

# TRANSPARENCY AS A TOOL TO POTENTIATE GENDER-BASED APPROACHES IN THE WTO

## Transparencia en la OMC como estrategia de empoderamiento femenino

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### ***Abstract***

Women have a critical role in sustaining the economy and in the development of trade. However, such role has long been invisible due to orthodox conceptions that have ignored the gender variable in commercial analyses. Today, it is generally accepted that neither the economy nor business are gender neutral and that the performance of these activities often impact negatively the lives of women. Women's participation in trade, on equal terms as men, in any of the various possible roles –producer, wage earner, consumer, merchant, taxpayer– will not only favour the lives of women, but also the performance of the economies in which they participate. Transparency, as a principle of the multilateral trading system, can play a significant role as a strategy for the empowerment of women.

**Keywords:** trade; human rights; gender equality; transparency; WTO; women workers; women's economic empowerment.

### ***Resumen***

La mujer tiene un rol fundamental en el sostenimiento de la economía y el desarrollo del comercio. Esto ha sido largamente invisibilizado por concepciones ortodoxas que han obviado la variable de género en los análisis comerciales. Hoy es generalmente aceptado que ni la economía ni el comercio son imparciales en

relación con género y que sus desempeños tienen un impacto, con frecuencia negativo, en la vida de las mujeres. La participación femenina en el comercio, en pie de igualdad con el hombre, desde cualquiera de sus disímiles roles – productora, asalariada, consumidora, comerciante, contribuyente– no solo favorecerá la vida de las mujeres, sino el desempeño de las economías en las que participan. La transparencia, como principio del sistema multilateral del comercio puede jugar un papel importante como estrategia de empoderamiento de la mujer.

**Palabras clave:** comercio; derechos humanos; género; transparencia; OMC.

## **Summary**

1. Introduction. 2. Discussion. 2.1. Gender and human rights. 2.2. Economy, Human Rights, Gender and Commerce. 2.3. The World Trade Organization under the gender looking glass. 2.3.1. Transparency as a principle and tool to foster gender approach in the WTO. 3. Conclusions. Bibliographic references.

## **1. INTRODUCTION**

This paper aims at discussing the role of the World Trade Organization (WTO) in the promotion of commercial strategies and policies that would support the reduction of gender-based gaps in international trade. According to Art. III (1) (2) (4) of the Marrakech Agreement (AC MARR),<sup>1</sup> the WTO, among other things, acts as a forum for negotiating trade agreements for its Members, manages Multilateral and Plurilateral Commercial Agreements, and also manages the Examination Mechanism for Commercial Policies. Consequently, it is not unwise to discuss the principle of transparency transversal to the whole Multilateral System of Commerce from a gender perspective, as the visibility and publicity of Members' public strategies can expand and increase the inclusion of this issue in the process of creation of commercial policies. The Organization's Secretariat, under the leadership of its Director General implementing the role of promotion and control, can impact positively the achievement by the Members of their goals of higher living standards and full employment on equal terms for all citizens regardless of their gender.

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<sup>1</sup> Art. III (1) (2) (4) of the Marrakech Agreement which established the World Trade Organization (WTO) (AC MARR) 1995. Updated edition of juridical texts, Secretariat of the WTO, 2017, ISBN: 978-92-870-4519-5, p. 4.

Achieving the highest economic performance demands equal participation of men and women. On the one hand, women represent at least fifty per cent of the population in every society and play a critical role in the economy as well as in the reproduction of the labour force. On the other hand, women are one of the more vulnerable sectors at world level, constantly facing violation of their economic, salary, social, and consumer rights, in most cases because of the implementation of customary policies that do not take into account gender gaps in commerce, judged not important in patriarchal cultures which consider women should stay at home, taking care of children and elders and doing house chores. However, it has been proved that economic and commercial policies that generate an increase in the volume of exchange of goods and services can also become a significant incentive in the recognition and guarantee of the economic and labour rights of women as well as their participation in the chains of international commerce.<sup>2</sup>

In the last 30 years, globalisation has brought about an increase in cross-border flows of goods and services, capital, technology and information. In this period, has prevailed the belief that a reduction of economic, geographic and cultural restrictions and obstacles would, in turn, produce an increase in productivity and new jobs, and therefore in the general well-being. We have thus witnessed the formulation of economic policies based on the assumption that the market would automatically guarantee development.

The myth that politics and commercial liberalization are impartial towards gender have for a long time prevented the inclusion of the topic in official statistics and public debate. Consequently, the link gender-commerce has been insufficiently explored in academic spheres and ignored in political ones. A comprehensive and thorough analysis of the impact of such interaction on women's lives. It is equally imperative the submission of proposals to formulate an inclusive commercial policy that would contribute to reduce the gender gap and would improve the conditions for women. The visibility, we insist, of the WTO's transparency as a tool for women's economic empowerment can be fertile ground for inclusive measures, regardless of the level of development of Members, though always taking into account inherent socio-cultural features.

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<sup>2</sup> World Bank Group and World Trade Organization, *Women and Trade: The Role of Trade in Promoting Gender Equality*, p. 2, [https://www.wto.org/english/res\\_e/publications\\_e/women\\_trade\\_pub2807\\_e.htm](https://www.wto.org/english/res_e/publications_e/women_trade_pub2807_e.htm)

## 2. DISCUSSION

### 2.1. GENDER AND HUMAN RIGHTS

The conceptual differentiation between gender and sex in studies began in the 1980s. Even though somewhat ambiguous, the notion of sex is restricted to a biological category. According to RADL PHILIPP, the term gender emphasizes the social, cultural and historic aspect of identities of both, women and men, their roles and functions in their space in which they develop. Such distinction does not deny the biological, anatomical and physiological support of gender distinctions, but it emphasizes a broader outreach. Historic-social experiences –both at individual and collective level– condition the physiognomy of the feminine and the masculine roles. However, this is not static, but it changes with the changes in circumstances.<sup>3</sup>

UNESCO defines gender as the sociocultural constructions which distinguish and configure the roles, perceptions and status of women and men in a society.<sup>4</sup> The processes of cultural socialization and appropriation at a certain historic time, endow those roles with content and at the same time establish barriers and limitations more or less flexible regarding the responsibilities, activities, and labour insertion among others. Furthermore, gender interacts with other criteria that can likewise find other limitations such as social class, race, poverty level, ethnic group, sexual orientation, and other issues.

We agree with RADL PHILIPP in that currently the term gender is, to a certain point, neutral-descriptive. However, in the field of social sciences and in the scope of this paper, the word retains its critical-ideological-feminist<sup>5</sup> meaning. In this sense, a gender perspective implies a critical analysis of the relations between men and women.

As pointed by Corina RODRÍGUEZ,<sup>6</sup> gender relations are defined by the conjunction between historic practices, ideological attitudes and religious beliefs,

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<sup>3</sup> RADL PHILIPP, Rita, "Derechos humanos y género", *CEDES* [online] (CD), No. 81, may-ago, 2010, pp. 135-155, <https://doi.org/10.1590/S0101-32622010000200002> [2020.08.02].

<sup>4</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO), *UNESCO Cultural Indicators of Culture for Development. Methodological Handbook*, 2014, p. 104, [es.unesco.org/creativity/sites/creativity/files/digital-library/cdis/Iguldad%20de%20genero.pdf](http://es.unesco.org/creativity/sites/creativity/files/digital-library/cdis/Iguldad%20de%20genero.pdf)

<sup>5</sup> RADL PHILIPP, Rita, "Derechos humanos...", *cit.*, p. 139.

<sup>6</sup> RODRÍGUEZ ENRÍQUEZ, Corina, "Análisis Económico para la equidad: los aportes de la economía feminista", *SaberEs Revista de Ciencias Económicas y Estadística (S-RCEE)*, No. 2, 2010, pp. 3-22, <http://www.saberes.fcecon.unr.edu.ar/index.php/revista/article/view/31/62>

differentiated by the feminine and the masculine together with the material conditions associated to the nature and distribution of resources and capabilities. These connections are characterised by power inequalities. "Gender standards" assign specific differentiated rights and responsibilities to women and men. Therefore, such standards affect the distribution of resources, wealth, work, decision-making and political power, as well as the enjoyment of rights, both within the family and in public life. Because of this, the issue of human rights (HHRR) and their meaning is conditioned by gender.

Consequently, gender equality is a HHRR problem, as it focuses in the participation of the "person" in the various sectors of society, disregarding identification issues. We can state there is gender equality when opportunities, recognition, exercise and guarantees of rights, as well as individual and collective responsibilities are structured in a generic manner regardless of the fact that the persons are men or women. This, undoubtedly, is an indicator to take into account when evaluating sustainable development focused on the persons, according to the United Nations (UNO) practice.<sup>7</sup>

Gender prejudices limit economic, social and political opportunities of women. Specific manifestations of such prejudices create unfavourable asymmetries and shape what is known as gender inequality. Even in areas not dealt with by studies on inequalities, such as commerce, it is more and more evident that the possible contributions of women can be shattered –and in fact are shattered– by the impact of the differences in the treatment of men and by the exchange of goods and services. Furthermore, the growing impact on other areas also shows historic inequalities and lack of strategies to change the dimension of those inequalities and to prevent their transfer to other areas and other realities based on the influence of globalisation and the internationalisation of economic processes and chains of supply.

This does not mean men and women are identical, nor that they must be treated in the same way,<sup>8</sup> it means men and women should have equal possibilities in life, according to their interests, needs and priorities. Gender inequality no brings negative consequences not only for women, society and efficiency are also damaged, because, as we explain above, approximately half of the world population are women, and therefore women also represent half of

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<sup>7</sup> Vid. <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

<sup>8</sup> In an unequal context, an equal treatment is not an adequate strategy for gender equality, as it can maintain and sharpen disparities.

the production potential. If this potential is not fully used because women are constrained by discriminatory practices, then the world can't yield the expected performance, even if we all participate in equal manner.

There is no standard model for gender equality, every approach must take into account the specific particularities of each society and culture. The emphasis in gender-based approach, equality and women empowerment are expressions of the concern for women and men to have the same opportunities to make decisions. To achieve gender equality we need a new, comprehensive look reflected in institutional transformations and social dynamics which perpetuate inequalities. The strategies to generate equitable scenarios are more effective when they include aspects of politics, planning, examination and evaluation of processes in a comprehensive, non-isolated manner.<sup>9</sup>

Dismantling this social construction of gender is the purpose of feminism, both as a movement in favour of women's rights and in its political dimension of "identity". Such purpose is expressed in a project aimed at eliminating gender inequalities and in an academic construction that represents its continuation in the fields of Philosophy, Social Sciences and Economy.<sup>10</sup>

From a historic viewpoint, the notion of the equality between women and men began to be identified in the feminine social imaginary at the time of the Illustration in France and Great Britain. It was considerably influenced by the French Revolution, as it raised awareness among women of the exclusion and oppression to which they were subjected and made them demand the position they deserved in society.<sup>11</sup> The French Revolution was undoubtedly a

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<sup>9</sup> Organization for the Economic Cooperation and Development (OECD), *DAC Guidelines for Gender Equality and Women's Empowerment in Development Cooperation*, pp. 9-11, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjBIMiHx-LrAhXvRt8KHQ7fC9QQFjABegQIBBAB&url=https%3A%2F%2Fwww.oecd.org%2Fdevelopment%2Fgender-development%2F28313843.pdf&usq=AOvVaw1w9ay-nA3B6SBwefTx6RDWS>

<sup>10</sup> ESQUIVEL, Valeria, "¿Es posible una economía feminista?", *Cuadernos de la ciencia y la tecnología. Mateadas Científicas II. Museo Interactivo*, No. 265, septiembre-octubre, 2016, pp. 147-171, [http://www.gemlac.org/index.php?option=com\\_content&view=article&id=339:es-posible-una-economia-feminista&catid=24&Itemid=148](http://www.gemlac.org/index.php?option=com_content&view=article&id=339:es-posible-una-economia-feminista&catid=24&Itemid=148)

<sup>11</sup> Even the title of the 1789 Declaration of the Rights of Man and Citizen excludes women, who were not considered subjects with rights. In this respect, Olympe DE GOUGES publishes in 1791 the "Declaration of the Rights of the Woman and the Female Citizen", in which she demands equal rights for both sexes, a different political role, equal rights to occupy public service jobs (also, art. 10 says that "if a woman can be sentenced to gallows, she should have the right to walk up the tribune"). Vid. RAMÍREZ, Gloria, *La Declaración de derechos de la*

leap forward in the recognition of HHRR, even though within the framework of male gnoseology. It nevertheless opened the gates to development to the feminist movement. Later, the socialist working movement worked out a more complete notion of the objectives of the feminist struggle. It began defending the idea that, up to that moment, human rights were identified taking as a reference the male sex, disregarding what women –who represent the other half of humanity– felt or thought, and what they fought and lived for. Making women invisible is denying recognition of their specific rights, turning them into a simple part of men’s doing. Selectiveness of HHRR is one of the elements that explains social constructions describing women as inferior, submissive and dependent beings, without a right to our own gender identity.<sup>12</sup>

The end of the Second World War and the economic, political and social transformations it brought, marks a landmark in the struggle for women’s social rights. In the second half of the 20<sup>th</sup> century there were many outstanding figures who laid the foundations and ultimately developed the feminist thought at the international level. The modern movement for women’s rights became much stronger from the 1960s, articulated around outstanding feminists like Simone DE BEAUVOIR, Betty FRIEDAN, Alice SCHWARZER, Juliet MITCHELL, Kate MILLET, among others.<sup>13</sup>

One of the major achievements of the modern feminist movement has been the increasing international awareness of women’s rights, which has been particularly expressed within the framework of international organizations and agencies. As part of this reality, the United Nations has called since 1975, four world conferences on women,<sup>14</sup> which have contributed to place the issue of women’s equality in the centre of the international agenda. These events have

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*mujer de Olympe de Gouges 1791: ¿Una declaración de segunda clase?*, p. 3, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi-HhJbZ3OLrAhUkSN8KHei7B-kQFjABegQIAhAB&url=https%3A%2F%2Fcedatdraunescodh.unam.mx%2Fcedatdra%2Fcedatdra%2Fmateriales%2Fu1\\_cuaderno2\\_trabajo.pdf&usq=AOv-Vaw0KVCaIZbicUbaoYllu6CZI](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi-HhJbZ3OLrAhUkSN8KHei7B-kQFjABegQIAhAB&url=https%3A%2F%2Fcedatdraunescodh.unam.mx%2Fcedatdra%2Fcedatdra%2Fmateriales%2Fu1_cuaderno2_trabajo.pdf&usq=AOv-Vaw0KVCaIZbicUbaoYllu6CZI)

<sup>12</sup> CARRERA LUGO, María Elena, *Los derechos humanos: universales y con dimensión de género?*, p. 6, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjA8aLT5uLrAhWuuFkKHZepDskQFJAAegQIBRAB&url=https%3A%2F%2Fwww.segobver.gob.mx%2Fgenero%2Fdocs%2FBiblioteca%2FLos\\_derechos%2520humanos.pdf&usq=AOv-Vaw0SWZn6veKxYviGnqvNHpoT](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjA8aLT5uLrAhWuuFkKHZepDskQFJAAegQIBRAB&url=https%3A%2F%2Fwww.segobver.gob.mx%2Fgenero%2Fdocs%2FBiblioteca%2FLos_derechos%2520humanos.pdf&usq=AOv-Vaw0SWZn6veKxYviGnqvNHpoT)

<sup>13</sup> RADL PHILIPP, Rita, “Derechos humanos...”, *cit.*, p. 144.

<sup>14</sup> The first World Conference on the Juridical and Social Status of Women was held in Mexico in 1975. It was followed by the Conferences of Copenhagen in 1980, Nairobi in 1985 and Beijing in 1995.

mobilised public opinion in the world to support a number of common objectives with a plan of action for the advancement of all women in all areas of public and private life at the global level.

Special mention should be made of the Beijing Conference (1995), which adopted the “gender approach.” This conference acknowledged that only through a reassessment of the whole structure of the society could the necessary changes for an equal participation of men and women in society could be generated.<sup>15</sup> Furthermore, the Conference passed a programme to foster the social role of women, known as Beijing Platform for Action.<sup>16</sup> The Conference marks a turning point in the treatment of the topic in the world, which no longer focuses in the social and juridical situation of women. The Conference opened a new structural approach regarding women’s rights. Beijing stressed fact that women’s rights, are human rights and that gender equality is a matter of universal interest and a benefit for all.

However, the intentions of the international community are still far from being effectively implemented. The development of women, and their full integration into all social spheres are constantly restricted and coerced, and in all geographic areas, discriminatory situations continue to persist. Women are prevented from accessing the labour market, or such access is conditioned to disadvantage; they are kept in poverty and absolute economic dependence; they are prevented access to education, technical and/or professional training, and

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<sup>15</sup>“19. It is essential to design, implement and monitor, with the full participation of women, effective, efficient and mutually reinforcing gender-sensitive policies and programmes, at all levels that will foster the empowerment and advancement of women”; Fourth World Conference on Women (IV CMSM), Beijing Declaration, 15 September 1995, p. 3. “1. The Platform for Action is an agenda for women’s empowerment. It aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women [1] and at 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. This means that the principle of shared power should be established between women and men at home, in the workplace and in the wider national and international communities. Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace [...]”. IV WCOW, Beijing Platform for Action, 15 September 1995, p. 7.

<sup>16</sup>The Beijing Declaration and Platform for Action was signed by 189 governments on 15 September 1995, as the closing of the IV World Conference on Women. It is the first international juridical instrument that presents a detailed plan of action establishing strategies to ensure women an equal treatment and full enjoyment of human rights in 12 areas of concern: poverty, education and training, health care, violence against women and girls, armed conflicts, economy, power and decision-making, the institutional mechanism to empower women, human rights, mass media and the environment.



are denied the exercise of their rights as citizens. This shows the long path still to be traversed for the real establishment, from institutionality and the family, of a status of equality between men and women.

The design of innovative projects to attract, promote and retain more women in public spaces, either labour or political, must be fed from the gender perspective, as it will help understand and untangle the cultural codes which in turn will help understand –and fight against– more efficiently prejudice and stereotypes. Most importantly, it must be understood that a gender-based perspective has an impact on both women and men, and benefits all the society as it removes obstacles and eliminates discrimination establishing more equitable conditions for the participation of a half of the society which, among other things, will impact positively on commerce and economy.<sup>17</sup>

## 2.2. ECONOMY, HUMAN RIGHTS, GENDER AND COMMERCE

To face the challenges imposed by globalisation, countries have designed and developed a diversity of strategies for their insertion in the world economy. However, these strategies, which usually analyse first place the imperatives of transnational capital and the position of countries, have not taken into consideration how the roles of genders condition their impacts on the lives of the individuals, especially on women.

Based on this, several theoretical, conceptual and empirical elaborations have been developed which outline an “economy with a gender perspective” and a “feminist economy”. The former visualises, from a notion of gender, the differences between men and women. It does not describe these differences as strictly derived from the economic rationality, but from the social and cultural construction of gender relations. The feminist economy departs from the complex interaction between feminism and economy. Its objective transcends the explanation of economic subordination of women because of gender relations. It is characterised by the generation of knowledge to transform situations of gender inequality.<sup>18</sup>

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<sup>17</sup> LAMAS, Martha, *La perspectiva de género*, p. 10, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjW4vH19eLrAhWE2FkKHWW-WAKQQFjADegQIBBAB&url=http%3A%2F%2Fwww.obela.org%2Fsystem%2Ffiles%2FLa%2520perspectiva%2520de%2520q%25C3%25A9nero%2520-%2520Marta%2520Lamas.pdf&usg=AOvVaw1ukr7Yjqx7EczrD97k8S>

<sup>18</sup> RODRÍGUEZ ENRÍQUEZ, Corina, “Análisis Económico...”, *cit.*, p. 3.

This trend has analysed and criticised several economic topics; it has also developed concepts and frameworks for discussion that make the explanation power of economy richer while providing useful tools to promote the feminist agenda. It fosters as well studies related to the contents and outreach of this economy of new type, in which the role of genders is in gear with the commitment to change situations of inequality. Such changes, based on a holistic vision, must flow vertically though there must be an adjustment of the relations at home. Family life is deeply marked by relations of inequality between genders, therefore, it cannot sustain an equitable model of change for men and women if there are not changes in the family as basic unit of the economy.

Feminist economy identifies well-being as an indicator of the success of the economy, instead of using other habitual indicators such as the Gross Domestic Product (GDP). From this viewpoint, the objective of economic functioning is the reproduction of life and not the reproduction of capital. Thus, sustainability and fair distribution move to a first position in feminist analysis, while one of its major arguments deals with the dimensions of gender present in the relation between production and reproduction, which structure perpetuates women's economic subordination and limit their autonomy. Based on these principles, this discipline makes significant contributions to the analysis of women's participation in the economy, and evidence the mechanisms of discrimination in the labour market.<sup>19</sup>

Another outstanding aspect in the feminist economy has been the renovation of a long-standing debate within feminism about unpaid domestic and caregiver work as key element in economic analysis. The debate, which began very early and in contact with Marxism, emphasized the role of unpaid domestic work in the process of capitalist accumulation and its impact on women's exploitation both at home and in the capitalist system. As part of this analysis, feminism developed the notions of sexual division of work, social organisation of caregiving and economy of caregiving.<sup>20</sup>

All those variables are discussed from a gender perspective to explain women's situation of disadvantage in the labour market. The lesser and most precarious feminine insertion in the labour market partly explains women's economic

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<sup>19</sup> RODRÍGUEZ ENRÍQUEZ, Corina, "Análisis Económico...", *cit.* p. 7.

<sup>20</sup> RODRÍGUEZ ENRÍQUEZ, Corina, "Economía feminista y economía del cuidado. Aportes conceptuales para el estudio de la desigualdad", *Revista Nueva Sociedad*, No. 256, marzo-abril, 2015, pp. 30-34, <https://nuso.org/revista/256/la-economia-invisible-feminismo-cuidados-y-poder/>

subordination and lack of autonomy. In short, inequality is a determining variable in the production of commodities and the reproduction of people.<sup>21</sup>

Consequently, it can be inferred that institutions, standards and policies are never neutral in terms of gender, as they operate on an unequal ground in which men and women do not occupy the same place in labour reproduction and economic well-being. Feminist economy has been able to prove these issues and position them in the international debate, and has managed to involve States and International Organisations more and more in the debate. This favours the design of macroeconomic policies, though there are still cases that reinforce gender economic inequality, precisely because ethical analyses of the economy are obviated.

Gender inequality is a constant in time and in States. However, discussions based on the feminist conception of the economy have favoured the implementation of changes and this, in turn, shows that institutions can change their dynamics because of collective pressure and influence.<sup>22</sup> This has been the situation in international commerce, where the analyses based on feminist economic principles and the safeguarding HHRR have progressed considerably even in the face of voracious commercial policies.

HHRR and commerce are interconnected in post WWII world order, though for a long time the two things were considered completely independent one from the other, both in International Law and in the internal aspect.<sup>23</sup> It was not until well advanced the 20<sup>th</sup> century that the debate on this complex issue started and the argument became more relevant as it became evident that globalisation and economic interdependence would modify international affairs. The impact on world economy under its influence is decisive, not only for individual and collective prosperity, but also for

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<sup>21</sup> A clear example is the way in which gender inequality of income stimulated the growth of semi-industrialised economies, such as Thailand. In these cases, the pressure for flexible prices led to an increase in jobs for women, whose salaries are much lower than the salaries of men because they have less negotiation power in the labour market. This means that the growth of exports attained in the 1990s was achieved at the expense of the institutionalisation (exploitation) of women. *Vid. SEGUINO, Stephanie, "Gender Inequality and Economic Growth: A Cross-Country Analysis", 28 World Development, No. 7, 2000, pp. 1211-1218.*

<sup>22</sup> *Ibidem.*

<sup>23</sup> PEIXOTO BATISTA, Juliana, "Derechos humanos y comercio, ¿una relación conflictiva? La protección del derecho a la educación en las negociaciones comerciales internacionales", en P. Gentili et al., *Políticas de privatización, espacio público y educación en América Latina.*

the capability of States to meet their international obligations regarding respect, protection and guarantee of HHRR.<sup>24</sup>

The last 30 years have shown great advances in telecommunications, computer science and transport, which has brought in turn a significant reduction in the costs for economic integration. Information and Communication Technologies have knocked down many barriers, allowing the expansion of the flows of goods and services and international organisation of production. But, this accelerated advance has not been sustained on platforms for the protection of the most vulnerable sectors of the population in developing countries, a fact that has expanded even more the gap between the rich and the poor and continues to foster HHRR violations and gender-based discrimination.<sup>25</sup>

The current concept of Human Rights is based on the principles of universality, interdependence and indivisibility, which should prevent a selective protection of Human Rights on the part of States, as well as a despair standing among UN Members with regards to the contents and obligations, especially in reference to collective rights. On the other hand, the normative development of the multilateral trade system, leaded by the WTO is based on liberalisation and progressiveness, which means that if there is a standing agreement between Members, more favourable conditions for all could be negotiated while the obligations resulted from the Agreements will be internally implemented to meet the economic and institutional reality. Such reality will determine the focus of attention, meaning a State can be party of new international economic-commercial strategies even if the social grid is far from having the conditions to effectively implement such strategies. Therefore, in spite of the progress achieved, international protection of HHRR can be far less effective than the pressure to maintain the conditions allowing the insertion in the chains of international commercial values.

Going back to the interaction, the standards for the protection of human rights and commerce, can and should favour each other. However, implementing this premise in the area of economic, social and cultural rights has resulted more difficult than the protection of civil and political rights. In practice, the effects of an open and transparent trade system have not resulted in fair dis-

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<sup>24</sup> ABRAMOVICH, Víctor E., "Linhas de trabalho em direitos econômicos, sociais e culturais: Instrumentos e aliados", *SUR. Revista Internacional de Direitos Humanos (RIDH)*, No. 2, 2005, pp. 189-196.

<sup>25</sup> CASTRILLO, Isabel, Coral PEY y María de la Luz TRAUTMAN, *Género, Comercio y Derechos Humanos ¿Una relación armónica?*

tribution and equal individual opportunities. And the situation is even more serious in underdeveloped countries. In general, it is currently acknowledged that the liberalisation of trade, threatens the protection of human rights instead of strengthening it. Too often, commercial commitments of States are not compatible with their obligations regarding fundamental rights, which, among other things, impact the gender gap.<sup>26</sup>

According to AZAR, ESPINO and SALVADOR, "The way in which countries participate in international trade has an effect on the internal allocation of resources and generates productive sectors as well as actors that are 'winners' and 'losers'. Economic movements and processes launched by international trade in each society interact with the existing system of gender relations. As a result, they are assimilated by men and women in different ways and have different effects on their well-being. In this way, though neither commercial policies nor the development of international trade create gender inequalities, they can modify those gender inequalities".<sup>27</sup>

International trade reproduces in a large measure, the unequal structures of economies and negatively affects women in their multidimensional roles, be it in their capacity of employees, producers, entrepreneurs, consumers, users of public services and unpaid caregivers.<sup>28</sup>

At the beginning of the 1990s, at the time when WTO was about to be created, began the controversy around the relation between trade and gender equality. The debate, in both the political and the academic arenas, was associated to the consequences of liberalisation policies in at least three areas:

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<sup>26</sup> Several reports from HHRR international agencies refer a worsening of the protection of some fundamental rights within the processes of commercial integration. *Vid.* Economic and Social Council (ECOSOC), *Reports of Sessions 18 and 19. Globalisation and its consequences for economic, social and cultural rights*, E/1999/22 E/C.12/1998/26, 4 December 1998; United Nations Organization (ONU), *Declaration of the United Nations Committee for Economic, Social and Cultural Rights in the Third Conference of Ministers of the WTO*, E/C.12/1999/9 18 March 1999; United Nations High Commissioner for Human Rights, *Report Liberalisation of Trade and Services and of Human Rights*. E/CN.4/Sub.2/2002/9, 2 July 2003; ONU, *Report of the Special Rapporteur on the Rights to the Access to Food*, E/CN.4/2003/54/Add1, 3 January 2003.

<sup>27</sup> AZAR Paola, Alma ESPINO y Soledad SALVADOR, *Los vínculos entre comercio, género y equidad. Un análisis para seis países de América Latina*, p. 1, <https://www.researchgate.net/publication/264878867>

<sup>28</sup> FROHMANN, Alicia, *Herramientas de Política Comercial para contribuir a la igualdad de género*, "Series International Trade", No. 153, Economic Commission for Latin America and the Caribbean (CEPAL), 2019, pp. 15-16.

institutionalization, the use by men and women of the opportunities in the labour market and the provision of labour.<sup>29</sup> Important initiatives were also promoted and implemented from the United Nations, such as the already mentioned Beijing Platform for Action, and the Convention for the Elimination of all forms of Discrimination against Women (CEDAW).<sup>30</sup> Also in this same period there were other initiatives that related gender and commerce in other United Nations agencies like the United Nations Development Fund for Women (UNIFEM) and the United Nations Development Program (UNDP).<sup>31</sup>

Liberalisation and commercial opening have been part of the integration strategies of countries, with a significant impact in several regions, including Latin America. They impact productive and employment structures through their effects on the economic growth and level of income. At the time, it was very common for men, mostly in agricultural entities, to hold for themselves the few permanent jobs available while women only had access to seasonal jobs. Occupational segregation by gender and the high demand of employment had contributed and still contributes to substantially reduce their strength in front of the employer, which in turn contributed and continues to contribute to reduce the payment to women workers.

Showing these realities as part of the debate of the Multilateral System of Commerce made possible the familiarisation with the idea that real markets are also socio-political constructions considerably influenced by state intervention. However, State and Government must have the will to launch and implement strategies that include the gender approach, and for this, it is necessary to count on the efforts of women and men alike, and with the cooperation of International Inter-Governmental and Non-Governmental Organisations.<sup>32</sup>

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<sup>29</sup> RAZAVI, Shahra, *The Gendered Impacts of Liberalization: Towards "Embedded Liberalism"?*, p. 7, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiUx6\\_MsuTrAhXfl3IEHc8MABQQFjACegQIBRAB&url=https%3A%2F%2Fwww.unrisd.org%2F80256B3C005BCCF9%2F\(httpAuxPages\)%2F801038C4A586DF16C125786F00320E55%2F%24file%2FCh1-Razavi.pdf&usq=AOvVaw3O-zl\\_641NFzqzZ-HYSm-](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiUx6_MsuTrAhXfl3IEHc8MABQQFjACegQIBRAB&url=https%3A%2F%2Fwww.unrisd.org%2F80256B3C005BCCF9%2F(httpAuxPages)%2F801038C4A586DF16C125786F00320E55%2F%24file%2FCh1-Razavi.pdf&usq=AOvVaw3O-zl_641NFzqzZ-HYSm-)

<sup>30</sup> CEDAW is considered an important achievement as the first juridically binding instrument to adopt an all-encompassing approach to ban discrimination against women in all spheres. It was adopted on 18 December 1979 and was first enforced on 3 September 1981. It has currently 189 States Parties. *Vid.* [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-8&chapter=4&lang=en) [2020.09.12].

<sup>31</sup> FROHMANN, Alicia, *Herramientas...*, *cit.*, p. 16.

<sup>32</sup> RAZAVI, Shahra, *The Gendered Impacts...*, *cit.* p. 11.

The commercial opening has proved to have contradictory repercussions. For example, though the field of investments requires highly qualified labour force, it generates reductions in the systems of social protection and working standards, which destabilises work, which destabilises work at the medium and long term. Likewise, there is a process of territorial re-localisation of the investment and relocation of jobs from the formal sector of the labour market towards the informal sector.<sup>33</sup> In spite of these contradictions, the liberalisation is an indispensable component of the structural adjustment programs promoted by the Bretton Wood institutions with which WTO, according to Art. III (5) of the AC MARR,<sup>34</sup> shall cooperate with a view to achieving greater coherence in global economy policy-making.

The transformations resulting from the economic opening in the volume and trade patterns of a country occur within the framework of economic structures and institutions which, as we have discussed earlier in this paper, are not foreign to gender prejudices. That's why women, especially the poorer ones, have faced greater difficulties to overcome the situation. It is currently acknowledged that gender inequality curtails human development.<sup>35</sup>

Alicia FROHMANN provides a disturbing picture of the situation after analysing the access to institutions, to credit, to employment, to courts, to work incentives, to the use of property, and to protection from violence: "The inequalities of rights in the face of the law, also limits opportunities and economic empowerment of women. Based on data for seven indicators in 189 countries, the World Bank (2018) estimates that 2.700 million women globally face inequality gaps and obstacles of legal nature. In some countries, women are not entitled

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<sup>33</sup> RODRÍGUEZ ENRÍQUEZ, Corina, "Economía feminista y economía...", *cit.*, pp. 18-19.

<sup>34</sup> "5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies" (WTO) (AC MARR), 1995, p. 4.

<sup>35</sup> The 2012 Report urges action in four areas: 1) approach problems related to human capital, such as excess of girls and women deaths and gender disparities in education when and where observed; 2) reducing income and productivity differences between women and men; 3) grant more voice and participation to women at home and in society; and 4) limit the perpetuation of gender inequality between generations. Vid. World Bank, *Report on Global Development Mundial. Gender equality and development*, p. VII, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjimMbp-sOXrAhWNIHIEHZB0Dy0QFjADegQIBRAB&url=https%3A%2F%2Fwww.upm.es%2Fsf%2FRectorado%2FGerencia%2Figualdad%2FDocumentos%2FInforme\\_sobre\\_desarrollo\\_Mundial\\_%25202012\\_banco\\_mundial.pdf&usq=AOvVaw2x5CYLhdUTU513M\\_fxJMAv](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjimMbp-sOXrAhWNIHIEHZB0Dy0QFjADegQIBRAB&url=https%3A%2F%2Fwww.upm.es%2Fsf%2FRectorado%2FGerencia%2Figualdad%2FDocumentos%2FInforme_sobre_desarrollo_Mundial_%25202012_banco_mundial.pdf&usq=AOvVaw2x5CYLhdUTU513M_fxJMAv)



to register the birth of their offspring, cannot apply for a passport or pen a bank account. [...] access to credit is the worst performing gender indicator in all regions –including the OECD countries with higher income– followed by the protection in case of violence against women [...] With regards to access to credit and personal insecurities, inequalities are barriers which impact negatively and in a decisive manner, women’s economic empowerment’.<sup>36</sup>

In the face of this situation, the adoption of a gender approach enriches the analysis on commercial policies and favours a better understanding of the performance in this field. An inadequate productive capability, restricted access to information and markets, the limited availability of productive resources and the weaknesses of infrastructures, are problems that worsen with gender inequalities. Competitiveness of economies can also suffer with an unfavourable situation of women.<sup>37</sup>

Nevertheless, it is more and more accepted that commercial policy can contribute to create economic opportunities for women and to reduce, even if temporary, the loss of jobs vulnerable to external competition, while this policy includes such specific objectives.<sup>38</sup>

### 2.3. THE WORLD TRADE ORGANIZATION UNDER THE GENDER LOOKING GLASS

The birth of the WTO was the result of a long process of negotiations which began within the General Agreement on Trade and Tariffs (GATT 1947). Its creation marked a turning point in the process of harmonizing the system of International Law, especially the International Economic Law. This advance had its origin, in a large measure, in the predominance of the neoliberal paradigm which contributed to the expansion of the multilateral system. However, the role of developing countries and the work of the Organ for the Solution of Differences have shown a defensive position in the central core of the organisation, which is to connect the liberalisation of commerce to the generation of options for

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<sup>36</sup> FROHMANN, Alicia, *Herramientas...*, *cit.*, p. 14.

<sup>37</sup> KLUGMAN, Jeni, *The 2030 Agenda and the Potential Contribution of Trade to Gender Equality*, p. 8, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiPrdXDtuXrAhUypFkKHd8hA-EQFjAAegQIAxAB&url=https%3A%2F%2Fwww.tralac.org%2Fimages%2Fdocs%2F10610%2Fthe-2030-agenda-and-the-potential-contribution-of-trade-to-gender-equality-ictsd-september-2016.pdf&usq=AOvVaw3JO98la1oAWnLnyqsBGNEC>

<sup>38</sup> FROHMANN, Alicia, *Herramientas...*, *cit.*, p. 16.



development and improvement in the living standard of the citizens of its Members, especially developing and less advanced countries (PMA).<sup>39</sup>

In this context, the permanent study and updating of the ways and mechanisms through which WTO works is indispensable, much more for the most vulnerable economies, that seek in the Organization an alternative to insert themselves in the productive processes and international services rendering. The aggressive environment favoured by the major economic powers seeking the expansion of their markets, not only towards developing and less advanced countries, but also between developed countries, makes evident that the permanent updating can generate an advantage that permits participation or, in a way, influence international commercial policies originated in the WTO.

One of the most significant recent transformations in international economy and in the organisation of its production has been the protagonism of transnational companies and the opacity of internal markets with regards to those. Such phenomenon has affected the capacity of public agents for increasing, improving and diversifying national exports –mostly in developing countries–. All this favours the WTO's maintenance and perfecting of its role in the regulation of international commerce, starting from the improvement of its multilateral juridical standards to meet public interests which guarantee development and social well-being policies.

The issue of gender was Analysis of Commercial Policies, Secretariat Report not taken into account within the WTO when formulating Commercial Agreements, a fact that was in tune the predominant thinking of the time that the liberalisation of commerce would, by itself, bring about better opportunities for all and would generate social development for all economies, especially for the less developed. However, the practice in the implementation of Multilateral Agreements has demonstrated that this process is not automatic, it does not reduce poverty by itself, and it generates more inequalities than the ones it eliminates.

In this respect, *Frohmann's* gender approach analysis states that "The General Agreement on Trade and Tariffs (GATT, 1994), for example, reduced in many countries the fiscal revenue resulting from import tariffs, that, without a re-allocation of resources, reduced the public services which users are mostly

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<sup>39</sup> LLAGUNO CEREZO, Desiree, "Las notificaciones en el Sistema de Transparencia de la OMC", LLM Thesis on file at University of Havana, 2019.

women. On the other hand, the Agreement on Textiles and Clothing of that same year shifted women's jobs in developed countries to developing countries, increased competition between countries and destabilised employment in the sector as it reduced salaries without modifying the gender gaps. The Agreement on Subsidies and Countervailing Measures did not include the programmes for the promotion of women empowerment in the category of non-recurrent subsidies [...]"<sup>40</sup>

Social inequalities and impoverishment, in spite of the commercial opening, provoked citizens' protests echoed by developing and less advanced Member States, because in their perception, negotiations did not take into account the perspective of developing countries. The Third Ministerial Meeting of the WTO held in Seattle, USA,<sup>41</sup> was a failure because of the demands and initiatives of the civil society and non-governmental organisations, to include in the commercial debates variables such as poverty, and means of subsistence.<sup>42</sup>

The Fourth Ministerial Meeting, held in Doha, Qatar in 2001, initiated the Doha Round for Multilateral Commercial Negotiations, which included the Doha Development Agenda (PDD). A number of measures was adopted, in principle beneficial for poor countries and making emphasis on development, which contributed to doubt the idea that globalisation would lead to economic growth. Then, there was the notion that equality and human rights are the foundation and the logic of growth through international trade. Though the gender issue was not explicitly mentioned, the commitments acquired there have significant implications for gender equality. However, even with such an ambitious agenda, there has not been a consensus between developing Members and developed Members.

Today, in contrast with the situation of a decade ago, feminist movements, UN agencies and non-governmental organisations have included the gender issue in the agendas of Governments and International agencies as an essential element for the effectiveness of development policies. Also, organisations like OECD have included in their reports, statistical information on the economic

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<sup>40</sup> FROHMANN, Alicia, *Herramientas...*, cit., p. 16.

<sup>41</sup> The Third WTO Ministerial Conference was held in Seattle on 30 November to 3 December 1999.

<sup>42</sup> RANDRIAMARO, Zo, *Gender and Trade. Overview Report, 2006*, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi1o-WU4OfrAhUo01kKHUax-AREQFJACegQIAhAB&url=https%3A%2F%2Fwww.wedo.org%2Fwp-content%2Fuploads%2Fcep-trade-or.pdf&usg=AOvVaw0eN08NO4UPuoR4Q7NZouLy>

cost of discrimination, and on the impact on economic growth of policies that reduce the gender gap.<sup>43</sup> Furthermore, the motivations related to development of the Sustainable Development Goals (SDG) of the 2030 Agenda even in developed countries, has shown the urgent need for the WTO to contribute with them, including in their work programmes the SDG 5 of gender equality.

As we have previously discussed in this paper, though WTO's agreements do not specifically refer to the issue of gender, the actions of the Secretariat show that it acknowledges the importance of trade for the achievement of gender equality through the creation of jobs, development and empowerment. The most important result has been so far the Declaration on Trade and Women's Economic Empowerment,<sup>44</sup> adopted in 2017 by the Eleventh Ministerial Conference in Buenos Aires which major objectives are to eliminate the obstacles that prevent women's economic empowerment and foster such empowerment. This was the and multilateral organisations such as the result of the coordination between several countries and multilateral organisations, such as the International Centre for Trade, the United Nations Conference on Trade and Development (UNCTAD), the WTO, and others. The gender approach has also been present in the policies for facilitating trade and in the Aid for Trade programmes.

However, these expectations and declarations are not enough to ensure that Members include the gender approach in their commercial strategies to thus guarantee women's economic empowerment. Consequently, the identification of mechanisms that guarantee that both commerce and gender equality agendas support each other is necessary. One way could be the principle of de Transparency, focused on the intention that all Members must visualize and acknowledge the good experiences in trade empowerment and at the same time question the few advances in the closing of gaps on the occasion of the Exams on Commercial Policies. Notifications could also be considered useful instruments to inform management, administrative bodies, and the Secretariat about Agreements and individual progress of Members.

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<sup>43</sup> Organization for the Economic Cooperation and Development (OECD) - Social Institutions and Gender (SIGI), *Index 2019 Global report: Transforming challenges into Opportunities*, p. 16, <https://www.oecd-ilibrary.org/sites/bc56d212-en/1/2/1/index.html?itemId=/content/publication/bc56d212-en&csp=3c7e048c80fc5e8e6616e1289a989dd3&itemIGO=oecd&itemContentType=book>

<sup>44</sup> *Vid.* [https://www.wto.org/spanish/thewto\\_s/minist\\_s/mc11\\_s/genderdeclarationmc11\\_s.pdf](https://www.wto.org/spanish/thewto_s/minist_s/mc11_s/genderdeclarationmc11_s.pdf)

### **2.3.1. *Transparency as a principle and tool to foster gender approach in the WTO***

The principle of transparency means all members are juridically bound to inform the other members and their commercial partners in general about policies and practices affecting trade. It has equally a systemic significance as it allows its members to watch trade measures adopted by other members and assess their impact on the multilateral trade system. It is a transversal principle that extends throughout the whole multilateral trade system and that implies obligations both for the members of the organisation and for the organisation's bodies.

The essence is to publicise policies, practices and regulations that have an impact on trade, that all members and commercial actors receive the same information, so that they can adopt decisions regarding the exchange of goods and services (internal transparency). In the case of transparency binding of WTO bodies (external transparency), mention should be made of the various initiatives and programmes existing to inform the general public, including the academic environment and the civil society, of the activities implemented by the WTO. Additionally, the development of information and communication technologies and the media has meant the obligation of constantly updating the website of the Organisation also as a publicizing tool of the WTO's organs and decisions.<sup>45</sup>

According to LEJÁRRAGA, there are four different aspects of Transparency that could become systematic in international trade standards. These aspects are: first, information, which implies publications, notifications and points of contact; second, participation, which refers to the right of members to request detailed information about any topic that can have an impact on commercial policies, as well as making comments, observations and recommendations on those policies; third, predictability, understood as the need for rules and regulations are clear and that they be implemented in a fair and coherent manner and; fourth, the struggle against corruption, which means establishing procedures

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<sup>45</sup> On 14 May 2002, the General Council decided that the public should have access to a larger number of documents as soon as these were distributed. It also decided that the scarce number of documents that had initially been private, shall be quickly made public: in approximately two months, instead of six months as it had been previously established. For the second time an important decision on transparency was adopted. Indeed, on 18 July 1996, the General Council agreed to disseminate more information on WTO activities and decided public information should be accessed online, including WTO documents that could have been considered for the general distribution. The objective is for the general public to have more information.

for controlling, monitoring and accountability.<sup>46</sup> Data compilation is not the simple preparation of databases, but it aims at monitoring WTO Agreements and their conversion into strategies adapted to time and historic situation. It is thus understandable the need to collect information that favours the gender agenda.

Transparency will continue to be a key element in the commercial agenda, at the regional and multilateral levels, and it therefore is an indispensable tool for empirical and quantitative analyses in gender equality. Regional agreements that include ambitious regulations are associated with trade flows greater than those with lower levels of transparency commitment.<sup>47</sup>

Transparency binding obligations are collected in all WTO Agreements. Special mention should be made of: GATT (art X), General Agreement on Trade in Services (GATS) (art III) and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) (art 63). In general, monitoring and evaluation mechanisms that derive agreements from the implementation of the principle of transparency within the framework of WTO agreements are the notifications, the Exam on Commercial Policies, the work of WTO Councils and Committees and the Mechanism of Transparency in Regional Commercial Agreements (RCA), as well as the Preferential Commercial Agreements (PCA).<sup>48</sup>

As part of the insertion in commercial debates on gender, the steps adopted by WTO Secretariat aim, in the first place at raising awareness with regards to the relationship commerce; second to generate data that prove the impact of trade on women and thus favour related initiatives among its Members; and last, to provide technical assistance and advise to governmental agents and entrepreneur women. All this would not be possible without the flows of information generated by the notifications to which Trade Agreements invite. One of the most important tools of the trade policy for gender equality, is precisely the generation of data on trade and gender. These data will not only provide a radiography on the performance for empowerment, but they also allow the identification of obstacles and barriers restricting women's participation in international trade.

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<sup>46</sup> LEJÁRRAGA, Iza, *Multilateralising Regionalism, Strengthening Transparency Disciplines in Trade*, p. 15, <http://dx.doi.org/10.1787/5k44t7k99xzq-en>

<sup>47</sup> LEJÁRRAGA, Iza y Ben SHEPHERD, *Quantitative Evidence on Transparency in Regional Trade Agreements*, p. 6, <http://dx.doi.org/10.1787/5k450q9v2mg5-en>

<sup>48</sup> LLAGUNO CEREZO, Desiree, "Las notificaciones..." *cit.*, p. 10.

It would be difficult to accurately identify the measures that hinder the construction of equitable and sustainable spaces for both men and women without information on how the opening of markets has an impact on women. This principle could actually constitute a first step to raise awareness on the measures to adopt and their net benefits. Currently, markets with greater information asymmetries will more probably remain closed, as there is no information that would encourage entrepreneurs and economic operators to approach in search of new opportunities. Even a market that has suppressed tariff barriers but does not provide adequate and predictable information, might not be attractive. In an economy where women are concentrated in the sector of production of export goods, it could be harmful for the employment if the Government disregards its obligations to provide commercial information to WTO. Therefore, opening a market without transparency could hinder the implementation of trade strategies aimed at generating empowerment.

Transparency has been deemed so important that in the already discussed 2017 Joint Declaration on Trade and Women's Economic Empowerment, signing parties committed to share experiences on policies and programmes to foster the participation of women and to voluntarily inform them during the Exam on Trade Policies at WTO. Such information will allow Members to become familiarised with current practices in gender studies, methods and procedures for the collection of data segregated by gender, use of indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistical information and information about trade. Every data, tools and information provided will be essential to examine, design, and implement more gender-sensitive trade policies.

Encouraging the flow of information towards the WTO has also encouraged its Members to internally articulate an agenda for trade and women's economic empowerment, and more importantly, on the information to provide in the Exams on Trade Policies Members have to take, as we will analyse below.

One of the examples is the case of Canada, a country where the gender issue is highly important in the design of every development program, every policy and every initiative, including trade policies, therefore information on every experience is to be provided. Impact assessment analysis can be used to identify products and market segments with a positive influence for women that can be socialised as part of the Transparency standards for participation. Canada, leading a group of Members, is also at the

forefront in the proposals to include gender equality in the negotiations on the national regulations for the area of services.<sup>49</sup>

Predictability standards allow the expansion of trade practices in stable environments, as well as the establishment of protection coverage for elder women, contrary to what would occur in a market of which there is no information about its functioning and dynamics. Situations of gender-based inequality can be more easily thwarted in those economies in which there is a flow of data and therefore impact modelling.<sup>50</sup>

As part of the policy for awareness raising in gender-based analysis, the WTO adopted the Plan of Action on Trade and Gender 2017-2019, to support the activities of WTO Members in this area and to compile new data on the impact of gender-related trade measures. It is important to mention that, by virtue of the principle of special and differentiated treatment<sup>51</sup> developing and less advanced Member countries can chose to have extended periods of time for the implementation of Agreements and decisions. Similarly, these countries can request technical assistance and advice the Organisation provides for capacity-building that would, in turn, facilitate adequate formulation, implementation and control of trade policies in tune with the Plan of Action and integrating an integrating, change-generating, gender-based vision. These technical capacity-building programmes on the relation between trade and gender are not only addressed to governments, but also to specific sectors such as women entrepreneurs or women's unions in certain areas such as agriculture and fishing.

However, in this regard there are certain aspects to be discussed on the use of the special and differentiated treatment principle in a subject that, first of all, is closely related to HHRR issues. Even though it is true that the construction

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<sup>49</sup> World Trade Organization, *En primer plano: Reforzar el papel de las mujeres en el comercio*, p. 108, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig2NuGoejrAhUywFkKHVMUB5cQFjAAegQIARAB&url=https%3A%2F%2Fwww.wto.org%2Fspanish%2Fres\\_s%2Fbooksp\\_s%2F13\\_anrep18\\_spotlightincreasingwomenrole\\_s.pdf&usq=AOvVaw0yWF0\\_dodUepqrFONOR833](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig2NuGoejrAhUywFkKHVMUB5cQFjAAegQIARAB&url=https%3A%2F%2Fwww.wto.org%2Fspanish%2Fres_s%2Fbooksp_s%2F13_anrep18_spotlightincreasingwomenrole_s.pdf&usq=AOvVaw0yWF0_dodUepqrFONOR833)

<sup>50</sup> World Bank Group and World Trade Organization, *Women and Trade. The Role of Trade in Promoting Gender Equality*, p. 177, <https://www.worldbank.org/en/topic/trade/publication/women-and-trade-the-role-of-trade-in-promoting-womens-equality>

<sup>51</sup> World Trade Organization, *Implementation of special and differential treatment provisions in WTO Agreements and decisions*, [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=21868,75336,69267,64560,46353,12283,1294&CurrentCatalogueIdIndex=6&FullTextHash=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=21868,75336,69267,64560,46353,12283,1294&CurrentCatalogueIdIndex=6&FullTextHash=)



of trade policies with a gender perspective that aim at the suppression of the gender gap requires technical capacity-building programmes oriented to government decision-makers, the need for this capacity-building should not be used as a justification to extend for unlimited time the effective implementation of actions or measures. The idea is not only foster and promote practices that would ensure the economic growth of developing and less advanced countries, but also ensure that such growth is based on non-discriminatory platforms aimed at encouraging participation of men and women in equal conditions, precisely in those Member countries with higher rates of gender inequality. The principle of special and differentiated treatment should turn into specific initiatives to accelerate the development of basic economic infrastructures and the support to necessary services which, in turn, increase and expand women's opportunities in the labour market. The solution of specific gender problems should be extended and expanded in the same way through their inclusion in the designs and implementation of plans for support.

As established in the Joint Declaration on Trade and Women's Economic Empowerment, the objective should be:

"[...]

7. Sharing our respective experiences relating to policies and programs to encourage women's participation in national and international economies through World Trade Organization (WTO) information exchanges, as appropriate and voluntary reporting during the WTO trade policy review process;
8. Sharing best practices for conducting gender-based analysis of trade policies and for the monitoring of their effects;
9. Sharing methods and procedures for the collection of gender-disaggregated data the use of indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistics related to trade;
10. Working together in the WTO to remove barriers for women's economic empowerment and increase their participation in trade; and
11. Ensuring that Aid for Trade supports tools and know-how for analysing, designing and implementing more gender-responsive trade policies. [...]"<sup>52</sup>

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<sup>52</sup> LEJÁRRAGA, Iza, *Multilateralising Regionalism...*, cit.



Another tool included in the WTO Transparency system is the mechanism is the WTO Trade Policy Review Process (TPRM),<sup>53</sup> and as is established in the Declaration, this mechanism is one of the ways to contribute to the generalisation of the use of gender-based agendas in trade. This Mechanism consists in a collectively-taken evaluation of a Member trade practices within the WTO.<sup>54</sup> The evaluation assesses the performance of the Member's trade with other Members, the impact of these practices on the Member's trade with other Members, and how such practices can be adjusted to international trade standards. The Member being evaluated provides important information for a visualisation on how trade is integrated in its functioning as a State and as a Legal Entity in International Law.

The documents to be provided for the Exam include a report drafted by the Secretariat, a report by the Member under examination, the observations and comments drafted by the Chairman of the Body for the Review of Trade Policies (OEPC) as a conclusion, and a section with outstanding information on trade policies. The reports resulting from this process become an especially useful reference as they include a wide range of comprehensive information on trade.

Between 2019 and until July 2020 there have been 15 such processes in which, based on the Secretariat's Report, a gender-based approach is analysed in a comprehensive manner only for the European Union and Canada,<sup>55</sup> not surprising if one takes into account the that there have been significant advances since 2017 in these two geographic areas, where the gender-based approach is the core in the implementation of the trade liberalisation. Special mention deserve small island states Samoa and Papua New Guinea in Oceania, as there is an evident progress based on the use of national tools combined with the technical support provide by the WTO. On the one hand, Samoa specifically shows the impact of projects for the mitigation of poverty which have taken

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<sup>53</sup> WTO, "Annex 3 of the Marrakech Agreement. Mechanism to examine commercial policies, amended by Decision of the General Council, in July 2017", p. 515.

<sup>54</sup> All members are bound to formally take an exam periodically. The four major commercial entities (currently the European Union, the United States, China and Japan) take the exam every three years. The other 16 more important commercial partners take the exam every five years. Members take the exam every seven years. *Vid.* WTO, *Amendment of the trade policy review mechanism*, decision of 26 July 2017, WT/L/1014.

<sup>55</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Canada*, 17 April 2019, p. 10, WT/TPR/S/389; WTO, *Analysis of Commercial Policies, Secretariat Report. European Union*, 10 December 2019, p. 39, WT/TPR/S/395.

into account a gender-based approach.<sup>56</sup> On the other hand, Papua New Guinea included the gender-based approach as the major objective of its National Trade Policy.<sup>57</sup> A large group of countries does not show advances in the trade-gender relation. The issue of women is only considered as part of the statistics disaggregation by gender. This is the case of, for example, Costa Rica that only mentions that the unemployment rate is higher in women than in men.<sup>58</sup> Bangladesh shows the impact of gender-based policies in the labour market.<sup>59</sup> North Macedonia only shows information on the number of unemployed women.<sup>60</sup> Suriname shows an intention to generate more employment opportunities for women and includes this issue as an objective in its General Plan for agricultural development.<sup>61</sup> A fourth group acknowledges the wide gender gap they exhibit: Laos includes the expectation of a reform in human capital to eliminate gender disparities;<sup>62</sup> Australia is working to meet the principles of employment by providing equal opportunities for women at the work place;<sup>63</sup> and Japan, where there is a persistent significant salary difference between genders, is working in the promotion of employment for women and to encourage the participation of women in the labour market.<sup>64</sup> Last, there was no mention of any gender-based issue by Ecuador,<sup>65</sup> Trinidad and Tobago,<sup>66</sup>

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<sup>56</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Samoa*, 13 February 2019, p. 12, 10WT/TPR/S/386.

<sup>57</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Papua New Guinea*, 3 April 2019, pp. 22-23, WT/TPR/S/387.

<sup>58</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Costa Rica*, 24 July 2019, p. 19, WT/TPR/S/392.

<sup>59</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Bangladesh*, 6 February 2019, p. 21, WT/TPR/S/385.

<sup>60</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Republic of North Macedonia*, 11 June 2019, p. 19, WT/TPR/S/390.

<sup>61</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Suriname*, 7 August 2019, p. 49, WT/TPR/S/391.

<sup>62</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. People's Democratic Republic of Lao*, 14 October 2019, p. 13, WT/TPR/S/394.

<sup>63</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Australia*, 15 January 2020, p. 92, WT/TPR/S/396.

<sup>64</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Japan*, 22 January 2020, p. 54, WT/TPR/S/397.

<sup>65</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Ecuador*, 8 January 2019, WT/TPR/S/383.

<sup>66</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Trinidad and Tobago*, 27 March 2019, WT/TPR/S/388.

and Peru, though the latter acknowledges it is still exploring the issue of women's economic empowerment as a new possibility.<sup>67</sup>

In general, 80 per cent of the 15 Members that most recently took the exam discussed the issue of the gender gap and women's economic empowerment. The three members that do not discuss the topic coincidentally are located in the Latin America and the Caribbean region. The statistics on trade policy that can be gathered from the exams can be included in the decision-making negotiations to generate a greater commitment in gender-based analysis. In the same way, circulating the information among all members to facilitate an exchange through questions and answers will be a good opportunity to present experiences with a positive outcome that could become a motivation and an example of best practices.

It is now acknowledged that the implementation of internal legislations is not enough guarantee to achieve advances in the reduction of inequalities between men and women. Experiences cannot only be focused and limited to results. It is necessary to show each of the actions that favoured the result. In some cases, the resources exist to implement strategies, but the staff in charge of the implementation is very limited and/or does not have the training and preparation required. If the approach and the implementation are not comprehensively designed, all the positive results that can be generated by knowledge and experiences and the technical support will never materialise into more and better opportunities for women.

Today, the facilitation of trade is a recurrent aspect in national policies, because barriers must be necessarily removed. Therefore, transparency also plays an important role in the transfer of the information necessary to find and pinpoint those barriers, especially the ones related with the specific gender-related offer, which prevent women from being able to display their full entrepreneurship potential.<sup>68</sup>

As has been discussed in this paper, trade affects women's economic empowerment and well-being. Gender inequalities can usually increase due to the unequal distribution of income and resources among the various groups of

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<sup>67</sup> WTO, *Analysis of Commercial Policies, Secretariat Report. Peru*, 27 August 2019, p. 9, WT/TPR/S/393.

<sup>68</sup> United Nations Conference on Trade and Development (UNCTAD), *Analysis of the Commercial Policy through a "gender looking glass": Summary of Case Studies of Seven Countries Carried Out By UNCTAD*, UNCTAD/DITC/2014/3, 2014, p. 17.

women and men. Commerce also has an impact on the status of women in their several roles as employees, producers, consumers, merchants and tax-payers. It is therefore critical within the framework of the WTO to raise awareness on the responsibility of the organisation and its members to ensure the access of women to the information on trade issues within a favourable, non-discriminatory environment. In the same way, the publication of standards and regulations related gender equality should be favoured, indicating their relation with trade. Reliable statistical information, disaggregated by gender, research capacity and political will, is as well a critically needed element to carry out thorough and comprehensive evaluations about the impact on gender of trade policies.<sup>69</sup>

### 3. CONCLUSIONS

A gender-based approach in the studies on international trade law requires also a multidisciplinary approach with the participation of jurists, economists and other experts. It also demands a thorough, painstaking examination of standards, principles, institutions and provisions. It is therefore crucial to understand the beneficial effects of a gender-based approach for the economy in general and for trade in particular and to evaluate fairly the importance of including the gender variable in the formulation and implementation of trade policies that can have a real impact on gender equality.

But, it is impossible to implement a gender-aware trade policy without the necessary statistics disaggregated by gender. These, and their adequate publication and dissemination would inform about the reality of women and the eventual impact of trade regulations on them. The evaluation of impact evaluations will, in turn, favour better oriented negotiations and decision-making, and will avoid discrimination and foster agreement on transitional initiatives for affirmative action when necessary. A policy to foster the access of women to second- and third-level education and to technical professional education will facilitate their participation in the labour market, and will provide women access to higher level jobs, better paid and more stable, mostly in the area of services. The implementation of other strategies that do not include an analysis of the various impacts every policy can have on both men and women, which continue to assign women narrow sector-based jobs, will only worsen the existing gender inequalities instead of removing them.

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<sup>69</sup> UNCTAD, *Virtual Didactic Handbook of the Institute on Commerce and Gender*, p. 31, <https://unctad.org/es/paginas/PublicationWebflyer.aspx?publicationid=1137> (2020.03.02)

The principles of the multilateral trade system, especially the principle of transparency, and the trade policy tools can become a great potential as agents for change in the lives of women. The WTO Secretariat can give a critical impulse to the inclusion of the gender variables in the creation and implementation of trade policies. Only in this way will liberalisation processes achieve a sustainable development, including the unavoidable elimination of gender-based discrimination and the gaps existing in the labour market.

The notifications to ensure the flow of information among WTO Members and between members and WTO, as well as the Exam on Trade Policies are tools of the Multilateral Trade System that facilitate the inclusion of policies for women's economic empowerment in the agendas and that will show the positive results for economic growth of an equal participation of everyone, men and women, in the exchange of goods and services.

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Recibido: 23/12/2020  
Aprobado: 25/1/2021