

Beyond Barriers

The Gender Implications of Trade Liberalization in Southern Africa

Sheila Kiratu and Suryapratim Roy

2010

Abstract

Gender is a key factor in the complex relationship among trade, growth and development, yet there is a widespread assumption that trade policies and agreements are class, race and gender neutral. This paper attempts to distil these assumptions and highlights the various aspects of the relationship between gender and trade by focusing on the effect on trade of women engaged in trading activities and the effect of trade on women's lives.

It examines the opportunities and challenges that regional trade arrangements in Southern Africa offer women, as well as WTO instruments that curtail the involvement of women in national economic sectors. It finds that trade policies are in most cases responsible for reducing the policy space of states, thereby rendering them incapable of formulating pro-gender/pro-development policies.

But national policies or measures on gender can be complementary to trade rules and agreements when trade instruments impose conditions of gender equality that states should meet to gain the benefits of trade, thus filling in the gaps that may exist in national policies. However, the most compelling challenge lies in arriving at WTO-compatible streamlined regional solutions to reduce inequalities at all stages of the economic process.

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About the Trade Knowledge Network

<http://www.tradeknowledgenetwork.net>

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Abbreviations and Acronyms

ACP	African, Caribbean and Pacific
AGDI	Africa Gender and Development Index
AU	African Union
AU Policy	AU Gender Policy Action Plan
CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COMESA	Common Market for Southern and Eastern Africa
COMESA Policy	COMESA Gender Policy
CPA	Cotonou Partnership Agreement
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
G & D Protocol	SADC Gender and Development Protocol
NEPAD	New Partnership for Africa's Development
OECD	Organization for Economic Cooperation and Development
RTA	regional trade agreement
SADC	Southern African Development Community
SME	small and medium-sized enterprise
SPS	sanitary and phytosanitary standard
SSA	sub-Saharan Africa
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNECA	UN Economic Commission for Africa
USD	U.S. dollar
WTO	World Trade Organization

Executive Summary

Although trade can be a catalyst for gender equality, the effects of trade liberalization and economic globalization on women, in particular, so far have been mixed. For example, while in a large number of cases trade in general has improved women's empowerment and livelihoods, in some other cases the benefits gained by women from trade liberalization have been marginal, and relatively lower than those gained by men. In some other cases, however, trade liberalization has actually exacerbated gender inequalities and women's economic and social status (UNCTAD, 2009).

The primary criticism levelled against international trade agreements from a gender perspective is that the measurement of international trade in terms of a net economic benefit and market-based criteria has largely ignored societal imbalances, which in turn results in long-term trade inefficiencies. This criticism is supported by the fact that Article XX of the GATT, which allows for the reconciliation of trade- and non-trade-related norms in the trade context, is silent on the issue of women's rights. Trade agreements have also been criticized for reducing the policy space afforded to national initiatives in general, and the same may well apply to the empowerment of women and their participation in formal economic activities. But these very agreements can be used to streamline the reduction of inequalities at all stages of the economic process and we proffer suggestions on the necessity and means of doing so.

Key findings are as follows:

- Gender relations are not outside the economy in some realm of 'preferences', 'aptitudes' and 'traditions', but rather permeate all economic activities.
- The characteristic above all others that identifies the engagement of women in economic activities in Africa is their engagement in the informal economy, as around 70 percent of the informal traders in sub-Saharan Africa are women.
- Social perpetuation of gender gaps is not, it appears, the most compelling obstacle to women being involved in trade. In fact, national, institutional and legal hurdles have a more adverse effect on women attempting to develop their earning capacity.
- The percentage of women who would be affected by trade facilitation aimed at the formal economy would be much smaller than changes focusing on the informal economy.
- However, national or local measures are not always effective, and external requirements may well bring about actual differences. Thus there is a crucial role to be played by trade agreements to fill gender-related gaps in policy.
- It is possible that trade agreements may not be mindful of, or may be indifferent to, national and local policies while incorporating gender sensitivity. Here international instruments on gender not directly related to trade can play an important role in creating rights-based frameworks where women can seek economic rights by way of entitlement and also ensuring that national governments have the appropriate protective enabling instruments in place to avoid any undermining of or distortions to trade policies.
- Regional trading arrangements (RTAs) are likely to offer opportunities that are best suited to women because the latter do not necessarily need large export markets and may find neighbouring markets more familiar and easier to deal with.

Recommendations are as follows:

- The most common requirement that one comes across is that of adopting a ‘gender perspective’ on trade relations. What is needed, therefore, is a methodological intervention whereby analysis of the desirability of trade particular choices requires addressing gender concerns.
- It appears that RTAs should address the reality of informal cross-border trade so as to minimize the negative effects of free trade agreements on vulnerable groups such as women.
- Supportive institutional measures should be adopted rather than a move towards eradicating informal cross-border trade altogether, but at the same time, the hazards to women inherent in such trade should be removed. What this calls for is an enhanced role for regional governance bodies in assessing the positive role of informal trade and applying this assessment to regional trading arrangements.
- It would be useful to have a yardstick against which RTAs can be measured for their gender sensitivity, which would considerably reduce negotiator hesitancy and the administrative costs of incorporating gender concerns in individual RTAs.

1. Introduction

Choudhury (2008: 115) succinctly summarizes why trade should be concerned with gender as follows:

The object and purpose of many trade agreements is to raise standards of living and to fulfill the objective of sustainable development. As gender inequality has been recognized as an impediment to the promotion of economic development, it must also negatively impact opportunities to increase living standards and sustainable development. Accordingly, if trade agreements are to meet their stated objectives, gender inequality must be addressed.

Even if we were to assume that the concept of sustainable development eludes conventional positivist economic analysis, gender would still be a force to contend with. Catagay (2001: 21; emphasis added) observes that ‘gender relations are not outside the economy in some realm of “preferences”, “aptitudes” and “traditions”; *gender relations are continually reformulated and permeate all economic activities*’. It appears from this statement that the reformulation of gender activities is affected by the economy and the question of which economic activities are ‘permeated’ by gender and to what extent this occurs needs to be addressed.

It is a common belief that the success of export-led growth relies on gender differences, where the inequality of wages stimulates growth in semi-industrialized countries. Although there is a study supporting this belief regarding cheap labour in Thailand (Seguino, 2000), contrary results arrived at in sub-Saharan Africa (SSA). The World Bank (2007) in its *Doing business in Africa report* points out that lack of skilled labour is the most compelling obstacle to doing business in the continent, and this is exacerbated by conventional export patterns. Based on a literature review, the Organization for Economic and Cooperation and Development (Korineck, 2005) concludes that market imperfections such as inadequate information and gender biases in resources, education and employment imply an inefficient allocation of labour and adversely impact the way in which economic phenomena such as investment and trade liberalization translate into economic growth. Further, evidence from Uganda’s Poverty Eradication Plan (2004) shows that addressing structural gender-based inequalities in education and formal sector employment could allow Uganda to gain up to five percentage points of gross domestic product.

Thus, even if it is debatable whether gender differences are inefficient for trade, a conversation in this regard definitely needs to happen.

In 2005 a review of the implementation of the Beijing Platform for Action (which emerged from the UN Fourth World Conference on Women, 1995¹) arrived at the following assessment of the economic engagement of women:

Achievements are as follows:

- i. Labour policies were compatible with International Labour Organization conventions.
- ii. Microcredit schemes and business literacy training had been instituted.
- iii. Progress has been made in women gaining access to land.
- iv. Land reform programs that include a quota for women had been instituted.

1 See Annex A.

Challenges include the following:

- i. Macroeconomic policies were not sensitive to gender.
- ii. The contributions of informal and household economies, which are dominated by women, had not been recognized.
- iii. There was a skewed distribution of remunerated and unremunerated work to the detriment of women.
- iv. The distribution of resources between men and women was highly inequitable.

All four of the challenges enumerated above have a clear relationship with trade policy and practices, as we shall explore in the course of this paper. The two compelling questions that merit attention are, firstly, why do we need to talk about gender in the context of trade agreements, and, secondly, why do we not limit our discussion to the multilateral trading system operating under the aegis of the World Trade Organization (WTO) instead of bringing in regional trade agreements (RTAs) as well? Before we proceed to an examination of the international and regional steps taken to address the gender–trade dynamic, it would be interesting to note two factors integral to this dynamic in Africa: those of informal trade and the obstacles to the participation of women in formal microbusinesses.

As far as methodological preferences are concerned, this paper is largely a literature review. It may be argued that a gender analysis is largely the adoption of a different methodology in examining issues such as trade to the usual tools such as pricing theory and political economy concerns. However, as will be evident in the course of this paper, other than the issue of greater representation of women in trade organizations and at different levels of government, gender inequality may well be addressed through certain facets integral to trade, e.g. the formal/informal dichotomy, national biases and sectoral priorities. One qualification must be mentioned: the issues addressed in relation to gender are those pertaining to women in the economy of SSA, and the position of men in gender analytical frameworks is beyond the scope of this paper. Nevertheless, in section 4 we briefly talk about the gendered nature of the fish trade in Tanzania, which is fuelled by patriarchal clans and kinships, and reaffirm Miller's (1991) study of men in Jamaica when it observes that 'men's domination of men outside the bonds of kinship and community has been more severe and brutal than men's domination of women within or outside the kin or ethnic group'.

2. Key Factors of the Gender-Trade Dynamic in SSA

2.1 Informal cross-border trade

While the notion of the care or reproductive economy is universal, i.e. where women sacrifice productive labour in order to attend to unpaid domestic duties, the characteristic above all others that identifies the engagement of women in economic activities in Asia and SSA is their involvement in the informal economy. In terms of sheer numbers, the percentage of women who would be affected by trade facilitation aimed at the formal economy would be much smaller than changes in the informal economy. An integral aspect of the informal economy is *informal cross-border trade*.

Informal cross-border trade is defined as largely unrecorded trade of goods and services passing through, and in the neighbourhood of, the established customs points along the borders of the countries in a region (Macamo, 1998). This includes goods that are under-invoiced and misdeclared, without necessarily including clandestine operations such as secret deals involving formal importers, exporters, customs and other public officials. A recent OECD report (Lesser & Moisé-Leeman, 2009) points out that in Uganda, for example, informal exports flowing to its five neighbouring countries were estimated to account for USD 231.7 million in 2006, corresponding to around 86 percent of the country's official export flows to these countries.² Similarly, informal imports were estimated at USD 80.6 million, corresponding to approximately 19 percent of official import flows from these countries. Available surveys in SSA indicate that a substantial proportion of informal cross-border trade in the region concerns staple food commodities (e.g. maize, rice and cattle) and low-quality consumer goods (e.g. clothes, shoes and electronic appliances) and is conducted mainly by individual traders and micro, small and medium-sized enterprises and often consists of small consignments. Further, the informal sector is closely linked with the formal economy – it produces for, trades with, distributes for and provides services to the formal economy. It includes survival activities, stable enterprises and dynamic growing businesses (Chen, Varek & Carr, 2004).

Around 70 percent of the informal traders in SSA are women,³ and studies have shown how the income earned from informal trade has allowed women social benefits such as status and greater bargaining power in the household (Damon & Jeuring, 2009). In fact, Damon and Jeuring (2009) provide a compelling argument that informal cross-border trade is crucial for alleviating poverty in SSA. Income generated by such trade enables women to obtain decent shelter and has a multiplier effect on education and healthcare, not only for themselves, but for their dependents as well. In addition, it is in informal economic activities that women have managed to develop some degree of self-sufficiency. However, informal cross-border trade creates some compelling problems such as instilling a culture of corruption in trade, especially at border posts, and encouraging trade in illegal substances, including drug trafficking. The former is especially detrimental to women, as they do not have access to the 'old boys networks' that would allow them to avoid the regular bribery (with accompanying demands for sexual favours) and impoundment of goods at various checkpoints. Finally, informal cross-border trade discourages the growth of formal small and medium-sized enterprises (SMEs) and innovative cooperative societies.

2 The OECD has classified informal cross-border trade into three categories:

- Category A: informal (unregistered) traders or firms operating entirely outside the formal economy;
- Category B: formal (registered) firms *fully* evading trade-related regulations and duties (e.g. avoiding official border crossing posts); and
- Category C: formal (registered) firms *partially* evading trade-related regulations and duties by resorting to illegal practices (e.g. under-invoicing).

3 Of this figure, around 40 percent operate exclusively outside formal trade channels, while the rest use informal trade as a source of supplementary income (Economic Justice Network, 2007). Studies of trade between Mozambique and South Africa and between Zimbabwe and South Africa found that over 70 percent and 65 percent, respectively, of traders were women (Peberdy, 2002).

Thus, it appears that supportive institutional measures should be adopted rather than a move towards eradicating informal cross-border trade altogether, but at the same time, removing the hazards inherent in such trade is crucial. Matorofa (2008) argues that regional measures such as the Southern African Development Community (SADC) Free Trade Agreement (FTA) have not addressed the reality of informal cross-border trade. For instance, by way of the 2008 FTA, there is a target of zero tariffs on 85 percent of all intraregional trade. However, for goods to be eligible for duty-free entry, certificates of origin need to be furnished, which informal traders are unable to obtain, as it is only the manufacturers of products who can issue such certificates. Given the variety of low-value goods sold by informal traders in small quantities, either manufacturers are unwilling to oblige for every trader or wholesalers acquire such certificates and informally retail such goods to cross-border traders, thus defeating the purpose of zero tariff trade, as informal traders still suffer heavy taxes.

The issue of informal cross-border trade has come up before the WTO by way of the decision on trade facilitation adopted by the General Council on 1 August 2004, in which members are called upon to suggest changes to the General Agreement on Tariffs and Trade (GATT) Article V (Freedom of Transit), Article VIII (Fees and Formalities Connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations). The suggestions tabled include the simplification of import–export documents, the reduction of administrative channels (preferably moving towards a single window clearance system), and the phasing out of the mandatory use of customs brokers and private companies to handle preshipment inspections, among others (Lesser & Moisé-Leeman, 2009). A number of these measures are already in the process of being implemented at the regional level; the Southern African Customs Union and SADC, for example, are proceeding with the implementation of shared documentation (i.e. a single clearance document, SAD500) in order to facilitate formal regional trade. In addition, common measures in relation to pre-clearance and post-clearance audits, e.g. automated customs management systems, may be explored within a framework of border agency cooperation.⁴

The other aspect of the informal economy that women rely heavily on, i.e. informal financing and credit, is characterized by a lack of regulation, high interest rates and improper modes of recovery, primarily because of women's lack of access to formal financing mechanisms, credit and trade finance.

2.2 Engendering business

After compiling case studies of women entrepreneurs, the World Bank (2008) released a comprehensive report entitled *Doing business: Women in Africa*, in which the primary obstacles to both SMEs and large businesses were discussed by women who overcame them. Before proceeding on to such obstacles in detail, two observations are highlighted: most of the obstacles they faced pertain to regressive and discouraging administrative practices. The social perpetuation of gender gaps is not, it appears, the most compelling obstacle. For instance, a Cameroonian management consultant says, 'Looking back now, I wasn't conscious of my gender or my age'. Similarly, a Rwandese handicrafts business owner reflects that she has not experienced any discrimination when running her business; on the contrary, the government is supportive of the role her business plays in employing women with traditional skills. The focus of the report is how other national, institutional and legal hurdles have an adverse effect on women attempting to develop their earning capacity. In Table 1, we have attempted to identify some of the main findings of the report and some regional/bilateral steps that may be taken.

⁴ For instance, the technology to ensure instant transfer of information from the point of origin through various points of transit to the point of destination exists; what is required is a regional agreement on its use. For more details, see the UN Economic Commission for Africa Trade Hub, <http://www.ecatradehub.com>.

Table 1: Obstacle to women's participation in business in Africa and possible solutions

Country	Primary obstacle/s	Possible solutions	Implications for regional measures
Cameroon	<p>1) Civil Status Registration Ordinance, 1981: A husband may still formally object to his wife's exercise of trade or profession if he judges it is not in the interest of their marriage or children.</p> <p>2) A cumbersome tax system and lack of transparency provides scope for corrupt practices.</p>	<p>1) Repeal this ordinance.</p> <p>2) Reduce the effective tax rate, simplify the tax payment system, and establish standardized tax rates and payment channels for registered businesses.</p>	<p>Simple customs management systems, regional VAT and avoidance of double taxation agreements</p>
Rwanda	<p>1) A withholding tax on imports and excise duty on raw materials reduce the benefits accorded by the African Growth and Opportunity Act.</p> <p>2) Transit through Kenyan ports delays delivery time.</p>	<p>1) Faster reimbursement of duties paid on raw material imports would reduce the amount of working capital tied up.</p> <p>2) Initiate measures to simplify export processes and lower transport costs.</p>	<p>1) Joint border inspection systems</p> <p>2) Cargo information exchange and cargo tracking system among customs authorities; greater coordination among countries to reduce paperwork and bureaucracy</p> <p>3) Regional/bilateral transit and shipping agreements</p>
Swaziland	<p>1) The Deeds Registry Act prohibits women from registering property; no formal title to land poses a huge business risk and makes it difficult to acquire credit.</p> <p>2) The Marriage Act, 1964 confers minority status on women that makes it difficult for them to open and manage bank accounts.</p>	<p>Repeal the Deeds Registry Act and abolish the minority status accorded to women under the Marriage Act.</p>	<p>Possibility of developing a common registration process for all fair trade businesses</p>
Tanzania	<p>The Chattels Act has uncoordinated registries, although it provides for the registration of non-land securities.</p>	<p>Financial institutions need a single, comprehensive system of registering non-land securities; the Chattels Act should be amended accordingly.</p>	<p>The possible development of regional credit information systems, as microfinance organizations often operate across borders</p>
Uganda	<p>Business registration and trade licensing is far too complex and expensive; the Ugandan Trade Licensing Law mandates annual applications to keep business registrations valid.</p>	<p>1) Introduce a single window for business registration and a business guide for clarifying all startup requirements.</p> <p>2) The Ugandan Trade Licensing Law should be amended so that business registrations do not need to be renewed annually as long as proper auditing and annual reports are filed.</p>	<p>Possibility of evolving standardized rules on corporate governance</p>

Source: Derived from World Bank (2008)

Thus, it is clear from the above that there are a number of formal, solvable domestic obstacles to the participation of women in business and several regional measures may be adopted.

As is also evident from the discussion above, the utilization of income is a largely male activity, added to which is the relative absence of a culture of saving in Africa, with negligible access to and utilization of formal banking channels. Thus, there is the potential for microfinance⁵ activities to play a compelling role in enhancing the participation of women in economic activities, especially in cooperatives, where there is adequate scope for the reduction of household hierarchies. However, some of the reservations expressed by Kabeer (2005) in her empirical study on the impact of microfinance in Asia may well apply to SSA when she says that microfinance is more a 'safety-net' than 'a ladder out of poverty' for women: '[there is] very little evidence relating to the extent to which microfinance clients graduated out of poverty and into mainstream financial services.' Mayoux (2002) argues that rather than eliminating poverty, some microfinance schemes serve to increase women's debt through high interest and insurance payments, which leads to the feminization of household debt; and often microfinance schemes are promoted to ensure that women can pay for the gap in services created by structural adjustment and privatization. Notwithstanding these issues, an increasing number of women are resorting to microfinance in Africa (Laure-Buffard, 2008) and some commentators have indicated a strong preference for this over development aid for small enterprises and vulnerable groups⁶ (Moyo, 2009).

5 Microfinance is the provision of a broad range of financial services such as loans, payment services, money transfers and insurance to poor or low-income households and their microenterprises; see <http://www.adb.org/Documents/Policies/Microfinance/microfinance0100.asp>.

6 In the SADC Gender and Development Protocol, 'vulnerable groups' are defined as 'population groups which, as a result of having the least access to public, economic and other resources, or as a result of their sex, physical ability, migrant status or age, are the least capable of maintaining subsistence, and easily fall prey to violations of their human rights'.

3. Institutional and Legal Prescriptions on Gender

Gender has been construed as an issue that can be dealt with substantially within national boundaries by such processes as national legal instruments, microeconomic decisions (such as labour valuation), local governance reform and structural changes to social practices. Even from a macroeconomic perspective, suggestions have been made on including gender while framing national budgets (Villagomez, 2004) and devising long-term plans. This suggestion does make sense. In SSA, for instance, the structural disempowerment of women (not to mention issues in relation to determining what empowerment is and then measuring it) is entrenched in varied societal practices and psychological habituation, making it impossible to prescribe economic solutions by way of trade relations. In South Africa, however essentialist it may sound, the role of apartheid has had a significant impact on a unique disarticulation of women and notions of capabilities. This was borne out by the testimonies of women before the continent's various Truth and Reconciliation Commissions (Sanders, 2006). In post-conflict states such as the Democratic Republic of the Congo, the roles of women are defined in a quite different way from other African states, requiring different developmental solutions (De Wattaville, 2002). Thus, to expect trade relations among states within SSA and with states in other parts of the world to serve as a panacea to resolve the problem of entrenched gender roles is wishful thinking.

It appears from the above that despite there being a clear relationship between macroeconomic choices influenced by trade imperatives in relation to the development of women, it is difficult to see how such choices can cause any real structural changes. It is in this regard that we would like to submit that national or local measures are not always effective and external requirements may well bring about actual changes. Reliance may be placed on the arguments developed by Krishnan and Palaniswamy (2008), who criticise the elite accumulation of resources by local institutions. Further, as we shall see in this section, regional steps that have taken, such as those adopted by SADC and the New Partnership for Africa's Development (NEPAD), leave a lot to be desired. Thus it is argued that a crucial role has to be played by trade agreements to fill in these gaps. One qualification, however, must be made to the discussion on the complementarities of trade agreements and national policies in alleviating gender differences. It is possible that trade agreements may not be mindful of or may be indifferent to national and local policies when incorporating gender sensitivity. Trade agreements have often been criticized for reducing the policy space afforded to national initiatives in general, and the same may well apply to the empowerment of women and their participation in formal economic activities.

3.1 Gender in SSA regional blocs/frameworks

International instruments on gender not directly related to trade serve a dual purpose: to create a rights-based framework where women seek economic rights by way of entitlement and also to ensure that national governments have the appropriate protective enabling instruments in place to avoid any deterrence of or distortions to trade policies. Annex A provides a list of international instruments that create the framework for the appreciation of gender issues in trade. It may be argued that the incorporation of gender perspectives in trade agreements is a matter of law for the effective fulfillment of the goals set out in such instruments. This argument draws on a rights approach to trade, where trade reforms are considered integral to ensuring the basic socioeconomic rights of women.

Institutional measures have been taken in the African subcontinent to address gender issues. The African Union (AU) published a Gender Policy Action Plan (AU Policy) in 2008, supporting the UN process of gender recognition right from the First World Conference on Women in 1975 to the fourth such conference in Beijing in 1995, which resulted in the formulation of the Beijing Declaration. As the AU Policy declares, the AU has been no stranger to international efforts to reduce gender inequality: the

Constitutive Act of the Union, Articles 3 and 4; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; and also Article 2 of the Solemn Declaration on Gender Equality in Africa have echoed various international instruments, and the AU has also set up a Women and Gender Development Directorate.⁷ African states have affirmed that they are 'determined to ensure that the rights of women are promoted, realized and protected in order for them to enjoy fully all their human rights through the AU Protocol on Women, particularly Article 15, which provides the right to food security, and Article 19(f), by virtue of which countries commit themselves to reduce the negative impact of trade and economic policies and programs on women. We will now proceed to an examination of gender issues addressed in specific regional instruments.

3.1.1 Gender and NEPAD

NEPAD's four development initiatives address Peace, Security, Democracy and Political Governance; Economic and Corporate Governance; Capital Flows; and Market Access. The six sectoral priorities are the Infrastructure Gap; Human Resource Development; Agriculture; the Environment; Culture; and Science and Technology. Hlupekile-Longwe (2002) undertook an assessment of the internal and external coherence⁸ of NEPAD's gender sensitivity and concludes that 'despite the many critical and pervasive gender issues which haunt Africa, the international commitments to address these issues, NEPAD is severely and almost completely gender blind'. The argument goes that the policy intention of gender equality is divorced from governance and is wholly compartmentalized within the paradigm of social and economic development:

the main policy goal of *'assuring [women's] participation in the political and economic life of African countries'* is put separately from the policy goal on democracy and human rights, and is presented as a means towards *'promoting the role of women in social and economic development'*.

Further, this policy goal is not complemented by program goals and project objectives, other than the objectives of gender equality in access to schooling and access to credit. However, subsequent to this study, NEPAD created an Office of Gender and Civil Society in 2004 and addressed some of the concerns that Hlupekile-Longwe (2002) raises. In a report referred to in Hlupekile-Longwe (2002), the NEPAD Secretariat identified the flaws in NEPAD's existing policies. For instance, NEPAD's policy of promoting labour-intensive high-value crops such as flowers and spices at the expense of staple food crops had undermined food security. Further, the failure to consider the role of women in the livestock, forestry and aquaculture sectors in NEPAD's Comprehensive Africa Agriculture Development Plan was acknowledged. Generally speaking, in this report the NEPAD Gender Office acknowledges its role in the non-implementation of AU policies.

3.1.2 Gender and COMESA

The links between gender and trade feature quite prominently in the Common Market for Eastern and Southern Africa (COMESA) Gender Policy issued in 2002 (COMESA Policy), which looks more promising than the NEPAD measures. The primary gender concerns identified in the policy document are inadequate access to trade information; women's lack of skills in export management and marketing;

7 The Women and Gender Development Directorate has an 'overall mandate of ensuring that capacity is built for all AU Organs, RECs and Member States to understand gender, develop skills for achieving gender mainstreaming target and practice in all policy and programme processes and actions by 2015, in order to close the existing gender gaps and deliver the promise of equality for all African men, women, boys and girls' (AU, 2008: 8).

8 While *internal coherence* refers to the articulation of mechanisms to fulfill objectives identified within the NEPAD framework, *external coherence* refers to adherence to commitments and measures adopted outside the NEPAD framework (in this particular study, the reference is to international commitments).

unfamiliar and complicated procedures in export management; and issues relating to women's lack of skills in quality control, packaging, import management and techniques. Concentrating specifically on FTAs, the COMESA Policy talks about the 'inadvertent exclusion' of women from the benefits of FTAs due to complicated procedures such as adherence to rules of origin and the inability to identify exclusions from customs duty charges. In addition, the much highlighted problem of women's inadequate access to finance and the methods for securing it (such as their inability to meet collateral requirements) have been discussed.

Admittedly, there are some problems with the COMESA Policy such as its echoing of NEPAD's placing of blame on lack of education as the centre of all problems. Further, the document also mentions that the low quality of goods produced by women is another main barrier to their participation in regional trade. However, there is not much interrogation of the reasons behind this problem and what the solutions might be. Should there be a concentration on the production of certain kinds of goods? Is there a way of applying comparative advantage in the region? Would the adoption of management best practices assist in this regard? Such questions are not addressed.

3.1.3 Gender and SADC

The SADC Gender and Development Protocol (G & D Protocol), which encompasses and enhances all existing regional and international commitments for achieving gender equality (Commission on Gender Equality, 2007), was adopted by members of SADC in August 2008. The G & D Protocol obliges SADC member states to amend their laws to ensure equal rights for women across a wide range of issues, including constitutional and legal reform, governance, education, productive resources, gender-based violence, health, HIV/AIDS, peacebuilding, and conflict resolution. The implementation of the protocol is monitored through reports by the SADC executive Secretary to the heads of state and government every two years. The G & D Protocol does contain some much-needed relief; while 2015 has been targeted as the year by when all discriminatory laws are to be removed, there are milestones for immediate measures such as putting in place laws ensuring 'equal legal status and capacity in civil law, including, amongst other things, full contractual rights; the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit' (art. 6(c)).

Further, member states are required to develop subsidized training programs to develop women's entrepreneurial skills and provide opportunities to enhance the production, marketing and exporting of quality products by women (art. 17, sec. 6). More specifically, on the issue of trade, member states have a deadline of 2010 to (a) review their trade policies, protocols and declarations to make them gender responsive; (b) include regional women's networks in trade policy structures; (c) create gender quotas in all trade missions; and (d) ensure women's equal access to financial and other markets, including trade negotiation processes (art. 17). In addition, member states are required to minimize the negative effects of FTAs on vulnerable groups.

However, the G & D Protocol has been criticized for certain exclusions, such as not requiring member countries to criminalize marital rape (HRW, 2008); inadequate treatment of health and education;⁹ and, importantly, its non-adoption of a commitment to ensure that where there is a contradiction between customary law and constitutional provisions for gender equality, the latter takes precedence. This latter criticism is especially pertinent, as is borne out by our observations in section 2.2, above. The other issue that we would like to highlight is that the lack of relationship between the SADC G & D Protocol and

⁹ Sections such as HIV and AIDS are cross referenced with documents that are either not legally binding, such as the Maseru Declaration on HIV and AIDS, or do not take gender issues into consideration, such as the SADC Protocol on Education and Training.

the SADC Trade Protocol. The latter has been criticized for being gender blind (Pheko, 1999), and it would be helpful for the SADC G & D Protocol to identify certain areas/sectors of regional trade collaboration in which women are particularly involved, e.g. the production of agricultural, leather and non-metallic products.

3.2 Gender and the role of trade agreements

3.2.1 International trade agreements

The primary criticism levelled against international trade agreements from a gender perspective is that the measurement of international trade in terms of net economic benefit and market-based criteria has largely ignored societal imbalances, which in turn results in long-term trade inefficiencies. This criticism is supported by the fact that Article XX of the GATT, which allows for the reconciliation of trade- and non-trade-related norms in the trade context, is silent on the issue of women's rights. Thus, the evolving 'trade plus' approach to formulating trade agreements, where the environmental, health and labour impacts of the international trade regime are being considered, would also need to take into account the differential impacts on women caused by trade and whether existing agreements are truly gender neutral. Interestingly, in relation to agriculture, for instance, while non-trade concerns such as food security, employment, biodiversity protection, environmental protection and animal welfare were included in the Doha Development Agenda, gender was not.

3.2.2 Regional trade agreements

There has been an increase in RTAs¹⁰ in the past two decades, primarily because of the increasing importance of regional trade architecture, a fact that has also been identified by the WTO. The accelerated proliferation and the resulting web of RTAs has brought about a 'spaghetti bowl' of such agreements – a look at the bewildering matrix of RTAs in Africa provided in Annex B indicates the absence of clear, coordinated commitments. There are 821 RTAs in the world today; the number notified to the WTO has reached 421;¹¹ and more than half of the world's trade in goods, and a significant portion of trade in services, is estimated to occur under RTAs. The general reputation that RTAs enjoy in developing countries is not very favourable: there is a belief that issues that developing countries refused to have on the WTO negotiating agenda find their way into RTAs (Randriamaro, 2006). According to UNCTAD (2007), developing countries may seek FTAs with developed countries for the following reasons:

- They want to get concessions that are not granted to other countries, especially market access.
- An FTA might attract more foreign direct investment to the developing country partner, although evidence on benefits to developing countries is mixed.
- There is a perceived risk of losing competitiveness vis-à-vis other developing countries that might have entered into an FTA with the same main trading partner.

The EU and African, Caribbean and Pacific (ACP) countries agreed to establish a new trade arrangement based on reciprocal trading relations in conformity with WTO rules starting in 2008. The new arrangement is based on the Cotonou Partnership Agreement (CPA), which was signed on 31 December

10 The phrase 'regional trade agreements' for the purposes of this project includes FTAs, RTAs, bilateral trade agreements, cross-regional trade agreements and economic partnership agreements.

11 WTO statistics, http://www.wto.org/english/tratop_e/region_e/region_e.htm.

2000. Central to the CPA is the Economic Partnership Agreement (EPA), which is seen as an instrument for the realization of the objectives of the CPA. In other words, the EPA is the essence of the CPA and a major point of departure from the previous trade arrangements. The EU wants EPA negotiations to go beyond tariffs and trade, to include a wide range of trade-related issues such as services, competition policy, intellectual property rights, labour standards and consumer policy. The European Commission has explicitly said that it wants discussions to go beyond existing WTO commitments with reciprocal preferential access characterizing the changes (EUROSTEP, 2004). Commentators have expressed concern that such reciprocity, although it may induce greater exports, may not be very beneficial for women. It has been argued that economic and capability disparities abound among countries in SSA and fragile trading arrangements within the region may be disrupted if they are all subject to the same trading standards with the EU (Roy, 2005).

Under the SADC agreement, for example, Zimbabwean food producers have free access to the large South African market. It will be difficult for Zimbabwean food exporters to compete with EU products once the EU also has free access to Southern African markets in 2010, as stipulated in the EU–South Africa Trade Agreement. Thus, cheaper imports would depress local prices, which would in turn reduce opportunities for women to earn their livelihoods (and we shall see in the following section, agriculture is the primary source of income for most women in the subcontinent). Regional food processing industries would be affected and women would bear disproportionate costs; for example, in Zimbabwe the packaging of sugar is done predominantly by women. However, it would be incorrect to view this criticism as a reason to halt the EU–ACP EPAs. What needs to be addressed is whether any regional initiatives would alleviate the impact the EPAs would have on women and, at the same time, allow women to seize the opportunities that reciprocal market access would allow.

The ‘WTO-plus’ provisions in RTAs that go beyond the requirements in WTO agreements and rules have also been viewed with some suspicion,¹² primarily because RTAs create parallel commitments. Njinkeu and Gitonga (2005) argue that African RTAs are not a threat to multilateralism; they have so far not succeeded in excluding non-participating trading partners from any business opportunities. It should be noted, however, that regional trading arrangements are likely to offer opportunities that are best suited to women *because they do not necessarily need large export markets and may find neighbouring markets more familiar and easier to deal with* (Randriamaro, 2006). This observation is in accordance with the discussion in section 2, above, on the pervasiveness of informal cross-border trade, where formal trading arrangements need to be astutely aware of the reality of informal trade, effectively capture its advantages and alleviate its shortfalls. What this calls for is an enhanced role for regional governance bodies in assessing the positive role of informal trade and how they may inform regional trading arrangements, brief suggestions for which are provided in section 2.1.

12 Some commentators believe that progress in the WTO negotiations in matters such as providing cheaper generic drugs to patients by relaxing the TRIPS Agreement and providing exceptions to it may be hampered by RTA commitments (Khor, 2005).

4. Sectoral Analysis: Food Security

One sector where there is a clear relationship among trade, development and gender is agriculture. Research shows that in SSA, 70–80 percent of household food production is attributed to women (Ouisumbing et al., 1995). There has been a great deal of criticism in relation to Africa's subscription to trade liberalization in agricultural products. Consider, for instance, the observation that Africa has continuously signed international agreements that promote world market supplies 'at the expense of food production for local consumption. The rules on market access, tariffs and subsidies severely limit the government's ability to protect domestic agricultural production were women preponderate' (Randriamaro, 2006). It appears therefore that there is serious discontent about the effects of trade on the two development priorities of food security and food sovereignty¹³ as far as women are concerned. Further, there are views that trade liberalization in agriculture is gender insensitive because 'women face greater obstacles in accessing land, credit and new technologies, [and] they are disadvantaged in terms of being able to exploit new opportunities' (Peters, 2004: 15). In addition, while women are actively involved in the *production* of crops, the process of utilizing the crops thus produced for *income generation* tends to be the preserve of men, thus disassociating women from the processes of trade. For instance, in Kenya 90 percent of French bean export contracts to smallholders were issued to male household members, who received the payment and controlled family labour allocation, with women receiving a fraction of the actual labour invested in production (Dolan & Corby, 2003). The onset of the preference for contract farming in export transactions did not improve on the situation, as women do not obtain contracts in their own names and export companies pay men for the sale of vegetables (Elbeshbishi, 2009). A number of these problems (including obtaining credit) may ultimately be traced back to the fact that women generally do not have any property rights or title to land in a large number of countries in the subcontinent (UNECA, 2008).

As far as international trade is concerned, some commentators are of the opinion that increasing trade liberalization in agriculture has exacerbated gender inequality. Floro (2001) argues that the positive effects of export expansion on women are undermined by the negative effects of import expansion, thus requiring selective trade policies. For instance, Madeley (2000), an economist, argues that increased food imports in Kenya coupled with an increase in the price of farm input have left women much worse off. Sengendo and Tumushabe (2002) studied trade liberalization policies in Uganda and observe that liberalization caused a switch to export crops, which created land speculation and a loss of common property resources, thus making women more dependent on private-property-owning men. It is for such reasons that multilateral trade negotiations on agriculture are faltering and continuing to be contentious, as is evident in the current Doha negotiations at the WTO, hence the possibility of regional and bilateral trade agreements assuming a greater role in diverting, creating, promoting or restricting trade in food products. However, Perkins (2003) argues that, based on precedent, it would not be advisable for countries in SSA to enter into agreements that distort trade in agriculture, and the trend in RTAs is not really to trump multilateral concessions.

Interestingly, multilateral agreements under the WTO framework have been cited as being biased against women, e.g. those involved in the fish industry in SSA. The UNCTAD (2008) report on *Mainstreaming gender into trade and development strategies in Africa* argues that the WTO Agreement on the Application of Sanitary and Phyto-sanitary Standards may discourage the participation of women in the fish export industry. The argument goes thus: while the activity of fishing is the preserve of men, women are more involved post-harvest activities such as handling, preservation (such as salting, smoking and drying),

13 Food sovereignty is about the right of peoples, communities and countries to define for themselves agricultural, labour, fishing, food and land policies that are appropriate to their unique circumstances (ecologically, socially, economically and culturally) in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; and to restrict the dumping of products in their markets. Food sovereignty does not negate trade, but, rather, it promotes the formulation of trade policies and practices that serve the rights of peoples to safe, healthy and ecologically sustainable production (Via Campesina et al., 2009).

processing (such as making fish paste and cakes) and marketing. However, even within preservation, processing and marketing activities, basic problems such as the lack of access to capital, equipment, technology, know-how and education inhibit women from being as efficient as men in such activities. On the other hand, it is also argued that meeting sanitary and phytosanitary standards (SPSs) is very important in terms of market access to the EU, given that the EU puts high priority on food safety certifications and SPSs, especially when most countries in SSA have relatively few SPSs, food safety requirements or technical barriers to trade. Thus, the solution could be to arrive at regional SPSs or, more importantly, to include specific provisions in terms of capacity building programs to meet international standards. This could include, for example, capacity to meet standards and certify products, conform to the requirements of fair trade markets or meet eco-labelling requirements.

5. Conclusion and Recommendations: Mainstreaming Gender in Trade

On examining the literature on the interface between trade and gender, the most common phrase that one comes across is the requirement to adopt a ‘gender perspective’ on trade relations. What is evident, therefore, is the requirement for a methodological intervention whereby any analysis of the desirability of trade choices requires addressing gender concerns. In financial terms, this would require a gender baseline to financing choices, while as far as trade negotiations are concerned, it would be a question of the prioritization of gender equality while making concessionary choices.

Some international efforts have been made to develop a measure that can be integrated into institutional and legal frameworks, notably the Trade and Gender Index, following the ‘Beyond Human Development Index’ approach. Women in Development Europe has been developing such a tool, which in its current form comprises three indicators: situational indicators, political will indicators and dynamic indicators. While situational and political will indicators may well be largely established already, the real innovation lies in dynamic indicator, which are largely predicated on the situational and political will indicators, but are arrived at after examining the trade elasticities of such indicators. These trade elasticities are arrived at by first taking into account factors pertinent to trade relations, including tariffs, trade direction, trade volumes and the sectoral breakdown of trade. These factors are then compared over a period of time against gender indicators, thus arriving at conclusions as to how gender indicators correspond to trade indicators, and vice versa. The difficulty of this tool is measuring specific correlation between gender and development indices and the effects of trade. Two primary assumptions, among others, are involved: (1) situational and political will indicators adequately capture the problems inherent in gender inequality, and (2) there is a clear correlation between institutional changes (such as amendment to trade agreements) and the effects of trade. However, imperfections in such assumptions would make it difficult to incorporate the trade and gender indicators in assessing the efficiency of trade agreements. The following recommendations are made:

- It would be useful to have a yardstick against which RTAs can be measured for their gender sensitivity, which would considerably reduce negotiator hesitancy and the administrative costs of incorporating gender concerns into individual RTAs. At a regional level, the UN Economic Commission for Africa (UNECA) is in the process of formulating a trade and gender index, which is not yet finalized.¹⁴ To date, UNECA has started the process of developing the Africa Gender and Development Index (AGDI). The AGDI is based on the Gender-related Development Index and the Gender Empowerment Measure developed by UN Development Programme in the 1990s to address the problem of the lack of gender-disaggregated data for policymaking, planning, monitoring and accountability. To this end, the AGDI takes into account the major African charters and documents that have a bearing on gender relations, identifies gender gaps in the selected power blocks, facilitates the review of the underlying gender relations in Africa and bases its findings on the nationally available statistics of African countries. The AGDI is a composite index consisting of two parts.
 - (i) The **Gender Status Index** captures gender-related issues that can be measured quantitatively and is based on three blocks: social power (including indicators on education and health), economic power (containing indicators on income, time use, employment and access to resources) and political power (consisting of indicators on formal and informal political power).

¹⁴ Personal communication from Souleymane Abdullah, economic affairs officer, UNECA, 20 August 2009.

(ii) The **African Women's Progress Scoreboard** has a broader base of indicators than the purely quantitative ones contained in the Gender Status Index; it tracks government progress in ratifying relevant conventions such as the Convention on the Elimination of Discrimination Against Women (CEDAW) and the African Commission on Human and People's Rights, and implementing policies in line with international documents on issues such as violence against women, maternal mortality, contraception, HIV/AIDS, women's land rights, women's rights to equal wages, and women's access to new technologies and agricultural extension services.

- As is obvious from the above, other than undertaking the task of measuring the intricacies of the AGDI, the other difficulty is the applicability of the index (or its equivalent) to specific trading arrangements. In addition to bringing in a specific gender measurement, a re-examination of the methodology adopted in examining trade arrangements may also be warranted. For instance, general equilibrium models may be more effective in identifying more thoroughly the gender–trade interface rather than partial equilibrium models, as the latter tend to overstate the benefits or costs of a given policy change by attaching importance to immediate impacts and excluding indirect effects (Clones, 2003).
- As has been discussed, the issue of capability deprivation exacerbates the gender gap in the wake of increasing trade liberalization. It would therefore seem that if there were a way to ensure that trade is required to involve a good measure of capacity building, then many problems would be resolved. The Canadian International Development Agency has issued a document on trade-related capacity building (CIDA, 2003) in which an exhaustive list of trade promotion suggestions is formulated. It may also be mentioned in this regard that in the 2007 EU Aid for Trade Strategy (Mandelson et al., 2007), the EU's earlier commitment to increase funding on trade-related assistance has been renewed. A portion of these funds may be diverted to trade-related capacity building.
- Furthermore, compliance with trade agreements by way of market mechanisms would indirectly require programs to reduce gender inequality to meet yardsticks of efficiency. For instance, limited access to resources and inputs to production would mean that there would be pressure for changes in financial and institutional infrastructure (Clones, 2003).
- Again, limited women's participation within the household and in relation to microeconomic and macroeconomic issues results in inefficiencies in household budget allocation, capital accumulation and the implementation of policy decisions, and this requires pressure for greater women's participation in decision making. Thus, an international and regional *demand-side cognizance* of the crucial role of women in making trade more efficient would result in domestic or local *supply-side changes* to enable the greater empowerment of women.

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Annex A: An international Framework for Gender Equality in Trade

Source: Adapted from Gibb (2009)

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

- CEDAW is based on the principle of substantive equality between women and men, guaranteeing equality of outcomes, not just equality of opportunity.
- CEDAW provides a comprehensive definition of discrimination against women as any distinction, exclusion or restriction on the basis of sex that intentionally or unintentionally nullifies or impairs the recognition, enjoyment and exercise of women's social, cultural, political and economic rights.
- CEDAW binds all states parties to fulfil, protect and respect women's rights. States parties must not discriminate against women in any way.
- CEDAW requires that states parties must ensure that private organizations, enterprises and individuals promote and protect women's rights.

2. International Covenant on Economic, Social and Cultural Rights, 1966

- Art 11 provides for the right to adequate standard of living and the right to food, which is relevant in considerations of the Agreement on Agriculture and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- Art 12 provides for the right to the highest standard of health, which is relevant to considerations on TRIPS regarding access to medicines, intellectual property rights and traditional knowledge in medicine.

3. Beijing Platform for Action, 1995

- Strategic Objective A.1: 'Review, adopt and maintain macroeconomic policies and development strategies that address the needs and efforts of women in poverty.'
- Strategic Objective F.1 (165 (d)): '... devise mechanisms and take positive action to enable women to gain access to full and equal participation in the formulation of policies and definition of structures through such bodies as ministries of finance and trade, national economic commissions, economic research institutes and other key agencies, as well as through their participation in appropriate international bodies.'
- Strategic Objective F.1 (165 (k)): '... seek to ensure that national policies related to international and regional trade agreements do not have an adverse impact on women's new and traditional economic activities.'

4. Millennium Development Goals (MDGs)

- MDG 3: Promote gender equality and empower women.
- MDG 8: Develop a global partnership for development.

5. International Labour Organization Declaration on Fundamental Principles and Rights at Work, 1998¹⁵

- No. 100: Equal Remuneration for Men and Women Workers for Work of Equal Value Convention, 1951
- No. 111: Discrimination (Employment and Occupation) Convention, 1958
- No. 177: Convention on Home Work, 1996: home-based workers (informal sector) are entitled to minimum standards laid down by international law, including rights to accessible training to improve skills.

6. Convention on Biological Diversity (CBD), 1992

- The CBD recognizes the central role of women, drawing specific attention to ‘the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation’. The CBD and TRIPS Agreement overlap in some areas. The TRIPS Council is reviewing CBD Article 27.3(b) dealing with patent protection on ‘life forms’, and was tasked in the Doha Declaration with reviewing the relationship between the CBD and the TRIPS Agreement with respect to the protection of traditional knowledge and folklore.

7. UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 2003

- Trade agreements on labour mobility; the liberalization of agriculture in some regions; and shortages of health, care and education workers in developed countries are contributing to women’s increasing participation in temporary labour migration. The Institute on Migration estimates that about half of all migrants are now women. This convention addresses concerns over the sexism, low wages, poor working conditions, and lack of labour protection laws and job security experienced by migrants.

¹⁵ The declaration, arguably a soft law instrument in itself, synthesizes prior ILO conventions and includes a follow-up procedure to see that the conventions are being implemented by member countries.

Annex B: The Matrix of Regional Trade Agreements in Africa

Source: Yang and Gupta (2005)

African Union

