

# WTO Investment Facilitation for Development Negotiations

A gender lens for action



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# About the paper

This report identifies how World Trade Organization negotiators and signatories can mainstream gender considerations through the negotiations on Investment Facilitation for Development (IFD). It examines policies and regulations that can encourage investment that attracts women-owned businesses and empowers them economically.

The report proposes that the IFD incorporate elements from agreements targeting gender equality and include provisions on responsible business conduct that explicitly reference domestic gender equality standards. IFD negotiations could ensure that the right for parties to regulate clearly includes gender equality policies and establish a gender subcommittee to monitor the gender impact of implementing IFD commitments.

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# Foreword

Gender equality isn't a 'nice to have'. It is a fundamental human right and the foundation on which all our freedoms stand. Without equality, economies cannot grow to their full potential and societies cannot fully rebuild.

But reaching gender equality isn't a straightforward path. It requires everyone to take an active stance to create a more just society – to dig into and improve underlying structures, rules and institutions.

We know that policies can increase both the participation of businesses in global value chains and the benefits they accrue. We also know that these opportunities and benefits differ for women and men.

It has taken years of effort by a dedicated group of women and men around the world to put the women and trade agenda firmly on the table. Trade policies are finally beginning to respond to gender equality.

The fact that 127 countries have joined the 2017 Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment is a testament to the growing recognition that trade is central to gender equality and achieving our collective commitments under the United Nations Sustainable Development Goal 5.

The establishment of the World Trade Organization (WTO) Informal Working Group on Trade and Gender in 2020 was an additional step to bring gender equality within the work of the WTO. The challenge for many governments is how to translate political will into practical guidelines and recommendations across WTO agreements and processes.

This publication answers that challenge. It responds to the call from policymakers for a practical guide to create WTO rules and processes that are more inclusive. Gender mainstreaming ensures that trade and trade-related policies promote more equitable opportunities rather than perpetuate inequalities.

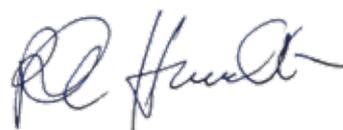
Facilitating investments can deliver transformational outcomes for livelihoods and economies everywhere. They can create jobs and increase wages, enable technology transfers and skills development, improve access to quality healthcare, water and sanitation, road infrastructure and services, and bring small businesses into the fold of global value chains. However, foreign direct investments can also exacerbate inequalities between men and women when the legal and regulatory environment is gender-blind.

Mainstreaming gender considerations in the negotiations on Investment Facilitation for Development (IFD) will allow us to leverage investments as a force for women's economic empowerment.

I would like to thank the European Commission for its longstanding support of our work on women and trade over the past decade and the SheTrades Initiative, which made this publication possible.

At the International Trade Centre, we have worked with policymakers in developing and least developed countries to build their capacity to more effectively engage in IFD negotiations at the WTO. We will continue to do our part by helping policymakers make their trade strategies more inclusive, through specialized toolkits, publications and online policy tools. We call on governments to work with us to ensure that the benefits from investment facilitation accrue equally to women and men.

Our hope is that this knowledge sparks thought, commitment and action within the trade and development community.



Pamela Coke-Hamilton  
Executive Director  
International Trade Centre

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# Acronyms

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

BRICS	Brazil, Russian Federation, India, China and South Africa
FDI	Foreign direct investment
IFD	Investment facilitation for development
IIA	International investment agreement
ILO	International Labour Organization
IPAs	Investment promotion agencies
ISO	International Organization for Standardization
IWA	International Workshop Agreement
MSMEs	Micro, small and medium-sized enterprises
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

# Executive summary

This policy paper seeks to contribute to the WTO discussions on the Agreement on Investment Facilitation for Development by examining the gender lens to investment facilitation through which to advance gender equality.

Promoting gender equity through investment will benefit investment, business and society. A growing body of data suggests that specifically focusing investment initiatives on women could positively affect domestic economies and produce better development outcomes.<sup>1</sup>

Investments in women have disproportionately high social and economic impact due to the positive spillover effects in healthcare, education, economic growth and job creation.<sup>2</sup> Not only are there numerous ways for investment decisions to have a positive impact and benefit women, but many of these outcomes often have complementary and compounding effects on the strength and long-term success of an investment or business.

The potential of foreign direct investment to improve the livelihoods of women and the less advantaged has not yet been fully realized. Research suggests that the nature of gender segmentation in the economy and the high mobility of transnational capital mean that while women's wages may be higher due to foreign investment, this is unlikely to close the gender wage gap.<sup>3</sup>

To support efforts to realize this untapped potential, this report develops the gender lens through which to examine investment facilitation tools, rules and policies. It identifies the distinct channels of public provision and consumption as well as employment. It highlights how even when a legal and regulatory environment appears to be gender-neutral in principle, it may have gender-differentiated outcomes that need to be better understood.

The most effective way to promote women's economic empowerment is a whole-of-government approach. Joined-up governance can better create an environment where it is easier for women entrepreneurs and women investors to establish themselves, operate and expand their existing investments. It also enables women to have better access to employment with fair and equal treatment to men, and creates conditions that observe key labour standards and protections for women. A whole-of-government approach would recognize that critical infrastructure and services affect women and men differently.

The report identifies different avenues for WTO negotiators and signatory parties to mainstream gender considerations through the Agreement on Investment Facilitation for Development. It examines policies and regulations that can help to encourage investment that attracts women-owned businesses and advances their economic empowerment. It seeks to identify how this can complement growing demands for investment facilitation rules that can promote sustainability, particularly in developing and least developed countries.<sup>4</sup>

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1 International Monetary Fund (2018). *Pursuing Women's Economic Empowerment*. IMG Policy Papers. Washington, D.C.: International Monetary Fund. <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/05/31/pp053118pursuing-womens-economic-empowerment>.

2 See Organization for Economic Co-operation and Development [OECD] (2015). 'Why a Push for Gender Equality Makes Sounds Economic Sense.' OECD Yearbook. <https://www.oecd.org/forum/oecdyearbook/push-gender-equality-economic-sense.htm>.

3 Braunstein, E. (2006). *Foreign Direct Investment, Development and Gender Equity: A Review of Research and Policy*. UNRISD Occasional Paper, No. 12, Geneva: United Nations Research Institute for Social Development. <https://www.files.ethz.ch/isn/38767/OP%20012.pdf>.

4 World Trade Organization (2017a). 'Deepening Africa's Integration in the Global Economy through Trade and Investment Facilitation for Development: Abuja Statement.' WT/GC/186#WT/MIN(17)/4 (7 November 2017). [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=239992,239877,239866,239841,239807,239717,239704,239247,239189,238858&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRec](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=239992,239877,239866,239841,239807,239717,239704,239247,239189,238858&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRec).

# Chapter 1

## Introduction

Foreign direct investment (FDI) must be harnessed carefully to realize its potential to promote gender equality and other United Nations Sustainable Development Goals (SDGs). Investment interacts with women's access to critical physical, financial and human resources as well as basic services, with significant implications for their empowerment, livelihoods, health, socioeconomic status and well-being.

Promoting gender equity through investment will benefit the investment itself, along with business and society. Investments in women have disproportionately high social and economic impacts because of the positive spillover effects in healthcare, education and economic growth and job creation.<sup>5</sup>

Yet the potential of FDI to improve the livelihoods of women and the less advantaged has not been fully realized. Research suggests that the nature of gender segmentation in the economy and the high mobility of transnational capital mean that while women's wages may be higher due to foreign investment, this is unlikely to close the gender wage gap.<sup>6</sup>

Women tend to earn less than men on average. The International Labour Organization (ILO) estimated in 2018 that the global gender pay gap in mean hourly earnings was around 20%.<sup>7</sup> This raises questions about how to best facilitate investment so it is tool to empower women.

Policies and regulations are needed to facilitate investment that attracts women-owned businesses

and advances their economic empowerment. This will complement growing demands for investment facilitation rules that can promote sustainability, particularly from developing and least developed countries.<sup>8</sup>

World Trade Organization (WTO) negotiations on an Agreement on Investment Facilitation for Development (IFD) are expected to conclude in 2023. This policy paper seeks to contribute to these discussions by examining a gender lens to investment facilitation through which to advance gender equality.

Section 2 of this paper focuses on developing the gender lens to investment facilitation, drawing on the key channels of public provision, consumption and employment. The analysis moves to the international level in Section 3, which explores how to promote gender equality objectives in investment facilitation agreements by identifying different negotiating and policy proposals. The section identifies key considerations for WTO law and policymakers seeking to facilitate investment to promote women's economic empowerment, particularly under the IFD.

The policy paper concludes with Section 9, which offers recommendations to increase coherence between investment facilitation policies and other gender empowerment and social inclusion public policies. Investment facilitation policies do not exist in isolation, but interact with other policy areas, including gender, education and health.

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5 OECD (2015), *op.cit.*

6 Braunstein, E. (2006), *op.cit.*

7 International Labour Organization (2022). *Pay Transparency Legislation: Implications for employers' and workers' organizations*. Geneva: International Labour Organization. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_849209.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_849209.pdf).

8 WTO (2017a), *op.cit.*

# Chapter 2

## Gender dimensions of investment facilitation

Developing a gender lens to examine investment facilitation tools, rules and policies involves identifying distinct channels, including public provision and consumption as well as employment. Even when a legal and regulatory environment appears to be gender-neutral in principle, it may have gender-differentiated outcomes. A gender lens can provide greater understanding of how changes related to investment facilitation affect different groups of women and men, allowing for policy initiatives to promote women's economic empowerment in investment facilitation frameworks.

### The public provision and consumption channel

Investment facilitation policies seek to encourage the benefits of investments to a country by giving investors a transparent, predictable and efficient regulatory and administrative framework for investment. Developing a gender lens to the public provision of investment facilitation involves, from the outset, consideration of how differently women and men benefit from investments being made.

Such a lens will seek investments in enterprises that offer products or services that substantially improve the lives of women and girls. It will assess the relevance of investment projects for gender equality objectives and identify whether trade-offs are being made at the expense of alternatives that better support women's economic empowerment.

Under the right conditions, international investment can help enhance the host economy's productive capacity and growth potential, drive job creation and improvements in living standards, allow the transfer of technology and know-how, and spur domestic investment, including through the creation of local supplier linkages. Without careful planning and impact assessments, though, investment can also lead to adverse social, environmental and economic effects. These may exacerbate gender inequalities.

A gender-sensitive assessment to facilitating investment would look for synergies in investment that could, for example, also support development in remote areas,

where disadvantaged women will most benefit. This synergy could be through electrification, road building and water and sanitation projects of direct relevance to promoting women's well-being and empowerment.

When there are few or no services to offer medical support, education and care, women typically become the safety net of last resort. Women throughout the world spend on average between three and six hours on unpaid care activities each day, while men spend between half an hour and two hours.<sup>9</sup> Critical infrastructure and services will therefore affect women and men differently.

Designing wider pavements makes it easier to move around with strollers or mobility aids and more streetlights make walking at night safer. Affordable, accessible and secure public transport solutions are central to the creation of a functional infrastructure that serves the needs of women and men.

When designing and implementing investment facilitation instruments, officials will differ in terms of their understanding of how gender issues may affect their work. Women may also have less knowledge of reforms and less access to relevant information. Women, particularly in developing countries, have limited ability to influence investment decisions either in their community or at the national level. This may be due to low representation in parliament, public office and managerial positions in companies or on corporate boards.

Women are also often excluded from informal networks of communication. Gender-aware analyses of the legal and regulatory environment for investment need to be conducted in collaboration with key women's associations, trade unions, civil society groups, the business community and government counterparts. Inter-agency coordination on promoting gender equality when facilitating investment is therefore an important element of this endeavour.

Reforms and procedures are better explained through a coordinated institutional framework, where the different government agencies and levels of government involved in developing trade and investment policy, and those approving and granting business licences, work together

<sup>9</sup> Ferrant, G., Pesando, L.M., and Nowacka, K. (2014). *Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes*. Issues Paper. Paris: OECD Development Centre. [https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf).



with stakeholders including unions and gender experts, rather than in silos providing conflicting messages and treatment of women employees and women-owned/led businesses and entrepreneurs.

Domestic investment promotion agencies (IPAs) are often the focal point through which FDI can be facilitated. As such, IPAs play a critical role in promoting women's economic empowerment by attracting sustainable investments<sup>10</sup> and in assisting new and existing investors. IPAs must play a central role of coordination and liaison on facilitating investment with a gender equality requirement among other relevant government entities and stakeholders.

Efficient collaboration mechanisms to promote women's economic empowerment through investment facilitation can be set up at the policy level. IPAs are in an ideal position to report to and/or participate in high-level working groups promoting gender equality and women's empowerment at the national level.

For example, the IPAs in Costa Rica and Côte d'Ivoire formally participate in the national committees working on gender equality. They are responsible for collecting and disseminating data, along with strengthening both the monitoring and evaluation mechanisms with the aim of a building stronger evidence base of the different gender gaps in the economy.<sup>11</sup>

Investors benefit from simplified business entry processes and administration requirements, yet there is a greater benefit for women as they are generally in a more disadvantaged position than men when dealing with complex entry processes. For instance, there has been a persistent gender gap in the global literacy rate: about 90% of men and just over 83% of women in the world were literate in 2020,<sup>12</sup> indicating a 7% global literacy gender gap.

The gender literacy gap is 17 percentage points in South Asia, while sub-Saharan Africa and the Middle East and North Africa have a gender literacy gap of 15 percentage points and 14 percentage points, respectively.<sup>13</sup> Women's literacy is a valuable component in supporting their economic empowerment. It enables women to understand how to formalize a business, keep business records and manage income and expenditure.<sup>14</sup>

Research also suggests that women may face higher levels of 'interference' in interacting with government officials or complying with government regulations. This was seen in a study from eight countries in the Middle East and North Africa that identified constraints affecting women, including, for instance, the inability to enter a business registration office without a male relative, travel without male permission or check into a hotel on their own.<sup>15</sup>

10 Helibrón, A., and Kronfol, H. (2020). *Increasing the Development Impact of Investment Promotion Agencies. Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty.* [https://elibrary.worldbank.org/doi/pdf/10.1596/978-1-4648-1536-2\\_ch5](https://elibrary.worldbank.org/doi/pdf/10.1596/978-1-4648-1536-2_ch5).

11 United Nations Conference on Trade and Development [UNCTAD] (2020). *Mainstreaming Gender Equality in Investment Promotion.* The IPA Observer, Issue 10 (November 2020). [https://unctad.org/system/files/official-document/diaepcbinf2020d7\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2020d7_en.pdf).

12 United Nations Educational, Scientific and Cultural Organization (2022). *Protect her Rights, Strengthen your Laws.* Division for Policies and Lifelong Learning Systems – Section of Education Policy, Educator Sector. Paris: UNESCO. <https://unesdoc.unesco.org/ark:/48223/pf0000382158>.

13 Wadhwa, D. (2019). 'More Men than Women are Literate.' World Bank Blogs. <https://blogs.worldbank.org/opendata/more-men-women-are-literate>.

14 UNCTAD (2020), *op.cit.*

15 Chamlou, N., Klapper, L., and Muzi, S. (2008). *The Environment for Women's Entrepreneurship in the Middle East and North Africa.* Washington, D.C.: World Bank Group. <https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-7495-5>.

There is evidence that women are more likely to suffer harassment and requests for bribes when interacting with public officials. A survey in Bangladesh found that government officials were more likely to target female applicants for informal 'speed payments' because they were assumed to have a male provider.<sup>16</sup>

Another study in India found that women had to wait on average 37% longer than men to see the same local government official. Women of roughly the same income as men were three times more likely to be 'queue-jumped,' and 16% of women reported sexual harassment from local government officials.<sup>17</sup>

The disproportionate impact of investment constraints on women and men requires carefully designed interventions and monitoring of impacts to redress the imbalances. By building local understanding of gender and private-sector development issues, local associations can be better equipped to advocate effectively for change to advance gender-sensitive reforms. Ensuring that women's voices are heard in the diagnostic process – and concomitantly in solution design, implementation, monitoring and evaluation – will increase women's ability to benefit from and contribute to investment growth.

An improved business-enabling environment for women-owned firms will result in greater numbers of successful women entrepreneurs and increased job creation.

## The employment channel

### Women-owned/led businesses

Although women's entrepreneurship has risen and women's participation in the labour force has increased substantially in recent years, major disparities persist. Women's economic activities are not equally distributed across productive sectors.

Women-run firms in most developing countries tend to be undercapitalized and they have poorer access to machinery, fertilizer inputs, extension information and credit than male-run enterprises. Laws, regulations

and customs restrict the ability of women to manage property, conduct business or even travel without the consent of their husbands. In many regions, women are less likely to have land and, in some cases, are disadvantaged by discriminatory ownership laws and regulations.

The impact of investment and trade expansion in each country varies by socioeconomic structure.<sup>18</sup> For example, there may be sectoral segregation where women tend to start businesses in different industries than men, and sectors dominated by women typically earn less. In many countries, women-owned businesses are concentrated in the retail trade and services sectors, which are mainly health, education and social services. These are characterized by lower investments and growth compared to the manufacturing, construction and mining sectors.<sup>19</sup>

Business incorporation and licensing practices often entail lengthy and complex registration procedures. A whole-of-government approach to promoting women's economic empowerment would seek to create an environment where it is easier for women entrepreneurs and women investors to establish, operate and expand their investments.

Within this ecosystem, IPAs could seek to target investments towards developing the full potential of women entrepreneurs and to encourage all investors to add domestic gender equality requirements and labour standards into their existing operations. Investment facilitation has the potential to be of particular benefit to women. A growing body of data suggests that specifically focusing investment initiatives on women could positively affect domestic economies and produce better development outcomes.<sup>20</sup>

Given that women spend disproportionately more time compared to men on unpaid and care work, they cannot afford long and costly registration procedures.<sup>21</sup> As investment legislation and administrative procedures and requirements affect businesses of men and those of women differently, these differences must be understood and appropriately addressed.

16 Simavi, S., Manuel, C., and Blackden, M. (2010). *Gender Dimensions of Investment Climate Reform; A Guide for Policy Makers and Practitioners*. Washington, D.C.: The World Bank. <https://documents1.worldbank.org/curated/en/260721468321276647/pdf/528610PUB0gend101Official0Use0Only1.pdf>.

17 *Ibid.*

18 Joekes, S., Frohmann, A., and Fontana, M. (2020). *A Primer on Gender on Trade. Gender, Social Inclusion and Trade Knowledge Product Series*. BKP Economic Advisors. [https://www.bkp-development.com/images/reports/A\\_PRIMER\\_ON\\_GENDER\\_AND\\_TRADE\\_bkp\\_07052020.pdf](https://www.bkp-development.com/images/reports/A_PRIMER_ON_GENDER_AND_TRADE_bkp_07052020.pdf).

19 Rosa, J.M., and Sylla, D. (2016). *A Comparison of the Performance of Female-Owned and Male-Owned Small and Medium-Sized Enterprises*. Ottawa: Statistics Canada, Centre for Special Business Projects. <https://ised-isde.canada.ca/site/sme-research-statistics/en/research-reports/comparison-performance-female-owned-and-male-owned-small-and-medium-sized-enterprises/comparison-performance-female-owned-and-male-owned-small-and-medium-sized-enterprises>.

20 International Monetary Fund, *op cit.*

21 Ferrant, G., Pesando, L.M., and Nowacka, K. (2014), *op.cit.*

Laws directly affecting women's capacity to participate in the private sector may require male consent to start or operate a business. There may be rules that prevent women from working in certain sectors, such as repairing or maintaining 'heavy machinery' *in situ*, which may act as a barrier to women working in the engineering sector more widely.<sup>22</sup>

Other laws outside the business sector, such as those concerning marriage, family relations and inheritance, may have a determining influence on women's ability to participate in the private sector or economic activities in general. Again, even when a legal and regulatory environment appears gender-neutral in principle, it may have gender-differentiated outcomes. As a result, these laws may hinder women more than men when it comes to accessing credit, assets, education, training and information needed to start and operate a firm.

Gender-based stereotypes and lack of role models often serve as barriers to women's professional advancement and limit their voices both in business communities and policymaking. Including women business owners and women's business associations in public-private dialogue and advocacy efforts will allow women's unique constraints to be considered in the reform process.

IPAs have a role to play to strengthen and promote demand for investment for women entrepreneurs and women-owned/led businesses. They can undertake gender equality advocacy in the world of finance, investments and investors' internal practices. They can also create more favourable conditions for investing with a gender lens.

## Facilitating investment in firms that promote workplace equity

Women's participation in the labour force has grown dramatically due to changes in cultural attitudes as well as women- and child-friendly public policies. Still, large gender gaps remain between men and women's labour

force participation around the world.<sup>23</sup> The International Monetary Fund said in 2018 that only 55% of women had the opportunity to participate in the labour force, compared with 80% of men. As of 2016, women earned about 50% less than men for the same type of work and represented just 20% of parliamentarians across the world.<sup>24</sup>

In addition to the already persistent disparities in men and women's wages, labour force participation and access to financial services, the effects of the COVID-19 pandemic have disproportionately affected women, who are more likely to work in low-wage health and social care sectors,<sup>25</sup> in addition to undertaking greater unpaid care work.<sup>26</sup>

Yet full convergence of labour force participation between genders would add an estimated 12% to gross domestic product; even halving the gap would lead to a 6% increase in gross domestic product by 2030.<sup>27</sup> It has been demonstrated that increasing women's income can lead to a more efficient allocation of resources within households and boost the share of expenditures allocated to health, education and nutrition.<sup>28</sup>

There is also growing evidence that pursuing gender equity as an investor would have positive benefits for the investment, business and society.<sup>29</sup> Not only are there various ways in which investment decisions can have a positive impact and benefit women, but many of these outcomes often have complementary and compounding effects on the strength and long-term success of an investment or business.

For example, companies with women in executive management repeatedly outperform companies that have no women in senior roles. This is the same case for companies with women on their boards. Studies also suggest that diverse workforces support the retainment of talent and employee motivation and foster creativity and stronger financial performance.

Moreover, the purchasing power of women is growing, and companies and investors are taking note of the

22 For example, in Mali Decrét No. 96-178/P-RM. See [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=44399&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=44399&p_lang=en).

23 See Goldstein, M., Martinez, P.G., and Papineni, S. (2019). *Tackling the Global Profitarchy Gender and the Choice of Business Sector*. Policy Research Working Paper 8865. Washington, D.C.: World Bank. <https://openknowledge.worldbank.org/server/api/core/bitstreams/cdec052-b862-5b52-89b0-5650074e9a89/content>.

24 Lagarde, C. (2016). 'The Business Case for Women's Empowerment.' APEC CEO Summit, Peru. <https://www.imf.org/en/News/Articles/2016/11/18/SP111816-The-Business-Case-for-Womens-Empowerment>.

25 See Trumbic, T. (2020). 'New Measures are Needed to Safeguard Women's Economic Opportunities During COVID-19.' World Bank Blogs (10 September 2020). <https://blogs.worldbank.org/developmenttalk/new-measures-are-needed-safeguard-womens-economic-opportunities-during-covid-19>.

26 Ferrant, G., Pesando, L.M., and Nowacka, K. (2014), *op.cit.*

27 OECD (2015), *op.cit.*

28 Quedraogo, R., and Marlet, E. (2018). *Foreign Direct Investment and Women Empowerment: New Evidence on Developing Countries*. Statistics Department. IMF Working Papers. No. 2018/025. <https://www.imf.org/en/Publications/WP/Issues/2018/01/26/Foreign-Direct-Investment-and-Women-Empowerment-New-Evidence-on-Developing-Countries-45597>.

29 KPMG (2021) Gender Lens Investing. <https://kpmg.com/pt/en/home/insights/2021/03/gender-lens-investing.html>.



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opportunity in accessing this capital. Entrepreneurs who can effectively demonstrate their ability to empower women will have greater success accessing these capital sources than those who cannot.<sup>30</sup>

The gender effects of investment have been analysed in relation to the labour market and employment. Many studies argue that foreign-owned firms generally pay higher wages than domestic companies.<sup>31</sup> Furthermore, foreign-owned firms bring advanced technologies into their host countries, generating potential technological spillovers to local suppliers or customers. As local firms adapt and acquire new technology, they eventually give wage premiums to retain their newly trained workers. Female labour demand will increase if the new technology is more attuned to a female workforce.

Foreign-owned firms may also establish responsible business codes that implement more gender-equal norms, maternity benefits, childcare facilities and protection against workplace harassment.<sup>32</sup>

Nevertheless, women earn considerably less than men on average.<sup>33</sup>

Foreign investment tends to occur in places where foreign companies expect high profitability. This phenomenon, known as the 'cherry-picking effect', influences the labour market effects of foreign investment, as firms with positive prospects tend to have higher wages compared to prevailing local salaries.<sup>34</sup> Studies have also shown that FDI may have a negative impact on gender development and inequality, for example, if national cultural norms are opposed to female development or if investments are made in technologically advanced sectors.<sup>35</sup>

30 *Ibid.*

31 Aitken, Harrison and Lipsey (1996), Hunya (1997) and Golejewska (2002) all argue that foreign-owned firms generally pay higher wages than their domestic counterparts. This is explained by the fact that foreign-owned firms use more advanced technology and thus require higher levels of skills. See Braunstein, E. (2006), *op.cit.*

32 OECD (2015), *op.cit.*

33 Institute for Women's Policy Research (2018). The Gender Wage Gap: 2017: Earnings Differences by Race and Ethnicity. IWPR #C464. [https://iwpr.org/wp-content/uploads/2020/08/C464\\_Gender-Wage-Gap-2.pdf](https://iwpr.org/wp-content/uploads/2020/08/C464_Gender-Wage-Gap-2.pdf).

34 Helble, M., and Takeda, A. (2020). *Do Women Benefit from FDI? FDI and Labor Market Outcomes in Cambodia*. ADBI Working Paper Series 1093. Tokyo: Asian Development Bank Institute. <https://www.adb.org/sites/default/files/publication/572731/adbi-wp1093.pdf>.

35 OECD (2015), *op.cit.*

This was confirmed in a study of the impact of FDI on the pay gap between women and men workers in the People's Republic of China which concluded that the effect is contingent on whether the FDI is directed more towards men- or women-dominated industries.<sup>36</sup>

Research on the impact of foreign investment on employees in the garment sector and other manufacturing sectors in Cambodia found that FDI helps to eliminate the gender gap vis-à-vis wages and, more importantly, the probability of working in the formal sector in other manufacturing sectors. Nevertheless, FDI does not lower the wage gap in the garment sector.<sup>37</sup>

Poor working conditions are a common problem across garment sector firms for all workers, but even more so for women, who concentrate in a narrow range of low-skilled and low-paid positions. Discriminatory practices – such as dismissals and terminations of pregnant workers as well as managerial beliefs and stereotypes about women's skills and supposedly more docile attitudes – intensify gender segregation, both horizontally and vertically.

Women are less likely than men to occupy managerial positions and the gender division of labour on the factory floor thus reflects gender and generational divisions of roles and responsibilities in the home.<sup>38</sup>

Women are also three times as likely as men to be hired informally and are much more likely than men to be unpaid workers who contribute to the family's business,<sup>39</sup> where they are subject to inefficiencies and limitations

more often than men.<sup>40</sup> Such discrepancies impair the ability of women to participate in development and to contribute to higher living standards.

The informal economy absorbs more than half of the global workforce and the share of women in informal employment is higher than men in most countries.<sup>41</sup> As a result, millions of women workers suffer from poor working conditions and a lack of rights at work. Low-quality employment, inadequate social protection, poor governance and low productivity are some of the obstacles that women workers and women-led enterprises face when caught in the informality trap.<sup>42</sup>

A gender lens to investment facilitation would seek to identify and promote gender-inclusive linkages between foreign investors and the local economy. This requires more systematic research into the impact of investment on the gender pay gap in different contexts, as well as other decent work indicators such as maternity benefits, childcare facilities, access to basic healthcare and protection against harassment.

To address these disparities effectively, a joined-up governance approach is necessary, with coordination across different ministries. Investment promotion and industrial policy must be developed with gender, education and health agencies and representatives from labour, gender, women's business associations and cooperatives. This will require industry-specific impact assessment studies to focus on the different contexts of women working in different sectors of the economy that are both affected and excluded by investment.

36 Braunstein, E., and Brenner, M. (2008). 'Foreign Direct Investment and Gendered Wages in Urban China,' *Feminist Economics*, 13(3-4), pp. 213–237, DOI: 10.1080/13545700701439432.

37 Helble and Takeda (2020), *op.cit.*

38 Dyaja, D., Brown, D., and Lupo, L. (2019). *An Impact Evaluation of Better Work from a Gender Perspective*. Geneva: International Labour Office. <https://betterwork.org/wp-content/uploads/2020/01/Discussion-Paper-30.pdf>.

39 Ferrant, G., Pesando, L.M., and Nowacka, K. (2014), *op.cit.*

40 *Ibid.*

41 Bonnet, F., Vanek, J., and Chen, M. (2019). *Women and Men in the Informal Economy: A Statistical Brief*. Geneva: International Labour Office. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_711798.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_711798.pdf)

42 International Labour Organization (2015). Promoting Transition to Formality. <https://www.ilo.org/global/topics/skills-knowledge-and-employability/treepedia/post-training/formality/lang--en/index.htm>.

# Chapter 3

## Do current negotiations adequately recognize gender issues?

International frameworks highlight the need for investment facilitation rules that can promote SDGs including SDG 1 (poverty eradication) and SDG 5 (gender equality).<sup>43</sup> The OECD Policy Framework for Investment was developed to help governments create an enabling environment for investment and enhance its development benefits to society.<sup>44</sup>

In 2016, G20 trade ministers agreed on a set of non-binding Guiding Principles for Investment and Policymaking, aiming to 'promote investment for inclusive economic growth and sustainable development'.<sup>45</sup> It is increasingly acknowledged that when regulated correctly, FDI can be an important mechanism for delivering global public goods, improving labour conditions, setting global industry standards and delivering infrastructure to local communities.<sup>46</sup>

For FDI to deliver these benefits equitably and with the objective of aligning with the SDGs, especially SDG 5, it is vital to adopt a gender lens from planning to negotiation and through to implementation.

Rather than facilitating investment, international investment rules traditionally have been primarily concerned with negotiating market access for foreign investors in the host country, protecting their investments from discrimination and unfair treatment, with strong enforcement through an investor–state dispute settlement mechanism.

Recent developments in the Netherlands, for example, suggest that gender considerations are increasingly being incorporated into international investment agreements (IIAs).<sup>47</sup> Previously, when investment agreements mentioned gender equality, they mostly focused on gender equality in arbitral dispute resolution and the gender division among arbitrators.<sup>48</sup>

Few IIAs include provisions on investment facilitation, however.<sup>49</sup> Until recently, investment facilitation laws and policies were addressed only at the national level. IIAs also have exclusive jurisdiction over bilateral investment. As a result, only a few provisions in WTO trade agreements relate to investment.

The General Agreement on Trade in Services regulates investment in terms of services supplied under Mode 3. These are services provided by 'a services supplier of one Member, through commercial presence in the territory of another Member'.<sup>50</sup> The WTO Agreement on Trade-Related Investment Measures prohibits Members from applying trade-related investment measures that would not comply with the General Agreement on Tariffs and Trade provision on national treatment.<sup>51</sup>

Other investment-related provisions are included in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>52</sup> and the Government Procurement Agreement prohibition on discrimination on the basis of foreign affiliation or

43 See OECD (n.d.). OECD Work on Investment Promotion and Facilitation. <https://www.oecd.org/investment/investment-promotion-and-facilitation.htm> and UNCTAD (2021). Multinational Enterprises and the International Transmission of Gender Policies and Practices. Investment and Enterprise Division. Geneva: UNCTAD. [https://unctad.org/system/files/official-document/diaiefn2021d1\\_en.pdf](https://unctad.org/system/files/official-document/diaiefn2021d1_en.pdf).

44 OECD (n.d.), *op.cit.*

45 G20 (2016). Annex III: G20 Guiding Principles for Global Investment Policymaking. <https://www.oecd.org/daf/inv/investment-policy/G20-Guiding-Principles-for-Global-Investment-Policymaking.pdf>.

46 International Finance Corporation (2017b). *Annual Report 2017: Creating Markets*. Washington, D.C.: International Finance Corporation. <https://www.ifc.org/wps/wcm/connect/aa14d660-c31a-449a-88ea-dcc443c29910/IFC-AR17-Full-Report-Vol-1-v2.pdf?MOD=AJPERES&CVID=IYRJuCw>.

47 Government of the Netherlands (2019). The Dutch Final Model Bilateral Investment Treaty. <https://www.rijksoverheid.nl/ministeries/ministerie-van-buitenlandse-zaken/documenten/publicaties/2019/03/22/nieuwe-modeltekst-investeringsakkoorden>.

48 Amaral, R.N., and Jaller, L.D. (2020). 'The Role of Regulation and MNEs in Ensuring Equal Opportunities for Women,' *Transnational Corporations Journal*, 27(3). Also see UNCTAD (2021), *op.cit.*

49 Moreira, N.C. (2018). 'Cooperation and facilitation investment agreements in Brazil: The path for host state development,' Kluwer Arbitration Blog. Also Bernasconi-Osterwalder, N., and Brauch, M.D. (2015). 'Comparative commentary to Brazil's cooperation and investment facilitation agreements (CIFAs) with Mozambique, Angola, Mexico, and Malawi.' Winnipeg: International Institute for Sustainable Development. Most notable is Brazil's approach of negotiating cooperation and facilitation investment agreements with interested partners rather than bilateral investment treaties.

50 Pursuant to the General Agreement on Trade in Services Article I:1(c).

51 Pursuant to Articles III and XI of the General Agreement on Tariffs and Trade, this includes investment measures that are quantitative restrictions aside from 'duties, taxes or other charges', with certain exceptions.

52 Boie, B. (2010). *The Protection of Intellectual Property Rights through Bilateral Investment Treaties: Is there a TRIPS-plus Dimension?* Swiss National Centre of Competence in Research. [https://www.wti.org/media/filer\\_public/c5/47/c5475d4a-f97c-4a8b-a12a-4ae491c6abb3/the\\_protection\\_of\\_iprs\\_through\\_bits.pdf](https://www.wti.org/media/filer_public/c5/47/c5475d4a-f97c-4a8b-a12a-4ae491c6abb3/the_protection_of_iprs_through_bits.pdf). TRIPs includes provisions that refer explicitly to investment, such as Article 70 on the protection of existing subject matter. The implications of the TRIPs Agreement's intellectual property rights rules on foreign investors, as well as the evolution of TRIPs-plus provisions in bilateral investment treaties, have also been the subject of considerable analysis.



ownership, or based on where a supplier has sourced the goods and services on offer.<sup>53</sup> These scattered provisions do not specifically address either investment facilitation or gender equality objectives.

The legal vacuum surrounding investment facilitation at the international rule-making level has triggered calls for measures to facilitate higher quality investment in developing countries. The G20 made a commitment in 2016 to enhance an open world economy by working towards trade and investment facilitation and liberalization, focusing on high-quality and responsible investment.<sup>54</sup>

The following year, a group of 70 WTO Members endorsed a Joint Ministerial Statement on Investment Facilitation for Development.<sup>55</sup> The statement announced plans for structured discussions on an investment facilitation framework that would improve the transparency and predictability of investment measures; streamline and speed up administrative procedures and

requirements; and enhance international cooperation, information sharing, the exchange of best practices and relations with relevant stakeholders, including dispute prevention.

This statement was explicit on a core objective being the need for a framework to facilitate greater participation by developing and least developed country Members in global investment flows. However, the initiative did not mention the need to promote women's economic empowerment or to achieve SDG 5.

The negotiations cover issues including the scope and possible exclusions of the agreement, non-discrimination and most favoured nation requirements, home-state obligations, investment facilitation needs assessments, supplier-development programmes and special and differential treatment.<sup>56</sup>

The 2021 Easter Text and its revisions are the reference documents for the ongoing negotiations on IFD and provide draft provisions for a final multilateral

<sup>53</sup> WTO Government Procurement Agreement, Article IV.

<sup>54</sup> G20 (2016), *op.cit.*

<sup>55</sup> World Trade Organization (2017b). Eleventh WTO Ministerial Conference. [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/mc11\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_e.htm).

<sup>56</sup> See World Trade Organization (20 January 2022). WTO Structured Discussions on Investment Facilitation for Development: Negotiating Meeting of 26 and 27 January 2022. INF/IFD/W/42 [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=282625,282419,282264,282139,281986,282061,281940,280706,280535,280214&CurrentCatalogueIdIndex=9&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=282625,282419,282264,282139,281986,282061,281940,280706,280535,280214&CurrentCatalogueIdIndex=9&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) and World Trade Organization (31 January 2022). WTO Structured Discussions on Investment Facilitation for Development: Negotiating Meeting of 14 and 15 February 2022. INF/IFD/W/43 [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=282625,282419,282264,282139,281986,282061,281940,280706,280535,280214&CurrentCatalogueIdIndex=8&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=282625,282419,282264,282139,281986,282061,281940,280706,280535,280214&CurrentCatalogueIdIndex=8&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True).

agreement.<sup>57</sup> The text suggests the adoption of international commitments and seeks to lay the basis of its future governance structure. It focuses on developing countries, particularly least developed countries, which are perceived to have greater investment needs.

The negotiations of an IFD agreement within the framework of the WTO provide a unique window of opportunity to offer clarity and policy coherence in promoting women's economic empowerment across areas of investment and trade. The WTO Joint Statement on Investment Facilitation for Development aims to develop predictable, transparent and open investment rules that will contribute to sustainable investment, more efficient investment flows and greater business confidence. This framework could usefully mainstream goals and principles promoting gender equality under SDG 5 within the agreement.

## Preamble recitals

The preamble recital of the IFD agreement could espouse and incorporate gender equality objectives as follows:

- Recognize the importance of equality between men and women when formulating, implementing and reviewing measures in the field of investment and investment facilitation.
- Note that these objectives can be achieved without compromising the right of the contracting parties to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as gender equality.
- Reaffirm commitments to effectively implement the obligations under the Convention on the Elimination of all Forms of Discrimination Against Women, 1979; ILO Equal Remuneration Convention (No. 100); ILO Discrimination (Employment and Occupation) Convention (No. 111); ILO Workers with Family Responsibilities Convention (No. 156); ILO Maternity Protection Convention (No. 183); ILO Convention Eliminating Violence and Harassment in the World of Work (No. 190) and the UN Women's Empowerment Principles.

Incorporating these preamble recital objectives would provide a stronger framework and context from which to promote gender equality throughout the text of the agreement. The transparency, streamlining and acceleration of administrative procedures could all be designed with due regard to reducing gender

inequalities and disparities, such as the burden of unpaid work and childcare, and the ease of formalizing women-owned/led businesses.

This would support domestic policy instruments that are designed to address the needs of women entrepreneurs seeking to invest, as well as those investors seeking to invest in businesses promoting gender equality.

## Responsible business conduct

Provisions relating to responsible business conduct could specifically reference and incorporate domestic gender equality principles and norms, such as those set out in the preamble recitals. Responsible business conduct principles and standards impose an expectation that all firms avoid and address negative impacts of their operations, while contributing to the sustainable development of the countries where they operate.

While it is the role of businesses to act responsibly and integrate environmental and social issues in their core activities, governments have a duty to protect the public interest from the potential negative impacts of business activities. Governments have the role of providing an enabling framework for responsible business conduct that should be reflected in their investment facilitation efforts.

Investment facilitation measures should be non-discriminatory by nature. Therefore, providing an enabling framework for responsible business conduct to promote gender equality will help governments attract and keep high-quality and responsible investors. This will help to minimize the risks of potential adverse impacts of investments on women and the less advantaged, ensuring broader value creation and more sustainable development.

Canada has proposed that the IFD include an article on responsible business conduct as follows:

- Each Member reaffirms the importance of internationally recognized standards, guidelines and principles of responsible business conduct that have been endorsed or are supported by that Member, including the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights, and shall encourage investors and enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate these standards, guidelines and principles into their business practices and internal

<sup>57</sup> World Trade Organization (23 April 2021). 'Easter Text' to Facilitate Negotiations for an Investment Facilitation Agreement. [https://www.wto.org/english/news\\_e/news21\\_e/infac\\_27apr21\\_e.htm](https://www.wto.org/english/news_e/news21_e/infac_27apr21_e.htm).

policies. These standards, guidelines and principles address areas such as labour, environment, *gender equality*, human rights, community relations and anti-corruption.

- Each Member should encourage investors or enterprises operating within its territory to undertake and maintain meaningful engagement and dialogue, in accordance with international responsible business conduct standards, guidelines and principles that have been endorsed or are supported by that Member, with indigenous peoples *and local communities* [emphasis added].

## The EU-Angola Model Sustainable Investment Facilitation Agreement

The EU–Angola Model Sustainable Investment Facilitation Agreement<sup>58</sup> offers a developed template of legal provisions from which to strengthen a gender lens in future IFD accords, i.e. the WTO IFD agreement and bilateral IFD agreements or for incorporation into future IIAs.

The agreement specifically references and endorses women’s economic empowerment under Article 5.8 Investment and Gender Equality. These provisions explicitly recognize that ‘inclusive investment policies can contribute to advancing women’s economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the UN 2030 Agenda on Sustainable Development’. The parties affirm their ‘intention to implement this agreement in a manner that promotes and enhances gender equality’.<sup>59</sup>

To these ends, the provision also says the parties shall work together appropriately to ‘strengthen their cooperation on investment-related aspects of gender equality policies and measures, including activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement’.<sup>60</sup>

Support for micro, small and medium-sized enterprises (MSMEs) has also been mainstreamed across the agreement’s provisions. For example, parties are encouraged to review the application of the agreement affecting investment to make the investment framework ‘more effective in achieving its policy objectives and in addressing the specific needs of MSMEs’.<sup>61</sup> The parties also acknowledge that impact assessments should take into account ‘the potential impact of any proposed measure on MSMEs and on sustainable development’.<sup>62</sup>

Provisions establishing problem-solving mechanisms also say that each party shall try to establish or maintain suitable mechanisms (which are easily accessible, including for MSMEs) aimed at effectively resolving problems.<sup>63</sup>

The EU–Angola IFD Agreement affirms the parties’ commitment ‘to promote the development of investment in a way that is conducive to decent work for all, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008’.<sup>64</sup> The scope of the EU–Angola draft agreement provides that parties retain the right to regulate within their territories to achieve legitimate policy objectives.<sup>65</sup>

The illustrative list includes the protection of public health, social services, public education, safety, public morals and social or consumer protection. This list could be expanded to explicitly include gender equality or women’s economic empowerment objectives.<sup>66</sup>

The agreement does not, however, mainstream gender language throughout the provisions. For example, provisions on transparency of the investment framework require the parties to make available, via electronic means, ‘a description that informs the other Party’s government agencies, investors and other interested parties of the practical steps needed to invest in its territory’.<sup>67</sup> Here, the description could also cover, *inter alia*, the requirements and procedures related to financing and support for women-owned businesses.

58 European Commission (2022). EU-Angola Sustainable Investment Facilitation Agreement. Retrieved 22 December 2022 from [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6136](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6136).

59 *Ibid.*: Article 5.8.

60 *Ibid.*: Article 5.8.

61 *Ibid.*: Article 4.5.

62 *Ibid.*: Article 4.4.

63 *Ibid.*: Article 4.2.

64 *Ibid.*: Article 5.3.

65 *Ibid.*: Article 5.2.

66 *Ibid.*: Article 1.2.

67 *Ibid.*: Article 2.4.



Similarly, provisions on linkages with the host economy<sup>68</sup> could include explicit gender equality language. There could be, for example, a statement encouraging each party to make information on domestic suppliers available to investors and potential investors, with a view to strengthening linkages with the local economy, increasing the competitiveness of domestic suppliers and *enhancing the contribution of investment to promote gender equality and sustainable development*.

The provisions establishing the Committee for Investment Facilitation<sup>69</sup> could also encourage fair representation of women to the fullest extent possible. The requirements for focal points and stakeholder involvement could similarly encourage these inquiry points to be aware of the needs of small women-owned/led businesses and women entrepreneurs in the investment climate.<sup>70</sup>

The provisions on regulatory coherence and impact assessments could usefully state that when conducting impact assessments of its measures, specific account should be taken of the potential impact on women-owned/led businesses, in addition to sustainable development.<sup>71</sup> This would support the stakeholder consultation and periodic reviews, which could determine whether measures should be introduced or modified to target the needs of small and women-owned/led businesses.

## The outlines for BRICS investment facilitation

The outlines for BRICS<sup>72</sup> investment facilitation specifically focus on special and differential treatment<sup>73</sup>. They note that global rules on investment facilitation will likely bring about new and complex commitments for countries with respect to legislative requirements, new technology and equipment, and human capacity. As a result, host economies would need to align their national development strategies.

In view of this, the BRICS countries want the WTO to adopt the special and differential treatment provisions in the investment facilitation agreement in a similar way to the Trade Facilitation Agreement. This would allow member states to commit to what they feel comfortable to achieve within specified timeframes. This would also factor in support and capacity building within the commitments of the IFD agreement to ensure that a focus on SDG 5 on achieving gender equality can be realized in practice.

The BRICS Understanding on Investment Facilitation includes a statement that the BRICS countries will try to exchange information regularly on, *inter alia*, prospective investment opportunities and incentives offered, including for small and medium-sized enterprises. This could usefully include a further reference to women-owned businesses. It could also call for fair gender representation on relevant committees, agencies and focal points at the national and international levels.<sup>74</sup>

68 *Ibid.*: Article 2.6.

69 *Ibid.*: Article 7.2.

70 *Ibid.*: Article 4.1.

71 *Ibid.*: Article 4.4.

72 The five BRICS countries are Brazil, Russian Federation, India, China and South Africa.

73 BRICS Information Centre (2017). Outlines for BRICS Investment Facilitation: Annex I to the 7th Meeting of the BRICS Trade Ministers Statement. <http://www.brics.utoronto.ca/docs/170802-trade.html>.

74 See <https://brics-russia2020.ru/images/53/21/532176.pdf>.

## The E-15 Initiative

The E-15 Initiative has also proposed an ambitious and comprehensive framework for investment facilitation with global principles and commitments that could usefully advocate and incorporate more explicit women's economic empowerment principles.<sup>75</sup>

The framework advocates for an international agreement with commitments to be made not only by host countries, but also by home countries and multinational enterprises (see Box 1). These commitments mostly relate to transparency and information disclosure and could include a gender-disaggregated data requirement on the profiles of women-owned/led businesses in the economy.

The provisions on responsible business conduct could also incorporate best practice gender equality standards.

This requirement could then operate alongside specific measures to promote women's economic empowerment taken by domestic IPAs.

In terms of governance, the E-15 framework proposes programmes to complement the Trade Facilitation Agreement because in the context of international value chains, trade and investment are part of the same equation. Expanding the agreement to complement the WTO Investment Facilitation Agreement would allow for greater complementarity and synergies in promoting women's economic empowerment as an SDG.

These efforts could be further supported through the WTO-led Aid for Trade initiative. This is a useful instrument to mobilize resources to support developing countries to address their trade-related obstacles and incorporate gender equality objectives.

### Box 1: Elements of a WTO agreement on investment for development

Below are the potential elements of an international agreement to facilitate investment for development:

#### Common principles

- Transparency
- Predictability
- Efficiency

#### Responsibilities/commitments

- Host countries: inward investment facilitation measures (tools, policies and processes)
- Home countries: outward investment facilitation measures
- Private sector: responsible business conduct
- International organizations (OECD and others: monitoring and evidence-based research)

#### Governance/implementation

- Investment Facilitation Principles by the OECD and other international organizations (*short term*)
- Investment Facilitation Agreement under the WTO (*long term*)
- Specific support programme for developing countries

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Source: Sauvant, Karl P., and Hamdani, Khalil (2015). *An international support programme for sustainable investment facilitation*. International Centre for Trade and Sustainable Development.

<sup>75</sup> Sauvant, K.P., and Hamdani, K. (2015). *An International Support Programme for Sustainable Investment Facilitation*. Geneva: International Centre for Trade and Sustainable Development and World Economic Forum. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3143372](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143372).

## Chapter 4

# Ensuring consistency between WTO rules and countries' gender pledges

To provide a coherent framework for encouraging gender equality commitments domestically, the preamble of the WTO IFD could endorse the international conventions and labour standards that promote gender equality and women's economic empowerment that the parties have endorsed domestically. This would allow for a sounder and more supportive legal context for advancing these objectives through investment facilitation and other domestic policies.

To provide policy space to advance women's economic empowerment initiatives domestically, the scope of the WTO IFD agreement could explicitly permit parties to regulate within their territories to achieve legitimate policy goals, including gender equality objectives.

Special and differential treatment will be necessary to allow member states to commit to what they feel comfortable to achieve within specified timeframes and provide the policy space to incorporate stronger gender equality requirements domestically. Investment facilitation will likely bring about new and complex commitments for countries with respect to legislative requirements, new technology and equipment, and human capacity and, as a result, host economies will need to reflect this in their national development strategies.<sup>76</sup>

The agreement could seek to incorporate provisions for advance publication and opportunity to comment on any proposed law or regulation on investment before it is enacted or published. The requirement for the documents to provide sufficient detail and explain the rationale for the laws could explicitly allow interested people, including gender experts, to assess whether and how the proposed law might significantly affect the interests of women and men. This could usefully include consultations with women's business unions, gender experts, labour/workers organizations and other relevant bodies.

When parties using electronic means to inform the other party's government agencies, investors and other interested parties of the practical steps needed to invest in their territories, such communication could explicitly include the domestic requirements and procedures related to financing and support for women-owned/led businesses. Domestic focal points and stakeholder involvement could encourage and advocate an awareness of the needs of small and women-owned/led businesses in the investment climate.

When encouraging sustainable linkages with the local economy, gender language could be explicitly included to ensure, and with a view to enhancing, the contribution of investment to gender equality and sustainable development.

The committee or institutional body that is responsible for overseeing the implementation of the WTO IFD could seek to lead by example and include fair gender balance among its members. This body could ensure that the necessary gender-disaggregated data are collected on the impact of investment facilitation measures on the parties' women-owned/led businesses, with gender impact assessments and stakeholder consultations to identify and advocate domestic capacity-building initiatives that can effectively empower women to benefit from investment.

Expanding the Trade Facilitation Agreement to complement the WTO IFD agreement could allow for greater complementarity and synergies, preventing the duplication that occurs when working in silos. These efforts could then harness Aid for Trade resources to back local initiatives to support women's businesses and help them to take advantage of the benefits of sustainable investment through appropriate investment facilitation policies.

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<sup>76</sup> BRICS Information Centre (2017), *op.cit.*

# Chapter 5

## Ensuring women's interests are represented in negotiations

Many steps can be taken to ensure intentional inclusivity and consideration of the interests of women when negotiating and implementing the investment facilitation for development agreements. This is relevant to the WTO IFD agreement and bilateral investment facilitation agreements, and incorporating these provisions in IIAs. Below is a non-exhaustive list of proposed actions:

- Endeavour to make the SDGs central to the structuring, negotiation and implementation strategy of the IFD agreement and IIAs, particularly SDG 5.
  - Include gender equality training and representation in the investment facilitation focal points and IPAs. The International Organization for Standardization's (ISO) International Workshop Agreement (IWA) 34 on Women's Entrepreneurship can also be used as a tool to promote consistency and harmonization in terminology and criteria.
  - Include clear gender provisions in national IFD negotiating strategies, based on whole-of-government gender equality policy and robust gender-sensitive empirical evidence.
  - Establishing certain national organizations as champions for women's economic empowerment programmes can serve as an accountability and monitoring forum to ensure implementation of the gender equality goals in the IFD agreement and IIAs. These could be national organizations such as the ministry responsible for the advancement of women, children and the family. Supporting capacity building in national organizations is more likely to ensure sustainability of representation and reporting after projects are completed.
- Incorporate impact assessments on gender equality. The findings of these assessments can be used to identify and advocate for more effective measures. For example, since 2013, Austria has required a mandatory ex-ante impact assessment on gender equality along with other assessments of potential socioeconomic and environmental impacts for all new and amended laws and regulations, as well as major investment or procurement contracts at the federal level.
  - Quantitative and qualitative thresholds ensure the proportionality of these efforts in relation to the respective law or regulation. The impact assessments are disclosed for consultation and parliamentary discussions. Ministries are to carry out ex-post evaluations of the impacts within five years and report to parliament in the Annual Report on Impact Assessment submitted in May.<sup>77</sup>
  - Governments can negotiate broader IIAs with investment facilitation provisions that are based on international best practice. An example is the 2019 Dutch Model Bilateral Investment Treaty, which set an unprecedented positive recognition of the nexus between trade, investment and gender equality and social inclusion.
  - Ensure specialized gender expertise is accessible to the negotiators and government bodies to provide support throughout the various stages of the negotiation and implementation of the agreement.

<sup>77</sup> UNCTAD (2020). *op cit*.

# Chapter 6

## Ensuring women's interests are represented in negotiations

Training is needed for women to carry out work inspections and reporting to improve the gender-sensitive implementation of investment agreements and policies. Whistleblowing at the corporate level should be both encouraged and protected to ensure that women are empowered to report specific or systemic instances of lack of compliance or poor implementation.<sup>78</sup>

Complementary women's economic empowerment initiatives could include skills training for women in non-traditional as well as traditional investment-supported industries, support for women-owned/led businesses to benefit from investment, and the provision of childcare services for workers in investment-supported industries.

Systematic public–private dialogue is one example of a key process for host governments to receive feedback from businesswomen on legal and administrative bottlenecks they face when investing or reinvesting. This can help authorities provide the most suitable mechanisms and policies in response to concerns raised by women entrepreneurs as well as investors who want to identify opportunities to promote gender equality.

In turn, efficient public–private dialogue can also allow the government to explain rules and gender equality requirements to entrepreneurs and businesses. This can ultimately facilitate new investments that promote gender equality.

Monitoring of agreements includes factoring in effective reporting and whistleblowing mechanisms at the design stage rather than post-facto, taking into account any informal, local or institutional power structures. Furthermore, to incorporate gender assessments, gender analysis practices should also be brought to align with the mainstream requirement for regulatory impact analysis of public governance, which includes procurement.

Conducting gender audits or gender-based analysis, systematically analysing the differential effects of policies, legislation regulations and institutional or individual practices on women and men would improve the design and the planning of policies, prevent negative impact on gender equality and ensure the adaptation of the policy to make sure that any discriminatory effects are either identified or mitigated. Independent evaluation is also needed to ensure the integrity of audits.

Gender impact assessments should be conducted ex-ante on the proposed law or agreement and after its implementation to determine if the intended outcomes were achieved. To be most effective, these assessments must be fully integrated into policy development and implementation and be supported at the highest level of government. As a priority, staff performing the gender impact assessment need appropriate expertise and access to qualitative and quantitative data to support their analysis.

For example, in Sweden, binding regulations stipulate that gender impact assessments must be conducted on policy proposals potentially affecting gender equality. Bills require a separate section assessing whether proposals and expected outcomes contribute to the achievement of gender equality goals or potentially hinder fulfilment of the goals. Experts at the Division for Gender Equality offer training and workshops to support assessment-related work in other departments and line ministries.

The Division for Gender Equality also provides general training sessions on gender equality, gender mainstreaming and gender budgeting for all ministries in the Government Offices of Sweden. Line ministries can also take in external consultants or experts for support and training related to specific gender equality challenges such as how to work with sex-disaggregated data.<sup>79</sup>

<sup>78</sup> See Tilton, C. (2018). 'Women and Whistleblowing: Exploring the Gender Effects in Policy Design,' *Columbia Journal of Gender and Law*, 35(2), pp. 338–368. <https://journals.library.columbia.edu/index.php/cjgl/article/view/2772> and Organization for Economic Co-operation and Development (2016). *Committing to Effective Whistleblower Protection*. Paris: OECD. [https://www.oecd-ilibrary.org/governance/committing-to-effective-whistleblower-protection\\_9789264252639-en](https://www.oecd-ilibrary.org/governance/committing-to-effective-whistleblower-protection_9789264252639-en).

<sup>79</sup> OECD (n.d.) *Toolkit for Mainstreaming and Implementing Gender Equality*, <https://www.oecd.org/gender/governance/toolkit/>.



Developing a sound legal framework for gender-sensitive investment requires strong and efficient institutions with competent staff trained to identify pathways and impediments to women's economic empowerment. This will include not only supporting women entrepreneurs seeking investment, but also encouraging investment that promotes gender equality in its operations.

Laws and regulations can be incorrectly and inconsistently applied due to inadequate understanding by public officials in charge of administering and approving business licences. Capacity building of the civil service and IPAs is thus a key process supporting investment facilitation that promotes women's economic empowerment through collaborative governance involving multistakeholder consultations. Regular monitoring and evaluation are necessary to ensure that investment facilitation tools and policies are useful and current and can identify and target women's needs when facilitating investment.

Agencies can also designate gender focal points to promote and monitor progress. Their responsibilities include promoting measures and programmes to support gender-equal representation at all levels within the IPA, promote a safe working environment for all staff, monitor and report on progress, and receive feedback from IPA staff on gender equality-related issues and concerns.

For example, Australia's Austrade's gender focal point reports on both internal gender equality targets as well as external targets on levels of female participation in IPA activities. The agency's gender equality strategy contributes to targets at the IPA level, at the level of the investing enterprises it serves and at the national level.<sup>80</sup>

Leading by example, IPAs can develop their gender lens introducing complementary policies in their own workplace. For example, Colombia's IPA, ProColombia, has enacted measures (including a 'happiness committee') promoting work-life balance for all staff and gender equality initiatives, which contribute to attracting top female talent. Women represent more than half of the staff and fill two-thirds of leadership positions in the agency.

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<sup>80</sup> UNCTAD (2020), op cit.



The IPA ensures that women and men have equal access to its internship programmes in collaboration with local universities, as well as to its own internal University of ProColombia, which offers language courses, postgraduate education and career development programmes to its staff.<sup>81</sup>

Some IPAs address gender through internal non-discrimination policies. Egypt's IPA, the General Authority for Investment and Free Zones, created an internal Equal Opportunities Committee that ensures equal treatment for men and women, including in recruitment and promotion.

Kenya's KenInvest explicitly states the government's commitment to gender equity as part of its values of equity and fairness and says it 'subscribes to equity and gender balance in both recruitment and career development'.<sup>82</sup> KenInvest offers a range of training options on gender equality and women's empowerment topics to its staff. These cover topics including the prevention of sexual harassment in the workplace, recognizing gender bias in recruitment and promotion, and targeted programmes for women in leadership, confidence-building and career development.

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

<sup>82</sup> United Nations Educational, Scientific and Cultural Organization (2022), *op.cit.*

## Chapter 7

# How to make Aid for Trade initiatives more gender-responsive

The WTO Aid for Trade initiative can focus on identified women-dominated industries that are affected by investment by establishing, in the long term:

- Gender awareness programmes, implementation, compliance, monitoring and reporting;
- Training and capacity building to move women-owned/led businesses and women's cooperatives into the formal sector, which investment can reach;
- Training and capacity building to help women-owned/led businesses and cooperatives attract investment and develop further;
- Training for women to undertake inspections and conduct reporting to improve the gender-sensitive implementation of investment agreements and policies.



# Chapter 8

## How to strengthen the production and use of gender data

International guidelines such as the 2021 ISO IWA 34 on Women's Entrepreneurship address the lack of consistency in the terminology defining and referring to women's firms.<sup>83</sup> This initiative can provide for further clarity and harmonization of definitions related to women's entrepreneurship, such as those for women-owned business, women-led business, women-led cooperatives and women-led informal enterprises. These definitions can then be transposed to investment facilitation policies and programmes to promote women's economic empowerment.

The ISO IWA 34 on Women's Entrepreneurship can help to collect internationally comparable data by providing the criteria for evaluating important factors related to these definitions, such as ownership, management and control, as well as how to handle dilution by investment. Using these data will allow for targeted training of government officials, girls and women's education and scholarship programmes.

Data are often analysed at face value and should seek to consider deep-rooted, somewhat hidden legislative barriers – for example, rules that prevent women from working in certain sectors, such as repairing or

maintaining 'heavy machinery' *in situ*.<sup>84</sup> The practical effect of this is that although women are technically not prohibited from becoming engineers, they cannot work with such machinery on site, so employers are reluctant to hire them. Such barriers go beyond the 'letter of the law', which does not prevent women from being engineers.

Quantitative and qualitative data should be gathered and collected on the non-market workloads of men and women and their implications for economic and business activity as well as the type of firms run by women when compared to those commonly run by men. This would include, for example, the following factors:

- Size (large/medium-sized/small/micro)
- Formal/informal
- Labour-related issues (e.g. policies, enforcement)
- Location (e.g. rural/urban)
- Location in the supply chain
- Years in operation
- Management structure
- Legal form (e.g. incorporated/unincorporated)

<sup>83</sup> See International Organization for Standardization (2021). *IWA 34:2021 – Women's Entrepreneurship – Key Definitions and General Criteria*. <https://www.iso.org/standard/79585.html>.

<sup>84</sup> For example, in Mali Décret No. 96-178/P-RM.

# Chapter 9

## Recommendations

The 2017 WTO Ministerial Conference Joint Declaration on Trade and Women's Economic Empowerment acknowledged the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and that inclusive trade policies can advance women's economic empowerment, which helps to reduce poverty. The recommendations following from this assessment are made in the context of WTO efforts to become more gender-responsive:

- The WTO IFD could usefully incorporate preamble recitals and obligations endorsing, implementing and monitoring the enforcement of relevant international agreements such as the Convention on the Elimination of all Forms of Discrimination Against Women, 1979; the Beijing Platform for Action; SDG 5: Achieve gender equality and empower all women and girls; ILO Equal Remuneration Convention (No. 100); ILO Discrimination (Employment and Occupation) Convention (No. 111); ILO Workers with Family Responsibilities Convention (No. 156); ILO Maternity Protection Convention (No. 183); ILO Convention Eliminating Violence and Harassment in the World of Work (No. 190); and the UN Women's Empowerment Principles.
- The WTO IFD could ensure that the right for parties to regulate explicitly includes gender equality policies within the illustrative list.
- Host countries, home countries and multinational enterprises should take on WTO IFD commitments. Commitments relating to transparency and information disclosure should include communicating relevant women's economic empowerment promotion policies and gender-disaggregated data.
- The WTO IFD could include provisions on responsible business conduct that explicitly reference domestic gender equality standards, such as those set out in the preamble recitals.
- The WTO IFD could establish a gender subcommittee/working group through the investment facilitation agreement to monitor the gender impact of the implementation of commitments and discuss challenges and future initiatives.
- The WTO IFD parties' domestic IPAs could encourage consultations among government officials responsible for investment facilitation to incorporate gender empowerment policies, women's business associations, cooperatives, civil society groups including labour unions and education ministries to develop gender-sensitive investment facilitation policies, share information and cooperate on implementation, monitoring and initiatives.



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- The WTO IFD parties' domestic IPAs could undertake gender impact assessments on investment and investment facilitation measures using harmonized terminology and criteria, such as the 2021 ISO IWA 34 on Women's Entrepreneurship.
- The WTO IFD parties could advocate for training and capacity building at the domestic level to ensure that women-owned/led businesses benefit from the IFD and that businesses and investment facilitation bodies implement and enforce gender equality standards and principles in the workplace.
- The WTO IFD could create channels for IFD implementing bodies to coordinate activities with the trade facilitation implementing bodies for more coherent and effective implementation of gender equality policies.
- The WTO IFD parties' domestic IPAs could harness WTO Aid for Trade resources to support capacity building, training and advocacy tools to increase the benefits of investment for women and the less advantaged, as well as mainstreaming gender equality policies and training in the workplace.

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