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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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GENDER PROVISIONS IN INTERNATIONAL TRADE AGREEMENTS

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Abstract:

International trade agreements have traditionally focused on economic considerations. Still, a growing body of research and global advocacy efforts have brought to light the importance of integrating gender provisions into these agreements. This paper aims to analyse the incorporation of gender-related clauses in international trade agreements and their potential impact on promoting gender inclusivity and equality. The integration of gender provisions in trade agreements stems from the recognition that trade policies can have a profound influence on gender disparities. Empirical evidence has shown that women often experience trade-related challenges, such as wage gaps, limited market access, and unequal economic opportunities. Therefore, the research will explore how gender provisions address these disparities by promoting women's economic empowerment, access to resources, and participation in international trade activities. The study will take a multifaceted strategy to attain these goals. It will first examine current international trade agreements, emphasising those negotiated following the Beijing Declaration and Platform for Action in 1995, constituting a significant turning point in world policy for gender mainstreaming. In addition, using case studies and real-world examples, the research will examine the substance and usefulness of gender-related sections in specific trade agreements. The study will also investigate substantial factors such as women's involvement in trade, income distribution, and access to finance and resources to assess the outcomes and impact of gender legislation. The study intends to use these measures to examine whether gender clauses in international trade agreements result in substantial improvements in gender equality. In conclusion, this study aims to shed light on the evolving character of international trade

agreements by stressing the importance of gender clauses that promote inclusion and equality. The study will try to better understand the role of trade agreements in furthering gender equality by evaluating the evolution of these provisions, their substance, and their real-world impact. It will also influence future trade policy discussions. Finally, this study aims to contribute to continuing efforts to establish a more equal and inclusive global economy that benefits all genders.

Keywords: Gender, Women, Equality, Inclusiveness.

INTRODUCTION

As the world becomes more connected, international trade agreements are becoming essential tools for influencing the dynamics of global commerce. These agreements, intended to make it easier for capital, products, and services to move across national boundaries, are essential for promoting worldwide cooperation and economic advancement. But against this backdrop of globalisation, there's a rising recognition of the complex interplay between gender and international trade. The relationship between international trade agreements and gender equality has recently drawn much interest and concern. Even though governments, civil society, and international organisations have aggressively promoted gender equality, gender inequality still affects women's lives and the lives of disadvantaged groups across the world. In light of this, it has become more important to research how international trade agreements aggravate or lessen gender inequality.

International trade agreements aim to promote economic expansion, generate job opportunities, and improve the general well-being of countries. Nonetheless, these agreements significantly impact the dynamics of gender equality, reshaping economic environments, impacting labour markets, and influencing access to vital services like healthcare and education. As such, it raises the question of how well international trade agreements handle gender-related issues and the effects they have on women's and disadvantaged groups' economic and social standing. To shed light on several crucial aspects, this research project explores the intricate relationship between gender and international trade agreements. The incorporation of gender considerations into trade agreements, the comprehension of the economic consequences for women and marginalised communities, the analysis of labour market dynamics, the evaluation of social and cultural influences, the examination of resource accessibility, the identification of best practices and policy recommendations to advance gender equality within

international trade frameworks are a few of these. The study aims to give policymakers, academics, and activists dedicated to advancing gender equality in a globalised world a thorough knowledge of how international trade agreements and gender issues interact. The main focus of the study is on the complex ways that trade agreements with other countries affect gender dynamics. Gender factors should be taken into account throughout trade agreement negotiations and implementation. Traditionally, economic considerations have dominated trade talks, frequently ignoring gender-related issues. Nonetheless, there's a growing understanding of the necessity of mainstreaming gender in trade policy debates to guarantee that trade agreements benefit all facets of society fairly.

Furthermore, international trade agreements may affect women and men differently regarding jobs, pay, and resource access. Trade liberalisation, for example, may result in displacing male-dominated sectors and the growth of businesses like textiles and clothing, which employ many women. It is essential to comprehend these gendered consequences to create policies that reduce adverse effects and encourage inclusive economic growth. Furthermore, access to finance, land, and technology is essential for economic empowerment. However, institutional limitations, cultural norms, and discriminatory legislation frequently make it difficult for women to use these resources. Through their impact on property rights, investment restrictions, and technology transfer methods, international trade agreements have the potential to either increase or mitigate these impediments. Another essential thing to think about is the dynamics of the labour market. Trade agreements may impact the need for particular labour types, which may change the composition of the workforce and the wages paid. Furthermore, because informal workers sometimes lack legal protections and negotiating strength, the informal sector—where many women are employed—may be disproportionately impacted by trade liberalisation. In addition, the study looks for best practices and suggested policies for advancing gender equality in trade agreements across international borders. This entails using a multifaceted strategy that incorporates gender analysis at every level of the trade policy formulation process. Ensuring that trade policies are inclusive and gender-responsive also means developing collaborations between governments, civil society groups, and the commercial sector. The study aims to advance our understanding of the intricate connection between gender dynamics and international trade agreements. It seeks to inform evidence-based policymaking and advocacy initiatives to achieve gender equality globally by illuminating the numerous facets of this connection.

HISTORICAL DEVELOPMENT OF GENDER PROVISIONS IN TRADE AGREEMENTS

Gender clauses in trade agreements have evolved in response to changing global ideas on gender equality and economic involvement. Including such measures has acquired respect and relevance in international trade discussions. Gender problems were virtually missing from the debate in the early days of trade agreements. Trade talks have historically centred on economic concerns such as tariffs, quotas, and market access. However, by the late twentieth century, there has been a steady trend toward acknowledging the significance of gender factors in trade agreements.

The 1990s saw the start of this change. The Beijing Declaration and Platform for Action, adopted at Fourth World Conference on Women¹ in 1995, significantly increased awareness about the gender implications of trade policy. To promote women's economic empowerment, it underlined the importance of including a gender perspective in all policy and program areas, including trade. As a result, gender clauses began to appear, albeit in primitive form, in a few trade agreements. These early regulations primarily concerned non-discrimination and ensuring women had equal access to trade benefits. For example, the North American Free Trade Agreement (NAFTA) signed in 1994 included a labour cooperation side agreement that included promises to combat gender discrimination in the workplace. In the early twenty-first century, the impetus grew even more vital. The Agreement on Technical Barriers to Trade² recognised the importance of gender equality in standard-setting procedures. Furthermore, several regional trade agreements, such as those between the European Union and developing nations, began to include gender-related wording³. However, it was not until the mid-2010s that the inclusion of significant gender measures in trade treaties gained traction. Gender equality was acknowledged as a standalone goal (Goal 5) in the 2015 United Nations Sustainable Development Goals (SDGs), and its significance to all other SDGs, including those linked to economic growth and sustainable development. This worldwide commitment increased the pressure on trade negotiators to handle gender issues more effectively.

¹ Beijing Declaration and Platform for Action (1995) Fourth World Conference on Women, Beijing, 4-15 September.

² Koul, A.K. (2018). WTO Agreement on Technical Barriers to Trade (TBT). In: Koul, A.K., Guide to the WTO and GATT. Springer, Singapore.

³ Joost Pauwelyn & Kelly Kuan, Gender Provisions in Trade Agreements: Recent Developments, 74 Stanford Law Review 544, 547-48 (1985).

In 2017, Canada set a precedent by including a separate chapter on gender in its trade deal with Chile. This ground-breaking agreement addressed gender concerns in various trade sectors, including labour rights, entrepreneurship, and economic empowerment. Canada's effort created a new precedent, inspiring other countries to follow suit⁴. The United States-Mexico-Canada Agreement (USMCA), which will replace NAFTA in 2020, has a more sophisticated labour chapter, including a provision on gender equality. It acknowledged the significance of encouraging equal pay for equal labour, combating workplace harassment, and fostering work-life balance. The European Union has also made significant strides by integrating gender equality and women's empowerment into its trade agreements, setting a global benchmark for gender provisions. These agreements include commitments to gender-responsive trade policies and promoting women's economic participation.

In summary, the historical development of gender provisions in trade agreements reflects a transformative journey from their absence to increasing recognition as essential components of contemporary trade deals. International commitments, such as the Beijing Declaration, the SDGs, and pioneering agreements from countries like Canada, have driven the evolution. As the global focus on gender equality continues to intensify, it is expected that the integration of gender provisions in trade agreements will become even more comprehensive and integral to international trade policy.

GENDER PROVISIONS IN INTERNATIONAL TRADE AGREEMENTS

Gender provisions in international trade agreements cover various measures to foster gender equality, economic empowerment for women, and correct gender imbalances in the global economy. These clauses have changed, and their scope and clarity may differ amongst agreements.

Gender provisions within international trade agreements emphasise the critical principle of non-discrimination and equal treatment. They make explicit commitments to ensuring that women and men are treated equally in all aspects of trade. These provisions aim to eliminate gender-based discrimination, creating a fair and inclusive trade environment. They support the notion that

⁴ Johanne Belisle, Trade Agreements and Gender Equality: Opportunities and Challenges for Canada 43 YALE L.J. 733, 737-38(1994).

individuals should not face different trade-related opportunities or treatment based on gender. Many trade agreements include provisions supporting labour rights and workplace gender equality. These clauses go beyond equal compensation for equal labour, addressing topics such as eliminating workplace discrimination and harassment and establishing a safe and inclusive workplace for women. They empower women in the workplace by preserving their rights and creating an environment where women may work and progress without facing gender-based prejudices or unfair practices. Trade agreements frequently emphasise the importance of education and skill development for women. These provisions commit to providing women with access to high-quality education and training opportunities, ensuring they have the skills needed to engage in many areas of the economy. Education and skill development programs are critical to covering the gender gap in the workforce and allowing women to advance to higher-paying and leadership roles. Specific trade treaties include provisions addressing the role of women in trade and entrepreneurship. These regulations encourage women to participate actively in international business and cross-border enterprises. They assist women entrepreneurs by offering capacity-building programs and initiatives that improve their skills, techniques and access to resources. These agreements enhance economic possibilities for women in global commerce by supporting female entrepreneurs.

Gender provisions help to establish and implement gender-responsive trade policies. These policies consider how trade affects men and women differently. They ensure that trade agreements do not disproportionately affect women and contribute to women's economic well-being. Gender-responsive guidelines aim to establish a more equitable trading environment that benefits both genders equally and reduces gender inequities in trade. Trade agreements increasingly recognise the need for work-life balance, particularly for women. These rules address the need for parental leave, flexible working hours, and childcare assistance. These agreements assist women to properly perform their duties at home and work by giving this support for work-life balance. This is critical for ensuring that women may work without putting undue burden on their personal lives. Gender provisions aim to make international markets accessible to women by lowering trade obstacles and tariffs. These laws promote economic growth and expand possibilities for women by allowing female entrepreneurs to grow in business. Improved access to foreign markets enables women to grow their enterprises and reach a more extensive consumer base, contributing to economic empowerment. Gender effect assessments are required as part of the review process for several trade agreements. These evaluations

entail assessing the possible consequences of trade policies on women and gender equality. Trade agreements that perform such reviews may detect and rectify any negative repercussions and ensure that trade policies do not unwittingly aggravate gender gaps. These evaluations help to shape gender-responsive policy. The gathering and analysis of gender-sensitive data is critical in gender provisions. These requirements underscore the need to obtain gender-disaggregated data that is accurate and thorough. Such information is essential for tracking and assessing the impact of trade policies on men and women. Policymakers may make better-informed judgments and build more effective gender-responsive trade policies with trustworthy data.

Gender provisions frequently urge civil society and stakeholders to participate in designing, implementing, and monitoring these provisions. Inclusion is critical because it guarantees that a wide range of voices and viewpoints contribute to creating a successful gender policy. Involving civil society and stakeholders in executing these regulations also enables openness and accountability. Throughout the trade policymaking process, many trade agreements prioritise gender mainstreaming. Gender mainstreaming incorporates gender concerns into all trade negotiations, decision-making, and implementation stages. It guarantees that gender equality is a central tenet of trade policies rather than an afterthought. Trade agreements underline the critical role that gender equality plays by mainstreaming gender factors.

STRENGTHS AND SHORTCOMINGS OF EXISTING GENDER PROVISIONS

The fact that current trade agreements include gender clauses is good as it shows that the prejudice against women is acknowledged. Thus, their increasing frequency is beneficial in and of itself, and the benefits of the current provisions are already apparent. The most significant change has been the addition of gender terminology, which has increased the visibility of gender equality concerns in the context of trade policy and allowed for a more concentrated analysis of how trade may influence or fail to benefit women. They force a departure from the long-standing presumption that all people have equal access to the advantages—or hazards—of new trade policies and regulations⁵.

⁵ SUSAN D FRANCK, GENDER, INTERNATIONAL TRADE LAW, AND THE ROLE OF WOMEN IN TRADE 205-06(Oxford University Press 2018).

The inclusion of a gender lens in trade agreements has improved the collaboration between other ministries and trade officials at the governmental level. In Chile, for instance, the Ministry of Women and Gender Equity is now involved in trade negotiations. In 2018, Global Affairs Canada's Trade Policy and Negotiations Branch designated a gender focal point. Furthermore, gender provisions have made it easier for the private sector and civil society to participate in the development of trade policy and in the observation of how trade agreements are implemented in practice by expanding the conversation about trade to include differences in its effects on men and women and, in some instances, by establishing stakeholder consultations. Prospects for knowledge and practices related to gender equality can also be found in the cooperation mechanisms established by trade agreements. Trade authorities' understanding of the difficulties faced by women has increased as a result of the capacity-building activities included in these procedures, which have also made it easier to share important knowledge. The subject will continue to be on the table because committees created under the trade and gender chapters are required to convene once a year. The flexibility these agreements allow the committees to take on additional projects over time also allows them to change as interest in and understanding of the myriad ways commerce and gender interact grows⁶.

Nevertheless, the gender requirements, as now drafted, are not without flaws. First, the structural components of a nation's commerce, the level of export concentration or diversification, the laws about gender equality, and the status of women in the country all influence how trade affects women. Only the agreements' core provisions and related implementation measures have the power to change trade patterns; gender provisions, and even gender chapters inside trade agreements, do not have this effect. Therefore, all sections of a trade agreement—not only those that contain the terms "gender" or "women"—must be subject to the gender lens and special gender-related measures. Although it has been the exception, this is true for certain agreements. Second, most gender rules deal with the job discrimination that women experience. As in the case of the EFTA-Indonesia agreement, how people are impacted as customers, caregivers, or regular citizens is disregarded or briefly discussed. Most research focuses on women in labour, production, or commerce occupations. In connection with this, most projects concentrate on just one aspect of the trade-gender interaction: women's contributions to or underachievement of competitive advantage. This disregards women who are already the most

⁶ Erika George, *The Place of Women in the World of Trade: A Case for Gender-Differentiated Tariffs*, 45 *Harvard International Law Journal* 367, 372-75 (2004).

disadvantaged or vulnerable, such as those who work in the informal economy or live in rural areas. Third, best-effort wording is typically used when drafting gender provisions. Fourthly, no systems are in place to track how they affect sustainable development or gender equality⁷. The monitoring responsibilities established by trade agreements' chapters on gender, labour, or sustainable development are exclusive to that chapter; they do not include the agreement's overall effects. Meaningful benchmarks, targets, or indicators are absent from the monitoring and supervision systems, making it difficult to determine whether their established goals have been reached.

Therefore, the nation's commitment to the procedures and initiatives established under the cooperation mechanism will determine how effective these mechanisms are in promoting gender equality. Policymakers and the general public need to keep an eye on the effects of new trade patterns and trade-related laws that result from trade agreements to determine where these policies are working well and where they are not. Consequently, this makes it possible to take appropriate action. Above all, continued observation will allow building a body of information regarding trade and trade-related regulations' more varied and comprehensive effects. Gaining more significant results for women from future trade deals requires having this information.

CONCLUSION AND SUGGESTIONS

To sum up, the inclusion of gender-related clauses in trade agreements is a big step in the direction of gender equality. However, for these measures to be effective, member nations must be committed to advancing gender parity, and robust monitoring systems and well-informed policy decisions are also necessary. The following ideas could help enhance the effectiveness of such provisions and ensure they result in significant change for women. First and foremost, as an essential element of all trade agreements, nations must promote gender equality. This means committing resources and putting policies in place that support women's economic empowerment and recognising this significance. To fully understand the subtleties of trade agreements' effects on women in many socioeconomic strata, it is also imperative to improve data collection and analysis, particularly emphasising gender-disaggregated data.

⁷ JOANNE SCOTTE, *THE GENDER OF JUS COGENS* 321-28 (Oxford University Press 2020).

In addition, governments must include a wide range of stakeholders, such as civil society and women's organisations, in the planning, executing, and assessing these policies. Their viewpoints and experiences are extremely useful in creating an inclusive and efficient approach. Finally, programs aimed at increasing the ability of critical institutions, trade negotiators, and legislators can help them comprehend and execute gender-inclusive trade policies. Considering these factors, it is clear that when undertaken with a sincere commitment to inclusive economic growth and a focus on ongoing monitoring, analysis, and stakeholder involvement, international trade agreements may be effective vehicles for furthering gender equality. We may expect that by adopting these actions, future trade deals will benefit women more equally.

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