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# **Gender Mainstreaming in International Trade: Catalyst for Economic Development and Political Stability**

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## **I. Introduction**

The free trade ideology that has fueled the development of modern trade agreements has been called into question in recent years. Advocates of a trade policy that takes into consideration not only net economic benefits on a global basis but also the societal impacts of liberalized trade regimes are becoming more vocal. Attention has been focused on the need for higher labor and environmental standards to be incorporated in trade agreements, which traditionally have not addressed such concerns. While the debate on these issues is still in progress, there seems to be a growing recognition that incorporating social concerns into trade policy is desirable, if not politically necessary.<sup>1</sup>

Gender is another traditionally invisible issue in trade policy debates. Free trade ideology proceeds from the assumption that trade is gender neutral. This assumption underlies the language of free trade agreements, which therefore does not address or include gender differentiated impacts of trade. However, in recent years, this assumption has been challenged by trade economists and non-governmental organizations (“NGOs”) devoted to international trade

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<sup>1</sup>See, e.g., Diane Elson and Nilufer Cagatay, *The Social Content of Macroeconomic Policies*, 28 WORLD DEV. 1347 (2000) (stating that social issues are now part of policy dialogues on macroeconomics, trade policies and debt relief and advocating an approach in which macroeconomic policies would be judged not by market based criteria but in terms of whether they address social justice issues, including gender justice, such as distributive justice, equity, provisioning of needs for all, freedom from poverty and discrimination, social inclusion, development of human capabilities).

issues. Such critics have introduced the concept of gender mainstreaming into trade policy discussions. Gender mainstreaming is the practice of identifying gender issues and gender specific impacts in the policies and practices of governments and intergovernmental bodies with the goal of achieving gender equality. It may also include such strategies as promoting the participation of women at all levels and fields of activity and developing specific programs for the benefit of women. Gender mainstreaming had its genesis in the 1995 Beijing Declaration and Platform for Action (“Beijing Declaration”),<sup>2</sup> which recommended that a gender perspective be incorporated in policies and programs relating to all spheres of society in order to improve the status of women. Since that date, gender mainstreaming has been utilized as a policy instrument by national governments and intergovernmental organizations (“IGOs”) in a wide variety of contexts. However, no international trade law instrument incorporates a gender mainstreaming perspective.

This paper will examine the role of gender mainstreaming in trade policy and law. This is a timely topic as 2005 marks the tenth anniversary of both the Beijing Declaration and the World Trade Organization (“WTO”). These events represent defining moments in the global women’s movement and the trade liberalization agenda, respectively. These two topics have not yet been successfully integrated but will need to be if globalization is to proceed in a meaningful, positive way. This paper will argue that gender mainstreaming is a useful tool for achieving this objective and will make recommendations for its use within WTO law and institutions.

There are two arguments supporting gender mainstreaming in international trade. One is that the international community has mandated gender equality as a goal to be achieved by

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<sup>2</sup>Fourth World Conference on Women, Sept. 4–15, *Beijing Declaration and Platform for Action*,

mainstreaming gender issues in all areas of economic, political and social life, including trade matters.<sup>3</sup> The other relates to the theme of this book, namely trade as the guarantor of peace, liberty and security. The WTO's stated goal of international trade liberalization is to promote economic development and increase prosperity among nations.<sup>4</sup> Since the vast majority of the world's poor are women and their children, it is necessary for the Members of the WTO to adopt a gender perspective in order to achieve its goals.<sup>5</sup> A failure to do so will hinder economic development. Assuming that countries with developed economies have a greater propensity to democracy and political stability than countries whose economies are still developing, it could be argued that the end result of a successful gender mainstreaming strategy will be not only enhanced economic well-being, but a more secure political environment as well.

This paper is organized as follows. Section 2 discusses the historical background of the concept of gender mainstreaming in international law. Section 3 illustrates the use of gender

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U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Declaration*].

<sup>3</sup>The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") contains the most comprehensive mandate on women's equality in a multilateral treaty focused exclusively on women's rights. G.A. Res. 34/180, U.N. GAOR Supp. No. 46, U.N. Doc. A/34/180 (Sept. 3, 1981). This principle of gender equality is contained in other international human rights instruments, including the Universal Declaration of Human Rights. G.A. Res. 217A (III), Art. I, U.N. Doc. A/810 (1948). The Beijing Declaration focuses on women's equal participation in all spheres of society and sets forth a series of action steps for national governments, international organizations, and other actors. *See* discussion of gender mainstreaming mandate of Beijing Declaration *infra* section II. The UN Millennium Development Goals include promoting gender equality and the empowerment of women as an important step in promoting sustainable economic development. UN Millennium Declaration, G.A. Res. 55/2, ¶ 20, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

<sup>4</sup>Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, at ¶ 1, Apr. 15, 1994, 33 I.L.M. 1125 (1994).

<sup>5</sup>*Beijing Declaration*, *supra* note 2, at Annex II, ¶ 16; U.N. Dev. Program, *Human Development Report 1995: Gender and Human Development*, at 4 (1995).

mainstreaming by some international and regional IGOs concerned with trade and development matters. Section 4 discusses gender analysis and notes some problem areas that have been identified in international trade policy and law through its use. Section 5 concludes by suggesting ways in which gender might be mainstreamed within the WTO.

## **II. Historical Development of Gender Mainstreaming**

Gender mainstreaming as a tool of public policy was firmly established at the international level by the Beijing Declaration, the final document that emerged from the United Nations (“UN”) Fourth World Conference on Women held in Beijing, China in September 1995 (“Beijing Conference”).<sup>6</sup> The Beijing Conference was the capstone event in a series of international developments in the area of women’s rights. During the UN Decade for Women, which spanned 1975-1985, a series of conferences on the status of women was held. These conferences, held at Mexico City in 1975, Copenhagen in 1980 and Nairobi in 1985, elaborated a progressively more detailed framework for the achievement of women’s equality. The early conferences focused on establishing the principle that women were entitled to equal rights in all areas of human activity. Equality was frequently linked to development and peace while inequality was associated with underdevelopment and conflict.<sup>7</sup> After the Third World Conference on Women held in Nairobi in 1985, the UN General Assembly resolved to integrate the Forward-looking Strategies for the Advancement of Women drafted at that conference into all economic and social development programs and urged all UN entities to formulate and put

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<sup>6</sup>For a brief but comprehensive history of the development of women’s human rights, see Felice D. Gaer, *And Never the Twain Shall Meet? The Struggle to Establish Women’s Rights as International Human Rights*, in *THE INTERNATIONAL HUMAN RIGHTS OF WOMEN, INSTRUMENTS OF CHANGE* (Lockwood, ed., 1998).

<sup>7</sup>*Id.* at 13–14.

into effect a comprehensive policy on women's equality.<sup>8</sup> This was, in effect, the birth of gender mainstreaming in international institutions.

The Beijing Declaration expanded on the work done during the Decade for Women with some significant differences. Rather than being merely a “laundry list” of issues, it articulated a series of corrective actions to address such issues, along with a detailed allocation of responsibilities for such actions among international organizations, national governments, and other actors.<sup>9</sup> The Beijing Declaration also reflected a growing consensus among commentators that an emphasis on equality of rights alone would not improve the status of women. Such an approach often led to women's issues being pigeon-holed into specialized agencies focusing on a narrow range of concerns with only limited impact on women's lives.<sup>10</sup> A more comprehensive approach to incorporating a gender perspective into all areas of life was needed.

The Beijing Declaration does not define gender mainstreaming. However, the concept is elaborated in various ways in the language of the document. The Beijing Declaration focuses on twelve areas of concern for women, namely, poverty, education and training, health, violence against women, armed conflict, the economy, power and decision-making, institutional mechanisms for the advancement of women, human rights, the media, the environment, and the

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<sup>8</sup>G.A. Res. 41/111, ¶ 3, U.N. Doc. A/RES/41/111 (Dec. 4, 1986); G.A. Res. 42/62, ¶ 4, U.N. Doc. A/RES/42/62 (Nov. 30, 1987).

<sup>9</sup>*Beijing Declaration*, *supra* note 2, at Annex II.

<sup>10</sup>Council of Europe, *Final Report of Activities of Group of Specialists on Mainstreaming, Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practice*, at 15–16 (1998) [hereinafter *Final Report*].

girl child.<sup>11</sup> With respect to each of these areas, the document states that “[g]overnments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programs so that before decisions are taken, analysis is made of the effects on women and men, respectively”.<sup>12</sup> It is clear that gender mainstreaming is intended to be a broad-based concept, cutting across all sectors of the economy and extending into social and political areas of human life as well.

The Beijing Declaration’s provisions on institutional mechanisms for the advancement of women tackle perceived defects in the machinery of national governments intended to design and implement strategies for the advancement of women (“national machineries”). Such national machineries often operate at the periphery of government and suffer from unclear mandates, inadequate resources, and lack of political support.<sup>13</sup> Similar problems have been identified at the international and regional level.<sup>14</sup> While earlier international conferences underscored the need to incorporate gender concerns in policy discussions and while methodologies for gender analysis have been developed, such an approach was not used frequently or consistently.<sup>15</sup> As an antidote, the Beijing Declaration recommends that national governments renew their commitments to the advancement of women at the highest possible level and develop and

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<sup>11</sup>*Beijing Declaration, supra* note 2, at Annex II, ¶ 44.

<sup>12</sup>*Id.* at ¶¶ 57, 79, 105, 123, 141, 164, 189, 202, 229, 238, 252, 273.

<sup>13</sup>*Id.* at ¶ 196.

<sup>14</sup>*Id.* at ¶ 197.

<sup>15</sup>*Id.* at ¶¶ 198, 200.

implement strategies and mechanisms to promote gender equality, including the creation and use of gender disaggregated data.<sup>16</sup>

The Beijing Declaration contains a mandate to mainstream gender in international trade. In the section on women and the economy, the document urges national governments to ensure that their policies on international and regional trade agreements “do not have an adverse impact on women’s new and traditional economic activities.”<sup>17</sup> In the section on institutional arrangements, the document encourages the UN General Assembly to invite the WTO to cooperate in implementing the Platform for Action contained in the Beijing Declaration.<sup>18</sup> The General Assembly subsequently resolved that the WTO, as well as the Bretton Woods institutions, the UN institutions, and other international and regional intergovernmental bodies should support government efforts, and develop their own programs in order to implement the Beijing Declaration.<sup>19</sup>

### **III. Gender Mainstreaming in Intergovernmental Organizations**

Despite the mandate of the Beijing Declaration, the WTO has not yet implemented a gender mainstreaming strategy. In this respect, the WTO has not followed the lead of other international and regional IGOs concerned with trade and economic matters. Gender mainstreaming has been utilized by various UN agencies, including the UN Conference on Trade and Development (“UNCTAD”), the UN Development Fund for Women (“UNIFEM”), and the

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<sup>16</sup>*Beijing Declaration*, *supra* note 2, at Annex II, at ¶¶ 203–08.

<sup>17</sup>*Id.* at ¶ 165(k).

<sup>18</sup>*Id.* at ¶ 343.

<sup>19</sup>G.A. Res. S-23/3, ¶ 49, U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000).

International Bank for Reconstruction and Development (“World Bank”). Other IGOs that incorporate gender mainstreaming in their policies include the Council of Europe<sup>20</sup>, Asia-Pacific Economic Cooperation<sup>21</sup>, the Commonwealth Secretariat,<sup>22</sup> and the Organization for Economic Development and Cooperation.<sup>23</sup> The work done by these organizations can be drawn upon in developing a gender mainstreaming strategy for the WTO.

Both UNIFEM and UNCTAD have explored the linkage between trade and gender. UNIFEM is the women’s fund at the UN and its mandate is to provide financial and technical assistance, including sharing its expertise on gender mainstreaming and women’s empowerment, to programs and strategies that promote women’s human rights, political participation and economic security, including development activities.<sup>24</sup> UNIFEM has analyzed trade policies and their gender differentiated impacts, especially in the context of the North American Free Trade Agreement and its effect on female workers in the agricultural, garment, textile, and maquiladora

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<sup>20</sup>*Final Report, supra* note 10.

<sup>21</sup>ASIA-PACIFIC ECONOMIC COOPERATION [APEC], FRAMEWORK FOR THE INTEGRATION OF WOMEN IN APEC (1999), *available at* <http://www.apecsec.org.sg> [hereinafter *Framework*].

<sup>22</sup>COMMONWEALTH SECRETARIAT, COMMONWEALTH MINISTERS RESPONSIBLE FOR WOMEN’S AFFAIRS, THE COMMONWEALTH PLAN OF ACTION FOR GENDER EQUALITY 2005-2015 (2005), *available at* <http://www.thecommonwealth.org/Templates/Colour.asp?NodeID=381168int2ndParentNodeID=33902>.

<sup>23</sup>Org. for Econ. Cooperation and Dev., *Catching Up on Gender Mainstreaming and Gender Equality: An Action Programme for OECD* (2002), *available at* <http://www.oecd.org/dataoecd/14/0/23377303.pdf>.

<sup>24</sup>U.N. Dev. Fund for Women [UNIFEM], About Us, <http://www.unifem.org/about> (last visited Nov. 15, 2005); *see also* Joanne Sandler, *UNIFEM’s Experiences in Mainstreaming for Gender Equality, presented to the UNICEF Meeting of Gender Focal Points*, (May 5–9, 1997).

factories in Mexico.<sup>25</sup> UNIFEM's strategy has emphasized capacity building on the gender implications of trade policies, agreements, and bodies, building a solid knowledge base on such gender impacts, and supporting advocacy efforts for gender mainstreaming in trade.<sup>26</sup>

UNCTAD is the focal point within the UN system for trade and development issues, as well as related issues in the areas of investment, finance, technology, enterprise development and sustainable development.<sup>27</sup> It has convened meetings of experts to study the linkage among trade, development, and gender issues, leading to a series of recommendations on gender mainstreaming in UNCTAD and national governments.<sup>28</sup> One recommendation was that UNCTAD establish focal points for gender issues within its various divisions.<sup>29</sup> In 2003, UNCTAD was appointed head of a UN interagency task force on gender and trade composed of representatives from several UN agencies, as well as the WTO. The task force is charged with coordinating research, capacity building and advocacy activities on these issues within the UN

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<sup>25</sup>Sandler, *supra* note 24, at 4.

<sup>26</sup>U.N. Inter-Agency Task Force on Gender and Trade, July 17–18, 2003, *Report on the First Meeting*, 3–4 [hereinafter *Inter-Agency Task Force Report*].

<sup>27</sup>U.N. Conference on Trade and Dev. [UNCTAD], About UNCTAD, <http://www.unctad.org/Templates/Page.asp?intItemID=1530&lang=1> (last visited Nov. 15, 2005).

<sup>28</sup>UNCTAD, Geneva, Switz., July 12–13, 1999, *Report on the Pre-UNCTAD X Expert Workshop on Trade, Sustainable Development and Gender*, (Aug. 18, 1999); UNCTAD, Geneva, Switz., Nov.14–16, 2001, *Report of the Expert Meeting on Mainstreaming Gender in Order to Promote Opportunities*, TD/B/COM.3/40, TD/B/COM.3/EM.14/3.

<sup>29</sup>UNCTAD, Commission on Enterprise, Business Facilitation and Development, *Mainstreaming Gender in Order to Promote Opportunities, Agreed Recommendations*, TD/B/COM.3/L.22 (Feb. 25, 2002).

system.<sup>30</sup> The task force's objectives are to sensitize policy makers at the national and international level to critical trade issues linked to gender equality, to assist countries in integrating a gender perspective in their trade policies, to promote gender and development considerations in trade agreements, to coordinate national and international policies relating to trade, development and gender, and to improve technical cooperation and capacity building related to these issues.<sup>31</sup> The task force has studied the linkage between trade and gender in developing countries and published its findings.<sup>32</sup> It recommended to governments that gender inequality in the context of international trade be addressed by improved access at the national level to education and credit for women, reduction of labor market discrimination, improvements in programs to eliminate violence against women and to assist working mothers, and gender mainstreaming throughout government. It also recommended that governments conduct ex ante analyses of trade policies on women prior to granting concessions in trade negotiations and identified areas in which trade policies adversely affected women in developing countries, including developed country subsidies and market access restrictions regarding gender-sensitive products in both the agricultural and non-agricultural sectors, barriers to trade in services, including the movement of service providers, and increases in product standards. The task force also resolved to continue its own ex ante analysis of the gender impacts of trade expansion and prospective changes in trade policy and to develop a methodology for such analysis.<sup>33</sup>

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<sup>30</sup>U.N. Inter-Agency Task Force on Gender and Trade, *Terms of Reference*, 2–3 (2003).

<sup>31</sup>*Id.*; see also *Inter-Agency Task Force Report*, *supra* note 26.

<sup>32</sup>UNCTAD, *TRADE AND GENDER: OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES* (2004).

<sup>33</sup>UNCTAD, *Round Table on Trade and Gender*, TD/L.378, (June 16, 2004).

The two Bretton Woods institutions - the World Bank and the International Monetary Fund (“IMF”) - have begun to utilize gender mainstreaming. The World Bank has recognized that gender inequality slows economic growth and hinders development.<sup>34</sup> It views the third UN Millennium Development Goal of promoting gender equality and empowering women as central to its overall mission to reduce poverty and stimulate economic growth<sup>35</sup>. The World Bank has developed a comprehensive program for gender mainstreaming in its development activities, including its analytical work, development operations and capacity building.<sup>36</sup> The World Bank routinely undertakes social and gender assessments as part of the due diligence required when entering into new development projects.<sup>37</sup> In the area of trade, the World Bank and the IMF have started to study gender-differentiated effects of trade liberalization through their poverty and

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<sup>34</sup>WORLD BANK, ENGENDERING DEVELOPMENT 73 (2001).

<sup>35</sup>World Bank, Gender and Development, web page, <http://web.worldbank.org> (follow “Topics” hyperlink; then follow “Gender” hyperlink) (last visited Nov. 17, 2005).

<sup>36</sup>*Id.*; World Bank Operational Manual, Operational Policies, Gender and Development, OP 4.20 (March 2003, rev. Dec. 2004), <http://web.worldbank.org> (follow “Topics” hyperlink; then follow “Gender” hyperlink; then follow “Strategy” hyperlink; then follow “OP/BP 4.20 Gender and Development” hyperlink); World Bank Operational Manual, Bank Procedures, Gender and Development BP 4.20 (March 2003), <http://web.worldbank.org/> (follow “Topics” hyperlink; then follow “Gender” hyperlink; then follow “Strategy” hyperlink; then follow “OP/BP 4.20 Gender and Development” hyperlink).

<sup>37</sup>World Bank, Integrating Gender Into the World Bank’s Work, A Strategy for Action, (January 2002), *available at* <http://siteresources.worldbank.org/INTGENDER/Resources/strategypaper.pdf>. The Asian Development Bank undertakes such assessments also. Asian Development Bank Operations Manual, §§ C2 (Gender and Development), C3 (Incorporation of Social Dimensions of ADB-Operations), *available at* <http://www.adb.org/Documents/Manuals/Operations/default.asp?p=policies> (last visited Nov. 15, 2005).

social analyses of macroeconomic policy changes in selected countries.<sup>38</sup> These strategies are not well-developed at this point, but indicate that other international economic institutions with missions related to that of the WTO have begun to implement the gender mainstreaming mandate of the Beijing Declaration.

An examination of gender mainstreaming strategies within IGOs to date reveals a number of common factors. These include an emphasis on gender analysis, use of sex-disaggregated quantitative information as well as qualitative information, capacity building on gender issues, establishing focal points for gender issues on the national, regional, and international levels, and increased participation of women in policy-making functions.<sup>39</sup>

#### **IV. Gender Analysis of International Trade Policy and Law**

Gender analysis will form an important component of any effective gender mainstreaming strategy in international trade. Underlying its use is the insight of some economists that macroeconomic and trade policies affect women and men differently. This is due to differences in household responsibilities, work patterns, and access to resources.<sup>40</sup> Some of the differences that have been identified include the following factors. Women bear more responsibility for unpaid household work than do men, which affects their ability to accept paid employment

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<sup>38</sup>Caroline M. Robb, *Poverty and Social Analysis - Linking Macroeconomic Policies to Poverty Outcomes: Summary of Early Experiences*, 27–30 (IMF Working Paper, WP/03/43, 2003).

<sup>39</sup>See *Framework*, *supra* note 21; see also U.N. EDUC., SCIENTIFIC AND CULTURAL ORG. [UNESCO], MAINSTREAMING THE NEEDS OF WOMEN 8 (2003).

<sup>40</sup>Lourdes Beneria & Amy Lind, *Engendering International Trade: Concepts, Policy, and Action*, §3.0 (GSD Working Paper Series No. 5, July 1995) (The Gender, Science, and Development Programme and the UN Development Fund for Women), *available at* <http://www.ifias.ca/gsd/Beneria.contents.html>; Nilufer Cagatay, U.N. Dev. Programme Background Paper, TRADE, GENDER AND POVERTY 19–26 (2001).

outside the home and to receive the education and training needed to obtain such employment. Women's childbearing function affects their labor market participation because of absences due to maternity and being denied work in sectors deemed unacceptable for women of childbearing years. Social norms may limit women's access to resources and their ability to own property. Women are often segregated in the labor market in low paying jobs involving high job insecurity and poor working conditions. Women's consumption patterns differ from those of men because their primary role is often that of caregiver, and they may be more adversely affected than men by changes in the prices of food, education, and health care. Finally, women consume less leisure time than men due to their different responsibilities and may be time poor.<sup>41</sup> Since women have different opportunities and constraints than men, they may not benefit from trade liberalization to the same extent or in the same manner as men and it may be more difficult for them to adjust to economic changes that result from trade liberalization. For these reasons, it is important to analyze the differential impacts on women and men of changes in trade policy before they are implemented.

Gender analysis is a tool first developed for use in the social sciences.<sup>42</sup> Its use is now accepted in the area of development policy and program planning and focuses on a core set of issues, namely women's and men's roles, factors that shape gender roles and the gender division of work, access to and control over resources and opportunities and their systems of distribution,

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<sup>41</sup>WOMEN'S EDGE, FRAMEWORK FOR GENDER ASSESSMENTS OF TRADE AND INVESTMENT AGREEMENTS v. (April 2002), available at <http://www.womensedge.org> [hereinafter *Women's Edge Framework*]; SUSAN JOEKES & ANN WESTON, WOMEN AND THE NEW TRADE AGENDA 2-3 (1994).

<sup>42</sup>UNESCO, Section for Women and Gender Equality, *UNESCO's Gender Mainstreaming Implementation Framework for 2002-2007*, 10 (2003).

access to and participation in decision-making processes, and men's and women's practical and strategic needs and interests.<sup>43</sup> The results of such analysis are then used to establish gender objectives and indicators in line with international objectives, attainment of which is monitored through gender impact studies.<sup>44</sup> Other components of this approach include aligning resources with objectives and ensuring equal representation and participation of women and men.<sup>45</sup>

A similar approach might be applied to trade matters. Gender analysis is a much newer concept in the area of trade and relatively few models have been developed for its use. There is little experience with their application to trade policy and law. Two such models are noteworthy. One is the Trade Impact Review ("TIR") instrument developed by the Women's Edge Coalition, an NGO located in the United States that advocates for changes in international trade policies on behalf of women and other poor people in order to reduce poverty ("Women's Edge").<sup>46</sup> The TIR is designed to assess the impact of trade liberalization on groups living in poverty, especially women. Specifically, the TIR identifies the direct and indirect economic effects of a change in trade or investment policy on women and other vulnerable groups, as well as the legal and regulatory changes or conflicts that may arise as a result of such policy.<sup>47</sup> The purpose of this analysis is to inform the United States government of the negative impacts of trade and investment agreements prior to entering into legally binding commitments and to encourage the

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<sup>43</sup>*Id.* at 11.

<sup>44</sup>*Id.* at 12.

<sup>45</sup>*Id.*

<sup>46</sup>Women's Edge, About Us, <http://www.womensedge.org> (visited 11/30/05).

<sup>47</sup>WOMEN'S EDGE, THE EFFECTS OF TRADE LIBERALIZATION ON JAMAICA'S POOR: AN ANALYSIS OF AGRICULTURE AND SERVICES (June 2004), *available at* <http://www.womensedge.org>.

United States to address such negative consequences and to build upon positive effects for such persons, especially those in developing countries.<sup>48</sup>

There are two levels of analysis under the TIR framework, an economic analysis and a legal analysis. The economic analysis consists of measuring trade agreement impacts on women with reference to five indicators: relative prices, employment, relative wages, consumption, and institutions and regulation.<sup>49</sup> The legal analysis consists of a two step process: 1) examining the language of the trade agreement itself, as well as its implementation and enforcement mechanisms, and 2) examining potential conflicts with national laws or international obligations relevant to women.<sup>50</sup> The purpose of the first step is to identify overt gender bias in the treaty language or disparate impact of treaty language that seems gender neutral on its face. In considering gender bias in the related implementation and enforcement mechanisms under the first step, the gender composition and gender awareness of the agencies involved would be considered. The second step involves identifying possible conflicts with domestic laws and other obligations and would include an analysis of international obligations on gender equality and human rights, the constitution, laws granting special benefits to women and other disadvantaged groups, such as non-discrimination and equal treatment laws, affirmative action and other laws providing special treatment; and gender-neutral laws such as those pertaining to fair wages, food

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<sup>48</sup>*Women's Edge Framework*, *supra* note 41, at v–vi. Women's Edge recommended that the United States Trade Representative assess gender and other social impact both within the United States and in developing countries of new trade and investment commitments on a multilateral, regional, or bilateral basis as well as for built-in and new negotiations under existing agreements. *Id.* at xi.

<sup>49</sup>*Id.* at 13–23.

<sup>50</sup>*Id.* at 23.

labeling, and health and safety; gaps in the coverage or enforcement of laws, such as labor laws; and religious, traditional or customary laws and practices, especially those relating to land and other assets.<sup>51</sup>

Another framework for analysis has been developed for use by the Commonwealth Secretariat in its work on ensuring gender equity among its members, which include both developing and developed countries.<sup>52</sup> This framework for analysis of gender and trade policy and trade liberalization is based on three gender realities: 1) women's and men's traditional roles in society place different restraints on their time and their ability to respond to changing opportunities in the trade environment; 2) access to and ownership of assets and productive resources is dependent on gender; and 3) the nature of production in different sectors of the economy is dependent on gender roles.<sup>53</sup> Given these realities, the framework suggests the following three steps in gender analysis. First, identify the situation of women and men at the point of introduction of trade liberalization or change in trade policies and determine what mechanisms or measures are incorporated into the policy changes to account for these differences. Second, identify the expected results of such changes and determine whether such results were generated. Third, determine what additional mechanisms or measures must be incorporated to return to the expected trajectory.<sup>54</sup>

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<sup>51</sup>*Id.*

<sup>52</sup>MARIAMA WILLIAMS, COMMONWEALTH SECRETARIAT, GENDER MAINSTREAMING IN THE MULTILATERAL TRADING SYSTEM (2003).

<sup>53</sup>*Id.* at 42.

<sup>54</sup>*Id.* at 42–45.

Certain concerns have emerged as a result of application of these gender analysis frameworks. Since gender analysis of trade is still in its infancy, the relationship between gender and trade is not completely understood. It is difficult to articulate a complete list of the issues or to prioritize them at this point in time. However, some of the most frequently cited areas of concern are the following:

1. Agriculture: Women produce half of the world's food overall and between 60 and 80 percent in many developing countries, often with little access to land and other resources.<sup>55</sup> The effects of agricultural trade liberalization on these women are mixed. While trade liberalization has resulted in increased employment opportunities for some women, the ability of other women to earn a living in subsistence agriculture has been jeopardized by the advent of cheap agricultural imports and by developing countries' introducing export-driven agricultural policies.<sup>56</sup> Such liberalization also poses a threat to household food security because women farmers in developing countries are primarily responsible for household food production.<sup>57</sup>

2. Services: The services sector has grown rapidly and with it, employment opportunities for women have increased. However, women have tended to be segregated into lower paying jobs in tourism, hospitality services, and social services, with only a small percentage employed in higher paying jobs in financial services.<sup>58</sup> This suggests that women on the whole may not be

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<sup>55</sup>*Id.* at 62.

<sup>56</sup>UNCTAD, *supra* note 32, at 108.

<sup>57</sup>*Id.* at 85.

<sup>58</sup>Eugenia McGill, *Trade and Gender*, in THE WORLD TRADE ORGANIZATION: LEGAL, ECONOMIC AND POLITICAL ANALYSIS, VOL. II 726 (Patrick F.J. Macrory, Arthur E. Appleton, and Michael G. Plummer, eds., 2005).

realizing their proportionate share of the gains projected to result from liberalized services trade. Another concern is with the broad reach of Uruguay Round General Agreement on Trade in Services (“GATS”), and the impact on women of trade liberalization in sectors of particular concern to women, such as health care and education.<sup>59</sup> For example, women are often the caretakers of families and communities and have a high stake in health care services both as consumers and providers.<sup>60</sup> Women may be adversely affected by liberalized trade in health care services if increased competition in health care creates a tiered system of health care in which the poor receive fewer or lower quality services than the wealthy.<sup>61</sup>

3. Investment: Increases in foreign direct investment could lead to the creation of new jobs for women. However, such developments may raise questions about the quality of the new employment opportunities - wages, working conditions, contribution to knowledge and skills upgrading. There are also concerns about the impact of foreign direct investment on the nature, size and growth potential of women-owned and women-operated small and medium-sized firms in host countries through impacts on production, resource allocation, and competition.<sup>62</sup>

4. Intellectual property rights: The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property (“TRIPs Agreement”) strengthens intellectual property protection within

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<sup>59</sup>General Agreement on Trade in Services [GATS], art. 1., Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1125 (1994).

<sup>60</sup>WILLIAMS, *supra* note 52, at 91.

<sup>61</sup>*Id.* at 98.

<sup>62</sup>*Id.* at 128–129.

the trade context.<sup>63</sup> It fails to address two important issues for women, namely lack of access of women and other poor people to essential medicines protected by patents, especially those used to treat HIV/AIDS, and protection of women's traditional knowledge regarding plant species.<sup>64</sup> Women represent half of the world's population infected with HIV/AIDS and young women have consistently higher rates of infection than men.<sup>65</sup> They are particularly vulnerable to price increases of patented drugs used to treat the disease and some commentators believe they should have preferential access to those drugs.<sup>66</sup> The WTO Declaration on the TRIPs Agreement and Public Health, dealing with compulsory licenses by developing countries and the exemption for such countries from providing pharmaceutical drug patent protection, mitigates this problem to some extent.<sup>67</sup> Regarding traditional knowledge of plant species, women are often the majority of small farmers in developing countries and are responsible for selection, improvement and adaptation of plant varieties.<sup>68</sup> Although women's store of indigenous knowledge is key to food security and health care in such countries, there is no protection in the TRIPs Agreement for such knowledge.

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<sup>63</sup>Agreement on Trade-Related Aspects of Intellectual Property [TRIPs], art. 2, Apr/ 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

<sup>64</sup>UNCTAD, *supra* note 32, at 256.

<sup>65</sup>*Id.* at 264.

<sup>66</sup>*Id.*

<sup>67</sup>World Trade Organization [WTO], Ministerial Conference, Nov. 9-14, 2001, *Declaration on the TRIPs Agreement and Public Health*, WT/MIN(01)/DEC/2 (Nov. 20, 2001).

<sup>68</sup>WILLIAMS, *supra* note 52, at 140, 144-145.

5. Labor rights: Trade liberalization may increase employment opportunities for women but the newly-created jobs may offer only low wages, no benefits and no job security, such as in the garment, hospitality, and maquiladora industries.<sup>69</sup> There is also concern about the health and safety of women working in these newly created jobs, as well as the special problems women encounter in the workplace more generally, such as job security and leave in the event of maternity, as well as sexual discrimination and harassment.<sup>70</sup> Core labor standards and special protections for women workers are not addressed in the WTO Agreements.

## V. Conclusion: Gender Mainstreaming in the WTO

The WTO has been criticized for failing to take gender into account in its policies.<sup>71</sup> This criticism is justified because the trade regime over which the WTO presides has enormous repercussions for development and economic welfare. It is critical that the WTO take steps to incorporate gender mainstreaming in its policies and agreements and encourage its Members to take steps as well. A successful gender mainstreaming strategy would include the elements utilized by other IGOs and would include changes in the governance structure of the WTO and in substantive WTO law.

### Governance Structure

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<sup>69</sup>McGill, *supra* note 58, at 734.

<sup>70</sup>WILLIAMS, *supra* note 52, at 35, 130.

<sup>71</sup>To date, the WTO's formal involvement in gender issues is limited to its participation on the UN Inter-Agency Task Force on Gender and Trade. *See supra* notes 30-31 and accompanying text. Some attention has also been paid to trade and gender issues at WTO public symposia. *See* WTO, Symposium Program, Challenges Ahead on the Road to Cancun, Geneva, Switz., June 16-18, 2003, *Summary of Session III on Women as Economic Players in Sustainable Development*, available at [http://www.wto.org/english/tratop\\_e/dda\\_e/symp03\\_gwit\\_background\\_e.doc](http://www.wto.org/english/tratop_e/dda_e/symp03_gwit_background_e.doc).

The following changes in the governance structure of the WTO would form part of a successful strategy of gender mainstreaming:

- a. Establishment of a committee on gender and trade within the WTO to advance the Doha Development Agenda as it relates to gender issues and to fulfill the mandate of the Beijing Declaration;
- b. Requirement of a gender impact review of new and existing WTO Agreements by the WTO Secretariat;
- c. Affirmative action to increase the representation of women in policy making positions at the WTO, on WTO dispute panels, and in national ministries charged with formulating trade policy and negotiating trade agreements;<sup>72</sup>
- d. Building expertise on trade and gender issues within the WTO Secretariat and dispute settlement bodies and within national ministries charged with formulating trade policy and negotiating trade agreements;<sup>73</sup> and
- e. Use of the trade policy review mechanism (“TPRM”) as a forum for examining gender issues relating to national trade policies.<sup>74</sup> The TPRM currently has a narrow focus on the direction of trade policies rather than on trade policy impacts,

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<sup>72</sup>Although women are well-represented on the professional staff of the WTO Secretariat, (50% of positions), few are in senior policymaking positions. Similarly, there are few women trade policy experts in the WTO dispute panel roster and women are also poorly represented in national trade missions at the WTO. WOMEN’S ENVIRONMENT & DEVELOPMENT ORGANIZATION, FINANCING FOR DEVELOPMENT GENDER POLICY BRIEFING KIT (2002), *available at* <http://wedo.org/ffd/representation.htm>.

<sup>73</sup>Because the WTO Secretariat does not include gender specialists, it has little capacity to conduct gender analysis. McGill, *supra* note 58, at 738.

<sup>74</sup>WILLIAMS, *supra* note 52, at 172–174.

and excludes questions of gender inequality or bias. However, the TPRM authorizes consideration “to the extent relevant ... of the wider economic and development needs, policies, and objectives of the Member concerned, as well as of its external environment.”<sup>75</sup> It is legitimate to ask how national policies impact gender equality in the review process.

### Substantive Law

There are several substantive areas of WTO law that should be reexamined in the light of their impact on women, including the following:

1. Agriculture: The Uruguay Round Agreement on Agriculture does not include any exemptions from agricultural supports that would benefit women subsistence farmers who are primarily responsible for household food security.<sup>76</sup> Proposals for the creation of a development box at the WTO Fourth Ministerial Conference in Doha, which would allow developing countries to exclude some staple crops from their tariff reduction commitments and allow greater government support for poor farmers, and for the creation of a special products category and a special safeguards mechanism at the WTO Fifth Ministerial Conference in Cancun, which would address the food security and rural development needs of developing countries, seems likely to

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<sup>75</sup>Trade Policy Review Mechanism, Agreement Establishing the WTO, para A (ii), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 3, Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

<sup>76</sup>Agreement on Agriculture, Agreement Establishing the WTO, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Results of the Uruguay Round, 33 I.L.M. 1125 (1994)

mitigate the adverse impact of the Agreement on Agriculture on subsistence women farmers in developing countries and should be adopted.<sup>77</sup>

2. Services: The GATS does not currently include any guarantees for access to health care or other essential services. Specific measures to protect the access of women and other poor people to such services should be included in GATS.<sup>78</sup>

3. Investment: Investment is not addressed in a comprehensive way in the WTO Agreements. However, the Uruguay Round Agreement on Trade-Related Investment Measures (“TRIMs Agreement”) regulates some national government investment restrictions having direct effects on trade on a limited basis.<sup>79</sup> The TRIMs Agreement, even though limited in scope, has been criticized for constraining the ability of developing countries’ governments to regulate foreign direct investment to promote development because of the effect of the prohibition against useful tools such as domestic or local content requirements on labor and other inputs used in the production process.<sup>80</sup> A gender aware approach to foreign investment would include allowing developing countries to implement gender sensitive and pro-development requirements for foreign direct investment and the right to screen out investments that do not promote gender equality and poverty reduction.

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<sup>77</sup>McGill, *supra* note 58, at 725–26; UNCTAD, *supra* note 32, at 307–08; WILLIAMS, *supra* note 52, at 164–65.

<sup>78</sup>WILLIAMS, *supra* note 52, at 165; UNCTAD, *supra* note 32, at 310–11; McGill, *supra* note 58 at 727.

<sup>79</sup>Agreement on Trade-Related Investment Measures, Agreement Establishing the WTO, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

<sup>80</sup>WILLIAMS, *supra* note 52, at 125–26; UNCTAD, *supra* note 32, at 308–09.

4. Intellectual property rights: The TRIPs Agreement does not ensure access to essential medicines, such as those necessary to treat HIV/AIDs, through compulsory licensing or other measures, nor does it contain protections for traditional knowledge.<sup>81</sup> Provisions offering these sorts of protections should be incorporated in the TRIPs Agreement.

5. Labor rights: Labor rights are not currently addressed in the WTO Agreements. However, labor rights of women is a legitimate area of concern for the WTO since trade liberalization has increased employment opportunities for women in sectors where labor protections are inadequate, e.g. in export processing zones (“EPZs”). Most WTO Members believe that the International Labor Organization (“ILO”), rather than the WTO is the appropriate international forum for addressing such issues.<sup>82</sup> Another suggestion is to encourage multinational corporations, who are often the owners of enterprises in EPZs, to adopt codes of conduct to regulate their labor and employment practices in the EPZs.<sup>83</sup> The proposal to include provisions on labor standards within the WTO Agreements is a controversial one that many commentators today seem to avoid. This may be due to the recognition that incorporating minimum labor standards or workers rights within the WTO was attempted during the Uruguay Round negotiations and failed.<sup>84</sup> However, the fact that job creation is increasingly linked to trade liberalization renews the argument for consideration of a social clause within the context of the WTO.

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<sup>81</sup>UNCTAD, *supra* note 32, at 314–17.

<sup>82</sup>McGill, *supra* note 58, at 734.

<sup>83</sup>WILLIAMS, *supra* note 52, at 171–172.

There are several objections that can and will be raised against a system of gender mainstreaming within the WTO. A principal objection is that positive outcomes in terms of economic empowerment that result for some women as a result of gender mainstreaming may not translate into collective gains for women in general nor into sustained political power. Moreover, gender analysis increases the analytical burden and costs for policymakers by increasing the amount of data that must be collected and the amount of analysis that must be conducted. If gender analysis is required at the national government level, this may be problematic for developing countries who are already overburdened by the costs of implementation of the WTO Agreements. Finally, some Members may object to incorporating a women's rights perspectives into the WTO either because they object to equal rights for women or because they object to expanding the agenda for the WTO beyond economic issues to include social issues.

All of these are difficult issues that will have to be addressed. However, the potential for increased economic gains by women, along with greater political stability and prospects for peace, that will result from mainstreaming a gender perspective in international trade will be worth the hard work that is ahead of those who seek to incorporate such a perspective.

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<sup>84</sup>U.S. INTERNATIONAL TRADE COMMISSION, TRADE ISSUES OF THE 1990'S - PART II, INTERNATIONAL ECONOMIC REVIEW, 18, 19 (December 1994).