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GENDER-INCLUSIVE GOVERNANCE FOR E-COMMERCE^a

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Abstract

United Nations' 2030 Sustainable Development Goals' SDG 5 places gender equality front and centre for sustainable development. The Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017 brings gender equality to the forefront of trade policy. In the intersection of trade policy and digital technologies, this paper examines how electronic commerce can work towards gender equality, filling a knowledge gap about gender-inclusive governance. Legal-empirical analysis of key regulatory and policy challenges facing women in e-commerce, and identification of vehicles for gender equality at the regional and multilateral level are followed by policy options for promoting women participation in e-commerce. The paper presents a framework for understanding the multiplicity of gender gaps as they manifest themselves in e-commerce models, suggesting potential but also concerns, and advances a multi-level approach to incorporating gender-inclusive e-commerce regulation into trade policy.

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1. Trade and Gender

United Nations' 2030 Sustainable Development Goals' SDG 5, "Achieve gender equality and empower all women and girls", places gender equality front and centre for sustainable development, and it explicitly references using digital technologies to foster women empowerment. How can electronic commerce work towards gender equality? The aims of the paper fall squarely within The Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017 (Buenos Aires Declaration on Women and Trade) which calls for addressing knowledge gaps in the field.³ Legal-empirical analysis of key regulatory and policy challenges facing women in e-commerce, and identification of vehicles at the regional and multilateral level for supporting gender equality will generate new knowledge about policy implications and policy options for shaping gender-inclusive e-commerce. The paper proposes actionable policy options for promoting women participation in e-commerce, hereby contributing to gender-inclusive governance for trade policy. The paper advances a multi-level approach to incorporating gender-inclusive e-commerce regulation into trade policy, to contribute to closing the gender gap by shaping gender-inclusive governance for international trade law and policy.

Developments in e-commerce can sustain the status quo for women participation in e-commerce, or even worse women participation could experience backsliding. However, it could also prove fertile ground for contributing to closing the gender gap using the developments and the potential of the landscape as forces for change by improving existing models and creating new, gender-inclusive models. Moving towards gender-inclusive e-commerce is imperative for sustainable trade policy because women continue to suffer under a gender gap, despite the promises of digital developments for inclusion and growth. Gender equality is an essential component to the inclusion, participation, increased competitiveness, and economic growth for developing and least developed countries (LDCs).⁴

1.1. Conceptual Framework for Addressing the Gender Gap in Trade

Despite the assumption that trade reforms will benefit men and women equally, it is not always the case, and due to the different roles that women and men have in society, trade policy does not automatically generate gender-neutral results.⁵

With no universally accepted understanding of the gender gap in trade, for the purpose of this paper, "gender gap" encompasses the structural differences women face in terms of (i) the gendered composition of the labour force, (ii) women's primary responsibility for reproductive work, and (iii) women's differential access to and control over resources relative to men. (Bamber and Staritz 2016, 3) The gendered composition of the labour force can be measured through women participation in the labour force and employment in

³ https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

⁴ See, among others, (Kaplinsky 2016)

⁵ (Rocha 2018) on the occasion of "The Buenos Aires Declaration on Women and Trade at One", on 7 December 2018, WTO.

specific sectors, but the other two structural differences are more intricate and difficult to assess through conventional economic measures. It is submitted that the structural differences are faced by more groups of individuals than women, reflected in a wider concept of gender equality sensitive to sex, status, and other socio-economic norms. Thus, the gender gap is a multidimensional concept, both in nature of occurrence and in the dynamics of its development. The gender-based inequality, which for present purposes is referred to as the gender gap, in turn impacts trade and outcomes because they influence the patterns of resource allocation and competitive advantages of countries.⁶

This presents a conceptual framework for the gender equality agenda that is emerging in trade policymaking, and its multiplicity. For example, if focusing on the economic gender inequality solely, the employment rate of female-to-male in economy relates to many other structural components – such as sector of employment, urban or rural area, etc.⁷ This structural gender gap also reflects question of capabilities, and the proposition that it can be addressed through e-commerce. This brings us to the need for an investigation in law of the regulatory structures that create regulatory space for e-commerce and its gender-inclusive development. On a substantive level, UNCTAD has prescribed at least two ways to make trade policy more gender-sensitive using trade agreements, and they should be combined to yield the best results; ex ante gender-related assessment of trade measures, and inclusion of gender-related considerations in trade instruments.⁸

It is submitted that the existing patterns of trade entail perpetuating the existing structural challenges facing women in the economy at large: (i) Women tend to be concentrated in fewer sectors, and face gendered job segregation, (ii) women’s response to potential opportunities in new economic activities is dampened by time constraints with poor infrastructure and services heightening these challenges for women in developing countries, and (iii) women face greater disadvantage in responding to new economic incentives because of gender differences in access to productive resources, including land, credit, education, skills, infrastructure, utilities, and services.⁹ These structural challenges, in their many permutations, produce inequality and discrimination based on gender in the economy that interact in complex ways with other divides.

1.2. The Gender Digital Divide

The gender gap interacts with a number of divides. Women are fairly well represented across industries but that is not the case in technical jobs, nor in technological courses, and the issue here is one of gender stereotyping and its impact on education selection.¹⁰ This is a

⁶ (Bamber and Staritz 2016, 7) citing Marzia Fontana, 2009, see (Fontana 2016)

⁷ See (Bamber and Staritz 2016, 3)

⁸ (UNCTAD 2017b, 1–2 ff.)

⁹ Identified by Bamber and Staritz in terms of supply chains, (Bamber and Staritz 2016, 6) Citing UNCTAD 2015 and Fontana 2011. Also see (Bamber and Staritz 2016, 9, table 1)

¹⁰ (Bamber 2018) At “the Buenos Aires Declaration on Women and Trade at One”, on 7 December 2018, Penny Bamber presented data-driven evidence based research, looking at firm level data when asking “what type of jobs and for whom when you technologically upgrade in GVCs?”, under the title “Gender and Global Value Chains”. The presentation included findings from a paper on women employment in medical devices sectors, and from a paper on women employment in extractive industries (more specifically, mining in Chile).

structural problem which reflects the dynamics of the gendered composition of the labour market and of education with technology, producing the conditions for a gendered divide. Supposedly, these circumstances are similar to those that give rise to the gendered divide for digitalization.

The gender digital divide implies that impaired access to IT infrastructure or IT skills education based on gender exacerbates the gender gap.¹¹ In consequence, the gender digital divide may imply a disadvantage in seizing technology-driven opportunities, because of gender, low access to infrastructure, finance, and IT skills. The gender gap cross-cutting with other divides can deepen the divides and by implication widen the gender gap, including: (i) the divide between micro, small, and medium-sized entities, and larger entities, (ii) divides between levels of development among countries, (iii) the digital divide. (Wu 2017, 1) These components are all present in e-commerce. The challenges in seizing export opportunities are related to both the digital divide between developed and developing countries, and the digital divide within countries across income levels, rural/urban regions, and gender.

2. Patterns and Challenges for Women Participation in E-Commerce

2.1. The Extent and Nature of Women's Participation in E-Commerce

The growth of e-commerce sales has been exponential with global sales reaching \$25 trillion in 2015. E-commerce offers small and medium-sized enterprises (SMEs) several advantages, such as lower transaction costs, access to larger or new markets, secure payment options and, arguably, faster productivity and output growth. Women in particular stand to benefit from e-commerce because it allows them to connect directly with buyers, thereby circumventing discriminatory local business or legal practices. Furthermore, evidence suggests that women increase sale volume and profits when selling to destinations further from their home country rather than over a single border, and such sales often require digitization.¹²

However, women exporters face more trade obstacles than men do, with 74% of woman-owned firms reporting challenging non-tariff measures compared to 54% of businesses owned by men.¹³ A study of current patterns for e-commerce that controls for firm size found that the gender gap is a structural feature of the economy, and not unique to e-commerce. By implication, there are not any significant differences between male and female participation rates in e-commerce relative to the wider economy.¹⁴ The study finds that firm size is the driver for differences in export participation. Of firms with 51 or more

¹¹ See the panel on this topic shaping the issue, ("Disrupting the Gender Digital Divide: What Role for International Trade Policy? | International Centre for Trade and Sustainable Development" 2018)

¹² (WTO and OECD 2017)

¹³ (International Trade Centre 2016)

¹⁴ (Suominen 2018, 3, 16) In several surveys of firms in Africa, Asia, and Latin America, Suominen did not find a difference between genders in participation in e-commerce or in the severity of regulatory challenges facing firms, but found differences between firms of different sizes, and between countries with different levels of development.

employees that are run by women and sell and buy online, 71 percent export whereas 74 percent of male-led firms in the same size category export. (Suominen 2018, 6) The data support the importance of the SME and micro, small, and medium-sized enterprises (MSMEs) agenda, and its infusion with trade and gender for gender-inclusive outcomes. Here, it is important to recall the structural differences women face in terms of (i) the gendered composition of the labour force, and (iii) women's differential access to and control over resources relative to men,¹⁵ including access to finance and investments for upscaling firm size.

With the structural differences that women face in terms of (ii) primary responsibility for reproductive work, and (iii) women's differential access to and control over resources relative to men,¹⁶ online work and ICT-enabled services exports can be particular empowering for women expected to stay at home and where women lack the professional networks and resources relative to men.¹⁷ Servicification has a potential to diversify economies, and ICT is a major factor in those possibilities. However, where access to education is lacking or where a digital divide exists, women may find it challenging to reap these benefits. Furthermore, in trade in services, barriers to trade are mostly of a regulatory nature that can be time and resource consuming to overcome, for example obtaining a license or complying with domestic regulations, like licensing requirements and qualifications, and technical standards.¹⁸ Gender may be anonymized online but where it takes a license to operate, gender discrimination can occur. E-commerce can instead anonymize gender by limiting face-to-face interactions with national officials who may have a gender bias.¹⁹

Evidence shows that it is more difficult for women to access financing than for men because of gender biases among investors and lenders.²⁰ ITC research shows that the trade finance gap that women entrepreneurs in emerging markets face is around US\$260-320 billion per year. Here, e-commerce is instrumental for women because selling online, on Etsy, eBay, Ali Baba, Amazon, or via one's own platform, would, in theory, be less costly, or require less financing, but in any case it would still require some financial infrastructure, such as e-payment systems and access to opening a bank account. This advantage, however, could be lost where women suffer under a digital gender divide because IT infrastructure and IT skills are a pre-requisite for engaging in online exports.

Women use the Internet intensively as consumers, producers, exporters, and investors, and thus policies and regulations that shape the online economy critically shape the economic

¹⁵ (Bamber and Staritz 2016, 3)

¹⁶ (Bamber and Staritz 2016, 3)

¹⁷ (Suominen 2018, 8) Citing (World Bank 2016)

¹⁸ These are issues which the built-in mandate in GATS article VI:4 set out. They are central to discussion on developing measures and disciplines in the Working Party for Domestic Regulation and in the Joint Statement Group on Domestic Regulation. Similar issues, but with regard to investments, appear in discussion on Investment Facilitation in that separate Joint Statement Group's thematic discussions.

¹⁹ (International Trade Centre 2016)

²⁰ Suominen cites the following examples, (Alesina, Lotti, and Mistrulli 2013; Calcagnini, Giombini, and Lenti 2014; Harkness 2016).

prospects of women. To the extent that women are more active online than men, policies and regulations that shape economic activity on the Internet can have an outsized impact on women. In sum, an enabling environment with internet connection and IT backbone, e-commerce logistics, online payments, skilled workforces, and an accommodating regulatory environment, are required for firms to engage in cross-border e-commerce.²¹ An estimated one billion people in the developing world have broadband but not a debit card or a credit card. To reflect this reality, an enabling environment for e-commerce would include access to broadband and to payments mechanism.²²

2.2. The Supply Chain Context

International trade has enabled firms to organize their business in global value chains, utilizing the comparative advantages of respective economies to outsource (or onsource) the most efficient productions and tasks to and from them. One of the important considerations is also the risk diversification and minimization for firms when integrating into value chains with the most risk averse environments for their operations.

Women face a multiplicity of challenges but also opportunities in participating in and profiting from value chains.²³ The literature on the gender dimensions of GVCs fall into two main groups: One group focusing on the industries that were among the first to outsource services and parts of the production, namely the apparel industry and agriculture, and identifying high levels of female employment because of women's flexibility and the gender wage gap. This led to the idea of feminization of GVCs of trade. The other group focusing more on what happens when countries move into higher GVC sectors, namely in technology, and here there is a need for much more evidence-based research. When looking toward the general trade literature, the picture depicts a reality that is not benefitting women, suggesting defeminization of GVCs, with lower female participation in high tech sectors.²⁴

To make global value chains work for development, the World Bank designates the three focus areas – (i) entering global value chains, (ii) expanding and strengthening GVC participation, (iii) turning GVC participation into sustainable development.²⁵ Bamber and Staritz find that a holistic approach to integrating gender into the GVC framework is required to identify key issues, opportunities, and challenges for gender equality and socio-

²¹ (Suominen 2018, 9–10) Citing Suominen, Kati. 2017. "Ecommerce Development Index." Report for the U.S. Agency for International Development (April) <https://www.nextradegroupllc.com/ecommerce-development-index>.

²² (Ferrantino 2018) At "the Buenos Aires Declaration on Women and Trade at One", Michael Ferrantino gave this presentation of data-driven evidence based research.

²³ See, among others, (Bamber and Staritz 2016)

²⁴ Literature review and analysis by Penny Bamber at "The Buenos Aires Declaration on Women and Trade at One", on 7 December 2018 presenting data-driven evidence based research, looking at firm level data when asking "what type of jobs and for whom when you technologically upgrade in GVCs?". (Bamber 2018)- the presentation included findings from a paper on women employment in medical devices sectors, and from a paper on women employment in extractive industries (more specifically, mining in Chile).

²⁵ (Taglioni and Winkler 2016). Similar logic is followed by (Kaplinsky 2016)

economic development.²⁶ This frames a multi-dimensional approach to gender and e-commerce.

First, the improvement of existing value chains and introduction of a stronger sense of transparency and accountability without structurally changing them. This assumes that the existing non e-commerce trade regulations and global gender awareness contributes to closing the gender gap, not only in traditional trade, but also in e-commerce. This improves conditions for women's participation in existing global value chains by engaging firms, similar to how firms in apparel supply chains pledged to not use child labour, in order to not lose profits from consumers turning away, and paves the way for gender-inclusive e-commerce. This is how e-commerce affects the existing value chains, and in return, those global value chains have implications for women on their outset and in each economy that contributes to its operation because trade affects the structure of production. This means that some sectors may expand while others may contract.

Second, in the environment of the existing value chains, the domestic and national regulation on e-commerce has the potential to improve women participation as an aggregate measure in the economy.²⁷ Through including and improving their participation in e-commerce supply chains it can create the possibilities for women that will improve their overall participation in the economy. When businesses structure their supply chains, and outsource to or source supply in a jurisdiction, that jurisdiction will have a regulatory framework in place to secure women participation and the allocation of their profits. Gender-inclusive domestic reform and policy can improve conditions for women by securing the allocation of profits to the women who sold goods or services online cross-border, by securing freedom from discrimination for the women who come to that jurisdiction to render services or goods, and by securing gender equality in the operations that take place in the jurisdiction.

Thirdly, supporting new models for e-commerce supply chains that have women participation ingrained, starts with developing IT skills and financing women-led businesses. E-commerce can fuel such exports with low costs. Also, e-commerce enables women to trade online, directly with consumers, without having to have a size that propels into a supply chain, avoiding some complexities and potential discrimination – that is the real kicker for women in e-commerce, and could be fuel for expanding MSMEs.

2.3. Key Regulatory and Policy Challenges Facing Women in Participating in Trade

Bamber and Staritz identified the following structural challenges facing women in the context of participation in supply chains: (i) Women tend to be concentrated in fewer sectors, and face gendered job segregation,²⁸ (ii) women's response to potential opportunities in new economic activities is dampened by time constraints with poor infrastructure and services heightening these challenges for women in developing countries, (iii) women face greater disadvantage in responding to new economic incentives because of

²⁶ (Bamber and Staritz 2016, 2)

²⁷ See (World Bank 2018b)

²⁸ (World Bank 2018b)

gender differences in access to productive resources, including land, credit, education, skills, infrastructure, utilities, and services.²⁹

The World Bank has collected and analyzed data that illustrates how domestic laws and regulations limit women's economic participation, citing research that calls into question the notion that economic growth alone increases gender equality when rather continuous policy commitments to gender equality are required to achieve the goal.³⁰ The World Bank singled out seven indicators for its scoring system which themselves are illustrative for key regulatory and policy challenges facing women participation in trade across various domestic regimes; (i) accessing institutions, (ii) using property, (iii) getting a job, (iv) providing incentives to work, (v) going to court, (vi) building credit, (vii) protecting women from violence.³¹

In the specific context of e-commerce on a firm level, Suominen identified the following key constraints, regardless if firms were run by men or women: (i) smaller firms are uniformly less likely to export and are more hampered in e-commerce, as in cross-border trade, than large firms, naming five specific areas that need improvement: customs procedures for e-commerce imports and exports; IP and copyright rules online; legal liability for online sellers and platforms supporting them; data privacy and localization requirements.³²

In broader terms, the empirical evidence gives rise to the following two key regulatory and policy challenges in legal terms. Data would contribute to understanding the extent, the costs, and the implications. The regulatory aspect (i): Trade developments showed that gender needs to be recognized before the law. For example, without legal recognition of gender identity, women will not be able to access the financial infrastructure needed for participating in trade, such as opening a bank account, or cash checks, and women would not be able to obtain licenses, such as a license to operate as a professional service supplier. Furthermore, women would not be able to avail themselves of regulatory frameworks in place to support trade. The market access aspect (ii): For example, without freedom from discrimination based on gender identity, women and other disadvantaged will lose profits where they will have to outsource or bring in outside counsel or business partner to overcome discrimination, or not be able to access markets if leveraging domestic e-commerce into cross-border e-commerce is too cumbersome.

3. Gender Equality and Trade Policy - The Changing WTO and PTA/RTA Landscapes

As an entry-point to trade agreements and gender, this paper adopts the view, that trade affects economies along three channels: (i) trade usually leads to changes in the structure of production, which may affect employment opportunities, wages, and the quality and security of the jobs, (ii) trade induces changes in the price of goods and services, which in

²⁹ (Bamber and Staritz 2016, 6) Citing UNCTAD 2015 and Fontana 2011. Also see Bamber, table 1, on p. 9.

³⁰ (World Bank 2018b) Key Findings report, p. 2, citing (Duflo 2012)

³¹ (World Bank 2018b)

³² (Suominen 2018, 1)

turn impacts real incomes, (iii) the reduction or elimination of tariffs from trade liberalization diminishes government revenues and may curtail its ability to provide public services. UNCTAD submits that these impacts can be examined through a gender lens.³³ UNCTAD has established how trade has an impact on women's empowerment and well-being, and how gender equality has an impact on the trade performance and competitiveness of different countries.³⁴

The WTO has sought to reflect some of the digital developments in its case law,³⁵ through the Information Technology Agreement (ITA),³⁶ and through working groups devoted to e-commerce, but there is yet no comprehensive multilateral response to digitalization in the shape of an e-commerce agreement. Regional Trade Agreements (RTAs) such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Canada-Chile Free Trade Agreement (CCFTA), and the European Union-South Korea Free Trade Agreement (EU-Korea FTA), however, have addressed the issues in contemporary and comprehensive manners.³⁷

3.1. Gender Equality in the WTO

WTO's Aid for Trade 2017 highlighted the need for change toward gender-inclusion.³⁸ With the Buenos Aires Declaration on Women and Trade,³⁹ 123 countries committed to remove barriers to women's economic empowerment and increase their participation in trade. While there is no universal model or understanding of how to address gender gaps in trade policy and to remove barriers to women's economic empowerment and increase their participation in trade, the effort can build on the work of the many platforms committed to and instruments for advancing a trade and gender agenda for trade policy.

In the WTO, current debates among Members concentrate around four substantive joint initiatives, at varying stages and with different modalities, announced on 13 December 2017, during the final day of the WTO's 11th Ministerial Conference in Buenos Aires (MC11):⁴⁰

³³ (UNCTAD 2017b, n. 1)

³⁴ (UNCTAD 2017b, 1) Also (UNCTAD 2017a, 2014)

³⁵ See namely *US-Gambling*, United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services, [WT/DS285](#).

³⁶ The ITA is a WTO agreement concluded in the Ministerial Declaration on Trade in Information Technology Products in 1996, and entered into force 1 July 1997. The ITA was expanded in 2015.

³⁷ See (Wu 2017)

³⁸ (WTO and OECD 2017)

³⁹ Available here https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

⁴⁰ The new initiatives for E-Commerce, MSMEs, and investment facilitation were launched at MC11, on 13 December 2017, see Joint statement on Electronic Commerce ([WT/MIN\(17\)/60](#)), Joint ministerial statement on Investment Facilitation for Development ([WT/MIN\(17\)/59](#)), and Joint Ministerial statement - Declaration on the establishment of a WTO informal work programme for MSMEs ([WT/MIN\(17\)/58](#)). See (WTO n.d.) Proponents of DR had hoped for a DR outcome at the MC11, based on a consolidated text, which included a provision on gender equality, but the attempt failed. Instead, a Joint Ministerial statement on services domestic regulation with more signatories was signed as the outcome ([WT/MIN\(17\)/61](#)). DR remains an item

- Domestic Regulation (DR), GATS article VI:4
- Micro, Small and Medium-Sized Enterprises (MSMEs)
- Investment Facilitation
- E-commerce

With its disciplines on Domestic Regulation (DR), GATS article VI addresses the domestic regulations that are neither discriminatory or quantitative in nature. These measures may not necessarily be considered imposing trade restrictions but GATS foresaw that domestic regulations could have trade-restricting effects, and thus established the mandate for negotiating disciplines in GATS article VI:4.⁴¹ WTO Members agreed to further developing rules to ensure that domestic regulations support rather than impede the opening of services markets to trade and investment as a central task for the ongoing services negotiations.⁴²

Friends of DR floated JOB/SERV/272 in pursuit of an outcome on DR at MC11. Among other provisions, under the DR GATS VI:4 mandate the text included provisions on measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. This section also included a provision on gender equality that Canada had included, and which Canada had previously also included in the DR text for Trade in Services Agreement (TiSA).⁴³

At the time of MC11, the proposal read:

“Gender Equality

6.2 Where a Member adopts or maintains ***measures relating to authorisation for the supply of a service***, the Member shall ensure that such measures do not discriminate against individuals on the basis of gender.^{44”}

Friends of DR were not successful in securing an outcome and instead secured support for a Joint Ministerial Statement on Services Domestic Regulation, on 13 December 2017 (WT/MIN(17)/61). This joint initiative has continued discussions outside the WPDR in 2018. The text on gender equality has been adjusted to the following:⁴⁵

“Development of Measures

11. If a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that:

at the WTO as reflected in the summary of an Informal WTO Ministerial Gathering, Paris, 31 May 2018, p. 1, which also cites the items above – e-commerce, investment facilitation, and MSMEs – as well as women’s economic empowerment.

⁴¹ (Lim 2014, 2)

⁴² (Mattoo, and Sauvé 2003, 1)

⁴³ (Thystrup 2017b) Also (Thystrup 2017a)

⁴⁴ [\[For greater certainty, legitimate differentiation, which means differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto gender equality, shall not be considered discrimination for the purposes of this provision.\]](#)

⁴⁵ DR4-D/Rev.1, Working Room Document by the Chair, 14 September 2018

[...]

[(e) such measures do not discriminate between men and women.]⁴⁶”

Recalling the need for recognition before the law, bias based on gender adversely affecting women, and many new opportunities for employment outside the existing gendered composition of the labour force (women working in agriculture), DR is important for market access and participation in supply of services, which often requires a license or authorization. Furthermore, this could serve as an entry-point to trade in services.

However, many members are not convinced that gender is a trade policy issue, but in the context of these open-ended DR discussions in the joint initiative, it seems that some have overcome resistance with the change in language. In essence, the text has been watered down to a binary from the broader term, gender, which did not make such a pronouncement. As the wider concept that reflects a multiplicity, gender equality does not preclude, while the binary wording could exclude those that do not identify with the binary and fails to protect those that are deemed outside the scope from discrimination. Furthermore, the binary wording does not fully reflect the multiplicity and complexity of the gender gap. It is, however, positioned to build on the important traction for women participation in trade, and this platform could help it incrementally reflect the multiplicity of gender equality and ensure its rooting in gender-inclusivity.

The DR initiative is quite advanced but momentum has also sustained for the other three announced on that day. On 13 December 2017, during the final day of MC11, 87 WTO members accounting for around 78 per cent of world exports issued a joint statement declaring their intention to create, multilaterally, an Informal Working Group on MSMEs at the WTO, open to all members (WT/MIN(17)/58).(WTO n.d.) The joint statement reads:

“We proposed a comprehensive and strategic discussion on MSMEs in the WTO, as a contribution at the multilateral level to addressing obstacles related to foreign trade operations that represent a significant burden for MSMEs interested in participating in international trade.”

Gender equality in trade is at the heart of the issues that the MSMEs initiative targets with women facing greater disadvantage in responding to new economic incentives because of gender differences in access to productive resources, including land, credit, education, skills, infrastructure, utilities, and services,⁴⁷ and women entrepreneurs concentrating in operating micro or very small businesses, (International Trade Centre 2016) and with firm size being the driver for differences in export participation.(Suominen 2018, 6).

Indeed, gender equality is a natural component to the MSME agenda, judging from the the joint statement (WT/MIN(17)/58) which reads:

“With the utmost degree of transparency, the group will discuss, among others, issues of relevance to MSMEs, related to improved access to information for MSMEs; ways to

⁴⁶ Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.

⁴⁷ (Bamber and Staritz 2016, 6) citing (UNCTAD 2015) and (Fontana 2011). Also see (Bamber and Staritz 2016, 9, table 1) Bamber.

promote a more predictable regulatory environment for MSMEs; reduction of trade costs, including areas such as trade facilitation, shipping and logistics, and procedures and requirements related to origin; promotion, including through cooperation with other multilateral institutions, of better access to trade finance for MSMEs; identification of issues of particular interest to MSMEs that could be addressed in WTO Trade Policy reports; and consideration of how technical assistance and capacity building initiatives could take into account the trade needs and challenges of MSMEs.”

Implementation of gender-inclusion into the regulatory space for MSMEs could begin with the tools indicated in the joint statement: Non-discrimination, improved access to finance, technical assistance, and capacity building.

Recognizing the links between investment, trade and development, on the same occasion, 70 WTO members announced plans to pursue structured, thematic discussions with the aim of developing a multilateral framework on investment facilitation. The proponents account for around 73 per cent of trade and 66 per cent of inward foreign direct investment (FDI), and they have been meeting throughout 2018 to discuss how to organize outreach activities and structured discussions on this topic.⁴⁸

The joint statement (WT/MIN(17)/59) calls for:

“These discussions shall seek to identify and develop the elements of a framework for facilitating foreign direct investments 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.”

Implementation of gender-inclusion into the regulatory space for investment facilitation could begin with the themes indicated in the joint statement. Recalling how women face structural differences when seeking finance and investments, and recalling key regulatory challenges such as gender bias, the promise of greater transparency in every level would support gender equality. More specifically, the platform could be used for advancing investments to support women participation in trade for development. The World Bank has specifically addressed these concerns and the shape of domestic reforms.⁴⁹

3.1.1. E-Commerce

Thirdly, on the same occasion, 71 Members launched a joint initiative on e-commerce to initiate exploratory work towards future WTO negotiations on trade-related aspects of electronic commerce.⁵⁰ The Joint Statement (WT/MIN(17)/60) reads:

“We share the goal of advancing electronic commerce work in the WTO in order to better harness these opportunities. We recognize the particular opportunities and

⁴⁸ For background and pathways, see (ICTSD 2018)

⁴⁹ (World Bank 2018b)

⁵⁰ (“Updating the Multilateral Rule Book on E-Commerce | International Centre for Trade and Sustainable Development” 2018)

challenges faced by developing countries, especially LDCs, as well as by micro, small and medium-sized enterprises, in relation to electronic commerce. We also recognize the important role of the WTO in promoting open, transparent, non-discriminatory and predictable regulatory environments in facilitating electronic commerce.”

All the key regulatory and policy challenges identified, above, play out in e-commerce, across the existing models, with the potential for improving such models and for creating new business models. There is a much potential for incorporating gender equality into this initiative’s regulatory space, especially as it revolves around components for an enabling environment. Recalling the structural differences women face in terms of the the gendered composition of the labour force, women’s primary responsibility for reproductive work, and women’s differential access to and control over resources relative to men,⁵¹ e-commerce provides flexibility in structuring participation in trade, new markets for employment, and pathways to control over online resources that may be cheaper than traditional business.

Furthermore, SDG 5 on gender equality provides a strong argument for including gender equality into the e-commerce initiative as SDG specifically references the use of digital technologies for women empowerment. However, it will take effort to overcome the gender digital divide and other aspects of the gender gap because (ii) women’s response to potential opportunities in new economic activities is dampened by time constraints with poor infrastructure and services, and (iii) women face greater disadvantage in responding to new economic incentives because of gender differences in access to productive resources.⁵²

The following items floated as part of the ongoing e-commerce initiative are particularly relevant for this:

- Transparency,
- Non-discrimination,
- Enabling environment,
- Predictable regulatory environments

Elements of an enabling environment to facilitate online transactions have already been introduced into discussions at the WTO.⁵³ Consumer protection is one of these elements. Here, it is argued that in order to create an environment where consumers can participate in online trade in services with confidence, it is essential to ensure that consumers enjoy concrete rights, and that ways to quickly addressing problems exist, to protect consumers from unfair practices, to ensure transparency, and to provide for effective redress, and other trust-enhancing measures. It is further submitted that to this end, effective international cooperation between consumer protection agencies or other relevant bodies is paramount.⁵⁴ Injecting gender equality into the modalities for an enabling environment in

⁵¹ (Bamber and Staritz 2016, 3)

⁵² Identified by Bamber and Staritz in terms of supply chains, (Bamber and Staritz 2016, 6) citing (UNCTAD 2015) and (Fontana 2011). Also see (Bamber and Staritz 2016, 9, table 1)

⁵³ At the Council for Trade in Services – Special session in TN/S/W/64, May 2017, communication from the European Union.

⁵⁴ TN/S/W/64, May 2017, p. 1.

e-commerce discussions could be approached the same way by outlining how enjoying rights, having effective redress, protection from discriminatory practices, and transparency form part of an enabling environment for e-commerce, and by emphasizing international cooperation and coordination with other (national and regional agencies and bodies to this end. Hereby, an enabling environment for e-commerce would be created, with regulatory space for gender equality. Prescriptive measures for adopting and maintaining measures that contribute to closing the gender gaps would be coupled with an overall prohibition against discrimination based on gender and embedded within the modalities for e-commerce. Experiences from injecting gender equality into RTAs and their e-commerce chapters would cross-fertilize these discussions with lessons learned from domestic and regional reform and implementation.

Achieving a predictable regulatory environment for e-commerce could connect with incorporating gender equality into DR because service suppliers would then rely on obtaining licenses, and authorisations when meeting the requirements, regardless of gender, and the regulatory environment would be more predictable. The World Bank emphasized the importance of domestic reforms for women participation in trade.⁵⁵ By securing access to IT skills and access to finance, in particular, gender equality in the digital market would be improved, and e-commerce could then deliver on the promise of inclusive economic growth from technology.

Provisions ensuring transparency and access to the digital market and online infrastructure would contribute to inclusive e-commerce to overcome difficulties in take advantage of these new technologies. Such provisions would then be coupled with specific programmes for overcoming the gender digital divide to develop necessary IT skills for taking advantage of this access. Coupling these issues would provide for more comprehensive implementation of gender equality by embedding it within an e-commerce framework that connects with other trade policy issues.

While the gender gap is not unique to existing e-commerce business models, women looking to participate in e-commerce may experience a digital divide from not knowing technology as well, not having access to online infrastructure, and in some cases not receiving the same education. E-commerce that does not support gender-inclusion or does not stem a deepening of the gender digital divide could, in the worst-case scenario, exclude women from participating in e-commerce by increasing the gender gap. In the best-case scenario, however, incorporating gender-inclusive provisions into e-commerce could propel gender inclusion by improving the existing models or using technology to create new business models that from their inception foster women participation by bridging the gender gap.

As mentioned, firm size matters for whether firm export, whether the firms are led by women or by men.⁵⁶ The joint statement points out that a link exists between MSMEs and e-commerce and furthering gender equality in this nexus could be particularly beneficial for

⁵⁵ (World Bank 2018b)

⁵⁶ (Suominen 2018)

women participation and for development. Namely, this platform could be used for providing access to finance.

In conclusion, gender equality could feed into all of these four initiatives and such a comprehensive, incremental approach could help ensure the implementation of gender-inclusive governance across the WTO *aequi*. These efforts could build on RTA experiences, which offer valuable lessons for furthering gender-inclusive e-commerce across business models.

3.2. Gender Equality in PTAs/RTAs

Gender-related provisions in selected Preferential Trade Agreements (PTAs) have been discussed in recent literature.(Bensalem 2017; Frohmann 2017) However, a comprehensive and detailed categorization of gender-related provisions in PTAs does not exist yet. This gap will be filled in a forthcoming study of more than 550 PTAs, which will identify commonalities as well as differences between the PTAs that explicitly address gender issues.⁵⁷ Until then, it will suffice to submit that indeed, a number of PTAs include consideration for or commitment to gender equality.

Canada is promoting gender equality in its trade policy, and in its FTA practice. For example, CETA's preamble includes the following: "(...) REAFFIRMING their commitment to promote sustainable development and the development of international trade in such a way as to contribute to sustainable development in its economic, social and environmental dimensions;" The Canada-Chile FTA has been amended to include a chapter on trade and gender, Appendix II – Chapter N *bis*–Trade and Gender. In article N *bis*-01: General Provisions, (1), the Parties "acknowledge the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socioeconomic development. Inclusive economic growth aims to distribute benefits among the entire population by providing equitable opportunities for the participation of women and men in business, industry and the labour market." In (2) the Parties cite SDG 5. Article N *bis*-02 incorporates International Agreements, and article N *bis*-03 institutes Cooperation Activities. In the same vein, the Canada-Israel FTA includes a chapter (chapter 13) on Trade and Gender.⁵⁸

Australia is another trading partner committed to promoting gender equality by means of its foreign policy, having adopted a [Gender Equality and Women's Empowerment Strategy](#).⁵⁹("Australia's Assistance for Gender Equality" n.d.) The agenda is shared by a number of economic partners and regional organizations, with initiatives driven by APEC⁶⁰

⁵⁷ With the WTO, (Monteiro 2018) presentation at "The Buenos Aires Declaration on Women and Trade at One", WTO, Geneva.

⁵⁸ Canada pursued a gender chapter in the NAFTA renegotiations but failed to secure such a chapter in the negotiated outcome, USMCA. The labour chapter, however, does include provisions to protect against discrimination based on sex, sexual orientation and gender identity.(Government of Canada n.d.)

⁵⁹ ("Australia's Assistance for Gender Equality" n.d.)

⁶⁰ (APEC 2018) Also, Patrice Braun's presentation at ("Disrupting the Gender Digital Divide: What Role for International Trade Policy? | International Centre for Trade and Sustainable Development" 2018), and (Braun 2018)

and OECD(Korinek, n.d.) are promoting the agenda. Indeed, APEC) has been a pioneer in including gender issues into its agenda. Furthermore, a stand-alone chapter on gender and trade in a bilateral trade agreement was included first in the 2016 FTA between Chile and Uruguay. At the firm level, trade policy in Latin America and the Caribbean has been developing gender initiatives to further women's export entrepreneurship.⁶¹

3.2.2. E-Commerce

Much of the innovation is occurring in RTAs because of the slow pace at which the multilateral trading system is updating trade rules for the digital era.⁶² While there is no universal model for incorporating e-commerce into Regional Trade Agreements (RTAs), or for including such provisions into existing trade rules, RTAs have proven to be vehicles for concluding chapters on e-commerce, for example in EU-Korea FTA, which entered into force on 1 July 2011, and CPTPP, concluded on 23 January 2018.

Generally, provisions related to digital trade in RTAs cover the following areas, often included in a chapter dedicated to e-commerce:(Wu 2017)

General provisions

- Definitions
- Non-discriminatory Treatment of Digital Products
- Affirmation of WTO Rules 5.

Market access

- Customs Duties
- Trade in Services

Enabling digital trade⁶³

- Adoption of the UNCITRAL Model Law
- Electronic Authentication/Electronic Signatures
- Paperless Trading

Protection of users of e-commerce

- Consumer Protection
- Protection of Personal Information
- Unsolicited Electronic Messages

Other cutting-edge issues

- Cross-Border Information Flows
- Data Localisation
- Treatment of Source Code

⁶¹ (Frohmann 2017)

⁶² After (Wu 2017, 2) See p. 9 ff. for scoping of provisions across RTAs.

⁶³ This headline is what this author would categorize as measures belonging to an “enabling environment”

Cooperation and dispute settlement of e-commerce chapters

- Cooperation
- Dispute Settlement

Intellectual property provisions

3.3. A Framework for Gender-Inclusive E-Commerce Governance

When discussing gender-inclusive governance for e-commerce it is relevant to distinguish between (i) existing models for or patterns in trade, (ii) changing existing models, and (iii) creating new models, and across either model to distinguish based on (iv) size of firm (scale).⁶⁴ The reason is that the various models encompass different activities, different levels of gender-inclusion on their outset and gendered compositions, and different levels of need for an enabling environment in order to operate. Recalling UNCTAD's recommendations for comprehensive ex ante gender-related assessment of trade measures and gender-related considerations in trade instruments,(UNCTAD 2017b, 1–2 ff.) analysis of gender-inclusive e-commerce facilitated by RTAs would generate new knowledge that could inform the Joint Statement Group's work as well as the design of future RTAs. The new knowledge could be used for extrapolating lessons to be replicated in other regulatory environments. The analytical framework could consist of questions such as such as (i) does the RTA encompass gender equality or the watered-down women participation for e-commerce? (ii) Does the RTA employ best endeavour-language or binding rules? (iii) Does the RTA carry a systemic value (i.e. changing models or reflecting new models)? Regulatory responses in RTAs would then be adjusted to whether they aim to secure non-discrimination in existing e-commerce business models, improving the gender-inclusive, enabling environment in business models, or supporting new business models with, for example, support for IT skills and access to finance.

Many RTAs contain provisions aimed at growing and facilitating digital trade, including requirements to establish a domestic legal and regulatory framework for e-commerce, as well as various trade facilitation measures.(Wu 2017, 14) Gender equality could be injected into this regulatory space for enabling gender-inclusive e-commerce, with emphasis on implementation and bridging the RTA with domestic law. Furthermore, gender equality could be injected into

- Transparency
- non-discrimination
- predictable regulatory environments
- enabling environments
- market access
- cooperation

⁶⁴ For analysis and empirics, see (International Trade Centre 2018) The 2018 outlook maps how digitalization and the rise of the platform economy are rapidly changing the way in which firms do business, discusses how a strong business ecosystem is necessary to manage this change, and examines how to design the business ecosystem that is necessary for small businesses to embrace and benefit from the digital age.

All of the key regulatory and policy challenges for women participation, identified above, manifest themselves in the broader challenge for shaping an enabling environment for e-commerce, discussed above.

For women to socially upgrade into better jobs in (i) existing e-commerce models, women have to overcome, among other obstacles, the gendered composition of the labour force and education. This could be a focus area for establishing an enabling environment within existing e-commerce.

Women's opportunities in new economic activities are dampened by time constraints, and women face greater disadvantage in responding to new economic incentives because of gender differences in access to productive resources.⁶⁵ Therefore, establishing an enabling environment by means of easing the regulatory barriers that can be time and resource consuming to overcome could (ii) change existing models for e-commerce so they also become more gender-inclusive.

Furthermore, an enabling environment could support (iii) creating new models that are gender-inclusive from the outset by addressing the multiplicity of the gender gap, namely the finance gap and the digital divide. Even where participation in e-commerce on a small scale is less costly or require less financing, it would still require some IT infrastructure and financial infrastructure, such as internet access and skills, e-payment systems, and access to opening a bank account. IT infrastructure and financial infrastructure, including payment mechanisms, are a component to an enabling environment, that could have real impact for women to overcome the greater disadvantages women face in responding to new economic incentives because of gender differences in access to resources, including land, credit, education, skills, infrastructure, utilities, and services.⁶⁶

Anchoring the enabling environment in domestic policy commitments to gender equality are particularly important for gender-inclusive e-commerce because 90% of e-commerce is in fact domestic trade. Domestic policy commitments to gender equality in both the exporting country and the importing country when establishing an enabling environment could help leverage domestic e-commerce into cross-border e-commerce. While helping smaller firms at large overcome the difficulties in accessing markets that have to do with their size (iv), it could perhaps have an outsized impact on women autonomy over and making profit from participation in e-commerce. This is because new market access could help overcome some of the vulnerability women face by being concentrated in fewer sectors, and facing gendered job segregation.⁶⁷ However, it always comes down to some of the pre-requisites of an enabling environment that helps women respond to new economic incentives: access to resources, namely to finance and to developing IT skills.

⁶⁵ (Bamber and Staritz 2016, 6) Citing (UNCTAD 2015) and (Fontana 2011). Also see Bamber, table 1, on p. 9.

⁶⁶ (Bamber and Staritz 2016, 6) Citing (UNCTAD 2015) and (Fontana 2011). Also see Bamber, table 1, on p. 9.

⁶⁷ (World Bank 2018b) identify these laws and their roots.

4. Recommendations for Gender-Inclusive Governance for E-Commerce

4.1 Where are We Now?

The Buenos Aires Declaration on Women and Trade is now one year old, and the occasion calls for a stocktaking of what is on the table but also what is missing in terms of initiatives for gender equality in trade policy. In the spirit of the SDGs and the Buenos Aires Declaration, gender is part of the MSMEs initiative and of DR initiative at the WTO. Furthermore, there is potential and perhaps momentum for the emergence of an agenda engaging all four WTO initiatives.

The WTO approach, so far, spans the following:(WTO, n.d., 2017) (i) Issue-specific approach: seen in Canada's proposal for gender equality in DR tabled at the WPDR, 2016; (ii) 2017 Aid for Trade, (iii) 2017 WTO Declaration on Women and Trade which sets out, among others, to address knowledge gaps in this field.⁶⁸ Furthermore, gender-inclusive trade policy can be injected into the regulatory spaces of the four initiatives that are discussed at the WTO, in a more holistic approach to strengthening women participation in trade. At WTO level, all four current initiatives can enhance gender-inclusive opportunities, namely e-Commerce Initiative. While several key regulatory and policy challenges can be identified, they intersect in terms of establishing an enabling environment for e-commerce, suggesting much potential for shaping gender-inclusive governance for e-commerce.

However, consensus that gender is a trade policy issue for the WTO is not complete. Judging from the current language in DR, the multiplicity of the gender gap and the wider gender equality agenda is missing from the current framing.

RTAs have experimented with gender chapters, regional cooperation, and other pathways to gender inclusion. However, it seems that the link between gender equality and RTA's often cutting-edge e-commerce chapters could be improved systemically and specifically. RTA can offer opportunities for enhancing women participation in e-commerce in making trade agreements more gender-inclusive. Indeed, RTAs can serve as experimental labs for shaping e-commerce chapters that create gender-inclusive opportunities for women in e-commerce as they are faster and more directed, and not held up in the complicated scenario of the WTO's current agenda.⁶⁹ RTAs can move beyond best endeavour-language and weave gender-inclusive provisions that give women agency and economic empowerment, and protect them from discrimination and provide them with recognition in law into their regulatory layers. This would be coupled with market access components, and bolstered with stronger horizontal and sectoral, cross-cutting commitments. With focus on rulemaking and a goal for regulation that is implemented, gender equality is shaped as a shared responsibility resting on and enforced by external force, regulation.

⁶⁸ https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

⁶⁹ Arguments and empirical evidence supporting that RTAs are labs, see UNCTAD paper (DiCaprio, Santos-Paulino, and Sokolova 2018)

Regional organizations and economies alike mobilize for gender-inclusive trade policy.⁷⁰ The World Bank study can be read as to also indicate best practices in domestic policy and regulatory reforms to support women’s competitiveness in e-commerce.⁷¹ It must be emphasized how it is imperative for gender equality and women participation in trade that the domestic policy level is engaged in the effort, and then to use RTAs as opportunities to experiment with improving gender-inclusive rules that are enforceable regionally. These experiences can feed into the negotiating modalities of the four areas that are moving at the WTO of which can all have a gender equality aspect. The long-term goal would be to produce binding rules if the conditions are there for it. Until then, a kind of division of labour could pave the way; RTAs as experimental labs that can bilaterally promote domestic best practices and ensure domestic implementation, creating gradually improved binding rules, and then use WTO for sustaining discussions and political momentum, TPR monitoring, and in its Aid for Trade, always have gender and trade.

The current agenda for women participation in trade leaves out the wider gender equality agenda. On a systemic level, beyond women participation in trade, what is missing is consensus or settled notion that gender is also a trade issue. Glitches in connecting the dots between gender gap, e-commerce, and development also seem to occur – the MSMEs platform in WTO could be very helpful for this. Furthermore, the domestic regulatory and policy component is missing from the agenda. Here it should be recalled how gender issues play out behind borders. It remains difficult to monitor and assess compliance, difficult to raise complaints, rules themselves are difficult to implement - at large, data is missing. On an institutional level, a stronger sense of coordination between platforms, to support multi-tiered and multi-level coordination to improve women participation in e-commerce is missing.

UNCTAD prescribes comprehensive ex ante gender-related assessment of trade measures, and inclusion of gender-related considerations in trade instruments,⁷² but it also identifies and works to remedy a major missing piece, data, and collecting this data requires a gender-sensitive approach.⁷³

⁷⁰ The trade and gender agenda is not exclusively North-related – also SADC, MERCOSUR, and ASEAN are mobilizing to empower women in trade.

⁷¹ (World Bank 2018a)

⁷² (UNCTAD 2017b, 1–2 ff.) Also see the UNCTAD Toolbox (UNCTAD 2017a) and resources such as (UNCTAD 2014)

⁷³ UNCTAD, working session at the WTO Public Forum 2018, “PUBLIC FORUM 2018 — SESSION 72 : WORKING SESSION

Data and statistics for gender-responsive trade policy”, on 4 October 2018, and (UNCTAD n.d.)

4.2. A Multi-Level Approach to Incremental Change for Comprehensive Gender-Inclusive Trade Policy

As for methodology, it is recommended to pursue a multi-level approach that combines bottom-up with top-down to support incremental change for a comprehensive shift towards gender-inclusive e-commerce.

First, on a governance-level, a bottom-up approach, would imply (i) focusing on (implementing) domestic reforms identified by the World Bank.⁷⁴ The domestic policy commitments to gender equality are particularly important for gender-inclusive e-commerce because 90% of e-commerce is in fact domestic trade.⁷⁵ Therefore, it matters for gender-inclusive governance for e-commerce that the policy approach reflects this pattern to implement domestically and leverage to cross-border e-commerce. In this work, particular focus should be placed at shaping an enabling environment as key regulatory and policy challenges facing women in e-commerce are at play, and can be addressed in this regulatory space. On an issue-specific level, the bottom up approach would imply (ii) energizing the gender-inclusion component to all four initiatives currently on the agenda of the WTO, to sustain the policy momentum for improving the regulatory framework for women participation in trade, drawing on platforms such as UNCTAD and on RTA experiences with designing and implementing gender-inclusion in trade policy. Furthermore, (iii) combining the domestic level and the issue-specific level would help reconcile trade and gender as a trade issue for WTO, and drawing on ITC, World bank, and UNCTAD resources.(UNCTAD 2017b)

Secondly, it is recommended to pursue a top-down approach to gender-inclusion across the WTO *aequi* by (i) reading SDGs, and by implication gender equality, into the trading system for an incrementally more gender-inclusive trading system. It would also imply (ii) dedicating time, resources, and political will to continue discussing trade and gender in the WTO's rule-based system, and to support its incorporation into the initiatives currently moving, combining contemporary focus-areas with long-term perspectives. For example, trade and gender could form part of TPR monitoring. Ideally, the methodology pursued would couple the top-down and bottom-up approaches at the same time to integrate levels and cross-cutting issues, and to improve conditions for a comprehensive shift towards sustainable gender-inclusion in the spirit of the SDGs.

Conceptually, when committing to women participation in trade to encompass members with sensitivities, it is recommended to not lose sight over the broader gender equality issue and its multiplicity. Members could prepare the ground for expanding the platform to address how gender is one part of a larger socio-economic issue that sees discrimination based on gender, sex, sexual orientation, class, race, and origins. Empowering women and by extension, gender too, can incrementally improve gender equality in trade using e-commerce.

⁷⁴ (World Bank 2018b) See (World Bank 2018a)

⁷⁵ (Ferrantino 2018) at "The Buenos Aires Declaration on Women and Trade at One", on 7 December 2018, WTO.

In terms of market access, when designing and implementing gender-inclusive programmes for women participation in trade which often focuses on regulation, it is recommended that the market access component is also brought to the forefront. This would imply (i) supporting accessing markets, expanding and strengthening participation in those market, and ensuring sustained gender-inclusion, using the multilevel approach of combining a bottom up approach (domestic regulations) and a top-down approach (commitments and policy support). Here, it is advised to (ii) focus on the sectors that employ the most women but not limit to those because that could produce the unfortunate side-effect that existing patterns of limited employment and the gendered composition of labour and education are perpetuated on the expense of support for women branching into digital products and services via e-commerce.

As for best practice, it is advised to further examine RTAs closely, to learn from these experiences and to use RTAs as labs for continuously improving regulatory frameworks, with shaping an enabling environment as a focal point for gender-inclusive governance of e-commerce. Here, the UNCTAD Toolbox and the E-Commerce Readiness Assessment could be a valuable contributions. The regulatory space afforded by RTAs has the potential to bridge the activities of domestic and multilateral levels.

4.3. Development

The following recommendations pertain to Aid for Trade; (i) In terms of capacity building, establishing cross-cutting support centres for e-commerce could help shoulder the burden on the exporting side for participants and for regulators. Such centres could advise on all major steps for e-commerce; (a) establishing online presence, (b) enhancing and strengthening access to online trading platforms and markets, and support compliance with licensing requirements, and customs duties to ensure that such costs on the importing side do not eliminate or undercut profits for the online trader, and (c) improve gender-inclusive participation in e-commerce for development. Aid for Trade should focus in particular on developing IT skills and providing access to finance. Furthermore, engaging domestic regulators and committing firms operating global value chains regionally as well as globally could help ensure that LDC women participating in e-commerce are not excluded from GVCs, and if included in GVCs, that they are not run over. Access to financial e-payments infrastructure is central, and here the World Bank would be instrumental in operationalizing women participation in and profiting from e-commerce and supply chains. Including a review of all these measures in the Aid for Trade review would sustain momentum and ensure accountability.

As for sectoral perspectives, it is advised to (i) not lose sight of how many women in developing countries and LDCs work in agriculture. (“The Female Face of Farming | Gender | Food and Agriculture Organization of the United Nations” n.d.; SOFA Team and Doss 2011) Indeed, (ii) e-commerce presupposes education and access to developing IT skills to bridge a digital divide, and e-commerce alone cannot close the gender gap in trade. However, we can (iii) use e-commerce as fuel for women from developing countries and LDCs for many reasons; for one, technology can blur gender, and it comes with low costs. Secondly, e-commerce enables trade to readily cross borders into other markets, and e-systems can improve accountability in for example profits made in supply chains. Thirdly, the rapid development of e-commerce-enabling technology, when ensuring

that it is gender-inclusive, promises more opportunities for women beyond the trades where most women currently find employment or work, and could be anchored in enabling environments for e-commerce. Ideally, (iv) these improvements on the ground are coupled with the pursuit of comprehensive shifts in thinking that builds up over time across initiatives and issues, from a domestic policy and regulatory level to an international policy and regulatory level.

Finally, it is strongly recommended to continue the effort to collect more data on all aspects of gender-inclusive governance for e-commerce and for trade policy.

5. Conclusions

The gender gap is a multidimensional concept in the nature of its occurrence, in the dynamics of its development, and in the manifold ways it interrelates with other divides. When addressing e-commerce, it is important to recall how the gender gap is not unique to e-commerce in that it reflects economy at large. However, moving towards gender-inclusive e-commerce is imperative for sustainable trade policy because digitalization can serve to fuel improving business models in terms of women participation and it can contribute to shaping new business models for gender-inclusive e-commerce. Yet, e-commerce could also impair women participation if the gender digital divide deepens, and these tendencies are skewed towards the developing world.

The domestic level is seeing reforms of domestic law across the world to improve conditions for women participation. Indeed, it is imperative for women participation in trade that the domestic policy level is engaged in the effort, alongside mobilizing the firms operating supply chains, energizing the regional level as experimental labs, and sustaining discussions in the WTO.

RTAs that include gender-inclusive provisions can improve women participation in e-commerce as trade policy does otherwise not have regulation in place or agree on a gender-inclusive model. WTO-linked initiatives paved the way for the Buenos Aires Declaration on Trade and Women. Furthermore, there is an agenda with four initiatives being discussed at the WTO, and gender-inclusive governance could form part of all four initiatives.

Under the umbrella of gender-inclusive governance for e-commerce, the paper discussed the regulatory space for gender equality in creating an enabling environment for e-commerce. The paper recommends pursuing a multilevel approach for comprehensive improvement of women participation in trade. Conceptually it is recommended to not lose sight of the broader gender-inclusive agenda when focusing on women participation in trade. It is also recommended to complement the focus on regulation with a focus on market access. Furthermore, it is recommended to incorporate programmes into Aid for Trade, and to not lose sight of sectoral perspectives, or of the required educational and IT skills that participating in e-commerce presupposes. Finally, more data on all aspects is needed to support data-driven gender-inclusive trade policymaking.

In conclusion, lack of gender equality, in all its permutations ranging from discrimination, lack of recognition before the law, and socio-economic disempowerment, is a global and structural issue. For gender-inclusive opportunities in trade, addressing this global, structural issue with multi-level approaches to the negotiating modalities, coupled with

gender-inclusive governance for e-commerce as a new frontier that can propel socio-economic change, could contribute to closing the gender gap. E-commerce alone cannot close the gender gap in trade but with regulations and policies in place to support gender-inclusive governance for e-commerce, e-commerce can foster agency and economic empowerment, and e-commerce can be a vehicle for more comprehensive, incremental change to eventually reconcile the complex gender gap in trade, and support the development agenda.

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