



The WTO in a nutshell:

WHY WOMEN SAY

*No to WTO*

# What is the WTO?

The World Trade Organization (WTO) is a multilateral organisation. First established in 1995, it is an institution which creates and governs the rules for international trade between countries. Since its creation, the WTO has been used to push for the expansion of neoliberal globalisation under the guise of so-called trade and investments policies which has contributed to inequalities between countries, within countries, between rich and poor as well as between men and women.

It is headquartered in Geneva, Switzerland and, as of 2022, consists of 164 member countries. Countries become a member of the WTO through an accession process where the government of the country will firstly have to apply to the WTO and then participate in a lengthy negotiation process with some of the existing members of the WTO. This negotiation, once complete, results in an “accession package” which also includes a list and timeline of conditions, tariffs, and non-tariffs on trade that the applying country can and cannot continue to implement on goods and services from other WTO members. This negotiation process is also wrought with power imbalances between the acceding country and existing WTO members, as well as amongst WTO members itself. Existing WTO members, for example, can take advantage of their bargaining power vis-à-vis acceding countries, which in turn leads to unfair outcomes of the accession process. The wealthier and more developed members of the WTO can also take more advantage of this bargaining power than the poorer and developing WTO members, allowing for rich and developed WTO members to reach outcomes that can benefit themselves the most. In other words, even from the accession itself, the WTO process lacks both procedural and substantive fairness.<sup>1</sup>

The WTO in its decision-making is also an inherently undemocratic institution. Though the WTO allows for a “one country, one vote” system, the actual decision-making is not based on the majority of votes, instead, it is based on consensus. This often results in many poor and developing countries finding it difficult to stand in open opposition to the forceful delegations of the EU, USA and other wealthy and developed countries. Like other multilateral spaces, the WTO is an institution that is also wrought with the asymmetrical power relations and dynamics between wealthy and developed countries and poor and developing countries.



<sup>1</sup> Derk Bienen & Mamo Mihretu, The Principle of Fairness and WTO Accession – An Appraisal and Assessment of Consequences(2010). SSRN Electronic Journal. 10.2139/ssrn.1633043.

# Its Beginnings...

Initial ideas for a multilateral trade system first emerged at the Bretton Woods Conference that took place in 1944 and that resulted in the creation of the International Monetary Fund (IMF) and the World Bank. Though the negotiations for the then International Trade Organization (ITO) had failed, it still led to the creation of the first multilateral trade agreement known as the General Agreement on Tariffs and Trade (GATT)<sup>2</sup> which had come into force in 1948. From 1948 to 1994, the GATT - which was largely focused on reducing or eliminating tariffs - provided the foundational multilateral rules for the post-war trading system and much of the world's trade. Once tariffs had largely come down, trade agreements started to expand into non-tariff barriers to trade instead, such as rules regarding patent and trademark, regulations around how a product should be manufactured, handled, or advertised, and policies that promoted the use of or provision of subsidies to domestic producers.

In 1986, the Uruguay Round - the eighth round of trade negotiations carried out within the framework of the GATT - began. This negotiation continued until 1993 and took the multilateral trading system into uncharted waters, by expanding its reach to trade in services and the protection of intellectual property rights among others, and finally, for all these rules to be converged under the World Trade Organization (WTO), making the WTO the successor to the GATT.

## **WTO Green Room**

The Green Room is an informal structure/practice within the WTO, convened by the Director General (DG) of the WTO. This practice sees the DG along with a small select group of countries within the WTO membership come together in secret meetings to discuss select issues within the multilateral trading system. In general, this small group of countries participating in the green room are powerful members of the WTO such as the United States, the European Union, Canada, and Japan. Occasionally a handful of much larger developing countries would also join. The Green Room practice was very prevalent during the Uruguay Rounds, which saw the introduction of intellectual property rights, investment protection, agricultural trade barriers, and subsidies under the WTO.

<sup>2</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

# Impacts of WTO Agreements on Women

WTO and all the agreements under it have historically been blind to the gender differentiated impact of trade policies. Trade negotiators tend to assume that trade policies and trade liberalisation to be gender neutral in its formulation and in its impact. They do this by firstly, disregarding the contribution of the unpaid care economy - which are predominantly filled by women - to the productive economy and market activities. Secondly, trade policies also tend to disregard the fact that in many parts of the world, men and women have different access to and control over resources. And finally, trade policies ignore that men and women experience different gender discriminations resulting from patriarchal beliefs that prevent women from exercising the same kind of economic, social, and political rights as well as decision-making rights.

There are also the additional differential impacts of WTO's trade rules between developing and developed countries. WTO argues that its global trade rules and commitments are aimed to provide a level playing field for all countries. However, in application, the constraints WTO agreements impose over national policies are much tighter for developing than for developed and wealthy countries. When these contexts are combined with the difference between developed and developing countries - in the level of development, standard of living, culture, market and production activities, capacities of state, government regulation and policies, historical colonisation, etc. - the WTO rules become even more harmful to women, and in particular, women in the Global South.





## Constraining governments' capacity to implement pro-women and pro-peoples' policies

- **Government cannot make laws and policies in the interests of people and for promoting women's human rights**
- **Government actions or policies, even when they are made in the interests of its people and environment, can be challenged at the WTO**

The breadth and expansiveness of WTO agreements has resulted in considerable constraints to the capacity of many governments, particularly from poor and developing countries, to craft and implement policies that will contribute to the protection of women's human rights and achieving sustainable development. This has led some economists to describe the WTO as kicking away the ladder to prevent the developing countries from reaching the same level of development of developed countries.<sup>3</sup> Even the UN Commission on Trade and Development (UNCTAD) have acknowledged that the gains from international trade and globalisation are uneven and unequal between developed and developing countries. The marginalisation of many developing and least developing countries, and of the poor and women, because of the current trade rules therefore goes together.<sup>4</sup>

Human rights treaties, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) recognise the use of government policies such as gender affirmative action and temporary special measures to remedy gender inequality and achieve substantive equality. Therefore a "one-size-fits-all" approach (which is the basis of the multilateral trading system) - that does not consider inequalities between men and women, between rich and poor and between countries and of various levels of wealth and development — will not remedy any form of inequalities, including gender inequality.

However, fiscal, labour, wage, industrial, and environmental policies that are meant to protect and promote human rights can be viewed as discriminatory or a form of trade restrictions and can thus be challenged under the WTO dispute settlement system. The WTO dispute settlement system has seen many cases brought to it that challenge the government's domestic and national policies, even when they are made in the interest of the public or of the environment.

<sup>3</sup> Chang, Ha-Joon (2002). *Kicking Away the Ladder. Development Strategy in Historical Perspective*. London: Anthem Press.

<sup>4</sup> Edited by Anh-Nga TRAN-N GUYEN and Americo BEVIGLIA Z AMPETTI (2004). *Trade and Gender Opportunities and Challenges for Developing Countries*. UNCTAD UN Inter-Agency Network on Women and Gender Equality Task Force on Gender and Trade.

### **Case study: WTO as a circular firing spot against climate actions**

There have been nine disputes brought so far to the WTO's dispute settlement mechanism against countries' domestic renewable energy policies and measures. Many of these dispute cases are around local or domestic energy support programmes that require the use of locally made and produced content. This local content requirement is one of the most common types of renewable energy support scheme that many countries have introduced as it has the potential to support just and equitable transitions by supporting the move away from fossil fuel industries and boosting local employment and local industries in renewable energy.

In 2012, the Japanese government and the European Union (EU) brought a dispute settlement case against Canada over its Ontario Green Energy Act. The Act, which intends to promote renewable energy in the province of Ontario, offered above-market prices for electricity supplied by renewable energy companies but only offered the premium to firms who bought source their content locally. The WTO panel had ruled in favour of Japan and the EU, stating that Ontario's incentives were illegal as they discriminated against foreign firms.

In 2014, the US government sued India at the WTO over India's massive solar energy programme which contains local content requirements. The Jawaharlal Nehru National Solar Mission which was intended to ease chronic energy shortages in the country was argued as discriminatory against foreign companies and therefore a violation of the WTO trade rules. The WTO ruled in favour of the US government.

In 2016, the Indian government sued the US government at the WTO over the US' local content requirements and subsidies provided by its eight states in the renewable energy sector. The WTO dispute resolution panel ruled in favour of India.

In 2019, China initiated a dispute settlement case against the United States at the World Trade Organization (WTO), targeting the same state-level renewable energy programme that was the focus of India's case.

The current climate crisis poses one of the greatest threats to women's human rights. It has and will continue to cause devastation, particularly on the lives of women, and particularly for women in developing and

least developing countries. Governments are therefore required to make every effort possible to prevent further climate crises, one of which is through transitioning away from fossil fuel to renewables, to low-carbon economies and to energy democracy. Local content requirements are one of the easiest ways governments can promote and encourage the transition to renewables since by effect, such policies would promote and encourage the creation of local jobs and local industries for local consumption. Renewable energy industries also have a higher level of women's participation in it than the often more male-dominated fossil fuel industries.

It is clear however, from these disputes that the WTO rules are constraining government's ability to regulate in the interests of its peoples', even when those regulations are in compliance with the government's obligation under human rights instruments and global commitments, including such as the climate change treaties and Sustainable Development Goals.



## **Undermining women's food sovereignty, contributing to hunger and poverty of farmers and peasant women**

- ***Undermining food sovereignty of women, communities and countries***
- ***Big agribusinesses displacing local and small farmers***
- ***Loss of biodiversity, traditional agricultural practices and knowledge***

It is estimated that women provide over 50% of the world's food, and yet are more likely to experience hunger and food insecurity than men.<sup>5</sup> Because of patriarchal values and structural barriers to accessing resources, women are also less likely to benefit from commercial and industrial agriculture than men. In many agricultural and rural communities, food crops produced for household consumption or for the local markets are usually grown, cultivated, and marketed by women, while more commercial and industrialised crops (also known as cash crops) cultivated on a much larger scale for direct export or further processing, are more frequently found in men's economic domain. There are also many instances of when a particular type of agriculture crop that is traditionally grown by women becomes commercially exploitative, men would then enter these sectors and take over the production and market of these crops. The influx of cheap food imports as the result of trade liberalisation, particularly the removal of tariff barriers through the WTO GATT and AoA rules have reduced the domestic prices of agricultural products and further lowered women's often already very meagre earnings in the sector.

At the same time, trade rules force developing countries to stop growing staple foods for domestic consumption, and instead turn their focus on growing cash crops for export to volatile global markets. These policies have destroyed the livelihoods of small-scale subsistence farmers, the majority of whom are women while also undermining the food sovereignty of communities and countries.

The well-documented role of women in the practice and preservation of traditional knowledge in many areas such as seed preservation, biomass related activities, traditional agriculture, and the practice as well as use of traditional medicines, especially for gynaecology related treatment, is being disregarded and erased by trade liberalisation. In place of women, corporations are now being regarded as the source of agricultural knowledge. While the WTO GATT and AoA rules continue to undermine the capacity of women and communities to produce food, the WTO TRIPS rules have also encouraged for "biopiracy" to happen. Biopiracy is a phenomenon where corporations, mainly of the Global North, would patent biological resources and the knowledge of their use that

<sup>5</sup> Vandhana Shiva, Women and the gendered politics of food (2009). Philosophical Topics. 37(2):17-32.





mostly originated from the South, misappropriating the knowledge of farmers and indigenous peoples, and adversely affecting their ability to continue to use their resources and knowledge, resulting in consumers everywhere losing out.

### **Case study: Between Raw Milk and Packed Milk: Women Livestock Farmers in Pakistan**



In Pakistan, 90% of consumers still buy fresh, unpasteurised milk, which is mostly being supplied by the informal milk sector. This sector is largely in the hands of small and landless farmers (as producers) and a very wide network of milk vendors spread across the country both in rural and urban areas. Punjab province is one of the targets of the corporatising of the milk sector as the province that has the largest livestock sector in Pakistan. The Punjab province reportedly accounts for 49% of all cattle in Pakistan and notably, 65% of buffaloes in the country. Many of the small and landless farmers and producers of milk are women. The sale of fresh milk grants a steady source of income, especially for landless women agriculture workers who have tenuous and/or seasonal access to agricultural work. Many of the women in Punjab also perform their roles as the primary caretaker of livestock as part of their unpaid care work for the family which also includes caregiving, domestic housework, and community work.

Women's rearing of livestock is critical to household food security and nutrition in the country and even more so in rural and remote areas. Caring for cattle enables women to produce fresh milk as well as other products such as butter, yogurt, and ghee. Dry animal manure, which is used as fuel and fertiliser, is also produced as a by-product of cattle-

raising. Women can therefore secure food for their families by keeping a portion of their production for their own consumption. They can also make a small income by selling the milk to other households in their communities as well as to milk sellers. The milk sellers in turn supply milk to shops in the villages and the city, individual households in the city, tea stalls and hotels, as well as middlemen that also supply to dairy companies.

Pakistan as a member of the WTO adheres to the WTO's Sanitary and Phytosanitary (SPS) Agreement. The country also adheres to the 'Codex Alimentarius' or 'Food Code' - which is also referenced under SPS - as adopted by the Codex Alimentarius Commission, a commission established by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO).

Adherence to the Codex and WTO rules has led to Pakistan signing several domestic and national laws that harms small dairy women farmers and consolidated the monopoly of the big dairy corporations in Pakistan's dairy sector's production and value chain. These laws - the Punjab Pure Food Authority Act 2011, the Pakistan Pure Foods Law 2011, the Punjab Pure Food Regulations 2018 - form the basis of the existing trade-related food quality and safety legislative framework and cover more than 400 items including milk and milk products. Since May 2019, the Punjab Food Authority (PFA) has been campaigning to ban the sale of fresh milk and intends to pass legislation prohibiting the sale of fresh milk in Lahore, the second largest city in the country in terms of population and the capital of the province of Punjab. The Minimum Pasteurization Law, which will be implemented by July 2022, will criminalise the sale of raw milk. The small and landless farmers who produce most of the fresh milk in Pakistan will lose the market for their produce since they cannot afford to pasteurise their milk, allowing corporations instead to step in to process and package milk for consumers. Women farmers who take care of cattle will lose their livelihoods when the ban on selling unpasteurised milk is implemented. Households which previously used unpasteurised milk will have to switch to packaged milk. Not only will they have to spend more on milk itself (since company-processed and packaged milk is more expensive), but they will also have to purchase other dairy products separately e.g. butter and yogurt. For a large segment of the population, this will not be financially feasible, and women farmers foresee a fall in nutritional intake.

(Excerpts from the case study "*The Impacts of Trade Liberalisation in the Livestock and Dairy Sector in Punjab, Pakistan on Peasant Women, 2020*" by Pakistan Kissan Mazdoor Tehreek (PKMT))

## Women's access to public services

- *More expensive or inaccessible public service*
- *Women losing access to public services and experience increase in unpaid care burden*

Because of how expansive WTO trade rules are, many of the WTO rules now extend beyond the trade in goods into areas such as services. Trade in services also carries different characteristics than trade in goods and is an area where the liberalisation and deregulation of the trade in services also interacts with the structural adjustment policies (SAPs) of the International Monetary Fund (IMF) and the World Bank. While the WTO's GATS itself does not explicitly require the privatisation and liberalisation of public services and the WTO argues that there are many ways in which governments can exclude its public services from the obligation it has under GATS, the reality is much more complex than that. When the WTO GATS rules interact with the neoliberal projects of governments, the SAPs of the IMF and the World Bank, and the hegemony of multinational corporations - the resulting privatisation, liberalisation and deregulation of public services has a particular and negative impact on women.

Similarly, the WTO TRIPS rules effectively privatises much of the health system - by putting the rights of patent and copyright of medicines and other life-saving devices and treatments firmly in the hand of corporations - mostly from the North to monopolise and set whatever prices they want. The TRIPS rules allow for the prices of IPR-protected products to be set by the corporations that own the IPR, resulting in many corporations jacking up the prices of the medicines, in some cases many times above the cost of production. Corporations owning a patent or copyright are also able to prevent competition from others, since TRIPS requires that if a patent for a medicine has been registered in a developing country, other producers are not permitted to produce, import, or sell the medicine (without the permission of the patent holder). In just a little over five years after the TRIPS Agreement was signed, the effects of patents on medicines were starting to be felt across the globe. As the HIV epidemic swept through Africa, Asia and Latin America, medicines protected by patents in the US and Europe were available only at exorbitant prices. Similar circumstances were repeated, just two decades later, during the COVID-19 pandemic when the WTO TRIPS rules made the prices of COVID-19 medicines and vaccines high for corporations to make profit from.

Because of patriarchy, women still carry the disproportionate burden of unpaid care work. Globally, women perform 76.2% of total hours of unpaid care work, more than three times as much as men.<sup>6</sup> In Asia and the Pacific, women spend more than four times more than men on unpaid care work. As such, women rely

<sup>6</sup> International Labour Office – Geneva: ILO (2018), *Care work and care jobs for the future of decent work*.

much more heavily on public services and related social infrastructure than men. Women are the primary users of public services, the majority of workers in the public sector and the main providers of unpaid care work when public services are cut.<sup>7</sup> The reduced access to and the likely unaffordability of privatised, liberalised and deregulated public services such as water and health care will greatly affect women as the main provider of unpaid care work. When medicines become more expensive, women are also the ones who would either pay more or when they cannot afford it, be the first to sacrifice their own treatments to prioritise the health needs of other family members.

### **Case study: From the AIDS pandemic to the COVID-19 pandemic**

During the AIDS pandemic in the late 1990s and early 2000s, the price set by corporations who own patents for AIDS medicines were outrageous. To illustrate, a year's supply of a combination of AIDS medicines costs US\$ 10,000 to \$15,000 when patented, while the price for a similar combination offered by an Indian generic drug producer was around US\$ 300. The margin of profit for the branded product covered by the patent is thus astronomical. Consequently, patients in developing countries were thus unable to afford AIDS medicines that are patented.

(Source: Martin Khor, Third World Network. TRIPS Agreement and the WTO's Crisis of Legitimacy (2001). Available online: <https://www.twn.my/title/legitimacy.htm>)



<sup>7</sup> Action Aid (2018) From Rhetoric to Rights: towards gender-just trade (<https://bit.ly/2CLLYOs>)

During the COVID-19 pandemic, developing countries have been faced with scarcity of medical products including vaccines, medicines, ventilators, diagnostic tools, PPEs, as well as underdeveloped health infrastructure and services. A range of trade and investment rules have bound the hands of developing countries from acting effectively. The WTO TRIPS rules have constrained the production and sharing of for COVID-19 related medicines, treatments and technology. For example, Remdesivir costs US\$ 2,340 - 3,120 for one patient in developed countries. But IPRs also limit supply by allowing production only by the holder of the IP. Therefore many developing countries were not able to get any Remdesivir, notwithstanding some licences to generic companies to supply to the developing countries. Remdesivir is sold at six times its price in black markets in New Delhi, India, and is now out of market despite efforts to boost production by local manufacturers. At the current rate of production and pricing of Covid vaccines, which are both determined by patent rights of the innovators, it will take till the end of 2024 to vaccinate the global population. The vaccines have been priced at various ranges; at the top are Moderna and Pfizer, priced at the US \$ 25 - \$ 37 and US\$ 19.50 per dose respectively. This means their price for two doses is double per person. Sputnik is selling around US\$ 10 per shot. Astra-Zeneca at US\$ 4 per shot and some national vaccines such as the Indian Covaxin are cheaper but remain expensive for large populations in developing and least developed countries. As in the case of medicines, the production and supply are facing major constraints from monopolies.

(Source: Feminists for a People's Vaccine Issue Paper #2 International Trade & Investment rules, Intellectual Property Rights and COVID-19: A Perspective from the South)





## Race to the Bottom with Women at the Bottom

- *Increase of women's employment does not necessarily means increase in decent work and wages for women*
- *Women can also suffer from loss of employment because of trade liberalisation*
- *Trade liberalisation allows for corporations competing in the global value chain to "shop around" for countries with the lowest labour rights standards and wages*

Supporters of trade liberalisation often argue that more open trade through the WTO and other trade agreements will expand job opportunities for all, including women. While it is true that in a lot of countries in the region, the growth in export-oriented industries also increased jobs for women, analysis of the type of jobs, the wages of the jobs and the increase and decrease of the jobs suggest a continuous race to the bottom with women at the bottom.

Firstly, much of the expanded job opportunities for women brought by the export-oriented industries taking advantage of trade liberalisation tend to be concentrated in labour-intensive, low value added, and low-wage export industries. Secondly, most corporations operating in these segments of global value chains rely on and profit through the lower pay, casualisation and informalisation of women workers as a source of comparative advantage. Several studies have documented that when it was cheaper and more profitable to hire women in the export-oriented manufacturing sector, there was a higher share of women's employment. But once those export industries move up the value chain where workers need more skill, wages are higher, and there is less casualisation and informalisation, jobs went to men and women were pushed out of the labour market.<sup>8</sup> These trends were particularly prominent in many developing countries throughout the 1980-1990s, beginning with the rising East Asian countries (Hong Kong, Taiwan, South Korea, Singapore), a number of South East Asian countries (Malaysia, Indonesia, Thailand and the Philippines), Bangladesh and Sri Lanka in South Asia.<sup>9</sup> While some of these countries have already moved up the value chain, some of these countries have remained at the bottom of the value chain and have now been joined by other least-developed and developing countries such as Cambodia or Vietnam where women continue to be the source of cheap, casual and informal labour.

The same can also be seen for women employed in the export-oriented agricultural sector, where women are mostly employed on estate farms or packing houses rather than directly through the product markets. Women are often preferred for these occupations because they are perceived as secondary workers with lower bargaining power than men, and thus easier to be laid off.

<sup>8</sup> See Susan Joeekes, *Trade-Related Employment For Women In Industry And Services In Developing Countries* (1995); Stephanie Seguino, *Gender wage inequality and export-led growth in South Korea* (1997), *The Journal of Development Studies*; Stephanie Seguino, *Accounting for Gender in Asian Economic Growth* (2000); UN Commission on Trade and Development (UNCTAD), *Trade, Gender and the Post-2015 development agenda* (2014); also UNCTAD, *Looking at Trade through a Gender Lens; Summary of Seven Country Case Studies Conducted by UNCTAD* (2014).

Many of the companies operating in export processing zones (EPZs) and in the export-oriented industry generally have also been shown to segregate women in unskilled positions that do not provide opportunities for training and promotion. Furthermore, the rights of women workers in EPZs to organise and form unions is routinely violated, which leaves them vulnerable to a range of other violations of labour and human rights.

### **Case study: A race to the bottom for women's labour and wages**

The Philippines' membership in the World Trade Organization (WTO) and other trade and investment agreements, along with its unilateral liberalisation and deregulation initiatives, paved the way for welcoming various foreign businesses and investments into the country. The trade and investment liberalisation and deregulation were also complemented by the implementation of labour flexibilisation to make the Philippine business environment even more attractive for profit-seeking foreign investors.

As a result, the Philippines' government amended its Labor Code in 1989 through the Republic Act 6175 - also known as the Herrera Law. The implementing rules of the Herrera Law facilitated labour contractualisation and other forms of flexible employment by allowing the exemption to the automatic regularisation of workers after six months of employment if a worker was hired "fixed for a specified period" or "for a specified season".

The country's southern region of Mindanao has been the target of agribusiness because of its vast fertile agricultural lands since the 1900s. Del Monte corporation which exports bananas and pineapples set up their pineapple plantations in Bukidnon in the 1920s, while Castle and Cooke, which is now known as Dole, developed their plantations in South Cotabato in the 1960s. As of 2016, 26 of the top 60 companies in Mindanao were involved in agribusiness, and the area remained dominated by foreign firms such as Del Monte, Dole/Stanfilco, Sumitomo Fruits, Unifrutti and Tadeco.

In the packing plants owned by Sumifru, the practice of contractualisation has left most women workers without the security of tenure even if they have stayed and worked at Sumifru for as long as 18 years. Every six months, the workers undergo a biannual evaluation process with their service providers which will assess whether their contracts will be renewed or not. The packing plants themselves lack the implementation of ILO for the right to safe and secure working environments as the wearing of personal protective equipment (PPE)

<sup>9</sup> Ibid.

such as rubber boots, masks, gloves and hairnet, were only compulsory during inspections and many of the PPEs are of poor condition. Women in the packing plant typically spend 12-20 hours a day in the banana packing plant with only about one hour and 41 minutes for a break. All these are illustrations of the unjust and unsafe work conditions that women workers are suffering from Sumifru's activities, which was only made possible by the range of liberalisation and the race to the bottom.

(Excerpts from the case study "Strengthening Sumifru Women Workers' Organisation Against Labour Contractualisation" by the Women Studies and Resource Center (WSRC))



# The neoliberal co-optation of women and gender

Though the WTO has been historically blind to the gendered impact of its trade rules and regime, it is slowly being compelled to address the issue after several decades of feminist and social movements challenge and criticism of the current multilateral trade system. During the 11th Ministerial Conference of the WTO in 2017, WTO attempted to ‘take-on’ the issue of gender through a “Joint Declaration on Trade and Women’s Economic Empowerment”<sup>10</sup>. This Declaration - which is a plurilateral initiative - took a narrow and neoliberal approach towards gender issues. Considered a “red herring” by feminist movements and allies,<sup>11</sup> the Declaration fails on several levels. Firstly, it fails to address the adverse impacts of existing WTO rules and their role in deepening inequality and exploitation. Secondly, it appears to be designed to not only mask the failures of the WTO using the word gender and women, but to also introduce ‘new issues’ under the guise of gender equality within the WTO , that will only threaten women’s human rights even further.

Because the Declaration was the result of a plurilateral initiative, it did not have the support of all WTO members. The largely rhetorical declaration which had no concrete obligations on the WTO or on any of its members, did however lead to the establishment of an Informal Working Group on Trade and Gender in 2020. The Group aims to share best practice on removing barriers to women’s participation in world trade, to exchange views on how to apply a “gender lens” to the work of the WTO, to review gender-related reports produced by the WTO Secretariat, and to discuss how women may benefit from the Aid for Trade initiative. Participation in this Informal Working Group is open to all WTO members. The initiative is currently chaired by Botswana, Iceland and El Salvador.

The Informal Working Group - while remains a plurilateral initiative and does not have the support of all WTO members - continues to approach the issue of trade and gender through a problematic and neoliberal lens. It continues to ignore how the trade liberalisation promoted by the WTO has caused and exacerbated deep structural inequalities and has disproportionately marginalised constituencies, particularly women, especially in developing countries, small island developing states, and least developed countries. Redressing all these harms caused by the WTO would require a total review and reshaping of the WTO agreements.<sup>12</sup>

<sup>10</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/genderdeclarationmc11\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf)

<sup>11</sup> Statement: Women’s Rights Groups Call on Governments to Reject the WTO Declaration on Women’s Economic Empowerment, available online: <https://apwid.org/statement-womens-rights-groups-call-on-governments-to-reject-the-wto-declaration-on-womens-economic-empowerment/>

<sup>12</sup> See Open Letter from the Gender and Trade Coalition to the Director-General and Honourable Delegates of the World Trade Organization (WTO) ahead of MC12: <https://drive.google.com/file/d/1jH6va-hZV3U6vb4sfRRBp6QQPd26r9Yz/view>

Both the Declaration and the Informal Working Group also need to be viewed in the context of the continued and on-going push for further neoliberal agenda through the instrumentalisation and co-optation of women's human rights and gender equality. The discussions around gender therefore are also being used as tools to push further liberalisation without allowing for a policy discussion on the negative gender impacts of WTO agreements. This push for further neoliberal agendas, especially in new areas such as services, e-commerce, government procurement, and foreign investment by the WTO will ultimately only further harm women and violate women's human rights.

## *Current issues in the WTO: Results of the 12th Ministerial Conference of the WTO (MC12)<sup>15</sup>*

The most recent WTO Ministerial Conference, which took place on 12 - 15 June 2022, concluded with even more pro-corporate, anti-worker, and anti-development outcomes on all major issues that were negotiated at the MC12. The issues being negotiated included access to medicines, agriculture, digital trade, and the future of the WTO itself.

On access to medicine, the MC12 failed to deliver a comprehensive waiver of intellectual property (IP) restrictions on vaccines, treatments, and tests related to COVID-19 within the WTO's Trade-Related Aspects of Intellectual Property (TRIPS) agreement. The TRIPS Waiver which was co-sponsored by more than 60 developing countries and supported by over 100 developing countries and international communities/civil society organisations was an opportunity to ensure that the countries from the Global South would be able to manufacture and produce much needed vaccines, treatments, and tests to tackle the COVID-19 pandemic. The outcome of MC12 was only able to deliver on limited flexibility on one of the provisions of TRIPS and excludes all forms of IP, except patents. The MC12's so-called TRIPS waiver also excludes treatments and tests and requires far more intrusive monitoring and reporting than the existing TRIPS rules, resulting in a "TRIPS-plus" agreement rather than a real TRIPS waiver.

On fisheries, the MC12 concluded with a WTO Fisheries Subsidies Agreement that fundamentally favours the wealthy and developed countries who will be allowed to maintain subsidies provided the fishing is within the waters of any country's jurisdiction. They are also able to subsidise fishing overfished stocks provided they can demonstrate that there are "sustainable" measures in place.

<sup>15</sup> See Deborah James, The World Trade Organization After the 12th Ministerial Conference, available online: <https://www.ineteconomics.org/perspectives/blog/the-world-trade-organization-after-the-12th-ministerial-conference>



On the other hand, MC12 sees most of the flexibilities and Special and Differential Treatment for developing countries removed. The MC12 outcomes on fisheries ultimately lets the biggest subsidisers responsible for the collapse in fish stocks globally off the hook regarding subsidy reductions, while jeopardising small-scale fishers' access to tiny subsidies that are critical for their livelihoods, and harm developing countries' rights under international law to develop this sector for sustenance and livelihoods.

On agriculture, the MC12 failed to deliver on a permanent solution to the public food stockholding programmes that were demanded by developing countries. Public food stockholding programmes are usually used by governments as a measure to promote food security and to manage the price of goods to protect consumers and support farmers. In the context of COVID-19 and the financial economic crisis of 2007-2008 which resulted in the increase in prices of food - it can also help address and mitigate the failures of market and global supply chains. The MC12's failure to deliver on the public food stockholding programme means that developing countries can only rely on the conditional and temporary reprieve on public stockholding programmes that the WTO currently provides.

Many of these conclusions of MC12 are also now inconclusive when the US government, during the WTO General Council (GC) meeting that took place after the MC12, suggested that the agreement to work on the list of decisions adopted at MC12 is not a mandate, adding that WTO members will still have to work beyond the MC12 outcomes on other issues. This position of the US effectively results in some of the key decisions coming out of MC12 such as the ministerial decision on the TRIPS Agreement, and the agreement on fisheries subsidies among others to be turned upside down.

The demands for the COVID-19 waiver and access to COVID-19 treatments and vaccines highlights not only the inequalities between countries, but also the inequalities along the lines of "geography, wealth, income, gender, race, caste, ethnicity, disability, sexual orientation, gender identity and other factors shape who has access and who has not, who will live and who will die (as a result of the pandemic)".<sup>13</sup> Women who are overwhelmingly responsible for feeding their family around the world have and are therefore the ones heavily impacted by the volatility of food prices. Women also make up 47% of the 120 million people around the world who earn money directly from fishing and processing.<sup>14</sup> The failure of the WTO on all these fronts ensures that women who have been the most vulnerable to the COVID-19 pandemic and food insecurity remains vulnerable and that the global injustices that are endemic to the WTO trade rules continues.

<sup>13</sup> <https://feminists4peoplesvaccine.org/#about>

<sup>14</sup> Food and Agriculture Organization of the United Nations (FAO). Globefish Research Programme: The role of women in the seafood industry. Rome, 2015. Page 2; [http://www.globefish.org/upl/Publications/Final%20EXECUTIVE\\_SUMMARY\\_GL.pdf](http://www.globefish.org/upl/Publications/Final%20EXECUTIVE_SUMMARY_GL.pdf)



## *Call to action - APWLD position*

Though it has been almost 30 years since the establishment of the WTO, civil society, feminist, and diverse social movements have consistently and continuously resisted and protested the WTO and the many bilateral, plurilateral and regional trade agreements that has emerged since.

Since the late 1990s, APWLD has been organising, supporting, and strengthening the feminist movement and various forms of resistance against the WTO and other neoliberal trade and investment agendas. These actions have always been rooted in womens' lived everyday experiences and brought the voices of grassroots women as those who have been those most marginalised and impacted by neoliberal trade rules. From as far back as 1999, APWLD has been part of the Stop WTO movement, documenting the disastrous effects of the Agreement on Agriculture (AoA) on the livelihoods of many rural and indigenous women in Asia and the Pacific. In 2002, APWLD had organised the Asian Fisherfolk Conference: Cut Away the Net of Globalisation in Hat Yai, Thailand to analyse the impact of globalisation, particularly liberalisation and privatisation, on the small-scale fisheries sector. In 2005, APWLD had launched the 'Don't Globalise Hunger! Assert Women's Rights to Food Sovereignty' campaign and supported 86 women to the 6th WTO Ministerial Conference in Hong Kong to protest the effects of globalisation on their lives and communities. In Hong Kong, APWLD had also organised the very first Women's Tribunal against the WTO with the participation of indigenous, migrant, peasant, workers, and other groups of marginalised women. In 2013, APWLD had organised the Feminist Carnival during the 9th WTO Ministerial Conference in Bali, Indonesia to reject the WTO and call for economic justice. In 2016, APWLD further strengthened its work against neoliberal trade and investment agreements and corporate power through the creation of the Women Interrogating Trade and Corporate Hegemony (WITCH) programme which, aside

from WTO, has been focusing on organising against new generations of mega Free Trade Agreements (FTAs) such as the Regional Economic Comprehensive Partnership (RCEP) and the Comprehensive and Progressive Agreement for a Trans-Pacific Partnership (CPTPP) Agreement. During the height of the COVID-19 pandemic, APWLD campaigned alongside feminist, civil society, and social movements to demand for a TRIPS waiver to enable the poor to access COVID-19 medications and other treatments needed to tackle the pandemic.

Movements have also continued to resist and protest the introduction of so-called “new issues” to be covered by WTO rules, such as e-commerce the grand myth of cross-border data flows in trade deals<sup>16</sup>, and the neoliberal co-optation of women’s economic empowerment by the WTO as a ruse to advance even more harmful neoliberal trade rules. As the WTO continues to trigger land and resource grabbing, forced evictions, exploitations of workers, reduce food sovereignty and rob women of their rights and livelihoods, APWLD also continues to call on and work with civil society, movements, and communities to reject WTO and other neoliberal trade and investment agreements.

As the WTO continues to face a deadlock, resulting from increasingly stronger positions being taken up by developing and least developing countries, more and more harmful neoliberal trade rules are now being made outside of the WTO where the weak positions of developing and least-developing countries can be more exploited and where negotiations lack even more transparency than the WTO process. While many of the trade and investment rules being made outside of the WTO appears to be more harmful than those found under the WTO, the WTO remains the foundation of all the other trade and investment rules and therefore remains as the root cause of the injustices within the global trade system through its lack of democratic decision making and the prioritisation of free market and corporate interests over people and the planet. As such, APWLD members and allies continues to work collectively not only to put forward feminist analysis on trade, but to also mobilise and advocate for a more just and equitable trade and economic system.

In place of the WTO and the global neoliberal economic system, APWLD demands the following:

- A feminist trade justice agenda that will remedy inequalities, ensure gender-responsive public services and infrastructure, promote and protect women’s human rights; adheres to the principles of international cooperation and solidarity that truly advances Development Justice;
- People centred trade where local communities and elected people centred governments have sovereignty over their own economies and development; and
- Strengthening of multilateralism that is based on solidarity, democracy, human rights and justice, rather than the interests of unaccountable multinational corporations or wealthy states.

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<sup>16</sup> See IT for Change paper on in response to the proposals by the United States, Japan and European Union for a liberalised e-commerce regime at the 2017 WTO Ministerial Conference.

# Annex: Agreements Under the WTO

There are about 60 agreements and decisions totalling to 550 pages under the WTO. Some of these include agreements that were negotiated under the GATT framework which predated the establishment of the WTO itself. All member countries of the WTO must sign and ratify all WTO agreements. There are also plurilateral initiatives and agreements of all types that take place in the WTO (which are explained in further detail below). All the agreements and the initiatives within the WTO are critical, dangerous and impact on women's human rights. Some of the more critical agreements of the WTO are discussed below.

**GATT** - The General Agreement on Tariffs and Trade (GATT)'s overall purpose was to supposedly promote international trade by reducing or eliminating tariffs as one of the most common barriers to trade. The GATT predates the WTO as it was one of the agreements that had emerged through the Bretton Woods Conference. When the WTO came into being, the rules of the GATT 1947 were transposed into the new legal framework of the WTO as the General Agreement on Tariffs and Trade 1994 (GATT 1994). While GATT 1994 incorporates the provisions of the GATT 1947 by reference, it is also, much broader in scope and application, incorporating areas that were not in GATT 1947 including non-tariff issues such as anti-dumping, subsidies, technical barriers to trade, customs valuation, and many others. The GATT's singular goal towards zero tariffs has been particularly harmful for governments, especially in least-developing and developing countries who rely on tariffs as an important source of revenues to fund government expenditure and public services.

**GATS** - The General Agreement on Trade in Services (GATS) is the agreement within the WTO that sets forth rules for how countries can regulate services, and gives transnational services suppliers rights not only to operate, but also rights in the way that they operate, in foreign countries. The trade in services that GATS aims to liberalise is broadly categorised into 4 Modes. But it is the privatisation and liberalisation of essential and public services such as water or energy under Mode 3 that has had the most negative impacts on women and the poor.

**TRIPS** - The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a WTO agreement that is focused on the protection of intellectual property on pharmaceutical (diagnostics, treatments, medicines, and vaccines), copyright (such as on books, music, etc.) and agriculture (plant varieties, seeds, animal, living organism, etc.). In the case of medicines, TRIPS has resulted in the monopoly and economic control of big pharmaceutical corporations and therefore higher drug prices in many countries. In the case of agriculture, TRIPS has resulted in the monopoly and economic control of big agribusinesses who have used their control to firstly, further undermine the plant varieties, biodiversity, local knowledge, and cultures that have been handed down through countless generations of rural and Indigenous communities and through women in those communities; and secondly, push for further concentrations of hybrids and genetically modified organisms (GMOs).

**AOA** - The WTO Agreement on Agriculture (AoA) (also known as the WTO Agriculture Agreement) is an agreement that was negotiated under the framework of GATT during the Uruguay Rounds with a focus on trade and domestic policies specifically around agriculture. There are three areas that are the focus of the AoA. The first is market

access where governments commit to reducing even more tariffs to allow for even freer movement of agricultural goods. The other two areas of the AoA, which is domestic support and export competition, essentially requires governments to end or reduce subsidies or other forms of support to farmers that are seen to distort trade. While the AoA allows for developed countries to maintain high levels of their own subsidies, it limits the ability of developing countries to provide support to their farmers through subsidies. This limits the ability of developing countries to protect their domestic food market, ensure food security, prevent the dumping of agricultural produce from other countries while also undermining peoples' food sovereignty.

**TRIMS** - The WTO Agreement on Trade-Related Investment Measures (TRIMS) was negotiated during the Uruguay Rounds under the GATT framework. It focuses on any measures, policies or regulation imposed on foreign investment that can be discriminatory towards the foreign investors. Some of the examples of investment measures are requirements for the foreign investor to source locally for local production (known as local content requirement), regulations around limiting the imports that the foreign investor can bring in for the local production and any requirements around local ownerships. Local content and local ownership requirements and import restrictions are all measures that can help promote and protect domestic industries. It is important to note however, that many multinational corporations were aiming for much higher foreign investors protections than what is currently found in TRIMS (and the earlier GATT). This led to the higher foreign investors protections to emerge in bilateral and plurilateral investment agreements found outside the WTO, through provisions largely known as the Investor State Dispute Settlements (ISDS).

**SPS** - The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) sets out the basic rules for food safety and animal and plant health standards. These 'standards' are internationally determined and set as a benchmark against which national measures and regulations on safety and quality of food products are evaluated. Because these standards are largely determined and driven by developed countries, developing countries have a harder time meeting the SPS standards. These standards are increasingly used as a 'non-tariffs-barrier' (NTB) to agricultural imports from the developing countries as well as between the developed countries. It is also being imposed on developing countries through national measures and regulations which are harming and undermining small producers and farmers who find these standards difficult to meet.

**TBT** - The Agreement on Technical Barriers to Trade (TBT) largely focuses on non-tariff measures that a country can or cannot implement. These measures can range from any kinds of regulations, standards, testing and certification procedures whether around food safety, the environment, etc., do not create unnecessary obstacles towards trade. Like the criticism on SPS, these standards are often used to prevent imports from the developing countries as well as between the developed countries, while imposing and restricting on the domestic policy spaces, especially of developing countries.

**Plurilateral Agreements or Initiatives** - WTO Plurilateral initiatives are discussions at the WTO in which only a subset of Members is participating. They can aim to create new rules, secure mutual liberalisation of tariffs, create a new process or launch a conversation on new issues. They cover areas such as electronic commerce, investment facilitation, and even the intersection of gender and trade. Such initiatives are not always without controversy, which is why it does not include all WTO members. In some cases,



some WTO members also feel that the initiatives or issues being discussed do not fit under the scope or mandate of the WTO. The plurilateral initiatives are different from the WTO agreements and decisions because only a group of WTO members are involved and participating in the negotiations and discussions. But these initiatives and agreements are also dangerous, as it can sometimes get pushed later as a new issue to be negotiated, become one of the agreements of the WTO, or form part of other bilateral and plurilateral agreements outside of the WTO.

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*Above are just a select core WTO agreements that is the focus of this brief. These WTO trade agreements are the foundations on which all other trade agreements, including those negotiated outside of the WTO such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), the Regional Economic Partnership (RCEP), and bilateral trade and investment agreements, etc. All of the newer trade agreements would need to use WTO trade rules as a starting point - they cannot lower it and can only either meet or go beyond existing WTO rules. This highlights the importance of continuously challenging the existing WTO rules and agreements, even as more and more trade negotiations continue to take place outside of it. There are also continuous efforts from wealthy and developed countries to multilateralise the WTO Plus rules that they have won in other bilateral, plurilateral and regional trade agreements in the WTO.*



# Glossary

**Trade and investment agreements** between countries can be broadly categorised into 3 types of agreements - bilateral, plurilateral and multilateral agreements. Bilateral agreements refers to agreement between either 2 countries, 2 blocs of countries (such as the EU) or between a bloc of countries and another country. Plurilateral agreement is an agreement between more than two countries, but not a great many, which would be multilateral agreement. In the context of the WTO, plurilateral agreements are agreements in which member countries would be given the choice to agree to new rules on a voluntary basis. While multilateral agreements of the WTO are agreements in which all WTO members are party to.

**Regional trade agreements** are usually a type of plurilateral agreements, in which member countries voluntarily enter in the negotiations and become party to the agreement. These more than 2 countries would usually come together through regionalism which can be defined by geographical proximities, regional identities or some other regional commonalities. The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) Agreement is one such example of a handful of Asia-Pacific countries coming together with other countries across the Pacific ocean.

**Asymmetrical power** refers to the relationship between 2 parties (individuals, countries, etc.) in which one, the more powerful party, has control over the outcome for the other less powerful party, while the less powerful party does not have the same control.

Agribusinesses is a combination of the words "agriculture" and "business" and refers to any business related to agricultural and agricultural-related commercial activities.

**Competitive advantage** refers to a company's ability to differentiate itself and outperform its competitors. Comparative advantage is how a business lowers costs to gain advantage over its competitors.

**Customs valuation** is a process where the custom authority of a country would assign monetary value on goods or services that are being imported or exported. This monetary value then helps the custom authority determine if or any custom duties would be imposed on the goods and services being imported and exported.

**Dumping** is the export of a product that is being sold at a lower price in a foreign market than the price that the product would be charged in its local or domestic market. Anti-dumping measures usually refers to the measures (such as tariffs) which the government importing or receiving the lower priced products can impose on the products so that it is not unfair to its own local or domestic producers and products.

**Food sovereignty** is the peoples' response to claim back their lands and resources to ensure the availability and accessibility of culturally acceptable, adequate, safe and nutritious food for communities and nations. It also includes the freedom and power of the people and their communities to assert and realise the right to food and to produce food, and fight the power of the corporations and other forces that destroy people's food production systems through trade, investment and other policies and means.

**Global value chains (GVC)** refers to a situation where different stages of the production or manufacturing process are located across different countries.

**Labour intensive** refers to a process or industry that requires a large amount of labour to produce its goods or services.

**Monopoly** is defined as a market structure where a single seller or producer has a dominant position in an industry or a sector. In a monopoly market, the seller faces no competition, as they are the sole seller of goods with no close alternatives or substitutes.

**Multinational** refers to a corporation that has assets, factories or manufacturing plants in one or more countries, other than the home country, and has a centralised office where its global management is coordinated. Transnational refers to a corporation which operates in multiple other countries, other than the home country, and does not have a centralised management system.

**Multilateralism, bilateralism and unilateralism** are complex and contested concepts related to international relations. Some scholars define each concept through quantities - unilateralism is based on one state, bilateralism is based on two, and multilateralism has three or more states.<sup>17</sup> The majority of scholars, however, would define it by quality and characteristics - suggesting that in order for anything to be considered multilateralism, favouritism and exceptionalism cannot factor into the decision-making process. Public good must be the main concern, and everyone must be held to the established rules so that a more powerful nation does not get to be treated differently or preferentially on the international scene. In brief, multilateralism opposes discriminatory policies and norms in favour of collective decision-making for public goods with no exceptions for powerful states.<sup>18</sup>

**Patriarchy or patriarchal beliefs** is the overarching belief that men have ascendancy and power over women's lives.

A **subsidy** is a direct or indirect payment to individuals or companies, usually in the form of a cash payment from the government or a targeted tax cut.

**Technical barriers to trade (TBT)** is any regulation, standard or procedure that could make exporting goods to another country more difficult. They usually consist of non-tariffs barriers (NTB), meaning any other types of regulation, standard or procedure that are not tariffs.

Under the WTO trade rules, if one country adopts a trade policy measure or takes actions that is considered to be a violation of WTO rules, other WTO members can take action on said member through the **WTO dispute settlement system**. Under the system, members taking action can request the establishment of a panel to settle the dispute. The panel will issue a report, which can subsequently be appealed before the WTO's Appellate Body on questions of WTO law.

<sup>17</sup> See for example: Robert E Keohane, Multilateralism: An Agenda for Research (1990), International Journal, 45(4), 731-764. doi:10.2307/40202705.

<sup>18</sup> See for example: John Ruggie, Multilateralism: The anatomy of an institution (1992), <https://scholar.harvard.edu/files/john-ruggie/files/multilateralism.pdf> International Organization, 46(3), Pp. 561-598.





## About APWLD

The Asia Pacific Forum on Women, Law and Development (APWLD) is the region's leading network of feminist and women's rights organisations and individual activists. For 35 years, we have been carrying out advocacy, activism and movement-building to advance women's human rights and Development Justice.

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