

TRADE AND GENDER:

WHAT DOES THE NEW TPPA MEAN FOR WOMEN IN DEVELOPING COUNTRIES?



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**Trade and Gender:
What Does the New TPPA Mean for Women in Developing Countries?**

Dhivya Kanagasingam

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LIST OF ACRONYMS

ASEAN	Association of Southeast Asian Nations
BIT	Bilateral investment treaty
CPTPP	The Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSO	Civil society organisation
EFTA	European Free Trade Association
EU	European Union
FDI	Foreign direct investment
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
ICN	India Committee of the Netherlands
IAA	International Investment Agreement
ILO	International Labour Organisation
IMF	International Monetary Fund
IP	Intellectual property
ISDS	Investor-state dispute settlement
ITO	International Trade Organisation
MNC	Multinational corporation
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NTM	Non-tariff measure
PCB	Polychlorinated biphenyl
PTIA	Preferential Trade and Investment Agreement
SOE	State-owned enterprise
SOMO	The Centre for Research on Multinational Corporations
TPPA	Trans-Pacific Partnership Agreement
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WHO	World Health Organization
WTO	World Trade Organization

GLOSSARY

BILATERAL INVESTMENT TREATY (BIT): An agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state.

BRETTON WOODS AGREEMENT: Delegates from 44 countries met to create a new international monetary system to ensure a foreign exchange rate system, prevent competitive devaluation, and promote economic growth.

COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP): Also known as TPP11, is a signed trade agreement pending ratification by Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

DEFEMINISATION: The removal of feminine qualities or characteristics.

DOMESTIC SUBSIDY: Also known as government aid, is given to support an industry that is struggling against international competition that has lowered prices.

EUROPEAN FREE TRADE ASSOCIATION (EFTA): A regional trade organisation and free trade area consisting of four European states: Iceland, Liechtenstein, Norway, and Switzerland. The organisation operates in parallel with the European Union (EU).

EUROPEAN UNION (EU): A political and economic union of 28 member states that are located primarily in Europe. The EU has developed as an internal single market through a standardised system of laws that apply in all member states in those matters where members have agreed to act as one.

FOREIGN DIRECT INVESTMENT (FDI): An investment in the form of a controlling ownership in a business in one country by an entity based in another country. It is distinguished from foreign portfolio investment by a notion of direct control.

FOOD SECURITY: The condition in which all people, at all times, have physical, social, and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preference for an active and healthy life.

FOOD SOVEREIGNTY: The right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.

FREE MARKET ECONOMICS: An idealised system in which the prices for goods and services are determined by the open market and by

consumers. In a free market, the laws and forces of supply and demand are free from any intervention by a government, a price-setting monopoly, or other authorities.

FREE-TRADE: International trade left to its natural course without tariffs, quotas, or other restrictions.

GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT): A legal agreement between many countries that aimed to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas.

GLOBALISATION: The process of interaction and integration between people, companies, and governments worldwide.

INTELLECTUAL PROPERTY (IP): Intangible property that is the result of creativity, such as patents, copyrights, and others.

INTERNATIONAL INVESTMENT AGREEMENT (IIA): A type of treaty between countries that addresses issues relevant to cross-border investments, usually for the purpose of protection, promotion, and liberalisation of such investments.

INTERNATIONAL LABOUR ORGANIZATION (ILO): A United Nations agency dealing with labour issues, particularly international labour standards, social protection, and work opportunities for all.

INTERNATIONAL MONETARY FUND (IMF): An international organisation formed at the 1945 Bretton Woods Conference which aims to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.

INTERNATIONAL TRADE ORGANIZATION (ITO): The proposed name for the international institution for the regulation of trade. The effort to form the organisation eventually failed due to lack of approval by the US Congress.

INVESTOR-STATE DISPUTE SETTLEMENT (ISDS): Also known as investment court system (ICS), an instrument of public international law through which investors can sue countries for alleged discriminatory practices. It often takes place under the auspices of international arbitral tribunals governed by different institutions, such as the London Court of International Arbitration, the International Chamber of Commerce, the Hong Kong International Arbitration Centre, or the United Nations Commission on International Trade Law.

LAISSEZ-FAIRE: An economic system in which transactions between private parties are free from government intervention such as regulation, privileges, tariffs, and subsidies.

MINIMUM STANDARD OF TREATMENT: A norm of customary international law which governs the treatment of aliens, by providing for

a minimum set of principles which States, regardless of their domestic legislation and practices, must respect when dealing with foreign nationals and their property.

MULTINATIONAL CORPORATION (MNC): A corporation that has facilities and other assets in at least one country other than its home country.

NEO-LIBERALISM: A model of economics that supports fiscal austerity, deregulation, free trade, privatisation, and greatly reduced government spending. It is often associated with laissez-faire economics, a policy that prescribes a minimal amount of government interference in the economic issues of individuals and society.

NON-TARIFF MEASURES (NTMS): Policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities or prices, or both.

NORTH AMERICAN AGREEMENT ON LABOUR COOPERATION (NAALC): The side agreement of NAFTA under which each of the three countries that are party to NAFTA agree to enforce their own labour standards, and to strive to improve labour standards in their country.

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA): An agreement signed by Canada, Mexico, and the United States, creating a trilateral trade bloc in North America.

OPEN DOOR POLICY: A foreign affairs term used to refer to the United States policy established in the late 19th century and the early 20th century that would allow for a system of trade in China open to all countries equally.

PATENT: A patent is a form of intellectual property which gives its owner the right to exclude others from making, using, selling, and importing an invention for a period of time.

PERMANENT PEOPLES' TRIBUNAL (TPP): An international opinion tribunal founded in 1979 in Bologna, Italy. It is a grassroots initiative and the result of the need to create an independent tool for researching and analysing.

POLYCHLORINATED BIPHENYL (PCB): An organic chlorine compound that was once deployed as a dielectric and coolant fluid. It has environmental toxicity and is classified as a persistent organic pollutant.

PREFERENTIAL TRADE AND INVESTMENT AGREEMENTS (PTIAs): Broader economic agreements among countries that are concluded for the purpose of facilitating international trade and the transfer of factors of production across borders. Issues dealt in PTIAs include foreign investment, trade in goods and services, tariffs and non-tariff measures, customs procedures, specific provisions dealing with selected sectors, competition, intellectual property, temporary entry of people, and many more.

RATIFICATION: The international act in which a state indicates its consent to be bound to a treaty or agreement.

SOCIAL DEMOCRACY: A political, social, and economic ideology that supports economic and social interventions to promote social justice within the framework of a liberal democratic polity and capitalist economy.

STATE: A nation or territory considered as an organised political community under one government.

STATE-OWNED ENTERPRISE (SOE): A business enterprise where the state has significant control through full, majority, or significant minority ownership.

TARIFFS: A tax or duty to be paid on a particular class of imports or exports.

TRADE AGREEMENTS: Wide-ranging taxes, tariff, and trade treaty between two or more countries.

TRADE LIBERALISATION: The removal or reduction of restrictions or barriers on the free exchange of goods between nations. This includes the removal or reduction of tariff obstacles, such as duties and surcharges, and of non-tariff obstacles, such as licensing rules, quotas, and other requirements.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS): An international legal agreement between all member nations of the WTO which sets down minimum standards for the regulation by national governments of many forms of intellectual property as applied to nationals of other WTO member nations.

TRADE-RELATED INVESTMENT MEASURES (TRIMS): Rules that apply to the domestic regulations a country applies to foreign investors often as part of an industrial policy. It is one of the four principal legal agreements of the WTO trade treaty.

TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPPA): A defunct proposed trade agreement among Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States, which was not ratified and could not enter into force after the United States withdrew its signature.

WORLD BANK: An international financial institution that provides loans to countries of the world for capital projects. It comprises two institutions: the International Bank for Reconstructions and Development (IBRD) and the International Development Association (IDA).

WORLD TRADE ORGANIZATION (WTO): An intergovernmental organisation that regulates international trade replacing the GATT. It is the largest international economic organisation in the world.

TRADE AND GENDER: WHAT DOES THE CPTPP MEAN FOR WOMEN IN DEVELOPING COUNTRIES?

Dhivya Kanagasingam

Introduction

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was born from the ashes of the Trans-Pacific Partnership Agreement (TPPA), which fell apart when President Donald Trump withdrew the United States from the TPPA on his first day of office after winning the 2016 Presidential Elections.¹ The CPTPP, or TPPA-11 as it has been nicknamed, was signed on March 8, 2018 in Chile with the remaining original members of the TPPA bar the US: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. It will come into force when six of its signatories complete domestic ratification procedures, which could be as soon as the end of 2018.² The CPTPP text, which was released in February 2018, looks very similar to its parent TPPA text, with the suspension of 22 provisions. These suspended provisions only go so far as to slightly narrow the most controversial aspects of the TPPA related to investment, government procurement, intellectual property, and the investor-state dispute settlement amongst others;³ these will be immediately reinstated if the US re-joins the partnership, which is a likely probability.⁴

This paper comes at a critical time as more developing countries outside the partnership are looking to join the CPTPP.⁵ It aims to analyse the current literature to explore how the CPTPP will likely impact women in the partnerships' developing country members. Section 1 of this paper will briefly present a background on international trade, international investment, and trade liberalisation. Section 2 will look at gender and trade. Section 3 will explore more deeply the impacts of the CPTPP on developing countries and women by focusing on a

few key areas of interest: the economy, food security, labour, its effect on policy space, the consequences of intellectual property rights, and the environment. It will then in Section 4 recommend potential ways forward for developing States and other stakeholders to ensure that the rights of people in developing countries, especially women, are upheld in all the above context and spaces.

This paper comes at a critical time as more developing countries outside the partnership are looking to join the CPTPP.

The CPTPP focuses very little on the traditional aspects of trade in terms of goods and services, with most of its 30 chapters devoted to investment, government procurement, disciplines on state-owned enterprises, and intellectual property. When the agreement was still the TPPA, the negotiation process saw no public access and negligible space for civil society intervention. Public interest groups were alerted to the potential harms of the TPPA only as a result of leaked texts of some of the chapters; even these leaks did not often reflect the latest state of negotiations.⁶ On the other hand, 605⁷ corporate advisers representing 382⁸ corporations were allowed access to the text to protect their clients' interests. It is important to note that the individual economic resources of multinational corporations (MNCs) far exceed those of sovereign States⁹ and that their enormous collective power can very easily manipulate legal outcomes including trade agreements.¹⁰ In this environment, profit-driven agendas can quickly take precedence over public interest. One has to look no further than the insertion of the contentious Investor-

State Dispute Settlement (ISDS) mechanism, which investors can use to sue countries for alleged discriminatory practices, to concede this point. Even with the redrafted clauses relating to ISDS in the CPTPP, the mechanism still grants foreign investors extraordinary rights that have in the past, limited the ability of States to regulate and implement laws and policies in the interest of their citizens.¹¹

Developing countries in the partnership generally disliked the TPPA's chapters relating to procurement, state-owned enterprises (SOEs), and intellectual property (IP) as these restrict what policies can be retained and introduced at the domestic level; however, these were swallowed with the promise of significant potential economic gains. The economic gains of the CPTPP will only be about a third of what it would have been under the TPPA, which included the US,¹² reducing the economic benefit of the agreement substantially while maintaining similar potential consequences. Ratification of the CPTPP by States would result in them trading some of their sovereignty for the putative economic gains of trade liberalisation. In this exchange, States consequently lose "rights to regulate and to protect non-economic values and the principles that shape provisions of public services,"¹³ including public health. The consequential effects of this will be distributed differentially across different countries and their people. Developing countries are particularly vulnerable as they lack both financial capacity and resources available in richer developed countries to mitigate some of the costs that will arise from trade liberalisation.

While poverty and gender inequality are inextricably linked, this link is often over-simplified and under-problematised.

Despite the CPTPP incorporating provisions of internationally recognised labour and human rights obligations and environmental safeguards, similar provisions in past agreements, such as the North-American Free Trade Agreement (NAFTA), have had little effect in ensuring desired outcomes. The Mexican Chapter of the Permanent People's Tribunal (PPT)¹⁴ which aimed to document the impact of the past 20 years of NAFTA heard the testimony of economists and researchers who gave evidence of the increase in poverty, decrease in real wages, increasing dependence upon multinational banks and

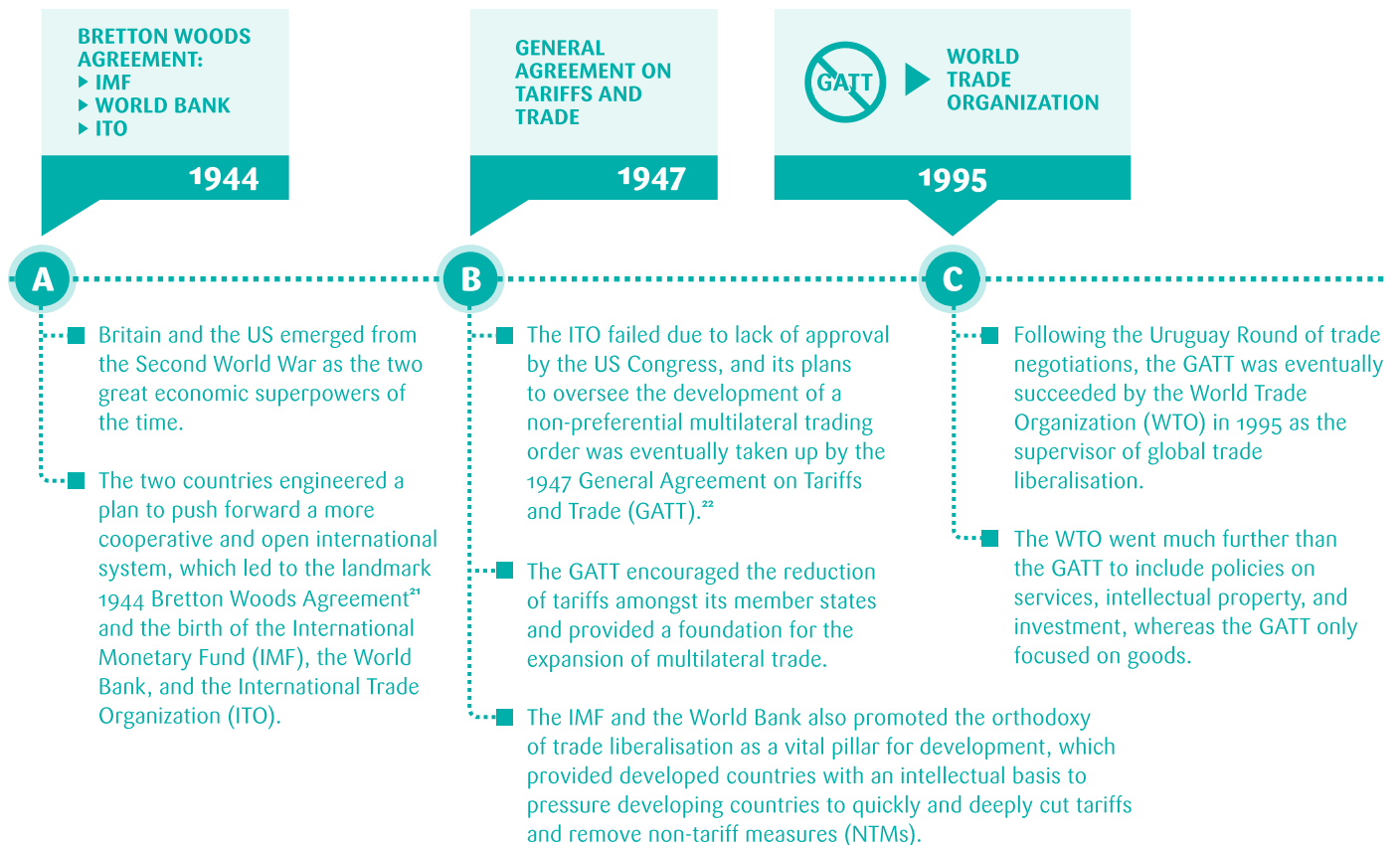
corporations, and increased human rights violations in Mexico since the NAFTA's implementation. It is not difficult to concede that the biggest losers of trade agreements within developing countries are marginalised groups, particularly women, who run the risk of being made more vulnerable under trade agreements such as the CPTPP.

Trade liberalisation alters the distribution of income between social groups and between women and men.¹⁵ While poverty and gender inequality are inextricably linked, this link is often over-simplified and under-problematised.¹⁶ The burden of poverty is already disproportionately borne by women, especially women from developing countries.¹⁷ Analysing the impacts of trade agreements on women in developing countries is therefore essential in ensuring that they do not further exacerbate existing gender inequalities and worsen women's economic and social status. However, not only will the CPTPP likely widen the economic inequality between men and women, it will also widen economic inequality between women; between those who can access the potential economic gains of the CPTPP and those who cannot. In latter sections of this paper, some of these groups are discussed: women farmers, women working in low-skilled employment in textile, manufacturing, and agriculture sectors, and women who rely on natural resources for sustenance such as rural and indigenous women. Due to the absence of gender-disaggregated data, it is often difficult to disentangle the gender-differentiated effects of trade liberalisation,¹⁸ particularly on the above mentioned groups.

The lack of data often leads to gaps in policy guidance on gender in trade policies, which affects women at the macro, meso, and micro levels. At the macro level, gender gaps in market participation may narrow if the sectors that expand are more female-intensive than those that contract.¹⁹ At the meso level, public provisions of important social services that favour women might be undermined if the loss of public revenue through reductions in tariffs leads to cuts in such services. Finally, at the micro level, trade liberalisation may extend or reduce female control over household spending, depending on whether trade liberalisation creates or destroys sources of independent income for women.²⁰

Background: International Trade, International Investment, and Trade Liberalisation

HOW THE INTERNATIONAL MONETARY FUND, WORLD BANK, AND THE WORLD TRADE ORGANIZATION CAME INTO BEING



The role of investment, especially foreign direct investment (FDI), was highly important to developing countries at the turn of the 20th century. This was due to a number of factors, including the 1973 Oil Crisis, which dried up private lending from banks, reduced aid to developing countries due to recession in developed countries, the rise in Free Market Economics championed by US President Ronald Reagan and UK Prime Minister Margaret Thatcher, the acceptance of an Open Door Policy in China, and the collapse of the Soviet Union, which saw more States commit to Free Market Economics.²³ Developing countries began competing with each other for FDI, which was virtually the only capital available to fuel their

development.²⁴ This competition allowed developed countries to dictate the standards of treatment of foreign investment and its enforcement through International Investments Agreements (IIAs), also known as Bilateral Investment Treaties (BITs). In fact, the number of IIAs have tripled in just the past two decades. It was argued by developed countries that without IIAs, foreign investment from companies and citizens in their States were at risk to regulatory caprice and expropriation. These vulnerabilities were particularly pronounced during decolonisation, which saw a wave of expropriation of foreign affiliates and their assets²⁵ by newly independent States who were restless for the ending of economic dominance from

It has now been acknowledged by many that developing countries require certain degrees of protection to enable local firms and farms to compete in their domestic markets, similar to how now-developed countries arranged their own trade and industrial policies when they were at the development stage.

former colonial powers. In reality, commitments undertaken in the WTO on Trade-Related Investment Measures (TRIMs) and self-inflicted BITs, laid the groundwork to incapacitate developing country's ability to impose conditions on FDI.²⁶

Today, we are seeing a new wave of investment and trade agreements in the form of Preferential Trade and Investment Agreements (PTIAs), which include market-access trade provisions, in addition to comprehensive post-establishment investment protection, which includes the controversial investor-state dispute settlements (ISDS) mechanism. This means that, now, investment rules are no longer exclusively confined in narrow, single-issue BITs but embedded in PTIAs that not only regulate trade and investment but also regulate their interaction with common concerns such as environmental protection and labour standards.²⁷ Recent examples of these PTIAs include the signed CPTPP and the Transatlantic Trade and Investment Partnership (TTIP), where negotiation talks are set to reopen. The North American Free Trade Agreement (NAFTA), the European Union (EU), and the European Free Trade Association (EFTA) are other examples of PTIAs.²⁸ The importance of economic growth to a country's development drives much of the allure around PTIAs, especially with developing States, with the promise of greater market access and increased inflow of FDI. However, looking back at the effectiveness of the IIA regime and its correlation to the inflow of FDI over the past six decades, research has found the relationship to be inconclusive.²⁹ For example, while Brazil is one of the top 10 recipients of FDI amongst developing countries,³⁰ it has never signed an investment agreement. In addition, what is generally known and reported as FDI contains speculative components and destabilising impulses which could negatively impact developing countries.³¹ This is not to say FDI may not offer any benefits to developing countries, however,

policies in the host countries play a determining role on the impact of FDI which is severely limited under PTIAs. A laissez-faire approach could, in fact, yield more harm than good.³²

In terms of trade, rapid liberalisation has led to import surges in many developing countries, which in turn has had adverse effects on local industrial and agriculture sectors, as well as on the balance of payments and debt position.³³ It has now been acknowledged by many that developing countries require certain degrees of protection to enable local firms and farms to compete in their domestic markets, similar to how now-developed countries arranged their own trade and industrial policies when they were at the development stage.³⁴ In fact, Britain and the USA, two countries that are supposed to have reached the summit of the world economy through free-market, free-trade policy, are actually the ones that most aggressively used protection and subsidies for industrial development.³⁵

It is evident that there are significant short-term costs when signing onto agreements, such as PTIAs, which are distributed differentially across various economies, sectors, and societal groups.³⁶ These need to be carefully considered during the negotiation stage of trade agreements where substantive changes can be made, without which detrimental impacts to vulnerable groups are inevitable.

Trade and Gender



Trade policymakers and practitioners are often puzzled when questioned about the importance of gender in trade policy with many holding preconceptions that trade is gender-neutral.³⁷ Yet, the gender-differentiated effects of trade liberalisation are widely acknowledged by people who study it.³⁸ Trade treaties generate economic winners and have the potential to greatly enhance the incomes of those with low socioeconomic status, but it also creates losers of which a disproportionate number are women.³⁹ Although trade liberalisation has translated into more jobs and better connections to markets for many women—an example being in Mexico, where research on the effects of the North American Free Trade Agreements (NAFTA) found that both between industry and within industry shifts favoured women⁴⁰—their competitive advantage lies in their lower wage and inferior working conditions. Indeed, much of

women’s trade-related gains in employment have occurred in the informal sector, where work is characterised by long hours, insecure employment, unhealthy conditions, low wages, and, often, sexual harassment.⁴¹

These realities make it difficult, if not impossible, for women farmers to survive and compete in a free-trade world.

In many developing countries, the agriculture sector is highly gender-sensitive. In India, for example, the sector engages 75.38% of all female workers.⁴² Although the agriculture sector is an easy mainstay for women, they are often confined to low-end, low-paying jobs like sowing, transplanting, weeding, and harvesting.⁴³ In India’s agriculture sector, not only do women earn only 70% of men’s wages, they also bear much of the unpaid family labour.⁴⁴ Generally, food crops produced for household consumption and for the local and domestic market are cultivated by women. Women, particularly in the South Asian context, are often restricted to local markets due to the socio-cultural setup, and domestic and social compulsions that tie women to their homes.⁴⁵ Commercial or industrialised crops, such as cotton or sugar, which are cultivated on a larger scale for direct export or further processing, are cultivated by men.⁴⁶ These realities make it difficult, if not impossible, for women farmers to survive and compete in a free-trade world.⁴⁷

Fundamental problems in the free-trade paradigm have led to huge surpluses and deficits amongst countries with unequal trade capacity and unequal trade, economic, and social policies,⁴⁸ contributing to economic downturns. During times of economic downturns, the impact on women is also generally worse. For example, during the East Asian Crisis, although unemployment in the Philippines affected more men, women’s wages fell more than men’s.⁴⁹ Lim asserts that “at a time when women were forced to shoulder greater domestic care duties, their working hours as wage earners also increased relative to men. One central coping strategy during the crisis was to increase the working hours of women, leading to more ‘idleness’ for men due to unemployment, underemployment, and shorter working hours.”⁵⁰

Trade liberalisation has also led to the persistence and widening of wage and occupational gaps and job insecurity, which has exacerbated existing gender inequalities and worsened women’s

economic and social status. For example, Levinshon’s⁵¹ analysis of trade liberalisation in Chile found that gross job relocation rates were often over twice as high for women than for men. In addition, as firms become more mobile through globalisation and can move from one country to another, the threat of movement can exert downward pressure on low-skilled workers, which are disproportionately comprised of women.⁵² Employment segregation by gender has also emerged in new industries and occupations as firms move up the value chain, an example being in East Asia, which has observed a defeminisation of the manufacturing workforce when this occurred. The decline in the demand for women’s labour appears as export production is restructured and becomes technologised where more specialised skills are required. This often translates into an increase in the demand for male labour and a reduction in female labour.⁵³

Effects of the CPTPP on Developing Countries and Women



ECONOMY

When the CPTPP was still the TPPA, several analyses attempted to highlight its potential advantages and risks, which required making assumptions about how economies would adjust to external shocks. The standard models, however, assume full employment and invariant income distribution, thus ruling out the core risks of trade and financial liberalisation.⁵⁴ In Malaysia, for example, the common emphasis on exports in these cost-benefit studies are misleading. The globalisation of value chains has increasingly led to production processes involving multiple countries. Higher exports alone cannot be assumed to increase a county’s income; only exports with a relatively high content of domestic value-added can.⁵⁵ Based on this, the effects of the previous TPPA and of the current CPTPP on Malaysia are estimated to be generally negative.⁵⁶ Overall, the benefits of the partnership seem to be skewed in favour of richer, developed countries, which will likely also observe the largest increase in domestic value-added export. When the TPPA was being finalised, economists believed that the biggest winners of the agreement would ultimately be multinational corporations and this looks to remain unchanged under the CPTPP.⁵⁷

The economic impact of the CPTPP will also widen inequality. In the context of NAFTA, research has found that cheaper access to US imports reduced the price of higher quality products in Mexican cities but at the same time led to a significant increase in Mexican real income inequality due to differences in cost of living inflation between rich and poor households. Despite the CPTPP supporting the trend toward global economic integration, which has the potential to substantially reduce poverty in the long run, the adjustments can be expected to be costly with the burden falling disproportionately on the poor.⁵⁸ Despite the CPTPP presenting opportunities to new markets, they are limited to those who have access to them. Women will be the last to access these opportunities owing to the gender division of labour, inequity of opportunities such as unequal access to education and health services, and gender-based differences in ownership and control over land, credit, and production and marketing knowledge.⁵⁹ It is likely the CPTPP will only exacerbate income inequality between men and women prevalent in most of the partnerships' countries.⁶⁰

FOOD SECURITY

While the triple global crises of high and volatile food prices, climate change, and financial turmoil have heightened public scrutiny of the current economic order,⁶¹ their intersecting impact on women remains unrecognised, let alone addressed. Domestic subsidies remain untouched in the CPTPP, despite having a distorting effect on global agriculture commodities. Wealthy nations are allowed to continue domestic subsidies on key crops, while preventing other nations from using trade barriers such as tariffs or local purchasing preferences to protect their own domestic agriculture industries.⁶² Proponents could argue this would improve food security by lowering food prices which could contribute to the improved nutritional status of vulnerable groups such as women and children.

While the triple global crises of high and volatile food prices, climate change, and financial turmoil have heightened public scrutiny of the current economic order, their intersecting impact on women remains unrecognised, let alone addressed.

However, an alternative argument could reason that the concentration of power among a few firms facilitated through the CPTPP leaves little room for small domestic firms that provide large sources of rural employment, impinging on the socioeconomic position of women who make up a large proportion of domestic agriculture workforce.

The work of Nobel Prize-winning economist Amartya Sen⁶³ has contributed to a broader understanding of food security and hunger. His work showed hunger to be deeply dependent on people's ability to access food, which is determined by their ability to obtain resources to produce it, buy it, or trade personal items for it. This nuanced understanding of food security highlights how access to food becomes precarious for many if their livelihoods and savings are threatened by changes in the economy.⁶⁴ Gender discrimination is a critical element to achieve adequate nutrition and food; for example, "in most parts of South Asia, there is a hierarchy in taking meals in the house, wherein adult men eat first, followed by younger men and boys and then the girls and women."⁶⁵ The CPTPP will likely further exacerbate this situation in contexts where gender discrimination already exists.

It is important to note that although food security and hunger are related, they are not the same. Just because a person is able to meet their daily calorie intake does not necessarily mean they are food secure; access to safe and nutritious food is also crucial. The developing world has experienced high rates of obesity, which is a form of malnutrition, for the same reasons as developed countries; these include changes in eating habits and physical activity patterns.⁶⁶ However, international trade has also rapidly saturated food markets with unhealthy food products, which have had a hand in causing alarmingly high rates of obesity and associated non-communicable diseases such as cardiovascular disease and diabetes in many developing countries.⁶⁷ Introducing food reforms, such as including nutrition disclosures, warnings on sugary drinks, identification of local products, and disclosure of GMO products can be impeded in the CPTPP's member countries as they are vulnerable to challenges as "technical barriers of trade."⁶⁸ This severely limits the governments' ability to respond to the growing health concerns in their respective countries.

Agriculture is an important engine of growth and poverty reduction. However, the sector has been underperforming in many countries due in part to women—who are a crucial

resource in agriculture and rural economy—facing constraints that reduce their productivity.⁶⁹ The rules on market access, tariffs, and subsidies restrict governments' ability to protect domestic agriculture production which is predominated by women, which threaten both women's food security and food sovereignty.⁷⁰ Women have a central role to play in boosting agricultural productivity and economic development, however, as emerging economies shift from subsistence to increasingly commercial agriculture ventures, few fully understand what women stand to lose and gain and what the implications on world hunger and poverty may be.⁷¹ Given the uncertainty regarding potential gain from trade liberalisation in agriculture, there is a need to strike a balance amongst efficiency objectives and other social goals, such as realisation of the right to food, securing farmer livelihoods, and ensuring environmental sustainability.

International trade has also rapidly saturated food markets with unhealthy food products, which have had a hand in causing alarmingly high rates of obesity and associated non-communicable diseases such as cardiovascular disease and diabetes in many developing countries.

LABOUR

One of the most contentious debates surrounding globalisation involves trade and workers' rights. Developing countries have long opposed efforts by the WTO and trade agreements such as the CPTPP in linking trade and labour standards. This is because a standard of protection that is appropriate in rich countries can impose an excessive burden on poor ones. The CPTPP's pronounced aims to improve labour standards across countries in the partnership also acts as a measure of protecting workers and businesses in richer countries from competition⁷² and runs counterintuitively to one of the key benefits seen by developing countries of entering the partnership, which is the increase in demand for labour in their respective countries. Although the provisions in the CPTPP seem promising, attaching labour standards to trade

agreements might run contrary to its intended effect and can make things worse for many workers in developing countries, especially if it raises the cost of labour above its level of productivity.⁷³ Imposition of labour standards that are too high on a country that is not ready for them will push more workers out of the "formal" sector, which tries to abide by such labour standards, into the "informal" sector, which sits outside the reach of government regulation, effectively exacerbating rather than diminishing existing inequality.⁷⁴

Under the CPTPP, all member countries are required to adopt and maintain the four principles of the 1998 ILO Declaration on Fundamental Principles and Rights at Work⁷⁵ into its respective domestic laws. These four principles are freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, and elimination of discrimination in respect of employment and occupation.

It is indeed paradoxical that agreements such as the CPTPP attempt to enforce labour standards when the agreements themselves expand a free trade model that has perpetuated labour rights violations around the world.⁷⁶ The standards themselves remain ineffective. The NAFTA labour provisions, known formally as the North American Agreement on Labour Cooperation (NAALC), was one of the most ambitious link between trade and labour rights ever implemented, and yet not one of the 23 complaints filed under NAALC alleging systematic workers' rights violations in the US, Canada, and Mexico has resulted in sanctions against an alleged labour rights violator.⁷⁷ Complaints have cited favouritism toward employer-controlled unions, firings for workers organising efforts, denial of collective bargaining rights, forced pregnancy testing, mistreatment of migrant workers, and life-threatening health and safety conditions.⁷⁸

It is indeed paradoxical that agreements such as the CPTPP attempt to enforce labour standards when the agreements themselves expand a free trade model that has perpetuated labour rights violations around the world.

There remains a need to recognise the entrenched inequalities women face in the labour market. Although trade liberalisation has increased employment opportunities for women, it has largely been confined to low-skilled sectors, such as textiles, manufacturing, and hospitality, which have been generally characterised by their inferior working conditions. For example, in the spinning mills of Tamil Nadu, India, women and young girls “are forced to work long hours for low wages...and are hardly ever allowed to leave the company compound.”⁷⁹ Trade liberalisation encourages emerging economies to maintain low wages for women to be competitive as “firms can always find another country with a pool of women workers whose bargaining power is weaker.”⁸⁰ Corporate auditing is not geared towards detecting forced labour and other labour rights infringements, and there is a near-complete lack of supply chain transparency,⁸¹ which further invisibilise vulnerable women and girls in the sector.

However, enforcing labour standards through trade agreements may not be the best way to tackle labour abuses. Countries, especially developing ones, must be given the policy space to determine solutions around vulnerable employment, such as poverty reduction, minimum wage, education, and social protection without the threat of trade sanctions that could undermine their efforts in doing so by taking away essential resources.

The majority of economically active women in developing countries are engaged in the informal sector and are therefore most exposed to potential exploitation.

The informal economy has grown in some countries faster than the formal economy. It denotes economic activity that takes place outside formally regulated structures where workers are “often self-employed, or, when they work as employees, do not possess a written labour contract, or do not have access to social security or health insurance.”⁸² In the last 20 years, a significant factor that has contributed to the growth of the informal sector has been the changing structure of transnational enterprise, facilitated through trade agreements such as the CPTPP. Cutting down on permanent full-time workers by decentralising and subcontracting, often to developing countries where labour is cheaper, not only reduces labour costs but also shifts responsibility for income,

benefits, and conditions onto the individual worker.⁸³ The modern enterprise is in essence an organiser of production carried out by others where the company’s real product is its label, design, and marketing. While companies are wholly dependent on a cascade of subcontracting operations, these are not part of the company’s formal structure, with wages and conditions deteriorating as one moves from the centre of operations to its periphery.⁸⁴ Nike for example does not regard itself as a manufacturer but a “research, development and marketing company.”⁸⁵

One way forward would be to look at how parts of the informal sector can be formalised. As of now, “more than 60% of the world’s employed population earn their livelihoods in the informal economy.”⁸⁶ Although informality exists in all countries regardless of the level of socio-economic development, it is more prevalent in developing countries.⁸⁷ It is still a widely accepted assumption that the informal sector is a transitory phenomenon which will in time be absorbed by the formal sector without the need for action by trade unions or the state.⁸⁸ However, experience from the last two decades show this to be unrealistic and only fosters complacency.⁸⁹

The majority of economically active women in developing countries are engaged in the informal sector and are therefore most exposed to potential exploitation. Formalising aspects of informal jobs requires a comprehensive yet context-specific approach. A major challenge is how to make informal employers comply with labour regulations and offer their employees formal benefits and protections.⁹⁰ It may be genuinely difficult for many employees to offer legal benefits and protections at their present level of operations and profits, which suggest that formalisation may need to be sequenced by first providing incentives and benefits to informal enterprises that register and then progressively enforcing compliance with taxation and labour regulation.⁹¹

It is however becoming more and more evident that trade unions need to evolve and be able to organise globally in order to meet the challenges of globalisation more effectively. Organising strategies between unions already organising informal sector workers, other informal sector associations, supportive NGOs, international trade union organisations, and international networks of informal sector workers must coordinate efforts and strategies towards pushing for common demands. As noted by Dan Gallin, “Organising in the informal sector takes place where the traditional labour movement intersects with the broader civil society.”⁹² The role of civil society is therefore paramount in realising this.

An underlying question around ISDS in trade agreements is whether its insertion really justifies the means.

INVESTOR-STATE DISPUTE SETTLEMENT AND POLICY SPACE

The Investment chapter of the CPTPP establishes a high standard of protection for foreign investors through provisions that include minimum standard of treatment, prohibition on expropriation without compensation, National and Most-Favoured Nation (MFN) treatment, and free transfer of funds relating to a covered investment. Investors will be able to enforce the Investment chapter by submitting a dispute to binding international arbitration called the investor-state dispute settlement (ISDS) mechanism. In the CPTPP, the scope of the ISDS mechanism has been slightly narrowed when compared to the TPPA. This is done in a number of ways. Firstly, the CPTPP suspends the ability of investors to bring ISDS claims for breaches of investment agreements or investment authorisations commonly adopted in the mining and oil sectors; however, ISDS is still available to investors in these sectors for contravention under CPTPP's protections.⁹³ Secondly, the CPTPP suspends the ability of investors in the financial service sector to bring ISDS claims for breaches of the minimum standard of treatment obligation. However, they still can bring ISDS claims for contravention under other provisions of the CPTPP.⁹⁴ Thirdly, after expressing concerns over the ISDS mechanism, Australia, Brunei, Malaysia, New Zealand, Peru, and Vietnam have agreed to exclude the use of ISDS between themselves; however, States and their investors in Canada, Chile, Japan, Mexico, and Singapore can still initiate ISDS proceedings against the aforementioned States.⁹⁵

An underlying question around ISDS in trade agreements is whether its insertion really justifies the means. Proponents of ISDS promulgate three core benefits: that it increases investment flows by providing investor security and protection, that it depoliticises investment disputes, and that it improves the rule of law in the host state.⁹⁶ None of these has conclusively been proven. After a decade of scholarly and practical inquiry, there is no strong evidence to suggest that investment agreements (IIAs), let alone ISDS, have an impact on investment flows.⁹⁷ There is also little evidence to suggest that ISDS frees a host state from diplomatic pressure and home states from having to advocate on behalf of their domestic

firms.⁹⁸ Lastly, contrary to strengthening national rule of law by reinforcing the importance of legal commitments, ISDS has been shown to weaken them.⁹⁹ The parallel legal system that ISDS creates subverts the role of domestic institutions and courts in their responsibility of developing, interpreting, and applying the law. By giving foreign investors access to ISDS, States have in effect limited their own domestic policy space and ceded aspects of their sovereign immunity.

ISDS CASE: PHILIP MORRIS ASIA AND AUSTRALIA

In 2011, the Australian government introduced strong tobacco control policies consistent with a substantial body of scientific literature and the WHO Framework Convention on Tobacco Control.¹⁰⁰ While several tobacco companies took their complaint to the High Court, Philip Morris Asia, a subsidiary of Philip Morris International, was able to bypass domestic legal avenues by launching an international arbitration through an ISDS clause found in a bilateral investment treaty signed between Australia and Hong Kong in the 1990s.¹⁰¹ Philip Morris Asia eventually lost its claim against Australia, but the case evoked an advocacy campaign against tobacco companies using trade agreements to limit public health policies. The CPTPP maintains the carve-out for tobacco as in TPPA, which would prevent tobacco companies from suing states for implementing domestic anti-tobacco laws, like in the case of Philip Morris Asia vs. Australia. The carve-out itself indicates that ISDS can be used by companies to fight reasonable legislations, but implies it is only a problem with tobacco, which is hardly the case.

The CPTPP follows a number of trade agreements that recognise intellectual property (IP) rights as protected investment and subject to its ISDS clause. The slow creep of corporate tentacles into the IP sphere has also limited States' capacity to set and enforce its own patent policy. This has facilitated boundary-pushing claims from companies that, again, limit a States' ability to act in the public interest. In the investor dispute by Eli Lilly against Canada, the US-based pharmaceutical company filed a suit under NAFTA's ISDS clause following the decision by Canada's Federal Court of Appeal that invalidated Eli Lilly's patent on Strattera, which is used to treat attention deficit disorder, and the psychiatric medicine Zyprexa.¹⁰²

The company demanded CAN\$100 million against Canada for indirect expropriation, but the suit was eventually dismissed by the Tribunal. Investors win less than 10% of indirect expropriation claims they bring against democratic countries,¹⁰³ so this outcome was somewhat unsurprising. However, it does suggest that cases are being brought forward through ISDS to achieve peripheral objectives.¹⁰⁴ For example, despite these cases rarely reaching a settlement, firms extend the length of the dispute and publicise the process to signal to other countries that a similar protracted dispute awaits them if they choose to regulate.¹⁰⁵

The slow creep of corporate tentacles into the IP sphere has also limited States' capacity to set and enforce its own patent policy.

There are also glaring areas of concern in the ISDS system regarding transparency and the partiality of arbitrators. In fact, just “three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament.”¹⁰⁶ Arbitrators are part of a small club of individuals, mostly men from developed countries, who have a financial stake in the existence of investment arbitration. It is also in their financial and professional interest to align their viewpoint to that of protecting investors' profits, in a system where only investors can sue and only States can be sued.¹⁰⁷

The high costs associated with investment arbitration, where legal fees alone can be as high as millions of dollars and awards in the hundreds of millions of dollars, is another concerning point for developing countries, many of which may not have the financial resources to defend these type of disputes. For example, the Czech Republic was forced to pay more than US\$350 million in compensation to a Dutch investor, which translated to a near-doubling of the country's public sector deficit.¹⁰⁸ The mere threat of an ISDS could be enough to dissuade States from implementing public interest laws and policies. Anything from forcing factories to use a scrubber on their chimneys to reduce carbon emissions and increasing minimum wage, to banning a toxic chemical could very easily be interpreted by investment arbitration as a form of indirect expropriation where States can then be held liable.

The UN Guiding Principles on Business and Human Rights notes that “the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so.”¹⁰⁹

The human rights of women, which have been consistently violated under free trade agreements,¹¹⁰ will likely continue under the CPTPP. The ISDS mechanism circumvents any constitutional and human rights guarantees at the national level. Access to justice mechanisms within States is a key principle of human rights and in many countries a constitutional guarantee, however, affected populations have no recourse to demand their rights against foreign investors in trade agreements such as the CPTPP. In this situation, groups of marginalised people who already struggle with multiple layers of oppression face additional barriers when attempting to realise their rights. For example, when Bear Creek, a Canadian mining company failed to implement provisions of the ILO Convention on Indigenous Peoples, to which Peru is a party and had ratified, Peru cancelled its licence following the company's failure to obtain informed consent from indigenous land owners.¹¹¹ The mining company subsequently launched an ISDS claim against Peru available through provisions of the Canada-Peru FTA, where the tribunal ordered the government of Peru to pay the mining company US\$18.2 million in compensation and US\$6 million in legal costs.¹¹²

CONSEQUENCES OF EXPANDED INTELLECTUAL PROPERTY RIGHTS

Patent law concerns itself with two domains, the public and the private, where it “plays the dual role in seeking to protect the public's right to retain knowledge already in the public domain and the investor's right to control whether and when he may patent his invention.”¹¹³ In the early years of patent laws in developed countries, the Patent Office, representing the interests of the public, would accept physical models as indisputable proof of prior invention. As the law evolved, patent specification or the art of textualising the invention into a comprehensible form soon replaced models, which introduced the “intellectual” element to intellectual property.¹¹⁴ This shifted the burden of proof from the inventor to the Patent Office who now had to prove lack of originality to refuse a patent. This placed an insurmountable burden on the Patent Office, an entity that was originally not expected to have expertise in new knowledge covered in patent applications,

which gave way to the grant of dubious and questionable patents.¹¹⁵

The rise of neoliberalism, with its emphasis on individual interests, has attempted to ostracise the public from patent law. Where once the public played an important part in determining the private rights granted by patents, powerful institutions such as the WTO have wrestled these away through the promotion of free trade, free markets, deregulation, and the removal of government interference.¹¹⁶ Social democracy on the other hand, with its public-centric goals, constantly tries to reinstate the public into patent law.¹¹⁷ The conflict between the two value systems within patent law are ongoing today within and among countries.

The insertion of IP chapters in free trade agreements is in itself incongruous as it involves bestowing monopolies, while at the same time claiming to be free-trade.

The US is an example of a patent system based on neo-liberalism where it has some of the highest forms of intellectual property protection in the world with strong domestic industries that rely on them. It is also one of the few net-exporters of IP and, as a result, receives greater benefits from heightened intellectual property protection around the world.¹¹⁸ Some of the most controversial provisions under the IP chapter of the TPPA hard-fought for by the US have been suspended in the CPTPP. These include granting patents on new uses of known products or inventions derived from plants, patent term adjustment for granting authority delays, and protection of undisclosed test or other data.¹¹⁹ However, suspension of these provisions does not equate to their removal and will be easily reinstated if or when the US decides to re-join the partnership. Even with the suspended provisions, the CPTPP strengthens monopolistic intellectual property rights (IPRs) beyond the already restrictive provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement of the WTO.

One of the common arguments used by proponents of heightened intellectual property protection is that it will result in economic growth and development by supporting nascent industries that rely on them¹²⁰ and through foreign direct investment.¹²¹ However, studies have shown that rapid economic growth is more often associated with weaker IP protection.¹²²

For example, countries like Brazil, China, and India have also seen high levels of FDI despite low levels of IP protection. For poorer countries to truly benefit from stronger IP rights, they have to gain relatively more patentable knowledge than richer countries.¹²³ This is a near-impossible task due to the existing technology gap between richer and poorer countries, which is only set to widen under the international IP regime promoted through TRIPS and the CPTPP. The rate at which developing countries can catch up to developed countries depends on both bridging the technology gap and on the social capacities within developing countries. Stronger patent systems that limit activities, such as imitating advanced technologies, reverse engineering advanced products, and applying technology disclosed in patents can be counterproductive to developing countries' catch-up efforts.¹²⁴

Each chapter of the CPTPP does not exist in a vacuum; concessions in some chapters have led to gains in others. However, it does raise the question of whether developing countries have adequately assessed the insertion of heightened IPRs when they seem to be unnecessary in promoting investment. The technology gap that is set to widen under the CPTPP will also lead to a development gap,¹²⁵ especially when higher protection in copyrighted materials and patented goods will raise the price of medicines, reduce access to education materials, and stunt innovation which will undoubtedly have detrimental effect on developing countries. It is interesting to note that the CPTPP's espoused need to "foster competition and open and effective markets" is conspicuously missing from the IP chapter.¹²⁶ The insertion of IP chapters in free trade agreements is in itself incongruous as it involves bestowing monopolies, while at the same time claiming to be free-trade.¹²⁷

In the CPTPP, in order to preserve US interest in the agreement, provisions where consensus could not be reached were merely suspended. For the IP chapter, these include:

- Patentability for inventions derived from plants;
- Patents for new uses, process, or methods of existing products (evergreening);
- Patent term adjustment for marketing and patent approval delays;
- Protection of undisclosed test data for chemical and biological drugs;
- The author/creator life +70-year copyright term;
- Legal liability and safe harbour provisions for internet service providers; and
- Protection of encryption, satellite programme and cable signals.¹²⁸

Notwithstanding the suspended provisions in the IP Chapter of the CPTPP, there remains glaring areas of concern. For example, the CPTPP still extends existing monopolies for no apparent gain. If copyright and patent laws exist for the purpose of motivating authors and inventors to produce more and better quality works and inventions, it makes little sense to apply any IP provision retrospectively, as it is quite impossible to motivate anyone to perform an act after it has already been done.¹²⁹ Developing countries are already grappling with IP standards imposed by TRIPS; the CPTPP with its strong enforcement arm through the ISDS will likely make this worse.

Proponents of strengthened IP protection say that patents encourage innovation and this promote the development of new and useful products, including new medicines. However, new drugs developed in recent years have been those that only service a market that can pay.¹³⁰ When India, “the last among the major developing countries producing pharmaceuticals,” finally brought “its patent system in full compliance with TRIPS,”¹³¹ the action consequently created a breach in the supply of cheap drugs to the developing world. This reduced the ability of developing countries to address prevalent public health problems in their countries. For example, “shortly after TRIPS was signed, newly developed, patented lifesaving HIV/AIDS drugs were priced out of reach for many...”¹³²

The adverse impact of expanded patent rights can also be observed in the diagnosis and treatment of breast cancer. In several countries, one company, Myriad, had patented the screening of BRAC1 and BRAC2 gene, where mutation of the genes are associated with significant increase risks of breast and ovarian cancer.¹³³ Despite a US Supreme Court ruling in June 2013 that stated naturally occurring DNA is not patentable, Myriad has filed suit after suit against other companies that offered genetic testing for the human BRAC1 and BRAC2 gene.¹³⁴

Even after compliance with TRIPS, there has been little evidence to suggest it has significantly increased drug research and development (R&D) in diseases and health issues predominantly found in developing countries.¹³⁵ An example is the lack of R&D in reproductive and maternal health.¹³⁶ This looks to remain unchanged if not, worsen in the CPTPP, ultimately affecting the lives and livelihoods of millions of people including women in the developing world.

ENVIRONMENT

The relationship between trade and environment is multifaceted. Increased economic growth associated with trade can result in increased consumption of non-renewable resources and greater environmental harm, such as increased air pollution and worsening water quality. On the other hand, economic growth can also generate the resources that provide a pathway for countries to transition out of polluting industries and into more service-orientated sectors that are less damaging to the environment.¹³⁷ This is especially pertinent to developing countries, as many still rely on natural resources for revenue and growth.

The CPTPP maintains the Environment chapter as in the TPPA, which make hollow promises to subdue the growing environmental concerns of our time.

Limited success by governments to diffuse sustainable energy technologies (SETs) have driven pathways for market-based approaches.¹³⁸ However, the commercialisation of environmental solutions has brought about other challenges. For example, of the 70 known ISDS cases brought against States in 2015, 20 were by investors in the renewable energy sector alone.¹³⁹ On the other hand, ISDS has also been used to limit States’ capacity to regulate for the environment. For example, when Canada attempted to ban the export of toxic PCB waste in accordance with the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal, they were sued by S.D. Meyers and was forced to pay Can\$6.05 million plus interest and compensation.¹⁴⁰

The CPTPP maintains the Environment chapter as in the TPPA, which make hollow promises to subdue the growing environmental concerns of our time. Although the CPTPP’s Environment chapter acknowledges environmental issues, such as ship pollution of the marine environment, depletion of the ozone layer, overfishing, conservation of flora and fauna, and that “transition to low emissions economy requires collective action,”¹⁴¹ it does little more than recognise them as issues. Climate change is not mentioned once in the entire agreement. In addition, the environmental commitments made through the vague “Cooperative Framework” available in the chapter contrast starkly with the very enforceable ISDS mechanism available to investors.

INTERNATIONAL ARBITRATION: CHEVRON V. ECUADOR

As recently as September 2018, an international tribunal found that the Republic of Ecuador violated a treaty with the US by allowing its court system to issue a US\$9.5 billion judgement against the company Chevron. Texaco, which was later acquired by Chevron had been accused for dumping toxic waste in local lakes and rivers of the Lago Agrio region for decades. This prompted some 30,000 local residents including five different Amazonian tribes to file a lawsuit against Texaco for the pollution which they say have led to health problems such as cancer and birth defects.¹⁴² Despite a court order directing Chevron to pay US\$18.2 billion where the verdict was later upheld in Ecuador's highest court but with a reduced amount of compensation to US\$9.5 billion, Chevron was able to circumvent justice through ISDS by arguing that "fraud and legal and procedural errors in the conduct of the underlying dispute"¹⁴³ were in breach of the US-Ecuador BIT.

The consequences of environmental degradation and climate change are felt disproportionately by women and girls as they primarily more dependent on natural resources. For example, in many developing countries, women's gender-ascribed roles and responsibilities include securing drinking water and collecting wood for energy and plants and herbs for medicine.¹⁴⁴ Women's and girls' vulnerabilities to gender-based violence can be exacerbated when these tasks take them further from home due to environmental degradation and climate change.¹⁴⁵ In addition to basic sustenance, the use of natural resources is also often a large proportion of the livelihood needs of women in rural communities.¹⁴⁶ As natural resources are degraded, it can jeopardise the already narrow economic opportunities available to women and increase their risk to poverty.¹⁴⁷ In the face of climate change, women also "face social, economic, and political barriers that limit their coping capacity."¹⁴⁸ Being a threat multiplier, climate change also exacerbates conflict and can increase violence against women.¹⁴⁹ The CPTPP will likely exacerbate the inequalities faced by women by prioritising economic gains over enforcing strong environmental policies that curb the degradation of natural resources and the effects of climate change.

Conclusion and Ways Forward

One of the biggest challenges that movements and CSOs are facing in relation to dealing with trade agreements such as the CPTPP is whether we should be working towards inserting gender, human rights, and environmental safeguards and considerations within them, or take a principled stance by rejecting them completely for propping a system that is so incompatible with our own; one that puts corporate interests above that of vulnerable people's. Would CSO consultations and added transparency really be able to veer the wave of trade regimes on a better more palatable path or will neoliberalism and corporate greed ensure it crashes onto us no matter what?

However, as we try to prepare and organise a response to the CPTPP, there are more threats looming on the horizon. The Regional Comprehensive Economic Partnership (RCEP) is set to bring even more developing countries into the free-trade fold with RCEP negotiations currently ongoing and will likely spill over into 2019. These include the ten member States of the Association of Southeast Asian Nations (ASEAN) and the six Asia-Pacific States with which ASEAN has existing trade agreements—Australia, China, India, Japan, and New Zealand.¹⁵⁰

If we choose to accept the current framework as part of our reality, working within it to ensure human rights may be an option. This could be done through advocating directly to business by developing a compelling case for the integration of human rights in businesses which could push the rights agenda forward. The "business case" for human rights argued by the Business Leaders Initiative on Human Rights together with the Office of the High Commissioner for Human Rights and the United Nations Global Compact explore the benefits in doing so which include: improved stakeholder relations, improved employee recruitment, retention and motivation, enhanced corporate reputation and brand image, and more sustainable business relationships with governments, business partners, and trade unions to name a few.¹⁵¹ Despite this being a strategic option which could be deployed in certain contexts, it is important to note that corporations are not people but legal constructs whose central purpose is to generate as much profits for shareholders as possible. Therefore governments can never be absolved in their duty in ensuring the rights of

the people they serve through laws that regulate corporate practices in ways that serve to protect the public interest.

As of now, there have been efforts by the Chair of the Intergovernmental Working Group toward a legally binding treaty to regulate transnational corporations (TNCs) and other business enterprise (OBE) with regards to human rights. However, a transformative shift in regulating corporations is required to end corporate abuse which necessitates a rearticulating of the way gender equality, women's human rights, and gender justice concerns are currently explored.¹⁵² The Feminists for a Binding Treaty Coalition highlights that such a binding treaty needs to “include strong and clear language to ensure non-discrimination on gender” and must “take into account the impact of corporate operations on gender roles and gender-based discrimination.”¹⁵³

In recent years, we have started to see the inclusion of trade and gender chapters in free trade agreements, an example being in the Canada-Chile FTA,¹⁵⁴ with other countries signalling interest in following suit. It remains to be seen if these chapters will really reap significant benefits for women, especially women from developing countries, when attempts with doing so with labour chapters have failed. More often than not, these chapters include very prettily worded purposive provisions with ambiguous and sometimes contradictory substantive provisions. As women's rights activist Sophie Hardefeldt argued, we must quickly realise “gendered exploitation is at the heart of the free trade agenda—a few tweaks to the edges won't make it feminist.”¹⁵⁵

As of now, although the CPTPP has been signed, not enough countries have ratified the agreement to make it come into force. There is therefore still room to make governments in the partnership aware of the dangers in doing so.

RECOMMENDATIONS

- States must prioritise gender equality, human rights, public health, and public interests over business interests; existing CPTPP partners should not ratify it and new partners should not join it.
- In future agreements, States must ensure the transparency of negotiations and guarantee meaningful consultation with those who will be affected, particularly women and their representatives.
- Governments should ensure workers protection through laws, regulation, and resource allocation toward trade unions and guilds to mitigate the consequences of globalisation.
- Allocate resources for impact assessments in trade and gender, including through disaggregated data, and on key areas such as agriculture, labour, food security, health, and the environment. These impact assessments should be conducted in a consultative manner and be available to the public. This is to ensure trade negotiations are evidence-based and provisions that negatively impact human rights and threaten sovereign policy space through ISDS clauses, public health through expanded IP rights, and others are rejected by developing countries.
- All existing trade agreements signed by developing countries should be reviewed and a proper post-facto impact assessment should be undertaken in the sectors mentioned above to determine the impact on women.
- Intergovernmental bodies need to underscore the importance of human rights frameworks and compliance to human rights standards in the globalised world. This should include minimum standards to which trade blocs should adhere.
- CSOs should build information and knowledge sharing on how trade agreements impacts their specific area of work and their constituencies. This includes working across movements toward building cohesive and comprehensive coalitions.
- CSOs and trade unions should work closely together to monitor stakeholders and key players within ministries and corporations, including policy shifts which may indicate further trade liberalisation.
- Trade unions should extend its field of activity to include the informal sector, and allocate resources toward organising non-traditional groups such as women, young people, and migrants.

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Trade and Gender:

What Does the New TPPA Mean for Women in Developing Countries?

ARROW is a regional and non-profit women's NGO based in Kuala Lumpur, Malaysia, and has consultative status with the Economic and Social Council of the United Nations. Established in 1993, it envisions an equal, just, and equitable world, where every woman enjoys her full sexual and reproductive rights. ARROW promotes and defends women's rights and needs, particularly in the areas of health and sexuality, and to reaffirm their agency to claim these rights.

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