

Notes

Trading for Equality: The Use of Legal Harmonization Requirements in European Union Association Agreements to Further Gender Equality

With the rise of the sustainable trade movement, greater scrutiny has been placed on the disparate impacts that trade has on women. As a result, gender-sensitive trade policy has become increasingly common, with countries such as Canada, Uruguay, and Chile calling for independent gender-focused chapters in free trade agreements. While many gender provisions in trade agreements remain couched in aspirational language, the trend towards more detailed, concrete commitments suggests the need for a mechanism of enforcement to motivate adherence and accountability to these commitments.

This Note examines whether legal harmonization requirements are effective as a tool to enforce gender equality commitments in trade agreements. In particular, the piece focuses on the use of harmonization provisions in individual Association Agreements signed between the European Union and Moldova, Georgia, and Ukraine. The Agreements require the partner nations to harmonize domestic legislation with select European Union gender equality and antidiscrimination directives. The analysis finds that the harmonization requirements are only moderately successful in influencing the adoption of gender equality and antidiscrimination legislation. Nevertheless, legal harmonization may still play a valuable role in mainstreaming gender as a key part of trade negotiations, paving the way for gender-sensitive trade policy in years to come.

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INTRODUCTION

The thriving globalization of the last few decades has given rise to better living standards, economic growth, and poverty reduction in many nations.¹ During this period, the prevailing belief was that the gains of increased trade, such as higher levels of productivity and expanded employment opportunities, would be shared gains for all.² However, as domestic inequalities widen³ and rallying cries of “trade for all!” echo throughout the global arena,⁴ globalization and international trade have drawn increasing scrutiny for leaving too many behind.⁵ Among those left behind are many women.⁶ While open markets have allowed for greater employment opportunities, women still encounter limited job quality, wages, and skill development—despite increasing trade and globalization.⁷ This disparate impact is driven by the fact that women tend to work in different sectors than men,⁸ and women are often employed in industries that are less resilient to market shocks resulting from trade liberalization.⁹

1. Valentin F. Lang & Marina Mendes Tavares, *The Distribution Gains from Globalization* 4 (Int’l Monetary Fund, Working Paper No. WP/18/54, 2018), <https://www.imf.org/en/Publications/WP/Issues/2018/03/13/The-Distribution-of-Gains-from-Globalization-45722> [<https://perma.cc/XXV2-DNLT>].

2. Policy Brief, U.N. Conf. on Trade & Dev., *The New Way of Addressing Gender Equality Issues in Trade Agreements: Is It a True Revolution?* 1, UNCTAD Policy Brief PB/2017/2 (No. 53) (Oct. 2017) [hereinafter *Gender Equality in Trade*].

3. See Lang & Tavares, *supra* note 1, at 4.

4. Lauren Kyger, *Should Women Have Their Own Provisions in Free Trade Agreements?*, TRADEVISTAS (June 6, 2019), <https://tradevistas.org/should-women-have-own-provisions-free-trade-agreements> [<https://perma.cc/7XZ5-F4BT>].

5. *Gender Equality in Trade*, *supra* note 2.

6. Simonetta Zarrilli, *International Trade Is at Risk of Leaving Women Behind*, CTR. FOR INT’L GOVERNANCE INNOVATION (Apr. 10, 2018), <https://www.cigionline.org/articles/international-trade-risk-leaving-women-behind> [<https://perma.cc/TF2B-E3DZ>].

7. *Id.*

8. Elina Viilup, *The EU’s Trade Policy: From Gender-Blind to Gender-Sensitive* 4 (Eur. Parliament Directorate Gen. for External Pol’y, Working Paper No. 2015_194, 2015), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/549058/EXPO_IDA\(2015\)549058_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/549058/EXPO_IDA(2015)549058_EN.pdf) [<https://perma.cc/6W22-62JD>].

9. Zarrilli, *supra* note 6. Zarrilli observes that women tend to work in sectors that are unable to react effectively to trade shocks. In manufacturing, women usually work in a limited number of sectors, and within these sectors, they perform functions linked to production, rather than to supervision or management. In agriculture, women typically occupy subsistence agriculture as producers or as members of family enterprises, and they are often unpaid. In services, women tend to be clustered in the low-skill segments of the sector, such as street

The relationship between trade and gender is often contradictory, and scholarship on the gendered implications of trade still remains limited.¹⁰ Nonetheless, there is a growing body of research indicating that, while trade liberalization has spurred development worldwide, in many countries it has failed to remedy gender biases present in job segregation and persistent wage inequality.¹¹ The principle underlying the gendered impacts of seemingly gender-neutral trade agreements is that trade does not exist in a “test-tube;”¹² rather, trade policies are introduced within the context of an already gendered economy.¹³ Given that trade policy is introduced within preexisting economic systems, and that these economic systems are shaped by gender differences, trade policy invariably has gendered effects.¹⁴

To combat the reinforcement of gender-based inequalities through trade, the inclusion of implicit and explicit gender provisions in trade agreements has become increasingly common.¹⁵ As of 2018, seventy-four trade agreements have been identified that explicitly mention gender.¹⁶ If provisions that refer implicitly to gender issues—such as human rights, sustainable development, and vulnerable groups—are considered, the figure rises to 243 agreements.¹⁷ These gender provisions are highly heterogeneous in scope¹⁸ and range from

vendors or informal cross-border traders. The ability of female workers to switch from one sector to another is hampered by skill level, limited access to productive resources, poverty, and social norms that dictate which jobs are suitable for women. *Id.*

10. Viilup, *supra* note 8, at 5.

11. *Id.* at 8; see also Jane Korinek, *Trade and Gender: Issues and Interactions* 10–11 (OECD, Trade Policy Papers No. 24, Nov. 23, 2005), https://read.oecd-ilibrary.org/trade/trade-and-gender_826133710302#page1 [<https://perma.cc/YPC8-V84W>].

12. BARB McLAREN, N.-S. INST. FREE TRADE AGREEMENTS IN PERU AND COLOMBIA: MONITORING FUTURE IMPACTS FROM A GENDER PERSPECTIVE 1 (Oct. 2012), <http://www.nsi-ins.ca/wp-content/uploads/2012/11/2012-Monitoring-Future-FTA-Impacts-from-a-Gender-Perspective.pdf> [<https://perma.cc/W4V3-P7PX>].

13. MARZIA FONTANA, EUR. PARL. DIRECTORATE GEN. INTERNAL POL’YS., GENDER EQUALITY IN TRADE AGREEMENTS 31–32 (2016), [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571388/IPOL_STU\(2016\)571388_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571388/IPOL_STU(2016)571388_EN.pdf) [<https://perma.cc/4TYB-XT9Y>].

14. *Id.* at 17.

15. José-Antonio Monteiro, *Gender-Related Provisions in Regional Trade Agreements* 7 (WTO Econ. Rsch. & Stat. Div., Working Paper No. ERSD-2018-15, 2018), https://www.wto.org/english/res_e/reser_e/ersd201815_e.htm [<https://perma.cc/Z53C-4EWQ>].

16. *Id.* at 2.

17. *Id.*

18. *Id.* at 12.

commitments to cooperate on gender-related issues¹⁹ to commitments to adopt gender equality laws, regulations, policies, and best practices.²⁰

As gender provisions in trade agreements have become more prevalent, the level of detail and attention afforded to these commitments has likewise increased.²¹ While “traditional” gender provisions affirmed broad commitments to gender equality and combatted discrimination, these provisions were typically couched in aspirational or “best endeavor” language.²² By contrast, more recent bilateral trade agreements—such as Canada–Chile,²³ Argentina–Chile,²⁴ and Canada–Israel²⁵—include dedicated gender chapters that reinforce traditional commitments to gender equality, while also outlining specific cooperation obligations and creating dedicated committees to aid in the implementation of the stated commitments.²⁶ Moreover, the Canada–Israel Agreement further renders the gender chapter enforceable under selected dispute settlement mechanisms.²⁷

With the increase in the prevalence of gender provisions, however, the question arises of how these provisions will be enforced.²⁸

19. *Id.* at 18.

20. *Id.* at 22.

21. *Id.* at 2.

22. Valerie Hughes, *Gender Chapters in Trade Agreements: Nice Rhetoric or Sound Policy?*, CTR. FOR INT’L GOVERNANCE INNOVATION (Oct. 9, 2019), <https://www.cigionline.org/articles/gender-chapters-trade-agreements-nice-rhetoric-or-sound-policy> [<https://perma.cc/EH5W-ECAZ>].

23. Agreement to Amend, in Respect of Investment and Trade and Gender, the Free Trade Agreement Between the Government of Canada and the Government of the Republic of Chile, Can.-Chile, art. III, ch. N *bis* (“Trade and Gender”), June 5, 2017, C.T.S. 2019/4 [hereinafter Amended Canada-Chile Trade Agreement].

24. Acuerdo Comercial Entre La República Argentina y La República de Chile [Trade Agreement Between the Argentine Republic and the Republic of Chile], Arg.-Chile, ch. 15 (“Género y Comercio”) [“Gender and Trade”], Feb. 11, 2017, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5682/download> [<https://perma.cc/Q2WL-B2GQ>].

25. Protocol Amending the Free Trade Agreement between the Government of Canada and the Government of the State of Israel, Can.-Isr., ch. 13 (“Trade and Gender”), May 28, 2018, C.T.S. 2019/23 [hereinafter Canada-Israel Trade Agreement].

26. Hughes, *supra* note 22.

27. Canada-Israel Trade Agreement, *supra* note 25, arts. 13.6, 19.

28. See Suzanne Zakaria, Note, *Fair Trade for Women, at Last: Using a Sanction Framework to Enforce Gender Equality Rights in Multilateral Trade Agreements*, 20 GEO. J. GENDER & L. 241, 241 (2018) (“[W]hile countries and multilateral groups have continuously pledged to abide by gender-inclusive trade standards, there is little incentive for members to

While many gender provisions entail merely aspirational language,²⁹ the trend towards more detailed, concrete commitments suggests the need for a mechanism to motivate adherence to these commitments.³⁰ Moreover, while there has been an increase in separate trade and gender chapters in agreements,³¹ these gender provisions remain “soft” commitments: They do not establish gender-related rules that the parties must comply with, nor specific gender thresholds to be reached.³² Such agreements do not seek the harmonization of gender-related legislation³³ and, outside of the Canada–Israel Agreement,³⁴ are exempt from any formal dispute-settlement mechanism which would render the commitments enforceable.³⁵

Recognizing the limited enforceability of voluntary gender provisions and that a persistent gender gap remains,³⁶ the European Union (EU) has adopted a strategy to “promote, in trade agreements, the commitment to adopt, maintain and implement gender equality laws, regulations and policies effectively, including the necessary active measures to promote gender equality and women empowerment at all levels.”³⁷ This strategy of encouraging the adoption of gender equality legislation has emerged in Association Agreements that the

comply if there is no enforcement forum available for aggrieved parties.”); *see also* CHARLES KENNY & MEGAN O’DONNELL, *CTR. FOR GLOB. DEV., MAKING GLOBAL TRADE MORE GENDER-INCLUSIVE 1* (2017), <https://www.cgdev.org/sites/default/files/making-global-trade-more-gender-inclusive.pdf> [<https://perma.cc/4VBE-T33J>] (“[I]nstituting follow-up enforcement mechanisms . . . can help to ensure trade benefits women and men more equally going forward.”).

29. Monteiro, *supra* note 15, at 32.

30. *See id.* at 32–33.

31. *Id.* at 14. As of 2018, six regional trade agreements on file with the WTO contain separate gender-related chapters: (1) the Treaty Establishing the Common Market for Eastern and Southern Africa (“COMESA”); (2) the Treaty for the Establishment of the East African Community (“EAC”); (3) the Canada–Chile Free Trade Agreement; (4) the Canada–Israel Free Trade Agreement; (5) the Argentina–Chile Free Trade Agreement; and (6) the Chile–Uruguay Free Trade Agreement. *Id.*; *see, e.g.*, Treaty Establishing the Common Market for Eastern and Southern Africa, ch. 23, Nov. 5, 1993, 2314 U.N.T.S. 41341; Treaty for the Establishment of the East African Community, ch. 22, Nov. 30, 1999, 2144 U.N.T.S. 37437; Amended Canada–Chile Trade Agreement, *supra* note 23, ch. N *bis*.

32. Zarrilli, *supra* note 6.

33. *Id.*

34. Canada–Israel Trade Agreement, *supra* note 25, arts. 13.6, 19.

35. Zarrilli, *supra* note 6; *see also* Hughes, *supra* note 22.

36. European Parliament Resolution of 13 March 2018 on Gender Equality in EU Trade Agreements No. 2017/2015(INI), 2019 O.J. (C 162) 15 [hereinafter Resolution on Gender Equality in EU Trade Agreements].

37. *Id.* at 21.

EU has signed with Georgia, Moldova, and Ukraine, establishing the Deep and Comprehensive Free Trade Area between the EU and the three European Partnership states.³⁸ These Agreements require the non-EU countries to gradually harmonize³⁹ their domestic legislation with the EU's antidiscrimination and gender equality legislation.⁴⁰

This Note seeks to understand the use of legal harmonization as an enforcement mechanism for gender provisions in the EU Association context. Part I lays out the increasing inclusion of gender provisions in trade agreements, the types of provisions drafted, and the context of gender equality in the broader movement towards more sustainable trade. Part II presents the challenge of the enforceability of

38. European Implementation Assessment: Association Agreements Between the EU and Moldova, Georgia, and Ukraine 11, EUR. PARL. DOC. PE 621.833 (2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621833/EPRS_STU\(2018\)621833_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621833/EPRS_STU(2018)621833_EN.pdf) [<https://perma.cc/82C6-7UUV>] [hereinafter *2018 Implementation Assessment for Moldova, Georgia, and Ukraine*].

39. A note on terminology: There is an ongoing debate regarding whether the process of aligning national legislation with EU standards and legislation should be referred to as “harmonization” or “approximation.” See Francesco Calderoni, *Chapter 1: Harmonization and Approximation Policies in the European Union*, in ORGANIZED CRIME LEGISLATION IN THE EUROPEAN UNION 1, 1 (2010) (outlining the “lively” debate surrounding the use of the term “harmonization” versus “approximation” in the EU criminal law context). The EU has used the term “approximation” in the Association Agreements to describe the obligation that the three partner nations have undertaken to bring national legislation in alignment with EU gender equality and antidiscrimination frameworks. See, e.g., Association Agreement Between the European Union and the European Atomic Energy Community and Their Member States, of the One Part, and the Republic of Moldova, of the Other Part, art. 37, annex III, June 27, 2014, O.J. L 260/4 [hereinafter *Moldova Association Agreement*]. However, in this Note, I have elected to instead employ the term “harmonization,” rather than “approximation,” to describe this gradual alignment process. I have two driving reasons for this choice of terminology. First, the term harmonization has been used more frequently than the term approximation in the trade literature that forms the basis for this Note, and thus it makes sense to build this Note from the terminology used in the prevailing literature. See, e.g., Monteiro, *supra* note 15, at 23 (discussing the harmonization of gender equality commitments); Gender Equality in Trade, *supra* note 2, at 4 (exploring the policy implications of harmonization); Zarrilli, *supra* note 6 (critiquing a lack of harmonization commitments in the Chile-Uruguay and Chile-Canada Free Trade Agreements). Second, the term approximation, as defined by Calderoni, refers to an exclusively EU process of eliminating differences between national systems of legislation to align with EU minimum standards. Calderoni, *supra* note 39, at 5–6. By contrast, harmonization is a much broader term; there are no specific processes for achieving harmonization, nor binding legal instruments with which countries must harmonize. *Id.* at 3. Given my intent for this Note to illuminate the use of harmonization as an enforcement mechanism generally, and not just within the EU-context, I opted to use the more flexible term “harmonization,” rather than the EU-specific term “approximation.”

40. HAIFA BENSALAM, CUTS INT'L, GENDER AS INCLUDED IN BILATERAL AND MULTI-PARTY TRADE AND INTEGRATION AGREEMENTS 16 (2017), <http://www.cuts-geneva.org/pdf/STUDY%20-%20Gender%20and%20Trade.pdf> [<https://perma.cc/3FZU-338F>].

these gender-specific commitments through various enforcement mechanisms, such as dispute settlement fora, the imposition of domestic economic sanctions, and legal harmonization requirements. Part II also introduces the Association Agreements signed between the EU and Georgia, Moldova, and Ukraine and presents the analytical framework for how these Agreements can be used to evaluate the efficacy of harmonization requirements as an enforcement mechanism for gender equality commitments. Finally, Part III explores the outcome of the Association Agreements signed between the EU and Georgia, Moldova, and Ukraine to examine whether harmonization of gender provisions was achieved and whether these commitments translate into real changes in equality. This study finds that moderate progress has been made towards meeting gender equality and antidiscrimination harmonization commitments. Reporting by the three partner nations suggests that Georgia is the sole country to have fulfilled the six harmonization commitments.⁴¹ However, despite limited success, harmonization mechanisms may still have played a valuable role in increasing the attention given to issues of gender equality in Ukraine and Moldova.⁴²

I. THE CHALLENGES OF GENDER INCLUSIVE TRADE

This Part surveys the ways in which gender-neutral trade policy may have differential impacts on women and drive gender-based inequality. Section I.C also provides an overview of different categories of gender commitments and their increasing prevalence in trade agreements.

While trade policy was once thought of as gender-neutral,⁴³ a growing body of research indicates that the impacts of trade are also gendered.⁴⁴ It is now understood that trade policies operate within the broader context of gendered economies⁴⁵ and, therefore, trade policy

41. See *infra* Part III.

42. *Id.*

43. FONTANA, *supra* note 13, at 31–32.

44. Viilup, *supra* note 8, at 5; see also U.N. Conf. on Trade & Dev., Assessment of Trade Policy Reform in Countries Acceding to the World Trade Organization: The Gender Dimension I, U.N. Doc. UNCTAD/DITC/TNCD/2010/6 (2010).

45. See Marzia Fontana, *The Gender Effects of Trade Liberalization in Developing Countries: A Review of the Literature*, in GENDER ASPECTS OF THE TRADE AND POVERTY NEXUS: A MACRO-MICRO APPROACH 25, 25 (Maurizio Bussolo & Rafael E. De Hoyos eds., 2009).

can reinforce preexisting inequalities.⁴⁶ These inequalities may be driven by gender norms, women's lower skill levels in certain industries, inequities in access to social and economic resources, and structural barriers to the employment of women (such as lack of affordable childcare options).⁴⁷ These impacts of trade on gender inequality loosely fall into three categories: (1) employment impacts; (2) consumption impacts; and (3) public provision impacts.⁴⁸

A. The Employment, Consumption, and Public Provision Impacts of Trade on Women

Beginning with the gendered employment impacts of trade, liberalization may lead to changes in the structure of production, as exporting sectors expand and other sectors that are sensitive to import competition contract.⁴⁹ The expansion and contraction of production sectors impacts not only the number of jobs offered, but also the quality of these jobs.⁵⁰ Further exposure to the world market through free trade systems may also impact the job security of the exporting

46. FONTANA, *supra* note 13, at 17; *see also Trade Deals Can Be a Tool for Women's Empowerment*, U.N. CONF. ON TRADE & DEV. (Mar. 29, 2019), <https://unctad.org/news/trade-deals-can-be-tool-womens-empowerment> [<https://perma.cc/7PWC-V7ZZ>] (observing that trade agreements, and any related gender chapters, do not operate in a vacuum); WORLD TRADE ORG., GENDER AWARE TRADE POLICY 1, 6, (2017), https://www.wto.org/english/news_e/news17_e/dgra_21jun17_e.pdf [<https://perma.cc/2HUV-SWLP>] (highlighting specific examples of how trade can impact women and women-owned enterprises).

47. Viilup, *supra* note 8, at 5.

48. FONTANA, *supra* note 13, at 18. Women are affected through these three channels as workers/producers, as consumers, and as citizens/taxpayers entitled to public services. *Id.*

49. *Id.* at 18. Changes in the size of exporting and importing sectors may affect the distribution of employment of different categories of workers, such as women, employed within impacted sectors. *Id.* Furthermore, existing gender inequality may determine comparative advantage and the sectors in which a country specializes in exporting. *See* Elissaios Papyrakis et al., *Gender and Trade Aspects of Labour Markets*, 48 J. DEV. STUD. 81, 82 (2010). Empirical research by Matthias Busse and Christian Spielmann indicate that there is a positive linkage between comparative advantage in labor-intensive goods and gender wage inequality. *See* Matthias Busse & Christian Spielmann, *Gender Inequality and Trade*, 14 REV. INT'L ECON. 362, 364 (2006). In essence, countries with a larger gender wage gap have a comparative advantage in exporting labor-intensive goods because the lower female wages allow for cost competitiveness on the international market. *Id.* at 362.

50. FONTANA, *supra* note 13, at 18. The economic volatility of exposure to the world markets "as well as possible trade-related changes in the regulatory environment are likely to affect the quality and security of employment differently for various groups of workers and producers, with small-scale producers and low-skill workers" often bearing the consequences. *Id.* Moreover, there is a high proportion of women in these disadvantaged job categories in many countries. *Id.*

employment opportunities.⁵¹ Women often bear the burden of the employment impact from trade because women tend to work in different sectors than men⁵²—sectors that are less able to react to market shocks resulting from trade liberalization⁵³—and because women frequently encounter difficulty switching sectors due to gender roles and norms.⁵⁴

Regarding consumption impacts, liberalization policies may also impact gender equality by altering the relative price of goods and services for households, as well as altering individual real incomes.⁵⁵ Because of “prevailing norms” in certain communities that assign to women the primary responsibility for the purchase and preparation of food for the family, the burden of price increases in household goods and services may be disproportionately borne by women.⁵⁶ These inequalities may be exacerbated where women heads of households have limited access to economic and social resources.⁵⁷

Finally, regarding the effect that trade has on public provisions, as free trade regimes reduce tariffs, concerns emerge over diminished government revenue to provide public services.⁵⁸ Specifically, fewer government resources may be available to fund social welfare programs and infrastructure investments, which may have a disproportionate impact on women.⁵⁹ To illustrate the impacts of diminished social welfare program funding, economists Isabel Ortiz and Matthew Cummins studied 128 developing countries during fiscal contractionary periods and found that countries’ austerity measures reduced social safety nets, reformed old age pensions, and capped the salaries of public sector employees (through cutting wage bills).⁶⁰ These reductions

51. *Id.* at 18.

52. Viilup, *supra* note 8, at 4.

53. *See supra* note 6 and accompanying text.

54. FONTANA, *supra* note 13, at 18.

55. *Id.* at 18–19. For an empirical analysis of the impact of trade liberalization on income-based gender inequality, see generally Papyrakis et al., *supra* note 49.

56. FONTANA, *supra* note 13, at 19; *see also* U.N. WOMEN, PROGRESS OF THE WORLD’S WOMEN 2019-2020: FAMILIES IN A CHANGING WORLD 15 (2019), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Progress-of-the-worlds-women-2019-2020-en.pdf> [<https://perma.cc/U2AU-GQUD>] (observing that, compared to men, women do three times the amount of unpaid care and domestic work within families).

57. *See* U.N. WOMEN, *supra* note 56, at 129–130.

58. FONTANA, *supra* note 13, at 19.

59. Fontana, *supra* note 45, at 19.

60. *See* Isabel Ortiz & Matthew Cummins, *Austerity Measures in Developing Countries: Public Expenditure Trends and the Risks to Children and Women*, 19 FEM. ECON. 55, 55, 67–73 (2013).

in government spending had a disproportionately negative impact on children and women.⁶¹ Furthermore, the negative impacts of austerity measures are not just felt by women in the Global South; austerity policies have also hindered the advancement of women in the Global North.⁶² While trade agreements may not result in fiscal austerity arrangements, the Ortiz and Cummins study illuminates how limitations in government welfare spending—limitations which could result from decreased tariff revenue under free trade agreements—may have a disproportionate impact on women.

B. The Role of Trade Policy in Promoting Inclusive Trade

The disproportionate gendered impacts that result from trade are often industry-specific and country-specific.⁶³ Therefore, one method for addressing such trade-based inequalities is to collect gender-disaggregated data and conduct an impact analysis of the gender implications of a specific trade agreement before the agreement is signed.⁶⁴ The EU has adopted such a strategy in their Sustainable Impact Assessment of trade agreements.⁶⁵ With the release of the World Bank's Gender Disaggregated Labor Database in July 2020, the ability

61. *Id.* at 55. The authors observe that wage bill reductions can hamper the delivery and quality of essential health, nutrition, and education services provided by public sector employees. *Id.* at 73. Reduction in the provision of public services, especially nutrition, disproportionately impacts women who are assigned the gender norm of primary purchase and preparation of food for their families. FONTANA, *supra* note 13, at 19. Furthermore, given that the public sector is a main source of formal employment for women in many developing countries, the salary cuts have had a disproportionate effect on women. See Ortiz & Cummins, *supra* note 60, at 70. Reducing social protection schemes, including pension benefits, finally runs a high risk of excluding women and children from need-based aid. *Id.* at 72–73.

62. JESSICA WOODROFFE & POLLY MEEKS, PUSH NO ONE BEHIND: HOW CURRENT ECONOMIC POLICY EXACERBATES GENDER INEQUALITY 5 (2019), <https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/5d15f88d4edf8e0001281406/1561720979675/PNOB+briefing+FINAL+July+2019.pdf> [<https://perma.cc/8MHN-XFWK>].

63. FONTANA, *supra* note 13, at 36.

64. *Id.* Fontana draws attention to the EU's limited use of system gender analysis in the EU's Sustainable Impact Analysis. Specifically, the author recommends making greater use of gender-disaggregated data and employing methodologies that better capture how specific trade provisions may impact women and men's abilities to participate in the market. *Id.*

65. Zamfir Ionel, *At a Glance: Gender Equality and Trade*, EUR. PARL. DOC. PE 633.163 (2019), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/633163/EPRS_ATA\(2019\)633163_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/633163/EPRS_ATA(2019)633163_EN.pdf) [<https://perma.cc/GBV9-Y9KU>]. The adoption of gender methodologies in the Sustainable Impact Analysis has been limited. See Viilup, *supra* note 8, at 20–22, for a detailed analysis of the limitations of the EU's Sustainable Impact Analysis on gender equality.

to analyze industry- and country-specific impacts of trade agreements on gender equality should be notably improved.⁶⁶

While trade agreements may exacerbate within-country inequality, trade agreements may also serve as powerful tools to make trade more gender-inclusive.⁶⁷ Trade agreements may provide for increased business and employment opportunities for women by increasing trade flows, particularly where gender impact analyses of the agreement have been conducted before the agreement is signed.⁶⁸ Furthermore, with informed sectoral and gender data, trade agreements present powerful opportunities to lower tariffs on products that women produce and consume, which, in turn, help to increase women's wages and consumption.⁶⁹ Moreover, gathering gender-disaggregated data can help policymakers better understand how any social service reductions, which may result from liberalizing tariffs,⁷⁰ will impact women and their families.⁷¹

Secondly, regional or bilateral trade agreements may serve as a vehicle for countries to encourage their trading partners to create laws and procedures that support women's participation in commerce and combat discrimination.⁷² Trade agreements may include suggested or binding provisions that increase gender equality by implementing, for example, capacity-building programs,⁷³ antidiscrimination legislation,⁷⁴ or affirmation of commitments to international conventions, such as the Convention on the Elimination of all Forms of Discrimination Against Women.⁷⁵ The following Section will survey the most common types of these gender provisions in greater detail.

66. *Gender Disaggregated Labor Database*, WORLD BANK (2020), <http://datatopics.worldbank.org/gldd/> [<https://perma.cc/FD3F-VHNZ>].

67. Amrita Bahri, *Women at the Frontline of COVID-19: Can Gender Mainstreaming in Free Trade Agreements Help?*, 23 J. INT'L ECON. L. 563, 572–73 (2020).

68. *Id.*

69. See U.N. WOMEN & U.N. CONF. ON TRADE & DEV., GENDER AND TRADE 6 (2020), https://unctad.org/en/PublicationsLibrary/UNWomen_2020d1_en.pdf [<https://perma.cc/RRC3-MEEL>].

70. See *supra* note 61 and accompanying text.

71. Ortiz & Cummins, *supra* note 60, at 69.

72. Bahri, *supra* note 67, at 572.

73. KENNY & O'DONNELL, *supra* note 28, at 1.

74. Moldova Association Agreement, *supra* note 39, annex III.

75. Amended Canada-Chile Trade Agreement, *supra* note 23, art. N *bis*-02.

C. *The Increasing Prevalence of Gender Provisions in Trade Agreements*

Gender-specific provisions have been included in trade agreements dating as far back as the 1957 Treaty of Rome, which established the European Economic Community.⁷⁶ Recently however, there has been an increased emphasis in trade policy on gender mainstreaming⁷⁷—or assessing the implications of any planned action (policy, legislative, or otherwise) on men and women.⁷⁸ Gender equality has steadily emerged as a policy norm in bilateral and multilateral accords.⁷⁹ The gender-inclusive trade movement has gained sufficient traction that, in 2017, the World Trade Organization (“WTO”) issued the Buenos Aires Declaration, which endorsed a collective initiative to increase the participation of women in trade.⁸⁰ Among other provisions, the Declaration committed the 118 signing nations to share information on women’s participation in international trade, to gather gender-disaggregated data, and to collaborate to remove barriers for women’s economic empowerment.⁸¹

In tandem with the discussions of gender-inclusive trade at the WTO, an increasing number of explicit gender provisions are drafted into regional trade agreements.⁸² Building off research conducted by José-Antonio Monteiro, who has compiled a database of all gender provisions across 556 trade agreements currently in force or notified to the WTO as of November 2018,⁸³ this Section briefly surveys the

76. EEC Treaty, art. 119 (as in effect 1958) (now TFEU, art. 157). The 1957 Treaty introduced the principle of equal pay for equal work among men and women, which has become a critical piece of EU gender policy. Building off this early premise, the EU has since adopted thirteen directives on gender equality. These directives include equal access to work, equality in promotions and working conditions, and paid parental leave, among other provisions. See European Commission Press Release MEMO/07/426, 50 Years of EU Gender Equality Law (Oct. 25, 2007), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_426 [<https://perma.cc/UY4K-YN7A>].

77. Monteiro, *supra* note 15, at 2.

78. U.N. WOMEN, *Gender Mainstreaming*, <https://www.unwomen.org/how-we-work/un-system-coordination/gender-mainstreaming> [<https://perma.cc/9ZHT-8N7W>].

79. Bahri, *supra* note 67, at 573.

80. World Trade Organization, *Joint Declaration on Trade and Women’s Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017*, WORLD TRADE ORG. (2017), https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf [<https://perma.cc/D2XT-CE5T>].

81. *Id.*

82. Monteiro, *supra* note 15, at 2.

83. *Id.*

most common types of gender provisions appearing in regional trade agreements.

Gender provisions remain highly heterogeneous, both in scope and placement within the trade agreement.⁸⁴ Moreover, such provisions may make explicit references to women or gender (“explicit gender provisions”), or they may refer to implicitly gender-related issues (“implicit gender provisions”), such as human rights or the social impacts of sustainable development.⁸⁵ As of 2018, seventy-four regional trade agreements included at least one provision explicitly referring to gender or gender-related issues.⁸⁶ An even larger number of agreements, 243 to be precise, included at least one implicit gender provision.⁸⁷ The gender provisions remain varied in terms of the actual language used.⁸⁸ Differences in language often reflect the provisions’ level of detail,⁸⁹ with a trend towards increasingly detailed gender-equality commitments in more recent trade agreements.⁹⁰ Most gender provisions are couched in “best endeavor” language and recommend, but do not require, that the parties forming the agreement take specific steps.⁹¹

Regarding the type of commitment engaged, the most common gender provision is a commitment to cooperate on issues related to gender, comprising 82% of gender provisions studied.⁹² The cooperation provisions are most frequently found in chapters on economic and social cooperation. However, they may also be included in other chapters, such as those dedicated to gender, labor, and sustainable development.⁹³ The provisions also vary in their specificity: While some

84. *Id.* at 1.

85. *Id.* at 4–6. Human rights commitments are the most common form of implicit gender-related provisions and are found in 172 regional trade agreements. The human rights commitments are multifaceted and include the right to equal treatment and nondiscrimination on the basis of sex, as well as references to international agreements and instruments addressing human rights. *Id.*

86. Monteiro, *supra* note 15, at 4. This comprises thirteen percent of the regional trade agreements in force or reported to the WTO as of November 2018.

87. *Id.*

88. *Id.* at 2.

89. *Id.* at 3.

90. *Id.* at 32. For example, the gender chapters of the Amended Canada-Chile and Canada-Israel Free Trade Agreements contain some of the most detailed institutional arrangements between States Parties. *Id.* at 30; *see also* Amended Canada-Chile Trade Agreement, *supra* note 23, ch. N *bis*; Canada-Israel Trade Agreement, *supra* note 25, ch. 13.

91. Monteiro, *supra* note 15, at 2.

92. *Id.* at 18. These commitments comprised sixty-one of the trade agreements analyzed.

93. *Id.*

agreements identify gender as part of a general, non-exhaustive list of “potential cooperation areas,” others articulate firmer, more specific cooperation commitments.⁹⁴ These commitments to cooperate represent powerful progress in promoting women’s economic empowerment. As Valerie Hughes observes, “[t]hese chapters . . . give credibility to the gender perspective in economic and trade issues, and encourage other countries to follow suit.”⁹⁵ Thus, cooperative commitments, even where non-binding, may serve a key role in mainstreaming gender equality discussions in trade policy and motivating other countries to grant gender a more prominent role in trade agreements.

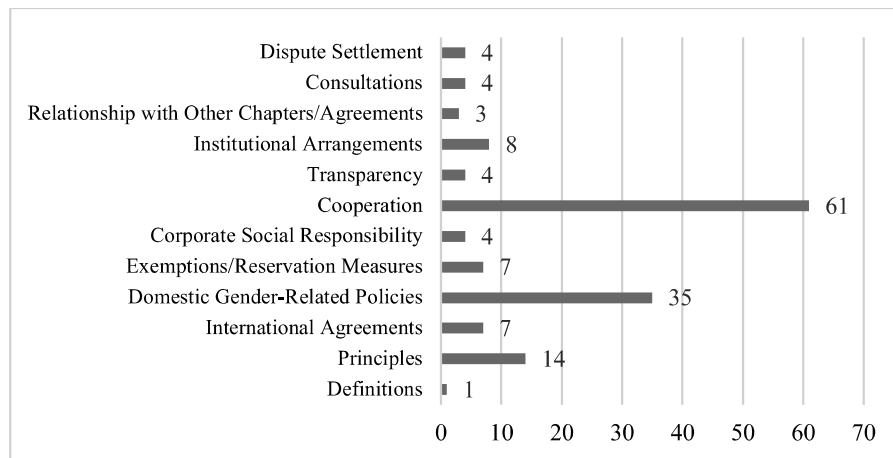


Figure 1. Frequency of Gender Provision Terms in Regional Trade Agreements⁹⁶

The second most frequent gender provision establishes specific commitments on domestic gender-related policies.⁹⁷ This type of provision ranges in scope from affirming the right of each country to regulate gender issues, to firm commitments to implement domestic legislation and programs on gender.⁹⁸ Like the cooperation commitments, the domestic policy commitments vary in specificity.⁹⁹ While some

94. *Id.*

95. See Hughes, *supra* note 22 (noting that the European Parliament Resolution of March 13, 2018 on Gender Equality in EU Trade Agreements explicitly cited the Canada-Chile free trade agreement as an example of how the EU could better implement gender-related chapters in future trade agreements).

96. Monterio, *supra* note 15, at 18.

97. *Id.*

98. *Id.*

99. *Id.*

provisions refer to gender-related policies generally, others specifically identify gendered aspects of education, labor, and social policies.¹⁰⁰

A limited but notably increasing number of agreements reported to the WTO include provisions requiring the parties to adopt gender-related policies.¹⁰¹ These policies may take the form of harmonization requirements obliging the adoption of legislation that meets guidelines of gender equality stipulated in the agreement.¹⁰² For example, the East African Community has adopted requirements that each party coordinate and harmonize their social policies relating to the promotion of equal opportunities and gender equality.¹⁰³ Similarly, in the context of the Eastern Partnership, the EU has signed Association Agreements with Georgia,¹⁰⁴ Moldova,¹⁰⁵ and Ukraine¹⁰⁶ to gradually approximate their legislation regarding gender equality and antidiscrimination measures.¹⁰⁷ Outside of these two prevalent types of gender provisions—commitments to cooperate and commitments to implement domestic gender-related policies—the remaining types of gender provisions are incorporated in only a limited number of regional trade agreements.¹⁰⁸

II. THE ENFORCEABILITY OF GENDER PROVISIONS

While gender provisions have been steadily mainstreamed in trade policy—occupying progressively more substantial sections of trade agreements—concerns remain as to the enforceability of these

100. *Id.*

101. *Id.* at 22.

102. *Id.*

103. BENSALAM, *supra* note 40, at 48–49; Treaty for the Establishment of the East African Community, *supra* note 31, ch. 22.

104. Association Agreement Between the European Union and the European Atomic Energy Community and Their Member States, of the One Part, and Georgia, of the Other Part, annex XXX, June 27, 2014, O.J. L 261/4 [hereinafter Georgia Association Agreement].

105. Moldova Association Agreement, *supra* note 39, annex III.

106. Association Agreement Between the European Union and the European Atomic Energy Community and Their Member States, of the One Part, and Ukraine, of the Other Part, annex XL, ch. 21, Mar. 21, 2014, O.J. L 161/1 [hereinafter Ukraine Association Agreement].

107. BENSALAM, *supra* note 40, at 18.

108. Monteiro, *supra* note 15, at 18.

provisions and their ability to influence actual change.¹⁰⁹ For the most part, gender provisions appear in “aspirational language” in a preamble, in a “mention” in a chapter on cross-cutting issues such as labor, or in a non-binding side agreement accompanying the main text of a trade agreement.¹¹⁰ The inclusion of gender-related provisions is a powerful first step in creating more inclusive trading systems; however, if countries “genuinely intend these commitments to be put into action,” greater enforcement provisions are required.¹¹¹

Part II explores this problem of how to enforce the gender-specific provisions in trade agreements. Without any form of enforcement mechanism, a country’s failure to comply with their gender-related obligations, commitments, or affirmations has no direct consequence.¹¹² Moreover, given that most provisions are limited to “best endeavor” language,¹¹³ the enforceability of gender-related commitments often depends on the adopting country’s willingness to implement commitments made and provide recourse to aggrieved parties.¹¹⁴

Within the literature, three primary enforcement mechanisms emerge: (1) enforcement of gender provisions through a dispute settlement forum;¹¹⁵ (2) enforcement of gender provisions through domestic economic sanctions;¹¹⁶ and (3) enforcement of gender provisions through legal harmonization.¹¹⁷ This Note will focus on legal

109. See AMRITA BAHRI, MAINSTREAMING GENDER CONSIDERATIONS IN FREE TRADE AGREEMENTS: “BUILDING BACK BETTER” IN POST-COVID-19 WORLD 18 (2020), <https://www.unescap.org/sites/default/files/92%20Final-Amrita%20Bahri-Mexico.pdf> [<https://perma.cc/R CJ5-U52M>]. Bahri lauds the gender mainstreaming that has occurred in trade policy, while observing that there is a “half-opened door in existing FTAs [free trade agreements] that countries need to push upon further by finding different ways of implementing or enforcing their gender-related commitments.” *Id.*

110. Kyger, *supra* note 4; see also *supra* Section I.B.

111. BAHRI, *supra* note 109, at 18; see also Kenny & O’Donnell, *supra* note 28 (“[I]nstituting follow-up enforcement mechanisms can help to ensure trade benefits women and men more equally going forward.”).

112. Bahri, *supra* note 67, at 578.

113. Hughes, *supra* note 22.

114. Zakaria, *supra* note 28, at 241.

115. Zarrilli, *supra* note 6. The Free Trade Agreement between Canada and Israel is the first free trade agreement to implement this approach. Canada-Israel Trade Agreement, *supra* note 25, arts. 13.6, 19.

116. Zakaria, *supra* note 28, at 259–64.

117. See Zarrilli, *supra* note 6. The Association Agreements between the European Union and Georgia, Moldova, and Ukraine follow this approach. See *supra* notes 104–106 and accompanying text; see also generally *2018 Implementation Assessment for Moldova, Georgia, and Ukraine*, *supra* note 38.

harmonization, the most prevalent of the enforcement mechanisms,¹¹⁸ to better understand how gender provisions included in free trade agreements can be enforced.

A. Presentation of the Problem

Given the recency of the new gender provisions,¹¹⁹ and that the majority of commitments are couched in “best endeavor” language,¹²⁰ the implementation of these gender equality provisions depends in large part on the adopting country’s willingness to do so.¹²¹ Countries may be unwilling to implement gender equality commitments for a variety of reasons. However, a predominant concern regarding the implementation of certain equality provisions centers on whether the commitment would require a change in domestic law that would be challenging to enact in practice.¹²² For example, the commitment to ensure equal pay between men and women is often framed in permissive language without any binding obligation because parties are reluctant to require changes to domestic legislation to implement such a commitment.¹²³ Furthermore, even where a commitment does not require a change in domestic legislation, a country may still be unwilling or unable to comply because the enforcement of such commitments often requires deep societal changes and long-term collaboration between different stakeholders and monitoring bodies.¹²⁴ Thus, even where countries have pledged to abide by gender-inclusive trade standards, there is little incentive for members to comply if there is no enforcement mechanism available for aggrieved parties.¹²⁵ This subsection will briefly explore the challenges of enforcement through the lens of the aforementioned three mechanisms for increasing the accountability of gender commitments made through trade agreements.

118. See Monteiro, *supra* note 15, at 93–97.

119. *Id.* at 1.

120. Hughes, *supra* note 22.

121. Zakaria, *supra* note 28, at 241.

122. See Amrita Bahri, *Measuring the Gender-Responsiveness of Free Trade Agreements: Using a Self-Evaluation Maturity Framework*, 14 GLOB. TRADE CUST. J. 517, 527 (2019).

123. *Id.*; see also, e.g., United States-Mexico-Canada Agreement, Can.-Mex.-U.S., ch. 23.9, Oct. 1, 2018, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/20-Intellectual-Property-Rights.pdf> [<https://perma.cc/7TKB-VKEX>].

124. Bahri, *supra* note 67, at 578.

125. BAHRI, *supra* note 109, at 18.

1. The Enforcement of Gender Provisions Through a Dispute Settlement Forum

Trade dispute resolution has largely evolved into two forms of disputes: (1) state-to-state disputes, which are handled by the WTO; and (2) investor-state disputes, which are handled by specialized tribunals.¹²⁶ According to the WTO, labor rights, including gender discrimination, are typically not enforced through the Organization's dispute settlement mechanism.¹²⁷ Rather, after significant debate and controversy,¹²⁸ members at the 1996 Singapore Ministerial Conference merely affirmed the WTO's commitment to labor standards, as they are defined by the International Labour Organization (ILO).¹²⁹ As part of the Conference, members emphasized that the ILO is the competent body to negotiate and set labor standards—and not the WTO.¹³⁰ The resistance of the WTO to enforce labor provisions renders it challenging to enforce gender provisions through state-to-state dispute settlement within the WTO's forum.

A second option is to secure enforcement through Investor-State Dispute Settlement (ISDS) mechanisms. These mechanisms allow investors to bring claims against a state in specialized tribunals if they believe that a signing country has violated their treaty obligations and treated the foreign investor unfairly.¹³¹ Essentially, investors may challenge government policies if they consider them to be “detrimental to their interests.”¹³² ISDS mechanisms have been successfully used by companies to address violations of workers' rights, and there has

126. James McBride & Andrew Chatzky, *How Are Trade Disputes Resolved?*, COUNCIL ON FOREIGN RELS. (Jan. 6, 2020, 7:00 AM), <https://www.cfr.org/backgrounder/how-are-trade-disputes-resolved> [https://perma.cc/PM2U-JUHZ].

127. See *Trade and Labour Standards*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm [https://perma.cc/KP7E-XEXT].

128. *Id.*

129. See World Trade Org., Ministerial Declaration of 18 December 1996, WTO Doc. WT/MIN(96)/DEC, 36 I.L.M. 218, 221 (1997).

130. The ILO, unlike the WTO, does not provide a state-to-state dispute settlement mechanism. See *Labour Dispute Prevention and Resolution*, INT'L LAB. ORG., <https://www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang—en/index.htm> [https://perma.cc/HWQ5-Z8T7].

131. Valentina Cagnin, *Investor-State Dispute Settlement (ISDS) from a Labour Law Perspective*, 8 EUR. LAB. L.J. 217, 218 (2017). ISDS mechanisms have become increasingly popular over the last two decades. *Id.* at 221 fig.1.

132. Tessa Khan & Marion Sharples, *Making Trade Work for Gender Equality*, GENDER & DEV. NETWORK BRIEFINGS, July 2017, at 7, <https://gadnetwork.org/gadn-resources/2017/7/4/making-trade-work-for-gender-equality-1> [https://perma.cc/GE7H-H9A8].

been a further push to address gender equality concerns and discrimination in the workplace through ISDS mechanisms, as well.¹³³ While the ISDS mechanism has gained traction as a means of increasing the enforceability of gender provisions, it has also raised considerable controversy.¹³⁴ ISDS provisions may enable investors to bring discrimination suits that can help to enforce gender equality commitments made in free trade agreements.¹³⁵ However, ISDS mechanisms can also enable investors to challenge government policies if they consider them to be detrimental to their interests.¹³⁶ These challenges may include domestic policies designed to benefit women, such as affirmative action legislation.¹³⁷ Furthermore, the enforcement of gender equality commitments through ISDS mechanisms may have a detrimental impact on women in the state being sued. The average cost for a state involved in an ISDS suit is \$8 million USD.¹³⁸ The significant cost of defending the state in an ISDS matter may limit the taxpayer revenue available for providing public services, especially in states with limited government revenue available for providing such services.¹³⁹ As was examined in Part I, a reduction in public services often has a much greater negative impact on women than on men.¹⁴⁰ Therefore, a suit brought to enforce gender equality commitments may, in turn, bear negative consequences for the women whom the matter is seeking to advance.

Finally, outside of the WTO resolution and the ISDS mechanism, any other form of dispute settlement clauses concerning gender provision enforcement is rare. As of 2018, only four regional trade agreements reported to the WTO contained such provisions.¹⁴¹ Indeed, the Canada-Israel Free Trade Agreement provides the first example of

133. CONCORD & WIDE+, GENDER AND TRADE 11 (2018), <https://wideplus.org/wp-content/uploads/2018/06/wide-concord-2018-trade-and-gender.pdf> [https://perma.cc/9HR9-UDMB].

134. Khan & Sharples, *supra* note 132, at 7; *see also* TIM RICE, ACTIONAID, AN ALTERNATIVE FDI FRAMEWORK FOR MORE AND BETTER JOBS IN DEVELOPING COUNTRIES 2 (2017), https://www.actionaid.org.uk/sites/default/files/publications/an_alternative_fdi_framework.pdf [https://perma.cc/4N66-MQ9L].

135. Khan & Sharples, *supra* note 132, at 7.

136. *Id.*

137. *Id.*

138. Cagnin, *supra* note 131, at 226.

139. *See id.* (observing that taxpayers bear the burden of financing a state's defense in an ISDS tribunal).

140. *See supra* note 61 and accompanying text.

141. Monteiro, *supra* note 15, at 18 fig.13.

a gender chapter subject to dispute settlement.¹⁴² However, as Amrita Bahri observes, this provision is a “cosmetic attempt” to create an enforcement mechanism.¹⁴³ While the chapter is subject to dispute settlement, both parties must consent to the settlement mechanism—thereby rendering it noncompulsory in practice.¹⁴⁴ As the Canada-Israel Agreement illustrates, while dispute settlement clauses are beginning to make a greater appearance in trade agreements, notable challenges persist in implementing a successful mechanism that motivates compliance with gender equality commitments.

2. The Enforcement of Gender Provisions Through Domestic Economic Sanctions

Another approach to enforcing gender provisions is to use trade sanctions as penalties for noncompliance with gender provision commitments. Such sanctions may be imposed on states as whole entities (“comprehensive sanctions”)¹⁴⁵ or limited to identified individuals (“targeted sanctions”).¹⁴⁶ Comprehensive trade sanctions may include trade restrictions, embargoes, and travel restrictions.¹⁴⁷ By contrast, targeted sanctions often encompass asset freezes, arms embargoes, foreign aid reductions, and capital restraints.¹⁴⁸ Using the Sergei Magnitsky Rule of Law Accountability Act of 2012 as a model framework, Suzanne Zakaria has explored the potential use of trade sanctions to promote gender equality.¹⁴⁹ Zakaria advocates for the use of targeted trade sanctions by multilateral trade agreement coalitions, like the WTO or the former North American Free Trade Area (NAFTA), to impose sanctions on legal individuals (including companies) who

142. Canada-Israel Trade Agreement, *supra* note 25, arts. 13.6, 19.

143. Bahri, *supra* note 67, at 578.

144. *Id.*

145. Zakaria, *supra* note 28, at 259.

146. *Id.* at 261.

147. *Id.* at 259.

148. *Id.* at 261.

149. *Id.* at 259–64. The Magnitsky Act was passed by the U.S. Congress in 2012 in response to the arrest, torture, and death of an anti-corruption lawyer, Sergei Magnitsky. *Id.* at 261. The law authorizes the U.S. President to determine whether Russian citizens have violated international human rights laws and to place these individuals on a “blacklist,” thereby barring their entry into the United States and freezing their U.S. assets. *Id.* at 261–62. The 2016 Global Magnitsky Act amended the 2012 Act to allow the U.S. government to designate individuals beyond Russia for targeted sanctions on the basis of human rights abuses more broadly. Global Magnitsky Human Rights Accountability Act of 2016, Pub. L. 114-328, Title XII(F), 130 Stat. 2000, 2533–38 (West).

commit “gross violations of internationally and domestically recognized gender equality rights.”¹⁵⁰ Sanctions could similarly be imposed for violations of gender equality agreements signed as well.¹⁵¹

While a sanctions mechanism provides an innovative and powerful enforcement tool for gender equality provisions in trade agreements, a significant challenge remains. The WTO has signaled a strong unwillingness to engage in the enforcement of any sort of labor or gender provision.¹⁵² Additionally, while the U.S.-Mexico-Canada Free Trade Agreement (also known as “USMCA”), the successor of NAFTA, does contain a provision requiring the parties to protect workers against discrimination on the basis of sex, imposing sanctions under this provision may violate Article XX of the General Agreement on Tariffs and Trade.¹⁵³ Lastly, should a sanctions framework be feasible, the effectiveness of trade sanctions as an instrument remains questionable.¹⁵⁴ In a large number of cases, countries do not change their behavior merely because sanctions have been imposed on them.¹⁵⁵ Moreover, sanctions only target exporting industries and do not tackle gender bias present in other areas.¹⁵⁶ Finally, leveling sanctions may drive women into other sectors with potentially even lower labor standards and further gender discrimination.¹⁵⁷

3. The Enforcement of Gender Provisions Through Legal Harmonization

Legal harmonization has been championed as a means of

150. Zakaria, *supra* note 28, at 262–63.

151. *Id.* at 263.

152. *See* Trade and Labour Standards, *supra* note 127.

153. KENNY & O'DONNELL, *supra* note 28. Article XX of the General Agreement on Tariffs and Trade (“GATT”) suggests that:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health
.....

General Agreement on Tariffs and Trade, art. XX, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S 194 (1947).

154. Busse & Spielmann, *supra* note 49, at 374.

155. *See id.* (citing Kimberly Ann Elliot & Gary Clyde Hufbauer, *Same Song, Same Refrain? Economic Sanctions in the 1990's*, 89 AM. ECON. REV. 403, 403–08 (1999)).

156. *Id.*

157. *Id.*

mainstreaming gender concerns into trade policy¹⁵⁸ and strengthening the enforceability of gender commitments.¹⁵⁹ Legal harmonization centers on the adjustment of domestic law so that it meets collectively-agreed-upon standards and targets.¹⁶⁰ The EU relies on a harmonization framework to align member states' national legal systems with the common rights, standards, and obligations that are binding on all EU Member countries (often referred to as the *acquis communautaire* or *acquis*¹⁶¹), with any derogations from the *acquis* available only in “exceptional circumstances.”¹⁶² The legal instruments of the *acquis* provide the underlying framework for the establishment and functioning of the EU's internal market,¹⁶³ as well as “institutional, ostensibly ‘non-market’ rules and norms,”¹⁶⁴ such as gender-equality and antidiscrimination measures.¹⁶⁵

The export of the *acquis* to third-party countries is an important foreign policy tool for the EU to extend the internal market beyond its borders¹⁶⁶ through harmonization requirements, such as those present in the Association Agreements signed with Georgia, Moldova, and Ukraine. As the EU has established trade relations with neighboring non-member nations, the trade agreements have encouraged, and in some cases required, harmonization with the non-market equality and antidiscrimination standards set by the EU, including equal pay for equal work between men and women.¹⁶⁷ Outside of the EU, the East African Community (EAC) has also made broad use of harmonization mechanisms, requiring that each party participating in the Community coordinate and harmonize their social policies relating to the

158. See, e.g., Jacqui True, *Trading-Off Gender Equality for Global Europe? The European Union and Free Trade Agreements*, 14 EUR. FOREIGN AFFS. REV. 723, 738 (2009).

159. See, e.g., Zarrilli, *supra* note 6.

160. Emanuela Carbonara & Francesco Parisi, *The Paradox of Legal Harmonization*, 132 PUB. CHOICE 367, 368 (2007).

161. See *Acquis*, EUR. UNION PUBL'NS OFF. GLOSSARY OF SUMMARIES, <https://eur-lex.europa.eu/summary/glossary/acquis.html> [https://perma.cc/P6UJ-VHU6]; Heather Grabbe, *European Union Conditionality and the Acquis Communautaire*, 23 INT'L POL. SCI. REV. 249, 251–52 (2002). For a detailed analysis of the network of legal instruments that comprise the *acquis*, see generally Joshua C. Fjelstul, *The Evolution of European Union Law: A New Data Set on the Acquis Communautaire*, 20 EUR. UNION POL. 690 (2019).

162. EUR. UNION PUBL'NS OFF., *supra* note 161.

163. See Marja-Liisa Öberg, *Internal Market Acquis as a Tool in EU External Relations: From Integration to Disintegration*, 47 LEGAL ISSUES OF ECON. INTEGRATION 151, 152 (2020).

164. True, *supra* note 158, at 723.

165. BENSALÉM, *supra* note 40, at 18.

166. Öberg, *supra* note 163, at 152.

167. BENSALÉM, *supra* note 40, at 34–45.

promotion of equal opportunities and gender equality.¹⁶⁸ Under these harmonization provisions, therefore, compliance with the free trade agreement is conditioned upon the satisfactory adoption of specified standards of gender equality. This lends greater enforceability to the commitments than mere “best endeavor” practices.

B. Analytical Framework

To better understand the effectiveness of legal harmonization as an enforcement mechanism for gender commitments in trade agreements, this Note examines the impacts of harmonization requirements related to gender equality in three Association Agreements signed by the EU with Georgia,¹⁶⁹ Moldova,¹⁷⁰ and Ukraine.¹⁷¹ Recognizing the limited enforceability of voluntary gender provisions in previous trade agreements,¹⁷² the EU has focused on legal harmonization with EU antidiscrimination and gender-equality directives as a component of Association Agreements signed with Moldova, Ukraine, Georgia, Bosnia, Montenegro, Serbia, and Albania.¹⁷³ The harmonization requirements undertaken by the partner nations have been either a definitive commitment to harmonize their laws to the EU legislation within a specific time period (typically three or four years),¹⁷⁴ or a provision that cooperation between the parties *may* involve, but does not require, the adjustment of a party’s legislation to EU directives.¹⁷⁵

168. *Id.* at 48–49.

169. Georgia Association Agreement, *supra* note 104, annex XXX.

170. Moldova Association Agreement, *supra* note 39, annex III.

171. Ukraine Association Agreement, *supra* note 106, annex XL.

172. *See* Resolution on Gender Equality in EU Trade Agreements, *supra* note 36, at 14 (observing that “references in these [EU bilateral and multilateral trade] agreements to promote women’s empowerment are mainly voluntary and, when binding, they are not enforceable in practice”).

173. *See* BENSALAM, *supra* note 40, at 34–45 (Annex I: Bilateral Agreements Table).

174. *Id.* The EU Association Agreements with Georgia, Moldova, and Ukraine provide for this form of legal harmonization. *See* Georgia Association Agreement, *supra* note 104, annex XXX; Moldova Association Agreement, *supra* note 39, annex III; Ukraine Association Agreement, *supra* note 106, annex XL.

175. *See* BENSALAM, *supra* note 40, at 34–45 (Annex I: Bilateral Agreements Table). The EU Association Agreements with Bosnia, Montenegro, Serbia, and Albania provide for this form of unilateral legal transplantation. *Id.*

1. Background to the EU Eastern Partnership Association Agreements and the Deep and Comprehensive Free Trade Area

The Association Agreements signed between the EU and Moldova, Georgia, and Ukraine resulted from negotiations beginning after the 2008 Russian invasion of Georgia.¹⁷⁶ Seeing a “geo-political necessit[y],” the EU sought to strengthen ties in the region through the “Eastern Partnership” initiative, which aims to bolster political and economic relations and to support sustainable legal reform in partner countries.¹⁷⁷ The Association Agreements signed between the EU and Georgia,¹⁷⁸ Moldova,¹⁷⁹ and Ukraine¹⁸⁰ introduced the Deep and Comprehensive Free Trade Areas (“DCFTAs”) and granted the three partner nations access to the European Internal Market.¹⁸¹ However, this market access is conditioned on the successful implementation of legislative harmonization requirements (selected EU *acquis*) listed in the Annexes of each Association Agreement.¹⁸² Outside of other harmonization commitments, the Association Agreements stipulate that each partner nation will “gradually approximate its legislation to the EU legislation and international instruments in terms of antidiscrimination and gender equality within a certain timeframe.”¹⁸³ Taken together, the social equality directives in the Annexes of each of the Association Agreements form a broad antidiscrimination framework intended to promote equality across identities and social groups.

176. Michael Emerson, *Recasting European Values for the EU and the Associated Neighbours* 4, CTR. FOR EUR. POL. STUD. (July 27, 2020), <https://3dcftas.eu/publications/recasting-european-values-for-the-eu-and-the-associated-neighbours> [.]

177. *Eastern Partnership*, EUR. UNION EXTERNAL ACTION SERV. (Oct. 19, 2016, 11:49 AM), https://eeas.europa.eu/diplomatic-network/eastern-partnership/419/eastern-partnership_en. [<https://perma.cc/ZAY6-V4HM>].

178. Georgia Association Agreement, *supra* note 104, annex XXX.

179. Moldova Association Agreement, *supra* note 39, annex III.

180. Ukraine Association Agreement, *supra* note 106, annex XL.

181. *See* Georgia Association Agreement, *supra* note 104, art. 1; Moldova Association Agreement, *supra* note 39, art. 1; Ukraine Association Agreement, *supra* 106, art. 1.

182. GUILLAUME VAN DER LOO & TINATIN AKHVLEDIANI, CTR. FOR EUR. POL. STUD., CATCH ME IF YOU CAN: UPDATING THE EASTERN PARTNERSHIP ASSOCIATION AGREEMENTS AND DCFTAs 5 (2020), <https://www.ceps.eu/wp-content/uploads/2020/05/GVDL-and-TA-Updating-AA-DCFTAs.pdf> [<https://perma.cc/TU7T-X8ZN>].

183. BENSALÉM, *supra* note 40, at 16.

2. The Association Agreement Enforcement Mechanism and Questions Presented for Analysis

The institutional framework chapters of the Association Agreements specify the establishment and functioning of four bodies to aid in the implementation of the Agreements: (1) an Association Council; (2) an Association Committee; (3) a Parliamentary Association Committee; and (4) a Civil-Society Platform.¹⁸⁴ These four bodies bring together stakeholders from both the EU and the partner country to design and implement the reforms necessary under the .¹⁸⁵ First, the Association Council is the highest collaborative body that oversees implementation of the .¹⁸⁶ The Council meets yearly at the ministerial level and examines any “major issues” arising from the Agreement.¹⁸⁷ Second, the Association Committee supports the Association Council in their role and is comprised of senior civil servants from both the EU and the partner nations.¹⁸⁸ Third, the Parliamentary Association Committee provides a forum for members of parliament from both the EU and the partner nations to “meet and to exchange views.”¹⁸⁹ Finally, the Civil Society Platform provides a forum for civil society representatives to interact regularly, including the members of the European Economic and Social Committee and representatives of the civil community of the partner nations.¹⁹⁰ Each of these bodies provides the opportunity for different governmental and nongovernmental organizations to participate in the harmonization process.

Outside of the Association Council, the EU independently monitors the progress of the implementation of the Agreements through reports prepared by the EU Foreign Affairs Council for the European Parliament and Association Implementation Reports

184. *2018 Implementation Assessment for Moldova, Georgia, and Ukraine*, *supra* note 38, at 12–13.

185. *Id.* at 13.

186. *Id.*

187. *Id.* The Association Council also considers any other bilateral or international issues of mutual interest outside of the Association Agreement framework. *Id.* In the case of Ukraine, bilateral summits are also organized in addition to the Association Council meetings. *See* Ukraine Association Agreement, *supra* note 106, art. 460.1.

188. *2018 Implementation Assessment for Moldova, Georgia, and Ukraine*, *supra* note 38, at 13.

189. *Id.* Each Parliamentary Association Committee establishes its own rules of procedure for these meetings. *Id.*

190. *Id.* The Civil Society Platform establishes its own rules of procedure for regular meetings. *Id.*

prepared by the European Commission.¹⁹¹ Failure to implement harmonization requirements can result in the loss of contingent funding provided for under the Association Agreements and loss of market access.¹⁹²

To better understand how legal harmonization functions as an enforcement mechanism, this Note seeks to analyze the use of legal harmonization provisions in Association Agreements between the EU and Moldova, Georgia, and Ukraine to understand how these requirements impact the adoption of gender equality and antidiscrimination provisions in the partner countries. In particular, this analysis will focus on two guiding questions: (1) has harmonization to EU antidiscrimination and gender equality directives been achieved?; and (2) what key takeaways emerge regarding the use of legal harmonization mechanisms to enforce gender commitments? This analysis seeks to shed light on how harmonization functions as an enforcement mechanism and its power, if any, to influence gender equality.

III. AN ANALYSIS OF EU ASSOCIATION AGREEMENTS WITH GEORGIA, MOLDOVA, AND UKRAINE

In a gender analysis of the Association Agreements and DCFTAs conducted for the Swedish International Development Cooperation, the far-reaching harmonization agenda was highlighted as the greatest beneficial gender-based impact of the new trade agreements.¹⁹³ The harmonization commitments are expected to create cascading effects for women by way of better employment opportunities, higher wages, and a better quality of life.¹⁹⁴

In the Association Agreements signed with the EU, both Georgia¹⁹⁵ and Moldova¹⁹⁶ committed to gradually harmonizing their legislation with six key EU Directives: (1) implementing the principle of equal treatment of men and women in matters of employment, including equal treatment in relation to working conditions and pay

191. *Id.*

192. VAN DER LOO & AKHVLEDIANI, *supra* note 182, at 5.

193. Andrea Spear et al., *Gender Analysis of the EU AA/DCFTAs with Georgia, Moldova, and Ukraine: Final Report 4*, INDEVELOP (Jan. 29, 2016), <http://dcfta.md/eng/gender-analysis-of-the-eu-aa-dcftas-with-georgia-moldova-and-ukraine> [https://perma.cc/24CE-QXVF].

194. *Id.* at 5.

195. Georgia Association Agreement, *supra* note 104, annex XXX.

196. Moldova Association Agreement, *supra* note 39, annex III.

[Directive 2006/54/EC];¹⁹⁷ (2) implementing the principle of equal treatment between men and women in the access to and supply of goods and services [Directive 2004/113/EC];¹⁹⁸ (3) introducing measures to improve the safety and health of pregnant and breastfeeding workers [Directive 92/85/EEC];¹⁹⁹ (4) implementing the principle of equal treatment for men and women in matters of social security [Directive 79/7/EEC];²⁰⁰ (5) implementing a framework to combat discrimination on grounds of disability, sexual orientation, religion, and age [Directive 2000/78/EC];²⁰¹ and (6) implementing the principle of equal treatment between persons “irrespective of racial or ethnic origin” [Directive 2000/43/EC].²⁰²

The EU-Ukraine also provides that Ukraine will gradually adopt the same commitments, with the exception of Directive 2006/54/EC, which concerns equal working conditions and pay.²⁰³ In lieu of this commitment, Ukraine has instead committed to harmonizing with Directive 96/34/EC,²⁰⁴ which provides standards for parental leave following the birth or adoption of a child.²⁰⁵ The timeline for the implementation of these harmonization requirements varies by partner nation and directive; however, the implementation generally ranges from three to four years following the signing of the .²⁰⁶ Failure to meet harmonization commitments does not trigger the dispute settlement mechanism provided for under the three Association Agreements.²⁰⁷

This analysis will first consider whether Georgia, Moldova, and Ukraine have individually met the gender equality and

197. See Council Directive 2006/54, 2006 O.J. (L 204) 23 (EC).

198. See Council Directive 2004/113, 2004 O.J. (L 373) 37 (EC).

199. See Council Directive 92/85, 1992 O.J. (L 348) (EEC).

200. See Council Directive 79/7, 1978 O.J. (L 6) 24 (EEC).

201. See Council Directive 2000/78, 2000 O.J. (L 303) (EC).

202. See Council Directive 2000/43, 2000 O.J. (L 180) 22 (EC).

203. Ukraine Association Agreement, *supra* note 106, annex XL.

204. *Id.*

205. See Council Directive 96/34, 1996 O.J. (L 145) (EC).

206. Georgia Association Agreement, *supra* note 104, annex XXX; Moldova Association Agreement, *supra* note 39, annex III; Ukraine Association Agreement, *supra* note 106, annex XL.

207. The dispute settlement mechanism covers only trade and trade-related matters in each of the Association Agreements and does not cover the title outlining the antidiscrimination and gender equality commitments. See Georgia Association Agreement, *supra* note 104, arts. 244–45; Moldova Association Agreement, *supra* note 39, arts. 380–81; Ukraine Association Agreement, *supra* note 106, arts. 303–04.

antidiscrimination harmonization commitments agreed to under the Association Agreements, before analyzing whether and how harmonization mechanisms can be effectively used to promote gender equality.

A. The Achievement of Harmonization Commitments

In 2020, the European Parliament's Committee on Foreign Affairs ("AFET" or "Committee") sought to evaluate the degree to which Georgia, Moldova, and Ukraine have implemented their commitments under the Association Agreements. Drawing upon implementation assessments prepared by the European Parliamentary Research Service and the Centre for European Policy Studies,²⁰⁸ the AFET scrutinized the progress which Georgia,²⁰⁹ Moldova,²¹⁰ and Ukraine²¹¹ individually have made in implementing their commitments under the individual Association Agreements. Following the AFET's reports, the European Parliament adopted three resolutions (one for each partner nation) regarding the implementation of the EU's Association Agreements.²¹²

208. Association Agreement Between the EU and Georgia: European Implementation Assessment (Update) 29–66, EUR. PARL. DOC. PE 642.820 II (Apr. 2020) [hereinafter 2020 Assessment Georgia]. This evaluation is an update of an earlier report published in July 2018, and thus evaluates the implementation of the since mid-2018. *See also* Association Agreement Between the EU and the Republic of Moldova: European Implementation Assessment (Update) 27–89, EUR. PARL. DOC. PE 642.834 II (May 2020). Like the Georgia Implementation Assessment, this evaluation is an update of an earlier report published in June 2018, and thus evaluates the implementation of the since mid-2018. *See also* Association Agreement Between the EU and the Ukraine: European Implementation Assessment (Update) 35–77, EUR. PARL. DOC. PE 642.844 I (July 2020). Similarly, this evaluation is an update of an earlier report published in June 2018, and thus evaluates the implementation of the since mid-2018.

209. *See generally* Report on the Implementation of the EU Association Agreement with Georgia (2019/2200(INI)), A9-0136/2020 (July 17, 2020), https://www.europarl.europa.eu/doceo/document/A-9-2020-0136_EN.pdf [<https://perma.cc/KK6U-S5T7>] [hereinafter Committee Report 2020 Georgia].

210. *See generally* Report on the Implementation of the EU Association Agreement with the Republic of Moldova (2019/2201(INI)), A9-0166/2020 (Sept. 28, 2020), https://www.europarl.europa.eu/doceo/document/A-9-2020-0166_EN.pdf [<https://perma.cc/P23B-UST3>] [hereinafter Committee Report 2020 Moldova].

211. *See generally* Report on the Implementation of the EU Association Agreement with Ukraine (2019/2202(INI)), A9-0219/2020 (Nov. 17, 2020), https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.pdf [<https://perma.cc/4DW4-FJ89>] [hereinafter Committee Report 2020 Ukraine].

212. *See generally* European Parliament Resolution of 16 September 2020 on the Implementation of the EU Association Agreement with Georgia (2019/2200(INI)), EUR. PARL. DOC. P9_TA(2020)0221 (Sept. 16, 2020) [hereinafter 2020 Parliamentary Resolution on Georgia];

For each of the three partner nations, the resolutions stressed that the countries should strive to “improve women’s representation and equal treatment at all levels of political and societal life”²¹³ and, interestingly, that the EU should seek to “mainstream gender equality” in all of their programs, policies, and activities with the partner nation, so that a woman’s perspective is always included in the decision-making process.²¹⁴ However, outside of these common themes, the success of each partner nation varies widely in terms of meeting their harmonization requirements and the observations by the EU regarding implementation, and, for this reason, each country is addressed individually in the following subsections.

1. Georgia

Notably, no mention is made in the 2020 Parliamentary Resolution on Georgia,²¹⁵ the Implementation Assessment,²¹⁶ or the Association Implementation Report on Georgia, prepared by the European Commission, as to whether Georgia has met its harmonization requirements for gender equality and antidiscrimination.²¹⁷ However, despite this silence, the Parliament of Georgia self-reports that they have amended their laws to harmonize with the six EU directives on gender equality and antidiscrimination provided for in the .²¹⁸ This

European Parliament Resolution of 20 October 2020 on the Implementation of the EU Association Agreement with the Republic of Moldova (2019/2201(INI)), EUR. PARL. DOC. P9_TA(2020)0279 (Oct. 20, 2020) [hereinafter 2020 Parliamentary Resolution on Moldova]; European Parliament Resolution of 11 February 2021 on the Implementation of the Association Agreement with Ukraine (2019/2202(INI)), EUR. PARL. DOC. P9_TA(2021)0050 (Feb. 11, 2021) [hereinafter 2021 Parliamentary Resolution on Ukraine].

213. 2020 Parliamentary Resolution on Georgia, *supra* note 212, ¶ 19; 2020 Parliamentary Resolution on Moldova, *supra* note 212, ¶ 63; 2021 Parliamentary Resolution on Ukraine, *supra* note 212, ¶ 75.

214. See *supra* note 213 and accompanying text.

215. 2020 Parliamentary Resolution on Georgia, *supra* note 212.

216. 2020 Assessment Georgia, *supra* note 208.

217. See generally *Joint Staff Working Document: Association Implementation Report on Georgia*, EUR. PARL. DOC. (COM SWD (2021) 18 final (Feb. 5, 2021), https://www.euneighbours.eu/sites/default/files/publications/2021-02/2021_association_implementation_report_in_georgia.pdf [<https://perma.cc/647V-89KB>].

218. PARL. OF GEOR., 2019-2020 ACTION PLAN OF THE PARLIAMENT OF GEORGIA FOR THE IMPLEMENTATION OF THE EU-GEORGIA ASSOCIATION AGREEMENT 24–25 (2019), https://www.ge.undp.org/content/dam/georgia/docs/publications/DG/UNDP_GE_DG_Parliament%20action%20plan%202019-20_implementation%20of%20EU-GEO%20AA_eng.pdf [<https://perma.cc/Y6C5-8AHS>]. The Labor Code of Georgia was amended in 2019 to

assessment, though lacking confirmation from the EU, suggests that Georgia has met its gender equality and antidiscrimination harmonization commitments, though the harmonization was accomplished outside of the three-to-four year window stipulated in the .²¹⁹ While the 2020 Report on the Implementation of the EU Association Agreement with Georgia, drafted by the Committee on Foreign Affairs, does not make any mention of Georgia's progress regarding harmonization with gender equality commitments, the Report does interestingly call for the full implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the "Istanbul Convention"), which Georgia has both signed and ratified.²²⁰ The implementation of the Istanbul Convention is not mentioned within the Georgian Association Agreement, and it is surprising that the topic is introduced in the context of the Committee's Report on Implementation, given that the Convention is absent in the original Association Agreement.

2. Moldova

According to Moldovan authorities, as of November 2019, Moldova has adopted five out of the six gender equality and antidiscrimination directives.²²¹ The Report on the Implementation of the EU

harmonize Georgian legislation with Directives 2000/43/EC and 2000/78/EC, which respectively concern equal treatment between persons, irrespective of racial or ethnic origin, and equal treatment in employment and occupation. *Id.* at 24. A legislative package of amendments to the Labor Code, Law on Public Service, Law on Gender Equality, Law on Labor Migration, Code Administrative Offences, and Law on Control of Entrepreneurial Activity were adopted that harmonize Georgian legislation with Directives 2006/54/EC, 92/85/EEC, and 79/7/EEC. *Id.* at 25. These directives govern, respectively, equal opportunities between men and women in employment and occupation, the safety and health of pregnant workers, and equal treatment of men and women in social security matters. *Id.* Harmonization of Georgian legislation with Directive 2004/113/EC, which provides for equal treatment between men and women in the access to and supply of goods and services, was also completed in February 2019. Rep. of the H.R.C., Visit to Georgia: Rep. of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity on His Visit to Georgia 2, U.N. Doc. A/HRC/41/45/Add.23 (2019).

219. Georgia Association Agreement, *supra* note 104, annex XXX.

220. Committee Report 2020 Georgia, *supra* note 209, ¶ 19.

221. *Association Implementation Report on Moldova* 14, COM SWD (2019) 325 final (Sept. 11, 2019), https://www.consilium.europa.eu/media/40700/swd_2019_325_fl_joint_staff_working_paper_en_v10_p1_1045191.pdf [<https://perma.cc/8G36-MPJA>]. The European Commission further notes that out of the five directives harmonized by the partner nation, four out of the five directives were only partially transposed, rather than fully implemented. *Id.* This 2019 Assessment is the most recent review of the Moldovan harmonization with the six antidiscrimination and equality directives that was available to the author.

Association Agreement with Moldova, drafted by the Committee on Foreign Affairs, notes, with concern, that the antidiscrimination commitments under Moldova's have been limited in their implementation.²²² Moreover, the Committee calls upon Moldova to not only implement measures to improve women's representation and equal treatment, but to also ratify the Istanbul Convention.²²³ Moldova has signed, but not ratified, the Convention due to opposition from religious organizations concerned that the Convention may curtail religious freedoms.²²⁴ Like the Georgian Association Agreement, the Association Agreement signed with Moldova also does not mention the Istanbul Convention.

Notably, the Committee on Foreign Affairs also called on the European Commission to upgrade "neglected areas" of the Agreements, including gender policy. However, the Committee did not outline how the "neglected areas" should be upgraded.²²⁵ A similar request is made in the Ukraine Report, where the Committee calls on the European Commission to "upgrade neglected areas of the association agreements . . . with regard to important policy areas such as gender mainstreaming."²²⁶ The "neglected areas" referenced in the Moldova Report may, thus, include gender mainstreaming provisions, which were not included in the original Association Agreements but are frequently referenced in the Committee on Foreign Affairs Implementation Reports.²²⁷

The Report also stressed that the EU "must hold the Republic of Moldova accountable for its commitments with regards to the social dimension of the AA."²²⁸ The Report suggests strengthening accountability to social commitments, including gender equality and

222. Committee Report 2020 Moldova, *supra* note 210, ¶ 59.

223. *Id.* ¶¶ 63–64. This call to ratify the Istanbul Convention is also echoed in the 2020 European Parliament Resolution. See 2020 Parliamentary Resolution on Moldova, *supra* note 212, ¶ 64.

224. Maria Dulgher, *The Dispute of the Day: Should Moldova Ratify the Istanbul Convention? The Answer of the Moldovan NGOs*, MOLDOVA.ORG (Dec. 18, 2019), <https://www.moldova.org/en/the-dispute-of-the-day-should-moldova-ratify-the-istanbul-convention-the-answer-of-the-moldovan-ngos> [https://perma.cc/8QS6-ZMNT].

225. See Committee Report 2020 Moldova, *supra* note 210, at 21 ("Calls on the Commission to upgrade neglected areas of Association Agreements, which include important policy areas such as gender, the European Green Deal and the prevention of health crises.").

226. Committee Report 2020 Ukraine, *supra* note 211, at 11.

227. See Committee Report 2020 Georgia, *supra* note 209, at 10; Committee Report 2020 Moldova, *supra* note 210, at 21, 25; Committee Report 2020 Ukraine, *supra* note 211, at 11, 22–23.

228. Committee Report 2020 Moldova, *supra* note 210, at 21.

antidiscrimination, through detailed annual progress reports that analyze both the legal harmonization of relevant directives and also the “actual implementation” of these directives.²²⁹ The Report further advocates for the imposition of sanctions mechanisms for violations of the standards in the Agreement, including withholding EU macro-financial assistance (“MFA”) funds or the use of conditionality.²³⁰

While Moldova has not yet fully fulfilled its Agreement commitments, it has made significant strides—such as introducing a gender-based electoral quota system that provides state funding to political parties in which women represent at least forty-percent of the party’s electoral candidates.²³¹ In the 2019 elections, all political parties complied with the quota requirement. However, only 18.6% of women registered on national lists were in the top ten “winnable” positions on the ballot.²³² Additional mechanisms may be required to instantiate an equal balance of both genders in winnable positions in elections to come.²³³

3. Ukraine

Following a Summit on October 12, 2021, Ukraine and the EU evaluated the extent to which Ukraine has achieved the harmonization commitments outlined under the ; however, the results of the assessment will not be presented publicly until 2022.²³⁴ Absent official evaluations, this subsection relies on self-reporting by Ukraine of its achievement of the various harmonization commitments.²³⁵

229. *Id.*

230. *Id.*

231. *Association Implementation Report on Moldova*, *supra* note 221, at 2–3.

232. *Id.* at 3. Only forty-nine out of 264 women registered on national lists were in the top ten “winnable” positions. *Id.*

233. *Id.*

234. *Joint Statement Following the 23rd EU-Ukraine Summit*, COUNCIL OF THE EUROPEAN UNION (Oct. 12, 2021), <https://www.consilium.europa.eu/media/52383/20211012-joint-statement-final.pdf> [<https://perma.cc/LVB3-AGZM>]. Article 481 of the Ukraine requires a “comprehensive review of the achievement of objectives under [the] Agreement” within five years of its entry into force. Ukraine Association Agreement, *supra* note 106, art. 481. The Agreement entered into force on September 1, 2017. *Association Agreement between the European Union and Ukraine*, GOV. PORTAL UKR., <https://www.kmu.gov.ua/en/yevropejska-integraciya/ugoda-pro-asociacyu> [<https://perma.cc/5CQ9-YP6A>].

235. Comm’s Dept. of the Secretariat of the Cabinet Ministers of Ukraine, *Government Has Opened the Pulse of the Agreement – An Online System of Monitoring of the Progress in*

According to Ukraine's monitoring system, Ukraine has harmonized domestic legislation with four out of the six gender equality and anti-discrimination directives: (1) implementing standards for parental leave following the birth or adoption of a child [Directive 96/34/EC];²³⁶ (2) implementing the principle of "equal treatment between men and women in the access to and supply of goods and services" [Directive 2004/113/EC];²³⁷ (3) introducing measures to improve the safety and health of pregnant and breastfeeding workers [Directive 92/85/EEC];²³⁸ and (4) implementing the principle of "equal treatment for men and women" in matters of social security [Directive 79/7/EEC].²³⁹ Ukraine states that there has been a delay in

the Implementation of the Association Agreement with the EU, GOV. PORTAL UKR. (Nov. 20, 2019, 11:43 AM), <https://www.kmu.gov.ua/en/news/uryad-vidkriv-puls-ugodi-onlajn-sistemu-monitoringu-realizaciyi-zahodiv-vikonannya-ugodi-pro-asociaciyu-z-yes> [https://perma.cc/2UYE-9Z9U]. The "Pulse of the Agreement" Monitoring Database outlines the progress that Ukraine has made with respect to meeting its harmonization obligations. The system uses four colors to identify the status of each commitment: (1) **green**, which indicates timely completion of the commitment; (2) **yellow**, which indicates that the commitment is not completed, but the deadline is approaching; (3) **red**, which indicates that the commitment has not been completed and is past the deadline set in the ; and (4) **gray**, which indicates that the deadline expired and completion of the commitment was not assessed by the government. *Id.* The database also identifies whether the Cabinet of Ministers, the Verkhovna Rada (the federal parliamentary body of Ukraine), or other bodies are responsible for the (failed) implementation of the commitment. *Id.*

236. Запровадження санкцій за порушення законодавства про батьківські відпустки для догляду за дитиною [*Introduction of Sanctions for Violation of the Legislation on Parental Leave for Child Care*], Пульс УГОДИ [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2017-substream3-21> [https://perma.cc/J2XG-EYMR].

237. Удосконалення системи захисту від дискримінації за ознакою статі [*Improving the System of Protection Against Discrimination on the Grounds of Sex*], Пульс УГОДИ [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2017-substream3-17> [https://perma.cc/TT8S-9J3L].

238. Посилення контролю за безпекою та гігієною праці вагітних працівниць, працівниць, які нещодавно народили, чи тих, що годують [*Strengthening Control Over Occupational Safety and Health of Pregnant Workers, Workers Who Have Recently Given Birth or Nursing Mothers*], Пульс УГОДИ [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2017-substream3-22> [https://perma.cc/668X-94PN].

239. Впровадження принципу рівноправності чоловіків і жінок у сфері соціального забезпечення [*Introduction of the Principle of Equality of Men and Women in the Field of Social Security*], Пульс УГОДИ [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2017-substream3-23> [https://perma.cc/SJF6-4343].

implementing a framework for equal treatment in employment and occupation [Directive 2000/78/EC]²⁴⁰ and implementing the principle of “equal treatment between persons irrespective of racial or ethnic origin” [Council Directive 2000/43/EC].²⁴¹ While not a harmonization commitment under the , Ukraine, like Moldova, has introduced an election quota requiring a certain percentage of female candidates per ballot.²⁴² The exact percentage of candidates varies by the size of the community holding the election.²⁴³

While Ukraine has made notable progress towards harmonization with regard to the remaining two equality and antidiscrimination directives, Ukraine has not yet fully achieved the directives.²⁴⁴ In response to this limited progress, the European Parliament has called for the prioritization of gender inequality and labor legislation reform.²⁴⁵

B. The Use of Harmonization as an Enforcement Mechanism of Gender Equality Commitments

The Association Agreements between the EU and Georgia, Moldova, and Ukraine provide both an illustration of potential challenges presented by harmonization mechanisms, as well as a model for how harmonization may, nonetheless, help to foster gender equality. This sub-section outlines three takeaways on the use of harmonization to advance gender equality.

240. Удосконалення механізму запобігання та протидії дискримінації працівників під час прийому на роботу [*Improving the Mechanism for Preventing and Combating Discrimination against Employees During Employment*], Пульс Угоди [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2018-substream2-35> [https://perma.cc/JYA6-9X4T].

241. Закріплення на законодавчому рівні заборони будь-якої дискримінації у сфері праці, в тому числі під час прийому на роботу [*Establish at the Legislative Level the Prohibition of Any Discrimination in the Field of Labor, Including Employment*], Пульс Угоди [PULSE OF THE AGREEMENT], <https://pulse.kmu.gov.ua/ua/streams/social-policy-and-employment/2018-substream2-34> [https://perma.cc/MM2Q-JLFH].

242. *Statement No.1 Based on the Interim Results of Gender Monitoring During Local Elections in Ukraine to be Held on October 25, 2020*, UKR. WOMEN’S FUND (Sept. 9, 2020), <https://uwf.org.ua/en/statement-%e2%84%961-based-on-the-interim-results-of-gender-monitoring-during-local-elections-in-ukraine-to-be-held-on-october-25-2020> [https://perma.cc/664M-DTS8] [hereinafter *Gender in Elections Ukraine*].

243. *Id.*

244. See *supra* notes 240–241 and accompanying text.

245. Committee Report 2020 Ukraine, *supra* note 211, at 27.

1. Political Incentives, the Role of Monitoring Bodies, and Conditionality

In understanding why Moldova and Ukraine have struggled to meet their gender equality harmonization commitments under the Association Agreements, it is helpful to take into consideration the competing political incentives that may be influencing whether the required harmonization occurs. On one hand, all three partner nations depend on the EU for financial assistance and are likely incentivized to meet their harmonization commitments so as to maintain good relations with the EU and continued access to MFA loans and aid funds.²⁴⁶ Further, all three partner nations have expressed a desire to join the EU,²⁴⁷ and thus have a political incentive to adopt the EU's antidiscrimination and gender equality measures as a way of signaling a willingness to comply with EU law. Given the strong incentives to comply with the harmonization commitments, it is striking that only one of the partner nations has fully implemented the requisite antidiscrimination legislation.²⁴⁸

In exploring further why this may be, it is useful to bear in mind that implementing the six directives requires significant changes in domestic law for the partner nations, as well as potential societal changes and long-term collaboration between different stakeholders to enforce the new equality legislation.²⁴⁹ These legislative and cooperation challenges hinder political incentives to adopt the required gender equality legislation. Recent literature interestingly suggests that this issue is not limited to gender equality commitments alone; there have also

246. Press Release, Eur. Comm'n, EU Disburses €50 Million in Macro-Financial Assistance to the Republic of Moldova (Oct. 8, 2021), https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5103 [<https://perma.cc/FTS3-VPTA>]; Press Release, Eur. Comm'n, EU Disburses €600 Million in Macro-Financial Assistance to Ukraine to Address the Economic Fallout of the COVID-19 Pandemic (Oct. 25, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5460 [<https://perma.cc/3DPM-GYZY>]; Press Release, Delegation of the Eur. Union to Geor., EU Disburses €100 Million in Macro-Financial Assistance to Georgia, Most of It as Part of COVID-19 Support (Nov. 25, 2020), https://eeas.europa.eu/delegations/georgia/89328/eu-disburses-%E2%82%AC100-million-macro-financial-assistance-georgia-most-it-part-covid-19-support_en [<https://perma.cc/G4ZG-M4BP>].

247. See generally *Batumi Summit Declaration, Presidents of Georgia, Republic of Moldova and Ukraine*, PRES. OF UKR. (July 19, 2021, 5:55 PM), <https://www.president.gov.ua/en/news/deklaraciya-batumskogo-samitu-shvalena-glavami-derzhav-asoci-69609> [<https://perma.cc/C2F7-3T2M>] (emphasizing the shared goal of the three partner nations to ascend to the EU and reaffirming an “unwavering commitment” to progressively harmonize domestic legislation with key elements of the EU *acquis*).

248. See *supra* Section III.A.1.

249. Bahri, *supra* note 122, at 578.

been notably limited implementation and enforcement of labor provisions, such as the right to freedom of association and collective bargaining, which have been drafted into EU trade agreements.²⁵⁰ Thus, the political challenges of introducing and enforcing the equality commitments provided for under the Association Agreements, combined with a lax EU oversight mechanism, may be hindering the full implementation of the gender equality commitments by the partner nations.

The cases of Georgia, Moldova, and Ukraine thus highlight that a legal harmonization mechanism is only as strong as its monitoring body. Determining whether the three partner nations had met their harmonization commitments presented a challenge while researching for this Note, given the fact neither the Implementation Assessments nor the Implementation Reports discuss whether each partner nation has met their antidiscrimination and gender commitments.²⁵¹ Rather, the assessments of each partner nation's progress in harmonizing legislation was based upon self-reporting. Absent a strong monitoring body, the EU's use of harmonization mechanisms resembles the dispute settlement mechanisms adopted by Israel and Canada²⁵² in that they are only as powerful as the trading nations wish them to be. The Canada-Israel trade agreement provides that the gender equality chapter is subject to dispute settlement if the commitments therein are not met; however, both parties have to consent to the settlement mechanism, which renders it non-compulsory in practice.²⁵³ In much the same way, the Association Agreements provide that the partner nations will harmonize with the agreed-upon equality directives.²⁵⁴ However, the successful completion of these directives depends, in large part, on

250. Axel Marx & Jadir Soares, *Does Integrating Labour Provisions in Free Trade Agreements Make a Difference? An Exploratory Analysis of Freedom of Association and Collective Bargaining Rights in 13 EU Trade Partners*, in GLOBAL GOVERNANCE THROUGH TRADE: EU POLICIES AND APPROACHES 158, 174 (Jan Wouters ed., 2015). The Marx & Soares study examined the protection of freedom of association and collective bargaining rights in thirteen countries with whom the EU had signed a trade agreement that specifically protects labor rights. *Id.* at 159. The authors found an overall deterioration in the protection of these labor rights following the trade agreement. *Id.*

251. The sole exception is the European Commission's 2019 Association Implementation Report on Moldova, which observes that Moldova has met five out of the six harmonization commitments related to gender equality and antidiscrimination. *Association Implementation Report on Moldova*, *supra* note 221, at 14.

252. See *supra* notes 142–144 and accompanying text.

253. Bahri, *supra* note 67, at 578.

254. See *supra* Section III.A.

the political will of the partner nation to do so,²⁵⁵ given that EU monitoring of harmonization is limited.

As the European Parliament observes, the EU needs to strengthen its monitoring of the social and equality provisions of the Association Agreements as they are operationalized by the partner nations.²⁵⁶ The Parliament suggests that the European Commission produce an annual report that highlights not only the transposition of the relevant provisions into national legislation, but also their “actual implementation” as well.²⁵⁷ Such a report will involve greater dialogue with government and civil society representatives in each of the partner nations. The four implementation bodies created by the Agreements—which comprise ministers, civil servants, and civil society representatives from both the EU and the partner nations²⁵⁸—may offer an ideal structure to produce these reports, given the broad participation by civil society and government alike in these bodies. The European Parliament has also explored the idea of imposing sanctions for violations of the labor standards set in the Agreement, including withholding EU funds or the use of conditionality.²⁵⁹ Such a mechanism would facilitate both the more rapid adoption of the necessary equality legislation, as well as the “actual implementation” of this legislation in the labor market.

As countries consider using a legal harmonization method to enforce gender commitments, ensuring an adequate monitoring body will be crucial in determining the success of such provisions.²⁶⁰ The use of annual reports prepared by both members of civil society and the partner governments may also provide useful feedback on the status of the harmonization commitments and their actual implementation.²⁶¹ Finally, conditionality of market access on the harmonization of agreed-upon legislation may be valuable to signal the gravity of the

255. See Michael Emerson, *Future Fundamentals for the Association Agreements Between the EU and Georgia, Moldova and Ukraine, and Organisation of the Wider Europe 2*, CTR. FOR EUR. POL. STUD. (July 27, 2020), <https://3dcftas.eu/publications/future-fundamentals-for-the-association-agreements-between-the-eu-and-georgia-moldova-and-ukraine-and-organisation-of-the-wider-europe> [<https://perma.cc/3W4R-L36E>] (stressing the political obligations presented by the transposition of EU Directives in the three partner nations).

256. Committee Report 2020 Moldova, *supra* note 210, at 21.

257. *Id.*

258. *2018 Implementation Assessment for Moldova, Georgia, and Ukraine*, *supra* note 38, at 12–13.

259. *Id.*

260. See *supra* note 256 and accompanying text.

261. See *supra* note 258 and accompanying text.

harmonization commitments made regarding gender and social issues.²⁶²

2. Flexibility in Updating Harmonization Objectives

One of the striking recommendations that emerged in the Committee on Foreign Affairs' Implementation Reports is the need to update neglected areas of the Association Agreements to include developments in gender policy, such as the use of gender mainstreaming.²⁶³ As gender mainstreaming concerns have become more prominent in trade negotiations,²⁶⁴ the European Parliament has stressed a desire to see gender mainstreaming considerations included in the partner nations' policymaking processes.²⁶⁵ However, updating the social equality harmonization requirements to reflect this policy interest presents a challenge.

Given that the Association Agreements were signed roughly six years ago, many provisions and a "significant part" of the EU's *acquis*, to which the partner nations are to harmonize, are out-of-date.²⁶⁶ The Association Agreements do include a general procedure that enables the Association Councils to "tak[e] into account the evolution of EU law and applicable standards" when updating harmonization requirements.²⁶⁷ However, these "updates" by the Association Councils are limited to the cases explicitly provided for in the .²⁶⁸ This implies that, under a strict reading, the Association Councils do not have the "general competence" to broaden the scope of the annexes so that new EU legislation or policy objectives are included.²⁶⁹ However, for annexes that cover a broad area of EU legislation (such as annexes on services, energy, and environment), the Association Councils have

262. See *supra* note 259 and accompanying text. Van der Loo and Akhvediani note that the economic and sectoral cooperation title of the Association Agreements (which contain the gender equality commitments) is not subject to any form of market conditionality. VAN DER LOO & AKHVLEDIANI, *supra* note 182, at 5. This creates a lower incentive for the partner states to actually implement the harmonization commitments. *Id.*

263. Committee Report 2020 Ukraine, *supra* note 211, at 11.

264. Monteiro, *supra* note 15, at 2.

265. Committee Report 2020 Ukraine, *supra* note 211, at 11. Gender mainstreaming was highlighted as a priority area for EU trade relations by the European Parliament in 2018. See Resolution on Gender Equality in EU Trade Agreements, *supra* note 36, ¶ 38.

266. VAN DER LOO & AKHVLEDIANI, *supra* note 182, at 4.

267. Ukraine Association Agreement, *supra* note 106, at 164.

268. VAN DER LOO & AKHVLEDIANI, *supra* note 182, at 9.

269. *Id.*

greater flexibility to creatively “update” the Annex to include EU legislation and policy initiatives that are directly or indirectly linked with the objectives of the original harmonization commitments.²⁷⁰ Therefore, for a cross-cutting issue like gender mainstreaming that may fall under different annexes, drafting broad harmonization annexes provides for much more creative “updating” to include gender mainstreaming initiatives.

Where the annex is narrowly tailored, the EU and the partner nation can use other soft or hard law instruments to outline how the partner nation’s legislation can be updated when key directives and policies have become out-of-date.²⁷¹ The *2017 Eastern Partnership – 20 Deliverables for 2020 Joint Staff Working Document* provides an example of an action plan developed by the EU and Georgia, Moldova, and Ukraine to update gender equality commitments under the Association Agreements to include gender mainstreaming and the ratification of the Istanbul Convention.²⁷²

The Eastern Partnership Association Agreements highlight the importance of creating a flexible mechanism to update harmonization requirements as relevant law and policy continue to change.²⁷³ Where harmonization annexes are provided, it may be advantageous to construe these annexes broadly so that the harmonization provisions can be easily updated.²⁷⁴ Where harmonization requirements are narrowly tailored, soft and hard law mechanisms may also prove useful in updating harmonization requirements.²⁷⁵ These mechanisms may take the form of hard law instruments, such as Memorandums of Understanding, or soft law instruments, such as Action Plans or Joint Declarations.²⁷⁶ Regardless of form, the ability to update harmonization requirements to align with future legislative developments is a significant factor in enabling the success of legal harmonization, by ensuring that such harmonization is relevant and compliant with expectations.

270. *Id.*

271. *Id.* at 35.

272. *Eastern Partnership – 20 Deliverables for 2020 Focusing on Key Priorities and Tangible Results* 8, SWD (2017) 300 final COM (June 9, 2017), https://www.eas.europa.eu/sites/default/files/swd_2017_300_fl_joint_staff_working_paper_en_v5_p1_940530.pdf [<https://perma.cc/QDP3-3DK6>].

273. *See supra* notes 266–269 and accompanying text.

274. *See supra* note 270 and accompanying text.

275. *See supra* note 271 and accompanying text.

276. VAN DER LOO & AKHVLEDIANI, *supra* note 182, at 35.

3. Mainstreaming Gender Equality Outside of Trade

Despite the moderate progress made by the three partner nations in harmonizing with gender equality and antidiscrimination directives, the study of Georgia, Moldova, and Ukraine also suggests that the harmonization commitments made under the Association Agreements may have strengthened the political attention given to gender equality issues in meaningful ways outside of the harmonization provisions. In the Association Implementation Reports, notable attention is given to the fact that Moldova amended the country's electoral laws to create gender quotas and increase female political representation.²⁷⁷ Ukraine has done similarly.²⁷⁸ Outside of electoral reform, all three partner nations have launched efforts to adopt the Istanbul Convention on gender-based violence²⁷⁹ and further expressed their commitment to the empowerment of women as part of the Joint Declaration of the Eastern Partnership Summit in 2017.²⁸⁰ While these accomplishments fall outside of the harmonization requirements, they highlight the increased visibility of women's issues within the partner nations.

Moreover, the inclusion of gender equality harmonization commitments may help further mainstream gender in trade negotiations. As Simonetta Zarrilli, the head of UNCTAD's Gender, Trade and Development Program, suggests, the movement of gender equality provisions in trade agreements from the "aspirations" of the preamble and into the core text renders gender equality considerations more visible in the trade negotiation process.²⁸¹ The inclusion of binding gender commitments, even where only moderately successful, may have a powerful signaling impact that gender must be included as an important consideration of trade.²⁸² Perhaps gender equality provisions will continue to be mainstreamed into trade considerations in much the same way that environmental considerations have become

277. *Association Implementation Report on Moldova*, *supra* note 221, at 2.

278. *Gender in Elections Ukraine*, *supra* note 242.

279. *See* Committee Report 2020 Georgia, *supra* note 209, at 10; Committee Report 2020 Moldova, *supra* note 210, at 22; Committee Report 2020 Ukraine, *supra* note 211, at 19.

280. Joint Declaration of the Eastern Partnership Summit (Brussels, 24 November 2017), annex 10, COM (2017) 14821/17 (Nov. 24, 2017).

281. *See* Zarrilli, *supra* note 6.

282. *See id.*; *see also* BENSALÉM, *supra* note 40, at 15–16 (observing that the separate gender chapter in the Amended Canada–Chile Trade Agreement inspired Cecilia Malmström, the EU Trade Commissioner, to prioritize the drafting of a separate gender chapter in the EU's updated trade agreement with Chile).

progressively more prevalent in trade agreements.²⁸³ While it is too early to be certain that gender will become mainstream in trade negotiations, the inclusion of these harmonization provisions is a powerful step in the direction towards gender equality.

CONCLUSION

While many gender provisions in trade agreements remain couched in aspirational language, legal harmonization requirements may serve as valuable enforcement mechanisms for strengthening accountability to stated gender commitments. This Note demonstrates that, even where only moderately successful as an enforcement tool, legal harmonization has played a valuable role in drawing attention to the gendered aspects of trade within both the EU and its partner nations. As the movement for sustainable trade gains additional traction and strategies for combating durable inequality become ever-more important, the legal harmonization of trade policy offers a powerful opportunity to foster a more equal future.

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283. See generally, e.g., Dale Colyer, *Environmental Provisions in Trade Agreements* (W. Va. Univ., Conf. Paper No. 123723, 2012), <https://ideas.repec.org/p/ags/wvucps/123723.html> [<https://perma.cc/HNS5-74T6>].

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