



Trade and social sustainability

An overview and analysis

2017:2



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Foreword

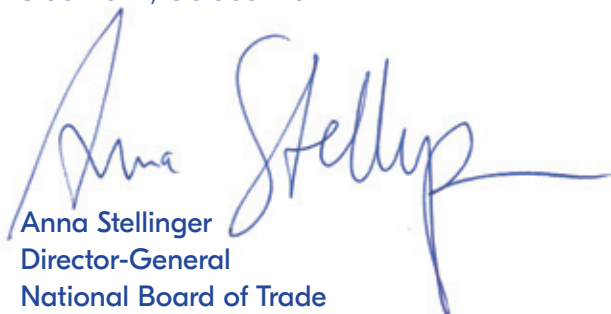
The 2030 Agenda and the UN Sustainable Development Goals state that trade is an engine for economic development and therefore an important instrument to achieve all dimensions of sustainable development. At the same time sustainable development is an explicit objective for trade policy instruments and we see a growing trend in using trade policy as a tool to promote specific sustainability objectives. These increasingly clear connections between trade and sustainability lay the basis for this report.

The main focus of this report is the links between trade and the social dimension of sustainable development. The report provides a comprehensive and holistic overview of relevant issues within trade and social sustainability, with a special focus on human rights, labour rights/working conditions and gender equality. The report also maps out trade related instrument with the potential to contribute to social sustainability, and it describes how the potential for trade to contribute to social sustainability is dependent on both national preconditions and complementary reforms.

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Stockholm, October 2017



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Summary

As a result of the 2030 Agenda, sustainability has become a universal and overarching goal for all of the UN's activities. All UN member states are to strive to achieve the new global sustainable development goals. The 2030 Agenda clearly states that trade is an important instrument for achieving sustainable development.

Sustainable development includes all efforts towards a balanced global development, taking account of economic, environmental and social dimensions. These three dimensions are of equal value, and overlap each other on several levels. Social sustainability includes the protection and promotion of a broad spectrum of values and interests such as human and labour rights, gender equality, and health, consumer and security issues.

There is no universal solution for how trade policy and trade rules can promote social sustainability most effectively. On the contrary, it is necessary to analyse each individual case, while considering the specific conditions and context. Future sustainability efforts in the area of trade will not only be about managing the social and environmental effects of economic growth, but will also have sustainability as a central component of all activities.

An analysis of trade and the impact of trade liberalisation measures on social sustainability issues should primarily be based on the economic effects of trade, such as increased growth, efficiency gains and structural adjustments, which also have social consequences. This report highlights both general links between trade and social sustainability, and links between trade and each of three focus areas: *human rights, working conditions and gender equality*. The report confirms that there are clear links between trade and social sustainability, and that trade liberalisation measures have different effects on each of these three areas of sustainability.

As for the focus areas, the report shows the complex relationship between trade liberalisation and protection of human rights. On the one hand, the economic resources generated as a result of trade can promote human rights in various ways. On the other hand, new trade opportunities also mean that weak protection for human rights in reality may be seen as a competitive advantage. Protecting human rights can be particularly challenging when trade takes place in geographically fragmented and long value chains. This means that trade-related instruments may be required in order to promote responsible value chains throughout the entire supply chain.

This particularly applies to labour rights and working conditions, because trade liberalisation measures have a far-reaching influence on the labour market, globally and locally. Some jobs disappear while others are created. Depending on where and in what sectors jobs are created or disappear, as well as on available resources for adjustment support, trade liberalisation measures



will have different sustainability effects in different countries. Since empirical studies have generated mixed results, further research and analysis is required in order to gain a better picture of what the actual effects of trade liberalisation measures are on labour rights and working conditions, and of how trade rules should be designed so as to make these effects as positive as possible.

Despite the fact that trade rules are designed to be gender-neutral, women and men are often impacted differently by trade and trade liberalisation measures, especially in the labour market. This is, among other things, due to different national socio-economic preconditions. Trade and trade liberalisation measures can impact gender equality at the national level, for example through changes in factors such as women's and men's occupations, economic empowerment, and access to resources, as well as through overall consumption patterns. In the trade context, it should be noted that gender equality is not merely a matter of the human right to not be discriminated against based on gender. It is also a matter of economic rationality. Countries with higher rates of female employment exploit their economic potential to a greater extent, which in turn boosts their economic growth. However, there are structural and practical limitations that prevent women from fully benefiting from the opportunities created by trade. Complementary measures are needed in order to create a level playing field for women's participation in the economy, to support women's entrepreneurship,

and thus foster national opportunities for socially sustainable trade.

Trade-related instruments with either the purpose or potential to promote social sustainability can be found at all policy levels, globally as well as regionally and nationally. Within the WTO system, social sustainability can be promoted by interpreting the WTO's regulatory framework, in line with the overarching goal of contributing to sustainable development, for example in its dispute settlement mechanism. The EU's trade policy can promote social sustainability through sustainability chapters in its free trade agreements (FTAs), sustainability impact assessments (SIA), and its Generalised Scheme of Preferences (GSP). In addition, Aid for Trade (AfT), public procurement and corporate social responsibility (CSR) can all contribute to achieving socially sustainable trade.

However, it should be stressed that not all trade-related instruments for social sustainability will be automatically effective. Differences in national preconditions mean that trade liberalisation measures have different effects on social sustainability. Consequently, additional reforms that complement trade liberalisation measures and improve conditions at the national level are often needed in order to benefit from trade. These national preconditions include a well-functioning infrastructure, good governance, adherence to the rule of law, as well as the expansion of social protection schemes and increased investments in health and education, which should include a gender equality perspective.

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Abbreviations and acronyms

AAAA	Addis Ababa Action Agenda	MNE	Multinational enterprise
AB	Appellate Body	MOU	Memorandum of Understanding
AfT	Aid for Trade	NAP	National Action Plan
B2C	Business-to-consumer	NGO	Non-governmental organisation
CAFTA-DR	Dominican Republic-Central America Free Trade Agreement	ODI	Overseas Development Institute
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	OIE	World Animal Health Organization
CSR	Corporate Social Responsibility	OECD	Organisation for Economic Co-operation and Development
DDA	Doha Development Agenda	PGU	Sweden's Policy for Global Development
DG	Directorate General	RBC	Responsible Business Conduct
DSB	Dispute Settlement Body	SDG	Sustainable Development Goals
DSU	Understanding on rules and procedures governing the settlement of disputes	SDT	Special and differential treatment
EBA	Everything But Arms	SIA	Sustainability Impact Assessment
EU	European Union	SME	Small and medium-sized enterprises
GATT	General Agreement on Tariffs and Trade	SPS	Sanitary and Phytosanitary Agreement
GATS	General Agreement on Trade in Services	SSM	Special safeguard mechanism
GDP	Gross Domestic Product	TBT	Technical Barriers to Trade Agreement
GPA	Agreement on Government Procurement	TFA	Trade Facilitation Agreement
GSP	Generalised Scheme of Preferences	TI	Transparency International
GVC	Global Value Chains	TPRM	Trade Policy Review Mechanism
GRI	Global Reporting Initiative	TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
HR	Human Rights	TSD	Trade and Sustainable Development
IA	Impact Assessment	UN	United Nations
ICT	Informations and Communication Technology	UNCTAD	United Nations Committee on Trade and Development
ILO	International Labour Organization	UNEP	United Nations Environmental Program
IPPC	International Plant Protection Convention	UNESCO	United Nations Educational, Scientific and Cultural Organization
ISO	International Standard	UNGP	United Nations Guiding Principles on Business and Human Rights
LDC	Least Developed Country	USD	United States dollar
MERCOSUR	Mercado Común del Sur	WHO	World Health Organization
MFN	Most-favoured-nation	WTO	World Trade Organization

1

Introduction to sustainability and trade

International trade is fundamental for economic growth and improved welfare. Empirical research shows that no country has succeeded in achieving long-term economic growth without being open to trade.¹ However, trade in itself is not sufficient to achieve economic, environmental and social sustainable development. Opportunities to share and benefit optimally from the positive effects of trade largely depend on a broad range of, often national, factors. At the same time, sustainable development is an express goal of contemporary trade policy at the global as well as on regional and national levels. However, the link between trade and sustainability is not confined to political ambition alone. Many existing trade-related instruments include ways of promoting sustainability. For example, all of the EU's free trade agreements contain specific chapters on sustainability, and at the EU level, public procurement is used to an increasing extent as a policy instrument where sustainability considerations are being given increased significance. This growing trend of using trade as an instrument to promote and foster sustainability forms the basis for this report.

1.1 Definition of the term “sustainability”

The term *sustainability* came into use in the 1970s and at the time mainly focused on the relationship between economic development and the environment.² In the 1980s, the term *sustainable development* was introduced and became universally recognised in 1987 through the UN-initiated

report entitled “Our Common Future”, generally referred to as the Brundtland report, which defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³ This is one of the most widely adopted and recognised definitions of sustainable development to this day. However, sustainability includes all efforts towards balanced global development, including economic, environmental and social dimensions.⁴ These three dimensions are of equal value and should not be seen as watertight compartments that are separate from each other, since in fact they overlap on many levels.⁵

1.2 The 2030 Agenda – a paradigm shift

The UN's 2030 Agenda and the global sustainable development goals (SDG), adopted in September 2015, will function as the international guiding framework for all policy areas and measures that are linked, in one way or another, to sustainability issues until 2030. The Agenda's 17 sustainable development goals and 169 targets include all three dimensions of sustainability and deal with issues such as ending poverty, gender equality, and climate action. All of the UN's activities should strive to achieve the SDGs, which have replaced the Millennium Development Goals from 2000. Unlike the Millennium Development Goals, which focused primarily on reducing poverty in developing countries, the SDGs are global

THE GLOBAL GOALS

For Sustainable Development



and universal. This means that they apply to all of the UN's member states.

With the 2030 Agenda and the SDGs, the emphasis has shifted from being primarily about meeting the needs of developing countries and identifying the measures needed to achieve global poverty reduction, into the idea of creating a sustainable world. The 2030 Agenda is thus not only about managing the social and environmental effects of economic growth but places sustainability front and centre as a basis for all policy, including trade policy.

1.3 The role of trade in the sustainability agenda

International trade has a central role in the 2030 Agenda, both as an instrument to help generate the resources required to implement and fulfil the SDGs, and as an independent goal of its own for a sustainable world. SDG 17 on partnership for the goals, include three trade specific targets: to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under WTO; to significantly increase the exports of developing countries, including doubling the least developed countries' share of global exports by 2020; and to realize timely implementation of duty-free and quota-free market access for goods

from LDCs.⁶ Explicit links to trade are also found in a number of the other targets, for instance targets related to eliminating export subsidies for agricultural products, banning certain forms of fishery subsidies, increasing AfT, including small and medium sized enterprises (SME) in value chains, and promoting sustainable consumption and production through sustainable public procurement.⁷ The principle of special and differential treatment (SDT) of developing countries is confirmed, while the importance of creating strong institutional foundations for sustainable trade through working with good governance and anti-corruption, for example, are emphasised. Many of these trade-related targets are not new but in fact confirm how the WTO and the UN have viewed the role of trade in contributing to development and previous commitments in the area within the framework of the WTO.⁸

In 2015, the Addis Ababa Action Agenda (AAAA) was adopted during the UN's Third International Conference on Financing for Development. The AAAA specifies a number of actions for financing the sustainable development goals in the 2030 Agenda⁹, while also confirming the role of trade as an engine for inclusive economic growth, its contribution to poverty reduction, and its significance in promoting sustainable development.¹⁰

1.4 Sustainability as a goal for trade policy

The preamble to the agreement establishing the WTO specifies sustainable development as a key goal and that one of the purposes of trade rules is to fulfil human rights, improve global living standards, promote sustainable development, and preserve the environment.¹¹ The Ministerial Declaration that began the trade negotiations under the Doha Round clarifies that the WTO believes that there is a clear relationship between trade liberalisation and sustainable development.¹² Since the WTO agreements do not contain an explicit obligation regarding sustainable development, this goal should be seen as a guiding principle and not as a legally binding obligation.¹³

The Lisbon Treaty, which lays down the fundamental principles for the EU's policies, states that the EU is to work for the sustainable development of Europe *"based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment."*¹⁴ Even in its external relations, which includes trade policy, the EU shall contribute to sustainable development, free and fair trade, eradication of poverty, and the protection of human rights.¹⁵ All of the EU's external actions on the international stage are to rest on the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, respect for the principles of the Charter of the United Nations, and international law.¹⁶ Sustainability is also an integral part of the EU's trade policy. The European Commission's trade strategy from 2015 states that a fundamental objective of the EU is for economic growth to go hand in hand with social justice and respect for human rights, as well as ambitious standards for working conditions, protection of the environment, health, and safety.¹⁷ In line with this, the EU's trade policy should promote sustainable development, human rights and good governance globally.¹⁸ The strategy also states that trade is not an end in itself but a tool to benefit people. The goal of the EU's trade policy is to derive the maximum benefit from this tool.¹⁹

The trade rules in the WTO and the EU constitute the legal framework for international trade that Sweden must comply with. At the national

level, Sweden has also legislated goals and ambitions on how to achieve sustainable development. The Swedish constitution states that the public sector shall promote sustainable development that leads to a good environment for current and future generations.²⁰ In accordance with Sweden's Policy for Global Development (PGU), all areas of policy are to work together in order to contribute to just and sustainable global development, which means that the poor can more successfully benefit from globalisation.²¹ Cooperation between trade and sustainability is also identified as a baseline for Sweden's export strategy from 2015: *"... trade between people and countries is beneficial and promotes values such as democracy, gender equality, human rights and a better environment."*²²

1.5 Sustainability in global value chains

A prominent feature of today's international trade is that the production of goods and services is divided into stages that take place in different parts of the world. This is usually termed international production networks or global value chains (GVC).²³ A global value chain includes the full range of activities that businesses undertake to bring a product or service from its conception to its end-use by final consumers. Over half of all trade today consists of inputs in the form of goods and services.²⁴ Thanks to the emergence of trade in GVC, countries no longer need to develop their competitiveness in entire industries in order to be able to participate in international trade. Instead, businesses can participate in value chains by specialising in the production stages for which their country has comparative advantages.²⁵ This new trade reality means that the sustainability challenges for market players vary depending on where they are in the value chain. Different challenges mean that there is no single solution as to how international trade can help to promote sustainability. A multifaceted approach at many different levels and by many different stakeholders is needed.

1.6 Social sustainability

Social sustainability includes the protection and promotion of a broad spectrum of legitimate interests such as human rights, working conditions, gender equality, and health and safety issues.²⁶ It

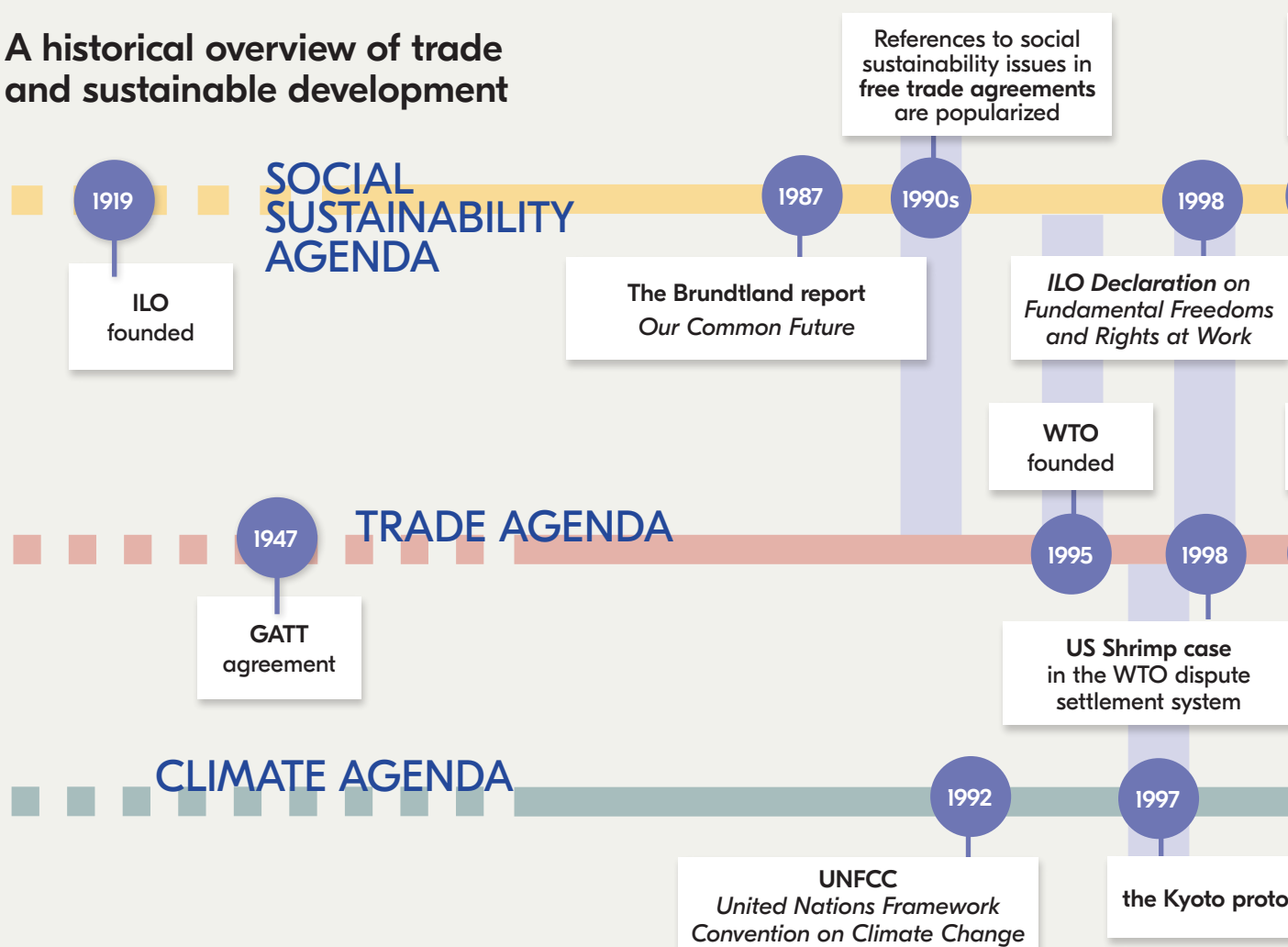
is difficult to fully separate social sustainability issues from economic issues, since they often impact each other. Examples include labour market issues, poverty eradication, and anti-corruption measures. This report uses a broad definition of social sustainability, and includes economic considerations that have a decisive influence on how social sustainability issues are regulated and managed.

Social sustainability issues are difficult to regulate on a global scale. Due to political, historical, economic, and cultural differences, social issues are managed in many and varied ways in different countries. This difficulty is increased by how dependent social sustainability issues are on national institutions and the capacities of individual countries to regulate, implement, and act

on social rights. Despite this, social sustainability issues such as human rights are often of global interest. This requires trade-offs between global ambitions and legitimate national interests.

The international position has long been that all three dimensions of sustainable development are mutually supportive, meaning that an action that promotes one dimension automatically also promotes the other two.²⁷ However, research has shown that this is not always the case. Conflicts between the different dimensions can arise, and consequently there is also a need to balance different interests against each other.²⁸ The potential negative effects must be evaluated on a case-by-case basis, along with an analysis of whether or not these effects can be compensated or neutralised. Balancing different interests, and deter-

A historical overview of trade and sustainable development



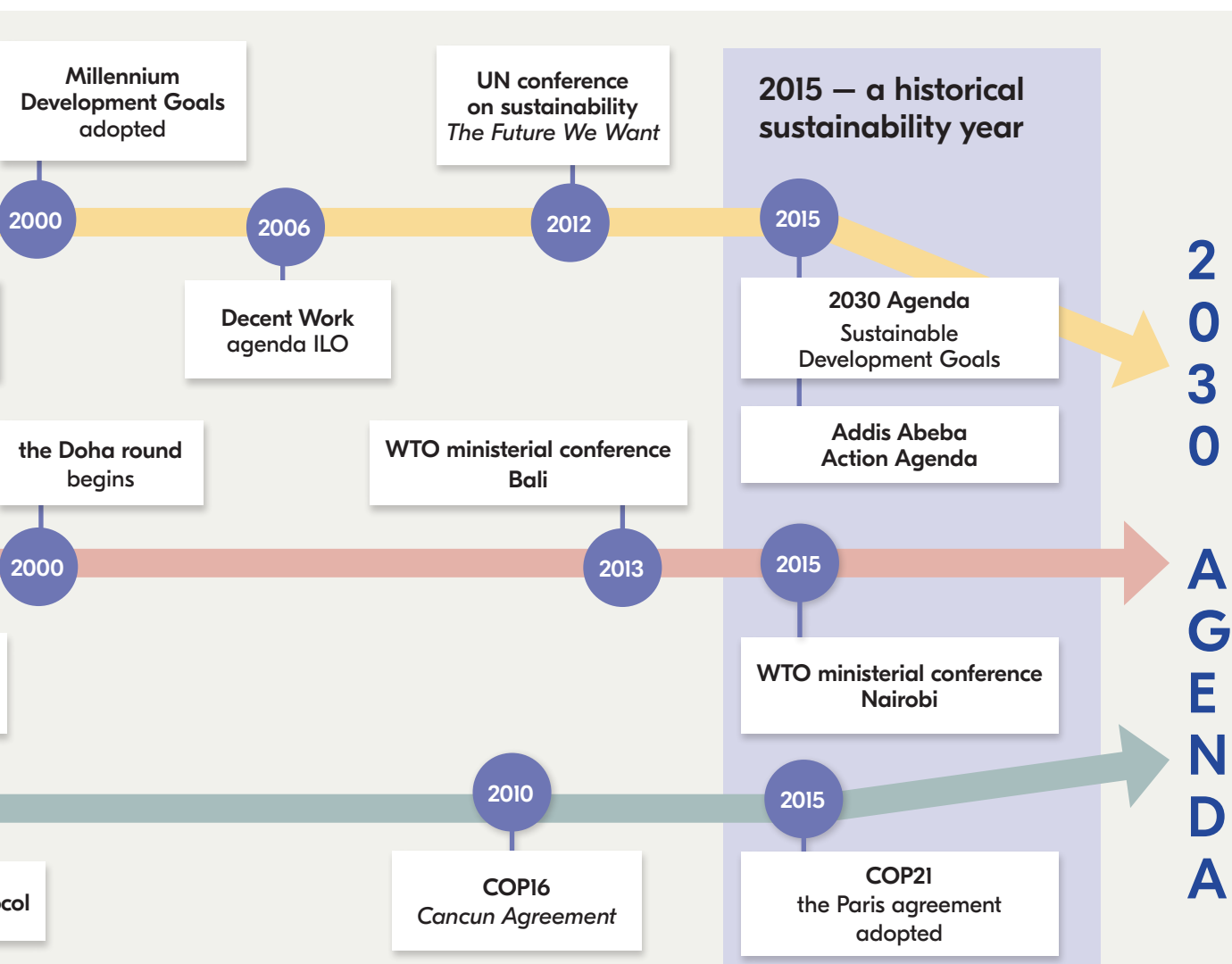
This timeline shows selected important events that have contributed to the development of both the sustainability agenda as well as the trade agenda, and how international work to promote the three dimensions of sustainable development – social, economic and environmental – coincided in 2015. With the adoption of the 2030 Agenda all these issues are intertwined and the role of trade in contributing to sustainable development is clarified.

mining which interest carries the most weight in each particular case, is ultimately a matter of political priority.

A further complicating aspect is that there is no given hierarchy between sources of international law, such as international agreements. This means, for example, that an obligation under an international trade agreement does not outweigh a commitment under a different international agreement with the purpose of promoting social sustainability (conventions on human rights, for example). This can be problematic should conflict arise between two obligations in different international agreements. The stand in international law is therefore that obligations under international agreements are to be interpreted in such a way that they are consistent with each other.²⁹

When social sustainability issues are regulated at the international level, their implementation is often weaker than when economic issues such as trade policy are regulated at the international level. In particular, there are seldom sufficiently strong mechanisms to implement and enforce social rights. One reason for this is that social sustainability issues are often closely linked to the sovereignty, power, and political systems of states, as well as the state's economic resources.

Furthermore, to a greater extent than for other sustainability issues, social sustainability regulation is a mix of public sector rules and private voluntary initiatives from the business community, such as CSR or responsible business conduct (RBC).³⁰ When it comes to labour market issues in particular, many countries also apply tripartite models that involve a strong union presence.



2

Purpose and method

2.1 Purpose and scope

So far, the links between trade and the environmental and economic dimensions of sustainability have been analysed in more detail than the connection between trade and social sustainability. This has created an imbalance regarding awareness of the social effects of trade, as well as a certain degree of neglect of social sustainability aspects in trade policy analysis. With the aim of counteracting this tendency, this report focuses solely on the link between trade and the social dimension of sustainability, and does not intend to provide an exhaustive picture of the links between trade and sustainability. The report is based on and aims to complement the National Board of Trade Sweden's previous analysis of trade and sustainability, with a particular focus on social sustainability.

This report aims to take a holistic approach to the subject of trade and social sustainability, and provides a general overview of relevant issues, followed by more in-depth analysis of three focus areas: human rights, working conditions, and gender equality. However, these areas are closely interlinked, and the report intends to demonstrate the horizontal nature and complexity of the subject. The report aims to create a general picture without claiming to provide a complete or comprehensive description of all the links that may exist between trade and social sustainability. Because social sustainability issues have a significant impact on developing countries in general and LDCs in particular, the report has a strong development perspective, focusing on how international trade and trade liberalisation measures

impact developing countries, especially regarding the three focus areas. Effects on the EU's internal market are not covered in this report.

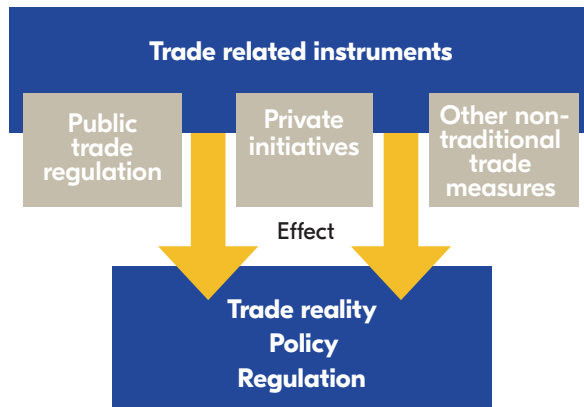
Taking into account this breadth and complexity, different parts of the report have different purposes. Chapters 3 – 8 of the report intend to **map** answers to the following questions:

- 1) The general links between trade and social sustainability, as well as the links between trade and three focus areas of social sustainability that are highlighted in 2030 Agenda, in the European Commission's trade strategy, and in Sweden's export strategy – human rights, working conditions and gender equality;
- 2) How the effects of trade are dependent on both national conditions and complementary policy measures; and
- 3) What existing trade-related instruments could be used in order to help promote social sustainability?

Based on this mapping exercise, chapter 9 **analyses** how trade-related instruments can help to promote social sustainability.

In this report, the term 'trade-related instrument' is used broadly, and includes all actions that impact trade policy, the regulatory framework for trade, and the realities of trade. This means that private initiatives and other non-traditional trade policy actions are also included in the report. However, the focus is primarily on how public sector trade regulations can help to promote social sustainability, and not on the role and contributions of the business community to the development of these regulations.

Figure 1: The report's use of the term trade related instrument.



2.2 Method

The mapping exercise is based on a broad literature review of both theory and empirical evidence in the area, and is complemented by concrete examples of trade's effects on sustainability. Taking into account the scope and complexity of the subject, the report has primarily selected studies of a more general nature that are relevant. The effects on individual countries cannot be seen as representative other than as individual examples.

In the light of the complexity of the area, the analysis includes the following components.

Trade and trade policy. The use of trade-related instruments to promote sustainability includes the aim of managing the effects of trade, if any, on social sustainability. For this reason, the nature and structure of trade reality as well as trade policy needs to be included in the analysis.

Effects in both directions. Considering the political goal of promoting social sustainability issues through trade policy, it is important to analyse both how trade impacts, and is impacted by, conditions at the national level.

Interaction between the legal system and the economy. Because the report aims to analyse how existing trade regulations can contribute to social sustainability, the regulatory frameworks for trade at both global and EU levels form a baseline for both the mapping exercise and the analysis in the report. Drawing a clear distinction between the economic and social effects of trade is not easy to do, since they interact and influence each other. As a result, this report starts its reasoning in the economic effects of trade, and the economic conditions within which trade rules operate and impact social sustainability.

2.3 Structure

Chapter 3 intends to provide a background to the economic effects of international trade and to describe the complex and intricate relationship between the economic and social dimensions of sustainability. As such, it forms the basis for the analysis of the issues dealt with in chapters 4 – 6, and is, in part, founded on previous analyses by the National Board of Trade Sweden.

Chapters 4 – 6 deal with the link between trade and three specific focus areas of social sustainability (human rights, working conditions, and gender equality) which have been identified as the most relevant aspects of social sustainability when it comes to trade. Chapter 7 describes the relationship between certain national preconditions and the effect trade liberalisation has in a country or region. Chapter 8 describes the most important trade-related instruments used for the purpose of promoting social sustainability. Finally, chapter 9 summarises the report and lists its conclusions.

This report ought to be read in its entirety, but each chapter can be read separately in order to provide an overview of its specific subject area.

3

The economic effects of trade impact social sustainability

One starting point in the analysis of how trade impacts social sustainability is to first look at how trade and trade liberalisation can impact a country's economic structure. This chapter aims to provide an introduction to the primarily economic effects of trade liberalisation, and how these in turn impact social sustainability issues.

The economic effects of trade liberalisation can be divided into direct (static) effects such as efficiency gains as a result of increased competition, economies of scale, and an increased range of products on offer; as well as indirect and long-term (dynamic) effects, such as a positive impact on productivity.

The economic effects of trade and trade liberalization have the potential to create opportunities for social sustainability and include, but are not limited to, the following areas:

Greater efficiencies lead to increased resources

Trade liberalisation removes barriers to free trade. Countries reduce or eliminate barriers that give rise to costs for exports, as well as imports from other countries. According to economic theory, trade leads to a more efficient use of existing resources. Instead of producing everything within a country, countries specialise in sectors in which they have a comparative advantage as a consequence of their specific supplies of skilled or unskilled labour, capital, natural resources, and similar factors.³¹ Trade in GVC allows businesses to specialise in the production stage for which their country has comparative advantages. This specialisation in production leads to a more efficient use of resources.³² This process can

make more resources available, which in turn can promote social sustainability.

Structural changes impacts employment and working conditions

Increased openness to trade usually leads to changes in a country's economy. This is called a structural adjustment period. This change in the structure of production impacts the labour market, resulting in changes to for example the employment rate, income distribution, and working conditions, which also has social effects. Structural changes can occur as a result of trade liberalisation and also as a result of technological development.

The potential gains from the structural changes depend on the speed and extent to which resources are redistributed to the economic sectors in which the country has a comparative advantage.³³ There is a risk that structural changes as a result of trade liberalisation occurs so rapidly that a country does not have sufficient time to adjust, and the result is instead a high level of unemployment for the country to try to manage. However, studies indicate that adjustment costs at the national level are generally lower than the gains that result from trade liberalisation.³⁴ Even if a country as a whole gains from trade liberalisation measures, there will be groups that may lose out, at least in the short term, as a result of trade liberalisation during this adjustment period. There are different ways of managing the potential negative social effects of trade liberalisation. For example, trade reforms can be introduced gradually so that a country has time to adjust itself to the new trade reality.³⁵ There may even be a



need to combine trade liberalisation measures with development aid initiatives that improve the individual country's chances of benefiting from trade's potential.

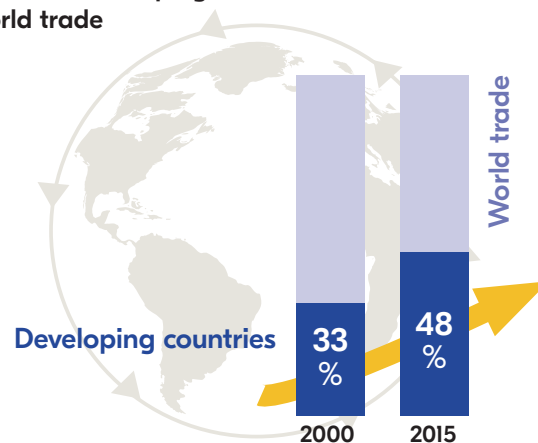
Increased productivity as a prerequisite for growth

Most researchers agree that there is generally a positive link between openness to trade on the one hand and increased productivity and economic growth on the other, but they also agree that this link is not automatic.³⁶ Historically speaking, even if countries that have been open to trade have grown faster than those that have not, the effects of trade liberalisation measures differ from country to country.

According to economic theory, there are many reasons why reducing trade barriers, at least for a certain time period, leads to static gains in the form of increased economic growth.³⁷ Being integrated in global or regional markets also increases the opportunities for businesses to expand their markets beyond the domestic market, which enables economies of scale.³⁸

In developing countries, trade reforms that have led to a more open economy and increased market access have been one of the most important factors for growth.³⁹ However, the link is not automatic, and in less developed countries, an increase in market access and trade liberalisation measures have not always resulted in increased growth.⁴⁰ The growth of GVC:s and specialisation means that developing countries do not themselves need to acquire all the skills required to create a complete value chain in order to be able to participate in international trade.⁴¹ Since

Figure 2: Developing countries' share of world trade



2000, developing countries' share of world trade has increased from 33 per cent to 48 per cent.⁴² Today, China is the world's biggest exporter, and developing countries such as Brazil, India, Indonesia, Malaysia, Thailand and Mexico are counted among the world's 20 biggest exporters.⁴³

New technology and infrastructure facilitates growth

Furthermore, through integration in GVCs, technology and expertise can flow more easily and at a lower cost from developed countries to developing countries.⁴⁴ Reduced prices on imported inputs and technologies can also help to make production systems more efficient, which in the long term means increased productivity and a more sustainable use of resources.⁴⁵

Along with reduced transport and communication costs, access to new technology has made it easier for businesses in developing countries to offer skills within specific areas of activity, for both goods and services, and thus contribute to

value chains that extend throughout the world.⁴⁶ For example, many countries in Asia have become strong players in the electronics sector as assemblers of electronic devices, and have attracted multinational enterprises such as Apple, Dell, Amazon, Nokia and Samsung.⁴⁷ More information about the importance of ICT is provided in chapter 7 about national preconditions for sustainable trade.

Economic growth as a precondition for poverty reduction⁴⁸

Trade is one of several important factors for achieving increased productivity and economic growth, which is a decisive factor in reducing poverty in the long term.⁴⁹ When the Copenhagen Consensus Centre brought together 82 leading economists to debate how the sustainable development goals in the 2030 Agenda could best be achieved, they concluded that increased free trade could lead to over 160 million people being lifted out of poverty.⁵⁰



*Goal number 1
of the UN's 17
Global Goals.*

However, the link between trade and poverty is more complex than the link between trade and growth. Trade can have direct effects on poverty through changed prices, the demand for labour, wage and salary levels, and state revenues.⁵¹ On the other hand, in order to identify the indirect effects, it is essential to look to other mechanisms affecting those living in poverty. This for example includes which sectors households living in poverty are employed, and how their production and consumption are impacted by direct changes in prices, employment and markets.⁵² Another important factor that affects how trade liberalisation measures impact groups living in poverty is where and in what sectors economic growth occurs as a result of the structural changes from trade.⁵³ Depending on which sectors and geographical areas are affected, trade liberalisation can both generate and eliminate opportunities for employment for low-income earners. Growth does not automatically contribute to a reduction in poverty unless job opportunities arise for the poor. Thus, economic growth

can contribute to reducing poverty if it occurs in sectors and geographical areas where those living in poverty work or reside.⁵⁴ For example, poor farmers will benefit if trade liberalisations leads to new markets for their products, and can result in them being able to sell their products for a higher price.⁵⁵ Many of the positive effects and the potential for poverty reduction as a result of openness to trade depend on complementary policies and institutions⁵⁶, which are described further in chapter 7 about national preconditions for sustainable trade.

Income distribution

Incomes are affected through increases in exports and imports. Depending on the economic structure of the country in question, increased economic growth can lead to the economy as a whole achieving higher revenues, but can also lead to losses for certain groups, while others benefit. This, in turn, can lead to increased income disparity.⁵⁷ Trade liberalisation measures increase the number of productive businesses in the market, which demand more skilled labour with higher wages and salaries. Some research indicates that in a closed economy that opens itself to trade, income inequality increases by 10 per cent.⁵⁸ Increased inequality in wages contributes to increased income inequality. However, the empirical evidence appears to indicate that increased income inequality does not lead to increased poverty. Rather, low-skilled labour has also benefited from trade liberalisation measures, but proportionally less than skilled labour.

Increased competition influences price levels and consumption patterns

Trade liberalisation measures increase competition in the market, which impacts consumption patterns and market structures. Increased competition allows a country's consumers and producers to purchase goods and services at a lower price than if they were to produce these themselves. For instance, if the prices of available goods and services fall, it can affect consumers' disposable income.

Trade reforms can change relative prices in markets of products and services as well as in markets for labour and capital. For the consumer, trade liberalisation can be beneficial if the prices of imported goods fall, which can result in increased purchasing power. Trade liberalisation can also impact production costs through for example lower prices for input goods, which ben-

efits producers. However, it is worth noting that changes in prices do not always lead to poverty reduction, since poor groups tend to have lower access to cheaper prices for consumer goods or inputs due to a lack of competition in the distribution and transport stages.⁵⁹

Impact on state revenue sources

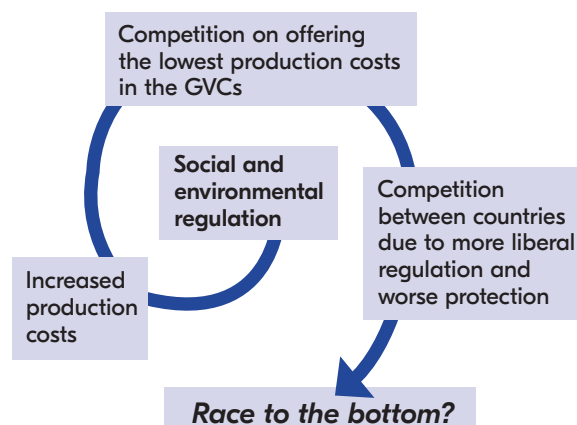
The effect of trade liberalization measures on state revenue partly depends on whether tariffs and customs duties are entirely eliminated or just reduced. When trade liberalisation measures consist of the removal of quantitative import restrictions and is replaced by tariffs, generally new revenue streams arise for the state.⁶⁰ On the other hand, if trade liberalisation reduces or eliminates tariffs and customs duties, direct revenues to the state from cross-border trade may instead be reduced.⁶¹ Customs revenues can constitute a large proportion of the state's resources, in particular in developing countries. Reduced customs revenues may in turn impact the state's capacity to finance social reforms.⁶² In theory, it should be possible to compensate for this through the increased economic growth trade is expected to bring. If increased international trade results in more jobs and higher income levels, an opportunity opens for the state to redistribute resources through income tax, which can compensate the state for these lost customs revenues.⁶³ However this requires well-functioning taxation and income redistribution systems and sufficient capacity to manage the collection of revenue in the form of income taxes rather than through tariffs and customs duties.⁶⁴

Regulatory competition — the risk of a *race to the bottom*?

Comprehensive social and environmental regulation can be seen as factors that increase production costs for businesses, and thus as a disadvantage for countries competing for foreign direct investment (FDI).⁶⁵ Trade in GVCs enables a global production system that allows countries to localise their production to the countries with the lowest production costs. This can in turn lead to a risk of a so-called *race to the bottom*⁶⁶, where countries seek competitive advantages through implementing lower protection levels and more permissive regulation, and consequently abstain from improving, or even reduce, the regulations that protect social development.

The majority of empirical evidence in this field pertains to labour standards and environmental

Figure 3: The risk of a *race to the bottom*



regulations. These studies show little evidence to back up the *race to the bottom* hypothesis.⁶⁷ Individual examples can be found of businesses that have chosen to move their production due to lower labour costs but differences in protection levels and national regulations governing labour rights and working conditions appear to only have a marginal impact on trade and investment flows. However, some studies indicate that even if countries are not competing with each other to any great extent by lowering protection levels, competition does occur in how well existing regulation is implemented.⁶⁸

Within the services sector, strong national regulation can be a prerequisite for being able to export services such as professional services, financial services, environmental services and communications services. Without regulation in the area, the market lacks sufficient competitiveness.⁶⁹ Depending on the extent to which knowledge about this is spread, as well as necessary preconditions for developing trade in services (such as education level), such regulation can prevent a *race to the bottom*, and could even lead to a *race to the top*.

Openness and incentives for peaceful relations

Beyond its economic effects, free trade increases cross-border exchanges and enables the creation of new international relations. This has the potential to create a free exchange of thoughts, ideas and innovations, creating an important incentive for building peaceful relationships between countries. Countries that trade with each other become more dependent on each other, creating incentives to avoid conflict, which is a fundamental prerequisite for promoting social sustainability.⁷⁰

4

Trade and human rights

This chapter presents the general links between trade and human rights with a particular focus on the social and economic aspects of human rights. The chapter functions as an umbrella for the subsequent chapters on working conditions and gender equality, but it also functions as a freestanding area of focus. Working conditions and gender equality both constitute different aspects of human rights, but in both cases their links to trade and trade liberalisation measures go beyond the rights perspective.

The primarily economic effects of increased trade and trade liberalisation measures presented in chapter 3 can impact countries' capacities to protect human rights. For example, the contribution of trade to increased growth and reduced poverty can be a step towards increased resources available to promote human rights. Many economists claim that the long-term effects of trade improve people's welfare primarily through increased economic resources and income levels, thus improving the quality of life of both men and women.⁷¹ Studies indicate that it is more likely that richer countries spend proportionally more resources on the protection of human rights because their basic needs are already met, and as a result more resources can be devoted to promoting human rights.⁷² Furthermore, human rights violations are more likely to occur in countries that isolate themselves. Countries that open themselves to the rest of the world and participate in international trade instead generate a broader exchange of ideas and information about the human rights situation in other countries.⁷³ Thus, there is a

link between a higher degree of openness to trade and better circumstances for some human rights, although further empirical evidence is needed to firmly establish a causal relationship.⁷⁴

However, there is also a risk that trade liberalisation measures will limit the ability of individual countries to take action to protect human rights. If trade liberalisation measures lead to lower state revenues and the state lacks the capacity to collect taxes in another way, tariff cuts could make it more difficult for states to provide basic services to their citizens or to finance social reforms aimed at fulfilling their human rights obligations. Trade rules can also limit a state's scope for trade-related actions in relation to another country as a consequence of that country's behaviour when it comes to human rights.

Box 1

Human rights

Human rights are part of international law.⁷⁵ The most fundamental internationally recognised human rights are recorded in the Charter of the United Nations and the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the eight most central ILO conventions (the fundamental conventions).⁷⁶ Under international law, states are required to do everything they can to respect, protect and fulfil these rights.⁷⁷



4.1 Protection for human rights

4.1.1 The state's obligation to protect human rights

It is up to each individual country to ensure that human rights are protected and fulfilled in the country. When human rights violations do occur, it is primarily the state's responsibility to ensure that the individual is compensated. Human rights limit how the state may treat individuals and certain groups of individuals deemed particularly worthy of protection (such as indigenous peoples) within its jurisdiction, and also imposes on the state certain positive obligations in relation to individuals and groups of people.⁷⁸ These conventions divide human rights into two categories: on the one hand civil and political rights (such as freedom of expression and the right to vote); and on the other hand economic, social, and cultural rights (such as the right to healthcare and education) which are generally of a positive nature. Despite this categorisation, all human rights are considered universal, indivisible and mutually supportive, and should be treated equally.⁷⁹ However, there is a difference in the requirements related to how these rights are to be implemented. Political and civil rights begin to apply immediately upon adoption of a convention, while economic, social, and cultural rights may be implemented progressively by each state in relation to its economic resources.⁸⁰ Although individual states are responsible for protecting human rights, all of the UN's member states have an obligation to work together in order to promote

human rights.⁸¹ The state's responsibility also extends to protecting individuals from businesses that violate human rights.

4.1.2 Corporate responsibility to respect human rights

Because the conventions on human rights are only binding for states; businesses, organisations, and individuals are not formally bound by the human rights conventions. However, businesses are nonetheless obliged to respect human rights in line with the legislation in each individual country. This can be interpreted to imply that a businesses' activities are not to cause, contribute to, or be associated with violations of human rights, and that businesses ought to act in ways that prevent such violations.⁸² In addition, businesses ought to take action against any negative consequences for human rights that occur as a result of their activities.⁸³

There are a number of international instruments that provide guidance on how businesses should behave in order to respect human rights. The UN's Guiding Principles on Business and Human Rights (UNGPs), informally known as the Ruggie principles, were adopted in 2011, which helped to crystallise the scope of business enterprises' responsibility for human rights.⁸⁴ These guiding principles are not legally binding, but clarify the state's obligations in the area, and what this in turn can mean for businesses. All of the UN's member states have been encouraged to develop their own national action plans regarding how these guiding principles are to be implemented in their country-specific context, and by

Box 2

UN Guiding Principles for Business and Human Rights

What — if any — responsibility businesses have in connection to human rights has been a long debated issue. In 2005 the UN Secretary General appointed Professor John Ruggie as Special Representative on issue of human rights, transnational corporations, other business enterprises. Ruggie's proposal for a *Protect, Respect, Remedy* Framework to manage these issues was presented and approved by the UN in 2008. Ruggie's mandate was extended by the UN Human Rights Council with the task to develop concrete recommendations on how to implement the Framework. After extensive consultations with states, businesses and civil society, Ruggie presented *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (UNGP). The Guiding Principles were endorsed by the UN Human Rights Council in June 2011.

Both the Framework and the UNGP rest on three pillars:

1. the state duty to protect against human rights abuses by third parties, including business;
2. the corporate responsibility to respect human rights; and
3. greater access by victims to effective remedy, both judicial and non-judicial.

The UNGP does not create new commitments under public international law, instead they provide non-binding guidelines clarifying what existing human rights obligations mean for states and businesses.

The main focus of Pillar 2, on corporate responsibility to respect human rights, is that business operations shall not contribute to the violation of human rights, and that businesses shall act to prevent such violations. According to the UNGP, this responsibility applies to the whole supply chain and in relation to the business' all activities and partners. The primary instrument recommended to fulfil this responsibility is to conduct a *due diligence* in order to identify actual and potential human rights effects from their business operations, or linked to their business, products or services through any business relationships. UNGP provides guidance on how to conduct a human rights *due diligence*, and how to manage the results of it.

2015, six countries, including Sweden, had developed such action plans.⁸⁵ The point of departure for these international guiding principles for business and human rights is that human rights are to be respected at all stages of the value chain. Identifying potential human rights violations throughout the entire value chain can be complicated for a multi-national enterprise. For example, in situations where it is deemed unreasonable to require investigations into every single link in the value chain, the UNGP state only that the business is to identify the areas that are at the greatest risk of human rights violations.⁸⁶

The possibility to identify human rights risks in the supply chain can be very different in different sectors. For example the European Commission has developed some practical guidelines for three sectors: for employment and recruitment agencies, ICT companies, and oil and gas companies.⁸⁷ In addition to these guidelines, there are a number of voluntary corporate initiatives in the form of CSR policies which can provide further guidance. These are described in more detail in section 8.3.

4.2 Trade rules and human rights

There is a risk that state efforts to fulfil human rights obligations may end up in conflict with trade rules. Conflicting objectives can arise for instance if national measures to protect the right to health or the right to life breach trade-related obligations.

4.2.1 The WTO and human rights

The Doha Development Agenda (DDA) recognises that international trade has effects on people and that there is a need for both human and institutional development in order to optimally benefit from trade.⁸⁸

Non-discrimination and the scope for state action

The WTO does not directly regulate human rights issues. Neither are there any direct limitations in the WTO's regulatory framework concerning how member states may regulate human rights. Some researchers are of the opinion that the WTO's regulatory framework nonetheless constitutes a limitation on its member states in promoting human rights.⁸⁹ Within the WTO, two fundamental principles of non-discrimination prevail: the principle of most-favoured-nation

(MFN), and the principle of national treatment. According to MFN, trade favours granted to one country must “immediately and unconditionally” be extended to all other countries in the WTO; and according to the principle of national treatment, the same taxes and regulations are to apply for imported as for locally produced goods once they have crossed a national border and entered the national market.⁹⁰ These principles thus mean that WTO members may not discriminate between their trading partners or between equivalent goods or services at the national level, whether sourced locally or in another member state. The WTO rules thus de facto restricts a country’s ability to rebuke against another WTO member by implementing trade sanctions in response to breaches of human rights,⁹¹ or to reward a state striving to promote human rights.⁹² However, most studies indicate that this type of sanction is ineffective.⁹³

The dispute settlement system

A fundamental principle in international law is that there is no hierarchy between sources of international law, such as international conventions.⁹⁴ This means that human rights conventions and international trade agreements have the same legal status. However, since the WTO system has a strong and mandatory dispute settlement mechanism within which all disputes concerning trade rules are to be settled,⁹⁵ it has been claimed that the WTO rules in practice have a stronger position than human rights conventions, in spite of having formally equal legal status.⁹⁶

One way to promote human rights through the WTOs dispute settlement system can occur when there is a potential conflict between obligations in WTO agreements and obligations in international agreements that concern human rights. In this case, it is possible to balance the interests against each other and to attempt to interpret the agreements in such a way that the conflict disappears. As mentioned above, sustainable development and the promotion of human rights are express purposes and goals of the WTO agreements⁹⁷, and trade rules are to be interpreted with these goals in mind.

Exceptions in protection of human rights

The WTO system allows for a number of exceptions where, in the case of a conflict, other national legitimate interests can outweigh the trade obligations in the WTO agreements. In the

human rights area, Articles XX(b) and XX(a) of the GATT are of special interest.

General exception to protect human, animal or plant life or health

Article XX(b) of the GATT allows for general exceptions from the trade rules in favour of national measures that are necessary to protect human, animal or plant life or health. One of the first occasions on which the purpose to protect human life was pleaded to legitimise a trade restriction was when Brazil introduced a ban and economic sanctions on the importation of retreaded/used tyres.⁹⁸

In this case, the EU was of the opinion that Brazil’s measures were in breach of the WTO’s regulatory framework and had a negative impact on the EU’s export of retreaded tyres to Brazil, and therefore brought up the matter within the WTO’s dispute settlement system.⁹⁹ Brazil admitted that the measures were in breach of the WTO’s regulatory framework, but claimed that its trade ban was necessary in order to protect the life and health of its population. Retreaded tyres more rapidly become waste than new tyres, and, according to Brazil, the accumulation of this waste constituted a health risk, in part because of the poisonous emissions caused by burning these tyres.¹⁰⁰ Brazil’s position was also that there was no reasonable alternative available in order to be able to protect the human right to health, which is why the measures ought to fall under the general exception for measures necessary to protect human life and health in Article XX(b) of the GATT. This was one of the first occasions when protection of human rights was used as an argument in defence of a measure that was deemed to be in breach of the WTO rules. The measure was in fact seen as fulfilling the requirements to be considered “necessary” under Article X(b) in order to achieve the desired purpose, i.e. both the principle and the wording were deemed provisionally justifiable. However, Brazil was seen as having imposed the ban in such a way that it constituted arbitrary and unjustifiable discrimination, as well as a disguised restriction on trade, and was therefore not considered justifiable by the WTO’s dispute settlement system.¹⁰¹

Exception to protect public morals

Article XX(a) of the GATT also offers an opportunity to promote human rights within the WTO system. This provision provides for an exception

from the WTO rules in order to protect public morals. What can be seen as a measure with the purpose of protecting public morals—can vary from member to member, taking into account differences in social, cultural, and ethical values. The intention is that members should have a certain scope to determine themselves what measures might be deemed necessary in order to protect public morals.¹⁰² Even if this provision does not expressly include human rights, in theory it can constitute a possibility for including human rights in an exception from the WTO rules.¹⁰³ For example, this exception could conceivably be used to legitimise trade restrictions in relation to countries that still apply slavery, ban free press, use child labour, or commit gross violations of human rights.¹⁰⁴

One example of a dispute where Article XX(a) of GATT was applied is what is referred to as the Seal Dispute.¹⁰⁵ This dispute concerned an EU regulation on trade in seal products, which established a general ban on the sale of these products within the EU. The regulation contained an exception from the general ban on trade in seal products stemming from traditional hunting carried on by Inuit communities and other indigenous peoples, where it contributes to their self-sufficiency. The regulation's compliance with WTO rules was questioned, and the reports from WTO's DSB concluded that the ban on trade in seal products could be justified on moral grounds, but the exception for indigenous peoples was questioned. In principle, the ban could be said to reflect a legitimate interest, but the Appellate Body was of the view that some aspects nonetheless constituted "arbitrary and unjustifiable discrimination".

Exception for national security

Yet another exception that may be associated with the promotion of human rights is Article XXI of GATT concerning the exception for national security. This provision allows WTO members to take action in order to preserve and protect their national security.¹⁰⁶ It is up to each member to determine themselves what constitutes a national security interest, and the measures they take do not need approval by others in the WTO. In other words, members should be able to use this exception if they consider that another country's violation of human rights is putting their national security at risk. Disputes in this area have been initiated but not concluded, which means that there is no case law to follow when it comes to

determining the limitations are for using this exception. However, members may not impose trade sanctions in order to protect another member's security unless the UN Security Council has authorised these sanctions. Up until 2011, both the USA and the EU had imposed trade sanctions in order to promote human rights on countries such as Burma, Belarus, Iran and North Korea.¹⁰⁷

Waivers – temporary exceptions

In exceptional cases, temporary exceptions or *waivers* from the WTO regulatory framework can be granted.¹⁰⁸ Many cases where a *waiver* has been granted can be considered connected to the promotion of human rights. The first time the WTO approved a waiver based on an argument in protection of human rights was to deal with the problem of trade in conflict diamonds.¹⁰⁹ Under this waiver, countries may only trade in diamonds certified by the *Kimberley Process Certification Scheme*, the purpose of which is to assure consumers and producers that they have not traded in diamonds that are indirectly financing war in Sierra Leone or the Democratic Republic of the Congo.¹¹⁰ Further examples include the EU's Generalised Scheme of Preferences (GSP), which is described in more detail in section 8.2.3, and the waiver from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concerning compulsory licenses for pharmaceuticals to be exported to developing countries with serious health problems, which is described in the following section.

Example areas – intellectual property rights and agriculture

Two examples of areas where trade and the WTO's regulatory framework impact human rights, and where there are potential conflicts between goals, are trade rules concerning agriculture and intellectual property rights (IPRs).

Trade and intellectual property rights

From a human rights perspective, the protection of IPRs is a complex issue. On the one hand, to some extent IPRs are human rights and their function is to promote cultural and technological progress, without which it becomes more difficult to fulfil economic and social human rights.¹¹¹ On the other hand, IPRs entail a kind of monopoly position for the rights holder, which in some instances can increase prices and reduce access to the invention or the work.

The TRIPS agreement in the WTO system requires WTO members to set up effective

national protection for patents, trademarks, and other types of IPRs. TRIPS regulates which IPRs rights should be protected as well as how they are to be protected. The relationship between TRIPS and access to pharmaceuticals has been the subject of debate.¹¹² Under certain circumstances, the granting of patents for pharmaceuticals can contribute to higher prices, which may make it more difficult for developing countries to supply their citizens with pharmaceuticals, and consequently make it increasingly difficult for states to fulfil the human right to basic healthcare.¹¹³ Thus in this area, different aspects of human rights may conflict with each other.

WTO member states have tried to avoid this conflict by means of the Doha Declaration on the TRIPS Agreement and Public Health from 2001. This Declaration emphasises that TRIPS can and should be implemented and construed in such a way as to promote public health and access to pharmaceuticals. To this end, member states have the right to fully utilise the flexibility that exists in TRIPS. The 2030 Agenda also expressly supports utilising the possibilities that exist to promote the right to healthcare and to ensure access to pharmaceuticals.¹¹⁴

The Doha Declaration of 2001 also acknowledged that the patent requirements in TRIPS had been worded in such a way that countries without sufficient manufacturing capacity of their own might find it difficult to utilise the compulsory licensing system in order to gain access to pharmaceuticals. Therefore, in 2003 a decision was adopted allowing WTO members to issue compulsory licenses for pharmaceuticals to be

exported to developing countries with serious public health problems that lack manufacturing capacity of their own for pharmaceuticals. This may be done subject to certain conditions.¹¹⁵

To date, this new WTO instrument has never been used. There is reason to believe that it probably cannot improve access to pharmaceuticals in general in developing countries, even if it may be able to function effectively for certain countries or products.¹¹⁶ In addition, provisions in FTAs that introduce stricter rules than TRIPS concerning compulsory licensing or clinical test data can make it more difficult or impossible to use this new instrument.¹¹⁷

Trade and agriculture

Agriculture continues to comprise the primary means of support in many countries and employs a great number of people. Globally, approximately 20 per cent of the work force are employed in the agricultural sector. Almost half of the world's population live in rural areas and are affected directly or indirectly by developments in agriculture.¹¹⁸ Access to food – or the right to food – constitutes part of the human right to an adequate living standard.¹¹⁹ The WTO's Agreement on Agriculture does not contain any direct reference to the right to food.¹²⁰ On the other hand, the Agreement on Agriculture draws attention to the right to food security.¹²¹

The purpose of the Agreement on Agriculture, which has been in force since 1995, is to create a just and market-based trading system for agricultural products. The means of achieving this are substantial and progressive reductions in tariffs and in trade-distorting agricultural subsidies.



The trade rules are significant for how trade with agricultural products works, and the opportunities for member states to benefit from trade. The regulatory framework also entails restrictions on members' ability to protect and support domestic agriculture. However, special conditions apply to developing countries, which means that they can for example use investment subsidies for agriculture, or input subsidies for poor farmers, without restrictions.

With the Agreement on Agriculture, a first step was taken within the WTO towards reforming trade in agricultural products. The Doha Round was a continuation of this reform agenda. The WTO member states have thus backed an agenda where the direction of new rules and obligations will be towards an increased openness in trade in agricultural products, a direction that is confirmed in the sustainable development goals in the 2030 Agenda.¹²² The Agreement on Agriculture means that the benefits of new obligations intended to limit trade distortions are to be balanced against interests other than trade, including members' needs to promote better food security. However, the WTO members have very different views on what this actually means for the formulation of trade rules for agricultural products, which is apparent in particular in questions that relate to price support in connection with public stockholding, and the special safeguard mechanism (SSM) for developing countries.

Over the years, the UN's Special Rapporteur on the right to food has been critical of the current regulatory framework in the WTO. The core of this criticism is that the trade rules establish frameworks that are far too restrictive on the policies that members can pursue in order to provide for the right to food.¹²³ The Special Rapporteur's negative account of the WTO's rules for trade in agricultural products, as well as the Rapporteur's questioning of the role of trade for food security, has been responded to and questioned by many WTO members as well as the WTO leaders.¹²⁴

The WTO's Agreement on Agriculture needs to be updated and have a more balanced and fair approach when it comes to the right of developed and developing countries to use trade-distorting support. At the same time, it is desirable to put a check on the trend occurring in many emerging economies towards an increased use of trade-distorting support, since this could damage other developing countries through unfair competi-

tion. It is a challenge to find solutions that can reduce the use of the most trade-distorting support in both developed and developing countries, which at the same time satisfy the desire of some developing countries to have greater scope for applying policies designed to strengthen their food security.¹²⁵ This potential conflict between goals raises the question of differentiating between different groups of developing countries, or at least a sufficiently flexible approach to the obligations of developing countries.

Many WTO members have raised the new obligations for domestic support as one of the most important agricultural issues for inclusion in future WTO negotiations. This is because the elimination of export subsidies was partly solved by the ministerial decision during the Ministerial Conference in Nairobi in 2015 (MC10). Given the huge changes that have occurred in trade with agricultural products and in the support policies of many member states since the Doha Round began, it is apparent that a number of members are now wondering if there might be reason to think in new ways, and to perhaps abandon the Agreement on Agriculture's current structure with its different boxes for agricultural support.

4.2.2 The EU's trade rules and human rights

All external action taken by the EU are to be based on human rights and the principles of the universality and indivisibility of the fundamental freedoms, as well as respect for the principles in the Charter of the United Nations and in public international law.¹²⁶ This also applies to trade policy, meaning that the EU's trade policy should not have a negative impact on human rights, and should aim to promote human rights.¹²⁷ In order to achieve this, the EU applies an approach that uses positive incentives such as trade preferences in combination with cooperation, dialogue, and transparency, as well as requirements and conditions for countries to qualify and retain the trade preferences they have been granted.¹²⁸

Since 1995, it has been standard procedure to include a human rights clause in EU's agreements with third countries, including FTAs.¹²⁹ The content of the human rights clause varies somewhat, but the standard content can be described as one part that identifies basic human rights and democratic principles, and one part that specifies under what circumstances appropriate measures



may be taken in cases where a party to the agreement has breached an essential condition of the agreement.¹³⁰ These human rights clauses can function as legal grounds for positive action such as dialogue on human rights issues, but in cases of serious and continuing violations of human rights, they can also constitute grounds for restrictive measures such as trade restrictions. However, this possibility has not been utilised, and consequently the clause has been criticised for being more of a 'political' clause than an 'actual human rights' clause, and future reforms have been discussed.¹³¹

Since 2008, the EU's trade agreements have also included a chapter on sustainable development as standard procedure.¹³² This chapter requires that the partner countries comply with the fundamental conventions on labour rights, which also constitute human rights.

A more detailed discussion of trade-related instruments for achieving socially sustainable development, including promotion of the protection of human rights (sustainability chapter in FTAs, Generalised Scheme of Preferences and impact assessments) can be found in chapter 8.

4.2.3 Free trade agreements and human rights

The link between trade agreements and human rights is not new. Even in the early 1800s, England signed agreements with Sweden, the USA, Portugal and Denmark forbidding slave trade.¹³³ In the 1980s and 1990s, the EU and USA began to include loose, non-binding human rights clauses in their free trade agreements. Canada, Mexico and the USA were the first to include explicit human rights clauses in a free trade agreement.¹³⁴ Today, a large number of free trade agreements contain

human rights clauses. In 2011, the WTO estimated that around 75 per cent of the world's countries were bound by a free trade agreement that contained some form of regulation of human rights.¹³⁵

References to human rights are expressed in different ways in agreements, and have varied legal significance. For example, they might contain legally binding requirements on non-derogation, or declaratory statements in the non-binding preamble to the agreement.¹³⁶ The consequences range from dialogue to potentially withdrawing rights and a separate dispute settlement mechanism.¹³⁷ These differences also mean that their legal significance varies in strength. Some are legally binding while others only express the parties' ambitions in the area. It is also possible to identify differences between different parties in the level of ambition concerning the scope of human rights in trade agreements. For example, the USA and Canada have a greater focus on specific human rights, which are stated in the agreements main text and are often legally binding.¹³⁸ Rights included are for example the right to privacy, political participation, access to pharmaceuticals, and collective rights for indigenous peoples.¹³⁹

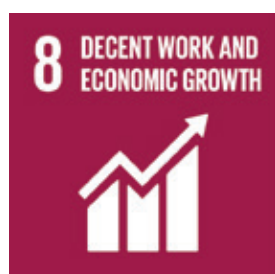
The FTA between Canada and Colombia, which entered into force in 2011, even includes a separate parallel agreement which obligates both parties to draw up annual reports on the impact the FTA has had on human rights in each of these countries.¹⁴⁰ These annual reports conclude that trade has increased rapidly in the sectors that have been liberalised, but it has not been possible to demonstrate that any factors that affect the protection of and respect for human rights have been directly impacted by the implementation of the FTA.¹⁴¹ In other words, the reports are unable to show a direct link between the FTA and the human rights situation in Colombia.

Despite the trend of including more and more human rights provisions in FTAs, there is not much information about the actual effects.¹⁴² Human rights provisions in FTAs could have the potential to make the application of human rights more effective, as well as the potential to assist individuals claiming their rights under the human rights conventions. This requires more understanding and knowledge from the policy makers and FTA negotiators, which for example can be acquired through impact assessments that focus on the FTA's potential effects on human rights.¹⁴³

5

Trade, labour rights and working conditions

One of the sustainable development goals in the 2030 Agenda is to promote decent work and economic growth.¹⁴⁴ This chapter focuses on the potential effects of international trade and trade liberalisation measures on human rights in the labour market – working conditions. To be able to identify what effect trade has on labour rights and working conditions, the most apparent point of departure is the effect of trade on the labour market and employment in general.¹⁴⁵



*Goal number 8
of the UN's 17
Global Goals.*

A country's production structure changes when it opens the door to trade. Factors of production shift from activities that are not competitive to activities that remain competitive or become more efficient. Labour is one such factor of production. This means that trade liberalisation also impacts the job market. Some jobs disappear while others are created.¹⁴⁶ The employment rate, wage levels, and other working conditions are affected, which in turn can impact social sustainability.¹⁴⁷ Furthermore, men and women in the labour market are affected differently, which is discussed in more detail in the next chapter. The number of jobs linked to international trade is greater now than ever before. This can to a large extent be attributed to the fact that today a large share of trade occurs in GVCs, and the possibility

to distribute production processes throughout the world.¹⁴⁸

5.1 Effects of trade on the labour market

The labour market plays an obvious role in reaping the benefits of GVC development. GVCs and the trend of geographic redistribution of production appears to have specific effects on the labour market. However, the links between trade, employment, and the labour market are far from obvious.

To a large extent, the short-term impact of changes in trade and trade liberalisation have led to a changed employment structure. These changes have occurred primarily within individual sectors rather than between sectors, and the effects on wages have been more significant than the effects on employment. Empirical literature is ambiguous about the effects of trade liberalisation measures on employment and wages.¹⁴⁹ From a theoretical, neoclassical economic perspective, the long-term level of employment is primarily determined by macroeconomic variables and the functions of institutions rather than by trade and trade policy. Consequently, at least theoretically, trade policy reforms do not have any long-term impact on the level of employment.

Macroeconomic shocks, as well as different types of trade shocks, can impact jobs in the short term, but in the long term market adjustment theoretically leads to an unchanged level of employment. On the other hand, trade in itself permits the spread of technology. The absorption of technology, both directly through imports of



capital goods, as well as indirectly, tends to boost the intensity of innovation.

As production processes become more fragmented, an increasing proportion of labour markets is confronted by tougher competition. Despite this, to date globalisation has had a relatively small effect on total employment.¹⁵⁰ Generally speaking, the establishment of GVC increases flexibility for businesses, which has put pressure on the demand side of employment. Increased competition as a result of increased trade may have intensified this effect, but the empirical evidence in this area is not clear. Countries with similar trading patterns and liberalisation in direct investments demonstrate greater variations in employment and unemployment. This seems to imply that domestic labour market conditions and functions play a greater role than increased competition in how the labour market reacts. On the other hand, globalisation has led to changes in the composition of the work force. For example, in the OECD countries, the composition of the work force has generally moved away from less qualified jobs in the manufacturing industry towards service-related jobs.¹⁵¹ This is also something that is clearly confirmed in the GVC statistics, which show that for most countries today in the OECD, over 50 per cent of their exports are generated through services.¹⁵²

The integration resulting from GVC has also led to deeper specialisation. The traditional view that specialisation occurs within different industries or sectors is no longer an appropriate description. Today, specialisation is related to different types of tasks in the value chain. The term used to describe this kind of specialisation is “*trade in*

tasks”.¹⁵³ In 2014, the OECD studied patterns in the degree of specialisation. The results showed that advanced economies specialise primarily in qualified business services such as research and development and design, while developing economies specialise primarily in manufacturing.¹⁵⁴ Specialisation has occurred within the tasks where the economy has comparative advantages, and development is driven primarily by changes within the sectors rather than between the sectors.

The precise effects of trade liberalisation measures on the labour market thus depend primarily on the conditions that prevail in each national labour market. Differences in trade flows, the capacity to adapt national industries and manufacturing sectors to international competition, and differences in the labour market structure are examples of factors that influence the effects of trade on the labour market.¹⁵⁵ Because of these differences, it is impossible to generalise about how trade liberalisation measures impact conditions on the labour market. In the short term and at the aggregated level, all that can be concluded is that the effects of trade on the labour market can be positive or negative, depending on national labour market conditions. In the long-term however, the efficiency gains as a result of trade liberalisation are expected to benefit employment and average wage levels.¹⁵⁶

Even if the general conclusion is that, in the long term, trade leads to improvements at the aggregated level, the effect is not clear-cut. Naturally, employment in the sectors subject to competition is affected to a greater extent. The jobs that are created as a result of openness to international trade tend to require more skills and

knowledge than those that disappear.¹⁵⁷ In addition, this impacts women and men to differing extents, due in part to segregated labour markets and differences in opportunities for acquiring these skills and knowledge.¹⁵⁸

5.2 Effects on labour rights and working conditions

The available empirical evidence regarding the link between trade, labour rights and working conditions is mixed. Some studies have shown that despite comprehensive international protection for working conditions, these protections are more difficult to uphold in GVCs.¹⁵⁹ For example, it appears that certain types of breaches of protections for working conditions, such as discrimination and breaches of the freedom of association, are more difficult to manage when trade occurs in geographically fragmented value chains, and with potentially long supply chains.¹⁶⁰

The geographical fragmentation of production has often resulted in production being moved to developing countries with low wages and low levels of protection for workers.¹⁶¹ Because of this, there are fears that trade liberalisation measures will lead to a *race to the bottom* in terms of working conditions, and worsen working conditions for the jobs that are linked to international trade.¹⁶² As described in chapter 3 above, there are few empirical studies that support this hypothesis.¹⁶³

What is discussed below is primarily how trade and trade liberalisation measures impact wage levels, protection of labour rights, and employment in formal and informal sectors.

5.2.1 Wage levels and labour rights

A general conclusion in economic theory is that trade liberalisation measures raise average income levels.¹⁶⁴ However, empirical studies in the area show varying results. Most of these studies indicate that wages increase in export-oriented businesses and that this in turn leads to larger wage differences, determined by skills.¹⁶⁵ The fact that production can be outsourced means that goods requiring intensive use of unqualified labour to an increasing extent are being produced by unskilled labour in developing countries.¹⁶⁶ The labour market for qualified jobs is increasing in developed countries and shrinking for unqualified job seekers, which can lead to an increase in the wage gap between people with

low levels of education and people with high levels of education. For developing countries, the statistics at the aggregated level indicate that trade liberalisation measures are not linked to differences in wages or employment.¹⁶⁷ However, these conclusions are not valid at the country level, where the results can vary greatly.¹⁶⁸ Some empirical studies also indicate that trade liberalisation measures can have a negative effect on certain protection levels under labour law, such as trade union rights including the right to organise and the employee's right to negotiate.¹⁶⁹

5.2.2 The informal sector

The informal sector can be described as all economic activity that is not covered at all, or inadequately covered, by legal or formal arrangements.¹⁷⁰ Over 80 per cent of workers in low-income countries, 40 per cent in middle-income countries, and 15 per cent in high-income countries work in the informal economy.¹⁷¹ Being employed in the informal economy often generates a low income compared to jobs in the formal sector, and does not offer any kind of protection under labour laws or other social protection. Because women make up the majority of those employed in the informal sector, they are disproportionately affected. For developing countries, the informal sector accounts for a relatively high proportion of jobs, and must therefore be taken into account to a greater extent than for developed countries.¹⁷² It is more difficult for entrepreneurs in the informal sector to take advantage of the opportunities that result from international trade, in part due to a lack of access to credit, skilled and educated labour, and opportunities to benefit from economies of scale.¹⁷³

The link between trade and the informal sector most likely goes in both directions, that is, increased trade will affect the size of the informal economy, and the existing informal economy in a country will be impacted by how the country reacts to trade reforms.¹⁷⁴ However, exactly how the informal sector is affected is not clear. One theory is that the increased competition creates incentives to reduce costs by for example outsourcing tasks to the informal sector.¹⁷⁵ In that case, trade liberalisation measures could be contributing to the existence of a larger informal economy. However, there is no clear empirical evidence for this.

5.3 Multilateral protection for labour rights and working conditions within the ILO

The most basic protection for labour rights and decent working conditions are the human rights that ban slavery and all forms of forced labour, protected by the UN's Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights.¹⁷⁶ Protection for working conditions is not included in the multilateral trade policy agenda within the WTO, and consequently there are few links to working conditions within the WTO system. Instead, the WTO identifies the ILO as the appropriate international body for these matters, and as responsible for promoting employment and good working conditions at the global level.¹⁷⁷ The ILO's work includes developing, upholding and promoting international labour standards.

One of the primary purposes of creating international labour standards is to create a *level playing field* and ensure that countries are not tempted to have low levels of protection for their labour force as a way of creating a competitive advantage in international trade.¹⁷⁸ According to this view, international labour standards mitigate the risk of a *race to the bottom*. The ILO labour standards exist both in the form of legally binding conventions that member states can ratify at the national level, and as non-binding recommendations that provide guidance.¹⁷⁹ These standards are also part of international law.¹⁸⁰ The legally binding conventions that the ILO develops establish a global minimum level for social standards on labour rights.¹⁸¹

Eight of the ILO's legally binding conventions that cover these four principles constitute the

ILO's fundamental conventions.¹⁸² The ILO's *Declaration on Fundamental Principles and Rights at Work* from 1998 declares that the four fundamental principles constitute such fundamental rights that they are a requirement for membership of the ILO. This means that the ILO's member states have an obligation to work towards fulfilling these rights, whether or not they have actually ratified these eight fundamental conventions.¹⁸³ The declaration from 1998 also emphasises that labour standards may not be used for protectionist purposes.

Much of the ILO's work today is done under the umbrella of its strategic plan for employment and decent working conditions (*Decent Work Agenda*). The purpose of the *Decent Work Agenda* is to promote social dialogue, social protection, the creation of jobs, and respect for international standards for working conditions.¹⁸⁴ In 2008, the *Declaration on Social Justice for a Fair Globalization* was adopted in order to support work with the *Decent Work Agenda* and to manage the challenges to decent work flowing from globalisation. Under this Declaration, international labour standards are the right way of achieving the Agenda's goals. The 2030 Agenda also identifies full employment and decent work as important goals.¹⁸⁵

It should be noted that the ILO's international regulation is complemented to a great extent by initiatives initiated and pursued by the business community, described in more detail in section 8.3.

5.4 Labour rights, working conditions and free trade agreements

The ILO's conventions are not always sufficient to maintain adequate protection for labour rights and working conditions. In order to boost the positive synergies between FTAs and decent work, additional steps have been made to link international labour standards to FTAs with the aim of strengthening the implementation of these standards.

Obligations in FTAs that concern labour rights have become significantly more prevalent in recent decades. In 2013, such obligations existed in 58 FTAs, compared to only 21 in 2005 and 4 in 1995.¹⁸⁶ Around 120 of 190 countries that are party to an FTA are party to an FTA that includes an obligation on labour rights.¹⁸⁷ This type of provision is most common in FTAs that the EU or USA

Box 3

The ILO has four categories of fundamental principles and rights at work:

- 1) freedom of association and the effective recognition of the right to collective bargaining;
- 2) the elimination of forced or compulsory labour;
- 3) the abolition of child labour (in particular the worst forms of child labour);
- 4) the elimination of discrimination in respect of employment and occupation.

are party to.¹⁸⁸ For example, these provisions may consist of the parties' commitment to strive for better national protection levels; a commitment not to reduce the level of current protections; and/or the implementation of existing national protection levels for working conditions.¹⁸⁹ The majority of FTAs that contain obligations related to the protection of working conditions contain explicit references to international labour standards such as the ILO's fundamental principles and conventions. How labour rights and working conditions are affected by these provisions is in part dependent on how these obligations are formulated.

5.4.1 Conditional provisions

For about 40 per cent of the FTAs that include provisions on labour rights and working conditions, the provisions are conditional, meaning that they are linked to economic sanctions or incentives. The agreement may be conditional to an obligation that must be fulfilled before or after the agreement is ratified, that is, before or after it comes into force and the parties are legally bound by it. If the obligation is to be fulfilled before the ratification, the entire agreement is conditional on the parties fulfilling its labour rights obligations. An example of this is that ratification of an agreement is conditional on certain national legislation first being in place.¹⁹⁰ Studies have shown that conditions that are linked to the ratification of an agreement often lead to significant changes in national labour legislation. For example, in connection with the USA entering into free trade agreements with Bahrain, Colombia, Morocco, Oman, Panama and Peru, all of these countries improved their labour standards and working conditions before the agreements were ratified. For instance, in Oman in 2006, workers were given the right to organise themselves in trade unions under certain conditions as a result of a conditional term in an FTA with the USA.¹⁹¹ It should be noted that the USA often has a very strong negotiating position and consequently good chances of influencing the outcome of trade negotiations, and demands far-reaching commitments from the other parties to its agreements, in particular if the other party is a developing country. Furthermore, the USA demonstrates a willingness to connect obligations to trade sanctions. For this reason, an element of caution should be exercised in drawing general conclusions from these studies concerning the

effects on working conditions from conditional obligations in FTAs.

Conditional obligations that are not linked to the ratification of the agreement primarily serve to ensure that existing legislation is followed. For example, all trade agreements that the USA has entered into after NAFTA contain obligations not to reduce the national level of protection on labour rights for the purpose of promoting trade or foreign investment. Conditional obligations after the ratification process are linked to procedural rules on how a complaint concerning non-performance of the obligation can be lodged, as well as how a dispute is settled. Non-performance of an obligation can lead to economic sanctions or the withdrawal of trade preferences. Experience of what consequences this type of conditional provision might have are limited because to date the existing mechanisms for complaints about non-performance of labour law obligations have only been utilised four times, and in all of these cases, by the USA.¹⁹²

Example

The US – Guatemala dispute

The only FTA to have led to a dispute settlement on labour rights obligation so far is the Dominican Republic-Central America – United States Free Trade Agreement (CAFTA-DR).

In 2011 the US requested the establishment of an arbitral panel to consider whether Guatemala was conforming to its obligations under the Labour Chapter in CAFTA-DR with respect to the effective enforcement of Guatemala's domestic laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work.¹⁹³ The US claims were not sustained by the panel.

In its final report from June 2017, the panel concluded that the majority of Guatemala's alleged failure to enforce domestic labour legislation was not done "in a manner affecting trade and that the US did not prove that Guatemala failed to conform to its obligations in accordance with the CAFTA-DR".¹⁹⁴

5.4.2 Promotional provisions

Provisions on labour rights and working conditions in FTAs that are not conditional, i.e. not linked to ratification or economic consequences, are referred to as promotional provisions. They consist primarily of cooperation activities, dialogue, and monitoring mechanisms. The agreements specify the areas in which the parties may cooperate and how this cooperation is to function.

It is difficult to estimate the effect of encouragement provisions as they aim to encourage the parties to promote decent working conditions. The limited available empirical evidence indicates that the effects depend on both the political context and whether or not a comprehensive framework exists for the various activities. The most decisive factor appears to be the political will for change in the country. It is also clear that an active civil society plays an enormous role in initiating, channelling, and maintaining such political will. The framework in the agreement can help to facilitate the pressure applied by civil society. An example of how a commitment to cooperate led to actual change is Mercosur. Here, the parties to the FTA have cooperated in providing common workplace inspections, which have also led to improvements in national procedures.¹⁹⁵

Provisional provisions can be combined with rules related to procedures and the creation of institutions aimed at ensuring the implementation of these commitments. Often, an FTA will create an institutional framework in the form of national contact points, a committee of representatives from all parties to the agreement, and some form of dispute settlement mechanism. An example of this is the Committee on Trade and Sustainable Development, created as a result of the FTA between the EU and Korea. This committee meets annually to discuss cooperation issues in the agreement and has also initiated a project with the aim of reviewing the possibilities of implementing the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111).¹⁹⁶

5.5 Private initiatives aimed at promoting decent work

Private stakeholders have also taken initiatives that aim to promote stronger protection for labour rights and working conditions in GVCs. This can partly be attributed to the difficulties that national governments, primarily in develop-

ing countries, face in managing the challenges connected to protecting workers' rights.¹⁹⁷ Within individual businesses, this might be implemented through active work with CSR/RBC.

Example

More than 1 100 textile workers killed in Rana Plaza, Bangladesh

In April 2013 the textile factory Rana Plaza in Dhaka, Bangladesh collapsed. The collapse caused at least 1127 deaths and more than 2500 people were injured. The tragedy was an awakening for the textile industry and everyone from customers to shareholders and media expressed their horror over the lack of security and the working conditions in Bangladesh.

Within a month after the building collapsed, a group of major retailers, including H&M, Zara, C&A, Tesco and Primark, signed a binding agreement with the purpose of contribute to the financing and implementation of the improvement of safety in factories in Bangladesh, *The Accord on Fire and Building Safety in Bangladesh*.

Both this agreement and the similar, *The Alliance for Bangladesh Worker Safety*, intend to contribute to the financing of fire safety and improvements of building structure in the factories in Bangladesh used by the businesses in the alliance. Among other things the agreement regulate inspections, as well as repairs and renovations of textile factories.

In July 2013 these initiatives from the private sector were embraced by the public sector in an attempt to improve factory safety and workers' rights in Bangladesh. The EU, the ILO and the government of Bangladesh signed the agreement *Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the ready-made garment and knitwear industry in Bangladesh* (Sustainability Compact) to which the USA and Canada also joined later on.

During annual evaluation meetings, the participants in the Sustainability Compact identify prioritized areas for future work, with the purpose of improving working conditions for employees in the textile industry in Bangladesh. The purpose is also to open up for dialog with relevant stakeholders such as trade unions, civil society, purchasers and employers.

The businesses generally follow international guidelines in the area, writes codes of conduct, and place demands on their suppliers in the value chain. Most codes of conduct contain rights for workers and explicitly states that the purchaser is to strive to uphold the protection of labour rights in the value chain.¹⁹⁸ Empirical studies of the effectiveness of codes of conduct are contradictory, but at an aggregated level it appears that codes of conduct lead to a marginal improvement in working conditions.¹⁹⁹ Most studies indicate that factory audits or other mechanisms designed to assure implementation at production sites are required in order for private regulation to lead to improved working conditions.²⁰⁰

The effect of private sustainability initiatives have however depends on national legislation. Research indicates that the best effect is achieved by combining national reforms with voluntary

private initiatives.²⁰¹ There are even a number of examples of private stakeholders cooperating in order to improve the working conditions in supplier countries.²⁰² A variation of this kind of cooperation is when businesses within a certain sector or industry with particular challenges join forces in order to achieve improvements.

A typical example of a sector where there are difficulties with working conditions is the textile and clothing industry. See example in the margin.

There is a growing trend to support the efforts of the private sector through public initiatives, including through legislation and regulation. This has an impact on the opportunities for the business community to achieve change and create scope for cooperation between the public and private sectors. This trend is described in more detail in section 8.3.3 below, which deals with CSR/RBC and trade policy more specifically.

6

Trade and gender equality

This chapter provides an overview of the relationship between trade and gender equality which is both a human right and highly influenced by conditions on the labour market. Gender equality is a right in itself, but also a method for achieving increased trade and sustainable economic development.

The connection between trade and gender equality is complex, and to a large extent dependent on national preconditions. The effects can run in both directions, meaning that trade and trade liberalisation measures can impact gender equality, but also that the gender equality situation in a country can influence its opportunities to trade. Trade and trade liberalisation measures can impact gender equality domestically through changes in factors such as women's and men's employment, economic empowerment, and access to resources as well as consumption patterns. Trade and trade liberalisation measures have helped create more jobs and strengthen links to markets for both men and women. Despite the fact that trade rules are formulated in a gender neutral way, men and women are impacted in different ways by international trade and trade liberalisation measures. This difference in the effects on men and women is due to differences in economic and social roles; differences in access to and control over resources; and other social, cultural, political, and economic factors.²⁰³

In the other direction, the gender equality situation in a country impacts its opportunities to benefit from international trade. Studies show that it is *more* expensive for countries that are wholly integrated in international trade to have a

high degree of gender inequality, than to be gender equal.²⁰⁴ In an economically integrated world, even the slightest improvements in efficiency in its use of resources can give a country with a higher level of gender equality a competitive advantage.²⁰⁵ In addition, a high level of global consensus about the importance of women's economic social and political power can lead to gender-based discrimination damaging a country's international image.²⁰⁶ In other words, it can be positive for a country that wants to become more involved in international trade to work actively to improve gender equality.

This section will focus on the effects of trade and trade liberalisation measures on gender equality. Because trade liberalisation measures are closely intertwined with the globalisation of value chains and the integration of labour markets, the issue of gender equality in the labour market is central to an analysis of the link between trade and general quality. Issues such as wage differences, and sectors subject to gender segregation are highly relevant.

The complex relationship between trade and gender equality, with indirect effects in both directions, means that trade and trade liberalisation measures can lead to increased gender equality, but not without complementary reforms.²⁰⁷ These reforms may be needed at the national and regional as well as international levels.



6.1 Gender equality as both a right and economic rationality

6.1.1 The right not to be discriminated against

Gender equality aims to ensure that all people, irrespective of sex, should have the same rights, obligations and opportunities.²⁰⁸ The term is defined somewhat differently depending on the context, but incorporates an aspiration to equality between men and women, and boys and girls, in all of life's dimensions.²⁰⁹ The right not to be discriminated against because of one's sex is a recognised human right and protected in a number of international conventions at the global as well as regional levels, and in national legislation.²¹⁰ Among other things, these agreements oblige the member states or signatory parties to eliminate all discrimination against women in the economic aspects of life.²¹¹ This includes the labour market, which is of particular interest based on an analysis of the link between trade and gender equality. Since the 1990s, gender equality has also been a priority issue on the agenda for sustainable development, and is now an integral

component of all international agreements and policy declarations concerning development and sustainability.²¹² For example, gender equality and the empowerment of all women and girls is one of the 17 goals of the 2030 Agenda, but is also integrated in the majority of the other goals.²¹³

Although great progress has been made, discrimination based on gender remains one of the most pervasive inequalities in the world. Women do not have the same rights, opportunities and decision-making autonomy as men, are poorer, earn less, have poorer prospects of climbing any career ladder, and are more likely to end their lives in poverty. The uneven distribution of unpaid domestic and household work between men and women constitutes a considerable obstacle to women and girls' opportunities to educate themselves, and to participate in the labour market and the society as a whole, on the same terms as boys and men. Gender segregation occurs both horizontally and vertically in the labour market, i.e. women and men are over- or under-represented in certain sectors, and women more rarely hold management positions or have career options.²¹⁴ Thus, there is every reason to review trade policy and the contribution of trade liberalisation measures to the elimination of discrimination on the basis of gender.



Goal number 5 of the UN's 17 Global Goals.

6.1.2 Economic potential of gender equal labour markets

However, gender equality is not just a rights issue but also an economic issue at both the individual and community levels. Research shows that, in the majority of cases, gender discrimination in the

labour market leads to lower economic growth. This is because available resources are not being utilised to their full extent, and employment opportunities and wages are not solely based on productivity but on gender.²¹⁵ Furthermore, the labour market is less flexible and misses out on valuable competence and skills. In most cases, a country that gets more women into paid employment, pays equal wages, and empowers women economically will utilise more of its economic potential, increase growth and raise its GDP. According to a report from the *McKinsey Global Institute*, a so called ‘best in region scenario’ where all countries matched their degree of improvement in gender equality with the country in their region that is improving the fastest could add as much as 11 per cent to its GDP in 2025.²¹⁶ In other words, there is great economic potential in working towards a labour market where gender equality prevails, and where all share in the opportunities provided by trade liberalisation measures.²¹⁷

A higher employment rate among women is crucial for empowering women economically and contributing to the economic growth of a country.²¹⁸ Globally, approximately 75 per cent of men of working age are employed, compared with about 50 per cent of women of working age.²¹⁹ Furthermore, women work part-time to a much greater extent. This statistic can be explained in part by the fact that the labour market is segregated, that women occupy temporary jobs to a greater extent, differences in opportunities to benefit from education, and that women leave and return to the labour market for family-related reasons to a greater extent.²²⁰ In other words, the empirical evidence shows that trade liberalisation measures have the potential to increase the employment rate among women, but simply increasing women’s participation in the workforce is not enough to ensure that differences in economic equality are eliminated. In order to optimise the potential of more women being employed in paid jobs, women need to be fully integrated into the workforce, get equal pay for equal work, and not be involuntarily referred to part-time work and to the poorest paid jobs with the worst working conditions.²²¹ However, a higher employment rate and thus increased income do not automatically lead to economic empowerment, because this also requires the possibility of having control over, and the right to decide about, how resources are to be utilised.

The 2030 Agenda does not make an express link between gender equality, women’s economic empowerment, and trade, but it is concluded that there is a link between women’s access to production resources and non-discriminatory legislation on the one hand, and the goals to end poverty, empower women and girls, and promote peaceful and inclusive societies on the other hand.²²² However, the Addis Abeba Action Agenda (AAAA) does establish an explicit link between gender equality and the empowerment of women, as well as the possibility of achieving sustainable, inclusive, just and fair economic growth.²²³ The member states undertake to facilitate women’s equal and active participation in domestic, regional and international trade.²²⁴ The fact that the AAAA includes gender equality issues on such a broad plane can be seen as a possibility to hold all stakeholders responsible for integrating the gender equality perspective into all policies related to development funding.²²⁵

6.2 The gender equality effects of trade liberalisation measures

Even if trade rules are considered to be gender neutral in their design, they can have strong effects on gender equality. The effects of trade liberalisation measures such as FTAs can be different for women and men, depending on their socio-economic baseline at the outset. These effects are also impacted by whether or not the negotiations, the design, implementation and monitoring of, the liberalisation measures have taken gender equality effects into account.²²⁶

Women tend to be affected more negatively than men by the increased competition that follows from trade liberalisation measures, and it is more challenging for them to take advantage of the opportunities that arise as a result of participating in international trade.²²⁷ This is especially true for women in developing countries who to a lesser degree than men have the necessary prerequisites for confronting these challenges and taking advantage of the opportunities associated with market integration.²²⁸ This difference in the effects on men and women can be due to differences in economic and social roles; differences in access to and control over resources; an uneven distribution between women and men of unpaid domestic and household work; and other social, cultural, political and economic factors.²²⁹ The

skills of the available labour force, the composition of the industry and other country-specific circumstances are also significant in relation to what effects an increased openness to trade will have on gender equality.²³⁰

The potential impact of trade liberalisation measures that are of relevance to gender equality analysis can be divided into five main categories:²³¹

- 1) The effects on production and labour markets
- 2) The effects on resources
- 3) The effects on consumption
- 4) The effects on state revenues
- 5) The effects on regulation

For an example of a gender equality analysis of a trade liberalisation measure in the form of a FTA, the reader is referred to the National Board of Trade Sweden's case study of the gender equality effects of the FTA between Korea and the EU.²³²

6.2.1 Effects on production and labour markets

The structural changes that trade liberalisation measures have on production, employment and working conditions impact gender equality differently depending on the sectors most affected and the composition of the workforce in these sectors.

Structural changes and employment

Men and women are both over-represented in some sectors and under-represented in others, which creates a clear gender segregation of the labour market. As a result of this division,

changes in the production structure have different consequences for men and for women.²³³ Studies indicate that economic development changes gender segregation rather than eliminating it. Over time, women's primary occupations have shifted from agriculture and industry to the services sector.²³⁴ At the global level roughly one third of women are employed in agriculture, roughly half in the services sector, and roughly one sixth in industry.²³⁵ However, in developing countries agriculture continues to be the most important source of employment for women and approximately 75 per cent of employed women work in the agricultural sector.²³⁶ The growth of the service sector also means that many tasks traditionally viewed as being a part of women's responsibility to take care of the home, such as childcare and cooking, are now included in the formal economy.²³⁷ Even if this development can create more formal jobs for women, there is a risk that it will further consolidate the gender segregation in the labour market.²³⁸

Furthermore, studies show that rapid structural changes in the labour market often have a greater impact on women. Businesses tend to both fire more women during bad times and hire more women once business has turned around again.²³⁹ In the case of economic crises, stimulus packages generally mainly target male-dominated export sectors such as the automotive industry.²⁴⁰ Women therefore have a less secure position in the labour market.

Empirical evidence shows that trade liberalisation measures have the potential to increase the employment rate for women. Increased exports



in the manufacturing industry have almost always been followed by a significant rise in the employment rate for women.²⁴¹ For example, the FTAs that Mexico entered into with North America and the EU has in total created three times as many jobs for women as for men.²⁴² In developing countries, women are often employed in industries that produce goods for resale, primarily in the manufacturing industry.²⁴³ Consequently, trade liberalisation measures can result in higher rates of employment among women even in developing countries. For example, the liberalisation of trade in services has the potential to create more jobs and income opportunities for women. Technological development and progress in the ICT sector in particular have opened up huge possibilities for trade in services that were not possible before, which can constitute a tool for economic growth, and empower women socially and economically.²⁴⁴ Empirical studies indicate that the expansion of exportable services has increased the employment opportunities for women, particularly in the IT sector, in countries like India, Jamaica, Mexico and the Philippines.²⁴⁵

Formal or informal sector?

Women are overrepresented in jobs in the informal sector, which are also far less secure, without formal social protection schemes.²⁴⁶ In Asia and Africa, 75 per cent of women work in the informal sector without access to for example pensions, sickness pay or parental leave.²⁴⁷ Goods and services produced by women in or close to the home, referred to as *home-based work*,²⁴⁸ are considered to be part of the informal sector. This kind of work is often seen as an extension of women's domestic chores and therefore tends to be undervalued as an activity that contributes to the economy.²⁴⁹

Even if studies indicate that trade in GVCs has led to a higher employment rate for women, it is unclear if this increase has occurred in the formal or the informal sector. There is a risk that women's employment in the informal economy has grown at the expense of the formal sector.²⁵⁰ However, other studies indicate that the establishment of multinational enterprises can be one way of increasing employment within the formal sector.²⁵¹ This means that trade liberalisation measures that make it easier for businesses to establish themselves abroad can contribute to more employment in jobs that are covered by social protections.²⁵²



Globally speaking, on average women earn 24 per cent less than men.

Source: UN Women

The reproductive workload, that is all types of unpaid activities within the household such as maintenance and childcare, impact women's opportunities to enter formal employment.²⁵³ This type of work is performed to a much greater extent by women, and this continues to be the case even when women take on other jobs.²⁵⁴ This is one of the primary reasons why women do not participate in the formal labour market to the same extent as men.²⁵⁵ Working to a greater extent in the household and not earning an income places women outside the social protection scheme and in a position of dependency in relation to men in the household with jobs that do generate an income.²⁵⁶ According to some studies, trade liberalisation measures can reduce the reproductive burden on the condition that these types of tasks are transformed into services that are sold in the formal market.²⁵⁷ This can then liberate time for women to enter into formal employment instead.

Wage differences

An important aspect of gender equality in the labour market is differences in pay between men and women. Globally speaking, on average women earn 24 per cent less than men.²⁵⁸ Average wages are significantly lower in female-dominated occupations and sectors than in male-dominated occupations.²⁵⁹

The increased competition as a result of trade liberalisation measures leads to pressure on employers to reduce costs, which in theory can result in it becoming too expensive to discrimi-

nate against women with comparable skills to men, since that would mean that wages are based on something other than just skills.²⁶⁰ It would therefore be economically irrational to keep wage inequalities based on gender.²⁶¹ However, empirical evidence shows that general wage inequality tends to persist after trade liberalisation measures, even if wage inequality has been reduced in some sectors.²⁶² For example, empirical evidence indicates that jobs created in the IT sector have helped reduce the wage inequality between men and women.²⁶³ However, although this has sometimes been due to increases in women's wages, it has also been a result of men's wages decreasing, which cannot be seen as a positive development.²⁶⁴

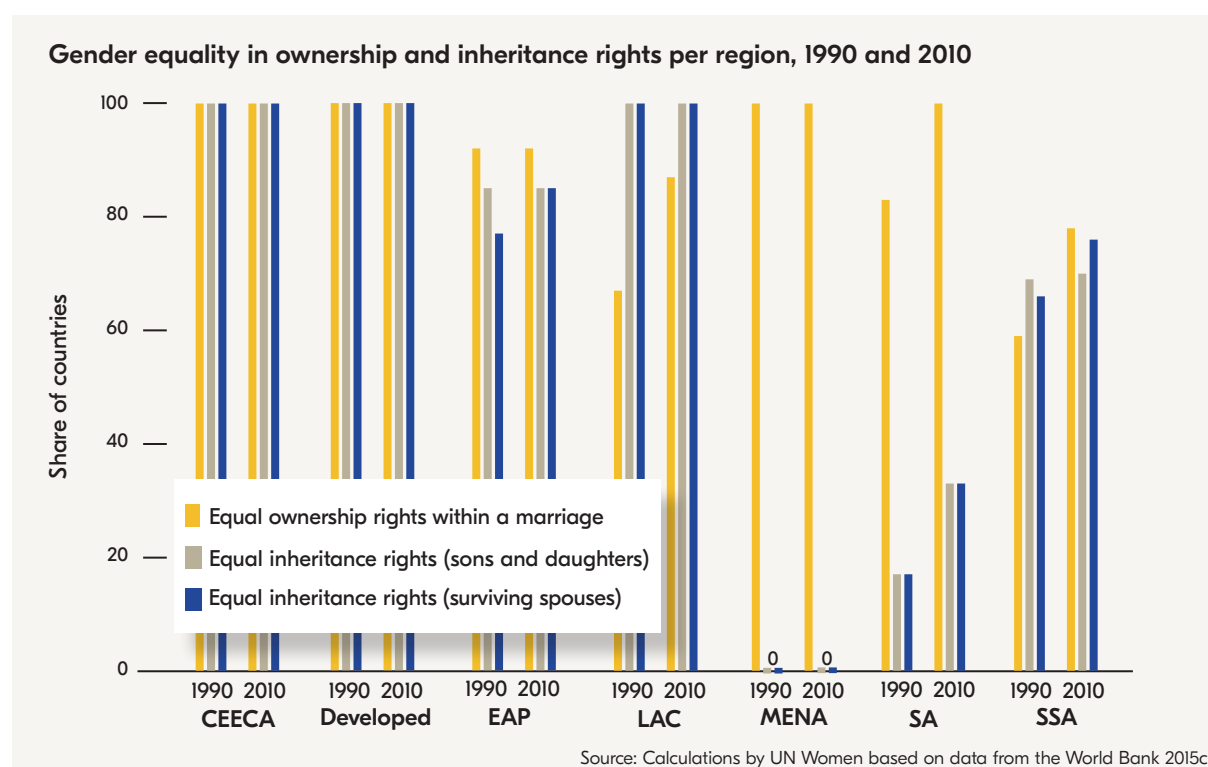
Empirical evidence shows that for some states in an industrialising phase, wage inequality in female-dominated sectors has been a competitive advantage during periods when economic growth has been driven by exports in manufacturing industries primarily staffed by low-paid women.²⁶⁵ For example, studies from South Korea show that wage inequality in the exporting manufacturing industry in particular contributed to economic growth.²⁶⁶ However it is difficult to reduce this short-term positive effect on economic growth to a systematic effect without risking the creation of a *race to the bottom* where developing countries compete with low wages in female-dominated

occupations. Because wage inequalities at the country level can both precede and remain after trade liberalisation measures, it is important to complement trade liberalisation measures by introducing, implementing and enforcing legislation on non-discrimination.²⁶⁷

6.2.2 Effects on assets and resources – opportunities for economic empowerment and entrepreneurship

Trade liberalisation measures that have helped create more jobs and stronger links to markets for women also improve their economic empowerment opportunities.²⁶⁸ For example, studies show that women who work in export sectors gain greater control over their income.²⁶⁹ This is particularly true for women working in the manufacturing industry and at a distance from their male relatives.²⁷⁰

However, due to differences in access to production factors, the preconditions for achieving increased economic empowerment and entrepreneurship are worse for women. Women entrepreneurs tend to manage smaller businesses, focus on less profitable sectors and be less productive.²⁷¹ Factors that limit women's entrepreneurship include legal capacity, access to financing and ICT, and having the right to own property.²⁷² In 2014, women had the same inher-



itance rights as men in only 55 of 160 countries and laws or customs in 102 of these 160 countries still deny women the same right as men to own land.²⁷³ This limits women's options for procuring credit and capital, which often requires land as security.²⁷⁴ The fact that women have poorer access to resources in the form of capital, credit, marketing networks and other factors that are decisive in order to be able to compete on an international market, can make it more difficult for women to compete, become entrepreneurs and be involved in GVCs. UNCTAD estimates that measures that create incentives and support for women's entrepreneurship by reducing thresholds and improving access to land, capital, etc., could raise GDP by 1–2 percentage points in many countries.²⁷⁵

The spread of ICT in recent years has made it far more possible for both women and men to access markets because it has lowered the information barriers and reduced transaction costs for getting their goods or services to markets. Because women are often more restricted in terms of both their mobility and available time, they may be able to benefit from this development to a greater degree.²⁷⁶

6.2.3 Effects on consumption

It is not only the effects on export and on employment that are of interest from the gender equality perspective. Imports and changes in consumption patterns can also impact gender equality. In general, prices of both goods and services are expected to fall as a consequence of increased competition. Depending on the type of goods and services that are impacted by trade liberalisation measures and the effect that this has on consumption patterns, gender equality can be affected in different ways. Since women tend to be responsible for making purchases for the household, from a gender equality perspective, the availability of cheaper household products can have positive effects, since a larger proportion of the household budget could be spent on expenses related to health and education instead.²⁷⁷ In particular, cheaper foodstuffs could benefit women consumers, since they spend a considerable proportion of their income on food for the household.²⁷⁸ Furthermore, women would be able to keep a larger proportion of their income and thereby strengthen their economic empowerment.

6.2.4 Effects on state resources

As is evident from the above, trade liberalisation measures that consist of tariff reductions lead to a change in the composition of state revenues, which can have indirect social effects that impact women to a greater extent than men.²⁷⁹ Lower revenues from tariffs and customs duties impacts available public funding for investments in health, education, social infrastructure and services, which are decisive for strengthening women's empowerment and making it possible for them to participate more in GVCs. This effect varies greatly between countries because tariffs constitute different proportions of state revenue, but tend to be a greater proportion in poorer countries.

In the long-term, trade liberalisation measures are expected to lead to an increase in state revenue, compensating for the drop in tariff revenues, but this assumes that the state has a well-functioning taxation system. This is often more difficult to achieve in developing countries where national institutions may be too weak to effectively and successfully introduce income tax, for instance due to inadequate census data or a large informal sector.²⁸⁰

6.2.5 Regulatory effects

A large proportion of trade liberalisation measures in modern FTAs concern regulatory matters such as environmental protection, standards, consumer protection, quality infrastructure, protection for intellectual property rights, public procurement, etc. In the long term, regulatory reforms in these areas ought to create better conditions for competition and improve opportunities for export, improve food and product safety, and lead to lower prices for goods and services.²⁸¹

An example of a regulatory matter that may have an impact on gender equality is the need to build and maintain a national quality infrastructure that will increase the safety and quality of products for both domestic consumption and export. The development of such quality infrastructure increases the chances of effectively implementing the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Agreement on Technical Barriers to Trade (TBT Agreement) for example (see section 8.1.2). In the short term, there is a risk that the construction of this kind of regulatory framework, system and bodies for testing,

inspection and supervision will raise the price of foodstuffs. This would have a particularly large impact on poorer households, which spend a proportionally greater amount of their income on food, and on the women who are responsible for purchasing food for the household. For example, this was identified as a risk in the analysis of the potential effects on gender equality of the EU's Association Agreements with the Ukraine, Georgia and Moldavia.²⁸² On the other hand, strong quality infrastructure can help protect weaker consumer groups such as women and children from product-related risks.

6.2.6 Additional effects of interest from a gender equality perspective

More open borders and the exchange of information as a result of trade liberalisation measures can lead to an increased flow of information about women's situations in different parts of the world, which in turn could lead to a general change in attitude in countries where there are higher levels of gender inequality.²⁸³ Some studies even indicate that liberalised trade with countries with strong economic and social rights for women can have a "contagious" effect on a trading partner with weaker rights for women.²⁸⁴

6.2.7 Country-specific conditions that impact the effects on gender equality

Many of the factors that impact the effects of trade liberalisation measures are country-specific, such as the taxation system, welfare system and education levels. This means that national regulation has a crucial role in creating an inclusive system that facilitates women's participation in the workforce, and which enables women's economic participation in value chains. Examples of such national regulation include banning gender-based discrimination, providing public childcare, creating taxation systems that do not make it more advantageous for women to be married or at home with children, and similar policies.²⁸⁵

National regulation can also limit women's mobility and thus their opportunities for becoming employed. For example, in Iran, Saudi Arabia and Yemen, married women need permission from a man in their household to work outside the home, which has led to a very low rate of employment outside the home among women.²⁸⁶ Furthermore, there are cultural attitudes related

to male and female stereotypes that can also impact women's opportunities to enter the labour market. For example in Georgia, the prevailing attitude is that men should be the only providers in the household, while women should do the household chores.²⁸⁷

Being aware of the fact that a country's specific conditions can impact how trade liberalisation measures might impact gender equality in the country is important for a better understanding of the effects of trade. This perspective should also be taken into account when designing trade rules and complementary measures, in order to ensure that they optimise the conditions for trade that contribute to gender equality. More information about the importance of national preconditions for social sustainability can be found in chapter 7.

6.3 Gender equality in trade rules

Although trade policy and trade rules are designed in a gender-neutral way, women and men are impacted differently. During the UN's Fourth World Conference on Women in Beijing in 1995, the UN member states agreed to seek to ensure that their trade policies related to trade agreements do not have an adverse economic impact on women.²⁸⁸

6.3.1 Gender equality in the WTO system

Trade rules within the WTO can be seen as having been based on the assumption that trade regulation and trade liberalisation are gender-neutral. Gender equality constitutes a very small part of the WTO's work. As is evident from this chapter however, a regulatory framework that is non-discriminatory in the formal sense does not mean that women and men are affected in the same ways by these rules. There is no consensus among the WTO's members that gender equality should be specifically included in the WTO's agenda.²⁸⁹ However, for some areas which are regulated or negotiated within the WTO, such as trade in services, the agricultural sector, and Aft, gender equality aspects are highly relevant.

The service sector and GATS

Given the growing scale and significance of the service sector for the global economy, as well as the fact that women are overrepresented in the

service sector, trade regulations for services are particularly relevant from the gender equality perspective.

The General Agreement on Trade in Services (GATS) is one of the three principal agreements within the WTO system and aims to open up world trade in services and provide them with a basic regulatory framework. GATS is comprised of a framework agreement which includes a commitment by the parties to apply the non-discrimination principle of MFN (see section 4.2.1); and national lists of commitments in which countries provide guarantees of a certain level of transparency for suppliers of services from other countries. Countries decide in which service sectors they want to make commitments, and how far-reaching these commitments are to be. GATS divides trade in services into four different modes of supply, where mode 4, is of particular interest in this context. Mode 4 entails the temporary movement of natural persons for service suppliers. Temporary movement in order to provide services has great potential for increasing women's participation in trade in services.²⁹⁰ To date, mode 4 has primarily been reserved for highly qualified professional groups or senior business categories in which women are under-represented.²⁹¹ The lack of recognition of professional and academic qualifications can also constitute an obstacle for the provision of services abroad through mode 4.²⁹² However, GATS allows member states to deviate from the MFN principle and establish bilateral or plurilateral agreements in this particular, which could favour exporters from countries that are covered. Addi-

tional measures that could conceivably facilitate mode 4 are for example the simplification of visa and work permit procedures, simplified procedures and requirements for requisite licenses, and removing the minimum wage requirement.²⁹³ These measures could lead to increased export of services from developing countries, but there is a risk that this will occur at the expense of decreased wages.

Agriculture

As noted above, agriculture continues to be the most important source of employment for women in developing countries, and roughly 75 per cent of employed women are active in the agricultural sector.²⁹⁴ Women working in agriculture in developing countries play a significant role in reducing poverty through for instance ensuring access to food in rural areas.²⁹⁵ However, women seldom own the land they operate, and women and men often cultivate different sorts of products, where products cultivated by men are often higher up in the value chain.²⁹⁶ UNCTAD also estimates that if women entrepreneurs in the agricultural sector had the same access to production resources as men, they would be able to increase their return by 20–30 per cent and thus increase global agricultural production by 2.5–4 per cent.²⁹⁷ The WTO Agreement on Agriculture impacts trade in agricultural products, for example by regulating market entry, export subsidies and internal aid to agriculture, among other things. The fact that developed countries may utilise export subsidies and provide aid to domestic agriculture under certain conditions is problematic for developing countries. It makes it



difficult for developing countries to compete internationally, which in turn may contribute to falling prices and job insecurity.²⁹⁸ Considering the high proportion of women employed in the agricultural sector, an increased possibility to compete internationally with agricultural products, that is, additional liberalisation in the area, would be favourable. Correcting trade restrictions and distortions on the world market for agricultural products through for example abolishing export subsidies within agriculture has been on the agenda within the WTO since 2001, and is now also a target in the 2030 Agenda.²⁹⁹

Aid for Trade

As described in more detail below, AfT is a collective name for trade related aid to developing countries, with the aim of building the country's capacity to trade. One area where AfT has been identified as having great potential is gender equality measures, particularly in light of the positive economic effects of including more women in international trade. If the recipient country has identified increased participation by women in international trade or similar gender equality measures as a priority in its trade strategy, projects with the purpose of achieving these priorities can be the object of financing under AfT.³⁰⁰ The amount of AfT provided for gender equality measures increased by 300 per cent between 2006 and 2008, but in spite of this it only constituted a marginal proportion of the total AfT.³⁰¹

Aid projects related to gender equality could include projects which aim to eliminate trade barriers for goods and services that are important for increasing women's participation in the workforce and women's entrepreneurship, and particularly goods and services that can enable women to access occupations that are higher up in the value chain.³⁰²

6.3.2 Gender equality in the EU's trade policy

According to the EU's fundamental regulatory framework, all of the EU's activities are to eliminate barriers to gender equality between women and men and promote gender equality.³⁰³ The European Commission regularly produces a strategy for including gender equality in all of the EU's policies. It is apparent from the strategy for 2010–2015 that the EU is to integrate gender equality into its trade policy as part of its work

with sustainable development.³⁰⁴ According to its regulatory framework for gender equality and the empowerment of women³⁰⁵, the promotion of social and economic rights as well as women's empowerment should guide all of the EU's external actions related to economic development, which includes all trade-related measures. In other words, gender equality is an express objective of EU trade policy. Some of the trade related instruments used to promote gender equality are for example free trade/Association Agreements, impact assessments and the GSP. This section comments in brief on the gender equality aspects of these instruments. How these instruments can be used to promote social sustainability in general is elaborated on in chapter 8.

Trade agreements

Free trade and association agreements can be an important instrument for the EU in its endeavours to promote gender equality. All of the EU's trade agreements contain regulations about gender equality linked to provisions on gender equality, albeit in the shape of human rights provisions which also are connected to sanctions.³⁰⁶ For example, these agreements refer directly to international conventions on gender equality such as the UN's Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).³⁰⁷ They also refer to the UN's Fourth World Conference on Women in Beijing in 1995.³⁰⁸ Furthermore, sometimes they include clear goals, for instance to strengthen dialogue and cooperation in order to promote gender equality.³⁰⁹ One trade agreement that has been particularly significant from the gender equality perspective is the Cotonou Agreement, a partnership agreement between the EU and the members of the African, Caribbean and Pacific Group of States, which prescribes the integration of gender equality into all areas of the agreement.³¹⁰ This agreement mentions equality between men's and women's rights in the context of respect for human rights, which theoretically should increase the chances of applying sanctions in the event of violations of human rights. The National Board of Trade Sweden has previously concluded that trade sanctions are not the best method of promoting compliance with human rights in matters of employment, but instead advocate partnership programmes as a more suitable form of promoting women's rights in agreements with developing countries.³¹¹ For a

more in-depth discussion of the most suitable ways of including the gender equality perspective in free trade agreements, the reader is referred to the National Board of Trade Sweden's report on gender and gender equality aspects of regional and bilateral free trade and association agreements (in Swedish only).

Impact assessments

In the Sustainability Impact Assessments (SIA) the EU conducts in connection with each new negotiation on trade liberalisation measures, gender equality is included in the assessment of the impacts of the current liberalisation measures in the social area.³¹² However, critics argue that in most cases the gender equality aspect is minimal and not implemented systematically.³¹³ The assessment often focuses on the economic sectors where women are overrepresented, such as the manufacturing industry and agriculture.³¹⁴ Most impact assessments do not include proposals for measures to counteract negative effects. Furthermore, the majority of SIAs focus only on the effects of trade liberalisation measures on women in the partner country in question, and not on the effect on women within the EU.³¹⁵ In the 2015 update of the guidelines for the implementation of impact assessments, a number of concrete questions on gender equality are included. Additionally, the new framework

specifies that a gender equality assessment is to be carried out systematically for all new external actions. As a result, the effects of the EU's trade policy on gender equality could potentially become clearer in the future.

Finally, for existing and future trade provisions related to gender equality to be effective, the mechanisms for monitoring compliance should be clear and measurable.³¹⁶ Gender-disaggregated statistics for specific areas such as services, entrepreneurship, the labour market and agriculture are essential for the provision of indicators related to gender equality.³¹⁷

Generalised Scheme of Preferences

As detailed in section 8.2.3, the EU's Generalised Scheme of Preferences, the GSP+, offers developing countries that ratify and implement certain international agreements linked to sustainable development a full exemption from customs duty on their exports to the EU.³¹⁸ The list of conventions that are to be implemented before a country can take advantage of GSP+ include the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).³¹⁹ Linking trade preferences to requirements to work against gender discrimination is thus an additional way for the EU to promote gender equality through international trade.

7

National preconditions for sustainable trade

As previously stated, a number of factors other than trade policy and trade rules impact the effects that trade has on questions of social sustainability. Trade liberalisation measures generate different effects in different countries depending on the country's capacity to derive benefit from the opportunities presented by open markets. The optimum use of trade liberalisation measures requires a certain domestic production capacity in the form of, for example, capital, natural resources, networks and infrastructure as well as functioning institutions. Furthermore, a stable economic system is fundamental for economic growth and consequently social sustainability, which is described in chapter 3.

A country's capacity to benefit from trade liberalization is often referred to as its absorption capacity, which among other things consists of its infrastructure, legal system, governance and administration, investment climate and human capital, among other things.³²⁰ For example, countries with weak education systems, high inflation, weak telecommunications, weak governments and low flexibility in labour markets tend to not be able to benefit to the same extent from trade liber-

alisation.³²¹ The quality of a country's institutions, the quality of its inputs, the proportion of its people who are educated and the rates of higher education also affects the connection between trade liberalisation measures and growth.³²² Furthermore, complementary reforms and stable national institutions are crucial if businesses' participation in GVC is to contribute to sustainable development.³²³ However, it is important to bear in mind that current research cannot entirely establish causal connections between these factors. It is unclear exactly which measures contribute to what improvements, which conditions are the most important, and in what order reforms ought to be implemented.

7.1 Infrastructure

Over the past three decades, literature and empirical research have emphasised the importance of well-functioning physical infrastructure in order to participate in international trade and attract investments.³²⁴ Potential opportunities for developing countries to participate in and benefit from trade liberalisation measures is limited if physical infrastructure is lacking or insufficient. Furthermore, within a country, the positive effects of transparent trade such as access to investment, etc., are often limited to regions, and in particular urban areas, where infrastructure is more developed and reliable.³²⁵

The lack of basic infrastructure can in practice prevent people from accessing new markets, which hinders production and increases the cost of trade.³²⁶ The sustainable development goals in

Definition

Absorption capacity =

the capacity of a nation to take advantage of trade liberalisation in areas such as infrastructure, legal system, governance, investment climate and human capital.



the 2030 Agenda include enhanced financial, technological and technical support, thereby facilitating the expansion of sustainable and resilient infrastructure in developing countries.³²⁷

Transport, ICT and network services are some of the different kinds of infrastructure that are of great importance for the effects of trade liberalisation on social sustainability.³²⁸ In order for investments in infrastructure to have optimal effects, infrastructure services and ways of managing complex trade formalities at the border are also required.

Transport systems

In developing countries in particular, deficiencies in the infrastructure for transport such as the quality of roads, railways, ports, etc., are an obstacle for getting goods and services to market. Poor infrastructure constitutes over 40 per cent of transport costs, which rise all the way up to 60 per cent for landlocked countries.³²⁹ Improvements to physical infrastructure are an important step towards being able to reduce transport costs and enable participation in trade. Studies show that reduced transport costs facilitate exports more than reductions in customs duties.³³⁰ For example, for some landlocked countries in Africa, a reduction in transport costs of 10 per cent resulted in an increase in international trade volumes of 25 per cent.³³¹

Information and communication technologies (ICT)³³²

In conjunction with the development of trade in the form of GVC, the revolution in ICT has changed the global economy.³³³ For example, developments in ICT has changed the transport

sector through the development of digital systems for freight and logistics. Additionally, developments in ICT have enabled the separation of the production and consumption of services.³³⁴ Cross-border trade in services (GATS mode of supply 1) to a large extent depends on well-functioning ICT.³³⁵ Smoother trade formalities and participation in global value chains are therefore facilitated by a well-developed ICT infrastructure.³³⁶

The quality of the ICT infrastructure in developing countries is far behind that of high-income countries.³³⁷ Investing in improvements in ICT can thus contribute to enabling poor countries to benefit more from trade, and contribute positively to social sustainability.³³⁸ Significantly increasing access to ICT and striving to provide universal and affordable access to the internet in LDCs is also a specific target in the 2030 Agenda, with the goal of achieving this by 2020.³³⁹

In 2013, the global growth in business-to-consumer (B2C) e-commerce was almost 14 per cent.³⁴⁰ Value chains in the future will be strongly impacted by where data is able to flow unhindered by various kinds of physical barriers.³⁴¹ One such physical barrier could be an ICT sector with inadequate capacity. In other words, there is great potential in developing national ICT capacity in order to benefit from the global rise in e-commerce.

Infrastructure services

Infrastructure services include financial services, transport and logistics, telecommunications, water and energy.³⁴² These services can mitigate potential deficiencies in the physical infrastruc-

ture. A lack of access to financial services can constitute a major barrier to employment. For example, it is estimated that only 20 per cent of Africans living in rural areas have access to a bank account compared to 38 per cent of Africans who live in cities.³⁴³ The quality of infrastructure services is also significant in order for the physical infrastructure to fulfil its potential.³⁴⁴

Trade facilitation

The efficiency of local trade formalities such as customs procedures, and border controls, as well as logistics services is key for countries that want to be integrated into GVC.³⁴⁵ Businesses in countries with high transaction costs and inefficient logistics services will find it more difficult to compete with businesses that enjoy an efficient logistics environment.³⁴⁶ Trade costs that are associated with inefficient formalities at borders can be reduced through trade facilitation reforms.³⁴⁷ One example of a measure that contributes to reducing trade costs and can thus facilitate the positive effects on sustainability of trade liberalisation is the WTO's Trade Facilitation Agreement (TFA).³⁴⁸ In 2015, the OECD estimated that the full implementation of the TFA could reduce global trade costs by 12–17 per cent, of which the largest reductions would occur in developing countries.³⁴⁹ Consequently, the TFA can contribute to maximizing the positive sustainability effects of trade.

Experience within the clothing sector for example, which is one of many sectors that is largely characterised by trade in GVC, shows that improved ICT services, lower transport costs and less time in ports and at border controls can significantly improve opportunities for low income countries to become involved in product differentiation and thus become more competitive.³⁵⁰

7.2 Well-functioning institutions

Institutional infrastructure is defined as a number of different social structures and regulations that control the interaction between private and public stakeholders and also between different private stakeholders.³⁵¹ This includes political structures, the legal system, property rights, the ability of fulfilling contracts/agreements, and investment protection but also factors such as social insurance and social security systems.³⁵² Well-functioning institutions reduce uncertainty and decrease transaction costs. Well-functioning institutional

infrastructure can improve countries' capacity to benefit from open markets.³⁵³ Institutional quality can even function as a comparative advantage and help facilitate trade flows.³⁵⁴

The recognised importance of institutional infrastructure for trade requires that trade liberalisation is complemented by institutional reforms in partner countries. Today, institutional reforms are often supported by aid and technical assistance from international aid institutions.³⁵⁵ FTAs also sometimes include obligations to assist parties to the agreement in complementary national reforms.³⁵⁶

7.2.1 Quality infrastructure

Quality infrastructure is a part of national institutions and systems that is particularly relevant for trade and which needs to be in place in order for businesses to be able to benefit from trade liberalisation. The term quality infrastructure includes the systems and mechanisms that provide the basis for the safety and quality of products and services in a country.

Important components in a national quality infrastructure include: the legal framework that defines rights and obligations for institutions and economic stakeholders that are involved in ensuring quality and safety; the legal framework for the supervision of product and service safety; and the government agencies that develop, prescribe and apply technical regulations with a bearing on product safety.

The institutions that provide measurement standards and standards for traceability are particularly important, as well as standardisation bodies that develop and issue voluntary standards, accreditation bodies that assess the competence of the bodies that assess compliance, bodies that carry out assessments of compliance in the market (for example, certification bodies, laboratories, inspection bodies), and market inspection authorities which, as supervising actors, ensure that the products and services offered by economic stakeholders on the market are safe and do not endanger health and safety and contribute to a sustainable environment.

How robust and transparent a country's quality infrastructure is to a large extent depends on the availability of harmonised standards that can be used at the global level. This is essential for creating confidence in the market for the free movement of goods and services, and thus creating the conditions for increased market access. However,

there is a risk that enforcing compliance with standards could lead to higher production costs and new demands on businesses, which can have a negative impact on competitiveness. Requirements that are set too high could for instance be difficult for small-scale farmers to comply with.³⁵⁷ The creation of efficient and well-functioning quality infrastructure is a challenge that requires long-term capacity- and institution-building, as well as cooperation between many different stakeholders. In this case, AfT could play a central role. For more information, see section 8.4.

7.2.2 Good governance and the rule of law

Governance is defined broadly in the literature as the traditions and institutions through which power in a country is exercised.³⁵⁸ This includes political stability, procedures for elections, separation of powers, the government's capacity to effectively formulate and apply policies, respect for public institutions, the rule of law, transparency, and the capacity to combat corruption.³⁵⁹

Businesses that conduct cross-border trade are dependent on being able to predict the costs of moving their goods, services, capital and personnel across borders. This means that a transparent and predictable policy environment is important when trading takes place in GVC.³⁶⁰ Sudden changes in the regulations, a cumbersome bureaucratic system, or unpredictability in the application of rules and regulations can have a significant negative effect on the competitiveness of businesses.³⁶¹

The term *rule of law* has no specific definition but generally consists of a system of rules (a legal system) that the majority accept as governing social, political and economic actions; that there are mechanisms for supervision and dispute resolution; and the capacity of the public sector to regulate and enforce mandatory compliance with the system of rules.³⁶² From a development perspective, the right of ownership and access to justice, including the right to a fair trial, are often highlighted as critical components of the *rule of law*.³⁶³ Furthermore, legislation formalises individual and collective rights and constitutes the framework within which individuals conduct themselves. The implementation of legislation is particularly decisive for compliance with rights and obligations.³⁶⁴ A legal system subject to the rule of law helps to create a predictable environment that promotes international trade.

7.2.3 Corruption

Some researchers highlight corruption as one of the primary obstacles for global trade.³⁶⁵ This is hardly surprising since far-reaching and complex regulation coupled with a bureaucratic system, which are common barriers to trade, often go hand-in-hand with a corrupt system.³⁶⁶ In previous studies, the National Board of Trade Sweden concluded that corruption has damaging effects on trade volumes as well as trade rules.³⁶⁷

Corruption can be defined as the abuse of entrusted power for private gain.³⁶⁸ Individuals who have been entrusted with the authority to make decisions on behalf of the organisation abuse this authority for their own personal gain.³⁶⁹ Corruption occurs in both the private and public sector and often takes the form of bribes, fraud or misappropriation. Corruption can also consist of inappropriate relationships between representatives of the public sector and private stakeholders. This can result in favouritism when public resources are allocated through for example shorter processing times or relaxation of the necessary requirements for permit applications.³⁷⁰ This can lead to unnecessary transaction costs for other parties and influence the flow of trade.

Effects of corruption

Corruption is an obstacle to democracy and a strong state governed by the rule of law. Public institutions lose trust and legitimacy when they

Box

Corruption

Corruption is a global problem, but there are large differences between countries and regions. These differences are primarily the result of variations in institutional quality and the possibility of demanding accountability from those with political power.³⁷¹ Each year, *Transparency International* (TI) draws up a Corruption Perceptions Index which measures the perceived levels of corruption in the public sector globally, and ranks countries based on a scale of 0 (very corrupt) to 100 (very free of corruption). In 2014, this index covered 175 countries and territories. Not a single country got a score of 100 and more than two thirds had a score less than 50.³⁷² In general, developing countries are more affected by corruption than, for instance, OECD countries.³⁷³

are used for private gain. Corruption also undermines a country's prosperity, since corrupt politicians do not invest enough resources in the development of infrastructure and other social protection schemes which are needed for a country to develop. Bribes increase transaction costs and lead to economic uncertainty as well as a higher tax burden on fewer individuals. They also reduce the state's resources and reduce the legitimacy of political power.³⁷⁴ TI identifies measures aimed at reducing corruption and illicit financial flows as some of the most important instruments for ensuring that public resources are not leached away and instead utilised to finance sustainable development.³⁷⁵

Corruption and trade

Economic theory indicates that corruption should reduce international trade, but empirical studies in the area have produced somewhat mixed results. Some studies indicate that if international institutions are weak or regulation is complicated, corruption can be positive for growth and for attracting foreign investment.³⁷⁶ However, this does not mean that corruption is something that would be endorsed from the trade policy perspective. In light of the other negative effects of corruption, focus should instead be on building the capacity of national institutions. Trade flows are also affected if corruption is organised and consequently anticipated or not. The uncertainty associated with chaotic and arbitrary corruption is likely to reduce trade.³⁷⁷

Thus it is clear that corruption has an impact on trade. The effects of corruption on trade are, however, unclear. In order to reduce corruption,

trade reforms must probably be accompanied by complementary measures.³⁷⁸ Anti-corruption measures are being included more and more frequently in trade-related instruments. For example, the majority of new FTAs contain anti-corruption provisions.³⁷⁹ For instance, one of the aims of the WTO's most recent Agreement, the TFA, is to simplify trade formalities and thus reduce transaction costs and corruption.³⁸⁰

7.2.4 Health and education

Health and education are additional factors that determine the potential for international trade to contribute to achieving social sustainability. Among other things, improving health and education levels promotes economic development, increases productivity in the labour market and improves capacity to absorb innovations³⁸¹, which in turn is crucial for maximizing the benefits of trade.

Education

Access to education is a human right and a development goal in itself.³⁸² Education also supports the achievement of the other sustainable development goals, and allows people to gain the skills they need to share in the benefits of a globalised economy.³⁸³

The increasingly rapid rate of technological development and restructuring that result from trade liberalizations requires a flexible labour force and the ability to adapt to change.³⁸⁴ People becoming better educated and developing more skills is often identified as a prerequisite for being able to increase productivity in a sector and to contribute to economic growth. UNESCO esti-



mates that increasing the average length of education of the population of a country by one year can increase its annual GDP growth from 2 per cent to 2.5 per cent.³⁸⁵

Investments in education are also an important factor in working towards greater gender equality in the labour market. For example, only 39 per cent of Mexican women with only compulsory school education are employed, compared to 48 per cent of Mexican women who have at least a high school education. Furthermore, investments in education can lead higher wages for those with jobs in the formal sector. On average, one year's education is linked to a wage increase of 10 per cent.³⁸⁶

Investing in education is also a way of investing in health. Educated people are more aware of diseases and therefore can avoid them, are more likely to seek medical care, and are less exposed to jobs and domestic environments with health-risks.³⁸⁷

Health

Research indicates that investments in health care make a significantly positive contribution to economic growth and development. Results about the extent of this contribution to economic growth vary however (between 26 and 40 per cent of growth).³⁸⁸ Improved health leads to longer life, which in turn leads to higher levels of savings and investments.³⁸⁹ Furthermore, diseases can lead to reduced learning potential, etc.³⁹⁰ Investments in health protection result in a stronger workforce (human capital), and thus contribute to a country's ability to share in the benefits of trade liberalization.

On the other hand, trade and trade liberalisation measures also affect health issues. For example, increased trade in pharmaceuticals and medical products can be an opportunity to improve people's standard of living. The technology transfer that occurs as a result of trade can also be a source of improved health.³⁹¹ However, trade liberalisation measures can also lead to health risks as a result of increased trade in products that are detrimental to health, such as tobacco. Open borders can also increase the risk of spreading contagious diseases.³⁹² The members of the World Health Organisation (WHO) have adopted a resolution on international trade that calls on WHO to support its members in understanding what effect international trade and trade agreements can have on health and how relevant questions in this area can be dealt with by national governments.³⁹³ In order to implement this resolution, WHO is

working on developing a diagnostic tool to help national governments analyse health and trade in order to determine how to formulate their strategies and regulations linked to trade and health.³⁹⁴

7.3 The importance of complementary reforms

As highlighted in this chapter, the effects of trade depend on national preconditions, and consequently complementary reforms may be required if trade and trade liberalisation measures are to contribute to social sustainability. The literature indicates that if trade liberalisation measures are implemented in an unstable macroeconomic framework, without active preparations aimed at strengthening national trade-related institutions or other complementary measures, the positive impact of trade on growth can be reduced or even become negative.³⁹⁵ The WTO and the World Bank identify strengthening the finance sector, state control, private ownership rights and education as particularly important investments in order for trade liberalisation measures to reduce poverty.³⁹⁶ A sound financial sector is identified as an important contributor to overcoming the limitations of access to loans, helping businesses grow and making it easier for households to manage risks and upturns and downturns in the economy.³⁹⁷ An analysis of 30 African countries between 1981 and 2010 found that open trade tended to reduce poverty in countries that had a well-developed financial sector and high level of education, among other things.³⁹⁸ These factors are important for ensuring a country's capacity to convert and redistribute resources from less productive sectors to sectors that are more productive. Complementing trade reforms with measures that increase the resources and skills of poorer groups in society can thus strengthen the positive effects of trade liberalization on social sustainability, such as poverty reduction.³⁹⁹

However, it is important to bear in mind that research does not show unequivocal causal connections between these factors. A case by case analysis is required in order to identify which measures are the most important in each situation, as well as the order in which they should be implemented. One example of an important trade-related instrument aiming to assist developing countries with conducting this analysis and improving their conditions for socially sustainable trade is AfT), which is discussed in section 8.4.

8

Trade-related instruments to promote social sustainability

This chapter aims to provide an overview and list of the trade-related instruments and processes that are being used or have the potential to be used in order to promote social sustainability at the multilateral, regional and national levels, as well as through private initiatives. This chapter includes both regulations as well as other types of instruments that may have been mentioned in other contexts in the chapters above, as well as new instruments. Even if this chapter intends to provide a comprehensive picture, additional trade-related instruments may well exist. The inclusion of an instrument in this chapter does not necessarily mean that it results in a positive effect on social sustainability, which is analysed further in the conclusions in chapter 9.

8.1 The WTO's trade rules and social sustainability

The opportunities for promoting sustainability within the framework of the WTO system can be divided into guiding principles that control the interpretation of the legal framework, mechanisms within the legal framework that can be used to promote social sustainability, and finally processes and institutional rules.

8.1.1 Guiding principles

Sustainable development in the preamble

The preamble to the agreement establishing the WTO specifies sustainability as a central goal, and that the purpose of WTO's trade rules among other things is to comply with human rights, improve global living standards, promote sus-

tainable development and preserve the environment.⁴⁰⁰ This goal should be seen as a guiding principle intended to form the basis of all applications and interpretations of the commitments in WTO agreements.

One example of an occasion where the dispute settlement system expressly referred to this guiding principle is the *US – Shrimp* dispute from 1998. This dispute concerned the US import ban on shrimp and shrimp products from non-certified countries (i.e. countries that had not used a certain net for catching shrimp).⁴⁰¹ The question raised was whether this prohibition, which breached GATT, could nonetheless be considered legitimate when considering the exemption for the conservation of exhaustible natural resources. The Appellate Body found that the concept of “exhaustible natural resources” must be construed broadly and that it is not a static concept, but by definition evolutionary. They referred specifically to the objective of sustainable development in the preamble as having guided its interpretation.

Special and differential treatment of developing countries

Another general principle that applies within the WTO system is that developing countries can receive special and differential treatment (SDT).⁴⁰² This can for example consist of trade preferences or technical aid from developed countries, or relief from certain commitments in the WTO agreements for developing countries, such as longer transition periods. Since more than three quarters of the members of the WTO



are developing countries, this is an important principle which is also confirmed in the 2030 Agenda.⁴⁰³ This can be one way of managing potentially negative consequences that arise during the adjustment period that follows structural changes as a result of trade liberalization.

8.1.2 Exceptions from the WTO rules

General exception in Article XX of the GATT

The WTO rules also provide for a number of exceptions which regulate when and how the protection of legitimate national interests may outweigh a country's economic obligations in the WTO agreements. The purpose of these exceptions is to clarify when a national action aimed at protecting a particular non-economic interest, which is in breach of obligations in the WTO agreements nonetheless is considered worthy of protection, thus entitling the member in question not to comply with the WTO obligation. The main provision that regulates when a general exception applies is Article XX of the GATT.⁴⁰⁴ Special exceptions are also found in many other agreements. The exceptions in GATT which are of most interest from a social sustainability perspective include the exception for measures to protect public morals, human, animal, or plant life, health and the conservation of exhaustible natural resources.⁴⁰⁵ The list of general exceptions in art XX of the GATT is exhaustive and connected to a number of requirements. In order to avoid abuse of the exceptions, such measures may not be applied in a manner which would con-

stitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or constitute a disguised restriction on international trade.⁴⁰⁶

National measures to protect the environment, health or public morals must be *necessary*. For example, WTO members have the right to decide individually what level of protection they want to apply for the environment, health and public morals. Other members cannot question the level of protection applied. They may only question whether a certain measure is necessary in order to achieve the intended protection level.⁴⁰⁷ When deciding if a measure is deemed necessary or not, the DSB take into account factors such as if the measure made an essential contribution to the intended protection of the interest, the effects of the measure on trade, and whether a less trade restrictive measure that is in line with the WTO obligations exists.⁴⁰⁸ For example, France's ban on asbestos was permitted because the measure was deemed to protect human life and health and no alternative measure existed that was reasonably available.⁴⁰⁹

The exception for the conservation of exhaustible natural resources does not contain any requirement for the measure to be necessary, but it must *relate* to the goal of protecting exhaustible natural resources, which means that there must be a close and genuine relationship between the measure and that goal, and the scope of the measure may not be disproportionate.⁴¹⁰

Since the case *EC – Hormones* 1998, it appears to be a trend in dispute settlements towards construing the requirements on such national meas-

ures less strictly than before. In this case, the EU had introduced an import ban on meat products treated with certain hormones. The Appellate Body placed the evidentiary burden of proving that a less trade restrictive measure was available to achieve the intended purpose on the member claiming that such a less trade restrictive measure exists.⁴¹¹ This can be one way of incorporating sustainability considerations into the WTO system to a greater extent.

Exceptions in the SPS and TBT Agreements

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Agreement on Technical Barriers to Trade (TBT Agreement) clearly state that no member is to be prevented from taking trade measures needed to protect life, health or the environment, at the level that the country considers appropriate.⁴¹²

The TBT Agreement aims to prevent and limit unnecessary technical barriers to trade as well as discrimination against other WTO members' goods. The Agreement contains provisions that members must comply with when they prepare, adopt or apply technical standards and procedures for assessing conformity.⁴¹³ Furthermore, the Agreement allows members to implement measures to achieve legitimate policy goals such as national security, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment.⁴¹⁴

The SPS Agreement contains rules that the WTO's member states shall follow when they apply measures to protect consumers against contaminated food, as well as for preventing the transmission of animal diseases and plant pests. The Agreement gives the WTO's members the right to introduce measures to protect themselves against transmissible animal diseases, plant pests and harmful contaminants in food. However, according to the SPS Agreement, the measures that a country takes to protect its population and plants and animals in its own territory must be based on scientific risk assessments, and achieve the desired level of protection by using the least trade-distorting measure available. In accordance with this, WTO countries are urged to follow international standards (guidelines) for SPS measures developed by the three bodies OIE, IPPC and Codex Alimentarius.⁴¹⁵ The SPS Agreement does not regulate production conditions

beyond what is directly connected to health risks for the consumer of the product, or the spread of plant pests or transmissible diseases. This means for example that requirements related to workers' health are not counted as SPS measures and not covered by the SPS Agreement.

Waivers – temporary exceptions

In exceptional cases, the WTO can grant temporary exceptions from the WTO rules, called waivers.⁴¹⁶ A waiver must have an end date and are to be reviewed annually. The review assesses whether the exceptional circumstances still exist. As shown in section 4.2.1, this option has been linked to an ambition to promote human rights on a number of occasions. Even if this option is only used in exceptional cases, it can nonetheless be a potential instrument for promoting social sustainability, since interests other than economic interests are discussed and considered.

8.1.3 Other relevant regulatory frameworks

Trade Facilitation Agreement (TFA)

Reducing the costs of trade facilitate trade flows, in turn generating positive economic effects which form the foundation of the impact of trade on social sustainability. Trade costs consists of in principle all costs required to get a good to its end user except the actual costs of production.⁴¹⁷ The largest trade costs today are the costs of transport, the costs of compliance with product standards and complex trade formalities – not tariffs and customs duties.⁴¹⁸ Furthermore, businesses in developing countries tend to bear the highest costs of trade.⁴¹⁹ One example of a measure that contributes to reducing trade costs and can thereby facilitate the positive effects of trade liberalisation is the WTO's Trade Facilitation Agreement (TFA).⁴²⁰ As previously stated, the full implementation of the TFA could reduce global trade costs by 12–17 per cent, of which the biggest reductions would occur in developing countries.⁴²¹ The WTO's TFA can therefore contribute to maximizing the positive effects on sustainability.

8.1.4 Dispute settlement mechanism

Within the WTO, there is a mandatory and binding system for settling disputes concerning the fulfilment of obligations. This system can also be a potential area for promoting social sustainabil-

ity. If a dispute between parties concerning an obligation within a WTO agreement⁴²² cannot be resolved by consultation between the parties, a panel of three independent experts is appointed. The panel provides recommendations on how to settle the dispute based on its interpretation of the WTO's regulatory framework. The panel's recommendations can be appealed to a permanent Appellate Body. The obligations in the WTO Agreements are to be interpreted in accordance with the general objectives in view in the preamble to the WTO agreement, which includes sustainable development.

As previously mentioned, the *US – Shrimp* dispute is an interesting example in this context, because it dealt with the possibility of an exception for the conservation of exhaustible natural resources. The Appellate Body found that the concept of “exhaustible natural resources” must be construed broadly and by definition as evolutionary, and referred to the objective of sustainable development as having guided its interpretation. Both living and non-living natural resources can be included in this term. This position is interesting because it indicates that the meaning of a wording in the WTO agreements can evolve over time through interpretation. The prohibition in that case was deemed not to be acceptable however, among other things because it was unreasonably discriminatory.

In disputes, the panels can also refer to other international laws to which the parties are bound, international expertise in the area in question, or other relevant information in order to obtain

guidance on how the obligations should be interpreted.⁴²³ This allows the panels to interpret the obligations more in line with the promotion of sustainable development. An important restriction on this possibility to promote sustainable development through the construction of the WTO agreements is that the rights and obligations in the agreements may not be augmented or diminished through the dispute settlement system.⁴²⁴ Furthermore, the dispute settlement system can only deal with issues that members raise as a dispute. In other words, the WTO cannot, on its own initiative, appoint a panel to interpret an obligation more in line with the promotion of sustainable development.⁴²⁵

8.1.5 Other procedures

The accession process

A potential opportunity to promote social sustainability within the WTO's procedural mechanisms is to require national reforms that contribute to social sustainability within the accession process, where new members apply for membership into the WTO. Any state or separate customs territory possessing full autonomy can become a member of the WTO, but all the existing members of the WTO must agree on the conditions for membership, which is the result of a negotiation process between the WTO and the prospective member.⁴²⁶ This negotiation process covers the conditions of membership, such as commitments to any national reforms required in order to comply with the rules in the WTO



agreements.⁴²⁷ In this negotiation process the WTO could for instance require transparency and a functioning legal system of the prospective WTO member.⁴²⁸ According to the WTO itself, over the last 20 years negotiations during the accession process have been used to promote and strengthen the core values within the WTO, including *good governance* and the rule of law.⁴²⁹ Since over 160 countries are members of the WTO, the possibility to promote social sustainability in accession processes is obviously limited.⁴³⁰ However, negotiations for accession to the WTO are ongoing with around 20 countries, and a further focus on requirements on potential member states could conceivably send an important signal about future priorities and the WTO's contribution to achieving the SDGs.⁴³¹

The Trade Policy Review Mechanism

WTO members' trade policies are reviewed regularly under the Trade Policy Review Mechanism, (TPRM) with the purpose of evaluating the impact that each member state's trade policy has on the multilateral trading system. The review should consider the background and general economic and development needs, as well as take the policy and goals of the member state being reviewed into account.⁴³² This means that the TPRM could be used to review how each member state's trade policy is contributing to the promotion of the global sustainable development goals. While the review itself cannot force compliance with the obligations, it could function as a kind of naming and shaming tool for member states that do not conduct themselves as they should.⁴³³

8.2 The EU's trade rules and social sustainability

The trade instruments traditionally used by the EU, which are described below, consist of both bilateral and regional efforts, including sustainable development chapters in free trade agreements, impact assessments of planned and current free trade agreements, the EU's Generalised Scheme of Preferences (GSP) and Aid for Trade (AfT).

Besides these instruments, a number of new instruments have recently been initiated that tackle specific sectors or problems, where CSR/RBC is highlighted as an important component.⁴³⁴ The extent to which trade policy is integrated with

other issues of particular interest to developing countries, and in particular for LDCs is also garnering greater attention. This is not just about trade policy and AfT or other trade-related instruments, but a broad integration of the ambitions of EU's external relations.

8.2.1 Sustainable development chapters in free trade agreements

The EU's recent FTAs contain a separate chapter containing horizontal provisions on trade and sustainable development, and the European Commission's goal is to promote ambitious and innovative chapters on sustainable development in all trade and investment agreements.⁴³⁵ The purpose of the sustainable development chapter is to engage the partner countries in a collaborative process that includes civil society as well as strengthening the coherence between national and international labour law and environmental standards. In this way, the parties to these agreements can utilise the potential of the FTA as a means of strengthening commitments in the area of sustainability, while simultaneously promoting dialogue and cooperation. The inclusion of environmental and social issues in free trade agreements can also send a message that sustainability issues are to be seen as equivalent to economic issues and aspects of trade, thereby giving them more weight.⁴³⁶

The modern version of the EU sustainable development chapter includes the following components: (1) confirmation of the parties' commitments to respect and implement multinational agreements that protect working conditions and the environment; (2) the parties' right to legislate national levels of protection; (3) commitments not to use sustainability measures for the purposes of protectionism, or to use low levels of protection as a competitive advantage; (4) specific obligations or areas of cooperation for sustainability issues that are relevant to the parties to the agreement; (5) commitments to promote trade and investment that contribute to sustainable development such as trade in environmental (green) goods and services, and the promotion of voluntary mechanisms and systems in the area of sustainability and CSR/RBC; (6) enforcement mechanisms to assure the implementation of the obligations in the sustainable development chapter that cover institutions, forms of cooperation, the inclusion of civil society, and dispute settle-

Box

Sustainable Impact Assessments (SIA)

A *Sustainability Impact Assessment (SIA)* is a tool which can be used in order to assess the potential sustainability impacts from a suggested policy measure, program or strategy.

A SIA has two main functions:

- 1) A methodology to develop policy which considers all three dimensions of sustainable development
- 2) A process to estimate potential and probable effects from policies before they have been formulated (*ex ante*)

According to the OECD, important aspects of a SIA is for example that all dimensions of sustainable development are fully integrated; that both short term and long term effects are considered; that due consideration is given to possible conflicts between national and global objectives; that the process is transparent and relevant stakeholders are involved; that the SIA is proportionate to the proposed measure; and that the process is not linear, but feed in information to different phases of the implementation of the measure.

In connection to trade policy, the EU uses SIAs as a support when negotiating free trade agreements (FTAs). A SIA then consists of an analysis of potential sustainability effects the planned FTA may have in the EU, in the partnering country, as well as other relevant countries. The SIA is based on an extensive consultation process with relevant stakeholders, with the objective of gathering information and contributing to a transparent process.

In 2016 the EU Commission published updated guidelines for how to design a SIA, *Handbook for trade sustainability impact assessment, 2nd edition*. The Handbook describes objectives, characteristics and principles for how to perform a SIA in the light of the 2030 Agenda and the EU Commission's new trade strategy *Trade for all*.

One important amendment to the updated handbook is that it provides guidance for how to analyse potential human rights consequences. The handbook should be read in conjunction with the Commission's guidelines regarding potential effects on human rights from trade policy measures from 2015, *Guidelines on the analysis of human rights impact assessment of trade related policy initiatives*.

ment mechanisms that are not linked to trade sanctions under other agreements.

One of the challenges of the sustainable development chapter is how to evaluate its actual impact on trading partners' situations concerning environmental and working condition protection. As modern FTAs containing a sustainable development chapter begin coming into force and being implemented, there should be some assurance that the sustainable development chapter is being used effectively and is also functioning as a support for the EU's development cooperation.⁴³⁷ This is also prioritised in the European Commission's trade strategy.⁴³⁸

8.2.2 Impact assessments

Another trade-related instrument for promoting sustainable development used by the European Commission is impact assessments. Prior to beginning negotiations on a free trade agreement, the European Commission conducts an internal *ex ante* impact assessment (IA) that is also open to consultation with external stakeholders.⁴³⁹ IAs are part of the EU's *Better Regulation* initiative, with the aim of ensuring that new legislation achieves its intended purposes in the most cost-effective way.⁴⁴⁰ IAs assess the potential economic, social and environmental impacts of legislative proposals.

Since 1999, the EC's DG Trade has conducted Sustainable Impact Assessments (SIAs) in parallel with trade agreement negotiations with the aim of assessing the negotiations agenda from the sustainability perspective. These SIAs are carried out by independent consultants in order to identify potential economic, social and environmental impacts in both the EU and the third party country. Just like an IA, and SIA contains both an assessment of relevant factors and an open consultation with stakeholders. From 2015, these SIAs are to also include an assessment of the potential impacts on human rights.⁴⁴¹ In July 2015, the European Commission published a guidance document for assessing impacts on human rights as part of the regular impact assessment of trade-related policy initiatives.⁴⁴² This guidance document is intended to be used primarily in the impact assessment process conducted before the European Commission tables a proposal for a policy initiative, such as initiating trade negotiations, and also as part of conducting a SIA. A SIA also results in a proposal for comple-

mentary measures in order to minimise the potential negative impacts of proposed trade liberalisation measures.⁴⁴³

Critics have suggested that a SIA prioritises the assessment of economic impacts over environmental and social impacts in particular.⁴⁴⁴ Furthermore, there has been criticism that the impact assessments are not completed sufficiently early to be able to have an effect on the national legislation of the prospective contracting party, for example.⁴⁴⁵ For this to occur, more long-term action is required to have any effect.

The European Commission is of the opinion that even if SIAs are not fully comprehensive, in particular with regard to complex potential social and environmental impacts, they nonetheless contribute much more information than the decision-makers would otherwise have access to. The guidance document for SIAs is also revised regularly by the European Commission in order to improve the methodology.

8.2.3 Generalised Scheme of Preferences (GSP)

As part of its Generalised Scheme of Preferences (GSP), the EU unilaterally gives developing countries special trading preferences compared to other countries that export to the EU, thereby contributing to opening new markets and increasing economic growth for developing countries. Systems like this are an exception from the WTO's rules on non-discrimination and permitted under the so called *Enabling Clause*.⁴⁴⁶ There are three main arrangements within the GSP: the Standard GSP arrangement, GSP+, and the *Everything but Arms* (EBA) arrangement. The Standard arrangement offers low and lower-middle income countries partial or entire removal of tariffs on two thirds of all product categories.⁴⁴⁷ Under the special arrangement for LDCs, the EBA, they are granted duty-free and quota-free access to all products, except for arms and ammunitions.⁴⁴⁸

To date, the GSP system has resulted in huge changes for the exports of developing countries.⁴⁴⁹ On average, since 1995 the GSP has led to a rise of 5 per cent in exports of the goods included in the scheme, and from LDCs, this rise is on average 10 per cent.⁴⁵⁰

The special stimulus arrangement for sustainable development and good governance, GSP+, offers full removal of tariffs on the same product categories as the standard/general arrangement

to vulnerable low and lower-middle income countries that ratify and implement 27 international conventions related to sustainable development.⁴⁵¹ These conventions concern human rights, labour rights, environmental protection and good governance and include the UN's Universal Declaration of Human Rights and the ILO's fundamental conventions.⁴⁵² The preferences in GSP+ can be granted, subsequent to an application, to developing countries that are assessed according to special criteria as vulnerable due to a lack of diversification and inadequate integration into the trading system. By offering lower tariffs for exports to the EU, GSP+ thus creates an incentive for developing countries to take more action to promote sustainability, with focus on social sustainability issues.

Every other year, the Commission present a report on the ratification and implementation of the conventions, compliance with the reporting requirements under the conventions, and actual application in the countries benefiting from the preferences in GSP+. The first report covering the period 2014–2015 was presented in January 2016 and included 14 countries.⁴⁵³ According to this report, all countries included in GSP+ arrangements have shown progress towards the implementation of the commitments in the conventions linked to sustainable development.⁴⁵⁴ In particular, reporting to international monitoring bodies has improved for most of the countries. For example, at the country level it can be noted that Bolivia has adopted a number of national laws to improve its human rights situation; that Ecuador has specified gender equality as a core issue in its new constitution; and that Paraguay has taken steps to improve consultations with its indigenous population.⁴⁵⁵

In cases of serious and systematic violations of human rights, it has been possible to withdraw preference to country benefiting from the GSP+ until the situation improves sufficiently. For example, in 2006 Belarus lost its preferences under the GSP because of serious and systematic breaches of employees' rights; and in 2010 Sri Lanka was downgraded from GSP+ preferences to the standard/general GSP arrangement because the country had not effectively implemented certain human rights conventions.⁴⁵⁶

Since January 2017, Sri Lanka now meets the eligibility criteria again and is back on the list of beneficiary countries.⁴⁵⁷

Definition

Corporate Social Responsibility, CSR

or responsible business conduct (RBC), as it is also called, is a broad term describing how businesses integrate social and environmental considerations into their operations. What constitutes a CSR-related activity is constantly changing in response to new contexts and challenges, means of communication and the expectations of relevant stakeholders.

CSR and RBC are used interchangeably in this report.

8.3 Corporate Social Responsibility (CSR)

When trade is globalised, the scope of what businesses can affect through their operations expands. In a world of GVCs and complex corporate structures, where multinational enterprises are gaining greater influence over trade, private stakeholders take part in creating the conditions that apply in global trade; for example through the creation of private standards and mechanisms for managing their business's impact on environmental and social conditions. This means that the modern trade reality is not just regulated by states and trade organisations such as the WTO, but also to a certain extent by private stakeholders.

By setting requirements for their suppliers and abiding by codes of conduct, businesses working actively with sustainability can also contribute to more environmentally and socially sustainable development. This chapter describes CSR/RBC corporate social responsibility as a trade policy instrument that can be used to promote sustainability.

8.3.1 Definition

Corporate Social Responsibility (CSR), or responsible business conduct (RBC), as it is also called, is a broad term describing how businesses integrate social and environmental considerations into their operations.⁴⁵⁸ What constitutes a CSR-related activity is constantly changing in response to new contexts and challenges, means of communication and the expectations of relevant stakeholders.

Working with CSR/RBC is often the rule rather than an exception among the bigger market players. The rationale for CSR activities has also started to transform from being a pure means of risk management, into seeing working with sustainability as part of core business.⁴⁵⁹ Other motives include the desire of shareholders to be more actively socially responsible, building an attractive brand, and becoming a more attractive employer.⁴⁶⁰

Working actively with CSR strategies can be costly in the form of investment measures, communication efforts and the de-prioritisation of other investment alternatives.⁴⁶¹ However, it can also result in financial gain through building a more attractive brand that customers are prepared to pay more for. The cost of capital can also be reduced if the financial sector perceives the business as exposing itself to fewer risks.⁴⁶² By working actively to integrate sustainability into the innovation process and business model, new markets can be opened up that may constitute concrete business opportunities. Furthermore, investors and financiers have helped to encourage the CSR trend. Today, in some cases, the capacity to demonstrate preparedness and responsibility for negative impacts may be a necessary condition for investment, in particularly imposed by institutional investors.

8.3.2 From voluntary to regulatory?

Originally, CSR/RBC was seen as purely voluntary commitments on behalf of individual businesses that went above and beyond the legislated requirements on their operations, with the aim of mitigating potential negative environmental and social consequences of their activities. In light of the driving forces described above, cooperation between businesses was initiated. As a consequence of this, a number of voluntary international guidelines have emerged concerning how businesses can manage their social and environmental impacts.

Despite the voluntary nature of many guidelines, commitments are often made in cooperation with states, and the trend seems to be towards increased state involvement. Corporations' management of their social impact is being increasingly regulated through for example legally binding requirements for non-financial reporting. This combination of measures is sometimes described in the political context as a

smart mix of voluntary and regulatory measures.⁴⁶³ It should be noted that the trend towards greater regulation in the area is being largely driven by private stakeholders through the development of guidelines and principles for CSR/RBC, which have gone on to form the basis of regulation at both national and international levels.

The role of the state

States can assist businesses in their sustainability efforts by providing them with information and assistance about how to analyse the impact of their operations on the entire supply chain. For example by developing and implementing national action plans, developing guidelines on how to work with CSR, and building a body of knowledge and raising awareness among businesses about these issues through information initiatives. The state can even create financial incentives for sustainability efforts and investments in sustainability, such as by taking sustainability efforts into account in assessments of applications for export credit.

As owners, states can set a good example in the governance of state owned enterprises by actively pursuing sustainability in their business strategies. Also as purchasers, states can be pioneers in setting tougher requirements on sustainability from their suppliers in public procurement.

An additional possibility is entering into a Memorandum of Understanding (MoU) with countries about structured cooperation on CSR/RBC. For example, Sweden currently has two such MoUs with China and Chile, and is investigating the possibilities of entering into similar agreements with more countries.⁴⁶⁴

A further possibility for the state to encourage and promote CSR/RBC is to create legally binding regulations in areas that are currently within the realm of voluntary corporate initiatives. In this way, a clear framework can be created covering how the private sector should be analysing and managing the impact of their operations on environmental and social conditions. One area with existing regulation is sustainability reporting, which is described below.

The existing regulatory framework with guidelines and standards for sustainability reporting is comprehensive. The guidelines are based on principles that emphasise liability, transparency, ethical behaviour, and human rights and which create incentives to go beyond the legal require-

ments and meet international expectations.⁴⁶⁵ The most important of these regulatory frameworks are described below.⁴⁶⁶

UN Global Compact

In 2000, the UN initiative *Global Compact*⁴⁶⁷ was launched with the aim of making businesses aware of the ethical dimension of business practices and encouraging them to increase their social responsibility. *Global Compact* establishes 10 principles in the area that the UN has identified as related to corporate social responsibility. These principles are primarily about human rights, labour rights, anti-corruption and environmental responsibility. The initiative includes over 12,000 participants from 170 countries, which makes it the biggest voluntary sustainability initiative for businesses.⁴⁶⁸

The UN's Guiding Principles for Businesses and Human Rights

Beyond its work with Global Compact, the UN works actively with human rights issues in trade and commerce. In June 2011, the United Nations Human Rights Council (UNHCR) adopted the *UN Guiding Principles on Business and Human Rights*.⁴⁶⁹ These principles form a global standard for promoting respect for human rights throughout business practices. National governments are encouraged to develop their own national action plans (NAPs) that put the UN's principles into practice at the national level. In August 2015, Sweden presented its NAP as the sixth EU country to do so.⁴⁷⁰ As per August 2017, 17 countries have adopted a NAP and many more are in the process of doing so.⁴⁷¹ *Read more about the Guiding Principles in Box 2, p 20.*

The OECD's Guidelines for Multinational Enterprises

In 2000, the OECD's ministerial meeting adopted guidelines for multinational enterprises based on the OECD Declaration on International Investment and Multinational Enterprises from 1976.⁴⁷² The OECD's guidelines state principles for best practice in order to ensure that multinational enterprises operate in compliance with laws, regulations and agreements in the countries in which they are active.

The ILO's Tripartite declaration on rights in working life

The ILO's Tripartite declaration of principles concerning multinational enterprises and social

policy (the MNE Declaration) is considered the most comprehensive framework for businesses regarding labour rights and working conditions.⁴⁷³ This declaration is a voluntary instrument intended to promote good practice among businesses and to encourage them to contribute positively towards economic and social development. The Declaration addresses MNEs, governments, and employers' and workers' organisations and its principles cover areas such as employment, training, conditions of work and life, and industrial relations.

Private initiatives: Global Reporting Initiative and ISO 26000

The Global Reporting Initiative (GRI) is a set of guidelines for businesses and organisations when accounting for and reporting on the activities that relate to sustainability.⁴⁷⁴ GRI develops industry-specific guidelines in cooperation with businesses and interest group organisations which aim to assist companies to comply with and market their sustainability policies. Furthermore, the standard guidelines allow stakeholders to compare the commitment of different businesses and organisations. In a similar way, the International Organization for Standardization (ISO) has developed an international standard that provides guidance on how businesses and organisations can work with corporate social responsibility (ISO 26000). This standard focuses on processes for implementing measures aimed at promoting sustainable development and furnishes guidelines and advice on how

businesses and organisations can act in socially responsible ways.⁴⁷⁵

8.3.3 Corporate social responsibility in trade policy

The connection between responsible business conduct and trade-related measures has become stronger. CSR/RBC is highlighted as an important instrument in the implementation and financing of the SDGs and in global climate negotiations. The European Commission's trade strategy *Trade for all* and the most recent G7 declaration also emphasise the important role of the business community in creating socially and environmentally responsible supply chains.⁴⁷⁶ The European Commission has been actively involved in issues related to CSR as part of strengthening the European market and economy since the beginning of this century. In 2001, the Commission published its green book *Promoting a European Framework for Corporate Social Responsibility*⁴⁷⁷, as the basic framework for the EU's CSR policy. The EU's 2011–2014 strategy for corporate social responsibility,⁴⁷⁸ which confirms its commitment to promote internationally recognised principles and guidelines, is supposed to be revised and updated at the time of writing.

Sustainability reporting

Businesses that issue sustainability reports account for and communicate for instance information about how business operations impact communities from the environmental and social perspectives. Among larger MNEs this type of



non-financial reporting has long constituted part of their voluntary CSR activities, but since the EU directive from 2014 came into force, there is now regulation within this area.⁴⁷⁹

The purpose of the directive is to increase transparency and access to information about the social impact of businesses and to increase predictability and create a more level playing field for businesses within the EU. Regularly obtaining standardised information can facilitate the measurement, monitoring and management of the social impact of businesses, which also facilitates comparisons between EU member states.

Empirical studies of sustainability reporting requirements indicate a variety of potential benefits for both businesses and the general trend in markets and trade. For example, harmonised reporting rules could improve competition on both the internal market as well as globally, and could lead to cost savings, new areas of business and deeper confidence among consumers and investors.⁴⁸⁰

UNCTAD highlights the reporting of non-financial information as a tool for holding businesses accountable for their social and environmental impacts and contributing to the achievement of the sustainable development goals.⁴⁸¹ However, according to UNCTAD, in order for this to be credible and useful, reporting should be harmonised with international guidelines in order to create comparability.⁴⁸²

CSR in free trade agreements

There is also a clear trend toward including references to international guidelines for CSR/RBC in FTAs. For example, the sustainability chapters now included in the EU's FTAs generally refer to international guidelines for CSR, and identify CSR activities as potential areas for cooperation.⁴⁸³ The inclusion of CSR issues in FTAs could make it easier for trading partners to apply existing international principles and guidelines for responsible business conduct.⁴⁸⁴

Notwithstanding the potential gains to be made in using responsible business conduct as an instrument for achieving political goals, it is important to also consider the limitations of such a strategy.

Unlike regulation and legislation, voluntary corporate initiatives are not always optimal for contributing to public welfare, since CSR decisions are affected by many factors that are not

necessarily related to improving public welfare.⁴⁸⁵ Nor can states delegate their responsibility to protect for human rights, for example.

As previously stated, the effects of trade in a country depend on a range of national preconditions, such as a functioning legal system, good governance, and the country's institutional capacity. The possibilities for private businesses to influence these conditions is severely restricted and it is also debatable whether it is even appropriate for businesses to attempt to influence these factors.

A common way for businesses to attempt to manage risk in their supply chains within the framework of their CSR activities is to establish *codes of conduct* for all partners in their supply chain. Empirical studies indicate that, at the aggregated level, codes of conduct improve workers' rights, even if only marginally.⁴⁸⁶ Furthermore, codes of conduct appear to only have an impact on a limited number of areas. For example, it has proven very difficult to handle discrimination problems and problems associated with asserting union rights through codes of conduct, but it has been possible to identify improvements in areas such as working hours, pay, and health and safety.⁴⁸⁷ Just like the use of private standards, codes of conduct can constitute a potential trade barrier because it is problematic for subcontractors to comply with new rules.

8.4 Aid for Trade

Aid for Trade is a collective name for all trade related to developing countries, in particular LDCs. AfT measures aim to build capacity and the infrastructure required in order enable recipients to benefit from trade liberalization, including by increasing their ability to compete internationally, and by supporting national policy and regulatory reforms. AfT attempts to address problems such as inadequate production capacity, a low degree of production diversification, and difficulties in compliance with technical requirements/standards in export markets.⁴⁸⁸ AfT is therefore a key instrument for maximizing the positive effects of trade on social sustainability. This is particularly relevant in light of the fact that globalisation and rapid technological development risk creating a greater gap between industrialised countries and LDCs unless the latter are supported in this development.

Figure 4: Aid for Trade (AfT) since the initiative was launched by the WTO



AfT was initiated by the WTO in conjunction with the ministerial conference in Hong Kong in 2005.⁴⁸⁹ The WTO defines AfT broadly, and includes all types of trade-related programs and projects such as technical assistance in developing trade strategies, the building of physical infrastructure such as roads and the expansion of the telecommunications network, as well as support in adjusting to reduced customs receipts, etc.⁴⁹⁰ In other words, AfT can include measures intended to facilitate trade at the border and cross-border trade, as well as assistance regarding purely national preconditions.

Since the initiative was launched in 2006, USD 246.5 billion has been invested in Aid for Trade. The majority, over 75 per cent, has gone to 4 specific sectors: transport, energy, agriculture, and banking and finance.⁴⁹¹ The EU is a major player in the AfT arena. In 2012, the EU was responsible for around 32 per cent of all AfT. Along with the OECD, the WTO has established a framework for monitoring AfT, and every other year a Global Review of the progress of AfT is conducted and the results published in a joint report of the situation – *Aid for Trade at a Glance*. The Global Review in 2015 focused on high trade costs.⁴⁹² Trade costs are highest in low income countries and lowest in high income countries. In other words, developing countries bear a disproportionately high share of global trade costs.⁴⁹³ Since inefficient handling of goods at the border is one of the highest trade costs for developing countries, the facilitation and simplification of trade formalities is a priority area for AfT.⁴⁹⁴

In order to create the right conditions for effective AfT for LDCs, it is important to coordinate AfT between donors, to adapt it to the individual country's needs and conditions, and to require measurable results.

8.5 Public procurement

Yet another trade related policy instrument for promoting sustainability available to states is their own trading in capacity of purchasers. Public procurement can be used as an instrument to promote certain social goals such as employment and social integration. Using public procurement in this way entails public purchasers using their purchasing power to influence the market to provide more socially sustainable solutions. Public procurement is used in large parts of the public sector and in sales represents around 14 per cent of the EU's GDP.⁴⁹⁵ In 2014, new EU directives in the area of public procurement were adopted with the purpose of using public procurement as an instrument for promoting social goals, among other things.⁴⁹⁶ In the new directives, there is a greater focus on the possibility, and in some cases the obligation, of the purchasing government agency to ensure that the contracts awarded are performed in accordance with environmental and social considerations and labour law.⁴⁹⁷

An equivalent focus on using public procurement as an instrument to promote social considerations does not exist in the WTO's plurilateral Agreement on Government Procurement (GPA).⁴⁹⁸ Since the GPA was revised in 2014 it also

contains certain rules governing environmental considerations in public procurement. It does not include any provisions on social considerations. The GPA rules are, compared for example with the EU's public procurement rules, very general in nature and leave a lot of room for interpretation by WTO members. Consequently, the fact that social considerations are not addressed in the GPA does not necessarily mean that requirements of this nature are not permitted. Social requirements ought in themselves to be compatible with the GPA provided that they are designed and applied in a manner that is compatible with all of the provisions in the GPA, including the principles of non-discrimination. However, it is worth mentioning that the issue has never been the subject of any dispute in the WTO's dispute settlement body, and consequently has not yet been tested. In conjunction with the negotiations for the current agreement, it was decided that the GPA committee would develop a number of work programmes to function as guidance for future work in the committee.⁴⁹⁹ One of the work programmes concerns sustainable public procurement in which social commitments may be included. This is in line with SDG 12.7. The current work programme may result in social considerations being regulated in the GPA in the next revision of the agreement.⁵⁰⁰

Using public procurement as an instrument to promote social objectives requires taking many interests into account. Getting good value for tax payers money is key, as is the provision of well-functioning social services to citizens. In addition to this, public procurement should be used as a



*Goal number 12
of the UN's 17
Global Goals.*

means of promoting social objectives. It is important to strive for a balance between these interests and to emphasise how social objectives go hand-in-hand with open trade. Open markets for public procurement promote free competition, can result in a larger variety of goods and services and thus contribute to higher quality and lower prices. When social requirements are set, businesses in other countries will also be given incentives to raise their social standards in order to fulfil the requirements, which contributes to increased competition for socially responsible products. Having open public procurement markets is also important for companies to be able to benefit from business opportunities in other countries. This not only benefits the individual company but may also contribute positively to economic growth in the company's home country. Open markets for public procurement mean more export opportunities for countries, which contributes to increased growth, and thus more resources being invested in welfare. These types of effects are very important for smaller developed countries and are in line with Sweden's Policy for Global Development (PGU).

9

Conclusions

The link between trade and social sustainability is not possible to disregard. It is a reality trade policymakers have to relate to. Determining how trade policy and trade rules can promote social sustainability most effectively requires a case by case analysis, taking into account the specific, prevailing conditions. An integrated view of how trade impacts all of the three dimensions of sustainable development is essential. Based on the overview and analysis in this report, this concluding chapter outlines our conclusions about the links between trade and social sustainability, and how the available trade-related instruments can best be used in order to promote social sustainability and contribute to achieving the global sustainable development goals.

9.1 General conclusions on the links between trade and social sustainability

Trade for sustainability constitutes a paradigm shift

With the 2030 Agenda and the SDGs, sustainability has become a universal and overarching goal for all of the UN's activities and all of its members. The 2030 Agenda clearly states that trade is an important instrument for achieving sustainable development. Trade policy, along with many other policy areas, will require some adjustments in order to achieve the goals. Trade policy and trade-related instruments at the global, regional and national levels are strategic tools in this work. Therefore, future work with sustainability related to trade will not only be about managing the

social and environmental impacts of economic growth, but will have sustainability as a goal and guiding principle.

Global goals, national responsibility for implementation and regional trade rules create a need for coordination

The 2030 Agenda is a set of global sustainability goals, but the responsibility for implementing these goals is national. A remaining challenge from the trade perspective is how to maximize the contribution of trade in terms of reaching the SDGs, without producing trade barriers as a result of national implementation measures. This risk will increase if there is not sufficient coordination between trade policy and measures taken for the purpose of achieving the SDGs. To further complicate the picture, in the case of the EU for example, responsibility for trade policy is regional. Without sufficient coordination, this could lead to further conflicts between goals and risk creating new barriers to trade.

Conflicts between goals require a balancing of interests

This report includes a number of examples of situations and policy areas where there is a risk of conflicts between trade policy goals and social sustainability goals. There is also a risk for conflict between different dimensions of sustainability, as in the case of environmental reforms being implemented at the expense of social welfare. In such cases, there is a need for a balancing of interests, which is ultimately a matter of political priority. The regulatory framework that controls international trade helps create a stable and pre-

dictable trading system, and clarifies how other community values and legitimate interests worthy of protection should be handled within the trading system. However, this framework may require complementary measures to avoid the risk of economic interests receiving stronger protection.

The economic effects of trade impact its social effects

An analysis of the impact of trade and trade liberalisation measures on social sustainability issues should be based on the economic effects of trade. The economic impact of trade and trade liberalisation measures on a country can result in changes in a country's production structure, consumption patterns, employment patterns, and sources of public revenue among other things. Changes in all of these factors will affect social sustainability.

The effects on social sustainability vary between our focus areas

It is apparent from this report that there are clear links between trade and social sustainability at both a general level and the three specific focus areas covered in this report – human rights, working conditions, and gender equality. The report concludes that trade and trade liberalisation measures have different effects on each of these focus areas. The conclusions for each of these areas are presented in section 9.2.

There is a tendency towards increased recognition of the private sector in sustainability-aspects of trade policy

As a result of the development of trade in GVCs since the 1990s, MNEs have an increasing influence on trade, and private stakeholders have become part of creating the conditions for global trade. This for example through the creation of private standards and mechanisms for managing their operations' impact on environmental and social conditions by working actively with CSR/RBC, which in turn has formed the foundation for increased regulation in the area. In the 2030 Agenda, private stakeholders and responsible business conduct are acknowledged as playing an essential role in financing and implementing a sustainable adjustment to global trade. Furthermore, FTAs are to an increasing extent acknowledging the importance of actively promoting CSR/RBC efforts by the business community, and sometimes also include direct references to

internationally recognised guidelines in the area. This exemplifies how trade-related instruments can promote social sustainability through supporting CSR/RBC.

Trade-related instruments to promote social sustainability exist at all policy levels

As this report shows, trade-related instruments with either the purpose or potential to promote social sustainability exist at the global as well as the regional and national levels. This includes public sector and private sector initiatives, as well as joint efforts. The conclusions relating to each individual instrument are reported in section 9.2.

Trade-related instruments aimed at promoting social sustainability are not automatically effective

It should be emphasised that not all trade-related instruments that can be used to promote social sustainability automatically fulfil this purpose and that they in fact may create other problems. Consequently, it is always important to emphasise a balancing of interests, and in each case analyse whether or not the trade-related instrument in question is a suitable and legitimate way of promoting a specific sustainable development goal.

The need for complementary measures to manage the differences in national preconditions

Differences in national preconditions mean that trade and trade liberalisation measures have different effects on social sustainability in different countries. Additional reforms that complement trade liberalisation measures and improve conditions at the national level are needed in order to maximize the benefits of trade liberalization. These complementary measures should aim to increase the quality of institutional and physical infrastructure, improve the business climate, and ensure the predictability of the legal system, as well as strengthen social security and access to education and healthcare. Complementary measures do not need to consist of solely national reforms but can also entail accepting exceptions from their obligations under international trade agreements during a transition period. This could give countries time to manage any negative consequences for social sustainability during the adjustment period following trade liberalization. Irrespective of the level at which

Figure 5: General conclusions on the links between trade and social sustainability



complementary measures are taken, they should be based on a sound analysis of the national circumstances in each individual case. A separate analysis of when and in what order reforms should be implemented would be particularly relevant.

Need for greater policy coherence

As the 2030 Agenda states, harmony between trade policy and the sustainability agenda has the potential to create a win-win situation. In order to work effectively with social sustainability issues, coordination and interaction between a number of policy areas is needed. Trade, investment, and aid policies should be mutually supportive, but

development in other policy areas such as climate action, agriculture, fisheries, migration, energy, and innovation should be coordinated as well. This coordination should be horizontal, that is between different policy areas, but also vertical, that is between trade-related and sustainability related initiatives at the global, regional and national levels. This should be done to a greater extent than is currently the case.

Partnerships between public and private sectors as well as civil society should be promoted

Experience from trade-related cooperation aimed at promoting social sustainability has been

positive. The Bangladesh Sustainability Compact is one noteworthy example of this. Both the 2030 Agenda and the European Commission's trade strategy highlights this type of cooperation as being a way forward for creating socially sustainable trade. It is emphasised that the role of the business community is not just about helping finance the goals, but also to take joint responsibility, through broad partnerships, in planning and implementing reforms that enhance the impact of trade on sustainability. The planning and implementation of trade-related efforts should therefore be developed through continuous dialogue with the private sector and civil society.

There is a need for further analysis of the actual effects of trade liberalisation measures on social sustainability

The lack of research on the actual effects of trade-related instruments that aim to promote sustainability is an obstacle to further development of including sustainability within trade policy. It is therefore essential to improve the analysis of the effects of international trade and trade liberalisation measures on sustainability, both in terms of general effects and with reference to specific trade policy instruments and sustainability issues. This lack of research is particularly apparent in terms of methodology for the analysis and measurement of the social consequences of FTAs. In this context, the difficulties of identifying the causal connection between a trade measure and its effect on sustainability are particularly noteworthy.

9.2 Conclusions within individual policy areas

9.2.1 Trade and human rights

Trade liberalisation measures can impact national capacity to protect human rights

Empirical studies show that countries that are more open to trade tend to promote human rights to a greater extent than isolated countries. States have an obligation to protect human rights, which requires public resources. Trade liberalisation measures can affect the availability of public resources and thus the scope to protect and promote human rights. For example, the economic growth to which trade contributes is fundamental for creating the economic resources necessary

to protect human rights, but at the same time there is a risk that lost revenues from tariffs and customs duties will reduce the available resources.

Existing trade rules include a number of possibilities for managing conflicts between trade interests and the protection of human rights

As in the case for other social sustainability issues, there is a risk that national measures to protect human rights may conflict with trade rules, for example trade-restricting actions taken with the aim of protecting the right to health. In this report, human rights differ from the other focus areas because existing trade rules, especially those within the framework of the WTO system, offer a number of possibilities where the interest of protecting human rights may constitute a legitimate interest that outweighs the obligation to comply with commitments in trade regulations, particularly through the exception mechanisms.

There is a need to deepen the human rights analysis in impact assessments

With the intention to avoid a conflict between the promotion of human rights and obligations in FTAs, these agreements often refer to international regulatory frameworks for the protection of human rights. However, the effects of doing so are not clear and require further analysis. It is therefore a welcome development that the European Commission's new version of SIAs will include more analysis of the effects on human rights of planned trade instruments.

CSR/RBC can contribute to respect for human rights throughout the entire supply chain

Businesses involved in cross-border trade and that also follow international guidelines on CSR/RBC undertake to respect human rights in all parts of the supply chain. One way of complying with this complicated obligation is to actively pursue CSR activities within the organisation, which involves, among other things, complying with international guidelines and requiring similar commitments from business partners in the supply chain. From the trade perspective, it is preferable that, as far as possible, businesses follow the same guidelines in order to create greater predictability and avoid a situation where suppliers must adapt their operations in order to fulfil requirements of many different standards.

9.2.2 Trade, labour rights and working conditions

The effect of trade on labour rights and working conditions depends on the effects of trade on the labour market in general

Changes in trade and trade liberalisation measures lead to change in the employment structure. Naturally, employment in the sectors most subject to competition is affected to a greater extent. The precise effects of trade liberalisation measures on the labour market thus depend on the prevailing conditions in the national labour market. In the long-term, the efficiency gains as a result of trade liberalisation are expected to benefit employment and average wage levels. The jobs that are created as a result of openness to international trade tend to require more skills and knowledge than those that disappear.

There is a need for further analysis of the impacts of trade liberalisation measures on working conditions

Because empirical studies have shown mixed results, the exact effects of trade liberalization measures on labour rights and working conditions remain unclear. Even if specific examples do exist, the risk of trade liberalisation measures leading to a race to the bottom for protection levels in labour rights appears difficult to prove conclusively based on the available empirical evidence. Some studies indicate that trade liberalisation measures can have a negative impact on certain labour rights such as the right to unionise. Further analysis is required in order to understand what actual effects trade liberalisation measures have on labour rights and working conditions, and how trade rules should be designed so that these effects are as positive as possible.

Free trade agreements can help to promote international labour standards

The ILO's international labour standards contribute to creating a level playing field in the area and prevent a race to the bottom for workers' rights. Some studies indicate that FTAs that include references to labour rights can have positive effects on the actual protection levels for workers. Research suggests that conditional agreements appear to be the most effective course of action for achieving significant change in national legis-

lation. Cooperation clauses also appear to be able to lead to improvements in labour protection at the national level. In other words, there is potential for using references to international labour standards in FTAs in order to improve compliance with these international standards. However, one should be cautious in drawing conclusions about the effects of conditional agreements when the relative strengths of the parties to the agreements differ.

9.2.3 Trade and gender equality

There is great potential for economic growth in promoting a gender equal labour market

There is great economic potential for promoting a more gender equal labour market with more women participating in international trade. Studies also show that it is more expensive for countries participating in international trade to not strive for gender equality. Consequently, gender equality should be a priority area of sustainability in finding synergies with trade policy.

Trade and trade liberalisation measures can under certain circumstances contribute to gender equality

The empirical evidence shows that trade liberalisation measures can increase female employment, which is important, but not sufficient, to ensure economic equality. In order to optimise the potential for increasing women's employment, among other things, women need to be fully integrated in the workforce, get equal pay for equal work, and not be involuntarily relegated to part-time work and to the poorest paid jobs with the worst conditions.

Trade liberalisation measures have different effects on men and women

Although trade rules are designed in a gender-neutral way, they affect men and women differently. This is due in part to different national socio-economic circumstances, which means that more analysis is needed of country-specific conditions. These effects may vary if gender concerns are considered in trade negotiations, as well as the design, implementation and monitoring of trade liberalisation measures.

Gender equal labour markets require investments in a gender-neutral level playing field

Because women have less access to resources such as land, capital and networks, women find it more difficult to compete in an international market, become entrepreneurs and to be involved in GVCs. National measures such as legislation on non-discrimination, easing of the burden of domestic chores, and education efforts, are needed to manage this difference in opportunities. However, trade-related instruments should also strive to neutralise this difference as much as possible. One possibility could be to make trade-related instruments conditional on compliance with requirements to implement international provisions related to gender equality in national legislation such as the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). FTAs that are conditional on national implementation of international labour standards, can be one source of inspiration. However, the effects of making trade agreements conditional are not certain, and further analysis on the effectiveness and consequences of conditional agreements is required.

Impact assessments should include a deeper gender equality perspective

Prior to all trade policy measures, *ex ante* impact assessments should be made that include the gender equality perspective. Analyses of the effects of trade liberalisation measures on gender equality should highlight in particular the effects on the production and labour markets, resources, consumption, state revenues, and national regulation. These assessments should also be complemented by *ex post* evaluations of the actual impacts on gender equality of the agreement, and of whether or not the measures to deal with these have been effective or should be designed differently next time.

Future trade liberalisation measures in the services sector should be analysed

Because the emerging services sector has the potential to increase employment among women, trade liberalisation measures within the services sector, such as liberalisation measures that extend to temporary movement of persons, can potentially contribute to increase gender equality in the labour market. Service liberalisation measures that facilitate female participation in the labour market, such as the liberalisation of

education and training services, and services that can reduce household burdens, can also contribute to gender equality.

9.3 Opportunities and limitations for promoting social sustainability through trade-related instruments

9.3.1 Multilaterally (WTO)

The 2030 Agenda can complement the WTO system's inclusion of social sustainability

The 2030 Agenda clearly states that cooperation at the multilateral level, meaning the WTO, is the primary platform for ensuring that trade is as effective an instrument as possible in contributing to achieving the SDGs. Social sustainability issues constitute a marginal portion of the WTO system. Integrating the 2030 Agenda into the WTO system can promote socially sustainable trade reforms at the multilateral level and assist in including new issues on the negotiation agenda. This can be facilitated by closer cooperation with other organisations that have an express sustainability purpose such as UNCTAD and ILO.

The WTO can facilitate the implementation of the SDGs

By integrating the 2030 Agenda into the WTO system, the WTO's regulatory framework can strengthen the implementation of the SDGs and the 2030 Agenda. This is true for both the goals that are specifically related to trade as well as other objectives where trade-related instruments can contribute.

The guiding principle of sustainable development can be used more in order to interpret WTO rules in a way that promotes social sustainability

It is stated in the preamble to the Agreement establishing the WTO that one of the goals of the WTO system is sustainable development. This goal is intended to function as a guiding principle for how to interpret all commitments in the WTO system. To date, interpretations of specific commitments have referred to this principle relatively few times. There should therefore be additional room for this goal to permeate the interpretation of WTO agreements.

Within the WTO, the dispute settlement system is likely to be the primary forum for promoting social sustainability in a legally binding way

The dispute settlement system constitutes the ultimate forum for interpreting the obligations in WTO agreements. This system could take the overarching goal of sustainable development more into account. The dispute settlement system is also the forum that contributes to clarifying if social sustainability issues can constitute legitimate interests that could motivate an exception from the rules. Here too, there is additional room to interpret the exceptions and the rest of the regulatory framework in a way that contributes to social sustainability to a greater extent.

The accession process and TPRMs are further opportunities to promote social sustainability within the WTO

A possibility for promoting sustainability issues through the WTO's formal rules could be requiring prospective WTO members to implement social reforms such as transparency and a functioning legal system as a part of the accession process. However, this possibility is limited due to the relatively low number of prospective members, and because of possible deficiencies in these areas among existing members. Consequently, the regular evaluations of members' trade policies (TPRM) constitute a better alternative for including a broader analysis of the effects of trade in which social sustainability issues are highlighted.

9.3.2 Bilateral/regional instruments with a focus on the EU

The EU's trade policy aims to promote social sustainability

The European Commission's new trade strategy *Trade for all* clarifies that trade policy is an important tool for promoting sustainability. Social sustainability issues such as respect for human rights and ambitious labour standards are highlighted as specific goals of the EU's trade policy. In order to achieve these goals, the EU makes use of trade-related instruments such as a separate sustainability chapter in FTAs, *ex ante* SIAs prior to trade agreement negotiations, and the EU's GSP for developing countries which can be used to promote observance of human rights in these countries.

The application of sustainability provisions in free trade agreements should be made more effective

The inclusion of sustainability provisions in FTAs is now a rule rather than an exception at the global level. Since 2008, the EU includes an entire chapter on sustainability in its free trade agreements. Including environmental and social issues in FTAs signals that sustainability goals are equivalent to economic growth goals and other traditional trade policy goals. The focus for working with the connection between sustainability and FTAs should now shift to how the application and observance of sustainability chapters can be made more effective, as well as monitoring of how effective these actually are in relation to sustainability.⁵⁰¹

The results of SIAs should be better reflected in the sustainability obligations in free trade agreements

The SIA that the European Commission conducts in connection to the initiation of each new FTA, is a rich source of information about potential partner countries' social circumstances and the potential impact of trade on sustainability. This information can and should be used more effectively in both the negotiation process and the wording of the agreement, in particular its chapter on sustainability. In this way, the obligations can be better adapted to each country's specific circumstances and thereby more effectively support the effects of sustainability on trade. The results of an SIA could also be used to identify necessary national reforms and to design AfT efforts linked to the ongoing trade negotiations.

Sustainability impact assessments of free trade agreements should also be done *ex post*

In order to evaluate the actual sustainability impact of a FTA, an *ex post* SIA should be conducted after the agreement has entered into force. Since existing empirical evidence on the effectiveness of sustainability provisions is inadequate, an *ex post* SIA would be valuable for trade policy. An *ex post* SIA could also be used as the basis for possible reforms of methods and processes for SIAs, as well as the planning and implementation of the sustainability obligations in FTAs.

Conditional schemes of preferences can help to promote social sustainability

For example, the EU's preference system GSP+, which allows full exemption from customs duty for certain developing countries on the condition that they ratify and implement a number of international agreements on sustainable development, have been shown to contribute to a higher degree of implementation of international human rights obligations at the national level in these countries.

References to international guidelines in free trade agreements help to provide clearer rules of the game for the business community

References to international CSR guidelines in FTAs can help coordinate the sustainability-related commitments that businesses should expect from their suppliers. It is important to avoid the creation of too many parallel systems, which can be particularly complicated for suppliers in developing countries.

9.3.3 Other trade-related instruments

Aid for Trade can help to support national reforms promoting the positive effects of trade on social sustainability

AfT has an important role in supporting national reforms that promote the positive effects of trade on sustainability. The 2030 Agenda states that particular attention must be paid to LDCs and their needs to be able to participate in trade. AfT is identified as a crucial means of maximising the contribution of trade to achieving the sustainable development goals. In order to maximise the positive effects of trade on social sustainability, trade-related instruments and AfT efforts as well as joint actions between donors, should be coordinated. Such efforts should also be adapted as much as possible to the specific needs of the individual partner country, and should be quantifiable as measurable results. Further research and analysis is needed concerning how AfT can be

adapted and adjusted to increase developing countries' participation in international trade, and to maximize the positive effects of trade on sustainability.

Public procurement can be one way of promoting a socially sustainable public consumption

At the national level, the trade generated by states themselves in capacity of purchasers offers an additional opportunity for promoting social sustainability. The most recent changes to the EU's rules indicate a clear trend towards facilitating national efforts to promote social sustainability through the public sector's consumption. At the multilateral level, this ambition is not as clear-cut, but there is reason to assume that the WTO GPA agreement will create greater scope for the inclusion of social considerations in the future.

CSR/RBC can assist businesses to take greater responsibility for their impact on social sustainability

Businesses that work actively to identify and manage social sustainability challenges in their supply chains and make sustainability related demands from their suppliers are contributing to a more socially sustainable trade. An example of a CSR/RBC measure is to publically report on how the businesses' activities impact society on a broader level. This transparency measure could facilitate monitoring as well as management of businesses' social impact and create an incentive for businesses to take greater responsibility for their impact on society. Steps have been taken towards regulating this area and requiring businesses of a certain size to report this type of information. This trend towards greater regulation in the area has been largely driven by private stakeholders through the development of guidelines and principles for CSR/RBC, which have gone on to form the basis of legislation at both national and international levels.

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411. See for example EC – Hormones where the Appellate Body placed the burden of proving that there was a measure available to achieve its aims on the plaintiff.
412. SPS Annex 1A, at 69 and 33. TBT, Article 2.10
413. Technical regulations include requirements related to product characteristics or their related processes and production methods, for example quality level requirements, performance, safety and dimensions, terminology, symbols, testing and testing methods, packaging, marking or labelling requirements. Procedures for the assessment of conformity refers to methods for checking that the applicable requirements in technical regulations or standards are met.
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