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Milestones in Canadian Gender and Trade Policy

by **Judit Fabian**
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POLICY PAPER

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by Judit Fabian¹

CGAI Fellow
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► Executive Summary

The progressive/inclusive² turn in Canada's trade policy has attracted significant attention since the advent of the Trudeau government. This is particularly true of its gender component. It is, however, only the most recent stage in a developmental arc that began with the negotiations for NAFTA in the early 1990s. "Trade and gender" is therefore not new, but is the continuation of a three decades-long developmental process that Canada has often led. The paper shows this by defining and describing the milestones of Canada's role in incorporating gender in trade agreements since the 1990s, and how gender is incorporated in Canada's trade policy at present.

² Through fall 2018, the Trudeau government regularly used the term "progressive" to describe its trade policy; however, thereafter the same government dropped "progressive" almost entirely for "inclusive." The substance of government trade policy remained the same, however. Government of Canada, "Canada's Inclusive Approach to Trade." Accessed August 28, 2021. https://www.international.gc.ca/trade-commerce/gender-equality-egalite_genres/approach-can-proche.aspx?lang=eng.



The term “virtue-signalling” describes a certain falseness: the use of specific words, phrases or actions to broadcast a quality to a target audience, but without requiring substantive action in support of the quality. It is therefore most often used in a pejorative sense to indicate superficiality or inauthenticity. It was this sense that Erin O’Toole, then-Conservative Party foreign affairs critic, evoked on Sept. 3, 2017 when he stated that Conservatives have “no time” for “virtue-signalling” with respect to gender, the environment or Indigenous concerns in trade agreements and other economic policy.³

That such a thing was said is trivial, but the two questions that follow immediately from it are important. First, why would such an opinion be held? Second, what is the justification for including concerns such as gender, the environment and Indigenous rights in economic policy and in international economic agreements? The second question has been answered at length across multiple scholarly literatures, showing the strong economic, ethical and political arguments for the inclusion of gender, environmental and Indigenous concerns in economic policy and agreements. The first question, however, has not been answered, and the present discussion’s purpose is to remedy the lack of historical awareness often shown of Canada’s relatively long and important history of Liberal and Conservative leadership in matters of gender and trade. It does so by showing the milestones that have made possible the inclusion of gender in the Trudeau government’s trade agreements. Each milestone represents either a change in policy direction, or the continuation of the pursuit of gender and trade despite a clear option to change. Each milestone must also be hard law, a trade agreement or have shown its influence by the passage of time.

More specifically, the paper describes the succinct outline of a history in eight milestones of the Canadian contribution to legitimizing the inclusion of gender in trade governance and indeed in the text of trade agreements. It begins with a brief summation of the intellectual antecedents of the status quo ante; i.e., that gender has no place in trade governance or trade agreements. It then turns to the bottom-up activism that first upset the status quo. This comprises the first two milestones in the list below, which concern the critiques of the Canada-U.S. Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA) that the National Action Committee (NAC) on the Status of Women made during the mid-1980s through the mid-1990s. The bulk of the paper then describes the top-down policies that terminated the status quo and did much to bring about a new consensus on the importance of gender to trade governance and trade agreements. This section comprises milestones three through eight, from the inclusion of a provision against sex-based discrimination in the North American Agreement on Labour Cooperation (NAALC 1993) to the World Trade Organization’s (WTO) Joint Declaration on Trade and Women’s Economic Empowerment of 2017.

³ Canadian Press, “Tories Offer Liberals a NAFTA Olive Branch – with Strings Attached,” CBC, September 3, 2017. Accessed September 15, 2021. <https://www.cbc.ca/news/politics/tories-nafta-support-liberals-conditional-1.4274269>. O’Toole has been leader of the federal Conservative Party since August 24, 2020.



The paper's fundamental purpose is to illuminate the context that has informed Canadian policy concerning gender and trade for the past 35 years, the obscurity of which has led to misunderstandings, such as O'Toole's comment, which may be clarified with relative ease. Despite the current identification of gender and trade policy with the Trudeau government, it suggests that Liberals must not believe they have ownership of gender and trade, while Conservatives need not believe they are bound to oppose it.

It must be stressed that the paper is not a study of real-world policy outcomes or a comparative study of the relative importance of different countries to the advancement of gender in trade governance. While important, such objectives are outside the paper's scope. Neither is it an exposition of the gendered nature of trade agreements or the importance of gender in trade governance – subjects well described in the relevant academic literatures and well understood at the WTO and within the Canadian government.⁴

The eight milestones are:

1. The opposition of NAC to the Canada-U.S. FTA (1985-88; Progressive Conservative majority government of Brian Mulroney);
2. The internationalization of NAC's opposition to NAFTA, helping to create a gender-based international counterpublic against trade liberalization (c. 1991-95; Progressive Conservative majority governments of Brian Mulroney and Kim Campbell; Liberal majority government of Jean Chrétien);
3. The inclusion of a provision against discrimination based on sex in NAALC, the NAFTA side agreement on labour (1993; Progressive Conservative majority government of Kim Campbell; Liberal majority government of Jean Chrétien);
4. Canada's term as APEC chair, including the introduction of gender mainstreaming in 1997 (1997-2002; Liberal majority government of Jean Chrétien);
5. The creation of the Policy Partnership on Women and the Economy (PPWE) at APEC (2011; Conservative minority government of Stephen Harper);
6. The inclusion within CETA of a justiciable protection for investors against gender-based discrimination (agreed 2014, signed 2017; Conservative majority government of Stephen Harper; Liberal majority government of Justin Trudeau);

⁴ See, for example, the WTO's Women and Trade webpage and the numerous publications it lists. World Trade Organization, Trade Topics: Women and Trade. Accessed August 15, 2021. https://www.wto.org/english/tratop_e/womenandtrade_e/womenandtrade_e.htm#:~:text=The%20WTO%20will%20frame%20and%20structure%20its%20actions,training%20to%20government%20officials%20and%20to%20women%20entrepreneurs; See also Government of Canada, "Trade and Gender Connection." Accessed August 15, 2021. https://www.international.gc.ca/trade-commerce/gender_equality-egalite_genres/trade_gender-commerce_genre.aspx?lang=eng.



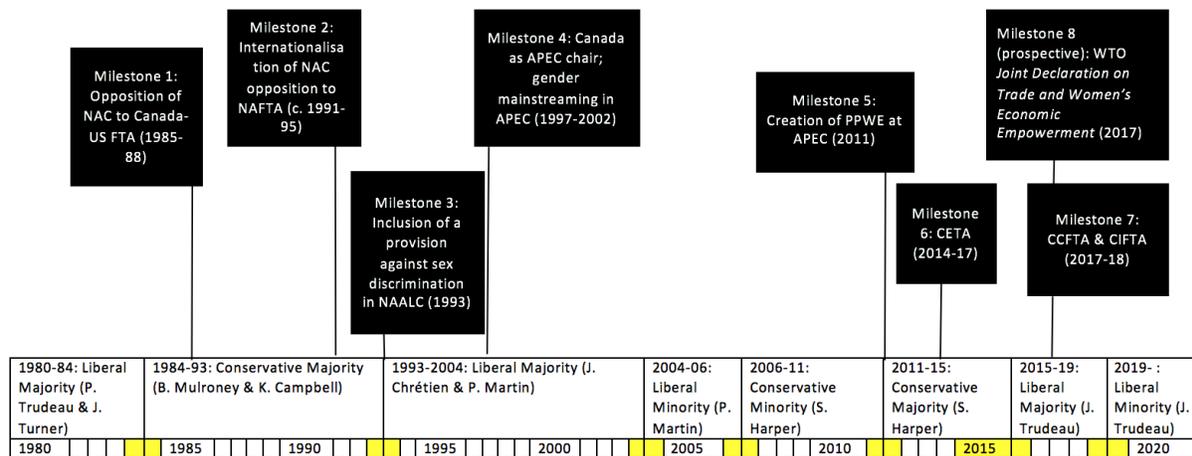
- The advent of stand-alone gender chapters in CCFTA and CIFTA, together with the introduction of justiciable protections against gender-based workplace discrimination in USMCA (2017-18; Liberal majority government of Justin Trudeau).

And very likely, once the developments of the next five or 10 years are known, an eighth milestone will have been added:

- The adaptation of Canada’s trade agreement gender chapter to a multilateral context and its endorsement in 2017 by a majority of WTO members as the basis for the Joint Declaration on Trade and Women’s Economic Empowerment (2017; Liberal majority government of Justin Trudeau).

Figure 1 shows the chronology of the eight milestones set against the federal government of the day. It shows how the advancement of gender and trade was a cross-party effort sustained across three decades.

Figure 1: Chronology of the Eight Milestones in Canadian Gender and Trade Policy set against the Federal Government of the Day⁵



The Status Quo Ante

The assertion that gender has no place in a trade agreement was relatively uncontroversial as recently as the mid-1990s. Indeed, it is founded upon the traditional gender blindness of international relations (IR) scholarship, international political economy (IPE) and economics. As Sjoberg and Tickner write, early IR feminists “attended graduate programs in political science

⁵ The federal government of the day is depicted as the party in power as long as the character of the government does not change between majority and minority. This is true even where the party’s time in power comprises multiple elections, although in a technical and constitutional sense each election brings a new government (as with the consecutive Conservative minority governments lead by Stephen Harper prior to the 2011 majority). In addition, for reasons of space the Progressive Conservative Mulroney and Campbell governments are labelled ‘Conservative’ in the figure, though they are labelled ‘Progressive Conservative’ in the list of milestones that precedes it.



where there were few women, read syllabi full of scholarly articles by mainly or only men, and experienced IR as a scholarly place often hostile to women and femininity.”⁶ It was only between 1988 and 1992, the middle years of the Uruguay round negotiations (1986-1994) that produced the World Trade Organization (WTO), when IR scholarship began to incorporate feminist contributions.⁷

The foundations of IPE might be even less receptive to gender than IR. The IPE scholarship that re-emerged in the 1970s was grounded upon the imperialist, and particularly British, theories of political economy of the late 19th and early 20th centuries.⁸ Thus, IPE developed upon a theoretical foundation constructed at a time before women entered public life en masse globally. Moreover, it was this tradition of knowledge production, divorced from considerations of gender, which informed the negotiations that led to GATT 1947, and which was in turn incorporated in its entirety within GATT 1994 as part of the WTO agreements. IPE’s gender blindness was thereby incorporated in the WTO’s founding documents.

Even decades after 1994, IPE remained strikingly inattentive to gender difference. Peterson wrote in 1997 how remarkable it was that critical and postmodern IPE theorists “fail to disturb – much less dismantle – androcentric premises.”⁹ In 2006, Waylen observed that “most critical IPE does not mention gender except in passing or engage with any of the gendered political economy debates and research.”¹⁰ Even as late as 2009, the *Routledge Handbook of International Political Economy* contained no entry in its index for “women” or “gender” and only six incidental mentions of “feminism.”¹¹ Again, this theoretical foundation informed the framing of the WTO agreements in the first decades of their operation.

Unsurprisingly, and uncontroversially, the theoretical foundations of economics are as gender blind as those of IR and IPE. Indeed, it need only be noted that the writings of Smith, Ricardo, Malthus, Marx, Keynes, Hayek and Friedman contain no evidence of meaningful attention to gender difference. Even New Trade Theory, as developed by Krugman in particular, remains gender blind.¹² Moreover, although Boserup, Waring and Peterson have authored pioneering works that introduce gender to economic thought, only during the 2000s did mainstream

⁶ J. Ann Tickner and Laura Sjoberg, eds. “Introduction: International Relations through Feminist Lenses,” *Feminism and International Relations: Conversations about the Past, Present and Future* (London: Routledge, 2011), 3.

⁷ *Ibid.*, 2–3, 9–11.

⁸ Ben Clift and Ben Rosamond, “Lineages of a British International Political Economy,” in Mark Blyth, ed., *Routledge Handbook of International Political Economy (IPE): IPE as a Global Conversation* (London: Routledge, 2009), 102.

⁹ Spike V. Peterson, “Whose Crisis? Early and Post-modern Masculinism,” in Stephen Gill and James Mittelman, eds., *Innovation and Transformation in International Studies* (Cambridge: Cambridge University Press, 1997), 156.

¹⁰ Georgina Waylen, “You Still Don’t Understand: Why Troubled Engagements Continue between Feminists and (Critical) IPE,” *Review of International Studies*, vol. 32 (2006), 145.

¹¹ Mark Blyth, ed., *Routledge Handbook of International Political Economy (IPE): IPE as a Global Conversation* (London: Routledge, 2009), 355–377.

¹² Diane Elson, Caren Grown, and Nilüfer Çağatay, “Mainstream, Heterodox, and Feminist Trade Theory,” in Irene Van Staveren, Diane Elson, Caren Grown and Nilüfer Çağatay, eds., *The Feminist Economics of Trade* (London: Routledge, 2007), 40. See also, Paul Krugman, *Rethinking International Trade* (Cambridge, MA: MIT Press, 1990); and Paul Krugman, “Myths and Realities of US Competitiveness,” *Science*, vol. 5 (1991), 254.



economists such as Winters and Bhagwati begin to address gender in a very limited and narrowly circumscribed manner.¹³

This foundational gender blindness corresponds to, and almost certainly contributed to, resistance to considerations of gender across institutions of global economic governance. In particular, the founding agreements of the WTO not only incorporate GATT 1947 but fail entirely to mention gender, sex or women.¹⁴ This failure to get in on the ground floor added the influence of path-dependence to the gender blindness of the theoretical and institutional foundations of global trade governance, which was borne out by the failure of the 2004 Sutherland Report to mention gender or women,¹⁵ and of the 2007 Report of the First Warwick Commission to make more than a fleeting mention.¹⁶

Similar histories may be given for other institutions of global economic governance. The World Bank began to open itself seriously to contributions from civil society, and not coincidentally to considerations of gender, only in the 1990s, and the IMF only in the mid-2000s. In short, when O'Toole made his dismissive comment about virtue-signalling, he was expressing a status quo ante that had been unquestioned only a relatively short time earlier, and had been reflected in the institutional and legal structure of global economic governance. Moreover, trade governance and the WTO had been at the forefront of this circumstance.

The Sea Change

What, then, has caused the sea change in relations between global economic governance and gender during the past 30 years? How has a widely accepted and longstanding consensus – that gender has no place in or relevance for trade agreements – become in Canada a cross-party and cross-government policy consensus of gender's importance to trade governance? Here, the paper narrows its focus to global trade, trade governance and Canada's role therein, not least because of Canada's important role across Liberal and Conservative governments in leading the changes to the place of gender in trade governance.

¹³ A. L. Winters, "Trade and Poverty, Is There a Connection?" World Trade Organization Special Studies No. 5: Trade, Income Disparity and Poverty (Geneva: World Trade Organization, 2000), 43-69; Jagdish Bhagwati, *In Defense of Globalization* (New York and Oxford: Oxford University Press, 2004) 74-76.

¹⁴ These include the Marrakesh Agreement Establishing the WTO, the Dispute Settlement Understanding (DSU), the General Agreement on Tariffs and Trade (GATT) 1994 (incorporating GATT 1947), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Trade-Related Investment Measures (TRIMS), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and numerous others.

¹⁵ World Trade Organization, "The Future of the WTO: Addressing Institutional Challenges in the New Millennium," Report by the Consultative Board to the Director-General Supachai Panitchpakdi (The Sutherland Report) (Geneva, 2004).

¹⁶ The Warwick Commission, "The Multilateral Trade Regime: Which Way Forward?" The Report of the First Warwick Commission, The University of Warwick, December 2007.



Bottom-Up

Remarkably, Canadian leadership in gender and trade can be traced equally to bottom-up and to top-down initiatives. For example, the earliest feminist opposition to a prospective free-trade agreement came in the context of the 1988 FTA between Canada and the United States. NAC argued consistently and forcefully through the mid-1980s that a free trade agreement between Canada and the United States would impose the greatest costs upon those “most disadvantaged in the labour force,” which would predominantly have been women.¹⁷ NAC further argued that women were more likely to lose manufacturing jobs as a result of the FTA, since women’s manufacturing jobs tended to be in the most vulnerable sectors.¹⁸ Finally, NAC argued that the FTA’s displacement of Canadian labour would cause particular harm to women in the services industry.¹⁹

These positions were complemented and supported by NAC’s participation in the founding meetings of the Council of Canadians and the Coalition Against Free Trade in 1985. NAC co-sponsored an “Against Free-Trade Revue” in 1986, endorsed a resolution against the FTA at its annual general meeting and became a founding member of the anti-free trade Pro-Canada Network in 1987.²⁰ Moreover, NAC openly campaigned against the FTA, and by implication the Progressive Conservative Party, during the period leading to the 1988 Canadian federal election.²¹

Although these actions cost NAC more than 50 per cent of its government funding between 1989 and 1992,²² its anti-free trade position and its research were of great import to subsequent research concerning gender and trade, and to subsequent positions taken by Canadian women’s organizations and feminists concerning trade liberalization. As Bashevkin states, NAC “identified linkages between free trade as a major government policy initiative and the lives of Canadian women,” and articulated “a feminist perspective on free-trade.”²³

This was innovative and among the first instances of a feminist perspective on free trade globally. As a result, NAC’s position and arguments became influential internationally. In particular, during the early 1990s NAC established a successful relationship with the Mexican women’s group *Mujer a Mujer* in opposition to NAFTA. As Elaine Burns, a founder of *Mujer a Mujer*, states: “with NAFTA it became obvious to us that we had to get to know each other across borders to try and influence the process of regional integration rather than just accepting the negative effects that it

¹⁷ Marjorie Cohen, “The Macdonald Report and Its Implications for Women,” *Feminist Action*, December, 1985, cited in Sylvia B. Bashevkin, *True Patriot Love: The Politics of Canadian Nationalism* (Toronto: Oxford University Press, 1991), 140.

¹⁸ *Ibid.*, 140.

¹⁹ *Ibid.*, 141.

²⁰ Sylvia B. Bashevkin, *True Patriot Love: The Politics of Canadian Nationalism* (Toronto: Oxford University Press, 1991), 141.

²¹ *Ibid.*, 142.

²² *Ibid.*, 143.

²³ *Ibid.*, 147.



was going to have on women.”²⁴ Liebowitz makes clear that NAC’s experience with the Canada-U.S. FTA was very important in persuading *Mujer a Mujer* to oppose NAFTA.²⁵

Moreover, although the same level of co-operation was not forthcoming with women’s groups in the United States, the Women’s Alternative Economic Network (WAEN) opposed NAFTA and the nascent WTO from 1990 to 1994, and Women’s EDGE arose in 1997 in opposition to the WTO and trade liberalization generally.²⁶ Their opposition recalled the arguments NAC used against the Canada-U.S. FTA: trade liberalization would erode social programs, services and environmental and labour standards, disproportionately affecting women, even as women also lost the majority of low-skilled manufacturing jobs that moved overseas.²⁷

As the 1990s progressed, gender and trade in civil society became still more closely associated with women’s NGOs and feminist advocacy against trade liberalization. This included participation in broad-based civil society efforts against fast-track authorization in 1997 for the Clinton administration to extend NAFTA membership; against the Multilateral Agreement on Investment (MAI) in 1998; for a “social-labour declaration” at the MERCOSUR summit in December 1998; against the proposed Free Trade Area of the Americas (FTAA); and famously, in opposition to the 1999 WTO Ministerial in Seattle.²⁸ What all of this signifies is the bottom-up creation of an international gender-and-trade counterpublic that seems to have begun in Canada with gender-based opposition to the Canada-U.S. FTA.²⁹ If the Trudeau government’s gender and trade initiatives were no more than a response to this powerful tradition, they would already be more substantive than virtue-signalling.

Two milestones may thus be identified in this narrative of the early years of Canadian civil society efforts to address the relationship between gender and trade. The first is NAC’s decision to oppose the 1988 Canada-U.S. FTA, and the second is NAC’s internationalization of its activism against NAFTA, which was crucial to the creation of an international counterpublic critical of the effects of trade liberalization upon women specifically.

²⁴ Elaine Burns, *Mujer a Mujer – Mexico*, Interview with Debra Jacqueline Liebowitz, Mexico City, January 10, 1996, cited in Debra Jacqueline Liebowitz, “Gender and Identity in an Era of Globalization: Transnational Political Organizing in North America,” PhD dissertation (New Brunswick, NJ: Rutgers, 2000), 81.

²⁵ *Ibid.*, 74–5.

²⁶ *Ibid.*, 97–99.

²⁷ *Ibid.*, 93–97, 229–230.

²⁸ *Ibid.*, 225–229.

²⁹ See Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” *Social Text*, nos. 25–26 (1990), 67, and Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992), 89–90.



Top-Down

However, what is particularly notable about Canada's contribution to gender and trade is that only a few years after NAC began its opposition to the Canada-U.S. FTA, the Canadian government began a top-down effort to address gender, including at its highest executive levels.

Admittedly, this began in the most ineffectual, minimalist way possible. NAFTA, ratified in 1993, was almost certainly the earliest trade agreement between developed countries explicitly to address women or gender in any way.³⁰ Negotiated and signed by the Mulroney government and the Bush administration between 1990 and 1992, NAFTA's original text did not mention women or gender. However, in 1993 the newly elected Clinton administration, partly in response to significant pressure from a Democratic Congress, determined that better protections were required for labour and environmental standards. Six rounds of negotiation ensued for the two NAFTA side agreements alone, resulting in the North American Agreement on Labour Cooperation (NAALC) and a similar agreement concerning the environment (NAAEC).³¹

NAALC contains three provisions that directly address gender and trade. The first, in Article 11, requires the Council of the Commission for Labour Cooperation to promote co-operative activities regarding "the equality of women and men in the workplace."³² This, of course, requires no substantive action, much less tangible progress, toward workplace equality. The second and third provisions occur in Annex 1, where NAFTA parties are required to "promote" as "guiding principles" the elimination of employment discrimination based on sex, and equal pay for equal work by women and men.³³ These principles do not rise to the level of rights, do not create common standards for domestic law and require only that equality prevail at the "same establishment" rather than across all establishments. It should be noted, however, that the mention of "special measures of protection or assistance for particular groups"³⁴ was sufficient to save affirmative-action policies from NAFTA-based challenges.

These mere mentions of "sex" and "women" in the text of a side agreement were incontrovertibly a milestone; they made acceptable – and accepted at the highest level of government – the idea that trade policy and trade law produced gendered results, and that economic policy and global economic governance, while often gender blind, were not gender neutral. Moreover, they were the product of the Progressive Conservative Canadian governments of Mulroney and Campbell – the former having negotiated the agreement and the latter having signed. That is to say, the tradition

³⁰ The status of women was explicitly addressed in a free trade agreement among developing countries in Africa as early as 1983. Lolita Laperle-Forget, "Gender Provisions in African Trade Agreements: Commitments to Reconciling Women's Empowerment and International Trade," Tralac Working Paper, July 2021, 2: Key Findings. Accessed August 28, 2021. <https://www.tralac.org/documents/events/tralac/4383-2021-annual-conference-presentation-laperle-forget-gender-provisions-in-african-trade-agreements/file.html>.

³¹ Maxwell A. Cameron and Brian W. Tomlin, *The Making of NAFTA: How the Deal was Done*, (Ithaca, NY: Cornell University Press, 2000) xiii–xiv.

³² *North American Agreement on Labour Cooperation* (NAALC), art. 11, para 1.13. Accessed September 17, 2021. <https://www.dol.gov/agencies/ilab/reports/pdf/naalc>

³³ *Ibid.*, Annex 1, paras. 7-8.

³⁴ *Ibid.*, Annex 1, para. 7.



of Canadian government leadership in matters of gender and trade can trace its roots to Progressive Conservative Party actions. If this be virtue-signalling, it is at least bipartisan.

Further initiatives to address gender in the context of trade governance followed under the Liberal governments of Chrétien (1993-2003) and Paul Martin (2003-2006). Although the first iterations of the Canada-Israel and Canada-Chile FTAs were signed in 1996, the major accomplishments concerning gender and trade during the Chrétien-Martin years came by means of Canada's contributions to the Asia-Pacific Economic Cooperation (APEC). 1997, the year of Canada's only chairship of APEC to date, was a watershed year in this respect. Following lobbying in 1996 by the Women Leaders Network (WLN) to include gender in APEC proceedings, gender mainstreaming was made mandatory in 1997 in all APEC policies and initiatives.³⁵ Moreover, the Chrétien government established a federal interdepartmental subcommittee on APEC, co-chaired by Status of Women Canada (SWC) and the Department of Foreign Affairs and International Trade (DFAIT), to identify key entry points for gender in APEC.³⁶

In the same year, the Canadian International Development Agency (CIDA) supported WLN through a gender and APEC project that produced in 1999 the Framework for the Integration of Women in APEC. The document defined "the elements necessary for mainstreaming women into APEC processes and activities"³⁷ and articulated the goal of gender mainstreaming in APEC as "the full participation of women in all aspects of life and ... to increase women's participation in sectors where they are weakly represented."³⁸ By means of these initiatives, APEC became the only multilateral economic organization to incorporate gender mainstreaming throughout its policy initiatives. Finally, in 2002, APEC replaced the Ad Hoc Advisory Group on Gender Integration with the permanent Gender Focal Points Network (GFPN).³⁹

APEC's policies then, between 1997 and 2002, are the fourth milestone; they represent the first adoption of gender mainstreaming by an institution with any part in global trade governance. Indeed, they represent the earliest instance of any kind of serious and complex engagement with gender by any such institution, and again the policies are traceable to the initiatives of a Canadian government, this time Liberal.

This leads directly to the fifth milestone, which was the combination in 2011 of the Gender Focal Points Network and Women's Leadership to create within APEC the Policy Partnership on Women and the Economy (PPWE). The PPWE was conceived as a "single public-private entity to

³⁵ Christina Gabriel and Laura Macdonald, "Managing Trade Engagements? Mapping the Contours of State Feminism and Women's Political Activism," *Canadian Foreign Policy*, vol. 12, no. 1 (2005), 82.

³⁶ *Ibid.*

³⁷ Asia-Pacific Economic Cooperation, "Framework for Integration of Women in APEC", 1999. Accessed May 23, 2019. http://www.apec.org/~media/Files/Groups/GFPN/02_aggi_framework.pdf; Heather Gibb, *Gender Mainstreaming: Good Practices from the Asia Pacific Region*, North-South Institute and Asia-Pacific Economic Cooperation Secretariat (Ottawa: Renouf Publishing, 2001), 7.

³⁸ *Ibid.*, 9.

³⁹ Judit Fabian, "Mulier Economicus: Gender and the WTO," Paper was presented at the 78th Annual Meeting of the Canadian Political Science Association, York University, Ontario, Canada, June 3, 2006, 46-47.



streamline and elevate the influence of women’s issues within APEC,”⁴⁰ with the institutional role of reporting on “APEC gender activities and outcomes”⁴¹ to the Senior Officials Meeting Steering Committee on Economic and Technical Cooperation (SOM-SCE). PPWE met in 2011 and 2012 in the United States and Russia, and was significantly involved in the 2014 APEC Women and the Economy Forum in Beijing, China. In the 2011 and 2012 meetings, the following tasks were adopted as fundamental to PPWE:

- (1) Assist APEC groups and actively cooperate with them to identify and address priority gender equality and women and the economy issues;
- (2) Promote and report on women’s representation across APEC and within individual groups;
- (3) Assess the use of gender equality criteria in project proposals;
- (4) Collect and share best practices in gender equality integration;
- (5) Support and report on the progress of implementation of gender integration within individual groups and across APEC economies;
- (6) Proactively engage key members of PPWE, including private sector members and ABAC;
- (7) Collaborate and assist in the development of project proposals in the area of women in the economy;
- (8) Propose recommendations and areas of priority for advancing gender equality and women and the economy integration in APEC.⁴²

With minor revisions, these tasks have been incorporated in the current PPWE terms of reference.⁴³ They continue to guide the PPWE’s activities, along with its 2015-18 and 2019-20 Strategic Plans, its annual work plans and its Women and the Economy dashboard.⁴⁴ The latter is a set of 75 indicators on the status of women in APEC member economies.⁴⁵

Beyond the roles and functions described above, it is particularly important to PPWE as a milestone that it was defined and established while Stephen Harper’s Conservative government held power in Canada. Though Canada was not APEC chair at the time (2011), all APEC policies require consensus approval and therefore the Harper government held a veto it did not use over the creation of PPWE. PPWE thus also marks a Conservative government’s continuation and expansion of initiatives concerning gender and trade that began under a Liberal government. It is the first instance of a Canadian government extending and expanding – not merely ratifying – the gender and trade policy of a previous government from a different party.

The same dynamic applies to the Comprehensive Economic and Trade Agreement (CETA). The Harper government negotiated it while holding a majority in Parliament, and though it touches

⁴⁰ Asia-Pacific Economic Cooperation, Policy Partnership on Women and the Economy. Accessed May 23, 2019.

<https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Policy-Partnership-on-Women-and-the-Economy>

⁴¹ Ibid.

⁴² Ibid.

⁴³ Asia-Pacific Economic Cooperation, PPWE Updated Terms of Reference, 2018/SOM2/PPWE/004, para. 2. Accessed May 23, 2019.

http://mddb.apec.org/Documents/2018/PPWE/PPWE1/18_ppwe1_004.pdf.

⁴⁴ Ibid.; and Policy Partnership on Women and the Economy. Accessed May 23, 2019. <https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Policy-Partnership-on-Women-and-the-Economy>.

⁴⁵ Ibid.



on gender and trade in only a single sub-paragraph, yet that brief mention is of sufficient importance to be a milestone for the purposes of this discussion. Specifically, Article 8.10, para. 2(d) of CETA states that a party is in breach of its obligation to accord “fair and equitable treatment” to investors and investments if its actions constitute “targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief.”⁴⁶ This passage appears in both the 2014 agreed text⁴⁷ that the Harper government negotiated and the 2017 text signed by the Trudeau government.⁴⁸

The single sub-paragraph in CETA is a milestone because it marks the first appearance of the word “gender,” rather than “sex” or “women” in a trade agreement among G20 economies. Equally, it marks the first time any provision in a trade agreement among G20 countries concerning “women,” “sex” or “gender” has been made directly justiciable by dispute settlement under the same agreement. In this respect, CETA constituted the most substantive engagement with gender in any of Canada’s trade agreements before 2017, and it resulted from negotiations undertaken by a Conservative majority government.

The final milestone is constituted by the three major trade agreements initiated and signed by Trudeau’s Liberal government between 2017 and 2019: the updated Canada-Chile and Canada-Israel FTAs, and the USMCA, which updated NAFTA. These agreements broke new ground in addressing gender in global trade governance, yet they also represent the logical extension of nearly three decades of consistent policy concerning gender and trade across Liberal and Conservative governments.

The modernized Canada-Chile Free-Trade Agreement (CCFTA), which entered into force on Feb. 5, 2019, was the first trade agreement between developed countries to include a stand-alone chapter devoted to gender and trade. Fundamentally, the chapter comprised the following three initiatives: it acknowledged the key role that gender-responsive policies can play in achieving sustainable socioeconomic development; it committed the parties to carry out “cooperation activities” designed to improve women’s economic capacity and conditions; and it established a Trade and Gender Committee to facilitate and monitor co-operation activities, and to report on the chapter’s implementation.⁴⁹ Thus the CCFTA accomplished three things: it became the first trade agreement explicitly to state the legitimacy and importance of gender as a topic for trade negotiations; second, it became the first such agreement to commit the parties to the development of a comprehensive understanding of the gendered effects of trade; and third, it became the first trade agreement to support the collection of sex-disaggregated data.⁵⁰

⁴⁶ *Comprehensive Economic and Trade Agreement* (2017 text), ch. 8, art. 8.10, para. 2.d. Accessed May 23, 2019.

<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng>.

⁴⁷ *Ibid.* (2014 text), ch. 8, art. 8.10, para. 2.d. Accessed May 23, 2019. http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.

⁴⁸ *Ibid.* (2017 text), ch. 8, art. 8.10, para. 2.d. Accessed May 23, 2019. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng>.

⁴⁹ *Canada-Chile Free Trade Agreement* (agreed 2017; in force 2019), Appendix II, ch. *Nbis*-Trade and Gender. Accessed May 23, 2019. https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng.

⁵⁰ *Ibid.*



The CCFTA was agreed upon during Michelle Bachelet's second term as president of Chile. Bachelet also served as executive director of UN-Women from 2010-13, and was a strong supporter of the inclusion of a gender chapter in the CCFTA. Nevertheless, the consistency of language between the CCFTA, the CIFTA and the WTO Joint Declaration on Trade and Women's Economic Empowerment (2017) suggests that Canada was a prime mover in all three initiatives, and that this paper need not be too concerned about which country was the precise inspiration for which detail and when. These milestones represent continued Canadian policy and leadership concerning gender and trade across decades and parties.

The modernized Canada-Israel Free-Trade Agreement (CIFTA) was signed on May 28, 2018, and received royal assent on May 27, 2019. It too contains a stand-alone gender chapter, the provisions of which mirror almost verbatim those of the CCFTA, with the crucial exception that the chapter is ultimately justiciable under the provisions for dispute settlement defined in chapter 19 of CIFTA.⁵¹ It is thus the first, and to date the only, trade agreement between developed economies with a fully justiciable stand-alone gender chapter.

Finally, the Trudeau government's stated aim entering NAFTA renegotiations was to achieve a stand-alone gender chapter similar to that of the CCFTA. This proved impossible. However, USMCA, the updated NAFTA, brought a significant gain for gender and trade. Most importantly, the provisions concerning labour moved from NAALC, the NAFTA side agreement on labour, to the text of USMCA proper. The labour provisions became justiciable under the same dispute settlement mechanism as the rest of USMCA. This includes the important Article 23.9, which recognizes the goal of eliminating sex-based discrimination in the workplace. The article provides strong protection against discrimination, committing the parties to "implement policies that protect workers against employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity and caregiving responsibilities, provide job-protected leave for birth or adoption of a child and care of family members, and protect against wage discrimination."⁵²

In its combination of strength of commitment and justiciability, Article 23.9 of USMCA is unique in trade agreements among developed economies.⁵³ More than this, the combination of CCFTA, CIFTA and USMCA represents a new and significantly higher standard for the incorporation of gender in the instruments of global trade governance. Each agreement displays a more nuanced understanding of gender scholarship and the concept of gender than had been evident in earlier agreements. Equally, the parties to each agreement commit themselves far more extensively than in prior trade agreements to eliminating gender discrimination and ameliorating negative gendered effects of trade liberalization. This greater commitment works in tandem with Canada's

⁵¹ *Canada-Israel Free Trade Agreement* (agreed 2018), ch. 13-Trade and Gender. Accessed May 23, 2019. <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/israel/fta-ale/text-texte/13.aspx?lang=eng>.

⁵² *United States, Mexico, Canada Agreement* (2018), Subject to Legal Review for Accuracy, Clarity, and Consistency, Subject to Language Authentication ch. 23, art. 23.9. Accessed May 23, 2019. <https://toddtucker.files.wordpress.com/2018/10/full-as-of-10-1-18.pdf>.

⁵³ It is worth noting that USMCA contains a significant number of references to "gender," "sex" and "women" – far more than in NAFTA. Other than article 23.9, though, such references are aspirational and commit the parties to co-operate toward gender-based goals rather than to specific actions or guarantees.



Feminist International Assistance Policy (FIAP), adopted in 2017, by which Canada has committed to an approach to international assistance that focuses on the eradication of poverty by empowering women and girls and promoting gender equality.⁵⁴ In short, it is the extension and expansion of a 30-year tradition across Liberal and Conservative Canadian governments, and including civil society activists, of seeking to understand and address the gendered effects of trade governance.

Coda: A Prospective Milestone at the WTO

Though too recent, aspirational and soft law to be called a milestone at present, the Trudeau government's efforts at the WTO may well qualify with hindsight. Essentially, the Trudeau government has resumed and expanded upon the Canadian delegation's efforts beginning in 2003, when Adair Heuchan was appointed counsellor to the WTO for the government of Canada in Geneva, and as CIDA's senior trade and development officer based in Geneva.⁵⁵ The most important initiative of this period was the 2003 WTO-NGO symposium, Women as Economic Actors in Sustainable Development, which CIDA, SWC and DFAIT sponsored.⁵⁶ Sadly, but instructively, the initiatives of this period did not become the influential milestone they first appeared to be; they produced no tangible and lasting change or influence and were not pursued after the Martin government fell in 2006.

The Trudeau government's progressive/inclusive trade policy has sought to revive efforts to address gender at the WTO. It has had remarkable success, particularly given the traditional reticence and resistance of WTO members concerning gender. Most importantly, Canada was "a key leader in the drafting and the promotion"⁵⁷ of the 2017 Joint Declaration on Trade and Women's Economic Empowerment, which adapts the gender chapter in CCFTA and CIFTA "to a multilateral context by establishing commitments for action and collaboration within the WTO."⁵⁸ The Declaration is a "collective initiative to increase the participation of women in trade"⁵⁹ and to

⁵⁴ Government of Canada, Canada's Feminist International Assistance Policy. Accessed August 28, 2021. https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/policy-politique.aspx?lang=eng; Pan-American Health Organization, Home: Canada: Canada's Feminist International Assistance Policy. Accessed August 28, 2021. <https://www.paho.org/en/canada/canadas-feminist-international-assistance-policy>; Rebecca Tiessen, "What's New about Canada's Feminist International Assistance Policy and Why 'More of the Same' Matters," The School of Public Policy Publications, December 19, 2019. Accessed August 28, 2021. <https://ssrn.com/abstract=3506896>.

⁵⁵ Foundation of Canadian Women Entrepreneurs, Best Practices For Women Entrepreneurs in Canada (Toronto: May 2004), 34.

⁵⁶ Ibid.

⁵⁷ Global Affairs Canada, "Canada Plays Leadership Role on Trade and Women's Economic Empowerment at WTO," News Release, December 12, 2017. Accessed May 28, 2019. https://www.canada.ca/en/global-affairs/news/2017/12/canada_plays_leadershiproleontradeandwomenseconomicempowermentat.html.

⁵⁸ Ibid.

⁵⁹ World Trade Organization, "Buenos Aires Declaration on Women and Trade Outlines Actions to Empower Women," December 12, 2017. Accessed May 28, 2019. https://www.wto.org/english/news_e/news17_e/mc11_12dec17_e.htm; World Trade Organization, *Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017*. Accessed August 29, 2021. https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf.



“provide more and better paid jobs for women.”⁶⁰ More specifically, WTO members have agreed to address gendered barriers to trade, “lack of access to trade financing, and sub-optimal participation of women in public procurement markets.”⁶¹ Since it is soft law and aspirational, the Declaration cannot be classed a milestone until its effects, if any, in policy, law or political discourse are known. Even so, the Declaration is as strong a candidate as one could reasonably conceive, and since 2017 it has been reinforced by further WTO initiatives: the 2018 WTO Action Plan on Trade and Gender; the 2018-19 WTO Technical Assistance Plan, including a training module on trade and gender; the 2019-20 WTO Task Force on Trade and Gender; and the Gender Research Hub inaugurated in 2021. Moreover, whatever its ultimate effect, the Declaration is important for marking the first joint statement of the WTO’s membership concerning gender.

Conclusion

The Trudeau government’s initiatives to address gender discrimination and the gendered effects of trade liberalization by means of trade agreements are neither superficial virtue-signalling nor especially partisan. Rather, they are the logical continuation of more than 30 years’ tradition of leadership in gender and trade by Canadian civil society and Liberal and Conservative Canadian governments. This tradition is characterized by the seven milestones defined in the present discussion, each of which represented an extension or expansion of Canadian gender and trade policy. Equally, though, in different circumstances or with different leadership, each could easily have been replaced by a different result and thereby constituted retrenchment or enervation of Canadian leadership in gender and trade.

⁶⁰ Ibid.

⁶¹ Ibid.

► About the Author

Judit Fabian is currently a visiting researcher at the Graduate School of Public and International Affairs, University of Ottawa and is a member of the core group of the recently formed Gender Research Hub of the World Trade Organization (Switzerland). Her work centres upon the idea of democratic global economic governance, which she is developing under the framework of inclusive global institutionalism.

She co-authored the most downloaded Centre for International Governance Innovation (CIGI) paper of 2017, concerning the modernization of the North American Free Trade Agreement (NAFTA). She also published on the question of preferential trade agreements versus multilateralism (2020) and is a proud contributor to the *Handbook on Gender, Diversity and Federalism (2020)* with a chapter on global governance. The title of her Ph.D. dissertation was “Towards a Theory of Democratic Global Economic Governance: Hybridization of Soft and Hard Law in the Case of Gender within the World Trade Organization,” which she is developing into a book. She also muses about the role of the “formal” and “informal” and the role of nationalism in governance.

She completed a post-doctoral appointment at the School of Public Policy, University of Calgary, earned her Ph.D. in political science (supervised from political science, political economy and law) at Carleton University, her M.A. in political studies from Queen’s University, her B.A. in political studies and international political economy from Trent University, and her B.Sc. in horticultural engineering from John von Neumann University (Hungary). Judit has also received training at the European University Institute (Italy), studied at the University of Helsinki (Finland), and is a proud alumna of Canada World Youth.

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