

歐盟新世代貿易協定之發展——以性別議題相關條文為例

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摘要

貿易自由化可能改變一國之生產及勞工之工作模式，而此將影響男女職業分工並加劇性別差距。為促進性別平等及女性經濟賦權，歐盟承諾在未來新的貿易協定中加強性別主流化之政策，包括在影響評估時進行實質的性別分析，以及在新貿易協定中設有強化性別平等的條款。在歐盟近期洽簽之貿易協定中，性別相關條文之規範形式以及義務強度各有不同。若欲確保此類條文能夠發揮作用，本文認為除將性別平等相關之一般性條文或章節涵蓋在協定中，應設立有效之監測及執行機制，並確實將永續影響評估之結果納入最終協定，以減少貿易協定對性別的不利影響。

(取材資料：Ina Opartyová & Justin Lindeboom, *Towards a Gender-Sensitive EU External Trade Policy*, EJIL: TALK! (Nov. 9, 2023), <https://www.ejiltalk.org/towards-a-gender-sensitive-eu-external-trade-policy/>.)

性別平等為歐盟對外政策及行動的核心優先事項之一。根據歐盟「第三次性別平等行動計畫 (GAP III)」，2025 年前歐盟應有 85% 的對外行動有助於性別平等與女性賦權¹，承諾其於對外政策中加強性別主流化²，包括在影響評估時進行實質的性別分析，以及在新貿易協定中透過訂定性別相關條文，以解決與貿易相關的性別問題³。

本文首先探討性別議題與貿易之關聯性，並接續審視當前歐盟諸多貿易協定中與性別相關之條文，最後提出改善建議，俾歐盟於日後能實施全面與有效的貿易政策，以保障性別平等與女性之經濟權益。

¹ *EU Gender Action Plan (Gap) III – an Ambitious Agenda for Gender Equality and Women’s Empowerment in EU External Action*, at 2, JOIN (2020) 17 final (Nov. 25, 2020) [hereinafter *Gender Action Plan III*].

² 性別主流化 (gender mainstreaming) 意指政策流程的 (重新) 組織、改進、制定與評估，以便通常參與政策制定的行為者，將性別平等觀點納入各層級與階段之所有政策中。What Is Gender Mainstreaming?, COUNCIL OF EUR., <https://www.coe.int/en/web/genderequality/what-is-gender-mainstreaming> (last visited Jan. 10, 2024); *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions—A Union of Equality: Gender Equality Strategy 2020-2025*, at 2, COM (2020) 152 final (Mar. 5, 2020) [hereinafter *Gender Equality Strategy 2020-2025*].

³ *Gender Action Plan III*, *supra* note 1, at 13; *Gender Equality Strategy 2020-2025*, *supra* note 2, at 18.

壹、性別議題與貿易之關聯性

有論者指出，貿易將對於男女產生不同的影響，其差別將取決於各個國家的產業結構與貿易政策⁴。而傳統「性別中立 (gender-neutral)」之貿易政策不僅未考慮社會結構下性別不平等之問題，在此基礎下，貿易自由化甚至可能加劇性別差距⁵。

論及自由貿易之參與，女性相較於男性往往會面臨更多障礙與衝擊⁶，其主要係源於性別歧視、同工不同酬與資源分配上之差距等因素⁷。尤其在貿易自由化的效應下，女性勞動者易於投入出口導向產業，從事勞動密集且低附加價值之經濟活動⁸。而女性難以透過貿易協定獲得新的就業機會或提升薪資水準的問題，在開發中國家更顯嚴重⁹。

有鑑於此，為確保自由貿易之效益最大化，且同時將其不分性別地平等分配予所有人，將性別平權納入貿易協定談判已成現今必要之舉。一國可藉由談判促使其貿易夥伴國制定與性別相關之國內法規，一方面降低女性參與貿易與經濟活動所面臨之障礙，另一方面則可為女性創造積極條件（如對女性創業提供財政或非財政等激勵措施），以達性別平等與女性賦權¹⁰。

貳、論當前歐盟對外貿易協定有關於性別之條款

歐盟目前已簽訂、進行批准程序或正在談判之自由貿易協定及經濟夥伴協定共有 24 個¹¹。然有一半之貿易協定缺乏具實質意義之性別敏感承諾 (Gender-sensitive commitment)：其中有 5 項協定僅包含不具強制性之勉力性條文¹²，不含任何有關處理貿易協定對女性可能產生之潛在負面影響之實際做法；另外 7 項協定則根本不包含任何具體與性別相關之條文¹³。

⁴ Amrita Bahri et al., *Introduction, in TRADE POLICY AND GENDER EQUALITY* 6 (Amrita Bahri eds., 2023).

⁵ *Id.* at 2, 7.

⁶ *Id.* at 7.

⁷ *Id.*; See U.N. Conf. on Trade and Dev., *Mainstreaming Gender in Trade Policy, Note by the UNCTAD Secretariat*, U.N. Doc. TD/B/C.I/EM.2/2/Rev.1 (Mar. 19, 2009).

⁸ Bahri, *supra* note 4, at 7.

⁹ See Seema Jayachandran, *The Roots of Gender Inequality in Developing Countries*, 7 ANN. REV. ECO. 63 (2015).

¹⁰ Amrita Bahri, *Making Trade Agreements Work for Women Empowerment: How Does It Help, What Has Been Done, and What Remains Undone?*, 11 LAT. AM. J. OF TRADE POL'Y 6, 11 (2021); E.g., ANOUSH DER BOGHOSSIAN, *TRADE POLICIES SUPPORTING WOMEN'S ECONOMIC EMPOWERMENT: TRENDS IN WTO MEMBERS* 1 (2019).

¹¹ *Negotiations and Agreements*, EUR. COMM'N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en (last visited Jan. 10, 2024).

¹² 僅有提及不歧視或平等受教權的條文。E.g., Free Trade Agreement Between the European Union and the Republic of Singapore, 2019 O.J. (L 294) 3.

¹³ E.g., Agreement Between the European Union and Japan for an Economic Partnership, 2018 O.J. (L

以下將舉例歐盟近期貿易協定中與性別相關之條文，並依規範體例與形式分類敘述之：

一、以專屬條文規範

在「歐盟—紐西蘭自由貿易協定」中，除在前言提及性別平等與女性賦權之重要性外¹⁴，在「貿易與永續發展 (Trade and Sustainable Development, TSD)」專章中亦詳列有關促進女性賦權之雙方共識與具體義務¹⁵，如締約國雙方應 (shall) 提高公眾對性別平等法律、法規及政策之認知度與透明度¹⁶、應有效履行其於國際公約中承諾之性別平等或女性權利相關義務¹⁷、應就與貿易有關的性別平等政策展開合作，以使女性獲得該協定所創造之機會並從中受益¹⁸。此外，其亦進一步列出具體合作事項，包含關於性別的貿易政策分析、分享強化女性賦權相關政策經驗與方法等¹⁹。

值得注意的是，TSD 專章之條文皆適用於該協定之爭端解決機制，故此類與性別相關之條文係具法律拘束力²⁰。而該協定為首個締約方皆需強制履行性別承諾之自由貿易協定，可謂是包容性貿易與永續發展議題之一大進展²¹。

二、依附於其他條文

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¹⁴ The New Zealand—European Union Free Trade Agreement pmbl., July 9, 2023, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en (“SEEKING to advance gender equality and the economic empowerment of women by promoting the importance of gender inclusive policies and practices in economic activities, including international trade, in an effort to eliminate all forms of gender-based discrimination.”).

¹⁵ *Id.* art. 19.4 (“The Parties recognise the need to advance gender equality and women's economic empowerment and to promote a gender perspective in the Parties' trade and investment relationship . . . Accordingly, the Parties emphasise their intention to implement this Agreement in a manner that promotes and enhances gender equality.”).

¹⁶ *Id.* art. 19.4(4) (“Each Party shall promote public awareness and transparency of its gender equality laws, regulations and policies, including their impact on and relevance for inclusive economic growth and trade policy.”).

¹⁷ *Id.* art. 19.4(6) (“Each Party shall effectively implement its obligations under the United Nations conventions to which it is a party that address gender equality or women's rights, including . . . ”).

¹⁸ *Id.* art. 19.4(7) (“The Parties shall work together on trade-related aspects of gender equality policies and measures, including activities for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.”).

¹⁹ *Id.* art. 19.4(8) (“The cooperation referred to in paragraph 7 shall cover matters of joint interest *inter alia*: (a) exchange of information and best practices related to collection of sex-disaggregated data and gender-based analysis of trade policies; (b) sharing experiences and best practices related to the design, implementation, monitoring, evaluation and strengthening of policies and programmes aimed at enhancing women's participation in economic activity, including international trade . . . ”).

²⁰ John Ballingall, *Sustainability and the New Zealand-EU Free Trade Agreement: A Step Up in Accountability*, INT'L INST. FOR SUSTAINABLE DEV. (Jan. 15, 2023), <https://www.iisd.org/articles/policy-analysis/new-zealand-eu-free-trade-agreement>.

²¹ *Id.*

針對在貿易協定中可能會對女性產生負面影響的條文，增加但書以要求締約方避免性別歧視，係將性別平權納入規範的展現方式之一。例如「加拿大—歐盟全面經濟與貿易協定」中第 8.10.2 條係規範投資之公平與公正待遇原則，而該條 d 款則進一步禁止性別歧視²²。

此外，當協定內容涉及女性居中屬於相對弱勢的產業或貿易類別，亦可見有促進性別平等之條文。例如「歐盟—東非共同體經濟夥伴協定」中之漁業專節中，其有規範歐盟應使女性等弱勢群體參與漁業，促進漁業中的性別平等²³；以及，「歐盟—南非貿易發展暨合作協定」之中小型企業相關條文中，同樣規定締約方在加強雙邊中小企業之合作時須注重性別平等²⁴。

三、以專章規範

除上述兩者，亦有以專章形式規範性別平等議題之協定，例如「歐盟—智利進步架構協定」即設有貿易與性別平等之特定章節²⁵。此專章內之規定包括要求締約方需制定促進性別平等的法律、簽署其他與性別平等為主題之國際協定，從而使性別平權的效果不僅僅限於協定締約方²⁶。儘管如此，該貿易與性別平等之章節排除協定中爭端解決條款之適用，導致其無法被有效執行²⁷。

參、邁向更具性別精神的貿易政策

由上述例子中可見，歐盟「新世代」之自由貿易協定成功彰顯性別平等價值，

²² Comprehensive Economic and Trade Agreement Between Canada, of the One Part, and the European Union and its Member States, of the Other Part, art. 8.10(2)(d), 2017 O.J. (L 11) 23, 58 (“A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes: (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief . . .”).

²³ Economic Partnership Agreement Between the East African Community Partner States, of the One Part, and the European Union and Its Member States of the Other Part art. 89(g)(ii), June 19, 2023, <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/4f8d4f46-48ba-45d8-a1d2-a1a934b56949/details?download=true> (“[P]articipation of marginal groups in the fishing industry for example, the promotion of gender equity in fisheries, and particularly developing capacity of women traders involved and intending to engage in fisheries.”).

²⁴ Agreement on Trade, Development and Cooperation Between the European Community and its Member States, of the One Part, and the Republic of South Africa, of the Other Part art. 54, 1999 O.J. (L 311) 3, 20 (“The Parties shall aim to develop and strengthen micro enterprises (MEs) and small and medium-sized enterprises (SMEs) in South Africa, as well as to promote cooperation between SMEs in the Community and in South Africa and the region in a manner that is sensitive to gender equality.”).

²⁵ EU-Chile Advanced Framework Agreement ch. 27, Dec. 9, 2022, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement_en.

²⁶ *Id.* art. 27.3 (“Each Party shall strive to ensure that its relevant law and policy provide for, and promote equal rights, treatment and opportunities between men and women, in accordance with their international commitments. Each Party shall strive to improve such law and policies.”).

²⁷ *Id.* art. 27.6 (“Article 26.20 [Dispute Resolution], Article 26.21 [Consultations] and Article 26.22 [Panel of Expert] of the chapter on Trade and Sustainable Development shall apply to this Chapter *mutatis mutandis*.”).

進一步促成永續發展及包容性貿易。然而，其實際上缺乏明示義務且具拘束力之規範。而為使歐盟完全履行其性別平等義務，仍有一些面向需要努力。

首先，歐盟執委會應堅持在與之談判的每一項新貿易協定時，如同其與紐西蘭所簽訂之協定，將與性別平等相關之的一般性條文或章節涵蓋在協定中。歐盟目前正在與印度、中國、澳洲、印尼及菲律賓談判新的自由貿易協定²⁸，而其中僅與印度所談之協定草案有包含有關貿易與性別平等的條文²⁹，其餘協定在貿易方面仍然缺乏實質性的性別平等保護。例如，與澳洲及印尼的協定草案僅在多邊勞工標準方面附帶地提及性別議題。

第二，日後洽簽的協定中應涵括對此些條文的有效監測與執行機制。目前少有貿易協定訂有監測機制，僅有加勒比海地區與歐盟間經濟夥伴協定具有相關規範，其分別對男性與女性於貿易協定下之受益進行強制性監測³⁰。此外，性別平等條文應當適用爭端解決機制或透過具體制裁以促使履行。

第三，解決貿易協定下之性別不平等問題，道阻且長，唯有透過具體保障才能消弭相關之負面性別影響。儘管有些永續影響評估已經涵蓋對不同性別影響的分析，但這些評估的結果通常沒有反映於最終協定中。

肆、結論

與過去的「性別中立」貿易政策相比，人們越來越關注有助於解決性別問題之貿易政策，故在於新世代貿易協定中納入性別主流化相關之條文已成趨勢。歐盟向來強調性別主流化之重要性，但其洽簽的諸多自由貿易協定中有關於性別平等相關條文的政策制定與實施，仍尚有改進的空間。未來歐盟將如何更加全面且有效地於貿易協定中落實性別主流化，以達性別平等與女性賦權之目標，其作法或可供各國參考。

²⁸ E.g., *EU and India Kick-Start Ambitious Trade Agenda*, EUR. COMM'N (June 22, 2022), https://policy.trade.ec.europa.eu/news/eu-and-india-kick-start-ambitious-trade-agenda-2022-06-17_en.

²⁹ *EU Textual Proposal to EU-India Agreement*, EUR. COMM'N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreement/documents_en (last visited Jan. 10, 2024).

³⁰ Economic Partnership Agreement Between the CARIFORUM States, of the One Part, and the European Community and its Member States, of the Other Part art. 5, 2008 O.J. (L 289) 3, 8 (“The Parties undertake to monitor continuously the operation of the Agreement . . . in order to ensure that the objectives of the Agreement are realised, the Agreement is properly implemented and the benefits for men, women, young people and children deriving from their Partnership are maximised.”).