

Macroeconomics, Poverty Reduction Strategies, and Women Of Dolphins, Doha, and Women...

Krista Nadakavukaren Schefer

Abstract

The role of women in today's globalizing world has been under analysis from many points of international law, including some works done on the impacts of the laws of the World Trade Organization (WTO) on women. While most of these studies are critical of the gendered impacts of trade, very little feminist legal analysis has appeared on WTO law. This paper argues for the potential of the radical feminist perspective of dominance theory to contribute to the women and trade discussion in a way that will include the concerns of women from all parts of the globe.

I often wonder, if it weren't for the Tuna-Dolphin case, if Seattle would have ever happened. And if Seattle hadn't happened, would the name "Doha" have ever meant anything to anyone other than the CEOs of Shell and Exxon and travelers seeking 7-star hotels?

I do believe, though, that even if it weren't for Tuna-Dolphin, discussions such as the ones you have been having for the past ten weeks would still occur – but perhaps with less resonance.

Let me step back a moment, though, because there may be a number of you that don't know what I'm talking about.

The World Trade Organization (the WTO) was established in 1995 as THE multilateral institution overseeing the legal rules of the international trading system. The WTO as an institution and its treaties as a package of rules governing the exchange of products and services and certain aspects of intellectual property protection replaced the informal institution of the General Agreement on Tariffs and Trade (GATT), that itself had been governing trade since 1948. The basic agreement that we call the GATT still exists –but it exists as one of five main agreements, next to a plethora of other agreements that is considered the WTO-package. All of these agreements – the GATT, the Gen. Agreement on Trade in Services (GATS), the Agreement on Intellectual Property (TRIPs), the others, are most realistically viewed as a legal embodiment of the basic, classical theory of liberalized trade that David Ricardo built up in the early nineteenth century. That theory provided evidence for the idea that trade between nations increases global wealth even if one trader is less efficient in producing both items, as long as goods that are *relatively* cheaper to produce are exported. Adding a *neoclassical* theorizing – one that focused on reducing government distortions to trade - on top, the drafters of the GATT succeeded in composing a legal text that is (too?) highly sensitive to the tendency of governments to protect their home producers at the expense of foreign competitors.

Thus, two of the main principles of WTO law emerge: Market Access and Non-Discrimination. That is, first, governments should not block products from getting onto

the shelves of stores in their country and, second, all products that are considered similar to each other should face the same conditions of competition, independent of their origin.

There are, of course, also exceptions recognized in the treaties for certain policy interests – public morals, health, resource conservation, security; as well as for certain types of products or activities – commodities, government procurement; or for certain conditions – sudden influxes of foreign goods or services, severe weather-induced shortages, balance of payment difficulties, but these exceptions themselves are limited.

Now, the rules of the GATT went along quietly doing their business of lowering the high tariffs that had appeared around the world in the 1920s and 1930s, and then moved to lowering non-tariff barriers to trade, such as technical regulations and administrative procedures that made life difficult for foreign producers to get onto their competitors' home markets. The GATT continued its work with very little attention given it until 1991 - and then Tuna-Dolphin happened. BIG MISTAKE for any neoliberal that enjoyed the quiet life: in a dispute between Mexico and the United States over a US prohibition on tuna exports from countries where fishing fleets were permitted to use purse-seine nets that resulted in substantial “collateral damage” of dolphins, the GATT dispute panel declared that the US argument that dolphin-friendly tuna is not a “like product” as dolphin-unfriendly tuna. This one decision – that wasn't even adopted, because the US blocked it – turned all eyes onto the GATT. Well, at least the environmental community was outraged and vocal about their disgust. It was then that I think a real turning point occurred, by making NGOs aware of the implications of the trade regime on the health of the environment. That awareness grew and began to include impacts on labor: about the same time, the US Presidential candidate Ross Perot began his campaign founded to a large extent on his “big sucking sound” idea, capturing the concept of job loss to nations with lower labor standards.

While both the NAFTA and the simultaneously-negotiated WTO nevertheless came into effect, the scrutiny and criticism of both regimes was much sharper than any had been before. Then came Seattle, the WTO's Ministerial Conference in 1999, and the massive demonstrations against the trade regime and macroeconomic policies of the Washington Consensus in general.

And somewhere in the midst of all this, the gender and feminist activists began to turn their attention to the economic institutions, too.

Which brings us to today. What is the impact of the WTO on poverty and in particular on gendered poverty? I am a lawyer, so I want to limit my examination to the impact that the WTO rules have on gendered poverty – and while it might not seem that that makes a tremendous difference, maybe a couple of you will see why I think it actually does. And here I want to make a note on what is covered when I talk about “WTO law”, because the international environment in which the WTO functions is somewhat different from the national legal environment: at the national level, gendered studies of law explicitly recognize that “the law” is more than the mere rules enforced by courts. Law permeates social relations and structures formal relationships, it shapes expectations that people have to one another and to the government, at least in the West.

International law is less uniformly pervasive. While positive – treaty – law is generally followed even without the existence of a supreme authority to bind governments to their

commitments, there is still less adherence to generally conceived concepts that are not “law”. Much of the political or diplomatic activity within the WTO takes place in a law-free zone. Thus, when I address the topic of gender and WTO law, it is a narrower focus than would be a gender and national law address. I will be concentrating on the actual rules of the WTO treaty agreements and the institutional setting in which they are implemented.

First, despite the substantial and growing literature examining and evaluating international law from a feminist legal perspective, there is not so much feminist-inspired academic work that looks particularly at the WTO law itself. This, I think, is quite unfortunate, and I hope to make some contribution to rectifying this situation in the next few years, but I said that a few years ago, and we see where good intentions in the life of a working mother have gotten me. Nevertheless, I shall first point out several aspects of the WTO that might cause concern and add a few words about whether or not they are necessarily problem areas. Then I will make a couple of comments (some perhaps provocative) to kick off our discussion:

First, an orthodox view of the WTO and its legal system from a woman-oriented viewpoint will likely turn up the following:

The Structure of the WTO is weak on women in positions of great influence.

- None of the Director-Generals (head of the WTO Secretariat) has been a woman.
- Of the newly-selected heads of the (Member-composed) treaty bodies, only 1 is a woman (TPRB)
- None of the heads of the bodies composing the trade negotiations committee is a woman.
- One of the 7 Appellate Body Members (the “highest court” of the WTO) is a woman – and she is the first in that position.
- Of the over 600 WTO Secretariat employees, slightly over half are female, but of these, (according to the WTO telephone book from 2002) only 3 are Directors of their departments and conversely, only 2 of the secretaries are male. An overrepresentation of women is also found in the translations department.
- In the national missions, it looks better there are several women heading their delegations, and a former US head of negotiations told me just in January that things have changed “so much” now in terms of the proportion of women in negotiations, but even in the 1980s, there were a large number of women from the South-Asian missions.

But naturally, numbers won’t reveal much about any true degree of gender-awareness. There may be some men with feminist-orientation, but there may also be some women with distinctly non-feminist tendencies. As feminist Mary Dunlap notes, “One error is [thinking] that all women are feminists. ... A second error is that to measure the progress of feminists in law one should count how many women rise to the top.” 34 *Buff. L. Rev.* 14 (1985). That is, “by their works we shall know them”.

Unfortunately for women, looking at the work of the Organization doesn’t allow one to paint a much more rosy picture: there is no official mainstreaming of gender in the WTO,

leaving it one of the few international organizations not to have such a policy in place. In addition, the Canadian delegation did suggest a gender investigation of the Organization during Dir.-Gen. Supadchai's directorship, but since then, it has not moved onto the agenda and has been seemingly forgotten. (I was referred by the very pleasant mission worker to her colleague who is the one in charge of "warm fuzzy issues, if you know what I mean"). Institutionally, therefore, the WTO does not look very promising in terms of taking gender concerns seriously.

How do the rules negotiated by the Members look? Let me start in by looking very superficially them:

- 1) The Marrakesh Agreement, the "constitution" of the WTO, states that WTO laws are made by, enforced by, and apply to Members (governments), and that the WTO decisionmaking process occurs by the principle of *consensus*. This means that governments negotiate the texts of the agreements and each government submits its own list of tariffs and quotas and offers for liberalization – there is no uniform list drawn up by "the WTO"; and WTO rules are not rules that directly effect individuals: they are guides for governments, and governments must implement them in domestic law for them to impact on individuals.
- 2) WTO laws on trade liberalization are based on classic theories of economics – thus, they look at aggregates and not at individuals when it comes to wealth;
- 3) WTO law is interpreted by individuals authorized only to interpret WTO treaties, although international law is to be recognized;
- 4) There is no rule on minimum labor standards or on environmental standards in the WTO texts, although there is a Committee on Trade and Environment that is expert in producing nothing of any value.

The rules, then, are distinctly sexless – dealing with non-human entities and non-human based, aggregate theories. Of course, however, these rules do impact humans – men and women, though. So how about the gender IMPACT angle?

Now the gender impact angle lends a very ambiguous picture of these WTO rules themselves: The short book produced by the Canadian International Development Agency gives a concise overview of the various rules of the WTO agreements and their relationship to gender. The lesson (repeated in a 1998 study performed by the UK Department for International Development and elsewhere) is interesting: trade liberalization rules affect women differently, depending on their particular context: where they live, how educated they are, whether they are married, what their social status is, and what the particular cultural norms are within their societies. Some rules probably also affect women both advantageously and disadvantageously, depending on which role the woman is performing: consumer or producer and if the latter, for which market she is producing.

For example, the rules that require Members to eliminate quantitative restrictions (such as an import prohibition) will harm women producers who had formerly enjoyed the exclusive position on their domestic market – workers and employers would be able to have higher production costs and profits because foreign products would simply not be permitted to sell their goods. For those not producing in the newly liberalized sector,

however, women as consumers of products are benefited by the lower prices that can ensue with the elimination of a quantitative restriction. When the quota is removed by a trading partner, on the other hand, for women involved in export production, the elimination of quotas is welcome – not only does such a change open new or expanded markets to such producers, but for women actively engaged in trade the complications of using a quota (gaining an allotment, receiving the license) would have been a burden that is thereby eliminated. And finally, the greater market access increases employment opportunities in export-oriented industries or in informal sectors that feed into the export sector. Such employment often offers women relatively more equal pay than industries producing for the national market. The analysis for tariff reductions is somewhat more complicated, since tariffs are supposed to go into national treasuries, and are there presumably used to fund public programs that assist women and their families. Absent corruption, the effects of tariff reduction therefore may be more negative overall for women in the country of import.

WTO law on subsidies is aimed at prohibiting government payments to particular companies or industries in order to allow them to enhance their competitiveness vis à vis foreign companies. General subsidies are not always going to be found as violations of the WTO – in particular, the Agreement on Subsidies would not rule out subsidies to women-supporting financial programs. Again, women producers may be helped or hurt by the restrictions on subsidies. Those producers who would have received moneys will suffer an income reduction while others benefit by either greater competitiveness or by the additional government revenue available for other public spending programs. A concrete example here of subsidies discussions with potential gender impacts is the decision taken in Hong Kong to require the USA to end its subsidies of cotton. The higher price of American cotton should open the way for African cotton producers to gain market share. Whether the actual gains will translate into greater wealth and autonomy for women remains to be seen, and will depend on productive structures in their communities and the social structures governing relations between women and men there.

The rules in the SPS and TBT Agreements, attempting to harmonize product standards threaten to condemn highly protective legislation to being WTO violations from which women may benefit particularly, as they are often in workplaces that do not have adequate health protections, but for many developing country producers, the great complexity of such technical standards that exists in industrialized markets hampers their ability to trade.

The effects of WTO on gendered poverty are similarly ambiguous. Poverty analyses, as you need not be reminded, reveal a disproportionately high number of poor women. Thus, the WTO's role in poverty reduction is in some degree perhaps THE WTO's gendered dimension. Looked at in this light, how does the WTO fare? Well, with the wealth gap increasing everywhere, it would seem not too well. This, however, should not surprise us, because the WTO law and policy is based on a theory that DOESN'T PRETEND to care about distribution of wealth. If the pie is getting bigger, THAT's what counts, not the fact that the fat boys are getting even bigger pieces of it.

But even here, getting to a “true answer” is difficult. Poverty analyses emphasize the importance of paid employment in avoiding or getting out of poverty, and many studies testify that increased trade does indeed lead to more jobs in the economy AND it seems particularly to lead to more jobs for WOMEN. This is particularly so in manufacturing industries that are export-driven. In South and East Asia and in Tunisia and Mauritius, the export-oriented manufacturing firms are highly feminized and the results in the gender area are interesting: *despite* evidence of poor working conditions and employment discrimination against hiring married women, it would appear that the Export-Processing Zone employment opportunities offered to women has to a great extent benefited the women. Not only do they get regular wages (whether higher or lower than outside the Zone is debated) and not only is the wage-gap between men and women in these zones lower than in the economies as a whole, but the working conditions seem not to be significantly worse than in other AVAILABLE jobs, AND they are able to escape the domination of the *even more gendered* social environment of the home. How long these benefits will last is questionable, but certainly it is not entirely negative.

When looking at trade’s poverty effects on women tied to agriculture, it is less positive. There, particularly for the women of Sub-Saharan Africa who tend to practice subsistence farming, the competition from foreign subsidized products can undercut their competitiveness. Increasing cash crop production for export is not a better alternative, as such production generally takes the form of unpaid work for male relatives, with no reduction in household employment for the women.

Now for some discussion-stimulators. The following statements are sometimes hinted at in anti-WTO literature. These I consider at least semi-MYTHS:

Trade liberalization is bad for women. The problem with such statements is that they are simply overbroad – no such generalization can always reflect the truth in all circumstances. The paper by the Canadian ministry reflects very well that ambiguity surrounding the effects of liberalization on women: greater market access allows more women to be hired in export industries and tends to make products cheaper for women in the importing markets – as well as threatening women’s jobs in markets facing fiercer competition; while many jobs in the export sector are poorly-paid and exploitative, there is some evidence that the mere fact of having a job outside the home gives women more control over finances at home and eases some of the domestic domination faced and there is evidence that higher competition lessens the wage-gap between women and men; lower tariffs reduce government revenue available to be spent on social programs, disproportionately burdening women, but general lowering of tariffs can allow women’s productions to compete on other markets; harmonization of health or technical standards may be more difficult for women-run small businesses to comply with, yet it could simplify their exporting efforts if standards are the same in all target markets.

The Agreement on Agriculture is responsible for Sub-Saharan Women’s hardships. I do not for a minute doubt the hardship faced by the women-farmers in SSA. I do, however, find that WTO LAW is not the cause of their problems. The distortions and hardship they face appear to me to be more due to the uneven liberalization pattern in which export-oriented producers from the LDCs cannot get their products onto northern

markets while their own products cannot compete with subsidized foreign goods. Now, this lowering of trade barriers and the reduction of such price-distorting instruments as export subsidies is exactly the AIM of the AoA – it is on the political level that the WTO rules, by failing to be adhered to, are used that should be to blame in this case. (taken from an impact-perspective)

GATS requires the liberalization of services and this is bad for women. GATS is one of the main targets of NGO-ire. In part this is deserved, as GATS does indeed attempt to regulate sensitive areas of domestic policy-making. BUT, GATS is also an extremely complex agreement, and while most negotiators probably did not completely understand the whole text and the provisions' relations with each other, they DID see the sensitivities. That's why it is much more adaptable to individual Member concerns. While MFN obligations are general (even there with the possibility of excepting out preferential trade partners) with Market access and the National Treatment obligations, this is not so. Those areas can be left out entirely OR they can be only partially liberalized. OF COURSE those committed to liberalization will try to argue that liberalization must occur, but an undistorted reading of the text leaves ample room for arguing otherwise.

As to the gendered impacts component, GATS, like the GATT is ambiguous. In the area of financial services, for instance, liberalizations that permit foreign banks to offer microcredit are doing a great service to many women, as it is women that most heavily rely on such credit (when available). Borrowing from such institutions permits them to escape the often oppressive nature of borrowing from male family members, and gives them greater control over their investments.

WTO dispute settlement has teeth. Yes, there is an automatically-triggered sanctions possibility, but it is in fact very rarely used. There is negotiating pressure to conform, but a Member could choose to ignore the WTO. Does it have the economic strength to do so? Maybe not, but it is unlikely that an industrialized country is going to severely damage a developing country for protecting its women.

** World Bank Gender Report: emphasizes “rights, resources, and voice”; need to reform institutions to establish equal rights and opportunities for women/men; foster economic development to expand opportunities for women to work/education; and

Does this mean the WTO is fine, from my gender-perspective? No. I do not doubt that women are potentially subjected to heavier burdens due to their sociological roles as caretakers or to more risks due to their economic role of lower status jobs. But here, the WTO has, in fact little to say: while the WTO legal system does not condemn such discrimination explicitly, neither does it encourage it.

Moreover, the areas where I see the most room for improving the lives of women are to a great extent overlapping with the problems of development (not necessarily with catering

to the developing countries' wishes) in general: for example, the tariff reductions that are negotiated out and protected by the market access provisions lessen government revenue (although the elimination of quotas does *not*), with the resulting "public provision effect" on goods and services that are provided to the poor by the government; the heightened competition combined with a lack of labor protections leading to a worsening of working conditions; etc.

Ultimately, however, I am not convinced that there are any merely LIBERAL LEGAL solutions to the problems. The gendered impacts of WTO seem to me much more deeply enmeshed in the structure of societies than in the rules of the trading system themselves, that I would balk at the suggestion that the WTO should be addressing these impacts directly. (Mentioning them in Trade Policy Reviews, considering them among other factors in proposals for further liberalization, perhaps even allowing exceptions to the rules if gendered impacts are severely harming the women of a Member – yes), but actually trying to decide how gender relations should be in the Member states is going WAY TOO FAR for me. Importantly – Crucially – the demand to solve a problem requires a grant of authority to implement the solution chosen. I would not want to give such far-reaching authority to an institution like the WTO.

We can discuss this concern in our subsequent discussion. Let me very briefly first set out a further interest in the question of gendered WTO. My real concerns with the gendered aspects of the WTO as a legal system itself come in light of radical feminist thought – that is, with the idea of the WTO as one instrument among many of preserving an international system of hierarchies: the dominance theory. It is the neoliberal economics that serve as the basis of the WTO (law AND institution), World Bank, and IMF that seem to me clear examples of such dominance – in men over women as well as of developed over developing.

The US Trade Neg. in Hong Kong stated at the conclusion: "The conference made it clear that there is a consensus, among countries rich and poor, North and South, large and small, that more open trade is the road to more prosperity. This is an important consensus because there are tough decisions to be made". (<http://usinfo.state.gov/ei/Archive/2005/Dec/18-997695.html>).

Where the WTO can really be criticized is in its single-minded view of liberalization as THE instrument for a better world, when the standard by which we measure "better" is the standard conceived of by Western men. From this critical viewpoint, women (and developing countries too) can NEVER escape dominance, because the norm is always determined externally.

Catherine MacKinnon, the most eloquent of the radical feminist thinkers, describes the way out of this trap as being consciousness-raising (becoming aware of the hierarchy) and then a complete re-conceptualizing of society. Imagine the impossible – it is not enough to simply focus on the rules of the WTO as being disadvantageous to women because women gain less from liberalization, we must think of the power relations of the whole international – not just WTO - system and how we can have any hopes of escaping domination – and in this we, the educated and secure women, in Switzerland are both oppressed and oppressing.

Barbara Stark's message in *A Change of World* is interesting here – when viewing the globalization of economies from the traditional feminist perspective of private and public spheres, the pull of globalization on women works to bring them out of the private sphere and into the public one of the workplace – which in turn leads to their greater visibility, leading to greater feminist consciousness. Very important to remember is that the greater consciousness – a main method for feminist-inspired change – is *independent* of the potentially exploitative context of the public-sphere work.

Now, I find Stark's example of the One-Child policy less than convincing, but as a general matter, I find her result quite refreshing, since it recognizes that the seeds of a feminist revision of hierarchies may be germinating out of the global economic system itself. What a promising future!