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Feminist Foreign Trade Policy is a Demand of the EU Treaties

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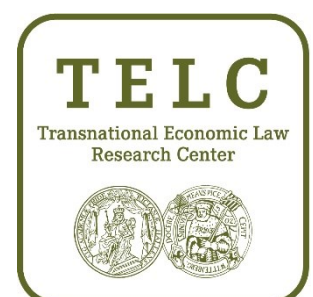
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On March 1st, 2023, Annalena Baerbock, the German federal foreign minister, introduced her long-awaited “Feminist Foreign Policy” (FFP) under the title “[Feministische Außenpolitik gestalten](#)”. In Germany, the paper prompted mixed responses, ranging from “*Kokolores*” (nonsense) to “most necessary” (see, e.g., a [FAZ podcast on the discussion of 2 March 2023](#)). The purpose of this short contribution is to highlight “guideline 5”, titled “Foreign Economic Policy”, and to place it into the context of EU foreign trade law. We argue that there is a strong basis for feminist trade policy in EU primary law. Arguably, any external action of the EU ought to be in compliance with basic considerations of feminist foreign policy. The key question is not *if* EU external action should comply with feminist foreign policy, but rather, *how*. For this inherently political process the German guidelines provide timely and welcome impetus.

Background: The hidden gender-bias of trade policy

It is one of the basic theoretical assumptions of trade policy and law that trade liberalization will have a positive impact on people’s economic lives. However, feminist economists, sociologists, and lawyers now agree that trade policy and law are not gender-neutral (see e.g. [Hannah/Roberts/Trommer, 2020](#)). Welfare gains

are not distributed in a gender-equitable manner, and many norms and standards still discriminate against women, either directly or, more frequently, as concomitant circumstances. For instance, while trade liberalization leads to the creation of new job opportunities, these jobs are usually in low-wage sectors such as agriculture, tourism, or the garment industry. As wage workers, women often have neither the technical skills nor the organizational structures to defend themselves against exploitative working conditions. Self-employed women, on the other hand, usually run small or micro-enterprises that have few or no employees and generate little turnover, leaving women at the margins of transnational trade.

Both from a human rights and an economic standpoint, these observations are worrisome. Structural inequalities, discriminating laws and policies, and socioculturally tolerated mistreatment of women and other vulnerable minorities in the economic sphere violate fundamental human and labor rights as guaranteed in the UN Convention on the Rights of Women and the ILO Conventions. In addition to the question of economic rights and justice, the gendered nature of trade has serious economic repercussions. Although women make up more than half of the world’s labour force, they contribute only 37 per cent of the gross global product. A [2015 study by McKinsey](#) concluded that global

GDP could be increased by \$12 trillion by 2025 „if all countries were to match the progress towards gender parity of the best performers in their region“. Twenty years ago, Spanish-American economist Lourdes Benería summarized these considerations in one formula: gender-sensitive economic policy equals “economics as if all people matter” ([Benería 2003](#)).

To address these considerations, feminist foreign policies promote a paradigm shift that takes into account the inherent power struggles in international trade policies and moves the focus away from state interests and towards the multifaceted vulnerabilities and well-being of people.

Following the Swedish pathway

In 2014, Sweden became the first country within the EU, and worldwide, to adopt a FFP. The Swedish FFP was dedicated to embracing a systematic gender perspective across all areas of foreign policy, including trade. The Swedish FFP, developed by Swedish foreign minister Margot Wallström, was based on a system known as the 3R-approach – Rights, Representation, and Resources. Since 2014, [several states have followed suit](#), including the EU member states [France](#) (2018), [Luxemburg](#) (2019), and [Spain](#) (2021). In the Netherlands and Belgium, the introduction of FFPs is currently up for debate. Contrary to France, which refrained from including trade in its FFP, other countries, namely Sweden and Spain, have identified economic rights and

empowerment of women as cornerstones of their FFPs. This comes as no surprise. Foreign economic policy is currently, and arguably always has been, an inherent part of foreign policy in general. In the case of Sweden, the commitment to a feminist trade policy translated into advocacy for the integration of gender equality in trade agreement negotiations.

Trade policy in the German FFP

The German FFP considers gender as a cross-sectional issue which should guide German foreign policy in all its areas in the future. Trade policy is one of six thematic areas identified in the FFP. The trade policy guidelines are further divided into six selected objectives and project areas.

Some of the objectives reaffirm existing commitments. The German FFP specifically reiterates its ongoing commitment to the [Buenos Aires Declaration on Trade and Women’s Economic Empowerment](#), which 118 WTO members and observers endorsed in the margins of the WTO’s 11th Ministerial Conference in 2017. Others pledge to support regional and international initiatives to further women’s empowerment, visibility, and networks, and to establish respective fora of dialogue at selected diplomatic missions abroad. Supply chains are another trade area of concern identified in the German FFP. The FFP pledges to use its diplomatic influence to campaign for ratification of the ILO’s Violence and Harassment Convention No. 190 from 2019. The

convention is the first international treaty that establishes a right to a working life free of violence and harassment. The great practical importance of this latest addition to ILO standards is demonstrated by the fact that in 2022, 46 countries worldwide still had no legal provisions protecting women from sexual harassment in the workplace. Interestingly, the objectives mention neither the German Supply Chain Act nor the respective European legislative process, but instead focus solely on the revision of the National Action Plan.

The last two of the six trade policy objectives of the German FFP fall into the areas of digitalisation and artificial intelligence (AI). While it is not unusual to consider matters of digitalization within a trade context, respective FFPs usually emphasize equal access to digital media (e.g. see the [Spanish FFP](#), p. 29). The German FFP goes further by bringing additional aspects of digital security into focus and promoting digital spaces free from gender-specific discrimination and hate speech (German FFP, p. 52). With regard to AI, the guidelines refer to the work of the [Freedom Online Coalition](#), a partnership currently made up of 36 governments. A working group of the coalition is in the process of developing guidelines for gender-appropriate design and application of AI (German FFP, p. 52). From a gender perspective, both subject areas are of enormous political relevance. [UN Women](#) very recently emphasized the pressing need to address and explore the impact of these

emerging technologies on women and girls. However, it is not entirely clear why they are treated as matters of trade policy.

Beyond these aspects, the German FFP only very vaguely declares its willingness to integrate gender issues into EU trade policy and does not explicitly identify any specific measures. In fact, the guidelines leave out a number of questions that point to the very heart of gender inequality.

Empowerment is not enough

While the FFP rightly reaffirms the importance of women's economic empowerment (p. 50), it is but one side of the coin. Research by feminist sociologists and economists show that a focus on economic empowerment is not enough to overcome deeply rooted barriers and inequalities. As indicated above, even supposedly neutral trade policies may perpetuate and reinforce discrimination against women. Other economic sectors, such as the extractive industries, are known for their harmfulness to women ([UN Women, 2022](#), p. 2). Any discourse on feminist trade policy should also consider these downsides of trade. Another pivotal question for a feminist re-orientation of trade policies is: who takes part in negotiations of trade agreements and other instruments? And who sits on the bench in case of a dispute? While the involvement of women in these processes is no panacea, change will not occur without them. Naturally, it is not for the German FFP to answer

all these questions single-handedly. As Annalena Baerbock herself emphasizes – the German FFP is but a ‘work in progress’ (FFP, p. 20). Nevertheless, it is critical to reflect on these questions along the way. This should be done while taking into account the respective EU legal framework.

The EU Legal Framework

In this regard, it is important to note that trade policy differs from other areas of foreign policy. As has been established clearly since the treaty of Lisbon in 2009, the EU has comprehensive and exclusive competence in trade policy, cf. Article 3(1) TFEU. Member states of the EU may not contradict this division of competences with their own foreign policies.

Even more importantly, EU foreign trade policy is value-bound. According to Article 207 TFEU, “[t]he common commercial policy shall be conducted in the context of the principles and objectives of the union’s external action”. This provision refers to Article 205 TFEU, which again points to the value-oriented goals of general EU foreign policy as laid down in Article 21(2) TEU. These goals represent binding values for the implementation of the Union’s external action, including the foreign economic and trade policy of the EU.

Even though they are not explicitly mentioned in Article 21(2) TEU, the broad human rights, development, and global good governance goals laid down in that provision leave no

doubt that the values and goals of feminist foreign policy are part of this catalogue. This is even more clear when considering that, according to Article 21(3) TEU, “[t]he Union shall ensure consistency between the different areas of its external action and between these and its other policies”. The principle of consistency points to the cross-cutting clauses of Articles 8 and 10 TFEU. Article 8 TFEU makes the elimination of inequalities and the promotion of equality between men and women a constitutional value of the EU. In addition, Article 10 TFEU stipulates that the EU shall aim to combat discrimination based on sex, racial, or ethnic origin, religion or belief, disability, age, or sexual orientation. These fundamental provisions align with the German approach to inclusive feminism as outlined in the FFP. Accordingly, feminist foreign policy:

“is not a foreign policy for women, but for all members of a society. It includes and does not exclude. It recognizes that discrimination is never one-dimensional. It therefore stands up for all those who are marginalized by society on the basis of gender identity, origin, religion, age, disability, sexual orientation or other reasons.”

(German FFP, p. 3, translated by the authors).

In light of these considerations, it becomes clear that any EU external action must be in compliance with basic considerations of feminist foreign policy. Moreover, in an area of exclu-

sive EU competence like foreign economic and trade policy, there is not much room left for deciding whether an EU member state actually wishes to pursue a feminist foreign policy. It is only a question of how such a policy should be designed and whether and with what intensity it is implemented. This is true for both, the EU and member state's level, as implementation deficits are obvious for both.

Feminist trade policy in times of gender backlash

As indicated above, the trade policy objectives of the German FFP are, intentionally or unintendedly, rather vague and leave room for interpretation and amendments. Contrary to the – as some would say – ‘provocative’ feminist label, they are neither particularly new nor even revolutionary. Rather, they mostly reaffirm existing legal obligations or emerging international consensus. In short: They are in a very positive sense up to date. However, for now, it remains to be seen whether actions will actually match rhetoric. In the past, trade law and policy have certainly not been considered particularly gender-sensitive. As we have indicated, this was merely the result of a lack of political will; legally there is a general obligation to pursue a feminist foreign economic and trade policy.

Ultimately, context is crucial. The German guidelines come at a time when right-wing policies all over Europe are increasingly threatening the rights of women and other vulnerable

groups. It should come as a warning-sign that only months ago the new Swedish government repealed its much-praised feminist foreign policy. In spite of the clear legal framework, gender-sensitive policies are not a matter of course within the EU – not now, nor in the near future. The German government will find an assertive ally in the European Parliament, which has underlined the importance of including increasingly feminist aspects in EU international economic and trade policy more than once. Just recently, the Committee on International Trade (INTA) of the European Parliament, in its session on 25 October 2022, highlighted relevant aspects of trade and gender and underlined the importance to increase respective efforts. Thus, the German FFP presents a timely and noteworthy impetus to maintain and deepen discussions at the EU level on the potential and limits of feminist trade policy. It gives much needed and necessary input on the implementation of a feminist foreign economic and trade policy.

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