

Emerging Trade Issues for Small Developing Countries

Scrutinising the Horizon

Edited by Teddy Y Soobramanien and Leah Worrall



The Commonwealth

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Commonwealth Secretariat
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Foreword

There has seldom been a time when international trade has featured so prominently as a topic on the global agenda, and it is currently a principal focus for Commonwealth co-operation.

The meeting of Commonwealth trade ministers in London in early 2017 marked a very significant interest in the potential for trade among our member countries, and this is expected also to be a major feature of the 2018 Commonwealth Heads of the Government Meeting – the Commonwealth Summit being hosted by the United Kingdom.

An innate understanding and sense of commonality within the rich diversity of our member countries results in measurable ‘Commonwealth Advantage’. It is rooted in our shared language, the Common Law – which also happens to be the basis for international law, our similar systems of parliamentary democracy, administration and regulation.

Research we have undertaken at the Commonwealth Secretariat shows that bilaterally, Commonwealth partners tend to trade 20 per cent more, and generate 10 per cent more foreign direct investment inflows than would otherwise be the case.

So it makes good business sense for us always to be scanning the horizon in order to find ways of making even more of this unique Commonwealth asset, so that together we can grow prosperity and build resilience for the good of all our citizens.

Our Commonwealth Secretariat knowledge base has been acquired from years of pioneering collaboration with our member countries as they have become more integrated within the global economy.

The majority of Commonwealth countries are classified as small states or Least Developed Countries, or are located in disadvantaged regions. Lack of capacity hampers their efforts to participate more fully in the global trading system.

Finding new ways of developing competitiveness for these member countries, and creating environments that are conducive to the growth of small and medium enterprises, are important factors in improving their trade performance.

This publication considers emerging trade issues from the perspective of countries needing to build competitiveness and resilience, and offers insights and guidance on formulating policies on various emerging trade issues – particularly within the context of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

Whether we are considering global and regional value chains, or more specific areas such as ecommerce and the digital economy, the research and policy guidance drawn together in these pages, together with critical reflection on the economic and geopolitical forces, suggests that Commonwealth links and collaboration are likely to be major influences on the future trading arrangements for our member countries.

The Right Hon Patricia Scotland QC
The Secretary-General of the Commonwealth

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Abbreviations and acronyms

ACP	African, Caribbean and Pacific
ADB	Asian Development Bank
AfT	Aid for Trade
ASEAN	Association of Southeast Asian Nations
B2B	Business to Business
B2C	Business to Consumer
B2G	Business to Government
BIT	Bilateral Investment Treaty
BOT	Build–Operate–Transfer
BPR	Business Process Reengineering
BRICS	Brazil, Russia, India, China and South Africa
C2C	Consumer to Consumer
CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CFU	Climate Funds Update
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CN	Combined Nomenclature
COP	Conference of the Parties
CTE	Committee on Trade and Environment
DAC	Development Assistance Committee
DFQF	Duty-Free Quota-Free
DIE	German Development Institute
DSU	Dispute Settlement Understanding
DVA	Domestic Value-Added
EBA	Everything But Arms
EC	European Commission
EEZ	Exclusive Economic Zone

EGA	Environmental Goods Agreement
EPA	Economic Partnership Agreement
ERD	European Report on Development
EU	European Union
EVI	Economic Vulnerability Index
FAO	UN Food and Agriculture Organization
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FVA	Foreign Value-Added
G2G	Government to Government
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GEF	Global Environment Facility
GNI	Gross National Income
GPA	Agreement on Government Procurement
GSP	Generalised System of Preferences
GVC	Global Value Chain
HAI	Human Assets Index
HIC	Hig-Income Country
ICT	Information and Communication Technology
IDE	Institute of Developing Economies
IEA	International Energy Agency
IFC	International Finance Corporation
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IMF	International Monetary Fund
IP	Intellectual Property
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual Property Rights
ISO	International Organization for Standardization
ISP	Internet Service Provider
IT	Information Technology

ITA	Information Technology Agreement
ITC	International Trade Centre
ITeS	IT-Enabled Services
ITU	International Telecommunications Union
IUU	Illegal, Unreported and Unregulated
LDC	Least Developed Country
LIC	Low-Income Country
LLDC	Landlocked Development Country
LMIC	Lower-Middle-Income Country
MADCTs	More Advanced Developing Countries and Territories
MC	WTO Ministerial Conference
MDG	Millennium Development Goal
MFN	Most-Favoured Nation
MIC	Middle-Income Country
MOI	Means of Implementation
MRIO	Multi-Regional Input-Output
MSMEs	Micro, Small and Medium-Sized Enterprises
NDC	Nationally Determined Contribution
NTB	Non-Tariff Barrier
NTM	Non-Tariff Measure
ODA	Official Development Assistance
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OOF	Other Official Flows
PIC	Pacific Island Country
REDD+	UN Reducing Emissions from Deforestation and Degradation
RoO	Rules of Origin
S&DT	Special and Differential Treatment
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDG	Sustainable Development Goal
SIDS	Small Island Development State
SMEs	Small and Medium-Sized Enterprises

SPS	Sanitary and Phytosanitary Standards
SSM	Special Safeguard Mechanism
SVEs	Small and Vulnerable Economies
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TISA	Trade in Services Agreement
TiVA	Trade in Value-Added
TPP	Trans-Pacific Partnership
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UK	United Kingdom
UMIC	Upper-Middle-Income Country
UN	United Nations
UNCLOS	UN Convention on the Law of the Sea
UNCTAD	UN Conference on Trade and Development
UNDESA	UN Department for Economic and Social Affairs
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNOHRLLS	UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
US	United States
USA	United States of America
WDI	World Development Indicators
WGTCPP	Working Group on the Interaction between Trade and Competition Policy
WGTGP	Working Group on Transparency in Government Procurement
WGTI	Working Group on the Relationship between Trade and Investment
WGTTT	Working Group on Trade and Transfer of Technology
WPEC	Working Party on E-Commerce
WPSE	Work Programme for Small and Vulnerable Economies
WTO	World Trade Organization

Chapter 1

Emerging Trade Issues for Small and Least Developed Countries – Scrutinising the Horizon

Teddy Y Soobramanien and Leah Worrall

The aim of this publication is to explore emerging trade issues for small developing countries. The world economy has undergone tremendous changes during the past decade, and a host of emerging issues are now influencing global trade, some of which are surrounded by uncertainty. These issues include the fragmentation of global value chains (GVCs), the digitisation of trade, climate change, growing prominence of micro, small and medium-sized enterprises (MSMEs) and geopolitical changes such as Brexit. Many of these issues have been researched extensively; policy-makers and World Trade Organization (WTO) negotiators have even informally discussed some of them. This publication's perspective is nonetheless unique, given its focus on a specific group of countries with distinct characteristics and its adoption of a pro-developmental approach.

Whether these issues should and will be addressed within the WTO context is debatable, and a matter for sovereign nation states to decide. The aim of this publication is not to promote or demote a particular stand. Rather, it examines the issues objectively, from a purely policy angle, including potential challenges and opportunities, and at times proposes policy options.

1.1 Multilateral trade context

Emerging trade issues and their linkages to other subject areas are being discussed in a number of regional and international fora—such as trade and climate change as part of the UN Conference on Climate Change, e-commerce as part of the UN Conference on Trade and Development's (UNCTAD's) ongoing work programme or trade as a means of implementation of the UN Sustainable Development Goals (SDGs). Some of these issues have even been on the WTO agenda for a number of years, hence the difficulty involved in seeing them as 'new issues'.

The novelty of the situation now is that some of these issues could find their way onto the WTO negotiations agenda. In fact, the WTO Nairobi Ministerial Declaration mentions that some members 'wish to identify and discuss other issues for negotiation', although it makes it clear that 'any decision to launch negotiations multilaterally on such issues would need to be agreed by all members'.

Broadening the WTO negotiations agenda raises both opportunities and challenges for small developing countries, related not only to participating effectively in discussions

on emerging issues in the lead-up to the 11th WTO Ministerial Conference (MC 11) and beyond but also to ensuring these discussions reflect their national priorities and address their development aspirations. Rashid Kaukab in Chapter 2 of this publication discusses perspectives of the potential ‘new’ issues in the WTO. Meanwhile, some WTO members have called for an exploration of new approaches to conducting negotiations at the level of the WTO. Lorand Bartels shares some views on these new approaches in Chapter 9.

In terms of the broader multilateral trade context, there have been some significant changes in the global trading landscape over the past decade, including the fragmentation of GVCs, the rise of servicification and e-commerce and the heightened role of regional and plurilateral agreements. Chapter 6 discusses e-commerce from the perspective of small developing countries: Soobramanien, Preville and Ming discuss various policy options and frameworks that should be in place for its development.

Trade interests at the international level are generally pursued through multilateral negotiations under the WTO and plurilateral processes such as the Environmental Goods Agreement (EGA) and the Trade in Services Agreement (TiSA), as well as regional and bilateral trade agreements. Developing countries’ and least developed countries’ (LDCs’) trade relations are also largely governed by preferential trade schemes such as the African Growth and Opportunity Act, the EU’s Everything But Arms initiative, the General System of Preferences and so on. Given slow progress on the Doha Development Agenda negotiations, alternative, and at times parallel, negotiation processes are allowing WTO Member States to pursue mutual domestic interests that might otherwise fail to reach consensus in the WTO multilateral context. For example, under the EGA, 17 WTO members are negotiating to facilitate trade in environmental goods and services, which also demonstrates the role of trade in climate change mitigation and adaptation. Chapter 5 by Leah Worrall gives further discussion on this. The TiSA, which was being negotiated by 23 WTO members, is grounded in the General Agreement on Trade in Services and aims to promote the further opening of markets through improving the rules for services across various sub-sectors, from e-commerce to maritime transport (EC, 2016).

Meanwhile, the emergence of mega-regional agreements—the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership—have also generated significant interest and will have implications for the multilateral trade environment. These mega-regional agreements have chapters that address the spheres of e-commerce, small and medium-sized enterprises and environment (or sanitary and phytosanitary measures), and some argue that the text is more progressive than the WTO Nairobi package and negotiations process.

Despite this, the Bali Package, which includes the Trade Facilitation Agreement, and the Nairobi Package have contributed to a gradual regain in confidence in the WTO multilateral process, thanks to some notable achievements: agriculture decisions on a special safeguard mechanism for developing countries; a decision on export subsidies and other export competition elements; a decision on cotton and public stock-holding for food security purposes; and decisions on the LDC services waiver and duty-free

quota-free market access. The effective implementation of these decisions will be crucial to strengthening the system and paving the way for successful conclusion of the remaining issues under negotiation.

The role of services in development, or the ‘servicification agenda’, has received renewed attention for its role in promoting the economic transformation of developing economies through services, alongside its role in the modernisation of agriculture and manufacturing sectors. This is particularly important, as for example African countries begin to question the transformational impact of agriculture-led development and also increasingly the employment productivity gains from manufacturing-led transformation. The process requires simultaneous investment and policy development in human skills and technological capacity to be transformational towards improvements in domestic sector competitiveness; the creation of higher value-added employment; and moving up the value chain. Countries also need to ensure equity in the distribution of economic gains. In Chapter 8, Bajaj and Selvakumar discuss the role of MSMEs in services for inclusive development.

National political agendas are increasingly focused on ensuring that the domestic economy benefits from globalisation, while the developing South negotiation processes are also focusing on ensuring that ‘opening up’ to trade will increase the development benefits for their populations and domestic private sectors rather than occurring ‘at any cost’. For example, the Economic Partnership Agreement negotiations between the EU and the African, Caribbean and Pacific (ACP) countries have focused on ensuring developing countries benefit from trade liberalisation efforts. Meanwhile, ACP countries have raised concerns related to the Brexit vote. The Brexit referendum signals the presence of an electorate that is increasingly concerned about the domestic benefits of globalisation and ensuring their equitable distribution across countries, something that has been echoed by political discussion in other EU Member States and the USA. In Chapter 7, Vickers discuss the potential impacts of Brexit on Commonwealth countries.

1.2 Widening the global context

Multilateral trade processes are largely confined to the WTO context, with the exception of emerging regional and plurilateral trade processes based on shared regional geography or shared interests. Despite this siloed approach, there has been growing recognition of the impact of the multilateral trade agenda on the ability to deliver development and climate change goals in other spheres and vice versa. This section summarises the two key international agendas recently agreed that have implications for the multilateral trade context: the 2030 Agenda for Sustainable Development and the Paris Agreement.

The UN General Assembly agreed the 2030 Agenda for Sustainable Development in September 2015 to build on the progress of the Millennium Development Goal (MDG) agenda. The newly agreed 17 SDGs and 169 sub-targets cover a broad range of social, environment and economic objectives. The sub-targets related to the WTO context focus on lowering tariff and non-tariff barriers in social or health-related

goods and services, as well as growing the contribution of LDCs to global trade (see Box 1). Other trade-related sub-targets address the need to tackle inefficient fossil fuel and fisheries subsidies that promote unsustainable environmental practices. Beyond the trade-related targets, other targets include access to enablers of trade, such as equal rights to access ‘new technology and financial services’ (sub-target 1.5) and ‘markets and opportunities for value addition’ (sub-target 2.3), for example (UN, 2015a).

The means of implementation (MOI) to achieve the SDGs are included in SDG 17 as well as the Addis Ababa Action Agenda, the implementation agenda of the SDGs. Trade is included as an important MOI for the delivery of the SDGs in general (see sub-targets in Box 1.1), echoed within the Addis Ababa Action Agenda document. SDG 17 outlines the avenues through which global partnership towards sustainable development can be revitalised; the terminology is significant given that the global partnership provisions of the MDGs implementation agenda—the 2002 Monterrey Consensus—were argued to be largely undelivered during the UN General Assembly negotiations. The Addis Ababa Action Agenda recognises the precedence of the WTO in trade-related negotiations. Trade-related provisions included within the agenda focus on lowering trade barriers, particularly for LDCs, including through the conclusion of the Doha Development Agenda and increasing Aid for Trade allocations. Poorvi Goel discusses the 2030 Agenda further in Chapter 3.

International trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development. We will continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization (WTO), as well as meaningful trade liberalization. Such a trading system encourages long-term investment in productive capacities. With appropriate supporting policies, infrastructure and an educated work force, trade can also help to promote productive employment and decent work, women’s empowerment and food security, as well as a reduction in inequality, and contribute to achieving the sustainable development goals (UN, 2015b).

The UN Framework Convention on Climate Change (UNFCCC) 21st Conference of the Parties in December 2015, which had WTO representation, agreed the Paris Agreement. The Paris Agreement comes into effect in 2020 and has major implications for the multilateral trade environment in capping global emissions at 2°C, with text to increase ambition to 1.5°C. The agreement is unique in being bottom-up in nature and built on Nationally Determined Contributions (NDCs) to reach the set target. However, current NDCs are insufficient to reach the 2°C target. In order to meet the NDCs, UNFCCC members will need to instil sectoral economic policies to reduce incentives for polluting livelihoods, processes and sectors, with trade-distorting implications. Article 6 also refers to the market mechanisms in ‘cooperative approaches that involve the use of internationally transferred mitigation outcomes’ across Member States and the need to ‘enable opportunities for coordination across [climate mitigation] instruments and relevant institutional arrangements’ across borders (UN, 2015c). Beyond the policy implications of the Paris Agreement, climate

Box 1.1 SDG sub-targets relating to the WTO

2.b Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round

3.b Support the research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all

8.a Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-related Technical Assistance to Least Developed Countries

10.a Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements

14.6 By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

17.10 Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda

17.11 Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020

17.12 Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access

change will have significant global impacts, affecting the comparative advantage of countries in trade and resulting in an increase in the prevalence of environmental shocks.

Given the major changes in the WTO over the past decade and the more recent changes in the wider policy context, the global landscape for trade is changing significantly. This has important implications for WTO Member States, but in particular for small developing countries that are still struggling to come to terms with existing challenges in participating effectively in the multilateral trade context. Emerging issues within the WTO and the wider policy context will create additional challenges for these Member States, and this publication explores these in further detail. In light of the changing landscape, there is a need for renewed recognition of special and differentiated treatment for developing countries. In particular, it is critical to enable small and vulnerable economies (SVEs), small island developing states (SIDS), landlocked developing countries (LLDCs) and LDCs to access financing for development, technology transfer and knowledge so they can meet the targets set out in the various agreements and/or effectively take part in the ongoing negotiations of the various relevant international bodies, including within the WTO.

1.3 A case for small states

While this publication is essentially about small developing countries and LDCs, this section looks specifically at small states as defined by the Commonwealth. A previous publication (Soobramanien and Gosset, 2015) outlines challenges for Commonwealth small states in the multilateral trade context. This publication focuses specifically on the emerging issues within the multilateral trade context and wider international policy context, with implications for the small developing countries.

A key priority for these small states is ensuring trade is used as a tool for development and benefits the livelihoods of their populations as well as the domestic private sector. MSMEs are particularly important in this context, given their difficulties in accessing enablers of trade (such as finance, technology and services) to access GVCs, but also their role in contributing to development through employment generation and poverty reduction.

Soobramanien and Gosset (2015) discuss the issue of definition of small states: 'When compared with developing countries in general, small states have been found to face higher export-related costs owing to their geographic remoteness (many are islands or landlocked countries) and other factors that can undermine their economic competitiveness.' Despite widespread academic discourse on small states, though, there is disagreement in terminology across international organisations. Table 1.1 provides a brief overview of the key terms relating to small states. Despite this disagreement between definitions, these widely cover inherent disadvantages in geography, population, size or economic characteristics that hinder countries from effectively participating in the multilateral trading system.

From a policy perspective, small states may lack the technical capacity and political clout to participate effectively in multilateral trade negotiations under the WTO as

Table 1.1 Key definitions of selected country classifications

International organisation	Term	Definition	List of countries
Commonwealth Secretariat	Small states	Sovereign states with a population size of 1.5 million people or less. Larger members—Botswana, Jamaica, Lesotho, Namibia and Papua New Guinea—are designated as small states because they share many characteristics of small states.	30: Antigua and Barbuda, The Bahamas, Barbados, Belize, Botswana, Brunei Darussalam, Republic of Cyprus, Dominica, Fiji, Grenada, Guyana, Jamaica, Kiribati, Lesotho, Malta, Mauritius, Namibia, Nauru, Papua New Guinea, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Solomon Islands, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu.
UN	Landlocked developing states	Countries with a lack of territorial access to the sea posing persistent challenges to growth and development as the main factor hindering their ability to better integrate in the global trading system. Transit of export and import goods through the territory of at least one neighbouring country and frequent changes of mode of transport result in high transaction costs and reduced international competitiveness.	31: Afghanistan, Armenia, Azerbaijan, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Ethiopia, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Macedonia, Malawi, Mali, Moldova, Mongolia, Nepal, Niger, Paraguay, Rwanda, Swaziland, Tajikistan, Turkmenistan, Uganda, Uzbekistan, Zambia, Zimbabwe.

(continued)

Table 1.1 Key definitions of selected country classifications (continued)

International organisation	Term	Definition	List of countries
UN	Least developed countries	Low-income countries confronting severe structural impediments to sustainable development. They are identified using gross national income per capita, the Human Asset Index and the Economic Vulnerability Index.	49; Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen, Zambia.
UN	Small island developing states	Ecologically fragile and vulnerable. Their small size, limited resources, geographic dispersion and isolation from markets place them at a disadvantage economically and prevent economies of scale. For small island developing states, the ocean and coastal environment is of strategic importance and constitutes a valuable development resource.	There is no official list of SIDS. The following list is taken from the unofficial 2014 Year of the SIDS website, totalling 39: Antigua and Barbuda, The Bahamas, Barbados, Belize, Cape Verde, Comoros, Cook Islands, Cuba, Dominica, Dominican Republic, Fiji, Grenada, Guinea Bissau, Guyana, Haiti, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius, Micronesia, Nauru, Niue, Palau, Papua New Guinea, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Samoa, São Tomé and Príncipe, Seychelles, Singapore, Solomon Islands, Suriname, Timor-Leste, Trinidad and Tobago, Tonga, Tuvalu, Vanuatu.

WTO	Small and vulnerable economies	A group of developing countries seeking flexibilities and enhanced special and differential treatment for small, vulnerable economies in the negotiations. Defined as countries whose average share for 1999–2004 of world merchandise trade does not exceed 0.16 per cent, world non-agricultural market access does not exceed 0.10 per cent and world agricultural trade does not exceed 0.40 per cent.	26: Antigua and Barbuda, Barbados, Belize, Bolivia, Cuba, Dominica, Dominican Republic, El Salvador, Ecuador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Mauritius, Nicaragua, Panama, Papua New Guinea, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Sri Lanka, Tonga, Trinidad and Tobago. (In addition, the WTO observer member, The Bahamas.)
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Source: UN (1992, 2014, 2016), Soobramanian and Gosset (2015), Commonwealth Secretariat (2016), UNCTAD (2016a, 2016b), UNDESA (2016), WTO (2016)

individual countries. Instead, they often form coalitions to advance their interests, such as through the ACP, the Africa Group, the SVE informal group and the G90, and as LDCs; however, given the large number of countries participating, individual country interests may be severely diluted (Soobramanien and Gosset, 2015). Given inherent disadvantages in participating in the multilateral trading system, small states must also be wary of ambitious liberalisation agendas, often pursuing exemptions or incremental obligations under WTO agreements.

The challenges small states already face in the multilateral trade context are likely to be further exacerbated by emerging issues within the WTO context and arising out of the wider global context. The authors of the following chapters discuss some of the key challenges. Small states will need to proactively engage with these agendas in order not only to effectively participate in the 'new' negotiations but also to ensure their trade and development interests are adequately represented at the table. Given the technical capacity constraints these countries face, the development of domestic technical capacity will be vital, alongside leveraging international cooperation and support in trade capacity-building efforts.

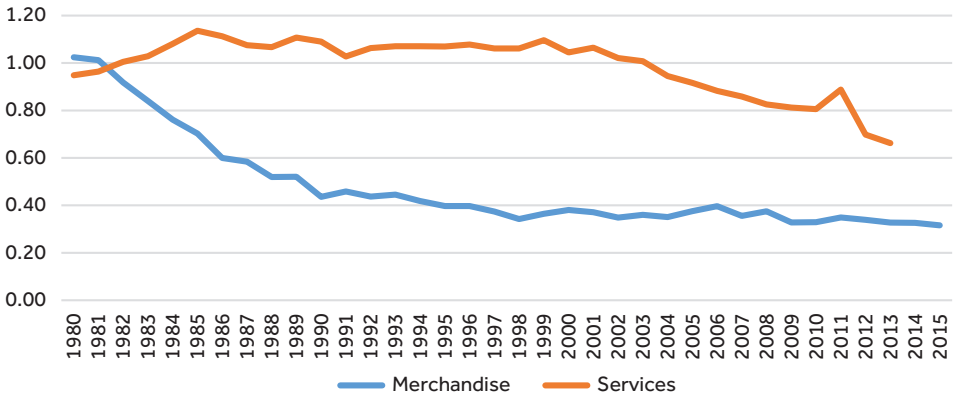
1.4 Commonwealth small states trade pattern

This following analyses trade data for the Commonwealth and the Commonwealth small states. The Commonwealth Secretariat's 2015 Trade Review provided an overview of the data for the 53 Commonwealth Member Countries. Their combined exports of goods and services were valued at \$3.4 trillion in 2013. In addition, there is increasing evidence of exports to developing countries, accounting for 29 per cent of Commonwealth total exports (*ibid.*). The 2015 Trade Review also outlines a 'Commonwealth effect'. Trade among Commonwealth countries is on average 20 per cent higher, generates on average 10 per cent more foreign direct investment and costs on average 19 per cent less than bilateral trade with non-Commonwealth countries. This is arguably because of the intrinsic advantages of being in the Commonwealth, including common (international) language, institutions, legal systems, etc. (*ibid.*).

Commonwealth small states have historically been marginalised in world trade, with a declining share of global exports on average from 1980 to the present, as shown in Figure 1.1 (Soobramanien and Gosset, 2015). Figure 1.2 shows trends in merchandise and services trade from 1980 to the present, demonstrating a clear negative shock following the global financial crisis in 2008, especially with regard to services. The annual percentage growth of merchandise trade in Commonwealth small states in the period 1995–2013, however, averaged 10.82 per cent, compared with 8.57 per cent growth for services. Recent trends in Commonwealth small states merchandise trade show annual percentages of negative growth in the period 2013–2015, reaching -7.9 per cent in 2015, with positive trends in services (UNCTAD, 2016c). The UNCTAD Statistics Diversification Index has remained relatively stable in Commonwealth Small States from 1995 to the present, fluctuating between 0.71 and 0.75 (*ibid.*).

As Soobramanien and Gosset (2015) outline, the majority of Commonwealth small states exports are goods (approximately 60 per cent). Total merchandise exports increased from US\$20.5 billion in 1995 to \$52.2 billion in 2015 (UNCTAD, 2016c).

Figure 1.1 Commonwealth small states’ percentage global shares of merchandise and services trade (1980–present)



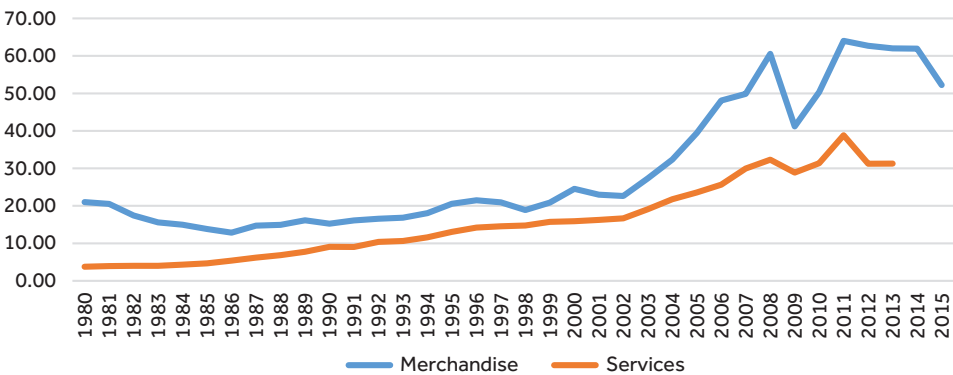
Note: Merchandise data show merchandise total trade share, annual data for 1980–2015. Services (BPM5) show exports and imports of total services share, annual data for 1980–2013

Source: UNCTAD (2016c)

The 2012 data reveal that approximately 35 per cent merchandise exports went to developing countries and the remainder to developed countries (author calculations from Soobramanien and Gosset, 2015).

Figure 1.2 shows the composition of Commonwealth small states’ imports and exports. Commonwealth small states have experienced a notable increase in exports to the emerging economies of India and China, from 2 per cent in 1995 to 5 per cent in 2012 (Soobramanien and Gosset, 2015). A small minority of ‘oil-rich’ countries, however, dominate these exports of Commonwealth small states, with for example Trinidad and Tobago and Brunei Darussalam representing over 40 per cent of total

Figure 1.2 Commonwealth small states’ value of merchandise and services trade (US\$ billions, 1980–present)



Note: Merchandise data show total merchandise trade, annual data 1980–2015. Services data (BPM5) show total services value, annual 1980–2013

Source: UNCTAD (2016c)

exports in 2012 where over 65 per cent of these exports were fuel (ibid.). Services trade is increasingly important in Commonwealth small states' exports, with exports and imports of total services reaching US\$13.1 billion in 1995 and more than doubling to \$31.3 billion in 2013 (UNCTAD, 2016c). The majority of the increase is explained by travel services, although Commonwealth small states are experiencing slower growth than developing countries as a whole (Soobramanien and Gosset, 2015).

1.5 Chapters overview

Chapter 2 provides an overview of emerging issues after the WTO Nairobi 10th Ministerial Conference. To put the issues into a wider perspective, Chapter 3 discusses the role of trade in realising the SDGs in the context of small states. Chapter 4 specifically provides an overview of SDG 14 on value chain governance for oceans and fisheries. Chapter 5 discusses trade sustainability and the inter-linkages of climate change and the environment with trade. The following chapter, Chapter 6, discusses the emerging issue of e-commerce and digital trade. Chapter 7 includes a discussion on Brexit and the Commonwealth and is followed in Chapter 8 by an analysis of the role of MSMEs in trade and development. The final chapter provides an overview of new approaches and architectures in the WTO context.

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Chapter 2

Post-Nairobi: Perspectives on Potential New Issues in the World Trade Organization

*Rashid S. Kaukab**

2.1 Background and context

The 10th World Trade Organization (WTO) Ministerial Conference, held in Nairobi, Kenya, on 15–19 December 2015, adopted a far-reaching ministerial declaration to guide the work of the organisation in the coming years. The last paragraph of this declaration created the possibility of bringing so-called ‘new issues’ to the WTO. This paragraph states, ‘[w]hile we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members’ (WTO, 2015, para. 34).

This is clearly not a mandate to negotiate, which can be granted only through an agreement/consensus among all members. Moreover, there is no mention or details of the ‘other issues’, or of how and when these can be identified and discussed. Nevertheless, and keeping in mind the rather long history of efforts to bring new issues to the WTO, there is an urgent need to objectively examine some of the potential ‘new issues’, with a view to developing a better understanding of them among the Commonwealth developing countries, particularly least developed countries (LDCs), small states and Sub-Saharan African countries. This will assist them in identifying their own interests and concerns regarding these issues and, hence, enable their better-informed and more active participation in various informal discussions. This chapter is geared towards meeting this need.

After briefly discussing some general contextual and background points about the new issues here, in the remainder of this introduction, Section 2.2 provides a brief but comprehensive analysis of several new issues. Finally, Section 2.3 offers some reflections and recommendations for the consideration of Commonwealth developing countries, in particular LDCs, small states and Sub-Saharan African countries.

Several important contextual points must be borne in mind when discussing potential new issues in the WTO. First, and perhaps the most important and interesting point, there is no clear and agreed definition of a ‘new issue’. A working understanding implies that a new issue is one without any existing WTO disciplines. However, this can be inadequate because there are provisions in many existing WTO agreements regarding most of the so-called new issues, for example provisions related to investment in the Agreement on Trade-Related Investment Measures (the TRIMs Agreement) and the General Agreement on Trade in Services (GATS), and those related to competition in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS

Agreement) and GATS. Therefore, the intention of the proponents of the new issues may be either (i) to supplement the existing WTO provisions on that issue; or (ii) to negotiate a dedicated, separate WTO agreement on that issue. Taken in this broad sense, a 'new issue' can be any issue that is not completely and/or distinctly covered under the existing WTO agreements. This broad understanding certainly enlarges the set of potential new issues, which leads us to the second contextual point below.

The broad understanding as described above would mean—at least theoretically—that any issue that is not fully and/or distinctly covered under the existing WTO agreements could be brought in as a 'new issue'. This will be problematic for at least two reasons. First, if the issue is already covered, but only partially, a better approach would be to build on this through the existing mandates for reviews and negotiations. Second, and more importantly, not every issue—no matter how new—can and should be addressed by the WTO. This condition has led to the general understanding that a new issue must be trade-related to be eligible to be proposed at the WTO. Although necessary and useful, this condition is not sufficiently robust, particularly in view of the growing flow of goods and services within and across borders, the emergence and expansion of regional and global value chains and links between various public policies and public policy instruments. In an increasingly interconnected and globalised world, any issue, whether economic, social or environmental, can have trade implications. However, this does not necessarily mean it should be addressed by the WTO, and competence to deal with it may lie with another international organisation or forum.¹ As a result, it has been extremely difficult to reach a consensus among all members on the 'trade-relatedness' of a 'new issue' and to bring it to the WTO. Third, the WTO debate around new issues has often been predicated on North–South (or the developing vs. developed country) lines.²

Although developed countries have generally proposed the new issues (based on the needs and demands of their businesses) to be discussed by the WTO, developing countries have generally opposed such efforts. There are several reasons for this general opposition of developing countries to the introduction of new issues in the WTO. First, their primary interest and emphasis has been on the full and faithful implementation of the Uruguay Round Agreements, and then on the conclusion of the Doha Round negotiations.

Second, they often lack the human, technical and institutional capacities to fully understand and effectively engage on a large number of issues. In many cases, their knowledge and understanding of the new issues may be limited.

Third, given the mercantile nature of the WTO and the fact that the proponents of new issues often happen to be developed countries, developing countries seem to fear that developed countries will accrue the main benefits emerging from agreements on new issues, while they will be left with less policy space, as well as the implementation burden of new commitments that can be enforced against them through the binding dispute settlement system.

Fourth, a look at the history of efforts to bring new issues to the WTO shows that these started as early as 1996, when the first WTO Ministerial Conference, held

in Singapore, established working groups on the four so-called Singapore Issues.³ E-commerce was brought into the work programme at the second WTO Ministerial Conference, held in Geneva in 1998. The fourth WTO Ministerial Conference in 2001, while launching the Doha Round, established Working Groups on Trade and Transfer of Technology (WGTTT), and Trade, Debt and Finance.⁴ None of these efforts led to the actual negotiation and conclusion of agreements, despite the attempts of their respective proponents, except for one, mentioned below. In fact, given strong opposition by developing countries, three of the four Singapore Issues (Relationship between Trade and Investment, Inter-Relationship between Trade and Competition Policy, and Transparency in Government Procurement) were dropped from the WTO agenda after the fifth WTO Ministerial Conference, held in Cancún in 2003.⁵

Fifth, and finally, although efforts to bring the new issues to the WTO have generally failed, at least one new issue has been successfully brought in and concluded at the WTO—namely, the WTO Trade Facilitation Agreement (TFA), which was concluded at the ninth WTO Ministerial Conference in 2013 and which entered into force on 22 February 2017. It is beyond the scope of this paper to discuss in full the reasons for this success. However, some key insights that can be offered in this regard include the clear relationship of the issue with trade; the perception of benefits to all; and the structure of the agreement, including the nature of special and differential treatment (S&DT) provisions in it, which link the assumption and implementation of obligations to national capacities and the provision of required assistance by developed countries. The lessons from this success, as well as from the failure in respect of many other new issues, should be kept in mind while dealing with potential new issues in the post-Nairobi scenario.

2.2 Potential new issues: Evolution and analysis

In the context of the points made in Section 2.1, this section provides a brief analysis of five ‘new issues’. These have been, or are, part of the WTO work programme, although they have not undergone any actual negotiations. These issues are trade and competition; trade and investment; transparency in government procurement; e-commerce; and trade and the transfer of technology. The ensuing sections give a brief account of their introduction and history in the WTO and identify key points of discussion among members, as well as points of particular interest to Commonwealth developing countries, especially LDCs, small states and Sub-Saharan African countries. Where relevant, they also include the latest developments on these issues outside the WTO, for example under the Trans-Pacific Partnership (TPP).

2.2.1 Trade and competition

History and key discussion points in the World Trade Organization

Competition has been discussed repeatedly in the context of trade. Non-discrimination and market access form the bedrock of the General Agreement on Tariffs and Trade (GATT), which aims to ensure a free and competitive market. A similar commitment

is seen in the GATS. The TRIPS Agreement allows Member States to take appropriate actions to prevent the abuse of intellectual property rights (IPR) that unreasonably restrain trade (e.g. anticompetitive licensing).

As a result of the WTO Ministerial Conference in Singapore (1996), the Working Group on the Interaction between Trade and Competition Policy (WGTCP) was established to study various aspects of this issue, with the participation of all WTO members. The WGTCP studied and discussed issues concerning trade and competition from 1996 to 2004, including:

- i. The relationship between the objectives, principles, concepts, scope and instruments of trade and competition policy, and their relationship with development and economic growth;
- ii. Stock-taking and analysis of existing instruments, standards and activities regarding trade and competition policy, including of experience with their application:
 - National competition policies, laws and instruments as they relate to trade;
 - Existing WTO provisions, bilateral/regional, plurilateral and multilateral agreements and initiatives;
- iii. Interaction between trade and competition policy:
 - The impact of anticompetitive practices of enterprises and associations on international trade;
 - The impact of state monopolies, exclusive rights and regulatory policies on competition and international trade;
 - The relationship between the trade-related aspects of IPR and competition policy;
 - The relationship between investment and competition policy;
 - The impact of trade policy on competition.

There were in-depth discussions in the WGTCP on many themes, and the following may be particularly relevant to Commonwealth developing countries:

Special needs and circumstances of developing countries

The view was expressed that an important feature of any multilateral framework in the area of competition law and policy would be its adaptation to the differing levels of development among members. It was important to take into consideration their different economic realities and degrees of economic development; their different cultural and social dynamics; the differences in resource endowments (i.e. taking note that certain applications of competition policy required more human and material resources); and the different degrees of institutional development present in Member States. In particular, any discussion pertaining to multilateral rules on competition

must take into consideration the different capacities and levels of sophistication of the developing countries.

Possible elements for a World Trade Organization framework on competition policy

It was suggested that the focus of this reform be to link WTO rules to the broad competition principles of open markets, non-discriminatory conditions of competition and consumer welfare. Along with the implementation of this approach, due attention needed to be given to governmental restraints, such as trade measures that restrict import and export competition, and exemptions from competition rules such as those concerning export cartels.

A number of further suggestions were made regarding implementation of a WTO framework on competition policy. First, it was suggested that transitional arrangements be an integral element of a multilateral framework. A second suggestion was to prioritise the anti-competitive practices that should be banned. A third was to examine the appropriateness of exemptions systems, particularly in terms of any adverse effects on economic development. A fourth was to study further whether or not competition law was a necessity, in particular whether or not there were ways in which to render markets competitive without resorting to a competition law. Fifth, it was desirable to conduct regular reviews of competition policy, including the handling of individual cases by members. Sixth, it was suggested that a technical co-operation and competition advocacy support system be created within the WTO.

Important recent developments outside the World Trade Organization

The TPP contains a specific chapter on competition policy,⁶ under which TPP members agree to adopt or maintain national competition laws that proscribe anticompetitive business conduct. To ensure such laws are effectively implemented, TPP parties will establish or maintain authorities responsible for the enforcement of national competition laws. The agreement limits the scope of competition policy to consumer protection, procedural fairness (with respect to laws of host countries), private rights of action, cooperation among competition authorities of Member States and transparency obligations.

The Transatlantic Trade and Investment Partnership (TTIP) between the USA and the EU is still under negotiation, and the final draft of the chapter on competition is not yet publicly available. However, the USA has indicated its interest in ensuring a sound and effective enforcement of competition for the efficient operation of markets and trade between the two trading blocs (Office of the US Trade Representative, 2014). Both parties also want disciplines on state-owned enterprises. The EU has released a draft of its textual proposal that indicates the level of coverage that it desires. It calls for a domestic competition law framework that addresses horizontal and vertical arrangements, the abuse of dominant positions and economic concentration. Furthermore, it calls for the effective implementation of laws, disciplines on state-owned enterprises and mutual cooperation between the competition authorities of both parties.

2.2.2 Trade and investment

History and key discussion points in the World Trade Organization

The Havana Charter for an International Trade Organization (Interim Commission for the International Trade Organization, 1948), which was never ratified, contained provisions on the treatment of foreign investment as part of a chapter on economic development. Article 12 acknowledged that investment was valuable in promoting economic development and reconstruction and that members shall strive to 'provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments, and to give due regard to the desirability of avoiding discrimination as between foreign investments'. It also recognised a member's right to regulate investment in line with its domestic policies.

Two existing WTO agreements contain important provisions related to investment. The TRIMs Agreement recognises that certain investment measures can restrict and distort trade. It states that WTO members may not apply any measure that discriminates against foreign products or that leads to quantitative restriction, and provides an illustrative list of prohibited TRIMs, such as local content requirements. Owing to strong disagreement among Member States during the Uruguay Round, the TRIMs Agreement does not impose any new disciplines or commitments relating to investments. The GATS governs rules relating to trade in services and describes four modes by means of which services may be rendered. One of these modes (commercial presence) deals with investment by foreign service suppliers and covers rules on general obligations, disciplines and individual commitments on market access.

As a result of the WTO Ministerial Conference in Singapore (1996), the Working Group on the Relationship between Trade and Investment (WGTI) was established to study various aspects of this issue, with the participation of all WTO members.

Under the Doha Ministerial Declaration (2001), the WGTI was mandated to clarify the scope and definition of the following issues: transparency; non-discrimination; means of preparing negotiated commitments; development provisions, exceptions and balance-of-payments safeguards; consultation; and dispute settlement (WTO, 2001: paras 20–22). A summary of some important points discussed from the perspective of Commonwealth developing countries is provided below.

Definitions of investment and investors

The definition of investment and investors was debated and discussed in great detail within the WGTI, and different approaches were highlighted. There was considerable difference of opinion among Member States on whether the Doha mandate⁷ prescribed a 'narrow' or 'broad' approach to defining investment. The narrow view supported limiting the definition to foreign direct investment (FDI) alone (sometimes also referred to as an 'enterprise-based' definition). The supporters of the 'broad' definition argued that the Doha ministerial mandate, while emphasising FDI, did not exclude the possibility of including other categories of investment. It was felt that a broad, asset-based definition of investment, covering both FDI and portfolio investment, would provide comprehensive, rules-based protection and guarantee high standards

of treatment for all categories of foreign investment. Supporters of a hybrid approach advocated the use of a narrow definition covering FDI in the pre-establishment phase only, and a broad, all-encompassing definition in the post-establishment phase.

Foreign direct investment and competition

The WGTI recognised that a liberal FDI regime could increase competition in the market and that a well-functioning competition policy could help remove obstacles to inward FDI resulting from the behaviour of incumbents. Therefore, a well-functioning competition policy could contribute towards providing an attractive legal framework for foreign investors and could enhance the benefits of inward FDI.

Transparency

Many Member States underlined in their submissions to the WGTI the importance of transparency for creating a predictable, stable and secure climate for foreign investment. The focus of discussion was not primarily on the benefits of transparency, but rather on the nature and depth of transparency provisions and the scope of their application. Member States recognised that transparency within the context of international commercial treaties involved two core requirements: (i) to make information on relevant laws, regulations and other policies publicly available; and (ii) to notify interested parties of relevant laws and regulations and any changes made to such laws. However, there was a difference of opinion on whether or not transparency also involved obligations to ensure laws and regulations were administered in a uniform, impartial and reasonable manner.

Some possible transparency obligations may include publication and notification requirements; enquiry points; prior notification; administrative and judicial procedures; investor and home country obligations; and confidentiality.

Non-discrimination

A distinction was drawn between the application of non-discrimination and national treatment, in particular at the pre- and post-establishment phases of investment. Many Member States agreed that the standards of non-discrimination should apply to investors and investments in the post-establishment period only, whereas the host country should have the right to regulate incoming investments, and that, therefore, pre-establishment commitments should be part of a multilateral agreement.

Balancing the benefits and costs

Developing countries acknowledged the importance of foreign investment for their sustainable development, including through the transfer of capital, technology and managerial know-how. Most developing countries were interested in attracting foreign investment through FDI and had undertaken many actions nationally to promote and protect foreign investment. However, they were not convinced that an investment agreement in the WTO would increase the flow of investment to them. They feared such an agreement would give more rights and privileges to foreign investors, including through dispute settlement.

Important recent developments outside the World Trade Organization⁸

In view of the importance of the definitions of investment and investors, as they effectively determine the coverage of obligations, it is useful to look at the definitions being adopted more recently in agreements/negotiations outside the WTO.

The TPP defines investment as⁹:

Every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- a. an enterprise;
- b. shares, stock and other forms of equity participation in an enterprise;
- c. bonds, debentures, other debt instruments and loans;
- d. futures, options and other derivatives;
- e. turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- f. intellectual property rights;
- g. licences, authorisations, permits and similar rights conferred pursuant to the Party's law; and
- h. other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

Under TTIP negotiations, the EU has released a draft of its textual proposal that indicates its desired coverage (EU, 2015):

Investment means every kind of asset which has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- a. an enterprise;
- b. shares, stocks and other forms of equity participation in an enterprise;
- c. bonds, debentures and other debt instruments of an enterprise;
- d. a loan to an enterprise;
- e. any other kinds of interest in an enterprise;
- f. an interest arising from:
 - i. a concession conferred pursuant to domestic law or under a contract, including to search for, cultivate, extract or exploit natural resources,

- ii. a turnkey, construction, production, or revenue-sharing contract, or
- iii. other similar contracts;
- g. intellectual property rights;
- h. any other moveable property, tangible or intangible, or immovable property and related rights;
- i. claims to money or claims to performance under a contract. (For greater certainty, 'claims to money' does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party, domestic financing of such contracts, or any related order, judgment, or arbitral award.)

Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments.

However, in January 2016, India released its model Bilateral Investment Treaty (BIT), which adopts a narrower enterprise-based definition:¹⁰

Investment means an enterprise constituted, organised and operated in good faith by an investor in accordance with the law of the Party in whose territory the investment is made, taken together with the assets of the enterprise, has the characteristics of an investment such as the commitment of capital or other resources, certain duration, the expectation of gain or profit, the assumption of risk and a significance for the development of the Party in whose territory the investment is made. An enterprise may possess the following assets:

- a. shares, stocks and other forms of equity instruments of the enterprise or in another enterprise;
- b. a debt instrument or security of another enterprise;
- c. a loan to another enterprise
 - i. where the enterprise is an affiliate of the investor, or
 - ii. where the original maturity of the loan is at least three years;
- d. licenses, permits, authorisations or similar rights conferred in accordance with the law of a Party;
- e. rights conferred by contracts of a long-term nature such as those to cultivate, extract or exploit natural resources in accordance with the law of a Party, or
- f. Copyrights, know-how and intellectual property rights such as patents, trademarks, industrial designs and trade names, to the extent they are recognized under the law of a Party; and
- g. moveable or immovable property and related rights;

- h. any other interests of the enterprise which involve substantial economic activity and out of which the enterprise derives significant financial value.

For greater clarity, investment does not include the following assets of an enterprise:

- i. portfolio investments of the enterprise or in another enterprise;
- ii. debt securities issued by a government or government-owned or controlled enterprise, or loans to a government or government-owned or controlled enterprise;
- iii. any pre-operational expenditure relating to admission, establishment, acquisition or expansion of the enterprise incurred before the commencement of substantial business operations of the enterprise in the territory of the Party where the investment is made;
- iv. claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party;
- v. goodwill, brand value, market share or similar intangible rights;
- vi. claims to money that arise solely from the extension of credit in connection with any commercial transaction;
- vii. an order or judgment sought or entered in any judicial, administrative or arbitral proceeding;
- viii. any other claims to money that do not involve the kind of interests or operations set out in the definition of investment in this Treaty.

2.2.3 Transparency in government procurement

History and key discussion points in the World Trade Organization

The GATT's Article III:8(a) excludes government procurement from national treatment commitments (GATT, 1994: Annex 1a). However, it defines the scope of exclusion. Government procurement is described as 'procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale'. The GATS gives an identical description while excluding the procurement of services from commitments under the agreement as 'procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale' (GATT, 1994: Annex 1b).

Government procurement has been an important area of work within the WTO, and Member States have worked on it on three fronts, as outlined below.

Plurilateral agreement on government procurement

The WTO Agreement on Government Procurement (GPA) was negotiated to ensure open, fair and transparent conditions of competition in government procurement.

Given that it is a plurilateral agreement, not all WTO members are parties to it. The first agreement (called the Tokyo Round Code on Government Procurement) and its amendment were negotiated as part of the Tokyo Round, and extended discussions under the Uruguay Round led to the GPA of 1994. Continued discussions for improving the government procurement regime led to the adoption of the Revised Agreement on Government Procurement 2012.

The GPA establishes rules that require open, fair and transparent conditions of competition in government procurement. However, these rules do not automatically apply to all the procurement activities of each party. Rather, disciplines apply according only to the commitments made by each member in its commitment schedule.¹¹

GPA 1994 and 2012 extend to both goods and services. They require Member States to extend most-favoured nation and national treatment benefits and to contain disciplines on transparency.

General Agreement on Trade in Services Negotiations on Government Procurement¹²

The GATS excludes government procurement in services from market access commitments. However, it does establish a multilateral mandate for negotiating the procurement of services. Negotiations have been ongoing under the Council for Trade in Services. There remains a significant difference of opinion among Member States on the scope and mandate for the negotiations.

Some members take the view that negotiations under this mandate can involve market access and non-discrimination as well as transparency and other procedural issues. Other members believe the mandate excludes most-favoured nation treatment, market access and national treatment from the scope of the mandated negotiations.

Working Group on Transparency in Government Procurement

The Singapore Ministerial Conference of 1996 set up the multilateral Working Group on Transparency in Government Procurement (WGTGP) to conduct a study on transparency in government procurement practices, taking into account national policies and, on that basis, to develop elements suitable for inclusion in an appropriate agreement.¹³ The Doha Ministerial Conference recognised the need for a multilateral agreement on transparency in government procurement and for enhanced capacity-building/technical assistance to developing countries and LDCs (WTO, 2001: para. 26). Like the working groups on Trade and Competition and Trade and Investment, the WGTGP carried out its work from 1997 to 2004.

The WGTGP discussed many issues, broadly covering the following themes:

- The definition of government procurement and the scope and coverage of a potential agreement;
- The substantive elements of a potential agreement on transparency in government procurement, including various aspects of access to general and specific procurement-related information and procedural matters;

- Compliance mechanisms of a potential agreement; and
- Issues relating to developing countries, including the role of S&DT, as well as technical assistance and capacity-building.

A summary of the discussion of some important points from the perspective of Commonwealth developing countries is as follows (WTO, 2002: 3–5):

Definitions

One view was that existing definitions under Article III:8 of the GATT and Article XIII:2 of the GATS could be used for a potential future multilateral agreement. Another view propounded that such a definition may not be sufficient or clear, particularly since ‘governmental purposes’ was itself a vague term.

Treatment of contractual arrangements by government entities

The main issue that arose with regard to this matter was the extent to which concessions and build–operate–transfer (BOT) contracts should be covered and, if covered, how they should be defined. Member States had a difference of opinion on this issue. Some felt that BOT contracts and concessions should not be covered, while others expressed the view that BOT contracts and at least some types of ‘concessions’ should be considered government procurement, especially given that in many countries the private sector has been increasingly involved in rendering goods and services that were traditionally handled exclusively by governments.

Application to levels of government entities

Three different approaches were offered. First, entities at all levels of government, including at sub-central levels, should be covered. Second, central government entities and entities at the highest level of sub-central government should be covered. Third, only central/federal government entities should be covered. Another important area of discussion under this theme pertained to procurement by state enterprises and whether or not such procurements should be covered under ‘government procurement’.

Application to procurement of services

Some Member States suggested that the issue of procurement of services should be discussed and decided under the GATS framework. Others expressed the view that there was little or no difference in the procurement of goods and services and that, therefore, both should be covered.

Application thresholds

The main issue related to whether or not the use of threshold values might avoid an unnecessary burden resulting from a transparency agreement. Many members opined that there should be a minimum threshold below which transparency obligations would not apply, and that there should be different limits for developing countries.

Application to procurement not open to foreign competition

It was the view of some that information on contracts that are not open to foreign entities was not a legitimate concern for an international agreement and, therefore,

should not be covered. Another view advocated the need to also cover such contracts, since foreign suppliers have an interest in clear information indicating that certain contracts are not open to them.

Provisions for exceptions

There was a discussion on including a general exceptions list, as contained in the GATT and GATS, which would be exempt from transparency obligations. Some Member States believed that, given the limited scope of such an agreement, general exceptions were not required. Furthermore, some suggested that exceptions should be envisaged to respond to social and developmental objectives, including procurement for public distribution systems and stabilisation programmes for essential commodities. Others argued that such goals did not conflict with the aim of achieving transparency.

Important recent developments outside the World Trade Organization

The TPP¹⁴ subjects government procurement to core commitments on national treatment and most-favoured nations. The chapter on government procurement applies to all measures concerning ‘covered procurement’, which is defined as a good or service or their combination specified in each member’s schedule by ‘any contractual means, including purchase; rental or lease, with or without an option to buy; BOT contracts; and public works concessions contracts’ above a specified threshold value by a procuring entity.¹⁵

The EU has not yet published the proposal that it submitted to the USA on government procurement under TTIP negotiations. The summary factsheet on government procurement highlights the importance of market access commitments on procurement; however, it does not detail the scope of the chapter.¹⁶

However, the recently completed text of the Comprehensive Economic and Trade Agreement between the EU and Canada is a good reference point from which to understand the EU’s comfort level. It extends the obligations on procurement to all covered procurements. In article 19.2, ‘[c]overed procurement’ covers both goods and services that are ‘not procured with a view to commercial sale or resale, or for use in the contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy’ above a specified threshold limit by a procuring entity.

2.2.4 E-commerce and digital trade

History and key discussion points in the World Trade Organization

At the WTO’s Second Ministerial Conference in Geneva in 1998, a Declaration on Global Electronic Commerce was adopted. The Declaration called for the establishment of a work programme ‘to examine all trade-related issues relating to global electronic commerce, including those issues identified by Members.’ Member States also affirmed that they would continue not to impose customs duties on electronic transmissions.

In September 1998, the General Council adopted the Work Programme on Electronic Commerce with a mandate to examine all trade-related issues relating to

global e-commerce and to propose any recommendations for action. Furthermore, four WTO bodies were mandated to continue the task of the work programme by exploring existing links between WTO agreements and e-commerce. The Council for Trade in Services was instructed to examine the treatment of e-commerce within the GATS; the Council for Trade in Goods was instructed to study the treatment of e-commerce in the GATT; the Council for TRIPS was mandated to examine IPR issues pertaining to e-commerce; and the Committee on Trade and Development was required to report on the development implications of e-commerce. The WTO General Council was mandated to, and continues to, keep the work programme under continuous review.

For the purposes of the work programme, e-commerce was understood to mean 'the production, distribution, marketing, sale or delivery of goods and services by electronic means'. The work programme covers all issues related to trade arising from global e-commerce, including enhancing internet connectivity and access to information and telecommunications technologies and public internet sites, the growth of mobile commerce, electronically delivered software, cloud computing, the protection of confidential data, privacy and consumer protection. The work programme also explores the economic development opportunities afforded by e-commerce for developing countries, particularly LDCs.

Over the years a number of topics have been discussed, some of which are highlighted below:

- Protection of personal information, privacy and development of e-commerce;
- Rules supporting innovative advances in computer application and platforms;
- Enhancing internet connectivity and mobile telephones;
- Electronically delivered software;
- Cloud computing;
- Consumer protection;
- Access to e-commerce by micro, small and medium-sized enterprises;
- Trade treatment of electronically delivered software;
- Jurisdiction and rules for applicable law to govern e-commerce;
- Classification of the content of certain electronic transmission.

Below is a summary of some important points addressed in the discussion.

Classification of digitised products

There was a considerable amount of discussion on the classification of digitised products and how this would fit within the WTO rules. The Harmonised System, upon which GATT concessions are negotiated, covers only goods that have physical characteristics, and it is not possible to fit electronic transmissions within the existing nomenclature. Furthermore, the need for a concrete definition of 'digitised product'

was mooted. Members were not sure if the coverage would include such different things as architectural designs, health check reports and fashion design, etc., which may be vague. Members also discussed the fact that there was likely to be overlap and confusion between application of the GATT and GATS to digitised products.

For example, such confusion could have related to software that could be either downloaded or delivered on a disk by means of cross-border post after an order was placed. The two transactions might be exactly the same, and it is simply the customer's choice as to how the software is supplied. Here, there may be inconsistencies between the commitments under the GATS and those under the GATT if the software were to be delivered physically. In this case, it would be not only the GATT that applied, but both the GATT and the GATS, because the GATS would apply to the distribution transaction and the GATT to the physical product. Many members thus believed that analysis of the scope called for its classification as a cross-cutting issue and should be further explored.

Fiscal implications

Some members were interested in finding out more about the application of internal taxes or other charges to e-commerce by different countries. Diverging views were expressed on the actual impact of e-commerce with regard to revenue losses for developing countries.

Imposition of customs duties on electronic transmissions

It is worth noting that the moratorium on the imposition of customs duties on electronic transmissions continues. At the WTO's 10th Ministerial Conference in Nairobi in December 2015, a decision was taken that Member States would not impose any customs duties on electronic transmissions until the next meeting in 2017.

Development-related issues

Many members voiced a concern that the benefits of e-commerce may not automatically flow to developing countries, despite this being an important tool of growth for them. As such, technical assistance alone may not be sufficient. Measures would have to be taken regarding access to basic infrastructure and technology, investment, market access, human resources and education.

Major recent developments outside the World Trade Organization

TPP's e-commerce chapter includes commitments ensuring that companies and consumers can access and move data freely (subject to safeguards), which will help ensure the free flow of global information and data. It also includes commitments on market access and national treatment and other measures to help prevent unreasonable restrictions, such as the arbitrary blocking of websites.

According to the definitions in the TPP, a digital product means a computer programme, text, video, image, sound recording or other product that is digitally

encoded, produced for commercial sale or distribution, and can be transmitted electronically. Electronic transmission or transmitted electronically means a transmission made using any electromagnetic means, including photonic means.

The EU has made available a draft proposal that it has submitted to the USA under the TTIP negotiations. The chapter on e-commerce applies to telecommunications and other information and communication technologies. It does not apply to gambling services, broadcasting services, audio-visual services, services of notaries or equivalent professions and legal representation services. The chapter on cross-border services deals with such issues (except audio-visual services).

Electronic transmission shall not be subject to any customs duties, and the chapter highlights the need for cooperation, the conclusion of contracts electronically and marketing communications. The chapter on the cross-border supply of services deals with market access, national treatment and most-favoured nation obligations. However, none of the provisions in the draft defines the items covered under e-commerce.

2.2.5 Trade and transfer of technology

There are a number of provisions in the WTO agreements that call for the transfer of technology between developed and developing countries.

The GATS recognises that increasing the participation of developing countries in world trade in services needs to be facilitated. This requires strengthening the capacity and competitiveness of their services sectors, *inter alia*, through access to technology on a commercial basis. The GATS also contains an obligation in Article IV paragraph 2, which encourages 'developed countries to establish contact points to facilitate the access of developing country members' service suppliers to information related to their respective markets concerning the availability of services technology'.

The TRIPS Agreement contains standards that affect the transfer of technology, and a number of provisions relate directly to the transfer of technology. The stated objectives of the agreement include that the 'protection and enforcement of IPR should contribute to the promotion of technological innovation and to the transfer and dissemination of technology'. Similarly, Article 8 states that members may adopt measures to promote technological development provided that these are consistent with the provisions of the TRIPS Agreement. The TRIPS Agreement also stipulates that 'developed-country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base'.

Under Article 9 of the WTO Agreement on Sanitary and Phytosanitary Measures, Member States agree to help developing countries with technical assistance, including in the areas of 'processing technologies, research, and infrastructure'. In a similar vein, the Agreement on Technical Barriers to Trade recognises 'the contribution which international standardization can make to the transfer of technology from developed to developing countries'.

However, many countries raised the issue that there were no guidelines to facilitate the transfer of technology and questioned how the transfer should take place and what specific measures could be taken within the WTO. As a result, in 2001 the Doha Ministerial Declaration called for the establishment of a working group to examine the relationship between trade and the transfer of technology and to prescribe any recommendations that may be taken within the mandate of the WTO to increase the flow of technology to developing countries.

The WGT'TT's work programme has largely comprised the following issues:

- An analysis of the relationship between trade and the transfer of technology;
- Work by other international intergovernmental organisations and academia;
- Sharing of country experiences;
- The identification of provisions related to the transfer of technology in the WTO agreements;
- Any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.

Some important points discussed in the WGT'TT include the following:

Definitional issues

Members expressed two different views on the definitional aspect of technology and its transfer. One group of countries (including the EU, Japan and Canada) argued in favour of a broad and inclusive definition of technology transfer. They felt a narrow definition of technology transfer would risk excluding relevant factors and processes that hinder developing countries in their efforts to make use of the opportunities that access to and use of technology offer. They felt that a definition should be inclusive and, *inter alia*, comprise the processes and factors relating to access to and use of technology.

The other group, comprising countries including India, Pakistan, Brazil, Cuba and Egypt, argued that the WGT'TT should avoid duplication and extract the benefits from a large body of available literature on this aspect. In their view, getting caught up in the definitional aspect would only shift its focus from the core issues.

Enabling environment

An important issue has been the vital role of domestic policies and frameworks in the generation, transfer and diffusion of technology. There is general recognition that the development of human capital, infrastructure, legal frameworks, macroeconomic conditions, levels of indigenous skills of workers and the domestic education system are key elements in creating a suitable enabling environment for the flow and diffusion of technology. Some members also emphasised the importance of a country's absorptive capacity in this regard, which depends on, among other things, the level and nature of the domestic education system in attracting technology from abroad.

Roles of home and host countries

Members considered the roles of both home and host countries to be important factors in facilitating the transfer of technology. Some believed the role policies could have in promoting greater flows of technology transfer could be established by considering both international technology transfer and the diffusion of technology within a country, once it had been transferred. Others emphasised the importance of examining the reasons why developing countries faced structural problems in acquiring technology from abroad and considering ways in which the international community could change that situation.

Furthermore, many developed countries argued that the regulatory framework and other supportive measures in the host country to attract technology were of crucial significance in creating an enabling environment. However, many developing countries believed that home country measures, including financing for the transfer of technology, incentives to stimulate FDIs with a technology of transfer component, incentives for small and medium-sized enterprises seeking partners in developing countries, simplification of rules of origin and the establishment of a database to ensure the flow of all relevant information on technology, were much more important in facilitating technology transfer.

Role of intellectual property rights

The discussions suggest that, although the empirical evidence on the subject is mixed, an appropriate IPR regime could have a role in technology transfer as an inducement to direct investment, as a stimulus to innovation and as a source of inexpensive technological know-how. However, views have also been expressed that one cannot be the precondition for the other. A number of members have stated that it is only after a developing country has acquired sufficient national scientific and technological capacity that the protection of intellectual property becomes an important element in the transfer of technology.

Role of foreign direct investment

There has been a difference of opinion among members on the role of FDI and the transfer of technology. Some members observed that technology transfer was often most successful when accomplished by means of FDI. They believed that the pre-establishment assessment and long-term commitment of foreign direct investors increased the likelihood that transferred technology would be adapted to local needs and made suitable for the local production environment. However, other members (particularly the developing countries) felt that, although FDI could result in the transfer of technology, its importance in that regard had been overstated. They have been sceptical about FDI providing a solution to the problem of technology transfer in much of the developing world, especially given that FDI in many cases has resulted in the transfer of only low levels of technology.

Transfer of technology and World Trade Organization agreements

The Working Group engaged in preliminary discussions on some of the existing WTO agreements that contain technology-related clauses that might have an impact

on facilitating the flow of technology to developing countries. Members recognised that most of the WTO provisions related to technology transfer were of a ‘best endeavour’ nature, rather than binding obligations, and believed they should be made operational so they could actually facilitate the transfer of technology to developing countries. Others argued that the provisions were underpinned by several priorities, such as integrating countries into world trade, protecting IPR, increasing the flow of investment and promoting sustainable development. They noted that some of these provisions identified technical assistance, training, the provision of information and other forms of developmental cooperation as the principal means of promoting the transfer of technology. These members were also not willing to introduce any element of negotiation into the Working Group and believed it was not the appropriate forum in which to review implementation of the WTO agreements.

Role of technical assistance

Members acknowledged that technological capacity-building in developing countries could have an important role in the transfer of technology. Some believed that, as production became increasingly knowledge and technology-intensive, issues of technology transfer and technological capacity-building in developing countries would become even more important for achieving sustained growth and development. They felt enhancing the effectiveness of the relevant WTO instruments for the transfer of technology and capacity-building in developing countries would be important. At the same time, they argued the WTO was not geared to support initiatives that would help developing countries attract foreign technology.

2.3 Ways forward: Some reflections and recommendations

The information and points presented in the previous two sections of this paper highlight several insights relevant to the discussion of potential new issues in the post-Nairobi period. First, many of the new issues are not really ‘new’ to the WTO. There are provisions in several existing WTO agreements that deal with some aspects of these. Moreover, wide-ranging discussions have taken place among members on many of these issues, and a body of relevant information and analysis exists in WTO Reports and WTO Secretariat Notes.

Second, and as a very important caveat to the first point, the views and perspectives of members continue to diverge. This divergence is related not only to whether or not to negotiate on the issue but also, perhaps even more importantly, to definitions, possible coverage, extent of possible obligations, special treatment for developing countries and application of WTO dispute settlement, among other things. Third, and unsurprisingly, these differences and divergences are often predicated on developed vs. developing country lines.

Fourth, definitional challenges abound for all the issues. There may be many reasons for this. Technical clarity and legal specifications are always difficult when dealing with emerging and complex phenomena. The definitions also determine the scope, and hence shape the extent, of ultimate obligations. In this sense, definitions have a big impact on ultimate outcomes and members are thus understandably very

careful. The definitional challenge may also be attributable to the current and future commercial interests of the members. Members have a tendency to argue for the definitions that best serve their own interests.

Fifth, the debates on special treatment for developing countries with respect to the new issues generally reflect the very similar views and deadlock as in the other WTO discussions and negotiations under the Doha Round on S&DT for developing countries. Hence, while the needs of developing countries for technical assistance, capacity-building and transitional periods are recognised, there is generally much stronger resistance to allowing them substantively differentiated obligations, particularly as a group.

Sixth, the world outside the WTO is moving on. The same new issues have been/are being negotiated in regional and plurilateral agreements outside the WTO. These often take place among developed countries, although some developing countries are also part of these. These agreements are adopting definitions, clarifying concepts, determining obligations and setting the standards that may very well become the templates for future negotiations and agreements on these issues. Rather worryingly, the inputs by developing countries to these developments have so far been very limited.

Seventh, the international economic and trade scene has been evolving at a pace not witnessed before. Technological, economic and political changes require that the trade rule books also be updated. This may be done by addressing the new issues and, hence, it is important to find appropriate ways in which to do this.

Finally, amid all this, a large number of developing countries, particularly LDCs, small states and Sub-Saharan African countries, continue to face the extreme challenges of under-development and abject poverty. Their resources remain limited and they are still marginalised in the international trade and economic systems. Their engagement in discussions on potential new issues is urgently warranted but is predicated on building their capacity as well as clearly demonstrating the tangible benefits they will reap from participation. This should be the role and responsibility of their developed country partners.

For their part, these developing countries need to break the vicious cycle of their limited participation in the WTO discussions/negotiations, which leads to lopsided agreements that do not benefit them equally, which in turn leads to chronic under-capacity and resentment, reflected again in their limited participation in the subsequent discussions/negotiations.

Accordingly, some suggestions are hereby offered to assist the Commonwealth developing countries, in particular LDCs, small states and Sub-Saharan African countries:

- **Substantive and technical preparations:** There is an urgent need to undertake a reasonably thorough assessment of the potential new issues with a view to improving technical knowledge and understanding, identifying national interests and concerns and outlining possible substantive ways and means by which to

articulate and advance these interests and concerns. This will be challenging but not impossible. In many cases, there is no need to reinvent the wheel: a great deal of information and analysis already exists. This can be built upon and refined with the help of organisations such as the Commonwealth Secretariat. An important component of this work will be country- and region-specific.

- **Models for S&DT:** As part of these substantive preparations, it will be crucial to develop concrete, robust, realistic and practical models for the S&DT of developing countries with respect to the new issues. This work should not be postponed. Developing countries cannot abandon the quest for S&DT, but this quest should not remain grounded in the past. There is the opportunity for innovation in crafting S&DT that is suitable to each issue and in line with countries' development needs. The experience of TFA negotiations can be useful in this regard.
- **Initiative and engagement:** Developing countries should not remain passive bystanders and wait for developed countries to set the agenda. They can be proactive in many ways without giving up their principled positions on new issues. For example, they can propose new issues relating to their own interests; request other proponents of new issues to provide further details and clarifications particularly related to the development dimension of the issues; ask relevant international and non-governmental organisations to assist by preparing focused studies and option menus; discuss/take up the issues within their own fora and regional arrangements; and engage in informal discussions with developed countries, etc.
- **Strategic approach:** Finally, developing countries need to develop a holistic and strategic approach to new issues. These—and even 'newer'—issues will keep emerging in a fast-evolving world. A knee-jerk reaction of either an immediate 'no' or an enthusiastic 'yes' to each issue will not be appropriate. Instead, there is a need for a strategic approach that carefully examines each issue and then decides whether, where and how to deal with it.

Notes

* Rashid S Kaukab is Executive Director, CUTS International, Geneva. This paper has been contributed in his personal capacity with substantial research inputs by Smriti Bahety, Policy Analyst, CUTS International, Jaipur, and hence does not necessarily reflect the views of CUTS International. An earlier draft of this paper was presented at a meeting of the African Commonwealth countries held in Lusaka, Zambia, on 14–15 April 2016.

- 1 It can be argued that one reason for the proponents of the new issues bringing these to the WTO is the incomplete and uncoordinated system of global governance, where effective, well-resourced and competent international organisations do not always exist and/or have the mandate to deal with the issue comprehensively and effectively. Moreover, systematic and organised mechanisms to bring together several international organisations to deal collectively with issues that clearly have multiple dimensions do not exist. Finally, the binding and efficient dispute-settlement system of the WTO can be a reason for bringing the issues to the WTO even when other organisations may be dealing with it.
- 2 This seems to be changing, as now some developing countries do not seem to oppose the new issues so stringently.

- 3 Relationship between Trade and Investment, Inter-Relationship between Trade and Competition Policy, Transparency in Government Procurement, and Trade Facilitation.
- 4 This was at the demand of developing countries.
- 5 Although developing countries advanced many reasons for their opposition, their limited technical and negotiating capacities, their priority for the implementation of Uruguay Round Agreements and the conclusion of Doha Round, and their perception of these issues as being of primary benefit to developed countries, can be regarded as the main ones. It will be imperative to understand and effectively address these in order to overcome the opposition of many developing countries to the bringing of 'new issues' to the WTO in the future.
- 6 Chapter 16 of the TPP, available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Competition.pdf>
- 7 The Doha mandate gave guidance in this area, through its reference to 'long term cross border investment, particularly foreign direct investment that will contribute to the expansion of trade'.
- 8 Investment has also been covered through a very large number of bilateral agreements among countries, known as Bilateral Investment Treaties (BITs). A cursory look at the BITs' evolution in the past decade shows a movement towards balancing the rights of foreign investors and host governments, including through reform of the mechanisms for dispute settlement between them.
- 9 Chapter 9 of TPP, available at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>
- 10 See https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf
- 11 See https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm
- 12 Ibid.
- 13 See https://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm
- 14 See <https://ustr.gov/sites/default/files/TPP-Final-Text-Government-Procurement.pdf>
- 15 Please note that 'procuring entity' is described (by way of listing specific government entities or departments) by each party in its own schedule of commitments.
- 16 See http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153000.3%20Public%20Procurement.pdf

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Chapter 3

The Imperatives of More Effectively Leveraging Trade and Advancing the Sustainable Development Goals in Small States

*Poorvi Goel*¹

3.1 Introduction

The international community adopted the Sustainable Development Goals (SDGs) as a key component of the 2030 Agenda. The 17 goals linked to 169 targets, progress on which will be measured against as many as 304 proposed indicators, provide a global framework of actions over the next 15 years to tackle critical socioeconomic and environmental challenges. The increased number of goals and targets reflects the level of ambition of the SDGs compared with the Millennium Development Goals (MDGs), which had 8 goals, 21 targets and 60 indicators. Building on the initiative implemented during 2000–2015, the new focal point for action by the international community seeks not only to finish what the MDGs started but also to go beyond, including by identifying the ‘means of implementation’.

However, the translation of the SDGs into an implementation agenda remains subject to continued debate. While the goals have been mandated by Heads of State, they must be implemented within a somewhat piecemeal international architecture. There is continued reliance on the multilateral trading system as a means of implementation. Under these tools for meeting the targets, international trade has been given an unprecedented role, with direct and cross-cutting references to deliver on the global agenda—representing a heartening effort to mainstream trade into a comprehensive development strategy. However, experience to date, including the continued failure to reach agreement on the Doha Development Round of negotiations, suggests that challenges lie ahead.

In addition to these political economy issues, the SDGs were adopted just at the time when the global economy began to experience a profound structural shift. An unprecedented trade slowdown has marked the recovery period since the global financial crisis of 2008. In 2016, global trade expanded by 1.9 per cent, down from 2.4 per cent growth in the previous year (IMF, 2017). In fact, the growth of trade volume for five years in a row has been much lower than the comparable annual average growth of about 6 per cent during 1980–2007. This unfavourable turn of events stands in contrast with the buoyancy of global trade apparent when the MDGs were adopted, in 2000. Even with a favourable global trading landscape, small states² were in any case unable to fully achieve the aspirations of the MDGs (World Bank, 2013).

The absolute value of exports of goods and services actually contracted by US\$2.8 trillion in 2015, with at least 121 countries reporting a decline in export earnings in that year. When the MDGs were adopted in 2000, exports of goods and services had expanded by \$814 billion. This trade slowdown has also adversely impacted small states, with a contraction of goods and services exports of \$67 billion in 2015.³ However, services have been outperforming trade in goods; the contraction in small states is explained by the goods exports contraction of \$79 billion. The projections for 2012–2021 unfortunately also present a somewhat sanguine outlook and perspective. If projections turn out to be correct, this could be the slowest period of trade expansion since the second world war. This lost decade of gains from trade potentially poses an even bigger loss to small states. This is because of the amplified effect of trade on their growth and development, their small size and their greater reliance on external trade as a result of limited domestic markets.

Subdued economic growth in the Eurozone, China's rebalancing of economic activities away from investment towards consumption and services and faltering economic performance of several advanced developing countries, among other factors, will continue to weigh in on the global trading system. Exacerbating this is the growing prevalence of protectionist measures and discontent about globalisation and trade liberalisation, which are causing heightened policy uncertainty and leaving small, poor and vulnerable countries most affected (Razzaque et al., 2017). That is, the global trade slowdown is being accompanied by systemic threats to the current global trade support architecture, which is worrying for small states as they depend most on the multilaterally agreed framework of rules to protect their trade interests.

Just as the global trading system is struggling, the UN agenda is striving for higher ambition. There is a much greater focus on the specific trade interests of small states within the SDG agenda. While the goals address many important issues that are common to developing countries, due consideration has been given to the special needs of small, vulnerable economies (SVEs), least developed countries (LDCs), small island developing states (SIDS) and landlocked developing countries (LLDCs). A much greater degree of differentiation among developing countries is apparent within the SDGs than there was in the MDGs.

Formidable challenges lie ahead. Although the level of ambition is admirable, there are gaps in relation to the means of implementation. The size of small states gives them high economic exposure with a narrow resource and export base, and their remoteness and isolation from centres of commercial activity poses challenges to integrating into global value chains (GVCs). These characteristics make them unique in the sense that the difficulties they face in the pursuit of sustainable development are particularly severe and complex. The SDGs do not adequately address the economic disadvantages small states face in terms of, for example, trade costs and connectivity, because of a narrower focus on trade in goods as opposed to services trade. This chapter takes stock of the global trading environment in relation to small states, and how the SDGs address their needs and their shortcomings.

3.2 Small states' recent trade performance

When the MDGs were adopted in 2000, it is fair to say global economic conditions were more conducive to their achievement over the implementation period. Generally, the period from 2000 to 2007 was a time of economic growth and macroeconomic stability, which allowed governments the fiscal and policy space to enable progress. It was even posited as the era that ended 'boom and bust', referred to as the 'Great Moderation'. Most commentators were therefore caught severely off guard after 2007.

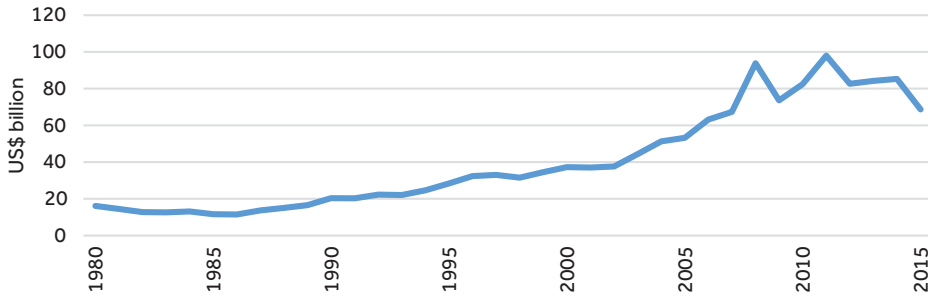
Although 2000–2007 was buoyant in relation to global trade, it is important to note that the mechanisms and frameworks that underpinned this trade and growth expansion were laid down far earlier (e.g. as countries become more closely integrated within the global trading system and membership of the World Trade Organization (WTO) expanded). Generally, developed and developing countries were experiencing increases in investment and foreign direct investment (FDI), structural changes, rising commodity prices and increasing stocks of foreign reserves. This enabled strengthened links between developed and developing countries through trade, FDI, remittances and official development assistance (ODA) (UN, 2016). Global exports volume expanded by on average 7.3 per cent between 2000 and 2007, and gross domestic product (GDP) by 4.5 per cent. Emerging market and developing economies, for example the BRICS,⁴ showed stellar export volume growth of 10.4 per cent over this period, while advanced economies showed 6.2 per cent (IMF, 2017).

Commonwealth small states did not experience the same trade boom as other countries. While other countries experienced nearly double the trade growth compared with output growth, the goods and services export volume of Commonwealth small states grew at 3.7 per cent, compared with GDP growth of 3.2 per cent. These countries experienced a double whammy of lower GDP and lower export growth, which resulted in them not achieving their MDGs to a satisfactory level (UN, 2015). Therefore, even with a favourable global trading landscape, small states found it difficult to keep pace with other developing countries.

It is clear that the global trading landscape of the SDG implementation period is profoundly different to that under the MDGs. While global exports of goods and services (value terms, current US\$) suffered a major setback in 2009, with a decline of 20 per cent, and in 2015, with a decline of 12 per cent, Commonwealth small states suffered a greater decline in relative terms. Their exports took a hit in 2009, 2012 and 2015, with 22, 16 and 19 per cent declines, respectively. In 2015, goods and services exports from these countries contracted by US\$16.6 billion from \$85.3 billion in 2014 (Figure 3.1). These trends reflect the fact, even when economic conditions are favourable, small states struggle to keep pace with the rest of the world; when things take a turn for the worse, they are disproportionately affected.

Out of the 19 small states for which both volume and value data are available in 2015, 9 experienced a simultaneous increase in volume and decline in the value of exports.⁵ This can be explained by changes in export prices of goods and services, and changes in exchange rates between the US dollar and individual countries (WTO, 2015). For 2016 and 2017, world export volume is estimated to grow 2.2 and 3.5 per

Figure 3.1 Commonwealth small states' exports of goods and services (US\$ billion)



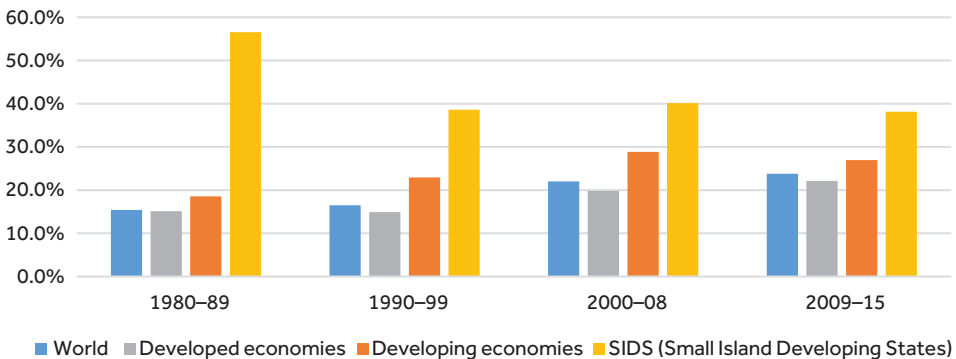
Source: UNCTADstat

cent, respectively; for Commonwealth small states the estimates are lower, at 2.1 and 3.1 per cent.

Figure 3.2 shows that SIDS (a subset of small states) have greater import shares than other country groups, but it also reveals that trade orientation for this group has been slowing down. Even in terms of overall growth prospects, Commonwealth small states do not seem to be faring any better, given that they are estimated to grow at 2.4 and 2.9 per cent in 2016 and 2017, compared with global GDP growth of 3.1 and 3.4 per cent (IMF, 2017).

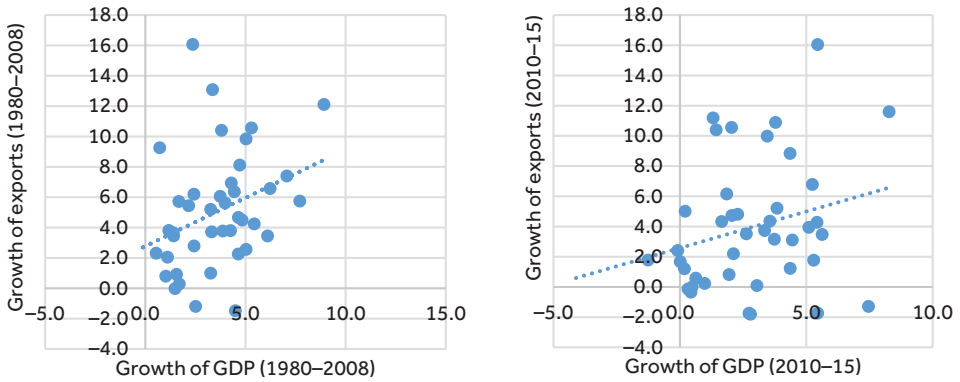
International trade has traditionally been regarded as a driver of economic growth. However, the positive association between growth in trade and GDP has weakened in recent times. The World Bank has estimated that, during the mid-1980s–2000, a 1 per cent increase in global GDP was associated with a more than 2 per cent increase in the volume of trade. However, since the 2000s, this relationship has fallen to just 1.3 per cent (World Bank, 2015). A scatterplot between growth of exports and GDP for small states shows that the trade–growth relationship has indeed weakened in the post-crisis period (Figure 3.3).

Figure 3.2 Imports as a share of GDP by country groups



Source: Calculations using data from UNCTADstat

Figure 3.3 Association between exports of goods and services and GDP growth for small states

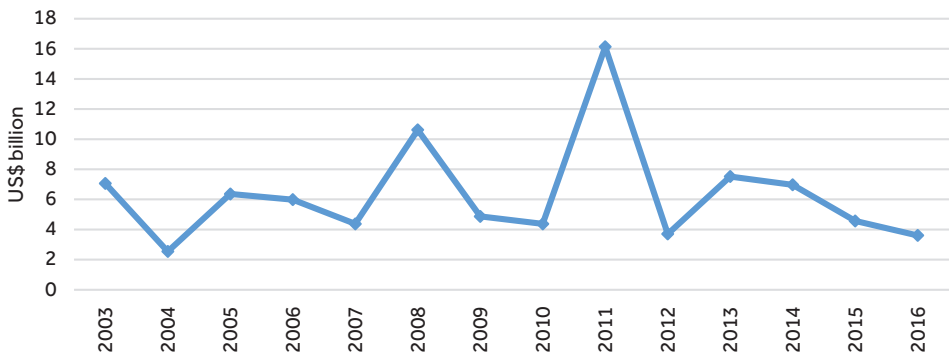


Note: Data for Equatorial Guinea and Nauru are not available
Source: Calculations using data from IMF World Economic Outlook database, October 2016

One component of investment, greenfield FDI, which is vital for promoting economic development, infrastructure and creating jobs in developing countries, has been sporadically inflowing into Commonwealth small states since 2003. Mirroring the trade slowdown, greenfield FDI into these countries has been consistently declining since 2013 (Figure 3.4).

Adding to the global trade slowdown are heightened policy uncertainty and rising protectionist sentiments in advanced countries. Uncertainty has a dampening effect on investment, especially in developing and small economies that are dependent on capital accumulation and productivity increases for future growth (Constantinescu et al., 2017). Trade restrictive measures also reached a post-crisis high in 2016 (Vickers, 2017). Many of these measures have been put in place by G20 countries and directly affect the exports of LDCs and small states: 2,581 affect small states⁶ and 933 affect LDCs.⁷

Figure 3.4 Greenfield FDI erratic and steadily declining for Commonwealth small states since 2013



Source: Calculations using data from fDi Markets, Financial Times

Given these unfolding global trade developments, trade multilateralism undeniably has an imperative to protect the trade interests of small states, especially in light of the crucial role assigned to it by the 2030 Agenda. Small states need an enabling trading environment that supports their integration into the global trading system.

3.3 Reflection of small states' trade interests in the Sustainable Development Goals

SDG 17 aims to strengthen means of implementation and revitalise the global partnership for sustainable development. Under trade, the three targets are to promote the multilateral trading system under the WTO, double the LDCs' share of global exports by 2020 and realise timely implementation of duty-free and quota-free (DFQF) market access for LDCs. The specific SDG targets related to SIDS are shown in Table 3.1. However, while the SDGs considerably improve on the MDGs in view of the more specific reference to the trade and economic interests of SIDS, there remain a number of areas that have not been effectively integrated into the SDGs.

The upcoming 11th WTO Ministerial Conference (MC11) on 11–14 December 2017 in Buenos Aires, Argentina, represents an extremely timely platform to reaffirm and restore the centrality of trade multilateralism and promote greater trade-led development, especially for small states and LDCs. The 10th WTO Ministerial Conference in Nairobi was important in many respects for reinforcing confidence in the system's capacity to deliver for vulnerable groups of countries. With the Trade Facilitation Agreement (TFA) now entering into force, there will be a need to deliver technical assistance to small states as per its provisions. The Sixth Global Aid for Trade Review will be held in July 2017, prior to MC11; this will be an opportunity to discuss the technical and financial assistance needs of small states.

Implementation of a number of other important decisions agreed to in MC10 will also be important to consider—for example a special safeguard mechanism (SSM) for developing countries; public stock-holding for food security purposes; export competition; preferential rules of origin for LDCs; and implementation of preferential treatment in favour of services and service suppliers of LDCs. Various elements of the Nairobi package stand to positively impact small states. These include (i) recourse to an SSM as envisaged under the Hong Kong Ministerial Declaration; (ii) the immediate elimination of remaining scheduled export subsidies by developed countries; (iii) the elimination of export subsidy entitlements by developing countries by the end of 2018; and (iv) the continued benefit of the Agreement on Agriculture for developing countries until 2023. Implementation of these decisions along with the TFA will be critical in helping many developing countries, including small states, achieve the SDGs. The substantive gains for cotton-producing developing countries is reflected in the Ministerial Declaration on Cotton, with the granting of DFQF market access for cotton produced and exported by LDCs, but small states may not avail themselves of such preferential treatment (Preville, 2016).

Table 3.1 SDG targets of direct relevance to SIDS

Goal	SDG target
Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture	2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment
Goal 3: Ensure healthy lives and promote well-being for all	3.c Substantially increase health financing and the recruitment, development, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing states
Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all	4.b By 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing states and African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programmes, in developed countries and other developing countries
Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all	4.c By 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing states
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	7.b By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, small island developing states and landlocked developing countries, in accordance with their respective programmes of support
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	8.3 Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services

(continued)

Table 3.1 SDG targets of direct relevance to SIDS (Continued)

Goal	SDG target
Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation	9.3 Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets
Goal 10. Reduce inequality within and among countries	9.a Facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and technical support to African countries, least developed countries, landlocked developing countries and small island developing states 10.b Encourage official development assistance and financial flows, including foreign direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing states and landlocked developing countries, in accordance with their national plans and programmes
Goal 13. Take urgent action to combat climate change and its impacts	13.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing states, including focusing on women, youth and local and marginalized communities
Goal 14. Conserve and sustainably use oceans, seas and marine resources for sustainable development	14.7 By 2030, increase the economic benefits to small island developing states and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism 14.a Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing states and least developed countries
Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development	14.b Provide access for small-scale artisanal fishers to marine resources and markets 17.18 By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing states, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts

Source: United Nations, 2015

3.3.1 The differentiation issue

Currently, in the WTO, members are divided into developed and developing countries and LDCs. There are 12 small states that are also LDCs,⁸ therefore the special needs of a vast majority of small states are not recognised in the same way as those of the LDCs. Small states presently share the same playing field as major trading economies like China and India, but WTO recognises SVEs as a special group without creating an official sub-category. Following the Doha Ministerial Conference, there was a decision to establish a Work Programme for Small and Vulnerable Economies (WPSE), to frame their responses to trade-related issues for their fuller integration into the multilateral trading system. The WPSE enables this group to pursue special and differential treatment (S&DT) in the WTO. The SDGs have targets specific to SIDS, but these do not include all small states (Table 3.1). Small states consider the strengthening of S&DT as critical and central to the WTO-led multilateral trading system, as this gives them the necessary policy space, allowing them to ring-fence domestic policies that will help in addressing their development challenges.

Related to the issue of SDT is the discussion around Aid for Trade (AfT), which tends to treat developing countries as a homogenous group. This categorisation tends to neglect small states. Most firms in these countries are micro, small and medium-sized enterprises, which suffer high trading costs, leading to lack of competition and efficiency. Cali et al. (2011) found that, although SVEs received higher levels of AfT per capita than other developing countries, there was a need to improve effectiveness. They also found that one category of AfT—AfT facilitation—was likely to have significant cost-reducing effects. Further assessment of aid allocation in production capacity is important, while promoting sectors with dynamic comparative advantage to venture into non-traditional sectors and achieve export diversification with the help of AfT.

The Doha Development Agenda is yet to be completed, 16 years after it was introduced, with a number of issues in the original mandate still under negotiation. These include three pillars of agriculture—domestic support, market access and export competition—as well as issues related to non-agriculture market access, services, development, the Agreement on Trade-Related Aspects of Intellectual Property Rights and rules. Many of these are of major economic significance for small states, and issues like domestic support and market access in agriculture and fisheries subsidies are gathering momentum ahead of MC11.

3.3.2 Excluded trade interests

Trade in services represents 38.5 per cent of small states' GDP, a potential avenue of growth. The achievement of many SDGs relies on the proper dispensation of services: improving health and education, enhancing regional cooperation by boosting transport services and information and communication technology, etc. Reducing trade barriers in services will make firms in small states more competitive and allow consumers choice of a wider range of products to improve their welfare, ranging from food security to nutrition. The WTO's decision to allow members to grant preferential access to their services markets to LDCs through the services waiver is a step in the

right direction. This is certainly of huge interest to many small states. However, the SDGs and the TFA do not include enough services-related targets.

The continued proliferation of regional trade agreements may pose a threat to the multilateral trading system, which is the first best option for trade liberalisation for small states and provides a free and fair trading platform. These regional initiatives must be complementary to the multilateral process to ensure fairness. Small states' participation in trade is preconditioned by enhanced supply-side and productive capacities, and technical and financial assistance will be necessary for their effective participation.

Furthermore, small states are particularly vulnerable to climate change, and their export profiles tend to be concentrated in goods and services that are climate-sensitive, for example agriculture, fisheries and tourism services. The 22nd Conference of the Parties (COP22) UN Climate Change Conference in Marrakech, Morocco, saw 48 countries promising to drastically cut their carbon emissions and move towards the use of 100 per cent renewable energy. As countries make efforts towards mitigating and adapting to climate change and meeting targets such as those set out in COP22, there is likely to be conflict between meeting trade rules and climate goals. This puts small states in an unfamiliar territory of accounting for climate implications of their trade goals. Therefore, there is greater need for alignment, coherence and 'mutual supportiveness' between the multilateral trade and environmental regimes, and global partnerships in general, as SDG 17 envisages.

3.4 Overcoming distance and other trade barriers

The SDG framework does not adequately address important targets such as trade costs for goods and services, which disproportionately affect small states (Hoekman, 2016). Commonwealth small states suffer from the small size of their domestic markets in conjunction with long distances from the global centres of commercial activity. This can inflict severe economic disadvantage in terms of excessive trade costs to the current major hubs. With value chains spanning countries across the globe, trade costs become an important determinant of firms' ability to access markets and expand their market share. High trade costs reduce the returns these firms receive, and in some cases can discourage them from integrating and trading in world markets at all.

The UN Economic and Social Commission for Asia and the Pacific and World Bank provide a database that gives an overall indication of a country's degree of integration with world markets. The measure of trade costs derived from this database incorporates all factors that drive a wedge between factory gate prices in the exporting country and consumer prices in the importing country. It therefore includes trade frictions, tariffs and non-tariff measures (NTMs), regulatory measures, standards and institutional differences, as well as geographical and historical factors.

Shepherd et al. (2016) calculated the average trade costs for individual countries by aggregating bilateral data. This trade cost value was translated into an ad valorem equivalent, for example the amount payable if the product or service was taxed on the

basis of its value. The study found that for small states located in Sub-Saharan Africa, trade costs are about twice as high as in the comparator markets of the UK and the USA. In the case of the Caribbean, trade costs are between two and four times as high as in the comparator markets (Canada and the USA) in manufacturing, and between two and nearly six times as high in agriculture. These results reinforce the view that, despite being geographically relatively close to the major markets of the USA and Canada, in practice Caribbean countries remain isolated from international trade as a result of high overall trade costs. A similar trend emerges in the Pacific, where trade costs are in the order of two or three times those observed in Australia and New Zealand.

In order to see the integration of countries with GVCs, Shepherd et al. (2016) also calculated value-added in exports for their respective most important sectors and significant trading partners. No Caribbean or Pacific small state has its largest export flow with another Caribbean or Pacific country, respectively, even if measured across a decade. These results suggest limited changes in the structure of trade in value-added for the Caribbean and Pacific regions, which is an added reflection of high trade costs. This results in a systemic exclusion of these small states from GVCs and further economic developments like emerging mega-trading blocs and increasing dominance of fast-developing countries (Razzaque and Keane, 2016). Sturgeon et al. (2017) also find that remoteness is a significant barrier to GVC participation and to upgrading in GVCs.

While trade costs in goods for small states are already a concern, correspondingly, barriers to services trade for these countries also need to be addressed. Hoekman and Shepherd (2015) find that services productivity is a statistically significant determinant of the productivity of manufacturing firms. Similarly, Francois and Hoekman (2010) determined that there was a positive link between services sector productivity and economic growth and development. Lowering services trade costs is likely to have positive effects on economy-wide productivity. This is especially significant given the rising importance of digitisation in overall trade, which will benefit directly from lower services trade costs.

There is a severe data and information limitation on barriers to trade at the intra-regional level, particularly in the Caribbean and the Pacific. This problem is exacerbated with trade in services. Furthermore, trade costs often do not include NTMs that small states face when competing in export markets. NTMs affect a number of SDGs but they do not figure prominently in the 2030 Agenda.⁹

3.5 Policy options and way forward

Reinvigorating trade and supporting trade expansion for small states should be a key component of the global policy agenda to enable growth in such states and achievement of their sustainable development targets. The shifting global trade landscape and prevalent economic uncertainties present a range of alternatives and possibilities for their development. There are a number of ways in which they can be supported to increase their trade substantially with the rest of the world. In this

section, we focus on rejuvenation of global partnerships, increasing AfT for capacity development and reducing trade costs to enable the integration of small states in the world trading system.

First, with the adoption of the 2030 Agenda, there is a unique opportunity to rejuvenate a global partnership for small states' development. This partnership should prioritise innovative approaches to targeting international support to assist small states. For example, access to trade finance is one of the challenges impairing their export supply response. The proposed Commonwealth initiative to establish a trade financing facility for small states¹⁰ is a concrete example of the innovative approaches required to support such states. The global trade slowdown should not be used as a pretext for reduced trade capacity-building. Small states' trade challenges need to be addressed effectively to promote their international competitiveness and to help them tackle other vulnerabilities, including those arising from climate change-related issues.

Second, there is a need for more strategically directed AfT to assist small states to improve their trade performance and address their unique trade challenges. Both the Caribbean and the Pacific states are implementing regional AfT strategies. These can be useful regional approaches for identifying trade-related needs, mobilising resources and facilitating implementation. It is also important to draw lessons from AfT implementation so future interventions can be better targeted and more effective. For instance, while many small states have experienced disproportionate preference erosion, there has been insufficient support to their trade-related adjustment needs. Under these circumstances, adjustment support is needed to diversify their economies and to develop and expand new sectors of export interest.

Third, countries can focus on including trade costs as a monitorable target towards achieving the SDGs. This approach is consistent with growth and poverty reduction efforts, and directly benefits trading partners. As countries prepare to implement trade facilitation measures under the TFA, use of trade cost indicators will provide a concrete focal point for both national action and international cooperation. There are many reasons why trade costs continue to be high, including domestic trade policies of countries, NTMs, weakness in logistics, etc., but governments can work with stakeholders to identify how to reduce the excessive costs. However, our monitoring mechanisms need to improve.

Annex

Table A.3.1 Trade-related aspects of SDGs

Goal	Trade-related aspect
Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture	2.b: Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round
Goal 3: Ensure healthy lives and promote well-being for all at all ages	3.b: Support the research and development of vaccines and medicines for communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the Trade Related Aspects of Intellectual Property Rights Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the TRIPS agreement regarding flexibilities to protect public health, and, in particular, provide access to medicines for all.
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all	8.a: Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-related Technical Assistance to Least Developed Countries
Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation	9.3: Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets
Goal 10: Reduce inequality within and among countries	10.a: Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements
Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development	14.6: By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

(continued)

Table A.3.1 Trade-related aspects of SDGs (Continued)

Goal	Trade-related aspect
Goal 17: Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development	<p>17.10: Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda</p> <p>17.11: Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020</p> <p>17.12: Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access</p>

Source: United Nations, 2015

Table A.3.2 Change in volume and value of Commonwealth small states' goods and services exports, 2015

Country	Growth of volume of goods and services exports (i.e. export growth in real terms) (%)	Growth of value of goods and services exports (i.e. export in US\$ in current prices) (%)
Antigua and Barbuda	6.8	2.0
The Bahamas	-9.4	-8.9
Barbados	5.5	1.6
Belize	-4.6	-4.6
Botswana	5.5	-24.1
Brunei Darussalam	-10.8	-43.9
Cyprus	1.9	-16.3
Dominica	8.8	8.0
Fiji	-	-12.9
Grenada	6.0	4.7
Guyana	7.4	-
Jamaica	23.7	-2.4
Kiribati	3.9	-
Lesotho	15.1	-
Malta	2.1	-13.3
Mauritius	-6.1	-13.7
Namibia	0.4	-9.2
Nauru	-	-
St Kitts and Nevis	11.8	9.6
Saint Lucia	12.4	-0.1
St Vincent and the Grenadines	3.1	4.5

(continued)

Table A.3.2 Change in volume and value of Commonwealth small states' goods and services exports, 2015 (Continued)

Country	Growth of volume of goods and services exports (i.e. export growth in real terms) (%)	Growth of value of goods and services exports (i.e. export in US\$ in current prices) (%)
Samoa	–	–
Seychelles	17.0	–5.5
Solomon Islands	2.8	–8.1
Swaziland	9.3	–4.4
Tonga	n/a	10.8
Trinidad and Tobago	–1.4	–
Tuvalu	–	–
Vanuatu	–	–9.1
World	2.7	–11.9

Source: IMF World Economic Outlook database, October 2016, and UNCTADstat

Table A.3.3 Examples of linkages between SDGs and NTMs

Goal	Example of relevant NTM
Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture	Sanitary and phytosanitary standards (SPS) and technical barriers to trade (TBT) to protect the health of human beings, plants and animals and crop protection against pests and diseases
Goal 3. Ensure healthy lives and promote well-being for all	<ul style="list-style-type: none"> • SPS for risks to human health from additives, contaminants, toxins or disease-causing organisms in food and drink • TBT to regulate food for consumer protection
Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all	Local content requirements to promote use of clean energy technologies
Goal 12. Ensure sustainable consumption and production patterns	TBT to regulate production and import of products that cause environmental damage
Goal 13. Take urgent action to combat climate change and its impacts	TBT to regulate production and trade with respect to carbon footprints
Goal 14. Conserve and sustainably use oceans, seas and marine resources for sustainable development	TBT to restrict trade with hazardous substances or pollutants harming aquatic or terrestrial ecosystems
Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss	<ul style="list-style-type: none"> • TBT to restrict trade of endangered flora and fauna • SPS to protect ecosystems and biodiversity from pests and invasive species.

Source: United Nations, 2015

Notes

- 1 Poorvi Goel, Research Officer, Commonwealth Secretariat, is grateful for constructive comments received from Dr Jodie Keane, Economic Adviser, Commonwealth Secretariat, and external peer reviewer Dr Vinaye Ancharaz.
- 2 For the purpose of this chapter, we focus on small states, as defined by the World Bank. These are those countries with a population under 1.5 million. This includes 50 countries: Antigua and Barbuda, The Bahamas, Bahrain, Barbados, Belize, Bhutan, Botswana, Brunei Darussalam, Cape Verde, Comoros, Cyprus, Djibouti, Dominica, Equatorial Guinea, Estonia, Fiji, Gabon, The Gambia, Grenada, Guinea-Bissau, Guyana, Iceland, Jamaica, Kiribati, Lesotho, Maldives, Malta, Marshall Islands, Mauritius, Micronesia, Montenegro, Namibia, Nauru, Palau, Qatar, St Kitts and Nevis, Saint Lucia, St Vincent and The Grenadines, Samoa, San Marino, São Tomé and Príncipe, Seychelles, Solomon Islands, Suriname, Swaziland, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu. Out of these 50, 29 are Commonwealth members. There were 31 small states before 2013, but The Gambia and Maldives have withdrawn from Commonwealth membership. The 29 Commonwealth small states are Antigua and Barbuda, The Bahamas, Barbados, Belize, Botswana, Brunei Darussalam, Cyprus, Dominica, Fiji, Grenada, Guyana, Jamaica, Kiribati, Lesotho, Malta, Mauritius, Namibia, Nauru, St Kitts and Nevis, Saint Lucia, St Vincent and The Grenadines, Samoa, Seychelles, Solomon Islands, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu.
- 3 Out of 50 Small States, data for 2014 and 2015 are available for only 32.
- 4 Brazil, Russia, India, China and South Africa.
- 5 Table A.3.2 in the Annex shows Commonwealth small states' growth of goods and services in value and volume terms in 2015.
- 6 Excluding Nauru (lack of data availability).
- 7 Data from Global Trade Alert.
- 8 Comoros, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, Kiribati, Lesotho, São Tomé and Príncipe, Solomon Islands, Timor-Leste, Tuvalu, Vanuatu. Of these, five are Commonwealth members.
- 9 For details on the SDGs and relevant NTMs, refer to Table A.3.3 in the Annex.
- 10 An important fallout from the 2008 global financial crisis was the contraction in trade finance, especially for many developing countries. In November 2013, Commonwealth Heads of Government through the Kotte Statement on International Trade and Investment requested the Secretariat to assess the need for and viability of a Commonwealth finance facility for those small and developing Member Countries without access to such resources. In addition, Heads welcomed an offer by the government of Malta to initiate a pilot mechanism among interested members to help augment trade and investment finance, particularly for small and vulnerable developing countries. The resultant feasibility study found significant demand for such a finance facility that could trigger over \$1 billion in trade.

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Chapter 4

Effectively Influencing Value Chain Governance and Implementing SDG 14: 'Life Below Water'

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4.1 Introduction

There have been significant structural changes in recent decades in the way trade, production and marketing are organised. There is now wide recognition that global trade increasingly involves spreading the production of a final good over firms in several countries, with each one undertaking what is better described as a 'task' in the overall process rather than the production of a discrete good or service (WTO–IDE, 2011). These changes, which result from the internationalisation of global production and the fragmentation of trade across countries, have occurred as capital has become increasingly mobile under the accelerated pace of financial globalisation. Their implications have been increasingly analysed through the lens of global value chain (GVC) analysis. This literature, which became fashionable during the 1990s, and its use of a heuristic approach to analysis were motivated by the need to understand better how firms and workers located in developing countries were engaging with more recent processes of globalisation.

Often neglected within the GVC literature are sectors and regions such as the processed fisheries sector, as is consideration of both the Pacific and the Caribbean as distinct regions. For example, in both regions the fisheries value chain has received far less attention to date than other sectors in the GVC literature, such as textiles and clothing and high-value agriculture, even though the promotion of these value chains has been spurred by the creation of tariff rents conveyed by the international trading system. As a result, across the African, Caribbean and Pacific (ACP) countries, these sectors are important drivers of the expansion of labour-intensive formal employment opportunities. For all of the ACP, the 'oceans economy' and fisheries-based value chains assume particular importance, in terms of their social, economic and environmental contributions.

This chapter focuses on the fisheries sector in the Caribbean and the Pacific, and considers the trade-related implementation agenda of Sustainable Development Goal (SDG) 4 through the GVC perspective. It is structured as follows. Section 4.2 gives an overview of the evolution of GVCs within natural resource sectors. Section 4.3 introduces the SDG 14 trade-related implementation agenda. Section 4.4 reviews current patterns of value addition within the fisheries sector with reference to the Caribbean and Pacific, and introduces the GVC perspective. Section 4.5 analyses least developed country (LDC) trade-related issues in the fisheries sector, focusing on

the Pacific, in view of their implications for the advancement of SDG 14. Section 4.6 briefly reviews the available evidence on how international support measures such as Aid for Trade (AFT) are responding to these dynamics. The chapter concludes with reference to the potential future dynamics unleashed by forthcoming multilateral trade negotiations for the implementation agenda of SDG 14 and for influence on GVC governance.

4.2 Non-equity modes of global value chain participation: Contract farming and fishing

While the literature has paid much attention to agricultural GVCs, including in Africa, there has been rather less focus on the fisheries sector across the ACP, with a few exceptions, such as Campling (2016). Nevertheless, it is fair to say similar dynamics may be at play. Contract farming as well as fishing is a form of vertical integration between producers and buyers. The major difference between contract farming and fishing and contract manufacturing is that the former is resource-seeking and the latter efficiency-seeking (UNCTAD, 2011). The contracting arrangements which exist between producers and buyers means that these GVCs are forms of non-equity modes of production (UNCTAD, 2011). The dynamics at play within the fisheries sector compared with other extractive industries are also unique in some respects.²

Despite some of these differences in terms of the structure of the value chain and its drivers, the dramatic transformation of the global trading system experienced in recent years means that a few dominant players tend to drive trade within the fisheries value chain at a global level. These are typically the drivers of integrated supply chains, comprising traders and retailers as well as multinational and transnational enterprises.

While there are undoubtedly new trade opportunities arising for all countries and regions in view of technological advances that can spur trade linkages and transactions, at the same time not all of these developments are viewed positively. As patterns of global trade have changed, these have subsequently been linked to qualitative changes in the governance structures associated with GVCs. With reference to Sub-Saharan Africa, Gibbon and Ponte (2005) argue that these shifts have resulted in the region 'trading down' rather than up in GVCs. This is through increasing producer specialisation within the lower value-added nodes of a given value chain, rather than facilitating movement up towards higher value-added nodes such as processing, retailing and marketing. This is because the quest by transnational corporations or globally operating retailers for economies of scale at the marketing and retailing nodes of GVCs has resulted in increasingly hierarchical relations between firms across borders. Although at the initial stages of integration these structures are expected to result in rapid producer and product upgrading, sustaining these gains over time may become challenging.

In terms of governance, the initial distinction made in the GVC literature was between industry-specific and internal governance structures.³ Since that time, there has been limited empirical scrutiny of these types of governance, in spite of the literature taking the framework forward extensively. More recently, there has been

greater consideration of the institutional context within which GVCs operate. This is because of the conceptual challenges regarding the interplay between internal GVC governance as defined by Gereffi et al. (2005) and external governance structures, including relating to public policy. The adoption of the SDGs clearly demonstrated major public policy concerns regarding the social as well as environmental outcomes of global trade (averting a race to the bottom) and the need for the international community to more effectively address these.

The focus and reflection on the regulatory measures associated with global trade the universal adoption of the SDGs prompted necessarily entail a more critical review of trade governance and interactions with institutional structures. In parallel, the GVC literature has begun to reflect on the institutional variables that influence the nature of GVC integration and upgrading outcomes (Dollar et al., 2016; Pathikonda and Farole, 2016), as described in the following sub-sections.

4.2.1 Value chain governance and public policy

Although the approach considers trade to be embedded in and determined by specific (but changing) institutional structures (see The IGLP Law and Global Production Working Group, 2016) and organisational aspects of international trade, more careful consideration of these structures and their influence, particularly on upgrading trajectories, has so far remained outside of the modelling sphere of 'which GVC takes what shape and why' (Keane, 2012). For example, the governance structures posited by Gereffi et al. (2005) do not include reference to external structures, including the institutional framework negotiated by governments for private actors, but rather focus on the internal structures between firms and private actors.

This omission is becoming increasingly recognised in view of the advancement of the SDGs and the 2030 Agenda. For example, Ponte and Sturgeon (2014) acknowledge that domestic regulation and public sector support need to be incorporated in a comprehensive framework that links GVC governance, institutional frameworks and upgrading processes. This is because, so far, GVC analysis has focused mainly on governance mechanisms internal to the value chain, treating the institutional framework (including state regulation) as 'background' (ibid.). Research questions remain regarding how overall GVC governance is shaped by broader institutional, regulatory and societal processes. These institutional aspects in view of public policy objectives clearly feature within the 2030 Agenda and the SDGs adopted by the international community in 2015.

However, it is the operationalisation of the trade-related targets, across fragmented regulatory spheres, that is now subject to increasing scrutiny. This more careful consideration of the institutional and regulatory context of trade is assuming increased importance in view of the need for more effective trade governance to advance the 2030 Agenda. The international community's acceptance of the GVC approach towards the analysis of global trade has led to the creation of new databases that distinguish between the imports of intermediates used in final production and exports. This means that analysis of global trade flows between partners has become more accurate and reliable.

4.2.2 Accounting for the value in global value chains

No single research method can provide a complete picture of GVC participation; rather, a combination of different approaches and research measures becomes necessary in order to effectively measure this. The recent empirical trade literature has begun to improve and refine some of the data sources and research methods used to map and measure GVCs. Some of these include (see Amador and Cabral, 2016):

- International trade statistics on parts and components (intermediate goods trade);
- Customs statistics on processing trade; and
- The integration of international trade data combined with input-output tables.

The last of the aforementioned approaches helps us begin to more clearly distinguish between sources of domestic value-added (DVA) as compared with foreign value-added (FVA). However, approaches at the current time focus on the sectoral level. This is in contrast with the more case study-based literature of the 1990s, which more clearly distinguished between value addition processes at the firm level and then subsequently, between the shares of value-added that accrue to different actors within the GVC.

Understanding how value is created and then, subsequently, who captures most of it, assumes particular importance in view of the SDG 14-related agenda. For example, SDG 14.7 calls on the international community to increase economic benefits to small island developing states (SIDS) and LDCs by 2030. Invariably, action on some of the other trade-related targets included within SDG 14 will assist in meeting this target. However, the adoption of the GVC perspective also entails consideration of the quantitative targets included in SDG 14 in tandem with the identification of the legal and institutional structures that must be influenced in order to realise these ambitions.⁴

4.3 SDG 14's trade-related implementation agenda⁵

The oceans governance policy landscape is highly fragmented, hindering effective management in view of sustainable development objectives. While the UN framework of rules covers some aspects, the World Trade Organization's (WTO's) remit seeks to address others. The recent adoption of the SDGs as part of the 2030 Agenda is an unprecedented attempt to overcome these differences. These goals, established for the next 15 years, are rightly ambitious, with full support of the Commonwealth. However, this should not obscure the scale of the challenges ahead. Urgent actions are required to advance this development agenda.

SDG 14 urges the international community to 'conserve and sustainably use the oceans, seas, and marine resources'. This points to a pressing need to address the issue of the conservation and rebuilding of global fish stocks that have been depleted not only as a result of the industrialisation of the fisheries sector to date but also because of the expansion of artisanal fisheries. Effective and sustainable fisheries management has become a greater imperative in recent years for all groups of countries.

For Caribbean and Pacific Commonwealth Member Countries the oceans economy is of critical importance, although there are major differences in terms of how and why this is the case. For example, The Bahamas has an Exclusive Economic Zone (EEZ) of an estimated 629,292 km² compared with a land area of 13,942 km². Kiribati comprises 33 islands with a total land area of just 810 km² but has about 3.5 million km² of marine waters. Coastal tourism fisheries remain important in The Bahamas, despite reduced catches. In Kiribati, the nature of offshore fisheries tends to be dominated by distant water fleets. The oceans economy assumes importance for SIDS in remarkably different ways, depending on their geographic (especially access to markets), socio-historical and environmental contexts. Despite these differences in context, however, the facts render the oceans economy, including sustainable fisheries management, of upmost importance.

SDG 14 interacts with many of the other targets in the 2030 Agenda, including, for example, SDG 2 to end hunger and achieve food security and improved nutrition. For some of the LDCs, SDG 14 interacts with other trade-related targets, notably doubling the share of LDC world exports. Other trade-related targets included in SDG 14 include:

- SDG 14.4: 'By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics.'
- SDG 14.6: 'By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation.'
- SDG 14.7: 'By 2030, increase the economic benefits to small island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism.'
- SDG 14.7b: 'Provide access for small-scale artisanal fishers to marine resources and markets.'

From a GVC perspective, these last two goals are closely interrelated. Damaging anti-competitiveness effects may arise in view of the inability to effectively regulate IUU fishing. Similarly, harmful fishing subsidies create a deeply unfair and un-level playing field. This can undermine and constrain market access for types of producers with less recourse to the financial resources needed to bolster their position within particular markets.

4.3.1 Reflecting on regulatory frameworks

The institutional architecture and regulatory context of the trade-related SDG 14 implementation agenda will need to be operationalised at different levels and within

different spheres. For example, efforts to achieve SDG 14.4 will require international adoption of the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement.⁶ The UN Food and Agriculture Organization's (FAO's) Port State Measures Agreement could be ratified and adopted to promote implementation and practical application on IUU measures. There is a need to promote coherence among the myriad of international laws and frameworks regulating the fisheries sector and their effective implementation in a mutually supportive manner by regional fisheries management organisations and national fisheries authorities.

The interaction between SDG 14 and the other SDGs will be a determinant of its successful implementation. For example, in view of major capacity constraints in countries with EEZs that far exceed their land area and ability to effectively police vast sea areas, the target included on AfT (SDG 8), which calls on the international community to increase shares destined for developing countries, particularly the LDCs, becomes paramount to the advancement of SDG 14.4.

While there are fresh proposals on the table calling for the prohibition of subsidies to fishing on overfished stocks and IUU fishing, major data issues abound. This is because of the complexity of first defining and then identifying harmful fishing subsidies. An estimated US\$20 billion of harmful fishing subsidies are deemed as contributing directly to overfishing, though in practice the level is likely to be far higher (UNCTAD, 2016a). There is a need for far more up-to-date and detailed studies across countries—a major research endeavour.

Prior to this, full transparency and the disclosure of information regarding subsidies to the fisheries sector are required. Transparency, along with consensus and common action, are core Commonwealth principles. The reaffirmation of these core principles by a number of Commonwealth member states featured strongly in the launch of a Commonwealth Blue Charter at the UN Oceans Conference, New York, 5–9 June 2017.

4.3.2 Proposals on the Table

Recent developments at the WTO in view of the achievement of SDG 14.6—addressing harmful fishing subsidies—may be viewed as either a 'glass half full' or a 'glass half empty' scenario. This is because, while some members have committed themselves to a multilateral deal (e.g. the EU), definitional issues remain regarding 'artisanal fisheries'. Other major players (e.g. the USA), disillusioned by WTO processes, are pursuing a plurilateral trade deal on addressing harmful fishing subsidies.

In relation to market access and SDG 14.7b, further liberalisation at the multilateral level and at the forthcoming WTO Ministerial Conference in 2017 looks unlikely. Within this context, the regional value chain mechanism and its promotion assume particular importance, particularly given the linkages between the fisheries, transportation and tourism sectors. Overcoming barriers to trade at the intra-regional level will also assist in meeting other trade-related targets included in the SDGs, notably those related to the LDCs and, more specifically, SDG 17 (to significantly increase the exports of developing countries, in particular with a view to doubling the LDC share of global exports by 2020).

Given stalled multilateralism and a realisation that the Doha Development Agenda is unlikely to be as fully implemented as originally envisaged, progress on the timely implementation of duty-free and quota-free market access on a lasting basis for all LDCs remains somewhat elusive. Nonetheless, since the last Ministerial, held in Nairobi 2015, efforts continue to ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to the facilitation of market access and, therefore, SDG 17.⁷

Finally, it must be recognised that not all aspects where changes are required may be directly under the influence of trade policy-makers (Keane and Melamed, 2015). This is precisely because of the nature of GVCs: around one third of global trade is intra-firm trade. This means an extremely large proportion of global trade takes place within the parameters of one globally operating firm. Within this context, the creation of effective institutional frameworks and the incentive structures required to induce shifts in the nature of GVC participation and potential gains, including economic benefits and shares of value-added, obviously become heightened. The following section explores these aspects, based on available data.

4.4 Value addition in the fisheries sector

There are longstanding concerns related to growth in developing countries' shares in world manufactured exports, which have not been matched with commensurate increases in the income earned from such activities (UNCTAD, 2002). Within the GVC literature and with particular reference to the light manufacturing sector, the shares of value-added available at particular GVC nodes are simply less than in the past (Baldwin, 2012). Within the light manufacturing sector, however, processed fisheries rarely get mentioned. We therefore review recent findings in the sub-sections below.

4.4.1 What the available data suggests

As discussed by Lanz and Werner (2015), agri-food products are among the main export products of small economies and are part of a value chain that has experienced significant changes over the past decades.⁸ Within their analysis, which focuses on small economies, the authors draw particular attention to the role of the processed fisheries sector. They estimate that, while exports from the category of 'fish' accounted for 3.4 per cent of total exports from small economies in 2013, they made up 90.5 per cent of processed product exports.

This very large difference between reported unprocessed and processed fish exports may reflect the fact that in some cases fish are not landed. This is because the quantity caught may be in such a large volume there is not the capacity to land and process; instead they are landed in another location and jurisdiction. In many cases, landed fish are simply consumed within the domestic market, rather than exported. Because so little processing actually takes place on SIDS, this accounts for the large proportion of processed fish products exported. This points to the need to exercise extreme caution in the interpretation of aggregate trade data.

Despite the clear data discrepancies, across small economies the sector is an important driver of value addition activities and the expansion of formal employment opportunities. On the whole, it is fair to say the evidence Lanz and Werner (2015) presents is suggestive of rather more upgrading and therefore a degree of ‘trading-up’ by small economies within the fisheries GVC (as opposed to trading-down and being locked into unprocessed commodity exports). This is because, while small economies exported below US\$0.5 billion of primary fish products in both 2003 and 2013, exports of processed fish almost tripled, from below \$1.5 billion in 2003 to \$4.2 billion in 2013.

This increase in volume is mirrored by an improvement in the relative position of small economies within the global fisheries value chain: their share in the world trade of processed fish increased from 5.2 per cent in 2003 to 6.5 per cent in 2013. An increase in both value addition and market share is a strong indicator of upgrading within GVCs (Kaplinsky and Reardon, 2005; Bernhardt and Milberg, 2011).

4.4.2 Data discrepancies

It is fair to say that while on paper these aggregate numbers look good, there is much less information on the types of firms involved in processing activities and in the accrual of shares of value addition. The aggregation of small economies can mask underlying dynamics, for example the effect of increases attributable to a few major players within the sector. More fundamentally, and a major challenge to the current narrative on GVCs is that fact that currently the distribution of trade in value-added is based on geographical location compared with the ownership of productive factors. Hence, aggregate analysis of value-added data can mask the fact that this accrues to foreign-owned firms and may well end up as income outside the country of production.

This issue is particularly pertinent for the fisheries sector, as aggregate trade data do not reflect the geographical extraction and movement of primary fish products, which are from the waters and ports of many SIDS in the Caribbean and Pacific but are not registered as exports as they are caught by vessels under foreign flags. Issues regarding at-sea transshipment are also largely unaccounted for.

Obviously, this information can be known only through detailed case study analysis. However, the available evidence suggests some reasons for concern. For example, according to Bjorndal et al. (2015) on value chain dynamics in small-scale fisheries, small-scale fishers and fish farmers receive relatively less value than processors and retailers. Campling (2016) echoes these concerns. The following sub-section introduces some of the sectoral measures of trade in DVA and FVA, with a particular focus on the fisheries sector in the Caribbean and Pacific regions.

4.4.3 Shifts in domestic and foreign value-added: Fisheries sector⁹

We present disaggregated analysis at the country and regional level on changes over time in the share of DVA and FVA in the fisheries sector for the Commonwealth Caribbean and Pacific.¹⁰ The objective of this analysis, which is not driven by any hypothesis and is simply descriptive at this stage, is intended to spur reflection on

related policy measures, instruments and data sources, which in the future could deepen this analysis. The next step in the analysis, for example, could include a closer examination of the interaction between shifts in value-added and regulatory frameworks.

Sectoral analysis of trade in value-added

The Eora Multi-Regional Input-Output (MRIO) database is a good effort to compile and harmonise input-output tables from several countries using different sectoral classifications. It is one of the major available data sources used to calculate trade in value-added (TiVA). Although invariably, in the process of preparing this dataset some assumptions as well as adjustments to the data have been made, which has invariably raised some concerns (Kowalski et al., 2015), it has the best country coverage in terms of availability across Commonwealth members.

It is important to understand some of the caveats of this database. These include the fact that, although in aggregate terms the Eora-MRIO can help calculate the value-added content of exports and other production variables, when the analysis is performed at disaggregated levels some inconsistencies may appear. The distinction between intermediates and final products blurs in the summation of overall TiVA, but it is logical to assume an increase in FVA equates to a greater use of imported intermediates and, hence, GVC engagement (IMF, 2015).

The reported figures for TiVA may differ substantially from those associated with gross merchandise trade. This is because not only is the value of imported intermediate goods used in production omitted, but also, as TiVA is decomposed, the services sector gains in weight once its overall contribution is acknowledged. Overall, 26 'sectors' are included in the database (including categories such as 're-export and re-import' as well as 'others').

This means that the value-added generated in local or foreign transport or financial services, for example, are embedded in both exported services and goods. Consequently, the structure of TiVA tends to be more similar to the structure of domestic production than it is to the value of goods trade. This is precisely one of the main objectives of the exercise undertaken to calculate TiVA: to address the imbalance between the measurement of gross trade compared with the value-added data used to measure gross domestic product (GDP).

Exploring shifts in value-added

One of the databases with the most developing country coverage was that developed by the UN Conference on Trade and Development (UNCTAD)–Eora. Within this database, the following two data sources are included:

- **DVA in exports:** This indicator measures how much value produced in the respective country is actually embodied in exports.
- **FVA in exports:** This indicator measures the share of imported intermediate inputs embodied within a country's exports and as such is a relatively good proxy for backward integration.

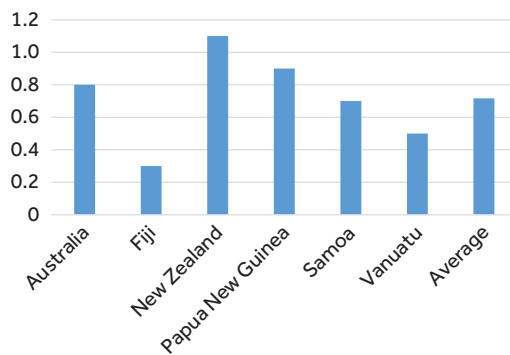
Both indicators can be expressed as a share of gross exports. For example, a decline in DVA embodied in exports as a share of gross exports (and thus an increase in FVA embodied within exports) implies the use of more foreign inputs embodied within exports; this could indicate the export of more technologically sophisticated exports, which demand higher skills and pay higher wages.

Essentially, TiVA is calculated by the summation of DVA in total exports (net exports) plus FVA. The following sub-sections analyse the contribution of DVA and FVA for the fisheries sector in the Caribbean and Pacific.

Comparison of Caribbean and Pacific: Shifts in value-added in the fisheries sector

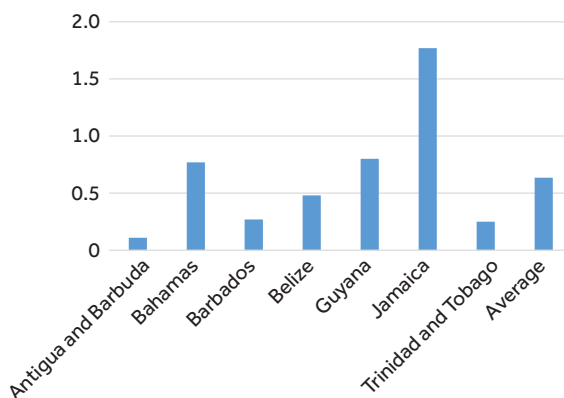
Figures 4.1 and 4.2 present the ratio of value-added exported compared with gross exports for those countries in the Commonwealth Pacific and Caribbean for which data are available, in 2012. It is clear from these results that the ratio of TiVA exported

Figure 4.1 Ratio of TiVA to gross exports in 2012 (Pacific)



Source: Authors elaboration based on Eora-MRIO

Figure 4.2 Ratio of TiVA to gross exports in 2012 (Caribbean)

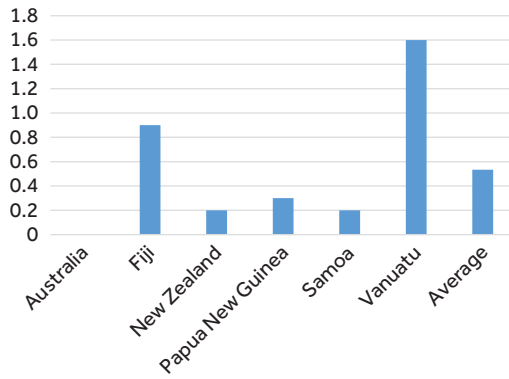


Source: Authors elaboration based on Eora-MRIO

compared with gross exports is slightly higher, on average, in the Pacific fisheries sector than in the Caribbean. There is also greater variation in the Caribbean, with Jamaica posting a ratio around three times higher than the average for the region.

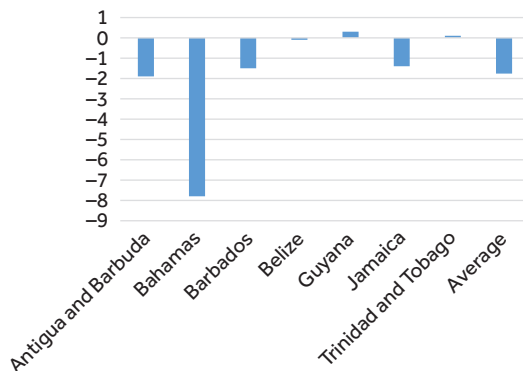
Figures 4.3 and 4.4 present shifts in FVA in the fisheries sector between 2000 and 2012. The largest decline in FVA is the largest shift apparent between 2000 and 2012 for The Bahamas—one of the largest apparent for the Caribbean as a whole. Whereas the share of FVA has generally increased in the Pacific, it has actually declined both on average and across several countries in the Caribbean. These declines are indicative of a greater contribution of DVA within the sector. However, they may also be reflective of a decline in engagement with the processed modern fisheries export sector.¹¹ Without much more detailed analysis, we are unable to make any normative judgement regarding this change at this stage.

Figures 4.3 Shifts in total FVA (% point change) between 2000 and 2012 (Pacific)



Source: Authors elaboration based on Eora-MRIO

Figure 4.4 Shifts in total FVA (% point change) between 2000 and 2012 (Caribbean)



Source: Authors elaboration based on Eora-MRIO

In comparison, all countries in the Pacific experienced increases in FVA in the fisheries sector between 2000 and 2012. The largest increases in FVA are apparent for Vanuatu and Fiji. These results are indicative of deeper GVC engagement in the fisheries sector by the region as a whole, and particularly for the aforementioned countries. However, again, without more detailed scrutiny (at the micro level), we are unable to infer any judgements regarding the distribution of value-added across actors within the value chain. Much more detailed case study and firm-level analysis, including regarding investment policy, is required to complement this analysis.

This is precisely because of the need to ensure momentum regarding the implementation of SDG 14. Obtaining data on shares of value-added across actors is extremely challenging because the information is highly commercially sensitive. Nevertheless, for policy-makers with a clear remit to '(14.7) By 2030, increase the economic benefits to small island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism', it is important to understand how and why shares of value addition within the fisheries sector changed so dramatically between 2000 and 2012 in both regions.¹²

Reflection on trends to date may lead to greater consideration of policy measures that could increase potential gains, both within as well as between sectors through effective linkage development.¹³

4.5 LDC-specific trade issues in the fisheries sector¹⁴

This section focuses on the role of the fisheries sector within the graduation criteria. This is because the sector plays a cross-cutting role and features heavily within each of the categories used to identify LDCs in the Pacific. For example, not only does the sector provide direct employment, but also it serves as a key source of nutrition. The specific targets included in SDG 14 therefore will invariably exert a major influence on progress towards sustainable graduation. The identification of LDCs is currently based on three criteria: per capita gross national income (GNI); human assets; and economic vulnerability to external shocks. The latter two are measured by two indices of structural impediments—namely, the Human Assets Index (HAI) and the Economic Vulnerability Index (EVI):

- i. **Income criterion**, based on a three-year average estimate of GNI per capita for the period 2011–2013, based on the World Bank Atlas method (under US\$1,035 for inclusion, above \$1,242 for graduation as applied in the 2015 triennial review);
- ii. **HAI** based on indicators of (a) nutrition: percentage of population undernourished; (b) health: mortality rate for children aged five years or under; (c) education: the gross secondary school enrolment ratio; and (d) adult literacy rate;
- iii. **EVI** based on indicators of (a) population size; (b) remoteness; (c) merchandise export concentration; (d) share of agriculture, forestry

and fisheries; (e) share of population in low elevated coastal zones; (f) instability of exports of goods and services; (g) victims of natural disasters; and (h) instability of agricultural production.

4.5.1 Graduation indicators and progress

According to the most recent report from the United Nations (2015) Committee for Development Policy, Kiribati had met both the income and the HAI criteria (for the second consecutive time). The Committee did not recommend, however, that Kiribati be graduated from the LDC category, given its extreme high economic vulnerability (the highest in the world). Consideration on the country's graduation was deferred to its 2018 session. Meanwhile, the Committee recommended Tuvalu for graduation at its 2012 triennial review but, in view of its high score on the EVI (see Table 4.1) and in anticipation of major challenges resulting from the effects of climate change, this country also saw consideration on its graduation deferred to 2018.

The situation faced by Tuvalu is similar to that of Vanuatu, which was found to be eligible for graduation in 2006, 2009 and 2012 and was recommended for graduation in the 2012 triennial review. However, the United Nations General Assembly decided to grant an additional preparatory period of one year before the start of the three-year preparatory process and invited the country to prepare its national smooth transition strategy. Three other LDCs met the eligibility criteria for graduation for the first time in 2015: Bhutan, São Tomé and Príncipe and Nepal. According to present rules, if these countries meet the criteria for graduation during the 2018 triennial review, the Committee may subsequently recommend them for graduation. In comparison, Solomon Islands met only the income and HAI criteria, whereas Timor-Leste only met the income criteria.

One objective of the Istanbul Programme of Action is to enable half of all LDCs to reach graduation by 2020. This is a formidable challenge, particularly given that, since the international community created the category, the number of countries defined as LDCs has doubled, from 24 to 48. There have been only four LDC graduates since 1971 (Botswana, Cape Verde, Maldives and Samoa). Nevertheless, according to recent estimates by Drabo and Guillaumont (2016), around 10 LDCs are likely to reach graduation status by 2020. These include Kiribati, Solomon Islands, Tuvalu and Vanuatu. The following sub-section explores the potential trade-related effects of LDC graduation and potential mitigation measures within the fisheries sector. Again, we take a GVC perspective and explore the potential for trade shifts as a result of movement from LDC status. Finally, we interpret these results in terms of their interaction with the implementation agenda of SDG 14.

4.5.2 Potential cost of graduation from LDC status

The approach taken in this analysis is as follows. First, data were collected on imports from LDC Commonwealth Pacific Island Countries (PICs). Subsequently, the duties levied on imported fisheries products from PICs were calculated (Figure 4.5). Specifying a value threshold of US\$1,000, the major imported fisheries products from LDC PICs were identified. This approach identified the main products likely affected

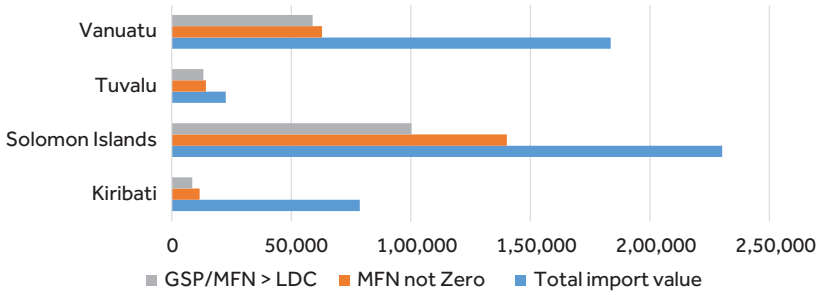
Table 4.1 Selected LDC graduation indicators

Country	Income			Economic Vulnerability Index (EVI)			Human Assets Index (HAI)		
	GNI per capita (US\$)	EVI	Share of population in low elevated coastal zones (%)	Export concentration index	Shares of agriculture, forestry and fisheries (%)	HAI	Prevalence of undernourishment in total population (%)		
Kiribati	2 489	71.5	95.22	0.83	26.2	86.3	5.0		
Solomon Islands	1 402	50.8	12.88	0.58	28.2	71.7	12.5		
Tuvalu	5 788	54.0	94.73	0.69	25.5	88.8	10.0		
Vanuatu	2 997	47.7	1.18	0.70	25.1	81.3	7.2		

Note: The indicators here are illustrative of those included within the EVI and HAI

Source: UNDESA

Figure 4.5 Value of imports receiving preference (US\$'000s)¹⁶



Source: UN Comtrade; see Keane and Kennan (2016).

by a tariff increase within particular markets.¹⁵ Finally, the three main competitors of each product were identified and their respective trade regimes identified. The following sub-sections present the main results of this analysis.

Almost 60 per cent of imports from Tuvalu face a GSP/MFN rate that is less favourable than the rate applicable to LDCs. In value terms, however, Solomon Islands is likely to face the greatest cost as a result of loss of trade preferences arising from graduation and movement out of the LDC classification (almost 44 per cent of its exports face a GSP/MFN rate that is less favourable than the rate applicable to LDCs). However, within the fisheries sector, Vanuatu has the highest number of 'key' products (26)¹⁷ that may be affected by a loss of preference if LDC status ceases (Table 4.2).

In comparison, Solomon Islands has around 20 products potentially facing an increase in tariffs. Most of these will likely face an increase in tariffs in the EU market, followed by the Japanese market. All Pacific LDCs have a number of key fisheries products that will likely face an increase in tariffs in the Japanese market. It is challenging to clearly identify affected products in the US market because specific duties are applied to volumes (as opposed to values) and these are difficult to quantify.

Table 4.2 Number of key fisheries products facing tariff increase

Country	Kiribati	Solomon Islands	Tuvalu	Vanuatu	Total
Canada	0	1		0	1
EU	3	11	0	3	17
Japan	12	7	7	12	38
USA		1		0	1
China				3	3
Korea Republic	2	0	3	6	11
Thailand	0	0	0	2	2
Total	17	20	10	26	73

Notes: 'Key' products are those on which there would be a loss of preference if LDC status ceased. Fisheries products are those falling within Harmonised System chapter 03 and sub-heads 1604 and 1605. Vanuatu appears to be the only PIC LDC eligible for China's LDC preferences

Source: Keane and Kennan (2016)

Table 4.3 Hypothetical duties on key fisheries products (US\$'000s)

Country	Kiribati	Solomon Islands	Tuvalu	Vanuatu
Canada	–	0.1	–	–
EU	1.4	18,092	–	1.4
Japan	294.1	105.6	107.2	1,663.50
USA	–	?	–	–
China	n/a	n/a	n/a	704.6
Korea Republic	9.3	–	2.8	352.4
Thailand	–	–	–	0.3

Notes: The duty that would hypothetically have been applied had the PIC not been an LDC, derived simply by applying the percentage point increase in applicable tariff to the value of imports from the country concerned (although it should be noted that duties collected do not always reflect this simple calculation). Where a range of tariffs may be applicable to different sub-items falling within a single trade code, the calculation uses the highest

Source: Keane and Kennan (2016)

In terms of the potential cost of graduation, the results of the analysis suggest this is highest for the Solomon Islands (Table 4.3), by a considerable margin. Most of these potential costs will be borne in the EU market. In comparison, Vanuatu has a larger range of products across a greater number of markets that may potentially face an increase in tariffs.

We then identified the major fisheries product, at the lowest level of disaggregation, within each market affected by a potential tariff increase because of graduation out of LDC status (Table 4.4). In each case, for each market the key fisheries product affected is tuna. Whereas the increase in tariffs within the Japanese market as a result of graduation from LDC status may put the affected PICs at an equal footing with their main competitors in terms of the costs of market access, it is Solomon Islands that may be put in a potentially more disadvantageous position relative to some of its major competitors in the EU market, such as Ecuador¹⁸ and Papua New Guinea,¹⁹ which enter the EU market tariff-free. However, a note of caution is urged for all other LDC PICs, in view of the fact that some of these countries (China, Korea and Japan) are currently in negotiations for a free trade agreement, which may in the future remove tariffs on these products.

This type of analysis clearly draws the readers' attention to the issue of flags of convenience, whereby the flag that flies is the one which relates to where the ship is registered as opposed to the flag of which its owners originate. What it also serves to highlight are issues relating to the potential effect of graduation from LDC status on the organisation of the fisheries GVC and the nature of integration of Pacific SIDS.

In brief, graduation from LDC status has the potential to shake up existing participation in GVCs in the region. Adopting a more disaggregated approach to analysis of the potential for trade shifts, in view of the new understandings arising from GVC analysis, and embedding this approach within an impact assessment framework, could result in more targeted AfT to assist with trade-related adjustment, as well as to address

Table 4.4 Products affected by tariff removal

Country	Market	HS code	Product	Preference loss (% point)	Hypothetical duty (US\$'000s)	Imports (av. 2013–2015 US\$'000s)	Competitors	Imports (av. 2013–2015 US\$'000s)	Tariff
Kiribati	Japan	030342000	Tunas, yellowfin, frozen excluding Heading 03.04, livers and roes	3.5	155.9	4,454	Taiwan China Korea Republic	69,350 21,635 17,935	3.5 3.5 3.5
Solomon Islands	EU	16041416	Fillets known as 'loins' of tunas or skipjack, prepared or preserved	20.5	8,058	39,306	Ecuador Thailand Papua New Guinea	198,461 73,713 57,114	0 24 0
Tuvalu	Japan	030344000	Frozen bigeye tunas: <i>Thunnus obesus</i> "	3.5	44.68	1,277	Taiwan China Korea Rep.	234,097 95,261 36,312	3.5 3.5 3.5
Vanuatu	Japan	030344000	Frozen bigeye tunas: <i>Thunnus obesus</i> "	3.5	767.63	21,932	Taiwan China Korea Republic	234,097 95,261 36,312	3.5 3.5 3.5

Source: Keane and Kennan (2016)

subsequent shortfalls in productive capacity. Such an approach is invariably more in tune with the intended focus of sustainability impact assessments, which are often used to determine the need for AfT resources but to date have unfortunately exhibited a heavy reliance on more macro-level analysis (e.g. use of Computable General Equilibrium).

4.6 Available evidence on international support measures²⁰

The AfT initiative has gained substantial momentum since it was officially launched in 2005 at the 6th WTO Ministerial, further to the Doha round of negotiations. There have also been substantial improvements in disbursement mechanisms. In the case of the LDCs, the Enhanced Integrated Framework is a key pillar of the international support architecture that is beginning to adapt in view of the forthcoming wave of LDC graduates. Although casual relations should not be interpreted in terms of causations, it is clear from a review of Table 4.5 that the next wave of LDCs expected by 2020 (Tuvalu, Angola, Kiribati, Bhutan, Nepal, São Tomé and Príncipe, Solomon Islands, Timor-Leste, Equatorial Guinea and Vanuatu) have received a much larger share of AfT compared with the non-graduates.

It is also clear that particular sectors in the next wave of LDC graduates have also received greater shares of AfT compared with the non-graduates (Table 4.6). These sectors include fishing, energy and transportation. Again, although caution is urged in the interpretation of these figures, at face value it would appear they deserve further attention. This is because they are suggestive of greater attention paid by available support measures (and donors) to the next wave of LDC graduates, which are predominantly island states. Moreover, the increased resources destined for the fisheries sector may be suggestive of better targeting in anticipation of the competitiveness effects likely to arise once the tariff rent is removed as a consequence of graduation from LDC status.

4.7 Conclusion

Momentum is growing to secure some of the trade-related aspects of SDG 14's implementation agenda. This includes the progress currently being made in view of

Table 4.5 AfT disbursements (2006–2010) to future LDC graduates

Indicator	LDCs likely to graduate in 2020	LDCs unlikely to graduate in 2020
Total AfT disbursement as share of GDP	4.32%	2.43%
Total AfT disbursement per capita (US\$)	83.37	11.80

Note: Number of future likely graduates by 2020 is 10, against 38 non-graduates

Source: OECD DAC

Table 4.6 Categories of Aft disbursement (2006–2010)

Sector	Graduates	Non-graduates
Transport and storage	44.00	4.37
Communications	3.28	0.20
Energy	22.64	1.94
Banking and financial services	3.92	0.58
Business and other services	1.08	0.69
Agriculture	3.85	2.94
Forestry	0.57	0.21
Fishing	10.56	0.27
Industry	0.84	0.39
Mineral resources and mining	1.48	0.21
Trade policies and regulation	0.72	0.22
Tourism	0.75	0.03

Source: OECD DAC

the WTO Ministerial that will take place later this year. Evident shifts are being made, albeit across different negotiation tracks. Issues of relevance to the Small States Work Programme at the WTO to consider include how to discipline harmful fisheries subsidies while preserving special and differential treatment (S&DT).

In order to avoid a similar fate to other negotiations, which have become stuck on issues related to S&DT, attention has begun to focus on issue-specific discussion on subsidy prohibition. Current areas under discussion include (see WTO, 2017):

- What sorts of fisheries subsidies should be *ipso facto* prohibited;
- What role, if any, Regional Fisheries Management Organisations and/or fisheries management systems should have in any package of disciplines;
- How to define subsistence, small-scale and artisanal fishing and what subsidy disciplines should apply to these activities; and
- How an agreement on fisheries subsidies could address future development needs of developing and least developed members.

A failure to achieve an outcome at the forthcoming WTO Ministerial that serves to support, rather than undermine, the SDGs runs an extremely high risk of jeopardising not only SDG 14 but also SDG 17 and reliance on the multilateral trading system as a means of implementing all other SDGs. Invariably, ensuring the effectiveness of trade governance structures operating at the multilateral level will be crucial to the overall success of the SDG implementation agenda.

For Caribbean and Pacific Commonwealth Member Countries, the oceans economy is of critical importance. Both regions are adapting to the significant changes in the way global trade, production and marketing are now organised. While the relative position of small economies within the global fisheries value chain has increased, with their world share of processed fisheries increasing from 5.2 per cent in 2003 to 6.5 per cent in 2013, these aggregate numbers mask underlying dynamics at the

regional level. As the data presented in this chapter have shown, the most recent available evidence on GVC participation is suggestive of rather divergent patterns of value addition within the fisheries sector for both regions: the Pacific region increased its share of foreign (imported) value-added within the fisheries sector between 2000 and 2012, which indicates deepening GVC integration; the converse is true for the Caribbean, where shares of foreign (imported) value-added declined substantially.

This shift in the Caribbean may have been driven by a commensurate increase in domestic value-added and deserves much further scrutiny within the context of the SDG 14 implementation agenda. This is because the ratio of (trade) in value-added exported compared with gross exports is slightly higher, on average, in the Pacific fisheries sector than it is in the Caribbean. Therefore, the results are suggestive of reduced engagement with the fisheries GVC, which may have implications for the achievement of SDG 14.7, as well as 14.7b, by 2030.

Notes

- 1 This chapter was drafted by Dr Jodie Keane, Economic Adviser, Commonwealth Secretariat, London. It is based on a number of existing as well as forthcoming Commonwealth Secretariat publications. The author is extremely grateful to the external peer reviewer (Dr Vinaye Ancharaz) in addition to Dr Liam Campling, Queen Mary University of London, and Jeff Ardrornm, Economic Adviser, Oceans and Natural Resources, Commonwealth Secretariat.
- 2 Marine fish are extracted by capital-intensive foreign firms, employing mainly foreigners, and sometimes rarely even touch down terrestrially.
- 3 For example, whether or not structures are buyer- or producer-driven, with the ability to exert control over forward or backward linkages (Gereffi and Korzeniewicz, 1994). This concept was subsequently developed into a hierarchy of internal governance structures by Gereffi et al. (2005), with each structure distinguished by the degree of coordination between actors at stages of production, or value chain nodes, and a function of the complexity of a transaction, the ability to codify aspects of it and the capabilities of producers. The governance typology of Gereffi et al. (2005) was developed on the basis of a set of country case studies.
- 4 Bolwig et al. (2010) present a conceptual framework integrating poverty and environmental concerns into GVC analysis.
- 5 This sub-section is adapted from the Commonwealth Secretariat's contribution to the Trade and Environment Review (see Maharaj, 2016).
- 6 It is fair to say that UNCLOS is already, at least as regards fisheries, entering into the realm of customary international law. In comparison, while the fish stock agreement is not as universal, it has spawned an increase in Regional Fisheries Management Organisations.
- 7 Consideration of the services waiver and linkage development between the fisheries, transportation and tourism sector could be an interesting avenue of research.
- 8 They recognise how modern agri-food value chains are buyer-driven chains where large retailers or food manufacturers constitute the lead firms. Moreover, suppliers in agri-food value chains are required to comply with a myriad of public and private food standards that are particularly important in the case of upgrading into packaging and processing.
- 9 This analysis is based on ongoing analysis on GVCs in the Caribbean and the Pacific and background papers prepared by Mendez-Parra and data obtained from the Eora Multi-Regional Input-Output (MRIO) database. A forthcoming GVC Handbook for the Caribbean and Pacific will present more disaggregated trade in value-added data across sectors.
- 10 DVA means the proportion of exports that a given country physically produces. FVA refers to the share of exports that includes components sourced from other countries.

- 11 This is because the decline in FVA within the sector may be indicative of less GVC engagement (IMF, 2015).
- 12 For the Pacific region, anecdotal information suggests this question can be answered in terms of (i) 2000 being a low year for Solomon Islands; (ii) Papua New Guinea developing onshore investment; (iii) Fiji actually upgrading; and (iv) Vanuatu licensing more boats. However, more specific country case studies analysis is required to confirm this.
- 13 A GVC Handbook specific to the Caribbean is a forthcoming Commonwealth Secretariat Publication.
- 14 This section is adapted from Keane and Kennan (2016).
- 15 These markets include Australia, Canada, Chile, China, the EU, Japan, Republic of Korea, India, New Zealand, Russian Federation, Switzerland, Taiwan, Thailand, Turkey and the USA.
- 16 Many of the most-favoured nation (MFN) rates (which for some of these reporting countries are set at a more disaggregated level than that at which the trade statistics are available) include a range of rates, including a zero tariff for one or more sub-items. Any value in a trade code for which MFN is not unequivocally zero is included in the group 'MFN not zero' and, similarly, the value of imports for which the Generalised System of Preferences (GSP) (if available, MFN otherwise) rate is less favourable than that for the LDCs. In the case of Australia and New Zealand, these amounts take into consideration South Pacific Regional Trade and Economic Cooperation Agreement preferences, which are more favourable than GSP and are unaffected by LDC status. It appears that only Vanuatu is eligible for China's preferences for LDCs (being included in the beneficiary list for the 'preferential tariff for 24 African LDCs').
- 17 These key products have been identified if they fall within the Harmonised System chapter 03 and sub-heads 1604 and 1605.
- 18 Ecuador under the EU–Ecuador Free Trade Agreement.
- 19 Papua New Guinea under the interim Economic Partnership Agreement.
- 20 This analysis is based on Goel and Keane (2016).

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Chapter 5

Trade Sustainability: Trade, Climate and Biodiversity Policy and Finance Inter-linkages

Leah Worrall

5.1 Introduction

There is a wide literature on the inter-linkages between biodiversity and trade, as well as between climate change and trade and biodiversity and climate. An earlier paper by Worrall (2015) focused on the science of climate change and provided brief illustrations of its impacts in select tradable sectors in select Commonwealth countries. This chapter instead provides an introductory summary of the international policy and finance context and theoretical inter-linkages between climate, biodiversity and trade.

Except in the case of land capital, economic valuation has traditionally viewed the environment as an externality, or a provider of cost-free inputs and outputs, such as forests and water. Environmental degradation and climate change have the potential to reduce the availability of inputs for trade and impact trade processes, from depleting fishery stocks to shifting global patterns of production.

Small states and least developed countries (LDCs) are already facing challenges in participating effectively within the multilateral trading system. These economies are often highly reliant on natural resources (including agriculture and tourism) and therefore their trade livelihoods, processes and sectors will be vulnerable to the effects of climate change and environmental degradation. Small island developing states (SIDS) are vulnerable to sea level rise, and lack the financial and technical capital to address these challenges. In addition, SIDS alongside landlocked developing countries (LLDCs) face high transportation costs, which may be further exacerbated by climate mitigation agreements on maritime and aviation in the future (see Section 5.2). The presence of environmental degradation will reduce the ability of species and ecosystems to adapt to climate change, acting as an additional stressor, which means environmental conservation efforts will be required to support climate action.

At the international to domestic levels, trade policy-making remains largely siloed in focusing on trade, with little consideration of the environmental implications. The 2030 Agenda agreed in September 2015 by the UN General Assembly presents an exception through the Sustainable Development Goals (SDGs) to 2030, which consider to a greater extent the environmental (as well as economic) aspects of development when compared with the Millennium Development Goals (MDGs). Trade is included as a means of implementation (MOI) under SDG 17 for the achievement of other goals, including those related to climate and biodiversity. Much remains to be elaborated, and it falls to countries to develop synergistic approaches to reach the various SDGs set out.

The World Trade Organization (WTO) Ministerial Conference in December 2015 agreed the Nairobi Package. This includes Ministerial Decisions related to advancing work on small states, e-commerce, food security and LDC preferences, as well as reference to the need to ‘discuss other issues for negotiation’ without providing a definition of ‘other issues’ and creating opportunities for Member States to discuss other trade issues. The package presents both important opportunities and challenges for small states to advance their integration into the multilateral trading system. With the emerging trend of sustainable goods and services, there can be a comparative advantage in employing *sustainable* strategies for trade compared with industrialised nations, in reducing susceptibility to climate change and environmental degradation.

The International Institute for Environment and Development (IIED) (2002) provides the following definition of sustainable trade:

Sustainable trade takes place when the international exchange of goods and services yields positive social, economic and environmental benefits, reflecting the four core criteria of sustainable development: 1. it generates economic value, 2. it reduces poverty and inequality, 3. it regenerates the environmental resource base, and 4. it is carried out within an open and accountable system of governance.

For the purposes of this chapter, the following definition will be adopted: ‘*Sustainable trade is the exchange of goods and services that yields positive economic and environmental benefits, internalising climate and biodiversity considerations.*’ This includes trade resilience to climate change, weather-related shocks and efforts towards environmental sustainability. Trade resilience can in turn be defined as the extent to which trade flows, activities and livelihoods are susceptible to changing environmental conditions.

Potential conflicts between trade, climate and biodiversity are well noted, and the chapter focuses on enhancing synergies through joined-up thinking, in order to *reduce*, though not necessarily eliminate, these conflicts. The chapter briefly summarises recent global trade trends as a background to this chapter (Section 5.2) and provides an overview of the international policy context across the trade sustainability fields (Section 5.3). Section 5.4 provides analysis on the international public mechanisms for financing sustainable trade. Section 5.5 explores the inter-linkages between trade, climate and biodiversity and Section 5.6 concludes.

5.2 Global trade trends in brief

This section provides a brief overview of global trade trends. Trade liberalisation across borders and increased demand for transport logistics across fragmented global value chains (GVCs) have been implicated as contributing to the effects of climate change and environmental degradation. Despite this, the 2008 global economic crisis trends show global declines in trade growth—dropping from 7 per cent to 3 per cent—alongside a decoupling of gross domestic product (GDP) growth and trade (Commonwealth Secretariat, 2015). Deceleration in the fragmentation of GVCs and the rise of services may continue the trend.

The absolute value of global trade (in US dollar terms) dropped by 13.5 per cent in 2015 when compared with 2014 (ADB, 2016). Global contributions of agriculture and industry value-added to total GDP have declined, reflecting proportional increases in services value-added (percentages), a trend also reflected in Caribbean small states, Pacific island small states and Sub-Saharan Africa (excluding high-income countries) (2014 data, World Development Indicators (WDI), 2016). With liberalisation efforts to access regional and GVCs alongside fragmentation, there is increased emphasis on tackling non-tariff barriers and logistics to reduce trade costs and increase the efficiency of trade—particularly for SIDS and LLDCs.

Commonwealth countries have fared better on average compared with the global picture and experienced 4.3 per cent average growth in trade following the financial crisis: from 2000, Commonwealth countries' global exports of goods and services tripled to 14.6 per cent of global exports in 2013, dominated by a few large exporters (Commonwealth Secretariat, 2015). The contribution of Caribbean and Pacific regions has been small, however (*ibid.*).

Developing countries and small states have the potential to technologically leapfrog industrialised nations in creating policy and investment environments that encourage sustainable trade flows, activities and livelihoods through renewable energy deployment and prioritisation of 'green' sustainable products and services. Key obstacles remain for Africa, Caribbean and Pacific (ACP) countries in accessing GVCs and value chain upgrading, however, given their reliance on agriculture and natural resource extraction, high GDP contributions from primary production processes and steep transportation costs. Sectors reliant on natural resources will be those most vulnerable to the long-term impacts of climate change, disaster shocks and natural resource degradation. Strategies available to ACP countries include value addition in leveraging additional gains from natural resources (alongside policies to reduce incentives for overuse), servicification of economies (including climate mitigation considerations through the deployment of renewable energy systems) and regional integration (including infrastructure investment to boost sustainable transportation capabilities).

5.3 Trade sustainability in the international policy context

Multilateral policy-making is largely siloed across different intergovernmental bodies with trade, climate and environment responsibilities, with only select examples of inter-linkages, such as fisheries subsidies and food security. The SDGs are the exception in addressing trade and environmental considerations, with trade as a means of implementation for achieving the SDGs, including those on climate and biodiversity. Despite this, there is a clear synergistic discourse evolving in the literature and negotiations processes, with the international community increasingly raising the importance of environmental considerations in trade.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) is a legal framework that directly provides the 'strict regulation' of trade in species threatened with extinction (Appendix I) and species that may become under threat from extinction (Appendix II), with these categories

of species requiring permits for trade.¹ Despite the role of CITES, illicit trade in endangered species continues, given the high monetary reward in illicit markets. The CITES Conference of the Parties (COP) revises the categorisation of species wherever necessary.² This is complemented by the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement), which allows members to offer environmental protection if there is a 'scientific justification' or protection that 'a Member determines to be appropriate' based on the 'the risks to human, animal or plant life or health' and avoiding 'arbitrary and unjustifiable discrimination' (WTO, 2016b).

With a remit to combat climate change, the UN Framework on Climate Change (UNFCCC) (1992) was founded on the principle of common but differentiated responsibility and aims to restrict atmospheric emissions to 450ppm, vaguely consistent with a 2°C change in global temperatures. UNFCCC Member States, with the noted exception of the USA, are currently bound by the Protocol to 2020. The Protocol includes reference to the fact that unilateral climate policies should not constitute 'arbitrary or unjustifiable discrimination' and not produce adverse effects on international trade. There are also three market mechanisms that permit the trading of emissions allowances between Parties.³ (The trade implications of international climate policy are discussed further below in line with the Paris Agreement.)

The Convention on Biological Diversity (CBD) (1992) sets out the aim of promoting the conservation of biological diversity, its sustainable use and the equitable sharing of benefits. Negotiations on patenting typically follow a North–South divide, with advanced industrialised nations such as the USA and Japan unwilling to create uncertainty in the patenting process—whereby patenting can exclude the rights of countries that host the biological resources used in product development (Robinson, 2014). The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), meanwhile, operates on the basis of 'national treatment' and the 'most-favoured nation (MFN) principle', requiring equal treatment of Member States regardless of their sovereignty—and raising questions for the sharing of benefits arising from genetic resources if these are patented. With regard to climate change implications, the literature has cited that genetic variants more capable of withstanding climatic effects may be patented, raising concerns in terms of access for poorer populations and economies.

The CBD has investigated the impacts of trade liberalisation on agricultural biological diversity, recognising that 'farming and the crucial benefits it yields – including food security, domestic employment and export-related economic growth – depends on agro-biodiversity' and provides ecosystem services such as nutrient recycling, soil health and regulation of pest populations (CBD, 2002, 2005). The intensification of agricultural systems, including excessive chemical inputs and unhealthy soil management, can tip soils into being carbon-emitting rather than carbon-absorbing. Agricultural subsidies that promote intensification can therefore result in both ecosystem degradation (through the degradation of ecosystem services) and increased sectoral emissions. More recently, the Export Competition Decision of the Nairobi Package aims to reduce export subsidies, particularly from developed

country Member States that account for some of the most intensive agricultural sectors in the world. (See further discussion below on the Nairobi Package.) For example, the EU Common Agricultural Policy has been under continued scrutiny for its environmental subsidies to Member States, which have been argued to equate to export subsidies in certain cases.

In linking the trade and environment, the Marrakesh Ministerial Decision on Trade and Environment agreed in 1994 established a Committee on Trade and Environment (CTE) whose mandate includes ‘to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system’. The Committee convenes WTO Member States and other international organisations, including those with environmental remits. The Decision also notes that ‘there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other’.

The reality, however, is that clashes often occur between environmental and trade considerations under WTO law, as outlined by arbitration cases under the General Agreement on Tariffs and Trade (GATT), Technical Barriers to Trade (TBT) and SPS Agreements.⁴ The GATT (1994) Article XX outlines General Exceptions that can be applied, including environmental considerations, so long as ‘such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination’ or a ‘disguised restriction’ as ‘necessary to protect human, animal or plant life or health’ and ‘relating to the conservation of exhaustible natural resources’. Though arbitrary rulings that have successfully used these exceptions are rare, there are some examples. For example, two cases under GATT Article XX have been successful: the France–Canada asbestos case, where France had banned imports on asbestos and asbestos-containing products, justified as ‘necessary to protect animal, human, plant life or health’; and the European Commission (EC) (and others)-Brazil re-treaded tyres case, where Brazil banned imports on re-treaded tyres, ruling that alternatives to the ban were not ‘reasonably available’ (WTO, 2016b). The major impediment in many of the WTO arbitration cases has been that environmental measures under question often fail to demonstrate the ‘arbitrary or unjustifiable’ clause.

Environmental perspectives trade are embodied in the environmental provisions of the Doha Development Agenda that was launched under the Doha Development Round in 2001. This includes the liberalisation of environmental goods and services and the need to integrate environmental and trade rules, for example through annual meetings between the WTO and multilateral environmental agreement bodies. The Doha negotiations have since deteriorated, and plurilateral negotiations have developed between 17 WTO members since July 2014 on negotiations for an Environmental Goods Agreement (EGA) for the liberalisation of environment-related tariff lines. A session of the EGA Parties in August 2016 revised the list of environmental goods and services to 300 tariff lines and developed a roadmap to

secure an agreement by the end of 2016, which has since stalled (BioRes, 2016b). The 17 members taking part in the negotiations are Australia, Canada, China, Costa Rica, Chinese Taipei, the EU, Hong Kong (China), Iceland, Israel, Japan, Korea, New Zealand, Norway, Switzerland, Singapore, Turkey and the USA. The key success of the EGA will be in expanding coverage to facilitate technology transfer to developing country members.

Inter-linkages between the biodiversity and climate change themes in international policy processes are evidenced under the UN Reducing Emissions from Deforestation and Degradation (REDD+) Programme. Having first been placed on the agenda in 2005, the programme was agreed at the UNFCCC COP13 in 2007 and promotes climate mitigation and forest conservation through the national implementation of REDD+ activities—including engaging with forest trade supply chains to promote sustainable use of wood and wood products. Note that the UN-REDD Strategic Framework (2016–2020) includes the need to tackle perverse economic incentives arising from ‘trade agreements [and] legal and illegal market demands’.

In addition, Member States to the CBD at COP12 in 2014 agreed the ‘identification, elimination, phasing out or reform of harmful incentives, consistent and in harmony with the Convention and other relevant international obligations’ and the need for the ‘better application of data standards’ across Parties. Beyond this, the outcome document set out the target to double biodiversity international public finance to developing countries, compared with the 2006–2010 baseline, for the period 2015–2020. Section 5.4 discusses international public financing for biodiversity in further detail. It is worth noting that healthy ecosystems are more resilient and likely to recover following weather shocks. In addition, conservation measures to reduce the pressures ecosystems are already facing will promote their resilience to climate change and hence the sustainability of ecosystem-dependent livelihoods and trade.⁵

More recently, 2015 was a major year for international policy landscape. The WTO Nairobi Package 2015 included opportunities to negotiate ‘other issues’, including through alternative ‘architectures’. As a nod to the breakdown of the Doha Development Agenda, it provides an avenue to pursue new negotiations. The EGA itself is an example of new issues (environmental goods) and new architectures (plurilateral negotiations) already having been pursued. The agricultural provisions under the Package include the pursuit of negotiations for a Special Safeguard Mechanism for developing countries and public stock-holding for food security purposes, as well as renewed efforts in tackling trade distorting subsidies. If these provisions are agreed in future negotiations, they may permit countries to respond more effectively to climate and weather shocks. The servicification agenda, meanwhile, presents opportunities to move away from excessive reliance on natural resource-intensive sectors, especially in LDCs, which are the sectors most vulnerable to climate change impacts, as well as sectors with linkages to natural resource sectors. As noted, LDCs and small states are facing barriers from high trade costs and uncompetitive domestic sectors, and climate change will present additional challenges.

The 2015 Paris Agreement reached at the UNFCCC’s COP21 set out the target to cap global emissions at 2°C above pre-industrial levels, with ambitions to increase to

1.5°C. The High Ambition Coalition, which comprised the African bloc, SIDS, the USA and EU, pushed for the inclusion of the higher ambition target of 1.5°C (Granoff, 2016).⁶ The Paris Agreement, which came into force once 55 countries, representing 55 per cent of emissions, had formally joined, adopted a bottom-up approach that has permitted countries to submit Nationally Determined Contributions (NDCs). NDCs this stage are, however, not ambitious enough to reach the aforementioned targets—and the ‘ratchet mechanism’ of the Paris Agreement is also essential in allowing increased ambition every five years (*ibid.*). President Trump has also confirmed the withdrawal of the United States, with negative implications for the global emissions reduction target. Article 6 of the Paris Agreement recognises the development of new market mechanisms: (i) trade of emissions units between domestic emissions trading schemes and (ii) ‘Internationally Transferred Mitigation *Outcomes*’—which, as Granoff (2016) outlines, indicates a wider recognition of climate activities beyond emissions credits. The potential relationship, if any, between the Paris Agreement and the Kyoto market mechanisms has yet to be clarified. The Paris Agreement also reaffirms commitments to achieving US\$200 billion in climate finance a year by 2020 and climate mitigation through the REDD+ mechanism.

Successful implementation of the Paris Agreement would result in significant trade shifts globally, including through the deployment of climate adaptation and mitigation policies and the scale-up of green goods and services (Cosbey, 2016). Concerns over trade-distorting effects of unilateral climate policies raise important questions on the overlap of international agreements agreed through different international organisations. Climate policies could penalise fossil fuel domestic sectors and, unless matched by similar climate mitigation ambition, in other countries could result in carbon leakage, although bilateral and regional commitments could help ensure similar ambition. Domestic climate policy measures under the MFN principle may not be able to discriminate like products based on life cycle analyses of emissions content. As such, countries may not successfully be able to apply border adjustment tariffs to ensure imported products match domestic ambitions. The International Organization for Standardization (ISO), which develops and publishes international standards, includes a standard ISO 14067 that provides ‘technical specification related to the requirements and guidelines for quantification and communication of greenhouse gas footprint of products’ to guide producers (CTE, 2014).

It is worth noting that the Paris Agreement does not account for international aviation and shipping emissions, which are responsible for 5 per cent of global emissions (Jegou et al., 2016). Given the high logistic costs facing SIDS and LLDCs, it is pertinent these international agreements do not penalise trade to and from remote countries. The UN International Civil Aviation Organization agreed in 2016 the Carbon Offsetting and Reduction Scheme for International Aviation, a market mechanism of aviation emissions comprising a pilot phase from 2021 for countries that choose to take part; a second phase in 2027–2035 will be for all states (BioRes, 2016a, 2016c). The mechanism excludes SIDS, LDCs and LLDCs, as well as others with a minimal share of aviation emissions (BioRes, 2016a, 2016c). The International Maritime Organization also agreed in 2016 on a global data collection system on fuel oil consumption, with effect from 1 January 2018. This applies to all ships with an at least 5,000 tonnage, which

account for approximately 85 per cent of shipping-related emissions (BioRes, 2016a). In 2016, Member States to the Montreal Protocol controlling chlorofluorocarbons also agreed an amendment to tackle hydrofluorocarbons, which have a highly potent effect on the climate when compared with carbon dioxide (BioRes, 2016d).

The SDGs and sub-targets address, among others, trade, climate change and biodiversity to guide the international community to 2030. While the MDGs were a primarily social agenda, the SDGs present a more holistic approach, promoting economic and environment concerns in parallel. The 2030 Agenda preamble, goals and sub-targets—and in particular SDG 17 on MOI—put some emphasis on the need for cross-cutting consideration of development aims. Trade is considered a major MOI in SDG 17, with sub-targets on promoting an ‘equitable’ multilateral trading system; concluding the Doha Development Agenda; increasing developing countries’ exports and doubling those of LDCs; and promoting duty-free quota-free access for LDCs. This is pertinent given the extent of environment-related goals—such as sustainable management of water, oceans and other ecosystems and the need to combat climate change, promote sustainable energy and build resilient infrastructure—which have important implications for inter-linkages between trade, climate change and biodiversity.

Though a comprehensive review of the SDGs is beyond the scope of this chapter, it is worth noting that SDG 12 aims to ‘[e]nsure sustainable consumption and production patterns’ and the efficient use of natural resources, the rationalisation of fossil fuel subsidies, sustainable practices for transnational companies and technological capacity. The fossil fuel subsidies phase-out agenda is pertinent as it provides effective price signals for sustainable consumption and production patterns—and since 2009 the G20 has committed to phase out fossil fuel subsidies, with the G7 calling on countries to end these by 2025.

Both the 2030 Agenda and the Addis Ababa Action Agenda—the implementation agenda for the SDGs—recognise the respective multilateral authority of the WTO, the UNFCCC and the CBD. The Addis Ababa Action Agenda also considers the role of trade, beyond financing for development, in delivering the SDGs. In particular, it highlights a ‘commit[ment] to coherent policy, financing, trade and technology frameworks to protect, manage and restore our ecosystems’. The agenda picks up on the role of trade in ensuring food security and eliminating agricultural export subsidies and subsidies contributing to overfishing as well as illegal wildlife trade.

Another key area in which the trade and environment worlds have come under renewed scrutiny is in the global fisheries market, discussed further in Chapter 4 of this publication. In brief, of 91 countries at the UN Conference on Trade and Development (UNCTAD), 14 have signed up to a roadmap to eliminate harmful fisheries subsidies. Global fisheries subsidies are estimated at US\$35 billion, with \$20 billion contributing to overfishing (UNCTAD, 2016c). The provisions include a roadmap for countries to report on what subsidies they are providing and to prohibit subsidies contributing to overfishing and illegal fishing (*ibid.*). (The UN Convention on the Law of the Sea and the Antarctic Treaty, which address marine biodiversity, are not discussed further here.)

Overall, it can be argued that there is an increasing appetite for environmental considerations in trade, as seen for example in the 2030 Agenda, the Addis Ababa Action Agenda, the WTO CTE and the EGA negotiations. This picture is reflected in the rising number of regional and bilateral trade agreements that address the environment. For example, the US Free Trade Agreements with Peru and Colombia, respectively, contain environment chapters that recognise ‘it is inappropriate to encourage trade or investment by weakening or reducing the protections offered in their respective environment laws’ and the importance of market-based incentives to encourage the ‘conservation, restoration, sustainable use, and protection of natural resources and the environment’. Both the mega-regionals—the Trans-Pacific Partnership and the (draft) Transatlantic Trade and Investment Partnership—include chapters on SPS that reflect the language of the WTO SPS Agreement. The former includes a chapter on the environment, which includes the right of the Parties to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety and the environment.

Cosbey (2016) cites the role of subsidies and certification schemes as important in boosting climate-compatible products and services. While the potentially trade-distorting effect of subsidies is noted, they can be important in the adoption of ‘new’ and green technologies. Action on eliminating global fossil fuel subsidies, totalling US\$493 billion in 2014, remains vital, to even the playing field for renewable energy technologies (IEA, 2016). For certification schemes, access to market information, finance and technology represents complementary policies required to shift into ‘green’ and sustainable products and services; these present significant barriers to adoption, particularly for small states, LDCs and micro, small and medium-sized enterprises (MSMEs) (see Chapter 8 in this publication).

5.4 International public financing options

This section provides an overview of international public financing earmarked for climate, biodiversity and Aid for Trade (Aft). Globally, volumes of public and private sector finance outstrip ‘finance needs’ for development; however, inequalities in distribution arise as a result of inefficient drawdown by certain economies (ERD, 2015). Small states, low-income countries (LICs) and LDCs are highly reliant on international public financing to achieve development objectives, given that they often attain comparatively lower levels of private sector investment and domestic resource mobilisation to meet development needs. International public financing is often catalytic in attracting other sources of financing, including through public–private partnerships and the lowering of private sector investment risk, and in the general creation of an enabling policy environment for domestic resource mobilisation and private sector investment.

Countries attracting official development assistance (ODA) and other official flows (OOF) can be crudely argued to have a comparative advantage in the sectors drawing down financing, whether this arises out of domestic or donor dynamics. They can also have increased ability to attract other types of finance in these sectors through ODA’s catalytic effect (see ERD, 2015). It is not necessarily the case that international

public flows earmarked for specific sectors will be allocated based on the economic efficiency or policy effectiveness within a sector, as finance can equally be distributed based on financial needs or vulnerability needs assessments. For example, needs assessments may be particularly relevant for climate change vulnerability, whereas LDCs and LICs may be those least able to financially adapt to climate change. ODA can be allocated based on any number of methodologies, assessments based on country income or vulnerability; on whether the domestic political economy and legal environment is conducive to sectoral investments; or on donor priorities and trade agreements, among others.

In terms of trade sustainability, developing countries, and in particular LDCs, small states, LLDCs and SIDS, which face the greatest challenges in terms of trade competitiveness, also often lack the financial resources to invest in sustainable trade. Many of these countries will also be among those most affected by climate change, given that the poorest communities and countries will be those least able to finance adaptation capacity. They are also the most affected by biodiversity degradation and reliance on natural resource sectors, and many are exposed to the adverse impacts of climate change as a result of geophysical and weather characteristics. Climate and biodiversity financing can be used to increase the resilience of communities and value chains.

The methodological approach categorises international public finances earmarked for biodiversity, climate change and AfT according to country income group and geographical region. Corrections are made for population effects, with the figures presented in per capita terms wherever feasible.⁷ This is particularly relevant for hypothesis on needs-based or vulnerability assessments, with regard to exposed populations. No correction has been made for any potential double-counting across various sources of data, relevant in particular for biodiversity and climate financing. Further, no distinction is made between grants and loans, except in the section on AfT— and further analysis for international public biodiversity and climate financing is required.

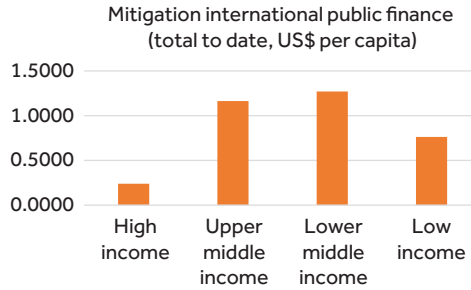
5.4.1 Climate change

The Climate Policy Initiative (2015) outlines that total climate finance flows reached US\$391 billion in 2014, accounting for both private and public investment in climate mitigation and adaptation. The below figures show international public financing only for climate mitigation and adaptation financing to date, by income group and region, taken from the Climate Funds Update (CFU) database, including REDD+ finance. It is presented in per capita terms to correct for any population effects.

A higher level of international public mitigation financing has been allocated to middle-income countries (MICs) than to LICs and high-income countries (HICs). In per capita terms, US\$0.24 has been awarded to HICs, \$1.16 to upper-middle-income countries (UMICs), \$1.27 to lower-middle-income countries (LMICs) and \$0.76 to LICs to date. Adaptation financing trends reveal that the majority of international public finances are allocated to LICs, with low levels of allocation to MICs and HICs, and donors likely allocating finance on a financial needs basis. While \$0.02 per capita

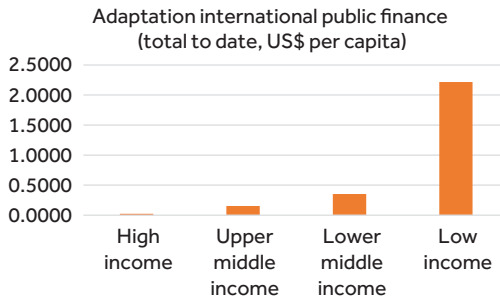
has been awarded to HICs, \$0.15 to UMICs and \$0.35 to LMICs, there has been a clear increase in per capita spending on LICs of \$2.22. It is also worth noting that the CFU database total international public finance earmarked for mitigation purposes is over 2.5 times the level of adaptation (\$7,737.68 million compared with \$2,875.18 million).

Figure 5.1 International public financing for climate mitigation (to date) by country income group (US\$ per capita)



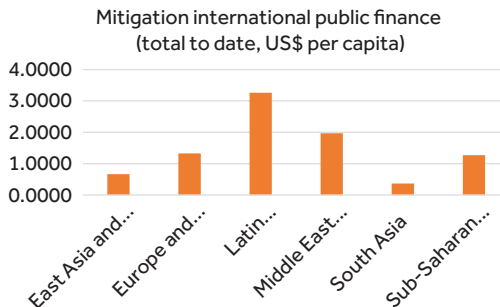
Source: CFU (2016)

Figure 5.2 International public financing for climate adaptation (to date) by country income group (US\$ per capita)



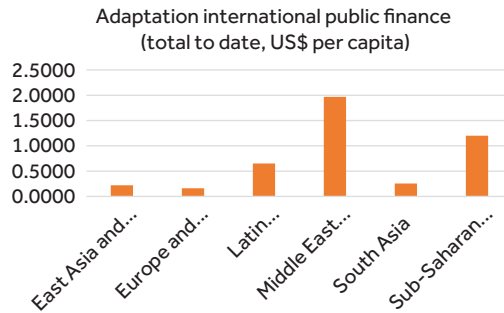
Source: CFU (2016)

Figure 5.3 International public financing for climate mitigation (to date) by region (US\$ per capita)



Source: CFU (2016)

Figure 5.4 International public financing for climate adaptation (to date) by region (US\$ per capita)



Source: CFU (2016)

From a regional perspective, Latin America and the Caribbean has received the highest amount of international public mitigation finance per capita (\$3.26) to date, followed by the Middle East and North Africa (\$1.97). This is significantly higher than East Asia and the Pacific, South Asia and Sub-Saharan Africa, which are attracting a range of \$0.37–1.27 per capita. The Middle East and North Africa receives the highest amount of international public adaptation financing per capita (\$1.97), followed by Sub-Saharan Africa (\$1.20). This is compared with a range of \$0.16–0.65 per capita for East Asia and the Pacific, Europe and Central Asia, Latin America and the Caribbean and South Asia.

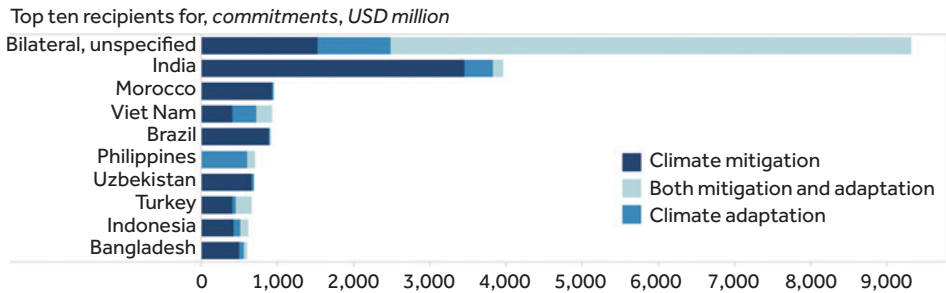
Using data from the Climate Policy Initiative (2015) (absolute data) in 2014, the regional picture is somewhat different, with East Asia and the Pacific drawing down the highest proportion of financing, followed by Western Europe. This could reflect both differences in accounting for both private and public sources of financing and potential shifts over time, with more financing being allocated in recent years to these regions.

Figure 5.5 shows the top 10 country recipients of Organisation for Economic Co-operation and Development (OECD) international public financial flows earmarked for climate purposes in 2014, combining both mitigation and adaptation financing. In this graph, India received the significant majority of climate international public flows for mitigation (\$3,463.85 million), adaptation (\$375.01 million) or both mitigation and adaptation purposes (\$132.11 million). Perhaps not surprisingly, South Asia had the highest absolute level of international public financing for climate purposes in 2014 (including India), exceeding financing for Latin America and the Caribbean and the Middle East and North Africa as the second and third largest regional recipients, according to the OECD data.

5.4.2 Biodiversity

Parker et al. (2012) in the CBD High-Level Panel report (2014) estimate levels of global funding for biodiversity at between \$51 and \$53 billion annually. The below figures show international public financing only, earmarked for biodiversity purposes

Figure 5.5 Top 10 recipients of OECD climate financing (commitments, US\$ millions)

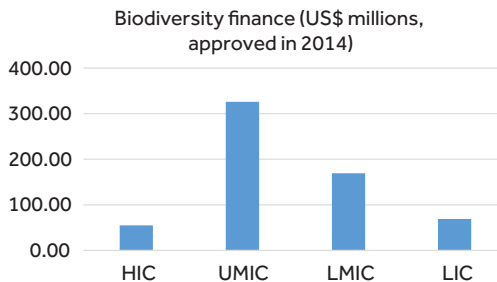


Source: OECD climate-related development finance data visualisation portal (2016)

by country income group and region and showing only finance approved through the Global Environment Facility (GEF) in 2014. The data are taken from the GEF website. The data by income group show both total finance in that period (US\$ millions) and data per capita (US\$ per capita). The regional data have not been adjusted for population, given the discrepancy between the World Bank WDI and OECD data in regional categorisations. The lower per capita figures presented below for biodiversity financing are a direct result of the data being restricted to international public financial flows through GEF in 2014, as compared with the climate financing data, which show total international public financial flows to date for climate purposes as recorded within the CFU.

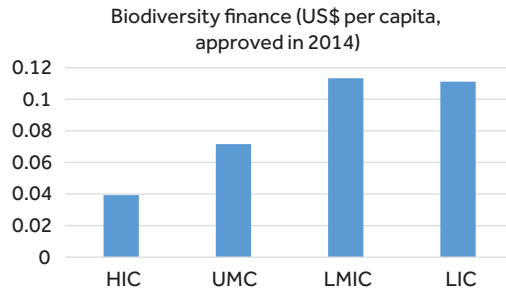
It is worth noting the significant change in trends when comparing the two country income graphs, with the latter showing trends corrected for population effects. The raw data show UMICs receiving the majority of international public biodiversity financing, totalling \$326.04 million as compared with \$54.88 million to HICs, \$169.06 million to LMICs and \$69.11 to LICs. When adjusted for population effects, the majority of the financing is allocated to LMICs (\$0.113 per capita), followed by LICs (\$0.111 per capita), with UMICs and HICs receiving a lower proportion (\$ 0.071 and \$ 0.039 per capita, respectively).

Figure 5.6 Biodiversity finance approved in 2014 by country income group (US\$ millions)



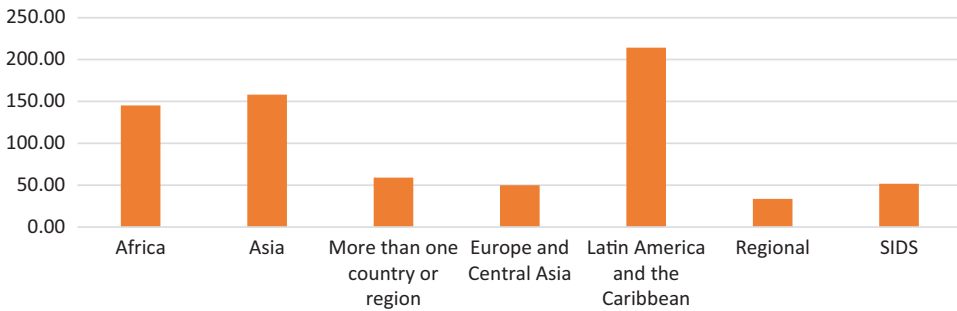
Source: GEF (2016)

Figure 5.7 Biodiversity finance approved in 2014 by country income group (US\$ per capita)



Source: GEF (2016)

Figure 5.8 Biodiversity finance approved in 2014 by region (US\$ millions)

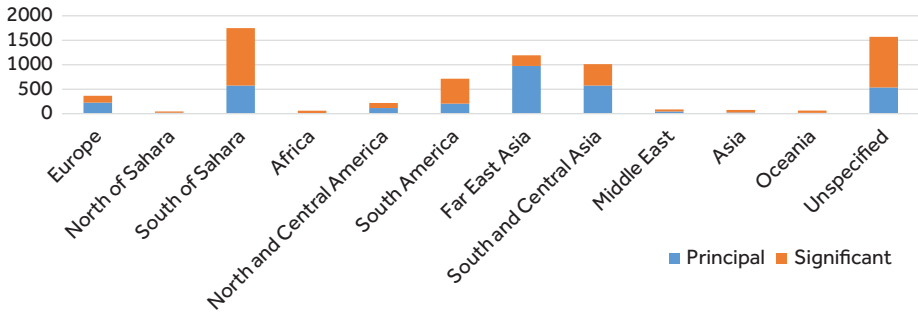


Source: GEF (2016)

When analysing the data by region, the majority of international public biodiversity financing approved in 2014 is allocated to Latin America and the Caribbean (\$214.26 million), followed by Asia and Africa (\$158.18 million and \$145.13 million, respectively). SIDS and Europe and Central Asia receive a smaller level of financing (\$51.59 million and \$49.93 million, respectively), with the remainder distributed via regional or multiple country envelopes. Latin America and the Caribbean attracts the highest proportion of international public financing earmarked for both climate mitigation and biodiversity purposes; Africa and Asia receive the second and third largest volumes of financing.

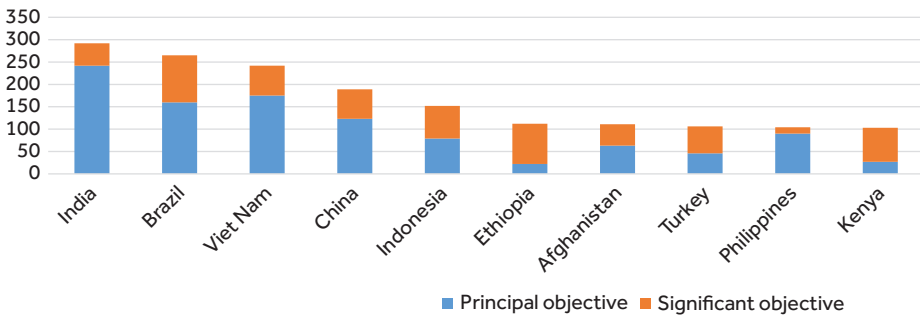
When compared with OECD Development Assistance Committee (DAC) regional data for 2014 in Figure 5.9, the picture changes to reflect higher proportions of international public financing to Sub-Saharan Africa (\$576 million principal objective; \$1,172 million significant objective), followed by Far East Asia (\$977 million; \$217 million significant objective).⁸ South America attracts the fourth highest level of financing, after South and Central Asia. This indicates a difference in allocation across different mechanisms and donors of international public financing for biodiversity in 2014. When omitting the OECD DAC tracking of 'significant objective' (i.e. not the primary objective), Asia is the primary recipient of biodiversity financing.

Figure 5.9 ECD international public financing by region in 2014 (US\$ millions)



Source: OECD DAC (2016)

Figure 5.10 Top 10 recipients of OECD international public biodiversity financing (US\$ millions)



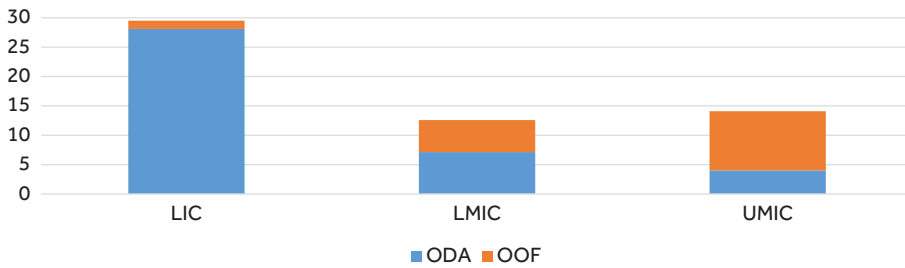
Source: OECD DAC (2016)

Figure 5.10 uses data taken from the OECD Rio Markers and shows international public financing for 2014 where biodiversity is the principal objective or a significant objective. India was the primary recipient of biodiversity aid, receiving \$292 million in total financing (\$242 million principal objective; \$50 million significant objective). Note that India was also the primary recipient of international public mitigation financing. After India, Brazil (\$160 million; \$105 million), then Viet Nam (\$175 million; \$67 million) and China (\$123 million; \$66 million) received the highest contributions. Brazil and Viet Nam were also top five recipients of OECD international public financing earmarked for both biodiversity and climate change. The OECD data also show significant volumes of international public biodiversity financing earmarked to countries in Asia and Latin America.

5.4.3 Aid for Trade

Total AfT flows reached \$42,830 million in 2014 (US 2013 constant prices) according to the OECD.stat database. The figures below show international public AfT financing in 2013 by income group and region, with data from the OECD.stat

Figure 5.11 AfT in 2013 by country income group (US\$ per capita) (ODA and OOF)



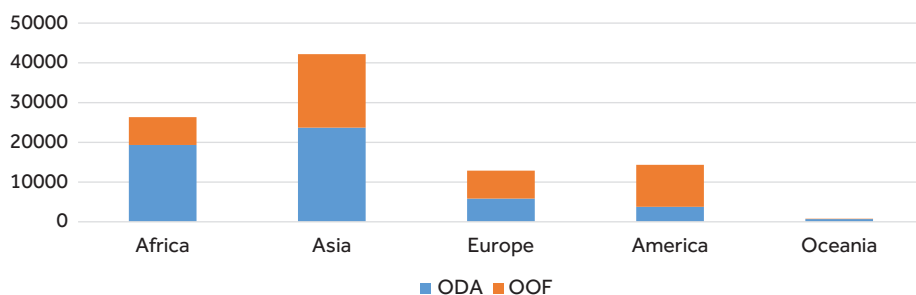
Source: OECD.stat database (2016)

database. The blue figures show ODA and OOF and the orange figures ODA only. The regional data show US\$ millions whereas the country income data have been corrected for population effects and show US\$ per capita. In terms of country income classifications, the 'LICs' group includes LDCs, LICs and Other LICs according to OECD classifications, whereas the 'UMICs' includes data for UMICs and More Advanced Developing Countries and Territories (MADCTs).

There is a significantly higher proportion of international public financing for AfT (OECD, 2013 data) when comparing the US\$ per capita figures with those presented in the biodiversity financing section (GEF, 2014 data). The data organised by country income group show the majority of AfT is being directed to LICs (including LDCs) as opposed to MICs. When OOF are removed, the ODA flows for 2013 show an even clearer country income trend, with LICs (including LDCs) receiving \$28.12 per capita, LMICs \$7.13 per capita and UMICs (including MADCTs) \$4.02 per capita. This is compared with \$29.53 per capita for LICs (and LDCs), \$12.60 per capita for LMICs and \$14.09 per capita for UMICs (and MADCTs) for ODA and OOF.

At the regional level, Asia attracts a significantly higher proportion of OECD AfT counting both ODA and OOF (totalling \$42,202 million) compared with other regions. Africa attracts the second highest amount (\$26,341 million) followed by America (\$14,351 million). When OOF are omitted, ODA regional AfT shows a similar trend, with Asia attracting the highest amount, totalling \$23,689 million, and Africa attracting \$19,330 million in 2013. With ODA-only flows, Europe receives a higher proportion of ODA than America (\$5,839 million and \$3,769 million, respectively), though it receives less in total in comparison with America when OOF are taken into account.

Figure 5.12 shows the top 10 country recipients of OECD AfT disbursements in 2014 (US\$ millions). As with international public financing for climate and biodiversity, India receives the highest amount of AfT financing (\$5,007 million). Turkey receives \$3,486 million, with the remainder receiving between \$1,503 million (Egypt) and \$2,658 million (Pakistan), excluding unspecified and Africa regional AfT disbursement. Other countries that are top 10 recipients of international public financing to all three sectors include Viet Nam and Turkey.

Figure 5.12 AfT in 2013 by region (US\$ millions) (ODA only and ODA and OOF)

Source: OECD.stat database (2016)

5.4.4 International public finance conclusions

Allocation of international public financing for climate adaptation and AfT closely follows a country income trend, with lower-income countries receiving the highest proportion of financing. Climate mitigation and biodiversity financing do not follow such a trend, with MICs receiving the highest proportion of finance, which may be in part explained by more conducive business or policy environments. Bilateral, regional and multilateral trade agreements, including preferential treatment, are likely to affect the donor prioritisation of AfT. For example, under the WTO, LDCs are prioritised under AfT provisions.

From a regional perspective, Latin America and the Caribbean receives the highest proportion of international public financing earmarked for climate mitigation and biodiversity, respectively. This may owe in part to the existence of bio-diverse forests, which also act as emissions sinks, or to the fact that environmental degradation may have occurred on a wider scale in more industrialised nations. The Middle East and North Africa has been the greatest recipient of international public biodiversity financing per capita, followed by Sub-Saharan Africa. It may be that these regions have high presence of environmental awareness and environmentally dependent sectors, such as the ecotourism sector in Sub-Saharan Africa. Finally, Asia receives the highest proportion of AfT financing, followed by Africa. This is not necessarily surprising. The EC's 2017 trade map of agreements shows preferential trade agreements in place or under negotiation with countries, with the majority in Central and South America, Asia and Africa; in the Pacific (Oceania) region trade agreements are much less common.

India receives the highest total investments in AfT, climate and biodiversity financing. Further research is required to ascertain the factors that explain this advantage.

5.5 Conceptualising the inter-linkages

This section addresses the inter-linkages between trade, climate change and biodiversity for sustainable trade—that is *'the exchange of goods and services that yields positive economic and environmental benefits, internalising climate and biodiversity considerations'*. Table 5.1 provides an overview of the inter-linkages between these three sectors.

Table 5.1 Inter-linkages between climate change, biodiversity and trade

The force		Biodiversity		Trade	
Climate change		Long-term	Short-term shock	Long-term	Short-term shock
The response					
Climate change		Bio-diverse and healthy ecosystems are less vulnerable to climate change (more able to adapt) and more able to act as sinks, absorbing emissions, requiring effective management of biological resources.	Localised destruction/ degradation or conservation events affect the emissions absorbed and emitted by ecosystems (e.g. forests) in the short term, with a long-term climate forcing effect. Effective legal and policy protection is required.	Trade has an impact on climate through scale, composition and technique effects. Trade can create opportunities in green technologies, goods and services (and reduce emissions) if conducive domestic frameworks are in place.	Production shocks can reduce emissions through a reduction in transport needs, the reduced supply of goods and services (scale effect) and shifts to less/more polluting goods and services (composition effect).

(continued)

Table 5.1 Inter-linkages between climate change, biodiversity and trade (continued)

The force		Biodiversity			Trade	
		Long-term	Short-term shock	Long-term	Long-term	Short-term shock
Climate change	Long-term	Shifts in climate will have largely negative, but also positive, impacts on species and ecosystems. Species and ecosystems will differ in their ability to adapt to changing conditions, but healthy ecosystems will be more resilient.	Weather shocks can cause localised and high-impact destruction or degradation of species and ecosystems that will differ in their ability to survive and recover. Effective management of biological resources will help reduce impacts.			
	Short-term shock					
Biodiversity						
						Trade can have impact on biodiversity through scale, composition and technique effects, with Biotrader/sustainability opportunities e.g. higher value environmentally sustainable products and services. Conducive policy frameworks are required to attract 'green trade'.

(continued)

Table 5.1 Inter-linkages between climate change, biodiversity and trade (continued)

The force		Biodiversity		Trade	
Climate change		Long-term	Short-term shock	Long-term	Short-term shock
Trade					
Climate change will affect natural, human and financial capital, e.g. shifts in climate will affect long-term water and land availability. Policy frameworks are needed to manage the long-term impacts of climate change.	Weather shocks can cause localised destruction and degradation of natural, human and financial capital e.g. labour and infrastructure. It can also increase/decrease demand for goods and services (e.g. reparation labour).	Genetic and biological resources create opportunities for trade, especially within poorer communities more reliant on natural resources. Effective legal and policy environments are required for sustainable use.	Localised destruction/degradation or conservation events will affect the biological resources available for livelihoods and trade purposes. This can increase/decrease the impact of biological resource use in the short term.		

5.5.1 Policy, investment and trends

The implementation of multilateral climate and biodiversity agreements is likely to have wide-reaching implications for trade, as will multilateral trade agreements for the realms of climate and biodiversity. Section 5.3 outlined some of the ways in which multilateral policy agreements impact are interrelated and impact on one another. Multilateral negotiation processes and implementation processes at domestic level need to take into account inter-linkages so that proactive sustainable trade measures can be put in place and conflicts can be avoided. The WTO's dedicated CTE, for example, helps serve this purpose. CBD members have also addressed the theme of trade liberalisation in COPs (see CBD, 2002, 2005).

While trade and climate change can be characterised under the polarity of reconciling fossil fuel-based globalisation with environmental implications, sustainable trade policies can also generate positive climate and biodiversity externalities that are not trade-distorting. An example was eliminating fossil fuel subsidies worth US\$493 billion in 2014 (IEA, 2016) to create an even playing field for all types of energy, as the G7 has committed to do by 2025 (Mathiesen, 2016). Bearing in mind that renewables are already beginning to compete with fossil fuels in certain markets, the impact could tip the balance in favour of these, reducing the need for renewable energy subsidies, which were at \$112 billion in 2014, while biofuel subsidies were estimated at \$23 billion (Kavanagh, 2016). Other examples include research and development investments, including in 'green' technologies; lowering tariff and non-tariff barriers for environmental goods and services, such as the plurilateral EGA that select WTO Member States are working towards; and shifting economic and financial incentives to encourage investments with returns along longer timescales, which include some form of environmental accounting. These suggestions are, however, not new, and the emphasis remains on the effective implementation of such measures.

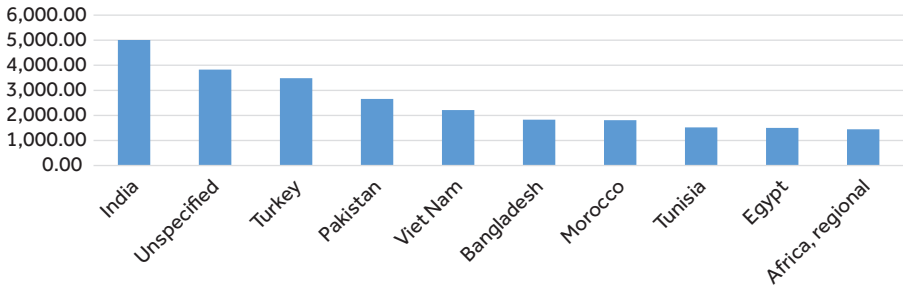
In addressing the conflicts, globalisation and trade liberalisation creates increasing demand for products and services and for cross-border regional and international transport. This holds the potential for increased emissions, assuming fossil fuel-intensive production, energy systems and transport. The WTO categorises the impact of trade on climate according to (i) the 'scale effect' of increased output; (ii) the 'composition effect' of trade liberalisation in changing the mix of production; and (iii) the 'technique effect' through the promotion of technologies (WTO, 2016a; Worrall, 2015). Decreases in global agricultural productivity are predicted to 2050, alongside increasing strains on natural resource and energy inputs for manufacturing and services infrastructure. Climate change will affect human, financial and infrastructure capital. For example, UNCTAD (2011) has outlined that, by 2050, 136 major port cities will experience infrastructure asset damage worth up to US\$28 trillion, assuming a sea level rise of 0.5 metres. The new Paris Agreement excludes emissions from aviation and shipping, which currently account for 5 per cent of global emissions—and this is likely to increase with the increased fragmentation of trade and higher demand for products (Jegou et al., 2016). This shows the importance of the need to develop an international transport carbon market mechanism, such as the International Civil Aviation Authority is developing for aviation emissions.

Healthy ecosystems are better able to withstand weather shocks and other stresses, with conservation investment and policy increasing the resilience of ecosystems to climate change. Beyond re-conservation measures, sustainable management of existing natural resource assets is required. When addressing trade and biodiversity, environmental accounting needs to address the value of biodiversity and ecosystem services. This is often a nuanced exercise, where for example a fully grown Amazon rainforest palm tree (*Euterpe precatoria*) has higher value than a newly planted tree—both in terms of its mitigation services and as an input for sustainable trade. Sustainable agricultural practices, including in reducing fertiliser inputs, decreasing water usage and increasing agricultural biodiversity, can support some level of agricultural adaptation, though this needs to be matched with ambitious climate targets to be effective. Biodiversity and trade can interact synergistically provided a conducive policy environment is established at the domestic and international levels; this includes investments that operate with an understanding of environmental accounting and are included in policy decision-making.

The UNCTAD Biotrade initiative provides demonstrated examples of sustainable trade in goods derived from biological resources that has contributed to local social and economic development, including in rural, indigenous and marginalised communities. This trend has been bolstered through increasing global demand for sustainable goods and services—a growing sector that recent estimates suggest amounts to US\$5.2 billion (UNCTAD, 2016a). UNCTAD (2016b) defines Biotrade as ‘the collection, production, transformation and commercialization of goods and services derived from native biodiversity (ecosystems and species) under social, environmental and economic sustainability criteria’.

Conservation incentives can also be linked to tourism services with linkages into the local economy, creating local value chains into the agriculture, manufacturing and services sectors. General trade enablers, including access to market information, finance and technologies for small-scale producers and MSMEs, are general enablers for producers and service providers in developing countries, including in sustainable products and services. Such schemes are often taken up asymmetrically according to the size of the company and access to information, with MSMEs less likely than larger corporations to adopt new sustainable technologies, processes or inputs. For certification schemes, for example, access to information and markets is vital, but only firms with the financial and technological capital required to invest in sustainable goods and services will be able to benefit from the sustainability market. Education and training on biodiversity can also provide further incentives for sustainable trade.

Conflicts can arise whereby globalisation and trade liberalisation create increased demand for goods and services that rely on unsustainable use of natural resources or the conversion of land (including for agricultural purposes). This puts pressure on environmental assets, including through unsustainable practices in manufacturing and services. This can result in reduced ecosystem services and natural resource assets, including carbon mitigation and adaptive services, such as in the role of coastal mangroves and marshlands in buffering sea level rise and storm shocks (CBD, 2002). Meanwhile, trade liberalisation has also in part been implicated in the spread of

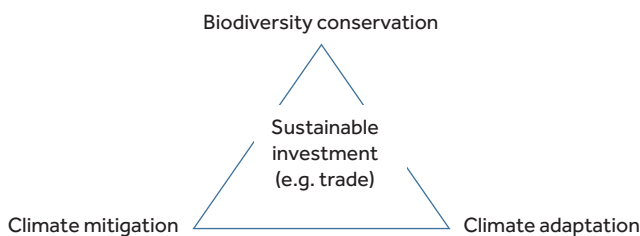
Figure 5.13 Top 10 recipients of OECD AfT in 2014 (US\$ millions)

Source: OECD.stat database (2016)

invasive species, with its associated impacts on fauna and flora in overseas territories, and the potential for knock-on impacts on biodiversity levels and ecosystem services. Robinson (2014) estimates the cost of invasive species to the global economy at US\$1.4 trillion in 2014. Costanza et al. (2014) estimate the global value of ecosystem services at \$145 trillion per year (based on 1997–2011 data). Healthy ecosystems will increase the resilience of ecosystems to such shocks, whereas genetic diversity provides species and ecosystems with ‘options’ to adapt to climate change and other economic stressors.

Investments in climate mitigation, adaptation and biodiversity conservation will not necessarily contribute positively across all these facets. This points to the need for sound policy-making to manage the trade-offs of sustainable trade. For example, while biofuels can be climate-mitigating in reducing fossil fuel demand, life cycle analysis reveals that they can also act as a net source of emissions if unsustainable agricultural practices are taken into account. Such practices include their production on deforested land, intensive use of chemical inputs and utilisation of unhealthy soils that act as a source of emissions. The biofuels market is estimated at US\$168 billion in 2016 and is predicted to grow by over 4 per cent per annum to 2024 (Biofuels International, 2016). Renewable energy investments may also lead to the creation of energy assets and grids in areas susceptible to climate change impacts in the medium to long term, such as coastal regions, or involve the clearing of important biological resources that are not climate-mitigating but are important for biodiversity purposes. Sustainable trade investment should consider the impact on all these facets.

Beyond the long-term implications of climate change and biodiversity for trade and vice versa, short-term shocks can create significant implications for the social,

Figure 5.14 Sustainable investment

economic and environmental aspects of trade sustainability. It is worth noting that simultaneous shocks, for example simultaneous lower market demand and a natural disaster, would create a stronger combined shock to any given economy than a single shock force acting on trade sustainability. An overview of long-term forces and short-term shocks for trade sustainability is provided in Table 5.1 above.

5.5.2 Social implications

A full examination of the social implications of trade sustainability is beyond the scope of this chapter. However, in the context of trade as a force for poverty reduction and economic development, unsustainability creates issues for the sustainability of global achievements in development, including poverty reduction efforts. The Overseas Development Institute (ODI) (2015) and the World Bank (2016) have argued the need to think about poverty reduction synergistically with climate change, given that lower-income households and women are among those most vulnerable and dependent on biological resources for welfare and livelihood purposes—sectors that will be highly affected by climate change. A modelling exercise reveals that unchecked climate change could draw up to 720 million people back into extreme poverty in the period 2030–2050 (based on a 3.5°C emissions trajectory; ODI, 2015). Climate change therefore poses a severe threat in terms of increasing inequality and poverty over the long term, including through impacts on biological resources. Renewable energy investments, beyond climate mitigation potential, can also increase access to energy in rural populations.

Briefly, research has also explored the role of climate change in conflict and violence (e.g. Hsiang et al., 2013, Kelley et al., 2015). A recent paper outlines climate shocks as responsible for 23 per cent of conflict outbreaks (Schleussner et al., 2016), whereas the UN Environment Programme (UNEP) (2016) claims 40 per cent of armed conflict between government and instate groups has a link to natural resources. UNCTAD (2016b) has also demonstrated the role of Biotrade in post-conflict recovery in Indonesia and Colombia through social and economic recovery.

5.6 Conclusion

This chapter has summarised the international policy environment for trade sustainability and discussed international public financial resources earmarked for climate, biodiversity and trade purposes, as well as examining the inter-linkages in more detail. The analysis demonstrates the presence of trade-offs between climate, biodiversity and trade objectives and investments, with long-term horizons required for policy and investment decisions to promote climate adaptation, mitigation and environmental conservation.

Within the international policy context, international policy-making across climate, biodiversity and trade spheres remains largely siloed. The SDGs present an exception, with objectives across these three trade sustainability spheres. Trade is included as an MOI to achieve the SDGs in the 2030 Agenda and the Addis Ababa Action Agenda, including objectives on climate and biodiversity. This platform is important for the

WTO, the UNFCCC and the CBD, among other international organisations, to begin to engage more effectively on the issue of trade sustainability of value chains. It will also help small states begin engaging with trade sustainability, as countries particularly reliant on natural resources. International public financing is largely geared towards the achievement of international development objectives, and could also help in the drawdown of additional international public financing for trade sustainability.

WTO, UNFCCC and CBD ministerial meetings and conference of the parties already often host representatives from respective international organisation. The WTO, for example, has a dedicated Committee on Trade and Environment. However, this has not necessarily translated into boosting the importance of sustainability considerations in international trade policy processes. The onus remains on individual countries to develop national policy that effectively intertwines climate, biodiversity and trade considerations for sustainable development. Though not fully addressed in this chapter, the social development implications would need to be thoroughly integrated.

Given the regularly enforced dispute settlement mechanism of the WTO, which can carry more weight with Member States than certain environmental agreements that lack strong enforcement measures, the incorporation of environmental considerations within WTO processes (from negotiation to implementation) will be vital. This is particularly relevant for small states that already face challenges in the implementation of WTO rules and that may lack the financial and technical capital to support dispute settlement processes. Technical contributions from environmental experts should be consulted in the formation of new WTO agreements; whilst WTO environmental exemption rules would allow countries to implement unilateral environmental policy, they need to ensure these are not a means of arbitrary or unjustifiable discrimination. The introduction of new rules is necessary given the ineffectiveness of 'environmental exemptions' rules already included in the WTO dispute settlement process. Furthermore, the plurilateral negotiations on the EGA present a positive example of trade negotiations under the WTO as a beneficial force for the environment, in facilitating the movement of environmental goods and services.

From an international public finance perspective, there are differences in the way that climate, biodiversity and AfT financing is disbursed across country income groups and regions. According to the data selected for use in this chapter, there are some clear trends. When corrected for population effects in disbursement, international public financing for climate mitigation and biodiversity are both directed primarily to UMICs and the Latin America and Caribbean region. For climate adaptation international public financing, LICs and the Middle East and North Africa receive the highest proportion per capita. The highest proportion of AfT is allocated to LICs and Asia (not corrected for population effects owing to differences in data categorisation). More research needs to be conducted to isolate the effects of loans versus grants in allocations, which were here identified only for AfT.

For countries and regions that are seeking to finance trade sustainability transitions and policies, respective comparative advantages are apparent in attracting international public flows. It is also recognised that international public financial

flows can be catalytic in attracting alternative sources of financing, particularly if used to support improvements in the business environment or to encourage public–private partnerships (see discussion in ERD, 2015). More analysis is required to isolate country-level comparative advantages, but the regional financial data provided in this chapter provide a first step for policy-makers. Small states and LICs are particularly dependent on international public resources to finance development policy—and the analysis shows that climate adaptation and AfT allocations are strongest to LICs and LDCs. Meanwhile, cost-effective spending of limited international public resources can also be maximised through joined-up thinking on trade sustainability.

While short-term trade and economic considerations can be the primary focus of national policy-makers and investments, the implications of climate change and biodiversity degradation for value chains will have significant effects on existing trade patterns at domestic to international levels in the longer term. Examining the possible synergies and trade-offs between trade, climate and biodiversity becomes essential at national level, in light of international sustainable development objectives (such as the 2030 Agenda). Existing trade patterns can both exacerbate climate change and biodiversity degradation and be susceptible to the future impacts of climate change and biodiversity degradation. However, trade can also help support green growth opportunities in countries. When trade policy and national policy strategy are developed at the country level, identification of the risks and opportunities of climate and biodiversity should be fully integrated into policy-making processes; while many countries already possess environmental safeguards for policy and investment decisions, these need to be maximised in order to deliver transformational change into climate-resilient and sustainable value chains to support the long-term development of trade livelihoods, processes and sectors. Beyond financial support, international support may be required by small states that lack the technical know-how to do so, with the potential to draw down environmental knowledge, for example from UNFCCC and CBD mechanisms or developed country partners.

In providing international policy and public finance context, as well as theoretical investigation of inter-linkages, this chapter has aimed to provide a first step in further research on trade sustainability at international to country levels.

Notes

- 1 Various other multilateral environmental agreements are not mentioned here, given their number.
- 2 The CITES 17th COP in September 2016 revised the status of a variety of marine and land species, including thresher sharks.
- 3 The Kyoto Protocol commits Annex B industrialised nations to ‘assigned [emissions] amounts’. Annex B Parties are permitted under Article 17 to sell ‘excess’ emissions, known as Assigned Amount Units to other Annex B Parties and the transfer of climate mitigation activities to other countries is also permitted through (i) Land Use, Land Use Change and Forestry removal units, (ii) emission reduction units from Joint Implementation projects in Annex B countries and (iii) certified emissions reduction units from Clean Development Mechanism (CDM) projects in non-Annex B developing countries.
- 4 See the WTO website for examples of environment-related arbitration cases.
- 5 The Aichi Biodiversity Targets (2011–2020) agreed by CBD Member States aim to phase out subsidies harmful to biodiversity, preserve genetic diversity and control invasive species pathways. The latter

is particularly pertinent given that international transport (air and water) has been implicated in the spread of invasive species. With regard to pollution, transnational corporations (including fossil fuel extraction corporations) are often implicated in large-scale environmental violations in countries of operation and are often difficult to bring to account, largely because of the complicated structure of these corporations, which have subsidiaries across various legal jurisdictions, and the unwillingness of host governments to penalise them.

- 6 Some climate research suggests that emissions already emitted will lock the world into temperature increases of at least 1.5°C above pre-industrial levels; the upcoming publication by the Intergovernmental Panel on Climate Change (IPCC) will explore the 1.5°C level in further detail.
- 7 Population figures are taken from the World Bank income and regional classifications, therefore population corrections were feasible only for those data sources that use the same categories. WDI 2014 aggregate population data were used for the adjustment.
- 8 'Activities scored as "principal" would not have been funded but for that policy objective; activities scored "significant" have other primary objectives but have been formulated or adjusted to help meet the policy objective' (OECD, 2015).

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Chapter 6

E-Commerce Development: Policy Considerations for Small Developing Countries

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6.1 Introduction

This chapter explores policy considerations for electronic commerce (e-commerce) development in small developing countries. E-commerce, though not entirely a new subject area in international trade discourse, is coming to the forefront now given its rapid expansion and the need for governments and the global community at large to look more carefully at the implications of this and to come up with relevant policy measures. This chapter does not purport to build the case for a particular stance by these countries on e-commerce, but rather looks at the potential benefits that could accrue from e-commerce development and at the same time the serious challenges they face, given the constraints that exist, as well as ways to address these. While the focus is on small developing countries, many of the issues covered will be relevant to the larger group of developing countries. They may also generally be of interest in shaping up a global agenda on e-commerce with a development dimension.

6.2 What is e-commerce and why is it important to study it?

We cannot assign one specific definition to e-commerce, as it is an evolving practice that is inextricably linked to technological development and forms of conducting business transactions. Broadly, e-commerce can be defined as the buying and selling of goods and services through computer networks such as the internet or other electronic means. In the context of the World Trade Organization (WTO) Work Programme on E-Commerce, it is defined as ‘the production, distribution, marketing, sale or delivery of goods and services by electronic means’ (WTO, 1998). According to the UN Conference on Trade and Development (UNCTAD) (2015), e-commerce covers purchases and sales conducted over computer networks, using multiple formats and devices, including the web and electronic data interchange, using personal computers, laptops, tablets and mobile phones of varying levels of sophistication. E-commerce may involve physical goods as well as intangible (digital) products and services that can be delivered digitally (ibid.). Digital trade, a form of e-commerce, is defined as trade in purely digitised products that can be downloaded or streamed over the internet (UNCTAD, 2016).

E-commerce has been linked with the revolution and boom in information and communication technologies (ICTs) in the later part of the 1990s. The rapidly

evolving nature of technologies quickly affects the way business is conducted through the internet (e.g. the Uber mobile application for booking transportation) such that it becomes difficult to size up precisely the amount of transactions taking place at a given point in time and the methods through which these are happening. Forms can be business to business (B2B), business to consumer (B2C), consumer to consumer (C2C), business to government (B2G) and, to a certain extent, government to government (G2G).

UNCTAD (2015) estimates that the value of global B2B e-commerce in 2013 exceeded US\$15 trillion. Global B2C e-commerce accounted for an estimated \$1.2 trillion in 2013 (ibid.). Given this rapid expansion, it will not take long before this form of trading dominates global transactions. E-commerce presents much development potential, especially in mitigating some of the disadvantages arising out of smallness and remoteness, but numerous policy implications and challenges need to be thoroughly analysed to ensure this form of trading does not go unregulated and out of control. Impacts with regard to traditional ways of conducting business, revenue, origin of products and services, employment and intellectual property rights are among the areas that will require attention.

6.3 How can e-commerce be measured?

The measurement of e-commerce depends first and foremost on the definition assigned to it or the specific method of delivery used—for example B2B or B2C trade. Given the lack of a uniform and universally accepted approach, it is difficult to precisely ascertain the amount of trade being conducted through e-commerce. Furthermore, very few countries, especially developing countries, maintain data on e-commerce. According to UNCTAD (2015: 39), ‘[t]here are few benchmarks of country e-commerce performance; those that exist suffer from a lack of public availability, scope or consistent methodology, as well as limited geographical coverage.’

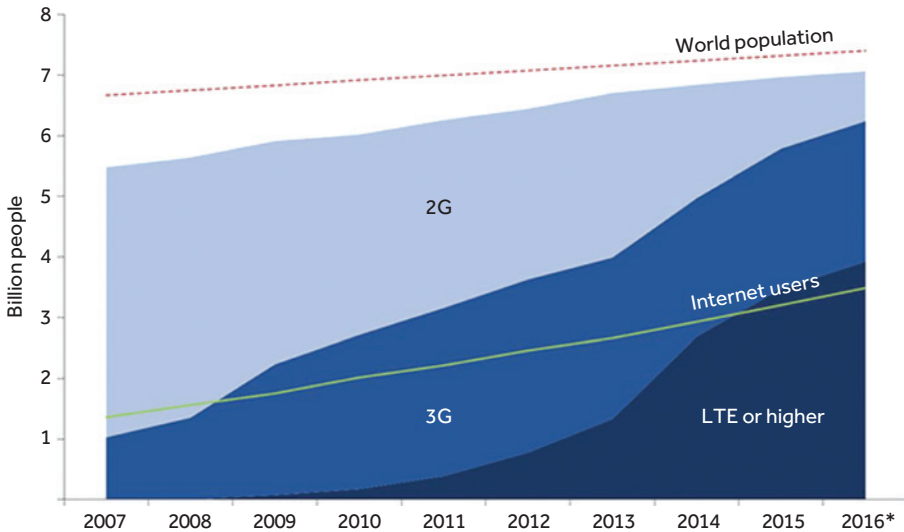
Many of the studies conducted on e-commerce actually try to measure it on the basis of the capabilities of countries to carry out e-commerce transactions, such as access to modern methods of telecommunications—internet, telephony, number of computers per household, cost of communication. However, few studies actually pertain to the measurement of e-commerce—that is, the actual trade taking place between parties through electronic means and that was hitherto conducted through traditional means such as through border and customs post, or captured by local presence in the case of services. The International Telecommunications Union (ITU) collects comprehensive data on ICTs (ITU, 2016).

Table 6.1 Individuals using the internet (millions)

	2008	2016
Developed	753	1,023
Developing	808	2,465
Total	1,561	3,488

Source: ITU

Figure 6.1 Evolution of internet users and mobile network coverage and evolving technologies



Source: ITU (2016b)

UNCTAD (2015) has developed an index for the measurement of B2C e-commerce. Basically, this assesses the readiness of countries for e-commerce, using data for 130 economies on four indicators: internet use, secure servers, credit card penetration and postal delivery services. But the other aspects of e-commerce remain largely unmeasured, in part because of the lack of data and/or an appropriate methodology. The rapidly evolving nature of this trade further complicates efforts to measure it. Developing a policy and regulatory framework that involves measurement in this area will certainly require more adequate data and methods. There will also need to be a focus on increasing data availability for specific groups of countries, such as small states.

6.4 Assessing readiness for e-commerce through e-government

UNCTAD (2015) identifies the need to put in place high-speed internet access and to develop robust payment and delivery systems to ensure seamless transaction processing. The Commonwealth Secretariat eReadiness framework takes a much broader view and considers the enterprise as a whole to function effectively in a digital environment. These frameworks are complementary and could be utilised in conjunction to ensure full assessment of the digital ecosystem to support e-commerce. The benefits of e-commerce are widely documented, and, with the exponential growth of internet usage and mobile devices, new digital pathways to conduct commerce are being created. However, critical technological and legislative elements must be in place to ensure e-commerce is readily available, trusted, safe and secure.

Table 6.2 UN E-government index

Country	E-government rank		E-government index		Online service index		Human capital index		Telecommunication infrastructure index	
	2014	2012	2014	2012	2014	2012	2014	2012	2014	2012
Antigua and Barbuda	60	49	0.59	0.63	0.42	0.31	0.77	0.88	0.59	0.72
The Bahamas	92	65	0.49	0.58	0.34	0.47	0.71	0.81	0.42	0.46
Barbados	59	44	0.59	0.66	0.22	0.37	0.89	0.92	0.67	0.67
Botswana	112	121	0.42	0.42	0.31	0.36	0.66	0.71	0.30	0.19
Brunei Darussalam	86	54	0.50	0.63	0.36	0.59	0.78	0.83	0.37	0.46
Fiji	85	105	0.50	0.47	0.39	0.36	0.83	0.80	0.29	0.24
Lesotho	153	136	0.26	0.35	0.16	0.30	0.51	0.70	0.12	0.05
Maldives	94	95	0.48	0.50	0.36	0.33	0.69	0.81	0.40	0.36
Mauritius	76	93	0.53	0.51	0.47	0.43	0.69	0.76	0.44	0.33
Seychelles	81	84	0.51	0.52	0.33	0.33	0.73	0.82	0.47	0.40
Sri Lanka	74	115	0.54	0.44	0.65	0.38	0.74	0.74	0.23	0.19
Tonga	98	111	0.47	0.44	0.35	0.24	0.83	0.87	0.23	0.21
Trinidad and Tobago	91	67	0.49	0.57	0.33	0.48	0.69	0.78	0.45	0.45
Tuvalu	137	134	0.31	0.35	0.04	0.05	0.70	0.82	0.18	0.19
Vanuatu	159	135	0.26	0.35	0.08	0.22	0.57	0.65	0.12	0.18

Before embarking on an e-commerce strategy and its subsequent implementation, countries should conduct an eReadiness assessment to evaluate their level of ICT sophistication, including in infrastructure, ICT literacy, the legal and regulatory environment and cyber security. The eReadiness toolkit developed by the Commonwealth is designed to allow a government to determine where it stands with regard to the Commonwealth objectives, vision and principles for e-government at the time the assessment is carried out. The Commonwealth toolkit can be accessed by contacting the authors of this chapter.

E-government is the provision of government services online, and could include e-commerce activities such as provision and payment of services, for example filing and payment of taxes, purchasing government publications, etc. Table 6.2 provides a sample of small states' e-government rankings and key elements that contributed these, as developed by the UN. The E-Government Index is a composite value of the Online Service Index (government services online), the Human Capital Index (adult literacy rates, years of schooling and enrolment) and the Telecommunications Index (mobile and fixed telephone, internet usage, fixed broadband subscriptions). Table 6.2 suggests small developing states have little experience in the development of e-services. In addition, most countries, with the notable exception of Antigua and Barbuda, and Barbados, lack the required infrastructure framework. However, it should be noted that significant investments are being made in these countries, which accounts for the improved Telecommunication Infrastructure Index from 2012 to 2014.

6.4.1 Infrastructure

The effectiveness of e-government initiatives in reaching citizens and businesses depends greatly on the availability of ICT infrastructure, including connectivity and broadband penetration and access. Mobile telephony, wireless access and other technological options should be explored by policy-makers with regard to coverage and cost, in the recognition that strategic e-governance/e-commerce may be a catalyst in reaching development targets and equitable public services for remote communities (McGee and Gaventa, 2010).

The explosive increase in the use of mobile telephony provides a significant opportunity for countries to leapfrog technology generations. The widespread availability and use of mobile devices will put technology in the hands of consumers, facilitating e-commerce activities.

Liberalisation of the telecommunications industry is a critical requirement in providing affordable, accessible and reliable telecommunications services. International experience shows that liberalisation of a country's telecommunications sector results in a lowering, through competition, of user fees to access internet and mobile services. The uptake of e-commerce can take place only if citizens and entrepreneurs have access to the technology and can afford this. An environment where technological choice is limited and access to technology is not affordable will result in the failure of e-commerce initiatives.

An immediate first step is the drafting of an enabling legislation and set of regulations for the setting up of a communications regulator. The legislation should be principle-based and should focus on the roles and responsibilities of the regulatory authority. The independence of national regulatory agencies is one of the fundamental underpinnings of successful liberalisation and of competition. The Malta Communications Authority is celebrating 15 years of operation and has been successful in fostering competition by creating a regulatory environment that encourages new entrants to the market while protecting consumers from predatory practices. Such independence creates conditions that are conducive to investment, incentivises new market entrants with the prospect of a level playing field, achieves a stable regulatory landscape and means institutions are not susceptible to political whim.

6.4.2 ICT literacy

ICT literacy is a prerequisite for government and private sector employees responsible for conducting e-commerce projects, and for citizens to be able to utilise them to their full potential. Small states generally have fairly good levels of primary education; however, migration of skilled personnel to more developed countries leads to a shortage of well-trained teachers. While a good-quality primary school level is crucial to the development of the human resource base of a country, the development of universal secondary-level education is seen as vital to meeting labour market needs. Nevertheless, there is much to be positive about, since Table 6.2 above indicates that most small states have a high Human Capacity Index, which suggests the educational system has the ability to produce a skilled workforce capable of functioning in a twenty-first century labour market.

6.4.3 Legal and regulatory environment

A cyber-legislative framework should, to the extent possible, precede the implementation of an e-government strategy in order to ensure legal effect, confidence and trust, as well as protection against misuse and abuse. The launch and implementation of an e-commerce strategy can be critically undermined, and potentially result in political embarrassment, in the event that an appropriate cyber-legislative framework is not in place. Without e-commerce legislation, electronic transactions will have no legal validity or effect. The absence of legal validity and effect will create jurisprudence and legal issues. Thus, e-commerce legislation must be in place, ideally prior to the initiation of e-services. Key pieces of legislation should cover e-commerce, data protection and privacy, intellectual property and computer misuse.

6.4.4 Cybercrime and cyber security

The internet and the World Wide Web have emerged as the dominant economic medium of the twenty-first century, connecting over 2 billion people and creating a global, borderless commercial marketplace worth upwards of US\$15 trillion. International banking and investment and the expansion of world trade have become critically reliant on web-based communications, making the internet a key component of economic infrastructure. Accordingly, secure, safe and reliable access

Table 6.3 Review of e-commerce legislation completed by the Commonwealth Secretariat during 2013

Country	Electronic transactions act (year)	Computer misuse act (year)	Data protection act (year)	Cyber security policy/act (year)	Mobile subscribers/100 pop.	Internet subscribers/100 pop.
Antigua and Barbuda	Yes (06)	Yes (06)	Yes (98)	Draft	47.05	17.77
The Bahamas	Yes (03)	Yes (03)	Yes (03)	No	124.94	11.4
Barbados	Yes (01)	Yes (04)	Yes (05)	No	128.07	22.35
Belize	Yes (03)	No	No	No	62.32	2.92
Botswana	No	No	No	Yes (07)	117.76	6
Brunei Darussalam	Yes (08)	No	Yes (07)	Draft	109.07	25.56
Cyprus	Draft	No	Yes (01)	Yes (04)	93.7	17.51
Dominica	Yes (05)	No	No	No	144.85	8.72
The Gambia	No	No	No	No	85.53	0.22
Grenada	Yes (08)	No	No	No	116.71	10.48
Guyana	No	No	No	No	73.61	6.43
Jamaica	Yes (06)	Draft	Draft	Yes (10)	113.22	4.2
Kiribati	No	No	No	No	10.05	0.87
Lesotho	No	No	No	No	32.18	0.12
Maldives	No	Draft	No	Draft	156.5	6.44
Malta	Yes (01)	Yes (01)	Yes (03)	Yes	109.34	26.83
Mauritius	Yes (00)	Yes (03)	Yes (04)	Yes (03)	156.5	8.13
Namibia	Yes (10)	Yes (03)	Draft	Yes (03)	67.21	4.17
Nauru	No	No	No	No	60.46	1.49
Papua New Guinea	No	No	No	No	27.84	0.5
St Kitts and Nevis	Yes (10)	No	Draft	No	161.44	9.72
Saint Lucia	Yes (07)	Yes	Yes	Draft	102.89	10.79

(continued)

Table 6.3 Review of e-commerce legislation completed by the Commonwealth Secretariat during 2013 (continued)

Country	Electronic transactions act (year)	Computer misuse act (year)	Data protection act (year)	Cyber security policy/act (year)	Mobile subscribers/100 pop.	Internet subscribers/100 pop.
St Vincent and the Grenadines	Yes (07)	No	Yes	Draft	120.54	11.68
Samoa	Yes (08)	No	No	No	91.43	0.74
Seychelles	Yes (01)	Yes (98)	Yes (03)	Draft	135.91	6.6
Solomon Islands	Yes (08)	No	No	No	5.57	0.4
Swaziland	No	No	No	No	61.78	1.88
Tonga	No	Yes (03)	No	No	52.18	4.33
Trinidad and Tobago	Yes (09)	Yes (01)	Yes	Draft	141.21	10.85
Tuvalu	No	No	No	No	25.44	8.2
Vanuatu	Yes (00)	No	No	No	119.05	1.11

to critical internet resources has become essential to achieving sustainable growth and to countries' full participation in the international economy, regardless of their size and stage of development. The World Bank's 2009 report on ICTs suggests that, for every 10 per cent broadband penetration there is a corresponding 1.3 per cent gross domestic product (GDP) growth, which is more pronounced in developing countries.

The increasing reliance on the internet as a communications platform and commercial marketplace creates new risks and vulnerabilities, notably those resulting from exposure to unlawful or offensive activity, or cybercrime. Cybercrime encompasses not only crimes related to computer systems (e.g. 'hacking', in order to damage or compromise computer data) but also traditional forms of crime, such as fraud and identity theft, which are increasingly committed by means of the internet. The latter could include not only internet-based offences such as phishing and spam but also use of the internet in the illegal trade in drugs, protected species and arms and in money laundering, as well as for the distribution of illegal or illicit content, such as child pornography.

Small states (population less than 1.5 million) face considerable challenges relating mostly to their small size—leading to limited ability to reap the benefits of economies of scale, vulnerability to adverse external shocks and limited institutional and technical capacity of the public sector—as well as often to their remoteness, which includes both depressed areas with low income and geographical separation. Table 6.3 showed some key characteristics, itemised below:

- 80 per cent or 24 out of 30 countries do not have cybercrime laws or policies.
- 70 per cent or 21 out of 30 countries do not have a computer misuse act.
- 30 per cent or 10 out of 30 countries do not have a data protection act.
- Average mobile subscriptions per 100 inhabitants are at 92.
- Average internet subscriptions per 100 inhabitants are at 8.

The ability of small states to respond to cyber threats is very limited, given a severe lack of skilled technical resources and small budgets, which restricts governments' ability to use third party companies to assist in the resolution of cybercrimes. Infrastructure is not hardened, data centres are not secure, patches are not implemented and unlicensed software is prevalent, and this could be a recipe for disaster. An equally troubling trend is the exponential increase in mobile phones, which has increased the number of entry points into key sites.

6.4.5 Business process reengineering

While the application of technology is important to the successful implementation of e-commerce initiatives, it is equally important that obsolete and inefficient processes and policies be reengineered before technology is applied. An organisation must reorient itself to be more customer-focused and must design processes to make the customer experience seamless, easy to use and economical.

Government Business process reengineering (BPR) is the application of reengineering within a government context; however, the underlying principles of BPR are universal:

- **Fundamental reconsideration:** This goes back to the *raison d'être* of the organisation and asks questions such as, should government be operating in this industry? Could this function be conducted better outside government? Is this a core business for government?
- **Radical redesign:** 'Thinking outside the box' becomes part of the critical thinking process and the focus is on the customer. Several techniques could be applied in conducting a radical redesign; we cover these in more detail later in the chapter.
- **Dramatic improvements:** Quantum leaps in improvement in cost, time and speed are associated with BPR initiatives. In some instances, breakthrough improvements are established initially and incremental changes are applied on an ongoing basis to further refine redesigned processes.

Resistance to implementation of an e-commerce strategy is to be expected. Resistance to change—both individual and organisational—arises for a variety of reasons, including fear, scepticism, concern, inertia and economic factors. The key is that such resistance should be anticipated strategically, planned for and subsequently managed. People need to know why change is necessary, what the benefits are and how they will be affected.

The benefits of BPR include:

- Improvements in 'ease of doing' business by reducing red tape and removing departmental silos;
- Reduction in turnaround time to process transactions, such as obtaining a business licence or an import/export licence;
- Increase in efficiency within revenue authorities especially in customs and excise departments; and
- Increase in customer satisfaction in trade and related government services.

6.5 E-commerce on the international agenda

6.5.1 A multilateral trade perspective

The WTO Work Programme on E-Commerce, first adopted in 1998, has received renewed attention in recent years. As stated above, in the WTO's most recent Ministerial Conference in Nairobi, countries agreed to continue to 'maintain the current practice of not imposing customs duties on electronic transmissions until our next session which we have decided to hold in 2017'.

Four WTO bodies were charged with the responsibility of carrying out the work programme: the Council for Trade in Services; the Council for Trade in Goods; the Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and the Committee on Trade and Development. The General Council plays

a central role and keeps the work programme under continuous review. Since then, members have worked in these various WTO bodies and reported on progress to the General Council on a regular basis.

At the 9th WTO Ministerial Conference held in December 2013 in Bali, there was a great deal of discussion on the status of the work on e-commerce in the WTO, and in particular on the development-related issues to be addressed in the work programme. Accordingly, the General Council was instructed to emphasise and reinvigorate the development dimension in the work programme, particularly through the Committee on Trade and Development, to examine and monitor development-related issues such as technical assistance, capacity-building and the facilitation of access to e-commerce by micro, small and medium-sized enterprises (MSMEs), including small producers and suppliers, of developing countries and particularly of least developed country (LDC) members. Further, any relevant body designated in the work programme may explore appropriate mechanisms to address the relationship between e-commerce and development in a focused and comprehensive manner. Rapid technological development, including tools for e-commerce, makes it even more pressing to advance work at the multilateral level in this specific area.

This Decision during the Bali Ministerial Conference, as well as previous ones, was reaffirmed at the last WTO Ministerial Conference, held in Nairobi in December 2015. A few members, including the USA, have circulated a proposal to contribute to the discussion on e-commerce (WTO, 2016). This lists examples of positive contributions to a flourishing digital economy.

Over the years, a number of topics have been discussed in the WTO on e-commerce, some of which are highlighted below:

- Protection of personal information and privacy and the development of e-commerce;
- Rules supporting innovative advances in computer application and platforms;
- Enhancing internet connectivity and mobile telephones;
- Electronically delivered software;
- Cloud computing;
- Consumer protection;
- Access to e-commerce by MSMEs;
- Trade treatment of electronically delivered software;
- Jurisdiction and rules for applicable law to govern e-commerce;
- Classification of the content of certain electronic transmissions.

At the multilateral level, beyond the WTO, there is a need to understand how the 2030 Agenda for Sustainable Development will influence and be influenced by emerging issues at the WTO. The WTO Nairobi Package 'recognize[s] the role the WTO can play in contributing towards achievement of the 2030 Sustainable

Development Goals'. The 2030 Agenda recognises the importance of access to ICT and global interconnectedness: Sustainable Development Goal (SDG) 9 target 9.c is to 'Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.'

At the domestic level, ICTs will be important for developing countries in terms of technological upgrading across all sectors and the servicification of economies. As stated, e-commerce affects the 'production, distribution, marketing, sale or delivery goods', thus technological upgrading can be targeted across sectors to boost their competitiveness in global value chains, while tradable electronic services can help promote structural transformation in countries. Services are increasingly viewed as an important part of structural transformation processes, given that manufacturing sectors in many countries in Sub-Saharan Africa and Latin America are not delivering sufficient structural transformation. It is vital that developing countries proactively participate in the WTO e-commerce discussion in order to deliver a work programme that promotes their interests. At a more general level, technological upgrading overall and within the context of e-commerce can also contribute towards improved data collection in developing countries, as envisioned under the 2030 Agenda to achieve the SDGs.

6.5.2 A mega-regional perspective

At the regional trade level, the Trans-Pacific Partnership (TPP) agreement e-commerce chapter includes commitments ensuring companies and consumers can access and move data freely (subject to safeguards), which will help ensure the free flow of the global information and data. It also includes commitments on market access and national treatment, and other measures to help prevent unreasonable restrictions, such as the arbitrary blocking of websites.

According to the definitions in the TPP, 'digital product' means a computer programme, text, video, image, sound recording or other product that is digitally encoded and produced for commercial sale or distribution, and that can be transmitted electronically. Electronic transmission or 'transmitted electronically' means a transmission made using any electromagnetic means, including by photonic means.

The EU has made available a draft proposal that it submitted to the USA under the Transatlantic Trade and Investment Partnership negotiations. The chapter on e-commerce applies to telecommunications and other ICTs. It does not apply to gambling services, broadcasting services, audio-visual services, services of notaries or equivalent professions and legal representation services. The chapter on cross-border services deals with such issues (except audio-visual services). Electronic transmission shall not be subject to any customs duty, and the chapter highlights the need for cooperation, conclusion of contracts electronically and marketing communications. The chapter on cross-border supply of services deals with market access, national treatment and most-favoured nation obligations. However, none of the provisions in the draft defines the items covered under e-commerce.

At the bilateral level, trade agreements are also beginning to include provisions on e-commerce, for example the US Free Trade Agreements with Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman and Peru. The WTO has an important role to play in ensuring e-commerce policy does not become fragmented, with discord across different regional and bilateral trade agreements.

6.6 The economic impact of e-commerce

The globalisation of the world economy, advances in telecommunications and expansion of the services economy have reached such a stage that more and more transactions will be carried out through electronic means. E-commerce has a positive impact on economic growth, as it promotes consumption and generates income and employment. A study of the EU digital single market on macroeconomic impacts (Cardona et al., 2015) found that cross-border e-commerce reduced trade costs compared with offline trade. Increased price competition squeezes domestic retail price margins and has a negative output effect in that sector (-2.6 per cent). However, the resulting retail efficiency gains have a positive effect on production in other sectors (between 0.9 and 2.6 per cent) and on household consumption (+1.07 per cent). The combined macroeconomic effect of these transmission channels adds 0.14 per cent to EU GDP. Additional policy measures to facilitate cross-border e-commerce between EU Member States could add another 0.3 per cent to household consumption and 0.04 per cent to GDP, or 0.03 per cent in the more conservative estimate. Obviously, the findings would vary depending on the level of e-commerce infrastructure in different countries, the pattern and composition of consumption and the size of the market, for example.

The fact that e-commerce can reduce trade costs is of major significance to small countries, many of which face high costs as a result of their remoteness from main markets, their size and their level of technological development. E-commerce can facilitate the development of small-scale and medium-size enterprises, which dominate the business landscape of small developing countries.

In addition to the direct trade impact of e-commerce, the accounting of countries should also consider the indirect benefit and impact of e-commerce on, for example, investment, social development, education and health, to mention but a few. There is much room to research the economic impact of e-commerce on the socioeconomic development of a country or region. However, it should be emphasised that e-commerce cannot flourish by itself. The right environment needs to be in place for it to prosper and generate the expected benefits. This also depends to a large extent on the trade and production patterns of countries, as well as the sectoral composition of their economies. In some cases, economies highly reliant on the services sectors may gain more than economies engaged in primary sector production, although one can arguably claim that e-commerce has the capacity to touch on all sectors.

In the words of WTO Director-General Azevedo,

E-commerce is a transformative force in global trade, supporting growth, development and job creation. By reducing the trade costs associated with

physical distance, e-commerce allows businesses to access the global marketplace, reach a broader network of buyers and participate in international trade. In this way, e-commerce can also be a force for inclusion. Broader dissemination of such technologies means that the trade opportunities generated by e-commerce are also available to businesses in developing countries, with some of them making significant headway in recent years. But there is a long, long way to go. For example, Africa and the Middle-East share less than 2 per cent of the world e-commerce market. Similarly, we must ensure that e-commerce works as a springboard for smaller companies to compete and reach new markets.

In the context of WTO discussion on e-commerce, some members were interested in finding out more about the application of internal taxes or other charges to e-commerce by different countries. Divergent views were expressed on the actual impact of e-commerce with regard to revenue losses for developing countries. It is worth noting that the moratorium on imposition of customs duties on electronic transmissions continues. At the WTO's 10th Ministerial Conference in Nairobi in December 2015, a decision was taken that Member States would not impose any customs duty on electronic transmissions until the next meeting in 2017.

Actually, the benefits of e-commerce may not automatically flow to developing countries, but it certainly is an important tool of growth for them. As such, technical assistance alone may not be sufficient. Measures would have to be taken regarding access to basic infrastructure and technology, investment, market access, human resources and education. This chapter deals with these later on.

6.7 E-commerce, a catalyst for development: The case of small countries

Many small countries have certain common inherent characteristics that become extremely relevant in the context of e-commerce development; remoteness from market is a major problem. Transport and telecommunications costs, for example, affect their competitiveness to a significant extent. The product marketing and promotion aspect is also affected, as it often proves expensive to carry out marketing campaigns in remote markets. Further, the markets of these countries being small, many of them cannot afford the benefits arising from economies of scale, which seriously undermines the competitiveness of their produce. Similarly, the development of e-commerce can vary depending on the characteristics of countries. As Lawrence and Tar (2010) put it, 'different characteristics of infrastructural, socioeconomic and socio-cultural have created a significant level of variation in the adoption and growth of e-commerce in developing countries'. Table 6.4 shows variations in the use of internet among a group of small developing countries. As a basis for comparison, the percentage of individuals using the internet in the UK in 2015 was 92 per cent, against 70 per cent in 2005.

Given the special characteristics of the smaller and least developed countries and the prevalence of MSMEs and small producers in these countries, there are merits in exploring the potential for e-commerce to contribute to socioeconomic development

Table 6.4 Percentage of individuals using the internet

	2005	2015
Barbados	52.50	76.11
Dominica	38.54	67.60
Fiji	8.45	46.33
Kiribati	4.00	13.00
Botswana	3.26	27.50
Lesotho	2.58	16.07
Mauritius	15.17	50.14

Source: ITU

and to enhance their participation in the global economy. Bridging geographic distances, access to remote areas/markets and a wide range of services and small business development are some of the potential gains from e-commerce.

As indicated above, e-commerce has greatly expanded what is now considered as tradable, and, as such, subject to the pattern of such trade, developing countries may have a lot to gain from. In fact, as early as 2003, Humphrey et al. opined that e-commerce would become the new driver of economic growth for developing countries. Even prior to that time, Primo Braga (1997) was of the view that developing countries may find emerging satellite technology particularly interesting, as it could allow them to ‘leapfrog’ into the new ‘information age’ by skipping the stage of copper and other cable networks.

Nevertheless, uncertainties are inevitably created from such an expanded boundary of what is tradable, where all elements of the transaction process (advertising, purchasing, consuming) can occur in different jurisdictions. One clear uncertainty, which small countries should be cognisant of, is the challenge in determining where a transaction actually took place and thus potential impact on that jurisdiction, including from a regulatory standpoint. Further, e-commerce has wide-ranging implications that need to be thoroughly studied, such as those related to access, tax and revenue and intellectual property rights (IPR). Also, there is an enormous technology, infrastructural and regulatory (policy) gap to fill to unleash the full potential of e-commerce in these countries. Aid for Trade (AfT) could be one instrument that could be used to fill in the gap in developing countries, especially in building the e-commerce infrastructure.

The following key points provide guidance on policy development and negotiating positions on e-commerce:

- E-commerce facilitates the creation of and access to a truly global market, otherwise a major limitation for small countries.
- Services can be provided via the internet, eliminating the need for travel to or establish offices within a foreign jurisdiction, again another limitation for small states.
- Its use helps in mitigating the problems of exclusion and isolation, which are features of small countries.

E-commerce complements the drive by small states to transform themselves into service economies. The transformation of many small developing countries into service economies or at a minimum the drive to diversify their economies (especially in light of the erosion of traditional preferential agreements governing trade in goods) hinges on the ability for services sectors to, among other things, capitalise on their competitive advantage, mitigate the dis-economies of scale in non-service industries and therefore increase their level of competitiveness and participation in global trade. E-commerce directly impacts Modes 1 (cross-border trade) and 2 (movement of consumers) of supplying a service, and indirectly impacts Modes 3 (commercial presence) and 4 (movement of natural persons).

Essentially, e-commerce can circumvent the need for physical delivery or presence across the border in order to supply some goods and services. This means circumventing conventional forms of border measures, duties or taxes, resulting in reduced transaction costs. There is a clear impact on competition, as such circumvention can be viewed as trade-diverting. On the other hand, it is very probable that welfare benefits will accrue as well. It means too that questions arise about having to establish within a foreign jurisdiction to supply a service or to travel there in person. Additionally, small countries will find the ability to trade electronically leads to a tremendous reduction in administration and transportation costs.

There is an indication of an increase in the usage of internet in Sub-Saharan Africa, LDCs and small states. For instance, the average number of internet users rose from 1 in 100 in 2001 to 6 in 100 in 2011 for LDCs, 4 in 100 to 20 in 100 for small states and 1 in 100 to 13 in 100 in Sub-Saharan Africa over the same period. However, this rise in usage is low compared with that in high-income Organisation for Economic Co-operation and Development countries, which rose from 38 in 100 in 2001 to 77 in 100 in 2011. The technology on computers emerging with mobile phones is in its infant stage in Sub-Saharan Africa, LDCs and small and vulnerable economies, but already there are 84 million internet-enabled mobiles in Africa. In 2012, there were approximately 52 million Facebook users in Africa and 7 million in the Caribbean, including companies. There are therefore tremendous merits in investing in ICT in small states, LDCs and Sub-Saharan Africa in order to explore the full potential telecommunications and e-commerce can offer for their socioeconomic development and ensuring their integration into the global market place.

In order to highlight the areas of importance for small countries, Wunsch-Vincent's innovative approach has been drawn on. The author provides a comprehensive analysis of the treatment of e-commerce activities within the WTO by applying a 'baskets' approach to categorise related activities. This approach makes it easier to appreciate the span of e-commerce across the various aspects of the work of the WTO. We discuss these baskets and further assessments in detail below:

6.7.1 Basket I: IT goods

This category includes physical or tangible goods such as computers and semiconductors. These form part of the infrastructure needed to access the internet

to conduct e-commerce. The relevant rules are typically those reflected in the General Agreement on Tariffs and Trade (GATT). Small states could continue engaging in negotiations on IT if they are to benefit from opportunities created by e-commerce. An important aspect is the liberalisation of trade of IT goods, including a reduction in tariffs and other duties that such goods may attract. Small states should therefore ensure that the liberalisation of trade in IT goods complements a wider strategic plan to improve on the use of such goods to facilitate e-commerce—that is, seeing IT goods as a critical input into other sectors.

6.7.2 Basket II: Internet infrastructure services

This basket pertains to the virtual services needed to access the internet and as such includes both basic and value-added telecommunication services, as well as computer-related services, programmers and internet service providers (ISPs). General Agreement on Trade in Services (GATS) rules are directly applicable to these services, as reflected in the Agreement as well as the Schedules of Commitments of members. Since infrastructure services aid in facilitating access to the internet, and clearly stand out as a core aspect of e-commerce. As such, it is important that small states continue to engage in negotiations on these services. Human resource development within small states to be able to provide these services is also important, both for competitive supply at the domestic level and for the export of services.

6.7.3 Basket III: Electronically traded services

These are services that can be traded via the internet, including business, tourism, financial, professional and audio-visual services, to name a few. From a Mode 4 (movement of natural persons) perspective, there is the recognition also that being able to provide services via the internet reduces the need to actually enter another jurisdiction. Thus, the creation of virtual catwalks and portfolios, presentations via teleconferencing, transfer of completed designs, etc., enable professionals to remain in their home country and gain market access for their services. In addition to actually trading in goods and services, the internet allows for ‘telecommuting’, whereby people work from a remote terminal, such as at home. It is important that small states pursue the liberalisation of services sectors, including the traditionally conservative Modes 1 and 2. Small states again need to be strategic in the market opening granted as they pursue the liberalisation of foreign markets. The ability to provide professional, cultural and entertainment services, for example, will increasingly become key in the development of these sectors within developing countries. Small states need to increase their preparation for the shift to a virtual world, where each day new services are provided (telemedicine), jobs are created (bloggers, virtual assistants) and technology is innovated (advertising tools—Facebook, Twitter). Furthermore, electronically traded services have implications for organisational structure and can easily facilitate a remote business presence within any jurisdiction. This may have implications for foreign investment, as Mode 3 (establishment – commercial presence) within a country is being replaced by virtual offices. By extension, this has implications for investment in small states.

6.7.4 Basket IV: Digital products

Many products are traditionally traded in a physical form but technological advances mean they can now be traded in a digital form. Common examples are books, music, video games and movies. The entertainment sectors therefore stand to be severely affected by increased production and trade in digital products. An obvious implication is the impact on protecting the IPR associated with the production of digital products, as well as the trade-diverting effects that will be created. Also, engaging in e-commerce activities may affect government revenue insofar as goods are now purchased online and consumed electronically, thereby evading importation and attending duties. Sales taxes for such items are also impossible to institute, as the sales are technically conducted with a foreign jurisdiction. As indicated above, small states should consider the cost and benefits of supporting strong IPR protection of digital products. While this chapter highlights some of the core considerations, detailed analysis is required to determine how to shape small states' interests.

In summary, e-commerce affects ICT-related, commercial, governmental and the gamut of professional services. Not only is e-commerce important from an economic standpoint, but also it is critical to human resource development, such as through improving education and health. Further, small states can import needed services at a cheaper cost but also the potential for these states to increase their exports of services is a tremendous motivator to engage in dialogue on e-commerce, especially within the ambit of the WTO.

Small states have recognised this potential and are making great effort to capitalise on it. They are increasingly seeking to pursue development models that will position them as innovation-driven services economies. To fully actualise the possibilities, however, they must urgently address many challenges in the technical and legal/regulatory sphere to address.

6.8 The regulatory and other legal requirements for e-commerce

As mentioned earlier, one of the main conditions for the development of e-commerce is to have the right regulatory and legal infrastructure in place. This cuts across sectors.

6.8.1 E-commerce and trade in services

The GATS defines a service according to the medium through which the service can be delivered. Using four modes of supply—Mode 1 (cross-border supply), Mode 2 (consumption abroad), Mode 3 (commercial presence) and Mode 4 (movement of natural persons)—members undertake specific market access and national treatment commitments to facilitate the liberalisation of services sectors. Regulatory measures are also agreed and applicable in a general manner, through horizontal commitments plus specific commitments undertaken by countries. At the end of the Uruguay Round, members reached an agreement to continue negotiations on trade in basic telecommunication services. As such, the GATS Annex on Telecommunications

guarantees access to and use of public telecommunications networks and services. There was some reticence, however, as some developing countries—including small states—felt e-commerce and related activities were technically too complex to be negotiated at that juncture. What has been emphasised, however, is that GATS Articles VIII and IX and the Reference Paper on Regulatory Principles guard against the impairment of market opportunities through the denial of access to networks.

It can be agreed that most electronically delivered products are services and, as such, are governed by the GATS. Commitments in Modes 1 and 2 have been less than ambitious, however, and many countries have opted not to undertake market access and national treatment commitments, effectively not liberalising the cross-border supply of sectors that are transmittable through this means. Essentially, WTO members have not made significant commitments in services sectors where electronic delivery is feasible.

‘Barrier-free e-commerce would be more effectively secured by deepening and widening the limited cross-border trade commitments under the GATS, and by clarifying and strengthening certain GATS disciplines’ (Mattoo and Schuknecht, 2000). The core provisions of the GATS Annex on Telecommunications deal with access to and use of public telecommunications transport networks and services. These obligations apply regardless of whether a member has undertaken to liberalise access to its basic telecommunications sector under the GATS. If a specific commitment is made in the telecommunications sector itself, then a competing supplier of telecommunications services, whether basic or value-added, benefiting from such a commitment would be entitled to access to and use of established networks and services in just the same way as a supplier of any other service—essentially the right of interconnection.

It must be emphasised, however, that not all services regulatory measures are covered by a country’s services schedule of commitments—only those in which commitments taken are listed. For e-commerce purposes, the array of regulatory measures covered will be much wider. Telecommunications, financial services and delivery will all be relevant.

How LDCs make better use of the recently agreed LDC services waiver to develop the e-commerce sector remains an area to be studied further. This could provide useful guidance to other smaller countries in trade in services negotiations.

6.8.2 E-commerce and trade in goods

The Working Party on E-Commerce (WPEC) has identified the following as core issues forming the mandate of the Council on Trade in Goods.

- Market access for and access to products related to e-commerce;
- Valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994;
- Issues arising from the application of the Agreement on Import Licensing Procedures;

- Customs duties and other duties and charges as defined under Article II of the GATT;
- Standards in relation to e-commerce;
- Rules of origin issues; and
- Classification issues.

In addition to the above, it is important to recall that the decision by the General Council in advocating a ban on customs duties was inspired pursuant to a proposal submitted by the USA in February 1998. This decision implies that electronic transmissions can attract customs duties and are invariably considered as importation of a good that would then be subject to GATT rules; further, the decision is not concerned with distinguishing electronic transmissions in terms of what they contain. This raises the issue of technological neutrality and what this means for both the classification and the treatment of e-commerce. Technological neutrality as a recognised principle, including in dispute settlement, essentially holds that a measure is not applicable or inapplicable owing to the use of technology; hence there is neutrality and application of the measure regardless of medium used or product type. The principle, in short, promotes identical treatment of goods and services.

According to Mattoo and Schuknecht (2000),

[T]he strength of the proposal for duty-free treatment is that for the limited class of electronically delivered media products, it may ensure that trade in future, as at present, is free of restrictions – provided it is agreed that such products should be treated as if they are goods. The weakness of the proposal is that it does not take into account the trade regime for services, which constitute the bulk of electronically transmitted products.

WTO members, such as the EU, on the other hand, have proposed that electronic transmissions be classified as services and therefore be subject to GATS rules. This has been assessed as a move to be able to restrict the importation of audio-visual services.

There was a considerable amount of discussion in the WTO on the classification of digitised products and how it would fit within the rules. The Harmonised System, upon which GATT concessions are negotiated, covers only goods that have physical characteristics, and it is not possible to fit electronic transmissions within the existing nomenclature. Further, the need for a concrete definition of ‘digitised product’ was mooted, given that many countries were not sure if the coverage would include many different things like architectural designs, health check reports and fashion design, etc., which may be sometimes vague (earlier on in the chapter we referred to a definition for digital trade). There are also likely to be overlap and confusion between application of the GATT and the GATS to digitised products.

For example, after an order is placed, software can either be downloaded or be delivered across the border by post. The two transactions may be exactly the same, and it is simply the customer’s choice as to which way the software is supplied. Here,

there may be inconsistencies between the commitments under the GATS and those under the GATT when the product is delivered physically. In this case it is not only the GATT that applies but both the GATT and the GATS, because the GATS applies to the distribution transaction and the GATT to the physical product. Many members thus believed that analysis of the scope called for its classification as a cross-cutting issue and should be further explored.

Notwithstanding the above classification challenges, any discussion on access to the internet as a medium that greatly facilitates e-commerce is closely linked to the establishment of requisite infrastructure and hardware. This implies that, even where there is extensive liberalisation of services that can be provided through electronic or digital means, absence of the required infrastructure effectively negates the drive to export services. Essentially, if there is no internet, there is no e-commerce. The importance of the role played by the rules governing market access for relevant infrastructure has to be underscored.

Essentially, small countries need to determine how best to ensure the goods (semiconductors, computers etc.) needed to promote the development of supporting e-commerce infrastructure can gain access to its markets. This strategic determination must be complemented by a push for the liberalisation of the services sectors of importance to small countries as they seek to export services of interest via Modes 1 and 2 in particular. The impact in Modes 3 and 4 are also important considerations, as e-commerce affects all modes of supplying a service, whether directly or indirectly. For developing countries, the emphasis has traditionally been on making offers in market opening in Mode 3 and requesting entry through Mode 4. More emphasis on Modes 1 and 2 is therefore relatively new to small countries. The disciplines to facilitate trade in services are established; however, progress on liberalisation has not been required to facilitate substantive free movement. While there is no way of compelling liberalisation of services within the WTO framework, states are increasingly pursuing GATS V-compatible agreements, wherein ambitions for access and entry are more favourably considered.

The expansion of the Information Technology Agreement, agreed at the Nairobi Ministerial Conference in December 2015, eliminates tariffs on an additional 201 IT products valued at over US\$1.3 trillion per year. Negotiations were conducted by over 50 WTO members but all 162 WTO members will benefit from the Agreement, as they will all enjoy duty-free market access to the markets of the members eliminating tariffs on these products. IT products are essential for the development of e-commerce. Eliminating tariffs in a further set of products will allow industry to reduce the cost of importing the hardware necessary to develop the IT sector, create highly qualified jobs for young people, make other industries more efficient by using IT and enable countries to become part of global value chains.

6.8.3 E-commerce and intellectual property rights

IPR are important because the things of value that are traded on the internet must be protected, using technological security systems and intellectual property (IP) laws,

or else they can be stolen or pirated and whole businesses can be destroyed. Also, IP is involved in making e-commerce work. The systems that allow the internet to function—software, networks, designs, chips, routers and switches, the user interface and so on—are forms of IP and often protected by IPR. Trademarks are an essential part of e-commerce business, as trademarks and unfair competition law protect branding, customer recognition and goodwill, which are essential elements of web-based business.

E-commerce and internet-related businesses are based on product or patent licensing. This is because so many different technologies are required to create a product that companies often outsource the development of some components, or share technologies through licensing arrangements. If every company had to develop and produce all technological aspects of every product independently, development of high-technology products would be impossible. The economics of e-commerce depends on companies working together to share, through licensing, the opportunities and risks of business. Many of these companies are small and medium-sized enterprises.

Finally, e-commerce businesses usually hold a great deal of their value in IP, which will thus be affected by whether the IP has been protected. Many e-commerce companies, like other technology companies, have patent portfolios and trademarks that enhance the value of their business. Within the context of this discussion on e-commerce and IP, it should be noted that the WTO and the World Intellectual Property Organization have undertaken work in different areas, with the former obviously focusing on the relationship between IP and trade in goods and services and the latter on the scientific areas of work related to IP.

The WTO TRIPS Agreement requires all WTO members to have TRIPS-compliant IP legislation, with the exception of LDCs, which are currently benefiting from an extension period till July 2021.

In maintaining analysis within the context of the WTO, it is important to note the discussion on e-commerce within the WPEC and the TRIPS Council. As previously indicated, the WPEC included dedicated tasks for the TRIPS Council, pursuant to the Geneva Ministerial, to examine all trade-related issues stemming from e-commerce. Essentially, the WPEC identifies that the TRIPS Council shall examine and report on the IP issues arising in connection with e-commerce. Issues that should be of central focus are (i) protection and enforcement of copyrights and related rights; (ii) protection and enforcement of trademarks; and (iii) new technologies and access to technology.

In a broad assessment of proposals made to date, recommendations lean towards strong IPR protection for all forms of technology on the internet, including protection of copyrights in the digital environment by embracing the principle of technological neutrality. Application of this principle is also viewed as applicable to rules on enforcement, such as any violation of IPR on the internet. Eugui (2001) opines that this approach will place an additional burden on developing countries, which will be

challenged to enforce these obligations given, *inter alia*, the status of their IP platform and legal environment.

It is nonetheless important to note the crucial role IP can play in technology transfer to least developed and smaller developing countries. Article 66.2 of the WTO TRIPS Agreement provides that, '[d]eveloped country members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members in order to enable them to create a sound and viable technological base.' This provision is a sound and effective basis to promote technology transfer in the field of e-commerce and is a positive obligation.

In providing a detailed assessment of copyrights and neighbouring rights, Eugui (2001) further identifies the potential and economic interests attached to the export of activities such as culture and folklore through literature translation works and audio-visual services, to name a few. The protective role played by IPR enforcement in assisting artisans, such as authors, composers, performers, producers and broadcast organisations, to protect their original works and profit from their creative or economic activities in the marketplace is also noted. While such protection may be attractive and beneficial for smaller countries, there is also recognition that accommodating the use of works for non-commercial (e.g. academic) purposes should be thoroughly assessed as the protection of internet content is developed.

The implications of increased protection of internet-based IP and content for developing countries, including small states, are varied, as they generate both costs and benefits. Some of the costs include:

- Issues related to new and possibly unknown rights, such as patents on new business procedures;
- Increased and costly borderless enforcement obligations;
- Erosion of the principle of territoriality;
- Patents that limit innovation;
- Jurisdictional problems;
- Increases in the existing imbalance between excessive private rights and public rights;
- Issues related to the protection of consumers and providers.

Essentially, people using the internet as a basis for conducting commerce must be protected against malicious practices such as fraud. Consumers often have to provide their personal details to be able to effect transactions online. With insufficient protection, there is a high risk that these personal details will be hacked and eventually land in the wrong hands. Similarly, ISPs must provide various business details, which also may be exposed to misuse. In these circumstances, legislation to protect both consumers and providers becomes imperative.

6.9 Conditions for the development of e-commerce in small countries

At this point, it is worth recalling the previous WTO Ministerial Decision, in Bali in 2013, on e-commerce, which called on the WTO Committee on Trade and Development to examine and report on the development implications of e-commerce, taking into account the economic, financial and development needs of developing countries. Issues to be examined included:

- Effects of e-commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises, and means of maximising possible benefits accruing to them;
- Challenges to and ways of enhancing the participation of developing countries in e-commerce, in particular as exporters of electronically delivered products;
- Role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- Use of information technology in the integration of developing countries in the multilateral trading system;
- Implications for developing countries of the possible impact of e-commerce on the traditional means of distribution of physical goods;
- Financial implications of e-commerce for developing countries.

As explained in this chapter, small countries have inherent disadvantages. In addition to the above, targeted support for them will enhance their participation in the global trading system through e-commerce.

Rhone (2009) has produced a detailed concept note geared towards developing a strategic plan on computer and related services in the Caribbean Community Single Market and Economy. Its recommendations are also applicable to small countries in general and include, among others, adopting least trade-restrictive, non-discriminatory treatment for e-commerce; harmonisation of regulations on e-commerce; liberalisation of infrastructure services that enable the development of e-commerce; and having IP protection in place. While it is necessary to put in place national trade policies (less trade-restrictive) and develop infrastructure that favours the development of e-commerce, it is imperative that smaller countries participate in the global rules-setting process and development discourse and bring forth the need to address e-commerce challenges and barriers so they can create and benefit from opportunities. Recommendations towards this end centre on fundamental elements covering trade in goods and services; infrastructure and access challenges; IPR; and the domestic policy environment, and include:

- Full analyses of the implications for small countries of the technological neutrality principle;
- Identification and assessment of IP content within products and services of export interest to developing countries, particularly in relation to value chain analysis.

Such assessments will complement the need to actively participate in the MiWi discourse without the assumption of obligations. This should also prompt small countries to more actively determine areas for exemption from IP protection, such as for academic and educational usage;

- Augmenting domestic investment with foreign investment into IT-related sectors, particularly those that will facilitate capacity and skills improvement and technology transfer. Smaller countries should embark on the creation of export processing zones and incentives for the establishment of e-commerce parks with the long-term strategy of moving up the value chain;
- In a similar manner to what is being achieved through the UN Global Compass, exploration of corporate social responsibility within the context of encouraging transnational and multinational corporations to permit the use of technology by smaller countries;
- Continuity of efforts by international organisations such as UNCTAD, the Commonwealth Secretariat and the International Trade Centre to support small countries in understanding e-commerce matters, removing barriers to exports and increasing technology flow;
- Pursuing the liberalisation of relevant goods and services that support and will expand the communications platform. This is achievable through multilateral liberalisation, to ensure provision of the hardware and software necessary to develop electronically sellable services. It is critical that access is affordable;
- Exploration of the benefits of signing the Information Technology Agreement, given in particular the expected emphasis to be placed on expanding the agreement to an 'ITA 2';
- By using development support platforms such as AfT, small countries pursuing development of the basic infrastructure necessary for the smooth functioning of the internet, including through AfT facilities. This includes facilities to conduct financial transactions on the internet;
- Within the context of the GATS, negotiation of access to developed country markets in sectors to which they can export services by electronic medium;
- In the eventual scenario of a multilateral agreement on e-commerce, exploration of the option of having provisions linking obligations to the capacity to implement and technical assistance, similar to the Trade Facilitation Agreement.

6.10 Conclusion

This chapter has examined different dimensions of e-commerce. The subject area is vast, covering technological factors to regulatory environment. The number of stakeholders involved in its development is equally numerous. Given the trend in the development of this sector, governments and international organisations will no doubt confront the reality of having to address the challenges it poses. What is also evident is that, to fully benefit from the benefits of e-commerce, developing

countries, especially small ones, will need support and technical assistance. AfT and other international initiatives on e-commerce will have to address the development dimensions well in this regard.

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Chapter 7

Post-Brexit Trade with Small Developing Countries: Making it Development-Friendly

*Brendan Vickers*¹

7.1 Introduction

On 19 June 2017, almost one year after the Brexit referendum, the UK and the EU formally began negotiations under Article 50 of the Lisbon Treaty to terminate the UK's membership of the EU.² With the UK having been a EU member for more than four decades, this decision is likely to have considerable political and economic implications for the UK, Europe and affected third countries around the world.

The EU is the UK's largest trading partner, representing about half of its world trade in goods and services. With the withdrawal negotiations now underway, a major priority for the UK is to secure a favourable post-Brexit trade deal with Europe to avoid major disruptions to trade and value chains. In this regard, the government's 2017 Brexit White Paper directs the UK to leave the Single Market and seek a new strategic partnership with the EU, including an ambitious and comprehensive free trade agreement (FTA) and a new customs agreement (UK Government, 2017). However, it will be extremely challenging to conclude such an agreement during the two-year timeframe, especially given the sequencing of the negotiations that start with settling the UK's rights and obligations as a departing EU member state.³ Since a future EU–UK trade deal is unlikely to be signed by March 2019 when the UK intends to exit the EU, the parties may need to consider transitional measures to avoid higher most-favoured nation (MFN) tariffs and services restrictions under the World Trade Organization (WTO) (Soobramanien and Razzaque, 2017).

Since the UK's priorities are to secure a comprehensive trade deal with Europe and negotiate FTAs with the fastest growing and most dynamic economies in the world (UK Government, 2017), there is the risk that the interests and concerns of most developing countries, especially the world's poorest nations, could be crowded out. The UK is the world's fifth largest economy and a significant participant in world trade, so the economic fallout from Brexit will have implications for many developing countries. The main transmission channels through which these countries' growth and development prospects will be affected include trade, investment, remittances, aid and development finance (Casero and Ruta, 2016; Commonwealth Secretariat, 2016a, 2016b; Hove and Wakeford, 2016; Mendez-Parra et al., 2016). While the UK may have little control over the indirect trade effects of Brexit—such as the depreciation of the pound—the government can consider implementing specific policy measures to avoid direct trade disruptions from higher tariffs or increased trade costs (e.g. compliance with new product standards). Even though overall trade

levels may not be significant, several small developing countries depend heavily on the UK market for their exports—from beef and bananas to sugar and rum. For these reasons, the implications of Brexit for the trade and development prospects of the Commonwealth's 28 small developing country members requires greater attention.⁴

This chapter explores the implications of Brexit for these small developing countries' trade and proposes some policy options for the UK to design a development-friendly trading regime. Small states are among the most open and trade dependent economies in the world. Their vulnerability to external shocks like Brexit is exacerbated by a range of unique and inherent trade challenges, which include, among others, small population sizes and domestic markets; highly concentrated exports, which preference erosion has disproportionately affected; and excessive trade costs arising from poor transport infrastructure and geographical remoteness from markets. Indeed, their trade costs are, on average, estimated to be at least 50 per cent higher than those for developing countries as a whole (Razzaque and Keane, 2015). Despite the rapid growth of developing countries' share in global trade, small states' share continues to decline as their dependence on trade to drive growth and development increases, especially to achieve the Sustainable Development Goals (Soobramanien and Gosset, 2015).

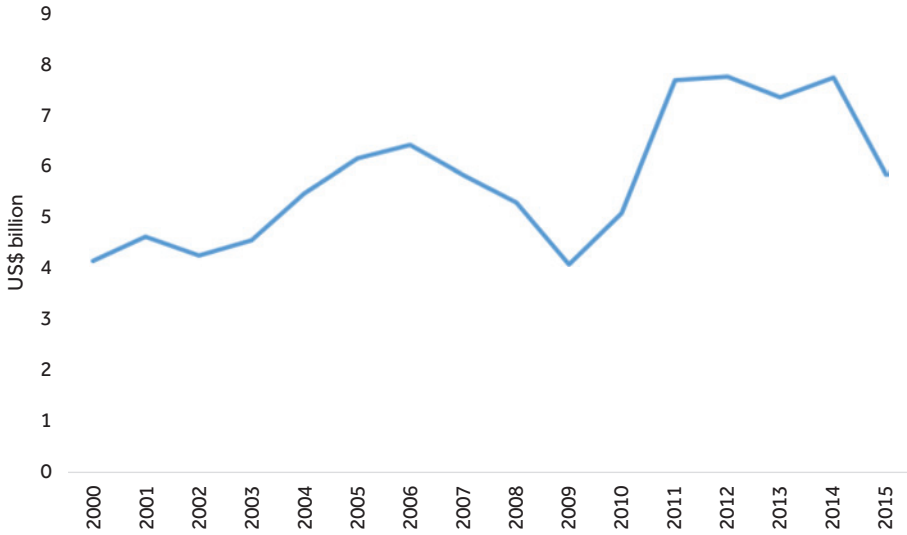
The chapter first provides an overview of trade between the UK and small developing countries. It then highlights the latter's trade and development concerns about Brexit, and finally offers some policy options to minimise any trade disruptions arising from possible post-Brexit trade policy shifts and strengthen future trade linkages. With Article 50 now triggered and the Brexit process underway, small developing countries need to be reassured that their market access to the UK post-Brexit will be just as favourable as existing arrangements.

7.2 Trade between the UK and Commonwealth small developing countries

Overall trade between the UK and Commonwealth small developing countries is small, representing about 6.5 per cent of overall UK–Commonwealth trade in 2015. Total merchandise trade flows between the UK and small developing countries has almost doubled over the past 15 years, from about US\$4.2 billion in 2000 to \$7.8 billion in 2014 (Figure 7.1). However, in 2015 this trade contracted significantly to \$5.9 billion, partly reflecting the effects of the global trade slowdown. Given the small size of these developing countries, productive and supply capacity constraints and their dependence on imported goods, the trade balance has consistently been in the UK's favour. Within this group of small developing countries, Botswana is the largest exporter to the UK, selling goods (mainly beef and diamonds) worth \$3.1 billion in 2015. At the other extreme are two Pacific small island developing states (SIDS), Kiribati and Tuvalu, which exported a mere \$1.7 million and \$116,000, respectively, to the UK in 2015.

Although trade levels are low, and the UK is not a dominant EU importer in most instances, some small developing countries do rely heavily on the UK market.

Figure 7.1 Small developing countries’ total trade with the UK, 2000–2015



Source: Authors’ calculations using data from UNCTADStat

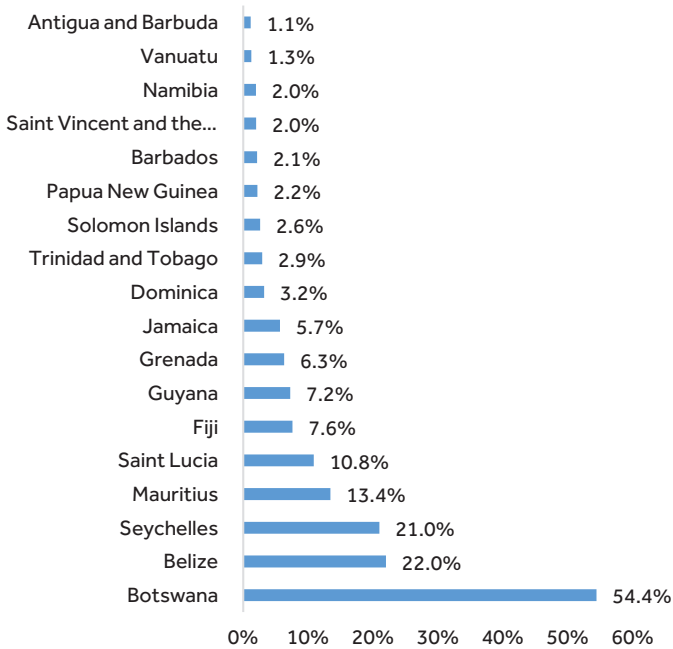
Botswana, for example, sends more than half of its total world exports to the UK (Figure 7.2). Another four small developing countries send over 10 per cent of their world exports to the UK: Belize (22.7 per cent), Seychelles (19.3 per cent), Mauritius (13.1 per cent) and Saint Lucia (10.8 per cent). There are also instances of members whose overall market share is not big but that have some sectoral exports that are critically dependent on the UK. These countries are the most exposed to Brexit-related shocks, especially lower export earnings due to a weaker pound and possible trade disruptions if the UK’s post-Brexit trade regime for developing countries is not as generous as the EU’s current arrangements.

Despite its relatively low share compared with the overall EU market, the UK is an important export destination for several small developing countries. For two small island states, Saint Lucia and Tuvalu, the UK absorbs more than 70 per cent of their EU exports (Table 7.1). This includes almost all of Saint Lucia’s banana exports. Belize and Fiji source about two-thirds of their European export receipts from the UK alone, while the UK takes about half of Brunei’s EU exports. The UK is also the largest importer of sugar into the EU. It buys more than 80 per cent of Belize’s sugar exports and over 70 per cent of Fiji’s. Fiji’s sugar exports to the UK, which occur through a direct contract between the Fiji Sugar Corporation and Tate & Lyle Sugars in London, account for a significant 95 per cent of Fiji’s UK export earnings.

7.3 Brexit concerns for small developing countries

The EU and the UK are important trade, investment and development cooperation partners for many small developing countries. The economic fallout of Brexit will differ among countries depending on their individual trade relations and development partnerships with the EU and the UK, and their level of economic

Figure 7.2 UK share of small developing countries' goods exports to the world (%), 2013–2015 average



Note: The figure does not show countries with shares of less than 1 per cent

Source: UNCTADStat

diversification, competitiveness and supply capacities, among others. Brexit may affect small developing countries indirectly, including through a weaker pound and the economic performance of the UK and Europe, and directly through possible trade disruptions arising from higher tariffs or increased trade costs.

Table 7.1 Importance of the UK market for small developing country goods exports, 2013–2015 average

% of EU imports going to UK	Country
More than 70%	Saint Lucia, Tuvalu*
Between 60% and 70%	Belize, Fiji
Between 50% and 60%	Brunei Darussalam*
Between 40% and 50%	Botswana, Samoa*, Seychelles, Vanuatu
Between 30% and 40%	Guyana, Nauru*
Between 20% and 30%	Dominica, Jamaica, Mauritius, Solomon Islands
Between 10% and 20%	Barbados, Papua New Guinea
Up to 10%	Antigua and Barbuda, The Bahamas, Grenada, Kiribati, Lesotho, Namibia, St Kitts and Nevis, St Vincent and the Grenadines, Swaziland, Tonga, Trinidad and Tobago

Note: * Share of the EU market may be influenced by exports of just a few high-value products over this period

Source: Eurostat COMEXT

7.3.1 Lower purchasing power from a weaker pound

Since the 23 June 2016 referendum, the pound has depreciated by between 10 and 20 per cent. There are two scenarios for this exchange rate effect on small developing countries: a sustained depreciation of the pound in the short to medium term and possible stabilisation in the medium to long term post-Brexit.

In the short to medium term, the lower value of the pound translates into reduced earnings from exports to the UK, decreased remittances sent by people working in the UK to their countries of origin and a lower value of UK aid received by beneficiary countries. For example, a 10 per cent sustained reduction in the pound means the 28 Commonwealth small developing countries will have about US\$645 million less in purchasing power out of their foreign exchange earnings, which will reduce their capacity to import goods and services that are vital for their growth and development. In terms of absolute value, Botswana is the most affected small developing country, potentially foregoing close to \$450 million out of its combined exports to and remittances and aid received from the UK. The second worst affected small developing country is Mauritius, with potential loss of purchasing power to the tune of just over \$43 million. Two Caribbean SIDS, Jamaica (\$37.8 million) and Trinidad and Tobago (35.1 million), also stand to lose substantially.

In the medium to long term, the pound may stabilise post-Brexit. Under this scenario, greater pound stability would limit the current income losses incurred by small developing countries that export to the UK or depend on the UK for aid and remittances.

7.3.2 Impact on UK and EU economic performance

The economic consequences of leaving the EU will depend on what policies the UK adopts post-Brexit, especially for trade, investment, immigration and regulation. Various modelling exercises and projections have been undertaken to quantify the impact of Brexit on the UK and EU. For example, one study of the 'static' effects on trade of the UK leaving the Single Market finds that all EU countries lose income post-Brexit; in the longer dynamic run, the costs of Brexit could be three times larger than those in the static analysis.⁵ Lower economic growth in the UK and EU could have a chilling effect on demand for goods and services produced by developing countries. Small developing countries exported just under US\$10 billion of goods to the EU in 2015, of which about \$1.4 billion (or about 14 per cent) was destined for the UK. With regard to services, the Caribbean tourism sector could especially be affected by lower household income and greater caution around consumer spending. Given that UK travellers are reported to spend seven times more than the average tourist in the Caribbean (Global News Matters Caribbean Research, 2016), the magnitude of this shock may be significant for certain countries. UK arrivals are most important for Barbados; second most important for Saint Lucia; and third most important for St Kitts and Nevis (Commonwealth Secretariat, 2016a).

The UK is the world's fifth largest economy, generating trade flows of US\$1.6 trillion (almost 4 per cent of world trade in goods and services in 2015). The UK's withdrawal

from the Single Market could impact on UK, EU and world trade, especially since the Eurozone is still recovering from the 2008 global financial crisis. Weaker growth in Europe will also hamper trade flows from other country groups. This is especially so since global trade growth has slowed alarmingly in recent years, a situation that has persisted for an unprecedentedly long time. In 2016, world trade volume expanded by only 1.9 per cent; this is compared with average growth of about 6 per cent over the almost three decades (1980–2007) prior to the crisis. In this context, Brexit presents an additional shock to an already vulnerable world economy and global trading system, with implications for developing countries.

7.3.3 Maintaining market access in the UK

Currently, three types of EU preferential arrangements govern the UK's bilateral trade with the 28 Commonwealth small developing countries. Five of the Commonwealth small states—Kiribati, Lesotho, Solomon Islands, Tuvalu and Vanuatu—are least developed countries (LDCs) and hence benefit from the EU's non-reciprocal Everything But Arms (EBA) scheme. Most of the other small developing countries have signed regional Economic Partnership Agreements (EPAs) with the EU (Table 7.2). The EPAs provide duty-free and quota-free (DFQF) market access for all developing country signatories under reciprocal arrangements that also require African, Caribbean and Pacific (ACP) countries to open up their markets to the EU, albeit with longer transitional periods.⁶ Nauru benefits from tariff preferences under

Table 7.2 Commonwealth small developing countries in EPAs

Region	Status	Small developing country parties
Caribbean	Signed; ratification ongoing; provisional application (except Haiti)	Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Trinidad and Tobago
Pacific Islands	Provisional application of Interim Partnership Agreement by Papua New Guinea and Fiji; Comprehensive EPA negotiations suspended for three years	Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu
Eastern and Southern Africa	Provisional application by Madagascar, Mauritius, Seychelles, Zimbabwe; ongoing negotiations with other parties	Mauritius, Seychelles
Southern African Development Community	Ratified by all Southern African Customs Union (SACU) members and Mozambique; provisional implementation	Botswana, Lesotho, Namibia, Swaziland

Source: Authors' summary as at June 2017

the EU's Generalised System of Preferences (GSP). Tonga⁷ and Brunei are the only small developing countries that trade with the UK and EU on WTO MFN terms. An EU–Brunei Partnership and Cooperation Agreement is in the process of being negotiated; this covers a range of political and economic areas and is regarded as a forerunner to FTA negotiations.

Once the UK formally exits the EU, all rights and obligations under these various agreements will cease to apply and the UK will devise its own trade policy to supersede the EU's common commercial policy. As highlighted above, most small developing countries enjoy DFQF access into the UK market under the EBA scheme or a regional EPA. In the absence of equivalent treatment post-Brexit, two challenges could arise.

First, certain products of export interest to small developing countries could face higher MFN tariffs in the UK market. Based on average annual EU imports in 2013–2015, small developing countries could pay additional annual import duties of around US\$113 million.⁸ In absolute terms, Mauritius may have to pay the largest import duties (about \$51.5 million), followed by Seychelles at \$32.3 million. Countries like Papua New Guinea, Namibia, Botswana, Swaziland and Jamaica would also be affected. However, proportional to current exports, Seychelles would take the biggest hit, with 23.4 per cent of its exports attracting additional duties.

Second, higher MFN duties would expose many small developing countries to greater competition in niche sectors in the UK market, including bananas, processed fish (e.g. canned tuna) and sugar, particularly from other larger developing countries. For example, without EPA-equivalent preferential treatment, Belize and Saint Lucia would face greater competition from more cost-effective banana suppliers in, for example, Latin America.

7.4 Post-Brexit UK trade policy options

To ensure continuity and avoid disruptions, the Brexit White Paper proposes a Great Repeal Act (GRA), which will immediately convert the entire EU *acquis*—including its trade regime—into UK law, 'wherever practical and appropriate.'⁹ This means the UK will continue to unilaterally implement all its obligations under existing trade preference schemes, including EBA, GSP and EPAs. This rollover of preferences will be a transitional measure until the UK and its partners can conclude WTO-compatible trading arrangements. However, there are potential WTO risks if continuing the status quo without a formal waiver.¹⁰ There may also be other possibilities for framing and shaping the UK's future trading arrangements.

7.4.1 Ensuring undisrupted market access for LDCs

There are five LDCs among the Commonwealth small developing countries. However, the UK has a long-standing commitment to support all the poorest countries, as reaffirmed in the Department for International Development's new Economic Development Strategy (DFID, 2017). Post-Brexit, the UK could devise its own unilateral GSP scheme, like the EU's EBA. The UK can, however, make its trade

regime more development-friendly by incorporating simple and less restrictive rules of origin (RoO) provisions. The current EU RoO provisions are quite complex, while there are instances of more flexible options used by other countries.¹¹ Another area of potential improvement could involve exploring possibilities of offering certain trade preferences in services, in line with the agreed LDC Waiver under the WTO.

7.4.2 Trade preferences for developing countries

While an EBA-type arrangement for LDCs is relatively straightforward, options for offering trade preferences to non-LDC developing countries need to be carefully considered. The EU and ACP countries have considered the FTA route in the form of EPAs to exchange trade preferences. These reciprocal arrangements conform to WTO rules that set the provisions for forming FTAs. One key issue is whether the UK can accede separately to existing EPAs¹² or install EPA replicas where ACP countries have signed deals with the EU.¹³ While some of the existing EPAs (e.g. SADC EPA and CARIFORUM EPA) could provide ready frameworks for new bilateral agreements with the UK, this could also reopen negotiations on many contentious issues, possibly dragging the process out for years.

The UK could also consider offering a new unilateral GSP scheme to ACP countries, which would be comparable to market access provisions contained in the EPAs. There are WTO requirements for the GSP schemes but the guidelines are quite broad and could potentially accommodate a suitable design. If required, the UK could also request waivers to grant non-reciprocal preferences. There are precedents for such arrangements: the USA has obtained WTO waivers for its trade preference initiatives with the Caribbean (i.e. the Caribbean Basin Initiative) and Africa (i.e. the African Growth and Opportunity Act IV, extended to 2025). This option would avoid the need for difficult negotiations with ACP countries at this stage, while ensuring the continuity of their preferential treatment. Once these short- to medium-term transitional arrangements are in place to provide policy continuity and avoid trade disruptions, one medium- to long-term option is to negotiate bilateral trade agreements with the ACP regions or sub-regions, possibly drawing on the EPA frameworks. However, it is imperative that the UK avoids a repetition of the controversial EPA experience.

7.4.3 Addressing non-tariff barriers

One key challenge for many ACP exporters is compliance with the high standards and regulations required for access to the EU market. This especially affects their exports of tropical fruit, vegetables, meat and other food products. In the short term, to ensure continuity and avoid disruptions, the GRA intends to convert most of the EU's trade-related standards into UK domestic regulations. However, ACP suppliers feel that some of these regulations are unnecessarily onerous and even protectionist, and should be reviewed. For example, Swaziland's citrus exports to the EU have been impaired by stringent sanitary and phytosanitary (SPS) standards for citrus black spot, losing market share to Spanish farmers as a result.

Post-Brexit, the UK could consider changing specific standards and developing its own set of domestic regulations in accordance with international science and rules.

Since the UK is not a citrus producer and relies on food imports, there may be a case for greater flexibility and for rescinding some EU measures regarded as unfair or protectionist by ACP producers, if this does not jeopardise plant health and food safety. For other goods imports, the UK and the EU could consider some harmonisation of standards or mutual recognition of certification procedures, which would reduce ACP trade costs by requiring 'one-time only' compliance and certification. There may also be an important role for the UK's future Aid for Trade programme in setting up conformity assessment infrastructure (e.g. testing laboratories) and providing training in small developing countries.

7.5 Post-Brexit trading arrangements and the Commonwealth

There has been some interest in the role of the Commonwealth in post-Brexit trading arrangements. Although not a trading bloc, such factors as historical ties, familiar administrative and legal systems, the use of largely one language, English, as the means of communicating with foreign partners and large and dynamic diasporas have contributed to strong trade relationships among members. Since 2000, intra-Commonwealth trade in goods and services has tripled to more than US\$600 billion. There is also econometric evidence that, when both bilateral partners are Commonwealth members, they tend to trade, on average, 20 per cent more and generate 10 per cent more foreign direct investment flows than otherwise. This so-called 'Commonwealth effect' or 'advantage' would imply bilateral trading costs between Commonwealth partners are, on average, 19 percentage points lower compared with other country pairs (Commonwealth Secretariat, 2015).

There also exist tremendous untapped trading opportunities within the Commonwealth, and—according to one estimate—even without being a trading bloc, intra-Commonwealth trade could expand to reach US\$1.3 trillion to \$1.9 trillion over the next 15 years. For example, considering all the products small developing countries export to the EU, a total of 1,348 items, currently worth just under \$90 million, are destined for the UK market only.¹⁴ About 98 of these products individually generate export revenues of at least \$100,000 (Table 7.3). Jamaica has the highest number of such products, at 19, followed by Vanuatu with 9 products and Papua New Guinea with 7. Three countries—all SIDS—have only one product worth more than \$100,000 that only the UK imports into Europe.

Some of these exporters compete successfully without relying on any trade preferences. These are the products where EU MFN tariffs are already at zero. Vanuatu has 16 products that also earn just over half its UK export earnings; it is followed by Samoa, which generates 28 per cent of its total exports from five products. Post-Brexit, close attention should be provided in assessing the trade potential of these items as well as any policy support measures needed for their development. Channelling of investments into these sectors and helping develop productive and supply capacities in small developing countries can trigger and sustain trade response. Since ACP countries that have signed the EPAs already receive 100 per cent duty-free access in the UK market, any increase in exports is likely to be in new products only. For

Table 7.3 98 products exported to the UK market alone and generating export revenues of at least US\$100,000

Country	No. of products with export values at least \$100,000 and the UK constitutes 100% of EU imports	Total value (US\$ million) of these products (2013–2015 average)
Jamaica	19	23.45
Vanuatu	9	3.83
Papua New Guinea	7	1.96
Brunei	6	13.87
Seychelles	6	1.7
The Bahamas	5	6.34
Belize	5	1.13
Saint Lucia	4	8.77
Guyana	4	6.35
Barbados	3	1.52
Swaziland	3	1.36
Trinidad and Tobago	3	1.27
Botswana	3	0.66
Samoa	3	0.47
Lesotho	3	0.35
Namibia	2	0.9
Dominica	2	0.8
Mauritius	2	0.62
Solomon Islands	2	0.58
Tuvalu	2	0.5
Grenada	2	0.28
St Vincent and the Grenadines	1	0.74
Fiji	1	0.7
St Kitts and Nevis	1	0.14

Source: Authors' summary using Eurostat COMEXT and UNCTAD TRAINS database

example, under a possible UK-CARIFORUM FTA, Jamaica can potentially increase its exports in new products by 33 per cent, although this is unrelated to the FTA (Bandeled and Banga, 2017).

The analysis here has been limited to goods trade as the data on bilateral services trade at a disaggregated level are currently not available for most Commonwealth small developing countries. Nevertheless, given the prominence of services sectors in the national economies and exports of many countries, including small states, the trade potential here should also be high.

7.6 Conclusion

The UK's commitment to promoting trade and development is indisputable. It has always recognised and championed the special needs and challenges facing such country groups as the LDCs, Sub-Saharan Africa and small states. It is one of the few high-income countries to achieve the international target of providing 0.7 per

cent of its GDP as official development assistance. The UK is also a strong advocate and a leading donor of Aid for Trade as a means of helping developing countries with supply-side capacity-building. The UK has contributed over US\$1 billion a year to help developing countries and LDCs boost their regional and world trade. The UK Department for International Development's Economic Development Strategy prioritises and seeks to strengthen the UK's approach to Aid for Trade (DFID, 2017). Post-Brexit, it is crucial that the UK continues its bilateral trade and development cooperation with capacity-constrained small developing countries.

With the Brexit negotiations now formally underway, small developing countries need to be reassured that their market access to the UK after the two years of withdrawal negotiations from the EU will be just as favourable as existing arrangements. Given Brexit-related uncertainties, such reassurances of trade continuity are imperative for investment decisions and future planning.

Notes

- 1 The author acknowledges the valuable data assistance of Poorvi Goel.
- 2 Brexit is the result of a June 2016 referendum in which 52 per cent of eligible UK voters favoured leaving the EU. On 29 March 2017, the UK triggered Article 50 of the Lisbon Treaty, formally commencing the 'Brexit' process that will see the UK leave the EU after a two-year period of withdrawal negotiations. Withdrawal from the EU is a right under Article 50 of the 2007 Lisbon Treaty—'Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.'
- 3 The two-year period for the withdrawal negotiations may only be extended with the unanimous agreement of the EU27 (union members, excluding the UK).
- 4 The Commonwealth has 30 small states, following the withdrawal of Maldives. However, Malta and Cyprus are classified as developed countries.
- 5 The overall gross domestic product (GDP) fall in the UK is £26–55 billion, about twice as big as the £12–28 billion income loss in the rest of the EU combined (Dhingra et al., 2016).
- 6 The exception is South Africa, which does not obtain full DFQF access to the EU market under the Southern African Development Community (SADC) EPA. The EU continues to provide the other members of the SADC EPA Group better access to its market than it offers South Africa. Nevertheless, the region-wide SADC EPA still improves South Africa's market access when compared to its bilateral Trade, Development and Cooperation Agreement with the EU, signed in 1999.
- 7 Tonga has been graduated from GSP since 1 January 2017.
- 8 These products are defined at the EU's Combined Nomenclature (CN) 8-digit code.
- 9 The Great Repeal Act will repeal the European Communities Act (1972) on Brexit+1.
- 10 The EU has used various Market Access Regulations to provide such access for some ACP countries since 2007, pending the signing and ratification of the EPAs.
- 11 While the EU's RoO often require process transformations (e.g., in the case of apparels), clothing items have to be domestically produced, from imported fabrics, in the recipient countries. On the other hand, countries such as Australia and Canada require recipient countries to add just 25 per cent local value for goods to qualify for duty-free access.
- 12 The EPAs do not have any built-in clauses to cover accepting new European members (e.g. UK post-Brexit), although all is possible politically.
- 13 The EPAs are 'mixed agreements' that require signature and ratification by all the EU member states. They are mixed agreements because they contain provisions on member state actions on development financing.
- 14 Average for EU imports over the period 2013–2015. These products are defined at the CN 8-digit code. CN is the EU's classification of goods, which meets requirements in terms of external trade statistics (both intra- and extra-Community) and customs tariffs.

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Chapter 8

The Emergence of Micro, Small and Medium-sized Enterprises: Enhancing their Role in International Trade

Pallavi Bajaj and Kirthika Selvakumar

8.1 Introduction

Recent discussions on the new issues in global trade have witnessed more interest in some key elements of the new global economy—micro, small and medium-sized enterprises (MSMEs), services, digital trade and technology. The inter-link between these aspects of international trade is dynamic, and the synergies are undeniable. With the growing acknowledgement of the role of MSMEs in global trade at its core, this chapter seeks to explore some of these synergies, as well as the challenges and the opportunities ahead.

MSMEs are increasingly being recognised as drivers of growth. They are now estimated to constitute 95 per cent of global firms, account for 50 per cent of global gross domestic product (GDP), and 60–70 per cent of employment, worldwide (ITC, 2015). Yet their participation in trade policy, and their mention in trade agreements, discussions and negotiations, has, so far, been fairly limited. Furthermore, trade policy, a key feature of economic policy, is often driven in consultation with industry. However, in such discussions, larger firms, with more organised representation, tend to have their voices heard better. The lack of aggregation of MSMEs affects their ability to participate in exercises to garner industry opinions on trade policy.

Recent discussions on various platforms, recognising the growing role of MSMEs, have attempted to address this situation and have pushed for the inclusion of MSMEs within the new issues in the discussion on global trade. Various studies have underscored the role of MSMEs in trade, employment and output, as well as their ability to potentially correct distributional distortions in the economy (Love and Roper, 2013). The World Trade Organization (WTO), for example, has acknowledged that the entry of newer, smaller firms alters industry dynamics for the better, ‘not only because successful entrants have productivity growth rates that are usually higher than those of incumbents, but also because their entry can foster increased innovation by market incumbents’ (WTO, 2016b). In fact, the same report underscores the diminishing need for size and scale in modern-day trading markets by arguing that the advantages of scale in international trade are ‘diminishing’, allowing micro-multinationals to participate competitively in the global market.

Discussions on MSMEs at various forums, such as the WTO, the International Labour Organization (ILO), the UN Conference on Trade and Development (UNCTAD), the

International Trade Centre (ITC), have underscored their potential, opportunities and specific vulnerabilities, and, in particular, the impact that the usual trade barriers have specifically on MSMEs as a result of their nature and scale of operation, and associated challenges.

For example, the Istanbul Programme of Action, part of the United Nations' (UN) initiatives to advance and improve the interests of least developed countries (LDCs), specifically highlights the role MSMEs can play in promoting national economic objectives (UNOHRLLS, 2011). MSMEs have also found reference in prominent international agendas, such as the Sustainable Development Goals and the Addis Ababa Agenda (Table 8.1).

The WTO (2016b) affirms,

“Micro firms and SMEs account for the majority of firms in most countries (95 per cent on average), and for the vast majority of jobs. They figure prominently in most governments' social and economic policies. They also feature prominently in the new UN Sustainable Development Goals, which seek to encourage the growth of SMEs in order to promote inclusive and sustainable growth, full and productive employment and decent work for all.”

Several regional trade agreements, worldwide, also specifically acknowledge MSMEs and have specific clauses alluding to them.

While conversations on global trade are seeking to give voice to MSMEs, and to acknowledge their role and potential, technological developments have pushed the frontier on digitally tradable goods and services. The growing relevance of e-commerce, or digital trade in goods and services, is creating a new kind of global supply chain and easing the participation of MSMEs in the global trade regime. Technology has, on the one hand, disrupted how we trade, traditionally, and how MSMEs interact in the global trading landscape, while, interestingly, also allowing for the aggregation of voices and experiences, the easier exchange of information and know-how and the implementation of capacity-building initiatives, where required.

Table 8.1 References to MSMEs in key international agreements

Sustainable Development Goals

- **8.3** Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services
- **9.3** Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit and their integration into value chains.

Addis Ababa Agenda

- **16** Generating full and productive employment and decent work for all and promoting MSMEs. We note that micro, small and medium-sized enterprises which create the vast majority of the jobs in many countries, often lack access to finance.
-

Digital trade in services has also blurred the lines between modes of services supply, and added new dimensions to trade and trade policy. Entrepreneurial ventures in the MSME services sector are offering niche services online, and bringing about a paradigm shift in the model of service supply by plugging into large service chains globally with such service offerings. Smaller providers of goods and services have emerged as suppliers of niche service and product offerings, which have contributed to GDP as well as filling a gap in the employment market, especially in developing and least developed economies. At the same time, digital trade in services and goods alike has, given the fluid flow of bits and bytes over the Internet, created new concerns over data and consumer security and privacy, necessitating some amount of government intervention and regulation. While regulators seek to prevent security and privacy lapses in the digital space, concerns over such regulation infringing the space of disguised barriers to trade have also been highlighted.

Furthermore, the digital platform, while connecting consumers, producers and service suppliers, has also, to an extent, allowed a greater geographical spread of the services value chain, making it harder for national-level regulators to control, regulate or monitor all levels of the chain individually, thus necessitating a multilateral dialogue on the sector. This realisation has fuelled the discussion on the need for policy intervention, at the national and multilateral level, in protecting and promoting the interests and growth of MSMEs.

In view of these developments, this chapter seeks to provide a detailed analysis of the challenges facing MSMEs in integrating into the global trade landscape and the limitations of existing measures in the WTO to enhance their participation. It provides a brief overview of MSMEs and how they plug into global value chains, both contributing to, as well as benefitting from, the phenomenon. It then focuses on the services sector, a key sector in the growth story of MSMEs, particularly for developing countries, and placing specific emphasis on the role of e-commerce in the services trade landscape. The authors then discuss the challenges experienced by MSMEs in commodities as well as in the services sector. It concludes by evaluating the measures already in place at the WTO to integrate MSMEs into the global trading landscape, and offering suggestions to improve on existing measures to enhance their participation in the global trading regime, in both manufacturing, as well as in services. In understanding that the nature of services and goods trade, even for MSMEs, means there are specific challenges to address and opportunities to explore, the chapter places separate emphasis on each sector within the MSME space.

8.2 Micro, small and medium-sized enterprises: Definitions

One of the limitations with analysing the growth of MSMEs is the lack of an internationally agreed-upon definition. Different countries and different international organisations classify these enterprises differently. While in some countries MSMEs are defined by the number of employees, other countries classify them by annual turnover, investment or scale of operation.

Furthermore, the threshold on each parameter also varies. For example, the Organisation for Economic Co-operation and Development (OECD) (n.d.)

defines MSMEs as ‘independent firms, which employ fewer than a given number of employees’. In the EU, this is less than 250 employees, whereas the United States of America (USA) considers firms that employ less than 500 employees MSMEs. A widespread analysis on MSMEs from 132 countries conducted by the International Finance Corporation (IFC) (2010) suggests that the majority of countries define micro enterprises as firms with up to 10 employees, small enterprises as those with 10–50 employees and medium enterprises as those with less than 250 employees.

It is also important to note that MSMEs operate in both the formal and the informal sector. While formal MSMEs are officially registered with respective national government agencies, informal enterprises are, by definition, not. ILO (2015) reports that only 26 per cent of MSMEs worldwide operate in the formal sector; unregistered informal firms constitute the remaining 74 per cent. Thus, in many developing countries, the contribution of MSMEs to economic growth and employment is greatly understated, given the ambiguity surrounding their definition and the lack of data as 80–95 per cent of all informal firms are micro firms (WTO, 2016b).

Adopting a common definition for MSMEs and creating credible sources of data collection on both formal and informal operations of MSMEs are critical to the ability of policy-makers to advance the growth of MSMEs and enhance their role in GDP, trade and employment. Additionally, in the interim, it may be useful to develop a comparative model of analysing limited available data, across definitions.

8.3 Plugging MSMEs into output, employment and global value chains

A vibrant entrepreneurial sector can ensure long-term sustainable economic growth, as the economy shifts away from primary industries (agrarian) towards manufacturing and services-oriented industries. In doing so, the spill-overs are plenty: poverty alleviation, creation of infrastructure and economic empowerment of women, among others.

MSMEs, a product of the growing entrepreneurial spirit worldwide, contribute significantly to GDP, employment and income distribution in the domestic economy. This is particularly true in developing countries, where MSMEs not only play a crucial role in providing employment for the growing rural and urban population but also are a source of innovation, generate export opportunities and attract foreign direct investment. This consequently fuels economic growth and aids in overall development (WTO, 2016b). Aside from in low-income developing countries, MSMEs play an indispensable part in middle- and high-income countries too. Research shows that MSMEs account for 63 per cent of total employment in 17 OECD countries. In addition, the World Bank (2012) reports that the MSME subgroup accounts for the largest share of employment in middle-income countries.

The evolving nature of global production processes, and the significant role played by global value chains (GVCs) in production and service supply, has enhanced the

ability of MSMEs to participate effectively in international trade. While MSMEs traditionally do not have the resources, capital or technical know-how to compete in an entire chain of activities, fragmentation of the production process has allowed them to specialise in specific parts of the production chain in which they have a comparative advantage. This has allowed MSMEs in both developing and developed countries to access information about the type and quality of products demanded by foreign markets and source for customers pre-production. This has greatly reduced the uncertainties and risks associated with operating in foreign markets and created the conditions to enable them to participate in international trade (Hesseks and Terjesen, 2010).

The development of MSMEs has been further aided by rapid improvement in information communication technologies (ICTs), particularly the Internet. This has vastly improved the opportunities available by allowing MSMEs to connect to world markets digitally. Digital technology has also helped reduce barriers to trade significantly by reducing fixed costs such as capital rents and eliminating the need for physical presence in every market firms seek to access, in both goods and services. In addition, it has allowed MSMEs to reach out to consumers beyond their geographical and regional borders and plug into GVCs at critical points, and enabled them to access a global consumer base and contribute effectively to the supply chains. With entrepreneurial culture taking wind in most economies, and alongside advances in technology and trading practices, such as e-commerce and digitally traded services, the domain of services-providing MSMEs is a rapidly expanding one and a niche in itself. Services MSMEs are not only offering their services directly to consumers, digitally, worldwide, and at the same time plugging into services supply chains with niche offerings, thereby completing the supply loop, but also supplying manufacturing value chains, at key points, with digital tradable support and ancillary services to complete the value chain. The criss-cross of services offerings, and the many possibilities for services MSMEs to connect into these chains, has also blurred the lines between different modes of services supply, offering consumers new means of accessing services globally. In a global economy where MSMEs form 95 per cent of all firms and account for 50 per cent of global GDP, developments in ICT have amplified their contribution to global trade, making this a pertinent subject that requires the attention of the global community (ITC, 2015).

However, while it is not difficult to logically ascertain the impact and scope of MSMEs in global trade and national output, in both goods and services, the cumulative quantitative impact of the growing MSME sector on global trade growth is hard to determine. There are two reasons for this. First, there is no internationally agreed definition of MSMEs, which makes measuring their impact difficult. Second, in the absence of reliable, accurate and consistent data any analysis, impedes the development of future growth strategies. This chapter further discusses this, along with other concerns about the potential of MSMEs and their ability to effectively contribute to national output and participate in global trade.

8.4 The services sector and MSMEs: The critical 'new' niche engine of growth

The services sector covers a wide gamut of sub-sectors, which constitute the backbone of any economy. From transport to infrastructure, IT, communications, banking, insurance and other financial services, tourism, distribution, postal services, education, health care and migration of manpower, both skilled and unskilled, the services sector has natural synergy with and supports all other economic activity.

In most economies, the services sector is also the fastest growing sector, and has shown significant potential over the past decade, globally. Trade in services, as well as the contribution of services to GDP (value-added), and to employment, have grown in both volume and share, in most economies, in varying proportions. As a matter of fact, in several countries, growth in trade in services has been stronger than that in merchandise trade. According to calculations based on UNCTADStat data, global exports of services in value terms nearly doubled between 2005 and 2015. Mashayekhi (2015) echoes this calculation, noting that this near doubling of global services exports was achieved at an annual rate of 3.6 per cent between 2008 and 2014. In 2010, the services sector also contributed to 71 per cent of global GDP (UNCTAD, 2014). While such growth has predominantly been aided by regulatory and institutional reforms, a strong services sector has also been known to support other sectors of the economy, and to enhance growth rates in manufacturing and agriculture. Therefore, efficiency in the services sector is key to enhanced and sustainable economic performance.

Growth in the services sector has not been restricted to developed and developing countries. LDCs the world over have also followed the trend. As a matter of fact, ITC (2013) notes that all LDCs (for which balance of payments data are available as of 2011) export services, and in fact some of them are net exporters of services. For example, in 2012, services exports contributed to 18 per cent of the total exports of LDCs in the Asia Pacific region (Arbis and Heal, 2015). Exports of commercial services displayed sustained growth in the period 2000–2010, according to data sources, and travel and tourism continued to be the mainstay of services exports from LDCs (WTO, 2011). As a matter of fact, in this period, LDCs witnessed an increase of over 14 per cent per annum of receipts from international tourism. This figure was in excess of the 10 per cent rate of growth in the same sector for other developing economies; and two times the total global average rate of growth of 7 per cent, for the sector. In addition, the market share of LDCs has grown nearly two times in the decade preceding 2011, and was 1.1 per cent of the respective world total during the last estimate. The sector has grown rapidly, and displayed a clear existence of a comparative advantage in this sector of export (WTO 2011).

In the same vein, UNCTAD (2014) underscores the significance of the services sector in developing countries, and LDCs, in referring to services as 'the new frontier for enhancing their participation in international trade, and in turn, realising development gains'.

The distribution of the growth of services trade, across service industries, in developing and least developed countries has also been fairly diverse. While travel

and tourism occupy the largest share of export of services from most LDCs, several Asian and African LDCs, such as Bangladesh, Cambodia, Burundi, Mozambique and Sudan, also export 'other business services', communication services (Benin, Bangladesh, Comoros, Djibouti, Ethiopia, The Gambia, etc.) and financial services, aided by technological innovation (ITC, 2013). Among developing countries, the growth of the services sector has been fuelled by the export of IT and IT-enabled services (ITeS), as was the case with India, for example.

With the widespread impact of the internet, digitally traded services have emerged as a significant sector in global trade, contributing to global supply chains and to manufacturing value chains, as well as providing services to consumers worldwide, directly, via the internet. This emergence of niche service suppliers in the services-based MSME sector adds an interesting element to the growth story of the services sector as a whole. A growing number of MSMEs, in all economies, are being set up in the services sector. Industries such as tourism, IT and ITeS, advertising, marketing, graphic design, health care, real estate, transport, etc. have seen a remarkable entrepreneurial surge. This has led to the establishment of small businesses, backed by owned funds, angel investors and venture capitalists who recognise their potential and significance in the economic structure of the country, as well as the benefits of the flexibility and dynamism inherent to them, in catering to the demands of both their customers and the rapidly evolving global markets and supply chains. In fact, as the World Trade Report notes, "trade flows of micro firms and SMEs are heavily tilted toward services (accounting for 68 per cent of total exports and 83 per cent of total imports)" (WTO, 2016b).

Unlike in manufacturing, the output of the services sector and the various points on the service supply chains are both intangible. This, in conjunction with the virtual nature of the digital platform, over which an increasing number of services are traded—directly to consumers; as well as indirectly, via supply chains or as ancillary services plugged into manufacturing value chains—adds a whole new dimension to global trade. Digital trade is based on a fluid exchange of bits and bytes, or data, over the Internet; this means government intervention and regulation have been necessary to ensure the security and privacy of the data, for both consumers and businesses. Yet, since digital trade itself is critically dependent on the unhindered exchange of these data, it is equally essential to ensure such regulation does not begin to overlap with the territory of unnecessary barriers to trade.

This conundrum, in addition to the fluidity of definitions in the sector, renders services-based MSMEs not amenable to old world legal and regulatory frameworks. Moreover, MSME service providers are typically first generation entrepreneurs, with personal savings at stake and little capital backing. They therefore require a robust risk mitigation framework.

The very nature of digital trade and value chains built online has allowed multiple small and big service providers to plug into various points of the services supply chain. This has created a framework whereby regulators at national or regional level do not have access to the entire value chain by themselves, necessitating the development of a modern, multilateral regime on trade in services, especially for e-commerce and digital trade. Furthermore, digital value chains in both services and

goods have the ability to change, and are already changing, the definition of modes of service supply, as well as the application of rules of origin as we know them, leading to an evolution in trade policy. An example is taxi or cab companies: consumers can order, track, locate and pay for the vehicle online, and be insured themselves as well as for the vehicle, for the entire duration of the journey, with one click of a button, via a mobile application, hosted on a digital server, all individual services, managed in potentially different geographies. Another relates to advances in technology, such as international hosting servers, 3D printing, travel portals, food and beverage industry review portals, and e-learning. Most of these developments started with small niche service offerings by entrepreneurial ventures in the MSME space, and have either been scaled up or merged with/supported by larger businesses, plugging into global supply chains in the services sector as well as support services for manufacturing output. The nexus of the MSME sub-sector and the services sector, fuelled by innovation and technological advancements, has led the way in the evolution of trade, as we know it.

Developments in technology, especially in the services sector, have disrupted trade, as we know it, and the way MSMEs participate in global trade. These developments are driving the way trade is evolving over the years. Yet technology itself offers the ability to aggregate MSMEs, especially those operating in the services sector. This allows for a platform where data on MSMEs in services can be collected, collated and analysed and MSMEs can interact, exchange know-how and experiences, collectively discuss and suggest solutions to the challenges they face, and at the same time have their voices heard by policy-makers. They can also tap technology to integrate efficiently into the global trading regime.

Adapting trade policy to these developments is not an issue that countries can regulate entirely domestically. This puts the onus on the global community to take action at the multilateral level to ensure both consumers and producers can benefit from this evolution, in a secure manner, without significant risk to their individual and collective interests.

8.5 Challenges facing MSMEs in manufacturing in the global trading landscape

8.5.1 Adhering to tariff and non-tariff barriers to trade

The inherent nature of MSMEs makes them more prone to the impact of market fluctuations and uncertainty. While a tariff hike would hit all businesses looking to access the market in question, for MSMEs their smaller scale of operations, relatively price-inelastic demands, smaller asset base and fewer resources make them particularly sensitive to such barriers, which affect their profit margins and their ability to compete with incumbents and larger firms.

At the same time, non-tariff barriers (NTBs) also tend to have a significant negative impact on MSMEs. Smaller firms find it harder to manage the uncertainty and lack of transparency such barriers create. For example, an ITC survey of 11,500 exporters and importers of goods from 23 developing countries found NTBs affected small firms most (ITC, 2015).

The two core NTBs to trade regulated by the WTO are sanitary and phytosanitary standards (SPS), which ensure tradable goods adhere to health and safety regulations, to protect public health; and technical barriers to trade (TBT), which comprise of regulations, standards and conformity assessment procedures for tradable goods. A widespread analysis of NTBs to trade have shown that SPS and TBT are costlier for small firms as large firms are more efficient and can benefit from economies of scale to comply with stringent requirements at lower cost than smaller exporters (Reyes, 2011; WTO, 2016b). Multiple studies have quantified the costs of restrictive SPS measures. For example, research by Fontagné et al. (2015), which uses export data provided by individual French firms, found that a restrictive SPS measure would reduce a firm's probability to export by 4 per cent and increase the intensive margin of an export by 18 per cent. This is a substantial amount that large firms are able to absorb quite easily, given their larger profit margins and relatively elastic demands, but would affect small firms adversely. Of all NTBs, MSMEs found conformity and pre-shipment requirements in export market and weak inspection and certification procedures particularly difficult to adhere to (ITC, 2015).

8.5.2 Limited opportunities to access finance

Analysis of worldwide firm-level data from the World Bank's Enterprise Survey shows that access to finance is the biggest obstacle to firms, both big and small, in the Commonwealth. Financing options for MSMEs are particularly limited because financial institutions face greater risks when lending to them. Lack of collateral and reliable financial information required for a loan and high fixed costs of financial transactions lead to investors perceiving MSMEs as high-risk borrowers. Research by the Asian Development Bank (ADB) (2014) estimates that more than half of MSMEs' requests for trade finance is rejected, compared with 7 per cent for multinational firms. Moreover, MSMEs face many more challenges than larger firms as a result of the tepid economic climate.

Since the financial crisis, financial institutions have become risk-averse and have tightened regulation on lending. This has affected MSMEs more adversely than large firms: studies have found that, during the 2008–2009 financial crisis, credit constraints on smaller exporters were so great that they resulted in stopping exports completely in some cases, and reducing the number of export markets served in others (WTO, 2016a). These measures affected exports from developing and low-income countries, as they are particularly dependent on bank-intermediated finance than in other regions (DIE, 2014). This has been exacerbated by the fact that the international trade finance sector is highly concentrated. DiCaprio (2015) reveals that about 40 banks account for 30 per cent of trade finances supplied internationally. Thus, in a time of recovery from a recession, banks are cautious to lend, which, in turn, significantly limits the export growth of these firms.

8.6 Challenges facing MSMEs in the services sector

Just as the potential of services-based MSMEs derives from the potent combination of their specific characteristics, and the strengths of both these firms and the services

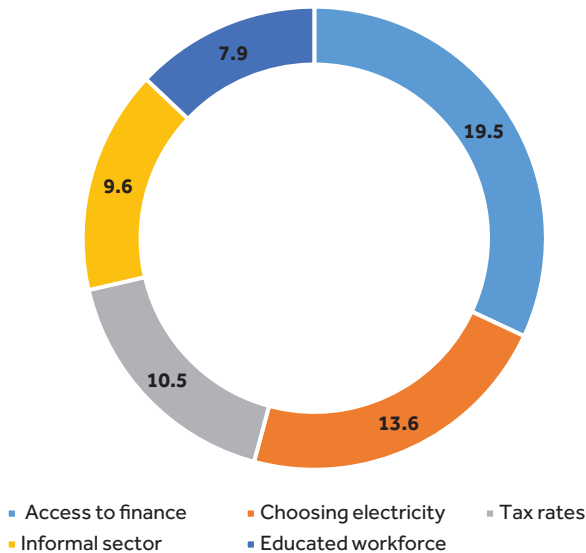
sector, in the same vein the challenges facing this sector are layered, and stem from the specificities of both MSMEs and the services sector.

The first layer of these challenges relates to the obstacles to productivity and competitiveness inherent to the sector, exacerbated by lack of adequate domestic institutional structures in the domestic economy. These challenges mean that, while MSMEs in the services sector, particularly in developing countries and LDCs, are exploring their potential and contributing to the domestic economy, their spread across services industries within specific economies and their direct contribution to trade remain limited (WTO, 2016b).

First, data on MSMEs, which are active largely in the informal space, are often sketchy, where available, and hard to collate. Additionally, sector-specific data on MSMEs are usually not easily to find, making it harder to segregate MSME contributions, by manufacturing and services, to GDP and to trade. Add to this is the lack of consistent, reliable and accurate data, particularly in developing and least developed economies, on the services sector and on trade in services. Coupled with the absence of categorical definitions and clean lines in the services sector, this makes assimilating and ensuring the consistency of data services-based MSMEs, as a niche category, an enormous challenge.

This is exacerbated by the fact that services entail a wide gamut of industries and activities, often resulting in a sketchy definition of what qualifies as ‘services’ to begin with. As the global economy enters a digital era, the overlapping domains of e-commerce and digital trade make the definition of ‘cross-border trade’ all the more complicated. Furthermore, lack of harmonisation on standards, regulations and

Figure 8.1 Top five challenges to firms in Commonwealth countries



Source: Author’s calculations using data from World Bank Enterprise Surveys. The percentages are calculated as an average of Commonwealth countries from 2010–2015

definitions makes partner data less relevant for analysis. Therefore, more often than not, just defining the sector and assimilating data on output and trade is a challenge. Lack of credible data also, as Arbis and Heal (2015) concur, makes it harder to analyse the growth and impact of trade in services on the economy, particularly for LDCs, and to plan and monitor developments in the sector. Naturally, then, formulating trade policy at regional or multilateral level, to ensure effective participation by services-based MSMEs in national output and in global trade, becomes more challenging.

Second, a challenge to services-based MSMEs in particular is the inadequacy of workers to meet the requirements of a skills-intensive business. Firms in the services-based MSME sector establish operations with unique or niche ideas and seek to scope out customers and make an impact with their offerings. Their services are specialised, and require specific skills sets and skilled human capital. As such, finding the requisite, trained human resources, and platforms where skilled resources are mapped to the niche requirements of smaller enterprises in the services sector, is often a key challenge in their growth and their ability to scale up operations, compete in a global market and integrate into GVCs, which require specialised services, value-added and scalable trained manpower. Lack of adequate skills development facilities, especially those with backing from the public sector, and inability to scale up to meet the requirements of businesses add to their woes, with smaller businesses often struggling to meet the costs of setting up such facilities specifically for their own firm. Additionally, services-based MSMEs are often unable to access low-cost, efficient support services for administrative, finance, human resource and compliance functions. Arbis and Heal (2015) agree, 'the ability to trade services more competitively relies heavily on human skill factors and an efficient regulatory framework and institutions that many Asia-Pacific LDCs have yet to fully develop, such as an adequately trained workforce, strong rule of law, intellectual property rights protection, and sufficient digital infrastructures'.

Third, such challenges are furthered in light of the poor, inadequate and inconsistent access to funds facing most MSMEs, including those in the services sector. Traditional banking has consistently failed MSMEs, particularly in developing and least developed countries, with administrative and collateral requirements that they are often unable to meet and impossible interest rates. In fact, as in the case of manufacturing, MSMEs in services often find financial resources only at higher rates of interest and with more stringent requirements by financial institutions than is the case for larger firms. This is, in addition to the nature of traditional banking, also a function of the lack of credible data and information available to financial institutions about services-based MSMEs, which operate across modes of supply in a market with fluid definitions; and a general lack of literacy in the financial sector on the services-based MSME sector. This leaves lenders and financial institutions with insufficient information to take an informed decision on the potential and the specific requirements and challenges of this sector, making it harder for them to fully comprehend it and to create financial assistance instruments tailored to the sector. In addition, it further discourages their risk appetite for the sector. The WTO (2016b) argues that, while international banks are reluctant to invest in developing country markets, local banks in these markets often lack the know-how, capacity, international network, etc. to support export-oriented MSMEs.

Without adequate capital backing, services-based MSMEs find it harder to put together the infrastructure required to offer services at prices lower than those of larger incumbents, to scale up operations to meet competition or to effectively reach out to and integrate into global services value chains, both within the services sector and in terms of ancillary support to manufacturing value chains. Moreover, while skilled manpower is a key requirement for services, without adequate capital backing it is harder for smaller firms to hire skilled experienced professionals to provide better-quality services than the larger incumbents. Lack of finance also makes it harder for them to comply with the multiple quantitative and regulatory restrictions they face in importing countries and to manage their competitiveness in the environment of uncertainty and lack of transparency the regulations create.

Furthermore, unlike in the case of manufacturing, the services sector naturally lends itself to easier replication of services offerings. Therefore, where a service offering finds takers in consumer demand, several other service providers, including incumbents and larger firms, are encouraged to capitalise on a good idea and to replicate it, differentiating themselves on price, quality of service and scale. In the absence of adequate capital backing, therefore, smaller firms find it harder to continue to compete on price, quality and scale, and to source experienced skilled professionals from the market, as a differentiating factor. This both discourages smaller entrepreneurs from investing in newer ideas, and in the research and development initiatives required to hone such ideas, and makes it harder for them to survive once they do. Easier, more tailored, access to capital for smaller firms would enable them to protect their ideas, invest in intellectual property protection and continue to scale up their operations and source more skilled manpower, so they can better compete in the market.

In addition to resource and data constraints, the weak institutional structure and inadequate regulatory reforms in most developing countries and LDCs also pose a barrier to growth and trade for MSMEs in general, and those operating in the services sector in particular. In addition to labour/employment law and policy, banking and access to credit and regulation on, *inter alia*, competition, public ownership of key industries and intellectual property (IP) are often not geared towards enhancing the ease of doing business, especially for MSMEs. For example, the continued existence of monopolies in key sectors such as telecommunications, IT and air transport makes it harder for smaller players to enter the market and create a niche for themselves. In the absence of a strong IP regime, smaller firms do not have the necessary incentive to invest in research and development, and cannot benefit from the sort of technological transfers with bigger domestic players or with players in the international market to which a healthy IP regime in the home economy could provide access. Where strong regulatory frameworks exist, they are often covered in bureaucracy and corruption, making it even harder for smaller firms to survive and compete.

Growth of services-based MSMEs in developing countries and LDCs is further hampered by the absence of high quality infrastructural facilities in the home economy. Grater et al. (2016) underscore the sensitivity of SME service providers' efficiency and productivity, to the quality of infrastructure in the domestic economy. They note, for example, that, "congested and unmaintained roads, and unreliable

and expensive electricity and telecommunications services can add significantly to the cost of doing business and dash SMEs' hopes of delivering competitively priced services at a regional or international level" Grater et al. (2016).

Where MSMEs that trade services do attempt to make it to international markets, they have to deal with both market access and regulatory barriers. Since barriers to trade in services are not tariff-based, but in fact quantitative or regulatory in nature, they are harder to measure and gain certainty on, and indeed they often represent disguised barriers to trade. At the same time, several aspects of services make the sector significant to the domestic economy, and particularly sensitive to regulation: governments strive to protect consumers, producers and, often, national security via regulation of industries in the sector. This makes the potential role of the multilateral arena particularly significant in ensuring countries have the flexibility to regulate the sector where necessary but at the same time preventing such regulation entering into the realm of disguised barriers to trade.

The result of the behind-the-border nature of these barriers is that they cause significant uncertainty and lack of transparency in doing business and add an additional layer of complexity to trade in the sector. They thereby raise costs and create an environment averse to the competitiveness of MSMEs, which tend not to have the resources to remain efficient and competitive in an uncertain, non-transparent trading environment and to meet burdensome regulatory requirements in the importing market. The WTO (2016b) notes, 'non-tariff barriers are particularly burdensome for SMEs, because they entail fixed costs independent of the size of the exporter'.

Arbis and Heal (2015) note,

"As tariffs are not applied to trade in services, barriers to trade are almost always generally of a quantitative and/or regulatory in nature and their impact is not amenable to simple quantification... In general, though, global commitments to liberalisation of services under the GATS are less advanced than liberalisation of levels of bound tariffs for merchandise trade under the GATT, and are subject to weaker regulatory disciplines. Thus despite declining overall costs, according to estimates, trade costs in services are two to three times higher than trade in goods globally, as services costs have remained relatively flat over the past decade, while trade costs in goods have continued to fall overall at a faster rate."

With businesses now going digital, and consumers meeting sellers in a virtual space, all these concerns are being underscored. Such interactions require the support of experienced and trained professionals, seamless connectivity and high-end technology, together with strong distribution networks, customer service set-ups and initial funding, as well as an efficient regulatory system that makes doing business easier, especially for small enterprises. In the absence of such support networks, and adequate institutional and regulatory reforms, businesses looking to sell services and trade online find it harder to flourish even domestically, let alone in the international market. Furthermore, without a clear, universally accepted, harmonised definition of e-commerce itself, policy-makers struggle to draft policies that support these businesses effectively and to provide standardised and 'easy-to-do-business-in' regulatory frameworks for businesses in the area. At the same time, lack of a clear

definition, and the lack of transparency that this leads to, adds to the costs of operation and compliance for businesses, and this uncertainty has impacts on efficiency.

In the digital space, technology is creating fluid and widespread service supply chains wherein domestic regulators may not necessarily even have access to, let alone the ability to control and regulate, all points of operation. In this environment, rules of origin, modes of service supply and therefore the ability of governments to protect both service suppliers and consumers from the inherent risk of trade that does not necessarily require peer-to-peer interaction in person are limited. Furthermore, the free exchange of bits and bytes over the internet creates challenges of security and privacy, even while the very nature of Mode 1 trade, and e-commerce, requires such free exchange, entailing a need to regulate with caution, without creating unnecessary barriers to trade. It also necessitates the intervention of international or multilateral bodies, such as the WTO, in trade policy, to ensure a fair and level playing field that also protects consumers' interests and security. In such an environment of uncertainty, even international regulatory bodies find themselves in uncharted waters, with members seeking out new ideas on finding the balance between regulation and liberalisation. In this situation, the services sector, particularly in the digital space, finds itself evolving faster than trade policy and regulatory reform. It is, of course, imperative to note, once again, that such missing links in trade policy add to the uncertainty and lack of transparency in trade, making it harder for MSMEs in services to compete in global markets.

Even in light of the above concerns, and given the clear role for a multilateral regulatory regime, there has been limited focus on MSMEs in the services sector in discussions and policy-making. In fact, very little attention in trade policy is paid to MSMEs engaged in services, even within the WTO, for example in the General Agreement on Trade in Services (GATS). This, as Adlung and Soprana (2012) note, is particularly uncanny, since the GATS, unlike the GATT, covers suppliers and not just services/products. It is also important to note that not much research or analysis has been undertaken, within or around the WTO, on MSMEs in services, their role in trade and development and the challenges they face, and how those can be addressed in both domestic, and international markets. While several Member States have pushed the agenda of both MSMEs and firms engaged in trade in services, at the WTO and at other negotiating forums, concrete action on addressing barriers to growth and trade faced by these entities, in particular, is yet to take shape.

Whereas negotiations on trade in goods, both in agriculture and in non-agriculture market access, have evolved over time, those on services have lagged behind developments in technology and global trading practices. With the internet redefining, for example, how services are or can be traded, there has been an evolution in the mere definition of tradable services and how they fit into the four modes of services supply defined under the WTO, as well as the relative significance of each mode of services supply to different economies. However, negotiation and agreement on this definition to allow consistency and harmonisation have lagged behind. With little or no clarity on the scope of these definitions, regulatory reforms on the sub-sector have also been left to the discretion of individual governments, leaving service providers

in the lurch and pleading for harmonisation: seeking to comply with multiple norms and requirements, often without access to necessary information, increases costs and decreases efficiency, interfering with their ability to compete globally. This is particularly detrimental for MSMEs, which are often strapped for capital and expertise and struggling to sell, in both the domestic and the international market.

Grater et al. (2016) refer in the below quote specifically to African LDCs and the role of MSMEs in the services sector, but this could just as easily apply to MSMEs and services worldwide. They note that, while MSMEs in the services sector are being seen as the new drivers of growth in Africa, and there is an increasing recognition of their role in economic growth, particularly for lesser developed economies, the focus on their scope an impact for LDCs, as well as information and data on SMEs in the service sector has been relatively meagre in academic research, and analysis, for Africa and other LDCs.

The WTO (2016a) reiterates this concern, underscoring,

“MSMEs continue to lag behind large firms not only with regard to productivity but also level of competitiveness and ability to internationalise. Evidence shows that while around 20 per cent of new firms go out of business after their first year, and just over 50 per cent after five years (Dunne, Robertson and Samuelson, 1988; van Praag, 2003; Knaup and Piazza, 2007; Geroski, Mata and Portugal, 2010), young MSMEs are more likely to survive if they export. If policymakers address the market failures that constitute barriers to trade for MSMEs the enterprises will be able to become more competitive” (WTO 2016a).

8.7 The Trade Facilitation Agreement: A beacon of hope for MSMEs in manufacturing

While MSMEs face many challenges that are unpredictable, such as market fluctuations and political instability, barriers related to regulatory unpredictability have been addressed to a certain extent through the Trade Facilitation Agreement (TFA) which has entered into force in February 2017. This seeks to expedite the movement, release and clearance of goods and promotes effective cooperation between customs. This enhanced transparency through the harmonisation of export and import processes will greatly enhance the competitiveness of MSMEs in particular, which are disproportionately affected by the lack of regulatory predictability. In quantifiable terms, the tariff equivalence of ‘red tape’ for imports corresponds to an additional tariff of 25.6 per cent in Sub-Saharan Africa (Nathan Associates Inc. cited in Joosep, 2014). Apart from tariffs, access to credit, NTBs and cumbersome customs procedures are perceived to be the most significant barriers to MSMEs’ export competitiveness (Joosep, 2014). Research by the OECD (2014) estimates the TFA measures will reduce global trade costs by 11 to 15 per cent and lead to an increase of exports of nearly US\$1 trillion. Consequently, MSMEs are able to pass on the cost reduction to consumers, thereby making their goods more competitive, and are able to integrate easily into GVCs.

However, a key limitation lies in being able to provide the resources to implement the TFA for MSMEs, especially in developing and least developed countries. These groups of countries fear that the agreement could lead to an increase in imports,

Table 8.2 Singapore's SME Policy 2015

Component	Relevance
<p>SME Centres Integrated one-stop centres where SMEs can access information and seek advice on a wide range of assistance programmes from relevant government agencies and private sector organisations.</p>	Can be used to provide information on trade procedures and identify SME needs (Articles 1, 2, 23)
<p>Market Readiness Assistance Grant Grants consultancy advice for SMEs on market assessment, market entry and business restructuring through internationalisation. These also include assistance on market research, legal and tax regulations.</p>	Can include or be extended to trade facilitation aspects (Article 1)
<p>Capability Development Grant Supports SMEs by co-funding up to 70% of their productivity improvement and capability development costs for 10 support areas:</p> <ol style="list-style-type: none"> 1. Business innovation and design 2. Business strategy development 3. Brand development 4. Enhancing quality and standards 5. Financial management 6. Human capital development 7. Intellectual property and franchising 8. Productivity improvement 9. Service excellence 10. Technology innovation 	Can include or extend to capacity-building for trade facilitation (e.g. knowledge and application of international standards for paperless trade, or of relevant certification and/or conformance procedures)
<p>Internationalisation schemes Reducing certain internationalisation risks to help SMEs thrive in foreign markets. Double Tax Deduction for Internationalisation allows Singaporeans posted overseas to receive tax deductions. The International Growth Scheme includes a lower tax rate on incremental income for qualifying overseas activities.</p>	Can be extended to special trade facilitation services such as SME the Programmes for Authorised Economic Operators and Single Windows or reduced fees and charges

Note: Article 1: Publication and Availability of Information; Article 2: Opportunity to Comment, Information before Entry into Force and Consultations; Article 23: Institutional Arrangements

which would negatively affect their trade balance. Research by the OECD (2014) shows that total trade facilitation costs will range between €3.5 billion and €19 billion. For many low-income countries, this will not be feasible without the assistance of developed countries. Thus, it is crucial that the international community provide sufficient investment to overcome capacity constraints related to human resources, training, equipment and ICT (Joosep, 2014).

The TFA alone is not sufficient. While it will help alleviate some of the bottlenecks experienced by producers and sellers of goods, it does not address the key issue of limited access to finance at high interest rates. Moreover, multilateral TFA measures are effective only if they are mainstreamed into national MSME policy frameworks. Countries need to up the ante on domestic regulation and infrastructural reforms, and work with banks in the private and public sector to provide sustainable, need-based financial assistance, loans and funding instruments to smaller firms, often disconnected from the credit market. In addition to successful implementation of international agreements, therefore, domestic reforms and further international technical assistance need to be coordinated to create an enabling environment for harmonising customs procedures and to reduce informational asymmetry between countries.

An example of successful promotion of MSMEs, through a consortium of domestic reforms and integration with multilateral efforts, is Singapore, a Commonwealth small state, which has managed to integrate TFA measures effectively into its national MSME policies to facilitate its growing MSME sector (Table 8.2). Fundamental to its success is the creation of its Centre@SME, a one-stop centre that provides direct assistance and advisory services to MSMEs, which helps them overcome the informational challenges MSMEs face with regard to trade facilitation. Singapore also uses its well-established ICT infrastructure to communicate with traders: Singapore Customs provides a mobile service for traders to receive updates on their shipments. In addition to these measures, the Singapore Customs Academy conducts regular training courses to disseminate information on customs compliance and provides access to information around the clock (UNESCAP, 2016).

Smaller, lower-income economies can benefit from the experiences of countries such as Singapore, and push to mainstream trade and MSMEs in domestic policy. They can work towards integrating MSMEs successfully in the multilateral trading system by effectively implementing measures such as Aid for Trade (AfT) and the TFA into development projects. This will create an environment that fosters the growth of smaller enterprises, which would lead to higher GDP, more employment and better welfare distribution, in addition to more effective participation in the global trading regime. Even where notable success has been achieved, such as in Singapore, tools provided by technology can enhance this, via, for example, a digital forum for MSMEs to exchange experiences and know-how, match products and services and gain enhanced market access.

8.8 Addressing challenges for MSMEs in services

The solutions required to address the challenges facing MSMEs in services require first critically acknowledging the difference in the nature of the sector *vis-à-vis* other sectors of the economy. Second, it is necessary to understand how the challenges facing MSMEs are different from those facing larger enterprises. In fact, even the challenges common to both larger and smaller enterprises tend to be more restrictive and to affect the efficiency of smaller enterprises more. The niche group of services-providing MSMEs are structurally and functionally different from other enterprises in their nature, their potential, and in the challenges they face. Yet they provide an engine

of growth to any economy, and plug back into the smooth functioning and efficiency of other sectors. The reforms required for enabling these enterprises to function optimally, enhance their competitiveness and integrate effectively into the global economy demand long-term vision and reforms, at both domestic and multilateral level. These reforms continue to be the most critical of all trade reforms to implement.

The space of both MSMEs and the services sector is an evolving one, and is driven by consumer demand. With every new service required by consumers, and thus offered by firms in the market, a new regulatory challenge faces policy-makers. With technology evolving rapidly and the digital space redefining the frontiers of trade in services, MSMEs are facing increased opportunities as well as challenges. Regulators are facing increased challenges with regard to security, privacy and management of data. Regulators and trade policy-makers must take rapid leaps forward and be able to adapt to anticipate or react promptly to the changing market environment and policy requirements.

In this light, negotiating a new regime for trade in services, particularly with a view to enhancing the ability of services-based MSMEs to integrate more effectively in the global trading regime and to benefit from the opportunity, while contributing better to sustainable economic development, is gaining traction as a key objective of policy-makers in multilateral and other trading forums. In fact, GATS negotiators anticipated the evolving nature of trade in services and the sensitivities of the sector. Part IV of the Agreement provided, in advance, for progressive liberalisation, while still affording 'due respect for national policy objectives and the level of development of individual Members' (GATS, 1994). This remains a powerful, and yet unutilised, tool in the hands of WTO members, and can be used effectively to guide the path ahead on trade policy, regulation and enhancing the ease of doing business in the multilateral trading regime. Such policy-making at this level would definitely facilitate trade for MSMEs and help them achieve their potential and contribute better to global trade.

Of course, it should be ensured that such a regime takes into account technological developments; innovation; incumbent economic situations in developing countries and LDCs; and newer trade mechanisms, platforms and practices, especially with reference to digitally traded services or, more generally, e-commerce. At the same time, institutional reforms are required at both national and international levels, to facilitate the building of supply-side and trade capacity in services and to enable trade, especially for MSMEs.

To begin with, an overarching environment that fosters entrepreneurial endeavours and encourages small businesses to take the leap is essential. The services sector operates in a high-skill, technology-driven industry where exchange of know-how is key. Additionally, the challenges facing smaller firms in these sectors are often not evident in terms of numbers, tariffs and border measures. Such challenges often require deep regulatory reforms, infrastructural development and capacity-building assistance, above all else. This requires both domestic and trade policy to take into account the specific concerns facing these firms in the niche sector, and to ensure that addressing them is mainstreamed in domestic reforms and in international trade

regulation. Since MSMEs in services are largely part of an unorganised, scattered group, their 'voice' often goes unheard. It is, therefore, essential to create a platform to encourage and support discussion and sharing of information among these firms, and to ensure policy-makers account for their opinion in their negotiations at international forums and during domestic policy reforms. It is essential for policy-makers and chambers of commerce to adopt a proactive rather than reactive approach to connecting industry to trade policy, especially when it comes to the voices and challenges of MSMEs.

Two aspects of such a platform are particularly interesting. First, such a platform could address all the concerns of services MSMEs that this section begins by discussing. It would allow firms not only a collective voice in policy-making but also a platform to exchange experiences and know-how, and a way to invest in and develop capacity-building initiatives and skills development programmes. Second, technology itself allows for the creation of such a platform and its effective management in the digital space, enabling smaller firms better access to it without having to invest in physical presence, facilitating interaction.

A forum such as this should also attempt to define and harmonise core definitions of services, MSMEs, e-commerce, etc. and ensure means of tracking output and trade in the sector. This will allow the development of a credible system of data collection. The challenges of definition and data collection are deeply intertwined, and their resolution is critical to allow tracking, monitoring and assessment of development and progress in the sector. Such a forum should also provide a means to disseminate information for MSMEs in services on regulation and access conditions in markets outside the home economy, preferably in a WTO language, to ensure all members can fully understand the regulation and its implications for effective market access.

Furthermore, since MSMEs in services are often born out of a specialised idea, for a niche service offering, by a handful of individuals with narrow expertise, they are critically dependent on ancillary services, further provided by other service-providing MSMEs, perhaps once again in the unorganised sector. It is therefore essential to create a credible national and global 'ecosystem' of service providers among MSMEs.

From the perspective of government policy, at a domestic level it is also essential to aid and support skill development so as to be able to infuse skilled individuals in scalable numbers into these firms. The services sector thrives on high-skilled manpower, and smaller firms often lack the capacity to develop a skilled force of human capital for themselves. Intervention to ensure an education and skills development ethos that encourages training for employment will assist smaller firms in addressing this element of fixed costs.

Additionally, it is necessary to implement targeted regulatory reforms in the banking sector, with a view to allowing easier and more consistent access to funds for MSMEs. It is also critical to ensure the complete financial inclusion of service-providing MSMEs, by building institutions dedicated to MSMEs in services within such an 'ecosystem'; enabling the collection and analysis of data on the sector; and providing

literacy on its potential, challenges and requirements to officials and agents in the financial sector, to help them comprehend it better and create products and solutions tailored to its needs. Governments should also focus on fostering an environment where risk-taking behaviour is encouraged among investors, with specific reference to the services-based MSME sector.

Regulatory reforms targeted at supporting MSMEs in services, not restricted to the banking sector, cannot be over emphasised with regard to the future of these entities. Regulatory norms must be designed to ensure ease of doing business. Governments must effectively reduce instances of corruption and red tape, excessive licencing requirements and commercial presence regulations, in addition to the administrative procedures and costs involved in establishing new businesses. Emphasis should also be put on developing robust infrastructural facilities, which can cater to the specific requirements of the services sector and are accessible to and targeted at MSMEs. For example, a stable communication technology network can allow MSMEs to use technology to connect to global production networks and value chains online and to benefit from the digital trade revolution, by operating in modes of service supply outside of Mode 3 (commercial presence) and Mode 4 (temporary movement of persons) of services supply, which have a higher cost of operation for these firms and whose strict regulations can be unnecessarily burdensome for them. Governments should also aim to ensure that the restrictions and regulations imposed on the sector are minimal, and indeed necessary, and do not pose *de facto* barriers to trade.

On the international front, negotiations in both regional and multilateral forums must seek to define and harmonise core terminology, data collection and assimilation methodology, service classification and regulatory requirements in services. Means to track e-commerce, particularly digitally traded services, must be established, and transparency must be ensured. Negotiations should account for current technological developments and allow for future advances and innovation, so that regulations can keep pace with technological developments and their impact on trade. International discussions must also tread with caution the fine line between consumer and firm protection online and data security; and overregulating the digital space. They need to ensure technology can constructively disrupt the norms as we know them on trade and at the same time effectively harness technology to use trade as the true engine of growth and efficient, sustainable development. It is also critical to ensure negotiations and discussions on trade facilitation account for the specific requirements of the services sector, and of the smaller firms within the sector. Regulations set up therein must cater to and seek to enhance the productivity and competitiveness of these firms. In fact, trade facilitation as we know it today, focused on manufacturing and trade in goods, will need to develop a whole new meaning and framework. This will account for the needs of the services sector, and particularly small firms in it, in terms of technical assistance, exchange of know-how, regulatory cooperation and mutual recognition, among others. This will perhaps entail mapping trade facilitation initiatives at the multilateral level with Aid for Trade (AfT) and technical assistance at the individual developing country and LDC level.

8.9 Conclusion

The increasing significance accorded to the rise of MSMEs at the WTO, as well as in regional and plurilateral discussions and in other international organisations, is promising, as it points towards more inclusive growth, which is truly sustainable. While the TFA mitigates some of the challenges facing MSMEs in internationalising, its full efficacy will be achieved only when trade facilitation measures are mainstreamed into national MSME policies and implemented effectively in the domestic context. Multilateral initiatives are able to determine the direction of global policy measures, but those measures are effective only if they are implemented and utilised effectively implemented domestically. Much more thrust needs to be given to policy-making, institutional and regulatory reforms, infrastructural development and technical support to MSMEs. The aim of this is to help build trade capacity, address supply-side constraints and assist with MSMEs to integrate into the global trade regime, to allow them to achieve their full potential and contribute effectively to economic development, especially in smaller states, LDCs and developing countries.

While discussions on the Doha Development Round continue to seek effective conclusion, technology and the manner in which it has affected and led trade have in the meantime led to the opening-up of a whole gamut of new issues in trade. MSMEs, and their growing synergy with trade in services, both represent critical new issue and perhaps have the potential to resolve a whole lot of other existing as well as new issues in trade, if explored effectively.

This is particularly true of the services-based MSME sector—the next generation of trade-based sustainable development and the harbinger of growth of the future in most economies. The sector has the potential to provide employment, promote skills development, contribute to GDP growth, enhance trade globally, address distribution issues and balance gender roles. Its dynamic nature and inherent flexibility, even within a niche service offering, makes it the ideal model for future global growth. It also feeds into the requirements of both manufacturing and agriculture at every step, for big and small players alike. However, given its fluid nature; the niche nature of its offerings; lack of adequate, credible data on the sector and on the fluid nature of its operations; its smaller scale; its undeniable dependence on skilled human resources; its added vulnerability to regulatory reforms or the lack thereof; and the interdependence between firms within the sector, it poses its own unique challenges, and requires special attention from policy-makers and businesses alike.

To allow services-based MSMEs to achieve their full potential, and contribute at home and globally, it is imperative to provide them with an enabling ecosystem, to give their collective voice a platform and to create a robust platform for curating reliable data and a forum for the exchange of experiences and know how. The much-needed thrust for services-based MSMEs, which will emanate from policy, planning and regulatory reforms with credible inputs from the ground level, will enable their mainstreaming, which will benefit their competitiveness and growth. Additionally, trade facilitation initiatives at the multilateral level and effective utilisation, where applicable, of AfT need to be targeted at promoting small businesses in the services sector, to ensure the sustainable growth of all sectors of the economy, both domestically and globally.

The internet, innovation and technology and, more recently, the growth of e-commerce have constructively disrupted the system and made it possible to provide businesses a whole new platform to aggregate their voices, experiences and know-how. This has special significance for MSMEs, which can benefit from the disruption and the aggregation, to exchange experiences and concerns, explore their potential and reach out to consumers across the globe. They can do this by integrating into GVCs, with minimal investment in physical infrastructure, for trade in both goods and services. This is an extremely positive development for services-based MSMEs in particular, redefining the future of trade in services.

Digital trade, alongside the growth of MSMEs as a critical instrument and the increasing significance of services-based MSMEs in such growth, has set forth a whole new game in trade, with new rules, players and policy and regulatory requirements. E-commerce has taken global trade to a whole new level of 'global', and policy-makers will need to raise their game to ensure inadequate reforms and old-world policy-making do not interrupt the potential pace of growth induced by these firms. In fact, this very technology can and should be employed to aggregate MSMEs and provide them the platform and opportunity discussed in this chapter.

However, with new technology and the greater flow of bits and bytes over the Internet, legitimate concerns on security and the privacy of data and of consumers are raising their head. Regulators have taken note and have addressed these concerns with stringent regulation. It is more necessary now than ever before to regulate with caution, ensuring security and privacy and guarding against fraud while taking care that the measures employed are indeed necessary, and do not over regulate markets, acting as barriers to trade. Technology has the potential to further change the nature of the game, and for the better, as long as policy-makers tread the line between security and regulation carefully.

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Chapter 9

The World Trade Organization Post-Nairobi: New Approaches and Architectures

Lorand Bartels

9.1 Introduction

The Uruguay Round of multilateral trade negotiations was carried out (at least towards the end) and concluded on the basis of a ‘single undertaking’ negotiating model, according to which nothing was agreed until, by consensus, everything was agreed. In that round the model had several advantages, including for developing countries, by ensuring their interests remained on the agenda and, at least in theory, the final package was balanced (Rodriguez Mendoza and Wilke, 2011: 492). However, for various reasons, including an increase in the membership of the World Trade Organization (WTO), an increase in the relative power of WTO members, greater awareness of the implications of trade negotiations and a certain scepticism about the value of unfettered trade liberalisation, in the Doha Round negotiations the single undertaking model has led to a stalemate.

It has, of course, always been recognised that it can take time to reach a consensus agreement on all issues on the agenda and that it might be possible to reach provisional agreement on certain issues in advance of such an agreement. The 1986 Punta del Este Ministerial Declaration, which established the single undertaking model for the Uruguay Round negotiations on trade in goods (the other areas for negotiation were added later), stated that:

The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of the negotiations (GATT Contracting Parties, 1986: Part IB(ii)).

Almost exactly the same wording was included in paragraph 47 of the 2001 Doha Ministerial Declaration that launched the Doha Round of negotiations (see Bartels, 2014). However, there is a difference between a delay in reaching a consensus agreement and an inability to reach such an agreement, and at least some WTO members have now come to the conclusion, reflected in paragraph 30 of the 2015 WTO Nairobi Ministerial Declaration, that they ‘do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations’.

The purpose of this chapter is to discuss some of these new approaches and their implications for small states. It is appropriate to begin, however, with an acknowledgement that these new approaches are not merely theoretical. For some years, a number of WTO Member States have, in practice, increasingly been negotiating outside the single undertaking model. They have made regional trade agreements, which are now increasingly significant in size, as well as plurilateral agreements, such as the Trade in Services Agreement (TiSA), whose final relationship to the WTO is yet to be determined. At a recent meeting, the EU's WTO Ambassador even stated that the EU's approach was to reserve the WTO as a forum for negotiating only those topics that could not be negotiated properly outside the WTO, such as subsidies (Vanheukelen, 2016). This development carries significant risks for small states. The more the larger players exit the WTO, the less they will be interested in the interests of small states within the WTO as a negotiating forum. Small states therefore have a clear interest in taking a proactive view of alternatives to the single undertaking, while at the same time making sure these alternatives do not undermine their own interests.

9.2 WTO negotiation models

9.2.1 Consensus agreements

The WTO has failed to deliver a comprehensive negotiation round. It has, though, succeeded in delivering agreements on eliminating duties on IT, eradicating export subsidies and facilitating trade, as well as a large number of waivers. On closer inspection, however, each of these agreements was reached only because one of a number of alternative necessary conditions was fulfilled—and those conditions are manifestly absent from the general run of subjects included in the Doha mandate.

The first of these conditions is that an agreement concerns an issue in which interests are identical, or at least similar, and therefore it is not necessary for one negotiating party to trade a concession here against another elsewhere. Such agreements might include the WTO decisions on transparency in regional trade agreements. However, such agreements are likely to be more concerned with institutional or procedural issues than with substantive trade issues, where trade-offs are more likely to occur. Examples include the 1989 agreements on dispute settlement and the 2010 decisions on transparency for notifications of regional and preferential trade agreements. Even on institutional and procedural matters, not all WTO members will necessarily have the same interests, as differing positions in relation to the Dispute Settlement Understanding (DSU) review have shown. In practice, then, this condition is unlikely to be met very often.

Second, consensus agreement can be reached when there is a political or moral imperative that overrides ordinary trade interests. We might understand in this light the 2001 Cotonou and Trade-Related Aspects of Intellectual Property Rights (TRIPS)/public health waivers, the 2003 Kimberley Process waivers and the numerous waivers that have been granted for least developed countries. It is not inconceivable that issues of similar importance, such as climate change, land-grabbing, child or slave labour or illicit trade, could lead to a consensus agreement despite the trade interests of some

WTO members. However, political or moral imperatives are unlikely to generate consensus agreement on the wider sets of issues found in the Doha mandate.

Third, consensus agreement can be reached where the parties' interests diverge but concessions are internally balanced (or differentiated) within the agreement. The Trade Facilitation Agreement (TFA) is an agreement in which there is both internal balance and a differentiation of obligations, insofar as developing country commitments are contingent upon capacity and, ultimately, financial and technical assistance (Bartels, 2014). In principle, internally balanced agreements should not be impossible to negotiate. However, even internally balanced agreements may be more valuable to some members than to others, and for some members they are therefore more valuable as bargaining chips for agreement on a matter of greater relative importance to those members. This means there will inevitably be some need to bundle issues in a 'package', whether to be implemented simultaneously or in sequence, and with 162 members it is obviously difficult to agree on such a package.

It should be noted that these three conditions can work in conjunction. An agreement to eliminate fossil fuel subsidies, for example, could conceivably be based on a commonality of interests for some members, a moral or political imperative for others and, depending on the structure of the agreement, an internal balance for others. It is not inconceivable that, for these reasons, a WTO multilateral agreement based on consensus could be reached on topics such as the elimination of fossil fuel subsidies or of fisheries subsidies, or environmental goods and services. It is also conceivable that, as some suggest, such matters are best addressed in WTO committees rather than in stand-alone negotiation forums. But the essential point remains: where the conditions identified here are not met, consensus agreement will prove difficult, and most likely impossible. The most obvious alternative, then, is some form of plurilateral agreement.

9.2.2 Plurilateral agreements

In its broadest meaning, a plurilateral agreement is one under which a subset of all WTO members make commitments on an issue. They may make these commitments to *all* WTO members on a most-favoured nation (MFN) basis (in a non-discriminatory plurilateral agreement), or only to the subset of WTO members on a reciprocal basis (in a discriminatory plurilateral agreement). At present, there are two discriminatory plurilateral agreements in force in the WTO—namely, the Agreement on Government Procurement, and the Agreement on Civil Aircraft. These are inscribed in Annex 4 of the WTO Agreement.

For participants, there is an initial disadvantage in opting for a non-discriminatory plurilateral agreement, insofar as non-participating WTO members can then 'free-ride' on the results. However, this cost can be outweighed by the benefit of reaching an agreement, particularly where there is a 'critical mass' of participants, and when non-participants are likely to accede in future. The 1996 Information Technology Agreement illustrates both of these points. This was a plurilateral agreement to eliminate duties on IT products, initially concluded by 29 WTO members, which now covers 81 members, representing about 97 per cent of world trade in IT products.

Should a plurilateral agreement also cover non-market access issues, free-riding may even turn out to be an advantage, insofar as it effectively means non-participants are adopting the regulatory preferences of participants. Indeed, this is one of the reasons why some developing countries are sceptical of plurilateral agreements. This is precisely why the safeguards described below are so important.

9.3 Legal aspects

The type of agreement reached—whether consensus or plurilateral, and, in the latter case, whether non-discriminatory or discriminatory—and whether or not the agreement is to be enforceable within the WTO dispute settlement system are all factors affecting the way these agreements are given legal force within the WTO legal system. In addition, any agreements adopted outside the WTO that set out measures that would affect WTO rights and obligations are still subject to WTO law, insofar as WTO rules will continue to apply to these measures.

9.3.1 Scheduled commitments

The easiest option for giving legal force to negotiated agreements is, where possible, for WTO members to schedule their commitments under Article II of the General Agreement on Tariffs and Trade (GATT) (measures affecting trade in goods) or Article XX of the General Agreement on Trade in Service (GATS) (measures affecting trade in services). This option is most suitable for market access commitments, but it is worth noting that, so long as commitments do not undermine other GATT or GATS obligations, they can cover any measures affecting trade in goods and services, including regulatory measures.¹ There was, for example, no conceptual problem in using Article II of the GATT to schedule subsidy commitments following the Uruguay Round. It would also appear that Article II is being envisaged for the 2015 Nairobi commitment to eliminate (most) export subsidies.

9.3.2 Amendment

An alternative route for adopting the results of negotiations is to amend the relevant WTO agreement in accordance with the procedures set out in Article X of the WTO Agreement. One advantage of this route is the involvement of the WTO framework for the implementation, administration and operation of the plurilateral agreement, guaranteed by Article III:1. This is also likely to have the advantage of enhancing knowledge and institutional support for any future accessions.

For amendments to the WTO agreements (subject to certain exceptions), the ordinary amendment procedure is Article X:3, and this is the paragraph that is being used for the amendments concerning TRIPS and public health and the TFA.

For plurilateral agreements, the relevant provision is Article X:9, which states that a plurilateral agreement may, by consensus, be added to Annex 4 of the WTO Agreement. Article II:3 states that such agreements are binding on those WTO members that have accepted them but do not create rights or obligations for other members. This is generally considered to mean plurilateral agreements in Annex 4

do not need to be extended to other WTO members on an MFN.² For a plurilateral agreement to be enforceable by WTO dispute settlement proceedings, it will also need to be added to the list of agreements covered in Appendix I of the DSU. This requires a separate consensus decision under Article X:8 as well as a decision, by the parties to the agreement, on how the DSU is to apply to that agreement, taken under the final paragraph of Annex 1 of the DSU.

A point that is often overlooked is that Article II:3 has the effect of *precluding* non-signatories to a plurilateral agreement included in Annex 4 from obtaining rights under that agreement, and also from enforcing those rights under the DSU. For any plurilateral agreement that is extended to non-participants on a non-discriminatory basis, then, it would be preferable to adopt the agreement as an ordinary amendment under Article X:3.

9.3.3 Informal commitments

These legal options are frequently preceded by agreements that are recorded in a ministerial declaration or some other legal instrument. It is important to note that such instruments must meet strict conditions for them to have any legal effect in WTO law, and the extent to which they can have legal effect within WTO law is also limited. This is true even when all WTO members agree the instrument at issue. For example, the commitment in the 2015 Nairobi Declaration on the elimination of export subsidies has political force, and may even constitute an agreement under general international law, but its legal force within the WTO is limited to providing interpretive context to a relevant WTO provision (which does not exist in the case of export subsidies) (see Bartels, 2016).

9.3.4 Application of WTO law to plurilateral agreements negotiated outside the WTO

Plurilateral agreements formed outside the WTO framework cannot be enforced within the WTO dispute settlement system. However, any measures adopted in implementing these commitments are still governed by WTO law, and in particular the MFN obligations in the GATT, the GATS and TRIPS. The only relevant exceptions to those obligations are those available for regional trade agreements. This means, for example, that any preferential treatment offered under TiSA will have to be extended to all WTO members on an MFN basis, unless TiSA qualifies as a regional economic integration agreement under Article V GATS.

9.4 Comparable experiences

9.4.1 The European Union

The EU provides several mechanisms to reach agreement without a consensus of all EU Member States. One is ‘qualified majority voting’, which applies as a general rule to matters affecting all EU Member States, but this is of little present relevance to the WTO. Of more interest is the EU’s ‘enhanced cooperation’ procedure, which allows a subset of (at least nine) EU Member States to adopt measures of further integration

on certain issues, applicable only to participating Member States. Importantly, all EU Member States may take part in deliberations within this procedure, which serves to protect the rights of non-participating EU Member States, and may also encourage their subsequent engagement. Third, Member States may be permitted to opt out of a given EU policy. Opt-outs, which are enshrined in the basic EU treaties, permit closer cooperation among the Member States that are *not* opting out. Currently, the UK, Denmark, Ireland and Poland have opt-outs variously on the Schengen visa regime, the euro, defence, human rights and security.

9.4.2 Association of Southeast Asian Nations

Flexible integration is also present in the Association of Southeast Asian Nations (ASEAN) Community in the form of various formulas for reaching agreement on certain issues. Chief among these is the 'ASEAN Minus X' formula, which, where there is consensus, allows an ASEAN subgroup to proceed with certain economic commitments even though other ASEAN Member States may not be ready to do so at that time. The formula is referred to in the ASEAN Charter but not defined, and in practice there are a number of variants. For instance, the ASEAN Australia New Zealand Free Trade Agreement adopted an ASEAN minus six agreement, whereas the ASEAN–Korea and ASEAN–India agreements adopted an ASEAN minus nine formulation.

9.5 Recommendations

The brief survey of flexibility mechanisms in the EU and ASEAN demonstrates that mechanisms are available that can address the concerns of small states that admitting any plurilateral agreements within the WTO system will necessarily undermine their interests.

First of all, plurilateral agreements should, where possible, be based on a critical mass of WTO members, such that they consider themselves able to extend the benefits of these agreements to non-participants on an MFN basis. For the reasons mentioned, this may require that the agreement be adopted, by consensus, under Article X:3 of the WTO Agreement, not Article X:9, as with discriminatory plurilateral agreements. Second, it is desirable that, as in the EU's enhanced cooperation procedure, negotiations be open to participation by all WTO members, even if they choose not to conclude the final agreement. Third, opt-outs from certain parts of the agreement should not be excluded *ex ante*, especially for developing countries.³

Even on the basis of these recommendations, it is not suggested that plurilateral agreements will necessarily be in the interests of small states and developing countries. Plainly, this is not the case. Losing the possibility of issue linkage can reduce the negotiating power of these countries; beyond this, it is conceivable that some negotiations, especially those involving regulatory matters or entailing preference erosion, could undermine their interests as a matter of substance. What is suggested is more modest. First, in determining whether small states and developing countries should adopt a flexible posture, the true counterfactual is not a veto on the issues set out in the Doha mandate but a veto on those issues that will survive a defection of WTO members frustrated with the WTO process. Second, the result of such a

calculation should not be predetermined, but may lead to the conclusion favouring, on a case-by-case basis, a smaller package reflecting reciprocal negotiating interests or even, provided no other harm is entailed, an open, non-discriminatory plurilateral agreement.

Notes

- 1 See, the examples, for goods schedules, paras 13–17 in WTO (2007), paras 13–17. The matter is explicit for services. Article XVIII of the GATS states that ‘Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member’s Schedule.’
- 2 The conventional view is that, as a result of Article III:2 of the WTO Agreement, signatories to a plurilateral agreement under Annex 4 do not need to apply them to non-signatories. However, it has been suggested that the MFN obligations in the GATT, the GATS and TRIPS would continue to apply to matters covered by a discriminatory plurilateral agreement. The argument is that Article III:2 of the WTO Agreement concerns only rights under the plurilateral agreement, and not rights under the ordinary WTO agreements. See Nottage and Sebastian (2006: 1012–13, n. 93). The point is well taken, but Article III:2 could also be read as stating that plurilateral agreements do not affect the rights of WTO members in respect of the *measures* laid down under these plurilateral agreements.
- 3 See also the recommendations of Hoekman and Mavroidis (2015).

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The Commonwealth

The world economy has undergone tremendous change during the past decade, with a range of emerging issues influencing global trade and coming to the fore in discussions among policy-makers and trade negotiators. Whether these issues will or should be addressed within the multilateral context as part of a trade agenda is still being debated, but inevitably countries need to engage with these policy issues and the implications for their economies.

In light of this changing international landscape, small developing countries need special support to effectively participate in the ongoing discussions on emerging issues in the various international bodies, including the WTO. This publication seeks to inform and help Commonwealth small developing countries adapt to emerging issues such as climate change, e-commerce, the implementation agenda of the Sustainable Development Goals (SDGs) and the new role of Micro, Small and Medium-sized enterprises (MSMEs) and GVCs within global trade. Finally, it also addresses the systemic issues that impact on the participation of these countries in the multilateral trading system and approaches to advance the WTO negotiations.

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