

UNIVERSITY OF KWAZULU-NATAL

**A CRITICAL DISCUSSION ON FOREIGN DIRECT INVESTMENT IN THE
MULTILATERAL TRADE SYSTEM AND DEVELOPMENT IN SADC**

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DECLARATION

This research has not been previously accepted for any degree and is not being currently considered for any other degree at any other university.

I declare that this Dissertation contains my own work except where specifically acknowledged.

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Signed.....

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ABSTRACT

Development is understood to be an economic process that aims at a constant improvement of the well-being of all individuals who have the right to participate and benefits from the fruits of development. Development is also a right that requires a progressive realisation by governments, international communities and private sectors to the satisfaction of all individuals. A progressive realisation of this right requires a vibrant economy, which can be acquired through International trade and Foreign Direct Investment (FDI). It is in this context that this thesis has attempted to discuss the influence of FDI and International trade on development. The discussion was initiated by focusing on the history of the multilateral trade system (MTS) by looking at various Ministerial rounds of both the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO). In this discussion the thesis found that, whilst there are various multilateral political frameworks regulating trade, FDI is subject to regional and domestic political frameworks.

The thesis also discussed development in relation to the millennium development goals (MGDs). It was established the goal eight of the MDGs requires the integration of poor countries into the MTS so that they can be able to exploit their comparative advantage. This goal influenced the launching of the Doha Development Agenda (DDA) at the Doha round in 2001. However, the thesis also established that conclusion of the DDA has been progressing at a slow pace. Therefore it has not yielded substantial results for poor countries. The failure to conclude the DDA has led to an increase of Regional Trade Agreements (RTAs), which some scholars view as a supplement of multilateral trade integration. However, the SADC region has not been able to conclude their integration objectives due to the fact that many member states belong to other RTAs.

In the case of FDI the thesis established that FDI is accompanied by a wide range of resources for host countries, which can be utilised for enhancing development. However, it was also established that the SADC has not been able to attract lucrative FDI due to a wide range of factors that impede FDI. On this finding, a case study was employed on four countries in the region, namely Angola, Botswana, South Africa and Zimbabwe.

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ABBREVIATIONS

MDGs	Millennium Development Goals
AfT	Aid for Trade
ARIPO	African Regional Industrial Property Organization
DDA	Doha Development Agenda
DG	Director-General
ECOWAS	Economic Community of West African States
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IMF	International Monetary Fund
IP	Intellectual Property
IPPC	International Plant Protection Convention
IPR's	Intellectual Property Right's
ITC	International Trade Centre
LDC's	Least Developed Countries
MFN	Most Favoured Nation
MTS	Multilateral Trading System
NEPAD	New Partnership for Africa's Development
NGO's	Non-Governmental Organisations
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
SADC	Southern African Development Community
TRIMS	Trade Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
WB	World Bank
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

CHAPTER 1 INTRODUCTION

1.1. Introduction

Development could best be understood as an economic process that is aimed at a constant improvement of the well-being of all individuals who have the right to participate and benefit from the fruits of development.¹ Development as a universal right requires a progressive realisation by the international community, governments and Multinational Corporations (MNCs) to the satisfaction of all individuals.² A progressive realisation of this right requires a vibrant economy, which can be acquired through International trade and Foreign Direct Investment (FDI). The evidence in the empirical works indicates that international trade and FDI could either be complements or supplements of each other.³ Thus, horizontal FDI serves as a substitute for international trade, whereas vertical FDI serves as a complement for international trade.⁴

1.1.1 Trade Integration and Development

In the case of international trade, a country will only be able to exploit its comparative advantage sufficiently if it is integrated into the multilateral trade system (MTS).⁵ Integration into the MTS can be established by signing international and regional trade agreements. International trade agreements are considered to be the most effective system of increasing trade, since they are administered under the World Trade Organisation (WTO), which comprises of 160 member countries responsible for 97% of global trade and 98 % of global Gross Domestic Production (GDP).⁶ Accession to the WTO by any member in terms of

¹ United Nation General Assembly on the Declaration of the Right to Development 2014 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/176/79/PDF/G1417679.pdf?OpenElement> accessed on 21 August 2014

² United Nation Human Rights: The Working Group of Governmental Experts on the Right to Development (1981-1989) available at <http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx> accessed on 21 August 2014

³ MA. Marchant & others 'International Trade and Foreign Direct Investment: Substitutes or Complements?' (2002) 34(2) *JAAE*: 289-289. See also note 26 below

⁴ An example of horizontal FDI is market-seeking FDI, where a foreign investor wants to serve foreign markets through tariff jumping. However, an example of vertical FDI is resource seeking FDI, whereby a foreign investor wants to exploit a natural resource originating from a foreign country. See, J. Aizenman & I. Noy 'FDI and trade—Two-way linkages?' (2006) 46 *QREF*: 317-318

⁵ B. Balassa 'The impotence of Trade for Developing countries' (1987) World Bank Discussion Paper, Report No. DRD248 page 8 available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/01/23/000333037_20130123115909/Rendered/PDF/NonAsciiFileName0.pdf accessed on 14 April 2014

⁶ Understanding the WTO: The Organisation 'Members and Observers' available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

article XII read with article II and XIV of the Marrakesh Agreement is a package deal, which means that signing the Marrakesh Agreement indicates an acceptance of all other agreements administered by the organisation.⁷

It follows from this that, trade integration is understood to be a movement that aims to increase international trade so as to meet development objectives of alleviating poverty through economic growth and job creation.⁸ In the last three decades, developing and least developing countries (LDCs), including those in the Southern African Development Community (SADC), began to integrate themselves into MTS.⁹ This was done in an attempt to increase outward oriented trade, which is regarded as one of the most important source for foreign capital.¹⁰

However, empirical evidence in the literature indicates that these countries have not generated substantial benefits from trade integration, in that, they have been marginalised by developed countries.¹¹ The marginalisation of SADC countries and some countries of the same status in the WTO began after the conclusion of the Uruguay Round under the General Agreement on Tariffs and Trade (GATT).¹² The Uruguay Round was concluded in 1994, encompassing a wide range of trade related agreements including the one establishing the WTO referred to as the Marrakesh agreement.¹³ As it was stated above,¹⁴ article XII read with article II and XIV of the Marrakesh agreement provides that any party signing the agreement shall be legally bound by all agreements annexed to the agreement.¹⁵ When the Marrakesh agreement came into operation, developing countries did not appreciate the full implications of the annexed agreements.¹⁶

⁷ Article XXI of the Marrakesh Agreement Establishing the World Trade Organisation 1994.

⁸ United Nations Department of Economic ‘The Millennium Development Goals Report’(2014) page 4 available at <http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf> accessed on 15 August 2014

⁹ SK. Mathur ‘Multilateral Trading System and Developing Countries: Prospects and Perspectives with Special Reference to India’ page 5 available at <http://www.cid.harvard.edu/cidtrade/Papers/mathur.pdf> accessed on 8 April 2014

¹⁰ Ibid 1

¹¹ J. Watal ‘Access to essential medicines in developing countries: does the WTO TRIPS agreement hinder it?’ STI Discussion Paper 8 (2000) page 2 available at http://www.iatp.org/files/Access_to_Essential_Medicines_in_Developing_Co.pdf accessed on 20 October 2014

¹² EM.Hafner-Burton ‘Do Global Trade Institutions Marginalize the Poor?’ (2005) *7ISR*: 441-442

¹³ JJ. Schott ‘The World Trading System: Challenges Ahead’ 2nded (1996) 4

¹⁴ Note 7 above

¹⁵ The Marrakesh Agreement was signed at the Marrakesh Ministerial Meeting in 1994

¹⁶ For an example; Despite the fact that they had opened up the borders for products originating from developed countries, their exports were still subject to enormous trade barriers in the developed countries, especially in the agricultural sector, where they have a huge comparative advantage.

The marginalisation of SADC countries and some countries of the same status was also observed by the architects of the Millennium Development Goals (MDGs) under goal eight of the United Nations Millennium Declaration 2000.¹⁷ Goal eight of the MDGs provides that in order to be able to address and deal with the needs and interests of developing countries and LDCs, WTO members must enhance the MTS in a comprehensive manner.¹⁸ This goal prompted an initiative to further the integration of developing countries and LDCs into the MTS, which was taken at the 4th Ministerial Round of the WTO in 2001 at Doha.¹⁹ The Doha Round resulted to the so called 'Doha Development Agenda' (DDA) and the conclusion thereof is perceived to be beneficial for poor countries.²⁰

However, this thesis argues that the DDA could be labelled as a dream deferred for SADC. This argument is based on following two reasons: Firstly, the DDA has lasted longer than any other multilateral trade negotiation agenda in history. Secondly, all the agreements that have been reached under the agenda considered to be beneficial for countries like SADC have failed to fulfil their development objectives, including the MDGs. Therefore, this insinuates a notion that the Doha Round is just like any other Round. Thus, calling it a development agenda was a false move.

Another argument that this thesis finds to be of particular importance revolves around the proliferation of regional trade agreements (RTAs).²¹ Empirical evidence in the literature indicates that the failure to conclude the DDA has resulted to an increase in the numbers of RTAs.²² RTAs are considered to be both a supplement of multilateral trade agreements and

¹⁷ The Declaration sets out MDGs and targets that must be met by all member countries no later than 2015. See, United Nations Department of Economic 'The Millennium Development Goals Report', United Nations Publications (2008) available at <http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf> accessed on 15 August 2014

¹⁸ M. Darrow 'The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda' (2012) *15(1)YHRDJ*: 55-70

¹⁹ B. Hoekman & A. Nicita 'Accessing the Doha Round: Market access, transactions costs and aid for trade facilitation', (2010) *19(1)JITED*: 64-67

²⁰ A successful conclusion of the Doha Development Agenda could yield an increased GDP of \$1 trillion annually in which a vast share goes to developing countries. See, J. Meltezer 'The 2013 WTO Bali Ministerial: Prospects and New Horizons: WTO (2013) available at <http://www.brookings.edu/blogs/up-front/posts/2013/11/25-wto-bali-ministerial-meltezer> accessed on 15 July 2014

²¹ P. Pal 'Regional Trade Agreements in a Multilateral Trade Regime: An Overview' (2004) page 1 available at http://www.networkideas.org/feathm/may2004/survey_paper_rta.pdf accessed on 2 December 2014

²² C. Perez del & others 'The Doha Round and Alternative Options for Creating a Fair and Market-Oriented Agricultural Trade System' (2009) IPC Position Paper page 7 available at http://www.agritrade.org/Publications/documents/IPC_TradeNegPaper_FINAL.pdf accessed on 4 August 2014

an instrument that will facilitate the conclusion of the DDA.²³ Developing countries have signed a number of RTAs with other developing countries and with developed countries as well.²⁴ However, the Southern African Development Community (SADC) is progressing very slowly in facilitating the process of regional integration through RTAs. The slow pace is attributed to the failure of concluding a customs union after the successful conclusion of a Free Trade Area (FTA). Among other reasons, SADC has not been able to conclude a customs union is because of the overlapping of memberships.²⁵

1.1.2. FDI and Development

Whilst negotiations on international and regional trade integration remain unresolved, FDI could pledge in as an alternative development strategy in SADC. Thus, Denisia²⁶ considers that where international traders are crowded with distortions such as trade and competition barriers or where their markets grind unproductively, FDI becomes a supplement for increasing business profits. This is due to the fact that, unlike trade, which is largely dependent on uniformed multilateral rules, FDI is only dependant on investment policies of the hosting country.²⁷

It is in this respect that the vast majority of developing countries and LDCs have implemented policies that echo the interests of foreign investors. FDI could best be described as occurring when an investor located in one country acquires an asset in another country with an intention to manage that asset.²⁸ This definition concurs with the International Monetary Fund (IMF) and the Organisation of Economic Community Development (OECD) FDI definitions, which provides that FDI is “a reflection of the aim of obtaining a lasting

²³ C. Freund & E. Ornelas ‘Regional trade agreements: blessing or burden?’, Centre Piece Summer (2010) available at <http://www.voxeu.org/article/regional-trade-agreements-blessing-or-burden> accessed on the 26 November 2014

²⁴ The number of regional agreements is growing at a rapid pace, thus as of today they account for 40% of world trade. See, UNCTAD secretariat ‘International Trade Negotiations, Regional Integration and South- South Trade’, Especially in Commodities (2004) Background Paper No. 2 page 13 available at http://www.g77.org/doha/Doha-BP02-International_Trade_Negotiations.pdf accessed on the 26 November 2014

²⁵ The technical barrier under this situation is that a member cannot belong to more than one Custom Union due to the Common External Tariff (CET). See, Article XXIV of the GATT 1994 available at http://www.wto.org/english/docs_e/legal_e/10-24.pdf accessed on the 2 March 2014. See, also EM. Sulliman (ANC) ‘Establishment of the Southern African Development Community (SADC) Customs Union as envisaged with the establishment of the SADC Free-Trade Agreement in 2008 and cost of the SADC Customs Union’: SA International Relations and Cooperation (2012) Question Paper No. 7

²⁶ V. Denisia ‘Foreign Direct Investment Theories: An Overview of the Main FDI Theories’ (2010) 2(2)*EJISE*:104, 107

²⁷ Ibid 108

²⁸ EM. Burt ‘Developing Countries and the Framework for Negotiations on Foreign Direct Investment in the World trade organization’ (1997) 12(6)*AUILR*:1015-1019

interest by a resident entity of one economy (direct investor) in an enterprise that is resident in another economy (the direct investment enterprise)".²⁹ The term 'lasting interest' warrants the need for sufficient conduct and care on behalf of the investor, which may be proved by showing that the foreign investors is well informed of the daily affairs of the entity.³⁰

FDI is an important source of foreign capital, which is important for economic cooperation and fulfilling development objectives.³¹ The domino effects of inward FDI on host countries involves enormous possibilities for technological spillovers and capital accumulations that can advance the development process.³² Technological spillovers encompass superior managerial skills, access to external markets and increased technology transfer.³³ Hale and Long³⁴ considers that "technology transfer occurs through movement of high-skilled workers from multilateral FDI firms to domestic firms as well as through network externalities among high-skilled workers". Through capital accumulations, host countries can be able to enhance employment opportunities and governments are placed in a position to generate substantial tax revenues that can be used on infrastructure and education development.³⁵

However, FDI does not accrue automatically in host countries, in that, the presence of FDI is determined by various factors, such as infrastructure, labour standards, market size, trade liberalisation and political stability.³⁶ The importance of these factors is subject to different motivations of FDI; namely, market-seeking; non-market-seeking; efficiency-seeking and natural-resource-seeking.³⁷ After considering these motivations, governments seek to implement policies that are favourable to their interests and that of foreign investors.³⁸ As a

²⁹ M. Duce & B. de Espana 'Definitions of Foreign Direct Investment (FDI)': a methodological note (2003) page 2 available at <http://bis.hasbeenforeclosed.com/publ/cgfs22bde3.pdf> accessed on 4 July 2014

³⁰ Ibid 3.

³¹ RE.Lipsey & F. Sjolholm, 'The Impact of inward FDI on Host Countries: Why Such Different Answers?' Does Foreign Direct Investment Promote Development, (2005) Washington DC: IIECD: 23-24

³² Ibid.

³³ G. Hale & C. Long, 'What Determines Technological Spill overs of Foreign Direct Investment: Evidence from China' (2006) Discussion Paper No.934 YUEGC: 1-3

³⁴ Ibid 9.

³⁵ SI.Ajayi 'FDI and Economic Development in Africa', *A Paper presented at the ADB/AERC International* (2006) page 13 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/09484246-EN-FDI-AND-ECONOMIC-GROWTH.PDF> accessed on 2 July 2014

³⁶ S. Muradzikwa 'Foreign investment in SADC Development Policy Research Unit', University of Cape Town (2002) DPRU Working Paper 02/67 page 14 available at <http://allafrica.com/download/resource/main/main/00010104:f68f647cb249e50b52f1f7016d0a6498.pdf> accessed on 2 April 2014

³⁷ A. Bitzenis & others 'Motives for FDI in a Small EMU Member State: The Case of Greece' (2007) *X(2JEB)*: 1-18

³⁸ In the case of FDI, host countries are interested in securing foreign investment capital from foreign investors, at the same time foreign investors are interested in securing assurance from host countries that once foreign investment capital has entered a particular host country, domestic policies would not be altered in a manner that

result, SADC countries have also adjusted their policies in a manner that is favourable to FDI.³⁹

However, SADC countries have received limited FDI inflows despite their efforts in creating a business enabling environment through policy adjustments.⁴⁰ As result, members of SADC have failed to generate substantial foreign capital through FDI that is needed for fulfilling development objectives.⁴¹ Empirical evidence in the literature indicates that the limited FDI inflows are due to a wide range of micro economic instabilities that impede FDI flows in the region.⁴² It is in this context that this thesis finds it important to discuss the dynamics of FDI and development and their reflection on SADC. In this discussion, the thesis will conduct a case study on four SADC countries, namely Angola, Botswana, South Africa and Zimbabwe.

1.2. Research questions and the reason for choosing the topic

The reason for choosing the topic is based on the fact that despite the fact that international trade and FDI have proven to be beneficial for development, SADC is progressing lethargic in terms of meeting its development commitments. It is in this respect that this thesis aims to answer the following question: Is trade integration and FDI a dream deferred for the development of SADC? In an attempt to answer this question the thesis will be answering the following sub-questions:

- ❖ What is the history of trade integration and FDI in the MTS?
- ❖ Why is SADC progressing lethargic in terms of meeting development objectives through trade integration?
- ❖ How does FDI lead to development?
- ❖ What are the factors that impede FDI?

will cease profit repatriation. See, OECD 'Foreign Direct Investment for Development Maximising Benefits Minimising Coasts: Overview' (2002) page 5-6 available at <http://www.oecd.org/investment/investmentfordevelopment/1959815.pdf> accessed on 26 May 2014

³⁹ These include "privatization, liberalization, economic structural-adjustment programmes and FDI regulatory reviews". See, E. Mahembe & NM. Odhiambo 'The dynamics of foreign direct investment in SADC countries: experiences from five middle-income economies' (2013) *11(4)PPM*: 35-35

⁴⁰ Ibid 35

⁴¹ According to the New Partnership for Africa's Development (NEPAD) initiative, SADC countries along with other African regions require \$64 billion FDI inflow in order for them to be able to reach the annual growth of 7 per cent needed for meeting the Millennium Development Goals. See, SADC 'Towards a Common Future' available at <http://www.sadc.int/themes/economic-development/investment/foreign-direct-investment/> accessed on 23 September 2014

⁴² Note 39 above, 45

1.3. Literature Review

FDI inflows in SADC are largely concentrated in the exploitation of natural resources.⁴³ This means that FDI in the region is motivated by resource-seeking foreign investments. Dunning⁴⁴ on his Eclectic FDI theory suggests that this type of FDI is export oriented and therefore requires the hosting country to adopt outward oriented policies, also referred to as 'trade liberalization'. Trade liberalisation can be defined as a primary source of globalisation, which involves the reduction of tariffs and other trade barriers.⁴⁵ The regime of multilateral trade liberalisation began in 1947 and was facilitated by the GATT (now the WTO).⁴⁶ There is empirical evidence in the literature indicating that trade liberalisation leads to economic growth, allocation of resources, increased productivity and FDI.⁴⁷

However, a basic understanding of trade liberalisation is that it is an opportunity not a guarantee because there is no certainty of beneficiation post liberalisation.⁴⁸ This is largely influenced by the fact that "liberalisations vary in their depth and intensity and never amount to an immediate shift to free trade".⁴⁹ Furthermore, a study conducted by Ghani⁵⁰ on the impact of trade liberalisation on trade balance and economic growth suggests that the differences on import and export elasticity may have an adverse impact on economic growth for developing countries. Hence, from a demand and production side, export volumes in developing countries are lower when compared with developed countries and are concentrated in primary commodities with low value added.⁵¹ Consequently, import volumes are higher in developing countries than in developed countries and are concentrated in secondary commodities with high value added.⁵²

⁴³ SR. Vinesh & others 'Determinants of foreign direct investment in SADC: an empirical analysis' (2014) *4(4)BMR*: 146-154

⁴⁴ JH. Dunning & SM. Lundan 'Multinational Enterprises and the Global Economy' 2 ed (2008) 68

⁴⁵ E. Lee 'Trade Liberalization and Employment', DESA (2005) Working Paper No. 5 page 1 available at http://www.un.org/esa/wp5_2005.pdf accessed on 26 November 2014

⁴⁶ A.P. Thirlwall 'Trade, Trade Liberalisation and Economic Growth: Theory and Evidence', African Development Bank (2000) Economic Research Papers No. 63 page 6 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00157660-EN-ERP-63.PDF> accessed on 3 May 2014

⁴⁷ Note 5 above, 1

⁴⁸ D. Greenaway & others 'Trade liberalisation and growth in developing countries' (2002) *67JDE*: 229-233

⁴⁹ Ibid 243

⁵⁰ G.M Ghani 'The Impact of Trade Liberalization on Developing Countries, Trade Balances with Industrial and Developing Countries' (2009) *10(2)IJBS*: 53-54

⁵¹ For instance, developing countries are major exporters of unprocessed coffee, which is exported at a low value added. Ibid 54

⁵² For instance, developed countries are major exporters of processed coffee, which is exported at a high value added. Ibid 54 and Note 46 above, 6

The main cause for differences on import and export elasticity is the fact that developed countries have imposed trade barriers for processed products originating from developing countries.⁵³ Empirical evidence in the literature indicates that trade barriers in developed countries are imposed on products where developing countries have the most comparative advantage, i.e. agriculture, textiles, clothing and steel.⁵⁴ However, despite these findings Dornbusch⁵⁵ indicates that the level of economic growth is influenced by the level in which a country has liberalised its trade policies. Thus, countries with high levels of trade liberalisation have experienced an increase in their export and in their GDP.⁵⁶

At its inception trade liberalisation was considered to be a win-win scenario when constructed in a non-discriminatory manner taking into account all the WTO principles.⁵⁷ According to Lee⁵⁸ trade liberalization could be achieved by either the reduction or removal of tariffs or of any anti-export bias through other means (e.g., reducing of export and agricultural subsidies). However, this has not been the case since developed countries have continued to grant their farmers agricultural subsidies and domestic support.⁵⁹ Empirical works indicates that trade barriers and subsidies in developed countries are detrimental to developing countries, in that they have hampered the efforts to generate substantial income so as to create a business enabling environment for FDI.⁶⁰

While there is general consensus in the literature that multilateral rules on trade have proven to be very significant ever since the establishment of the GATT in Bretton Woods System,

⁵³ T. N. Srinivasan 'Developing Countries and the Multilateral Trade System After Doha', Economic Growth Centre (2002) Discussion Paper No. 842 page 6 available at http://www.econ.yale.edu/growth_pdf/cdp842.pdf accessed on the 14 of August 2014

⁵⁴ Note 5 above, 38. See also, S. Mohan & others 'Barriers to prosperity – developing countries and the need for trade liberalisation', The Institute of Economic Affairs (2012) Discussion Paper No. 44 page 7 available at <http://www.iea.org.uk/sites/default/files/publications/files/Barrier%20to%20Trade%20-%20Mohan.pdf> accessed on 27 November 2014

⁵⁵ R. Dornbusch 'The Case for Trade Liberalization in Developing Countries' (1992) *6(1)JEP*: 69-76

⁵⁶ Note 46 above, 6

⁵⁷ F. Joseph & Others 'Trade liberalization in the Doha development round' Economic Policy (2005). See also chapter two of this thesis for the principles of the MTS.

⁵⁸ Note 45 above, 1

⁵⁹ For example: the United States offers \$10 to \$30 billion in cash to farmers of crops such as wheat, corn, soybeans, rice, and cotton every year. See, C. Edwards 'Downsizing the Federal Government: Agricultural Subsidies', CATO Institute (2009) available at <http://www.downsizinggovernment.org/agriculture/subsidies> accessed on 10 October 2014. See also, S. Grammling 'Trade Liberalization and Development – WTO and the Doha Round': FES Conference Report March (2007) page 8

⁶⁰ OECD 'Foreign Direct Investment for Development: Maximising benefits, minimising costs' (2002) page 29 available at <http://www.oecd.org/investment/investmentfordevelopment/1959815.pdf> accessed on 9 June 2014.

the same cannot be said regarding multilateral rules on FDI.⁶¹ Scholars are not in harmony with the thought of establishing multilateral rules for FDI. Burt⁶² writes that at the WTO Singapore Ministerial Conference in December 1996, developing countries led by India budged away from multilateral efforts of establishing regulatory rules for FDI. He considers that developing countries previewed the rules to possess restrictive policy measures on investment control as a sovereign right.⁶³ During this decade MNCs were largely based in developed nations, which implied that restrictive investment policies would lead to an abuse of power by the MNCs.⁶⁴ This article will be useful in this thesis because it critically discusses the history of trade and FDI in the MTS. However, the article falls short when considering the current outward investment flows. Thus, according to the World Investment Report 2014, MNCs from developing countries have increased their outward FDI flows.⁶⁵

Despite the lack of multilateral rules, FDI is the most vital device of promoting sustainable development, especially in developing countries.⁶⁶ The fundamental method of attracting FDI safeguard an equitable economic growth, enhances partnership between public and private institutions for sustainable development, leads to adequate governance and progressive realization of human rights, in particular the right to development.⁶⁷ This is all endorsed by the fact that investors are reluctant to invest in a muddled and unpredicted environment.⁶⁸ Mahembe⁶⁹ in his report irons out five reasons as to why governments in SADC are keen to attract FDI. These include transfer of technology, employment creation, capital flow, transfers of management skills to local managers and increase export competitiveness.⁷⁰ However, despite the efforts that have been put in place for attracting FDI in SADC, FDI inflows have been lethargic and unpredictable.⁷¹

⁶¹ J.H.H. Weiler & others 'International and Regional Trade Law: The Law of the World Trade Organization' (2011) page 5 available at http://www.jeanmonnetprogram.org/courses/wto/docs/unit_i-the_syntax_and_grammar_of_international_trade_law.pdf accessed on 2 April 2014

⁶² Note 28 above, 1017

⁶³ Ibid 1018

⁶⁴ Ibid 1017

⁶⁵ UNCTAD World Investment Report 2014 available at http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf accessed on the 21 of September 2014

⁶⁶ Note 60 above, 23

⁶⁷ C. Bellak & others 'Policies to Attract Foreign Direct Investment', OECD Global Forum on International Investment (2008) page 19 available at <http://www.oecd.org/investment/globalforum/40301081.pdf> accessed on 8 May 2014

⁶⁸ PE. Tembe 'Attracting Foreign Direct Investment in Developing Countries: Determinants and Policies-A Comparative Study between Mozambique' (2012) 3(4)*IJFR*: 69-72

⁶⁹ Note 39 above, 43

⁷⁰ Note 31 above, 24

⁷¹ Note 39 above, 35

The reasons for lethargic and unpredictable FDI inflows in SADC are facilitated by a wide range of factors that impede FDI. Muradzikwa⁷² partially discusses some of the factors that impede FDI in the SADC perspective. He also argues that in order to attract FDI, there must be political certainty; in that, all the rule or policies of doing business in the host country would not randomly change to the detriment of foreign investors.⁷³ Furthermore, regional infrastructure enhances the growth of both the size of the market and the economy. Thus, it plays a crucial part on sustainable development and facilitates investment.⁷⁴ This means that “the better the infrastructure of the host economy, the more attractive it is to foreign investors”.⁷⁵ Furthermore, on market size he argues that as market increase in size, so do the prospect of the efficient utilization of resources and the advantages of economies of scale”.⁷⁶ A small market size leads to unequal distribution of income, opportunities, wealth and poverty.⁷⁷ This deters investors (both foreign and domestic).

1.4. Research Methodology

The thesis is construed to desktop research and it will make use of a qualitative approach. Under this approach, the thesis will firstly conduct a descriptive analysis on the history of the multilateral trade system. This entails an overview of various Ministerial rounds of both the GATT and the WTO. The analysis will heavily rely upon primary sources (multilateral agreements, declarations, reports and working papers) and secondary sources (articles, Journals, Newspapers and Books) relating to trade and FDI under the auspices of both the GATT and the WTO.

Secondly an interpretive approach will be conducted to provide a better understanding of trade integration (international and regional) and development. Through this approach the thesis aims to interpret evidence in the literature that critically discusses the relationship between trade integration and development. The evidence that will be used is from primary (multilateral agreements, declarations, reports and working papers) and secondary sources

⁷² Note 36 above, 14

⁷³ Ibid 17

⁷⁴ Ibid 15

⁷⁵ Dr, Q. Alam & others ‘The Impact of Poor Governance on Foreign Direct Investment: The Bangladesh Experience’, NAPSIPAG) Annual Conference (2005) page 4 available at http://www.napsipag.org/pdf/Foreign_Direct_Investment.pdf accessed on 3 April 2014

⁷⁶ S.K Goh & KN. Wong “Malaysia’s Outward FDI”: “The effects of market size and government policy” (2010) page 11 available at <http://webcache.googleusercontent.com/search?q=cache:ULHkC-O9fG8J:cenpris.usm.my/index.php/downloadable-papers/downloadable-papers/download/category/2-list-of-2010-working-paper-series%3Fdownload%3D39:cenpris-working-paper-135-10%26start%3D20+&cd=1&hl=en&ct=clnk&gl=za> accessed on the 27th of November 2014

⁷⁷ Ibid 11

(articles, Journals, Newspapers and Books). On the third stage the thesis will also adopt an interpretive paradigm that underpins the interpretation of the factors that impede FDI in SADC. Journals, articles, newspapers, reports and books will be used. The pen ultimatum of the thesis will utilise a prescriptive analysis in the form of recommendations which may be useful to WTO and SADC members in promoting development through trade and FDI.

1.5. Structure of the Dissertation

Chapter two of the thesis will focus on the history and the background of the multilateral trade system. This will be done by critically discussing various rounds of both the GATT and the WTO. The discussion is necessary in order to establish whether developing countries have benefited through multilateral trade agreements or there is still much work that needs to be done.

Chapter three of the thesis will begin by critically discussing development and the MDGs. Thereafter the thesis will critically discuss the impact of both international and regional integration on development. This entails examining whether the regional and international commitments to trade integration have resulted to trade creation or trade diversion for SADC. On international integration focus will be based on the DDA, taking into account that if an agreement for its conclusion is reached, developing countries and LDCs could benefit from global trade. On regional integration the thesis will critically discuss the regional trade agreements of SADC member states and their potential on enhancing development.

Chapter four of the thesis will focus on the factors that impede FDI in SADC. Various technological spillovers will be discussed so as to provide some form of background regarding the relationship between FDI and development. There after the chapter will then discuss different factors that deters FDI. Finally, the thesis will briefly discuss FDI trends for 2012 and 2013 and provide a case study aimed at assessing the presence and the impact of the discussed factors that affect FDI.

Finally under chapter five, the thesis will provide conclusions and recommendations regarding the discussed issues.

CHAPTER TWO
THE HISTORY OF TRADE AND INVESTMENT IN THE MTS

2.1. Introduction

The period commonly referred to as the ‘classical gold standard’ between 1880 and 1914 remains unprecedented in terms of economic growth qualified by free trade in goods, labour and capital.⁷⁸ The gold standard monetary system offered fixed exchange rates, which caused a world-wide concerted movement on price levels and assurance of economic prosperity with moderate tariffs.⁷⁹ The cordiality was however disrupted for some years by the outbreak of World War I in 1914.⁸⁰ After World War I, a new dawn of a period commonly referred to as the ‘interwar period’ (1914-1945) began to unfold.⁸¹ Peace conferences were held surrounding an attempt by governments to restore the cordiality of the gold standard.⁸² Although the early 1920s appeared to have a positive outlook on the restoration of the gold standard, negotiations for tariff reduction among trading countries were perceived as being pointless due to unstable monetary conditions.⁸³ In the late 1920s all hopes for pre-war economic restoration were shattered by currency devaluations and the spread of tariff restrictions.⁸⁴ This economic downturn went from being bad to worse as it transformed from economic recession to economic depression.

In 1930, the outcome of what had been characterised as the ‘beggar-thy-neighbour’ exchange rates and tariff policies increased major contractions on international trade.⁸⁵ Hence, “multilateralism was replaced by bilateralism, non-discrimination by discrimination, free trade by comprehensive protection, freedom for capital flows by exchange controls and free movement of labour by rigorous restrictions”.⁸⁶ In order to avoid similar contractions after World War II, the need for a MTS was visualised. In 1944 Britain and the United States of America (USA) facilitated the so called ‘Bretton Woods Conference’ that led to the

⁷⁸ MD. Bordo ‘Gold Standard: The Concise Encyclopaedia of Economics Library of Economics and Liberty’ (2008) par 1 available at <http://www.econlib.org/library/Enc/GoldStandard.html> accessed on 3 April 2014

⁷⁹ H. Dieter ‘The Multilateral Trading System and Preferential Trade Agreements: Can their negative effects be minimized?’ (2008) GARNET Working Paper No. 54/08 page 2 available at <http://www2.warwick.ac.uk/fac/soc/garnet/workingpapers/5408.pdf> accessed on 5 April 2014

⁸⁰ DA. Irwin & others ‘The Genesis of the GATT: Draft Version’ (2007) page 7 available at <http://www.dartmouth.edu/~dirwin/docs/Creation.pdf> accessed on the 26th of October 2014

⁸¹ Ibid 7

⁸² RM. Stern ‘The Monetary Trading System’ (2007) Discussion Paper No. 569 page 5 available at <https://gspp.berkeley.edu/assets/uploads/research/pdf/ssrn-id1783908.pdf> accessed on 3 April 2014

⁸³ Ibid 6

⁸⁴ Ibid 6

⁸⁵ Note 78 above, par 2

⁸⁶ Note 79 above, 5

establishment of multilateral organisations.⁸⁷ The organisations that were formed at the Bretton Woods Institutions were the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank).⁸⁸

Recognising that the ‘beggar-thy-neighbour’ exchange rates and tariff policies were steering towards a Second World War, Ministers of the Bretton Wood System envisioned a need for the establishment of a third multilateral organisation, namely the International Trade Organisation (ITO).⁸⁹ In the late 1940s, Ministers of trading nations held various meetings to discuss the ITO Charter, also referred to as ‘Havana Charter’ and to negotiate the substantives thereof.⁹⁰ However, upon finalisation, the Charter was never submitted for congressional approval in the USA on the basis that the congress and several business groups had opposed to its provisions.⁹¹ Prior to the opposition of the Havana Charter, negotiations for a treaty governing international trade also began to unfold, which led to the establishment of the General Agreement on Tariffs and Trade (GATT 1947).⁹²

The GATT was constructed to be a temporary agreement pending ratification of the Havana Charter.⁹³ The main objective of the GATT was to reduce trade barriers and facilitate non-discriminatory trade among trading nations through multilateral negotiations and agreements.⁹⁴ Nevertheless, even after oppositions of the Havana Charter, the treaty remained

⁸⁷ Note 80 above, 3

⁸⁸ The World Bank was established with a mission of eliminating poverty and improving the living standards of people in the developing world by stimulating and supporting foreign investment in the post-World War II era. See, P. Griffin ‘New Political Economy’ (2006) *11(4)WB*: 571-571. On the other hand the IMF was established as “an organisation of various countries, working to foster global monetary cooperation, secure, financial stability, facilitate international trade, promote high employment and sustainable development and sustainable economic growth and reduce poverty around the world”. See, International Monetary Fund Study Guide MUNTR (2013) page 2 available at <http://www.imf.org/external/np/exr/center/econed/inside.pdf> accessed on 15 April 2014. See also, AM. Crowley ‘An Introduction to the WTO and GATT’ American Reserve Bank of Chicago (2003) page 43

⁸⁹ AT. Guzman ‘International trade law’ (Doctoral dissertation, University of California (2003)

⁹⁰ MA. Crowley ‘An Introduction to the WTO and GATT’, American Reserve Bank of Chicago (2003) page 44

⁹¹ The reason for opposing the charter was because “it was overloaded with topics unrelated to trade (employment, investment and antitrust)” and the inadequacies of protection afforded to foreign investors. See, World Trade Report ‘Sixty Years of the Multilateral Trade Cooperation: What have we Learned?’ (2007) page 180 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.366.2438&rep=rep1&type=pdf>. accessed on 10 April 2014

⁹² It is of interest to note that the GATT began with only 23 contracting parties who met in Geneva Switzerland. See, *Ibid* 179

⁹³ *Ibid* 180

⁹⁴ C. Michalopoulos ‘Trade and Development in the GATT and WTO’: The Role of Special and Differential Treatment for Developing Countries (2000) page 2 available at <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2388> accessed on 10 April 2014

for decades as the most supreme regulator of international trade, until it was consolidated to be part of the World Trade Organisation (WTO).⁹⁵

The WTO was established at the last round of the GATT, namely the Uruguay round under the Marrakesh Agreement.⁹⁶ The WTO has also continued with the tradition of holding Ministerial rounds of negotiations aimed at enhancing International trade. However, over the years the WTO has received fewer acknowledgements for its successes and enormous criticisms for its failures, to the extent that some scholars consider the organisation as being incompetent for multinational trade negotiations. Therefore, it follows from this that this thesis finds it important to discuss both the history of GATT and WTO. This will be done by discussing various Ministerial rounds of both the GATT and the WTO in order to establish the main reasons that have resulted into some scholars criticising the WTO as a multilateral trade organisation. However, before proceeding with the discussion it is important to understand some of the principles embodied in the multilateral trade negotiations. These principles are discussed briefly on the following sub-section.

2.2. The GATT and MTS Principles

As it was stated above, the GATT treaty dealt with the reduction of trade barriers in goods by facilitating non-discriminatory trade among trading nations through multilateral negotiations.⁹⁷ The treaty includes various trade principles that govern the nature and the scope of multilateral trade negotiations.⁹⁸ Ever since the first agreement by the initial contracting parties there has been great prosperity on economic growth and expansion of international trade.⁹⁹ International trading partners began to lower their tariffs levels, which resulted into a harmonised trading classification.¹⁰⁰ The GATT lasted for about 47 years as a standalone treaty where after its existence is consolidated with other agreements under the WTO along with multilateral trade principles discussed on the following sub-sub-sections.¹⁰¹

⁹⁵ C. VanGrasstek 'The History and Future of the World Trade Organization', World Trade Organization (2013) ISBN 978-92-870-3871-5 page 5 available at http://www.wto.org/english/res_e/booksp_e/historywto_e.pdf accessed on 26 October 2014

⁹⁶ See, The Agreement establishing the WTO 1994

⁹⁷ Note 94 above, 2

⁹⁸ Note 95 above, 20

⁹⁹ M. Tomz 'Membership Has Its Privileges: The Impact of GATT on International Trade', Stanford University (2005) page 9 available at <http://web.stanford.edu/~tomz/working/TomzGoldsteinRivers2005a.pdf> accessed on 15 April 2014

¹⁰⁰ Ibid 2

¹⁰¹ Note 95 above, 20

2.2.1. Most Favoured Nation

Article I of the GATT deals with the Most Favoured Nation (MFN) principle.¹⁰² The MFN principle does not originate from the appendage of the GATT, as it was applied on bilateral agreements prior the GATT.¹⁰³ It applies only on ‘like products’ imported or exported in the territory of a member or contracting party of international trade agreements.¹⁰⁴ The term ‘like products’ refers to products falling within one subject matter or category of subject matters of one member state with other member state(s).¹⁰⁵ The principle entails a notion that where state A, enters into an agreement with state B, requiring state A to grant privileges or advantages on state B, for the importation or exportation of products similar to those exported or imported by state C, state A shall immediately and unconditionally extend such privileges or advantages to state C or any other member who exports or imports similar products.¹⁰⁶ Furthermore, the article covers privileges or advantages granted in relation to custom duties and charges or methods of levying such duties and charges and rules and formalities of importation and exportation.¹⁰⁷

2.2.2. National Treatment

Article III of the GATT makes provision for the national treatment principle between ‘like products’ imported into a contracting party’s territory and local products of such a party.¹⁰⁸ The principle accentuates the application of similar treatment by contracting members on foreign and local products.¹⁰⁹ However, there is an exception to this principle linked to the role of government procurement and the need for payment of subsidies.¹¹⁰ On this notion, the contracting parties agreed to exclude the application of the national treatment principle where

¹⁰² Article I of the GATT 1994

¹⁰³ For example it was applied on the treaty of Amity and Commerce between USA and France in 1778. See, E. Ustor ‘The Most-Favoured-Nation Clause in the Law of Treaties: Working Paper Document A/CN.4/L.127’, (1968) 2YILC: 165-166.

¹⁰⁴ The MFN principle is also included on regional and bilateral trade agreements. H. Horn ‘National Treatment in the GATT’, IFN (2003) Working Paper No. 657 page 22 available at <http://www.ifn.se/Wfiles/wp/WP657.pdf> accessed on 5 May 2014

¹⁰⁵ K. Bagwell & R. W. Staiger ‘Reciprocity, non-discrimination and preferential agreements in the multilateral trading system’ (2001) 17EJPE: 281-292

¹⁰⁶ Note 104 above, 74

¹⁰⁷ See, Article I of the General Agreement on Tariffs and Trade (GATT) 1994

¹⁰⁸ See, Article III of the General Agreement on Tariffs and Trade (GATT) 1994

¹⁰⁹ For example once foreign products are imported and tariffs are paid, the importing country is prohibited from adding additional tax rates or imposing any regulatory barriers that are not imposed on similar product of that importing country. See, Note 104 above, 12

¹¹⁰ Ibid 22

the government preferentially makes purchase or payment of subsidies to local products, provided that this was not done in a commercial scale.¹¹¹

2.2.3. *Special and Differential Treatment*

The principle of Special and Differential Treatment (SDT) treatment found its role under the GATT in the 1960s due to the increasing diversity among contracting parties.¹¹² The SDT aims to resolve the competing demands for trade liberalisation and to provide equitable social development.¹¹³ Furthermore, it seeks to secure market access for countries with low levels of development.¹¹⁴ There are three different forms of SDT, namely modulation of commitment; preferences and declaration of support.¹¹⁵ This principle had an enormous contribution in the launching of the DDA in 2001, which was designed to adhere to the diverse needs and interests of all member countries.

2.2.4. *Transparency*

Transparency is a fundamental principle of multilateral trading system. There can be no practical purpose that can be served for implementing MFN or National Treatment or SDT without transparent rules and policies.¹¹⁶ Transparency reduces trade conflicts and renders governments accountable because it confers upon the economic actors advanced knowledge of the risks involved when concluding trade agreements.¹¹⁷ Article X of GATT places upon the contracting parties an obligation to disclose (by way of publication) to each other any

¹¹¹ Ibid 28

¹¹²P. Lichtenbaum 'Special Treatment vs Equal Participation: Striking a balance in the Doha Negotiations' International Law Review (2001) page 1007 available at <http://www.wcl.american.edu/journal/ilr/17/lichtenbaum.pdf> accessed on 3 October 2014

¹¹³ Ibid 1008

¹¹⁴ Ibid 1008

¹¹⁵ An example for modulation of commitment is the Duty Free and Quota Free (DFQF) Agreement, which requires Developing countries to provide market access of at least 97 per-cents and Developing should market access that within their capacity for products originating from Least Developed Countries (LDCs). Trade preferences date back to the enabling clause of the Tokyo round which allows the granting of trade privileges or advantages for developing and LDCs, which would otherwise violate Article I of the GATT (MFN). The last form which is declaration of support allows LDCs and Developing countries to declare support from WTO members. See, B. Hoekman & others 'Conclude Doha: it matters!', World Bank Policy Research Working Paper 5135 page 3. See also, IISD 'Special and Differential Treatment', Trade and Development Support Brief No. 2 of a series (2003) page 1 available at http://www.iisd.org/pdf/2003/investment_sdc_may_2003_2.pdf accessed on 29 October 2014

¹¹⁶ See 'Trade Facilitation: Article X of GATT on the Publication and Administration of Trade Regulations', Communication from the European Communities

http://trade.ec.europa.eu/doclib/docs/2003/june/tradoc_113131.pdf accessed on 30 October 2014

¹¹⁷ Note 105 above, 325

domestic and international policies or laws, which may have an impact on their trade relationship.¹¹⁸

2.2.5. Quantitative Restrictions

Article XI of the GATT 1994 restricts or prohibits a member from instituting or maintaining prohibitions or restrictions through quotas, import or export licenses or any other measure, on the importation of another member's territorial product or exporting or selling for exportation of a product ordained to be exported to another member's territory.¹¹⁹ This article however has a chilling effect for restrictions or prohibitions emanating from duties, taxes or any other charges.¹²⁰ Furthermore, a member who applied quantitative restrictions may be excused if it was applied to prevent shortages of foodstuff to apply standards for commodities or to any agricultural or fisheries products.¹²¹

2.2.6. Reciprocity

Although there is no specific provision in the GATT that deals with reciprocity, it is however regarded as a rule of thumb for international trade negotiations.¹²² The principle of reciprocity relates to the fact that where a contracting state has received tariff preferences or any other privilege or advantage from another state, it is bound to return such preferences or privilege or advantage on that state in the same proportion as they were offered to it.¹²³ The application of the reciprocity principle was narrowed down to bilateral agreements between trading states until the Kennedy Round in the 1960s, where the common tariff formula that supplemented it adoption on bilateral negotiations was adopted.¹²⁴

2.2.7. General Exceptions

Article XX of the GATT provides general exceptions for circumstances under which a contracting party may be justified for implementing measures inconsistent with the GATT principles.¹²⁵ However, the article also emphasises that such measures may not be

¹¹⁸ OECD 'Trade Principles and Concepts', OCDE/GD(95)141 page 6 available at http://ec.europa.eu/environment/integration/pdf/occd_te_1995.pdf accessed on 28 October 2014

¹¹⁹ UNCTAD 'Dispute Settlement': WTO, 3.5 GATT 1994 Page 50 available at http://unctad.org/en/Docs/edmmisc232overview_en.pdf accessed on 28 October 2014

¹²⁰ Ibid 50

¹²¹ Article XI of the GATT 1994

¹²² Note 105 above, 289

¹²³ Ibid 310

¹²⁴ Note 82 above, 5

¹²⁵ Article XX of the GATT 1994

implemented in a manner that is aimed at restricting trade on arbitrary or unjustifiable grounds.¹²⁶ On this notion, the article goes on to narrowly define the circumstance whereby a party may be entitled to adopt or enforce measures inconsistent with GATT principles. Among other circumstances, the Article includes exceptional circumstances for measures necessary (a) to protect public morals; and (b) to the protection of human, animal or plant life or health.¹²⁷ The party adopting such measures bears the obligation of proving that the adopted measures fall within the ambit of the article.¹²⁸

2.3. Ministerial Rounds of the GATT

The first round of the GATT took place at Geneva, Switzerland in 1947 and it took only eight months to conclude.¹²⁹ The round was signed by 23 contracting parties representing two thirds of world trade.¹³⁰ At this round, trade negotiations were conducted on a product-by-product basis between the contracting parties and resulted into 123 agreements covering 45 000 exchange concessions.¹³¹ The concessions came into effect on June 30, 1948 and affected one-fifth of world trade at that time.¹³² The second GATT round was held at Annecy, France in 1949 and was facilitated by thirteen contracting parties.¹³³ The negotiations in this round resulted to 5000 tariff concessions and an additional pledge of 10 countries in GATT.¹³⁴ It was during this round when the US congress and other business groups made their oppositions on the content of the proposed international trade organisation (ITO).¹³⁵

The Torquay Round was a third round under GATT and it was held in 1950 at England with 38 participating countries.¹³⁶ The negotiations resulted to 8 700 exchanges of tariff concessions and the GATT was acknowledged as the most affective negotiating forum for the

¹²⁶ Ibid

¹²⁷ Ibid Article XX (a) and (b)

¹²⁸ Note 19 above, 6

¹²⁹ Note 80 above 395

¹³⁰ The contracting parties at this round were as follows: 'Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom and the United States of America'. See, Ibid 395

¹³¹ Ibid 90

¹³² GATT bilateral negotiating material by Round available at http://www.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm accessed on 3 April 2014

¹³³ Ibid

¹³⁴ THE GATT/WTO A Brief Overview available at

http://graduateinstitute.ch/files/live/sites/iheid/files/shared/summer/WTO2012/protected/Week2/Yerxa_WTO_history.pdf accessed on 4 April 2014

¹³⁵ Ibid. See also note 91 above, 180

¹³⁶ G.P Casadio 'Multilateral Negotiations in the GATT Framework: An analysis of Trade Policy Changes Through the Various GATT Rounds', University of Bologna, Italy (1987) No. 36 page 1 available at <http://www2.dse.unibo.it/wp/36.pdf> accessed on 27 October 2014

reduction of trade barriers.¹³⁷ The Geneva, Dillon and again Geneva Rounds were also based primarily on the reduction of tariff barriers pertaining to trade in goods, except for the Kennedy Round, which introduced new topics such as special treatment for developing countries, liberalisation of agricultural commodities and non-tariff measures.¹³⁸

The 7th Round of the GATT was the Tokyo Round, which was launched in 1973 in Japan.¹³⁹ During the period between the inceptions of the Dillon Round in the 1960s up to the Tokyo round, Japanese exports displayed phenomenal growth.¹⁴⁰ Furthermore, during the negotiations at the Tokyo round, developing countries began to display great power and solidarity in their participation.¹⁴¹ The vast majority of developing country's concerns and demands were adhered to and productive outcomes were achieved.¹⁴² However, they were not in favour of long term interests due to the fact that the motive behind their demands qualified the import substitution ideology.¹⁴³ The negotiating parties observed that the MTS had grown to the extent that it warranted the need to intensify the negotiations not on tariffs but primarily on non-tariff measures.¹⁴⁴ This round also developed the agreements that were commonly referred to as the 'codes', which includes government procurement, technical barriers to trade, subsidies and countervailing duties, customs valuation, import licensing and

¹³⁷ W. Sandiford. 'GATT and the Uruguay Round' Eastern Caribbean Central Bank (ECCB) (1994), available at http://www.eccb-centralbank.Org/Rsch_Papers/Rpmar94.pdf Accessed on 18 April 2014

¹³⁸ The first Geneva round was held at Switzerland in 1955. The Dillon round was held in 1961 at USA and was considered to be less productive than the other rounds with 4 400 tariff reductions. In 1964 the second Geneva round was held at Switzerland. The Kennedy round was held in USA and it was named after the late president JF Kennedy. In this round countries were less preoccupied with lowering tariffs as they have been in the previous rounds. However the tariffs were reduced by 38 per cent and amounted to US\$406 Billion worth of trade. See, A. Lowenfeld 'The USA, The EEC and The GATT: The Road not Taken' (1996) *IJUPJIEL*: 533-534.

¹³⁹ The Kennedy Round marked a novel beginning by introducing the use of formulaic approaches which can be said to be a slight departure from the previous rounds. The major forces behind this Round were the United States and some developing countries. See, note 137 above

¹⁴⁰ The Japanese had become world leaders in designing quality goods like steel, ships, television watches, automobiles and semiconductors. See, The Library of Congress Country Studies; CIA World Factbook 'Japan Export' available at http://www.photius.com/countries/japan/economy/japan_economy_exports.html accessed on 5 May 2014

¹⁴¹ A prime example is their demand that trade barriers faced by their tropical products in developed countries be removed. See, T. N. Srinivasan 'Developing Countries in the World Trading System' (1999): From GATT, 1947, to the Third Ministerial Meeting of WTO (1999), (1999) *22(8)WE*: 1047-1056

¹⁴² Ibid 1059

¹⁴³ Ibid 1060

¹⁴⁴ The round introduced new topics on the table for negotiations such as, special treatment for developing countries, liberalisation of agricultural commodities and non-tariff measures. See, The WTO 'The Multilateral Trading System 50 years of Achievement available at http://www.wto.org/english/thewto_e/minist_e/min98_e/mc98_e/introd_e.htm accessed on 20 April 2014

anti-dumping.¹⁴⁵ These agreements were discussed further at the 8th GATT Ministerial round called the Uruguay round.

The Uruguay round was initiated at the USA, Washington DC in 1985.¹⁴⁶ The preparatory committee drew up the agenda upon receipt of two drafts, one from the Organisation for Economic Cooperation and Development (OECD) countries and the other from non-OECD countries.¹⁴⁷ The round was then launched at Uruguay Punta del Este in 1986 by 74 representatives.¹⁴⁸ Developing countries participated actively compared to the previous rounds and dealt away with the notion that trade rules must be implemented on account of development level.¹⁴⁹ During the negotiations agriculture had become the most protected sector even though it accounted for only 13 per cent of world trade.¹⁵⁰ The USA and the European Community (EC) failed to reach early consensus on agricultural negotiations, especially on dairy products. When the USA surged to truncate the EC export subsidies to farmers that have been offered since the 30s, the EC refused.¹⁵¹ This extended the proposed duration of negotiations until the parties informally settled their differences using a model referred to as 'Blair House accord'.¹⁵²

The Uruguay round basically involved the negotiating of new issues but also revisited traditional issues such as tariff-cutting and some areas where rules needed clarifying and strengthening.¹⁵³ The round also "tackled long-standing and intractable issues such as textiles and clothing and refurbished the dispute settlement system, intellectual property, and trade in services and instituted the trade policy review mechanism for examining the trade policies of individual countries, transformed aspects of the institution and the GATT's legal status".¹⁵⁴ Furthermore, the Uruguay round also brought on the table investment as part of the agenda. The reason for including investment under the negotiations can be attributed to two factors. The first being that former colonies were becoming sovereign nations, with novel domestic

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ W. Sandiford 'GATT and the Uruguay Round. Eastern Caribbean Central Bank' (ECCB) (1994) page 4 available at http://www.eccb-centralbank.org/Rsch_Papers/Rpmar94.pdf. Accessed on 22 April 2014

¹⁴⁸ Note 144 above

¹⁴⁹ Ibid

¹⁵⁰ Note 147 above, 4.

¹⁵¹ Understanding the WTO-Uruguay Round available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

¹⁵² A Blair House accord is a Memorandum of Understanding between the USA and the EC, which regulates the production of oilseeds. See, Understanding the WTO-Uruguay Round available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm accessed on 20 April 2014

¹⁵³ Note 144 above

¹⁵⁴ Ibid

policies for investment, which called for entrenched multilateral investment rules that will protect foreign investors against nationalisation.¹⁵⁵ The second reason was based on the continued increase of FDI flows between developed and developing countries.¹⁵⁶

During the negotiations, developed countries sought to establish multilateral rules regulating FDI domestic policies in host countries.¹⁵⁷ However, developing countries led by India refused such negotiations on the basis that the GATT was subjected only to trade relations.¹⁵⁸ On this notion, developed countries asserted that negotiations for investment on the table should then be construed and brought into conformity within the framework of trade relations.¹⁵⁹ Therefore, it was agreed that investment agreement will only cover certain investment measures that are detrimental on trade. This resulted to the agreement known as Trade Related Investment Measures (TRIMs).¹⁶⁰

The TRIMs agreement specifically deals with measures related to trade in goods that apply to both local and foreign enterprises.¹⁶¹ The agreement does not deal with the requirements of entry into host countries by investors or regulate measures related to trade in services.¹⁶² On its preamble the agreement provides that it seeks to adhere to the needs of developing countries, chiefly by increasing economic growth through the advancement of investment measures across international frontiers.¹⁶³ Before this agreement, host countries had put in place domestic policies setting out irrational requirements that must be met by foreign enterprises for local operation or admission.¹⁶⁴ The requirements included ‘local content’ (purchasing or making use of local products) and ‘trade balancing’ (“limiting the purchase or use of imports according to the amount of output exported”).¹⁶⁵ These measures were

¹⁵⁵ R. McCulloch ‘Investment Policies in the GATT’ (1990) *13(4)WE*: 541-549

¹⁵⁶ *Ibid* 549

¹⁵⁷ *Ibid* 550

¹⁵⁸ Note 28 above, 1039

¹⁵⁹ *Ibid* 1039

¹⁶⁰ *Ibid* 1039. See also The Trade-Related Investment Measures and Investment 1994 page 139 available at http://www.wto.org/english/docs_e/legal_e/18-trims.pdf accessed on 7 May 2014

¹⁶¹ Chapter 12 ‘Trade-Related Investment Measures and Investment’ available at <http://www.rrojasdatabank.info/undptrade/undpgtch12.pdf> accessed on 29 October 2014

¹⁶² Agreement On Trade-Related Investment Measures 1994 available at http://www.wto.org/english/docs_e/legal_e/18-trims.pdf accessed on 10 May 2014

¹⁶³ Note 159 above, 140

¹⁶⁴ DH. Brooks & others ‘Foreign Direct Investment: Trends, TRIMs, and WTO Negotiations’, *Asian Development Review* (2013) page 1 available at http://www.researchgate.net/publication/241473670_Foreign_Direct_Investment_Trends_TRIMs_and_WTO_Negotiations accessed on 26 November 2014

¹⁶⁵ GATT Overview of the results ‘The results of the Uruguay Round of Multilateral Trade Negotiations’, *Market access for Goods and services* (1994) available at <http://www.ub.edu/prometheus21/articulos/archivos/gatt.PDF> accessed on 1 June 2014

identified under Article 2 of the TRIMs agreement as being trade distorting measures on the basis that they were inconsistent with Articles III (national treatment) and XI (elimination of quantitative restrictions) of the GATT 1994.¹⁶⁶

After the signing of the final agreement of the Uruguay round at Marrakech, Morocco in 1994, the WTO was created in Geneva 1995.¹⁶⁷ As envisaged by its architects, it aims to reflect on the rules established at the Uruguay Round.¹⁶⁸

2.4. Ministerial Rounds of the WTO

The WTO adopted its first formal conference at a Ministerial level in 1996 at Singapore.¹⁶⁹ This conference was an initial major step for the enhancement of negotiations and agreements post the Uruguay Round.¹⁷⁰ It made effort to put under negotiations the so called ‘Singapore issues’ of competition, investment, government procurement, and trade facilitation.¹⁷¹ These issues, especially investment had a huge impact on the WTO Ministerial conferences that followed. Despite the incorporation of these issues at the Singapore conference, developing countries show their oppositions, especially on the proposal by developed countries to resuscitate multilateral rules on investment in a comprehensive manner. The Ministers however, agreed to form working groups on investment, competition and government procurement, which tasked with negotiating these issues outside the WTO Ministerial level.¹⁷² The fourth pillar of the new issues (trade facilitation) was placed for discussion with the Council of Trade in Goods. The Working Group on Investment was tasked with providing clearance between trade and investment by taking into account the coherence of both the interests of FDI home countries and host countries.¹⁷³ On this task the Working

¹⁶⁶ Note 160 above, 139. See also, Note 163 above, 3

¹⁶⁷ P. Gallagher ‘*The First Ten Years of the WTO 1995-2005*’ (2005) 1sted 14

¹⁶⁸ Note 144 above, 12

¹⁶⁹ K. Singh “Multilateral Investment Agreement in the WTO” :Asia-Pacific Research Network (2003) page 6 available at http://www.wto.org/english/forums_e/ngo_e/multi_invest_agree_july03_e.pdf accessed on 2 April 2014

¹⁷⁰ Note 144 above, 12

¹⁷¹ The conference also resulted in the establishment of three Working Groups on Investment, Competition and Government Procurement. See, WTO ‘Singapore Ministerial Declaration’ (1996) WT/MIN(96)/DEC page 8 available at http://www.wto.org/english/thewto_e/minist_e/min96_e/singapore_declaration96_e.pdf accessed on 29 May 2014. See also, PS. Mehta ‘The Doha Development Agenda’: The Road Ahead, Canadian Development Report (2003) page 11 available at <http://www.nsi-ins.ca/wp-content/uploads/2012/11/2003-Canadian-Development-Report-2003-Chapter-2.pdf> accessed on 28 May 2014

¹⁷² Ibid 11

¹⁷³ The Working Group on the Relationship Between Trade and Investment (1997) WT/WGTI/M/1

group also invited along other organisations such as UNCTAD, OECD, IMF and the World Bank.¹⁷⁴

The initial schedule established by the Working Group focused on the relationship between trade, investment and competition and the implications posed by such on economic growth, and development.¹⁷⁵ Negotiations within the group painted a clear picture on members that developments arising out of FDI needed great coherence of both domestic investment policies and international investment measures.¹⁷⁶ Despite such clarity, developing countries were not willing to enter into multilateral negotiations on investment, nor even when developed countries contended to convert the working group into an investment negotiating group that will negotiate at a WTO Ministerial level.¹⁷⁷ The absence of consensus between developed and developing countries on the establishment of comprehensive rules on investment resulted in developed countries lobbying to incorporate into the WTO negotiations a Multilateral Agreement on Investment (MAI).¹⁷⁸

The motive behind the MAI was largely influenced by chapter 11 of the North American Free Trade Agreement (NAFTA).¹⁷⁹ Thus, the MAI agreement was also meant to be a comprehensive one, dealing only with the protection and liberalisation of investment.¹⁸⁰ It comprised of two multilateral trade principles, namely MFN treatment and National treatment.¹⁸¹ During the negotiations in 1997 between the OECD countries, Europe and Canada proposed that the MIA negotiations be moved to the WTO because it could offer a resolute dispute settlement mechanism.¹⁸² At first, the USA was reluctant to adhere to this proposal but eventually acceded on condition that members of the OECD shall reiterate their commitments on the MAI negotiations outside the WTO.¹⁸³ However, just like the Havana

¹⁷⁴ Ibid

¹⁷⁵ Ibid para 8

¹⁷⁶ Ibid para 8

¹⁷⁷ Note 28 above, 1034

¹⁷⁸ The negotiations of a Multilateral Agreement on Investment began in 1995 under the OECD meeting upon the establishment of a Working Group by the Ministers. See, Note 28 above, 1042

¹⁷⁹ Chapter 11 of the NAFTA agreement included the right to establish an investment in a foreign country and the right to sue host governments if it is found that they have implemented a regulatory regime that affects the interests of foreign investors. See, The Multilateral Agreement on Investment (1998): Organisation of Economic Corporation and Development available at <http://www1.oecd.org/daf/mai/pdf/ng/ng987r1e.pdf> accessed on 2 April 2014

¹⁸⁰ PM. Vocke 'Investment Implications of Selected WTO Agreements and the Proposed Multilateral Agreement on Investment': International Monetary Fund (1997) WP/97/60 page 4 available at <http://www.imf.org/external/pubs/ft/wp/wp9760.pdf> accessed on 2 April 2014

¹⁸¹ See the discussion above on both principles under sub-sub-sections 2.2.1 and 2.2.2. see also, Note 179 above, 869.

¹⁸² Note 169 above, 27

¹⁸³ See, RL. Arcas 'Towards the Multilateralization of International Investment Law', (2009) *JWIT*: 865-868

Charter containing multilateral investment provisions in the 1940s, the MAI was also shelved in 1998 before comprehensive negotiations at the WTO.¹⁸⁴

The shelving of the MAI could be attributed to the following reasons: Firstly, the enactment of the Cuban Liberty and Democratic Solidarity Act by the USA, which led to France's withdrawal from the negotiations and the European Union (EU) instituting a complaint against the USA.¹⁸⁵ The Act unfairly discriminated foreign investors in Cuba, who were not from the USA.¹⁸⁶ Thus, the provisions of the Act sought relief measure for USA citizens and corporations whose property had been expropriated after the 1st of January 1959 against anyone who transacted from such property.¹⁸⁷ The second reason resulted from the major oppositions of the MAI provisions from particular developing countries and the NGOs.¹⁸⁸ The fall of the MAI resulted to the Working Group on Trade and Investment at the WTO being a standalone for multilateral negotiations on investment.¹⁸⁹

In 1999, the WTO held its second Ministerial conference referred to as the Seattle Ministerial Conference.¹⁹⁰ Prior to the Seattle Conference, developing countries formed an informal Like-Minded Group that represented their oppositions to include the Singapore issues for negotiations at the Seattle Ministerial conference.¹⁹¹ In October 1999 at Geneva, a draft Ministerial text for the Seattle Ministerial conference containing the position of the Like-Minded Group was produced.¹⁹² Paragraph 56 of the draft contained the position of the Like-Minded group, which focused primarily on the task remaining for the Working Group on the relationship between Trade and Investment.¹⁹³ The paragraph outlined the obligations of both home and host countries on FDI as well as the development objectives of host countries.¹⁹⁴ However, given the strength of the oppositions and the fact that the vast majority of

¹⁸⁴ Ibid 872

¹⁸⁵ Note 169 above, 28

¹⁸⁶ Note 28 above, 1035

¹⁸⁷ Ibid 135

¹⁸⁸ The basis upon which developing countries and the NGO opposed the MAI was based on a notion that it made it impossible for host countries to regulate the activities of foreign investors. Note 177 above, 26

¹⁸⁹ Note 180 above, 28

¹⁹⁰ Note 28 above, 1040

¹⁹¹ Ibid 1040

¹⁹² RE. Baldwin 'Failure of the WTO Ministerial Conference at Cancun: Reason and Remedies' (2006) 29(6)*WE*: 1-1

¹⁹³ Ibid 1

¹⁹⁴ M. Khor "The Singapore Issues in the WTO": Evolution and Implications for Developing Countries (2008) Third World Network page 5 available at

http://www.twncshop.com/index.php?main_page=product_info&cPath=76_77&products_id=306 accessed on 25 May 2014

developing countries were not invited to attend the initiation phase of the Conference, the Seattle Ministerial Conference distorted without a declaration.¹⁹⁵

In 2001, the Doha round was launched at Qatar and it promised to take into the heart the needs and interests of developing countries.¹⁹⁶ The round was an initiative to integrate developing and LDCs into the MTS due to avowals that these countries have been disenfranchised by the previous rounds.¹⁹⁷ On this notion, the Doha round gave rise to the so called ‘Doha Development Agenda’ (DDA). The declaration of the Doha round encompasses the negotiation of the of the following issues as part of the DDA; agricultural liberalization, antidumping and countervailing duty rules, access to non-agricultural markets, and further liberalization in the services sector, Trade Related Intellectual Rights and the Singapore issues.¹⁹⁸ However, parties could not agree to put the Singapore issues on the table for discussion under the DDA.¹⁹⁹

The logic behind developing countries opposing the negotiation of Singapore issues was based on ground observations with their limited knowledge; upon which they argued that negotiating these issues posed an adverse effect of undermining their development policies.²⁰⁰ Therefore, with a goal of seeking clarity and the implications behind these issues, developing countries wanted to conduct a study or a discussion, which will not warrant an establishment of new rules or agreements surrounding these issues, especially on investment. On this basis, the Ministers stated on Doha declaration that “negotiations on the Singapore issues will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations”.²⁰¹ The Chairman’s (Youssef Hussain Kamal) closing statement stated that “my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in

¹⁹⁵ It has been argued that the fall of the Seattle Ministerial Conference represented an indication that the WTO was not a competent body for multilateral negotiations. See, Note 190 above, 1

¹⁹⁶ RR.Yallapragada ‘The Collapse at Cancun: The Fifth Ministerial Conference Of the World Trade Organization’, Southwestern Economic Review Proceedings (2004) page 67 available at <http://swer.wtamu.edu/sites/default/files/Data/65%20-%2070-229-852-1-PB.pdf> accessed on 27 October 2014

¹⁹⁷ IF. Fergusson ‘World Trade Organization Negotiations: The Doha Development Agenda’, CRS Report for Congress (2011) page 3 available at <http://fas.org/sgp/crs/misc/RL32060.pdf> accessed on the 25th of October 2014

¹⁹⁸ Note 192 above, 3

¹⁹⁹ “This Declaration folded the on-going negotiations in agriculture and services into a broader agenda. That agenda includes industrial tariffs, topics of interest to developing countries, changes to WTO rules, and other provisions”. See, Note 193 above, 3. See also, Note 53 above, 6.

²⁰⁰ Note 192 above, 4

²⁰¹ Note 194 above, 7

government procurement, and trade facilitation could proceed”.²⁰² This implied that the parties would have to explicitly consent at the fifth Ministerial conference whether or not to put the Singapore issues under negotiations before they can proceed with other proposed negotiations for the round.²⁰³

The Working Group on Trade and Investment from 2002 on its 17th meeting up to 2003 on its 22nd meeting after the Doha Round scheduled its own negotiations, which focused on paragraph 20, 21, 22, 23, 25, 26 and 27 of the Doha Declaration.²⁰⁴ The respective paragraphs included issues like “exceptions and balance of payment safeguards, settlement of disputes between members, a stocktaking and analysis of existing agreements regarding trade and investment (bilateral, regional, WTO provisions); and a set of miscellaneous issues that included analysis of the advantages and disadvantages of entering into bilateral, regional and international rules on investment, including from a development perspective”.²⁰⁵

On the advantages and disadvantages of multilateral rules on investment, the OECD presented information that was conducted by its Committee on Investment and Multinational Enterprises (CIME).²⁰⁶ The information projected that FDI on economic development constitutes disadvantageous and advantageous effects for host countries.²⁰⁷ The advantageous effects include FDIs involvement on productivity and welfare. Thus, the more advanced integration of the host countries into the global economy means enormous experience for technology transfers and human capital progression.²⁰⁸ Information on the disadvantageous effects includes probable decline in the balance of payments, restricted backward linkages to the domestic economy and adverse effects on local competition.²⁰⁹ However, CIME also indicated that disadvantageous effects will not outweigh the advantages of FDI, if host nations are placed in a position to regulate the activities of multinational enterprises and to sustain adequate policy space for development objectives.²¹⁰

²⁰² Doha WTO Ministerial Conference 2001 available at http://www.wto.org/english/thewto_e/minist_e/min01_chair_speaking_e.htm accessed on 13 July 2014

²⁰³ Note 194 above, 7

²⁰⁴ Note 183 above, para 5

²⁰⁵ RIIA and IISD ‘Investment, Doha and the WTO’, (2003) page 6 available at http://www.iisd.org/pdf/2003/investment_riia_iisd.pdf accessed on 5 August 2014

²⁰⁶ Note 183 above, para 293

²⁰⁷ Ibid, para 294

²⁰⁸ Ibid para 294. See also, note 5 above, 1

²⁰⁹ Ibid para 294

²¹⁰ Ibid para 294

In 2003 under the chairmanship of Ambassador de Seixas Correa, developed countries agreed that the task of the Working Group, which was to provide clarity on the aims and outlooks of members behind the impact of multilateral rules on investment, was complete.²¹¹ Therefore, the next step was to move negotiations to a WTO Ministerial level. However, developing countries shared different views and contended that the task of the Group was not complete because they still lacked clarity on the implications behind multilateral investment rules.²¹² From the arguments presented, it became clear that developing countries wanted the negotiations for multilateral investment rules to be staged under the Working Group before placing them at a WTO Ministerial level.²¹³ Members of the EU recalled that the sole mandate of the Working Group was not to negotiate but to discuss and bring clarity of the issues surrounding multilateral investment rules.²¹⁴

The Working Group ended with enormous disagreements between the parties. Nevertheless, the chairman acknowledged that the commitments of the Working Group had been outstanding in fulfilling their tasks and further acknowledged the commitments of all organisations, who participated in the group.²¹⁵ Following this was the 5th Ministerial Conference of the WTO, which was held in Cancun, Mexico 2003.²¹⁶ Ministers at this round sought explicit consensus for the inclusion of the Singapore issues as part of the DDA.²¹⁷ However, no consensus could be reached as neither of the parties was willing to lax their interest in favour of the other. A group of 20 countries (G20) led by India, China, Brazil, Mexico and South Africa represented the interests of 70 developing member countries. G20 representatives adopted a firm stance on their rejection to include under negotiations the Singapore issues and suggested that the Working Groups should continue their task of providing clarity on the Singapore issues.²¹⁸ On the other hand developed countries persisted to put pressure on developing countries for the inclusion of the Singapore issues at this round. During the fray, both oppositions adopted blackmailing tactics.²¹⁹ Thus, developing countries proposed that they were willing to negotiate the Singapore issues on condition that developed

²¹¹ WTO, Working Group on the Relationship Between Trade and Investment: WT/WGTI/M/22 (2003) paragraph 77

²¹² Note 192 above, 9

²¹³ Ibid 9

²¹⁴ Note 211 above, para 77

²¹⁵ Ibid para 77

²¹⁶ NS. Bansal *'The World Trade Organisation'* 1sted (2007) 771

²¹⁷ Note 205 above, 6

²¹⁸ WTO, Working Group on the Relationship Between Trade and Investment: WT/WGTI/M/18 (2002) paragraph 294

²¹⁹ Note 192 above, 9

countries were to make commitments for a reform of agricultural policies.²²⁰ Whereas developed countries also contended that there would be no reduction of agricultural subsidies, unless developing countries were willing to enter into negotiations for Singapore issues.²²¹

The conference was chaired by Luis Enersto Debez, who proposed that the Singapore issues be separated into two groups, upon which the first group is put under negotiations and the other be postponed for the next Ministerial Conference.²²² The chairman's Declaration on Paragraph 14 (investment) and paragraph 15(competition) proposed for a postponement of these issues.²²³ However, paragraph 17 on government procurement along with paragraph 18 on trade facilitation proposed negotiations at the present meeting.²²⁴ Developed countries agreed to the Chairman's proposal but developing countries presented that they were not prepared to negotiate any of these issues. The controversies surrounding the issues resulted to the parties agreeing to drop the Singapore issues and reaching no agreement on agricultural subsidies.²²⁵

However, on the part of the EU, dropping the Singapore issues appeared to be a façade because they were willing to rescue the issues provided that developing countries were willing to do the same.²²⁶ A meeting on Singapore issues was held at the WTO after the Cancun Conference where the EU caused further complications by proclaiming that it was willing to drop one or two or three or even all the Singapore issues in a single undertaking.²²⁷ There was no clear indication on behalf of the EU delegates what was the insinuation behind this statement. At the meeting it transpired that developing countries also did not understand their intention when saying they were willing to drop the issues.²²⁸ The sole cause of the controversies was due to the fact that the word "drop" has different implications depending on the terms surrounding it.²²⁹ An attempt was made to bring clarity of the word. After a round of discussions the parties agreed on one meaning of the word "drop" and stated that the

²²⁰ The agricultural policy draws attention on the following three pillars: (i) Market access for agricultural products exported by developing countries to developed countries. (ii) Domestic support in the form of subsidies, which reduces import levels in developed countries. (iii) Export subsidies which have a negative impact on the competitiveness of farmers from developing countries. See, Note 194 above, 70

²²¹ Note 192 above, 15

²²² Ibid 15

²²³ Note 215 above para 300

²²⁴ Note 194 above 14

²²⁵ RR.Yallapragada& others ' The Have Not's Have It: Triumph Of Developing Countries At The World Trade Organization Meeting In Geneva' (2005) 4(1)IBERJ: 61-63

²²⁶ Note 194 above, 15

²²⁷ Ibid 15

²²⁸ Ibid 14

²²⁹ Ibid 15

word means the issues would no longer be discussed or negotiated in any event.²³⁰ The parties however agreed to continue discussions on issues relating to trade facilitation.

According to Yallapragada²³¹ “the fall of the Seattle Ministerial Conference represented a loss of confidence in the WTO agenda. In order to win back this confidence, the organisation has to address the needs and interests of all members”. In an attempt to gain such confidence, WTO members launched the 6th Ministerial Conference at Hong Kong in 2005 to engage on issues that will shape the final agreement of the DDA.²³² The conference was considered to be a success compared to the previous WTO rounds because progress was made on all the issues covered in the DDA.²³³ However, the round was subject to criticism because it was branded with partial modalities in contrast with the Doha Declaration text, which required full modalities on all the issues. Heydon²³⁴ considered that “notwithstanding this progress, the overall result leaves an enormous amount of work still to do”.

In 2009, WTO members held the 7th Ministerial Conference at Geneva, but members agreed that the round will not be a negotiated Ministerial Conference.²³⁵ In this conference Ministers only reaffirmed their willingness to complete the DDA in 2010 and recognised that Regional Trade Agreements should be seen as an important step of international integration, especially for LDCs.²³⁶ Grammling²³⁷ suggests that the round was just a waste of time in that it did not serve any public interest because there was no political effort to conclude the DDA.

The slow progress of completing the DDA resulted to members at the Bali Ministerial Conference adopting a new approach in the negotiations.²³⁸ The new approach entailed the identification of a small package (Bali Package) encompassing issues that are less complex

²³⁰ For further clarity on the meaning of drop see, Appendix 1 on Ibid 41

²³¹ Note 225 above, 64

²³² Competition News ‘Towards a free and fair economy for all: An Overview of the WTO’s 6th Ministerial Meeting in Hong Kong’, Edition 23. March(2006) page 2 available at <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/March-06-Newsletter.pdf> accessed on 27 October 2014

²³³ K. Heydon ‘After the WTO Hong Kong Ministerial Meeting: What is at stake?’, OECD (2006) Working Paper No. 27 page 3 available at <http://www.oecd.org/tad/35984888.pdf> accessed on 27 October 2014.

²³⁴ For example: “In agriculture, the so-called core modalities, the formulas for cutting tariffs and subsidies, were left unresolved. And the commitment in respect of market access for the products of least developed countries is weakened by the fact that the obligation relates only to, at least, 97% of products originating from LDCs. See, Ibid 3

²³⁵ I. Hjertman& others ‘Notes from the WTO 7th Ministerial Conference held in Geneva’, AIPPI (2009) Page 1 available at <https://www.aippi.org/download/committees/94/Report94Report+7th+Ministerial+Conference+of+WTO+GenevaEnglish.pdf> accessed on 28 October 2014.

²³⁶ Note 59 above, 3

²³⁷ Ibid 3

²³⁸ The Bali Ministerial Conference was held in December 2013 at Bali, Indonesia

for reaching an agreement on.²³⁹ Issues on the Bali Package were trade facilitation, agriculture and development issues. The final agreement of the conference is a three page Declaration containing decisions on all the issues. Bendini²⁴⁰ argues that the agreement will result to an increase of world GDP by \$1 trillion. The newly appointed Director General of the WTO, viz. Roberto Azevêdo²⁴¹ considered the agreement as huge success and an indication that the completion of the DDA is looming.

2.5. Conclusion

This chapter has attempted to discuss the history of the MTS by presenting various issues that have been put on the table for multilateral trade negotiations. In this discussion, it has been established that the initial Ministerial rounds of the MTS under the GATT, were basically concerned with the reduction of tariffs between the contracting partners.²⁴² This made the negotiation process to be much easier for reaching an early agreement. However, at the Kennedy round Ministers adopted a dynamic approach that entailed the negotiation of various issues affecting international trade.²⁴³ The approach has been followed ever since and it has made the negotiation process longer and much more complex than it used to be. This was evident from the Uruguay and Doha rounds, which lasted longer than any other GATT Ministerial round of negotiations.

The chapter has also established that the MTS has gained significant support from all sectors of the economy, in that beginning with only 23 contracting parties under the GATT, the number has increased to 160 members under the WTO. This indicates that the MTS is widely recognised as an important source for increasing international trade, which leads to economic growth and development. However, it was also established that the increase of members has contributed to the diversification of common interests between members. This was evident from the failed attempt of negotiating Singapore issues and the marginalisation of some member countries. Although an attempt was made to consolidate competing interests among members at the Doha round, there has not been much success.

²³⁹ FAO Trade Policy Briefs 'The Bali Package - implications for trade and food security' No. 16 page 1 available at <http://www.fao.org/docrep/019/i3658e/i3658e.pdf> accessed on 28 October 2014

²⁴⁰ R. Bendini 'WTO back on track after Bali', European Parliament (2013) DG EXPO/B/PolDep/Note/2013_27 page 3 available at [http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/522314/EXPO-INTA_SP\(2013\)522314_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/522314/EXPO-INTA_SP(2013)522314_EN.pdf) accessed on 28 October 2014.

²⁴¹ Ibid 3

²⁴² Note 91 above, 179

²⁴³ Note 139 above, 534

It follows from this that the WTO has been subject to much criticism than its predecessor. However, it is important to note that WTO critics have been divided into three classes.²⁴⁴ The first is the radicals, who reason that the WTO is built in a house of cards and there for must be blown away.²⁴⁵ The second class consists of reformers, who consider that the organisation has the potential to account and deliver but requires enormous structural reforms and adjustments.²⁴⁶ Finally, the confirmers, who think that the WTO is doing a great deal of work but just like any other organisation, it may be subjected to minor challenges.²⁴⁷

CHAPTER THREE

²⁴⁴ SA.Alqadhafi 'Reforming the WTO: Toward More Democratic Governance and Decision-Making', Gaddafi Foundation for Development (2007) page 2 available at http://www.wto.org/english/forums_e/ngo_e/posp67_gaddafi_found_e.pdf accessed on 24 July 2014

²⁴⁵ Ibid 2

²⁴⁶ Ibid 2

²⁴⁷ Ibid 2

TRADE INTEGRATION LEAD TO DEVELOPMENT

3.1. Introduction

Over the years, international trade has presented itself to be a major source for enhancing development and modernisation.²⁴⁸ This is largely influenced by the fact that international trade offers a wide range of commercial opportunities that can be utilised to increase economic growth and alleviate poverty.²⁴⁹ It is in this context that countries all over the world participate in cross border trade by exploiting their comparative advantage, which enables them to benefit through resource allocation.²⁵⁰ In 2000 the United Nations reasoned that international trade is a source of income that can be used for the attainment of Millennium Development Goals (MDGs) and targets set out in the United Nations (UN) Millennium Declaration.²⁵¹

The attainment of the MDGs and its targets are very crucial for development because their attainment is understood to be another step forward towards a progressive realisation of the right to development.²⁵² However, although developed and some developing countries have been able to utilise trade as a source of meeting their development needs, most developing and LDCs have failed to do the same. This is not because these countries lack any comparative advantage but this is due to the high transaction costs and other trade barriers facing their exports to other nations.²⁵³ It follows from this that goal 8 of the UN Millennium

²⁴⁸ P. Abbott & others 'Trade and Development: Lessons from Vietnam's Past Trade Agreements' (2008) 37(2)WD: 341-344

²⁴⁹ 'Trade has the potential of being a significant force for reducing global poverty by spurring economic growth, creating jobs, reducing prices, increasing the variety of goods for consumers, and helping countries acquire new technologies'. See, Centre for Global Development 'Rich World, Poor World: A Guide to Global Development available at www.cgdev.org/files/2853_file_GLOBAL_TRADE_DEV1.pdf accessed on the 10th of August 2014

²⁵⁰ Note 5 above, 8

²⁵¹ The following are MGDs (i) To eradicate extreme poverty and hunger; (ii) To achieve universal primary education; (iii) To promote gender equality and empower women; (iv) To reduce child mortality; (v) To improve maternal health; (vi) To combat HIV/AIDS, malaria and other diseases; (vii) To ensure environmental sustainability; and (viii) To develop a global partnership for development. See, S. Diana. "United Nations Millennium Development Goals: Progress Chart" (2012) available at http://www.un.org/millenniumgoals/pdf/2012_Progress_E.pdf accessed on 16 October 2014

²⁵² Report of the Working Group on the Right to Development: Question of the realisation of the right to development (1993) available at <http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx> accessed on 13 October 2014.

²⁵³ I. Haque 'Doha Development Agenda: Recapturing the Momentum of Multilateralism and Developing Countries' (2001) 17AUJLR: 1098-1099

Declaration pressures for the need of integrating LDCs and developing countries into the WTO in a manner that will enable them to exploit their comparative advantage.²⁵⁴

Evidence in the empirical works indicates that, if LDCs and developing countries were more integrated into the world economy, they would have been able to reap substantial benefits from international trade.²⁵⁵ In the recent multilateral negotiations at the WTO under the auspices of the DDA, members have said that they aim to facilitate the integration of LDCs and developing countries into the world economy.²⁵⁶ Evidence in the literature indicates that this would enhance their economic growth and provide them with adequate resources in dealing with their development needs.²⁵⁷

Although the concluding of the DDA is progressing very slowly, members have been able to reach an agreement on some issues considered to be significant for developing and LDCs.²⁵⁸ Among others, such agreements include the Duty Free Quota Free market access (DFQF), agriculture, Aid for Trade and Trade Facilitation.²⁵⁹ These agreements are considered to be beneficial for poor countries. For example; the granting of DFQF by developed countries and some developing countries lead to LDCs countries increasing their exports figures, which contributed to their increased global trade average in 2012.²⁶⁰ However, despite these agreements the WTO has failed to fulfil the interests of developing and LDCs in that their development objectives have not been fulfilled. As a result many countries are beginning to lose faith in the WTO as an organisation for multilateral trade negotiations. Thus, most countries are now concentrating on Regional Trade Agreements (RTAs) for facilitating trade.

²⁵⁴ S. Diana. "United Nations Millennium Development Goals: Progress Chart" (2012) available at http://www.un.org/millenniumgoals/pdf/2012_Progress_E.pdf accessed on 16 October 2014

²⁵⁵ It wasn't until the 80s when developing countries began to see the need of integration into the world economy. Before then, developing countries were reluctant to take the initiative of international integration due to the following reasons: Firstly, the demand of exports from developing countries was not growing at a rapid pace. Secondly, they perceived that the rules and terms of international trade would have a negative impact on their development interests. See, RM. Kavoussi 'International Trade and Economic Development: The Recent Experience of Developing Countries', (1985) *19(3)CBTSUJDA*: 379-385. See also, Note 5 above, 48

²⁵⁶ Note 253 above, 1107

²⁵⁷ J. Meltezer The 2013 WTO Bail Ministerial: Prospects and New Horizons: WTO (2013)

²⁵⁸ K. Anderson & V. Valenzuela 'The world trade organisation's Doha cotton initiative: A tale of two issues' *The World Economy* (2007)

²⁵⁹ Ibid

²⁶⁰ The World Bank Report (2013) page 9 available at http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1322665883147/WDR_2013_Report.pdf accessed on 29 September 2014

RTAs are considered to be another form of trade integration. Of particular interest on this thesis is the SADC RTA.²⁶¹ The SADC region has witnessed slow change in their global trade figures.²⁶² Considerable research indicates that the lethargic pace of trade beneficiation for SADC is attributed to two reasons. Firstly, it is the failure of reaching a comprehensive conclusion of the Doha Development Agenda (DDA).²⁶³ Secondly, it is the failure of integration within the region as it is believed that regional integration enhances international integration for member countries.²⁶⁴ The region has failed to conclude a customs union after their successful conclusion of the Free Trade Agreement (FTA).²⁶⁵ Among other reasons for such failure is the overlapping of membership in RTAs.²⁶⁶

Therefore, this thesis argues that the lack of international and regional integration in SADC has contributed to the slow pace of development within the region, in particular fulfilling MDGs provided for in the UN Millennium Declaration. In examining this argument, the thesis under this chapter will be answering the following question: Does Trade Integration Lead to Development? In answering this question, this chapter will start by discussing the concept of development and the right thereof. Secondly, the chapter will also critically discuss the DDA, in particular some of the agreements that have been concluded which seek to integrate developing and LDCs into the global trade. The penultimate of this chapter will be to critically discuss regional integration in SADC.

²⁶¹ The recent members of the SADC comprises of the vast majority of least developed countries and a slight minority of developing countries Least developed countries in SADC include Malawi, Madagascar, DRC, Lesotho, Mozambique, Tanzania, Zambia and Zimbabwe. Developing countries include South Africa, Swaziland, Botswana, Angola, Mauritius, Seychelles and Namibia. See, The United Nations list of least developing countries and developing countries available at http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf accessed on the 21st of September 2014. See also, The impotence of Trade for Developing countries' World Bank (1987) Discussion Paper, Report No. DRD248 and Ibid 9

²⁶² Ibid 9

²⁶³ B. Antoine & D. Laborde 'The potential cost of a failed Doha Round', International Food Policy Research Institute (2008) available at <http://www.ifpri.org/sites/default/files/publications/ifpridp00886.pdf> accessed on 15 of October 2014

²⁶⁴ EM.Sulliman (ANC) 'Establishment of the Southern African Development Community (SADC) Customs Union as envisaged with the establishment of the SADC Free-Trade Agreement in 2008 and cost of the SADC Customs Union': SA International Relations and Cooperation (2012) Question Paper No. 7-2012 of 22 August 2012. See also, F. Laursen 'Theory and Practice of Regional Integration: Jean Monnet/Robert Schuman Paper Series, EU Commission (2008) Vol. 8 No. 3 available at <http://aei.pitt.edu/8219/1/LaursenLongSympos08RegIntegedi.pdf> accessed on 15 October 2014

²⁶⁵ Lewis, Jeffrey others 'Free trade agreements and the SADC economies' *Journal of African Economies* 12.2 (2003): 156-206

²⁶⁶ Apart from Angola and Mozambique SADC member countries are also member of other regional agreements. See, A. Zembele 'Achieving Deeper Integration in Southern Africa: The Case of SADC Customs Union' (2011) available at http://www.dounia-risri.net/IMG/pdf/Dounia4_pp24-36.pdf accessed on 28 August 2014

3.2. Development

The United Nations (UN) Declaration on the right to development defines development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from”.²⁶⁷ This is the most comprehensive definition of development and it is also in line with that of the World Bank.²⁶⁸ The World Bank defines development as a goal aimed at increasing domestic wealth by improving the well-being of the majority of the population by ensuring free exercise of solidarity rights and increasing economic security of the nation.²⁶⁹ Both these definitions appear to shift the emphasis away from the notion that development encompasses only the aspect of economic growth; as it includes a wide range of aspects that influence the development of developing and LDC countries.²⁷⁰ It follows from both definitions that development is not only a process but it is also a right, which must be enjoyed by everyone.

3.2.1 The right to development

Development is an international right, which is entrenched in the UN Declaration on the right to development.²⁷¹ In drafting this right, the UN Commission on Human Rights was guided by the Working Group of Governmental Experts on the Right to Development.²⁷² The Working Group was established for the “studying of the scope and content of the right to development and to ensure its progressive realisation in all countries, of the economic, social and cultural rights enshrined in various international instruments, paying particular attention to the obstacles encountered by developing countries in their efforts to secure the enjoyment of human rights”.²⁷³ The UN Declaration emphasises the need of effective international aid

²⁶⁷ Article I of the United Nation General Assembly Declaration available at www.un.org accessed on the 18 of August 2014

²⁶⁸ World Bank ‘economic growth and human development’ available at http://www.worldbank.org/depweb/beyondco/beg_01.pdf accessed on the 16 of August 2014

²⁶⁹ Ibid 13

²⁷⁰ Report of the Working Group of governmental experts on the right to development: United Nations Commission on Human Rights (1981) item 8

²⁷¹ The United Nation General Assembly adopted a Declaration for a progressive realisation of the right to development. United Nations General Assembly (UNGA) A/RES/41/128

²⁷² Report of the Working Group on the Right to Development: Question of the realisation of the right to development (1993)

²⁷³ United Nation Human Rights: The Working Group of Governmental Experts on the Right to Development (1981-1989) available at <http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx> accessed on 21 August 2014

that aims to provide to developing countries, adequate measures for the enhancement of inclusive development.²⁷⁴

A prime example which seeks to collaborate with the required need of international aid is the WTO Aid-for-Trade (AfT) initiative, which was endorsed in 2005 at the 6th Ministerial Conference held in Hong Kong.²⁷⁵ The initiative seeks to further integrate LDCs and Developing countries into the global economy by increasing their exports in goods and services so that they can be able to reap the full benefits of trade liberalisation and strengthen their market size.²⁷⁶ It is important to note that although the AfT initiative does not fall under the auspices of the DDA is however a complementary thereof.²⁷⁷

AfT seeks to address the notion that in developing LDCs countries, trade liberalisation will hamper their economic growth to the benefit of others. This notion lies in the fact that whilst developed countries have all the resources of taking advantage of trade liberalisation, developing and LDCs do not. Therefore the initiative strives to provide resources needed by developing and LDCs that will assist them in improving their economic growth through trade in a liberalised regime.²⁷⁸ There are four categories of AfT, which include: (i) trade related technical assistance (ii) trade related infrastructure and (iii) aid to develop productive capacity.

Article 2 of the UN Declaration recognises human beings as subjects of development and confers upon them a right of active participation in the development process to their benefit.²⁷⁹ Governments are bestowed with a right and an obligation of ensuring a progressive realisation of the right to development by establishing and promoting an international and a national environment that is favourable to the development process.²⁸⁰ Governments are the representatives of the state in a normal democratic process and they are elected by the people to represent their interest. As such these bodies, under article 2 can be interpreted as such that

²⁷⁴ ID. Bunn, Right to Development: Implications for International Economic Law, (2000) *15(6)AUILR*: 1426-1453

²⁷⁵ NS. Bnsal (note 216 above) 858

²⁷⁶ N. Julia 'Aid for Trade' *Trade, Doha, and Development* (2006): 323.

²⁷⁷ This it does by supporting the trade reform policy under the DDA which is aimed at providing trade support to developing countries so that they can be able to exploit their comparative advantage on trade. See, IMF 'Executive Board Discusses Doha Development Agenda and Aid for Trade', Public Information Notice (PIN) No. 06/105 (2006) available at <https://www.imf.org/external/np/sec/pn/2006/pn06105.htm> accessed on 15 October 2014

²⁷⁸ M. Cali' & DW. Velde 'Does Aid for Trade Really Improve Trade Performance?', Elsevier Ltd (2010) *World Development* Vol. 39, No. 5

²⁷⁹ Article 2 of the United Nation Declaration on the Right to Development

²⁸⁰ Ibid

they have to create a lucrative and favourable economic condition within the state to ensure the development of their citizens. In other words, they have to put in place trade and investment policies that ensure development so as to achieve a progressive realisation of the right to development.

The right to development is important and unique in that it also places a duty on various economic drivers to take action in achieving its progressive realisation. The UN Working Groups on the right to development (which were responsible for the adoption and the implementation of the right to development) acknowledged the role played by the international community, governments, MNCs and the private sectors as a whole in ensuring a progressive realisation of the right to development.²⁸¹ One of other means to ensure a progressive realisation and cooperation of all players is by recognition and the establishment of Millennium Development Goals focused on attaining development.

3.2.2. Millennium Development Goals

The concerted participation between the international community and various states for the enhancement of development led to the establishment of Millennium Development Goals (MDGs).²⁸² These goals were adopted by 191 countries in 2000 under the United Nations Millennium Declaration.²⁸³ The MDGs operate as an internationally shared framework that consist of a set of goals and targets that must be met by all countries before 2015.²⁸⁴ The MDGs aim to reduce the dreadful level of poverty for at least 50%, ensure that every child is enrolled in school, promote gender equality by empowering women, facilitate sustainable development and provide reproductive health service.²⁸⁵

Of particular interest to this thesis is goal 8. This goal of the MDGs aims to enhance the multilateral trade system in a comprehensive manner that will address and deal with the needs and interests of least developed countries and developing countries.²⁸⁶ Recognising that MDGs could be achieved through international trade, members of the WTO agreed to engage

²⁸¹ Report of the Working Group on the Right to Development: Question of the realisation of the right to development (1993) available at <http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx> accessed on the 13 of October 2014.

²⁸² United Nations Development Agenda: Development for All (2007)

²⁸³ United Nations Millennium Declaration available at (2000) available at

<http://www.un.org/millennium/declaration/ares552e.pdf> accessed on 16 October 2014

²⁸⁴ United Nations Development Programme: Division of Public Affairs (2003) Vol. 12. No. 2

²⁸⁵ M. Darrow 'The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda' (2012) *15(1)YHRDJ*: 55-82

²⁸⁶ *Ibid* 87

on a concerted effort to try and create an enabling environment for underdeveloped countries.²⁸⁷ This means that underdeveloped countries must be provided with a wide range of trade opportunities that will enhance their economic and development objectives.²⁸⁸ These opportunities can be provided through trade liberalisation in developed countries for exports originating from developing and LDCs.

The MDGs also identify the agricultural sector to be an important area for developing countries, since they have a comparative advantage on agricultural products.²⁸⁹ This is a clear indication that, if developed countries were to liberalise trade barriers for agricultural products, developing and LDCs countries could reap substantial benefits.²⁹⁰ However, over the years, the agricultural sector has proven to be the most protected area in most countries, especially in developed countries.²⁹¹ It is in this context that WTO members under the DDA have engaged in negotiations, which strive for the liberalisation of products from LDCs countries.²⁹² The negotiations have resulted to a unanimous agreement by all members to offer Duty Free and Quota Free market access for products exported by LDCs.²⁹³ This thesis argues that examining this agreement along with other agreements under the DDA is very important for LDCs and developing countries because they are agreements upon which development progress can be achieved.

3.3. Doha Development Agenda

In 2001 the WTO held a Ministerial conference called the Doha Round, which resulted in the DDA.²⁹⁴ The DDA was launched in 2001 at Doha and it aims to address the interests and needs of developing countries and LDCs, who were previously disenfranchised in the international trading system.²⁹⁵ There has been considerable evidence in the literature pointing to the fact that the conclusion of the DDA will be beneficial to the countries that

²⁸⁷ Note 197 above, 2

²⁸⁸ WTO 'Millennium Development Goals: Doha Development Agenda available at http://www.wto.org/english/thewto_e/coher_e/mdg_e/dda_e.htm accessed on the 18 of August 2014

²⁸⁹ Ibid

²⁹⁰ OECD Policy Brief: The Doha Development Agenda: Tariffs and Trade (2003)

²⁹¹ CRS Report for Congress 'WTO Doha Round: The Agricultural Negotiations (2006) page 4 available at <http://fpc.state.gov/documents/organization/61057.pdf> accessed on the 14 of September 2014

²⁹² Note 197 above, 5

²⁹³ Ibid 5

²⁹⁴ Ibid 3

²⁹⁵ Developing countries were disenfranchised in the multilateral trading system to the extent that the implantation of the commitments in Uruguay Round agreement became hard and costly to implement. See, TN. Srinivasan 'Developing Countries and the Multilateral Trading System After Doha', Economic Growth Centre (2002), Discussion Paper No.842 available at http://www.econ.yale.edu/growth_pdf/cdp842.pdf accessed on 21 of October 2014.

were marginalised by the previous rounds of the multilateral trade system.²⁹⁶ It follows from this that the DDA was believed to be able to present a robust development element in the WTO.²⁹⁷

From its inception, the DDA acknowledged that the MTS has played a significant role in enhancing development through economic growth and job creation in the last 50 years.²⁹⁸ Therefore, the DDA seeks to increase in economic growth through international trade integration so as to alleviate poverty and provide opportunities and welfare gains for all member countries of the WTO.²⁹⁹ In a sample of 15 countries, the estimated gains upon the conclusion of the DDA are summed up as amounting to \$115 billion annually.³⁰⁰

The DDA focuses on the certain issues as being of paramount importance for development in developing countries. These issues include ‘trade facilitation, agriculture, duty-free quota-free market access and provisions for special and differential treatment in trade rules’.³⁰¹ The DDA also considers that the needs and interests of developing countries revolve around the issue of a lack of understanding and appreciating of long-term implications of closer multilateral cooperation.³⁰² It provides that in order for developing countries to be able to reach their development goals; they must understand the implications behind closer multilateral cooperation on their development policies and objectives.³⁰³

However, the differences between members participating in the DDA and the complexities that arise on the issues under negotiations have made it difficult for members to reach an agreement on the conclusion of the round.³⁰⁴ Of interest, and which is not surprising is that the most significant differences are between developed and developing countries. These differences vary from issues such as non-tariff barriers, industrial tariffs, agriculture, trade

²⁹⁶ A Doha Development Agenda was launched in the 4th Ministerial round of negotiations in Qatar under the WTO. The language adopted in the DDA declaration sought to change the portrait of international trade, thus restructuring it to favour development. See, Note 252 above 1112

²⁹⁷ Note 59 above, 3

²⁹⁸ Doha Declarations: WTO (2001)

²⁹⁹ Ibid

³⁰⁰ Note 287 above

³⁰¹ Note 197 above, 9

³⁰² Ibid 18

³⁰³ B. Hoekman ‘, Strengthening the global trade architecture for development: the post Doha agenda’ (2002) *I(1)WTRWBCEPR*:1-5

³⁰⁴ Developing countries under the DDA negotiations were represented by Brazil, India, China and South Africa. Whereas developed countries were represented by the EU (European Union) and the US (United States of America). See, A. Bouet and D. Labourde ‘Why is the Doha Failing? And what can be done? : International Food Policy Research Institute (2009) Discussion Paper No. 00877

remedies and services.³⁰⁵ As such, these and other issues such as raised oil prices and lack of government support have also contributed in the continued failure to conclude the DDA negotiations.³⁰⁶

However, despite having dealt with the failure of concluding the DDA, it is of necessity to briefly discuss some of the decisions reached by Ministers at the Hong Kong and the Bali Ministerial Conferences. The Hong Kong Ministerial Conference was the 6th in the WTO and it resulted to a Ministerial Decision on the Duty-Free Quota-Free (DFQF) market access.³⁰⁷ On the other hand the Bali Ministerial Conference was the 9th in the WTO and it resulted to a Ministerial Decision on Trade Facilitation and Agriculture.³⁰⁸ These decisions will now be considered in the following sub-sub sections.

3.3.1. Duty Free Quota Free Market Access

The UN Millennium Declaration settled that developed countries should provide duty free, quota free market to products originating from least developed countries (LDC's).³⁰⁹ Under the declaration it was agreed that this will have a positive impact on both developing countries and LDC's as it has the potential of enhancing their integration in the world economy.³¹⁰ At the WTO Ministerial at Hong Kong, the members of developed countries agreed on the UN declaration and attested that they will grant products from LDC's DFQF market access of at least 97%.³¹¹ Initially, the proposed percentage was 100% but was

³⁰⁵ Y. Decreux & L. Fontagne 'What did happen in the DDA? Quantifying the role of negotiation modalities', CEPII Working Paper (2013) page 3 available at http://www.cepii.fr/PDF_PUB/wp/2013/wp2013-38.pdf accessed on 9 October 2014

³⁰⁶ Restrictions on international trade deter economic growth and development. Trade restrictions are commonly applied by developed countries on export originating from developing countries, whereas, developing countries have liberalised their trade regime for developed world exports. For this reason it has been argued that the vast majority of developing countries that deepened their integration to the world economy by liberalising their trade have accumulated substantive income rates than those that did not. See P. Abbott & others 'Trade and Development: Lessons from Vietnam's Past Trade Agreements': Elsevier Ltd (2008) 37(2)WD: 341–355. See also, World Bank, Envisioning alternative futures: Reshaping global trade architecture for development (2002) page 153 available at <http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200370513/06--Ch6--152-186.pdf> accessed on 29 September 2014

³⁰⁷ NS. Bansal (note 216 above) 857

³⁰⁸ This conference was held at Bali in 2013 and it resulted to the so called 'Bali Package'. See A. Jatkar & C. Mukumba 'Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members', CUTS International Discussion Paper (2014) page 1 available at http://www.cuts-citee.org/pdf/Unpacking_the_Bali_Package-A_Snapshot_of_the_Bali_Ministerial_Decisions_of_the_WTO_Members.pdf accessed on 21 November 2014.

³⁰⁹ A. Bouet & others 'The Costs and Benefits of Duty-Free, Quota-Free Market Access for Poor Countries: Who and What Matters', Centre for Global Development (2010) Working paper 206 page 1 available at <http://www.ifpri.org/sites/default/files/publications/ifpridp00990.pdf> accessed on 4 September 2014

³¹⁰ Ibid 7

³¹¹ Note 287 above

reduced upon request by the USA to 97%.³¹² Some developing countries were also invited to provide Duty Free Quota Free market access as this was believed to be in their capacity.³¹³

The granting of DFQF market access by developed countries and some developing countries, who believe that they are in a position to do so, will assist LDCs to diversify their exports.³¹⁴ To date, LDCs exports to developed countries are duty free due to zero ratings, preferences and free trade agreements.³¹⁵ However, countries in the developed world that chooses to limit DFQF access to 97% instead of 100% tariff lines as agreed in the Hong Kong Ministerial Declaration are restricting a large share of exports from least developed countries.³¹⁶ Therefore, certain products that are of particular importance to poor countries such as agriculture and textile are still subjected to high trade tariffs in developed countries.

3.3.2 Trade Facilitation

Trade facilitation has been discussed under the WTO ever since the first ministerial round.³¹⁷ The core measures behind trade facilitation deal with customs procedures, so as to “increase producer surplus for exporting countries, and consumer surplus for importing countries”.³¹⁸ This would be done by rooting-out the so called ‘red tape’ and ‘bureaucratic’ trade obstacles.³¹⁹ These obstacles are proven to be one of the most hindering sources of expanding multilateral trade, especially for land locked countries.³²⁰ Empirical evidence in the literature indicates that transition costs in land locked countries are very high due to stringent red tape and bureaucratic trade obstacles.³²¹ High transition costs are considered to be detrimental for exporters and consumers, in that where an exporter incurs losses due to high transition costs,

³¹² D. Laborde ‘Looking for a meaningful Duty Free Quota Free Market Access Initiative in the Doha Development Agenda’, ICTSD (2008) Issue Paper No. 4 page 9 available at <http://www.ictsd.org/downloads/2009/01/labrodeweb.pdf> accessed on 9 August 2014

³¹³ Note 308 above, 1

³¹⁴ Note 311 above, 11

³¹⁵ Note 302 above, 4

³¹⁶ Note 116 above, 3

³¹⁷ C. Bellmann ‘The Bali Agreement: Implications for Development and the WTO’, Articles and Debates (2014) available at <http://poldev.revues.org/1744#tocto2n3> accessed on 2 December 2014

³¹⁸ B. Hoekman ‘The WTO Trade Facilitation Agreement: Milestone, Mirage, or Mistake?’, EUI and CEPR Draft (2014) page 9 available at <https://www.sais-jhu.edu/sites/default/files/Hoekman.pdf> accessed on 2 December 2014

³¹⁹ The ‘red tape’ and ‘bureaucratic’ trade obstacles include ‘delays at borders, lack of transparency and predictability, complicated requirements and other out dated custom procedures’. See, M. Engman ‘The Economic Impact of Trade Facilitation’, OECD (2009) Trade Policy Working Paper No. 21

³²⁰ P. Kanyimbo ‘Trade Facilitation in the Bali Package: What’s in it for Africa’ ECDPM Brief Note (2013) <http://ecdpm.org/wp-content/uploads/BN-61-Trade-Facilitation-Bali-What-is-in-it-for-Africa.pdf> accessed on 2 December 2014

³²¹ M. Evdokia& S. Sorescu ‘Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade’. OECD (2013) Trade Policy Work Paper No. 144

the only recourse available is to increase prices for consumers. As a result, exporters will not be able to compete with local suppliers, and in the case of a highly demanded product, consumers will have to purchase it at a high price.

It follows from this that the trade WTO Ministers considered the initiative to be an important movement under the DDA. Furthermore, the trade facilitation agreement could also result in substantial tax revenues for governments, in that they will process an increased number of goods and they could be in a position of developing substantial measures of dealing with fraud.³²² The agreement also makes special provisions for developing countries by stating that when the agreement enters into force, they can choose any provision they are willing to implement.³²³ The perceived outcome of the DDA on trade facilitation could have a positive outcome for developing countries in that it will lead to an increased GDP of \$1 trillion annually in which a vast share going to developing countries, which in turn could assist in such countries economic development.³²⁴

However this thesis argues that the differences on import and export elasticity may have an adverse impact on economic growth for developing countries.³²⁵ Hence, from a demand and production side, export volumes in developing countries are lower when compared with developed countries and are concentrated in primary commodities with low value added.³²⁶ Consequently, import volumes are higher in developing countries than in developed countries and are concentrated in secondary commodities with high value added.³²⁷ Therefore, this means that the trade facilitation agreement will be far more beneficial for developed countries than developing countries, especially those in the SADC region. Thus, exports from SADC countries are concentrated on raw material and agriculture.³²⁸ (See appendix A below)

³²² OECD 'The Costs and Benefits of Trade Facilitation' Policy Brief (2005) page 3 available at <http://www.oecd.org/trade/facilitation/35459690.pdf> accessed on 10 October 2014

³²³ For an example 'Indian companies suffer an estimated 37% cost disadvantage in shipping clothing from Mumbai to the United States due customs procedures'. See, Ibid 4

³²⁴ J. Meltezer 'The 2013 WTO Bail Ministerial: Prospects and New Horizons': WTO (2013)

³²⁵ Note 50 above 54

³²⁶ For instance, developing countries are major exporters of unprocessed coffee, which is exported at a low value added. Ibid 54

³²⁷ For instance, developed countries are major exporters of processed coffee, which is exported at a high value added. Ibid 54 and Note 46 above, 6

³²⁸ Agriculture is the most protected sector in developed countries, especially for products originating from developing countries. See, S.W Omamo & K von Grebmer 'Biotechnology, Agriculture, and Food Security in Southern Africa' 1sted (2005) 14

3.3.3 Agriculture

As pointed out above, agriculture has been a divisive issue at the WTO negotiations between member countries.³²⁹ As such, the conclusion of the DDA will also address trade distorting subsidies, especially in the agricultural sector where the vast majority of developing countries possess a comparative advantage (see appendix A below).³³⁰ Agricultural products are normally subject to higher tariffs than industrial products.³³¹ High tariffs in the agricultural sector are usually imposed by developed countries on products coming from developing countries. Such protection is detrimental to developing countries that derive substantial economic growth by exporting agricultural products.³³²

The recent negotiations on agriculture at the DDA were set out at the Uruguay Round under the Agreement on Agriculture (AOA) in 1994.³³³ As alluded to above, the agenda on agriculture appears to be a major stumbling block in multilateral trade negotiations as this was evident at Uruguay Round and at Cancun Ministerial Meeting.³³⁴ The granting of domestic or export support in the agricultural sector has resulted to favour farmers from the developed economies, who have become prominent in international competition.³³⁵ As a result small farmers in developing countries find themselves standing in breathe lines because they lack competition in the international market because their governments grant them insufficient subsidies compared to those in the developed world.³³⁶ Furthermore, agricultural subsidies have resulted to a decline on international prices for most agricultural products.³³⁷ Developing countries cannot reduce their prices so as to compete with the international markets because of high costs for production.³³⁸ Furthermore, developing countries have witnessed a substitution on their exports for imports of agricultural products from developed countries.³³⁹

³²⁹ Note 290 above, 4

³³⁰ OECD Policy Brief: The Doha Development Agenda: Tariffs and Trade (2003) page 2 available at <http://www.oecd.org/trade/tradedev/8920463.pdf> accessed on 7 of June 2014

³³¹ Ibid 2

³³² Note 290 above

³³³ J. Francois & others 'Gauging the WTO negotiation's potential gains: Doha Round' (2005) *20(42)EPCEPR*: 350-359

³³⁴ Note 324 above, 4

³³⁵ Note 304 above, 19

³³⁶ Ibid 19

³³⁷ DTB Associates 'Domestic Support and WTO Obligations In Key Developing Countries' (2011) page 12 available at <http://www.dtbassociates.com/docs/domesticupportstudy.pdf> accessed on 2 August 2014

³³⁸ R. Kwon 'Is Tariff Reduction a Viable Strategy for Economic Growth in the Periphery? An Examination of Tariff Interaction Effects in 69 Less Developed Countries' (2013) *19(2)ASA*: 243-256

³³⁹ Note 336 above, 8

From a technical point of view, despite the negativity surrounding the agreement, it seems as if developing countries and LDC countries stand to benefit in terms of international trade upon the completion of the DDA.³⁴⁰ At the same time the DDA incorporates a wide range of issues on the table for negotiation, which members are failing to reach a common agreement upon.³⁴¹ It is for this reason that the vast majority of WTO members have turned to favour RTAs as a regime that will enable them to exploit their comparative advantage so that they will be able to increase their economic growth and fulfil their development objectives. RTAs are considered to be easier than multilateral trade agreement due to the lesser number of countries participating on them.³⁴² Of interest in this thesis is the SADC RTA.

3.4. Regional Integration

There has been considerable evidence pointing toward the notion that the first step for integration into the world economy is regional integration and that regional integration enhances political and economic liberation.³⁴³ The phenomenon of advancing economic growth through regional integration has gained significant consideration in light of the fact that an agreement for the conclusion of the DDA is still pending.³⁴⁴ However, lucrative regional integration requires a harmonised regional trade scheme in which countries are enabled to exploit their comparative advantage in low external tariffs.³⁴⁵ Chauvin and Gaulier³⁴⁶ consider that if regional integration is performed in transparent manner, there would be enormous trade creation and less trade diversion.

Regional Trade Agreements (RTA) as envisaged by Article XXIV of the General Agreement on Trade and Tariffs (GATT) 1994, and take the form of Free Trade Areas and Custom Unions.³⁴⁷ To some extent, members of RTAs are entitled to waive the Most Favoured Nation (MFN) principle.³⁴⁸ Further article XXIV binds all WTO members to give notification to the

³⁴⁰ This is because the DDA promises to deal with trade distortion facing developing and LDC in that upon completion they will be able to exploit their comparative advantage. See, Note 196 above, 2

³⁴¹ Note 196 above, 67

³⁴² C. Freund & E. Ornelas 'Regional trade agreements: blessing or burden?', Centre Piece Summer (2010) page 17 available at <http://cep.lse.ac.uk/pubs/download/cp313.pdf> accessed on 3 August 2014

³⁴³ S. Chauvin & G. Gaulier 'Prospects for Increasing Trade among SADC Countries': Trade and Industry Policy Strategies (2002) Annual Forum page 1 available at <http://www.tips.org.za/files/555.pdf> accessed on 7 August 2014

³⁴⁴ Note 341 above, 17

³⁴⁵ Note 342 above, 1

³⁴⁶ Ibid 2

³⁴⁷ Note 102 above, Article XXIV

³⁴⁸ Note 102 above, Article I

WTO of their participation in any RTA.³⁴⁹ To date, the WTO has received over 1600 notifications of RTAs including those notified under the GATT.³⁵⁰ Regional integration in the form of RTAs encompasses trade liberalisation and non-discrimination commitments binding only between the parties in that the fall of tariffs is not extended to parties who are not party in the agreement.³⁵¹ In other words tariff fall is strictly confined to members.³⁵² It has been argued that regional integration has yielded considerable results for trade creation even for regions with less economic structures like SADC.³⁵³

3.4.1. SADC Trade Integration

The SADC was established in 1980 under the Southern African Development Coordination Conference.³⁵⁴ In 1992 the Treaty and the Declaration establishing the organisation was signed by the then four member states (Botswana, Mozambique, Tanzania and Zambia).³⁵⁵ Article 5 of the treaty forming the organization commits member states to actively participate in all negotiations aimed at integrating and advancing development objectives in the region.³⁵⁶ The integration of these member states aims to advance the well-being of the people of Southern Africa and their environment by ensuring sustainable economic expansion, harmony, safety and alleviation of poverty.³⁵⁷

To date, all SADC members adhere to the mandate of promoting development by enhancing economic growth, alleviating poverty, advancing the standards and quality of life of Southern African people and provide social support to those who were previously disadvantaged through regional integration.³⁵⁸ In 1996, SADC launched a Trade Protocol.³⁵⁹ The objectives

³⁴⁹ Note 102 above, Article XXIV

³⁵⁰ WTO 'Regional Trade Agreements: Facts and Figures' available at http://www.wto.org/english/tratop_e/region_e/regfac_e.htm accessed on the 24 of August 2014.

³⁵¹ Note 342 above, 2

³⁵² Ibid 2

³⁵³ Ibid 1

³⁵⁴ Southern African Development Community (SADC) Overview (2012) available at <http://www.housingfinanceafrica.org/wp-content/uploads/2012/10/SOUTHERN-AFRICAN-DEVELOPMENT-COMMUNITY.pdf> accessed on the 3rd of September 2014

³⁵⁵ Ibid

³⁵⁶ See Article 5 of the SADC treaty page 5 available at http://www.sadc.int/files/9113/5292/9434/SADC_Treaty.pdf accessed on 12 October 2014. See also, SADC RISDP 'under pinning the plan is the SADC vision that maps out the entire direction of development in the next 15 years'.

³⁵⁷ Ibid 3

³⁵⁸ Ibid 3

³⁵⁹ SADC Protocol on Trade 1996

of the protocol were to further liberalise intra-regional trade and establish a Free Trade Area thereby enhancing economic development through trade.³⁶⁰

Even more, recognising the importance of the Millennium Development Goals (MDG) and the New Project for Africa's Development (NEPAD) initiative,³⁶¹ SADC members formulated a Regional Indicative Strategic Development Plan ("RISDP") in 2003.³⁶² The RISDP aims to deal extensively with issues related to 'trade, economic liberalisation and development, infrastructure support for regional integration, science and technology, sustainable food security, and human and social development' in the next fifteen years.³⁶³

The RISDP outlined the timelines for the establishment of a Free Trade Area in 2008, SADC Customs Union in 2010, SADC Common Market 2015 and a SADC Monetary Union in 2016.³⁶⁴ The establishment of the FTA has been successful; however members are failing to establish a Custom Union. Undoubtedly, as envisaged by considerable research, the reason behind the non-establishment of the SADC custom union is attributed to the fact that the vast majority of SADC members belong to other existing Custom unions.³⁶⁵ The technical barrier under this situation is that a member cannot belong to more than one Custom Union due to the Common External Tariff (CET).³⁶⁶ This means that the establishment of a SADC Custom Union will result to members having to revoke their membership on the other Custom Union, which can have serious implications.³⁶⁷

Of particular interest to the issue regarding development in this region and generally is the formation or the existence of the free trade agreement. Thus, due to the elevation of these FTAs and their role in promoting development it is critical to undertake a discussion on the SADC FTA.

³⁶⁰ Ibid

³⁶¹ The NEPAD is an initiative by African Leader of shared vision to work both individually and collectively in promoting sustainable growth and development in the region. The initiative aims to eradicate poverty in Africa by active participation in the world economy. See, NEPAD (2001) available at http://www.nepad.org/system/files/framework_0.pdf accessed on 12 October 2014.

³⁶² Southern African Development Community (SADC):Regional Indicative Strategic Development Plan (RISDP) of 2003

³⁶³ Ibid

³⁶⁴ Ibid

³⁶⁵ EM.Sulliman (ANC) 'Establishment of the Southern African Development Community (SADC) Customs Union as envisaged with the establishment of the SADC Free-Trade Agreement in 2008 and cost of the SADC Customs Union': SA International Relations and Cooperation (2012) Question Paper No. 7-2012 of 22 August 2012

³⁶⁶ This rule is provided for under Article XXIV of the GATT 1994. See, also Ibid

³⁶⁷ Ibid

3.4.2. SADC Free Trade Agreement

An FTA can be best described as an agreement concluded by two or more countries, which affects the manner in which they wish to carry out their trade and investment relations.³⁶⁸ Among other issues, an FTA normally contains the following; an obligation for non-discriminatory reduction of trade barriers in goods and services among members, intellectual property rights protection and investment, dispute mechanisms and rules of origin.³⁶⁹ In 2000 the Southern African Development Community (SADC) launched a Free Trade Area. The SADC FTA was aimed at enhancing regional integration through ‘One Stop Boarder Post’ (OSBP) so as to increase trade and cross border investment flows.³⁷⁰ The FTA began to operate in 2008 as envisaged by the RISDP. The tariff reduction phase down programme resulted to the accomplishment of minimum conditions for the FTA and over 85% of intraregional trade was duty free between the parties.³⁷¹ Nevertheless due to some notable and important exceptions Angola, Democratic Republic of Congo and Seychelles remain outside the SADC FTA.³⁷²

Despite Angola being outside the FTA it seems to dominate the trade regime in SADC after South Africa.³⁷³ Their combined imports in 2011 were reported at \$207.2 billion accounting 58.7 per cent and exports were reported at \$209.7 billion accounting for 77.4 per cent.³⁷⁴ The dominance of these countries has been subject to considerable scepticism in that ‘regional inequality leads to divergence through a process of polarised development in favour of countries with large economic scales and higher levels of development at the cost of the smaller and lesser developed countries’.³⁷⁵ However it is also argued that, in a long run the dominance of these countries will spread the benefits of integration to smaller and lesser developed countries in the region via cross border factor flows.³⁷⁶

The FTA has reduced and eliminated some of the trade and non-trade barriers. This has resulted to more trade creation and less trade diversion in that the agreement has boosted

³⁶⁸ AE.Brunsdale& others ‘*The Pros and Cons of Entering into Negotiations on Free Trade Area*’ 1sted (1989) xii

³⁶⁹ Ibid xii

³⁷⁰ Note 342 above, 2

³⁷¹ R. Sandrey ‘An Analysis of the SADC Free Trade Area: Tralac Trade Brief’ (2013), No. D13TB01

³⁷² Southern Development Community: Towards a Common Future available at <http://www.sadc.int/about-sadc/integration-milestones/free-trade-area/> accessed on 24 August 2014

³⁷³ Ibid

³⁷⁴ Ibid

³⁷⁵ CL. McCarthy ‘Polarised Development in a SADC Free Trade Area’ (1999) 67(4)SAJE:211-211

³⁷⁶ Ibid 211

trade flows among member countries.³⁷⁷ However, such increase has not generated enough capital to meet development needs because there are still some barriers which exist. Therefore member countries have put much pessimism on the proposed customs union to tackle these barriers and enhance trade.

3.4.3 SADC Customs Union

Although in a customs union members do make arrangements for the rules of origin, tariff reductions are also extended to non-members of the arrangement. The launching of a customs union in SADC has been subject to a number of hindering challenges facing all members of the region.³⁷⁸ Among others, as alluded to above, the challenges include the overlapping membership.³⁷⁹

On the face of it, Article XXIV of GATT does not prohibit any member from being party to more than one customs union.³⁸⁰ However, a member belonging to more than one customs union may find it difficult to negotiate more than one common external tariff measures to the satisfaction of all members and such member would also face challenges when carrying out its obligation to third parties.³⁸¹ Therefore, establishing a customs union in SADC will require members who belong to other customs union to revoke their membership in favour of the SADC customs union. This is almost impossible because of the political and economic implications that follow upon revocation of membership.³⁸² Alternatively, SADC members may negotiate with the members of other RTAs under which SADC members are parties, for the establishment of common external tariff measures, policies and regulations. An initiative to achieve the latter was adopted in 2008 by members of the SADC, Common Market for

³⁷⁷ OA. Fadeyi 'Assessing the Impact of SADC FTA on South African Agricultural Trade', University of Free State (2013) available at <http://etd.uovs.ac.za/ETD-db/theses/available/etd-07222013-134750/unrestricted/FadeyiOA.pdf> accessed on 13 October 2014.

³⁷⁸ A. Zembele 'Achieving Deeper Integration in Southern Africa: The Case of SADC Customs Union' (2011) available at http://www.dounia-risri.net/IMG/pdf/Dounia4_pp24-36.pdf accessed on the 28th of August 2014

³⁷⁹ Ibid

³⁸⁰ Note 102 above

³⁸¹ Note 377 above

³⁸² The overlapping of membership of SADC is as follows SACU (South Africa, Botswana, Lesotho, Swaziland and Namibia), CEMAC (Democratic Republic of Congo), IOC (Mauritius), COMESA (Zimbabwe, Zambia, Seychelles, Madagascar and Malawi) and EAC (Tanzania). Economic implications may include members raising their tariffs, which will result to low levels of trade among members. Political implications may arise where there is no general consensus among member states for the revocation of a particular member. See, SADC Strategy Report (2015) page 1 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2011-2015%20-%20Southern%20Africa%20-%20Regional%20Integration%20Strategy%20Paper.pdf> accessed on 6 October 2014.

Eastern and Southern Africa (COMESA) and East African Community (EAC).³⁸³ Various leaders in the region met at Kampala (Uganda) in an effort to integrate the three Regional Economic Communities (RECs).³⁸⁴ The tripartite undertook a decision of establishing a Free Trade Area, which aims to integrate the Eastern and Southern African.³⁸⁵ Later in 2011 members of the Tripartite launched negotiations regarding the proposed T-FTA in a summit that was held in South Africa.³⁸⁶ However the negotiations were not substantive in nature, thus it was just an over view of the contents that should be contained in the T-FTA.

3.5. Conclusion

At the present time, the future for enhancing economic growth and meeting development objectives through trade is bleak for SADC countries. This is due to the fact that the integration of these countries in both the international and regional trade systems is progressing at a very slow pace, which gives rise to a wide range of uncertainties. Thus, internationally, to date, WTO members have not yet fully made substantial effort to complete the DDA. Thus, despite the existing agreements, there are some products from developing countries, which are still subject to tariffs. Further, developing countries have failed to agree to stop export and agricultural subsidies. Therefore, it follows from this that even though the current agreements under the DDA may possess some beneficiation for developing countries, such beneficiation are not enough for achieving development objectives.

The chapter has also established the failure of completing the DDA has resulted to a steady growth of RTAs. However the SADC region has failed to form a lucrative intra-trade regime due to the fact that establishing a customs union has been a milestone. Thus, the overlapping of membership is an issue that cannot be resolved overnight.³⁸⁷ Therefore, in order to facilitate the integration of the LDCs and developing countries members must consider the issue of multiplicity of memberships as a matter that requires urgency as it is adding a layer of complexity on the regional integration process.³⁸⁸

³⁸³ CCN.Chiumya 'Regional Trade Agreements: An African Perspective of Challenges for Customs Policies and Future Strategies' (2009) 3(2)WCJ: 85-86

³⁸⁴ JT. Gathii. *African regional trade agreements as legal regimes* 1sted (2011) 8

³⁸⁵ OECD 'Negotiating the COMESA-EAC-SADC Tripartite FTA' (2011) page 2 available at <http://www.oecd.org/aidfortrade/47407301.pdf> accessed on 16 October 2014

³⁸⁶ T. Hartzenberg 'Regional integration in Africa', WTO Working Paper No. ERSD-2011-14 page 7 available at <https://www.econstor.eu/dspace/bitstream/10419/57595/1/669412368.pdf> accessed on the 3rd of October 2014

³⁸⁷ Economic Commission for Africa 'Unlocking Africa's Trade Potential' Economic Report on Africa (2004) available at <http://www.uneca.org/cfm2004/pages/economic-report-africa-2004-unlocking-africas-trade-potential-global-economy-overview> accessed on 28 October 2014

³⁸⁸ Note 342 above, 5

The political effort by member countries to launch negotiations with other two regions to negotiate a T-FTA is perceived to be a huge step for African countries. However, this thesis argues that negotiating the T-FTA does not mean that this will facilitate the establishment of a customs union because many members of SADC do still belong to other regional arrangements that are not covered by the Tripartite.

Having discussed the issue of sluggish pace for enhancing the development process and economic growth through trade in SADC, the next chapter aims to deal with the issue of using FDI as another tool of enhancing the development process via the potential benefits of FDI. The next discussion lies on the notion that trade is not the only tool of facilitating the development process.



CHAPTER FOUR
WHAT ARE THE FACTORS THAT IMPEDE FDI?

4.1. Introduction

The exhaustion of monetary loans from international financial institutions and the enormous distortions facing international traders has led to Foreign Direct Investment (FDI) being the ultimate source of enhancing economic cooperation and development.³⁸⁹ The FDI concept in a general sense could be understood as meaning an individual form of capital flows found in the balance of payments across borders, originating from the investors' territory to the territory upon which the investment is being carried out.³⁹⁰ This definition is derived from the universally cited definition of the World Trade Organisation (WTO) Secretariat of 1996, which provides that FDI occurs "when an investor based in one country (the home country) acquires an asset in another country (the host country) with intent to have an effective voice in the management of that asset".³⁹¹

According to the International Monetary Fund (IMF) and the Organisation of Economic Co-operation and Development (OECD) definitions, FDI is a reflection of the aim of obtaining a lasting interest by a resident entity of one economy (direct investor) in an enterprise that is resident in another economy (the direct investment enterprise)".³⁹² The term 'lasting interest' insinuates a significant degree of influence in the management of the investment enterprise by a direct investor who intends on having a long-term relationship with such enterprise.³⁹³ According to Ridgeway,³⁹⁴ a direct investor is a foreign government, an entity, an individual or a group of correlated individuals who owns ten-per cent or more in the direct shares or voting stock in a foreign enterprise.

Moreover, there are two forms (also referred to as entry modes) of FDI namely, Mergers and Acquisitions (M&As) and Greenfield investment.³⁹⁵ Greenfield investment takes place where

³⁸⁹ M. Klein & others 'Foreign direct investment and poverty reduction', World Bank Publications (2001) page 1 available at <http://www.oecd.org/daf/inv/investmentstatisticsandanalysis/2422017.pdf> accessed on 21 July 2014.

³⁹⁰ O.U. Oregwu & B.C. Onuoha 'The Determinants of Foreign Direct Investments (FDIs) and the Nigerian Economy' (2013) 3(11) *AJCR*: 165-165

³⁹¹ Note 28 above, 1019

³⁹² Note 29 above, 2

³⁹³ *Ibid* 2

³⁹⁴ A. Ridgeway 'Definition of Foreign Direct Investment (FDI) terms' Statistics Canada (2004) Issues Paper (DITEG) #20 available at <http://www.imf.org/external/np/sta/bop/pdf/diteg20.pdf> accessed on 22 July 2014

³⁹⁵ H. Zhuang & D. Griffith 'The Effect of Mergers & Acquisitions and Greenfield FDI on Income Inequality' (2013) 10(1) *IJAE*: 29-30

there is the establishment of a new undertaking in the host country that leads to the creation of considerable employment and production.³⁹⁶ On the other hand, M&As take place where there is mutual consent between an existing enterprise and a foreign investor for the purchasing of all or part of the enterprise.³⁹⁷ Both these types of FDI possess potential development benefits for host countries.³⁹⁸ However, in developing countries the most favourable would be Greenfield investment because substantial employment is guaranteed, unlike M&As, which may result into the retrenchment of employees.

The domino effects of inward FDI on host countries involve enormous possibilities for technological spillovers and capital accumulations, which advances the development process.³⁹⁹ Technological spillovers encompass superior managerial skills, access to external markets and increased technology transfer.⁴⁰⁰ Hale and Long⁴⁰¹ consider that “technology transfer occurs through movement of high-skilled workers from multilateral FDI firms to domestic firms as well as through network externalities among high-skilled workers”. Through capital accumulations host countries can be able to enhance employment opportunities and governments are placed in a position to generate substantial tax revenues, which can be used on infrastructure and education development.⁴⁰²

However, it must be emphasised that the benefits of FDI do not accrue automatically, thus domestic policies, rules and regulations must be implemented in a transparent manner that is favourable to foreign investors.⁴⁰³ Colen⁴⁰⁴ considers that empirical evidence on FDI and economic growth is not harmonious, whilst economic theories find only positive effects. In the normal course of events foreign investors are triggered by the wide range of benefits that FDI has to offer including; the advancement of competition in foreign markets whilst circumventing tariffs; inexpensive labor for production; and cutting of importing costs where

³⁹⁶ L. Colen & others ‘Foreign Direct Investment as an Engine for Economic Growth and Human Development: A Review of the Arguments and Empirical Evidence’, (2008) Working Paper No. 16 page 10 available at https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp11-20/wp16.pdf accessed on 23 July 2014

³⁹⁷ Ibid 10

³⁹⁸ Some of the potential benefits of FDI in host countries include technology transfer, human capital, access to external markets and managerial skills which lead to increased productivity and economic growth. See, Note 31 above, 24. See also, Note 33 above, 3

³⁹⁹ Ibid 24

⁴⁰⁰ Note 26 above, 107

⁴⁰¹ Note 33 above, 3

⁴⁰² Note 35 above, 13

⁴⁰³ K. Williams ‘Essays on FDI, Growth and Political Instability in Developing Countries’, University of Nottingham (2010) page 153 available at <http://eprints.nottingham.ac.uk/11420/1/ethesispdf.pdf> accessed on the 5th of October 2014

⁴⁰⁴ Note 395 above, 17

raw material for production comes from the hosting country, i.e. natural resources, and where the host country offers advantageous investment incentives.⁴⁰⁵ The vast majority of developing countries attract foreign investments by offering special incentives to foreign investors.⁴⁰⁶ These incentives include tariff reductions or exemptions, tax holidays and subsidies for infrastructure.⁴⁰⁷ To a reasonable degree such incentives along with other domestic policies of attracting FDI have increased FDI inflows, not only between developed countries but between developing countries as well.⁴⁰⁸ However, the issue of unequal distribution of FDI among countries is of quite significance requires a critical discussion of the factors that attract FDI in host countries.

Thus this chapter aims to identify and critically discuss particular factors that impede FDI within the SADC.⁴⁰⁹ In analysing these factors, it is important to provide a critical discussion of the impact of FDI spillovers in host countries. The latter discussion aims to provide a clear understanding as to the reasons for SADC countries' continuous interest in attracting foreign investments. Further, this chapter will critically discuss the recent trends of FDI inflows so as to assess the progress that has been made in attracting FDI to the region. In doing so, an overview will be provided of some of the measures that have been taken by SADC governments in creating a harmonised environment for FDI in the region. Finally, the chapter will provide case studies on four countries in the region, which will provide a demonstration as to how the factors discussed impede FDI.

4.2. Spillover Channels

There has been considerable evidence indicating that the presence of FDI in host countries enhances human capital.⁴¹⁰ The term human capital can be defined as “a set of knowledge, qualifications, abilities, and individual qualities which facilitate the creation of the economic,

⁴⁰⁵ Note 28 above, 1021

⁴⁰⁶ Ibid 1021

⁴⁰⁷ Z. Liu 'Foreign Direct Investment and Technology Spill overs: Theory and Evidence' (2008) *85(1)JDE*:1-2

⁴⁰⁸ The 2013 World Investment Report indicated that developing countries captivated more FDI than developed countries in 2012, accounting for 52 per cents of universal FDI flows. This was largely influenced by the growing FDI relationship between developing countries. This relationship is considered important since the increasing FDI flows on developing countries are very important for social and economic development goals. See, UNCTAD 'Global Value Chains: Investment and Trade for Development', World Investment Report (2013).

⁴⁰⁹ SADC countries include South Africa, Botswana, Zimbabwe, Lesotho, Angola, Seychelles, Mauritius, Malawi, Madagascar, Mozambique, Swaziland, Tanzania, Zambia, Democratic Republic of Congo and Namibia. See, The United Nations list of least developing countries and developing countries available at http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf accessed on 21 September 2014.

⁴¹⁰ Note 28 above, 1022

social and personal welfare”.⁴¹¹ Human capital development encompasses a wide range of development issues and is regarded as the most crucial source of development and of the creation of a business enabling environment for FDI.⁴¹² Therefore, FDI and human capital appears to be two different concepts reinforcing one another. This means that, on one hand, countries with high educational standards and high skilled labour forces are in an advantageous position to attract FDI. On the other hand increased FDI inflows will enhance educational standards and skill in labour forces.⁴¹³

For developing countries foreign investments are crucial for maximisation of human capital because multinational corporations (MNC) especially from OECD countries offer more sophisticated training and other advances for human capital than domestic corporations do.⁴¹⁴ It should also be pointed out that the level of human capital on education is measured by primary, secondary and tertiary enrolments.⁴¹⁵ Akin and Vlad⁴¹⁶ found that a 10 percent increase on education leads to 0.2 percent increase in FDI inflows. Furthermore, education levels in developing countries are growing larger than in developed countries due to the commodification of education in developing countries. Therefore developing countries may be in a position of attracting more FDI in the long run than developed countries in terms of human capital.⁴¹⁷

MNCs possess more of the world’s sophisticated technology than domestic corporations in host countries and are essential for providing research and development (R&D) resources, as well as the skills for developing native products and processing technology.⁴¹⁸ Therefore,

⁴¹¹ LN. Ndeffo ‘Foreign Direct Investments and Human Capital Development in Sub-Saharan Africa’ University of Dschang, Cameroon (2010) page 38 available at http://www.ann.ugal.ro/eo/Doc2010_2/Ndeffo.pdf accessed on 15 July 2014

⁴¹² Note 60 above, 29

⁴¹³ Ibid 29

⁴¹⁴ For a firm to qualify as a multinational corporation it must own and control some form of income generating assets in more than one country. These corporations generally offer employee training facilities for prospective engineers, technicians, accountants, electricians, water suppliers, telecommunications, transportation and legal institutions. All these employee training facilities could contribute to skill development in the host country. See, AE. Omankhanlen ‘Foreign Direct Investment and its Effects on the Nigerian Economy’ (2011) *4(2)BIJ*: 253-254

⁴¹⁵ MS. Akin & V. Vlad ‘The Relationship between Education and Foreign Direct Investment: Testing the Inverse U Shape’ (2011) *4(1)EJEPS*: 27-30

⁴¹⁶ Ibid, 30

⁴¹⁷ Ibid, 30

⁴¹⁸ Technology transfers enhance productivity and reduce inaccuracy rates in production. See, S. Kurtish-Kastrati ‘The Effects of Foreign Direct Investments for Host Country’s Economy’ (2013) Vol. 5, Issue 1: 26-28

host countries stand to absorb modern and environmentally hygienic technology transfers from MNCs.⁴¹⁹

Further the superiority of management skills in MNCs can also stimulate domestic corporations to improve their own management skills.⁴²⁰ Thus local personnel who have acquired management skills through a foreign subsidiary may leave that subsidiary to establish a local firm (worker turnover).⁴²¹ However, Lipsey⁴²² suggests that the speed with which worker turnover takes place may be sluggish due to the fact that foreign firms offer their employees a premium wage to reduce worker turnover. Therefore, foreign firms have an indirect obligation to pay higher wages than foreign firms so as to generate substantial spillovers from foreign firms which in itself is another benefit of FDI.⁴²³

Finally, MNCs possess employment benefits resulting from FDI. In developing countries employment benefits are considered as the most prominent and visible effects of FDI.⁴²⁴ The main reason behind this assertion is the fact that developing countries have low capital and a large unemployment ratio.⁴²⁵ There are two forms of employment benefits resulting from the presence MNCs, namely direct and indirect employment benefits.⁴²⁶ Direct benefits take place where MNC's employ the citizens of the host country, offer them training. Indirect benefits emanate from the increased spending of employees of MNCs and on the increased demand in local suppliers.⁴²⁷ It is also important to understand that FDI does not occur automatically. Thus, before foreign investors consider whether or not to invest in a foreign country, they will examine the business environment. A business environment is determined by a wide range of factors such as market size, infrastructure, trade openness and labour costs.⁴²⁸ These factors are considered to be major determinants of attracting FDI.

⁴¹⁹ E. Sinani 'Spillovers of Technology Transfer from FDI: The Case of Estonia' (2004) 33(3)*JCEJ*: 445-448

⁴²⁰ Note 417 above, 28

⁴²¹ *Ibid* 29

⁴²² Note 31 above, 346

⁴²³ *Ibid* 346

⁴²⁴ J. Rhys 'Globalization, FDI and employment in Viet Nam', *Transnational Corporations* (2006)

⁴²⁵ C. Ernst 'The FDI-employment link in a globalizing world: The case of Argentina, Brazil and Mexico', *International Labour Office* (2005) *Employment Strategy Paper* 17

⁴²⁶ Note 415 above, 28

⁴²⁷ *Ibid* 29

⁴²⁸ E. Asiedu 'Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions and Political Instability', (2006) 29(1)*TWE*: 63-65

4.3. Determinants of FDI

According to the United Nations Conference on Trade and Development (UNCTAD (1999) determinants of FDI differ according to investment motivations which includes market-seeking, natural resource-seeking, efficiency-seeking and non-market-seeking FDI.⁴²⁹ These motivations are discussed by Dunning with regard to his eclectic paradigm of the determinants of FDI in developing countries.⁴³⁰ He considers that in the case of market-seeking, foreign investors are driven by the demand in the local market, i.e. market size and per capital income.⁴³¹ Therefore the objective of market seeking FDI is to serve domestic markets.⁴³² The motive behind market-seeking FDI is located in the manufacturing and service sectors.⁴³³ In the case of the manufacturing sector, goods are produced in the host country and sold in the local market.⁴³⁴ However, in the service sector, market-seeking FDI normally takes place in the telecommunications and electricity supply industries.⁴³⁵

With regard to non-market seeking FDI, the demand in the host bears no substantial influence on the foreign investor. Thus the goods are produced in the host country but are sold abroad.⁴³⁶ Therefore multinational enterprises or manufacturers in this case will be seeking for a host country that has a well-established export processing zone.⁴³⁷ Natural resource seeking FDI is considered to be the most volatile form of investment (given the fluctuation of prices in the world market) and is largely situated in primary sectors, which include mining, petroleum and quarrying industries.⁴³⁸ In this case raw materials are exported from the host country and imported into a foreign country where production or transformation will take place. In some cases the transformed material is exported back into the host country. There are particular factors that briefly have to be considered in light of FDI motivations which

⁴²⁹ UNCTAD World Investment Report (2009) available at http://unctad.org/en/docs/wir1999_en.pdf accessed on 29 September 2014

⁴³⁰ The eclectic paradigm indicates that attracting foreign investments includes a wide range of dimensions such as political, institutional and economic dimensions. See, JH, Dunning 'The Eclectic (OLI) Paradigm of International Production: Past, Present and Future' (2001) *8(2)JEB*: 173-184. See also, E. Asiedu 'On the Determinants of Foreign Direct Investment to Developing Countries: Is Africa Different?' (2001) *20(1)WD*: 107-111

⁴³¹ Where there is a demand in foreign local market, establishing a new venture in that country may reduce restrictions such as high transportation costs and rules of origin. See, JH. Dunning & SM. Lundan (note 44 above) 68

⁴³² Note 429 above, 109

⁴³³ Note 395 above,

⁴³⁴ Note 429 above, 109

⁴³⁵ JH. Dunning & SM. Lundan (note 44 above) 68

⁴³⁶ Note 429 above, 110

⁴³⁷ Ibid 110

⁴³⁸ Note 342 above, 11

include infrastructure, labour standards, trade liberalisation, market size and political stability. These factors are critically discussed below.

4.3.1. Infrastructure

As noted earlier, in respect of the examination of a business environment within a country, foreign investors will examine the availability, reliability and affordability of all forms of infrastructure (such as buildings, telecommunications, energy and transportation).⁴³⁹ The vast majority of literature on the relationship between infrastructure and FDI indicates that the reliability and availability of infrastructure, especially in the telecommunications sector, reduces business costs and increases rates of returns.⁴⁴⁰ Further essential components of infrastructure, such as roads, telecommunications, railways, highways and energy, enhance productivity.⁴⁴¹ Jameel⁴⁴² argues that foreign investors are more attracted to host countries that publicly provide that components of infrastructure.

4.3.2. Trade liberalisation

Trade liberalisation could best be understood as meaning a free or less restricted movement of exports and imports across borders.⁴⁴³ Studies on the determinants of FDI have different views on trade liberalisation as a source of attracting FDI. Some authors argue that trade liberalisation is the most viable factor of attracting exports oriented FDI,⁴⁴⁴ while others reason that trade restriction increases market-seeking FDI, which seeks to serve local markets through tariff jumping.⁴⁴⁵ Further trade restrictions could also be advantageous to market seeking FDI, thus it prevents foreign competitors from competing in the same market through

⁴³⁹ The forms of infrastructure may be classified as including physical, financial, human, and institutional infrastructure. See, note 429 above, 111

⁴⁴⁰ Note 427 above, 111

⁴⁴¹ J. Khadaroo & B. Seetanah 'Transport Infrastructure and FDI: Lessons from Sub-Saharan African Economies', *African Economic Conference (2007)* page 6 available at http://www.uneca.org/sites/default/files/page_attachments/jameel_khadaroo_boopen_seetanah_0.pdf accessed on 3 November 2014

⁴⁴² The free riding nature of transport infrastructure provided by hosting country governments has an impact of reducing costs and enhancing productivity. Therefore if foreign investors were required to provide their own infrastructure, their business operations would be less efficient and this could result to a repetition and waste of resources. See, note 438 above, 6

⁴⁴³ EM. Graham & W. Erika 'Domestic reform, trade and investment liberalisation, financial crisis, and foreign direct investment into Mexico' (2000) *23(6)WE*: 777-786

⁴⁴⁴ N. Mhlanga & others 'Understanding foreign direct investment in the southern African development community: an analysis based on project-level data', *Agricultural Economics* (2010) page 7 available at [http://ageconsearch.umn.edu/bitstream/51632/2/FDI%20in%20SADC%20IAAE%20Contributed%20Paper\(693\)-IAAE09.pdf](http://ageconsearch.umn.edu/bitstream/51632/2/FDI%20in%20SADC%20IAAE%20Contributed%20Paper(693)-IAAE09.pdf) accessed on 4 October 2014

⁴⁴⁵ G. Panagiotis & others 'Foreign Direct Investment and Trade Openness: The Case of Developing Economies' Springer Science+Business Media B.V. (2011) page 3 available at <http://link.springer.com/article/10.1007/s11205-011-9806-9#page-1> accessed 22 September 2014

exports. Therefore, whether or not trade liberalisation is a form of attracting FDI would be assessed in accordance with the business environment of each country. For example, countries whose FDI is motivated by exploitation of natural resources would substantially attract more FDI if their trade relationship with other countries was liberalised, while countries with larger market sizes would attract more market seeking FDI if their trade relationship with other countries are subject to restrictions.⁴⁴⁶

4.3.3. *Labour Standards*

There has been general consensus in the literature indicating that low labour standards are an important source of attracting FDI.⁴⁴⁷ This is largely influenced by presumption that MNCs enjoy increasing their productivity levels at low costs. Therefore foreign investors would require investing where they can be able to exploit local workers, whilst paying them below average wages.⁴⁴⁸ However, there is also a disagreement of opinion regarding the notion that labour standards are determined by the level of economic growth.⁴⁴⁹ The confirmatory studies on this notion suggest that developed economies are due to have higher labour standards than developing economies.⁴⁵⁰ Sarna⁴⁵¹ suggests that developing economies who offer average labour standards are less competitive than those who offer lower labour standards, whilst developed economies continue to receive FDI with average labour standards. On the other hand, the issue of offering lower labour standards as a determining factor for FDI is considered to be an illicit strategy for attracting investments, in that it inevitably leads to a limitation of basic human rights.⁴⁵² For example, a hosting country's government wishing to attract foreign investments may incentivise policies prohibiting employees from collective bargaining with a foreign investor. Therefore any country wishing to lower labour standards

⁴⁴⁶ Ibid 2

⁴⁴⁷ S. Braun 'Core labour standards and FDI: Friends or foes? The case of child labour', Review of World Economics (2006) page 4 available at <http://edoc.hu-berlin.de/series/sfb-649-papers/2006-14/PDF/14.pdf> accessed 20 November 2014

⁴⁴⁸ E. Robert & others 'Challenges to Globalization: Analyzing the Economics', University of Chicago Press (2002) page 385 available at <http://www.nber.org/chapters/c9544.pdf> accessed on 20 November 2014

⁴⁴⁹ Higher economies offer higher labour standards than lower economies. See, R. Sarna 'The impact of core labour standards on Foreign Direct Investment in East Asia' The Japan Institute for Labour Policy and Training (2005) page 11 available at <http://www.jil.go.jp/profile/documents/Sarna.pdf> accessed on 21 November 2014

⁴⁵⁰ Economic inequalities are caused are FDI disproportions in that developed economies have been the largest recipients of FDI than developing economies. To put it more succinctly, when a country experiences economic growth and FDI increase, labour standards will also increase. See, C.E. Moolman & others 'Foreign Direct Investment: South Africa's Elixir of Life?' University of Pretoria Working Paper Series (2006) page 12 available at https://web.up.ac.za/UserFiles/WP_2006_05.pdf accessed on 20 November 2014

⁴⁵¹ Note 448 above, 11

⁴⁵² Basic human rights that may be truncated by lower labour standards include collective bargaining, forced labour, child labour and non-discrimination. See, Note 448 above 12. See also, OECD *International Trade and Core Labour Standards* 1sted (2000) 35

as a form of attracting FDI must be willing to accept the limitation of basic human rights, which could have international consequences for the state as well, especially where it has signed and or ratified international human rights treaties.

4.3.4. *Market Size*

There is general consensus in the literature that a larger market size is considered to be one of the most important factors for attracting market-seeking FDI.⁴⁵³ There are two aspects that have been employed by different scholars in measuring market size for explaining FDI inflows i.e. per capita Gross Domestic Production (GDP) and absolute GDP.⁴⁵⁴ Both these measures “present different two different aspects of market-size, in that per-capita GDP reflects the income level while absolute GDP reflects the size of the whole economy”. However, the vast majority of empirical works on the determinants of FDI indicates that per capita GDP is the most robust measure of market size because it measures the variables by income level.⁴⁵⁵ It leans on the notion that distribution of income among different segments (lower, middle and upper income classes) of the population is an elemental aspect for determining the size of the market.⁴⁵⁶ Thus, when looking at the demand side channel, a firm that serves different segments in a foreign country, who have similar demand structures would sustain enormous exporting costs.⁴⁵⁷ It follows from this that such a firm would consider weighing up exporting costs against those of setting up a foreign subsidy. Therefore where it appears that setting up a foreign subsidy is cheaper than exporting, the firm will engage in the former.⁴⁵⁸ However, although this thesis echoes the fact that per capita GDP serves as a proxy for determining market size, it also argues that it may be a poor indicator for high-population countries.⁴⁵⁹ Therefore, absolute GDP would be an appropriate measure since it focuses on the entire economy.⁴⁶⁰

⁴⁵³ VR.Sannasse& others ‘Determinants of foreign direct investment in SADC: an empirical analysis’(2014) *4BMR*: 146-147. See also A. Chakabarti ‘The Determinants of Foreign Direct Investment: Sensitivity Analyses of Cross- Country Regressions’ (2001) *54KYKLOS*: 89-96

⁴⁵⁴ Note 452 above, 96

⁴⁵⁵ Ibid 98

⁴⁵⁶ A. Kohler ‘Income Distribution, Market Size and Foreign Direct Investment’ (2013) Page 2 available at http://www.econ.uzh.ch/eiit/Papers/Kohler_FDI_Marketsize_Mai2013.pdf accessed on 18 November 2014

⁴⁵⁷ Ibid 2

⁴⁵⁸ Ibid 2

⁴⁵⁹ Note 452 above, 98

⁴⁶⁰ Ibid 98

4.3.5. *Political Stability*

When deciding to invest, foreign investors normally examine the potential political future of the hosting country. Political instability can be defined using a narrow and a wide approach. In a narrow approach political instability can be defined as ‘a regime or government change or the incidence of political upheaval and violence in a society’.⁴⁶¹ The narrow approach is confined to situations like civil war, strikes and conflict with neighbouring countries.⁴⁶² In the wider approach, political instability can be defined as a ‘practice that has a detrimental effect on contracts, law and order, and the stability and efficiency of institutions’.⁴⁶³ The wide approach “encompasses policy uncertainty (*inter alia* pertaining to the enforcement of contracts and property rights)”.⁴⁶⁴ Political instability whether in a narrow approach or in a wide approach has a negative impact on economic conditions in that it maximises investment risks by hampering future returns.⁴⁶⁵ Further foreign investors are more understanding where a country is going through financial instability than political instability because in the case of the latter it takes many years to repair.⁴⁶⁶

Having discussed some of the determinants of FDI, this chapter will now critically discuss the case of SADC countries. In the following discussion this chapter will try and establish exactly which one or some of the discussed FDI determinants SADC may failing to respect.

4.4. *Overview of SADC FDI Flows*

The years preceding the mid-90s were largely dominated by political instabilities among SADC countries.⁴⁶⁷ In the mid-1990s there was a shift in policy framework in the region aimed at mobilising domestic and international financial resources including FDI.⁴⁶⁸ Thus, governments began to engage in privatisation programmes and trade liberalisation of local

⁴⁶¹ M. Burger ‘Risky Business: Political Instability and Greenfield Foreign Direct Investment in the Arab World’, The World Bank (2013) Policy Research Working Paper 6716 page 3 available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16932/WPS6716.pdf?sequence=1> accessed on 5 October 2014

⁴⁶² DPRU ‘What are the major trends and determinants of foreign direct investment in SADC countries?’ Policy Brief No. 00/P2 (2000)

⁴⁶³ Note 460 above, 3

⁴⁶⁴ Ibid 3

⁴⁶⁵ A. Shahzad & others ‘Political Stability and the Foreign Direct Investment Inflows in Pakistan’ (2012) *9(2)BJP*: 199-208

⁴⁶⁶ Note 402 above, 153

⁴⁶⁷ For example; the colonialism of Namibia by South Africa, the civil war in Mozambique and the apartheid regime in South Africa. See, note 461

⁴⁶⁸ C. Dupasquier & PN. Osakwe ‘Foreign Direct Investment in Africa: Performance, Challenges and Responsibilities’, Economic Commission for Africa (2005) ATPC Work in Progress No. 21

markets, which resulted in an improvement of economic performance.⁴⁶⁹ During this period FDI inflows into SADC originating from OECD countries began to multiply. From 1994 to 2004, research indicates that the GDP per annum grew from 1.5 per cent to 3.6 per cent.⁴⁷⁰ However, the 2008 economic recession had a massive impact on SADC FDI inflows in that between 2009 and 2010 the region recorded a 50 per cent fall of total FDI inflows.⁴⁷¹

According to the New Partnership for Africa's Development (NEPAD) initiative, SADC countries along with other African regions require \$64 billion FDI inflow in order for them to be able to reach the annual growth of 7 per cent needed for meeting the Millennium Development Goals.⁴⁷² This requirement is perceived as almost impossible considering that the region remains marginalised in attracting FDI. Thus, despite the promulgation of policy frameworks in favour of investors, the region only attracted a mere \$49 billion from 1995 to 2001.⁴⁷³

In 2006 SADC member states signed the Protocol on Finance and Investment.⁴⁷⁴ The Protocol recognises the necessity of regional cooperation which ultimately aims to attracting foreign investments in the region.⁴⁷⁵ Article 1 states that "no member state shall implement financial and investment policies which will lead to undesirable adjustments on other member states policies".⁴⁷⁶ This article warrants a harmonised approach by all member states through which financial and investment policies shall be implemented in such a way to ensure that members are able to for example attract FDI and ultimately attain their developmental needs. However there is considerable evidence indicating that this article has been violated in many occasions through the process of competitive bindings for FDI between SADC member states. In this process SADC countries offer unnecessary concessions on multinational

⁴⁶⁹ From 1995 to 2002 African countries in Sub Saharan witnessed a growth of 0.7 per cent on GDP per capital. See, Ibid

⁴⁷⁰ Note 461 above

⁴⁷¹ SADC 'Towards a Common Future' available at <http://www.sadc.int/themes/economic-development/investment/foreign-direct-investment/> accessed on 23 September 2014

⁴⁷² H. Bezuidenhout & W. Naudé 'Foreign Direct Investment and Trade in the Southern African Development Community', UNU-WIDER (2008) Research Paper No. 2008/88 page 1 available at http://www.wider.unu.edu/publications/working-papers/research-papers/2008/en_GB/rp2008-88/ accessed on 23 September 2014

⁴⁷³ Ibid 1

⁴⁷⁴ SDAC Protocol on Finance and Investment available at http://www.sadc.int/files/4213/5332/6872/Protocol_on_Finance_Investment2006.pdf accessed on the 11 September 2014.

⁴⁷⁵ Ibid

⁴⁷⁶ Ibid, Article 1

enterprises for attracting FDI. To a certain degree such concession may be detrimental to the contribution of investment on development.⁴⁷⁷

The protocol came into operation on April 2010.⁴⁷⁸ Various Ministers of Finance and Investment from SADC countries met in 2011 at Mauritius to discuss the implementation of the provisions of the protocol.⁴⁷⁹ Among other achievements the meeting resulted in the development of the SADC Investment portal and the establishment of the Investment Promotion Agency (IPA).⁴⁸⁰ Through these bodies the SADC region aims to further provide a transparent business environment to foreign investors.

Another fact that must be noted is that FDI flows in SADC are not equally distributed, thus South Africa remains the primary destination for FDI in the region. South Africa also appears in the radar screen of outward FDI in the region. Owing to the diversification of its economy, South Africa is responsible for more than 60 per cent of GDP in the region followed by Angola, Tanzania and Zambia. In 2002 South Africa was ranked as the third largest investor in Africa after the United States and the United Kingdom.⁴⁸¹ Generally South African FDI outflows are concentrated in SADC.⁴⁸² As is the case with the vast majority of inward FDI in Africa from foreign countries, South African outward FDI to Africa is largely located on natural resources and telecommunications sectors.⁴⁸³ The vast majority of FDI inflows into the region take form of mergers and acquisition and are generally concentrated in the exploitation of natural resources i.e. minerals, oil and raw materials.⁴⁸⁴ South Africa has hosted 7 out of 10 largest mergers and acquisitions in Africa from 1996 to 2012.⁴⁸⁵

⁴⁷⁷ A prime example of the grating of such concession by the Namibian government is to be found in the Namibia Ramatex case. See, D.Zampini 'Developing a balanced framework for Foreign Direct Investment in SADC:A decent work perspective', Monitoring Regional Integration in Southern Africa Yearbook (2008)

⁴⁷⁸ SADC Summit on Finance and Investment 2012 available at <http://sadcsummit.net/files/assets/common/downloads/page0034.pdf> accessed on 23 September 2014

⁴⁷⁹ Ibid

⁴⁸⁰ Ibid. See, also SADC Report of the Executive Secretary 2011-2012 available at http://www.sadc.int/files/1613/7243/4333/SADC_ES_Report_2011-2012_web.pdf accessed on 23 September 2014

⁴⁸¹ The total amount of SA outward FDI to Africa in 2002 was around \$1.45 billion, 90% of which was directed at SADC succeeding the UK (\$20 billion representing 1.9% of total outward FDI) and the US (\$19.0 billion). See, S. Page & DW. Velde 'Foreign Direct Investment by African Countries', Overseas Development Institute London (2004) page 33 available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5739.pdf> accessed on 4 September 2014

⁴⁸² Ibid 34

⁴⁸³ I.e. Market seeking and natural resource seeking FDI. Ibid

⁴⁸⁴ JC. Anyanwu 'Determinants of Foreign Direct Investment Inflows to Africa, 1980-2007' African Development Bank Group (2011) Working paper series No. 136 page 8 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/WORKING%20136%20Determinants%2>

4.5.Recent World FDI Trends 2012 and 2013

4.5.1. 2012

World FDI inflows sustained a decline of 18 per cent in 2012 to 1.35 trillion from 1.5 trillion in 2011.⁴⁸⁶ Although developing countries also suffered a slight decline of 4 per cent to 703 billion, they however, for the first time in history, outdid developed countries accounting for an enormous 54 per cent of total FDI inflows.⁴⁸⁷ Even more, African countries were the only countries to sustain a year on year increase of FDI inflows (44 billion in 2010, 48 billion in 2011 and 50 billion in 2012).⁴⁸⁸ However FDI inflows among African countries were not equally distributed thus while North Africa, Central Africa and East Africa recorded an increase, West Africa and Southern Africa recorded a decline.⁴⁸⁹ In addition, in the Southern African region FDI dropped from 8.7 billion in 2011 to 5.4 billion in 2012.⁴⁹⁰

4.5.2. 2013

FDI inflows in 2013 sustained a slight increase of 9 per cent to 1.5 trillion. All sectors of the economy recorded an increase, i.e. developing countries from 703 billion to 778 billion, transition economies recorded a 28 per cent increase to 108 billion and developed economies recorded a 9 per cent increase to 566 billion.⁴⁹¹ Africa continued with the year on year trend in that the region recorded a 4 per cent increase from 50 billion to 57 billion. The inflows in Africa were largely market seeking and infrastructure investments increase which indicates a shift from the preceding years.⁴⁹² The continent also recorded an increase of intra-regional flows, which were largely dominated by South Africa and two non SADC countries Nigerian and Kenyan enterprises. The SADC region reached almost 100 per cent of FDI increase compared to the previous year recording 13.2 billion from 6.7 billion in 2012.⁴⁹³ The vast

[00F%20Foreign%20Direct%20Investment%20Inflows%20To%20Africa%201980-2007%20AS.pdf](#) accessed on 7 October 2014

⁴⁸⁵ Ibid 9

⁴⁸⁶ UNCTAD World Investment Report 2013 page 23 available at http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf accessed on 11 September 2014.

⁴⁸⁷ Ibid 2

⁴⁸⁸ Developed countries suffered a 31 per cent decline, developing countries 4 per cent and transition economies 9 per cent. See, Ibid 67

⁴⁸⁹ Ibid 53

⁴⁹⁰ Ibid 39

⁴⁹¹ Note 65 above, 1

⁴⁹² In the preceding years foreign investments into Africa were largely concentrated in the extractive industry due to the abundance of natural resources. However the increasing middle class population and economic sustainability is motivating foreign investments in the consumer-market orientated sectors. See, Ibid 37

⁴⁹³ Ibid 37

majority of inflows were concentrated at infrastructure investments mainly in South Africa and Mozambique.⁴⁹⁴

Despite the fact that the region has been able to record the above FDI inflows, this thesis argues that the region has failed to attract lucrative FDI inflows that will enable the achievement of development objectives. The main reason for the lack of lucrative FDI inflows in the region is because the region is considered to be a business risky environment due to the presence of the factors that impede FDI. Below is a case study on four SADC countries so as to identify the presence and the impact of the factors that impede FDI in the region.

4.6. Case studies

4.6.1. Botswana

The years preceding 1996 in Botswana present no substantial evidence for development efforts in the country. However, since the attainment of independence in 1966, Botswana has been able to create a business enabling environment through sound macro-economic policies and good governance.⁴⁹⁵ In the last four decades, Botswana has achieved significant development objectives. Thus, it has transformed from being a Least Developing Country (LDC) to a developing country and it has generated substantial income for infrastructural development.⁴⁹⁶ In the last 40 years, the country has been applauded as one of the fastest growing economies in the world.⁴⁹⁷ The World Bank also applauded Botswana as having the most stable and powerful economy in Africa.⁴⁹⁸ The impressive economic performance in Botswana results from judicious management of diamonds and FDI inflows.

FDI inflows to Botswana are generally concentrated in the mining sector due to the abundance of natural resources.⁴⁹⁹ Emerging as the world's second largest producer of

⁴⁹⁴ Ibid 37

⁴⁹⁵ Ever since the attainment of independence from the British Empire in 1966, democratic elections have been held in a free and fair manner. See, BEDIA 'Botswana Investment Guide' available at http://www.fdi.net/documents/WorldBank/databases/botswana/Botswana_Investment_Guide.pdf accessed on 23 September 2014

⁴⁹⁶ Under the British colonialism there was only 12 kilometres of paved roads, and now there is more than 7 000 kilometres of paved roads. See, UNCTAD @ available at http://unctad.org/en/docs/iteipcmisc10_en.pdf accessed on the 21st of September 2014

⁴⁹⁷ K. Jefferis 'Botswana Country Overview' (2013) page 26 available at <http://acap.com.au/wp-content/uploads/2013/09/BOTSWANA-COUNTRY-AND-ECONOMIC-OVERVIEW-2013.pdf> accessed on 2 December 2014

⁴⁹⁸ Note 494 above,

⁴⁹⁹ Note 495 above, 1

diamonds and the first in terms of output value, the government has been able to generate substantial foreign capital to enhance national development objectives.⁵⁰⁰ The country has also enacted the National Strategy on Economic Diversification Drive (EDD), which is aimed at promoting the private sector so as to encourage economic diversification.⁵⁰¹ Furthermore in an attempt to promote beneficiation the government signed a deal with De Beers to establish a Diamond Trading Centre (DTC) in Botswana.⁵⁰² This agreement will make Botswana one of the largest suppliers of rough diamonds, in that diamonds from South Africa, Canada and Namibia will be processed and marketed from Botswana.⁵⁰³

However despite these successes, infrastructural development in the country is progressing at a lethargic pace, in that deficient road segments continue to lessen the competitiveness of products by increasing the cost and time of transportation.⁵⁰⁴ This deters the confidence of foreign investors.

4.7.2. *Angola*

Angola is the second highest FDI receptor in SADC after South Africa. This is attributed (similar to Botswana) to the abundance of natural resources i.e. oil, gas and diamonds. For example, in 2010 the mining sector accounted for 47% GDP and in 2011, 85% of government revenues were generated in the oil industry.⁵⁰⁵ However, despite the abundance in natural resources Angola is rated as one of the most difficult countries in which to do business.⁵⁰⁶ This is primarily caused by the landmines and other leftovers of the civil war, which lasted 27 years, ending in 2002.⁵⁰⁷ Furthermore, the Angolan civil war toured down infrastructural

⁵⁰⁰ i.e. 'The mining sector accounts for more than 50 per cent of GDP, government revenues from mineral taxes and royalties account for more than 50 per cent of the total revenue intake, and diamond exports account for almost 75 per cent of total exports'. See, A. Basu & K. Srinivasan 'Foreign Direct Investment in Africa-Some Case Studies' IMF (2002) working Paper 02/61 available at

<http://www.imf.org/external/pubs/ft/wp/2002/wp0261.pdf> accessed on 18 September 2014

⁵⁰¹ E. Mahembe & N.M. Odhiambo 'The dynamics of foreign direct investment in SADC countries: experiences from five middle-income economies' (2013) *11(4)PPM*: 1-35

⁵⁰² Ibid 36

⁵⁰³ Ibid 36

⁵⁰⁴ SADC Strategy Report (2015) page 15 available at

<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2011-2015%20-%20Southern%20Africa%20-%20Regional%20Integration%20Strategy%20Paper.pdf> accessed on 6 October 2014.

⁵⁰⁵ M.V. Murgui 'FDI and Development: Desk-study on the Impact of Chinese Foreign Direct Investment (FDI) has in Angola's socio-economic Development (2014) available at

http://ddd.uab.cat/pub/tfg/2014/119109/TFG_mvargasmurgui.pdf accessed on 18 September 2014

⁵⁰⁶ Out of 189 countries Angola is at 179. See, World Bank 'Doing Business', Ease of Doing Business Index (2013) available at <http://www.doingbusiness.org/rankings> accessed on 22 SEPTEMBER 2014

⁵⁰⁷ A. Wiig & I. Kolstad 'Multinational corporations and host country institutions: A case study of CSR activities in Angola', (2010) *19IBR*: 178-179

development to the extent that business continues to use private diesel generators as an electricity connecting source. Further there is a high risk of manufacturers losing their goods in transit due to the low level of transport.⁵⁰⁸

4.7.3. *South Africa*

In the establishment of the British colony in the early 19th century, South African FDI inflows were largely concentrated in the agricultural sector. However the discovery of natural resources in the 1860s represented a new trend, in that FDI inflows began to be recorded in the exploitation of natural resources. The vast majority of capital that was received through these flows was used to develop manufacturing sectors. The development of the manufacturing sector also attracted foreign investors, in that in the early 1970s FDI inflows were now recorded in the manufacturing and service sectors. The mining sector also continued to receive FDI but it was less than a quarter of total inflows due to the high demand in manufactured products.⁵⁰⁹

The cordiality of FDI inflows was however disrupted in late 80s by the voices against the apartheid regime. In the early 90s, the intensified level of political instability resulted into a fragile economy caused by sanctions as international protests against the apartheid regime began to increase. This resulted into 225 US corporations and 20 per cent of UK firms' leaving South Africa.⁵¹⁰ The apartheid regime in South Africa did not only cause disinvestments in South Africa but to the entire Southern African region. Thus in the 80s the region accounted for nearly two thirds of Africa's inward FDI but in the 90s the region recorded less than a quarter of total inflows into Africa.⁵¹¹

When political instability ended in the collapse of the apartheid regime by democratic elections in April 1994, South Africa began to record enormous FDI inflows. In 1996 the unemployment ratio increased enormously with 500 000 South African employees employed by MNCs. The reversals of FDI flows into South Africa were recorded as follows: from 1994 to 1996 ('74 per cent in the services sector, 24 per cent in manufacturing and 2 per cent on

⁵⁰⁸ R.S. de Oliveira 'Business success, Angola-style: postcolonial politics and the rise and rise of Sonangol' (2007) *45(4)JMAS*: 595-602

⁵⁰⁹ G. Stephen & A. Black 'Foreign direct investment in South Africa' *Investment Strategies in Emerging Markets* (2004)

⁵¹⁰ *Ibid*

⁵¹¹ UNCTAD World Investment Report 1996 available at http://unctad.org/en/Docs/wir1996_en.pdf accessed on 21 September 2014

mining’).⁵¹² The post-apartheid era resulted to South Africa being considered to be a primary destination for FDI and an economic hub for the SADC region. However, despite the FDI reversal in South Africa, inflows are considered to be low when compared to other emerging countries.⁵¹³ The reluctance of foreign investment in South Africa is attributed to the high level of crime and labour regulations.⁵¹⁴ Thus, according to Labour Department report strike incidents in the country grew 100% from 2009 to 2014.⁵¹⁵

4.7.4. Zimbabwe

Zimbabwe is well known for its generous investment rates on the local money market, which are considered to be the best in the world.⁵¹⁶ In contrast with this reputation, the country has also built a reputation of being a business risky environment. In 1998 Zimbabwe recorded \$444 million in FDI inflows.⁵¹⁷ However, lucrative FDI began to depreciate from 1999 where the country recorded only \$59 million.⁵¹⁸ Evidence in literature indicates that the decline was due to the intensified political instability and micro economic imbalances in the country.⁵¹⁹ Among other political imbalances, was the land reform programmes adopted by the government in the late 90s.⁵²⁰ The land reform programmes entitles the government to expropriate white owned commercial land without compensation.⁵²¹ Another programme that has been approved by the government is the nationalisation of foreign owned enterprises in all sectors of the economy.⁵²²

Despite the fact that the legality of the land reform policies was challenged by the SADC Tribunal in the case of *Mike Campbell (Pvt) Ltd & Others v The Republic of Zimbabwe*, the

⁵¹² UNCTAD World Investment Report 1997 available at http://unctad.org/en/docs/wir1997_en.pdf accessed on 21 September 2014

⁵¹³ M. Nowak & AR. Luca ‘Post-apartheid South Africa: The first ten years’, International Monetary Fund (2006) page 3 available at <http://www.imf.org/external/pubs/nft/2006/soafrica/eng/pasoaftr/pasoaftr.pdf> accessed on 29 October 2014

⁵¹⁴ Ibid

⁵¹⁵ B. Sathekge ‘Strikes in South Africa hit a four year record high’, The New Age 20 September 2013 page 1

⁵¹⁶ A. Chingarande & others ‘The impact of interest rates on foreign direct investment: A case study of the Zimbabwean economy’ (2012) *1(5)IJMSBR*: 1-2

⁵¹⁷ The increases of inflows in 1998 were largely driven by the liberalization and privatization programmes. See, Ibid 3

⁵¹⁸ UNCTAD ‘FDI in Brief Zimbabwe’ available at http://unctad.org/sections/dite_fdistat/docs/wid_ib_zw_en.pdf accessed on 5 November 2014

⁵¹⁹ Ibid 3

⁵²⁰ F. Gwenhamo ‘Foreign Direct Investment in Zimbabwe: The Role of Institutional Factors’, University of Cape Town (2009) Working Paper Number 144 page 3 available at http://www.econrsa.org/papers/w_papers/wp144.pdf accessed on 22 September 2014

⁵²¹ Ibid 4

⁵²² Ibid 2

government has continued its operations.⁵²³ The tribunal challenged the legality of the policies on the basis that such policies are based on racial discrimination and they make no provision for compensation.⁵²⁴ As stated above policy uncertainty relating to property rights is another form of political instability. Thus foreign investors now perceive Zimbabwe as a political unstable country.⁵²⁵ This perception has resulted to a decline of FDI inflows into the country.

4.8. Conclusion

This chapter has critically discussed some of the benefits that FDI has to offer in host countries. In this discussion it was established that these benefits do not accrue automatically, thus they are dependent on a wide range of determinants such as market size, infrastructure, political instability, trade liberalisation and labour standards. Further, the determinants of FDI differ according to the business environment of each country or region. In the case of SADC, the chapter has established that apart from South Africa, the vast majority of FDI inflows are concentrated in the exploitation of natural resources i.e. natural resources seeking FDI. This indicates that trade liberalisation is the most crucial determinant for SADC countries.

The chapter has also established that market size is an important determinant of market seeking FDI in that it allows foreign investors to benefit from economies of scale which may arise from low distribution costs. In the case of SADC countries, it was established that they do not have large markets except in services and manufacturing sectors. Therefore market seeking FDI is based on these sectors. In respect of the effects of trade liberalisation it was established that it could either be negative or positive depending on the motives of FDI. As explained above export oriented FDI favours a trade liberalised system and market seeking FDI favours a trade restricted country.

The case study has established that political instability in the region is a major deterrent of FDI. The 3 countries studied above except Botswana, engaged in a state of being politically unstable upon attainment of independence from colonial powers. South Africa has been the only country that has shown significant recovery followed by Angola even though there are some remnants of the civil war. On the other hand, Zimbabwe appears to be going in an anticlockwise direction with regard to creating a healthy business environment for FDI. The

⁵²³ *Mike Campbell (Pvt) Ltd & Others v The Republic of Zimbabwe*, SADC (T) Case No. 2/2007

⁵²⁴ L. Ndlovu 'Following the NAFTA Star: SADC land reform and investment protection after the *Campbell* litigation' (2011) *15LDD*: 59-60

government of Zimbabwe it appears persists on implementing policies which poses major risks on foreign investors even those in neighbouring countries.

Therefore in order for SADC countries to be able to attract more FDI there has to be stable, transparent and effective governance in all member countries. Even more, these countries have to adopt respect for decisions of the relevant bodies and implement it accordingly. Further for SADC countries to be able to attract substantial FDI flows, collectively these countries need to discontinue competitive bindings and develop policy frameworks which seek to harmonise domestic and intra-regional trade.



CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

Using a qualitative approach the thesis has attempted to answer the following question: Is trade integration and FDI a dream deferred for the development of SADC? The attempt was initiated by critically discussing the history of the multilateral trade system by looking at various ministerial rounds of both the GATT and the WTO. This was an important discussion because it will give the reader some form of background of the international regulations governing cross border trade and FDI. Further the reader will also be able to understand some of the principles employed on multilateral trade negotiations. The thesis also discussed the concept of development taking into account the right to development and the United Nations (UN) Millennium Declaration.⁵²⁶ In this discussion the thesis focussed on the eighth goal of the declaration which requires the integration of developing and Least Developed Countries (LDCs) into the multilateral trade system. Finally the thesis attempted to discuss the role of FDI on Development and some of the factors that impede foreign investors in the SADC region.

5.2. Conclusion and Recommendations

5.2.1. Trade Integration and Development

The thesis has found that international trade is regarded to be a major source of ensuring a progressive realisation of the right to development and facilitating the attainment of Millennium Declaration Goals.⁵²⁷ This was established by discussing the eighth goal of the UN Millennium Declaration.⁵²⁸ This goal recognises the integration of DCs and LDCs into the multilateral trade regime. This must be done in manner that enables such countries to be in a position of exploiting their comparative advantage to their benefit. It is on this basis that WTO members agreed to launch the Doha Round in 2001, which resulted into the Doha Development Agenda (DDA).

The DDA was an initiative aimed at taking into the heart the needs and interests of DCs and LDCs. To this end members of the WTO have reached various agreements aimed at enabling these countries to exploit their comparative advantage as warranted by the UN Millennium

⁵²⁶ See, sub-section 3.2 above.

⁵²⁷ Note 285 above

⁵²⁸ See, sub-sub section 322 above

Declaration. Among other agreements reached at the WTO, the thesis on focused on the following; Duty Free and Quota Free Market Access; Trade Facilitation; Agriculture and Aid for Trade. The thesis also found that, despite the existence of these agreements the DDA has failed to live up to its promise of ensuring development of developing and LDCs. According to Howse⁵²⁹ “instead of development being a big idea for the Doha round, it has tended to be the backdrop to a sharpening of divisions rather than playing the expected normatively unifying role”.

Therefore, many developing countries and LDCs will not be able to reach the MDGs within the prescribed time limits. The thesis supports this argument by stating that as a “Development Agenda”, the Doha Round had the responsibility of ensuring that the MDGs and targets are met. Prof. M. Dubey and Dr. B. Dhar, at the first session of the Bali Conference highlighted as follows: “Although the Doha Development Round was launched 12 years ago, the interests and needs of the developing countries have been consistently ignored”.⁵³⁰ On this basis this paper concludes that the DDA was built on the house of cards seeking to mislead the poor countries into believing that the agenda will ensure that their development needs and interests are adhered to.

However, the thesis does not echo with the growing perception in the literature contending that the WTO is incompetent for multilateral trade negotiations.⁵³¹ Thus, there are many factors that render the negotiations at the WTO harder and longer when compared to the General Agreement on Tariffs and Trade (GATT).⁵³² Among others, is the increased number of members participating in the negotiations and the wide range of issues on the table. Under the GATT there were smaller numbers of the contracting parties and the negotiations were primarily focused on the reduction of tariffs.⁵³³ This made the negotiation process smother and easier because every man jack interests and needs were the same. However the cordiality was disrupted at the Kennedy Round, where the contracting parties put under negotiations many issues affecting trade rather than focusing on reducing tariffs. After this round,

⁵²⁹ R. Howse ‘Mainstreaming the right to development into the World Trade Organization’ page 256 available at <http://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIIChapter18.pdf> accessed on 25 November 2014.

⁵³⁰ Seminar Report ‘The WTO Bali Ministerial and the Doha Development Agenda: Assessing the Gains and Losses’, India International Centre, New Delhi (2013) available at <http://focusweb.org/sites/www.focusweb.org/files/Report%20Post%20Bali%20Meet%2017%20Dec%202013.pdf> accessed on 26 October 2014

⁵³¹ Note 331 above. See also, RE. Baldwin ‘Failure of the WTO Ministerial Conference at Cancun: Reasons and Remedies’ (2006) 29(6) *WE*:664-677.

⁵³² Note 91 above, 179

⁵³³ Note 80 above 395

negotiations that followed also encompassed a wide range of issues. This means that the current regime at the WTO warrants a realisation of the needs and interests of an inherently diverse society.

Therefore, this thesis recommends that on the upcoming Ministerial Conferences members should adopt the same approach that was adopted at the Bali Ministerial Conference.⁵³⁴ This approach entails the identification of issues that are reasonable possible to reach an agreement between the members. Furthermore, this thesis also recommends the utilisation of Regional Trade Agreement (RTAs) as a source of integrating the diverse society into the MTS. However, the conclusion of comprehensive RTAs is not an easy task for some regions, particularly in Africa. On this notion the thesis went on to discuss the integration of Africa concentrating on the Southern African Development Community (SADC).

The thesis found that SADC integration could be compared to the DDA to the extent that although there have been some achievements, there is still a great deal of work that has to be done going forward. SADC integration is moving at a slow pace due to the issue of overlapping membership. In order to deal with this issue, SADC members launched negotiations for a Tripartite Free Trade Area (T-FTA) with COMESA and EAC.⁵³⁵ It is believed that this arrangement will harmonise trade among the countries in the African region. However, despite the effort of launching a T-FTA, this thesis argues that trade integration is far from being achieved. Empirical evidence in the literature indicates that believe that the negotiation approach between members is not adequate.⁵³⁶

According to the Economic Development in Africa Report 2013, governments in Africa should promote intra-regional trade by deviating from a linear approach of integration to a more development based approach.⁵³⁷ This thesis echoes this argument on the basis that a development based approach will make way for the participation of the private sector on TFTA negotiations.⁵³⁸ The participation of the private sector can fast track the negotiation process because they also stand to benefit from RTAs. Furthermore, the private sector is in a

⁵³⁴ Note 308 above

⁵³⁵ JT. Gathii (note 377 above, 8)

⁵³⁶ UNCTDA 'Intra-African trade: Unlocking private sector dynamism', Economic Development in Africa Report (2013) TD/B/60/4 page 2 available at http://unctad.org/meetings/en/SessionalDocuments/tdb60d4_en.pdf accessed on 12 November 2014

⁵³⁷ The linear approach is strictly confined to the reduction of trade barriers. Whereas the "development-based approach is focused to the building of capacities and private sector development to the elimination of trade barriers". See, Ibid 2

⁵³⁸ Ibid 2

position to understand the negative impact of trade barriers far better than the government. Therefore the thesis recommends that African government should encourage the participation of the private sector on RTA.⁵³⁹

5.2.2. *FDI and Development*

The thesis also discussed the impact of FDI on the development process. In this discussion it was established that the presence of FDI is beneficial for host countries. This is because FDI on host countries presents enormous possibilities for technological spillovers and capital accumulations, which can be used to advance the development process.⁵⁴⁰ However, it was found that FDI does not accrue automatically.⁵⁴¹ Thus, in order to attract FDI governments are supposed to create a business enabling environment for FDI through policy frameworks taking into account micro-economic determinants.⁵⁴² An attempt to adopt multilateral rules for creating a business environment for FDI in host countries was made at the WTO but no agreement could be reached, except for the Trade Related Investment Measures (TRIMS).⁵⁴³ The TRIMS however, is not comprehensive enough to provide for the protection of foreign investors, which can boost their confidence to invest abroad, especially in SADC. The absence of multilateral rules on FDI placed a duty on regional and local governments to create a business enabling environment through domestic and regional policies.

In the case of the SADC region, the thesis established that although all members recognised the necessity of regional cooperation for attracting FDI, there is still a wide range of micro-economic instabilities that exist in the region. These include political instability, weak infrastructure, low market size, labour standards and trade integration. A case study was employed aimed at identifying the impact of the discussed factors that impede the attraction FDI.⁵⁴⁴ The case study established among others, political instability seems to be the most detrimental factor. Although some countries have been able to deal with this factor, Zimbabwe is still regarded as a politically unstable country.

The arbitrary land reform policies in Zimbabwe have resulted to the country being identified as one of the most business unfriendly zone in SADC. This has negatively affected potential

⁵³⁹ Ibid 2

⁵⁴⁰ Note 31 above, 24

⁵⁴¹ Note 402 above, 153

⁵⁴² Ibid 154

⁵⁴³ Note 194 above, 15

⁵⁴⁴ See, sub-section 4.7 above

FDI inflows in Zimbabwe.⁵⁴⁵ Thus, ever since the implementation of the land reform policies FDI inflows have declined. The decline of FDI inflows in Zimbabwe does not affect only the Zimbabwean people but it affects the whole SADC region. Thus the effectiveness of the SADC Protocol on Finance and Investment is subject to criticism. In its preamble the protocol states that all members of SADC shall engage in concerted efforts to attract foreign investments. However the SADC members have failed to curb the implementation of the arbitrary land reform policies in Zimbabwe on the basis that these policies are detrimental for attracting FDI.

The thesis also found that the civil war in Angola, which lasted for 27 years, left the country with weak levels of infrastructure.⁵⁴⁶ Thus, many businesses rely on generators for electricity supply and manufacturers are at risk of losing their goods in transit due to lack of adequate transport. Further it was established that market size in SADC is not an issue for most countries because lucrative FDI inflows are generally based on the exploitation of natural resources. Therefore this places an obligation on the governments to facilitate their integration into global trade with other nations.

On this basis the thesis recommends that firstly; WTO members should reconsider the negotiation of international rules on investment. The main logic behind such recommendation is that an international agreement on investment under the MTS could have a positive impact on developing countries. According to E.V.K. Fitz Gerald⁵⁴⁷ in order to achieve foreign investor confidence developing countries must adopt an international approach of investment regulation. This will reduce the current uncertainties on the business environment in host countries. Further it will serve as a measure of assurance on foreign investors in that they will have recourse where host governments willingly shift their domestic policies in manner that deteriorates the interests of foreign investors.

A conclusion of an investment agreement at the WTO requires an approach that will address the needs and interest of everyone that may be affected by such an agreement.⁵⁴⁸ This should be done by inviting all the members of the WTO for negotiations, unlike the approach

⁵⁴⁵ None 517 above

⁵⁴⁶ Note 507 above, 602

⁵⁴⁷ E.V.K. FitzGerald and others 'The Development Implications on the Multilateral Agreement on Investment', Department for International Development (1998) page 5 available at <http://www.oecd.org/investment/investment-policy/1922690.pdf> accessed on 18 November 2014

⁵⁴⁸ P. De Man and Jan Wouters 'Improving the framework of Negotiations on International Investment Agreements', Leuven Centre for Global Governance Studies (2012) Working Paper No. 84 page 8 available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2274811 accessed on 22 November 2014

adopted by the OECD countries in 1997. Furthermore, recognising the scope of the DDA that it seeks to take into the heart the interests of developing countries, this thesis is of the opinion that an international agreement can be best suited on the agenda. Also DCs should take advantage of their majority confinement at the WTO by establishing common grounds. This will give them leverage in the negotiation process.⁵⁴⁹

Finally, the thesis recommends that SADC members must rise up to the challenge of attracting foreign investments by engaging in a concerted effort aimed at dealing with the factors affecting FDI. This entails the adoption of regional policies aimed at curbing any domestic policies that have a negative impact on the interests of foreign investors. Therefore such regional policies must be implemented in a manner that will override the principle of sovereignty of any state in the region. Further members must facilitate trade integration and infrastructural development.

⁵⁴⁹Ibid 8

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NAFTA: North American Free Trade Agreement, 1 January 1994

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Appendix A

Country	Status	Main export commodities	Source
Angola	Developing	Oil, diamonds, fish, non-ferrous scrap metal, wood, cassava, and shellfish	Afrol News www.afrolnews.com
Botswana	Developing	Diamonds, beef, textile machinery, petroleum products, metal, wood and paper products	Economic Watch www.economicwacth.com
Democratic Republic of Congo	Developing	Refined Copper, Raw Copper, Crude Petroleum, Cobalt, Cobalt Ore	OBSEVATORY of Economic Complexity http://Atlast.media.mit.edu
Lesotho	Least Developing	Pearls, precious stones, metals, coins, wool and mohair, food and live animals, electricity, water, diamonds, vegetable products	Afribiz www.afri-biz.biz
Madagascar	Least Developing	Agricultural products coffee, vanilla, shellfish, sugar, and fiber.	WildMadagascar www.wildmadagascar.org
Malawi	Least Developing	Tobaccotea, cotton, sugar, coffee, peanuts, apparels and wooden products.	Economy Watch www.economicwacth.com
Mauritius	Developing	Processed Fish, Raw Sugar and Textiles	Afribiz www.afri-biz.biz
Mozambique	Least Developing	Aluminium, Natural gas, prawns, sugar, tobacco and Wood.	SADCTrade.org
Namibia	Developing	Diamonds, stones, metals, Ores, ash, slag, fish and mollusc	Namibian Statistics Agency www.nsa.org.na
Seychelles	Developing	Canned tuna, frozen fish, cinnamon bark, copra, petroleum products	Indexmundi www.indexmudi.com
South Africa	Developing	Gold, diamonds, platinum, other metals and minerals, machinery and equipment.	Economy Watch www.economicwacth.com
Swaziland	Developing	sugar, cotton, and wood pulp	Economy Watch www.economicwacth.com
Tanzania		gold, coffee, cashew nuts, manufactured products and cotton.	Economy Watch www.economicwacth.com
Zambia	Developing	Refined Copper, Raw Copper, Corn, Raw Tobacco and Raw Cotton	OBSEVATORY of Economic Complexity http://Atlast.media.mit.edu



18 August 2014

Mr Nhlakanipho Macmillan Zikalala (209527098)
School of Law
Howard College Campus

Protocol reference number: HSS/0975/014M

Project title: A critical discussion on Foreign Direct Investment in the Multilateral Trade System and Development in SADC

Dear Mr Zikalala,

Full Approval – No Risk / Exempt Application

In response to your application dated 04 August 2014, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

.....
Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Ms Clydenia Stevens
Cc Academic Leader Research: Dr Shannon Bosch
Cc School Administrator: Mr Pradeep Ramsewak

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