A CRITICAL APPRAISAL OF THE ROLE OF AID FOR TRADE IN THE ACHIEVEMENT OF A GLOBAL PARTNERSHIP FOR DEVELOPMENT IN RESPECT OF KENYA AND TANZANIA

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DECLARATION OF CANDIDATE

I, Rushantha Chetty, hereby declare that the contents of this dissertation represent my own unaided work and the dissertation has not previously been submitted for academic examination towards any qualification. Furthermore, it represents my own opinions and not necessarily those of the University of Kwa-Zulu Natal, Howard College Campus.

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To my family, thank you for this opportunity and your endless support and encouragement. I hope this makes you proud.

CHAPTER 1: INTRODUCTION

1.1. Introduction

The modern multilateral trade system was born in 1948 when the General Agreement on Tariffs and Trade (GATT) entered into force.[1] The GATT created a legal framework for a mutual reduction in tariffs negotiated between the signatory governments party to it.[2] The GATT contained each government's commitment to reduce tariffs (referred to as the Schedule of Concessions) and a code of behaviour regulating other forms of government interference with international trade. [3]

The GATT code of behaviour was founded on three central principles. The first principle was that while governments would not be prohibited from protecting domestic industries against foreign competition, all such protection should be in the form of tariffs.[4] The second principle provided there would be no limits on tariff levels however, governments would participate in periodic negotiations aimed at gradually reducing existing levels.[5] The third principle was the Most-Favoured-Nation (MFN) principle found in Article 1 of GATT. This principle required governments to treat the trade of all other GATT countries equally and any advantage given to one GATT country had to be given immediately, and unconditionally, to every other GATT country.[6]

The GATT era witnessed eight rounds of multilateral trade negotiations that were held periodically to reduce tariffs and other barriers to international trade. The Uruguay Round (1986–1994) is significant for the creation of a new body of international law and in April 1994 the Marrakesh Agreement (otherwise known as the World Trade Organisation agreement) established the World Trade Organisation (WTO)[7]

The general purpose of the WTO is to "facilitate the implementation, administration and operation as well as to further the objectives" of the WTO agreements.[8] All agreements

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[1] C A Braga & E Grainger-Jones 'The Multilateral Trading System: Mid-Flight Turbulence or Systems Failure?' in R Newfarmer*Trade, Doha, and Development: A Window into the Issues* 2,27 available at *http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/Frontmatter.pdf*accessed on 04 April 2013.
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] M Matsushita et al *The World Trade Organization* (2003) 1, 5.
[7] Ibid.
[8] Ibid 9.

annexed to the WTO agreement are binding on all member states and the WTO agreement formally replaced the GATT 1947 as the new legal agreement.[9] WTO agreements use the MFN principle, which is regarded as the corner stone of the GATT and one of the pillars of the WTO, as well as special and differential provisions.

The special and differential provisions are an exception to the MFN principle but are included in almost every WTO agreement with regard to developing country members to make considerations for the various constraints they face.[10] The special and differential provisions are categorised into "provisions aimed at increasing the trade opportunities of developing country members", "provisions under which WTO members safeguard the interests of developing country members", "flexibility of commitments, of action and use of policy instruments", "transitional time periods", "technical assistance" and "provisions relating to least developed country members".[11]

As noted earlier, Special and Differential Treatment (SDT) is primarily designed to assist developing and LDCs. Therefore the need for effective SDT is particularly important when the agreements, such as the Sanitary and Phytosanitary Measures agreement (SPS agreement) and the Technical Barriers to Trade agreement (TBT agreement) create disciplines for areas in national regulation.[12]

To enhance the position of developing countries and LDCs, the first WTO ministerial conference in Singapore in 1996 adopted a declaration towards LDCs and developing countries to improve their overall capacity to respond to the opportunities offered by the trading system.[13]As part of the "great plan" for improving the capacity of such countries, the Doha Development Agreement was launched in Doha at the Fourth WTO Ministerial conference in November 2001.[14] The agreements adopted WTO initiatives in three areas; (1) initiatives to provide market access in product areas of particular concern to developing countries, (2) additional special and differential treatment provisions in WTO agreements to

[9]Ibid 8.
[10]Ibid 385.
[11]Ibid 386.
[12] D Prevost 'Operationalising Special And Differential Treatment Of Developing Countries Under The SPS Agreement' available at*http://igitur-archive.library.uu.nl/law/2006-0904200056/prevost_05_Operationalisingspecialanddifferential.pdf* accessed on 13 May 2013.
[13]Matsushita et al (Note 6 above) 379.
[14]Ibid 379-380.

benefit developing countries and (3) technical assistance to increase the capacity of developing countries to participate more fully in the WTO.[15]

Due to little success in assisting these countries, Aid for trade (AfT) was officially endorsed at the 6th Ministerial conference in Hong Kong in December 2005.[16] While the AfT is not formally part of the Doha negotiations, it is an essential accessory to a successful Doha Round toward a more open multilateral trading system.[17] Because there has been some debate on what AfT constitutes, the AfT Task Force (the body created to monitor the AfT initiative) identified six broad categories to highlight trade-related needs and the constraints in developing countries and least developed counties (LDCs).[18]

The rationale for conducting case studies of these two countries is that they are part of the same regional group, the East African Countries (EAC), and are very engaged in trade relations with one another. In addition, since these countries are at different levels of development (Kenya is a developing country while Tanzania is an LDC) the implementation of AfT in such diverse economies make for an interesting study.

1.2. Purpose statement

The objectives of the AfT initiative are to enable developing countries, particularly LDCs, to use trade more effectively for the promotion of growth, development and poverty reduction and to achieve their development objectives, including the developing a global partnership for development, with targets for aid, trade and debt relief (MDG 8) [19]; help developing countries, particularly LDCs, to build supply-side capacity and trade-related infrastructure in

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[15]Ibid 380.

[16]J Nelson 'Aid for Trade' in R Newfarmer *'Trade, Doha, and Development: A Window into the Issues'* 27, 323, available at *http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/Frontmatter.pdf*accessed 04 April 2013

[17]Ibid 323-324.

[18]Ibid. The 6 categories are trade policy and regulations, trade development, trade-related infrastructure, building productive capacity, trade-related adjustments and other trade-related needs. in practical terms AfT includes five activities (1) Technical assistance covers technical assistance, advice, and expertise to assist countries that are confronted with the complexities of modern trade, (2) capacity building involves the capacity of developing countries to deal with trade issues; (3)institutional reform helps to create a framework of well-functioning institutions for trade in customs, quality assurance and other areas; (4) the improvement of infrastructure and (5) assistance with adjustment costs deals with financial support and policy advice to help countries cope with any transitional adjustment costs from liberalization. To ensure an AfT initiative is successful, it would have to incorporate a combination of the above mentioned elements.

[19]The Millennium Development Goals are 8 goals that ought to be achieved by 2015 are to (1) halve extreme poverty and hunger, (2) achieve universal primary education ; (3) promote gender equality, (4) reduce under-five mortality by two-thirds,(5) reduce maternal mortality by three-quarters,(6) reduce the spread of HIV/AIDS, malaria and TB,(7) ensure environmental sustainability and (8) develop a global partnership for development, with targets for aid, trade and debt relief.

order to facilitate their access to markets and to export more; help facilitate, implement and adjust to trade reform and liberalization; assist smooth integration into the world trading system and finally to assist in the implementation of trade agreements.[20] The dissertation will conclude a critical analysis of the role of AfT in developing a global partnership for development, with targets for aid, trade and debt relief and how it will assist with the integration of Kenya and Tanzania into the multilateral trading system.

1.3. Research Problem

The status quo is that AfT is needed because many of the poorest countries have struggled to benefit from market access opportunities due to their inability to produce or export efficiently.[21] While trading with other countries is fundamental to achieve high economic growth rates and poverty reduction targets, most African countries lack the diversity of exportable products and the production capacity to take immediate advantage from improved market access opportunities.[22] Given that trade barriers are a limitation on trade, poor supply-side conditions are often larger constraints on the import-export performances in Africa.[23] The consequence of these constraints are that countries are unable to send goods in a competitive way to the world market and therefore, do not benefit from any improved market access.[24]The fact that countries that are unable to integrate into global markets miss out on sources of sustainable growth and poverty reduction has lead to the push to increase AfT.[25]

To understand how AfT can help poor countries, it is thought that a review of the multilateral trade system is needed. This will provide an understanding of the framework of the international trade arena and could lead to an explanation of why it is argued that the multilateral trade system has not supported developing countries and LDCs. Due to the fact that trade liberalisation is generally referred to as the key to growth and development, it is important to understand the purpose of trade liberalization and the results it creates. The dissertation will further attempt to determine the rationale of the establishment of AfT, as

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[20]WTO Work Programme on Aid-for-Trade, Background Note prepared by the WTO Secretariat available at *https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009DP.aspx?language=E&CatalogueIdList=69598,58039,64435,58619,55641,58379,51994,52316,51741,54208&CurrentCatalogueIdIndex=0&FullTextSearch=* accessed 17 October 2013.

[21] Prepared by the United Nations Economic Commission for Africa (UNECA),Global review of Aid for Trade 2011, 'African case stories: A snapshot of Aid for Trade on the ground in Africa' available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/african_case_stories_e.pdf* accessed on 22 April 2013.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25]Ibid.

well as the structure and objectives thereof. To see how effective the AfT initiative is, a case study ought to be included. Therefore this dissertation will investigate how AfT has assisted Kenya and Tanzania to take advantage of trade opportunities and improve their ability to become international players.

1.4. Research questions

In doing justice to the chosen topic this dissertation will answer the following research questions. Firstly, what is the multilateral trade system and GATT? Secondly, what is the purpose of trade liberalization and how it assisted developing countries and LDCs? Thirdly, how are developing countries and LDCs classified, what challenges do these countries face, and what role have they played in the multilateral trade system? The fourth question is what is Aid for Trade? And the last question is how has Aid for Trade assisted Kenya and Tanzania?

1.5. Research design and methodology

The research design will be a non-empirical study using existing sources of information to conclude a critical, legal analysis of the information to answer the research questions. The information will be gathered primarily by desk-top research, relying on secondary sources including text books, journal articles, other research papers and case studies.

1.6. Literature Review

This dissertation will rely on the works of academic leaders including Bernard Hoekman, Raj Bhala, Richard Newfarmer, T.N Srinivasan, Hugo Cameron and Dominique Njinkeu as a framework and guide to answer the research questions proposed. The above mentioned academics will be referred to for their various approaches to address development concerns. Hoekman, Cameron and Njinkeu take the view that WTO members can only use trade policy to achieve the MDG 8 and address the development concerns. Furthermore, these academics state that the WTO's approach to help developing countries and LDCs is to use trade as aid.[26] There are two effects of this approach; first the WTO has emphasized non-discriminatory trade liberalization to benefit all members, including developing countries, through better access to export markets and helping to lower own barriers to trade.[27] Secondly, the effort to

[26] B Hoekman 'Aid for Trade: Why, What, and Where Are We?'(2010), Available at *http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054127309228113 3/Bernard_Hoekman_Aid_For_Trade.pdf*accessed on 12 April2013.
[27]Ibid.

lower trade barriers on a MFN basis is complemented with positive discrimination in favour of developing countries through granting of preferential access to markets, as well as greater flexibility for developing countries for specific GATT/WTO rules.[28]

1.7. Structure of the dissertation

This dissertation will consist of seven chapters and will include a bibliography. Chapter 1 will include an introduction, the research problems, the research methodology and a conclusion. Chapter 2 will first focus on a discussion of the Multilateral Trade System, including the history of the Multilateral Trade System and the 9 rounds of multilateral trade negotiations. Secondly, the structure and origin of the General Agreement on Tariffs on Trade (GATT) will be discussed and thirdly the chapter will provide an analysis of the World Trade Organization.

Chapter 3 of the dissertation will provide an analysis of the definition and purpose of trade liberalization, as well as the effects of trade liberalization on developing countries and LDCs. Furthermore, this chapter analyses the SPS Agreement and the TBT Agreement.

Chapter 4 serves three objectives. The first objective is to explain how countries are accorded their developed, developing or least developed country statuses. Secondly, the chapter highlights and includes a discussion of the challenges that developing countries and LDCs face. The final objective of the chapter is to determine what role these countries have played within the multilateral trade system.

Chapter 5 of this dissertation examines the history and establishment of Aid for Trade. It further provides a discussion and critical analysis of the Global Reviews of AfT.

Chapter 6 provides the rationale for this dissertation being focused on Kenya and Tanzania. It further focuses on the effect of AfT in these countries.

Finally, Chapter 7 will contain the conclusion and recommendations of this dissertation.

[28]Ibid.

CHAPTER 2: THE MULTILATERAL TRADE SYSTEM

2.1. Introduction

The Multilateral Trade System can be described as a political process as well as a set of political institutions.[29] The political process refers to the negotiations or bargaining process between governments that creates trade rules to govern their behaviour towards one another and open their markets to imports.[30] The Multilateral Trade System is founded on rules established in 1947 that have been revised and amended over time.[31] It can be broken down into three individual components: firstly, an inter-governmental bargaining process; secondly, a set of rules governing international trade relations; and thirdly, a dispute settlement mechanism.[32] The political agreement (formerly the General Agreement on Tariffs and Trade (GATT) and currently the World Trade Organization (WTO)) sets the rules of the game, facilitates trade negotiations, and generally promotes international trade cooperation.[33] The rapid growth of global trade can be attributed to governments using the Multilateral Trade System to progressively eliminate national barriers to international trade.[34]

This chapter begins with a brief history of the Multilateral Trade System. This is followed by a detailed analysis and critical discussion on the GATT and the WTO.

2.2. The history of the Multilateral Trade System

2.2.1. A brief review of the history of the Multilateral Trade System

The original Multilateral Trade System was established under the leadership of the United States of America (US) immediately after the Second World War.[35] This was the result of two primary considerations, the first being that the USA had an interest in a liberal international trading system and secondly that the country believed (due to the experience of the interwar period) that a liberal trade system would not be possible without American

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[29]Chapter 2: The multilateral trade system 1.Available at *http://www.unc.edu/~toatley/poli140/Chapter_2.pdf* accessed on 29 June 2013.
[30]Ibid.
[31]Ibid 3.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35]Ibid 32.

leadership.[36] Therefore, the original plan was that the trade system would be based on market liberalism that reflected US and Western European economic interests.[37]

In the late 1940s, the Cold War helped unite the multilateral trade system and had two consequences for the burgeoning trade system.[38] The first was that US implemented the Marshall Plan to assist economic reconstruction in Western Europe to build a strong economic block in Western Europe to counter Soviet power and influence.[39] The Marshall Plan (also known as the European Recovery Program (ERP)) provided funds that allowed Europe to import critical goods from the US.[40] The second consequence was that between 1948 and 1958 the United States engaged in asymmetric trade liberalization.[41] The modern Multilateral Trade System, with its emphasis on non-discrimination, was born in 1948, when the GATT entered into force. The GATT era witnessed eight rounds of multilateral trade negotiations.[42]

2.3. General Agreement on Tariffs and Trade

As noted earlier, the multilateral trade system is both a political process and a set of political institutions. The political process is based on negotiations between governments. Through this bargaining process, governments create trade rules to govern their behaviour toward one another and open their markets to imports.[43] The political agreement, formerly the GATT and currently the WTO, sets the rules of the game, facilitates trade negotiations, and generally promotes international trade cooperation.[44] Trade has expanded rapidly since World War II;

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[36]Ibid 33.
[37] Ibid.
[38]Ibid 36.
[39]Ibid 37.
[40] The Marshall Plan aimed to provide for immediate needs (food, medicine, housing, an increase in industrial and agricultural production) of Europeans after Europe was destroyed in the war , by rapidly rebuilding factories, railroads and bridges, combating inflation and establishing financial stability. The US Economic Cooperation Administration also arranged for technical aid but most aid took the form of cash grants or loans that the Europeans used to buy essential goods like wheat and oil and to reconstruct factories and housing. Constitutional Rights Foundation Bill of Rights in Action Summer 2004 (20:3), available at *http://www.crf-usa.org/bill-of-rights-in-action/bria-20-3-a-the-marshall-plan-for-rebuilding-western-europe.html*.accessed on 02 October 2012. The Marshall Plan played a major role in the economic recovery, modernization, and unification of Europe. In three years, 1948-1951, it provided $12.4 billion for modernizing economic and financial systems and rebuilding the industrial and human capital of war-torn Europe. Available at *http://www.conservapedia.com/Marshall_Plan* accessed on 02 October 2013.
[41] Ibid.
[42] E.G Jones & C.A.P. Braga (Note 1 above) 2,28.
[43] Chapter 2:The multilateral trade system 1.Available at *http://www.unc.edu/~toatley/poli140/Chapter_2.pdf* accessed on 29 June 2013 (Note 29 above) 1.
[44] Ibid.

governments have used these institutions to progressively eliminate national barriers to international trade.[45]

2.3.1. What is the GATT?

The GATT devised many of the rules for much of world trade and was in force during the period that witnessed extremely high rates of growth in international commerce.[46] According to its preamble, its purpose was the "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis”.[47] From 1948 to 1994 the GATT seemed well-established but throughout those 47 years, it remained only a provisional agreement as it was established on a provisional basis and had a limited field of action.[48]

The GATT later established a forum for negotiations on reducing tariffs over the following decades through multilateral trade rounds. The initial negotiations led to an agreement that established a set of basic rules for participating countries as well as a forum for dispute resolution if countries deviated from these rules.[49] The most important rules embodied in the GATT 1947 are the fundamental principle of reciprocity and the two non-discrimination principles: Most Favoured Nation (MFN) Treatment and National Treatment.[50]

2.3.2. The important principles of GATT

*T*he objective of the multilateral system for trade in goods contained in the GATT is to provide industries and business enterprises in different countries with a secure, stable and predictable environment in which they can trade with one another under fair conditions and with equitable competition.[51] This open and liberal system is expected to promote trade and

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[45] Ibid.
[46] The GATT years: from Havana to Marrakesh. Available at *http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm* accessed on 14 July 2013.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50]The WTO and GATT: A Principled History 15. Available at *http://www.brookings.edu/~/media/press/books/2009/selfenforcingtrade/selfenforcingtrade_chapter* accessed on 03 July 2013.
[51]Chapter 2:The multilateral trade system 1.Available at *http://www.unc.edu/~toatley/poli140/Chapter_2.pdf* accessed on 29 June 2013 (Note 29 above).

increase investment, production and employment and thus facilitate the economic development of all countries.[52]

While GATT aims to liberalise trade, it recognizes that some countries may wish to protect their domestic industries from foreign competition. Therefore the first rule is that a domestic industry can only be protected by the use of tariffs provided such tariffs are kept at low levels.[53] Countries are prohibited from using quantitative restrictions except in specified cases; the rule against the use of quantitative restrictions was strengthened in the Uruguay Round.[54]

However the above rule is subject to specified exceptions.[55] According to Article XI [56] and Article XII [57] of the GATT 1994, an important exception permits countries that face balance of payments (BOP) difficulties to restrict imports in order to safeguard their external financial position.[58] This provides greater flexibility to developing countries than developed countries as it allows developing countries to use quantitative restrictions on imports if these are necessary to prevent a serious decline in their monetary reserves.[59]

The second important rule of GATT is that tariffs and other measures adopted by countries to protect domestic production should be reduced and, where possible, eliminated through negotiations among member countries and that tariffs that are reduced should be bound against further increases.[60] Tariffs that have been reduced are listed on a tariff-line basis in each country's schedule of concessions and the rates in these schedules are known as bound rates.[61] Countries are under an obligation not to increase tariffs above the bound rates in order to ensure that they do not create unnecessary obstacles to trade.[62]

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[52] Chapter 2: Four Main Rules of GATT available at *http://Www.Jurisint.Org/Pub/06/En/Doc/C02.Pdf* accessed on 01 July 2013.
[53] Ibid 60.
[54] Ibid.
[55] Ibid 61.
[56] Annexure A. Article XI
[57] Ibid. Article XII
[58] Chapter 2: Four Main Rules of GATT (Note 52 above).
[59] Ibid.
[60] Ibid.
[61] Ibid 62.
[62] Ibid 63.

The Most Favoured Nation Treatment Principle

A fundamental principle that is clearly expressed in Article I [63] of the GATT is the MFN treatment.[64] The MFN principle is based on non-discrimination, meaning that a country that is a recipient of this treatment should, nominally, receive equal trade advantages as the "most favoured nation" by the country granting such treatment.[65] In effect, a country that has been accorded MFN status may not be treated less advantageously than any other country with MFN status by the promising country.[66] The MFN obligation under GATT is unconditional and broad as it governs trade in both goods and services.[67] Although the major MFN commitment is found in Article I, there are many other MFN clauses in the GATT such as Article III[68], the internal mixing requirements, Article IV[69] and Article V[70].[71]

According to Article XXIV[72], the GATT rules recognize that tariffs and other barriers to trade can be reduced on a preferential basis by countries under regional arrangements.[73] Regional preferential arrangements thus constitute an important exception to the MFN rule.[74] To protect the trade interests of non-member countries, GATT lays down strict conditions for forming preferential arrangements such as, ArticleXXIV:8[75] that parties to regional arrangements must remove tariffs and other barriers to trade substantially affecting all trade among them, and that the arrangement should not result in the imposition of new barriers to trade with other countries.[76] Such arrangements may take the form of customs unions or free-trade areas. In both cases, trade among member States takes place on a duty-free basis while trade with other countries continues to be subject to MFN tariff rates.[77] In the case of customs unions, the tariffs of member countries are harmonized and are uniformly applied to imports.[78] On the other hand, in free-trade areas, member countries continue to use the tariffs

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[63] Annexure A (Note 56 above) Article I.
[64] Principles of the trading system. Available at *http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm* accessed on 14 July 2013.
[65] The WTO and GATT: A Principled History (Note 50 above15).
[66] Note 64 above.
[67] Ibid.
[68]Annexure A (Note 56 above) Article III.
[69]Ibid Article IV
[70]Ibid Article V.
[71]R Bhala '*International Trade Law: Theory And Practice'* (2001) pg 257-259.
[72]Annexure A(Note 56 above) Article XXIV.
[73] Chapter 2: Four Main Rules of GATT (Note 52 above) 63.
[74] Ibid.
[75]Annexure A (Note 56 above) Article XXIV:8.
[76] Ibid.
[77] Ibid.
[78] Ibid.

set out in their individual national schedules.[79]MFN treatment can be conditional or unconditional.[80]

The National Treatment Principle

The second fundamental principle of non-discrimination embodied in the GATT is the rule of national treatment, found in Article III.[81] The national treatment is the third rule of the GATT system. The rule of national treatment is that once a foreign-produced good has paid the price of entry into an import market (an import tariff), it has to be treated the same as a good produced in the country.[82] The good cannot be subjected to additional taxes or regulatory barriers that would differentiate it from a domestically produced good. The national treatment rule aims to prevent policymakers from eliminating the market access promised by tariff cuts through recourse to other domestic policies, such as taxes or subsidies.[83]

The national treatment ensures that once exporting businesses have entered a foreign market after payment of customs duties and other charges payable at the border, they will not be required to pay internal taxes at higher rates than those payable on products of domestic origin.[84]As governments are increasingly imposing taxes and adopting product regulations to protect the environment and the health and safety of consumers, the rule that these should be applied to domestic and imported products on a non-discriminatory basis is of vital importance to exporting enterprises.[85]

The Principle of Reciprocity

While the GATT 1947 and GATT 1994 do not specifically highlight the principle of reciprocity as a foundational principle, this principle is referred to in the agreement both formally and informally.[86] Reciprocity is said to be informal because, unlike the principles of non-discrimination (MFN treatment and National Treatment), no article of the GATT 1947 clearly identifies reciprocity as a foundational principle.[87] According to Bagwell and Staiger

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[79] Ibid.
[80]R Bhala (Note 71 above) 257-259. Conditional MFN is based on reciprocity and unconditional MFN is based on non-discrimination. Unconditional MFN treatment means that the GATT does not set any conditions for an importing member to claim MFN treatment, but it is not absolute.
[81]Note 52 above 63.
[82]Note 50 above 17.
[83]Note 52 above 64. It applies not only to internal taxes, but also to the rules governing mandatory standards for products and the sale and distribution of goods.
[84] Ibid.
[85]Ibid 65.
[86] Ibid.
[87]Note 50 above 15.

(2002), reciprocity "refers broadly to the ideal of mutual changes in trade policy which bring about changes in the volume of each country's imports that are of equal value to changes in the volume of its exports."[88] The multilateral negotiations were undertaken on a reciprocal basis between countries.[89] While this approach was successful, it was more of a rule of thumb in the negotiations phase.

The formal use of the principle of reciprocity is that once a contracting party commits to opening up access to its market, reciprocity becomes a formal rule for renegotiations if that country subsequently wants to back off from its commitment.[90] When countries try to avoid previous commitments, either by raising import tariffs to a higher level than was agreed on during the negotiating round or by not complying with the commitment to open market access, adversely affected trading partners are permitted to negotiate reciprocal market access in another area of interest and use the dispute settlement process to obtain a legal ruling that allows them to rebalance market access obligations. Therefore the GATT essentially relies on the principle of reciprocity to settle disputes.[91]

2.3.3. How did the GATT come into effect?

The origins of the GATT can be traced to the post-World War II period, when the original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two "Bretton Woods" institutions, the World Bank (WB) and the International Monetary Fund (IMF).[92] More than 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations.[93]

In 1945, negotiations were held on the structure and function of the ITO and the results of these negotiations were incorporated in the "proposals for expansion of world trade and employment".[94] The proposals were included in a draft charter which was amended between 1956 and 1948.The Havana conference began in November 1947, less than a month after GATT was signed, and the ITO final Charter was drawn up in March 1948 and became

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[88] R Ossa 'Multilateral Trade Negotiations' 33501 International Commercial Policy 24 available at *http://faculty.chicagobooth.edu/ralph.ossa/course%20materials/Lec%2010a%2010b%20-%20Multilateral%20trade%20negotiations.pdf* accessed on 23 October 2013.
[89] R Bhala (Note 71 above)130.
[90]Note 50 above 16.
[91] Ibid.
[92] Ibid.
[93]Note 46 above.
[94] R Bhala (Note 71 above)130.

known as the Havana charter; however, ratification in some national legislatures proved impossible.[95]

The GATT was intended to form one component of the broader ITO. In addition to facilitating trade liberalization, the ITO aimed to bring governments' attention to linkages between international trade flows, employment and economic development.[96] The ITO Charter called on governments to achieve and maintain full employment, and included a mechanism for inter-governmental consultation and policy coordination to achieve this objective.[97] The Charter further made economic development the responsibility of the industrialized countries as well as developing countries but extended significant exceptions to GATT rules to developing countries on non-discrimination and the use of quantitative restrictions.[98]

Even though the US government was one of the driving forces of the ITO, the most serious opposition emanated from the US Congress.[99] In 1950, the US government announced that it would not seek Congressional ratification of the Havana Charter and the ITO effectively ceased to exist.[100] Therefore, the GATT became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995.[101]

2.3.4. The GATT tariff negotiating rounds

The GATT has served as the basis for nine rounds of multilateral trade negotiations. These rounds were held periodically to reduce tariffs and other barriers to international trade. In the first four rounds, negotiations were conducted on a product-by-product basis (known as the "request/offer" approach), where GATT members exchanged lists of requests and offers on

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[95]Note 46 above. The ITO Charter called on governments to achieve and maintain full employment, and included a mechanism for inter-governmental consultation and policy coordination to achieve this objective. The Charter also made economic development the responsibility of the industrialized countries as well as developing countries, but extended significant exceptions to GATT rules to developing countries on non-discrimination and the use of quantitative restrictions. However, the US Congress objected to the employment and development features of the ITO and therefore refused to agree to participation in organizations (Diebold 1952; Gardner 1969).
[96]Note 29 above.
[97]Ibid 38.
[98] Ibid 40.The US rejected the Havana Charter because of its employment and development features and declined to participate in the ITO, therefore the ITO was never created. The GATT, which did not require congressional ratification, became the central trade institution.
[99]Note 46 above.
[100]Note 29 above 35.
[101]Note 46 above.

products of interest to them in order to reach agreement on tariff concessions.[102]Each round of negotiations will be briefly discussed.

The Geneva Round, 1947

The first round of multilateral trade negotiations was held in Geneva and therefore named the Geneva Round. The negotiations started in April 1947 and lasted seven months.[103] Tariff negotiations were held between the participants in the Preparatory Committee of the United Nations Conference on Trade and Employment and were conducted under the principle of the supplier rule, which in essence means that a concession can only be granted if the country supplying the largest part of the product makes a request for a tariff reduction.[104] By the end of the negotiations, 45 000 concessions had been granted. The Geneva Round is best known for the signing of the GATT, 1947.[105] The GATT is a set of multilateral trade agreements aimed at the removal of quotas and the reduction of tariff duties among the signatory nations.[106] It was originally signed by 23 countries and became the most effective instrument in the growth of world trade in the second half of the 20th century.[107]

The Annecy Round, 1949

The second round of negotiations took place from April to August 1949 in Annecy, France; 13 countries participated.[108] This round focused on tariff reductions but was primarily aimed at facilitating accession to the GATT by 10 countries which had not participated in the 1947 Geneva tariff negotiations. In the event, Uruguay did not accede until 1953.[109]

The Torquay Round, 1950

Thirty eight countries participated in the third round of negotiations in Torquay, England in 1950. Eight thousand seven hundred tariff concessions were granted.[110]

The Geneva Round, 1956-1959

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[102]GATT bilateral negotiating material by Round. Available at *http://www.wto.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm*accessed on 30 June 2013.
[103] Ibid.
[104] Available at *http://encyclopedia2.thefreedictionary.com/Geneva+Round* accessed on 30 June 2013.
[105] M Matsushita et al (Note 6 above)1, 5.
[106] Note 46 above.
[107] Ibid.
[108] Ibid.
[109]2nd Round (Annecy Tariff Conference, 1949).Available at *http://worldtradereview.com/webpage.asp?wID=433* accessed on 30 June 2013.
[110]Ibid.

The fourth round of negotiations returned to Geneva in 1955 and lasted until May 1956. Twenty-six countries took part in this round and $2.5 billion worth of tariffs were eliminated or reduced.[111]

The Dillon Round, 1960-1962

The Dillon Round is named after the US Treasury Secretary and former Under Secretary of State, Douglas Dillon, who first proposed the negotiations. This fifth round of negotiations started in September 1960 in Geneva and 26 countries participated.[112] It reduced more than $4.9 billion worth of tariffs and saw the beginning of discussions on the establishment of the European Economic Community (EEC).[113]

The Kennedy Round, 1962-1967

The Kennedy Round was named after President John F. Kennedy in recognition of the Trade Expansion Act of 1962; this Act gave the President unprecedented negotiating authority.[114] The sixth round of GATT multilateral trade negotiations was held from 1963 to 1967. In May 1963 Ministers reached agreement on three negotiating objectives for the round: measures to expand developing counties' trade as a means of promoting their economic development, the reduction or elimination of tariffs and other barriers to trade, and measures for access to markets for agricultural and other primary products.[115]

While developing countries played a minor role during the negotiations in this round, the adoption of Part IV of the GATT which absolved them from according reciprocity to developed countries in trade negotiations was considered a major achievement.[116] In the view of many developing countries, this was a direct result of the call for a better trade deal for developing countries made at the United Nations Conference on Trade and Development (UNCTAD).[117] Another outcome of the Kennedy Round was the adoption of an Anti-

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[111] The Multilateral Trading System: 50 Years Of Achievement. Available at *http://www.wto.org/english/thewto_e/minist_e/min98_e/slide_e/slide008.htm*accessed on 30 June. 2013.
[112] Ibid.
[113] Ibid.
[114] Ibid.
[115]Chapter 2: The Global Trade Regime 50 available at *http://www.rrojasdatabank.info/undpgtrade/undpgtch2.pdf* accessed on 23 October 2013.
[116]7th Round (Tokyo Round, 1973-79).Available at *http://worldtradereview.com/webpage.asp?wID=438*accessed on 10 July 2013.
[117] Ibid.

dumping Code, which gave more precise guidance on the implementation of Article VI of the GATT.[118]

The Tokyo Round, 1973-1979

The seventh round of GATT multilateral trade negotiations took place between 1973 and 1979. Some 102 countries participated in this round. In terms of the level of participation, the breadth of the negotiating agenda (tariffs, non-tariff measures and framework agreements) and the fact that the negotiations were not confined to GATT contracting parties, this was the biggest round ever.[119] The Tokyo Round was launched in September 1973 at a Ministerial meeting in Tokyo, but the negotiations were mainly conducted in Geneva.[120] The Ministerial declaration aimed to achieve tariff negotiations using the formula method, reduce or eliminate non-tariff measures, examine the possibility of reducing or eliminating all barriers in selected sectors, investigate the adequacy of the multilateral safeguard system, conduct negotiations on the agricultural sector taking its special characteristics and problems into account, and treat tropical products as a special and priority sector.[121]

Negotiations began again in July 1977 following a meeting between the US and the EEC, which ironed out some of their major differences on policy and procedure.[122] By July 1978 a large group of developed countries was able to put forward a "Framework of Understanding" which set out the principal elements they considered necessary for a balanced outcome of the negotiations.[123] This round established more stringent codes for non-tariff measures, but they were binding only on countries that accepted them.[124] In addition, the round resulted in the decision on differential and more favourable treatment, reciprocity and the fuller participation of developing countries, known as the 'enabling clause'.[125] The Tokyo Round negotiations were formally concluded in April 1979 and the negotiations resulted in average cuts in tariffs by developed countries for industrial products of about 35%.[126]

The Uruguay Round, 1986- 1994

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[118]Note 56 above Article VI.
[119]Note116 above.
[120]Ibid.
[121]Ibid.
[122]Ibid.
[123]Ibid.
[124]Note 115 above 50.
[125] Ibid.
[126]Note 116 above.

Considered one of the most ambitious rounds of the multilateral negotiations, the eighth round started in Uruguay in September 1986 and was followed by negotiations in Geneva, Brussels, Washington D.C. and Tokyo.[127] The round was launched to address the issues of structural deficiencies and the impact of certain countries' policies on world trade that GATT could not control and that were highlighted in the 1982 Ministerial Declaration.[128] Some 123 countries participated in what was deemed to be the biggest negotiating mandate on trade thus far as the negotiations sought to extend the trading system into several new areas such as trade in services and intellectual property, to reform trade in the agriculture and textiles sectors and to review all the original GATT articles.[129]

While the round was scheduled to conclude in December 1990, the US and the newly formed European Union (EU) disagreed on how to reform agricultural trade and decided to extend the talks.[130] In November 1992, the US and the EU settled most of their differences in a deal commonly referred to as "the Blair House accord" and in April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh.[131] The agreement, known as the Marrakesh Agreement established a new body of international law relating to trade, the WTO.[132] The WTO came into being upon its entry into force on 1 January 1995 and replaced the GATT system.[133]

One of the achievements of the Uruguay Round is the Uruguay Agreement on Agriculture, administered by the WTO, which brought agricultural trade more fully under the GATT.[134] The agreement provides for quantitative restrictions to be converted to tariffs and for a phased reduction of tariffs; it also imposes rules and disciplines on agricultural export subsidies and domestic subsidies. The Agreement on Agriculture remains the most substantial trade liberalization agreement in agricultural products in the history of trade negotiations.[135]

The Doha Round, 2001

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[127]The Uruguay Round. Available at *http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm* accessed on 16 July 2013.
[128]Ibid.
[129]Ibid.
[130]Note 115 above.
[131]Note 127 above.
[132] Ibid.
[133] Ibid.
[134] ibid
[135]Ibid. The goals of the agreement were to improve market access for agricultural products, reduce domestic support for agriculture in the form of price-distorting subsidies and quotas; eliminate export subsidies on agricultural products over time and harmonize to the greatest extent possible sanitary and phytosanitary measures between member countries

The first WTO Ministerial Conference, held in Singapore in 1996, established permanent working groups on four issues: transparency in government procurement, trade facilitation, trade and investment, and trade and competition (also referred to as the Singapore issues).[136] These issues were stressed at successive Ministerial conferences by the EU and were opposed by most developing countries.[137] The negotiations were intended to start at the Ministerial Conference of 1999 in Seattle, US and be called the Millennium Round, but the negotiations never commenced.[138] Due to the failure of the Millennium Round, it was decided that negotiations would not start again until the next Ministerial Conference in 2001 in Doha, Qatar.[139]

The Doha Round is the latest round of trade negotiations. It aims to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules.[140] The mandate of the round includes agriculture, services and intellectual property. The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries.[141] In Doha, ministers also approved a decision on how to address the problems developing countries face in implementing current WTO agreements, declared that the needs and interests of developing countries would be at the heart of the Work Programme and agreed that positive efforts will be made to ensure that developing countries, particularly least-developed countries, secure a share in the growth of world trade as well as promote their economic development.[142] The Doha Development Round has yet to be concluded.

2.4. The World Trade Organization

2.4.1. What is the WTO?

The WTO was created in 1995 and is the successor to and incorporates the GATT. It is an international organization with a legal personality and legal capacity.[143] According to Article III:1, the general purpose of the WTO is to "facilitate the implementation, administration and

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[136]'The Doha Round'. Available at *http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development* accessed on 22 July 2013.

[137]Ibid. Since no agreement was reached, the developed nations urged that any new trade negotiations include these issues.

[138]The negotiations never started because of the demonstrations and violence on the streets of Seattle disrupted the meetings. The "Battle of Seattle" had little to do with the failure of the Ministerial conference. T. N. Srinivasan 'Developing Countries And The Multilateral Trading System After Doha' Center Discussion Paper No. 842 available at *http://www.econ.yale.edu/growth_pdf/cdp842.pdf* accessed on 23 October 2013.

[139]Note 136 above.

[140] Ibid.

[141]Ibid.

[142] Ibid.

[143]M Matsushita et al (Note 6 above) 6.

operation as well as to further the objectives of the WTO agreements".[144] With its expanded role, the WTO affects many groups of countries but fundamentally it is still, like the GATT, a force for increased trade and globalization.[145]

The WTO consists of two main bodies; the Ministerial Conference and the General Council. The Ministerial Conference is composed of representatives of all WTO members and is the supreme authority of the organization; it can take decisions on all matters under any of the multilateral trade agreements.[146] The General Council is the chief decision-making and policy body between meetings of the Ministerial Conference and consists of the dispute settlement body and the trade policy review body.[147]

The most important change from the GATT to the WTO may be the Dispute Settlement Mechanism (DSM). The GATT permitted countries to declare a dispute with other countries that violated GATT rules.[148] Each complaint was handled by a "panel" of experts who issued a report that, if adopted unanimously by GATT members, would require the offending party to either change its behaviour or be subject to sanctions. However, the requirement of unanimity meant that the offending party could block a report, in effect giving every country

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[144]Ibid 6. "Article III provides for the Functions of the WTO 1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.4. The WTO shall administer the Trade Policy Review Mechanism ("TPRM") provided for in Annex 3 to this Agreement.5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies."

[145] Ibid.

[146] The authority of the Ministerial Conference is explained in the Marrakesh Agreement Establishing the World Trade Organization: "The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement." (WTO Agreement) K Zimsen 'Able and Willing? Does the USA's action during the 2008 crisis conform to hegemonic stability theory?' 2011 16 available at *http://skemman.is/stream/get/1946/10045/25110/1/BA_Kn%C3%BAtur_Zimsen.pdf* accessed on 02 October 2013.

[147] Matsushita et al (Note 6 above)7.

[148] Ibid.

veto power over findings against itself.[149] The WTO reversed this bias by requiring a unanimous decision to block a report; it therefore made the DSM much more effective.[150]

2.4.2. Why was the WTO established?

The idea of creating the WTO emerged from the various needs and suggestions expressed at the beginning of the Uruguay Round when negotiators realised that new agreements would require better institutional mechanisms and an improved system for resolving disputes.[151] One of the topics for discussion during the round was the functioning of the GATT system. Negotiators were also concerned about how new agreements would be enforced and whether they would be binding on all GATT contracting parties.[152] Therefore negotiators welcomed Professor Jackson's suggestion that this round should found a new "World Trade Organisation".[153] Jackson stated that this would cure the defects of the GATT by creating an organization that would be a United Nations specialized agency with an organizational structure and a dispute settlement mechanism.[154]

The establishment of such an organization would also solve the problems of the "GATT *a la carte*" as the agreement that established the WTO replaced the GATT *a la carte* system.[155] From 1947 to 1994 the GATT system developed through a series of agreements that each provided for specific measures to resolve conflict.[156] However, such provisions could only be invoked within the framework of a specific agreement. The creation of the WTO rectified this issue as it is an integrated system that is fundamentally different from the GATT system.[157] The GATT system was made up of several agreements, understandings and instruments; each major agreement was a treaty with a different membership, an independent body and a separate dispute settlement mechanism. In contrast, the WTO agreement is a single treaty

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[149] R.M. Stern 'The Multilateral Trading System' available at *http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1432&context=fss_papers&seiredir=1&referer=http%3A%2F%2Fscholar.google.co.za%2Fscholar%3Fq%3Dhow%2Bmany%2Brounds%2Bof%2Bnegotiations%2Bin%2Bmultilateral%2Btrade%2Bsystem%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C5#search=%22how%20many%20rounds%20negotiations%20multilateral%20trade%20system%22,* accessed on 03 April 2013.

[150] Ibid. Other improvements included the right to appeal. The intention was to provide viable enforcement of WTO rules, and it appears to have worked. This may be one of the reasons why the DSM has been used much more often than under the GATT.

[151] Matsushita et al (Note 6 above) 7.

[152] Ibid.

[153] Ibid.

[154] Ibid.

[155] Centre For Studies And Research In International Law And International Relations '*The World Trade Organization'* 1997,60.

[156] Ibid 60.

[157] Ibid 61.

instrument which was accepted by WTO members as a single undertaking.[158] The single undertaking[159]is found in Article II[160] paragraph 2 of the agreement that established the WTO.[161]

The Draft Final Act of the Uruguay Round was issued in 1991 and contained a proposal for the "multilateral trade organisation".[162] The name was later changed to the "World Trade Organization" and the negotiators decided that it would come into effect on 1 January 1995.[163] The package of agreements that brought the WTO into being were opened for signature on 15 April 1994 in Marrakesh, and consisted of multilateral trade agreements annexed to the Marrakesh Agreement (the WTO agreement).[164] The WTO agreement formally replaced the GATT 1947 with the GATT 1994, which is a new and legally distinct agreement; therefore the WTO agreement incorporates the GATT 1994 rather than the original GATT.[165]

2.4.3.The important principles of the WTO

In order for a trade system to be successful and effective, it should be based on principles that encourage free trade and development. It is therefore crucial that such an agreement should be applied on a non-discriminatory basis. Market liberalization and non-discrimination are the two core principles of the WTO.[166] The market liberalization principle provides the logic

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[158]Ibid 61.
[159]Note 115 above 52. A "single undertaking" requires all WTO members to accept the same rights and obligations. D Bhattacharya & M Rahman 'The Least Developed Countries In The WTO: Strengthening Participation Capacities' available at *http://zunia.org/sites/default/files/media/node-files/ld/127384_ldcunctad.pdf*accessed on 19 September 2013.*The single undertaking*. Member nations agreed to negotiate and sign all WTO agreements as part of a package deal, a 'single undertaking'. This meant finalizing the content of the agreements based on mutual bargaining and the concept of 'overall reciprocity' rather than on the value of each agreement. This approach was seen as benefiting developing countries by including in the final package of agreements areas that had previously been effectively excluded (such as agriculture and textiles). However, it also meant that all member countries would be covered by the same disciplines, both the enhanced versions of the Tokyo Round codes and the new agreements, including those that extended multilateral disciplines into new areas such as services and intellectual property rights. The single undertaking principle was retained in the declaration issued from the 2001 WTO Ministerial Conference in Doha, Qatar.
[160]**Article II of the Marrakesh Agreement Establishing the World Trade Organization: Scope of the WTO2.** "The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members." Available at *https://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_01_e.htm#articleII* accessed on 23 October 2013
[161]Note 155 above 61.
[162]Matsushita et al (Note 6 above).
[163]Ibid 6.
[164]Ibid.
[165] Ibid.
[166]Zimsen (Note 146 above) 17.

behind the international trading system and thus the rationale for the WTO.[167] Furthermore, it maintains that all nations stand to gain from trade, freer markets and lower tariffs and that the abolition of trading quotas enhances such gains as well as global economic wellbeing (Oatley, 2010, p. 22).[168] The non-discrimination principle aims to ensure a level and fair playing field for all within the system.

Non-discrimination is enshrined in the MFN and National Treatment principles. The MFN principle provides that a country should not discriminate between its trading partners (giving them equal MFN status); and it should not discriminate between its own and foreign products, services or nationals (giving them "National Treatment").[169] However, some exceptions are allowed whereby countries can set up a free trade agreement that applies only to goods traded within the group, thus discriminating against goods from outside, or they can give developing countries special access to their markets.[170] The National Treatment principle essentially involves treating others the same as one treats one's own nationals.[171]

The second founding principle is freer trade; barriers to trade must be removed through negotiation as their reduction is one of the most obvious means of encouraging trade.[172] While opening markets can be beneficial, it also requires adjustment.[173] Therefore the WTO agreements allow countries to introduce changes gradually, through "progressive liberalization" and developing countries, especially least developed countries (LDCs) are usually given more time to fulfil their obligations.[174]

The third important principle is that of predictability. This means that foreign companies, investors and governments should be confident that trade barriers will not be raised arbitrarily and that that tariff rates and commitments to liberalize markets are bound in the WTO.[175]

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[167]Ibid.
[168]Ibid.
[169]Note 46 above.
[170] Ibid.
[171]Ibid. Like the MFN principle, this principle is found in all three main WTO agreements (Article 3 of GATT, Article 17 of General Agreement of Trade in Services (GATS) and Article 3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)) and only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.
[172]'10 Benefits of the WTO trading system' 4. Available at *http://www.wto.org/english/res_e/doload_e/10b_e.pdf* accessed on 31 July 2013. These barriers can take the form of customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. As a result of the nine rounds of multilateral trade negotiations (previously discussed in this chapter), the industrial countries' tariff rates on industrial goods have decreased to less than 4% since the mid-1990s.
[173] Ibid.
[174] Ibid.
[175] Ibid.

This may be achieved through binding and transparency.[176] Market stability and predictability encourage investment, promote job creation and allow consumers to fully enjoy the benefits of choice and lower prices.[177] Therefore the multilateral trading system is an attempt by governments to make the business environment stable and predictable.[178]One way of doing this, is to discourage the use of quotas and other measures used to set limits on quantities of imports.[179] An alternate method is to ensure that countries' trade rules are clear and public (transparent); therefore, many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO.[180]

The fourth important principle in a trade system is increased competitiveness. To encourage competition in the international market, unfair practices such as export subsidies and dumping products below cost to gain market share are discouraged.[181] These are complex issues and the rules set out to establish what is fair or unfair and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.[182] The final component of an effective trade system is for the system to be more beneficial to LDCs by giving them more time to adjust, greater flexibility, and special privileges in implementing WTO agreements and fulfilling their obligations.[183] To support the development of LDCs, many WTO agreements include special and differential treatment clauses that take their specific needs into account.

2.5. Conclusion

This overview of the history of the Multilateral Trade System has shown that the original system was established by the US, while the modern Multilateral Trade System was born with the creation of the GATT in 1948. The GATT is found on three essential principles; the MFN principle, National Treatment and the principle of reciprocity. To address the deficits of the original GATT, nine rounds of multilateral trade negotiations were held, with the Doha Development Round still in progress. The trade negotiations were significant for various reasons, but the biggest success of the Uruguay Round was the establishment of the WTO.

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[176]Note 172 above 8.
[177]Note 64 above.
[178]Ibid. The administration of quotas can lead to excessive red tape and accusations of unfair play.
[179] Ibid.
[180]Note 172 above 6. National trade policies are monitored through the Trade Policy Review Mechanism ,which provides a further means of encouraging transparency at the domestic and multilateral level.
[181]Ibid 7.The non-discrimination principles and those on dumping and subsidies are designed to secure fair trade.
[182] Ibid.
[183] Ibid.

While the WTO succeeds the GATT, it encompasses some of the GATT principles such as non-discrimination.

CHAPTER 3: THE MEASURES OF TRADE LIBERALIZATION

3.1. Introduction

There has been massive liberalization of world trade since 1950, first under the auspices of the General Agreement on Tariffs and Trade (GATT) and currently under the World Trade Organization (WTO).[184] The doctrine that trade enhances welfare and growth has a long history dating back to Adam Smith (1723-90).[185] Smith stressed the importance of trade as an outlet for surplus production and as a means of broadening the market, thus improving the division of labour and the level of productivity.[186]

"between whatever places foreign trade is carried on, they all of them derive two distinct benefits from it. It carries the surplus part of the produce of their land and labour for which there is no demand among them, and brings back in return something else for which there is a demand. It gives value to their superfluities, by exchanging them for something else, which may satisfy part of their wants and increase their enjoyments. By means of it, the narrowness of the home market does not hinder the division of labour in any particular branch of art or manufacture from being carried to the highest perfection. By opening a more extensive market for whatever part of the produce of their labour may exceed the home consumption, it encourages them to improve its productive powers and to augment its annual produce to the utmost, and thereby to increase the real revenue of wealth and society"[187]

Smith also repudiated Mercantilism by rejecting the notion that a nation should produce at a higher cost what it could buy at a lower cost.[188] This is referred to as the principle of absolute advantage, whereby a country produces what it excels at making and buys the imports that it needs with the proceeds, therefore calling for free and open trade.[189] In the 19th century, Smith's productivity doctrine of the benefits of trade developed into an export drive

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[184] A. P. Thirlwall Economic Research Papers No 63 Trade, Trade Liberalisation And Economic Growth: Theory And Evidence 6. Available at *http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00157660-EN-ERP-63.PDF* accessed on 24 October 2013
[185] Ibid.
[186] Ibid.
[187] Ibid.
[188]K Zimsen(Note 146 above) 8.
[189]Ibid.

argument, particularly in the colonies, therefore explaining why the classical trade theory is generally associated with colonialism.[190]

Following Smith, another economist, David Ricardo (1772-1823) laid the theoretical foundation for free trade as we know it today; the principle of comparative advantage.[191] This explains that even two countries with technological and/or economic disparities can gain from trading with each other if they have different opportunity costs.[192] When nations concentrate on products with the lowest opportunity costs, they obtain more products from the available resources, increasing overall wealth.[193]

Ricardo showed that, based on the assumptions of perfect competition and the full employment of resources, countries can reap welfare gains by specializing in the production of goods with the lowest opportunity cost and trading the production surplus, provided that the international rate of exchange between commodities lies between the domestic opportunity cost ratios.[194] These are essentially static gains that arise from the reallocation of resources from one sector to another as increased specialization (based on comparative advantage) takes place.[195] They are the trade-creation gains that arise within Customs Unions or Free Trade Areas as the barriers to trade between members are removed.[196] Once the tariff barriers have been removed, and no further reallocation takes place, the static gains are exhausted.[197]

This is in contrast to the dynamic gains from trade which continually shifts the production frontier of countries outwards if trade is associated with more investment and improved productivity based on economies of scale, learning by doing and the acquisition of new knowledge from abroad, particularly through Foreign Direct Investment (FDI).[198] The dynamic gains from trade are the basis of the modern trade theory (Helpman and Krugman, 1985) and the growth theory (Grossman and Helpman, 1991) and constitute a vital link in the causal chain between exports and growth.[199] Therefore, there is little doubt that trade has

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[190] A. P. Thirlwall (Note 184 above) 6.
[191] K Zimsen (Note 146 above) 8.
[192] Ibid.
[193] A. P. Thirlwall (Note 184 above) 7.
[194] Ibid.
[195] Ibid.
[196] Ibid.
[197] Ibid.
[198] Ibid 8.
[199] Ibid.

acted as an important engine of growth for countries at different stages of development, not only by contributing to more efficient allocation of resources within countries, but by transmitting growth from one part of the world to another.[200] However, it is noted that not all countries share equally in the growth of trade or its benefits as this depends on the production and demand characteristics of the goods that a country produces and trades; the domestic economic policies pursued, and the trading regime it adopts.[201]

This chapter will firstly, analyse the purpose of trade liberalization in order to determine whether or not it has assisted developing countries to address these concerns. The needs of developing countries have received special attention in WTO agreements through the Special and Differential Treatment provisions. In order to determine the effectiveness of trade liberalization, the chapter also provides a legal analysis of the Sanitary Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement.

3.2. What is the purpose of trade liberalization?

World trade has proven a powerful means for countries to promote economic growth, development, and poverty alleviation. In the past 20 years, world trade has grown by an average 6 percent per annum.[202] However, trade has been an engine of growth for much longer. Most developing countries have shared in this prosperity. As a group, they now account for one-third of world trade. To determine the purpose of trade liberalization one should first understand what it means. Trade liberalization is generally defined as:

"The removal or reduction of restrictions or barriers on the free exchange of goods between nations. This includes the removal or reduction of both tariff (duties and surcharges) and non-tariff obstacles (like licensing rules, quotas and other requirements). The easing or eradication of these restrictions is often referred to as promoting 'free trade."[203]

Therefore the purpose of trade liberalization is to relax or remove unnecessary obstacles to trade between trading partners as this allows all countries to participate and benefit from the

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[200] Ibid.
[201] Ibid.
[202] Global Trade Liberalization and the Developing Countries November 2001.Available at *http://www.imf.org/external/np/exr/ib/2001/110801.htm#i* accessed on 23 July 2013.
[203] Trade Liberalization. Available at *http://www.economicshelp.org/dictionary/t/trade-liberalisation.html* accessed on 26 July 2013

world economy. Free trade or trade liberalization is considered to have five benefits: static gains, consumer gains, higher wages and more stable employment; gains in total factor productivity and catch-up benefits.[204] However, there is considerable overlap among them. These gains result from unilateral policy shifts as well as from the liberalization that takes place through regional and multilateral negotiations.[205] The five benefits of trade liberalization are discussed below.

Static Gains

The first benefit of trade liberalization is static gains which allow countries to export those goods and services that they can produce efficiently and import those that they make inefficiently. "Efficiency" is measured in relative rather than absolute terms.[206]

The static gains from free trade, that is, the gains that arise from the free exchange of goods and services when each country uses the same technology before and after freer trade, are typically estimated at less than two percent of Gross National Product (GNP).[207] During the Uruguay Round, it was roughly calculated that the static gains from the negotiated reduction in industrial tariffs and agricultural barriers would grow the global economy by about $40 billion, of which about $30 billion would be realized by advanced countries and $10 billion by developing countries.[208] While they are not trivial, static gains alone do not measure the full benefits of liberalization.

The criticisms of static gains by academics such as Jagdish Bhagwati (2001), the high priest of free trade, confirm that while there can be static gains from trade (if certain crucial assumptions are met) there is nothing in the theory of trade *per se* which demonstrates conclusively that trade liberalization will launch a country on a higher sustainable growth path.[209]Bhagwati adds that the impact of trade liberalization on reducing world poverty has been minimal, and in fact may have increased it.[210] Furthermore it is possible that trade

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[204]G C Hufbauer ,B Kotschwar *'The Future Course of Trade Liberalization'* 1998 available at *http://www.iie.com/publications/papers/paper.cfm?ResearchID=320* accessed on 28 July 2013.
[205]Ibid.
[206]Ibid.
[207]Ibid.
[208]Ibid.
[209] P Pacheco-López and A.P. Thirlwall 'Has Trade Liberalisation in Poor Countries Delivered the Promises Expected?' 3 Available at *http://www.kent.ac.uk/economics/documents/tt/Has%20Trade%20Liberalisation%20in%20Poor%20Countries.pdf* accessed on 24 October 2013.
[210] Ibid.

liberalization has exacerbated the unequal distribution of income between rich and poor countries, and between unskilled wage earners and other workers within countries.[211]

Consumer Savings

The second benefit of trade liberalization, consumer savings, result in lower prices, enabling consumers to buy more.[212] Trade also introduces more competition into domestic markets, undermining anti-competitive practices that usually prevail when domestic producers face challenges from foreign producers.[213] Industries that are shielded from foreign competition often charge higher prices, have little incentive to hold down costs and lack effective management practices. By injecting greater competition into sheltered domestic markets, trade liberalization forces national producers to live up to their potential.[214]

Higher wages and more stable employment

Over the past decade, jobs supported by US exports rose four times faster than overall private industry job creation.[215] Twelve million Americans out of a civilian labour force of 67 million people now owe their jobs to exports.[216] Richardson and Rindal (1995, 1996) show that both production and non-production workers in US exporting firms receive on average 14 percent higher wages than workers in firms that do not export.[217] Exporting companies tend to have more stable employment patterns.

Gains in total factor productivity

Another benefit of trade liberalization is that it exposes countries to new production and management technologies that foster higher productivity at both firm and industry level. Twenty years ago, American auto firms began learning how to produce cars more cheaply from Japanese companies.[218] Today, financial institutions in Tokyo are learning how to run banks and pension funds from the US. These gains are closely linked to cross-border direct investment (foreign direct investment, or FDI).[219] One of the objectives of trade agreements

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[211] Ibid.
[212] G.C. Hufbauer & B Kotschwar (Note 204 above).
[213] Ibid.
[214] Ibid.
[215] Ibid.
[216] Ibid.
[217] Ibid.
[218] Ibid.
[219] Ibid.

is to promote investment, simultaneously encouraging intra-company trade by multinational corporations (MNCs) and higher productivity in local companies that compete with MNCs.[220]

Catch-up benefits

One of the biggest gains from freer trade in goods, services and capital is the opportunity for developing and least developed countries to raise their productivity and income levels closer to those already achieved by developed countries. Research by Barro (1991, 1994) and Ben-David (1995) suggests that freer trade may help to close the income gap between developing and developed countries at a rate of about one-half of one percentage point per year, faster than might otherwise occur.[221] The catch-up benefit is largely reflected in the acquisition of better technology, improved management, and the spur to productivity that accompanies keen competition and FDI.[222]

3.3. How has trade liberalization assisted developing countries and least developed countries?

There has been widespread debate on whether or not trade liberalization has indeed assisted developing countries. It is commonly believed that sustained economic growth requires policies that open an economy to international trade and investment.[223]In recent decades, no developing country has achieved economic success, in terms of improving its citizens' standard of living, without being open to the rest of the world. Indeed, opening up to trade (along with promoting FDI) has been an important element in East Asia's economic success; average import tariffs have fallen from 30% to 10% over the past 20 years in the region.[224] Opening their economies up to the global economy has been essential in enabling many developing countries to develop competitive advantage in manufacturing certain products.[225] In these countries, defined by the World Bank as the "new globalizers," the number of people living in absolute poverty declined by more than 120 million (14%) between 1993 and 1998.[226]

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[220] Ibid.
[221] Ibid.
[222]Ibid.
[223]Note 202 above.
[224]Ibid.
[225]Ibid.
[226]Ibid.

There is considerable evidence that more outward-oriented countries tend to grow faster than those that are inward-looking.[227] Countries that have opened their economies in recent years, including India, Vietnam, and Uganda, have experienced faster growth and improved poverty reduction.[228] On average, developing countries that lowered tariffs sharply in the 1980s grew more rapidly in the 1990s than those that did not.[229] Freeing up trade often benefits the poor, especially as developing countries cannot afford the large subsidies, often used to protect privileged interests that trade protection provides.[230] Furthermore, the increased growth that results from freer trade itself tends to increase the incomes of the poor in roughly the same proportion as those of the population as a whole.[231] New jobs are created for unskilled workers, allowing them to graduate to the middle class. In general terms, inequality among countries has decreased since 1990, reflecting more rapid economic growth in developing countries as a result of trade liberalization.[232]

Therefore the potential gains from eliminating remaining trade barriers are considerable. Estimates of the monetary advantages of eliminating all barriers to trade range from US$250 billion to US$680 billion per year.[233] About two-thirds of these gains would accrue to industrial countries; however, the amount accruing to developing countries would still be more than twice the level of aid they currently receive.[234] Developing countries would gain more from global trade liberalization as a percentage of their GDP than industrial countries, because their economies are more highly protected.[235] Although benefits accrue from improved access to other countries' markets, countries benefit most from liberalizing their own markets. The main benefits for industrialized countries emanate from the liberalization of their agricultural markets. Developing countries would gain equally from liberalization of manufacturing and agriculture.[236] However, low-income countries would gain the most from agricultural liberalization due to the relatively greater importance of agriculture in their economies.[237]

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[227]Ibid.
[228]Ibid.
[229]Ibid.
[230]Ibid.
[231]Ibid.
[232]Ibid.
[233]Ibid.
[234]Ibid.
[235]G C. Hufbauer & B Kotschwar (Note 204 above).
[236] Ibid.
[237]Ibid.

The argument that trade liberalization leads to higher growth and poverty alleviation is based on two assumptions; first that opening up to trade leads to higher growth and second, that growth raises the incomes of the poor as much as the incomes of the rich. [238] There is evidence to suggest that growth most benefits those at the lower end of income distribution.[239] Despite the expected longer term economic gains, trade liberalization generates both winners and losers in the short run. During the 1990s, economists expected trade and foreign investment reforms to help developing countries reduce poverty.[240] Trade liberalization was expected to increase the demand for goods produced in developing countries by poor or unskilled workers, leading to higher wages and poverty reduction. Trade reforms were also expected to raise the prices of the agricultural products produced in developing countries and to reduce the prices of goods purchased by poor consumers.[241]

Ideally, unskilled labour would benefit from trade liberalization through increased demand for labour-intensive goods, which in turn, should reduce poverty.[242] However, the evidence suggests otherwise. One reason is that labour is not as mobile as trade models assume.[243] If comparative advantage is to increase unskilled workers' income, they need to be able to move out of contracting sectors and into expanding ones.[244] A second reason is that developing countries have historically protected their unskilled, labour-intensive sectors, so that trade reforms may lead to less protection for unskilled workers relative to skilled. A third reason is that even companies in countries with a comparative advantage in producing goods that use unskilled labour need to use skilled workers in order to compete in global markets.[245]

While there are many benefits, there are also unintended indirect effects of trade reforms such as influencing (1) the job opportunities and wages of the poor; (2) the prices that poor consumers pay for goods; (3) government revenue and accordingly social expenditure that affects the poor, and (4) income instability.[246] Even if average poverty decreases or remains constant, many households may move into or out of poverty as a result of trade

[238]Chapter 5: Trade liberalization: Why so much controversy? 148 available at *http://www1.worldbank.org/prem/lessons1990s/chaps/05-ch05_kl.pdf* accessed on 27 July 2013.
[239]Ibid.
[240]Ibid.
[241]Ibid.
[242] Ibid.
[243] Ibid.
[244]Ibid.
[245]Ibid.
[246]Ibid.

liberalization.[247] While some studies have found that trade reforms reduce employment in the short run, others have found that they increase it in the long run, as expanding sectors create new employment opportunities.[248]

In countries such as Kenya, Tanzania, and Zimbabwe, there were negative effects on employment where it was found that most companies responded to import competition pressure by contracting rather than aggressively upgrading.[249] Among the suggested reasons for such behaviour are the countries respective companies who lack of preparation for competition, the absence of policies to promote technological improvement (especially among small and medium enterprises), and the poor technological and human infrastructure.[250]

3.4. The Sanitary and Phytosanitary Measures Agreement and the Technical Barrier Trade Agreement

The Sanitary Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement are agreements of the World Trade Organization. These agreements have been established for the purpose of abetting trade by creating rights and obligations for countries to comply with when trading with one and other. The main purpose of the agreements is to ensure that no unnecessary trade barriers are created or used to restrict trade. The provisions of these agreements further give special consideration (through special and differential treatment provisions) to developing and least developed countries by granting them certain leeway's in performing and fulfilling their obligations. Therefore, to determine the effectiveness of trade liberalization, a legal analysis of the Sanitary Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement will follow.

3.4.1. The Sanitary and Phytosanitary Measures Agreement

International trade in food and agricultural products such as wood and fibres has occurred for as long as nations have existed.[251] The trade in agricultural products lowers food prices and provides consumers with a wider range of choices. Agricultural production and processing

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[247]Ibid 149.
[248]Ibid.
[249]Ibid.
[250]Ibid.
[251] Ibid.

offers many developing countries the opportunity to trade their way out of poverty. However, a fundamental requirement is that imported as well as domestic, agricultural products are safe and do not pose risks to human, animal and plant health. To ensure food safety, and to avoid the introduction of diseases and pests through trade, countries impose regulations to protect human and animal health (sanitary measures) and plant health (phtyosanitary measures) through the Sanitary and Phytosanitary Measures Agreement (hereinafter referred to as the SPS Agreement) .[252]

Sanitary and phytosanitary measures were one of the areas addressed in the Uruguay Round of trade negotiations. The Marrakesh Agreement contains many trade agreements in its annexes, including the SPS Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement) which covers technical regulations that are not covered by the SPS Agreement.[253]

While Annexure A[254] defines what a SPS measure is, the aim and objectives of the agreement can be found in the preamble. The preamble to the SPS Agreement sets out two main objectives. The first is to recognize the sovereign right of Members to determine the level of health protection they deem appropriate and to ensure that the SPS measures do not represent unnecessary, arbitrary, scientifically unjustifiable, or disguised restrictions on international trade.[255] Secondly, the agreement aims to encourage Members to use international standards, guidelines and recommendations where they exist. However, Members may still adopt SPS measures which result in higher levels of health protection or measures for health concerns for which international standards do not exist, provided that they are scientifically justified.[256]

The SPS agreement could be a useful tool to employ against trade barriers imposed by trading partners, but developing and least developed countries often face many challenges in implementing this agreement.[257] As a means to assist these countries, provisions on technical

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[252] SPS Agreement Training Module: Background Available at *http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/intro1_e.htm*accessed on 26 July 2013.
[253] Introduction to the SPS Agreement. Available at *http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c1s3p1_e.htm* accessed on 26 July 2013.
[254] Annexure B Definition1.
[255] Ibid.
[256] Ibid.
[257] Ibid. Developing countries face challenges in implementing the agreement because some countries may apply onerous and complex testing requirements to verify compliance with their SPS requirements; however, developing countries may lack the required technology, resources and skilled workers required to comply with the testing of a product's standards.

assistance and special and differential treatment are included in the agreement; this would ensure that they comply with their obligations and that their rights are protected and enforced.[258]

While the agreement attempts to assist developing countries, exporters in these countries often struggle to adjust to and comply with the SPS measures to achieve the appropriate level of protection in export markets. Article 9 that deals with technical assistance recognizes this difficulty.[259] Furthermore, the aim of Article 9.1[260] which specifies that the various forms technical assistance may take, and Article 9.2[261], which encourages importing Members to provide technical assistance, is to allow the developing country Member to maintain and expand its market access opportunities for the specific product.

To provide further assistance to developing countries in respect of the SPS Agreement, in 2001 the Doha Ministerial Conference urged Members to provide the financial and technical assistance necessary to facilitate least-developed countries to meet the SPS requirements in their export markets, and to help these countries implement the Agreement.[262] Technical assistance is also provided bilaterally by WTO Members and by international organizations, particularly the three standard-setting organizations (the International Plant Protection Convention (IPPC), Joint Codex Alimentarius Commission (Codex) and Office international des épizooties (OIE)).[263] Assistance can take many forms; from scientific advice to hands-on assistance in setting up national inspection services or investment in laboratory infrastructure.[264]

It is clear that developing countries have urgent needs with regard to the SPS Agreement and it is largely due to these needs that Special and Differential Treatment (SDT) is provided for in the agreement. Firstly, developing countries cannot always comply with the requirements of the agreement as compliance often requires many resources that the country does not have as well as additional costs.[265] Secondly, some developing countries cannot meet the

[258]Ibid.
[259] Developing Countries available at *http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c6s2p1_e.htm* accessed on 26 July 2013.
[260]Note 254 above Article 9 .
[261] Ibid Article 9. 2.
[262]Developing countries (Note 259 above).
[263] Ibid.
[264]'Implementation' available at *http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c4s2p1_e.htm* accessed on 26 July 2013.
[265]D Prevost (Note 12 above).

requirements set by their trading partners even where they are consistent with the agreement.[266]

Specific provisions in the agreement consider the constraints of developing countries by providing them with a certain flexibility and assistance with regard to their compliance with the SPS measures of other Members and the implementation of the SPS obligations.[267] Article 10 is the main provision for SDT in the SPS Agreement and Article 10.1[268] is mandatory and creates a binding obligation on Members. Many of the problems that developing countries face in terms of meeting the SPS requirements as set by their trading partners could be avoided if their constraints were considered when the requirements are drafted or in their application.[269]It is thus important to consider the needs of developing countries and their capabilities before drafting SPS measures. In this way, developing countries' compliance could be secured without endangering the sufficient level of protection.[270]

Another provision beneficial to developing countries is Article 10.2[271] is designed to make it possible for developing country Members to maintain export opportunities.[272] This provision sets out specific actions to give effect to the provision and the "longer time frames" are specified as six months. Article 10.2 aims to allow developing countries to maintain their export opportunities while adjusting to the new measures, as long as this does not negatively impact the level of protection sought by the importing country.[273]

In keeping with the SDT provisions, the aim of Article 10.3[274]is to enable developing countries to comply with their obligations by giving them additional time to adjust to them; however, while the committee may grant an extension, it is not obliged to do so provides that on request, the committee can grant specified time-limited exceptions in whole or in part

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[266] Ibid.
[267] Ibid.
[268]Annexure B (Note 254 above) Article 10.
[269] D Prevost (Note 12 above) 90.Some countries may apply onerous and complex testing requirements to verify compliance with their SPS requirements; developing countries may lack the technology required to comply with these testing requirements.
[270]Ibid 90.
[271]Annexure B (Note 254 above) Article 10.2.
[272]D Prevost (Note 12 above) 96.
[273]Ibid 97.
[274]Annexure B (254 above) Article 10.3.

from obligations under the SPS Agreement to developing countries, taking into account their financial, trade and development needs.[275]

Article 10.4[276] is the final proviso of the SDT provision in the agreement and provides that members should encourage and facilitate the active participation of developing countries in the three standard-setting organizations (Codex, OIE and the IPPC).[277] This article is addressed to WTO members rather than the international standard setting bodies as these bodies are independent institutions.[278] Therefore Article 10.4 is purely hortatory and contains no binding obligation on the independent institutions to comply with this provision.[279]

Another Article in the Agreement that shows consideration of the challenges facing developing countries is Article 14.[280] LDCs were allowed to delay the application of the Agreement to their import requirements until 1 January 2000 while developing countries were allowed to delay the application of the Agreement, other than its transparency provisions, until 1 January 1997.[281] This stay was only applicable to existing sanitary or phytosanitary measures on imported products in cases where these countries lacked technical expertise, technical infrastructure or resources.[282]

Paragraph 2[283] of Annexure B also reflects a consideration of developing countries' problems but cannot be strictly considered a SDT provision as it applies equally to developed, and developing countries.[284] While there is a strong indication of the enforceability of this provision, it is still not frequently implemented.[285] Paragraph 9[286] of Annexure B is aimed at

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[275]D Prevost (Note 12 above) 97.
[276]Annexure B (Note 254 above) Article 10.4.
[277]D Prevost (Note 12 above) 97. Many developing countries attend the meetings of of these organizations, or comment on standards that are being developed. However, some Members are concerned, that international standards are often not appropriate for developing countries' special needs, or that standards do not exist for products of special interest to them.
[278]D Prevost (Note 12 above) 104.
[279]Dispute Settlement, World Trade Organization, SPS measures. Available at *http://unctad.org/en/Docs/edmmisc232add13_en.pdf* accessed on 04 October 2013.
[280]Annexure B (Note 254 above) Article 14.
[281]Introduction to the SPS Agreement (.Note 253 above).
[282]Ibid.
[283]Annexure B (Note 254 above)
[284]D Prevost (Note 12 above)100. However, the provision specifically refers to developing countries, thus giving them an advantage. It is therefore implied that a Member should consider the time needed by a developing country to adapt to new requirements.
[285] Ibid.
[286]Annexure B(Note 254 above) Article 9.

enabling these countries to take full advantage of the increased transparency resulting from the disciplines of the SPS Agreement.[287]

With regard to SPS in Tanzania, Tanzania has in the past encountered SPS restrictions through the famous case of the EC bans on fish export from Tanzania due to concerns over cholera and pesticide residues in fishery products.[288] SPS problems are highlighted in the livestock sector where there is virtually no trade in Tanzanian livestock and livestock products, due to the presence of several endemic OIE-notifiable animal diseases.[289]

The livestock industry faces many challenges including the presence of several endemic OIE notifiable diseases, shortcomings in animal disease monitoring/management system, low quality and productivity (by regional and international standards), poor hygienic conditions in slaughterhouses, handling and processing facilities for meat, dairy and poultry products and the absence of standards and low quality of animal feed (poultry) due to only few commercial operations applying improved technologies and management practices.[290]

To rectify these constraints there were several activities planned including the EC - SADC Foot and Mouth Disease (FMD) project (2006-2011), the Promotion of Regional Integration in the Livestock Sector (PRINT) 2004-2009, strengthening disease information networks and diagnostic capacity, and improving disease surveillance management system (funded by Norway and UN fund, 2008- 2010). [291] Actions to address the disease situation depend greatly on the capability of the national veterinary service and the results of the OIE evaluation of veterinary services should be used to identify actions to strengthen veterinary services.[292] Therefore it is important that public-private investment is promoted to meet the growing demand for high quality meat, dairy and poultry products (in particular from the tourist sector) and a set of workable measures must be devised to balance the considerations of animal disease control and trade facilitation.[293]

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[287] D Prevost (Note 12 above)106.
[288] M Abegaz 'Mobilizing Aid for Trade For SPS-Related Technical Cooperation In East Africa SPS Balance Sheet For Tanzania' Research Work For The Standards And Trade Development Facility. Available at *http://www.standardsfacility.org/Files/AidForTrade/Final_Tanzania.pdf* accessed on 12 October 2013.
[289] Ibid 5-7.
[290] M Abegaz (Note 288 above) 5-7.
[291] Ibid.
[292] Ibid.
[293] Ibid.

SPS-related market access constraints are of particular importance for Tanzania's non-traditional agricultural commodity exports.[294] In the fresh produce trade, increasing attention has been given to appropriate use of pesticides and the presence of residues.[295] In trade of cut flowers, there are concerns over the international transmissions of plant pests(notably fruit fly) and the weak phytosanitary control system.[296]

The Plant pest situation (specifically the fruit fly) and shortcomings in pest surveillance and monitoring system are key constraints in the weak phytosanitary control system.[297] Tanzania faces many challenges against the EU market including non-compliance with regulations on pesticide residues, compliance with private standards (more stringent pesticide requirements and certification costs, more evident if expansion sought through smallholder farms), concerns over air freight may impede EU market access.[298] In efforts to manage the pest situation, various projects have been established including the FAO supporting the establishment of phytosanitary control and surveillance system (possibly also including revision of legislation) and addressing fruit fly infestation (regional programme seeking funding), USAID support for the Tanzania Horticulture Association (TAHA) through Tanzania Air-freight Program (TAP) for horticulture and the integration of small growers into value chains and Capacity Building on Maximum Residue Levels (MRLs) (SADC, 2006-2010) and the 10th European Development Fund(EDF) 2008-2013, with one focus on capacity building for companies and farmers on food safety issues, including SPS).[299] Other projects include the development of modern horticulture research and training institute (Horti Tengeru), the development of structured and costed national farm-level training programme with appropriate budgetary support and support for Horticulture Development Council.[300]

Due to Tanzania becoming a tourist attraction, it has been highlighted that the tourism sector has a number of key SPS-related capacity building needs.[301] According to Abegaz, Tanzania had a basic framework for SPS management but the quality thereof is weak.[302] An issue within the tourism industry is the limited awareness of and little priority given to food safety.

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[294] Ibid.
[295] Ibid 2.
[296] Ibid.
[297] Ibid.
[298] M Abegaz (Note 288 above).
[299] Ibid.
[300] Ibid.
[301] Ibid 3.
[302] Ibid. The system is said to be weak due to a lack of policy, a legal institutional framework, coordination and harmonization.

While the National Food Safety Action Plan has been drafted (FAO),it is not widely known and there is no national policy statement on food safety.[303] The limited food safety issues include a limited awareness of basic food safety issues at all levels (farmers, slaughterhouses, processors and manufacturers, street vendors, tourist sector, general public).[304] The Awareness raising and training activities of Tanzania Bureau of Standards (TBS) and Tanzania Food and Drugs Authority (TFDA) are limited due to lack of resources.[305] The situation is characterised by a limited awareness of food safety issues at all levels, weak capacity of the TFDA, and limited coverage and uptake by private sector of existing schemes/facilities for SMEs.[306] Therefore it was recommended that awareness of food safety issues (or importance of SPS issues in general) at political level should be raised, there ought to be an increased food safety awareness at all other levels through training, dissemination of general information and the TFDA budgetary and technical support should be increased as this would allow the TFDA to take a leading role.[307]

Abegaz suggests for an increase in market access and development of the tourism sector in Tanzania, priority must be given to the removal of pest problems that limit expansion in the floriculture and horticulture sectors.[308] Disease problems that limit the export of livestock ought to be addressed through a public-private investment program.[309]

Whilst Kenya has several "flagship" agricultural industries such as cut flowers, fresh vegetables, tea and fish, which are successful models of export-led growth, SPS issues such as a range of plant pests and diseases act as a brake on further growth and the extension of small-holder supply chains into new product groups and growing areas.[310] A further

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[303] Ibid.
[304] Ibid, the exception to the limited food safety issues is export fish and fishery products.
[305] Ibid.
[306] Ibid.
[307] M Abegaz (Note 288 above).
[308] Ibid.
[309] Ibid.
[310] M Abegaz 'Mobilizing Aid For Trade For SPS-Related Technical Cooperation In East Africa SPS Balance Sheet For Kenya' Research Work For The Standards And Trade Development Facility. Available at *http://www.standardsfacility.org/Files/AidForTrade/Final_Kenya.pdf* accessed on 12 October 2013.The lake fisheries sector is a well known example of where SPS issues had closed down a key export market but has successfully overcome these constraints. In the wake of export restrictions to the EU market in the late 1990s, Kenya upgraded compliance capacity in the lake fisheries sector, with assistance from a variety of donors, and reduced its dependence on the EU market by accessing new markets including Israel, Singapore, Japan and Australia. The last EU Food and Veterinary Office (FVO) inspection in 2006 noted excellent performance by the competent authority. However, SPS compliance is a process of continuous improvement. Thus, whilst noting the excellent performance with respect to enforcement of local standards, the FVO still raised a number of concerns in relation to sanitary controls, in particular in relation to their equivalence with EU legislation in areas such as the ability to test for histamine and heavy metals.

challenge, although also not SPS-specific, is that posed by environment campaigners in certain key markets with regard the impact of air transport on climate change.[311]

The continued prevalence of important animal diseases for livestock trade, weak veterinary infrastructure, facilities and services, low rates of investment in slaughterhouses, meat processing and distribution services act as an absolute block for access to many markets.[312] Despite the continuous efforts of the Kenyan Government, Department of Veterinary Service, the Dairy Board and private sector to improve the animal health situation and to support the sector in line with international standards, these efforts need to be further supported.[313] Furthermore, the decline in one of Kenya's major cash crops, coffee exports, has been exacerbated by pest and disease problems while food-borne diseases remain a problem in Kenya.[314] Some diseases such as aflatoxin poisoning peaks during food shortages and rainy seasons are preceded by drought conditions within specific regions, while typhoid peaks mainly during the rainy seasons.[315]

Whilst adequate planning for preventive response is required, available statistics are not well documented and processed for use in decision-making, investigations into causative factors and magnitudes of exposure to trigger their management are inadequate and require strengthening.[316] Thus, it is difficult to take the required preventive action. The burden of food-borne disease also creates a difficulty in the service sector, in particular for the tourism trade.[317] The tourist sector's backward linkages related to the supply of safe food, hygiene and sanitation issues need to be properly addressed. For income from visitors to be maximized and the likelihood of return visits increased, food-borne risks need to be reduced.[318]

Due to the above mentioned SPS issues in Kenya, Abegaz takes the view that priority must be given to the removal of pest problems that limit expansion in the floriculture and

[311] Ibid.
[312] Ibid. Up to 70% of all episodes of diarrhoea may be attributed to ingestion of contaminated food and water. In 2004, the most prevalent diseases were typhoid dysentery and gastroenteritis. Other diseases include aflatoxin poisoning, brucellosis and cholera
[313] M Abegaz (Note 310 above).
[314] Ibid.
[315] Ibid.
[316] Ibid.
[317] Ibid.
[318] Ibid.

horticulture sectors.[319] To deal with the issue of pests, the physical (laboratory compliance with international standards) and soft (pest risk analysis) must be improved.[320] Disease problems that limit the export of livestock, dairy and meat must be addressed through investment programs and current regulatory frameworks must be updated.[321]

3.4.2. The Technical Barriers to Trade Agreement

There have been many significant achievements in reducing tariff barriers to trade; however, many GATT provisions that addressed technical barriers were deemed to be insufficient to manage growing concerns.[322] During the Tokyo Round of multilateral trade negotiations, a plurilateral agreement (an agreement that is not signed by all GATT contracting parties) was concluded in 1979. This early TBT agreement, dubbed the "Standards Code", served as a basis for the WTO's TBT Agreement.[323] With only 32 signatories, the Standards Code provided a good testing ground for how best to discipline the use of technical regulations until the technical barriers to trade agreement (hereinafter referred to as the TBT Agreement) entered into force in 1995 with the entry into force of the WTO.[324]

The TBT Agreement applies to technical regulations governed by Articles 2 and 3[325] , and technical standards under Article 4.[326] However, Article 4 makes reference to Annex 3[327] of the Agreement which contains the Code of Good Practice for the Preparation, Adoption and Application of Standards ("Code of Good Practice").[328] This Code is very important because it contains almost all the substantive provisions governing the treatment of standards. There is a difference in coverage between the TBT Agreement and the SPS Agreement. The SPS Agreement covers a narrower or more precisely defined set of measures relating to human, animal and plant life or health than the TBT Agreement. To assess whether or not a health measure is covered by the TBT Agreement, it is best to first establish whether or not it is an SPS measure.[329]

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[319] Ibid.
[320] Ibid 9.
[321] Ibid.
[322] Ibid 10.
[323] A E Appleton '*Dispute Settlement, World Trade Organization, Technical Barriers To Trade'* available at *http://unctad.org/en/Docs/edmmisc232add22_en.pdf* accessed on 30 July 2013.
[324] Ibid.
[325] Annexure C Article 3:3.1.
[326] Ibid Article 4.
[327] Ibid Annex 3.
[328] A E Appleton(Note 323 above).
[329] Chapter 5: Trade liberalization: Why so much controversy? available at *http://www1.worldbank.org/prem/lessons1990s/chaps/05-ch05_kl.pdf* accessed on 27 July 2013.

The Preamble and Article 2.2[330] of the TBT Agreement set out the objectives of the agreement.[331]The Agreement seeks to achieve a balance between allowing Members the regulatory autonomy to protect legitimate interests (through the use of technical regulations, standards and conformity assessment procedures) and ensure that technical regulations, standards and conformity assessment procedures do not become unnecessary obstacles to international trade.[332] Furthermore, Article 2.1[333] contains the MFN principle. The MFN principle is applied to ensure that all products are treated in the same fashion, irrespective of their origin. The National Treatment principle is also relied on to ensure that there are no unnecessary obstacles to trade.[334] The principle requires that there must be no unnecessary obstacles to trade aimed at eliminating domestic producers' competitors. The measure must be necessary to serve a legitimate objective as provided in Article 2.2. [335]

Another important feature is the harmonization principle found in Article 2.6[336] as well as the Preamble. This principle seeks to eliminate trade barriers by promoting the use of existing standards.[337] The advantage of this principle would be that exporters would not have to fulfil a variety of standards, regulations and assessment procedures. However, the disadvantage is that members are only encouraged to use the existing standards.

In relation to this disadvantage, Article 2.4[338] provides that Members do not have to use an international standard if they consider it ineffective or inappropriate to achieve their objective. While Article 2.5[339] provides an incentive to countries to use international

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It is important to first determine if a health measure is an SPS measure because SPS measures have a limited and specific aim; to protect human, animal and plant life or health by ensuring food safety and preventing animal and plant-borne diseases from entering a country. On the other hand, technical regulations are imposed for a variety of policy objectives. Dispute Settlement, World Trade Organization, Technical Barriers to Trade. Available at *http://unctad.org/en/Docs/edmmisc232add22_en.pdf* accessed on 30 July 2013

[330] Annexure C (Note 325 above) Article 2.

[331] D Prevost (Note 12 above).

[332]Technical Barriers to Trade Agreement. Available at *http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm#top* accessed on 31 July 2013.

[333] Annexure C (Note 325 above) Article 2.

[334] D Prevost (Note 12 above).

[335]Ibid.

[336]Annexure C (Note 325 above) Article 2:2.6.

[337]Ibid.

[338]Annexure C (Note 325 above) Article2:2.4.

[339]Ibid Article2: 2.5.

standards, the Agreement goes on to provide that all technical regulations are rebuttably presumed to not create an unnecessary obstacle to international trade.[340]

A further interesting provision is Article 12 of the TBT Agreement which provides for special and differential treatment for developing countries. Article 12.1[341] provides that Members should extend differential and more favourable treatment to developing countries party to this Agreement. Article 12.2[342] provides that Members must give special attention to developing country Members' rights, obligations and the needs of developing country Members in the implementation of this Agreement.[343]The measures under Article 12.3[344]ensure that developing countries are able to meet the required standards in international markets while at the same time exercising their rights and freedoms.

Under the SDT provision of the TBT agreement, Article 12.4[345] requires that Members recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards.[346] Article 12.5[347] requires that Members shall take reasonable measures to ensure that international standardizing bodies and international systems for conformity assessment are organized and operate in a way that facilitates the active and representative participation of relevant bodies in all Member countries.[348] Article 12.6[349] provides that Members shall take reasonable measures to ensure that international standardizing bodies examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.[350]

Article 12.7[351] requires that Members must, in accordance with the provisions of Article 11[352], provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment

[340]Chapter 5: Trade liberalization: Why so much controversy? (Note 329 above) 88.
[341]Annexure C (Note 325 above) Article12.
[342]Ibid Article 12.2.
[343]Technical Barriers to Trade Agreement (Note 332 above).
[344]Annexure C (Note 325 above) Article 12.3.
[345] Annexure C Article 12.4 .
[346]Ibid
[347]Ibid Article 12.5.
[348]Technical Barriers to Trade Agreement (Note 332 above).
[349]Annexure C (Note 325 above) Article 12.6.
[350]Technical Barriers to Trade Agreement (Note 332 above).
[351] Annexure C (Note 325 above) Article 12.7 .
[352] Ibid Article 11

procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members.[353] Article 12.8[354] recognizes that developing countries may face problems, including institutional and infrastructural problems, in preparing and applying technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to fully discharge their obligations under this Agreement. Therefore Members must take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13[355] is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems noted above.[356]

3.5.Conclusion

It can be concluded that the objective of trade liberalization is to reduce or remove any unnecessary obstacle to trade between trading partners. To answer the question of whether or not trade liberalization has assisted developing countries, it is concluded that it has assisted them, but in a limited manner as there is still some uncertainty about whether the five benefits of trade liberalization identified in this chapter have been effective in such countries. Therefore the global community and international institutions have placed development and poverty alleviation high on their agendas as these issues form part of the Millennium Development Goals. With this goal in mind, the international community has named the current global trade negotiations, the Doha Development Agenda.[357] Trade liberalization is expected to impact positively on development and poverty reduction.[358]

Turning to the effectiveness of trade liberalization through the SPS and TBT Agreements, SDT provisions have been included in these agreements, mainly in Article 10 of the SPS Agreement and Article 12 of the TBT Agreement, to demonstrate that special consideration

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[353]Technical Barriers to Trade Agreement (Note 332 above).
[354] Annexure C (Note 325 above)Article 12.8.
[355]Ibid Article 13.
[356]Technical Barriers to Trade Agreement (Note 332 above).
[357]'How much will trade liberalization help the poor?' available at *http://www.ifpri.org/sites/default/files/publications/rb05.pdf* accessed on 02 October 2013.
[358]Ibid.

is given to the urgent needs of developing countries who are trying to comply with and implement these WTO agreements.

CHAPTER 4: LEAST DEVELOPED COUNTRIES AND DEVELOPING COUNTRIES

4.1. Introduction

In the early 1960s, there were growing concerns about the place of developing countries in international trade. [359] This led many of these countries to call for a fully-fledged conference specifically devoted to tackling these problems and identifying appropriate international action.[360] The first United Nations Conference on Trade and Development (UNCTAD) was held in Geneva in 1964.[361] UNCTAD has three main functions. Firstly it serves as a forum for intergovernmental deliberations, supported by discussions with experts and exchanging experiences aimed at consensus building.[362] Secondly, UNCTAD undertakes research, policy analysis and data collection and thirdly, the organization provides technical assistance geared to the specific requirements of developing countries, with special attention to the needs of the least developed countries (LDCs) and of economies in transition.[363]

Within the World Trade Organization (WTO) its 159 members are categorised into three categories: developed, developing and least developed countries.[364] Each of these statuses has advantages and disadvantages and ultimately affects the way these countries are treated within the WTO. This chapter will first discuss how LDCs and developing countries are identified. Secondly, it discusses the challenges confronting LDCs and developing countries.

[359] A brief history of UNCTAD. available at *http://unctad.org/en/Pages/About%20UNCTAD/A-Brief-History-of-UNCTAD.aspx* accessed on 23 October 2013.
[360] Ibid.
[361] Ibid.
[362] 'United Nations Conference on Trade and Development' available at *http://www.un-ngls.org/spip.php?page=article_s&id_article=806*accessed on 23 October 2013.
[363] Ibid. When appropriate, UNCTAD also cooperates with other organizations and donor countries in the delivery of technical assistance.
[364] 'Members and observers' available at *http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm*accessed on 19 September 2013.

Finally, the chapter examines the role these countries play within the Multilateral Trade System.

4.2. Identifying Least Developed Countries

The LDCs category was officially established in 1971 by the United Nations (UN) General Assembly with a view to attracting special international support for the most vulnerable and disadvantaged members of the UN family.[365] The LDCs represent the poorest and weakest section of the international community and are home to more than 880 million people. [366] The current list of LDCs includes 49 countries; 34 in Africa, 14 in Asia and the Pacific and one in Latin America.[367]

The Committee for Development Policy (CDP) is a subsidiary body of the UN Economic and Social Council whose purpose is to review the category of LDCs every three years and monitor their progress after graduation from the category.[368] In its 2011 plenary session, the CDP defined LDCs as low-income countries suffering from the most severe structural impediments to sustainable development. [369] The CDP further clarified that sustainable development incorporates economic, social and environmental development.[370] The concept of sustainable development reflects the Committee's practice in identifying LDCs which has taken a broader development perspective instead of focusing only on impediments to economic growth.[371]

Another function of the CDP is to identify countries as LDCs, using a set of formal criteria[372] The initial criteria for designating a country least developed required a low per capita Gross Domestic Product (GDP) and structural impediments to growth and the presence of such impediments indicated by a small share of manufacturing in total GDP, as well as low

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[365] LDC information criteria for identifying least developed countries. Available at *http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_criteria.shtml* accessed on 09 September 2013.

[366]Ibid. Eight hundred million people account for approximately 12 per cent of world population but for less than two percent of world GDP and about one percent of global trade in goods.

[367]The newest member of the LDCs in Africa is South Sudan. Available at*http://www.unohrlls.org/en/ldc/25/* accessed on 09 September 2013.

[368]Ibid.

[369]LDC information criteria for identifying least developed countries (Note 365 above).

[370]Ibid.

[371]Ibid.

[372]Ibid.

literacy rates.[373] The underlying principles for identifying LDCS as countries which face structural handicaps have essentially remained the same.[374] However, over the years the criteria have been refined to take into account new information from research on economic development, updated information on structural impediments to development and improvements in the availability of internationally comparable data.[375]

Currently, the following criteria are used to classify countries as least developed: (1) Gross National Income (GNI) per capita, (2) the Human Assets Index (HAI) and (3) the Economic Vulnerability Index (EVI).[376] The GNI per capita criterion is an absolute measure of national income while the HAI and the EVI are composite indices and relative measures of structural impediments that are calculated using information on all developing countries.[377] In the review process, the Committee determines threshold levels on each of the criteria to identify the countries to be added to or graduated from the category.[378] Graduation rules were established in 1991 and one of the guiding principles in designating LDCs has been to ensure that graduation will take place only after a country's development prospects have been significantly improved, and that the graduated country can sustain its development path.[379]

The thresholds for graduation have been established at a higher level than those for inclusion. Firstly, in order to be eligible for graduation a country must reach threshold levels for at least two out of three criteria (except in cases where the GNI per capita is at least twice the graduation threshold levels or where the likelihood that the level of GNI per capita is sustainable).[380] To be recommended for graduation, a country must be found eligible at two successive triennial reviews by the CDP while eligibility for inclusion is ascertained only once. [381] Secondly, a country graduates from the LDC category three years after the GA takes note of the United Nations Economic and Social Council (ECOSOC) endorsement of the

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[373]Ibid. The GDP criterion was based on the then current assumption that a high level of industrialization was a structural characteristic of developed or "advanced" countries and that the literacy rate indicated the extent of development of a country's human capital.
[374]Ibid.
[375]Ibid.
[376]Ibid.
[377]Ibid.
[378]Ibid.
[379]Ibid.
[380]Ibid. see also *http://www.unohrlls.org/en/ldc/164/* accessed on 09 September 2013.
[381]LDC information criteria for identifying least developed countries (Note 365 above).

recommendation of the CDP while inclusion is immediate.[382]Finally, inclusion requires approval from the country concerned, whereas graduation does not. [383]

In the identification process, the criteria are applied to a reference group consisting of LDCs and other selected developing countries.[384] The first criterion, GNI per capita, provides information on the income status of a country and the GNI measure used by the CDP is expressed in current United States dollars. National currencies are converted into United States dollars according to the World Bank's Atlas Method, which reduces the efforts of short term fluctuations in inflation and market exchange rates.[385] The threshold for inclusion is based on a three-year average of the level of GNI per capita, which the World Bank defines in order to identify low-income countries, whilst the threshold for graduation is set at a higher level (usually 20 percent above the inclusion). [386]

The next criterion is the HAI which has remained unchanged since 2006. It provides information regarding the level of development of human capital and is a combination of four indicators that each carry an equal 24 percent weight. [387] There are two indicators of health and nutrition, divided into a percentage of population of undernourished people and the mortality rate for children five years or under, and two of education, divided into gross secondary education enrolment ratio and the adult literacy rate.[388]The original data for each variable are converted into index numbers using a max-min procedure. [389]

The HAI threshold for inclusion is determined by the index number corresponding to the third quartile in the distribution of HAI results for the reference group of all least developed and developing countries under review.[390] Countries with HAI values lower than the threshold meet the HAI criterion for inclusion in the list of LDCs. [391]

The third criterion is the EVI. This is designed to reflect the risk posed to a country's development by exogenous shocks, the impact of which depend on the magnitude of the

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[382] Ibid. Graduation only takes place after three years in order to give the country time to prepare itself for a smooth transition from the list; during this three-year period, the country remains on the list of LDCs and continues to benefit from the special support measures associated with LDC status.
[383]Ibid.
[384]Ibid.
[385]Ibid.
[386]Ibid.
[387]Ibid.
[388]Ibid.
[389] Ibid.
[390] Ibid.
[391] Ibid.

shocks and on structural characteristics that determine the extent to which the country would be affected by such shocks (resilience).[392] The EVI incorporates eight indicators: (a) population size; (b) remoteness; (c) merchandise export concentration; (d) share of agriculture, forestry and fisheries in gross domestic product; (e) share of population living in low elevated coastal zones; (f) instability of exports of goods and services; (g) victims of natural disasters; and (h) instability of agricultural production. [393] These indicators are grouped into two broad areas comprising an exposure index and a shock index and the overall EVI score is a weighted average of the eight indicators.[394] The EVI threshold for inclusion is the value of the index at the first quartile of the values for the reference group and countries with EVI values higher than this threshold meet the EVI criterion for inclusion in the list of LDCs. [395]

As noted earlier, population size is a factor of the EVI and a condition that determines whether a country is eligible for least developed status. [396] In 1991, the CDP decided that countries with a population exceeding 75 million should not be considered for inclusion in the list of LDCs; however this limit did not apply to countries that were on the list when the parameter was introduced and furthermore, population size is not a criterion for graduation. [397]

Whilst there are very specific criteria for classification as an LDC, there are no precise criteria of how a developing country is categorised or World Trade Organisation definitions of “developed” and “developing” countries.[398] Members announce for themselves whether they are “developed” or “developing” countries, however other members can challenge the decision of a member to make use of provisions available to developing countries.[399]

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[392]Ibid. The EVI does not take into account vulnerabilities that result from economic policy choices made in the past.
[393] Least Developed Countries: Factsheets available at *http://www.un.org/en/development/desa/policy/cdp/ldc/profile/country_201.shtml*accessed on 09 September 2013
[394] Ibid.
[395]Ibid.
[396] Ibid.
[397] Ibid.
[398] Who are the developing countries in the WTO? Available at *http://www.wto.org/english/tratop_e/devel_e/d1who_e.htm* accessed on 09 September 2013.
[399] C Michalopoulos ‘The Role Of Special And Differential Treatment For Developing Countries In GATT and the World Trade Organization’ available at *http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2388* accessed on 24 November 2013.

According to the International Statistical Institute, a country falls into the category of developed or developing country according to their GNI per capita. [400]

4.3. The General Challenges faced by developing countries and LDCs

LDCs generally have a low level of socio-economic development that is characterized by weak human and institutional capacities, low and unequally distributed income and a scarcity of domestic financial resources.[401] They often suffer from governance crises, political instability and internal and external conflict and their largely agrarian economies are affected by a vicious cycle of low productivity and low investment.[402] These constraints are responsible for insufficient domestic resource mobilization, low economic management capacity, weaknesses in programme design and implementation, chronic external deficits, high debt burdens and heavy dependence on external financing that have kept LDCs in a poverty trap. [403]

In Africa 34 of the 53 Member States are LDCs[404] that face persistent economic and social challenges such as low capacity, poor infrastructure and inadequate social services.[405] To address these challenges, the Brussels Declaration and Programme of Action (BPoA) was adopted at the Third United Nations Conference on Least Developed Countries (UNLDCIII) held in Brussels in May 2001.[406] Since 2002, the United Nations Economic Commission for Africa (ECA) has produced an annual progress report on the implementation of the BPoA in African LDCs, highlighting the achievements and constraints of these countries.[407]

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[400] The international Statistical Institute available at *http://www.isi-web.org/component/content/article/5-root/root/81-developing* accessed on 16 September 2013.

[401] UN Office for Least Developed Countries, Landlocked Developing Countries and Small Island Developing Countries. Available at *http://www.unohrlls.org/en/ldc/25/* accessed on 13 September 2013.

[402]Ibid.

[403] Ibid.

[404]Challenges and Opportunities for African Least Developed Countries available at *http://www.un.org/special-rep/ohrlls/ldc/MTR/ECAInput.pdf* accessed on 10 September 2013.

[405]Ibid.

[406]Ibid. The program set out a framework for the reduction of poverty and improvement of human development for the decade 2001-2010. The primary goal is to halve the proportion of people living in extreme poverty and suffering from hunger by 2015. In addition, the BPoA consists of seven commitments that outline the key issues to be tackled by LDCs. These commitments are (1) Fostering a people- centred policy framework; (2) Promoting good governance at national and international levels; (3) Building human and institutional capacities; (4) Building productive capacities to make globalization work for LDCs; (5) Enhancing the role of trade in development; (6) Reducing vulnerability and protecting the environment; and (7) Mobilizing financial resources. There are also many other issues such as gender, HIV/AIDS and the environment.

[407]Ibid.

The challenges confronting LDCs and developing countries include a lack of resources and human capital, a lack of infrastructure and foreign debt.[408]A country's supply of natural resources is important and a country with infertile land and inadequate natural resources will find it more difficult to achieve income growth than one that is richly endowed with such resources.[409] It is also important that these resources are managed properly. [410] Although abundant supplies of natural resources can assist growth, they are neither sufficient to ensure growth or necessary for it. [411]

Human capital refers to the number of people, their training and experience.[412] A well-developed entrepreneurial class, motivated and trained to organize resources for efficient production, is often lacking in poor countries. This may be due to managerial positions being awarded to family members or on the basis of political patronage rather than merit, or to the prevalence of economic or cultural attitudes that do not favour wealth acquisition by organizing productive activities, or it may simply be the result of insufficient levels of education or training.[413] A discussion of these factors follows.

While there are many contributing factors, population growth is one of the central problems relating to economic development.[414] Some developing countries have population growth rates in excess of their GDP growth rates and therefore suffer negative GDP per capita growth.[415] Others' population growth is nearly the same as their rates of GDP growth and as a result, their standards of living are barely higher than they were 100 years ago.[416] The human development levels of African LDCs are low in comparison with other LDCs.[417] Furthermore, human development is lower than GDP per capita in many African LDCs.[418] The problem of over-population therefore gives rise to the various other challenges that plague developing countries and LDCs.

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[408] Chapter 36W: Challenges Facing the Developing Countries 4. Available at *http://wps.prenhall.com/wps/media/objects/1310/1341624/Chapter36W.pdf* accessed on 10 September 2013.
[409]Ibid 4.
[410] Ibid.
[411]Ibid 5.
[412] Ibid.
[413] Ibid.
[414]Ibid 6.
[415] Ibid.
[416] Ibid.
[417]Challenges and Opportunities for African Least Developed Countries (Note 404 above).
[418]Ibid para 57.

Poverty and overpopulation in African LDCs have resulted in environmental degradation and a loss of resources.[419]Deforestation has increased in many African countries.[420] The proportion of land covered by forest in the 34 African LDCs is estimated to have decreased from 26.1 percent in 1990 to 24 percent in 2000.[421] Another indicator of environmental degradation is the percentage of the population using solid fuels, which contributes to both deforestation and air pollution.[422] Climate change, as a result of global warming, is a further challenge to LDCs as it is apparent that the frequency and magnitude of natural disasters is increasing in these countries.[423] Furthermore, the loss of water supplies could adversely impact agriculture, further accelerating urbanization trends and emigration pressures.[424]

Production today is knowledge-intensive, placing a premium on a well-educated workforce. The ability to read, do basic calculations, operate electronic equipment and follow relatively complex instructions are important requirements of modern labour and the failure to develop such essential skills can be an important cause of the lack of growth.[425] Poor health is another source of inadequate human resources because when the labour force is healthy, less working time is lost and more effective effort is expended.[426]

Therefore the BPoA seeks to build human and institutional capacities in LDCs through social infrastructure and services, population measures, education and training, and health, nutrition and sanitation.[427]

A minimum level of education is a fundamental requirement for LDCs to compete in an increasingly knowledge and skills intensive global economy.[428] While some progress has been made in a few African LDCs[429], considerable challenges remain in expanding access to secondary schooling.[430] This can be seen in Tanzania where low skills levels are partly attributable to the low levels of spending on education, especially the higher education

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[419]Ibid para 42.
[420]Ibid.
[421]Ibid.
[422]Ibid para 43.
[423]Development Challenges facing LDCs in the coming decade. Available at *http://unctad.org/en/Docs/presspb20119_en.pdf* accessed on 26 August 2013.
[424]Ibid.
[425]Chapter 36W: Challenges Facing the Developing Countries (Note 408 above) 5.
[426] Ibid.
[427]Challenges and Opportunities for African Least Developed Countries (Note 404 above).
[428]Ibid.
[429]Ibid para 30.
[430]Ibid.

sector.[431] As a result, a sizeable proportion of the active labour force cannot be employed in skilled jobs and the unemployment rate in urban areas is high due to an influx of low skilled migrants from the rural areas.[432] The government has responded with a comprehensive education and training programme that addresses priority issues such as access and quality as well as seeking to ensure a gender balance.[433]

Commitment 3 of the BPoA also addresses various health, nutrition and sanitation measures.[434]Infant mortality in African LDCs has decreased slightly from 104.4 per 1 000 live births in 2000 to 101.7 in 2003.[435] Immunization is a critical factor in decreasing infant mortality; however the immunization rate for measles only reached 67.5 percent in 2003, an increase of over five percentage points from the 2001level.[436] With regard to sanitation measures, access to water and sanitation facilities are still a major challenge; in 2002, only 59.7 percent of the total population in African LDCs had access to water and 32.5 percent had access to sanitation facilities.[437]

As noted earlier, another challenge for developing countries is that the traditions and habitual ways of doing business vary among societies and are not all conducive to economic growth.[438] Cultural forces are often a source of inefficiency as personal, family considerations, past favours, or traditional friendship or enmity are more important than market incentives in motivating behaviour.[439] In a traditional society in which children are expected to adopt their parents' occupations, it is more difficult for the labour force to adapt to the requirements of growth than in a society in which upward mobility is a goal in itself.[440]

The fact that existing social, religious, or legal patterns may make growth more difficult does not imply that they are undesirable, but rather suggests that the benefits of these patterns

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[431]Third United Nations Conference On The Least Developed Countries Brussels, 14-20 May 2001 Country Presentation By The Government Of The United Republic Of Tanzania 12,13,14 available at *http://www.yumpu.com/en/document/view/8343901/the-government-of-the-united-republic-of-tanzania* accessed on 18 October 2013.
[432] Ibid. Women are particularly disadvantaged in terms of access to high level training; hence their employment in low skill jobs.
[433] Ibid.
[434]Challenges and Opportunities for African Least Developed Countries (Note 404 above).
[435]Ibid para 30.
[436]Ibid. While there was only a 5% increase in measles immunization Tanzania has an immunization coverage of above 85%, indicating it is likelyto achieve the infant mortality goal set by the BPoA.
[437]Ibid para 34.
[438]Chapter 36W: Challenges Facing the Developing Countries (Note 408 above) 8.
[439] Ibid.
[440] Ibid.

should be weighed against the costs, of which the limitation on growth is one.[441] When people derive satisfaction from a religion whose beliefs inhibit growth or when they value a society in which every household owns its own land and is more self-sufficient than in another society, they may be willing to pay a price in terms of forgone growth opportunities.[442] Therefore people in African LDCs in particular are sometimes willing to remain in a poor and under developed situation rather than, for example, sell their land to make a profit.

Another challenge (and one of the biggest) to developing countries and LDCs is the lack of key services, referred to as infrastructure as transportation and a communications network are necessary for efficient commerce.[443] Very slow progress has been made in many African LDCs.[444] Reliable roads, bridges, railways, and harbours are required to transport people, materials, and finished goods while telephone and postal services, water supply, and sanitation are also essential for economic development.[445]

Thus Commitment 4 of the BPoA focuses on the expansion of physical infrastructure (roads, railways, airports, ports, information technology and communications); technology adoption and transfer; enterprise development; energy; agriculture and agro-industries; manufacturing and mining; rural development and food security and sustainable tourism.[446] Two-thirds of all African LDCs lack access to roads, ports and other forms of transport networks; inadequate infrastructure has severe implications for landlocked LDCs.[447] Most of the infrastructure in Tanzania is in poor condition.[448] This has affected both agricultural production (limited marketing channels) and industrial production (interruptions in the electricity and water supply).[449]

The absence of dependable infrastructure can impose severe barriers to economic development especially in terms of trade.[450]Trade is an important vehicle for driving

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[441] Ibid.
[442] Ibid.
[443]Ibid 9.
[444]Challenges and Opportunities for African Least Developed Countries (Note 404 above). In Tanzania 46 % of the household respondents considered the quality of public services to be “fair”.
[445] Chapter 36W: Challenges Facing the Developing Countries (Note 408 above) 9.
[446]Challenges and Opportunities for African Least Developed Countries (Note 404 above) para 35.
[447]Ibid para 36.
[448]Third United Nations Conference On The Least Developed Countries (Note 431 above) 13.
[449]Ibid.
[450]Challenges and Opportunities for African Least Developed Countries (Note 404 above)

economic growth in African LDCs because these countries' economies are highly dependent on external trade. [451] Even though exports have increased, African LDCs remain dependent on one or two primary commodities and this exposes their economies to export revenue volatility that could hamper economic growth.[452] While the LDCs have undertaken trade liberalization, local industries have found it difficult to withstand competition in the international arena; this is witnessed in increased food imports as many local farmers in LDCs find it difficult to compete in global markets.[453]

Tanzania's weak industrial base is the result of a combination of history and recent policies that do not protect domestic industries from cheap imports.[454] The government has responded by adopting special incentives and anti-dumping measures such as "Minimum Dutiable Value" enforcement.[455] Furthermore, special export incentives have been offered and efforts are being made to establish Export Processing Zones.[456]

Of concern is that the LDCs are now highly integrated into a global economy characterized by increasing market volatility.[457] This can be seen in country like Kenya, whose most pressing challenge is to implement its new devolved system of governance, while strengthening its capacity to cope with domestic and external shocks.[458] The Kenyan economy's vulnerability to international oil prices, weak exports due to an underperforming manufacturing sector, lower agricultural output resulting from drought and declining forex earnings and remittances frequently exert pressure on the exchange rate and current account.[459] Increased food and fuel prices have highlighted the country's vulnerability to external shocks, rooted in both high exposure to shocks and low domestic resources and capacities to deal with their consequences.[460]

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[451]Ibid para 39.
[452]Ibid para 40.
[453]Development Challenges facing LDCs in the coming decade (Note 423 above).
[454] Third United Nations Conference On The Least Developed Countries (Note 431 above) 12-14.The weak industrial base is the result of a combination of history and recent policies that do not protect domestic industries from cheap imports coupled with the high cost of energy, poor physical and economic infrastructure and lack of investment in high technology lines.
[455] Ibid.
[456]Ibid.
[457]Third United Nations Conference On The Least Developed Countries (Note 431 above)
[458] Kenya Overview available at *http://www.worldbank.org/en/country/kenya/overview* accessed on 20 October 2013
[459]Ibid. Imported inflation from high fuel and food prices affects investments.
[460]Third United Nations Conference On The Least Developed Countries (Note 431 above).

The LDCs need to seize the trading opportunities arising from the rules, secure concessions and commitments from trading partners, effectively exercise their trading rights in export markets, fully implement their trade obligations and define and pursue their trade and development interests in negotiations, ensuring that their concerns are fully reflected on the future international trade agenda.[461]

The existence of trade barriers and non-tariff barriers also pose challenges.[462] While some developing countries' exporters have benefited from the commitment made by developed countries to duty-free and quota-free access to LDC exports, developing countries can only fully benefit if access is extended to cover 100% of products, rather than the current minimum of 97%. [463] While the European Union (EU)'s 'Everything but Arms' initiative has opened up EU markets to LDC exports, non-tariff barriers have increased and continue to increase because health scares such as mad-cow disease and avian flu, fears concerning pesticide residues in food and growing concern about the environment are driving health and safety, environmental impact and standard and quality measures.[464]

Existing non-tariff barriers include the WTO rules on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures, which, while designed to harmonize trade, are a challenge for LDCs.[465] Many LDCs require assistance to comply with the provisions of the agreements in order to compete successfully on international markets. Strong national institutions are required to test for quality and meet recognized standards.[466]

Moreover, conflict in African LDCs (civil war or war with another country), is a very common cause of government breakdown and subsequent economic upheaval and volatility.[467] It is believed that Kenya's single most serious challenge is governance.[468] Kenya scores well on measures of economic governance, such as microeconomic and budgetary management, voice, transparency, public administration, regulatory quality, and revenue

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[461]Ibid. By fully implementing trade obligations, they will turn them into a way of enhancing the stability and transparency of their trade regimes, and be able to devise and execute development policies within the framework of these obligations.
[462]UNIDO and the Least Developed Countries, Partners for Prosperity 17. Available at *http://www.unido.org/fileadmin/user_media/Services/LDC_SSC/ldc_brochure_210411_EN.pdf* accessed on 26 August 2013.
[463] Ibid.
[464] Ibid.
[465] Ibid.
[466]Ibid 18.
[467]Challenges and Opportunities for African Least Developed Countries (Note 404 above) para 54.
[468]Kenya Overview (Note 458 above).

mobilization.[469] However, the country scores poorly on measures of political governance such as the rule of law and control of corruption.[470]

It is estimated that conflict reduces the per capita growth rate by 2.2 percentage points during periods of war and 2.1 percentage points five years following the end of hostilities (Collier and Hoeffler 2000; Fosu and Collier 2005).[471] Conflict and war discourage investment, disrupt trade (Cramer 1999)[472] and reduce agricultural productivity.[473] Furthermore, the effect of such conflict is not only experienced within the state but in the countries neighbouring a country in conflict through economic and political contagion;[474] conflict results in internally displaced people and refugees, which intensifies poverty as people lose their jobs and livelihoods.[475] Therefore establishing peace and political stability is essential to poverty reduction strategies, improved investor confidence and the overall development of African LDCs.[476]

4.4. The Role of Least Developed and Developing Countries within the Multilateral Trade System

Having discussed the categorization and challenges faced by developing countries and LDCs, the discussion now turns to the role played by these countries in the Multilateral Trading System. For many years, the GATT was considered to be an arrangement that was primarily of relevance to developed countries; however, there was a major surge in active engagement by developing countries in the Uruguay Round Multilateral Trade Negotiation.[477] The creation of the WTO posed both a challenge and an opportunity to further participation on the part of the developing countries; the evidence suggests that the overall level of participation

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[469] Ibid.
[470] Kenya: Moving towards the tipping point available at *http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23203463~menuPK:51062077~pagePK:34370~piPK:34424~theSitePK:4607,00.html* accessed on 21 October 2013.
[471] Challenges and Opportunities for African Least Developed Countries (Note 404 above).
[472] Ibid para 54.
[473] Ibid.
[474] Ibid para 55.
[475] Ibid.
[476] Ibid para 56.
[477] The Least Developed Countries in The WTO: Strengthening Participation Capacities. Available at *http://zunia.org/sites/default/files/media/node-files/ld/127384_ldcunctad.pdf* accessed on 19 September 2013. The Uruguay round which took place between 1986 and 1994 is considered to be one of the most ambitious rounds of the multilateral negotiations. The round was launched to address the issues of structural deficiencies and the impact of certain countries policies on world trade that GATT could not manage that were highlighted at the 1982 Ministerial Declaration.

of the developing countries in the WTO system remains limited.[478] This is mainly due to their limited financial and human resources as well as institutional weaknesses.[479]

In the GATT negotiating rounds, the developing countries played a very limited role until the Doha Round.[480] The GATT was accused of failing to address the interests of developing countries; three reasons have been suggested to explain this situation:[481] (1) developing countries did not play an active role in GATT until the Uruguay Round, and this participation was characterized as passive and defensive; (2) developing countries were unwilling and failed to make concessions to their developed country negotiating partners in the exchange of tariff reductions; and (3) the developing counties' main objective and focus in GATT negotiations was special and differential provisions (as was discussed under Chapter 3 including longer time periods for implementing Agreements and commitments, measures to increase trading opportunities for developing countries, provisions requiring all WTO members to safeguard the trade interests of developing countries, support to help developing countries build the capacity to carry out WTO work, handle disputes, and implement technical standards, and provisions related to least-developed country (LDC) Members).[482]

However academics have argued that these assertions are not an accurate description of the role that developing countries played in the GATT. Firstly, it has been argued that developing countries played an active role in the negotiations on the International Trade Organization (ITO), within which GATT was to have been located.[483] Furthermore, the active role that developing countries played in the early years of GATT is demonstrated by the Uruguayan case filed in GATT against 15 of the developed country Members of GATT.[484] Secondly, developing countries participated in tariff concessions in the early period of GATT and in the later rounds of negotiations, including the Dillon Round, the Kennedy Round and the Tokyo Round.[485]

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[478]Ibid.
[479]Ibid.
[480] The Doha round was launched in Qatar in 2001 and is the latest round of trade negotiations. The aim of this round is to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The mandate of the round includes agriculture, services and intellectual property. The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries.
[481]F Ismail 'Rediscovering the Role of Developing Countries in GATT before the Doha Round' 22. Available at *http://www.ase.tufts.edu/gdae/Pubs/rp/RIS-DP141IsmaelJuly08.pdf*accessed on 26 August 2013.
[482] Ibid.
[483]Ibid 23.
[484]Ibid 24.
[485] Ibid.

A counter argument to the above issues is that evidence shows that developing countries were excluded from the negotiation process by the negotiating techniques and approach adopted by GATT (principal supplier and reciprocity) or by the reluctance of the US and EEC to negotiate on issues of interest to developing countries (such as agriculture, clothing and textiles and internal taxes and restrictions).[486] Secondly, the argument that developing countries' main objective was special and differential treatment is flawed as they played an active role in asserting their demands for increased market access for products of interest to developing countries throughout the history of GATT.[487]

By the end of the 1990s, there was a realisation that the previous rounds of the multilateral trade negotiations, particularly the Uruguay Round, had not been really fair as the greatest share of benefits accrued to rich countries.[488] It was suggested that the Uruguay Round was unbalanced in the sense that a gap emerged between the ability of developing countries to implement new multilateral trading rules and the willingness of developed countries to help them meet the ambitious requirements.[489] However, these writers argue that developing countries lacked the technical capacity to assess the results of the round and that their opposition was characterized by "stiff resistance and sudden collapse".[490]

Das (1997) concluded that the Uruguay Round was a unique negotiation in which most of the concessions were made by developing countries without gaining anything but meagre concessions in return; this resulted from the massive gap between the economic and political strengths of developed and developing countries.[491] Furthermore, the study analysed the severe overall imbalance in concessions made by countries from the South and North and how recent trends in WTO enhance these imbalances, including deficiencies in the dispute settlement system, market access, balance of payments and safeguards; subsidies and dumping and the commitments of developed countries.[492]

Luis Fernando Jaramillo's incisive critique of the Uruguay Round outcome noted that:

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[486] Ibid.
[487] Ibid.
[488] J Stiglitz 'Aid for Trade - Perspectives on Progress and a Way Forward'2012 The Right to Trade: A report for the Commonwealth Secretariat 2. Available at *http://www.globaleconomicgovernance.org/wp-content/uploads/Jones-2012-Commonwealth-Roundtable-with-Prof-Stiglitz.pdf* accessed on 14 October 2013.
[489]Aid for Trade: making trade effective for development Case Studies for Kenya, Tanzania and Uganda 13 available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_july09_session4_e.pdf* accessed on 12 October 2013.
[490]F Ismail (Note 481 above) 24.
[491] M Khor 'The WTO and the South: Implications and recent developments' available at *http://www.twnside.org.sg/title/pli-cn.htm*accessed on 14 November 2013.
[492]Ibid.

"The Uruguay Round is proof again that the developing world continues to be sidelined and rejected when it comes to defining areas of vital importance for their survival. The Third World confined itself to a role of passive spectator of the decisions adopted... The countries of the Third World have been put in a situation in which they already paid the price of accepting the new terms in different areas of interest for the industrialised countries, without obtaining in exchange satisfactory conditions of market access... According to some estimates, the industrialised countries, which make up only 20 percent of the GATT membership, will appropriate 70 percent of the additional income that will be generated by the implementation of the Uruguay Round. It would seem that this does not allow one to conclude that the Uruguay Round will translate into a positive balance to developing countries...Unquestionably, the developing countries are the losers both individually and collectively."[493]

Further proof that developing countries, particularly LDCs, played only a limited role in the multilateral trade system is evident in the establishment of the "Joint Integrated Technical Assistance Programme" (JITAP) programme. The JITAP was established in 1998 and its trade capacity building programme aimed to address LDCs and African countries' technical and capacity constraints. This programme was launched in Tanzania in 1998 with the primary purpose of raising awareness of the issues involved in the multilateral trade system and to facilitate participation in the negotiations as Tanzania had played a very ineffective role in these negotiations.[494]

Therefore, the role of developing countries in the current Doha Round is clearly unprecedented as developing countries including the LDCs are more organized, have gained significant technical capacity, are engaged in the process of bargaining and exchange of concessions, are offensive in areas of export that are of interest to them and have developed powerful alliances.[495] They are shaping not only the content of the Doha Round and its outcome, but the style and future course of the multilateral trading system.[496]

Among the original 23 signatories to the GATT 1947, 11 were developing countries.[497] Currently, more than 100 of the 134 members of the WTO are developing countries; 29 of these are LDCs and eight LDCs have observer status.[498] With the majority of WTO members being developing countries, one of the main focuses of the organization is to ensure that these

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[493]Ibid.
[494]Third United Nations Conference On The Least Developed Countries (Note 431 above) 32.
[495]F Ismail (Note 481 above) 24.
[496] Ibid.
[497] High Level Symposium on Trade and Development Geneva March1999 available a*t* *www.wto.org/english/tratop_e/devel_e/tr_dvbadoc_e.doc*accessed on 16 September 2013.
[498]Ibid.

countries are able to benefit from participating in international trade and from the Multilateral Trading System.[499]

4.5. Conclusion

Countries can be categorised into developed, developing and least developed countries. Developed and developing countries do not have to meet set criteria before adopting their statuses in contrast with LDCs who have to meet the criteria of (1) Gross National Income (GNI) per capita, (2) the Human Assets Index (HAI) and (3) the Economic Vulnerability Index (EVI).[500] Developing and least developed countries face a range of challenges due to their limited financial and human resources as well as institutional weaknesses. These weaknesses are also seen as the reason why developing countries have until the latest multilateral trade negotiation, played a very limited role in the Multilateral Trade System. This has allowed developed countries to extract considerable concessions from their weaker trade partners. Therefore, developing countries and LDCs need to draw up their own agenda for the forthcoming rounds of trade negotiation. This implies they will have to mobilize scarce resources for technical preparation and identify areas of interest.[501] By doing so, these countries will be able to launch a joint effort to capture the initiative from the very beginning of the negotiation process rather than reacting to pre-set agendas presented by others, thereby allowing them a more active and effective role in the multilateral trade system.[502]

CHAPTER 5: AID FOR TRADE

5.1. Introduction

While trade is a potential engine for growth that lifts millions of people out of poverty, many developing countries face barriers that prevent them from benefiting from the world trading system.[503] Some of these relate to export markets; the Doha Round of multilateral trade negotiations aims to reduce or eliminate such barriers.[504] These include non-tariff barriers,

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[499]Ibid.
[500]LDC information criteria for identifying least developed countries (Note 365 above).
[501]Ibid.
[502]Ibid.
[503] Aid for Trade: Why, What and How? Available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm* accessed on 27 September 2013.
[504] Ibid.

which are increasing in significance, as well as traditional tariff barriers.[505] However, internal barriers within most developing countries such as the lack of knowledge, excessive red tape, inadequate financing and poor infrastructure (also known as "supply-side constraints") can be just as difficult for exporters to overcome.[506]

While support has been provided to help developing and least developed countries (LDCs) to integrate into the multilateral trade system, it has been offered in a piecemeal fashion and has focused more on improving trade policy capabilities rather than building productive supply side capacities.[507] As a result of unresolved capacity problems, the challenges faced by developing countries in participating in global production and trade persist.[508] To bring developing countries and LDCs on board the global economy in a manner that supports their long-term development requires a mix of policy reforms and investment across various areas, including institutional infrastructure, training, the private sector and institutional development.[509] Programs targeting these types of interventions have become known as "Aid for Trade" (hereinafter AfT),[510] a concept that has recently attracted increased global attention.[511] There are many interpretations of the AfT concept, but according to Philip et al. (2005), it is broadly defined as "any assistance intended to help countries trade and in particular, to help them take advantage of trade agreements.[512]

This chapter provides an overview of the history of AfT and discusses its structure and operations. This is followed by a critical analysis of the AfT's Global Reviews.

5.2. The History of Aid for Trade

Professor Joseph Stiglitz argues that AfT was the product of challenges faced in both the trade and aid communities.[513] In the trade community, discussion on AfT emerged from the crisis in multilateral negotiations. By the end of the 1990s, it was recognized that the previous rounds of the multilateral trade negotiations, particularly the Uruguay Round, had not been fundamentally fair as the greatest share of the benefits accrued to rich countries.[514]

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[505] Ibid.
[506] Ibid.
[507] D Njinkeu & H Cameron 'Introduction: Aid for Trade and Development' in D Njinkeu& H Cameron *Aid for Trade and Development* (2009) 1.
[508] Ibid 2.
[509] Ibid.
[510] Ibid.
[511] Ibid.
[512] Ibid.
[513] Prof J Stiglitz (Note 488 above) 2.
[514] Ibid.

The origins of the AfT agenda lie in the Uruguay Round, which was conducted under the General Agreement on Tariffs and Trade (GATT) from 1986 to 1994.[515] As a result of the Uruguay Round, a gap emerged between the ability of developing countries to implement new multilateral trading rules and the willingness of developed countries to help developing countries meet the rules' ambitious requirements.[516]This contradiction ultimately gave rise to new aid schemes in the form of Trade-Related Technical Assistance (TRTA) and Trade-Related Capacity-Building (TRCB). Other examples are the Integrated Framework for Trade-Related Technical Assistance (IF) for Least-Developed Countries (LDCs) and the Joint Integrated Technical Assistance Programme (JITAP) for many African countries, which were agreed in the second half of the 1990s.[517] Many WTO members also felt that financial support in the form of technical assistance for trade could help overcome the developing countries' fears that WTO negotiations might have a negative impact on them.[518]

The development issues that resulted from the Uruguay Round stem firstly, from an imbalance in the concessions granted to developed, and developing countries.[519] According to Das (1997), the Uruguay Round was a unique negotiation because most of the concessions were made by developing countries without them receiving anything but meagre concessions in return; this is the consequence of the massive gap between the economic and political strengths of developed and developing countries.[520]Secondly, the implementation of new areas of agreement required significant amounts of money and thirdly, the agreements placed tremendous demands on developing countries.[521] The third point is sometimes referred to as the "one size fits all" problem.[522]

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[515]Aid for Trade: making trade effective for development Case Studies for Kenya, Tanzania and Uganda'14. Available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_july09_session4_e.pdf accessed* on 12 October 2013.
[516]Ibid 13.
[517]Ibid.
[518]Ibid.
[519]J.M Finger 'Aid for Trade: How We Got Here, Where We Might Go' in D Njinkeu & H Cameron *Aid for Trade and Development (*2009) 3,90.
[520]M Khor (Note 491 above).
[521] J.M Finger (Note 519 above).
[522]Ibid. The "one size fits all" problem arises because the international community has applied regulations through the WTO to institutions that constitute the basic structure of the economy, not just the interface between the domestic economy and the international economy.

Over the years, the "one size fits all" problem has received little attention.[523] Elements of AfT have existed for many years in bilateral and multilateral development assistance programs.[524] The issue was recognised with the launch of the WTO's Doha Round in 2001.[525] This round renewed the focus on developing countries concerns in the international trade system, including trade related technical assistance.[526] The Doha Round was launched with a promise to put development at the top of the agenda and address perceptions that the Uruguay Round was imbalanced and more favourable to developed than developing countries.[527] However, when the developed countries reneged on their promises, developing country Members walked out of the negotiations, a move from which the round never fully recovered.[528] During the same period, there was a rethinking of the trade agenda itself and its impact on development.[529]

The Washington Consensus[530] began to break down as researchers questioned whether trade liberalization increases trade and growth, and reduces poverty.[531] Furthermore, some analysts have suggested that trade liberalization in its current form might impair poverty reduction.[532] This reduced developing countries' willingness to participate in global trade institutions.[533] The aid and development community was also facing challenges; donors were under pressure to increase aid, and to show stronger results from aid programs. Therefore, AfT was a convenient response to the simultaneous challenges facing the aid and trade communities.[534]For the trade community it was a means to deliver a 'development dividend' to attract poor countries back to the negotiating table, while for the aid community it was a channel to absorb increasing aid flows, while also potentially yielding greater development

[523]Ibid 75.
[524] Ibid.
[525] Ibid.
[526] Ibid.
[527] Ibid.
[528]Prof J Stiglitz (Note 488 above).
[529]Ibid.
[530] R Kanbur, 'The Co-Evolution of the Washington Consensus and the Economic Development Discourse' Draft August 2008 available at *http://www.arts.cornell.edu/poverty/kanbur/Co-EvolutionWashingtonConsensus.pdf* accessed on 14 November 2013. John Williamson coined the phrase "Washington consensus" in 1989 when he drew up a reform agenda for a conference in Washington. He included 10 policy reforms that ought to be considered: Fiscal discipline, reordering public expenditure priorities, tax reform, liberalization of interest rates, a competitive exchange rate, trade liberalization, liberalization of inward foreign direct investment, privatization, deregulation and property rights.
[531]Prof J Stiglitz (Note 488 above).
[532]Ibid.
[533]Ibid.
[534]Ibid.

impacts.[535] Therefore AfT appears to have the product of a 'marriage of convenience' between the trade and aid communities.[536]

5.3. An overview of Aid for Trade

Although much has been written on AfT, there is still some confusion about what it is, what it should cover, how it might work and how it will be financed.[537] According to Cameron and Njinkeu, AfT implies costs relating to diverse areas such as trade related technical assistance, regional integration and infrastructure.[538]

A broad or narrow definition can be applied to AfT. [539] Page submits that one way to categorise AfT is by distinguishing between aid for WTO related costs and aid required more broadly to help countries use trade as a development tool.[540] A more narrow definition includes the cost of implementing multilateral commitments and costs relating to preference erosion.[541] A board definition covers support for conventionally recognised trade policy capacity building, infrastructure and other measures to build countries' ability to trade; for institutions that improve capacity to trade at national and regional levels; and for building private sector capacity in new import or export areas.[542] To determine what an AfT package should include, one should always consider the different types of needs identified, the different timing of needs and the different principles that guide aid and trade.[543] In considering different types of needs and different timings, Njinkeu et al. suggest that another way to classify AfT is using a "pillar" based approach[544] by grouping its different aspects into three broad pillars. Pillar 1 is the supply-side capacity, Pillar 2 is the trade system costs and Pillar 3 is trade and policy development.[545]

The first pillar essentially relates to building productive capacities by enhancing the regulatory, human resource and physical infrastructure that businesses need to produce goods

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[535]Ibid.
[536]Ibid.
[537]M Fabbroni & S. N. Karingi 'The Reality of Aid for Trade in Africa, Does Supply meet Demand?' 4,5 Available at *www.uneca.org/sites/default/files/publications/76.pdf* accessed on 15 October 2013.
[538]D Njinkeu & H Cameron (Note 483 above) 9.
[539] Ibid.
[540] Ibid.
[541] Ibid.
[542] Ibid.
[543] Ibid.
[544]' D Njinkeu et al. 'An African perspective on Aid for Trade' in D Njinkeu & H Cameron *Aid for Trade and Development* (2009)172.
[545]D Njinkeu & H Cameron (Note 507 above) 9.

competitively and to export these goods.[546] This pillar includes private sector development.[547] The second pillar refers to the alleviation of costs incurred as a result of trade reform and the costs of implementing international trade agreements.[548] The third pillar outlines the assistance required to address the human resource capacity gap in trade policy making and implementation. [549] Different governments will require specific expertise at various levels to formulate trade policy and negotiate positions that reduce poverty and promote development. This includes training and facilitating inputs from relevant ministries, the private sector, research institutions and civil society.[550]

Laird (2007) takes the position that AfT is a catch all term describing various forms of support to trade-related reforms negotiated under the currently open Doha Round.[551] Finally, the World Bank has suggested that all definitions of AfT should encompass trade and regulations, trade development activities, support to address supply-side constraints, support for macroeconomic and microeconomic adjustments and commodity price stabilization (World Bank 2006a).[552]

Following the World Bank's definition of AfT, it may be concluded that AfT is a multilateral initiative to assist developing countries, especially LDCs to build the trade capacity and infrastructure they need to benefit from the opening up of trade and to help integrate these countries in order to kick start growth.[553]

Turning to the question of what AfT is all about, elements of AfT have existed for many years in bilateral and multilateral development assistance programmes created by the WTO and other institutions. One of the objectives of the WTO is to help developing countries, in particular LDCs, expand their production and export of goods and services. While some countries have been successful, others, mainly LDCs have not and trade has failed to make the contribution that it ought to make to economic growth and poverty reduction.[554] Therefore, in 2001 when the Doha Round of multilateral trade negotiations was launched, it set out to address part of this problem by aiming to reduce trade-restricting and distorting

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[546]Ibid.
[547] Ibid.
[548]Ibid. Also included under the second pillar are costs incurred from the implementation of trade rules, food price increases to net food importers, preference erosion, reductions in tariff revenues and other economic and social costs related to the adjustment in specific sectors.
[549] Ibid.
[550]Ibid.
[551]M Fabbroni & S. N. Karingi (Note 537above) 4,5.
[552]Ibid.
[553]WTO Work Programme on Aid-for-Trade, Background Note (Note 20 above).
[554]Ibid.

practises that developing countries and LDCs face in their mainly developed country export markets and in South-South trade.[555]

Because market access improvements or strategies to ensure a more level playing field may not be sufficient to place all countries on the path of sustained trade growth, they need to be accompanied by AfT to address another part of the problem that many developing countries and LDCs face.[556] The need to provide additional Official Development Assistance (ODA) to help correct the deficit in trade capacity was recognized in 2005 by G-8 leaders at the Gleneagles Summit, and by their Finance and Development Ministers at meetings of the International Monetary Fund (IMF) and the World Bank.[557]The World Bank and the IMF jointly proposed an AfT framework.[558] This should comprise of traditional instruments such as trade-related technical assistance and institutional and supply-side capacity building, including trade-related infrastructure development, but this should be expanded to provide aid to help developing countries adjust to possible revenue losses suffered through cuts in tariff revenue and preferential margins, or, more generally, to pressures arising from increased international competition.[559]

This initiative was endorsed at the WTO Ministerial Conference in Hong Kong in December 2005; the Hong Kong Declaration[560] created a new WTO work programme on AfT that aims "to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO

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[555]Ibid.
[556]Ibid. That is, insufficient human, institutional and infrastructural capacity to participate effectively in international trade and expand the quantity and quality of goods and services they can supply to world markets at competitive prices.
[557]Ibid.
[558] Aid-For-Trade: Making It Effective OECD 2006, 24,25 available at*http://www.oecd.org/dac/aft/37198197.pdf* accessed on 18 October 2013.
[559] Ibid.
[560]Hong Kong Ministerial Declaration, 18 December 2005, paragraph 57.
"We welcome the discussions of Finance and Development Ministers in various fora, including the Development Committee of the World Bank and IM, that have taken place this year on expanding Aid for Trade. Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access. However, it can be a valuable complement to the DDA. We invite the Director-General to create a task force that shall provide recommendations on how to operationalize Aid for Trade. The Task Force will provide recommendations to the General Council by July 2006 on how Aid for Trade might contribute most effectively to the development dimension of the DDA. We also invite the Director-General to consult with Members as well as with the IMF and World Bank, relevant international organizations and the regional development banks with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade, where appropriate through grants and concessional loans".(Note 20 above)

Agreements and more broadly to expand their trade".[561] At the Hong Kong Ministerial, Trade Ministers directed WTO member governments and the WTO Secretariat to develop a workable AfT package to complement a successful conclusion to the Doha Round.[562]A comprehensive AfT package needs to respond to two concerns.[563] The first is the assistance that some WTO Members will need to help them implement the outcomes of current multilateral trade negotiations and to cope with certain economic adjustment costs that may be incurred.[564] The second concern is the insufficiency of trade-related capacity in many WTO Members to allow them to benefit from the opportunities the multilateral trading system creates to increase investment and expand the production of tradable goods and services.[565]

In February 2006, the Director-General established an AfT Task Force composed of 13 WTO Members.[566] The Task Force was chaired by the permanent representative of Sweden to the WTO and various international organizations[567] were invited to act in an advisory role to the Task Force on a regular basis.

After almost six months of analysis and deliberation, the Task Force delivered its consensus report in July 2006 (which was subsequently endorsed by the WTO General Council in October 2006).[568] The report explains the rationale for AfT, places AfT in a wider development framework, provides a wide definition of its scope and coverage, and sets out a series of proposals for further work and the eventual operationalization of AfT, focusing on strengthening the needs assessment at the country and regional level; strengthening the donor response; strengthening the "bridge" between needs and response and strengthening monitoring and evaluation. [569] The AfT task Force recommendations identified six broad categories to reflect the diverse trade-related needs and constraints that developing countries

[561]Ibid.
[562]Ibid.
[563]Ibid.
[564] Ibid. Effective implementation of WTO commitments is in the interest of the WTO membership as a whole.
[565]Ibid.
[566]Ibid.
[567]Ibid. International organizations such as UNCTAD, UNDP, UNIDO, the World Bank, the IMF and the OECD.
[568]Ibid.
[569] J.M Finger (Note 519 above).

face (WTO 2006).[570] These categories are regarded as sufficiently clear to establish a sound boundary between AfT and other development assistance which it is part of (OECD 2006).[571]

The category of trade policy and regulations includes training trade officials, analyzing proposals and positions and their impact on national stakeholders, technical and institutional support to facilitate the implementation of trade agreements and compliance with rules and standards.[572]Secondly, trade development deals with investment and trade promotion, support in different trade sectors and trade finance, market analysis and development.[573] The trade-related infrastructure category includes physical infrastructure to connect domestic and foreign markets and building productive capacity refers to investment in industries and specific sectors so that countries are able to diversify production and exports.[574]The trade-related adjustment category includes complementary measures to absorb some of the costs linked to tariff reductions or decreasing terms of trade to enable developing countries to benefit from trade liberalization.[575]

AfT seeks to build bridges between the development and trade communities as well as between the public and private sectors.[576] It involves external or foreign assistance to developing countries in the negotiation, design, implementation and assessment of policies that aim to assist economic participants such as firms and households to cope with and benefit from structural change in international trade and to mainstream international trade into domestic economic development.[577] The policies occur at national, regional and global levels.[578] They comprise measures, regulations and institution-building with a direct bearing on trade as well as complementary strategies with an indirect impact.[579]

To ensure the success of the AFT initiative, it was suggested that donors on the supply side should provide additional funding as AfT should not divert resources from other development priorities, such as health and education and that trade expertise and capacity should be

[570]M Fabbroni & S. N. Karingi, (Note 537 above) 4,5.
[571]Ibid. These categories include trade policy and regulations, trade development, trade-related infrastructure, building productive capacity, trade-related adjustments and other trade-related needs
[572]Aid for Trade: making trade effective for development Case Studies for Kenya, Tanzania and Uganda' (Note 515 above).
[573]Ibid.
[574]Ibid.
[575]Ibid.
[576]Ibid.
[577]Ibid.
[578]Ibid.
[579]Ibid.

increased.[580] On the other hand, recipients on the demand side should make trade a priority.[581] Trade needs to be a priority in recipient countries because AfT will only work if countries make it a central part of national development strategies.[582] These countries also need to take ownership and determine their own AfT plans by involving all stakeholders.[583] More importantly, recipient countries should focus on creating successful "business plans" which are vital because AfT is an investment and not merely a transfer.[584] Therefore the question is not only how much AfT is available, but whether it is effective and actually benefits developing countries.[585]

The majority of funding provided for AfT implementation comes from bilateral and multilateral donors as part of their overall contribution to national poverty reduction strategies, and is delivered through standard ODA channels.[586] As AfT evolves, donors and development partners are developing financing instruments, especially trust funds, that can support specific AfT priorities such as sanitary and phytosanitary (SPS) measures and trade facilitation in LDCs.[587]

Institutions which are able to provide targeted support for AfT implementation through dedicated financing instruments include among others, the Enhanced Integrated Framework (EIF) for LDCs, the Standards and Trade Development Facility, the World Bank Trade Facilitation Facility and the Multi-donor Trust Fund for Trade and Development.[588] Developing countries also allocate AfT finance through the national budget.[589] Another potential instrument for AfT financing is a trade Sector Wide Approach (SWAp).[590] This instrument is appropriate due to the cross-cutting nature of trade and therefore the need to engage with a wide and diverse range of stakeholders in the implementation of trade development activities.[591] It should be noted that the various channels for AfT financing do

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[580]M Fabbroni & S. N. Karingi, (Note 537 above) .
[581]Ibid.
[582]Ibid.
[583]Ibid.
[584]Ibid.
[585]Ibid.
[586] The Global Mechanism available at *http://global-mechanism.org/how-is-aid-for-trade-financed* accessed on 18 October 2013.
[587] Ibid.
[588] Ibid.
[589]Ibid.
[590] Ibid.
[591] Ibid.

not exclude but rather complement one another and can be accessed individually, independently, at different times and in no pre-determined order.[592]

Therefore in order to invest successfully in AfT, donors and recipients need to firstly, improve co-operation, as one of the challenges confronting AfT is to co-ordinate many parties' efforts and create the right incentives so that recipients and donors work together more effectively.[593] Secondly, the private sector needs to be involved because it is businesses and not governments that ensure that trade and financial resources flow from increased private investment and trade easily trumps government aid.[594] Thirdly, transparency and accountability must improve in order to ensure that pledges are honoured, needs are met, and financial assistance is used effectively.[595]

In keeping with the principles of AfT, in 2005 (through the Paris Declaration on Aid Effectiveness)[596] donors signed up to principles on harmonization, alignment and ownership that, were also cited in the AfT Task Force Recommendations.[597]Rogerson (2005) summarizes the main elements in the aid effectiveness debate firstly as ownership that is, respecting the right and responsibility of the partner country itself to establish its development agenda, setting out its own strategies to reduce poverty and increase growth.[598] The principle of alignment refers to aligning development assistance with the development priorities and results orientated strategies defined by the partner country and depending on partner countries' own systems.[599] The principle of harmonization aims to streamline and harmonize donor policies.[600]

The Task Force also invited Director General Pascal Lamy to set up a monitoring body of AfT in the WTO, which would provide for an annual AfT Debate.[601] The monitoring and evaluation in the WTO will take place on three levels, firstly a global review of AfT flows (using data compiled by the OECD-DAC database) to assess whether additional resources are

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[592] Ibid.
[593]M Fabbroni& S. N. Karingi, (Note 537 above) .
[594] Ibid.
[595] Ibid.
[596] The Paris Declaration (agreed upon by donors and recipients) includes principles to guide aid delivery, including country ownership, mutual accountability, aligning aid to national development strategies, effective donor coordination, harmonization of donor procedures, transparency and multi- year commitments. *Aid for Trade and Development'* 2009 3.
[597]S Page 'Aid for Trade :A new issue in the WTO' in D Njinkeu& H Cameron *Aid for Trade and Development* (2009)140.
[598] Ibid.
[599] Ibid.
[600]Ibid.
[601]WTO Work Programme on Aid-for-Trade, Background Note (Note 20 above).

being delivered, to identify where gaps lie, to highlight where improvements should be made, and to increase transparency on pledges and disbursements.[602] The second level will include an evaluation of national, regional and multilateral donor's AfT activities (based on donor self-assessment), to ensure the distribution of best practices across countries, to identify areas for improvement and to increase transparency on pledges and commitments.[603] The third level is national and regional monitoring and evaluation (based on recipient "case studies") to provide a more focused, country-specific perspective on whether trade needs are being met, financial resources are being provided, and AfT is effective on the ground.[604] Therefore the various levels of AfT monitoring will form the substance of an Annual AfT Report and debate amongst all WTO Members.[605]

5.4. Global Reviews of Aid for Trade

The WTO is encouraging the convening of a limited number of national and sub-regional AfT reviews which will test current AfT plans, identify priorities, and agree on how these plans and priorities should be implemented.[606] While the initial aim of these reviews was to raise awareness of AfT, recently, the Regional Reviews provide actual examples of AfT strategies in progress and create incentives for other countries and sub-regions to follow suit.[607] The results of these regional reviews are profiled in the Global Reviews on Aid-for-Trade.[608]

The purpose of the Global Review is to strengthen the monitoring and evaluation of AfT in order to provide a strong incentive to both donors and recipients to advance the AfT agenda.[609] In 2007 the WTO's AfT initiative moved into its first stage of implementing the 2006 recommendations of the AfT Task Force. Later that year, the first Global Review was held. The Global Reviews are held every two years, with the first being held in November 2007. A discussion of each of these reviews is necessary to enable a more detailed analysis of the effectiveness of AfT.

a. The First Global Review, 2007

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[602] Ibid.
[603] Ibid.
[604] Ibid.
[605] Ibid.
[606] Aid for Trade. Available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm* accessed on 18 October 2013.
[607] Ibid.
[608] Ibid.
[609] Ibid.

The objectives of "Mobilizing Aid for Trade: A Global Review" held in 2007, were firstly, to take stock of what was happening in developing and least developing countries.[610] The global review put together various contributions to the monitoring process, including a discussion of the results and recommendations of the three regional.[611] The second objective was to identify what should happen next; roadmaps were created for mainstreaming trade in national development strategies.[612] Partner countries, donors and agencies were encouraged to identify key objectives and to discuss how these could be achieved effectively.[613] Thirdly, it was agreed that there should be better monitoring and evaluation. The global review discussed ways of improved monitoring and evaluating progress by partner and donor countries, including efforts to launch a work programme aimed at developing qualitative targets for improving trade capacity.[614]

b. The Second Global Review, 2009

The Second Global Review provided an opportunity to give added force to the mandate on AfT which aims to help developing countries and LDCs to build the supply-side capacity and infrastructure they need to take advantage of the opening up of trade and to connect with the global economy.[615]

c. The Third Global Review, 2011

The Third Global Review held in 2011 was an opportunity to survey what had been achieved since the launch of the AfT Initiative.[616] This Review offered an opportunity for the AfT community to debate issues, share experiences and convey their future plans.[617] It further offered an opportunity to reaffirm the relevance of the initiative, engagement with the private sector and the regional trade integration agenda in Africa.[618] The focus of the Third Global

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[610] WTO launches first Global Review of Aid for Trade. Available at *http://www.wto.org/english/news_e/pres07_e/pr500_e.htm* accessed on 18 October 2013.
[611] Ibid.
[612] Ibid.
[613] Ibid.
[614] Ibid.
[615] Aid for Trade Global Review 2009 available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review09_e.htm* accessed on 18 October 2013.
[616] Third Global Review of Aid For Trade: Showing Results available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review11_e.htm* accessed on 18 October 2013.
[617] Ibid.
[618] Ibid.

Review was on demonstrating results, drawing lessons about the impact on the ground and deciding how best to maximize the future potential of AfT.[619]

From the case studies included in this review, it is evident that AfT is making a difference to countries in need, such as Kenya and Tanzania. Kenya's lack of infrastructure is being addressed through various projects that are discussed in the following chapter. Tanzania is the biggest recipient of AfT in the East African Countries (EAC) Region and has also implemented projects (discussed in Chapter 6) that will address many of the challenges the country faces (as discussed in Chapter 3) and will further facilitate trade for Tanzania and its neighbours.

d. The Fourth Global Review, 2013

The Fourth Global Review was held in July 2013. The theme for this Review was "Connecting to value chains".[620]Global trade is increasingly characterized by transactions within complex value chains and the global expansion of these chains is offering new opportunities to many developing countries.[621] However, many developing countries, mainly LDCs, remain on the margins of global trade, attract limited foreign or domestic investment, and are locked into supplying a narrow range of goods or services.[622]

Therefore the aim of the Fourth Global Review of AfT was to examine strategies to connect companies in developing countries and LDCs to international value chains, to explore how to move up the value chain and to discuss the development benefits for the post 2015 Development Agenda.[623] However, based on the fact that this review was only conducted recently and since the information is limited, one may take the view that the fourth Review did not address the issues highlighted in previously Reviews and has instead, shifted the focus to another area, that of value chains. It is submitted that the focus should remain on building developing countries and LDCs' capacity to participate more actively in the international arena before dealing with how developing countries and LDCs can move up the value chain.

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[619] Ibid.

[620]Fourth Global Review of Aid for Trade: Connecting value chains available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13_e.htm* accessed on 18 October 2013.

[621]Ibid. Value chains are no longer only North-South in character, but also involve increasingly complex regional and South-South trade interactions and are extending beyond goods into services.

[622] Ibid.

[623] Ibid.

5.5. Conclusion

Since there is great uncertainty regarding the definition of AfT, the objective of this chapter was to critically determine the framework and operation of AfT. It is evident from its history that elements of AfT have existed for many years with the concept being highlighted and becoming a focal point since the Doha Round of negotiations. In the Honk Kong Ministerial, it was said that AfT should aim to help developing countries, especially LDCs, to build the supply side capacity and trade infrastructure they need to implement and benefit from WTO Agreements and to more broadly expand their trade.[624]A Task Force established to make recommendations on AfT established a WTO regulatory body for AfT, which compiles Global Reviews on how AfT is faring in practice.

CHAPTER 6: CASE STUDY ON KENYA AND TANZANIA

6.1. Introduction

As discussed in chapter 5, Aid for Trade (AfT) is necessary because many of the poorest countries in the world have struggled to benefit from market access opportunities due to their inability to produce or export efficiently. [625] While trading with other countries is fundamental to achieve high economic growth rates and poverty reduction targets, most African developing countries and all African LDCs have neither the diversity of exportable products nor the production capacity to take immediate advantage of improved market access opportunities.[626] Therefore, while it has been argued that trade barriers hamper trade, poor supply-side conditions have often been a more important constraint on export performance in various regions of Africa.[627]

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[624]WTO (2005) para 57, *'Aid for Trade and Development'* 2009 3.
[625]Prepared by the United Nations Economic Commission for Africa (UNECA),Global review of Aid for Trade 2011, 'African case stories: A snapshot of Aid for Trade on the ground in Africa'(Note 21 above) 8.
[626] Ibid.
[627] Ibid.

Many African countries desperately need resources to upgrade ports, telecommunications, customs facilities and institutions.[628] If they cannot a find competitive means to send goods to international markets, these countries stand to gain little from improved market access.[629] Therefore, in light of the discussion in chapter 5, this chapter focuses on two African countries, Kenya and Tanzania.

6.2. Kenya and Tanzania

The Republic of Kenya (Kenya) is a sovereign state in East Africa and is named after Mount Kenya, the second highest mountain in Africa.[630] Kenya is a trade and finance hub in East Africa and is a developing country as its economy is built on a stable economic environment anchored by the government as well as the private sector.[631] Kenya is a member of the East African Community (EAC) together with its southern neighbours, Tanzania, and Uganda.[632]The Kenyan economy relies heavily on tourism and agricultural production; the agricultural sector employs almost 75% of the population.[633]As the largest economy in East Africa Kenya was a major player in the establishment of the East African Common Market Protocol and in ensuring its success.[634]

The name Tanzania derives from the names of the two states, Tanganyika and Zanzibar that united to form the United Republic of Tanganyika and Zanzibar.[635] In October 1964, the country was renamed the United Republic of Tanzania.[636] As a founding member of the World Trade Organization, the Tanzanian trade policy is regaled by the rules and obligations of the multilateral trade system.[637] Tanzania also has preferential market access

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[628] Ibid.
[629] Ibid.
[630]The Republic of Kenya Domestic Economy. Available at *http://republicofkenya.org/economy/domestic-economy/* accessed on 21 October 2013.
[631] Ibid.
632Ibid.The East African Community (EAC) is the regional intergovernmental organization that is made up of the Republics of Kenya, Uganda, Tanzania, Rwanda and Burundi. The EAC member states officially launched the East African Common Market, removing trade barriers between and among the EAC nations to boost regional trade.
[633] Ibid.
[634]The Republic Of Kenya, East African Community. The Common Market Protocol allows citizens, products, capital and business services to move freely throughout the five EAC countries, giving EAC member states access to an increased market. Kenya was among the first EAC members to do away with work permits for citizens of other EAC member states as a way to facilitate the free flow of labour in the region. Available at *http://republicofkenya.org/economy/east-african-community/* accessed on 14 November 2013.
[635]Tanzania. Available at *http://www.tanzania.org.za/index.php?p=7* accessed on 21 October 2013.
[636]Ibid.
[637] K Brolén et al 'Aid for Trade: from policies to practice
The cases of Mozambique, Tanzania, Vietnam and Zambia' 239 available at *http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_july09_session4_e.pdf* accessed on 25 November 2013.

offers from regional, bilateral and multilateral trade agreements.[638]This country also forms a part of the EAC, together with Kenya and Uganda.[639] In 2003, Tanzania was included on the list of least developed countries (LDCs) in the world after it failed to meet the Gross national income (GNI) and the Human Assets Index (HAI) standards.[640]

6.3. The rationale for choosing these countries

The rationale for conducting case studies of these two countries is that they are part of the same regional group, the East African Countries (EAC), and are very engaged in trade relations with one another. In addition, since these countries are at different levels of development (Kenya is a developing country while Tanzania is an LDC) the implementation of AfT in such diverse economies make for an interesting study.

6.4. Kenya and Aid for Trade

The fundamental aim of the AfT initiative is to help low-income countries overcome structural limitations and weak capacity on many fronts that undermine their ability to produce, compete and fully benefit from emerging trade and investment opportunities.[641]AfT is envisaged to provide a framework to connect wide-ranging assistance within a coherent trade and development strategy.[642] The WTO Task Force on AfT agreed that projects and programmes should be considered as AfT if those activities had been identified as trade-related development priorities in partner countries' national development strategies. [643]

According to McCulloch, Winters and Cireca (2001), the policy instruments related to AfT can be divided into three main categories.[644] The first are policies to overcome supply-side constraints and build productive capacity (e.g. reducing trade costs, improving transport links and access to electricity, and improving the business environment and/or access to credit). [645] The second set of policies aims to provide opportunities to the poor to share in the gains from trade (e.g. access to non-traditional markets, extension services, and micro-credit). Many of

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[638] Ibid.
[639]The Republic Of Kenya, East African Community. (Note 634 above). The three major economies in the EAC, Kenya, Tanzania and Uganda, have diverse strengths that make the region ideal for both domestic and foreign investment and trade. Kenya has the largest economy in the EAC, Tanzania has vast expanses of fertile land and natural resources such as timber and gold and Uganda has significant oil deposits.
[640]Least Developed Countries: Factsheets (Note 393 above).
[641] Trading Out Of Poverty: How Aid For Trade Can Help OECD 2009 19 available at *http://www.oecd.org/dac/aft/43242586.pdf* accessed on 6 September 2013.
[642] Ibid.
[643] Ibid.
[644] Ibid.
[645] Ibid.

those policies are common to the promotion of pro-poor growth in general.[646] The third set of policies focuses on mitigating the costs of adjustment (e.g. social safety nets, vocational training). [647]

It is said that aid only plays a limited role in Kenya, whose private sector is known for its resilience.[648]While Kenya is the biggest and most advanced economy in east and central Africa, it is still a poor, developing country.[649] Approximately 38% of Kenyans live in absolute poverty because the important agricultural sector is one of the least developed and is largely inefficient. One of the key impediments to growth in Kenya is deeply rooted structural problems.[650] Kenya's export performance remains weak, due to a number of factors, including inefficiencies at the port of Mombasa, an inadequate and expensive energy supply, underdeveloped transport networks, the limited reform of business regulations, and a lack of decisive action to curb corruption.[651] These factors make Kenya very expensive for international investors, especially in manufacturing, despite its lower labour costs than emerging Asia.[652] While Kenya is globally competitive in a number of sectors such as tea, tourism and horticulture, it has not been sufficiently exposed to new products, such as textiles and chemicals.[653]

In May 2012, the World Bank Board of Executive Directors discussed the Country Partnership Strategy (CPS) Progress Report to support Kenya through June 2013.[654] The report builds on the CPS to make a catalytic contribution to Kenya's continuing transformation to become a middle-income country.[655] During the CPS period, the World Bank Group aims to contribute to more inclusive growth by supporting activities to unleash Kenya's growth potential, reducing inequality and social exclusion and addressing the resource constraints and environmental challenges facing the country.[656]

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[646] Ibid.
[647] Ibid.
[648] ICTs for Financial services in Africa 12. Available at *http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/282822-1346223280837/FinancialServices.pdf* accessed on 21 October 2013.
[649] Ibid.
[650] Kenya: Moving towards the tipping point (Note 470 above).
[651] Ibid.
[652] Ibid.
[653] Ibid.
[654] Ibid.
[655] Ibid.
[656] Ibid.

In an attempt to maximise its potential, Kenya is focusing on improving its roads, railways, seaports, airports, water, sanitation and telecommunications in the hope of attracting and retaining investors who often complain that the country's dilapidated facilities increase the cost of doing business in the country.[657] An improved transportation system, more consistent shipping methods and a dependable telecommunications network will ensure the success of Kenya's economic growth plan and significantly reduce risk for investors and therefore make Kenyan products more competitive in the global market.[658]

One of the improvements underway is the new Lamu Port which will serve Kenya and the East African Community.[659] The Lamu Port will be the largest port on the continent, serving as a trans-African port and as a trade corridor from Lamu to Juba in Southern Sudan after a standard gauge rail-track is constructed.[660] The port will serve regions which will be connected by a standard railway gauge that will run from Lamu when the project is finally completed in 2015.[661]

Kenya plans to link the new port at Lamu by rail to Juba, which provides the shortest distance to the sea for Southern Sudan. This provides an alternative route for Southern Sudan oil which is currently transported by pipeline to Port Sudan in the north eastern part of the country.[662] The construction of the second transport corridor connecting Lamu Port to Southern Sudan will also provide an opportunity to open up and therefore develop the remote, dry northern parts of Kenya.[663]

As part of the AfT initiative, the International Development Association (IDA) supported the Kenyan government's plan to enhance trade and transport at the port of Mombasa, inland border posts, and along the road and rail corridor that links Mombasa to Uganda and beyond (East Africa's most important transportation corridor).[664]This World Bank trade and transport facilitation project aims to improve the trade environment by lowering transit costs and transport times along a key route linking Kenya's international seaport at Mombasa with

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[657]Republic of Kenya Infrastructure. Available at*http://republicofkenya.org/economy/infrastructure/* accessed on 16 November 2013.
[658]Ibid.
[659]ibid.
[660]Ibid. The port's importance is due to its ability to handle super post-Panamax vessels because of its deep natural channel which is 18 meters in depth.
[661] Ibid.
[662] Ibid.
[663] Ibid.
[664]Kenya: Moving towards the tipping point (Note 470 above).

Uganda and other landlocked countries in Africa's interior.[665] The East Africa Trade and Transport Facilitation Project that became effective in 2006, prevents delays, inefficiency and other problems plaguing the corridor. Preventing delays along the route is critical, as trade links are important for landlocked countries; not only does trade have direct benefits, but the corridor brings other advantages to the people of Eastern Africa, including small scale farmers who can save money using the quicker and more efficient transit routes. [666]

The corridor is a vital trade link for landlocked countries in the region since 95% of the goods that are imported into, or exported out of, Uganda pass through the port of Mombasa.[667] The project further aims to improve the movement of cargo along the Northern Transport Corridor, which makes its way inland from Mombasa through Nairobi to the Kenyan border at Malaba.[668] The World Bank project has also supported a number of other initiatives including port security and provided facilities for systems for information sharing among agencies at the Mombasa port, which have reduced processing times.[669]

Another IDA initiative is support for the expansion of electricity generation and associated transmission and distribution in Kenya.[670] Between 2009 and 2011, the number of electricity connections increased and distribution lines have been constructed or rehabilitated under the IDA-financed project.[671]For Kenya to be regionally and internationally competitive, reliable, adequate and affordable power is imperative. Therefore, the Kenyan electricity producer, Kengen, has opened its Public Infrastructure Bond Offer to investors.[672]Funds from the bond will be invested in diverse sources of energy while approximately 80 percent of the capital invested will be used to generate generation thermal power and the remainder will be assigned to upgrading power plants at the Tana River Delta.[673]

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[665] Ibid.
[666] Aid for Trade: World Bank Transport Facilitation Project Boosts Trade in East Africa. Available at *http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:22960919~pagePK:210058~piPK:210062~theSitePK:239071,00.html*accessed on 21 October 2013.Theaverage travelling time between Mombasa and the Ugandan border has improved. While in 2004 it took 14.5 hours to travel 750 km between Mombasa and Timboroa on the trade critical "northern corridor", in 2011 it took only nine hours to travel on the same road. For buses, the travelling time on the same stretch was reduced from 18 to 11 hours. The IDA is also supporting Kenya and its neighbours to fast-track customs transit cargo clearance across common borders with Uganda and Tanzania.
[667]Ibid.
[668]Ibid.
[669] Ibid.
[670] Ibid.
[671]Ibid.
[672]Republic of Kenya Infrastructure (Note 657 above).
[673] Ibid.

The Kenya Private Sector Power Generation Support Project aims to provide a reliable power supply to Kenyan citizens as well as the manufacturing and service sectors that help the economy grow and create jobs.[674] The government struggled to find investors for this expensive project, as private sector investors were concerned about the security of a return on their investments in Kenya's energy infrastructure.[675] However, the World Bank Group encouraged the private sector to step up by offering a unique package based on partial risk guarantees.[676] This reassured commercial financiers, who then agreed to invest in the project.[677]The project also benefited from a long-term loan from the International Finance Corporation (IFC) and political risk guarantees for commercial financiers from the Multilateral investment guarantee agency (MIGA).[678]

The third IDA initiative is to help the Kenyan government improve the level of water supply and sanitation.[679] Between 2007 and 2011, people's access to improved water sources in IDA-financed project areas improved from 27 percent to 50 percent and access to improved sewerage services grew from 10 to 20 percent.[680] The IDA is supporting government efforts to increase water storage and supply in response to Kenya's vulnerability to drought.[681]The program includes forest and water resource management upstream as well as water storage and production downstream.[682]

Kenya serves as a communications hub for the EAC region, and Kenyan firms increasingly aim for a regional footprint.[683] Kenya's labour force is better educated than that of its neighbours, and Kenyan professionals are often hired throughout the region.[684] Kenya's Information and Communication Technologies (ICT) sector has benefited from these conditions and a relatively advanced telecommunications sector.[685] The ICT sector was also identified as one of the key sectors in the government's Vision 2030 development plan. On the other hand, Kenya still has a large unbanked population, dependent on remittances, which

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674 Kenya's Power Shortage Problem Meets Innovative Finance 2012.Available at *http://www.worldbank.org/en/news/feature/2012/04/05/kenya-power-shortage-innovative-finance* accessed on 21 October 2013.
675 Ibid.
676 Ibid.
677 Ibid.
678 Ibid.
679 Kenya: Moving towards the tipping point (Note 470 above).
680 Ibid.
681 Ibid.
682 Ibid.
683 ICTs for Financial services in Africa (Note 648 above) 12.
684 Ibid.
685 Ibid.

makes it ripe for mobile money solutions.[686] The IDA helped Kenya launch its Open Data portal in July 2011 and also contributed to ICT innovation. [687] It supports new applications and provides support for reform of the telecommunications sector; it has expanded internet connectivity and enabled new ICT platforms, such as mobile money solutions.[688]

The mobile payments system is of immense value to the population, 95 percent of whom were unbanked until recently but who can now use mobile payments to pay bills, send money to their families and much more.[689] Despite the costs and practical obstacles of going mobile in Africa, this transformation shows just how highly people value being able to keep in touch; technologies keep people connected, stimulate economic development, and provide jobs.[690] Technology also plays a social role; it can provide medical consultations v*ia* mobile to those otherwise out of reach, support education projects and give farmers access to the data they need to respond to market surpluses and shortages.[691] The focus of extensive media coverage, Safaricom's mobile money service M-PESA has been successful for several reasons including the fact that the company already had a widespread agent network, which meant that the service was easily accessible throughout the country.[692]

Developing countries such as Kenya are particularly vulnerable to policy shocks because their export industries are the least diversified. Many are dependent on their exports and hence the world price of just one or two commodities.[693] A deficient policy environment will not stimulate the development required to take advantage of new global trading opportunities. There is a need to intensify economic reforms aimed at removing barriers that impede businesses' optimal performance.[694] The AfT initiative aims to strengthen the capacity of developing countries to participate in and benefit from trade liberalization. Therefore it provides linkages to the work of Business Membership Organizations (BMO), which amongst other goals try to strengthen productive capacity and diversify exports in order to

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[686]Ibid. This is unlike a country like South Africa where bank accounts and credit card ownership are already well entrenched.
[687]Kenya: Moving towards the tipping point (Note 470 above).
[688]Ibid.
[689]N Kroes How ICT Helps Developing Countries-Some Kenya Case-Studies 2011. Available at *http://ec.europa.eu/commission_2010-2014/kroes/en/blog/how-ict-helps-developing-countries-%E2%80%93-some-kenya-case-studies* accessed on 21 October 2013.
[690]Ibid.
[691]Ibid.
[692]ICTs for Financial services in Africa (Note 648 above) 12.
[693]W M. Lyakurwa,Aid For Trade For Least Developed Countries In The Global TradeSystemAvailable at *http://trapca.demo.co.ke/pdf/AID%20FOR%20TRADE%20FOR%20LEAST%20DEVELOPED%20COUNTRIES%20IN%20THE%20GLOBAL%20TRADE%20SYSTEM.doc.pdf* accessed on 21 October 2013.
[694]Ibid.

build on comparative advantages. BMOs in Kenya and Tanzania are not fully informed about the AfT initiative because they are not involved in discussions at governmental level and information is not properly circulated.[695] Although the BMOs display certain reservations regarding the AfT initiative, they are open to this new idea and see themselves as a potential partner. A review of current projects implemented by the BMOs shows that some are AfT-related such as the Kenya-Eastern and Southern African Business Membership Organisation (ESA-BMO) network project.[696]

The ESA-BMO is a network of private sector associations in ten countries (Kenya, Tanzania, Uganda, Rwanda, Burundi, South Africa, Zambia, Botswana, Mozambique and Zimbabwe).[697] The project is co-ordinated by the Confederation of Danish Industry (DI) in partnership with the Kenya Association of Manufacturers and the aim is to develop and advance common advocacy for businesses in the region.[698] Furthermore, the project is a platform for knowledge sharing and learning from best practice cases. This can pave the way for the development and promotion of common policy positions with respect to domestic and regional integration issues.[699]

One of the biggest success stories of AfT in Kenya is the cut-flower industry. Kenya was originally banned from importing flowers due to the pesticide residue found on the flowers.[700] With aid from the European Union (EU) and a change in the technical processes, Kenyan farmers were given access to a booming market.[701] Since then, horticulture has earned Kenya more than $700 million and has become the second highest earner after tourism.[702] Furthermore, Kenya is now the biggest exporter of cut flowers to the EU and the sectors final success lies in the fact that it employs 2 million Kenyans.[703]

An analysis of the achievements of AfT in Kenya through the various projects discussed thus far indicates that the AfT projects has enjoyed reasonable success in attempting to integrate Kenya into the international trade markets. The various projects undertaken highlight that the

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[695] Aid-For-Trade: Making It Effective OECD 2006 (Note 558 above) 67.
[696] Ibid.
[697] Ibid.
[698] Ibid 68.
[699] Ibid.
[700] Ibid.
[701] Aid for Trade helps Kenya's flowers bloom – WTO 02 October 2007 available at *http://wanjuguna.blogspot.com/2007/10/aid-for-trade-helps-kenyas-flowers.html* accessed on 25 November 2013.
[702] Ibid.
[703] Ibid.

biggest constraints to trade growth and development in Kenya such as the lack of proper power, infrastructure, proper water and sanitation services and it's vulnerability to policy shocks have been correctly identified and that the necessary measures have been taken to remove these constraints or are in the process thereof. The success of Kenya's cut-flower industry serves as evidence to the fact that with sufficient donor aid and assistance and assistance through WTO agreements, countries can access international markets with great success.

6.5. Tanzania and Aid for Trade

An LDC such as Tanzania faces many constraints and challenges, as was discussed in chapter 4. Tanzania is one of the biggest aid recipients in Africa and until recently, aid focused on social infrastructure such as health and education; however, the current wave of support for AfT could redefine how key donors allocate their aid and to which priority sectors.[704]

The United Nations Development Program (UNDP) is the United Nations development network that connects development partners to knowledge and resources by finding locally-owned solutions to build capacity, reduce poverty, promote human development and achieve the Millennium Development Goals.[705] The UNDP's trade-related support has three main objectives: firstly, to help developing countries build capacity to compete internationally by overcoming supply side constraints, especially LDCs; secondly, to help developing countries build capacity to negotiate, interpret and implement trade agreements (multilateral, regional and bilateral) in a manner that prioritizes poverty reduction and human development; and thirdly, to help developing countries incorporate pro-poor, development-centered trade policies into national development strategies, including poverty reduction programmes. [706]

At a United Nations Conference on Least Developing Countries in Brussels in 2001[707], it was said that due to debt servicing obligations, resources were often diverted from enhancing economic growth and improving the delivery of social services.[708] However, there are many areas such as agriculture, manufacturing, mining and tourism that can be identified as

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[704]Aid For Trade For Tanzania Case Study October 2005 DRAFT PAPER 8 available at *http://www.ileap-jeicp.org/downloads/Aid%20For%20Trade%20For%20Tanzania%20-%20Case%20Study.pdf* accessed on 21 October 2013.
[705] Delivering Aid For Trade 8,February 2012 available at*http://unctad.org/en/PublicationsLibrary/dommisc2012d1_en.pdf* accessed on 14 November 2013.
[706]Ibid.
[707]Third United Nations Conference On The Least Developed Countries (Note 431 above) 3.
[708]Aid For Trade For Tanzania Case Study October 2005 (Note 704 above).

potential growth "centres" once the right mix of policies is pursued.[709] The implementation of these programmes will lead to a greater competitive edge in world trade.[710]

The Southern Agricultural Growth Corridor (also known as the 'Tazara Corridor') is formed along the traditional trade route that links Tanzania to the landlocked countries in south-eastern Africa. [711] The corridor reaches mining industries in the Northern and Central Provinces of Zambia, Malawi and in the Democratic Republic of Congo (DRC). [712] It also passes through some of the richest farmland in Africa; an area that could become a globally important producer of crops and livestock.[713] However, this area's agricultural potential is currently largely dormant and the majority of the rural population remains poor and without food. [714]

In an attempt to develop the Tanzanian agricultural sector, the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) was designed to improve agricultural productivity, food security and livelihoods in Tanzania.[715] The SAGCOT was initiated at the World Economic Forum Africa summit in 2010, following which the SAGCOT Investment Blueprint was launched nationally and internationally.[716] The SAGCOT initiative has the potential to have a significant impact by bringing together government, business, donor partners and the farming community to pool resources and work together towards a common goal.[717] By addressing the entire agricultural value chain, the SAGCOT approach will not only improve agricultural productivity and ensure the necessary infrastructure, but will also ensure a policy environment and access to knowledge that will create an efficient, well-functioning agricultural value chain.[718]

To ensure the success of the SAGCOT initiative, much of Tanzania's current infrastructure which was built after independence, need to be improved.[719] The Port of Dar es Salaam plays a pivotal role in regional trade and gives Tanzania an advantage over its many landlocked

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[709]Ibid.
[710]Third United Nations Conference On The Least Developed Countries (Note 431 above) 3.
[711]Southern Agricultural Growth Corridor of Tanzania, Investment Blueprint 7 available at *http://www.agriculture.go.tz/sagcot/invest-blueprint-sagcot.pdf* accessed on 16 November 2013.
[712] Ibid.
[713] Ibid.
[714] Ibid.
[715]Southern Agricultural Growth Corridor of Tanzania. Available at *http://www.sagcot.com/about-us/what-is-sagcot/* accessed on 16 November 2013.
[716]Ibid.
[717] Ibid.
[718] Ibid.
[719]Southern Agricultural Growth Corridor of Tanzania, Investment Blueprint (Note 711 above).

neighbours.[720] However it is currently operating well below its potential capacity. According to the World Bank, Tanzania and Kenya could boost their annual GDP by up to $1.8 billion and $830 million, respectively by taking steps to improve the efficiency of their ports.[721]

If Tanzania's infrastructure is going to provide the services that are needed for agricultural growth, several important improvements are required. Firstly, the Dar es Salaam Port's capacity needs to be expanded and customs procedures should be accelerated.[722] Secondly, the road system requires rehabilitation and maintenance.[723] Thirdly, even though rail transport is less expensive than road transport, it is currently slow, insecure and unreliable; therefore the interchange facilities must be improved and the railway wagon and locomotive stock must be upgraded to make it more competitive.[724] Fourthly, the Tanzania Electric Supply Company Limited (TANESCO) power grid that supplies towns around the corridor must be upgraded in places and national shortages in generating capacity will need to be addressed.[725]

Initiatives to improve the infrastructure started with China who has provided an interest free loan for the rehabilitation of the Tanzania-Zambia Railway Authority (Tazara) Railway.[726] In respect of rebuilding roads, the African Development Bank (AfDB) and the Japan International Corporation Agency (JICA) has committed large sums of money for the upgrade of 450km of trunk roads.[727]In an effort to further encourage businesses in landlocked countries to use roads to transport their goods to the sea, the Tanzanian government has finished constructing a new road from Dar es Salaam on the coast to Mutukula on the border with Uganda.[728]

Furthermore, the European Union (EU) has invested in the construction of the Mwenga 3 MW hydro power project and the AfDB is constructing a full AC transmission line split into three individual construction lots.[729] The Millennium Challenge Corporation (MCC) has committed US$206m to the energy sector in Tanzania, including the Distribution Systems

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[720] Ibid.
[721]Tanzania, Kenya Compete for Trade with Landlocked Neighbours available at *http://www.voanews.com/content/tanzania-kenya-compete-for-trade-with-landlocked-neighbors/1698969.html*accessed on 14 November 2013.
[722]Southern Agricultural Growth Corridor of Tanzania, Investment Blueprint (Note 711 above) 23.
[723]Ibid.
[724]Ibid.
[725]Ibid 24.
[726]Ibid 25.
[727] Ibid.
[728]Tanzania, Kenya Compete for Trade with Landlocked Neighbours (Note 721 above).
[729] Ibid.

Rehabilitation and Extension Projects.[730] The Swedish International Development Cooperation Agency (SIDA) has invested in the installation of a transmission line and the electrification of Songea district.[731] Under the Kilimo Kwanza initiative, the Rural Energy Fund plans the electrification of irrigation schemes in the Southern Highlands and Eastern Zones.[732]

In order to improve the Dar es Salaam port, the Tanzania Ports Authority has invested in modern handling equipment, the construction of additional paved storage yards, and the relocation of container scanning facilities.[733] These improvements are aimed at easing the traffic flow, thereby enabling the port to handle greater volumes and reduce the container import dwell time.[734] Another initiative is to build a dedicated fertiliser terminal at the Dar es Salaam Port, thereby increasing the handling rates at the ship-to-shore interface and allowing improved throughput.[735]

Due to the fact that agriculture is the one of the biggest sectors in Tanzania, it is essential that this sector be developed to maximise its full potential. Therefore the World Bank, the AfDB, JICA and Irish Aid have supported the Agriculture Sector Development Programme (ASDP) to assist farmers to access agricultural knowledge, technologies, marketing and infrastructure.[736]

Furthermore, three Climate Change Mitigation projects have been developed with a focus on increased farm productivity driven by improved land use and the optimal use of proper agricultural inputs.[737] Other projects to develop the agricultural sector include the irrigated Mkula rice cooperative and mill and the Mtanga commercial farm for wheat, barley and maize.[738] The Tanzania Agricultural Partnership (TAP) is also working with private sector partners on the development of two grain partnership projects (rice and maize) and is creating a Commodity Investment Programme that links ASDP funding to agricultural business development.[739]

[730] Southern Agricultural Growth Corridor of Tanzania, Investment Blueprint (Note 711 above) 25.
[731] Ibid.
[732] Ibid.
[733] Ibid.
[734] Ibid.
[735] Ibid.
[736] Ibid.
[737] Ibid.
[738] Ibid.
[739] Ibid.

The Joint Integrated Technical Assistance Programme (JITAP) was launched in Tanzania in 1998 with the primary purpose of raising awareness of the issues involved in the multilateral trade system and to facilitate participation in the negotiations.[740] The JITAP Phase 1 was not very successful and at the end of the phase, Tanzania allocated US$300 000 to bridge the shortfall in counterpart funding.[741] This enabled the national implementing agencies responsible for the exporting development strategy (EDS) to initiate implementation of the EDS for horticulture development.[742] The implementation of Phase 2 met with some success but its impact has not been as far reaching as originally expected.[743] Nevertheless, Tanzania has implemented an exit strategy in which programmes initiated under JITAP are placed under Diagnostic Trade Integration Study (DTIS).[744]

The Integrated Framework focuses mainly on trade development and supply side issues.[745]Tanzania originally designed and implemented a programme that addressed the issues involved in investment in the country.[746] The Strengthening of the Business Environment of Tanzania (BEST)[747] undertook a wide range of legal and regulatory reforms including establishing an institutional framework and mechanisms for transforming labour laws, the implementation of market-orientated land policies, updating business licensing systems and taxation reforms.[748]

With regard to the interventions required, Tanzania started its initiatives on trade development with the formulation of a trade policy and strategy that was adopted by the government in 2003.[749] It is now providing guidance for implanting trade development programmes and measures.[750] Export-led growth has played a significant role in the success of the Tanzanian economy in recent years and increased competitiveness is seen as a

740 B Lyimo & E M Sungula 'Lessons From The Tanzanian Experience In Trade Capacity Building in *Aid For Trade and Development* (2009) 200
741 Ibid.
742 Ibid.
743 Ibid.
744 Ibid.
745Ibid.
746Ibid.
747Ibid 201.BEST is financed by a basket fund with initial contributions coming from the Danish International Development Agency (DANIDA), the United Kingdom Department for International Development (DFID), the Swedish International Development Agency (SIDA) and the Netherlands government. The World Bank is also joining the basket through its Micro, Small, and Medium Enterprises (MSME) Project for private sector development.
748 Ibid.
749 Ibid.
750Ibid 202.

necessary step in sustaining this performance. [751] A World Bank project launched in 2007 and has produced a series of reports and fostered other trade-related activities that have assisted this effort. [752]

The findings of the project included recommendations for a trade and competitiveness strategy to promote growth and outlined a series of actions aimed at expanding export markets, integrating Tanzania into existing global production networks, and improving access to affordable services inputs.[753] The report also included specific recommendations on increasing support for exporters to raise quality and meet international standards, improving market access, reviewing tariffs, taxes and other regulations, developing Export Processing Zones (EPZs) and lowering the costs of essential backbone services such as electricity, water and information and communications technology. [754]

The project also supports the development of market information systems which remain inadequate in providing timely, accurate and cost effective market information to the government and the private sector.[755] A report presented as part of the project notes the inadequacy of trade information on overseas market prices in Tanzania and calls for the development of a market information system to improve the flow of reliable information to businesses and farmers, in place of existing systems which tend to reside in silos and where most businesses still rely on personal contacts or networks for information.[756]

Technical capacity for the analysis of economic and trade issues is the most important element after creating the capacity to formulate and implement a trade policy and strategy.[757] The general strategy would cover issues ranging from trade based on comparative advantages to trade based on competitive advantages through higher productivity resulting from innovation and technology.[758] Measures to address such capacity are on the horizon in Tanzania and are due to be implemented as part of the Private Sector Development Strategy

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[751] What is the World Bank doing on Aid for Trade? 14 available at *http://siteresources.worldbank.org/INTRANETTRADE/Resources/AfTbookletFINAL.pdf* accessed on 20 October 2013.
[752] Ibid.
[753] Ibid.
[754] Ibid.
[755] Ibid.
[756] Ibid.
[757] B Lyimo&E M Sungula (Note 740 above) 203.
[758] Ibid.

(PSDS).[759] The World Bank's Private Sector Development Strategy initiative aims to contribute to sustainable development and poverty reduction in Africa by promoting broad-based economic growth, employment and inclusive development through effective private sector development.[760]The PSDS initiative is based on three pillars: Pillar I is the investment and business climate, Pillar II is access to social and economic infrastructure and Pillar III focuses on enterprise development.[761]

The UNDP also maintains an extensive private sector portfolio which seeks to promote inclusive markets and consists of two broad type of interventions: private sector development, which aims to increase the contribution of micro (small and medium) sized enterprises to economic growth and poverty reduction; and private sector engagement, which is aimed at encouraging partnerships between a range of companies from Northern and Southern multinationals and small and medium-sized enterprises (SMEs) to enhance broad development objectives.[762] The UNDP recognizes that the achievement of the MDGs depends on vibrant economic growth driven by the markets and private enterprises that create jobs; provide goods and services to the poor and generate tax revenues to finance essential social services and economic infrastructure in a country.[763]

As an engine of economic growth, the private sector is a key stakeholder in the Tanzanian development agenda. Although the Tanzanian private sector is mainly dominated by informal and formal small enterprises, it provides employment and services to the majority of the Tanzanian population.[764] The private sector remains largely underdeveloped; therefore it is important that its institutional and legal framework is strengthened in order to create a more conducive environment for enterprises to grow and attract foreign investment.[765] It is submitted that Tanzania also needs to develop its capacity to take advantage of the opportunities that Public-Private Partnerships can offer as this would to lead to improved service delivery and infrastructure development.[766]

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759 Ibid.
760 Supporting The Transformation Of The Private Sector In Africa Private Sector Development Strategy, 2013-2017 8. Available at *http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/2013-2017%20-%20Private%20Sector%20Development%20Strategy.pdf* accessed on 21 October 2013.
761 Ibid.
762 Delivering Aid For Trade (Note 705 above) 25,26.
763 UNDP in Tanzania, Private Sector Development. Available at *http://www.tz.undp.org/content/tanzania/en/home/ourwork/povertyreduction/in_depth/* accessed on 15 November 2013.
764 Supporting The Transformation Of The Private Sector In Africa Private Sector Development Strategy (Note 76 above).
765 Ibid.
766 Ibid.

In order to develop the capacity to maximise opportunities, the UNDP is working with the African Management Services Company (AMSCO) to implement the African Training and Management Services (ATMS) Project in Tanzania.[767] The ATMS project is a regional project which is the biggest and most ambitious human capital development effort in the private sector.[768] The project is operating in more than 25 countries to provide human capital solutions that lead to wealth creation through the private sector and commercially operated state enterprises.[769] In Tanzania, the project has supported 30 local enterprises with the ultimate goal of making them sustainable and competitive.[770]

Under the Investment Contract Management for Natural Resources and extractive industries project, the UNDP is also supporting continuous government efforts to develop the institutional capacity to negotiate, draft, regulate and manage investment contracts.[771]

Training for technical capacity building and institutional reforms address the human factor and the organisational aspects of the institutional framework for trade.[772] Tanzania has been unable to address these issues through the JITAP or the IF.[773] Because the JITAP does not cover supply side constraints, the IF is more focused on these issues.[774] However, due to a lack of resources, there has been little improvement in this area. Therefore it is clear that an instrument is needed to supplement the inadequate resources that LDCs receive under the IF.[775]

The World Bank's East Africa Trade and Transport Facilitation Project (EATTFP) is a regional operation covering four member states of the EAC that commenced in 2006.[776] The project seeks to enhance trade in the region through transport by supporting aspects of port operations, road transport, marine and railway transport.[777] It further seeks to enhance the performance of the East Africa Revenue Authorities. The project was a response to a request

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[767] Ibid.
[768] Ibid.
[769] Ibid.
[770] Ibid.
[771] Ibid.
[772] B Lyimo &E M Sungula (Note 740 above) 203.
[773] Ibid.
[774] Ibid.
[775] Ibid.
[776] Project Information Document (PID) Appraisal Stage 2. Available at *http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/04/26/000003596_20110428144810/Rendered/PDF/EATTFP010PID010Appraisal.pdf*accessed on 21 October 2013.
[777] Ibid.

by the EAC Secretariat and partner states to support regional integration following the promulgation of the EAC.[778]

An analysis of the role of AfT in Tanzania has lead to the opinion that, as is the case with AfT in Kenya, AfT has enjoyed a reasonable amount of success in Tanzania. The above discussed projects indicate that Tanzania has faced many serious impediments (discussed in chapter 4) however, the implementation of these projects have been successful in building trade capacity, reducing poverty, promoting human development and will essentially assist Tanzania in achieving the Millennium Development Goals. These projects contain the required elements of appropriate AfT initiatives (as discussed in chapter 5) and therefore address the impediments to trade that Tanzania faced, therefore enabling Tanzania to more actively participate in the international trade markets.

6.6. Conclusion

In the final analysis, the structure and objectives of an AfT facility should channel support to developing countries and LDCs in order to address the specific issues confronting them. An important issue in Africa is increasing support for the establishment of social and economic infrastructure.[779] Social infrastructure is vital for the development of human capital which assists trade development. Therefore an AfT facility should be bold enough to target a wide variety of factors and provide the substantial resources required to make the difference between the status quo and the potential for growth.[780]

[778] Ibid. Trade within the EAC has grown substantially in the past five years since the Customs Union was promulgated. Member countries have become one another's main trading partners with the growth in trade averaging 8-10 percent per year. This trend is expected to continue following the implementation of the EAC Common Market Protocol that became effective in July 2010.

[779] B Lyimo & E M Sungula (Note 740 above) 204.

[780] Ibid.

CHAPTER 7: CONCLUSION AND RECOMMENDATIONS

7.1. Introduction

It has been argued that Aid for Trade (AfT) is needed because many of the poorest countries have struggled to benefit from market access opportunities due to their inability to produce or export efficiently.[781] While trading with other countries is fundamental to achieve high economic growth rates and poverty reduction targets, most African developing countries have neither the diversity of exportable products nor the production capacity to take immediate advantage from improved market access opportunities. [782] Therefore the push to increase AfT arises because countries such as Kenya and Tanzania, who have the potential to become important role players in the international economy, are often unable to integrate into global markets miss out on important sources of sustainable growth and poverty reduction.[783]

At the outset, this dissertation aimed to answer 5 research questions; (1) What is the multilateral trade system and GATT? ; (2) What is the purpose of trade liberalization and how or has it assisted developing countries and Least Developed Countries (LDCs)? ; (3) What challenges do developing countries and LDCs face and what role have these countries played in the multilateral trade system? ; (4) What is Aid for Trade? and (5) How has AfT assisted Kenya and Tanzania? This chapter firstly provides the answers to the research questions proposed and secondly, provides recommendations that, in the view of the author, will be of assistance to Kenya and Tanzania.

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[781]Prepared by the United Nations Economic Commission for Africa (UNECA),Global review of Aid for Trade 2011, 'African case stories: A snapshot of Aid for Trade on the ground in Africa (Note 21 above).
[782] Ibid.
[783] Ibid. Kenya and Tanzania need to upgrade their ports, telecommunications, customs facilities and institutions because if they cannot send goods in a competitive way to the world market, then these countries stand to gain little from any improved market access.

7.2. Conclusion

Following the push to increase AfT, the purpose of this dissertation was to firstly critically review the history of the multilateral trade system. Therefore the first research question was what the multilateral trade system and the General Agreement on Tariffs and Trade (GATT).The research has established that the multilateral trade system is essentially both a political process and a set of political institutions.[784] The multilateral trade system was first established by the United States of America.[785] In 1948, the modern multilateral trade system, with its emphasis on non-discrimination, was reborn when the General Agreement on Tariffs and Trade (GATT) entered into force.

The General Agreement on Tariffs and Trade (GATT) was a multilateral agreement that provided the rules for world trade and was founded on 3 main principles. The first fundamental principle was the Most Favoured Nation treatment, the second important principle is the National Treatment principle and while the GATT 1947 and GATT 1994 does not specifically highlight the principle of reciprocity as a foundational principle, the principle of reciprocity is referred to in the agreement formally and informally.[786]

The GATT has also served as the basis for nine rounds of multilateral trade negotiations with the final round being the Doha Round 2001. Also known as the Doha Development Round, this round which is yet to concluded, is aimed at achieving a major reform of the international trading system through the introduction of lower trade barriers and revised trade rules.[787] The final element of the answer to research question one was the establishment of the World Trade Organisation (WTO). The WTO was established in response to the need for a more effective Dispute Settlement Mechanism (DSM) and the establishment of this organisation would also solve the problems of the "GATT *a la carte*".[788]

The second question that the dissertation was aimed at answering was what is the purpose of trade liberalization and how or has it assisted developing countries. Upon

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[784]Chapter 2:The multilateral trade system (Note 29 above).
[785] Ibid.
[786]Ibid.
[787]The Doha Round (Note 136 above).
[788]Centre For Studies And Research In International Law And International Relations '*The World Trade Organization'* (Note 155 above).

determining a definition of trade liberalisation, it is submitted that the purpose of trade liberalisation is to relax or remove unnecessary obstacles to trade between trading partners as this would allow all countries to participate and benefit from the world economy.[789] Therefore in determining whether or not trade liberalisation has assisted developing and least developed countries, it was concluded that while trade liberalisation generally creates 5 benefits, it also creates short term winners and losers because trade reforms can have inverse effects, as seen in Kenya and Tanzania. As a result thereof, it is submitted that trade liberalisation (despite its potential and promises) has thus far only provided a very limited assistance to developing countries and LDCs.

Another angle of looking at how or if trade liberalisation has assisted developing countries and LDCs was through an analysis of the Sanitary and Phytosanitary Measures (SPS) Agreement and the Technical Barrier Trade (TBT) agreements. In light of Tanzania's past ban by European Union (EU) on fish, it is suggested that priority should be given to the many SPS issues that plague Kenya and Tanzania and prevent these countries from reaching their export-import potential. It is submitted that the WTO has given special consideration to the various challenges that developing countries and LDCs face, through Articles 9 and 10 of the SPS agreement and Articles 2, 3, 4, 11 and 12 of the TBT Agreement.

To address the needs of the developing countries and LDCs, the next research question focused on identifying the challenges that these countries face and to further determine what role these countries have played in the multilateral trade system. Countries that are categorised as LDCs are done so according a set a criteria established by the United Nations Conference on Trade and Development (UNCTAD) while developed countries adopt their status on their own. The research has indicated that Kenya and Tanzania face challenges such as a lack of resources, human capital, a lack of reliable infrastructure and foreign debt.[790] A significant finding was that African countries in particular face the a challenge in the form of traditions and habitual ways of doing business which vary among societies and not all are equally

[789] Available at *http://www.economicshelp.org/dictionary/t/trade-liberalisation.html* accessed on 26 July 2013.
[11] Chapter 36W: Challenges Facing the Developing Countries (Note 408 above).

conducive to economic growth.[791] This issue was recently highlighted when Wal-Mart attempted to purchase the Kenyan Naivas supermarket chain.[792]

With regard to the role of developing countries and LDCs within the multilateral trade system, following academics, it is submitted that these countries have until the Doha Round, played a very limited role in the trade negotiations and their concerns and input have also been given little consideration and value. The Doha Round has changed the status quo as these countries are now shaping not only the content of the Doha Round and its outcome, but are also modelling the style and future course of the multilateral trading system.[793]

The need for AfT stemmed from addressing the challenges of developing countries and LDCs. Therefore, this lead to the research question of what is the purpose and structure AfT. It is clear that there is no exact definition of AfT, however according to the WTO, AfT is said to comprise of 5 elements.[794] It is submitted that essentially, AfT is designed to assist developing countries and LDCs to implement and benefit from WTO Agreements and more broadly to expand their trade opportunities and benefits.[795]

To understand how AfT is implemented, delivered and to determine it success thus far, a case study was conducted on Kenya and Tanzania. In a developing country like Kenya, AfT has been implemented through various means. This includes projects for the development of infrastructure, telecommunications and other initiatives that essentially aim to provide solutions to the challenges highlighted in Kenya. In consideration of the results at the 2013 Global Review, one may conclude that AfT is

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[791] Ibid.

[792] Wal-Mart planned to purchase the family owned Naivas supermarket chain in Kenya. A member of the family then applied to court to have the sale set aside but the application was dismissed. However, the deal was unsuccessful. This illustrates the issue that while many foreign investors are keen to invest in Kenya, family business owners refuse to sell their businesses, even where the decision to sell will be to their advantage. Duncan Miriri' In Africa, business is a family affair' Daily News 14 November 2013 at 15.

[793] F Ismail F (Note 481 above).

[794] M Fabbroni, S. N. Karingi (Note 537 above).All definitions of AfT should encompass trade and regulations, trade development activities, support to address supply-side constraints, support for macroeconomic and microeconomic adjustments and commodity price stabilization (World Bank 2006a).

[795] Hong Kong Ministerial Declaration, 18 December 2005, paragraph 57.

on the right path to successfully assisting Kenya.[796] The case study on Tanzania has lead to the understanding that AfT in Tanzania has thus far, not been very successful with the exception of the BEST project. While many projects have been implemented in an attempt to boost the Tanzanian economy, projects need to incorporate more than one of the 5 main activities (discussed in chapter 1) to ensure that Tanzania can become a bigger, stronger player in the international markets. It is submitted that while both these countries have a long road ahead before their full potential is reached, AfT is in the process of achieving its purpose.

7.3. Recommendations

The recommendations submitted in this dissertation are based primarily on the findings and recommendations of the Aid for trade at a glance: Connecting to value chains (Fourth Global review). It is submitted that in order for AfT to be entirely successful in Kenya and Tanzania, it is essential that the challenges in these countries be addressed. The first possible solution is Foreign Direct Investment (FDI). FDI plays an essential role in filling the resource gap that African LDCs face, which is especially relevant to financing investments in physical infrastructure.[797] While it is understood that culture is of great importance, it is submitted that culture ought not to lead to the detriment of the people who religiously follow it. Therefore the recent Wal-mart case in Kenya indicates while foreign investors are keen to assist Kenya, one of their biggest obstacles is the people of Kenya are not receptive of them. Therefore it is submitted that people should be educated to allow them to make decisions that will benefit them and their economy.

In the 34 African LDCs, driven by large investments in the natural resources sector, the net FDI inflows as a percentage of GDP amounted to 5.9 per cent in 2003.[798] An alternate solution could lie in external financing and debt relief. To achieve higher economic growth rates, African LDCs need to mobilize both domestic and external resources.[799] To do this, Overseas Development Assistance (ODA) and debt relief are needed to obtain the necessary funds to invest in sectors such health, education and

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[796] Aid, trade and development indicators for Kenya. Available *at http://www.keepeek.com/Digital-Asset-Management/oecd/development/aid-for-trade-at-a-glance-2013/aid-trade-and-development-indicators-for-kenya_aid_glance-2013-51-en#page1* accessed on 25 November 2013.
[797] Challenges and Opportunities for African Least Developed Countries (Note 404 above) para 47.
[798] Ibid.
[799] Ibid para 60.

infrastructure.[800] With regard to debt relief, total debt cancellation is needed if the Highly Indebted Poor Country (HIPC) initiative is to achieve its broader goals, of a permanent exit from debt rescheduling, sustainable growth, spending more on social programs and poverty reduction.[801] Countries that benefited from the HIPC program find that the debt burden is not sustainable and African post-conflict countries are in need of financing for reconstruction.[802] However, the HIPC debt-relief has been hampered by inadequate funds, a slow pace in releasing resources and inflexibility.[803]

After the global financial crisis, it was noted that the only sector that has gained priority for donors is the private sector development.[804] Therefore it is essential that Tanzania and Kenya develop their capacities to take advantage of the opportunities that public private partnerships can offer as this would to lead to an improvement of service delivery and the development of infrastructure.[805] Following the fact that private sector development had 14% of commitments made and aid to this sector increased by USD 171 million, it is submitted that Kenya and Tanzania must focus on private sector development.[806]

With the focus on value chains at the last global review, it is submitted that value chains can be very beneficial to developing countries because it encourages suppliers in these countries to comply with international standards and regulations, therefore allowing them access to the export markets. Value chains also have important policy implications, therefore implying that Kenya and Tanzania can only truly benefit from value chains if and when the widespread corruption and mismanagement in its government is stopped.[807] However, to take advantage of the opportunities created by value chains, Kenya and Tanzania must work towards ensuring they have effective border procedures, have no unnecessary barriers to trade, and ensure that there is a free flow of information and that there are no impediments to FDI. This may be

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[800]Ibid.
[801]Ibid para 63.
[802] Ibid para 64
[803]Ibid.
[804] Aid for trade at a glance: Connecting to value chains 5. Available at *http://www.keepeek.com/Digital-Asset-Management/oecd/development/aid-for-trade-at-a-glance-2013/the-way-forward_aid_glance-2013-10-en#page5* accessed on 25 November 2013.
[805]Supporting The Transformation Of The Private Sector In Africa Private Sector Development Strategy (Note 750 above).
[806]Ibid.
[807]K Brolén et al (Note 637 above) 313.

achieved through the creation and implementation of effective trade policies in these countries.[808]

As members of the EAC, it is submitted that Kenya and Tanzania ought to use their regional network as an opportunity to boost their trade performances. The regional participation of Kenya and Tanzania could lead to the access of external markets for local production and this will create a "learning by doing effect" as the economy will gain access to regional markets and eventually, the global markets.[809] Therefore, it may be said that regional trade could serve as a stepping stone for the facilitation of links to value chains and could eventually lead to the integration into the global arena.[810]

To ensure that AfT initiatives are successful, it is submitted that Kenya and Tanzania must ensure that their business environment is secure and that stable economic policies are put into place. This is of vital importance as these features will attract the much needed foreign investors and the private investors to these countries. It is further submitted that AfT in Kenya and Tanzania could be more effective and successful if these countries are able to maintain political and governmental stability and security (through the reduction of corruption and mismanagement).Corruption can be fought through the formulation of trade policies that are more transparent and non-discretionary.[811]Political stability will attract investors which could ultimately lead to an improved export performance. Emphasis must be placed on a stable political climate as this will influence the extent to which people benefit from trade liberalization.[812] This will essentially lead to the growth of export and import performances. Furthermore, it is submitted that the Tanzanian and Kenyan governments ought to follow the Paris Declaration principles as this will ensure that the aid donors and recipient governments can work together harmoniously.

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[808]Ibid.
[809]Ibid.
[810]Ibid.
[811] L.A Winters 'Trade Liberalisation And Economic Performance: An Overview' (2004) 112 The Economic Journal.
[812] K Higgins & S Prowse 'Trade, growth and poverty: making Aid for Trade work for inclusive growth and poverty reduction' 10. Available at *http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5778.pdf* accessed on 31 October 2013.

ANNEXURE A

1. GENERAL AGREEMENT ON TARIFFS AND TRADE 1947

[56]**Article XI of GATT 1947: General Elimination of Quantitative Restrictions provides that** 1. "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

[57]**Article XII of GATT 1947: Restrictions to Safeguard the Balance of Payments**1. "Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article."

[63]**Article I of GATT 1947: General Most-Favoured-Nation Treatment provides** 1. "With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

[68]**Article III of GATT 1947: National Treatment on Internal Taxation and Regulation provides that** 1. "The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or

domestic products so as to afford protection to domestic production.2. “The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.”

[69]**Article IV: Special Provisions relating to Cinematograph Films.** “If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements.”

[70]**Article V: Freedom of Transit provides** 2.”There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.”

[72]**Article XXIV: Territorial Application Frontier Traffic Customs Unions and Free-trade Areas provide** 1. “The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.”

[75]**Article XXIV:8 Territorial Application Frontier Traffic Customs Unions and Free-trade Areas** “provide for the purposes of this Agreement: (*a*) A customs union

shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XVand XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union"

[118]**Article VI of GATT: Anti-dumping and Countervailing Duties provides:** 1. "The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another (*a*) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, (*b*) in the absence of such domestic price, is less than either (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit."

ANNEXURE B

2. SANITARY AND PHYTOSANITARY MEASURES AGREEMENT

[254]**Annex A Definition**1. "Sanitary or phytosanitary measure — Any measure applied:(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests."

[260]**Article 9** : **Technical Assistance** 1. "Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries." Available at *http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm* accessed on 03 October 2013.

[261]**Article 9. 2**. "Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved."

[268]**Article 10: Special and Differential Treatment**1. "In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members."

[271]**Article 10.2** “Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.”

[274]**Article 10 3**. “With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.”

[276]**Article 10.4**.“Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.”

[280]**Article 14**: **Final Provisions.** “The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.”

[283]**Annex B**:**Transparency Of Sanitary And Phytosanitary Regulations, Publication of Regulations2.** “Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.”

[286]**Annex B** :**9.** “The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of

developing country Members to any notifications relating to products of particular interest to them."

ANNEXURE C

3. **TECHNICAL BARRIERS TO TRADE AGREEMENT**

[301]**Article 3:3.1** "Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2, with the exception of the obligation to notify as referred to in paragraphs 9.2 and 10.1 of Article 2. 3.2 Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned."

[302]**Article 4: Preparation, Adoption and Application of Standards 4.1** "Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice. 4.2 Standardizing bodies that have accepted and are complying with the Code of Good Practice shall be acknowledged by the Members as complying with the principles of this Agreement."

[303]**Annex 3: Code of Good Practice for the Preparation, Adoption and Application of Standards General Provisions** A. "For the purposes of this Code the

definitions in Annex 1 of this Agreement shall apply. B. This Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO (referred to in this Code collectively as "standardizing bodies" and individually as "the standardizing body"). C. Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate."

[306]**Technical Regulations and Standards Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies With respect to their central government bodies: 2.2** "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products."

[309]**Technical Regulations and Standards Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies With respect to their central government bodies: 2.1** "Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country."

[312]**Technical Regulations and Standards Article 2.6** “With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.”

[314]**Technical Regulations and Standards Article 2.4** “Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”

[315]**Technical Regulations and Standards Article 2.5** “A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.”

[317]**Article 12: Special and Differential Treatment of Developing Country Members 12.1 “**Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement**.”**

[318]**Article 12.2** “Members shall give particular attention to the provisions of this Agreement concerning developing country Members rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreements institutional arrangements.”

[320]**Article 12.3** “Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.”

[321]**Article 12.4** “Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.”

[323]**Article 12.5** “Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members.”

[325]**Article 12.6** “Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.”

[327]**Article 12.7** "Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members."

[328]**Article 11: Technical Assistance to Other Members11.1 "**Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations**."**

[330]**Article 12.8 "**It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members."

[331]**Institutions, Consultation and Dispute Settlement Article 13: The Committee on Technical Barriers to Trade 13.1** "A Committee on Technical Barriers to Trade is hereby established, and shall be composed of representatives from each of the

Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members."

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9 September 2013

Miss Rushantha Chetty 209516791
School of Law
Howard College Campus

Dear Miss Chetty

Protocol reference number: HSS/0955/013M
Project title: **A critical appraisal of the role Aid for Trade in the achievement of a global partnership for development in respect of Kenya and Tanzania**

NO- RISK APPROVAL

In response to your application dated 25 June 2013, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has 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.

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

Yours faithfully

Dr Shenuka Singh (ActingChair)
Humanities & Social Science Research Ethics Committee

/pm

cc Supervisor Mrs CE Stevens
cc Academic Leader: Professor M Carnelley
cc School Admin.: Mr Pradeep Ramsewak

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