

A CRITICAL DISCUSSION ON THE ROLE OF AID FOR TRADE
IN THE REALIZATION OF THE MDG 8 WITH REGARDS TO
GHANA AND NIGERIA

By

CHANELLE FAIRLENE PILLAY

209505611

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DECLARATION

I declare that 'A critical discussion on the role of Aid for Trade in the realization of the MDG 8 with regards to Ghana and Nigeria' is my own work and that all the sources that I have used and quoted have been indicated and acknowledged by means of references.

SIGNED: C F Pillay

209505611

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ABBREVIATIONS

MDG 8	Millennium Development Goal 8
AfT	Aid for Trade
ARIPO	African Regional Industrial Property Organization
CA	Codex Alimentarius
CHAN	Christian Health Association of Nigeria
DDA	Doha Development Agenda
DG	Director-General
ECOWAS	Economic Community of West African States
FDI	Foreign Direct Investment
FPIS	Federal Produce Inspection Service
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HIPC	Heavily Indebted Poor Countries
ICTSD	International Center for Trade and Sustainable Development
IMF	International Monetary Fund
IOE	International Office of Epizootics
IP	Intellectual Property
IPPC	International Plant Protection Convention
IPR's	Intellectual Property Right's
ITC	International Trade Centre
LDC's	Least Developed Countries
MDG's	Millennium Development Goals
MFN	Most Favoured Nation

MTS	Multilateral Trading System
NAFDAC	National Agency for Food and Drug Administration and Control
NCS	Nigerian Customs Service
NEPAD	New Partnership for Africa's Development
NGO's	Non-Governmental Organisations
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
PAN-SPSO	Participation of African Nations in Sanitary and Phytosanitary Standard-setting Organizations
PPRS	Plant Protection and Regulatory Services
SON	Standards Organization of Nigeria
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Right's
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
WB	World Bank
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

CHAPTER 1: RESEARCH PROPOSAL

1.1 INTRODUCTION

The idea of creating a World Trade Organisation (WTO) emerged in response to various needs and suggestions from countries desiring an open and predictable multilateral trading system (MTS).¹ More effective institutional mechanisms were required in order to implement efficient development across the globe with regards to trade and economic growth.² This thesis is aimed at discussing the position of Ghana and Nigeria in determining whether they are benefitting sufficiently under the MTS. To determine their development, this thesis will consider amongst others, whether they are currently raising their standards of living; trading with the aid being received and lastly whether Millennium Development Goal 8 (MDG 8), developing a global partnership for development, is being achieved effectively. Furthermore, it is necessary to determine whether the WTO Agreements such as the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) is contributing to the advancement of these developing countries and if not, the reasons for the non-fulfilment and poor results.

There have been criticisms regarding whether MDG 8 will be achieved by its deadline of 2015 and in addition, whether the Aid for Trade (AfT) initiative is being utilised effectively in Ghana and Nigeria. Furthermore, there are also the arguments which submit that the MTS is a success and considerable progress has been made in these developing nations as well as contributing to international peace and stability worldwide.³ This thesis will therefore critically discuss all the above issues in relation to Ghana and Nigeria in order to determine their progress and furthermore, how the impediments identified can be addressed for future development.

¹ The WTO Can Contribute to Peace and Security, available at:

http://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi09_e.htm, accessed on 15 November 2013.

² Ibid.

³ Ibid.

1.2 RESEARCH PROBLEM

1.2.1 *The World Trade Organisation and Multilateral Trading System*

The WTO is responsible for overseeing the MTS which has gradually evolved since 1948.⁴ It also provides a forum for continuing negotiations to liberalize trade in goods and services through the removal of barriers and to develop rules in new trade-related areas.⁵ The WTO system also provides a mechanism for settling trade disputes among member countries. To be specific, the agreement establishing the WTO called the Marrakesh Agreement provides that it would perform four functions:⁶

- 1) It shall facilitate the implementation, administration and operation of the Uruguay Round legal instruments and of any new agreements that may be negotiated in the future;
- 2) It shall provide a forum for further negotiations among member countries on matters covered by the Agreements;
- 3) It shall be responsible for the settlement of differences and disputes among member countries and
- 4) It shall be responsible for carrying out periodic reviews of the trade policies of its member countries

Thus, the MTS is the body of international rules by which countries are required to abide with regards to their trade relations with one another.⁷ The basic aim of these rules is simply to encourage countries to pursue open and liberal trade policies⁸, as was noted earlier. It is for this reason the MTS is known as the “heart of the WTO system”.⁹ The foundation of the MTS was laid immediately after World War II with the signing of an agreement known as the General Agreement on Tariffs and Trade (GATT) by the contracting parties on October 1947.¹⁰ The agreement became effective from January 1948.¹¹ The basic legal text of GATT

⁴ The World Trade Organisation, at 3, available at: http://www.wto.org/english/res_e/doload_e/inbr_e.pdf, accessed on 1 November 2013.

⁵ SK Deb, ‘Visiting Legal Aspects of the Multilateral Trading System’, (2004), Vol 26, *Asian Affairs*, at 6.

⁶Ibid 6.

⁷ Understanding the WTO: A Unique Contribution, available at:

http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm, accessed on 4 November 2013.

⁸ Note 5 above, 6.

⁹ The World Trade Organisation in Brief, available at: <http://www.wto.org>, accessed on 2 May 2013.

¹⁰ Note 5 above, 6.

¹¹Ibid 6.

remained almost unchanged until its successor; the WTO came into being in January 1995.¹² There have been criticisms regarding the MTS, which will be discussed further on in this thesis. Much of this criticism stems from the failure of bringing the Doha Round of negotiations to a conclusion even after eleven years of its launch.¹³ Alternatively, there have been arguments that the MTS and WTO have had great success in the last two decades.¹⁴

The research problem specific to this part of the thesis is to establish firstly, the nature and scope of the MTS and to determine whether developing countries such as Ghana and Nigeria have benefitted from such a body of international rules regarding their trade and development. As part of the discussion, this thesis will critically focus on the position of Ghana and Nigeria to determine whether there is anything lacking in the MTS which makes it difficult for these countries to participate in effectively and if so, the manner in which these obstacles can be rectified.

This thesis will further discuss the WTO, its role and functions. This discussion will contribute in determining whether Ghana and Nigeria have achieved trade liberalization and whether they have grown stronger economically. It is necessary to establish whether GATT and the WTO have contributed in creating a strong trading system promoting unparalleled growth. In order to do this, this thesis will critically evaluate the background and formation of the WTO. Furthermore, the criticism of the WTO and the MTS have to be established in order to determine whether it has had a positive impact in today's international trading or whether it has, instead, benefitted the rich at the expense of the poor.

1.2.2 The World Trade Organisation Agreements

The agreements under the WTO that are going to be the focus of this thesis is the SPS Agreement and the TRIPS Agreement, which have been previously mentioned. There is a need to determine what these agreements are aimed at establishing and whether they have benefitted or disadvantaged developing countries such as Ghana and Nigeria. An important aspect of the WTO is that over three quarters of the members are developing or least developed countries, which is the reason all WTO Agreements contain special provisions for

¹²Ibid 6.

¹³ D Drache & M Froese, 'Deadlock in the Doha Round: The Long Decline of Trade Multilateralism', 2007, at 2, available at: <http://www.worldtradelaw.net/articles/drachedoha.pdf>, accessed on 3 November 2013.

¹⁴ A Panagariya, 'Challenges to the Multilateral Trading System and Possible Responses', (2013), 7, *Economics: The Open Access, Open Assessment E-Journal*, at 10, available at: <http://www.economics-ejournal.org/economics/discussionpapers/2013-3>, accessed on 7 July 2013.

these countries to develop more efficiently.¹⁵ These provisions include longer time periods to implement agreements and commitments, measures to increase their trading opportunities and support to help them build the infrastructure for WTO work, handle disputes and implement technical standards.¹⁶ This thesis will, in addition, discuss some of the impediments and successes of these agreements on Ghana and Nigeria.

Of all the agreements administered by the WTO, the TRIPS Agreement is said to be “undoubtedly the most controversial with respect to its development-related impacts”.¹⁷ There are developing countries of the view that the TRIPS Agreement is unbalanced because it favours developed countries and transnational corporations instead of them.¹⁸ In addition, it has been criticised on the ground that it imposes various costs on developing countries without bringing positive effect to areas like trade and investment.¹⁹ It is for these reasons that this thesis will discuss the nature and scope of the TRIPS Agreement with relation to the above mentioned issues in determining whether it advances the development of Ghana and Nigeria or whether it hampers them from achieving MDG 8 as well as being detrimental to the trade and economic growth of these nations.

Regarding the SPS Agreement, the primary aim is to protect human, animal and plant life from the spread of pests or diseases that may be brought into the country by contaminated vegetables, fruits, meat and other food products.²⁰ The SPS Agreement requires member countries to apply these regulations in a manner that will not cause unreasonable barriers to international trade.²¹ It requires them to base their regulation on scientific principles and, in addition, encourages them to adopt international standards and guidelines wherever possible.²² Therefore, this thesis will critically discuss this agreement in determining its effect on Ghana and Nigeria in relation to their trade and ability to achieve MDG 8 and economic development.

¹⁵ Understanding the WTO: Special Policies, available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/org5_e.htm, accessed on 7 July 2013.

¹⁶ Note 9 above.

¹⁷ G Dutfield, ‘TRIPS and its Impact on Developing Countries’, at 1, available at: <http://www.scidev.net/en/policy-briefs/trips-and-its-impact-on-developing-countries.html>, accessed on 6 May 2013.

¹⁸ Ibid 1.

¹⁹ Ibid 1.

²⁰ Introduction to the SPS Agreement, available at: http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c1s1p1_e.htm, accessed on 24 November 2013.

²¹ Note 5 above, 6.

²² Ibid 6.

1.2.3 Millennium Development Goal 8

The Millennium Development Goals (MDG's) are a selection of eight goals encompassing 34 targets and 60 indicators.²³ The MDG's provide an important framework for international development and cooperation.²⁴ MDG 8 is aimed at developing a global partnership for development.²⁵ The three important aspects of MDG 8 relate to aid, trade and debt relief.²⁶ This thesis seeks to determine what the MDG's are and to establish the reasons for their creation and implementation. Furthermore, it has to be critically discussed as to whether MDG 8 will be achieved by the deadline of 2015 and the current position of Ghana and Nigeria regarding developing a global partnership for development. MDG 8 is the focus of this thesis for determining whether there have been positive developments and successful outcomes in these developing nations regarding their aid, trade and debt relief sectors.

MDG 8 received little attention in the donor policy statements when fewer than half of them mentioned the international systemic reforms in trade, aid, debt and technology.²⁷ Half the countries favoured enhancing access to technology yet most of them failed to explain specific actions taken to achieve this.²⁸ Intellectual Property (IP) is held to be a fundamental pillar of the MTS since it has the potential of influencing innovation, access to knowledge, technological development, competitiveness and sustainable development.²⁹ From a trade perspective, new technologies covered by IP are relevant in achieving MDG 8.³⁰ It is for this reason that the TRIPS Agreement is critically discussed, as previously noted.

The MDG's are aimed to be achieved by the end of 2015.³¹ As this deadline rapidly approaches, it is important for this thesis to determine whether these goals are able to be achieved and furthermore, what measures can be put into place to ensure effective implementation by this year and post-2015.

²³ Millennium Development Goals and Beyond 2015, available at: <http://www.un.org/millenniumgoals/>, accessed on 20 November 2013.

²⁴ S Fukuda-Parr, 'Are the MDGs Priority in Development Strategies and Aid Programmes', available at: <http://www.ideas.repec.org/p/ipc/wpaper/48.html>, accessed on 12 April 2013.

²⁵ Note 23 above.

²⁶ J Vandemoortele, 'Is MDG 8 on track as a Global Deal for Human Development?', at 14, available at: http://www.sarpn.org/documents/d0000464/P441_UNDP_MDG.pdf, accessed on 01 May 2013.

²⁷ Note 24 above.

²⁸ Ibid.

²⁹ Workshop on Aid for Trade and Intellectual Property, available at: <http://www.docsonline.wto.org>, accessed on 04 May 2013.

³⁰ Ibid.

³¹ Note 23 above.

1.2.4 Aid for Trade

AfT is a development assistance to bolster trade capacity and reduce trade costs in low income countries.³² For it to be effective however, AfT must address national trade-related priorities identified through domestic policy formulation processes.³³ Much of the focus of AfT is on agriculture because of its importance to the economy of some developing countries,³⁴ such as Ghana. Equally important is the need to have a monitoring and evaluation mechanism for assessing the impacts of AfT, particularly in the context of the country's development goals and trade policy objectives.³⁵ Since developing countries lack adequate resources to undertake the policies mentioned, external resources such as AfT are needed in order to create a competitive economy.³⁶ This thesis will therefore focus on whether the AfT initiative has been effective in achieving its original aims and objectives over the years. In addition, it will discuss the complications that the AfT initiative is experiencing in developing countries such as Ghana and Nigeria and furthermore, what effect these problems are having on their development regarding MDG 8 in relation to aid, trade and debt relief. Ultimately, this thesis seeks to determine whether the AfT initiative is producing effective results in Ghana and Nigeria and whether there are better means of implementing it in order to achieve results faster and more effectively presently and in the years to come.

1.2.5 Ghana and Nigeria: The Developing Countries

As alluded to earlier, the two developing countries that this thesis will discuss are Ghana and Nigeria. Both these countries fall under the Economic Community of West African States (ECOWAS) and are considered developing nations.³⁷

Firstly, the economy of Ghana is largely agrarian,³⁸ hence the importance of the AfT initiative and the SPS Agreement. The agricultural sector has been the largest contributor to the country's Gross Domestic Product (GDP) until recently when the services sector took

³² Aid for Trade, available at: <http://www.intracen.org/about/aid-for-trade/>, accessed on 25 November 2013.

³³ Ibid.

³⁴ O Cattaneo, 'Aid for Trade and Value Chains in Agri-Food', 2013, at 9, available at: http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13prog_e/agrifood_47.pdf, accessed on 10 October 2013.

³⁵ B Senadza & AD Laryea, 'Ghana Case Study: Managing Aid for Trade and Development Results', at 9, available at: http://www.oecd.org/dac/aft/Ghana_Case_Study.pdf, accessed on 10 April 2013.

³⁶ Note 32 above.

³⁷ The ECOWAS Commission, available at: <http://www.ecowas.int/>, accessed on 4 August 2013.

³⁸ S Brempong & K Adjei, 'Estimates of Food Production and Food Availability in Ghana: The Case of Year 2000', at 1, available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.151.2302&rep=rep1&type=pdf>, accessed on 23 November 2013.

over.³⁹ Ghana's long term development goal is to achieve a per capita income of at least US\$3,000 by 2020,⁴⁰ hence the importance of the agricultural sectors role.⁴¹ However, productive capacity constraints, arising largely from human, institutional and other bottlenecks pose a major challenge to the attainment of this goal.⁴² It is the aim of this thesis to emphasise that the role of AfT is able to propel the achievements of Ghana's development objectives.⁴³

1.3 RESEARCH METHODOLOGY

The research for this thesis will be entirely desk-top based. A review and analysis of existing publications form the focus of this thesis. It will comprise of locating journal articles and case studies that deal with the position of Ghana and Nigeria. The paper will include an analysis of particular WTO Agreements as well as policy and discussion papers. Academic text-books will be consulted when dealing with the creation and development of the WTO as well as the negotiation rounds that took place. When discussing AfT and MDG 8, website articles are imperative to access which deal with the development and progress of these initiatives and goals. For this thesis dealing with AfT, MDG 8 and the position of developing countries, an in-depth research is necessary in order to contrast and compare the academic works and arguments of various sources. Analysing other thesis's and publications will contribute at strengthening the content and nature of this thesis.

1.4 STRUCTURE OF THESIS AND RESEARCH QUESTIONS

Chapter 2 of this thesis will deal with the history and background on the GATT, WTO and the MTS. A critical discussion is necessary in order to determine whether the developing countries of Ghana and Nigeria have benefitted from this body or whether there is something lacking in the MTS that makes it difficult for them to participate effectively regarding their trade and economic development.

Thereafter, Chapter 3 will deal with the two specific WTO Agreements, namely the TRIPS Agreement and the SPS Agreement in order to determine whether Ghana and Nigeria have had developmental success in implementing them. It is vital to determine whether these

³⁹Note 35 above.

⁴⁰Ibid.

⁴¹Note 38 above.

⁴²Note 35 above.

⁴³Ibid.

agreements have been successful in furthering their aims and objectives in these developing nations and whether they have contributed towards making these countries stronger with regards to their trade and development.

AfT will be addressed in Chapter 4 in order to establish whether the initiative has been effective in assisting Ghana and Nigeria to produce more and trade better. It is necessary to determine whether this initiative is allowing these developing nations to compete in the global market and what impediments are causing slow progress. In addition, recommendations will be made in order to achieve results faster and more effectively in the future.

Chapter 5 of the thesis will discuss MDG 8 to establish whether Ghana and Nigeria will meet these goals and targets by the deadline of 2015. The nature and progress of MDG 8 will be critically discussed in order to determine what obstacles Ghana and Nigeria are facing in trying to achieve this goal of developing a global partnership for development.

The developing countries of Ghana and Nigeria will be specifically discussed under Chapter 6 in relation to their position in the multilateral trading system, the implementation of the WTO agreements, the AfT initiative and reaching MDG 8 by 2015.

Ultimately, under Chapter 7, recommendations and a conclusion will be made regarding these above related aspects based on the arguments and research presented.

1.5 CONCLUSION

AfT is ultimately about providing financial and technical assistance to developing countries in order to enable them to trade at a higher developmental level.⁴⁴ Through this initiative, developing countries such as Ghana and Nigeria are able to increase their share of world trade and come closer to fulfilling their development goals.⁴⁵ However, due to corruption and government abuse with regards to the aid being received, achieving a global partnership for development is seriously threatened in these developing countries.⁴⁶ It is the argument of this

⁴⁴Note 32 above.

⁴⁵ Aid for Trade, available at: http://www.wto.org/english/thewto_e/coher_e/mdg_e/a4t_e.htm, accessed on 4 August 2013.

⁴⁶ Millennium Development Goals, available at: <http://www.government.nl/issues/development-cooperation/milleneum-development-goals-mdgs>, accessed on 13 November 2013.

thesis that if MDG 8 is to have any meaning at all by 2015 and in the future, massive changes need to take place in Ghana and Nigeria. This thesis is therefore aimed at reflecting on the progress of these nations and identifying successes and failures of these initiatives and goals within them. It is also vital to determine what recommendations can be made in order for there to be successful implementation in the future and to avoid repeating the mistakes that slow progress and development in these developing countries.

CHAPTER 2: HISTORY AND BACKGROUND ON THE GENERAL AGREEMENT ON TARIFFS AND TRADE, THE WORLD TRADE ORGANISATION AND THE MULTILATERAL TRADING SYSTEM

2.1 INTRODUCTION

The Multilateral Trading System (MTS) is the body of international trade rules which countries are required to abide with regarding their trading relations with one another.⁴⁷ The role of the MTS matters to nations and their citizens especially since there is an international economic organisation at its centre⁴⁸, which is also termed as “the jewel in the crown”.⁴⁹ The foundation of the MTS was laid down with the signing of the agreement known as the General Agreement on Tariffs and Trade (GATT) by contracting parties on October 1947, which was dominated by the United States of America (USA).⁵⁰ The basic legal text of GATT remained almost unchanged until its successor; the World Trade Organisation (WTO) came into being on January 01, 1995.⁵¹ The MTS has now been described as the heart of the WTO which is responsible for overseeing this system.⁵² Over the years, there has been much cynicism regarding the future of the MTS especially due to the WTO’s Doha Round of negotiations, where negotiations on key issues have been stalled, even after a decade of its launch.⁵³ An imperative question that needs to be ultimately answered is whether GATT and the WTO have facilitated in creating a strong trading system that has contributed to unparalleled growth among developing countries.⁵⁴ In addition, it is necessary to determine the reasons for why these developing countries have had difficulties in participating in the MTS.

This chapter will firstly discuss the history and function of the MTS and the manner in which it affects developing countries. It will then go on to discuss the role of the GATT and the negotiation rounds that took place under this. Thirdly, the WTO’s creation and functions will be examined in determining whether they have advanced the needs of developing countries

⁴⁷Note 5 above, 6.

⁴⁸ Strengthening the Multilateral Trading System: Function of the WTO, at 3, available at: http://e15initiative.org/wp-content/uploads/2013/07/FuncWTO-Background-Paper_-1.pdf, accessed on 27 October 2013.

⁴⁹Ibid 8.

⁵⁰ The Foundation of the World Trading System, available at:

http://www.une.edu.ve/~cpittol/Archivo/Foundations_WTO.htm, accessed on 26 November 2013.

⁵¹Note 9 above.

⁵²Ibid.

⁵³ Note 14 above, 10.

⁵⁴Note 9 above.

and whether these developing countries are able to participate effectively when implementing the WTO agreements. In addition, the Doha Development Agenda (DDA) will be critically discussed in determining the reasons for the failure of this round as well as the effect it has had on the initiatives aimed at developing these poorer nations. This thesis will later discuss these above issues regarding Ghana and Nigeria's development specifically.

2.2 BACKGROUND ON THE MULTILATERAL TRADING SYSTEM

In 1945, the United States decided to establish a systematic multilateral framework for international monetary, financial and trade relations.⁵⁵ Non-discrimination and reciprocity were central ideas in this global arrangement for trade in order for there to be a globalisation of markets.⁵⁶

This thesis argues that there is no precise definition of the MTS. However, as mentioned earlier, the basic aim is to encourage countries to pursue open and liberal trade policies.⁵⁷ Countries need to cooperate with each other in order to reduce trade barriers and to expand trading relations.⁵⁸ The MTS, therefore, refers more to the conduct of trade and how the wider trading community should conduct their affairs within the legal framework that is set out. It is thus in the best interests of any liberalising economy to have a free and fair MTS that is open and stable for development.⁵⁹

It has been commented on previously that the basic legal text of the GATT remained almost unchanged until its successor, the WTO, came into being on 1 January 1995.⁶⁰ The scope of the MTS was widened with the inclusion of trade in agriculture and the conclusion of General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Intellectual Property Rights (TRIPS).⁶¹

⁵⁵ RM Stern, 'The Multilateral Trading System', (2011), Goldman School of Public Policy Working Paper No, at 6, available at: <http://gspp.berkeley.edu/assets/uploads/research/pdf/ssrn-id1783908.pdf>, accessed on 3 May 2013.

⁵⁶Ibid 6.

⁵⁷Note 5 above, 6.

⁵⁸ DA Iwirm & KH O'Rourke, 'Coping with Shocks and Shifts: The MTS in Historical Perspective', (2011), at 1, available at: <http://www.nber.org/chapters/c12575.pdf>, accessed on 15 July 2013.

⁵⁹Trade, June 2000, available at: <http://www.un.org/esa/ffd/themes/Trade-Sub-index-.htm>, accessed on 8 November 2013.

⁶⁰Note 5 above, 6.

⁶¹Ibid.

One of the problems with the MTS lies in the capacity gap between developed and developing countries.⁶² This is due to developing countries having a lower capacity in negotiating trade agreements and in implementing them.⁶³ Hence, there is a crucial gap between what these countries commit themselves to do and what they are actually able to implement and complete.⁶⁴ Even more so, developed countries have constantly promised to address this issue of capacity building but it still remains problematic.⁶⁵ Under the WTO, new and various issues are always being added to the negotiating agenda and are moving at rapid speed.⁶⁶ Hence, developing countries fall further behind due to their inability of solving the first set of issues presented to them.⁶⁷

Hence, the core elements for developing the MTS are technical cooperation and capacity building in order to integrate the world's developing countries into the system.⁶⁸ Furthermore, without international agreements on trade policies, policies may be encouraged that actually restrict trade and disadvantage the poorer nations instead of benefitting them.⁶⁹ Without an institutionalized system, the world economy may not flourish as much as it is capable of.⁷⁰ It is important for countries to enjoy the privileges that other member countries give them and to have the security that the trading rules provide.⁷¹ By taking this into consideration, advancement and development can occur in all areas that are lacking. Based on the research presented, this thesis supports the importance of a strong MTS in order to expand on trade, encourage job creation and develop the economy.

2.2.1 GATT and the Rounds of Negotiation

The GATT is known as the “constitution of international trade law” and the “dominant multilateral international trade institution” since the catastrophic experience with

⁶² C Blouin, ‘The Reality of Trade: The WTO and Developing Countries’, at 2, available at: <http://www.nsi-ins.ca/wp-content/uploads/2012/10/2002-The-Reality-of-Trade-the-Uruguay-Round-and-Developing-Countries.pdf>, accessed on 22 July 2013.

⁶³ Aid for Trade: The European Commission, available at: <http://ec.europa.eu/trade/policy/countries-and-regions/development/aid-for-trade/>, accessed on 23 November 2013.

⁶⁴ Note 62 above, 12.

⁶⁵ Ibid 2.

⁶⁶ Ibid 7.

⁶⁷ Ibid 2.

⁶⁸ Trade Facilitation: The Benefits of Simpler, More Transparent Border Procedures, Policy Brief OECD, August 2003, available at: <http://www.oecd.org/trade/facilitation/8920454.pdf>, accessed on 2 June 2013.

⁶⁹ D White, ‘Pros and Cons of Free Trade Agreements’, US Liberal Politics, available at: http://usliberals.about.com/od/theeconomyjobs/i/FreeTradeAgmts_2.htm, accessed on 25 November 2013.

⁷⁰ Note 58 above, 1.

⁷¹ Settling Disputes Chapter 3, at 105, available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap3_e.pdf, accessed on 22 September 2013.

protectionism in the 1930's took place.⁷² There is still the risk of this devastating rebirth of protectionism that could produce great losses due to high tariffs and countries being less integrated.⁷³ There is, therefore, a need to protect international trade growth and finance. The GATT, however, was originally aimed to be a temporary document seeking to primarily eliminate tariffs.⁷⁴

The purpose of the 1947 GATT is stated as the,

reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce ... with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.⁷⁵

During 47 years of its existence, seven rounds of trade negotiations took place under the support of GATT. These rounds were: Annecy (1949), Torquay (1951), Geneva (1956), Dillon (1960-61), Kennedy (1964-1967), Tokyo (1973-1979) and Uruguay (1986-1994).⁷⁶ The first four rounds were primarily aimed at market access in manufactured, semi-manufactured and capital goods as well as lowering tariffs.⁷⁷ The Kennedy Round further adopted an Agreement on Anti-Dumping.⁷⁸ It was during the Kennedy Round that the position of developing countries was truly considered.⁷⁹ In addition, the Tokyo Round also produced extensive results in reducing custom duties.⁸⁰ However, the Uruguay Round was the final, most complex and far-reaching of all trade negotiations under GATT.⁸¹ The Uruguay Round successfully covered diverse issues like subject services and intellectual

⁷²R Bhala, "International Trade Law: Theory and Practice", 2 ed, (2001), 127.

⁷³U Dadush, 'Resurgence Protectionism: Risks and Possible Remedies', at 1-2, available at: <http://www.felixpena.com.ar/contenido/negociaciones/anexos/2009-05-resurgent-protectionism.pdf>, accessed on 22 September 2013.

⁷⁴Note 72 above, 127.

⁷⁵Preamble of GATT 1947

⁷⁶PC Mavroidas, 'Doha, Dohalf or Dohaha? The WTO Licks Its Wounds', (2011), 3, *Trade Law and Development*, No 2, 376.

⁷⁷ R Wilkinson, 'The Problematic of Trade and Development Beyond the Doha Round', (2009), 1, *The Journal of International Trade and Diplomacy* 3, 155-186.

⁷⁸Note 76 above, 376.

⁷⁹Note 72 above, 138.

⁸⁰The Roots of the WTO, available at:

<http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm>. accessed on 25 November 2013.

⁸¹Note 76 above, 376.

property and took many important steps in reducing trade barriers as well as making the decision to phase out restrictions on imports of textiles and clothing.⁸² These restrictions were imposed by developed countries mainly on imports from selected developing and least-developing countries under previous bilateral agreements.⁸³

The Uruguay Round of the multilateral trade negotiations was an important milestone in over fifty years of GATT/WTO history.⁸⁴ Despite difficulties in launching the Uruguay Round, the negotiating agenda that was finally adopted was wide-ranging and motivated.⁸⁵ It was clear that the Uruguay Round was necessary since the Tokyo Round had not adequately dealt with issues such as market access and liberalization.⁸⁶ Many developing countries actively participated in the Uruguay Round individually and in coalitions with industrial countries by formulating new rules for the world trading system as well as making market access offers in areas such as trade in services and trade in agricultural products.⁸⁷

2.2.2 The World Trade Organisation and the Doha Round of Negotiation

As mentioned earlier, the WTO system, which is the result of the Uruguay Round of trade negotiations, replaced the GATT as the legal and institutional foundation of the MTS.⁸⁸ It was necessary for a permanent multilateral infrastructure to be created that promoted trade liberalization and dealt with the expansion of international trade law and policy.⁸⁹ The WTO creates a forum for member governments to address issues that affect their multilateral trade relations as well as to oversee the implementation of the trade agreements negotiated under the Uruguay Round.⁹⁰

The agreement establishing the WTO, known as the Marrakesh Agreement, provides that the WTO should perform four functions.⁹¹ These functions are namely, facilitating the implementation; administration and operation of the Uruguay Round legal instruments and any new agreements negotiated in the future; provide a forum for further negotiations among

⁸²Ibid.

⁸³Note 5 above, 6.

⁸⁴ Paralegal Guide: International Trade Law, available at: <http://www.paralegal.net/resources/international-trade-law/>, accessed on 20 November 2013.

⁸⁵ Note 62 above, 5.

⁸⁶ Note 72 above, 193.

⁸⁷Note 62 above, 1.

⁸⁸Note 5 above, 6.

⁸⁹Ibid.

⁹⁰Note 72 above, 193.

⁹¹ Note 5 above, 6.

member countries on matters covered by the Agreements; be responsible for the settlement of differences and disputes among member countries and it shall be responsible for carrying out periodic reviews of the trade policies of its member countries.⁹² Hence, every member of the WTO is directed to “ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements”.⁹³

The three main agreements under the WTO system were the multilateral agreements on trade in goods including the General GATT 1994 and its associate agreements, General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁹⁴ The TRIPS Agreement will be discussed in a subsequent chapter.

The WTO is different from the GATT and is therefore exposed to new obstacles especially since it has an increasingly active and varied membership of countries in the world.⁹⁵ Technical assistance to developing countries is an essential part of the WTO.⁹⁶ The objective of this is to help build the necessary institutions and to train officials.⁹⁷ In addition, the WTO aims to improve the understanding of the agreements created and facilitate implementation of all its obligations.⁹⁸ There is constant emphasis on enhancing the capacity of countries to integrate into the world economy in order to realize the benefits of the market access opportunities that are available to them as a result of being WTO members.⁹⁹

Technical assistance took the form of short courses that were provided by organizations such as the United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC).¹⁰⁰ These workshops and capacity building programs emphasized trade promotions and assisted businesses in developing countries which formed

⁹²Ibid.

⁹³S Charnovitz, ‘The WTO’s Problematic Last Resort Against Non-Compliance’, at 2, available at: <http://www.worldtradelaw.net/articles/charnovitzlastresort.pdf>, accessed on July 3 2013.

⁹⁴Note 5 above, 6.

⁹⁵M Wolf, ‘Globalization and Global Economic Development’, (2004), 20(1), Oxford Review of Economic Policy, 72-84, 75.

⁹⁶Chapter 6: Developing Countries, available at:

http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap6_e.pdf, accessed on 20 September 2013.

⁹⁷Note 62 above, 6-7.

⁹⁸Ibid 1.

⁹⁹Ibid 6.

¹⁰⁰UNCTAD:Relationship with other agencies, available at:

<http://unctad.org/en/Pages/About%20UNCTAD/Relationship-with-other-agencies.aspx>, accessed on 22 September 2013.

technical assistance.¹⁰¹ These workshops, however, were not entirely beneficial to developing countries and had many limitations in their implementation.¹⁰² Developing countries faced many challenges in practically applying the lessons that were imparted at these workshops and seminar programs.¹⁰³ Instead of fostering advancement, poor results were seen.¹⁰⁴

In addition, the WTO Agreements include provisions that entitle developing countries to possess special rights. These provisions are termed as the "Special and Differential Treatment" provisions. These rights allow developed countries the ability to treat developing countries in a more favorable manner than other WTO Members. Special allowances are given which include longer time periods for implementation in order to increase trading opportunities at a similar pace of other stable countries. It was furthermore agreed in the Doha Declaration that such provisions were imperative for the growth of developing countries and hence needed strengthening and more effective operations. Such Special and Differential Treatment provisions are found in agreements such as the GATS and the TRIPS Agreement. (Special and Differential Treatment Provisions, available at: http://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm, accessed on 27 February 2014)

The WTO has been responsible for overseeing the MTS which has gradually evolved since 1948.¹⁰⁵ It further provides a forum for continuing negotiations to liberalize trade in goods and services by removing barriers and developing rules in new trade-related subject areas.¹⁰⁶ Another important feature is the mechanism provided for settling trade disputes among member countries.¹⁰⁷

Based on the research presented thus far, this thesis identifies that there is no doubt the Uruguay Round of trade negotiations made a significant contribution toward lowering global barriers to merchandise trade. However, developing countries have remained unable to tap into the markets of developed countries.¹⁰⁸ Moreover, there is an increase in evidence of the

¹⁰¹ Ibid.

¹⁰² M Tortora, 'The Skeleton in the Closet', UNCTAD, at 7-9, available at: http://unctad.org/Sections/comdip/docs/webcdpbkgd16_en.pdf, accessed on 22 September 2013.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Note 5 above, 6.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

difficulties faced by developing countries in implementing the WTO commitments in new areas such as the TRIPS Agreement and the Agreement on Sanitary and Phytosanitary Measures (SPS) which are both discussed under the following chapter.

In November 2001, the WTO members decided to launch a further round of multilateral trade negotiations that was entitled the Doha Development Agenda (DDA).¹⁰⁹ It was the fourth session of the Ministerial Conference which took place in Doha, Qatar.¹¹⁰ The odd name given was meant to distinguish it from the Uruguay Round and to emphasize that developing country interests were to be given priority.¹¹¹ Before the various country representatives met, the deep divisions between developing and developed countries had not yet been resolved.¹¹² These issues included aspects on transparency in government procurement, trade facilitation and market access.¹¹³ One of the most controversial issues dealt with agriculture due to the vital role it played in developing countries.¹¹⁴

The focus of the Doha Round was on trade liberalisation in order to enhance the interests of developing countries.¹¹⁵ Some of these developing countries could not benefit from a multilateral liberalization based on reciprocal market access because they had very little to offer compared to other countries.¹¹⁶ The Doha Round was the first time trading nations ever focused on the needs of developing countries.¹¹⁷ The Doha Declaration contained important initiatives for developing countries and further recognised that trade is not an end in itself but rather a means to achieving broader development.¹¹⁸

Despite the aims and purpose of the negotiation round, the Doha Round, which started in 2001, has suffered a deadlock in recent years.¹¹⁹ The main stumbling blocks were agriculture

¹⁰⁹ TN Srinivasen, 'Developing Countries and the Multilateral Trading System After Doha', 2002, Discussion Paper No.842, at 1, available at http://www.econ.yale.edu/growth_pdf/cdp842.pdf, accessed on 23 June 2013.

¹¹⁰ Ibid.

¹¹¹ JJ Schott, 'The Future of the Multilateral Trading System, in a Multi-Polar World', 2008, at 4, available at: [http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/%28ynDK_FileContainerByKey%29/ADMR-7BEHDV/\\$FILE/Futureofthemultilateraltradingsystem.pdf?Open](http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/%28ynDK_FileContainerByKey%29/ADMR-7BEHDV/$FILE/Futureofthemultilateraltradingsystem.pdf?Open), accessed on 17 May 2013.

¹¹² Note 109 above, 1.

¹¹³ B Bhattacharyya, 'Transparency in Government Procurement in the Context of the Doha Development Agenda', at 121, available at: http://www.unescap.org/tid/publication/chap7_2278.pdf, accessed on 2 November 2013.

¹¹⁴ Note 109 above, 8.

¹¹⁵ Note 55 above, 6.

¹¹⁶ Aid and Trade, *Oxford Review of Economic Policy*, (2007), 23 (3), 481-507.

¹¹⁷ Note 113 above, 121.

¹¹⁸ Note 68 above, 1-8.

¹¹⁹ Note 48 above, 9.

and the fact that new issues had arisen whilst old issues had not yet been solved.¹²⁰ Some of these new issues included the inability to provide sustainable solutions for the food crisis, the impact of raised oil prices and the weak and drastic reduction in governmental support.¹²¹ According to this thesis, it is due to these unresolved matters that developing countries are unable to progress effectively since many relied on the conclusion of this round.

Hence, there are many reasons why the Doha Round has not progressed well. Some of the problems reside in the complex issues on the trade negotiating agenda.¹²² There is also a sizeable gap on the ability of countries to participate actively in WTO deliberations¹²³, hence the reason why developing nations find it challenging to participate in the MTS. In addition, resource constraints are real.¹²⁴ Developing countries have been uncertain as to whether they could take advantage of the new trading opportunities in the Doha Round due to infrastructure and human capital constraints experienced.¹²⁵ Success in the Doha Round is complicated due to the legacy of previous GATT rounds.¹²⁶ During the GATT era, there was substantial reduction of border barriers to manufactured imports in nations like the United States and Europe.¹²⁷ It can therefore be argued that in comparison, the GATT era was a huge success¹²⁸ whilst the Doha Round was a failure. In 2011 the Director General (DG) of the WTO, Pascal Lamy, announced before the Trade Negotiating Committee of the WTO that the Doha round is dead.¹²⁹ The DG also commented that the Doha mandate continues to live on as an objective but not as a tangible reality.¹³⁰

¹²⁰ R Acharya & M Daly, 'Selected Issues Concerning the MTS', Discussion Paper No 7, at 13, available at: http://www.wto.org/english/res_e/booksp_e/discussion_papers7_e.pdf, accessed on 9 November 2013.

¹²¹ B Gilbert, 'Doha Round: WTO causes more disputes than it settles', available at: <http://www.momagri.org/UK/focus-on-issues/Doha-Round-WTO-Causes-More-Disputes-than-it-Settles-332.html>, accessed on 22 September.

¹²² The Doha Agenda, available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/doha1_e.htm, accessed on 8 July 2013.

¹²³ Note 111 above, 5.

¹²⁴ Panel 2: The Financial Crisis, Trade and Regional Integration in Africa, African Development Bank Annual Meetings 2009, available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/AMS%20Crisis%20%20Regional%20Integ%20%20Trade%2010%20April2009%20-%20Final.pdf>, accessed on 26 November 2013.

¹²⁵ Ibid.

¹²⁶ Note 111 above, 5.

¹²⁷ Ibid 6.

¹²⁸ P Collier, 'Why the WTO is Deadlocked and What can be done about it', 2005, at 1, available at: <http://users.ox.ac.uk/~econpco/research/pdfs/WTO-deadlock.pdf>, accessed on 22 September 2013.

¹²⁹ Note 76 above, 368.

¹³⁰ Ibid.

Other academics, such as Srinivasen, have further argued that calling the Doha Round a development round was not suitable.¹³¹ He argues that trade is just one of the tools in the development process and that there are many other tools that influence development and are probably more important than trade.¹³² This thesis supports the argument of Srinivasen for the reason that a development round is intended to produce effective steps going forward. This round has come to a complete standstill which clearly proves that it contains complex issues which are not able to be addressed effectively because of a lack of commitment and inadequate solutions.

According to Mavroidis, there is much uncertainty surrounding the Doha Round's fate.¹³³ The round, in his opinion, as originally designed and understood, should not be an option any longer.¹³⁴ He is of the belief that it is impossible to predict what direction it will take due to the lack of leadership and since it suffers from "inherent birth defects".¹³⁵ A further academic, Panagariya, is of the credited argument that it is false to associate the WTO and its achievements with failure.¹³⁶ This thesis supports the above arguments and does make the note that these achievements however, have indeed been tarnished by what is definitely a bigger failure of bringing the Doha negotiations to a conclusion.

Panagariya states that "the silver lining for the optimists, however, is that while the negotiations remain in intensive care on life support, virtually none of the major negotiators have suggested that the life support be withdrawn".¹³⁷ This therefore shows the hope that a revival would take place since developing countries will be detrimentally affected by the complete failure of the round. This thesis submits that it would be a positive starting point if developing countries took responsibility in their leadership to pursue their concerns.

Despite the above concerns, this thesis argues that some progress has indeed been achieved in direct response to Doha. As such, the WTO and the Organisation for Economic Co-operation and Development (OECD) also created a joint database to monitor support for trade capacity building in the context of the Doha negotiations and the Millennium Development Goals

¹³¹Note 109 above, 25.

¹³²Ibid 18.

¹³³Note 76 above, 376.

¹³⁴Ibid 376.

¹³⁵Ibid.

¹³⁶Note 14 above, 10.

¹³⁷Ibid.

(MDG's), which will help to ensure better co-ordination.¹³⁸ Surveys have shown that the Doha ministerial meeting had a significant impact on shifting the focus of development co-operation towards a growth agenda focused on reducing poverty and which includes trade and investment as the key engines of development.¹³⁹ Although considerable progress has been made, a number of challenges remain, particularly with regard to the effective implementation of trade capacity building.¹⁴⁰ This thesis seeks to emphasize that although developing countries are struggling to implement their WTO obligations and are further relying heavily on the Doha Round being completed, it has to be understood that it is a challenging task for the WTO to deliver on it, especially since there are differences in what each country desires from the round.

As has been deliberated on earlier, developing countries face numerous issues in participating in the WTO process. This thesis emphasizes the importance of developing countries requiring the capacity to understand the content, implications and constraints of the WTO and its agreements. In addition, they must have the ability to formulate trade objectives and pursue them in order to defend their nation's development.¹⁴¹

Bali, Indonesia, held the Ninth Ministerial Conference in the year 2013 where a number of decisions were created that were aimed at streamlining trade, making provisions for developing countries to have more options in providing food security and boosting trade development more generally. Some of the work programs involved Aid for Trade, transfer of technology, agreements on trade facilitations and even monitoring mechanisms on Special and Differential Treatment. The above thus emphasizes the efforts put forward in creating development. (Ninth WTO Ministerial Conference, available at: <https://mc9.wto.org/> accessed on 27 February 2014).

It is clear from the arguments presented that the WTO has come under heated criticism due to the poor results seen in certain developing countries. However, despite these criticisms, the existence of the system is of great importance to international trade.¹⁴² When weighing up the pros and cons of the system, it can be submitted that there are many over-riding reasons why

¹³⁸Note 68 above.

¹³⁹Ibid.

¹⁴⁰Ibid.

¹⁴¹Note 62 above, 1.

¹⁴² 10 Benefits of the WTO Trading System, available at: http://www.wto.org/english/res_e/doload_e/10b_e.pdf, accessed on 12 April 2012

international trade relations are better off with the system than without it.¹⁴³ These reasons include the promotion of peace, constructively handled disputes, easy rules to abide by, freer trade cutting the cost of living, providing more choices for products and qualities, incomes being raised by trade, the stimulation of economic growth by trade and good government being encouraged.¹⁴⁴

2.3 CONCLUSION

The support for the MTS has not declined but has multiplied in the decades of its existence.¹⁴⁵ From a mere 23 contracting parties in 1947, the WTO commands the support of 151 members today.¹⁴⁶ This thesis is furthermore of the argument that the MTS is necessary for nations and their citizens especially since there is the possibility of power being misused on a global scale and hence, the MTS promotes compliance and transparency. Even more, the WTO expanded on areas which were in fact not covered by the GATT, the most prominent, being the TRIPS Agreement covering Intellectual Property.¹⁴⁷ The WTO was therefore created to continue the move forward toward freer trade that was started under the GATT.

As have been shown in this chapter, the WTO affects many groups. Much like the GATT, it is still fundamentally a force for increased trade and has done much in facilitating this international trade.¹⁴⁸ Despite these plausible efforts, this thesis is of the argument that the WTO is not a perfect organization and does lack in some areas as many systems and organisations do. It has the ability to be improved, but many of its flaws will inevitably remain because they are there in response to political realities.¹⁴⁹ Overall, it seems clear that the WTO serves an extremely useful purpose, and that it serves it surprisingly well.¹⁵⁰ This thesis supports the view that even though there are critics as well as supporters of the system; on a balance it seems as if the support of the MTS trumps all critics.¹⁵¹

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ P Kumar, 'Multilateral Trading System: Is it India's Best Option?', 2008, Working Paper No.4, at 1, available at: <http://www.cuts-citee.org/pdf/WP08-04.pdf>, accessed on 29 May 2013.

¹⁴⁶ Ibid 1.

¹⁴⁷ Note 55 above, 15.

¹⁴⁸ Ibid 15.

¹⁴⁹ Ibid 23.

¹⁵⁰ Ibid 17.

¹⁵¹ Note 48 above, 3.

Lastly, according to Wolf, at the beginning of the twenty-first century, the MTS is the most remarkable achievement in institutionalized global economic cooperation that there has ever been.¹⁵² He also argued that the GATT survived and thrived through many huge challenges and since it has been reborn as the WTO in 1995, this institution has become the most prominent symbol of globalization.¹⁵³ This thesis ultimately upholds the argument put forward in a recent article by Murphy when she stated,

We still need a multilateral framework for trade. The multilateral system gives the most countries the best chance to have a voice in the economic structures that affect them. If there is a crisis in the multilateral system then governments need to take responsibility for the crisis and act to get us out of the mess... it's not just about leadership-it's about whether people believe the trade system is needed.¹⁵⁴

¹⁵²Note 95 above, 75.

¹⁵³Ibid.

¹⁵⁴S Murphy, 'Crisis or opportunity in the multilateral trading system?', 2012, Institute for Agriculture and Trade Policy, available at: <http://www.iatp.org/documents/crisis-or-opportunity-in-the-multilateral-trade-system>, accessed on 28 November 2013.

CHAPTER 3: THE WORLD TRADE ORGANIZATION AGREEMENTS

3.1 INTRODUCTION

The World Trade Organisation (WTO) agreements stem from negotiations between Member countries.¹⁵⁵ The WTO agreements cover goods, services and Intellectual Property (IP).¹⁵⁶ It is through these agreements that Members have rights and obligations regarding their treatment and flexibility in the market.¹⁵⁷ In addition, these agreements set out the principles of trade liberalization and the exceptions that are permitted within this.¹⁵⁸ Furthermore, it takes into consideration the position of developing countries and prescribes special treatment and dispute settlement procedures for them.¹⁵⁹ The basis of the WTO system is the Uruguay Round agreements, such as the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which are analysed in this chapter.¹⁶⁰

The SPS Agreement is aimed primarily at protecting human, animal and plant life from the spread of pest or diseases that may be brought into the country by contaminated vegetables, fruits, meat and other products.¹⁶¹ The agreement requires member countries to apply these regulations in a way that will not cause unreasonable barriers to international trade but rather be based on scientific principles in order to adopt international standards and guidelines where possible.¹⁶² However, whilst standards and regulations promote economic development and trade, they may also be used as powerful tools to hamper international trade and protect domestic producers mainly through unjustified requirements and unnecessary tests that are time consuming and detrimental for developing countries.¹⁶³

¹⁵⁵ The WTO Agreements, available at: http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr03_e.htm, accessed on 30 July 2013.

¹⁵⁶ WTO Legal Texts, available at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm, accessed on 2 October 2013.

¹⁵⁷ Note 155 above.

¹⁵⁸ Overview: A Navigational Guide of the WTO Agreements, available at: <http://www.wto.org>, accessed on June 29 2013.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Note 5 above, 6.

¹⁶² Note 5 above, 6.

¹⁶³ S Zarrilli, 'WTO Sanitary and Phytosanitary Agreement: Issues for Developing Countries', Trade-Related Agenda, Development and Equity (TRADE) Working Paper 3, at 1, available at: <http://www.biosecurity.govt.nz/files/biosec/policy-laws/intl/sps/.../dc-issues.pdf>, accessed on 4 July 2013.

The second agreement that will be discussed in this chapter is the TRIPS Agreement. Out of all the agreements administered by the WTO, the TRIPS Agreement is said to be undoubtedly the most controversial with respect to its development-related impacts.¹⁶⁴ Many developing countries are of the opinion that this 1995 agreement is unbalanced because it benefits developed countries and transnational corporations whilst imposing various costs on developing countries as well as being ineffective in areas like trade and investment.¹⁶⁵ This conflict between developed and developing countries, especially over services and high-technology industries, has grown heated over the years.¹⁶⁶ The reason for poor results in developing countries is especially attributed to socio-political factors such as the scarcity of basic infrastructure, poor roads and transportation for access to hospitals, government instability and corruption.¹⁶⁷

This chapter will therefore analyse both the SPS and TRIPS agreements respectively, in order to determine whether their implementation has been beneficial to developing nations. A critical discussion is necessary in order to determine the aims of these agreements and the results they have produced in developing nations over the past years. The specific position of Ghana and Nigeria will be discussed at a later stage.

3.2 LEGAL ANALYSIS OF THE AGREEMENT ON THE APPLICATION ON SANITARY AND PHYTOSANITARY MEASURES

In the past 50 years there has been an expansion of international trade and travel.¹⁶⁸ This expansion has increased the movement of products which results in possible health risks being posed to the public.¹⁶⁹ Due to this, food safety is no longer just a domestic issue.¹⁷⁰ Countries worldwide are faced on a daily basis with decisions concerning risks posed by

¹⁶⁴Mukono, 'Intellectual Property in the Economic Partnership Agreements: looking at the pro-development concerns of Intellectual Property 2012', Public Dialogue, at 4, available at: http://www.seatiniuganda.org/downloads/Reports/march_reports/Mukono%20Public%20Dialogue%20report%5B1%5D.pdf, accessed on 25 November 2013.

¹⁶⁵Note 17 above, 1.

¹⁶⁶Note 72 above, 195.

¹⁶⁷ J Subhan, 'Scrutinized: The TRIPS Agreement and Public Health, (2006), 9 (2), McGill Journal of Medicine, 152-159.

¹⁶⁸ The WTO Sanitary and Phytosanitary (SPS) Agreement, at 3, available at:

http://www.daff.gov.au/__data/assets/pdf_file/0007/146896/wto_sps_agreement_booklet.pdf, accessed on 02 July 2013.

¹⁶⁹ Ibid.

¹⁷⁰ AAlemanno, 'Public Perception of Food Safety Risks Under WTO Law: A Normative Perspective', available at <http://www.albertoalemanno.eu/.../public-perception-of-risks-under-wto-law-a-normative-perspective> accessed on 4 July 2013.

tradable food products and the processes in which they are manufactured in.¹⁷¹ Furthermore, farmers in developing countries face challenges in selling their products around the world.¹⁷² There are many technical requirements such as hygiene and safety of products that have become barriers in trading.¹⁷³ In the food industry, product and process development is considered vital since it is influential on the domestic economy.¹⁷⁴ It is for this reason that governments are concerned with issues such as food poisoning, foot and mouth disease or sugar-plant pests.¹⁷⁵ By responding to these risks, governments tend to adopt protective measures that hinder the trade of products which often results in trade disputes.¹⁷⁶ Adopting these measures may be necessary for the protection of public health and their implementation may be motivated by a desire to shield domestic industries from food imports coming from foreign countries.¹⁷⁷ An example of this guise is when a country prohibits imports of a particular product in order to protect domestic producers of that product, citing an unfounded risk of a pest or a disease.¹⁷⁸

It is required that domestically produced and imported goods adhere to certain regulations and standards.¹⁷⁹ These standards and regulations are constantly increasing in most countries because of the expansion in volume, variety and sophistication of products that are manufactured and traded.¹⁸⁰ As commented on earlier, there are standards and regulations which can be used as abusive tools to cause detrimental effects within international trade.¹⁸¹ It is the argument of this thesis that the SPS Agreement aims to strike a balance between protecting food safety, plant and animal health as well as preventing trade barriers that are unjustifiable. However, the agreement can be detrimental to developing nations when implemented incorrectly.

¹⁷¹ Ibid.

¹⁷² The SPS Agreement, International Trade Forum Magazine, Issue 3, 2010, available at: <http://www.tradeforum.org/The-SPS-Agreement-WTO-Agreement-on-the-Application-of-Sanitary-and-Phytosanitary-Measures/>, accessed on 20 November 2013.

¹⁷³ Ibid.

¹⁷⁴ R Winger & G Wall, 'Food Product Innovation: A Background Working Paper', at 1, available at: <http://www.fao.org/docrep/016/j7193e/j7193e.pdf>, accessed on 1 October 2013.

¹⁷⁵ SK Gujadhur, 'Technical Assistance for SPS Measures', International Trade Forum Magazine, available at: <http://www.tradeforum.org/Technical-Assistance-for-SPS-Measures-Protect-Health-Not-Trade/>, accessed on 8 November 2013.

¹⁷⁶ Note 170 above.

¹⁷⁷ Ibid.

¹⁷⁸ Note 72 above, 1666.

¹⁷⁹ Understanding the SPS Agreement, available at: <http://www.wto.org>, accessed on 2 September 2013.

¹⁸⁰ Note 163 above, 1.

¹⁸¹ Ibid.

The SPS Agreement was negotiated during the Uruguay Round in response to many concerns regarding trade barriers and product safety.¹⁸² In order to achieve the interests of promoting international trade and protecting the life and health of human beings, the WTO drafters decided to develop this new legal instrument where science has been chosen as the tool to determine the lawfulness of Member States when governing food matters.¹⁸³ Thus, the agreement recognizes the importance of WTO members protecting themselves from the risks posed by the entry of pests and diseases along with seeking to minimise any negative effects of SPS measures on trade.¹⁸⁴ These SPS measures are usually in the form of quarantine or food safety requirements which can be classified as sanitary measures, relating to human or animal health or life, and phytosanitary, relating to plant life and health.¹⁸⁵ In seeking to protect health, WTO members must not use SPS measures that are unnecessary, not science-based, arbitrary, or which constitute a disguised restriction on international trade.¹⁸⁶ Although these measures were designed for protection, some member countries are using protectionism in disguise.¹⁸⁷ Thus, there is a pressing need to assess the motives behind these SPS measures. Ensuring that they are used to protect public health and safety but not for protectionist ends is a difficult but urgent task for the WTO.¹⁸⁸

In relation to the above, the agreement provides guidelines for government behaviour in implementing technical measures.¹⁸⁹ The goal is therefore to protect the legitimate rights of importing countries with respect to national health and safety without providing a loophole for countries to avoid other trade-liberalizing disciplines of the Uruguay Round Agreements.¹⁹⁰ The SPS Agreement is composed of 14 articles stipulating procedural and substantive requirements, definitions and additional details.¹⁹¹ The cornerstone of the SPS Agreement falls under Article 2.2 which stipulates that SPS measures must have a scientific

¹⁸² The WTO Agreement Series: Sanitary and Phytosanitary Measures, at 2, available at:

http://www.wto.org/english/res_e/booksp_e/agrmtseries4_sps_e.pdf, accessed on 1 November 2013.

¹⁸³ Note 170 above, 4.

¹⁸⁴ Note 182 above, 9.

¹⁸⁵ Ibid.

¹⁸⁶ Note 168 above, 3.

¹⁸⁷ D Kono, 'Protection for whom? The Uses and Abuses of Sanitary and Phytosanitary Standards in the WTO', at 1, available at: http://www.princeton.edu/~pcglobal/conferences/wtoreform/Kono_memo.pdf accessed on 1 October 2013.

¹⁸⁸ Ibid 1.

¹⁸⁹ S Thornsby, 'Sanitary and Phytosanitary Issues: Where does the WTO go from here?', at 7, available at: <http://www.unctad.info/upload/Infocomm/Docs/orange/spswto.pdf>, accessed on 13 May 2013.

¹⁹⁰ Ibid 12.

¹⁹¹ SA Neeliah, 'The SPS Agreement: Barrier or Catalyst?', (2011), 12 (2), The Estey Centre Journal of International Law and Trade Policy, 104-130.

basis and cannot be maintained without sufficient scientific evidence, as discussed earlier.¹⁹² The exercise of the right to impose SPS measures is further limited by a non-discrimination requirement which is seen in Article 2.3 where Members have to ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.¹⁹³ This broad non-discrimination provision is complemented in Article 5.5, according to which each Member has to avoid arbitrary or unjustifiable distinctions, if such distinctions result in discrimination or a disguised restriction on international trade.¹⁹⁴

The agreement is administered by the Committee on Sanitary and Phytosanitary Measures, in which all WTO members can benefit by active participation.¹⁹⁵ In order to help members implement the SPS Agreement, the SPS Committee has activities in place such as monitoring this implementation process.¹⁹⁶ There is also a range of specific technical assistance activities that are organized with the aim of enhancing knowledge and expertise of government officials from WTO developing country Members so that the agreement is comprehended effectively.¹⁹⁷ SPS measures are relevant to all exporters and importers because while exporters may not represent a risk themselves, there may be contamination with soil or plant residues or shipments of defective packaging materials.¹⁹⁸ Responsibility for implementing the SPS Agreement usually lies with the government departments and national repositories that have the expertise and information relevant to plant and animal health, as well as food safety matters.¹⁹⁹ In 2009, the Participation of African Nations in Sanitary and Phytosanitary Standard-setting Organizations (PAN-SPSO) project carried out activities to sensitize SPS management authorities in Africa on the importance of improved SPS coordination and provided support for the establishment and operation of national SPS committees.²⁰⁰

¹⁹² Agreement on Sanitary and Phytosanitary Measures, available at: <http://www.wto.org>, accessed on 12 October 2013

¹⁹³ Ibid.

¹⁹⁴ Training Module on the WTO Agreement on Sanitary and Phytosanitary Measures, available at: http://unctad.org/en/Docs/ditctncd20043_en.pdf, at 2-10, accessed on 1 October 2013.

¹⁹⁵ The WTO Sanitary and Phytosanitary (SPS) Agreement Available at: http://www.daff.gov.au/_data/assets/pdf_file/.../wto_sps_agreement_booklet.pdf Accessed on 02 July 2013.

¹⁹⁶ Note 168 above.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ The PAN-SPSO project aims to enhance the effective participation of African countries in the standard setting activities of the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC). Implemented by the African Union Inter-African Bureau for Animal Resources (AU/IBAR), in collaboration with the African Union Inter-African

A domestic regulatory framework covering the work, responsibilities and powers of all these bodies is needed, together with concrete systems of compliance.²⁰¹ This would encourage and ensure confidence in assessments and confidence in certificates issued in connection with SPS measures.²⁰² To identify risks and to research, develop and implement science-based SPS measures, WTO members need access to personnel trained in appropriate areas of expertise.²⁰³ According to this thesis, this is the reason developing countries are not able to sufficiently benefit from the agreement. Access to this expertise will detect and diagnose animal and plant pests and diseases that would provide better trade in agricultural commodities.²⁰⁴ Quarantine and inspection officers trained in sampling and detection techniques are needed at import entry and export exit points.²⁰⁵ As part of the SPS agreement, WTO members are encouraged to provide technical assistance to WTO developing country members²⁰⁶, however, based on results and research provided in this thesis, it seems as though this assistance is poor. Although technical capacity will vary between WTO members in implementing the SPS Agreement, developing countries in particular may further find it challenging to implement the agreement due to resource constraints, including limited expertise.²⁰⁷

The argument has been raised that the SPS Agreement places a heavier burden on developing countries than on industrialized countries because developing nations have to comply with the standards already established by the WTO²⁰⁸ which is challenging for them due to high costs.²⁰⁹ According to the research presented, it would thus appear that in order for developing countries to use this WTO agreement effectively, these nations would have to upgrade their SPS system to international standards. This would require an upgrade in

Phytopsanitary Council (AU/IAPSC), and financed by the European Union (EU), the project cooperates with seven Regional Economic Communities (RECs).

201 Note 168 above, 6.

202 Ibid.

203 Ibid 7.

204 Ibid 6.

205 Ibid.

206 Ibid.

207 J Magalhaes, 'Regional Sanitary and Phytosanitary Frameworks and Strategies in Africa', Report for the Standards and Trade Development Facility, 2010, at xi, available at, http://www.standardsfacility.org/Files/Publications/STDF_Regional_SPS_Strategies_in_Africa_EN.pdf, accessed on 18 November 2013.

208 S Jaffee & S Henson, 'Standards and Agro-Food Exports from Developing Countries: Rebalancing the Debate', at 1, available at: <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-3348>, accessed on 12 August 2013.

209 MF Jensen, 'Reviewing the SPS Agreement: A Developing Country Perspective', at 1, available at: <http://www.foi.life.ku.dk/publikationer/~media/migration%20folder/upload/foi/docs/publikationer/working%20papers/2002/1.pdf.ashx>, accessed on 28 November 2013.

laboratories, facilities, equipment, training and research, which in hindsight is expecting developing countries to go beyond many of their abilities and financial positions.²¹⁰ It is the argument of this thesis that this is consequently not beneficial but rather burdening on them especially when developed nations do not remain committed in assisting them.

Furthermore, the agreement provides national authorities with a framework to develop their domestic policies.²¹¹ In order to promote the harmonization of SPS regulations on an international basis, countries are encouraged to play a full part in the activities of international organizations.²¹² A preferred tool used in the SPS Agreement to achieve its goal is that of harmonization.²¹³ The agreement explicitly mentions three organisations that are involved in setting international standards and attempting to harmonize various SPS measures for several years.²¹⁴ These organisations are the Codex Alimentarius (CA), the International Office of Epizootics (IOE) and the International Plant Protection Convention (IPPC).²¹⁵ However, as mentioned previously, few developing countries have the financial and human resources to participate actively in these. The agreement also provides for special and differential treatment in favour of developing countries and least developed countries under Article 10 of the agreement.²¹⁶ It includes longer time-frames for compliance and facilitation of developing country participation in the work of the relevant international organizations.²¹⁷

Based on the above concerns, it is clear that the SPS Agreement is unable to achieve its desired results among developing countries.²¹⁸ Despite these issues, there is some hope in the agreement, since it has been designed in a way that can be used as instruments to achieve policy objectives like protecting domestic producers, even though WTO members are required to restrain from applying measures for any protective purposes.²¹⁹ Developing nations are required to use this agreement as an instrument for their benefit by understanding it correctly.

²¹⁰ Note 62 above, 7-8.

²¹¹ Note 163 above, 7.

²¹² Ibid.

²¹³ Note 209 above, 7.

²¹⁴ Ibid 22-23.

²¹⁵ Ibid.

²¹⁶ Ibid 29.

²¹⁷ Note 163 above. 23.

²¹⁸ Note 189 above, 17..

²¹⁹ P Crivelli & J Groschl, 'SPS Measures and Trade: Implementation Matters', 2012, Staff Working Paper, at 2-31, available at: http://www.wto.org/english/res-e/reser_e/ersd201205-e.pdf accessed on 5 June 2013.

It is the argument of this thesis that developed countries have benefitted whilst developing countries are falling behind with results. It is not the rich that needs assistance, but rather the poor. Based on the arguments presented in this thesis, for some, implementation has produced mixed results and has been a slow process. The problems faced include a lack of infrastructure in developing countries and in addition, the capacity to engage in international development activities is further limited.²²⁰ Developing countries were also constrained by their relative inability to access information on standards or in developing standards.²²¹ The lack of tools to implement commitments and exercise rights, insufficient time to comment on notifications and the lack of international consensus standards for food safety were additional problems faced.²²²

The common complaint that arises under the implementation of this agreement is that importing countries are not adhering to international standards.²²³ There are usually long delays when it comes to completing risk assessments and there is also insufficient transparency.²²⁴ There are debates regarding how and when to be lenient to poorer countries without endangering consumers and farming in importing countries.²²⁵ The SPS Committee has agreed on a procedure for developing countries to request special treatment or technical assistance when they find it difficult to meet the specified requirements.²²⁶ Developing countries have been finding it difficult to meet these requirements and although special treatment and technical assistance are objectives to be achieved, they have not materialised in many cases.

3.3 LEGAL ANALYSIS OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY

Due to the unauthorized use of IP that infringed the right of the owner, developed countries were prompted to make proposals for some sort of action to be taken as early as the Tokyo Round of negotiations.²²⁷ Largely due to the unsatisfactory enforcement of trademark and copyright laws in many countries, there was a considerable increase in the production and

²²⁰Note 191 above.

²²¹Ibid.

²²²Ibid.

²²³Note 168 above, 14.

²²⁴Ibid 11.

²²⁵Ibid 12.

²²⁶Ibid 5.

²²⁷The TRIPS Agreement 10 years on, at 2, available at:

http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc_117771.pdf, accessed 6 July 2013.

trade of counterfeit and pirated goods during the years before the Uruguay Round.²²⁸ The standards of protection as well as the periods for which rights were protected also varied across different member countries widely.²²⁹

There were many defects in the previous existing World Intellectual Property Organisation (WIPO) regime which is why, in the 1980's; U.S Industrial interest advocated introducing a new IP treaty.²³⁰ Their preferred forum for policing the new agreement was the international trade regime of the GATT/WTO.²³¹ Multilateral international IP conventions had already existed for more than a century when the TRIPS Agreement was negotiated in the GATT Uruguay Round.²³² One of the problems experienced with the WIPO regime was the low level of minimum standards set in the conventions that the WIPO was charged with implementing.²³³ Experts found that WIPO's staff and the activities lacked a development orientation, including a clear understanding of the overall purposes of WIPO's development cooperation activities, which is an example of critical shortcomings in the technical assistance activities of the WIPO.²³⁴ These defects pushed the developed countries to lobby for a more effective international IP protection scheme.²³⁵

In light of the above, two options were considered. One, was to amend the conventions within the WIPO regime or secondly, to develop a new agreement within the GATT/WTO regime.²³⁶ However, due to a lack of success in these negotiations and the many advantages posed by the GATT system, a new IP treaty within the GATT/WTO was considered called the TRIPS Agreement.²³⁷ The United States, which led the overall TRIPS negotiation, believed it would be easier to write a single completely new treaty than to negotiate amendments of the existing Conventions.²³⁸ It was ultimately signed at the Marrakesh Ministerial Meeting in April 1994 as part of a package deal with the other Uruguay Round

²²⁸ Ibid 2.

²²⁹ Note 5 above, 6.

²³⁰ Y Fukunaga, 'Enforcing Trips: Challenges of Adjudicating Minimum Standards Agreements', (2008), *Berkeley Technology Law Journal*, (23), 868-931.

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ WIPO: Technical Assistance Criticized for Shortcomings, available at:

http://www.twinside.org.sg/title2/intellectual_property/info.service/2011/ipr.info.111105.htm, accessed on 1 October 2013.

²³⁵ Note 230 above.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

Agreements and came into force in 1995 even though developed and developing countries have historically differed in their attitudes regarding stringent IP protection especially regarding public health.²³⁹

The Preamble of the TRIPS Agreement contains the general objectives of the Agreement. These objectives include the promotion of efficient protection of intellectual property rights by ensuring that trade is not hampered. These objectives should be read alongside Article 7 of the Agreement which encourages the promotion of technological innovation which benefits economic and social welfare. Furthermore, Article 8 deals with 'Principles' that are aimed at preventing the abuse of intellectual property rights by creating protective measures. (Overview of the TRIPS Agreement, available at: http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm, accessed on 27 February 2014)

The TRIPS Agreement ultimately seeks to implement a uniform set of IP protection across nations in order for there to be greater stability in economic international relations.²⁴⁰ However, critics are of the argument that such an agreement promotes too strong of a protection of IP rights and hence, developing nations are prevented from accessing affordable and essential medicines.²⁴¹

Based on the research above, this thesis emphasizes that the TRIPS Agreement in 1994 represented a massive change in the international framework of IP. Unlike previous agreements, TRIPS is part of a global trade organisation, which is the WTO.²⁴² The scope of TRIPS covers nearly all types of IP rights such as patents, trademarks, copyrights and geographical indications.²⁴³ It can be summarised as an effort to respond to the concerns of any industry whose products rely on the above list.

As noted above, the TRIPS Agreement is aimed at addressing long-standing issues of foreign piracy and counterfeiting of patents, copyrights and trademarks that have always been a concern to the owners of intellectual property rights (IPR's).²⁴⁴ Countries acquire an interest

²³⁹ Ibid.

²⁴⁰ Note 167 above.

²⁴¹ Ibid.

²⁴² Note 227 above, 3.

²⁴³ Ibid.

²⁴⁴ Note 55 above, 6.

in IPR's the more they generate technological innovations.²⁴⁵ For many developing countries, however, they have had few IPR's for which they might seek recognition abroad.²⁴⁶ Unlike other agreements enforced through the WTO, the TRIPS Agreement requires member nations to adopt policies for IP protection that meet certain minimum standards.²⁴⁷ It has been argued that applying this minimum standard can cause potential damage to developing countries because of its "one size fits all" approach²⁴⁸ which, according to this thesis, does not take into consideration the specific needs and demands of each nation.

The agreement on TRIPS defines "intellectual property" as the creation of the human mind and the human intellect.²⁴⁹ The rights of creators of innovative or artistic works are known as intellectual property rights.²⁵⁰ These rights include:

- (a) Copyright, which protects the rights of creators of literary, scientific and artistic works;
- (b) Patents, which protect the rights of inventors; and
- (c) Industrial designs, which protect the rights to ornamental designs.²⁵¹

Developed countries held the view that IP can be produced anywhere where there is creative human capital which is the reason developing countries should therefore look at themselves as producers of IP exports for the rest of the world and not only as consumers in order to enter these markets as well.²⁵²

Developing countries were generally not opposed to proposals for TRIPS; however, they did initially resist discussion on minimum standards being imposed.²⁵³ They were apprehensive because of such negotiations requiring them to change their policy on patentability and they were also fearful that adopting minimum standards would lead to increased royalty payments for the use of patented technology under license and thus to higher prices for the products

²⁴⁵Ibid.

²⁴⁶Ibid.

²⁴⁷Note 230 above.

²⁴⁸C Michalopoulos, 'Special and Differential Treatment of Developing Countries in TRIPS', at 24, available at: <http://www.uno.org/geneva/pdf/economic/issues/special-differential-treatment-in-TRIPS-English.pdf>, accessed on 1 October 2013.

²⁴⁹Note 5 above, 6.

²⁵⁰Ibid.

²⁵¹Ibid.

²⁵²Note 72 above, 1176.

²⁵³Note 5 above, 6.

manufactured.²⁵⁴ An important feature of the TRIPS Agreement is that the standards of protection laid down in WIPO Conventions have been made legally enforceable.²⁵⁵ The agreement on TRIPS provides that countries may adopt appropriate measures, including legislation, to prevent IP holders from abusing their rights and adopting practices that unreasonably restrain trade or adversely affect the transfer of technology.²⁵⁶ The agreement balances the tension between these protections as well as the need to disseminate knowledge, especially to developing countries that require economic growth through technology.²⁵⁷

This agreement is a concern for developing countries due to various provisions that are considered as being quite controversial.²⁵⁸ As noted earlier, the TRIPS Agreement is definitely the most controversial of all Uruguay Round agreements and in addition, it is a global political issue since it questions how IP rules, which are designed first and foremost as private rights, are intended to be shaped to facilitate economic development and social welfare for all.²⁵⁹ It also appeared that developed countries benefitted more since most IP rights, like patents, were and are held by richer parties whilst it imposed costs on poorer countries.²⁶⁰

Thus, the formation of TRIPS was not at all a smooth process.²⁶¹ It can be noted from the above arguments that its role among developing countries continues to be a sensitive issue. There are basically two broad arguments put forward by advocates, favouring the agreement.²⁶² Firstly, it is argued that TRIPS encourages the transfer of technology and secondly, the absence of IP laws discourages inventions and innovations, so people have less motivation to work on new products or processes if they have the belief that it will be copied and sold at a lower price that does not reflect the costs of the research and development.²⁶³ Developing countries, on the other hand, believe the TRIPS Agreement will make the process

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid 6.

²⁵⁷ Note 72 above, 1177.

²⁵⁸ Trade-Related Aspects of Intellectual Property Rights, available at: <http://www.patentlens.net/daisy/patentlens/415.html>, accessed on 26 November 2013.

²⁵⁹ Note 227 above.

²⁶⁰ Ibid.

²⁶¹ Note 230 above, 868-931.

²⁶² Integration into the Multilateral Trading System: The Role of the WTO, at 78-79, available at: http://www.unescap.org/tid/publication/chap2_2054.pdf, accessed on 7 June 2013.

²⁶³ Ibid 78-79.

of technological adaptation more difficult and costly.²⁶⁴ They are also apprehensive that implementing the TRIPS Agreement could result in higher prices for medicines, which would make lifesaving drugs essentially unavailable to people in countries that are in urgent need of them.²⁶⁵ This is especially seen in many African developing countries such as Ghana and Nigeria. Both these nations will be discussed at a subsequent stage of this thesis in regards to this issue.

Even more, the TRIPS Agreement has been questioned on the basis of its legitimacy.²⁶⁶ Since it has come into force, there has been increasing evidence of social, environmental and economic problems that have been caused by its implementation.²⁶⁷ Many of the promised benefits of technology transfer, innovation and increased foreign direct investment have not yet materialised.²⁶⁸ There is worldwide opposition to TRIPS because of its role in patenting of life and in reducing access to medicines.²⁶⁹ It is for this reason that TRIPS has been viewed as one of the most damaging aspects of the WTO in the eyes of hundreds of civil society groups and Non-Governmental Organisations (NGO's) around the world.²⁷⁰ It has even been argued that TRIPS has given the Multilateral Trading System (MTS) a bad name especially since it is being used as a protectionist instrument to promote corporate monopolies over technologies, seeds, genes and medicines.²⁷¹ This undermines sustainable development objectives, including eradicating poverty, meeting public health needs, conserving biodiversity, protecting the environment and the realisation of the economic, social and cultural rights.²⁷²

In retrospect, based on the above arguments, this thesis argues that the Uruguay Round decision of bringing IP issues into the WTO through the TRIPS Agreement seems to have been a mistake. The WIPO already existed in dealing with IP issues so there was no need to

²⁶⁴ Ibid.

²⁶⁵ Note 230 above, 868-931.

²⁶⁶ Re-thinking TRIPS in the WTO, available at: <http://www.twinside.org.sg/title/joint5.htm>, accessed on 01 July 2013.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ R Gross, World Intellectual Property Organisation, 2007, available at: <http://www.giswatch.org/institutional-overview/civil-society-participation/world-intellectual-property-organisation-wipo>, accessed on 27 November 2013.

²⁷¹ Note 266 above.

²⁷² Ibid.

bring it into the WTO by calling them trade-related.²⁷³ It has been recommended that the WTO members should take action before more damage is done by TRIPS and a suggestion has been that IP protection be taken out of the WTO altogether.²⁷⁴ A fundamental re-thinking of TRIPS in the WTO is therefore required²⁷⁵ especially for the benefit of developing nations.

3.3 CONCLUSION

Even after a mere five years of these WTO agreements taking effect, developing countries still faced difficulties in implementing them.²⁷⁶ These nations were hampered due to the lack of financial and technical capacities as well as failing to implement the agreements in a way that would boost their participation in international trade.²⁷⁷ It can be argued that developing countries took on many commitments that they were not able to realistically meet. This thesis submits that in principle, the SPS Agreement should assist developing countries expand their market access and enjoy transparency and harmonization. Furthermore, the SPS Agreement was principally negotiated by developed countries, leaving developing nations out of the process.²⁷⁸ Based on the arguments presented, it is obvious that developing nations find it difficult to implement the SPS Agreement in practice. This thesis supports the comment made by Jensen that “developing countries endorse the aim of the Agreement but most find that parts of it does not work properly”.²⁷⁹

On the other hand, the TRIPS Agreement has been described to be a “monstrosity of modern capitalism”.²⁸⁰ Noam Chomsky, a renowned academic, agreed with this description and further added that there is nothing liberal about the TRIPS Agreement since it is designed for private tyrannies to monopolize the technology and knowledge of the future.²⁸¹ It is the argument of this thesis that it is essential for the WTO to acknowledge that the TRIPS Agreement contains weaknesses and that it needs to be interpreted and applied in a manner that considers the health care crisis that faces many developing nations such as Ghana and Nigeria.

²⁷³Note 109 above.

²⁷⁴Ibid.

²⁷⁵Note 266 above.

²⁷⁶Note 155.

²⁷⁷Note 62 above.

²⁷⁸Note 209 above, 34.

²⁷⁹Ibid 34.

²⁸⁰Note 167 above, 152-159.

²⁸¹N Chomsky, Speech, Asian College of Journalism, Chennai, available at: http://www.greenmac.com/World_Events/aninterac.html, accessed on 13 August 2013.

CHAPTER 4: MILLENNIUM DEVELOPMENT GOAL 8

4.1 INTRODUCTION

The Millennium Development Goals (MDG's) consist of eight development priorities that were created to be achieved by the deadline of 2015.²⁸² They are also referred to as the “world’s biggest promise- a global agreement to reduce poverty and human deprivation at historically unprecedented rates through collaborative multilateral action”.²⁸³ The focus of the eighth goal is to develop a global partnership for development and address aspects of trade, international relations and transfers which include aid and global obligations.²⁸⁴

The purpose of this chapter is to deal with Millennium Development Goal 8 (MDG 8) in order to determine the purpose for its creation and implementation, specifically with regards to developing countries. It is the assumption of this paper that MDG 8 provides a platform for global cooperation and development in order to strengthen relations and boost economic and trade growth within developing countries by using tools such as aid, trade and debt relief, which will be elaborated on at a later stage. This thesis therefore intends to argue that this goal raises awareness of neglected global issues that need to be solved for the advancement of developing nations.²⁸⁵ It can be argued that by setting out the specific aims and targets of MDG 8, developing countries can accelerate their development towards a more successful economy in the global arena as well as achieve development results in the Aid for Trade (AFT) initiative and under the World Trade Organisation (WTO) agreements.

Hence, the chapter will firstly provide an analysis of the MDG's and establish the reasons for their creation. Secondly, for purposes of this paper, however, MDG 8 will be specifically discussed in order to ascertain the implementation and effectiveness of the goal in particular developing countries. The position of Ghana and Nigeria will be critically evaluated accordingly at a later stage to determine their progress, successes and failures in implementation. Lastly, the chapter will attempt to further determine whether MDG 8 will be

²⁸² Millennium Development Goals-Country Report 2010, at 12-13, available at: www.statssa.gov.za/news_archive/Docs/MDGR_2010.pdf, accessed on 4 July 2013.

²⁸³ D Hulme, *The Making of the Millennium Development Goals*, 2009, at 1, available at: http://www.eadi.org/fileadmin/MDG_2015_Publications/Hulme_PAPER.pdf, accessed on 9 September 2013.

²⁸⁴ Note 282 above, 12-13.

²⁸⁵ Note 24 above.

fully achieved by the deadline of 2015 and if not, what other possible measures exist which could provide a clear plan for the way forward in international trade.

4.2 THE MILLENNIUM DEVELOPMENT GOALS

At the United Nations (UN) Millennium Summit in September 2000, the international community reached an agreement on working towards achieving eight fundamental economic and social development priorities by the year 2015 for the world's poor nations.²⁸⁶ These eight development priorities were termed the “Millennium Development Goals” (MDG's). The following is a statement by the heads of State and Government from the United Nations Millennium Declaration, which promotes the values and principles enshrined in the MDG's,

We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognise that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable. These efforts must include policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with effective participation.²⁸⁷

From the start, the MDG's were highly criticised for being too driven by a pro-aid agenda favoured by the “Triad”, also known as the United States, Japan and Europe.²⁸⁸ The Triad had support from, as well as the MDGs being co-sponsored by, the International Monetary Fund (IMF), the World Bank (WB) and the Organization for Economic Cooperation and Development (OECD).²⁸⁹

²⁸⁶ S Amin, ‘The Millennium Development Goals: A Critique from the South’, An Independent Socialist Magazine, March 2006, available at: <http://monthlyreview.org/2006/03/01>, accessed on 9 September 2013.

²⁸⁷ United Nations Millennium Declaration, Article I.5, available at: <http://www1.umn.edu/humanrts/instate/millennium.html>, accessed on 25 October 2013.

²⁸⁸ S Edjang, ‘The Curious Case of Africa's Progress and the Missing MDGs’, available at: <http://www.africanarguments.org/2013/05/17>, accessed on 25 October 2013.

²⁸⁹ Note 286 above.

These goals have since become the central point for public policy discussions and actions concerning economic and social development.²⁹⁰ Meetings and conferences on these goals have been held regularly to reiterate their aims and to reaffirm the commitment of countries to these goals and to assess the extent of their progress.²⁹¹ It is the submission of this thesis that the goals are commendable since they promote good objectives such as access to medicines, development of technology, debt reduction, poverty alleviation and provision of aid.²⁹² However, statistics from surveys undertaken from 2007-2012 show that the majority of developing countries experience the burdens of untreated diseases since universal access to medication remains out of reach.²⁹³ Furthermore, the definitions of poverty and healthcare are said to be too vague.²⁹⁴ It has been argued that the MDG definition of poverty is too narrow and its emphasis on specified goals takes poverty out of its broader context.²⁹⁵ Furthermore, based on the many concerns and criticisms raised, it is difficult to determine whether these goals will be achieved by the deadline of 2015 in developing countries.²⁹⁶

The eight MDG's are listed below as follows:²⁹⁷

- 1) To eradicate extreme poverty and hunger;
- 2) To achieve universal primary education;
- 3) To promote gender equality and empower women;
- 4) To reduce child mortality;
- 5) To improve maternal health;
- 6) To combat HIV/AIDS, malaria and other diseases;
- 7) To ensure environmental sustainability; and
- 8) To develop a global partnership for development

²⁹⁰ The United Nations Development Strategy Beyond 2015, Economic and Social Affairs, Policy Note, at 4, available at: http://www.un.org/en/development/desa/policy/cdp/cdp_publications/2012cdppolicynote.pdf, accessed on 20 November 2013.

²⁹¹ Note 286 above.

²⁹² Ibid.

²⁹³ WHO: Millennium Development Goals (MDGs), available at: <http://www.who.int/mediacentre/factsheets> accessed on 24 October 2013.

²⁹⁴ Women Go Beyond the Millennium Goals-Belgium, at 4, available at: http://diplomatie.belgium.be/en/binaries/women_go_beyond_the_millennium_goals_en_tcm312-65178.pdf, accessed on 19 November 2013.

²⁹⁵ P Alston, 'A Human Rights Perspective on The Millennium Development Goals', (unpublished thesis), available at: www2.ohchr.org/english/issues/millennium-development/docs/alston.doc, accessed on 25 October 2013

²⁹⁶ Note 286 above.

²⁹⁷ Note 282 above, 13.

This thesis upholds the comment made by Director-General, Pascal Lamy, during a speech that adopting the Millennium Declaration and its eight goals was a landmark achievement for the international community.²⁹⁸ For the past decade, the eight MDG's with their 21 targets and 60 indicators have been the blueprint, both at the national and global level, for channelling global efforts to address the development needs of the world's poorest countries.²⁹⁹ The broader Millennium Declaration consists of six fundamental values: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.³⁰⁰ This thesis acknowledges these values as being vital to the development of developing nations.

As mentioned earlier, MDG 8 has set specific numerical targets to be achieved by 2015 through a global partnership, with rich countries supporting the poorer countries through sufficient aid, debt relief and improved market access.³⁰¹ International cooperation is therefore vital to achieve this.³⁰² It is the argument of this thesis that achieving MDG 8 will be a momentous achievement for developing nations since success in developing a global partnership for development will have a significant domino effect on the other MDG's.

If these goals are fully accomplished, it will allow African communities and countries to raise productivity and compete successfully in world markets to increase economic growth, education and trade development.³⁰³ Thus, achieving the MDG's is an essential foundation to global stability.³⁰⁴

4.2.1 Millennium Development Goal 8

As set out earlier, MDG 8 deals with developing a global partnership for development. It is ultimately aimed at creating change at a global level,³⁰⁵ which according to this thesis,

²⁹⁸ Rapid Doha Conclusion Will Help Us Achieve Millennium Development Goals- Lamy, June 2010, WTO News, available at: http://www.wto.org/english/news_e/sppl_e/sppl161_e.htm, accessed on 2 November 2013.

²⁹⁹ Pauwelyn, 'The World Trade Organisation and the Millennium Development Goals: Global Cooperation at Work', available at http://www.wto.org/english/news_e/sppl_e/sppl161_e.htm, accessed on 5 April 2013.

³⁰⁰ A Sumner & T Lawo, 'The MDGs and Beyond: Pro-Poor Policy in a Changing World', 2010, at 5-8, available at: http://www.eadi.org/fileadmin/Documents/Publications/policy_wp/EADI_Policy_Paper_March_2010.pdf accessed on 13 August 2013

³⁰¹ Bringing 2015 to 2005: Implementing the Millennium Development Goals Today, available at: www.aidandtrade.org accessed on 3 July 2013.

³⁰² Note 300 above, 6.

³⁰³ Achieving the Millennium Development Goals in Africa-Recommendations of the MDG Africa Steering Group, 2008, available at: www.mdgafrica.org accessed on 8 July 2013

³⁰⁴ Note 301 above.

³⁰⁵ Building a Global Partnership for Development, available at <http://cesr.org/article.php?id=928> accessed on 30 November 2013

requires international cooperation. This goal addresses trade, international relations and transfers which include aid and global obligations.³⁰⁶ In addition, it places a responsibility on the international community to assist developing countries, particularly in the areas of trade, aid, debt and access to essential drugs and technologies.³⁰⁷ This responsibility of wealthier countries assisting the poorer nations is essentially the difference between the other MDG's and MDG 8.³⁰⁸ This thesis therefore emphasizes the importance of developed nations assisting developing countries in achieving MDG 8 because without their commitment, developing countries will not see much progress or success.

According to Samir Amin, the writers of this goal straightaway declared that the objective is to establish an open, multilateral commercial and financial system.³⁰⁹ Strengthening global partnerships for development is a prerequisite in order to accelerate progress in trade and the nation's development.³¹⁰ This thesis furthermore submits that the success of MDG 8 will, in addition, produce success in the Aid for Trade (Aft) initiative amongst developing nations.

MDG 8 has further targets, from A-G, which are briefly set out below to achieve a global partnership for development.³¹¹ Target 8A is aimed at further developing an open, rule based, predictable, non-discriminatory trading and financial system.³¹² This includes a commitment to good governance, development and poverty reduction, both nationally and internationally.³¹³ According to a 2013 fact sheet, despite the pledges by the G20 members to resist protectionist measures initiated as a result of the global financial crisis, only a small percentage of trade restrictions introduced since the end of 2008 have been eliminated. The protectionist measures taken so far have affected almost 3 per cent of global trade. (Goal 8: Develop A Global Partnership For Development, available at: <http://www.un.org/millenniumgoals/global.shtml>, accessed on 27 February 2013).

³⁰⁶ Note 282 above, 14.

³⁰⁷ *Claiming the Millennium Development Goals: A Human Rights Approach*, United Nations, New York & Geneva, 2008, at viii, available at: http://www.ohchr.org/Documents/Publications/Claiming_MDGs_en.pdf accessed on 6 September 2013.

³⁰⁸ Note 305 above.

³⁰⁹ Note 286 above.

³¹⁰ *Delivering on the Global Partnership for Achieving the Millennium Development Goals*, MDG Gap Task Force Report 2008, at 1, available at: <http://www.un.org/millenniumgoals/pdf/MDG%20Gap%20Task%20Force%20Report%202008.pdf> accessed on 10 September 2013.

³¹¹ Note 307 above, 5.

³¹² *United Nations Millennium Development Goals: Goal 8 Develop A Global Partnership for Development*, available at: <http://www.un.org/millenniumgoals/global.shtml> accessed on 29 November 2013.

³¹³ Note 307 above, vii-viii.

According to this thesis, developing countries would then be able to maximise their benefits under the elements of transparency and non-discrimination within the global system of trade.

Target 8B is focused on specifically addressing the special needs of the least developed countries (LDCs).³¹⁴ Although this paper is focused on developing countries, it is important to note that Target 8B makes note of some important aspects that pertain to developing nations as well.³¹⁵ The problem with this target, however, is that the declaration to deal comprehensively with developing countries' debt problems through national and international measures is not accompanied by any further information concerning the approach to follow or even the principles on which such a measure should be founded.³¹⁶ It is thus the submission of this thesis that there is a degree of confusion since developing countries are not able to reach their full potential due to a lack of knowledge in implementing these measures. The Heavily Indebted Poor Countries (HIPC) Initiative which was launched in 1996 by the IMF and WB aims to ensure that no poor country faces a debt burden it cannot manage.³¹⁷ Since then, the international financial community, including multilateral organizations and governments have worked together to reduce the external debt burdens of the most heavily indebted poor countries.³¹⁸ Further cooperation from developed nations will assist developing countries achieve MDG 8 faster.

Target 8C is further aimed at addressing the special needs of landlocked countries and small-island developing States³¹⁹ since they are prone to suffer from a lack of stable economies, high transportation, communication expenses, costly administration and infrastructure.³²⁰ These are some of the areas requiring attention in Ghana and Nigeria.

Target 8D deals comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.³²¹ On

³¹⁴Note 312 above.

³¹⁵Ibid.

³¹⁶Note 286 above.

³¹⁷Debt Relief Under the HIPC Initiative, available at: www.imf.org/external/np/exr/facts/hipc.htm, accessed on 4 September 2013.

³¹⁸Ibid.

³¹⁹Note 307 above, viii.

³²⁰Note 312 above.

³²¹Ibid.

the other hand, Target 8E focuses on cooperating with developing countries to develop and implement strategies for decent and productive work for the youth.³²²

In addition, Target 8F deals with cooperating with pharmaceutical companies in order to provide access to affordable and essential drugs in developing countries.³²³ This is a rather generous intention to provide access to drugs; however, it is immediately nullified by indicating that this should be done ‘in cooperation with the pharmaceutical industry’ since this is precisely the industry that prohibits anyone from calling their abusive monopoly into question.³²⁴ It can therefore be argued by this thesis that the intentions behind the writers of these goals were well founded. However, these goals are unable to be reached because what they truly entail is difficult for developing countries to meet.

Lastly, Target 8G deals with making available the benefits of new technologies, especially information and communications in cooperation with the private sector.³²⁵ Here again, a generous intention is set out but is subject to a condition that takes away most of its meaning.³²⁶ MDG 8 thus applies to all the MDG’s due to the number of commitments it undertakes which affect the other goals as well.³²⁷ MDG 8 is thus overarching and central to the achievement of the other goals.³²⁸ The use of information and communications technology continues to grow worldwide and this contributes to achieving the remainder goals.³²⁹

In relation to multilateral trade, the WTO’s core activities fall within the targets that are set out in MDG 8.³³⁰ These targets in MDG 8 are proof that the international community recognises that global trade is an important engine for development.³³¹ Even more so, MDG 8

³²² Note 307 above, 5.

³²³ Note 312 above.

³²⁴ Note 286 above.

³²⁵ The Millennium Development Goals Available at: www.developmentgoals.org, accessed on 25 July 2013.

³²⁶ Note 286 above.

³²⁷ Note 307 above.

³²⁸ The Millennium Development Goals, available at: <http://www.oxfam.org/en/campaigns/health-education> accessed on 26 October 2013

³²⁹ Ibid.

³³⁰ J Deichmann & C Malgwi, ‘The Geography of Foreign Direct Investment in Africa for the UN Millennium Development Goals’, (2012), 7, Issue 2 & 3, *African Journal of Business and Economic Research*, 49-56.

³³¹ Note 299 above.

can be linked to Foreign Direct Investment (FDI).³³² Most African economies are not in a position to meet this goal even though the MDG's as a whole seek to level the playing fields among nations such as Africa.³³³ MDG 8 therefore seeks to facilitate international partnerships including, but not limited to mutually beneficial FDI.³³⁴

In order to achieve MDG 8, various initiatives need to be prioritised in a country such as, speeding up growth and transforming the economy to create decent work and sustainable livelihoods, substantial programming to build economic and social infrastructure, pursuing advancement and enhanced international cooperation and building a developmental state, including improvement of public services and strengthening democratic institutions.³³⁵

4.2.2 Review on Millennium Development Goal 8

When the MDG's were agreed upon in 2000, there were high expectations for the hope of the radical change that they would bring.³³⁶ However, it can be questioned whether these goals were ever attainable in the first place, especially for developing nations. It has been observed that global structures and governing international trade and finance have mainly served the better off nations.³³⁷ However, over the years, there has been little evidence of the so-called 'global partnership for development' which so many people believed in.³³⁸ The reason for this slow development can be attributed to one fact; when decisions and agendas are influenced by conditions that are heavily in favour of certain participants, such as the richer countries, the talk of partnership in reality is worthless especially to poorer nations.³³⁹ While there has been progress on several counts, important gaps remain in delivering on the global commitments in the areas of aid, trade, debt relief, and access to new technologies and affordable essential medicines.³⁴⁰

³³² M Rosegrant, 'Agriculture and Achieving the Development Goals', International Food Policy Research Institute, available at: <http://www.ifpri.org/publication/agriculture-and-achieving-millennium-development-goals>, accessed on 2 September 2013.

³³³ Note 330 above, 49-56.

³³⁴ Ibid.

³³⁵ Note 282 above, 16-18.

³³⁶ The Leprosy Mission: The Millennium Development Goals, available at: http://leprosymission.ie/media/8986_MDGreportPublishedAug09.pdf, accessed on 4 August 2015.

³³⁷ The Millennium Development Goals-Unrealistic and Unattainable because MDG Implementation Policies Advance the Interests of the Rich World at the Expense of the Poor, Available at: www.leprosymission.ie/media/8986_MDGreportPublishedAug09.pdf, accessed on 1 September 2013.

³³⁸ Note 14 above, 34-35.

³³⁹ Note 337 above.

³⁴⁰ Note 310 above.

Based on the above arguments, it should be noted that some countries remain off track in meeting these goals by 2015. This is particularly true in large parts of Africa where some states are fragile or emerging from conflict.³⁴¹ The progress of both Ghana and Nigeria will be discussed at a later stage in this thesis. Concrete public policies and investments are central for achieving the MDG 8 and accelerating economic growth but these, on its own, are still not enough.³⁴²

Alternatively, the MDG's, as a whole, have been successful in capturing the attention of major international development agencies, as well as the governments of many developing countries.³⁴³ These goals, however, have been subject to many criticisms. One of the key concerns is that the MDG targets are not sufficiently focused on the poorest of the poor or on inequality within a country.³⁴⁴ As set out previously, Target 8A deals with developing the trading and financial system.³⁴⁵ However, there has been little movement on the Doha Round of trade talks as developed countries have failed to live up to their commitments to make this a development round.³⁴⁶ If Target 8A is to be achieved, global trade has to be structured in such a way to benefit poverty reduction under the WTO.³⁴⁷ However, the reality has been quite the opposite. It has been argued that the conclusion of the WTO negotiation is not in the interests of the poor in developing countries and that the achievement of the MDG's will be pushed further from reach.³⁴⁸ An example of inequality and unfairness is further attributed to the fact that under Target 8A, the word 'equitable' was eliminated from the wording, in the operation of the Millennium Declaration into the MDGs. (Building A Global Partnership for Development Through MDG 8, available at: <http://cesr.org/article.php?id=928>, accessed on 27 February 2013). Member States should also make clearer and stronger commitments to expand AfT resources to assist low-income countries in realizing their productive and export potential and in supporting their efforts to create productive employment.³⁴⁹ The resources for AfT and their allocation should be better aligned with specific country needs³⁵⁰ rather than

³⁴¹Note 303 above.

³⁴²Ibid.

³⁴³Note 307 above, 4.

³⁴⁴Ibid 4.

³⁴⁵Note 312 above.

³⁴⁶ Millennium Development Goal 8 Review: A Report from Make Poverty History and Micah Challenge, Australia, 2009, at 1, available at: http://www.micahchallenge.org.au/assets/pdf/Goal8_report_web.pdf accessed on 29 July 2013.

³⁴⁷Note 312 above.

³⁴⁸Note 337 above.

³⁴⁹Note 310 above, xi.

³⁵⁰Ibid.

grouping all developing nations under one broad category. The concept of AfT will be further discussed in this thesis.

Target 8B requires ODA to be increased for countries that are committed to reducing poverty.³⁵¹ However, historically, aid has been used primarily by donor governments as a means of pursuing their own interests.³⁵² They pursue this by tying conditions to aid that either benefit donor country companies or create a policy environment that are favourable to business interests from donor countries.³⁵³ Based on this, developing countries cannot progress effectively when their interests are not priority. Current implementation gaps in the delivery of aid flows and slow progress in improving the quality of ODA are early warnings of the risk of not meeting global targets within the time frame set by the MDG agenda and reaffirmed by Member States at subsequent summits and international forums.³⁵⁴ Urgent action in this area is essential to put aid flows on track to support the achievement of MDG 8 in developing countries.³⁵⁵

Target 8D calls for debt relief.³⁵⁶ As alluded to earlier, the HIPC Initiative was established by the WB and the IMF in the mid 1990's.³⁵⁷ It resulted in 23 countries receiving debt relief of \$48.2 billion by mid-2008.³⁵⁸ This proves that cooperation, debt relief and provision of aid has produced beneficial results to some.³⁵⁹

The achievement of Target E, dealing with providing access to affordable essential drugs in developing countries, has been seriously undermined by WTO agreements such as the Trade Related Aspects of Intellectual Property Rights (TRIPS), which was discussed earlier in this thesis.³⁶⁰ A survey of 33 developing countries found generic drugs to be trading at six times their international reference price, in the private sector.³⁶¹ The availability of essential

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Note 337 above.

³⁵⁴ Note 310 above, xi.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ C Gaynor, 'Structural Injustice and the MDGs: A Critical Analysis of the Zambian Experience', *Development Review* 2005, available at: <http://www.trocaire.org/resources/tdr-article/structural-injustice-and-mdgs-critical-analysis-zambian-experience> accessed on 1 October 2013.

³⁵⁸ Note 337 above.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ Ibid.

medicines is usually very poor in the public sector.³⁶² When medicines are not available in the public sector, patients will have to purchase medicines from the higher-priced private sector, or forget treatment altogether.³⁶³ Since health facilities in the public sector generally provide medicines at low cost or free of charge, they are especially important for providing access to medicines for the poor.³⁶⁴ It is the submission of this thesis that if this target is not adequately met, the effects within a developing nation are detrimental and will push the attainment of the other MDG's further away.

Target 8F sets out the implementation of new technologies which is associated with more rapid economic growth.³⁶⁵ It also attempts to bridge the technological divide and encouraging development cooperation to facilitate greater access to new technologies in developing countries.³⁶⁶ Science, technology and innovation must be at the heart of the MDG's through the development of new platform technologies and infrastructure, improving higher education in science, promoting business activities, improving the policy environment and focusing on underfunded research.³⁶⁷ This thesis seeks to emphasize the importance of this goal for developing nations because of what it entails. By pursuing the attainment of this goal, education is able to expand and therefore, larger amounts of the population are able to acquire job opportunities which allow the nation to flourish economically.

From the discussion above, it is evident that MDG 8 has given a clear, communicable and quantitative focus to international and national development priorities. When first looking at MDG 8, it seems to be well founded. However, developed countries have abandoned many quantitative targets, without any consequences, that were set for the developing countries.³⁶⁸ These targets contained detailed lists of indicators that ranged from debt relief to development aid and trade.³⁶⁹ There is the need for the creation of reachable targets since

³⁶² Access to Affordable Essential Medicines, at 36, available at:

<http://www.who.int/medicines/mdg/MDG08ChapterEMedsEn.pdf>, accessed on 30 October 2013.

³⁶³ Ibid 36.

³⁶⁴ Note 337 above.

³⁶⁵ Millennium Development Goal Indicators, available at:

<http://mdgs.un.org/unsd/mdg/host.aspx?Content=indicators/officiallist.htm>, accessed on 2 November 2013.

³⁶⁶ Note 307 above, 49.

³⁶⁷ Ibid 49.

³⁶⁸ M Langford, A Poverty Of Rights: Six Ways to Fix the MDGs, IDS Bulletin, (41), 1, 2010, at 84, available at: <https://www.jus.uio.no/smr/english/people/aca/malcolml/Poverty%20of%20Rights.pdf>, accessed on 5 July 2013.

³⁶⁹ Ibid.

many donor reports reflect this absence of qualitative targets.³⁷⁰ There is a listing of development aid projects and programmes yet no detailed assessment of how they are systematically addressing the issues brought forward by MDG 8.³⁷¹

In order for there to be effective development, policymakers must focus on a needs-based approach.³⁷² The UN Millennium Project has structured these recommendations into seven priority investment clusters to guide national strategies: rural development, urban development, health systems, education, gender equality, environmental sustainability, and science and technology.³⁷³ Cooperation for global partnership entails increased and more effective coordination between all actors with a view to more transparent, participatory, accountable, efficient and sustainable actions.³⁷⁴

In the poorer countries, there has been very little progress in fulfilling MDG 8.³⁷⁵ Based on the research provided, there is no single explanation as to an individual country's lack of progress. The UN Millennium Project has however, stressed four separate fundamental causes which can occur simultaneously.³⁷⁶ One explanation is inadequate governance.³⁷⁷ When there is a vision for long term developments, many corrupt elites lack the will to pursue it.³⁷⁸ When there is an absence of committed political leadership, it is difficult for the international community and development partners to support these long-term strategies in achieving the MDG's.³⁷⁹

Another explanation is attributed to countries getting caught in poverty traps.³⁸⁰ According to their income levels, they are governed reasonably well but they cannot make the investments in human capital and infrastructure that are required to achieve self-sustaining economic

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Aid and Development, at 3, available at:

http://www.unmillenniumproject.org/documents/2015_to_2005_GST_Sept-05.pdf, accessed on 30 October 2013.

³⁷³ Ibid.

³⁷⁴ Note 307 above, 44.

³⁷⁵ MDG Gap Task Force Reports Millennium Development Goal 8, available at:

http://www.un.org/en/development/desa/policy/mdg_gap/mdg_gap_archive.shtml, accessed on 2 November 2013

³⁷⁶ Note 301 above.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

growth.³⁸¹ A third situation takes place in countries such as middle-income countries, where progress has been substantially uneven.³⁸² This results in large groups of society being forgotten in development aspects. Ending poverty in these communities is possible but it requires high levels of political commitment.³⁸³ The final reason could be attributed to the fact that a number of MDG's are not being met because policymakers lack awareness on how to proceed or they simply neglect core development priorities.³⁸⁴

According to Samir Amin, examining these goals and definitions lead to the conclusion that the MDG's cannot be taken seriously because the intentions and hopes of many of the goals are subject to conditions that eliminate the possibility of them becoming a reality.³⁸⁵ It is his view that the goals amount to pure hypocrisy by pulling the wool over the eyes of many.³⁸⁶ Although this seems like a harsh criticism, it does hold an extent of truth based on the results seen in developing nations.

MDG 8 is most meaningful at the level of developing countries' MDG-based national strategies.³⁸⁷ If each national strategy sets out the maximum efforts that a developing country can make towards the goals, including the domestic resources that can be mobilised, then donor countries must fill the gap of support required to achieve the goals. This is important for the poorest countries that have few resources available.³⁸⁸

4.3 CONCLUSION

It is the conclusion of this thesis that MDG 8 is ambitious in its objectives as well as containing exhaustive targets to reach. Furthermore, it is the only MDG that places no "quantitative benchmarks" to reach by 2015.³⁸⁹ This thesis submits that as a result, it is challenging to determine whether progress has taken place. In addition, there are no sanctions for governments who do not comply with the commitments they have made to developing nations.³⁹⁰ Since MDG 8 is based on developing a global partnership for development,

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Note 286 above.

³⁸⁶ Ibid.

³⁸⁷ Beyond the Millennium Development Goals: Towards an OECD Contribution to the Post 2015 Agenda, at 1, available at: <http://unstats.un.org/unsd/broaderprogress/pdf/POST-2015%20Overview%20Paper%20%28OECD%29.pdf> accessed on 22 November 2013.

³⁸⁸ Note 301 above.

³⁸⁹ Note 305 above.

³⁹⁰ Ibid.

cooperation and tighter bonds among countries is essential. Based on the lack of this, MDG 8 remains largely ineffective in developing nations.

The MDG's have helped to highlight the need to realize often neglected economic and social rights.³⁹¹ It is the argument of this thesis that developed countries need to take these issues more seriously for the advancement of developing nations. A new and honest attempt at global partnership is urgently required, based on mutuality of respect.³⁹² There are serious problems with the assumptions underlying the attainment of MDG 8 and with methods and vehicles with which their attainment is pursued.³⁹³

According to the United Nation's annual assessments, the current efforts of many countries will not be enough to achieve the MDG's since many African regions are lagging the furthest behind, especially in areas of armed conflict.³⁹⁴ Extra efforts by government as well as civil society will be essential in reducing the shortfall.³⁹⁵

National level impacts regarding the MDG's are unclear and need more exploration.³⁹⁶ The debate around what, if anything, can and should succeed the MDG's after 2015 is still in its very premature stages and there is the fear that talking about this will derail the momentum for the MDG's to be met by 2015.³⁹⁷ These goals took ten years to formulate and many people in the developing world believe it is important to have some sort of global international development framework even after 2015.³⁹⁸ However, it is the criticism of this thesis that devising strategies for post-2015 will not achieve desired results if these goals are not better understood before the deadline arrives. The 2015 deadline is around the corner and based on the progress, it is obvious that developing a global partnership for development will not be met by that deadline.

³⁹¹ Note 307 above, 44.

³⁹² Note 337 above.

³⁹³ Ibid.

³⁹⁴ Millennium Development Goals, available at: <http://www.government.nl/issues/development-cooperation/milleneum-development-goals-mdgs>, accessed on 7 September 2013.

³⁹⁵ Ibid.

³⁹⁶ Note 387 above, 1.

³⁹⁷ Note 300 above, 5-8.

³⁹⁸ L Williams, 'What Comes After the MDGs?', Poverty Matters Blog, available at: <http://www.cigionline.org/articles/2011/06/what-comes-after-mdgs>, accessed on 9 September 2013.

There are three options which are recommended for the future. The deadline for the MDG's could simply be extended, the goals could be developed and built in a more effective manner or something else entirely different needs to be created.³⁹⁹ It is time for national governments to hear the voice of civil society and to consult citizens in order to come up with a position.⁴⁰⁰ More so, the United Nation needs to set in place a participatory process to create a framework that is wider than global summits and it needs to include the opinions and recommendations of those who are directly affected.⁴⁰¹

It is the argument of this thesis that in order to promote higher economic growth, capacity building is essential. In order to achieve these goals by 2015, there needs to be a pursuit of policies that promote economic growth and participation in order to ensure the advancement of the poor.⁴⁰² Assessing whether MDG 8 is being achieved is a complex statistical task that has to take many annual reports into consideration.⁴⁰³ Many of these reports are also unclear because of the poor quality of the data received and incorrect estimations submitted.⁴⁰⁴ It ultimately comes down to determining whether there are largely positive outcomes or negative outcomes. This thesis, however, does uphold the submission that MDG 8 has achieved a balanced contribution.⁴⁰⁵ However, more results could have taken place if accurate implementation and accountability were pursued.

The position of Ghana and Nigeria will be discussed in dealing with the progress of developing a global partnership for development in a further chapter.

³⁹⁹Ibid.

⁴⁰⁰Ibid.

⁴⁰¹Ibid.

⁴⁰² DS Hakura & SM Nsouli, 'The MDG, The Emerging Framework For Capacity Building, And The Role of the IMF', International Monetary Fund Working Paper, 03/199, 2003, at 3, available at:

<http://www.imf.org/external/pubs/ft/wp/2003/wp03119.pdf> accessed on 30 April 2013.

⁴⁰³Note 283 above, 1.

⁴⁰⁴Note 402 above.

⁴⁰⁵Note 283 above, 1.

CHAPTER 5: AID FOR TRADE

5.1 INTRODUCTION

In 2005, the World Trade Organization (WTO) launched the Aid for Trade (AfT) concept to strengthen the participation of developing countries in the Multilateral Trading System (MTS).⁴⁰⁶ AfT is a form of development assistance which assists in bolstering trade capacity and reducing trade costs in low income countries.⁴⁰⁷ However, in order for it to be effective and reach its full potential, AfT must address national trade-related priorities identified through domestic policy formulation processes in the developing countries.⁴⁰⁸ Furthermore, there is the need to have a monitoring and evaluation mechanism for assessing the impacts of AfT, particularly in the context of a country's development goals and trade objectives.⁴⁰⁹ Since developing countries like Ghana and Nigeria lack typical adequate resources to undertake the policies mentioned, external resources such as AfT is needed because it is necessary to create a more competitive economy⁴¹⁰ using trade as a powerful engine for sustainable development.⁴¹¹ Hence, the AfT initiative establishes a comprehensive framework for tackling trade-related bottlenecks.⁴¹² The initiative aims to link aid and trade in a holistic strategy for reducing poverty in developing countries.⁴¹³ This thesis focuses on the AfT initiative impacting the Millennium Development Goal 8 (MDG 8). Accordingly, AfT is closely related to MDG 8, which is focused on developing a global partnership for development by improving areas in aid, trade and debt relief.⁴¹⁴

This paper will therefore discuss what the AfT initiative encompasses, whether this initiative has been effective in its implementation, the complications that developing countries face regarding AfT and what impact these problems are having on the development of these countries with regards to their trade and economy. The developing countries of Ghana and Nigeria will be specifically discussed at a later stage under Chapter 6.

⁴⁰⁶ J Said, 'Where Aid for Trade is failing and why: The example of Malawi', available at: <http://www.ictsd.org/i/a4t/115355> accessed on 7 October 2013.

⁴⁰⁷ Ghana Case Study: Managing Aid for Trade and Development Results, at 10-12, available at: http://www.oecd.org/dac/afit/Ghana_Case_Study.pdf, accessed on 10 April 2013.

⁴⁰⁸ Ibid 10-12.

⁴⁰⁹ Ibid

⁴¹⁰ Ibid

⁴¹¹ Aid for Trade at a Glance 2011: Showing Results, OECD/WTO (2011), at 21, available at: <http://dx.doi.org/10.1787/9789264117471-en>, accessed 6 August 2013.

⁴¹² Ibid 21.

⁴¹³ Ibid 21.

⁴¹⁴ Note 26 above, 14.

5.2 AID FOR TRADE

As previously mentioned, AfT is aimed at enabling countries to use trade more effectively in order to promote growth and to reduce poverty levels.⁴¹⁵ In order to do this, AfT assists these developing countries by increasing exports of goods and services in order to integrate them into the MTS and as a result, they benefit from liberalised trade and increased market access.⁴¹⁶ It is further aimed at achieving a country's development objectives, including the Millennium Development Goals (MDGs), which were discussed previously in this paper.⁴¹⁷ The fundamental aim of the AfT initiative is to assist these low-income countries overcome structural limitations and weak capacities on many levels that undermine their ability to produce, compete and fully benefit from promising trade and investment opportunities.⁴¹⁸

The Organisation for Economic Co-operation and Development (OECD), which has in the past been the most important coordinator of official development assistance, takes the view that trade-related technical assistance and capacity building, together with trade-related infrastructure are clearly covered by the definition of AfT.⁴¹⁹ Effective AfT will enhance growth prospects as well as complement multilateral trade reforms and distribute global benefits more equitably across and within developing countries.⁴²⁰ This therefore contributes to the realisation of MDG8 which focuses on establishing a global partnership and cooperation for development.⁴²¹ It is argued in this thesis that many of the poorest nations have struggled to take advantage of market access opportunities due to their inability to produce or export efficiently. It is crucial for countries to trade with others in order to achieve high economic growth rates and reach poverty reduction targets.⁴²² It is for this reason that aid is provided to developing nations so that they may enter the trading arena. Trade allows developing countries to access technologies that are essential for improving their productivity

⁴¹⁵ Chapter 3: How is Aid for Trade Delivered? Aid for Trade at a Glance 2011, OECD, WTO 2011, at 69, available at: <http://www.oecd.org/dac/aft/48395738.pdf>, accessed on 7 October 2013

⁴¹⁶ Aid for Trade and LDC's: Starting to show Results, OECD, WTO 2011, at 9, available at: www.wto.org/english/tratop_e/devel_e/a4t_ldcs_e.pdf, accessed on 7 August 2013.

⁴¹⁷ Note 415 above, 69.

⁴¹⁸ Trading Out of Poverty: How Aid for Trade Can Help, OECD Journal on Development, at 19, available at: <http://www.oecd.org/dac/aft>, accessed on 7 July 2013

⁴¹⁹ S Laird, Aid for Trade: Cool Aid or Kool-Aid?, G-24 Discussion Papers, at 2, available at: http://www.unctad.org/en/Docs/gdsmdpbg2420076_en.pdf accessed on 1 October 2013.

⁴²⁰ Note 416 above, 9.

⁴²¹ Note 26 above.

⁴²² Monitoring Aid for Trade Flows to Africa, African Case Stories: A Snapshot of Aid for Trade on the ground in Africa, at 8-9, available at: www.wto.org/english/tratop_e/devel-e/a4t.../african_case_stories_e.pdf accessed on 8 September 2013.

and competitiveness which will generate growth and employment opportunities.⁴²³ Thus, AfT is designed as a tool to interlock aid and trade policies to reduce these poverty levels by engaging poor groups directly in trade-related activities.⁴²⁴ The following set of six broad categories summarises the AfT agenda: trade policy and regulation, trade development, trade-related infrastructure, building productive capacity, trade-related adjustment and other trade-related needs.⁴²⁵

The arguments for AfT are that countries need infrastructure, institutions, technical capacity and investment in order to trade in general and also specifically in the case of the new liberalisation under the WTO.⁴²⁶ There has been a history of great mistrust and conflict between the two concepts of aid and trade⁴²⁷ in practice. Aid agencies in developing countries are normally entirely separate from trade ministries.⁴²⁸ This makes it difficult for them to cooperate as a team to achieve results. Many discussions on AfT have shown that these divisions continue to remain wide.⁴²⁹

It must be noted that AfT is not a new global development fund or even a new aid category.⁴³⁰ AfT has been an integral part of regular Official Development Assistance (ODA) programmes.⁴³¹ Donors have, in fact, been providing substantial amounts of aid to trade-related programmes for many years.⁴³² Thus, the focus of AfT has expanded quite significantly. It is for this purpose that developing countries are encouraged to incorporate trade objectives into their development plans.⁴³³ Responsibility for AfT does not lie with the WTO but rather in the hands of developing countries, regional economic communities and their development partners.⁴³⁴ The WTO cannot deliver development assistance as it is not a

⁴²³ Trading Out of Poverty: How Aid for Trade Can Help, OECD Journal on Development, at 10, available at: <http://www.oecd.org/dac/aft>, accessed on 8 August 2013.

⁴²⁴ Ibid 1.

⁴²⁵ Strengthening Accountability in Aid for Trade, The Development Dimension, OECD, at 15, available at: <http://dx.doi.org/10.1787/10.1787/9789264123212-en>, accessed on 6 October 2013.

⁴²⁶ S Page, 'The Potential Impact of the Aid for Trade Initiative- G24', at 8, available at: <http://www.g24.org/TGM/un-pag07.pdf>, accessed on 3 April 2013.

⁴²⁷ Foreign Aid Issues, available at: <http://www.povertycure.org/issues/foreign-aid/> Accessed on 3 November 2013.

⁴²⁸ Note 426 above, 2.

⁴²⁹ Ibid, 8.

⁴³⁰ Aid for Trade: Is It Working?, available at: <http://www.oecd.org/dac/aft/45581702.pdf>, accessed on 25 October 2013.

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Note 416 above, 9.

⁴³⁴ Ibid 9.

development agency and has no intention of being one since its core mandate is focused on setting trade rules to ensure countries actively participate and benefit from world trade.⁴³⁵ The WTO has a catalytic role to play by getting many existing development assistance mechanisms to work effectively together and to ensure that the agencies responsible for development understand WTO Member needs.⁴³⁶ However, despite the differences and the nature of the WTO's focus, this trade body does work closely with the OECD in the monitoring and evaluation of AfT.⁴³⁷ AfT is therefore a clear example of how the WTO has a growing stake in other global policy arenas besides trade.⁴³⁸ This is essential to create cooperation on many levels to achieve greater productivity and growth.

It has been emphasized that the programme on AfT is aimed at investing in developing countries to build the supply-side capacity and trade-related infrastructure that they need in order to assist them to implement and benefit from WTO agreements and more broadly, to expand their trade.⁴³⁹ These WTO agreements were discussed at an earlier stage, dealing with how developing countries are using them to enhance trade and develop their global activities. The role of AfT under the TRIPS Agreement is to examine how developing countries can use Intellectual Property (IP) to support their economic growth and development.⁴⁴⁰ Furthermore, AfT is capable of assisting developing countries to achieve the appropriate levels of protection in export markets under the SPS Agreement, especially under Article 9 which deals with technical assistance.⁴⁴¹

Based on the arguments made, it can be stated that AfT measures have been designed in a manner to be used as a means to join current aid and trade policies in pursuit of raised living standards and reduced poverty levels.⁴⁴² Even more, it should be used to ensure that the benefits of trade policies do materialise in these developing nations since trade policy

⁴³⁵ WTO: Development- Aid for Trade Fact Sheet, Available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴³⁶ Ibid.

⁴³⁷ Note 416 above, 9.

⁴³⁸ Note 435 above.

⁴³⁹ W Hynes & P Holden, "What future for the Global Aid for Trade Initiative?" Draft Paper, at 2, available at: <http://www.tcd.ie/iiis/documents/discussion/abstracts/IIISDP421.php>, accessed on 6 August 2013.

⁴⁴⁰ WTO: TRIPS Agreement, available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴⁴¹ Ibid.

⁴⁴² Note 418 above, 9.

reforms, on their own, are particularly insufficient to deliver the expected benefits from trade expansion.⁴⁴³

AfT first emerged as an issue within the Doha Round of negotiations.⁴⁴⁴ There was a desire to find benefits for all countries in the negotiation, and thus AfT was to be a complement, not a substitute for the round.⁴⁴⁵ However, by the time the round stalled, AfT had acquired sufficient support from the aid and the trade community to go forward independently of the round⁴⁴⁶ by being a new approach to building an international trade regime.⁴⁴⁷ The WTO Task Force provided recommendations firstly on how to operate AfT and secondly, on how AfT might contribute most effectively to the development dimension of the Doha Development Agenda (DDA).⁴⁴⁸

This thesis supports the argument that when developing countries are not in control of their own development path, or when donors fail to respect their leadership, the results from this development assistance will consequently be unsustainable.⁴⁴⁹ It can therefore be submitted that AfT is a joint venture between developed and developing countries in order to achieve operative results, however, in order to reach success, partner countries must ensure that trade is an integral part of their development plans that combines clear and articulate needs and priorities.⁴⁵⁰ AfT activities cut across many policy areas and sectors.⁴⁵¹ Therefore, effectiveness in AfT will depend on many actors working together in a coherent way.⁴⁵²

5.3 REVIEWS ON AID FOR TRADE

The 1st Global Review of 2007 was focused on putting a spotlight on AfT.⁴⁵³ The WTO and the OECD focused on providing an accountability mechanism at a global level in order to enhance the credibility of AfT.⁴⁵⁴ Thus, once operational, AfT structures within countries

⁴⁴³Ibid 9.

⁴⁴⁴ Aid for Trade: One Year On, at 1, available at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5006.pdf>, accessed on 2 August 2013.

⁴⁴⁵The Potential Impact of the Aid for Trade Initiative, available at: www.g24.org/TGM/un-pag07.pdf, accessed on 4 October 2013.

⁴⁴⁶ Note 426 above, xi.

⁴⁴⁷Ibid 9.

⁴⁴⁸ Note 439 above, 2.

⁴⁴⁹ Note 415 above, 70.

⁴⁵⁰ Ibid.

⁴⁵¹Ibid 74.

⁴⁵²Ibid 74.

⁴⁵³ Aid for Trade at a Glance 2007: 1st Global Review, at 15, available at: www.oecd.org/dac/aft.pdf, accessed on 25 October 2015.

⁴⁵⁴Ibid 15.

would improve so that results would be seen. The monitoring mechanism was said to be a work in progress which would continuously be reinforced to promote and submit feedback to donor and partner countries, which would therefore provide an environment for discussions, knowledge-sharing, exchange of information and donor funding.⁴⁵⁵

In its concluding remarks, the review stated that,

The commitments on management for results calls for donors and partner countries to direct resources to achieving results, and using information on results to improve decisions making and programme performance... Furthermore, greater effort will be needed to establish specific mechanisms for joint monitoring of aid effectiveness at the country level.⁴⁵⁶

Based on the surveys and feedback of the 1st Global Review, it was noted that the next survey would need to show improvement if the value of the monitoring system was to be maximized.⁴⁵⁷ The main priority areas for improvement were submitted to involve careful planning and communication between donors and partner countries, a clearer understanding of concepts and definitions in order to secure a higher return rate from partner countries, information on best practices was needed and further innovative thinking.⁴⁵⁸

The 2nd Global Review of 2009 was aimed at providing a more in-depth analysis of AfT efforts at country level and best practices and comparable data on AfT delivery across donor and partner countries.⁴⁵⁹ It was aimed at evaluating the progress made since the 1st Global Review and to scrutinize how AfT was being utilized on the ground.⁴⁶⁰ Furthermore, views had been exchanged based on how aid flows could be maintained against the backdrop of the global recession.⁴⁶¹ The key objectives of this review was to determine how AfT had moved from commitment to implementation, what obstacles partner countries encountered while mainstreaming trade into national and regional development strategies, how to sustain aid flows during the global economic downturn and lastly, how to assess the effectiveness of AfT.⁴⁶²

⁴⁵⁵Ibid 15.

⁴⁵⁶Ibid 62.

⁴⁵⁷Ibid 63.

⁴⁵⁸Ibid 63.

⁴⁵⁹Ibid 18.

⁴⁶⁰ Global Review Aid for Trade Review, available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

It was discussed at this Review that AfT should support national and regional efforts to stimulate sustained long-term economic growth.⁴⁶³ The important aspect of that sector is the role of the private sector. It should be a core component of the AfT initiative to partner with the private sector to create the incentives for growth.⁴⁶⁴ To positively engage the private sector, access to finance needs to be improved.⁴⁶⁵ Difficulties in trade finance are symptomatic of broader constraints in access to credit for the business sector in developing countries.⁴⁶⁶ It was further recommended that AfT strategies should be country-owned and country-driven.⁴⁶⁷ Thus, many case studies had been examined in order to showcase how AfT was being implemented across different regions.⁴⁶⁸

In discussing the way forward from the economic crisis under the 2nd Global Review, WTO Director-General, Pascal Lamy said,

This Aid for Trade meeting is designed to support developing countries as they seek to better integrate into the multilateral trading system and to take advantage of export opportunities. This is even more relevant today: Aid for Trade is needed to prepare poor countries to exit the crisis. This is no time to fail our development promises.⁴⁶⁹

The 3rd Global Review of AfT was focused on showing results.⁴⁷⁰ It was an opportunity to survey what had been achieved since the last reviews. It was submitted in this review that the AfT initiative had achieved much in a short space of time since developing countries made progress in mainstreaming trade into their national development strategies and donors mobilized additional resources, notably in support of regional economic integration.⁴⁷¹ The Review highlighted that the international community responded well to the challenge of helping developing countries overcome limitations that undermined their ability to maximize the benefits of trade opportunities.⁴⁷² Many case stories had been used which clearly

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Helping Developing Countries Grow, available at: <https://www.gov.uk/government/policies/helping-developing-countries-economies-to-grow> accessed on 3 November 2013.

⁴⁶⁶ Note 460 above.

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

⁴⁶⁹ WTO Launches Second Global Review of Aid for Trade, available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴⁷⁰ Third Global Review of Aid for Trade: Showing Results, available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴⁷¹ Ibid.

⁴⁷² Note 411 above, 21.

demonstrated that AfT is becoming central to development strategies and that substantial initiatives are taking root across a wide spectrum of developing countries.⁴⁷³ It was further concluded under this Review that the joint OECD/WTO AfT website contains a wealth of information that would be developed further to offer a networking function supporting the information needs of the aid-for-trade policy makers and practitioners on how to make the initiative more effective.⁴⁷⁴

It was stated that,

In addition, active knowledge sharing should also be further pursued through deepened and broadened in country dialogue between stakeholders. These discussions should not only focus on ‘bridging demand’ and ‘response’, but increasingly on what approaches work best in showing that aid for trade has an impact on trade performance, economic growth and poverty reduction.⁴⁷⁵

The 4TH Global Review of AfT was the most recent and dealt with ‘connecting to value chains’.⁴⁷⁶ It provided an opportunity for international organizations, the private sector, governments, civil society and academia to discuss the changing nature of value chains and how developing countries can experience benefits from them.⁴⁷⁷

The theme of this Review was further set out because of the following,

Global trade is increasingly characterized by transactions within complex value chains. The global expansion of value chains is offering new opportunities for many developing countries. Value chains are no longer just North-South in character but also involve increasingly complex regional and South-South trade interactions and are extending beyond goods into services too...The aim of the Fourth Global Review of Aid for Trade was to examine strategies to connect developing country and LDC firms to international value chains, how to move up the value chain and discuss the associated development benefits in the context of the debate about the post-2015 development agenda.⁴⁷⁸

⁴⁷³ Ibid 173.

⁴⁷⁴ Monitoring the Aid for Trade Initiative, available at: www.aid4trade.org accessed on 1 November 2013.

⁴⁷⁵ Note 411 above, 182

⁴⁷⁶ Fourth Global Review of Aid for Trade, available at: <http://www.wto.org>, accessed on 25 October 2013.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

Since its inception in 2007, the Global Review of AfT has established itself as the pre-eminent multilateral forum exploring trade and development issues.⁴⁷⁹ The global AfT initiative was outlined by an international Task Force under the backing of the WTO in 2006.⁴⁸⁰ The OECD and the WTO Secretariat were in charge of monitoring the implementation of the aid by the aid donors and that is when the above global reviews started taking place.⁴⁸¹

As such, AfT is also proving to be ineffective in countries that have failed to reconcile the trade and development spheres.⁴⁸² There are trade officials, international trade organisations, donors and academics who would argue that it is the responsibility of those countries to step up to the challenge of reconciling trade with their development efforts.⁴⁸³ This is true; however, there are serious underlying reasons as to why these developing countries are not able to mainstream trade in their development strategy.⁴⁸⁴ Such countries usually do not have the human and institutional capacity to mainstream trade in their development strategy.⁴⁸⁵ Even more, aid is provided to these countries, irrespective of whether they are able to absorb it or not.⁴⁸⁶ By providing this aid, irrespective of the countries capabilities in using it effectively, it causes a distortion of markets, aid dependency, greater income inequality and a lower likelihood that such countries will be able to participate in the global trading system.⁴⁸⁷

The WTO Task Force on AfT noted that,

a lack of empirical data has made it difficult to examine the relationship between policies related to trade and development performance. Better data and statistics are a precondition for better understanding the process of globalisation and its impact and for determining priorities for development co-operation.⁴⁸⁸

⁴⁷⁹ Ibid.

⁴⁸⁰ Note 439 above, 2.

⁴⁸¹ Ibid.

⁴⁸² Note 406 above.

⁴⁸³ Ibid.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Note 411 above, 44

The improvement of these areas will result in a more thorough review of AfT within developing countries.⁴⁸⁹ Global monitoring has provided useful information for all stakeholders in AfT.⁴⁹⁰ However, this thesis notes the necessity of more emphasis needing to be placed on local tracking and monitoring.⁴⁹¹ Even more, there are many ways in which AfT can assist developing countries improve in their export performance such as identifying export opportunities, developing human capital, developing physical productive capacity and tackling infrastructure bottlenecks.⁴⁹² However, the impact of AfT tends to vary considerably across nations depending on the type of intervention taken, the income levels, the geographical region of the recipient country and the sector in which AfT flows are directed.⁴⁹³

There is the realisation that AfT is a combination of many intricate relationships among partner country governments, bilateral donors, multilateral and regional agencies, the private sector and other non-governmental organisations.⁴⁹⁴ Therefore, making AfT work more productively requires comprehensive and rigorous implementation of aid effectiveness that is enshrined in the Paris Declaration⁴⁹⁵, which combines decades of lessons learned and which sets out clear commitments aimed at improving these results.⁴⁹⁶ The principal objective of the AfT initiative was to mobilize aid resources and evidence to date does suggest that this has been achieved to some degree.⁴⁹⁷

The WTO and OECD review AfT periodically.⁴⁹⁸ According to this thesis, this provides an element of transparency which contributes to the progress of the AfT initiative among developing countries. It should be apparent that transparency facilitates dialogue and the creation of accountability.⁴⁹⁹ AfT has become an increasingly important priority in developing

⁴⁸⁹Ibid 44.

⁴⁹⁰Ibid 66.

⁴⁹¹Ibid 66.

⁴⁹² Note 418 above, 20.

⁴⁹³ Y Basnett, 'Increasing the effectiveness of Aid for Trade: the circumstances under which it works best', 2012, ODI Working Papers, available at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7793.pdf>, accessed on 28 November 2013.

⁴⁹⁴ Note 415 above, 69.

⁴⁹⁵ The Paris Declaration on Aid Effectiveness expressed the international community's consensus on the direction for reforming aid delivery and management to achieve improved effectiveness and results, available at: <http://www.web.worldbank.org>, accessed on 24 October 2013.

⁴⁹⁶ Note 415 above, page 69.

⁴⁹⁷ Note 439 above, 13.

⁴⁹⁸ Note 439 above.

⁴⁹⁹ Ibid 8.

co-operation among countries which makes accountability vital.⁵⁰⁰ Measuring the outcomes and impacts of AfT are difficult even though donors have been evaluating trade-related assistance for many years.⁵⁰¹ This monitoring aspect is based more on a spotlight, rather than a microscope.⁵⁰² This means that there is a generalized impression of AfT, which provides for assessment to take place at a global level rather than a more specific look at what is really taking place country by country.⁵⁰³ It is the argument of this thesis that using a microscope monitoring system will produce more visible results regarding the impact of AfT in developing nations. This will therefore highlight the problematic areas and also showcase the successes and improvements more clearly.

Poor supply-side conditions are an important constraint on the export performance in various regions of Africa.⁵⁰⁴ Many African nations are in desperate need of resources to upgrade ports, telecommunications, customs facilities and institutions.⁵⁰⁵ If they cannot participate in the world market with competitive goods, then the countries stand to gain little from any improved market access.⁵⁰⁶

Based on the above research, AfT, therefore, remains a high priority for most developing countries and donors. Strategies and objectives are being created which are increasingly focusing on economic growth, poverty reduction and regional integration.⁵⁰⁷ Problems occur when OECD countries are confronted with budgetary challenges and when donors face difficulties in responding to the higher demand for AfT from developing countries.⁵⁰⁸ As has been noted earlier, AfT is not a new concept. According to this thesis however, there is the need for new knowledge on AfT interventions. In order to obtain evidence and insights, it is essential to assess the extent to which past programmes and projects have met the AfT expectations as well as measuring their impacts⁵⁰⁹ with more concrete evidence.

⁵⁰⁰ Note 425 above, 15.

⁵⁰¹ Ibid 11.

⁵⁰² Note 439 above, 8.

⁵⁰³ Ibid.

⁵⁰⁴ Note 422 above, 8

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid.

⁵⁰⁷ Note 411 above, 15.

⁵⁰⁸ Ibid.

⁵⁰⁹ Note 425 above, 14.

In order for there to be greater coherence in applying trade and aid policies, international cooperation is vital.⁵¹⁰ AfT needs the support of a range of complementary policies within developing countries.⁵¹¹ This calls for appropriate macro-economic policies, efficient labour markets, a supportive system of education and training and a sound regulatory environment.⁵¹² It is the argument of this thesis that there is a need to show that AfT is worth conducting. There is still the need to demonstrate the fact that a broad-based multilateral trade liberalisation and the integration of developing countries into the global economy produce large potential gains.⁵¹³ It is recommended by this thesis that it is necessary to show that AfT contributes to wider development goals and has identifiable targets. Hence, there needs to be a case by case and country by country identification of the nature and extent of the barriers that are preventing the benefits of trade from being realised.⁵¹⁴ This thesis emphasizes that unless this is done, AfT will remain futile and results will not be seen. It is the submission of this thesis that it is for this reason that each country varies with regards to their economy, population, socio-economic issues and trading capabilities. It is not sufficient to put a one size fits all jacket across a global scale and therefore, a more specific case by case analysis needs to be made.

Furthermore, AfT has proven to be successful when there is effective coordination between donors and recipients around the design, implementation and monitoring of AfT programmes.⁵¹⁵ The instruments and modalities used for delivering AfT are able to address constraints at the transnational and regional level.⁵¹⁶ These projects are targeted at improving trade for individual countries, when in fact there may be greater successes if focused towards greater integration of trade within regions, instead.⁵¹⁷

The AfT review process is, however, mixed with different results and conclusions.⁵¹⁸ It is a challenging concept due to monitoring flows and in establishing consensus on the link between development aid and trade.⁵¹⁹ It can be stated that the OECD and WTO have put into

510 Development Co-operation Directorate (DCD-DAC), available at: <http://www.oecd.org/dac/publicationseriesthedevelopmentdimension.htm>, accessed on 4 November 2013.

511 Note 418 above, 28-29.

512 Ibid 28-29.

513 Ibid 28-29.

514 Ibid 28-29.

515 Note 493 above.

516 Ibid.

⁵¹⁷ Ibid.

⁵¹⁸ Note 439 above, 6.

⁵¹⁹ Ibid 6.

place a credible monitoring mechanism which has been refined and expanded over the years.⁵²⁰ The AfT review process has succeeded in uniting political support for AfT as a global public good. However, maintaining the momentum of monitoring will be challenging.⁵²¹ Whether the future of the initiative is good or bad, it offers valuable lessons for future global cooperation in the field of development.⁵²²

5.4 CONCLUSION

Much empirical literature tends to confirm that AfT has indeed been effective over the years in raising exports and improving the economy.⁵²³ This paints a rather positive picture on the impact AfT has had in economic performance in many countries.⁵²⁴ While consultative processes and aid implementation practices continue to improve, both donors and partner countries need to do more to ensure that AfT is effective and consistent.⁵²⁵

This thesis affirms that AfT is needed now more than ever. AfT will assist partner countries address broad growth and poverty reduction challenges, overcome long-term constraints and make their economies more resilient with diversified sources of growth.⁵²⁶ It supports the poor and vulnerable countries in developing the basic economic infrastructure and tools they need to harness trade as an engine of economic growth and development because for such countries, it will help build the necessary capacity to trade effectively and efficiently, and accelerate poverty eradication.⁵²⁷ At the end of the day, AfT is a crucial complement to trade opening under the aegis of the WTO.⁵²⁸ Since, as proven to some extent by the discussion thus far, AfT offers opportunities as well as challenges to pro-poor development policies.⁵²⁹

The implementation of AfT with respect to the developing countries of Ghana and Nigeria will be dealt with at a later stage in this thesis to determine their progress and failures.

⁵²⁰ Ibid 6.

⁵²¹ Ibid 6.

⁵²² Ibid 6.

⁵²³ Note 493 above.

⁵²⁴ Ibid.

⁵²⁵ Note 415 above, 74

⁵²⁶ Chapter 1: The Impact of the Economic Crisis on Aid for Trade, Aid for Trade at a Glance 2009: Maintaining Momentum, OECD/WTO 2011, at 21, available at: <http://www.oecd.org/dac/aft/43234753.pdf>, accessed on 18 August 2013.

⁵²⁷ P Mandelson, 'Europes aid for trade pledge, 2007, Available at:

<http://www.trade.ec.europa.eu/doclib/html/136451.htm>, accessed on 1 October 2013.

⁵²⁸ Aid for Trade: Helping developing countries benefit from new trading opportunities, available at:

[http://www.oecd.org/Development/Co-operation/Directorate\(DCD-DAC\)](http://www.oecd.org/Development/Co-operation/Directorate(DCD-DAC)), accessed on 2 October 2013.

⁵²⁹ Note 32 above.

CHAPTER 6: ANALYSIS OF GHANA AND NIGERIA'S DEVELOPMENT WITHIN THE INTERNATIONAL TRADE LAW

6.1 INTRODUCTION

Ghana and Nigeria are two of the developing countries in Africa that fall under the Economic Community of West African States (ECOWAS).⁵³⁰ The economy of Ghana is largely agrarian and is relatively open to trade.⁵³¹ Ghana's long term development goal is to achieve a per capita income of at least US\$30,000 by the year 2020⁵³² in which their agriculture sector is expected to play a major role. Thus, the importance of the role of the Agreement on Sanitary and Phytosanitary Measures (SPS), which will be discussed at a later stage of this thesis. However, productive capacity constraints, arising largely from human, institutional and other bottlenecks pose a major challenge in achieving such a goal.⁵³³ Alternatively, Nigeria is similarly a developing nation in the global economic order but is visibly presenting a diminutive economic growth.⁵³⁴ There has, however, been some hope that the future of Nigeria appears to be bright if the country cooperates to reduce corruption and expand on their trade and development areas.⁵³⁵ This thesis therefore, seeks to emphasize the possible improvements in the development of Nigeria once corruption is combated. It has been noted that the corruption in Nigeria is the root cause of the country's undoing regarding their trade and economic development.⁵³⁶ This will be further discussed at a later stage of this thesis.

Thus, this thesis will discuss whether both these developing African nations are benefitting in the Multilateral Trading System (MTS) and furthermore, whether they are experiencing success or failure in terms of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). These World Trade Organization (WTO) agreements have been critically discussed at an earlier stage of this thesis. It will furthermore be determined the manner in which these countries have responded to the Aid for Trade (AfT) initiative and what complications are hampering development within the nation. With regards to Millennium

⁵³⁰Note 37 above.

⁵³¹Ghana, available at: <http://www.ghanaweb.com/>, accessed on 5 September 2011.

⁵³²Note 407 above.

⁵³³Ibid.

⁵³⁴S C Nwachukwa, 'The Developing Nigeria', available at:

<http://www.businessdayonline.com/NG/index.php/analysis/commentary/29470-the-developing-nigeria>, accessed on 12 April 2013.

⁵³⁵Ibid.

⁵³⁶Ibid.

Development Goal 8 (MDG 8), it is important to determine whether Ghana and Nigeria are truly developing global partnerships for development and if these goals and indicators will be achieved by the deadline of 2015 and if not, the reasons for this failure.

6.2 GHANA'S DEVELOPMENT

6.2.1 Ghana's Development under the Multilateral Trading System (MTS)

Before gaining independence in 1957, Ghana's trade regime was generally a liberal one with very few restrictions.⁵³⁷ There had been no deliberate endeavors within the country to promote exports or generally to interfere with the trading process.⁵³⁸ By 1983, Ghana's economy faced a near collapse which resulted in economic reforms supported by the International Monetary Fund (IMF) and the World Bank (WB) being instituted to stabilize the economy and structure imbalances in order to spur continuous growth in the country.⁵³⁹

Ghana's economy has a diverse and rich resource base and in addition, has one of the highest Gross Domestic Product (GDP) per capita in Africa.⁵⁴⁰ This demonstrates the potential of this developing nation in the global economy. The country nevertheless, remains fairly dependent on international financial and technical assistance.⁵⁴¹ Despite their relative prosperity, poverty remains persistent in Ghana and one of the factors contributing to this is the HIV/AIDS epidemic.⁵⁴² This epidemic consequently hampers the social development of a country and ultimately affects trade and development.

Furthermore, Ghana does face macroeconomic challenges which include that of growing debt, high inflations and significant deficits due to the international food and fuel price crisis. It can therefore be argued that Ghana is still vulnerable to the effects of the global economic crises which would affect the development of the developing nation. (Ghana, available at: <http://www.acdi-cida.gc.ca/ghana-e>, accessed on 3 March 2014)

Ghana's main objective in their service sector was to build and strengthen its domestic supply capacity, efficiency and competitiveness in order for the country to take advantage of the

⁵³⁷Note 407 above.

⁵³⁸Ibid.

⁵³⁹Ibid.

⁵⁴⁰Ibid.

⁵⁴¹Ghana, available at: <http://www.ilo.org/public/english/region>, accessed on 30 September 2013

⁵⁴²Orphan Aid Africa, available at: <http://www.oafrica.org>, accessed on 20 September 2013

market access opportunities in which it has supply capacity.⁵⁴³ This is to be achieved through trade policy instruments across the following areas: multilateral trade, creating a fair and transparent import-export regime, facilitating trade, enhancing production capacity for domestic and export markets, domestic trade and distribution, consumer protection and fair trade and protection of intellectual property rights.⁵⁴⁴

Thus, internal trade policy is a key tool in achieving the Government's development goals.⁵⁴⁵ Even more, economic growth has to come from increased international trade since Ghana has a relatively small domestic market.⁵⁴⁶ Multilateral trade is important to Ghana because the Government fully recognizes that international trading rules have a direct impact on their development, especially in the context of globalization.⁵⁴⁷ Agricultural subsidies, as well as high tariffs and non-tariff barriers in other countries limit the potential for the country concerned to produce and trade in products of interest to it.⁵⁴⁸

Nevertheless, there is ample evidence that the country has actively participated in the MTS and have continued with their efforts in opening up their markets by refraining from using non-tariff measures and relying on tariffs as the main instrument of trade protection.⁵⁴⁹ As a developing country, they have been urged to continue the pursuit for liberalization.⁵⁵⁰ Ghana has reiterated their strong commitment to the MTS and Members have expressed assurances of assistance in the form of bilateral and multilateral technical assistance.⁵⁵¹ Members also recognized that Ghana's access to the markets of developed countries was critical for improving its economic performance.⁵⁵² In January 2008, Ghana underwent its 3rd Trade Policy Review at the WTO.⁵⁵³ Since its last Review in 2001, Ghana's macroeconomic fundamentals have improved greatly based on the results that were shown.⁵⁵⁴ Ghana had achieved higher growth rates because of the steps taken to liberalize the trade regime through

⁵⁴³ Ghana's WTO Trade Policy Review and the Challenge of Epistemic Knowledge Communities in Ghana, available at: <http://www.modernghana.com>, accessed on 14 October 2013

⁵⁴⁴ Ghana Districts, Available at: <http://www.ghanadistricts.com>, accessed on 23 October 2013

⁵⁴⁵ Ibid.

⁵⁴⁶ Trade and Investment Regimes, available at: <http://www.wto.org>, accessed on 22 October 2013 n

⁵⁴⁷ Note 544 above.

⁵⁴⁸ Ibid.

⁵⁴⁹ Ghana Shows Promise at WTO Trade Policy Review Body, available at: <http://www.ghanaweb.com>, accessed on 19 October 2013.

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

⁵⁵² Ibid.

⁵⁵³ Note 543 above.

⁵⁵⁴ Ibid.

the reduction of its applied Most Favored Nation (MFN) tariffs and structural reforms.⁵⁵⁵ However, the United States of America (USA) had argued that more effort in Ghana was needed, especially over the protection of Intellectual Property (IP).⁵⁵⁶

6.2.2 Ghana's Development under the Agreement on Trade-Related Aspects of Intellectual Property and the Agreement on the Application of Sanitary and Phytosanitary Measures

Ghana is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization (ARIPO) in 1976.⁵⁵⁷ Even more, it is a signatory to various Intellectual Property Rights (IPR's) treaties since IPR protection is a policy priority for the nation.⁵⁵⁸ Since 2001, Ghana has continued to implement trade liberalization reforms at a slower pace than most others.⁵⁵⁹ Thus, in order to meet the requirements of the TRIPS Agreement and be fully compliant, new legislation in most areas of intellectual property rights had to be adopted such as the Trade Marks Act 664 of 2005 and the Patent Act 657 of 2003.⁵⁶⁰ The Government has also taken the initiative to increase its enforcement efforts in this area so that they do not fall behind.⁵⁶¹

Ghana strives to achieve universal access to medicines in order to manage diseases such as AIDS, malaria and tuberculosis.⁵⁶² Local industries were not able to progress effectively in the areas of Intellectual Property (IP), competition, trade and drug regulation due to various gaps in the laws, policies, international and regional agreements.⁵⁶³ Most pharmaceutical industries in Ghana are in danger of collapsing due to the lack of competition and the preferences of foreign pharmaceutical products.⁵⁶⁴ There are also many illegal counterfeit drugs which are imported illegally into the country which therefore pose a threat to the integrity of the supply chain within the country.⁵⁶⁵ Due to this, workshops were conducted in order to build capacity of local pharmaceutical industries in line with the WTO-TRIPS

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

⁵⁵⁷ Trade Policies and Practices by Measure, available at: http://www.wto.orh/english/tartop_e/tpr_e/s194-03_e.doc, accessed on 7 October 2013.

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid.

⁵⁶⁰ Ghana Laws, available at: <http://www.wipo.int/wipolex/en/profile.jsp?code=GH>, accessed on 28 October 2013.

⁵⁶¹ Note 557 above.

⁵⁶² Moves by Ghana to improve access to medicines ,2009, available at: <http://www.ghanaweb.com> accessed on 17 October 2013

⁵⁶³ Ibid.

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid.

Agreement.⁵⁶⁶ By these undertakings, the country is able to grow competitively in meeting local demands. According to Dr Michael Addo, the President of Pharmaceutical Manufacturers Association of Ghana, this institution should operate in conjunction with national regulators to achieve universal access to medicines and so that domestic pharmaceutical industries would be strengthened.⁵⁶⁷ He furthermore stressed the need for government to ensure full incorporation of all TRIPS and safeguards in national legislations to promote domestic pharmaceutical industries.⁵⁶⁸

SPS measures in Ghana are the responsibility of the Directorates of Plant Protection and Regulatory Services (PPRS).⁵⁶⁹ Imports of plants and plant products require a phytosanitary certificate from an authorized body of the exporting country and an import permit issued by the PPRS.⁵⁷⁰ The PPRS has statutory responsibilities over plant pest and disease management, pesticide regulation and control and inspection and certification.⁵⁷¹ In addition, Ghana prohibits the importation of poultry products from certain countries because of avian influenza.⁵⁷² Under the SPS Agreement, the WTO sets constraints on member-states' policies relating to food safety (bacterial contaminants, pesticides, inspection and labeling) as well as animal and plant health (phytosanitation) with respect to imported pests and diseases.⁵⁷³ However, meeting these requirements would require an overhaul of Ghana's standards regime to ensure conformity to assessment and other requirements.⁵⁷⁴ This thesis supports the above view due to the research shown which proves Ghana's position is not as viable and sustainable as it could be.

6.2.3 Ghana's Development under Millennium Development Goal 8

Ghana has mainstreamed the MDG's into the national development framework that has driven the national socio-economic development agenda.⁵⁷⁵ The United Nation (UN) system

⁵⁶⁶ Ibid.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.

⁵⁶⁹ Note 557 above.

⁵⁷⁰ Ibid.

⁵⁷¹ National Food Safety Systems in Africa – A Situation Analysis, Final Report, WHO Regional Conference, available at: <http://www.fao.org/docrep/meeting/010/a0215e/a0215e24.htm> accessed on 2 October 2013

⁵⁷² Note 557 above.

⁵⁷³ Ghana expects export value to hit \$5b mid year of 2016, available at: <http://www.ghanabusinessnews.com> accessed on 23 October 2013.

⁵⁷⁴ Ibid.

⁵⁷⁵ The United Nations In Ghana- Millennium Development Goals, available at: http://unghana.org/site/index.php?option=com_content&view=article&id=81&Itemid=448, accessed on 20 October 2013

is partnering with the government of Ghana to ensure that national priorities are linked with the MDG's.⁵⁷⁶ The Ghana Shared Growth and Development Agenda 2010-2013 is the medium term national strategy that guides Ghana's efforts to reach the MDG's.⁵⁷⁷ In September 2000, Ghana committed itself to tracking the 8 time-bound MDG's and their associated indicators.⁵⁷⁸ The country has made substantial progress over the last few years in achieving the MDG's although there are still many areas which need improvement.⁵⁷⁹ As alluded to earlier, MDG 8 is aimed at developing a global partnership for development utilizing areas such as aid, trade and debt relief.⁵⁸⁰ Ghana has made positive progress towards strengthening government and donor partnership to deal with the debts of the country and ensure its sustainability in the long run.⁵⁸¹ Aid inflows continued to be dominated by project aid which constitutes more than 60 per cent of Official Development Assistance (ODA) inflows.⁵⁸² In terms of cooperation with the private sector, Ghana has seen rapid and dramatic improvement in mobile phone and internet usage over the past decade. Mobile cellular subscription surged in the last few years.⁵⁸³ In addition, subscribers of internet service for the entire population have almost doubled from 2009 to 2010 at 4.2million,⁵⁸⁴ thus indicating the vast increase and improvement in technological use.

Under MDG 8, developed countries were required to increase ODA to developing countries by the year 2015 yet only a few countries have exceeded this.⁵⁸⁵ Aid inflow into Ghana takes on different forms such as project aid, budget support and sector budget support.⁵⁸⁶ Aid flows were once not an important issue for Ghana due to the substantial foreign exchange reserves, low debt stock and a small private sector.⁵⁸⁷ However, this has changed in recent times due to the country depending on foreign aid increases for their development and expansion.⁵⁸⁸ Some

⁵⁷⁶ Ibid.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ghana's 2010 MDGs Report-National Development Planning, available at: http://www.undp.org/content/dam/ghana/docs/Doc/Inclgro/UNDP_GH_IG_2010MDGreport_18102013.pdf accessed on 23 October 2013

⁵⁷⁹ Millennium Development Goals in Ghana, at 2, available at: <http://www.measuredhs.com/pubs/pdf/OD60/OD60.pdf>, accessed on 17 October 2013.

⁵⁸⁰ 2010 Ghana's MDGs Report-National Development Planning, available at: http://www.undp.org/content/dam/ghana/docs/Doc/Inclgro/UNDP_GH_IG_2010MDGreport_18102013.pdf accessed on 23 October 2013

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid 61.

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid.

factors which contribute to progress in developing a global partnership for development include that of good governance.⁵⁸⁹ It is vital for the country of Ghana to have political stability as well as a strengthening of Parliament and improved democratic governance.⁵⁹⁰ This thesis stresses the argument that by improving accountability, there will be a definite increase of confidence for development partners in the country's system.⁵⁹¹

There has been an increasing global interest to promote development in Ghana.⁵⁹² The reason being that Ghana shows potential for stronger economic and trade development. Building partnerships for development and resource mobilization for development is fundamental in achieving this goal.⁵⁹³ This demands the country to deal effectively and comprehensively with the debt problem the nation faces.⁵⁹⁴ Nonetheless, current debt levels in Ghana seem to be within the threshold of sustainable levels.⁵⁹⁵ However, if the pattern continues in this manner, Ghana may find herself in an unfavorable debt situation in the years to come.⁵⁹⁶ The debt service situation in Ghana is becoming sustainable mainly due to the expansion of the economy.⁵⁹⁷ Key interventions were introduced to ensure that Ghana manages its public debt efficiently.⁵⁹⁸ The government continuously conducts periodic Debt Sustainability Analyses to ensure continuous public debt sustainability and the adoption of appropriate strategies.⁵⁹⁹

In addition, Ghana is experiencing a technological revolution that is centered on information and communication technologies (ICT).⁶⁰⁰ This is shaping, accelerating and transforming the country in many areas. Such an example would be in the area of mobile phone subscriptions which has increased momentarily.⁶⁰¹ Furthermore, there has been an increase in the number of service providers and the expansion in the network coverage across the nation.⁶⁰² The rapid expansion is moreover due to the reduction in the price of mobile phones and the cost

⁵⁸⁹Ibid 63.

⁵⁹⁰Ibid 63.

⁵⁹¹Ibid 63.

⁵⁹²Ibid 64.

⁵⁹³Ibid 64.

⁵⁹⁴Ibid 60.

⁵⁹⁵Ibid 64.

⁵⁹⁶Ibid 65.

⁵⁹⁷Ibid 65.

⁵⁹⁸Ibid 65-66.

⁵⁹⁹Ibid 66.

⁶⁰⁰Ibid 67.

⁶⁰¹Ibid 67.

⁶⁰² Ibid.

of using these phones.⁶⁰³ Since 1995, internet usage has also expanded rapidly, although much slower than telephone usage.⁶⁰⁴ Additionally, there has been a sharp rise in the ownership of computers by households and the number of schools with computers continues to grow as well.⁶⁰⁵ It is the argument of this thesis that the above reports contribute to MDG 8 being achieved in areas of technology. Encouragement of technology expansion affects education and economic levels favorably.

This thesis is in agreement that Ghana's progress in achieving MDG 8 by the 2015 has its successes and failures.⁶⁰⁶ Some targets have been achieved ahead of time whilst others remain unsatisfied.⁶⁰⁷ Ghana's progress in achieving the target of dealing comprehensively with the domestic debt burden continues to grow in momentum.⁶⁰⁸ The inflows of ODA have increased in certain areas but have also experienced stagnancy in others.⁶⁰⁹ The country is progressing well regarding the target of making available the benefits of new technologies, especially information and communications.⁶¹⁰ Overall, Ghana can be said to be striving in the right direction to attaining MDG 8 by the deadline of 2015. However, this cannot be achieved when the country is moving at a slow pace in meeting this deadline. The Government needs to continue working effectively with development partners to accelerate progress in the areas which are lacking.⁶¹¹

6.2.4 Ghana's Development under the Aid for Trade (AfT) Initiative

It has been well established that low income countries are not able to integrate into the international trading system on the same terms and levels as their high income counterparts.⁶¹² Low income economies face many challenges in exploiting market access opportunities and these problems continue to persist due to productive capacity constraints which arise from human, institutional and other bottlenecks.⁶¹³ AfT has therefore been introduced to curb these issues. The goals and objectives of the AfT initiative have been discussed in an earlier chapter of this thesis. Ghana receives a significant amount of aid

⁶⁰³ Ibid.

⁶⁰⁴ Ibid.

⁶⁰⁵ Ibid 68.

⁶⁰⁶ Ibid 70.

⁶⁰⁷ Ibid 70.

⁶⁰⁸ Ibid 70.

⁶⁰⁹ Ibid 70.

⁶¹⁰ Ibid 77.

⁶¹¹ Ibid 69.

⁶¹² Note 407 above.

⁶¹³ Ibid.

according to African standards.⁶¹⁴ With about USD 400 million invested since 2006, Ghana is among the top recipients of aid for trade in Africa.⁶¹⁵ The majority of this AfT goes into economic infrastructure and the building of productive capacities of the real sectors of the economy which is agriculture.⁶¹⁶ Despite the 2008 economic and financial crises in most parts of the global north, the available OECD figures in 2010 showed continuous growth in development aid in Ghana.⁶¹⁷

This thesis upholds the submission that the impact of AfT in Ghana has been varied over the years.⁶¹⁸ On the one hand, it has contributed to mainstreaming trade and tackling some of the existing constraints that deter Ghanaian exports.⁶¹⁹ However alternatively, it has not succeeded in strengthening the absorptive capacity of the local institutions involved in the initiative, which has limited the overall impact of AfT.⁶²⁰ Despite the recent increase in trade, Ghana's exports are still highly concentrated and low in value added.⁶²¹ Given that substantial course of aid flows into productive sectors, it is important that adequate structures are put in place to ensure that adequate measurement of impacts and outcomes are achieved.⁶²² For this to happen, there is a need for coherent AfT strategies to ensure that these flows have a desired impact on Ghana and are adequately measured.⁶²³ A study had been prepared for the International Center for Trade and Sustainable Development (ICTSD) which demonstrated that overall, the assessment demonstrates that AfT has been partially effective and has generated some positive impact.⁶²⁴ The gains, however, are argued to be limited, especially due to systemic, procedural and human resource related factors which arise from the internal and external political economies.⁶²⁵

This thesis substantiates the argument that Ghana needs to use concise and comprehensive surveys of existing mechanisms in order to manage AfT and development results which

⁶¹⁴Ibid.

⁶¹⁵ Evaluating Aid for Trade on the Ground: Lessons from Ghana, available at: <http://www.ictsd.org/i/publications/171290>, accessed on 19 October 2013.

⁶¹⁶Note 407 above.

⁶¹⁷Note 578 above, 70.

⁶¹⁸Note 615 above.

⁶¹⁹ Ibid.

⁶²⁰ Ibid.

⁶²¹Ibid.

⁶²²Note 407 above.

⁶²³Ibid.

⁶²⁴Note 615 above.

⁶²⁵Ibid.

include targets and performance indicators.⁶²⁶ Furthermore, assessments of these targets and indicators that donors use to monitor progress with their AfT related projects and programs needs to be conducted.⁶²⁷ There also needs to be an analysis of data on AfT flows and donor activities in the agricultural sector.⁶²⁸

6.3 NIGERIA'S DEVELOPMENT

6.3.1 Nigeria's Development under the Multilateral Trading System (MTS)

Agriculture is the largest sector of Nigeria's economy.⁶²⁹ According to several reports, Nigeria continues to be perceived as a highly corrupt and a difficult country in which to do business.⁶³⁰ According to the argument of this thesis, this perception deters much of the progress and development of effective, transparent trade in the country. Several steps have been taken to address the negative perception through various pieces of legislation.⁶³¹ Nigeria, which was one of the richest 50 countries in the early 1970's, has retrogressed to become one of the 25 poorest countries in the twenty-first century.⁶³² This thesis therefore submits that Nigeria has fared poorly in its development areas over the recent years. However, despite the many impediments faced, the country continues to strive forward and attempts to achieve adequate growth in its economy.⁶³³

Nigeria's most common description is known as the African country with "incredible potential".⁶³⁴ This thesis aims to emphasize that although Nigeria is known for the potential it possesses, its leadership has been unable thus far to solve the problems that keep millions of citizens living in poverty. Though Nigeria has been a member of the WTO since its commencement, some of its government officials question the ability of its weak, oil dependent economy to continue to participate in the organization's agenda for trade

⁶²⁶Note 407 above.

⁶²⁷Ibid.

⁶²⁸ Ibid.

⁶²⁹ Nigeria GDP Growth Rate, available at: <http://www.tradingeconomics.com/nigeria/gdp-growth>, accessed on 7 August 2013.

⁶³⁰ WTO applauds Nigeria for Reforms, available at: <http://www.vanguardngr.com/2011/07/wto>, accessed on 23 October 2013.

⁶³¹ Ibid.

⁶³²The Millennium Development Goals: Can Nigeria Meet the Goals in 2015, available at: <http://www.civicus.org/new/media/MDGforICAN.doc>, accessed on 20 October 2013.

⁶³³Note 630 above.

⁶³⁴ Nigeria Summary, available at: <http://www.cid.harvard.edu/cidtrade/gov/nigeriagov.html>, accessed on 23 October 2013.

liberalization.⁶³⁵ Supporters of the Nigerian Minister of Finance, Malam Adamu Ciroma, maintain that opting out of participating in organizations such as the WTO, IMF or World Bank would be detrimental to Nigerian development.⁶³⁶ Having identified these key concerns, this thesis continues to uphold the importance of the MTS to developing nations, especially when used effectively.

As mentioned previously, Nigeria is a key member of the WTO and a relevant actor in the regional and global economy.⁶³⁷ The country held the Chairmanship of the General Council two years back, as well as that of the last WTO Ministerial Conference⁶³⁸ which showed their dedication and participation in the MTS.⁶³⁹ The WTO's aim of liberalizing the market, however, is having a detrimental impact on the economy of Nigeria because of the lack of regulation on the part of the government.⁶⁴⁰ Thus, indigenous traders are threatened because the Nigerian market is open for foreigners to conduct themselves in any manner that is free from regulation and control.⁶⁴¹ Liberalization is allowing foreigners to enter the country with their goods without paying any duty and in most cases; they have products that do not meet certain standards.⁶⁴² Even more, due to the lack of regulation and control, they are allowed to sell as retailers in Nigeria causing the nation to face challenges and threats to their own economy and amidst their own people.⁶⁴³

Odilim Enwegbara, a Development Economist, advised that Nigeria should exit the WTO in order to enhance tariffs that would encourage exportation rather than importation in the country.⁶⁴⁴ The Economist further argued that the Nigerian economy will only develop if the nation were to be industrialized. He also advocated for the export of home-made goods rather

⁶³⁵ Ibid.

⁶³⁶ Ibid.

⁶³⁷ The WTO is Having a Negative Impact on the Nigerian Economy, available at www.allafrica.com/stories/201209280747.html, accessed on 20 October 2013

⁶³⁸ H Mendoza, 'Making the WTO a More Effective Tool for Development', available at: <http://www.nigeriadevelopmentandfinanceforum.org/PolicyDialogue/Dialogue.aspx?Edition=57>, accessed on 2 November 2013.

⁶³⁹ H Musa, 'The WTO is Having a Negative Impact on the Nigerian Economy', available at www.allafrica.com/stories/201209280747.html, accessed on 20 October 2013.

⁶⁴⁰ Note 637 above.

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ Ibid.

⁶⁴⁴ Lessons from China: Nigeria Must Exit the World Trade Organisation, available at: <http://www.channelstv.com/home/2013/07/10/lesson-from-china-nigeria-must-exit-world-trade-organisation/> accessed on 21 October 2013.

than allowing all sorts of importation by the mere fact of being a member of the WTO.⁶⁴⁵ He claimed that Nigeria should be more like China and seek foreign loans to industrialize its economy in order to develop the people and infrastructure.⁶⁴⁶

At the fourth WTO Trade Review, there had been strong and broad-based economic reforms seen in Nigeria.⁶⁴⁷ Nigeria has simplified customs procedures and has also recognized diversification of the economy and regulatory reforms.⁶⁴⁸ It has been argued that the reforms have to continue to accelerate if Nigeria is to meet its own ambitious development goals.⁶⁴⁹ Furthermore, there needs to be a domestication of WTO agreements in Nigeria to give legal effect to it in local courts.⁶⁵⁰ Nigeria continues to use restrictive trade measures, non-transparent valuation procedures, and non-transparent laws and regulations which raise the cost of trade doing business.⁶⁵¹ The transparency of a country's laws, regulations, procedures and decisions is essential for the stability and predictability of its trade and investment regime.⁶⁵² Nigeria's economy is already benefiting from the steps it has taken since 2005 to liberalize its trade regime.⁶⁵³ They are urged to continue in commitments towards the principles of openness and market based economic reform that has stimulated the nation's growth in the last five years.⁶⁵⁴

Dr Mendoza, a candidate of Mexico for the position of Director General of the WTO, said that he is a firm believer in the MTS because it has been a key for trade becoming a dynamic engine of world economic growth and development for developing countries during the past decades.⁶⁵⁵ He is of the view that the WTO is a highly successful institution because it promotes trade which facilitates growth and partnership development.⁶⁵⁶ He furthermore believes that the MTS, as embedded in the WTO, will always be indispensable to the world

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid.

⁶⁴⁷ Note 630 above.

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ Ibid.

⁶⁵¹ Trade Policy Review of Nigeria 2011, available at: <http://www.geneva.usmission.gov/2011/06/28>, accessed on 7 October 2013.

⁶⁵² Ibid.

⁶⁵³ Ibid.

⁶⁵⁴ Ibid.

⁶⁵⁵ HB Mendoza, Making the WTO a more Effective Tool for Development, available at: <http://www.myndff.com/PolicyDialogue> accessed on 13 October 2013

⁶⁵⁶ Ibid.

and to its Members.⁶⁵⁷ His argument is a credible one as it does relate to developing nations such as Nigeria. It is the argument of this thesis that if Nigeria had to opt out of such an institution which promotes trade and partnership development, they would experience a vast number of failures and will not be able to progress as effectively as they can in the MTS.

It is the argument of this thesis that trade is undeniably a powerful tool for development. Hence, there is an urgent need to provide countries the opportunity to reap its benefits.⁶⁵⁸ Developing countries such as Nigeria need this aid, trade and financial benefits the most. Therefore, the WTO and its Members should direct their efforts in line with this aim.⁶⁵⁹ The Organization needs to deliver on effective market access for goods and services from developing countries, particularly from Africa.⁶⁶⁰ The work, however, is not complete and there is always room for improvement. It therefore has to be emphasized that the WTO is an indispensable international organization.⁶⁶¹ It is the argument of this thesis that if the WTO did not exist for developing nations such as Nigeria, an institution such as it would have to be eventually created in order to provide for a global economic governance and for the rule of law in trade, economics and beyond.⁶⁶²

6.3.2 Nigeria's Development under the Agreement on Trade-Related Aspects of Intellectual Property and the Agreement on the Application of Sanitary and Phytosanitary Measures

The recurring news in Nigeria is focused on the lack of medicines within the country.⁶⁶³ There is a difficulty in accessing medicines due to numerous factors, which are discussed below in this thesis.⁶⁶⁴ The problems pertaining to the access of medicines in Nigeria have made the search for solutions more complicated over the years.⁶⁶⁵ Nigeria has inadequate infrastructure, high rates of mortality due to diseases, lack of technical assistance, and lack of funding for the treatment of major diseases, the presence of counterfeit medicines in the Nigerian market and around the world as well as an underdeveloped pharmaceutical

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

⁶⁶⁰ Ibid.

⁶⁶¹ Nigeria: Osakwe-WTO rules will not impede Nigeria's Agriculture Sector Development, available at: <http://allafrica.com/stories/201305060115.html>, accessed on 18 October 2013

⁶⁶² Ibid.

⁶⁶³ H Iyortyer , 'The Quest for Access to Medicines and the Effects of the TRIPS Agreement: An Appraisal of the Nigerian Situation Balanced Against other States', (2009), Durham theses, Durham University, Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/282/> accessed on 30 November 2013

⁶⁶⁴ Ibid.

⁶⁶⁵ Ibid.

industry.⁶⁶⁶ In addition, there has been reports that a vast number of Nigerians are disappointed in the government for their inability in providing basic utilities that are essential for the Nigerian economy to function effectively.⁶⁶⁷ Moreover, Nigeria has a large population and the government is struggling to meet the healthcare needs of such a vast number of people.⁶⁶⁸ This thesis supports the argument that without any financial assistance from the national government and other international organizations around the world, the future for many Nigerians in accessing lifesaving medicines seems bleak.⁶⁶⁹

One of the challenges in accessing medicine in Nigeria is the fact that IP has not yet been effectively developed which makes IP law a complicated subject for the nation to deal with.⁶⁷⁰ Thus, if this country is going to compete with other countries in the area of IP, the government needs to develop the law in this area as well as the pharmaceutical industry.⁶⁷¹ It has been previously noted that the TRIPS Agreement introduced global minimum standards for the protection and enforcement of nearly all forms of IP rights, including those on patents.⁶⁷² Nigeria had a deadline of 2005 to become TRIPS compliant.⁶⁷³ However, Nigeria did not amend its IP laws to meet the required standards promptly. It is imperative for Nigeria to adapt its intellectual property laws to become TRIPS compliant if it is to take advantage of the flexibilities within the agreement.⁶⁷⁴ Nigeria had also been encouraged to abandon outdated IP rights and speed up the passage of the new Intellectual Property Bill before the National Assembly to come in line with the TRIPS Agreement.⁶⁷⁵

Thus, for Nigeria to improve accessibility of Nigerian's to essential medicine, there are a few policy options which are available to this developing nation. The granting of compulsory licenses is one that is readily available to the Nigerian government for purposes of increasing drug supply within the country.⁶⁷⁶ It is essential for the Nigerian Government to consider

⁶⁶⁶Ibid.

⁶⁶⁷Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰Ibid.

⁶⁷¹Ibid.

⁶⁷²Note 227 above.

⁶⁷³Note 663 above.

⁶⁷⁴Ibid.

⁶⁷⁵Note 630 above.

⁶⁷⁶AAdewole, 'Globalization, the TRIPS Agreement and Their Implications on Access to Essential Medicine for Developing Countries: A Case Study of Nigeria', at 188, available at: <http://www.nials-nigeria.org/pub/AyodeleA.pdf> accessed on 8 July 2013.

granting compulsory licenses to indigenous firms with requisite manufacturing capabilities to produce the essential drugs that they can produce.⁶⁷⁷

The Nigerian Customs Service (NCS) would also have to double up in their efforts at ensuring that the nation's borders are not welcoming to the smuggling in of sub-standard drugs into the country.⁶⁷⁸ The Christian Health Association of Nigeria (CHAN), a non-profit organization, is engaged in the provision of pharmaceutical products for missionary hospitals, amongst others.⁶⁷⁹ This allows mission hospitals to access drugs and other pharmaceuticals at cheaper prices, while the quality is uncompromised.⁶⁸⁰

The TRIPS Agreement cannot be entirely blamed for the lack of access to medicines in many developing countries.⁶⁸¹ Nigeria has to take advantage of the flexibilities of compulsory licenses and parallel importation in the TRIPS Agreement to ensure that it gains access to medicines.⁶⁸² Nigeria should seek to put in place infrastructure, electricity, good transportation systems, technical assistance to existing laboratories and guidance on setting up new laboratories for improved medical and scientific research.⁶⁸³ Nigeria needs to acknowledge that the TRIPS Agreement has a key role to play in the nation. The government should further seek to make the pharmaceutical industry more self-reliant.⁶⁸⁴

Nigeria imports large quantities of agricultural food products, mainly from the United States and the EU.⁶⁸⁵ Its increasing trade with the MTS in agricultural products requires that it improve its phytosanitary capabilities, to protect consumers and its agricultural system from foreign pests and diseases, and to ensure safe food for its population.⁶⁸⁶ In Nigeria, there are several departments and agencies which share responsibility for food control, including food hygiene, safety, standards and trade. The National Agency for Food and Drug Administration and Control (NAFDAC) has the mandate to regulate and control the manufacture,

⁶⁷⁷Ibid 189.

⁶⁷⁸Ibid 190.

⁶⁷⁹Ibid 191.

⁶⁸⁰Ibid 191.

⁶⁸¹Note 663 above.

⁶⁸²Ibid.

⁶⁸³Ibid.

⁶⁸⁴Ibid.

⁶⁸⁵SPS Capacity in Nigeria, at 12, available at:

<http://www.watradehub.com/sites/default/files/resourcefiles/aug09/1720sps20capacity20nigeria.pdf>; accessed on 23 October 2013

⁶⁸⁶Ibid 12.

importation, exportation, distribution, sale and use of food, drugs, cosmetics and packaged water.⁶⁸⁷ Its mission is to safeguard public health by ensuring that only the right quality of the above is sold and used.⁶⁸⁸

The Federal Ministry of Commerce and Industry is the focal point for the WTO in Nigeria and deals with issues including SPS standards.⁶⁸⁹ The Federal Produce Inspection Service (FPIS) inspects and ensures that all agricultural produce destined for exports of local processing meets prescribed international quality standards.⁶⁹⁰ Standards Organization of Nigeria (SON) is the custodian of all National and International Standards on Food Safety which coordinates the elaboration, review, adoption and adaptation of food safety standards through the active involvement of relevant stakeholders.⁶⁹¹ All the above agencies inspect the active growth of crops and storage facilities. They furthermore conduct pest surveys to monitor the presence and spread of plant pests.⁶⁹² The challenges in implementing SPS standards in Nigeria include the cross border smuggling of banned and unregistered pesticides, low literacy levels of farmers, use of faulty equipment, inadequate capacity of staff of the government agencies and poor awareness of the issues related to food safety.⁶⁹³ In order to build capacity to effectively implement SPS issues in Nigeria, workshops, seminars and conferences are being organized continually to enhance competencies of enforcement officers.⁶⁹⁴

The needs of developing countries for technical assistance in SPS measures vary according to each country's agricultural orientation, level of economic development and knowledge of SPS issues.⁶⁹⁵ Therefore, to assist in meeting global SPS requirements in a cost effective way, SPS capacity-building should be prioritized and planned on a country by country basis, which is more specific and less broad.

⁶⁸⁷Ibid 12.

⁶⁸⁸Ibid 13.

⁶⁸⁹Note 20 above.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid.

⁶⁹²Ibid.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

⁶⁹⁵ Note 685 above, 51.

6.3.3 Nigeria's Development under Millennium Development Goal 8

Debt relief negotiated by Nigeria in 2005 provided new opportunities for investment in the social sector.⁶⁹⁶ In order to build on these positive developments there is a need to take action to forestall a relapse into unsustainable levels of debt that could prevent the country from achieving the MDG's.⁶⁹⁷ In addition, development assistance has grown. Improving the quality of human and capital resources available is critical to attracting the foreign direct investment that is needed to contribute to development.⁶⁹⁸

MDG 8 commits both the North and the South to work together for achieving an open, rule-based trading and financial system.⁶⁹⁹ However, if the current slow trends continue in Nigeria's development, it will be difficult for the country to achieve the MDG 8 target by 2015.⁷⁰⁰ There is however, a high potential to achieve this goal which deals with developing a global partnership for development. The level of ODA in Nigeria is increasing but still extremely low.⁷⁰¹ Furthermore, there are still problems dealing with market access for products of developing countries, especially Nigeria.⁷⁰² According to this thesis, in order to determine the correct progress of Nigeria, the review reports need to be as accurate as possible.⁷⁰³ This, however, is the main challenge. There has been a real task in gathering accurate, reliable, credible and believable statistics in the past few years.⁷⁰⁴ The reports also do not indicate the policies and practices that need to change in order to attain these goals. There is no straightforward answer as to whether Nigeria can or cannot meet the goals by 2015, including MDG 8.⁷⁰⁵ There are, however, sufficient resources in Nigeria to achieve this goal, however, in order for this to happen; the country needs to implement proper policies and programmes to achieve this.⁷⁰⁶ One good initiative in Nigeria designed to meet the MDG 8 is the Oversight of Public Expenditure in Nigeria (OPEN) which was set up to monitor the

⁶⁹⁶MDGs in Nigeria: The Current Progress, available at: <http://www.ng.undp.org/mdgsngprogress.shtml>, accessed on 19 October 2013.

⁶⁹⁷Ibid.

⁶⁹⁸Ibid.

⁶⁹⁹The Millennium Development Goals: Can Nigeria Meet the Goals in 2015, available at: <http://www.civicus.org/new/media/MDGforICAN.doc> accessed on 20 October 2013.

⁷⁰⁰Ibid.

⁷⁰¹Ibid.

⁷⁰²Ibid.

⁷⁰³Ibid.

⁷⁰⁴Ibid.

⁷⁰⁵Ibid.

⁷⁰⁶Ibid.

Debt Relief Gain (DRG).⁷⁰⁷ The leadership of this process has been open and transparent.⁷⁰⁸ This promotes accountability and encourages support.

With the inception of the democratic rule in Nigeria, a lot has been done to create a cordial relationship with the international community.⁷⁰⁹ The recent debt cancellation by the Paris club owed by Nigeria was seen as a landmark achievement.⁷¹⁰ In terms of international and regional integration, Nigeria is a founding member of the New Partnership for Africa's Development (NEPAD), African Union and the Economic Community of West African States (ECOWAS).⁷¹¹ There has also been an unprecedented increase of communication which creates more partnership with international governmental agencies.⁷¹²

6.3.4 Nigeria's Development under the Aid for Trade Initiative

Since 1960, Nigeria has received \$400 billion in aid, which is six times what the US pumped into reconstructing the whole of Western Europe after World War II.⁷¹³ Nigeria suffers from what economists call the 'resource curse'.⁷¹⁴ This is the paradox that developing countries with an abundance of natural reserves tend to enjoy worse economic growth than countries without minerals and fuels.⁷¹⁵ The huge flow of oil wealth means that the government does not rely on taxpayers for its income which results in them not having to answer to the people.⁷¹⁶ This is a situation which fosters rampant corruption and economic ruin since there is no investment in infrastructure as the country's leader's cream off its wealth.⁷¹⁷ It has already been emphasized earlier that corruption in Nigeria is endemic. It has been estimated that since 1960, billions of government money has been stolen, which is almost the total sum Nigeria has received in foreign aid.⁷¹⁸ According to Michel Burleigh, his view is that the cash should rather be burned or flushed away for all the good it is doing for ordinary Nigerians.⁷¹⁹

⁷⁰⁷Ibid.

⁷⁰⁸Ibid.

⁷⁰⁹ AM Buba, *The MDGs: The Nigerian Situation*, available at: <http://www.gamji.com/article6000/NEWS7953.htm>, accessed on 18 October 2013.

⁷¹⁰Note 696 above.

⁷¹¹Ibid.

⁷¹²Ibid.

⁷¹³ M Burleigh, *Nigeria: A Country So Corrupt It Would Be Better To Burn Our Aid Money*, available at: <http://www.dailymail.co.uk/debate/article-2387359/Nigeria-country-corrupt-better-burn-aid-money.html> accessed on 23 October 2013.

⁷¹⁴Ibid.

⁷¹⁵Ibid.

⁷¹⁶Ibid.

⁷¹⁷Ibid.

⁷¹⁸Ibid.

⁷¹⁹Ibid.

According to the Prime Minister of Britain's speech on aid, trade and democracy, it was submitted that the aid delivered to Nigeria must be used in the correct way.⁷²⁰ Furthermore, his view was that aid must contribute to investing in projects that will provide roads, internet and infrastructure as well as training the next generation as business leaders, which will help kick start growth and development and ultimately help Africa move off aid altogether.⁷²¹

6.4 CONCLUSION

It is the submission of this thesis that the WTO has been created so that countries such as Ghana and Nigeria are able to develop successfully in the global arena. This body encourages these countries to pursue open and liberal trade policies so that these developing nations have a chance at reducing poverty, expanding trade relations and utilizing aid and debt relief effectively.⁷²² The WTO agreements have been formulated to reduce trading obstacles and improving structures within a country.⁷²³ In terms of the arguments presented by this paper, even though these developing nations have progressed slowly in using these agreements accurately, as identified in this chapter, there is evidence that they are able to take advantage of what these agreements seek to do in order for the country to reap development focused benefits. Thus, the AfT initiative is known as a development assistance measure for countries such as Ghana and Nigeria to strengthen their trading capacity through domestic policy formulations.⁷²⁴ Therefore, with the correct monitoring and evaluation mechanisms, AfT is able to be assessed particularly in the context of both Ghana and Nigeria's own specific development goals and trade policy objectives.⁷²⁵

A competitive economy needs to become a priority for both Ghana and Nigeria by using aid and trade to address areas that are lacking such as resources.⁷²⁶ The 2015 deadline for MDG 8 was set so that countries would be encouraged to develop a global partnership for development.⁷²⁷ Ghana and Nigeria need to encourage this cooperation in order to achieve

⁷²⁰Prime Minister David Cameron has delivered a speech on aid, trade and democracy in Lagos, Nigeria, available at: <https://www.gov.uk/government> accessed on 23 October 2013

⁷²¹Ibid.

⁷²²Note 5 above, 6.

⁷²³Ibid 6.

⁷²⁴Note 407 above.

⁷²⁵Ibid.

⁷²⁶Sustainable Growth, available at: http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/sustainable-growth/index_en.htm accessed on 23 October 2013.

⁷²⁷Note 24 above.

these goals by 2015. Under MDG 8, aid, trade and debt relief will help both Ghana and Nigeria to develop this global partnership if they use it appropriately, especially by combating corruption. In order to achieve MDG 8, these developing nations need to encourage technological innovation, which in terms of the chapter is at the heart of reaching a global partnership for development.⁷²⁸ This thesis seeks to emphasize that both developing countries are able to see great development in their economies and trading sectors if they take the above initiatives seriously enough to combat the impediments and reevaluate their attempts at achieving development.

CHAPTER 7: RECOMMENDATIONS AND CONCLUSIONS

7.1 INTRODUCTION

The aim of this thesis has been to critically discuss the position of Ghana and Nigeria with regards to the Aid for Trade (AFT) initiative and their ability to meet Millennium Development Goal 8 (MDG 8) by the year 2015. Furthermore, their position within the Multilateral Trading System (MTS) has been emphasized with further discussion regarding the implementation of specific World Trade Organisation (WTO) agreements. The purpose of this chapter is to deliberate the various recommendations that can be placed forward regarding Ghana and Nigeria's development in the above mentioned areas. Many academic recommendations and comments have been included thus far under the previous chapters. This chapter, however, seeks to provide a summary of the recommendations. These recommendations have the ability to assist both these countries in developing their trade and economy in a more efficient manner for the future. It is the argument of this thesis that in order for Ghana and Nigeria to reach their full global economic potential, the areas which are lacking and causing stagnancy in development need to be solved.

7.2 RECOMMENDATIONS FOR GHANA IN TERMS OF:

7.2.1 The Multilateral Trading System (MTS)

As previously discussed in this thesis, Ghana's main global economic policy objective is to achieve middle-income status by 2015 and become a leading agri-industrial country, thereby

⁷²⁸Workshop on Aid for Trade and Intellectual Property, available at: <http://www.docsonline.wto.org> accessed on 4 May 2013.

achieving a substantial reduction of poverty.⁷²⁹ In order to achieve this sustainable economic growth, sound investment environment, macroeconomic stability and pro-market reforms is required.⁷³⁰ Since Ghana has a relatively small domestic market, this growth should take place through increased international trade especially since trade is the key tool for development.⁷³¹ There should furthermore be increased regional and global integration, new areas of comparative advantage and full utilization of preferential market access in order to expand foreign trade relations.⁷³² In order to facilitate trade and maximize their revenue, Ghana is recommended to implement transparent, WTO-consistent frameworks as a priority.⁷³³ In addition, Ghana is involved in trade negotiations with regional partners in the context of the ECOWAS.⁷³⁴

Technical assistance should consequently focus on enhancing the negotiating capacities of Ghanaian officials by providing training in negotiating techniques and by ensuring that officials are in line with developments in the MTS.⁷³⁵ The reason for this is attributed to the argument that Ghana's participation in the work of the WTO is hampered by its lack of adequate representation as well as by a shortage of staff trained in WTO matters.⁷³⁶ Ghana faces a range of supply-side and trade-related infrastructure obstacles which constrains their ability to engage in international trade.⁷³⁷ This thesis is of the argument that a developing nation such as Ghana is recommended to recognize the role that trade can play in their development. It is the argument of this thesis that by Ghana dealing with this issue appropriately, they are able to develop more at a much smoother pace.

7.2.2 The World Trade Organisation Agreements

When implementing the TRIPS Agreement, increased assistance is needed within the country to draw up further legislation that regulates the agreements operation and that creates awareness in order for customs officials to seize counterfeit and pirated goods at the border.⁷³⁸ As previously discussed, the TRIPS Agreement contains acute disparities in

⁷²⁹Trade and Investment Regimes, available at: http://www.wto.org/english/tratop-e/trp_e/s194-02_e.doc accessed on 25 October 2013.

⁷³⁰Ibid.

⁷³¹Ibid.

⁷³²Ibid.

⁷³³Ibid.

⁷³⁴Ibid.

⁷³⁵Ibid.

⁷³⁶Ibid.

⁷³⁷Note 29 above.

⁷³⁸Note 729 above.

pharmaceutical access between the industrialized and developing countries.⁷³⁹ Developing countries make up approximately 80% of the world's population but only represent approximately 20% of global pharmaceutical consumption.⁷⁴⁰ Based on the research presented, it can be argued that Ghana has made strides in improving public health; however, there are also urgent and serious health needs that cannot be met by the existing system.⁷⁴¹ In order for Ghana to gain better access of the population to medicines, it is recommended that Ghana needs to work sufficiently well within the TRIPS Agreement regime.⁷⁴² In order to do this, certain options are recommended. These options include compulsory licensing, parallel importing, technology transfer, local production and voluntary differential pricing.⁷⁴³ In addition, Ghana and its Access to Medicines Advisory Committee are encouraged to consider their local production.⁷⁴⁴ If it makes economic sense, local manufacturing can be an effective option if human and technological capacity is scaled up.⁷⁴⁵ Ghana is furthermore encouraged to pursue compulsory licensing by addressing administrative and knowledge barriers identified.⁷⁴⁶ This can be achieved by obtaining support from developed countries and international organizations on the effective implementation of this compulsory licensing.⁷⁴⁷ There is no "one size fits all" policy menu that should be applied so broadly.⁷⁴⁸ Governments, especially that of Ghana, need to make informed policy choices when it comes to improving access to medicines and assess which measures are most needed and viable for their particular nations development and advancement.⁷⁴⁹

The main form of technical assistance that is recommended is the training of officials in the fundamental principles required, which is the foundation of the WTO agreements.⁷⁵⁰ The development and implementation of standards and other technical requirements, including sanitary and phytosanitary measures, are a key priority for Ghana.⁷⁵¹ It is therefore recommended that Ghana needs to ensure that imported goods meet the applicable standards and technical regulations as well as sanitary and phytosanitary requirements under the SPS

⁷³⁹TRIPS, The Doha Declaration and Increasing Access to Medicines: Policy Options for Ghana, available at: <http://www.globalizationandhealth.com>, accessed on 20 October 2013

⁷⁴⁰Ibid.

⁷⁴¹Ibid.

⁷⁴²Ibid.

⁷⁴³Ibid.

⁷⁴⁴Ibid.

⁷⁴⁵Ibid.

⁷⁴⁶Ibid.

⁷⁴⁷Ibid.

⁷⁴⁸Ibid.

⁷⁴⁹Ibid.

⁷⁵⁰Note 729 above.

⁷⁵¹Ibid.

Agreement.⁷⁵² In relation to the SPS Agreement, the National Plant Protection Organization (NPPO) of Ghana is recommended to formulate ways of addressing the challenge of invasive alien species that could become potentially invasive to the country's development.⁷⁵³ They need to furthermore deal with the manner in which to translate policy objectives into effective management practice when species are identified as threats.⁷⁵⁴ There needs to be further training which involves a clear understanding of alien species on the national territory which is essential to detect threats to the country.⁷⁵⁵ The NPPO should therefore collaborate with all relevant stakeholders who include environmentalists, researchers, regulators, policymakers, private sector and civil society in managing these alien species.⁷⁵⁶ There needs to be an establishment of an early detection and rapid response system for invasive alien species and this has to be coordinated by the NPPO.⁷⁵⁷

Based on the research presented, it is apparent that there is a lack of appropriate domestic laws and regulations and testing equipment which makes it difficult for the relevant authorities to control the quality of imported products.⁷⁵⁸ It is imperative to emphasize, once again, that technical assistance and capacity-building projects could focus on assisting Ghana to participate in the work of the international standardization bodies and to enact relevant rules and regulations.⁷⁵⁹

7.2.3 Aid for Trade

Based on the research and the backdrop of the AfT flows into the agricultural sector of Ghana, it is recommended that the country adopt a framework that enables the measurement of the trade impacts to measure results more adequately.⁷⁶⁰ This recommendation was taken into consideration in the year 2011 when Ghana introduced an aid policy, titled Ghana Aid Policy and Strategy, which was developed in order to ensure that aid is managed and monitored properly.⁷⁶¹ As has been alluded to earlier, mainstreaming AfT into the country's

⁷⁵²Ibid.

⁷⁵³The Role of Ghana's National Plant Protection Organization, available at: <http://www.forestry.gov.uk> accessed on 24 October 2013.

⁷⁵⁴Ibid.

⁷⁵⁵Ibid.

⁷⁵⁶Ibid.

⁷⁵⁷Ibid.

⁷⁵⁸Note 729 above.

⁷⁵⁹Ibid.

⁷⁶⁰Note 407 above, 9.

⁷⁶¹Ibid 9.

development agenda would improve monitoring and evaluation.⁷⁶² According to the Executive Director of the Databank Financial Services, Yofi Grant, Ghana should move away from aid dependency and the focus should now be entirely on trade, adding that Ghana and Africa should re-engineer themselves to benefit from their share of the world trade.⁷⁶³ It is the argument of this thesis that the above recommendation is credible provided that the economy of Ghana is stable. Based on alternative research and results, there is still much trade development needed through the use of aid and furthermore, in order to determine whether the country is indeed stable, proper mechanisms are needed to monitor results effectively. In order for the aid to be effective, it must be aligned with national development strategies, institutions and procedures.⁷⁶⁴ Increasing aid to Ghana creates both opportunities and challenges. Ghana's Government and their development partners are recommended to maintain their enthusiasm and efforts for realising the aid effectiveness within the nation.⁷⁶⁵

7.2.4 Millennium Development Goal 8

Since the year 2000 when Ghana signed on the United Nation's MDG's, they have been mainstreamed into the country's successive medium term development plans. Although there has been progress towards achieving some of these targets by 2015, progress on others have not been as steady.⁷⁶⁶ This thesis puts forward the recommendation that Ghana is required to have reliable, timely and internationally comparable data on the MDG 8 indicators. Without this, appropriate policies and interventions cannot be implemented to achieve a global partnership for development. This recommendation is crucial in order to hold the international community to account.⁷⁶⁷ As mentioned earlier, overall, Ghana has made substantial progress in reaching all the Millennium Development Goals (MDG's). Nevertheless, there is still room for vast improvements and progress.⁷⁶⁸ This relies heavily on understanding what a global partnership for development truly entails and striving towards achieving its development on a global scale.

⁷⁶²Ibid 31.

⁷⁶³ IG Orhin, 'Ghana: Time to Move From Aid to Trade', 2006, available at: <http://www.allafrica.com>. accessed on 3 November 2013

⁷⁶⁴ Ghana, at 2, available at: <http://www.oecd.org/dac/effectiveness/41951381.pdf> accessed on 27 October 2013.

⁷⁶⁵Ibid 4.

⁷⁶⁶ Ghana's Progress on the MDG's, available at: http://www.mofep.gov.gh/sites/default/files/docs/mdbs/2010/Fact_Sheet_MDG_Report1_LR.pdf, accessed on 28 November 2013.

⁷⁶⁷The Millennium Development Goals Report 2013, available at: <http://www.un.org/millenniumgoals/pdf/report>, accessed on 22 October 2013.

⁷⁶⁸ Millennium Development Goals in Ghana: A new look at data from the 2008 Ghana Demographic and Health Survey, available at: <http://www.measuredhs.com/pubs/.../OD60.pdf>, accessed on 23 November 2013.

7.3 RECOMMENDATIONS FOR NIGERIA IN TERMS OF:

7.3.1 The Multilateral Trading System

Based on the arguments presented, Nigeria is a firm believer in a strong, fair, transparent, credible and rules-based MTS embodied in the WTO and the benefits it provides.⁷⁶⁹ This thesis supports the argument that in order for Nigeria to become one of the world's top 20 economies, they are recommended to continue relying on the predictability and security that the MTS guarantees to meet the nation's economic and developmental objectives and reforms.⁷⁷⁰ The recommendations put forward relating Ghana is similar to that of Nigeria. The constraints and impediments discussed affect both developing nations. In order for Nigeria to deepen coherence, five key areas can be the focus of the country.⁷⁷¹ These areas are resource mobilization, mainstreaming of trade into development plans and programs, regional trade integration, private sector development and monitoring and evaluating AFT, which will be discussed at a later stage.⁷⁷²

7.3.2 The World Trade Organisation Agreements

It is the responsibility of the Nigerian government to put in place laws that favour the health needs of the nation. When dealing with the TRIPS Agreement, the Nigerian government is recommended to exercise a political will and follow other developing countries that have already adjusted their Intellectual Property laws to ensure public health friendly legislations that would guarantee access to medicines for the majority of the populace.⁷⁷³

Nigeria needs to furthermore enhance their human and institutional capacity.⁷⁷⁴ This includes training for key mid-level and senior government officials on the SPS Agreement, the workings of the WTO SPS Committee, and the practice of working bilaterally with other WTO members on SPS issues.⁷⁷⁵ In addition, efforts need to be made to strengthen SPS linkages on a regional basis, especially through the Economic Community of West African

⁷⁶⁹Opening Address by H.E MR. Olusegun Olutoyin Aganga Federal Minister of Trade and Investment, Nigeria 15 December 2011, available at: http://www.wto.org/english/thewto_e/minist_e/...e/.../aganga_opening_e.doc, accessed on 24 October 2013.

⁷⁷⁰Ibid.

⁷⁷¹Note 45 above.

⁷⁷²Ibid.

⁷⁷³Journalists Against Aids Nigeria, available at: <http://www.nigeria-aids.org> accessed on 20 October 2013.

⁷⁷⁴Expanding Nigeria's High Value Food Exports through Enhanced SPS Capacity, available at: <http://www.standardsfacility.org>, accessed on 22 October 2013.

⁷⁷⁵ Ibid.

States (ECOWAS).⁷⁷⁶ There needs to be more institutional structures which improve communication between the SPS issues and the government of Nigeria in the agricultural and food sector.⁷⁷⁷ In addition, there needs to be an updating of SPS-related legislation to reflect the official and commercial requirements of the current international trading regime.⁷⁷⁸ The WTO Secretariat should also be asked to contribute its expertise in the training of Nigerian officials on the SPS Agreement and the SPS Committee.⁷⁷⁹ The WTO SPS Agreement has several provisions on technical assistance to developing countries but this has been weak and without much practical value in Nigeria.⁷⁸⁰

7.3.3 Aid for Trade

As mentioned earlier, Nigeria has received an exorbitant amount of aid since 1960.⁷⁸¹ It is the argument of this thesis that with such an excessive amount of attention being contributed in AfT in the past years, this developing country should be independent of aid and be trading effectively whilst developing an even more stable economy. Nigeria is recommended to develop strategies and mechanisms in order to defeat the “resource curse”, mentioned in Chapter 6, in order to enjoy their economic growth and trade development on a global scale. It has been continuously emphasized that corruption is the root of all impediments within the country.⁷⁸² Thus, it is recommended that accountability within the government be encouraged in order for the country to thrive and succeed. The country is recommended to use the aid being received in the correct manner such as in technology and infrastructure.⁷⁸³

7.3.4 Millennium Development Goal 8

As was recommended to Ghana, likewise, Nigeria is required to improve on their data which reflects the progress of the achievement of the MDG 8 indicators. The argument of this thesis is that by improving in this area, achieving a global partnership for development is more likely to take place by the year of 2015. There needs to be an encouraging of public support and funding for development in achieving this goal.⁷⁸⁴ This thesis argues that the failure of

⁷⁷⁶Ibid.

⁷⁷⁷Ibid.

⁷⁷⁸Ibid.

⁷⁷⁹Ibid.

⁷⁸⁰Ibid.

⁷⁸¹Note 713 above.

⁷⁸²Ibid.

⁷⁸³Prime Minister David Cameron has delivered a speech on aid, trade and democracy in Lagos, Nigeria, available at: <https://www.gov.uk/government> accessed on 23 October 2013.

⁷⁸⁴Note 767 above.

achieving MDG 8 is partially the fault of developed countries who do not commit entirely to their promises in assisting developing nations such as Nigeria. Evidence from past MDG Reports showed a likelihood of achieving several MDG's, including that of MDG 8.⁷⁸⁵ However, the most critical barrier, as previously stated, remains to be the lack of up to date data on the goals and their indicators.⁷⁸⁶ A constitutional responsibility is required to ensure the implementation of MDG 8.⁷⁸⁷ Governance and integration of the MDG's into national development strategies can no longer be a challenge for the nation.⁷⁸⁸ Stronger monitoring systems as well as higher stakeholder involvements are able to ensure more effective progress by 2015 and thereafter.⁷⁸⁹

7.4 CONCLUSION

It is the argument of this thesis that the WTO has contributed in creating a trading system that developing nations such as Ghana and Nigeria can take full advantage of with the correct approach, expertise and knowledge. Both Ghana and Nigeria are able to achieve unparalleled growth if they use the MTS to boost their trading, competitiveness and economic growth in the country's market. This thesis reaffirms the importance of integrating developing economies into the MTS in order for them to equally benefit from international trade and growth. By implementing the TRIPS and SPS agreements effectively, Ghana and Nigeria are able to see success in areas such as technology advancement, accessibility of medicines, food and product safety, poverty alleviation and economic development.⁷⁹⁰ It can be furthermore recommended that the TRIPS Agreement seek to amend its language in order to make it obligatory for nations to implement provisions on compulsory licensing within their domestic legislation.⁷⁹¹

The WTO needs to continue encouraging additional flows of AFT, support improved ways of monitoring and evaluating the initiative and encourage the mainstreaming of trade into national development strategies by partner countries.⁷⁹²

⁷⁸⁵ UNDP in Nigeria, available at: <http://www.ng.undp.org/nigeriamdgs.shtml>, accessed on 30 November 2013.

⁷⁸⁶Note 767 above.

⁷⁸⁷Note 785 above.

⁷⁸⁸Ibid.

⁷⁸⁹Ibid.

⁷⁹⁰Note 167 above.

⁷⁹¹Ibid.

⁷⁹²Note 45 above.

The Millennium Development Goals have made significant and substantial progress in meeting many of the targets according to the 2013 Millennium Development Goal Report. However, there has also been reports of uneven achievements between countries. This thesis supports the argument that with accelerated action, the world and many developing nations can achieve the MDG's and create sustainability for all. (The Millennium Development Goals Report 2013, available at: www.un.org/millenniumgoals/.../report-2013/mdg-report-2013-english.p, accessed on 2 March 2014)

In achieving the MDG 8, in order to strengthen global partnership development, both Ghana and Nigeria need to promote debt relief, develop IT infrastructure, expand on trade agreements, improve access to affordable drugs and increase poverty-reducing expenditures.⁷⁹³ By promoting debt relief, it enables governments to free up budgets formerly used to pay down their debts. As emphasized earlier, they can rededicate these funds to cover costs in other areas such as training or education.⁷⁹⁴ According to the UN Secretary-General Ban Ki-Moon,

The MDGs have proven that focused global development objectives can make a profound difference. Success in the next 1000 days will not only improve the lives of millions, it will add momentum as we plan for beyond 2015 and the challenges of sustainable development.⁷⁹⁵

Furthermore, Ghana and Nigeria are able to achieve the MDG 8 deadline by 2015 if they tackle issues such as corruption and focus their efforts on achieving this global partnership for development by using aid and trade effectively and working on their debt relief. It is vital for both countries to understand the importance of AfT for the benefit of their nation.

Given the economic and political importance of Ghana and Nigeria in West Africa, addressing the identified issues will be crucial.⁷⁹⁶ Successful reforms will be a likely vehicle for deeper integration within and across both regions.⁷⁹⁷ In order to strengthen trade in both Ghana and Nigeria, existing commitments should be fully implemented and laws will have to

⁷⁹³World Bank: Partnering to help countries move forward, available at: <http://www.worldbank.org/mdgs> accessed on 23 October 2013.

⁷⁹⁴Ibid.

⁷⁹⁵Note 767 above.

⁷⁹⁶Removing Barriers to Trade between Ghana and Nigeria: Strengthening Regional Integration by Implementing ECOWAS Commitments, available at: <http://www.web.worldbank.org>, accessed on 25 October 2013.

⁷⁹⁷Ibid.

be applied appropriately and consistently.⁷⁹⁸ This can be ensured through transparency and better complaint mechanisms found at the heart of any initiative.⁷⁹⁹

There are varied reviews on the development of both Ghana and Nigeria under the WTO and in the MTS, as a whole. There are successes and failures that are experienced within both developing nations. Both Ghana and Nigeria have seen development due to their role in the MTS. It is the argument of this thesis that although there are problematic areas in the TRIPS and SPS agreements, these nations should take advantage of the greater benefits the agreements aim to achieve, as mentioned earlier. Based on the arguments presented, the AfT initiative has contributed in facilitating the mobilization of international resources to address developing countries supply-side constraints and trade-related bottlenecks.⁸⁰⁰ If Ghana and Nigeria were to eliminate corruption and spread awareness on the benefits of this initiative, trade is able to expand considerably, which boosts the achievement of other goals such as MDG 8. The deadline for MDG 8 is not far off. In order to develop a global partnership for development, it has been emphasized that aid, trade and debt relief is able to enhance the economy of a developing nation and provide a platform for continued growth.⁸⁰¹ Ghana and Nigeria are both able to take advantage of these goals and initiatives by combating the various impediments with training, education and transparent government.⁸⁰² This thesis seeks to uphold the argument that both these developing countries are able to have a successful future if they implement these recommendations in a manner which further expands on development and in creating a stable and fruitful economic nation.

⁷⁹⁸Ibid.

⁷⁹⁹Ibid.

⁸⁰⁰Note 407 above.

⁸⁰¹Note 24 above.

⁸⁰²Ibid.

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