

Small States in the Multilateral Trading System

Overcoming Barriers to Participation

Edited by Teddy Y. Soobramanien and Laura Gosset



The Commonwealth

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The Commonwealth

Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
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Foreword

by Yonov Frederick Agah, Deputy Director-General,
World Trade Organization

Trade has generally been acknowledged as an important enabler of growth and development, and the integration of national economies into the multilateral trading system (MTS) can have an important role in fostering trade-led economic growth and development.

Small states, however, face acute challenges in their participation in the MTS because of a lack of economy of scale, limited natural resources, vulnerability and long distances to key export markets. This disadvantaged position of small states has long been recognised by the Commonwealth Secretariat, which initiated a discourse on the challenges that they face, the concerns that they have and how to address them. The Commonwealth Secretariat has also been helping small states to raise these issues with the World Trade Organization (WTO), and this publication is another example of the proactive and valuable work conducted by the Commonwealth Secretariat. This compilation comprises an excellent selection of articles, which will further help small states to enhance and enrich their participation in the MTS.

The publication presents a comprehensive understanding of the establishment of a Work Programme on Small Economies as part of the WTO's Doha Development Agenda (DDA), which was supported by the Commonwealth Secretariat. The work programme has the objective of framing 'responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system without creating a sub-category of WTO Member'. The work programme has become the vehicle under which small states or small, vulnerable economies (SVEs), as they are categorised by the WTO, have successfully introduced their concerns in the negotiations. Through their perseverance, SVEs have been able to overcome initial difficulties related to their inherent characteristics. As a result, today, their issues are reflected, in one form or another, in almost all areas of the negotiations.

This book offers valuable insights into the systemic issues that would need to be taken into account by the SVEs in order to increase their participation in the WTO. Of particular worth are the detailed options and proposals that have been put forward for the consideration of the SVEs to improve their participation under each of the main aspects of work of the WTO. This includes very sound suggestions under the main pillars of the work of the organisation, that is, negotiation, dispute settlement, agreement administration, research and technical assistance.

Regarding the negotiating function of the WTO, SVEs are actively participating in the work of the WTO to arrive at a post-Bali work programme to conclude the DDA. SVEs are especially keen to see a successful outcome to the round because many of their concerns are central to what is under negotiation. Therefore, a positive outcome regarding these issues should help the SVEs to make significant advances in their efforts to achieve development through opening new export opportunities that generate economic growth.

Although the SVEs have been successful in introducing their issues in the areas of agriculture and non-agricultural market access, and final outcomes in these areas are likely to have specific flexibilities for the SVEs, it is important that SVEs also focus their efforts on areas such as fisheries and services, given the importance of these sectors for their economies. The fact that many SVEs have a comparative advantage in these areas will allow them to benefit more greatly from the new market access opportunities that the conclusion of the round will create. This publication provides an excellent overview of why services – especially tourism, health and information communication technology services – are important areas for the SVEs and how they can use the MTS to advance their interests and enhance their ability to realise trading opportunities in these sectors.

One of the other WTO functions for which the participation of SVEs is analysed in this publication is dispute settlement. The conclusions and recommendations in Chapter 3 are important to ensure that the SVEs are able to use the full toolbox of WTO options to keep markets open to their exports, which is a crucial component of their efforts to achieve development through economic growth. This is all the more important given that the SVEs' dependency on a few exports and markets means that a trade-restrictive measure on one of these products is bound to have very dramatic effects on their economic and developmental outlook.

The publication also takes into consideration how SVEs have turned their attention to other new trade-related issues of interest to them outside the DDA. One area that is becoming increasingly important is the challenges faced by small economies when linking into regional and global value chains (GVCs) for goods and services. SVEs are increasingly aware that participation in GVCs is important for their further integration in the MTS. The fragmentation of production brought on by modern production methods and low trade costs represents an opportunity for SVEs, as they would not need to develop a whole vertically integrated industry to participate in world trade. SVEs can specialise in tasks or components and this can be done at a much lower cost than trying to produce and export complete products.

The WTO has also been playing its part in supporting a better understanding of some of the key challenges faced by the SVEs. Work has been undertaken on both the area of non-tariff measures (NTMs) and the certification problems faced by the SVEs. A workshop on NTMs showed that SVEs face burdensome NTMs in two of their most important export sectors – agriculture and fisheries – mainly resulting from measures aiming to protect plant, animal and human health. The Standards and Trade Development Facility (STDF) is addressing some of the standardisation-related

concerns that SVEs have by building their capacity to implement international sanitary and phytosanitary standards, guidelines and recommendations as a means to improve their human, animal and plant health status, as well as their ability to gain and maintain access to markets.

Another issue that is highlighted in this publication as a factor inhibiting the participation of SVEs in the MTS is the fact that several of the SVEs do not have missions in Geneva. To address this shortcoming, the WTO organises ‘Geneva Week’ – a biannual event to which all non-resident delegations are invited – which provides a detailed briefing in the different areas of work of the WTO. This is another area in which the WTO has worked closely with the Commonwealth Secretariat, and these events have frequently featured contributions from Commonwealth trade experts. Through its Small States Office initiative, the Commonwealth Secretariat has also allowed several non-residents to establish a presence in Geneva in order to better participate in the work of the WTO.

Overall, the publication offers governance, political, economic and systemic insights into the MTS from the perspective of small states. The main premise of the book is to help countries to reap the advantages of their endowments facilitated by participation in the MTS. Therefore, the proposals and the benefits of such participation, explored in the different chapters, are highly informative.

I believe that this book furthers our understanding of some of the major challenges that small states face in the MTS. It is appropriate that this publication is being released during the WTO’s 20th anniversary – a time not only for commemoration but also for reflection and renewed commitment. It is in the spirit of this reflection that I say that it has been a great pleasure to collaborate with the Commonwealth Secretariat on many issues, especially those relating to the work and concerns of small states.

Yonov Frederick Agah
Deputy Director-General
World Trade Organization

Foreword

by Deodat Maharaj, Deputy Secretary General,
Commonwealth Secretariat

This publication brings together a selection of recent Commonwealth research and analytical work on small states' participation in the multilateral trading system (MTS). The chapters have been written and reviewed by outstanding experts, both practitioners and academics, in the field of international trade. While sharing their findings and extensive experience, they have successfully managed to tailor their work to the special case of small states, many of which are World Trade Organization (WTO) members. This is a significant addition to the existing body of literature on multilateral trade, given its approach and orientation.

The timeliness of this publication cannot be overstated. The MTS is gaining momentum following the successful conclusion of the WTO Bali Ministerial Conference with an agreement reached on trade facilitation and a number of decisions made on development issues, including for the least-developed countries (LDCs) and the small vulnerable economies (SVEs). Indeed, the Commonwealth is a firm supporter of a rules-based, transparent, free and fair MTS that enhances trade liberalisation and developmental objectives, while taking into account the special requirements of SVEs and LDCs. The Commonwealth is also strongly committed to working with its member countries towards successfully completing the Doha Development Round of Trade Negotiations.

The inherent characteristics of small states have led to their increasing marginalisation in the global economy. Despite the rapid growth of developing countries' share in global trade, small states' share continues to decline. There is, therefore, a strong case for identifying and recognising their specific problems at the international level and addressing these in a manner that will better facilitate their integration and be conducive to their development imperatives. Recent developments at the WTO are indeed encouraging. The Trade Facilitation Agreement will allow for reductions in trade costs, a major problem faced by small states, given their remoteness from markets and high transport costs. Furthermore, this agreement promises to boost world trade, thereby creating the potential for jobs and income within small states. This is an unprecedented opportunity for small states; with the support of development partners, including the Commonwealth Secretariat, small states can achieve meaningful benefits.

The Commonwealth is focused on ensuring that its members do not stay at the periphery of global development initiatives, including the trading system. Its

research-led work provides member countries with informed analysis to assist in their decision-making process on trade policies and trade negotiations. Our proactive and forward-looking approach enables the Commonwealth Secretariat to respond to topical trade issues in a timely manner. In that regard, we have recently launched the Trade Policy Discussion Paper series with the objective of stimulating debate on key trade policy issues that have an impact on the Commonwealth and the global economy. The Commonwealth in-country programmes and those being implemented at the regional level are focused on helping member countries improve their supply response capacity and unleash their trade potential through improved trade competitiveness. Trade capacity-building and institutional strengthening through the Hubs and Spokes Programme has been instrumental in supporting African, Caribbean and Pacific (ACP) countries and regions in their trade policies and trade negotiations. Dedicated advisory support has also been provided to small states through the Commonwealth Small States Office in Geneva.

The authors of this publication have come up with useful and innovative ideas for improving the functioning of the MTS, particularly from the perspective of small states with a view to enhancing their participation. It is my expectation that these insights will contribute to the ongoing debate on reform of the system and, more generally, on global economic governance. It is also my view that trade will have an increasingly greater role in the post-2015 development agenda.

I welcome this important publication and the value that it brings to Commonwealth members and the MTS.

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Abbreviations and acronyms

| | |
|--------|---|
| ACP | African, Caribbean and Pacific group of states |
| ACWL | Advisory Centre on WTO Law |
| ADR | alternative dispute resolution |
| AfT | Aid for Trade |
| BoP | balance of payments |
| BRICS | Brazil, Russia, India, China and South Africa |
| CSS | Commonwealth small states |
| DDA | Doha Development Agenda |
| DSU | Dispute Settlement Understanding |
| EU | European Union |
| FTA | free trade agreement |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| GDP | gross domestic product |
| GNI | gross national income |
| GVC | global value chain |
| ICT | Information and communication technology |
| LDC | least-developed country |
| MFN | most-favoured nation |
| MTS | multilateral trading system |
| NAMA | non-agricultural market access |
| NGO | non-governmental organisation |
| OECD | Organisation of Economic Co-operation and Development |
| PTA | preferential trade agreement |
| RTA | regional trade agreement |
| SDT | special and differential treatments |
| SPS | sanitary and phytosanitary standards |
| SVE | small vulnerable economies |
| TBT | technical barriers to trade |
| TiSA | Trade in Services Agreement |
| TPR | trade policy review |
| UN | United Nations |
| UNCTAD | United Nations Conference on Trade and Development |
| WTO | World Trade Organization |

Chapter 1

Small States in the Multilateral Trading System: An Overview

Chapter 1

Small States in the Multilateral Trading System: An Overview

Teddy Y Soobramanien and Laura Gosset

1.1 Introduction

Small vulnerable economies recognize that given their size, it is impossible for them to integrate into the global economy without forming alliances with many countries, groups, commercial interests and geographies. However, because of limited leverage, multilateral negotiations are a valued option as they allow small countries to benefit from group negotiating efforts. – Dr Marion Williams, Ambassador of Barbados in Geneva¹

The World Trade Organization (WTO), created by the Marrakesh Agreement in 1995, sought to develop ‘an integrated, more viable and durable multilateral trading system’ (WTO 1999). To date, the trade body has a diverse membership of 161 countries, including developed, developing and least-developed countries (LDCs). This diverse membership often faces a series of problems of Byzantine complexity when addressing the initial mandate of ‘raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services...’ (WTO 1999).

Although the rules-based multilateral trading system (MTS) gained in prominence with the establishment of the WTO in 1995, the participation of countries in global trade initiatives goes back almost half a century further (see Table 1.1). The Uruguay

Table 1.1 Rounds of multilateral trade negotiations

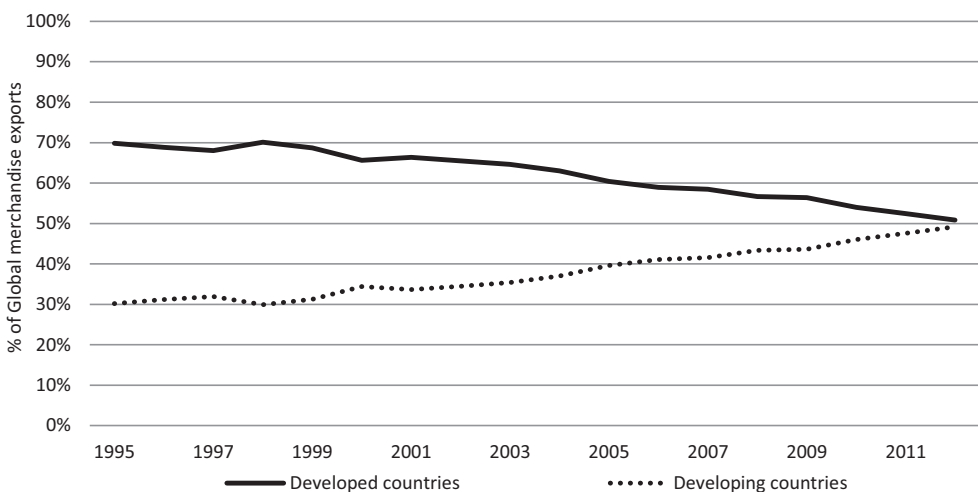
| Year | Round | Contracting parties/members | Commonwealth small states involved in negotiations |
|--------------|----------------------------|-----------------------------|--|
| 1947 | Geneva | 23 | – |
| 1949 | Annecy | 13 | – |
| 1950–1951 | Torquay | 38 | – |
| 1956 | Geneva | 26 | – |
| 1960–1961 | The Dillon Round | 26 | – |
| 1964–1967 | The Kennedy Round | 62 | 5 |
| 1973–1979 | The Tokyo Round | 102 | 7 |
| 1986–1994 | The Uruguay Round | 123 | 23 |
| 2001–ongoing | The Doha Development Round | 161 | 27 ² |

Round, which resulted in the establishment of the WTO, was preceded by a series of rounds of trade negotiations with roots dating as far back as 1947, following the end of World War II and the establishment of the General Agreement on Tariffs and Trade (GATT). The GATT 1947 text provides the basic principles and rules for the MTS and has been carried over into the WTO through GATT 1994.

Since 1995, there has been a rapid evolution in the membership of the WTO, in both numbers and composition: it has grown from 23 original contracting parties of GATT 1947 to 128 members of the WTO in 1995 and 161 in 2014. The political dynamics of the organisation have changed, with a gradual power shift from major developed economies – the Quad³ – towards large developing economies such as India and China, with the latter group of countries playing an increasingly prominent part in the WTO decision-making process. Developing countries have become more active in WTO activities such as implementing commitments from the Uruguay Round agreements, negotiating new ones and making use of the Trade Policy Review Mechanism and the WTO Dispute Settlement Mechanism (see Chapter 3 of this publication). Although much remains to be done to enhance the participation of developing countries in the MTS, progress has been achieved in certain areas, such as representation in informal group meetings, capacity-building and technical assistance programmes, as well as recognition of specific problems pertaining to certain groups of countries.

This increased participation of developing countries in the world trading system reflects their rising economic prominence and the emergence of a multipolar world. Developing countries⁴ share of global trade has risen dramatically since the mid-1990s; their exports have expanded to 49 per cent of world merchandise exports (see Figure 1.1). South–South trade (trade between developing countries) has doubled since 2000 and now represents almost one-third of the total world exports.⁵ Similarly,

Figure 1.1 Global merchandise exports



Source: Authors' estimates using UNCTAD data (2014)

developing countries' share of world gross domestic product (GDP) has more than doubled from 18 per cent in 1995 to almost 40 per cent in 2013.⁶

Despite these advancements in developing countries' participation in the MTS and in global trade, the advancements have been concentrated in large emerging economies, and many countries remain disadvantaged in their quest to integrate and derive benefit from the MTS owing to their inherent characteristics of smallness, being land- and sea-locked or being otherwise geographically disadvantaged. This group of countries, commonly referred to as small states, are the focus of this publication.⁷ This is a diverse group that faces unique challenges when it comes to international trade. Over the past two decades, global awareness of the challenges and vulnerabilities faced by small states has increased enormously; however, as will be evinced in this chapter, this has not translated into any noticeable impact on the actual trade performance of small states.

The MTS has also been subjected to frequent criticism in recent years, especially with regard to its failure to deliver on the promises of the Doha Development Round. However, with the proliferation of regional- and mega-trading blocs across the world, the MTS still affords protection to the smallest and least developed of its member states within the global trading environment. The outcome reached in 2013 in Bali during the ninth WTO Ministerial Conference, which included a Trade Facilitation Agreement, is providing fresh impetus to the negotiations and contributing to rebuilding confidence in the system. Therefore, the time is opportune to undertake a thorough examination of the systemic issues underpinning the institutional functioning of the MTS and to seek more effective ways to deliver on results for small states.

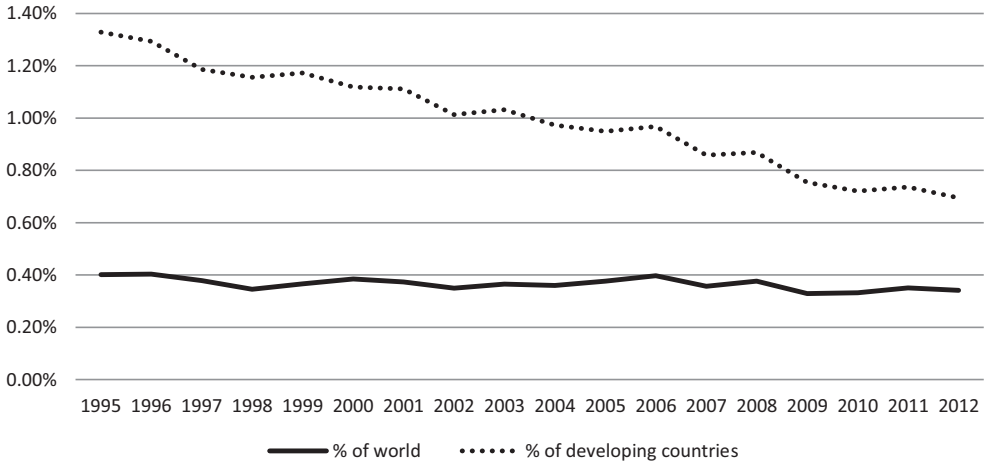
This first chapter describes the political and economic evolution of small states within the context of a changing MTS and a changing global trade landscape. With a brief mention of the changing dynamics of the MTS and the factors that have influenced the transformation of global trade over the last two decades, this chapter provides an overview of small states' participation in global trade and in the WTO and a brief description of what the rest of the book will contain.

1.2 Small states in global trade

1.2.1 Trade trends, growth and composition

Historically, small states have been marginalised in world trade. Their share of global export exhibits a clear declining trend from the 1980s onwards, along with a decline in their share of total global trade transactions (Grynberg and Razzaque 2004). Approximately 60 per cent of Commonwealth small states (CSS)⁸ exports are goods, which have increased in value from approximately US\$21 billion in 1995 to US\$63 billion in 2012.⁹ However, growth in trade has been slower than for other developing countries;¹⁰ a comparison of average annual growth rates of merchandise exports since 2000 suggests that CSS have had slower growth than LDCs and developing countries as a whole.¹¹ As well as having relatively slow export growth rates compared with the rest of the South, CSS have a declining share in global trade. CSS exports

Figure 1.2 CSS share of world and developing country merchandise exports

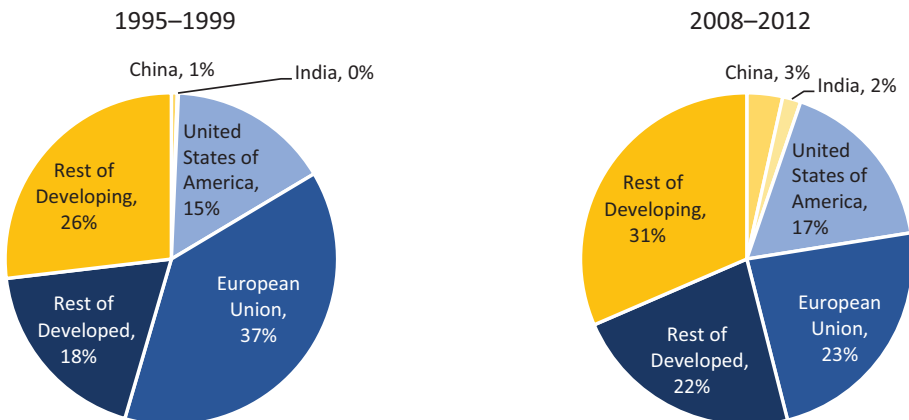


Source: Authors’ estimates using UNCTAD data (2014)

currently make up 0.34 per cent of total world export trade, and this has decreased from 0.40 per cent in 1995. There has been a more noticeable decline in the CSS share of developing countries’ exports since 1995: from 1.33 per cent in 1995 to 0.69 per cent in 2012 (see Figure 1.2). These declining figures suggest that CSS will continue to struggle to participate in world trade.

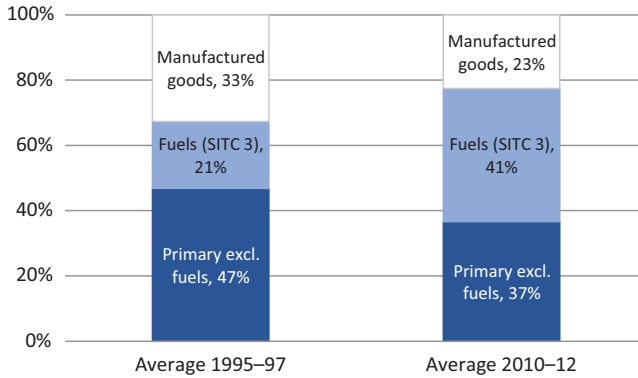
In 2012, out of approximately US\$63 billion in CSS exports, approximately US\$22 billion went to developing countries and US\$41 billion went to developed countries.¹² The majority of CSS trade still occurs with traditional Northern partners such as the European Union (EU), although Southern partners’ shares continue to grow. The EU accounts for the largest share of CSS exports, approximately 23 per cent (see Figure 1.3). In terms of CSS trade with the faster growing developing countries, the most

Figure 1.3 CSS merchandise export destinations



Source: Authors’ estimates using UNCTAD data (2014)

Figure 1.4 Composition of CSS merchandise exports



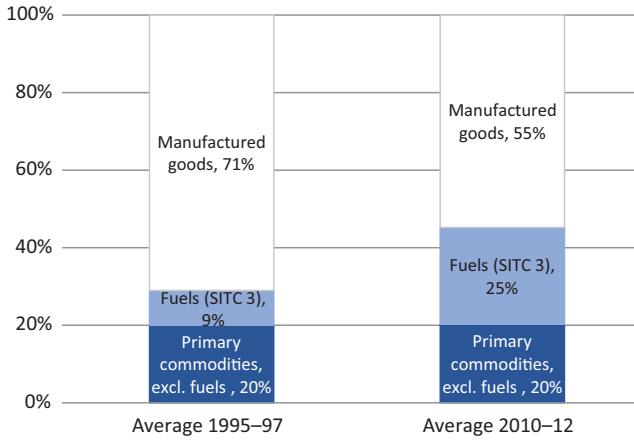
Source: Authors’ estimates using UNCTAD data (2014)

notable increase has been in exports to China and India.¹³ Since 1995, China’s share in the CSS export market has grown from 1 per cent to 3 per cent of total CSS exports, and similarly India’s share has grown from less than 1 per cent to 2 per cent.

CSS imports also mostly originate from developed countries. The EU and the USA accounted for approximately one-third of the total CSS imports in 2012, although their shares appear to be declining over time, as imports from developing countries have grown at a faster rate than developed country imports. The largest Southern trading partners are South Africa, China, Singapore and India. Both China and India have greatly increased their shares of CSS imports since 1995, from 1 per cent each to 7 per cent and 4 per cent respectively in 2012. In 2012, of a total of US\$81 billion in CSS imports, 57 per cent came from developing countries.¹⁴

A small minority of ‘oil-rich’ countries have a relatively large volume of fuel exports that dominate the exports of CSS as a group. Brunei Darussalam and Trinidad and Tobago represented over 40 per cent of the total exports for the group in 2012, and over 65 per cent of their merchandise exports were fuel. Looking at the rest of the CSS, most countries are exporting mainly primary commodities. In 2012, CSS merchandise exports comprised approximately 41 per cent fuels, 37 per cent other primary commodities and only 21 per cent manufactured goods¹⁵ (see Figure 1.4). Given the small size of the manufacturing sector in many small states, it is not surprising that over half of all CSS imports are manufactured goods and that fuel imports are increasing (see Figure 1.5).

Services trade is an important growing sector for many developing countries, and this is also the case for small states (see Chapter 6 of this publication). CSS’ services exports have more than doubled since 2000, reaching US\$31 billion in 2012.¹⁶ All CSS are increasing their trade in services, mainly in travel-related services, although the group is experiencing slower export growth than developing countries as a whole. As is the case with goods trade, small states’ share in global services trade is shrinking. Since 2000, the average annual export growth rate for the group of CSS has been approximately 6 per cent, compared with developing countries’ growth rate of 12

Figure 1.5 Composition of CSS merchandise imports

Source: Authors' estimates using UNCTAD data (2014)

per cent and the world average of 9 per cent.¹⁷ Again, their share in the overall world services trade is small; CSS service exports represented only 0.7 per cent of total world service exports in 2012. Their share has declined from 1.1 per cent in 1999.

Overall, these trade trends suggest a lack of export diversification and reliance on imports of manufactured goods. Small states are largely characterised by the instability of their exports, in both goods (through a dependence on primary commodities) and services (through a dependence on travel and tourism). However, at the same time, trade and, in particular, the export sector play an imperative part in the development of small states. Compared with other countries, a higher proportion of small states' GDP is linked to trade,¹⁸ the implications of which can be that they are more heavily subject to fluctuating commodity prices and unpredictable political situations that can have negative impacts on their long-term economic stability and growth.

1.2.2 Removing trade barriers for small states

The relatively slow growth and marginalisation of CSS in global trade has been attributed largely to the specific barriers they face with regard to diversifying their export base and developing their economies. When compared with developing countries in general, small states have been found to face higher export-related costs owing to their geographic remoteness (many are islands or landlocked countries) and other factors that can undermine their economic competitiveness.¹⁹ Given the position of small states in the changing global economy and the trade challenges that come with small states' inherent characteristics, the role of international development initiatives is paramount in strengthening the participation of small states in the MTS. In the future, both tariff and non-tariff barriers to trade in small states need to be addressed.²⁰

According to WTO data, developed countries have generally bound tariffs at relatively low levels; for instance, the UK average of most-favoured nation (MFN) tariffs for

Table 1.2 Tariff averages in 2014 (or latest year available)²²

| Country | Average MFN tariff (%) for all products |
|--------------------------|---|
| United Kingdom | 3.7 |
| United States of America | 2.0 |
| China | 12.2 |
| Brazil | 12.3 |
| India | 13.9 |
| Russian Federation | 8.9 |
| South Africa | 7.6 |

all products was 3.7 per cent in 2014²¹ (see Table 1.2). In contrast, many developing countries have bound tariffs at a high rate, even at 100 per cent, and applied tariffs at 10–20 per cent. As the global economy is shifting from traditional patterns of trade between the North and South to incorporate more South–South trade, developing countries must deal with higher tariffs from other developing countries. In most cases, small states do not receive preferential tariff rates from other large Southern countries (WTO 2015).

Other than tariff barriers, CSS face a host of non-tariff barriers for their exports. The lack of domestic capacity to comply with the requirements of export markets for their products put them at a serious disadvantage vis-à-vis more advanced developing countries. Recent studies suggest that the costs of compliance with non-tariff barriers have greater impact on small and medium-size firms and in particular those in small states (Lacey and Draper in press). For small states, even marginal increases in production costs can have severe adverse impacts on trade (Lacey and Draper in press). Enhancing domestic technical capacity in these areas and investment in infrastructure, such as adequately equipped laboratories for testing, will help small states to develop their export potential. Given the number of resources involved, consideration could also be given to regional initiatives in these specific areas, such as pooling of regional resources to set up regional infrastructure.

There is the potential for small states to maximise on the available opportunities in the coming years, but this will require careful and strategic choices. For instance, instead of focusing on traditional markets in the North, should CSS be rethinking their negotiation strategies in the Doha Round and beyond to focus their efforts on improving their trade access with the South? The Aid for Trade (AFT) initiative can be geared towards strengthening the supply-side and trade-related infrastructure of small states (see Chapter 5 of this publication). Another potential area for attention includes connecting small states to regional and global value chains, linking directly to economic development and growth. Furthermore, the newly adopted Trade Facilitation Agreement could help to reduce the costs of trade and enhance the flow of goods across borders, as it includes explicit provisions for technical assistance and capacity-building.

1.3 Small states in multilateral trade negotiations

1.3.1 Small states' participation in WTO processes

The participation of small states can be examined through various aspects of the WTO system: its negotiations processes, the various coalitions to which the small states belong and the extent to which they have been successful in advocating their interests.²³ Coalitions are often formed on the basis of geographical regions and historical ties and are likely to be issue based. The proliferation of informal groups and coalitions in the WTO reflects the fragmentation of major country blocs into small constituents that have common positions on particular issues. For instance, the current WTO texts²⁴ on modalities for agriculture and non-agricultural market access (NAMA) contain no fewer than 30 explicit references to countries based on specific characteristics and suggesting proposals for special treatment (e.g. small vulnerable economies (SVEs), countries with low binding coverage, recently acceded members).²⁵ Although this fragmentation reflects the political dynamics of the MTS and the multiplicity of issues, it is also, to a certain extent, attributable to the diversity of the membership, the characteristics of each member and their aspirations from participation in the MTS.

Historically in the GATT, the broad categorisation of developed, developing and least-developed countries was prevalent and possibly sufficient; informal groups were not as widespread as today. The question of whether or not developing countries can be differentiated based on their characteristics remains a point of much contention. Although many developing countries, especially the larger ones, have resisted any move to differentiate or create sub-categories of membership in the WTO, there is growing pressure to recognise that some categories of developing countries may not be affected in the same way as others. In one of its decisions, in a case brought by India against the EU over tariff preferences, the WTO Appellate Body concluded that 'developing countries' could be differentiated provided they meet certain special conditions, namely 'development, financial and trade needs to which the treatment in question is intended to respond'.²⁶ Although this decision was made in a specific dispute case, it certainly provides elements for reflection on whether all developing countries should be put in the same category or whether there are merits in considering the specific conditions faced by some of them, and the specific problems they encounter as a result.

Nevertheless, the WTO landscape has changed dramatically over the past 20 years and many groups other than developed, developing and least-developed countries have emerged with their own set of characteristics and issue-based concerns. The variety of issues being discussed and the diversity of national interests oblige countries to enter into these alliances and adhere to like-minded groups to assert their presence and make their voice heard. The biggest group of developing countries operating in the WTO is the G-90, which is composed of the African, Caribbean and Pacific group of states (ACP), the LDCs and the African Group. The typical process is for the African Group, the ACP and the LDCs to meet separately to come up with their own position papers. The G-90 group is then convened to harmonise positions into

one common paper. The G-90 group of countries was particularly active during the WTO Ministerial Conferences in Cancun (2003), Hong Kong (2005) and Geneva (2009). CSS have relied extensively on major developing country groupings such as the ACP or the African Group to defend their interests and have aligned their position with these groups on specific issues. In recent years, they have become more actively involved in the SVE group. The SVE is an informal group operating in the WTO composed of 25 member countries²⁷ that emerged in the aftermath of the Uruguay Round. The first reference to 'small economies' in a WTO Ministerial document can be found in the Ministerial Declaration adopted in 1998 at a meeting in Geneva. In paragraph 6 of that document, Ministers expressed deep concern at the marginalisation of LDCs and of 'certain small economies', and recognised the urgent need to address this situation. An informal group came into being and has since been continuously advocating to its members that issues of specific concern be addressed in order to ensure their greater participation in the MTS and for them to derive benefit from international trade. Following the agreement by Ministers at the Doha Ministerial Conference to establish a work programme 'to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system', a dedicated body in the WTO under the aegis of the Committee on Trade and Development was set up. Some of the inherent characteristics of SVEs include physical isolation and distance from the main markets, minimal shares of world trade, low productivity and insufficient supply, inability to diversify production, high transport and transit costs, difficulties in attracting foreign investment and low competitiveness (Smith 2009). SVEs are, however, not recognised formally as a category on their own, even though certain decisions can be attributed directly to them.²⁸ As is made clear in the Agreed Framework, SVEs are not meant to form any sub-category of members. According to the current modalities texts, an SVE is defined as a country whose average share for 1999–2004 (1) of world merchandise trade does not exceed 0.16 per cent, (2) of world NAMA trade does not exceed 0.10 per cent and (3) of world agricultural trade does not exceed 0.40 per cent.

The above definition for SVEs in the WTO is, however, not universally used for defining small states, especially when addressing a broader set of problems faced by these countries in other forums. The Commonwealth, for example, defines small states as sovereign states with a population size of 1.5 million people or less. Larger member countries – Botswana, Jamaica, Lesotho, Namibia and Papua New Guinea – are designated as small states because they share many characteristics with small states. Of the 53 Commonwealth member countries, 31 are small states. With the exception of Malta and Cyprus, which are developed country members in the WTO, all Commonwealth small state members of the WTO are members of the SVEs group. Although most CSS are founding members of the WTO, a few, including Samoa, Tonga and Vanuatu, had to undergo the complex accession process. Seychelles recently completed its accession process and joined the WTO in 2014. Among the reasons advanced for becoming a member of the WTO is the protection afforded by the rules-based system, where the consensus rule still prevails. It also provides a platform for countries, irrespective of size, to make their voice heard at the global level.

Despite the benefits that come with being a member of the WTO, participation in the MTS and the WTO is a complex process. The system has been put under serious strain with a WTO negotiations process that has been ongoing since 2001. This has put the whole system at risk and has subjected it to severe criticism on its capacity as a forum for negotiating and delivering results. Understanding and participating effectively remains a daunting challenge, particularly for small states that are confronted with limited human, technical and financial resources and a number of socio-economic priority issues to deal with at national and regional levels. In Geneva alone, there are numerous formal committees and sub-committees engaged in the implementation of WTO covered agreements and the current Doha Development Agenda (DDA) negotiations. Member states of the WTO must now attend an impressive number of at least 3,000 meetings per year (Hamilton and Langhorne 2010). In addition, there are several like-minded groups, often meeting in an informal mode, in which small states participate. These alliances and groupings have become more active in the course of the ongoing DDA negotiations. Some of these alliances are issue based, such as the G-33, which represents a coalition of developing countries pressing for flexibility for developing countries to undertake limited market opening in agriculture on 'special products'.²⁹ Some of the groups are composed exclusively of developed or developing countries, whereas others include a mix of developed and developing countries, such as the Cairns Group.³⁰ In addition, small states often sit alongside larger developing countries in the African Group or the G-33.

Traditionally, the majority of small states have adopted a defensive approach; they have been wary of embracing ambitious trade liberalisation and taking commitment beyond their implementation capacity at the multilateral level, be it on international trade matters or global regulations. At first, in the GATT and even the WTO, the interests of developing countries and LDCs were limited to seeking special and differential treatment in the form of longer implementation periods or lower levels of commitment as a group. However, nowadays, these countries' interests do not necessarily converge on all issues. On certain negotiating issues such as agriculture, there are substantial differences in positions among developing countries. Certain developing countries, including small ones, show a growing inclination towards an offensive approach on market access, trade facilitation and seeking technical support to fully integrate and participate actively in the MTS. For example, in the Negotiating Group on Trade Facilitation, it was fairly common to come across negotiating proposals jointly sponsored by developed and small developing countries. More recently, in 2015, Mauritius announced its intention to join the Trade in Services Agreement (TiSA), a plurilateral agreement being negotiated outside the framework of the WTO round of multilateral trade negotiations.

Small states are increasingly using existing agreements and flexibilities to pursue developmental goals, while also ensuring that future agreements bring benefits to the population at large. In the Committee on Subsidies and Countervailing measures, a group of small countries has been given a special time extension until the end of 2015 for the phasing out of certain export subsidy programmes that are essential for their industrial and economic development.³¹ Some of the other proposals put

forward by the SVEs group include technical support and assistance as necessary to help them implement their obligations in the areas of sanitary and phytosanitary measures, technical barriers to trade and the Agreement on Trade-Related Aspects of Intellectual Property Rights, and thereby facilitate their fuller integration into the MTS.

Throughout the current negotiating texts in the context of the DDA, there are specific references to ‘small, vulnerable economies’, ‘recently acceded members’ and ‘preference dependent countries’, to name a few. Proposals have also been made by SVEs in negotiating areas such as fisheries subsidies – the fisheries sector being of vital socio-economic importance for many of them – and trade facilitation, which can help in reducing the cost of trading, especially for those SVEs that are either sea- or land-locked or a significant distance away from major markets. In both agriculture and NAMA, the ACP, which includes a number of CSS, has been fighting for consideration to be given to the erosion of preferential market access in its traditional markets of the EU and USA. Many ACP small states are affected by the erosion of their preferential access to traditional markets. In the NAMA negotiations, the ACP, in a submission, demonstrated the vulnerability of ACP countries as a result of a high dependence on only a few exported products and a few markets.³²

The flexibilities in existing agreements and references in negotiating texts are a result of numerous proposals and submissions tabled, sustained and arduous advocacy and activism on the part of the *demandeurs*. This represents several years of regulation and mobilisation of tremendous resources on the part of small states.

1.3.2 Coping with the expanding MTS agenda

Despite some positive advancements since the conclusion of the Uruguay Round, much remains to be done for small states to become active players in the MTS and for them to start deriving meaningful economic benefits from it. In addition to adhering to global trade rules set up by the international community, a country also has to develop its productive capacity to take advantage of new opportunities created by the lowering of trade barriers. Hence, the capacity to produce and export, that is, trade development, should work in unison with the global trade rules and the trade liberalisation process for development benefits to be derived and to filter down to the population. Another complicating factor with regard to the participation of small states in the system is that the multilateral trade agenda is ever evolving, expanding and constantly being overloaded with issues, which are either directly or indirectly of interest to small states and require their full attention and action. Some issues such as food security, climate change and trade finance are gaining more and more prominence in the WTO and are of strategic and economic interest for CSS. Whether or not the WTO is the right forum to address some of these issues is debatable, but, nevertheless, the major economic interests, including income and employment for the population, are at stake and countries need to be fully aware of the latest developments in the WTO, be vigilant and stand ready to defend their interests when necessary. Some decisions can have devastating consequences on their economies; this was the case for small ACP countries when traditional preferential access to the

EU market was lost following WTO decisions of EU preferential regimes for sugar, bananas and other products.

Given the changing global trade landscape, looking at participation in the MTS and trade policies in isolation from what is happening in the rest of the world is the wrong approach. Proliferation of regional trade agreements and the rise of mega-trading blocs is definitely having an impact on countries' levels of engagement with the WTO. Should the multilateral process be the first and best option for CSS, given their trade agendas and development goals? Views will certainly differ. 'On response to the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TiSA), the ideal would involve a rapid and dynamic resuscitation of multilateral negotiations led by the excluded countries' (Rollo and Parra 2014). Resource-constrained small countries might have to reconsider their priorities, undertake analytical studies and re-adjust their trade policies based on new trends. With the rise of regional trade agreements, there are likely to be trade creation and regulatory convergences, but also trade diversion and deflection. These represent both opportunities and challenges for small states.

A group approach

In the 1960s and 1970s, a group approach worked pretty well within the United Nations (UN) system and small countries could participate in discussions. However, soon afterwards, particularly in the context of the G-77 discussion forum (named for the 77 developing countries that formed the original coalition in the United Nations Conference on Trade and Development (UNCTAD) I in 1964), major divergences started to emerge between developing countries, weakening the group as a whole. This led to a proliferation of groupings and alliances, often with overlapping membership. Such groupings are broadly representative of the different interests of their members. However, a country has to be careful about relying too heavily on its group membership and the practice of 'coalition diplomacy', as this would imply that most of the time it would have to align itself with the group's position and it might prove difficult to go against the majority. In the African Group, for example, positions may diverge between small economy members and members of the Cairns Group on topics such as agriculture. Even within the SVEs group, positions may diverge among members on the level of ambition for market access liberalisation and yet converge on special and differential treatment issues. There is a further weakness of a group approach. To achieve consensus in the group, very often, the only way to reconcile divergent interests is through 'constructive ambiguities' (i.e. using language that will accommodate all members and help in reaching a consensus). Sensitive areas in the negotiations have been agriculture and NAMA, where interests among member states may differ substantially. This situation does not contribute to strengthening the position of the group, as the 'constructive ambiguities' may surface later in the negotiations and result in unforeseen blockages due to differences in interpretation. Representation in 'Green Rooms', the informal meetings convened by the WTO Director-General on specific negotiations issues, has also been a major concern, especially in terms of representation and inclusiveness in these meetings.

Diplomatic representation

Having diplomatic representation in capitals where major trade issues are discussed, such as Geneva, New York or Brussels, is of critical importance in enhancing the participation of countries in the MTS and allowing them to properly monitor and conduct negotiations (see Chapter 2 of this publication). Diplomatic representation in emerging countries such as China and Brazil is also becoming increasingly important, as these countries exert a greater influence on international trade and global governance issues.

Out of 60 countries that are LDCs, small states or landlocked, at least ten do not have a resident mission in Geneva. The Commonwealth Secretariat provides office facilities to CSS delegations in the Commonwealth Small States Office in Geneva. At present, this office houses seven small states' delegations.³³ Although some CSS have a permanent mission in Geneva, many of them still do not have dedicated and adequate WTO representation, making it difficult to defend their trade interests and respond to other countries' proposals on time. Even where countries have managed to get representation, in most cases it is rather skeletal and not sufficiently staffed to ensure effective participation in all meetings of the WTO and other international trade organisations.

To be able to staff missions abroad with the right technical expertise is another critical factor. As the international economic agenda becomes heavily loaded with issues that require specific technical skills, developing countries have started to include technically qualified experts in their representations. In Geneva, for example, many countries have included specially equipped trade representatives in their delegations to focus exclusively on trade issues in the same way that some others have dedicated officials in foreign representation for human rights, health and labour issues. Others have found it more appropriate to co-opt experts from capitals to regularly attend WTO bodies, especially negotiating bodies, where specialised expertise is required. The involvement of technical experts from capitals not only helps to be more effective and responsive but also ensures that the home government has effective ownership of the issue at stake and that Ministers are in a better position to take decisions during ministerial meetings.

Co-ordination mechanisms and priority setting

In the context of resource constraints and inadequate representation abroad, ensuring proper co-ordination at the national level and setting priorities based on economic and political interests is key. The advantage of ensuring good co-ordination between foreign representation and capitals is that resources at home can be used more cost-effectively to follow up and provide input to Geneva, for example, rather than having to relocate staff there. Resources can be pooled together at the national level with swift collaboration of various ministries and departments working on trade. Such an approach, which can take the form of a co-ordination body or mechanism, has the added benefit of enlisting the support of various bodies, both public and private, working on trade issues and the civil society. At the same time, a greater sense of ownership is created and a reform/implementation agenda is more easily achieved.

With a heavy agenda and a growing number of issues at the multilateral level, it is virtually impossible to cover all issues, hence the importance of setting priorities based on a country's interest. Trying to be involved in all areas of work might prove to be counterproductive when a country is faced with resource constraint. CSS rely on a few products for exports. In addition, as mentioned earlier, there are a few services sectors that are of economic importance to them, tourism being one of them. However, while setting priorities, one has to be mindful of not only existing trade structure and protecting current trade interest but also projecting future development trends and the development of new industries. This has become more relevant nowadays with value chain processes across different countries. A clear trade strategy will certainly provide useful guidance and inform policy-makers and negotiators of what issues are to be addressed in a multilateral setting and how this can be done.³⁴

1.4 Chapters in this book

This publication brings together valuable perspectives from a wide range of experts on the participation of small states in the MTS and proposes new ways that this increased participation can benefit small and marginalised countries in the future.

Chapter 2 presents a rigorous and comprehensive review of the systemic issues affecting small states' participation in the WTO. This chapter outlines some of the particular challenges and priorities for small states with respect to the MTS. It explains the key contours of the debate on the WTO's systemic challenges and institutional reform and illustrates the extensive range of systemic issues and proposals that currently exist. To provide context for small states, this chapter mentions a broad spectrum of these proposals. It focuses most on those areas deemed to be of particular interest to small states, which include the following:

1. the WTO's system/regime management function;
2. the WTO's negotiation and rule-making function;
3. the WTO's dispute settlement function; and
4. the WTO's outreach and its interface with global economic governance and regional/preferential trade arrangements.

Notably, this chapter does not aim to address the challenges that small states face when organising themselves at the national/regional level to devise and advance their international trade policy objectives; instead, it focuses on the international dimension, that is, the interaction of small states with the WTO system itself, including the Secretariat and other members. It also does not aim to address the substance of the Doha Round of WTO negotiations.

Chapter 3, using the Dispute Settlement Understanding as an example, offers a novel and highly informed perspective on the importance of the WTO's dispute-settlement function for small states and LDCs. This chapter provides insight into how the adjudicating arm of the system can work for small states. Chapter 3 provides the first specific evaluation of the participation of CSS and LDCs in WTO dispute

settlement. Despite these countries' small shares of global trade, the author queries if their current limited participation in WTO dispute settlement processes should be greater. This chapter analyses the special constraints these countries face and makes some tentative proposals to improve that participation.

Chapter 4 provides new and thought-provoking insight into what small and poor developing countries need from the MTS. Having recognised the importance of the WTO in ensuring predictability for producers and consumers and the limited negotiating capacity of small and poor countries, the chapter examines three potential areas of constraint on trading by them: market access in goods, costs of trading and opening up of services trade. Several proposals that are currently under negotiation are then examined, ending with some key suggested areas on which these countries should focus their efforts in the WTO.

The critical role of AfT in support of small states is addressed in Chapter 5. This chapter examines the rationale of AfT to SVEs and delves into the specific challenges faced by these countries in terms of their trade. After highlighting these challenges, the chapter provides fresh analysis, quantifying AfT flows to SVEs over the past decade and the distribution of where this funding has gone. The chapter critically evaluates how effective this has been for SVEs so far, and ends with some useful recommendations on how to move forward with this initiative.

The final chapter brings in a discussion of an extremely significant and growing element in the global economy: services trade. Chapter 6 investigates the importance of services trade in the WTO, particularly for small states, through an examination of small states' involvement in the General Agreement on Trade in Services and services negotiations, and further exploration of the impact of the development of some specific services such as tourism, health and International Trade Centre (ITC) on small states. This chapter concludes with suggestions on what role the MTS should play in advancing the services sector and the ability of small states to realise opportunities in this sector.

Notes

- 1 Statement delivered at the United Nations Conference on Trade and Development (UNCTAD) XIII, Doha, Qatar (2012).
- 2 The Bahamas, Kiribati, Nauru and Tuvalu are not members of the WTO.
- 3 Canada, the European Union, Japan and the USA.
- 4 The term 'developing countries' used in this chapter includes 'Transition economies' and 'Developing economies' as classified by UNCTADstat. For more information, see <http://unctadstat.unctad.org/EN/Classifications.html>. 'Southern countries' and 'the South' are also terms used in this chapter to refer to the same group of countries.
- 5 Unless otherwise specified, the statistics used in this chapter are based on authors' estimates using UNCTAD data (2014).
- 6 Authors' estimates using the World Economic Outlook database using GDP in current prices for emerging markets and developing economies (2014).
- 7 Although the focus of this book is essentially on Commonwealth small states, the issues raised are also confronted by many non-Commonwealth small states, as they share the inherent characteristics of smallness (Section 1.3 of this chapter elaborates on some of the definitions associated with smallness currently in use).

- 8 See Annex 1 for a list of Commonwealth small states.
- 9 Estimates calculated using UNCTAD data in current US prices and current exchange rates (2014).
- 10 CSS include two countries classified as 'developed' (Cyprus and Malta); however, the group as a whole is analysed in comparison with the group of developing countries.
- 11 The average annual growth rates were calculated based on the change in total value of exports for each group, year upon year. Estimates calculated using UNCTAD data in current US prices and current exchange rates (2014).
- 12 Estimates calculated using UNCTAD data in current US prices and current exchange rates (2014).
- 13 The Republic of Korea is another developing country with a significant share in CSS exports, but approximately 72 per cent of exports from CSS to Korea are from Brunei Darussalam only (from UNCTAD data 2015).
- 14 Estimates calculated using UNCTAD data in current US prices and current exchange rates (2014).
- 15 Goods are defined using Standard International Trade Classification (SITC) Revision 3: manufactured goods as SITC 5–8 or 667 and 68; primary goods as SITC 0+1+2+4+68+667+971 and fuels as SITC 3.
- 16 Service data are largely unavailable. Data in current US prices and current exchange rates were used from UNCTAD (2014). No information on Nauru was available.
- 17 Service data are largely unavailable. Data were used from UNCTAD (2014). No information on Nauru was available.
- 18 Average taken from the sum of exports and imports as a percentage of GDP for 2010–2012 from UNCTAD data (2015).
- 19 For further discussion, see Winters and Martins (2004).
- 20 For further discussion of the needs of small states in the WTO, see Chapter 4 of this publication.
- 21 Data retrieved from the ITC market access map (2015).
- 22 Based on the latest data available – in most cases, small states do not receive preferential tariffs from these countries.
- 23 For further information, see Chapter 11 in Bayne and Woolcock (2011).
- 24 July 2008 modalities texts are still under negotiation and can be accessed from the WTO website (www.wto.org).
- 25 See WTO documents TN/AG/W/4/Rev.4 and TA/MA/W/103/Rev.3 of 6 December 2008, available at: www.wto.org
- 26 See WTO Appellate Body Report, WT/DS246/AB/R. 2004, EC Conditions for the Granting of Tariff Preferences to Developing Countries. Document available at: www.wto.org
- 27 For more information about country groupings and alliances, see the WTO website (www.wto.org).
- 28 See the decisions reached at the WTO Ministerial Conferences, for example in Bali in November 2013 – WT/MIN (13)/33, WT/L/908, available at: www.wto.org; see also footnote 11 of the text of TN/AG/W/4/Rev.4 of 6 December 2008 for agriculture and paragraph 13 of TN/MA/W/103/Rev.3 of 6 December 2008 for NAMA regarding the categorisation and its recognisance in the WTO negotiations.
- 29 For more information about country groupings and alliances, see the WTO website (www.wto.org).
- 30 The Cairns Group is a coalition of agricultural exporting nations lobbying for agricultural trade liberalisation within the WTO.
- 31 Article 27 of the WTO Agreement of Subsidies and Countervailing Measures.
- 32 TN/MA/W/53, tabled by Benin on behalf of the ACP in the NAMA negotiating group. Document available at: www.wto.org
- 33 Including representation of the Pacific Islands Forum Secretariat and the Organisation of Eastern Caribbean States.
- 34 For further reading, see Jones (2013).

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Chapter 2

Systemic Issues for the Commonwealth
Small States in the Functioning of the
World Trade Organization: Options and
Proposals

Chapter 2

Systemic Issues for the Commonwealth Small States in the Functioning of the World Trade Organization: Options and Proposals

Carolyn Deere Birkbeck

2.1 Introduction

Recurring standstills in the World Trade Organization (WTO) Doha Round of negotiations is rightly spurring debate among the WTO's members and Secretariat, as well as experts and stakeholders, on the future of the organisation.¹ The issues at stake are not new. Amid concerns about the languishing negotiations, WTO members made a collective call at the 2011 WTO Ministerial Conference for the organisation to be improved and its functioning to be strengthened. To date, however, members are yet to make any decisions or provide guidance regarding a process to advance such efforts.

This chapter analyses the systemic issues and challenges that small states face in the multilateral trading system.² To help enable small states³ to participate meaningfully in discussions on WTO reform, it highlights areas of particular importance to them, and presents options and proposals that could be pursued by small state governments and stakeholders.⁴

Neither the WTO nor the debates about its challenges are static. As the intensity of public debate on globalisation waxes and wanes, and the salience of specific trade challenges shifts and evolves, so too has the debate on systemic issues facing the WTO.⁵ Since the WTO's launch in 1995, the issue of institutional reform – whether or not it is needed, in what form it may be needed and through what kind of process it could be delivered – has been an ever-present issue for the organisation and its growing and diverse membership.

Calls from member states and scholars for attention to be paid to 'systemic' challenges facing the WTO have been most acute at specific junctures in its relatively short history, most notably following the Seattle, Cancun and Hong Kong WTO Ministerial Conferences, but also in the face of the ongoing failure of members to conclude the round of negotiations launched by the 2001 Doha Development Agenda (DDA).⁶ Intense public debate at each of these junctures has spurred debates about the organisation's legitimacy⁷ and a number of high-level efforts to focus attention on concerns about systemic challenges facing the WTO.

In 2004, former WTO Director-General Dr Supachai Panitchpakdi commissioned a consultative board of experts, led by Peter Sutherland (former Director-General

of the General Agreement on Tariffs and Trade (GATT) and the WTO),⁸ to present proposals for institutional reform. The Sutherland Report was followed in 2007 by an independent commission supported by Warwick University on ‘the Future of the WTO’.⁹ The view that more attention to other ‘systemic issues’, beyond the challenges facing WTO’s negotiation function, was one of the reasons that WTO members agreed in 2009 to reinstate the practice of holding biennial Ministerial Conferences (as called for in the WTO’s mandate) and to put discussion of ways to strengthen the multilateral trading system on the agenda.¹⁰ Furthermore, in 2012, the WTO Director-General Pascal Lamy commissioned a report from a panel of eminent experts on the future of the global trading system.¹¹

To date, action on institutional reforms and systemic issues has been constrained by differences between and within the membership (and the WTO Secretariat) on priorities and on how best to approach and address these issues, if at all. However, some WTO reforms have proven possible. A number of administrative and informal changes have been made to how the WTO works.¹² There have also been several formal decisions taken by the WTO’s General Council, trade ministers or the WTO Secretariat. Meanwhile, proposals for reform continue to be generated by governments, scholars, civil society and industry groups.¹³

The year 2015 marks the 20th anniversary of the WTO, and members are likely to meet by the end of 2015 for the next biennial WTO Ministerial Conference. Members thus have an important opportunity to forge a way forward not only on the WTO’s negotiating agendas but also on systemic issues and challenges facing the organisation. Given the many challenges that small states face in the international trading system (see Chapter 1), they have a clear interest in negotiating for the substantive content of trade agreements to account for their particular needs, constraints and vulnerabilities.¹⁴ In addition, small states have much to gain by engaging in debates on systemic and institutional reforms at the WTO. They should work to ensure that the particular needs and concerns of the WTO’s smallest members are not neglected, and that the various systemic issues facing the WTO are addressed in ways that ensure they can use and benefit from all of the functions the multilateral trading system (MTS) offers.

For small states, ongoing discussions of systemic issues facing the WTO can and should be harnessed as an opportunity to promote attention to a number of their pressing priorities, including:

- concrete measures to boost their participation in and influence on WTO decision-making and to ensure inclusive, transparent processes that maximise possibilities for effective engagement;
- greater support for building the supply-side capacity needed to benefit from trade opportunities, to meet the high costs of implementing trade agreements and to build the long-term regulatory, institutional and negotiating capacities required to manage their international trade relations;
- greater allocation of WTO’s budget for trade research, statistics and monitoring toward analysis that responds to their needs, while building their local research capacities;

- mechanisms for independent assessment of the potential and actual impacts of WTO rules on national development priorities;
- promotion of ‘development-oriented’ coherence between WTO rule-making and the policy strategies and advice of international organisations and development agencies (such as in regard to debt and finance) upon which small states are particularly reliant for implementing their development strategies;
- assurance that interactions between the WTO and other institutions of global economic governance (such as the G-20 and development co-operation agencies) incorporate a specific focus on the needs of small states;
- boosting transparency and understanding of intersections between WTO agreements and the growing range of preferential trade agreements (PTAs) and regional trade agreements (RTAs), including integration arrangements among small states; and
- exploring ways in which the WTO’s dispute settlement arrangements could help small states to better enforce their trading rights on the global stage.

This chapter analyses systemic issues of particular interest to small states, in regard to eight of the WTO’s institutional functions: (1) regime management, including agenda setting and policy dialogue, internal management of the WTO Secretariat and the functioning of the WTO’s regular committees; (2) negotiation and rule-making, including the principles and processes of negotiations, the ways in which small states and their coalitions are represented and the accession process; (3) dispute settlement; (4) monitoring of treaty implementation and assessment; (5) research and statistics; (6) AfT, capacity-building and technical assistance; (7) outreach and stakeholder engagement; and (8) interface with the broader system of global economic governance as well as RTAs and PTAs, both those in which small states participate and those in which they are left out.

For each of the functions, some of the options that small states could pursue relate specifically to actions that they could call on the WTO Secretariat to take. Others relate to actions that governments could take in their capacity as WTO members, in their role as donors to small states or as members of other international organisations relevant to trade and small states. Some recommendations also relate to the Secretariats of other international organisations and to stakeholders – that is to the wider system of actors that animate the MTS.

2.2 Regime management: options and proposals

This section addresses the WTO’s regime/system management function, including several cross-cutting issues related to the WTO’s regular committees and the internal management of the WTO Secretariat.

2.2.1 Strategic direction and new issues: agenda setting, policy dialogue and deliberation

The importance of a rules-based, multilateral approach to managing world trade to small states is widely accepted. At the heart of debates about systemic issues facing

the MTS, however, are enduring tensions about the underlying mandate and strategic direction of the WTO as the core multilateral trade institution for managing world trade.

Development advocates contend that the core purpose of the WTO is too often misconstrued as one of opening trade; instead they argue that its purpose is one of promoting development alongside the 'global public good' of a rules-based MTS (Mendoza, 2003, Puri 2011). Others insist that the WTO needs to shift away from the traditional mercantilist vision of the GATT to better address goals of sustainable development. Although difficult to resolve, the deeply systemic issue of the WTO's purpose and mandate is important because the varying views and visions that members assert set important contexts for their positions on other issues.

A cross-cutting issue for the WTO is whether or not its institutional structure is adequate for the task of enabling strategic policy oversight of the trading system.¹⁵ There have been numerous proposals for new processes, structures and initiatives to strengthen the WTO's deliberative function, most notably to provide a space for policy debate, problem solving and thinking about long-term strategic direction and challenges facing the multilateral trading system.¹⁶ There also appears to be growing recognition that deliberative spaces within the WTO system are needed to engage political and policy leaders, including new issues (prominent among these are the increasing complexity of non-tariff measures, energy, exchange rates and climate change).¹⁷ Ongoing debates at the WTO on how to address 'new issues' suggest that such venues will be increasingly important for keeping the WTO both dynamic and relevant. Moreover, these debates highlight the important questions of 'who decides' which issues warrant attention from the membership, in what form members can have their say and how to ensure the WTO's weakest members have a voice.

Those keen to foster more high-level policy engagement of national officials, ministers and even leaders in the management of the WTO system have proposed more frequent, annual Ministerial Conferences and also the transformation of some Ministerial Conferences to serve more as policy or strategic summits, such as on a five-yearly basis.¹⁸ Some analysts propose that the WTO should have a management committee or executive board comprising member states to guide negotiations and oversee, among other matters, the budget and management of the WTO Secretariat. Proposals for any kind of formal, smaller group management structure of the WTO negotiations (such as the structure that existed in the latter years of the GATT in the form of the Consultative Group of 18 (CG-18)) quickly encounter political opposition among those fearful that it would enable a sub-set of member states to dominate the WTO. There is, however, growing interest in the formation of a consultative/advisory/strategic body, with an appropriate representative/rotating membership of key countries and coalitions/groups, which could focus on strategic issues for the system as a whole and deliberation on emerging challenges. Proponents advocate that such a group would not focus on specific issues under negotiation or have any decision-making capacities.

There are proposals for re-invigorating the WTO's regular committees, the General Council and Ministerial Conferences through redefinition and/or clarification of

mandates in ways that would better enable policy dialogue/deliberation on policy matters and the strategic direction of the WTO.¹⁹ Indeed, a growing number of experts call for greater opportunities for political deliberation within WTO decision-making (Howse 2002; Pauwelyn 2005).

Others contend that, rather than seek a new space in the WTO for policy deliberations, the WTO may in fact be best suited to 'hard-rule'-making, while deepening co-operation with other international organisations, such as the United Nations Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD), to offer a joint forum for policy dialogue.

Finally, some analysts also argue that, to effectively integrate development into international trade disciplines, the current institutional apparatus of the WTO needs revision. Options could include upgrading the WTO Committee on Trade and Development (CTD) to the level of a 'Council' and incorporating a more explicit 'development' post at the senior level of the WTO (such as at the Deputy Director-General level), where responsibilities could include working to promote the adequate representation of small states and their interests in decision-making.

2.2.2 Regular committees

Alongside the 'special sessions' of the various WTO Committees that were established to facilitate the Doha Negotiations, the WTO's suite of regular committees continue to be responsible for much of the day-to-day administration of WTO agreements and regular work of the organisation. Their roles include enabling information exchange, dialogue, data collection and notification processes (where WTO members inform each other of national developments), which in turn assist countries in their implementation of WTO agreements (Elsig et al. 2013). Notably, the roles of Committees vary and sometimes involve several different roles. Some Committees are charged with overseeing the notifications requirements embedded in WTO agreements (e.g. countries must notify the Technical Barriers to Trade and Sanitary and Phytosanitary Standards (SPS) Committees respectively on their planned regulatory reforms in the areas of technical standards and sanitary/phytosanitary standards). In some cases, these notifications touch on substantively challenging and highly political issues (e.g. subsidies notifications). Other Committees are more procedural or focused on internal matters (e.g. Budget Committee) and some are charged with exploring policy issues and intersections (e.g. Working Group on Trade and the Transfer of Technology) and the appropriate WTO response. In some instances, the regular committees serve as a forum for the exchange of views and reflection on emerging issues and on best practices, which can lead to the elaboration of new norms or activities for the WTO (Elsig et al. 2013).

In the wake of the stalled Doha Round, there is new interest in strengthening the roles of the WTO's regular committees. For small states, the regime management activities of regular committees, such as monitoring external trade policies and trends (including through notification processes), as well as exchanging views on best practices and emerging topics, are particularly important because small countries

face capacity constraints in conducting such activities themselves. However, the small size of most small state delegations means that they cannot attend, never mind effectively participate in, many of the Committees. With many Committee meetings held each week, and often in parallel, even efforts to pool resources through coalitions do not adequately address the challenges small states face in absorbing extensive background documentation and simply being able to attend the great number of regular committee meetings on top of special sessions and other informal meetings, briefings, training sessions, etc.

There is not, however, always a shared understanding or clarity on the roles of Committees.²⁰ Some Committees achieve little progress on their agenda items, returning repeatedly to the same issues or devoting most of their time to debates on the mandate of the Committee. In some Committees, engagement of the membership is weak. Furthermore, the roles and responsibilities of Chairs are not always sufficiently understood, in which case it is effectively the Secretariat that shepherds the work of the Committee.

There have been calls for greater engagement of relevant non-stake actors with expertise or experience (whether from non-governmental organisations (NGOs), the private sector or academia) and inter-governmental organisations (IGOs) to inject new energy, evidence and analytical insight into some discussions.²¹ Furthermore, some Committees lack the mandate to do any more than encourage countries to notify and report, relying on the motivation of individual members to comply with such commitments. Amid calls for the WTO to better respond to emerging and new issues, there are differences of opinion among the membership about the extent to which regular committees should engage in policy deliberations, particularly where these may have the potential to lead to the elaboration of new norms.

Options for discussion by small states include:

- greater support for efforts by small states to be present and engaged in regular committee work, such as through support for non-resident small state missions in Geneva and for the efforts of small state coalitions/groupings to broaden and deepen their participation in regular committee meetings.
- adoption of a policy on observership of WTO regular committees, including the potential for other IGOs, NGOs and private sector actors to provide technical and expert input.
- improvement of the process of choosing committee Chairs, with a focus on relevant technical knowledge and facilitation skills, ensuring that Chairs receive adequate substantive support and training in meeting management/facilitation where relevant.
- clarification of the mandates of regular committees, including if and how they could be more engaged in deliberative debates and discussions of challenges not already addressed in negotiations (e.g. on new issues such as climate change and trade, exchange rates, food security, global value chains, etc.) or if other mechanisms should be used for such purposes.

- provision of tailored advice to small states (and least-developed countries (LDCs)) on key upcoming issues across regular committees that have particular relevance to their national interests and, where appropriate, short briefings by the Committee Chair or Secretariat on the content of relevant background documentation.

2.2.3 Secretariat and internal management

A further set of proposals on WTO reform address the role, management and resources of the WTO Secretariat – the custodian of the WTO's agreements.

There has been considerable political discussion about the WTO Secretariat's relationship with member states, with a particular focus on the importance of Secretariat neutrality. Developing country concerns about impartiality on the part of the Secretariat have arisen in regard to many areas of the WTO's work, such as in the trade policy review process, the dispute settlement process, the provision of technical assistance and training, and its research agenda. The complaints have focused on alleged Secretariat bias in favour of greater trade liberalisation and/or in favour of the interests of the more powerful member states.²² The Secretariat has many roles with the potential to have an impact on outcomes and perceptions. For instance, as the skills and knowledge of Committee Chairs varies widely, the Secretariat's scope for influence – whether intentional or inadvertently – can be high. Although some Chairs steward their Committees with minimal backup from the Secretariat, others rely heavily on the Secretariat to prepare their strategy, speaking notes and summaries and to advise them before, during and after Committee meetings (in addition to formal summaries prepared afterwards by the Secretariat). One response from developing countries has been to take a close interest in the process for selection of the WTO's leadership (particularly its Director-General)²³ and to argue for boosted developing country representation among the WTO's staff.

A range of other management issues, with similar political dimensions, has arisen with regard to the appropriate structure of the WTO's senior management. There have been questions, for instance, about the efficacy of having four Deputy Director-Generals. The Deputy Director-General positions are essentially political appointments made by the Director-General, usually of senior former trade diplomats from the WTO's membership, with consideration of regional representation. Two concerns that have arisen are the weakening of institutional memory, as the incumbents in these positions change on a regular basis, and questions about the qualifications of some political appointees for roles in senior management and political posts. Regarding the role of the WTO's senior management, some analysts have also argued for deeper consideration of the potential for the WTO's Director-General and/or senior staff to be selectively involved in the chairing of some negotiations (Ismail and Vickers 2011). Although the Director-General chairs the Doha Round's Trade Negotiation Committee, representatives of member states chosen by the membership normally chair all other Committees.

Many proposals for strengthening the WTO include some expansion and intensification of the Secretariat's activities (such as an expanded trade policy review (TPR) process) and potentially also of its staffing and budget. Indeed, since the WTO's

inception, some have called for the organisation to have greater resources and staff,²⁴ emphasising its relatively small size compared with other international organisations. Member states have, however, been reluctant to boost the Secretariat's substantive role and functions, scope for independent initiative or budget.

Despite its relatively small size, the Secretariat has not been passive. On the contrary, it has undertaken numerous initiatives (such as the AfT initiative) that have ultimately received the support of the members. This has boosted confidence in selectively expanding the Secretariat's scope. Similarly, despite initial reservations about the perceived lack of formal mandate from member states for certain activities, most WTO members concur that the WTO Secretariat's efforts to provide regular monitoring on protectionist measures in the context of the financial crisis have been useful, and there has been wide support for its expanded attention to statistics and support for research in developing countries.

Many of the proposals for expanding WTO's activities with regard to trade and development and to better service the needs of small states would require greater numbers of WTO staff and resources.²⁵ However, rather than a broad-based call for a larger Secretariat, the case for more resources – even for development and small states priorities – should be made on a function-by-function basis, with careful consideration of the appropriate strategy for expanding the WTO's role (Deere Birkbeck 2009a). In some instances, the activities or services that small states need could be better provided jointly with, or by, other actors within and outside the multilateral system. UNCTAD, NGOs and national universities might, for instance, be better vehicles for meeting research needs.

To advance their interests at the WTO, small states could argue for:

- greater representation of their nationals on the WTO staff;
- a review of the effectiveness of the WTO's senior management system (e.g. the practice of political appointment of four Deputy Director-Generals, and the degree to which these Deputy Director-Generals consider the interests of small states);
- more specific services and activities from the WTO Secretariat that respond to particular needs of small states;
- an advisory/consultative body of senior officials to complement the General Council's role, which could provide oversight and strategic direction for the WTO system and its Secretariat on recurring challenges for the organisation, such as ensuring adequate representation of the organisation's smallest and weakest members.

2.3 Negotiation function: options and proposals

Political theory suggests that small states should favour multilateral over bilateral trade negotiations, as the multilateral forums usually offer relatively more formal, transparent negotiating processes and greater potential for collective action among weaker countries, which can boost their ability to mitigate and manage power asymmetries. However, a broad suite of studies has documented the challenges of

effective developing country representation in WTO negotiations,²⁶ particularly for the WTO's smallest and poorest members (Jones 2013).²⁷

Small states have many objectives in WTO negotiations. In some areas, these are aligned with those of other developing countries, but they also have distinct goals and priorities. Some of their priorities include crafting rules that preserve their policy flexibility (such as to support domestic industries and retain customs revenue), obtaining increased access to key export markets, preservation/managed reduction of preference, and AfT. Importantly, for some small states, 'participating' in the global system is an important objective in its own right. Given that small states are often marginalised in decision-making, sometimes merely being present in the room ensures some degree of recognition of their interests. Furthermore, such participation enables small states to understand the negotiations and outcomes, which helps them to implement rules in their domestic economy in harmony with those agreed internationally, and to be aware of the flexibilities they can use. However, powerful states still generally dominate agenda setting and the conclusion of trade rounds. Too often, poor, small and vulnerable countries are marginalised while the 'big players' in global trade negotiations spar.

Four aspects of the WTO's negotiation function warrant particular attention: (1) the principles underpinning WTO negotiations; (2) the processes of negotiation – informal and formal; (3) the representation and effective participation of small states and their coalitions; and (4) the accession process.

2.3.1 WTO negotiation principles

Ongoing debates on how to improve the WTO's negotiation function regularly lead to discussion of the principles at the core of the multilateral trading system, most notably principles of the single undertaking, most-favoured nation (MFN), national treatment, consensus-based decision-making, and special and differential treatment (SDT).

Single undertaking

In the light of the stalemate in the DDA, the 2011 Ministerial statement proposed that governments should pursue 'different negotiating approaches while respecting the principles of transparency and inclusiveness'. It proposed advancing negotiations in those areas where progress can be achieved, such that members might 'reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking'. As members work to apply this proposal in practice, they encounter considerable variation (and confusion) in how members interpret the term 'single undertaking' and what it means in practice (Wolfe 2009). Some argue that the notion of a single undertaking (meaning that nothing is agreed until everything is agreed) refers to the final suite of agreements to be adopted, whereas others argue that the single undertaking demands that attention be paid to obtaining a 'balance' between the pace of negotiations at every step along the way.

In terms of 'different approaches', key options under discussion include a move towards more variable speed negotiations and/or a variable geometry of rights and

obligations through, for instance, plurilateral and critical mass negotiations (where a sub-group of WTO member states advance with negotiations) and ‘early harvest’ decisions.²⁸ Some proponents suggest that plurilateral approaches need not contradict the single undertaking, arguing that agreements could be put on ‘hold’ until other elements of a single undertaking were completed. The issue is not merely theoretical. Many governments are already in the midst of plurilateral negotiations – both on environmental goods and services and on services.²⁹

For small states, the proposal for new negotiating approaches offers opportunities (such as early harvests on some issues), as well as important risks. One risk is that promises of inclusiveness in the context of new approaches will not be achieved in practice. To date, only a few contributions to this debate have seriously considered the implications of variable geometry for inclusiveness and development, given the WTO’s prior challenges in this respect.³⁰ A second risk is that plurilateral negotiations will leave out many developing countries, which will then later struggle to catch up with regulations and laws, the negotiation of which they were not involved in. A third risk is that the pursuit of plurilateral approaches will mean that small and poor countries will be engaged on only a narrow set of issues (such as discussion of cotton, market access and SDT), whereas the broader systemic and regulatory issues that define the multilateral system will be negotiated by only larger players. Moreover, critics of departure from the single undertaking argue that the challenge of maintaining the development content of the round relies on a single undertaking, and on the sequencing of issues defined in the original Doha Ministerial Declaration for ensuring that attention to development issues is a priority. Finally, pragmatists argue that the single undertaking or similar arrangements that provide the possibility for members to make trade-offs between issue areas and interests will remain a vital part of the politics of concluding trade deals.

For these reasons, most developing countries argue against a retreat from the single undertaking in the context of the Doha Round (although some are more open to this approach in the post-Doha context) (see the discussion on ‘post-Doha options’ below). There does appear, nonetheless, to be growing acceptance that, while the single undertaking remains a core principle, its interpretation and application demand greater clarification.

Consensus

Among international organisations, the WTO is notable for the emphasis its members place on consensus-based decision-making. In principle, the consensus-based procedures of WTO decision-making formally empower all participants by giving them potential veto power, which allows even smaller states to exert more influence on agenda setting and negotiation outcomes. Critics, however, highlight that the consensus principle generates inefficiencies in the negotiation process, for example by enabling one powerful country or groups of weaker players to hold hostage the progress of negotiations. For small states, for instance, the consensus principle enables them to work together and with groups of other countries to block unwelcome elements of negotiations. This possibility is, however, a double-edged

sword, as it also enables single, larger countries to block progress on issues that matter to them. Furthermore, the consensus principle is also something of a mirage in that it can deflect from the power politics that are pervasive in the WTO's informal politics.³¹ On many issues, consensus does not imply that all countries agree, but rather that they have too little power to stop other countries moving ahead or have conceded.

Several responses to these challenges have been proposed.³² One option is for countries to vote to resolve particular negotiation issues, using the WTO's current one-member, one-vote rules for voting (which have been invoked in only a very limited number of cases). Alternatively, Narlikar (2011) suggests that, to ensure that the entire membership has a meaningful say in decision-making, members should combine a critical mass approach with negotiations, together with a voting system that requires a super majority. Another proposal is for the use of an executive board to resolve negotiation deadlocks, whereas others advocate maintaining the consensus-based approach to highly contested aspects of negotiation but allowing voting on more procedural or less significant issues.³³

While recognising that the consensus principle may result in a slower and more difficult process, which in turn can lead to both frustration with the system and greater recourse to RTAs, its supporters argue that it remains the more democratic and inclusive approach in comparison with multilateralism. Ismail and Vickers argue, for instance, that '[n]ot only does consensus force WTO Members to build convergences in their positions and make compromises in the interests of the system as a whole, but it also creates learning opportunities and empowerment for developing and least-developed countries' (2011). Among other points, they emphasise that there is not so much a problem with the 'consensus' principle itself but instead with its application (Ismail and Vickers 2011),³⁴ noting that, in the past, the principle was treated with greater respect. In line with this analysis are proposals that those withholding consensus in WTO negotiations should offer, as the minimum, a verbal or written statement justifying their position with evidence of potential harm. In summary, although the consensus principle remains a common subject of criticism, those close to WTO politics argue that efforts to revise the consensus-based principle would find great difficulty garnering political support.

Special and differential treatment

A core systemic issue for small states in the WTO relates to the nature and operationalisation of the concept of SDT as a core principle for multilateral rule-making. For small states, appealing for more effective operationalisation of the principle of SDT throughout the WTO's agreements and work is a central part of their negotiating strategy.³⁵ The principle of SDT has, for instance, allowed small states to articulate and advance their trade priorities. They also place considerable emphasis on negotiations with the aim of clarifying and implementing SDT provisions. However, there is considerable dissatisfaction among developing countries with the operationalisation of the SDT principle in existing trade agreements and in the process of trade negotiations (Mitchell and Voon 2009; Stevens 2003).

Whereas some analysts have argued that SDT should focus simply on delaying deadlines for developing countries to implement WTO agreements (Srinivasan 1998, 2002, 2004), most developing countries insist on a more substantive approach (e.g. involving variations in the obligations themselves and elements such as a principle of non-reciprocal obligations for LDCs). Some development advocates call for recasting the SDT principle in the language of 'hard law' and for SDT to be locked into WTO commitments so that they are 'legally enforceable, predictable, and therefore more beneficial...' (Kaushik and Mukibi 2011). There are also calls to implement the 'right to development' in international law, including through SDT at the WTO (Chimni 2011).

Although there have long been some 28 agreement-specific SDT proposals under discussion in the Doha negotiations (in Annex C of the draft Cancun text), many of the poorest countries remain unconvinced that these will provide meaningful benefits.³⁶ Moreover, these efforts come in the context of scepticism about the potential for current approaches to SDT to address underlying tensions in today's negotiating environment – both where emerging developing countries and developed countries spar over whether or not their claims for SDT and 'policy space' are legitimate, and where poorer developing countries contest some claims for SDT by larger developing countries.³⁷

Some development advocates call for a new 'positive' SDT agenda that focuses less on broad categories of countries (e.g. LDCs, developing countries) and more on the specific needs of individual countries. This agenda includes proposals for 'à la carte' SDT that would be needs-based and tailor-made for particular countries by topic and for developing country sub-groups (such as small vulnerable economies (SVEs), landlocked developing countries and specific issue-based coalitions) (Melendez-Ortiz and Biswas 2011). The criteria to qualify for SDT by topic or issue could be set by WTO Committees, and then countries could self-designate. Developing country opponents to such proposals, however, argue that maintaining the broad-based collective identity of developing countries is critical to achieving the political power needed to achieve outcomes in negotiations and that fragmentation among developing countries on issues such as SDT would diminish that power. It may, however, be possible to have an approach to SDT that combines both approaches, with solidarity among large groups of developing countries on certain key principles of negotiations and an *à la carte* approach to specific negotiating issues. Although there is no accepted norm in international trade negotiations for differentiating countries on the basis of smallness or vulnerability, the needs-based *à la carte* approach might yield similar results.

MFN and national treatment

The principles of MFN and national treatment have long formed cornerstones of WTO negotiations. There is broad consensus on the enduring principle of national treatment (which calls on members to give equal treatment to foreign and national actors in regard to trade policy, i.e. not to discriminate between domestic and foreign producers).

In the context of the languishing Doha Round, however, some analysts ask if the MFN principle has outlived its usefulness, particularly in a world where much

trade is plurilateral or under preferential terms. According to the MFN principle embedded in WTO agreements, countries cannot normally discriminate between their trading partners. If countries grant a trade concession to one country (such as a lower customs duty rate for one of their products), they have to do the same for all other WTO members. (Notably, the preferential trade arrangements that many small states trade under occur against the MFN principle.)

Growing interest in plurilateral negotiations has spurred debate on whether or not the agreements that emerge should be applied on an MFN basis. Whereas results of the current plurilateral negotiations at the WTO on environmental goods are intended to apply on an MFN basis, some WTO members are pursuing a plurilateral agreement on services, which is initially being negotiated outside the WTO with the intention that it will be applied on a non-MFN basis (albeit with a view to eventual multilateralisation in the WTO system). Already the WTO's existing plurilateral Agreement on Government Procurement is applied on a non-MFN basis. The implication of non-MFN plurilateral agreements is that the benefits of such agreements would extend to only the parties to the agreements and not to all other WTO members. Even amid discussion of MFN/non-MFN plurilateral agreements, the wider view appears to be that MFN must remain a core principle of the WTO and that greater understanding of its role/relevance, both historically and currently, is needed.

Post-Doha options

Several proposals have been offered for how to improve the WTO negotiating function post Doha. There are, for instance, proposals for moving away from all encompassing 'rounds' of negotiations on an ever-increasing number of subjects to more *à la carte* negotiations. In this spirit, some propose revisiting the mandate of the WTO regular committees so that the WTO can serve as a permanent negotiating forum, whereby negotiations would be prioritised and addressed as new topics arise. There also appears to be greater sympathy for pursuing plurilateral agreements in the post-Doha world (i.e. once the Doha Round is concluded).

To ensure consistency with multilateralism, Rodríguez and Wilke (2011) propose the following guidelines for plurilateral approaches: (1) requiring the WTO Ministerial Conference or the General Council to launch the negotiations (a green light to proceed), thereby implying a collective decision by all WTO members; (2) establishing criteria for the determination of what constitutes a critical mass on a case-by-case basis, taking into account the political and economic position of individual countries; (3) providing for particular 'opt out' options for WTO members in negotiation clauses, which means that acceding members to a plurilateral agreement could accept or reject certain elements later; and (4) applying all agreements on an MFN basis. Further proposals focus on the importance of the process of plurilateral negotiations, insisting that they should be undertaken with the broader WTO membership and framework in mind; as such, all members should be able to observe and have a voice in the negotiations, and principles such as SDT should be incorporated into negotiations. Some proponents also argue that calls for moving ahead with specific plurilateral negotiations should be evaluated by their merits (rather than by quantitative criteria such as that the countries involved must represent a certain percentage of trade in the sector concerned).

An alternative proposal considers ways in which the processes through which governments seek to cooperate may need to vary depending on the subject matter in question; whereas negotiations on tariff liberalisation may call for processes that facilitate competitive bargaining, efforts to forge greater transparency, harmonisation or cooperation on 'inside-the-border' regulatory measures might be better suited to processes that emphasise dialogue, exchange and institutional support. The regulatory goal may vary – it could be regulatory convergence/harmonisation or greater transparency of differences between heterogeneous regulatory systems. Some argue that negotiations on regulatory matters ought to be designed to focus on guidelines and best practices rather than on hard law, and that such dialogue may be better suited to non-WTO forums such as UNCTAD or the OECD. 'New issues' might be better addressed within the WTO but in a deliberative/policy dialogue format, with possible collaboration from other relevant international organisations.

Options for discussion by small states include calling for:

- an agreement on an approach and specific timeline by which the WTO members will finalise proposals for making a broader range of SDT proposals more precise, effective and operational, and on the establishment of an SDT monitoring mechanism;
- a new approach to SDT that combines existing categories of developing countries with a more issue-specific needs-based approach;
- affirmation of the importance of the WTO's MFN principle and consensus principle;
- a post-Doha dialogue among members on the approach to negotiations, including options for variable geometry and a permanent negotiating forum as an alternative to negotiation Rounds.

2.3.2 Negotiating process: formal and informal

Since the mid-2000s, there has been growing attention given to the rising participation of developing countries and their coalitions in WTO negotiations, as well as to the fairness, transparency and inclusiveness of the WTO decision-making processes.³⁸ As the prominence of developing country coalitions and emerging developing countries in international trade negotiations mounts, their strategies and performance are also a topic of increasing interest.³⁹ Scholars and experts have set forth a variety of lessons for developing countries, as well as proposals and strategies for bolstering the impact of their coalitions.⁴⁰ Alongside studies on how to strengthen small states and their coalitions are numerous proposals for better management of the WTO negotiating process – most notably, the scope, complexity and asymmetric power dynamics of negotiations.⁴¹

Although the Doha Round is notable for the increasing participation of large developing economies in the inner circle of WTO negotiations, weak and small countries often remain absent; they cannot take for granted the support of other developing countries in advancing their particular interests across the WTO's

functions (Deere Birkbeck and Jones 2012). Small states have worked to address some of these challenges by making greater use of coalitions. The process of negotiations – both formal and informal – has also evolved in ways that address important elements of exclusion, most notably by widening the representation and participation of coalitions in some of the key informal processes.

Although the growing use of coalitions by developing countries has altered the ‘atmospherics’ of trade negotiations, for many of the poorest and weakest countries, the reality is one of exclusion from key negotiating processes. Indeed, some critics argue that optimism about the rise of coalitions at the WTO is giving unwarranted legitimacy to a negotiating process that remains fundamentally flawed in terms of opportunities for effective representation and participation by small and weak countries. Four sets of persistent challenges exist: (1) structural power asymmetries shape negotiations; (2) resource, power and organisational constraints; (3) perceptions on the part of small states that they are operating under a high level of threat from large states, reducing their expectations of influence (Jones et al. 2010); and (4) the persistence of informal small group meetings within and outside the WTO, and the formal structure/sequencing of negotiations and modalities. A particular concern for small and poor states is that negotiations are increasingly divided into two tiers, in which small and poor countries are engaged in negotiations on only a narrow set of issues, such as discussion of cotton, market access and SDT, whereas the broader systemic and regulatory issues that define the multilateral system are negotiated by larger players.

It is widely agreed that there is little prospect that the WTO will ever reach agreements with all its members in a room and, as such, some small group processes are inevitable. In this regard, two areas for attention are the composition of small groups and the transparency of their deliberations. On the composition of small groups, the WTO Director-General has considerable flexibility as regards who is invited to small group meetings, as do other governments and Chairs that host such meetings. Although flexibility is indeed important for the negotiation process, and smaller numbers can improve efficiency, the risk is that the most powerful countries will negotiate in smaller groups, resulting in decisions that they are then able to impose on the excluded countries. Whereas closed consultations previously included only a handful of developing countries on an individual basis, there are now greater efforts to engage relevant coalition representatives, at least in the more ‘formal’ of informal negotiations (such as green rooms held within the WTO Secretariat and hosted by the WTO Director-General). However, beyond green rooms, many countries and coalitions remain excluded from the myriad of other informal negotiation processes or are not able to participate effectively when they are invited.

As regards the transparency of the deliberations of small groups, the benefits to small states of increased inclusion of their coalitions at key moments of the negotiating process also depends on the internal co-ordination and politics of those coalitions. The benefits of inclusion are eroded, for instance, if members of relevant coalitions are not properly consulted, informed and briefed by their representatives. Although many coalitions are making efforts to improve their internal communication strategies and

information dissemination (Patel 2007), the transparency and co-ordination within those coalitions that small states participate in remain imperfect. The result is that, even if a coalition is included in green rooms, some individual members may still feel inadequately represented.

In regard to the structure and sequencing of negotiations, small states have long complained about their difficulties participating in a proliferating and overlapping suite of WTO meetings, particularly given the complexity of topics in question. Even in the regular negotiating work of the WTO in Geneva, small states cannot follow all the subjects of the Doha Round simultaneously alongside the organisation's regular work. Concerns have been particularly acute during Ministerial Conferences where intensive negotiations have occurred. The prominence of concerns about the negotiating process at Ministerial Conferences has faded somewhat from attention largely because there has been no 'negotiating' agenda at any Ministerial Conference since 2005, but attention on this issue is likely to re-emerge when Ministerial Conferences are again used as a negotiating venue. A key challenge here will be for members to learn from and build on the experience of past Ministerial Conferences. Given the high turnover of delegates across national missions to the WTO, however, much of the relevant 'institutional memory' erodes over time. The task of retaining the lessons from the past will thus require explicit attention from members, the Secretariat and external experts alike.

Some further aspects of the negotiating process for which reform proposals have been offered include the role of Chairs in negotiations and the process of WTO Ministerial meetings; the role of the WTO Secretariat in negotiations; and the relationship between ongoing negotiations in special sessions and the regular work of WTO Committees.⁴² Some analysts, for instance, propose that greater intervention and leadership on the part of the Secretariat with well-defined parameters is possible.⁴³

In regard to the WTO negotiating process, small states could call for:

- discussions on reform of the WTO's negotiating processes to focus on balancing of three competing demands: greater efficiency, inclusiveness and legitimacy (Ismail and Vickers 2011). These three considerations are particularly important, given that any agreement reached at the WTO must ultimately be ratified and implemented by governments at the national level, where concerns about inclusiveness and legitimacy often emerge.
- improved transparency of green room meetings and small group consultations, such as through a fuller briefing of what has occurred in meetings by the WTO Secretariat and by their coalition representatives, and clear guidelines for all negotiating Chairs on the composition of the green room and other small group meetings. Without the imposition of formal procedural rules that might prove counterproductive, well-conceived guidelines could help to ensure that, where subjects are of key interest to particular countries or have a direct impact on poor countries (even if they are not the major trading powers or actors in that area), such countries are invited.

- more careful sequencing and predictability of WTO negotiations and briefings by the WTO Secretariat to enable maximum participation by small states on priority areas of interest. This would facilitate being able to move beyond broad political statements to concrete positions and fall-back positions on negotiating issues. Small states could call for the introduction of a norm of 'time out' in the midst of negotiations, particularly at WTO Ministerial Conferences, to enable back and forth consultations between coalitions and their representatives.
- improved transparency of WTO negotiations (e.g. by publishing summary records of all meetings and key points of negotiating drafts on the WTO website without delay), which would better enable national stakeholders to approach their own governments for explanations and to offer suggestions (Kaukab 2011).
- adoption of a code of conduct to provide clearer guidance on the selection and conduct of the Chairs of WTO negotiations, including ensuring adequate representation of small states and their coalitions.

2.3.3 Representation and effective participation of small states and their coalitions

The influence of the WTO's smallest members on the outcome of negotiations also continues to be impeded by a lack of clarity on the part of many such countries about their negotiating interests and underlying institutional weaknesses, and by several systemic constraining characteristics of WTO negotiation processes.⁴⁴ On a positive note, small states have projected their voice more assertively, acquired more visibility and drawn more attention to their concerns in WTO negotiations over the past decade, particularly through coalition building and more specific articulation of their interests and demands. This is reflected in the fact that many draft Doha negotiating texts recognise the need to take account of the diversity in the needs and capabilities of members, specifically through differentiated proposed treatment of various groups of countries, including SVEs (Deere Birkbeck and Jones 2012).⁴⁵

At the WTO, small states are, nonetheless, making efforts to work together, most notably through the SVEs in the WTO's CTD (special session) and other negotiating bodies. This approach has yielded some important successes, such as the establishment of a Work Programme on Small Economies.⁴⁶ The Doha Declaration mandates the General Council to examine the problems facing small economies and to make recommendations on the trade-related measures that could improve their integration into the multilateral trading system, without creating a separate category of WTO members. Furthermore, the WTO General Council agreed in 2002 that the question of small economies would be a standing agenda item of the General Council; that the CTD would hold dedicated sessions on this question and report regularly to the General Council; and that the relevant subsidiary bodies will be asked by the General Council to frame responses to the trade-related issues identified in the CTD. Furthermore, the 2005 Hong Kong Ministerial Declaration contains several references to small economies; in paragraph 41, it instructs the CTD in a dedicated session to continue its work and monitor progress of the proposals by small economies in the WTO's negotiating groups and other bodies.

Small states participate in a number of coalitions and groups in the WTO; some of these are based on regional identity (the African, Caribbean and Pacific group of states (ACP), the African Group, the Caribbean Community Secretariat (CARICOM) and the Organization of Eastern Caribbean States (OECS)), whereas others are based on shared characteristics (the SVE and LDC groups). Small states have also participated in broad coalitions of developing countries such as the G-90 and the G-110, and some have joined issue-based coalitions such as the Cotton 4,⁴⁷ Friends of Fish and the G-20 in the effort to have their voices heard and interests taken into account. However, although issue-based coalitions can also be an effective vehicle for negotiations, they tend to be under-utilised by small states.

Coalitions are useful for small states in several ways (Deere Birkbeck and Jones 2012). First, coalitions can help countries to build negotiating positions, where their understanding of issues might otherwise be weak. Second, participation in coalitions can expand the representation of countries, as their interests can be represented in multiple places. The SVE group, for instance, designates focal point co-ordinators that follow particular issues and attend issue-specific meetings on their behalf. In some instances, countries have joined coalitions simply to ensure that their specific interests are heard by that coalition (Deere Birkbeck and Harbour 2011). Third, coalitions can help build convergence among the WTO membership. Fourth, the growing use of coalitions has improved the transparency of the WTO's 'green room' processes (as it enables an expanded representation of small states through their coalitions).

To boost the effectiveness of small state engagement in coalitions and the credibility of those coalitions in the eyes of negotiating partners, a number of proposals have already been made, including for improving the internal workings of coalitions (e.g. strengthening internal management, including on principles for representation of coalition members; mechanisms for internal transparency and consultations; institutionalised co-ordination; and selection of leadership),⁴⁸ boosting negotiating strategies and tactics, strengthening accountability and oversight of delegated representatives of the group and more careful management of lobbyists engaged by small states to assist them in negotiations (Laurent 2011).

Given their resource constraints, a pressing strategic issue for small and poor WTO members is not just whether or not to join coalitions, but how to use their participation in coalitions strategically and to ensure that coalitions are tactically successful. Rather than relying only on regional and characteristic-based groupings, countries should give greater consideration to where and how their interests might be served by complementing this engagement with participation in issue-based coalitions and alliances with key regional powers (Deere Birkbeck and Harbour, 2011).

A final matter related to small state coalitions relates to strategic decisions about the scope and membership of the key small state coalition, the SVE group. Some small state negotiators argue that the SVE group's decision to expand from 'small island developing states' to a 'small vulnerable economies' group has undermined its effectiveness. There are concerns that the expansion of the coalition to include non-island states made the meaning of 'smallness' in the context of some non-island states

difficult to define and defend. Although the decision to increase group membership can boost political weight within the context of WTO negotiations, where the membership is too extensive, other WTO members could contest it. Furthermore, there are concerns that the range of competing interests within the group may make concessions from other WTO members to the group more costly. However, the successes of the SVE group to date can be attributed at least partly to the flexible definition of the group, which means that the actual composition of the SVE group is different in various negotiating areas. As such, it can be argued that enlarging the group and making the composition of the group flexible has been a tactical move that has helped the group acquire recognition, as well as special and tailored treatment in different negotiating areas, including:

- greater organisational and substantive support by the Secretariat to coalitions of small and poor countries (including small state-specific research and analysis, facilitating/enabling co-ordination within coalitions, Secretariat briefings where relevant and web presence).
- more leadership from the WTO Director-General, Deputy Director-Generals and Secretariat staff to help enable small states and their coalitions to boost the degree and efficiency of their engagement with the organisation. This could include more systematic efforts by the WTO Secretariat to facilitate the flow of objective information (such as through briefings and factual information from the Secretariat, or by hosting discussions with stakeholders and experts) on the status and process of negotiations, and the implications for small states of proposals under discussion.
- financial provision in the WTO's regular budget for the representation of all WTO members should be central to the accountability and credibility of the WTO. That is, the representation of small states at the WTO should not be left to a country's own financial resources or to the unpredictable generosity of individual WTO members that may provide assistance. Small states with a demonstrated commitment to achieving an effective presence in Geneva should be able to formally approach the WTO to complement the national financial resources they can afford to invest. They could also call for the establishment of travel funds, as many other international organisations have, to facilitate the participation of technical experts from small and poor countries to participate in relevant committees and meetings.
- a commitment from members that small states and their coalitions should be more reliably represented in WTO decision-making, including green rooms and other informal meetings.
- greater use by the WTO Secretariat of webcasts and video conferences to increase the participation of those small states that cannot afford to station experts in Geneva.
- further support from donors and other IGOs for the Commonwealth's Small States Office in Geneva.

2.3.4 Accession process

The fourth and final systemic aspect of trade negotiations relates to the WTO's accession process. Among the 24 countries in the process of accession, small states include The Bahamas, Bhutan, Comoros, Equatorial Guinea, Seychelles and São Tomé and Príncipe, three of which are LDCs and two of which are Commonwealth member countries (The Bahamas and Seychelles). The challenges that developing countries face in the WTO accession process have yielded a number of studies and numerous recommendations for reform.⁴⁹ The complex and time-consuming process of WTO accession is particularly problematic for small states, upon which it can place excessive substantive demands, particularly when they are also LDCs. Several small states, such as Samoa, negotiated their accession for more than a decade. Bhutan's negotiation has lasted that long and is still ongoing. Whereas small states may be able to harness coalitions to advance their interests in broader negotiations, in the case of accession, they stand alone.

Core concerns about the WTO accession process relate to the length and complexity of negotiations, power asymmetries in negotiations and the difficulties accession countries face with implementation of accession agreements where commitments undertaken by some acceding countries are unrealistically high. More recent entrants often find themselves worse off than countries that are already members owing to pressures to take on more onerous commitments than incumbent members of similar levels of development, and because they have to accede to WTO agreements that other members negotiated before their entry into the system. The 'WTO-plus' conditions that form part of most WTO accession deals risk creating a 'two-tier' WTO membership. They also challenge the GATT principle of non-discrimination and add to the obstacles facing WTO negotiations (as some new members already hold 'hard feelings', as they believe they have undertaken 'too much' in their accession deals). Furthermore, Imboden (2012) notes that the accession focuses on the demands of incumbent WTO members rather than on helping to advance the trade reforms that are most important for the acceding country's development. He also notes that 'bilateral accession negotiations are the most difficult and least predictable part of most accession processes...[wherein] Members can force the acceding country to accept any of their requests or to forego accession' (Imboden 2012).

Although some efforts to improve the accession process have been made (e.g. WTO members adopted guidelines on LDC accessions in 2002, with the aim of expediting their accession process and making it less onerous), the task of promoting greater clarity, simplicity and speed for countries in the accession process remains a work in progress. Demands for improvements in the LDC accession guidelines spurred a decision at the 2011 Ministerial Conference to agree on benchmarks that could help guide LDC accessions.⁵⁰ The decision, adopted in July 2012, addresses five issues: benchmarks on goods, benchmarks on services, transparency in accession negotiations, SDT and transition periods, and technical assistance. It also provides some concrete guidelines to operationalise the notion of 'restraint' when seeking commitment from acceding LDCs. However, as the implementation of the decision is an ongoing matter, its contribution to greater fairness in accession outcomes remains

to be seen. Furthermore, the decision applies only to LDCs and thus not to all small states that are in the accession process.

Options that small states could consider advancing include calling for:

- simplified and more transparent accession procedures for small states that remain in the accession process (e.g. WTO 2010b),
- a multilateral process that facilitates agreement on those bilateral issues between existing members and acceding states that unduly postpone accession and that limit the scope for excessive demands on small states;
- enhanced institutional mechanisms to 'provide acceding countries with the opportunity to express their views on the process and periodic progress reports on accessions to the General Council' (WTO 2010b:11);
- the definition of transition periods for acceding small states to be given early in the negotiation process;
- greater technical support and capacity-building for small states at all stages of the WTO accession process. In addition, the creation of a multilateral technical assistance programme for each acceding small state to increase the transparency and co-ordination of aid is required; and
- assurance that technical assistance action plans for countries contain commitments that ensure the country has the means to implement the various activities foreseen and agreed upon (Imboden 2012).

2.4 Dispute settlement function: options and proposals

As the challenges that small states face in using and benefiting from the WTO dispute settlement system are addressed in Chapter 3,⁵¹ only a brief summary of issues and options is offered here.

In principle, the existence of the WTO's dispute settlement mechanism is a major benefit to small states, as it provides an objective judicial mechanism ostensibly divorced from power politics. However, developed countries and a relatively small group of larger developing countries have dominated the use of the WTO's dispute settlement system. Since early 2013, Antigua and Barbuda was the only small state to have been a complainant in a WTO dispute (in a case against the USA), and Trinidad and Tobago was the only small state to have been a respondent (in a case launched by Costa Rica) (Jackson 2012). A number of small states have nonetheless participated as third parties in one or more disputes.

While they have rarely been complainants or respondents, small states can be affected adversely or positively by disputes among other WTO members. For instance, a successful WTO complaint brought by several Latin American countries and the USA forced the European Union (EU) to abandon its preferential treatment of bananas imported from some countries, such as St Lucia, for which bananas are a principal export. A further issue for small states relates to their ability to ensure that larger trading partners adhere to any rulings that do emerge from the Dispute Settlement Understanding (DSU) process.

The most commonly cited constraints to the use of the DSU by small states are the significant human and financial costs of mounting a case; shortages of legal capacity to pursue and sustain engagement in a case; inadequate resources to invest in the scientific or technical expertise pertinent to advancing their case; and limited government and private sector capacity to survey foreign markets to identify violations of WTO rules that harm their interests and potential cases that they could beneficially pursue. Some small states also perceive a threat that they will face informal bilateral pressures to resolve cases through mutual settlement (many WTO disputes are resolved through mutual settlement rather than rulings) and to concede to unfair settlement terms. There is also some debate about the degree to which small states have the capacity to retaliate, with some analysts arguing for greater optimism in lieu of overly negative perceptions (see Chapter 3 and Nottage 2012).⁵²

At the 2001 Doha Ministerial Conference, WTO members agreed to improve and clarify the DSU. Subsequent negotiations are ongoing in special sessions of the Dispute Settlement Body. Although these negotiations have not yielded concrete outcomes, they have generated proposals from WTO members on a number of issues, some of which address particular issues of concern for small states, such as proposals on enhancing third-party rights; enhancing compensation as a remedy; strengthening notification requirements for mutually agreed solutions; strengthening SDT for developing countries at various stages of the proceedings; and modified procedures for retaliation, including collective retaliation or enhanced surveillance of retaliation.⁵³

Options that small states could consider advancing to boost the responsiveness of the DSU to their needs and address their challenges of participation include calling for:

- greater support and training for small states on the use of mediation and alternative processes for resolving disputes, the DSU's arbitration provisions and other provisions that enable the WTO Director-General to use his or her 'good offices' to assist countries to settle disputes;
- analysis and dialogue on the case for creating a 'small claims' procedure within the WTO and on the possibility of compensation as a remedy;⁵⁴
- boosted financial contributions to the Advisory Centre on WTO Law (ACWL) to increase its ability to respond to small states' needs for assistance and to reduce its membership fees for small states that are not LDCs (which receive the ACWL's services for free);
- greater support for building legal capacity for WTO disputes within small states, including financial support for acquiring scientific or technical expertise where relevant. This should include assistance to help countries address pre- or post-litigation constraints or the associated perceptions and fears with regard to political pressure;
- increases in the legal capacity of small states and their familiarity with the DSU process by boosting training and information for small states on the arrangements and potential benefits of participating more frequently as third parties in disputes;

- boosted awareness in small states for governments and stakeholders of what proceedings involve, through continued efforts to make the public aspects of WTO dispute proceedings more transparent, such as through webcasting;
- boosted capacity of small states to monitor and analyse the sources of violations of WTO commitments that harm their economic interests, including of industries and small and medium-sized businesses.

2.5 Treaty administration, monitoring and assessment functions: options and proposals

The monitoring of trade policies is a key component of treaty administration and of the management of the WTO system. For the smallest and poorest WTO members, monitoring mechanisms have an important role in addressing their limited resources and capacity for surveillance.⁵⁵ Small states, for instance, need advance warning of changes in the trade policies or barriers of major trading partners, analyses of the impact of those changes and information that helps them resist pressures to ‘over-comply’ with their commitments and to promote compliance by rich countries with their obligations (Ghosh 2010).

The WTO has several different monitoring processes and transparency provisions within its agreements, and their number has grown since the WTO was established. The monitoring function is served by, for instance, the day-to-day activities of the WTO Secretariat, members themselves (in the form of self-reporting through notification requirements embedded in some WTO agreements (such as for subsidies)), institutionalised surveillance mechanisms such as the TPR mechanism (which has been operating since 1989 and periodically reviews the trade policies of all WTO members) and discussions and monitoring activities of the WTO’s regular committees.

In recent years, further mechanisms have been created, most notably to monitor regional trade agreements and food safety standards. There are also improved mechanisms for monitoring AfT, such as the Global Reviews of AfT and the expansion of the TPR’s scope, enabling some countries to self-nominate for monitoring of AfT flows. There have also been improvements to reporting mechanisms called for by developing countries.⁵⁶ At the insistence of developing countries, for instance, the CTD, rather than the Committee on RTAs (CRTA), is the forum for reviewing RTAs among developing countries. In regard to SPS measures, developing countries secured provisions, calling on developed countries to advise on how new standards they adopt would offer SDT to developing countries. On the SPS front, for instance, notifying members are expected to mention how their policies would affect others. In the case of RTAs, however, there has been strong opposition to assessments of their impact on the WTO system. Notably, beyond the WTO, there are a growing number of efforts to provide information on trade measures, flows and policies, including by UNCTAD and online databases of protection measures created by independent stakeholder initiatives.⁵⁷

Only a few studies analyse the WTO’s monitoring function from a development perspective (e.g. Ghosh 2008; Qureshi 1990).⁵⁸ These highlight that, on the procedural

front, participation in TPR meetings is dominated by a handful of WTO members. The TPR process is more actively used by developed than developing countries (such as through submission of advance questions to countries), meaning that the direction of peer pressure flows more against the latter. At present, the smallest countries participate only minimally in discussions of the performance of other WTO members and, even when their own country is discussed, many governments do not participate at a high level. In many cases, small states are reviewed as part of a broader economic community, such as the OECS, rather than individually. At present, the TPR process does not facilitate inputs or allow participation from non-state actors. Furthermore, TPRs are too infrequent (every four years for developing countries and less frequently for LDCs) to serve as a dynamic tool for policy dialogue.⁵⁹

On the substantive front, the TPR process does not currently aim to make an assessment of the impacts of WTO agreements on development. Critics argue that the TPR's focus on compliance with WTO does too little to help countries explore how they can better take advantage of the MTS, identify what additional support they need or reinforce development-oriented national trade policy-making. At present, TPR reports often do not describe or analyse the most contentious trade policies of members or include detailed analysis of key provisions of RTAs to which the country belongs, or give any indication of the implications of this. There are many proposals for harnessing the TPR as a tool for integrating development and other dimensions into trade policy-making (ranging from environment to labour, gender and human rights considerations). These recommendations also have a procedural element, as they include a call for stronger roles for other international organisations, experts and stakeholders in the TPR process (Deere Birkbeck 2009a).

From a political perspective, the call for more timely, compliance-oriented information and impact analysis from the TPR will face several hurdles. First, the WTO Secretariat faces constraints on its mandate to investigate and evaluate the policies of its members. Second, developing countries fear that greater transparency and more analytical reports could target their policies more than those of the rich. They have also resisted proposals to increase peer pressure and institutionalise follow-up to the TPR for fear that this may work against them, as they may be less able to use transparency mechanisms to coax changes on the part of developed countries. Larger developing countries, some of which already use their own resources for external monitoring, may prefer to maintain the status quo. Poorer countries regrettably remain largely disengaged from the TPR process and these related debates.

In addition to debate on strengthening the WTO's monitoring function, small states could benefit from incorporating greater assessment and evaluation of the impacts of existing and proposed WTO agreements into the WTO's governance arrangements, either through the TPR as noted above or through a new mechanism at the WTO. There are also proposals for an ombudsperson function in the WTO, such as one that could receive complaints from stakeholders about development impacts as a way of boosting WTO transparency and accountability (Pena 2011).

The push for *ex ante* and *ex post* assessments of the impacts of trade liberalisation and rules is not new. It has already spurred numerous efforts to devise methodologies

and pilot studies for the assessment of trade impacts on development, sustainable development, the environment, gender, poverty, human rights and labour. The United Nations Environment Programme (UNEP) as well as the EU, the USA and Canada have carried out environmental or sustainability impact assessments of trade negotiations. Some development advocates have also called for a more coherent approach that links assessments of the impacts of WTO agreements on developing countries with studies of impacts of International Monetary Fund (IMF) and World Bank conditionalities on developing countries (Chimni 2011).

For small states, the incorporation of a new function within the WTO that could take up a range of these kinds of assessments, independently or with others, could help address challenges they face in terms of gathering evidence and persuading other WTO members of the challenges they face and opportunities they require in the global trading system.

In summary, options that small states could consider in regard to the WTO's monitoring (and possible assessment) function include calling for:

- increasing representation of small states as formal discussants for the TPRs of other countries and to pose questions relevant to their economies in TPR meetings;
- boosting of the political profile and usefulness of TPRs to national trade policy-making processes and dialogue through, for instance:
 - greater emphasis on high-level representation by member states at TPRs;
 - increased media coverage of reviews; and
 - using the TPR process to foster input from and dialogue with researchers and stakeholders at the national level on the direction and impacts of trade reforms (Deere Birkbeck 2009a);
- analysis of the processes of national trade policy-making in TPRs (Ostry 2002, 2004);
- inclusion of a review of developed country implementation of their development commitments to developing countries, in terms of both trade rules and provision of trade-related capacity-building, in the TPRs;
- linking of the TPR process more closely to the assessment of adjustment costs arising from the implementation of WTO rules and thus to their capacity-building needs and appropriate legal obligations for provision of assistance by other members (see Luke and Bernal 2011);
- improvement of the co-ordination between the various WTO divisions in the production of TPR reports to boost quality of analysis, and also with the World Bank, IMF, United Nations (UN) agencies such as UNCTAD, regional development banks and national research institutions to increase analysis of the intersection of trade with other relevant policies in the TPRs;
- introduction of TPR 'follow-up' documents to show responses to concerns raised in TPR meetings (see also Ghosh 2008, 2010); and

- beyond the WTO, support of greater engagement and initiatives by non-state actors in monitoring to boost the timeliness of trade-related information in the face of slow institutional and self-reporting.

With regard to boosting the availability of information and analysis in the assessment of the impacts on small states of various WTO agreements and negotiation proposals, small states could propose that:

- an assessment or evaluation function be added to the WTO system to review the effects of actual and proposed trade rules against objectives such as sustainable development and employment, and to identify national trade-related hurdles that impede their realisation. Such a function could take place under the auspices of the WTO CTD, the General Council or the Ministerial Conference. Given political fears about the potential for links to dispute settlement proceedings, such a function should be separate to the peer review/transparency function of the TPR but could feed into it. To ensure independence and impartiality, it could be implemented for member states by a network of independent research institutions or think tanks.
- an ombudsperson function be defined within the WTO's institutional structure that could receive complaints from stakeholders within WTO members and initiate independent investigations of alleged negative impacts of WTO agreements (Pena 2011).

2.6 Research and statistics function: options and proposals

For small states, shortfalls in information flows and analytical capacity on trade rules and policies are significant problems. Although most small states have access to some national trade data, they rarely have the analytical capacity to properly assess economic impacts of potential changes in trade rules or the trade-offs of different trade policy options. They also lack the data and human resource capacity to monitor changes in trade laws and policies among their trading partners, and analyse their impacts. Even where small states have relevant information and impact assessments, they face challenges in translating these into concrete negotiating positions.

In terms of processes for research and analysis, small states vary in their links to international networks of expertise, whether in the NGO, IGO or academic community. In some cases, small states rely on their negotiating partners for information on their negotiating options and potential impacts, including through the provision of consultants to assist them. Short-term interventions such as studies by external consultants or international organisations may sometimes be useful, but these do not address the broader need to support the development of analytical capacity within countries among researchers and analysts who are more familiar with the local economy. Furthermore, the work of external consultants is not always tailored to the needs of small states, and is sometimes biased towards the interests of donors.

In terms of content, small states have an interest in calling for more country-level research on the relationship between trade policies/rules and their broader national

development strategies and circumstances; more practical, detailed negotiation-relevant analysis of their specific interests on particular subjects of WTO negotiations; greater information and analysis on the implications of RTAs and PTAs; and greater assessment of impacts and potential impacts of trade rules and policies on small states. They also have a shared interest with other developing countries in wanting greater support for gathering and compiling trade statistics and other relevant data in their countries.

Progress towards the kinds of research and policy outputs that small states need will rely on improvements in the WTO's capacity to gather, make available and analyse trade data and statistics. This in turn will demand support for countries to gather and report data, and also to rethink the methodologies of some aspects of data collection. A key practical challenge for negotiations is, for instance, how to determine the origins of products that are combinations of components from many countries and how to determine where along the production chain value is added. (The WTO Secretariat, which together with the OECD has launched a database measuring trade in value added, is now taking on part of the task of gathering data on the value-added dimension of trade flows.⁶⁰) The WTO has also launched an Integrated Trade Intelligence Portal (I-TIP) to build transparency on non-tariff measures.⁶¹

Although there appears to be at least implicit support from many members of the WTO Secretariat's growing body of research, there is a need to also consider the appropriate role and scale of the WTO Secretariat's research function in addressing the research and statistical needs of small states, and how best to build research capacity beyond the WTO Secretariat.

Options that small states could pursue include:

- Boosting the role of their governments and researchers in setting the WTO research agenda and having greater ownership of the research process.
- Calling for region- and country-level research regarding trade interests and practical, detailed negotiation-relevant analysis of their specific interests on particular subjects of WTO negotiations.⁶²
- More studies that assess impacts, develop policy options and propose negotiating positions through processes that are clearly linked to broader national processes of devising their development strategies.
- Calling for greater resources and support for long-term institutional research and analytical capacity within universities, research institutes and NGOs within small states.
- Exploring ways to build relationships between the WTO and small state government officials and researchers to enable them to use the databases and knowledge within the Secretariat.
- Enhancing support for independent research and policy analysis conducted by organisations such as UNCTAD, the International Trade Centre (ITC) and the Commonwealth Secretariat, as well as think tanks, research centres and NGOs.

2.7 Aid for Trade, capacity-building and technical assistance function: options and proposals

For small states, capacity-building is a critical systemic issue, as it has a fundamental bearing on their participation in the WTO (see Chapter 5). The ability of such countries to benefit from the WTO system depends on greater supply-side capacity and building the institutional and regulatory framework needed to implement and benefit from international rules. This in turn is linked to their broader needs for development co-operation and their ability to secure adequate support from bilateral and multilateral donors. Small states are also heavily reliant on external assistance to support their engagement in the WTO system.

The WTO is involved in several initiatives to provide trade-related capacity-building to developing countries. Most prominent among these is the WTO's AfT initiative.⁶³ AfT includes assistance to countries for building productive capacity and economic infrastructure, for trade-related adjustment and to support action on trade policy and regulations.⁶⁴ For developing countries, the inclusion of AfT discussions in multilateral trade talks and the creation of a mechanism for monitoring AfT flows have been important achievements alongside the DDA.⁶⁵

In addition, the WTO is engaged in some of the capacity-building conducted by the ITC and UNCTAD – although its role and relationship with each institution vary. The WTO hosts the Enhanced Integrated Framework (EIF), which is the main mechanism through which LDCs, many of which are small states, access AfT.⁶⁶ Similarly, the WTO participates in the Standards and Trade Development Facility, a joint initiative of the Food and Agriculture Organization (FAO), the WTO, the World Bank, the World Health Organization (WHO), the World Organisation for Animal Health (OIE) and others, which is relevant to AfT in that it works to support developing countries to build capacity to implement SPS standards. It acts as a co-ordinating and financing mechanism and monitors aid flows at an operational, issue-specific level.⁶⁷

Furthermore, the WTO has its own technical assistance and training activities and programmes, which are considered core elements of the development dimension of the multilateral trading system, as confirmed by ministers at Doha in 2001. Within the WTO Secretariat, trade-related technical assistance is co-ordinated by the Institute for Training and Technical Cooperation (ITTC),⁶⁸ based on the technical assistance and training plans. The CTD⁶⁹ is the regular body overseeing all of the trade-related technical assistance activities. Although there has been one external review,⁷⁰ these activities attract relatively little external attention, but are nonetheless significant, as they tend to focus on policy and regulatory issues and on training on the interpretation/implementation of WTO rules and negotiation issues.

However, there are many critical assessments of the content and flows of Aid for Trade, and a number of proposals to enhance its effectiveness.⁷¹ Although few analysts refute the importance of AfT, critical development advocates insist that the provision of such assistance must not be a quid pro quo to reward developing countries for

agreeing to include new issues in trade negotiations or for accepting bad trade deals.⁷² They also caution that engagement in the AfT discussion should not absorb the WTO delegations of small states to the extent that it distracts their limited resources from engaging in negotiations. Further concerns are that, overall, AfT flows fall well below political commitments and that flows are not always 'additional' to existing assistance. Furthermore, small states have expressed concerns that too few AfT resources have flowed towards trade-related adjustment, and support on matters of trade policy and regulations is also inadequate.⁷³

To address the challenges facing AfT, it is important to acknowledge important difficulties at the national level. Most small states struggle to co-ordinate the diversity of individual providers of trade-related assistance to their countries. Governments often need assistance in devising how best to use available resources to their advantage; for instance, helping them to better assess their needs, formulate effective projects, negotiate with donors, utilise resources productively, ensure regional co-ordination and co-ordinate among ministries and with stakeholders.

At the international level, 'institutional' aspects of AfT that warrant attention are the difficulties that small states can experience in determining how best to access resources; there is no single point of access, identified process or set of criteria for beneficiaries to follow in order to tap into the AfT commitments of bilateral and multilateral donors. There is also relatively little attention paid by donors to regional integration efforts that are the basis of the engagement of many small states in the multilateral system.

Further concerns that are of particular relevance to small states relate to inadequate monitoring and evaluation of AfT, weak engagement of non-government stakeholders and poor links between trade-related assistance and broader development co-operation upon which most small states rely heavily. Across the AfT arena, many training and technical assistance initiatives continue to come under criticism for focusing on 'delivering' project outputs and for a bias towards supporting the commercial interests of donor countries or meeting the administrative criteria and procedures of donors in lieu of the needs and ownership of receiving countries (Imboden 2012). The quality and independence of assistance is a vital consideration for highly aid-dependent small states, particularly when provided bilaterally, as substantive tensions can arise between donors and recipients on the interpretation and implementation of contentious WTO norms.

In the area of Aid for Trade, options for addressing 'systemic' issues for consideration by small states include calling for:

- greater attention to the specific needs of small states, and a fuller role in the planning and management of the AfT programmes (Laurent 2011);
- greater transparency and clarity in terms of how countries can best access available Aid for Trade resources;
- improved processes and mechanisms for monitoring the effectiveness of AfT and the accountability of donors for the overall level and quality of AfT to ensure that

developed countries comply with their commitments to provide resources and that credible information is available to all WTO members;

- establishing stronger links between AfT and national development and poverty reduction strategies. Small states should be prepared to offer advice on the appropriate role of the Bretton Woods Institutions, regional development banks and other international organisations in AfT, as well as their critical assessment of the niche and comparative advantages of the EIF, UNCTAD, the ITC and the development banks in the provision of trade-related capacity-building and AfT; and
- boosting of the role of South–South co-operation in AfT and greater use of regional economic communities in distribution of AfT (Luke and Bernal 2011), including through support of regional AfT facilities. The use of regional facilities could give regional integration efforts much-needed momentum and, if appropriately designed, could provide national stakeholders with more transparent and responsive vehicles to access financial support;
- greater donor support in the areas of ‘trade-related adjustment’ and ‘policy and regulatory reform’, which aims to improve the ability of developing countries to formulate trade policy, participate in negotiations and implement trade rules. This includes support for nationally relevant research, development-oriented training and advice on the negotiation and implementation of agreements, legal capacity to engage in the WTO DSU process, and monitoring of trade policies and laws in other member states (including for violations of WTO commitments).

With regard to the WTO Secretariat’s training and technical assistance, small states could consider calling for:

- more specific, dedicated training and technical assistance for small states given their specific needs and specificities, particularly with regard to negotiations and implementation of WTO commitments;
- greater emphasis by the Secretariat on facilitating the access of small states to independent analysis with regard to their interests and opportunities in the trading system;
- more regular external assessment of the collective impact of WTO assistance on small states;
- support for small state delegations for representation in Geneva through the WTO’s regular budget; and
- more systematic ‘back up’ support by the WTO Secretariat for small state engagement in WTO negotiations and the accession process.

A number of cross-cutting options could also be considered, including:

- Greater donor support for multilateral capacity-building initiatives, such as the EIF or the programmes of UNCTAD, in preference over their bilateral programmes (Deere et al. 2007). They could also call for exploration of new mechanisms that would enable recipients to select their preferred providers of assistance from the

‘market place’ of potential donors. This could include boosting the proportion of technical assistance that is channelled through independent third parties that have no direct stake in the outcome of trade negotiations, such as the Commonwealth Secretariat, UNCTAD and regional development banks.

- Greater donor support for national stakeholder forums and consultations on trade policy in small states and consultations during negotiations. This should include promotion of a greater role for local, non-governmental actors with a durable presence in developing countries as recipients and providers of capacity-building, including research centres, think tanks and civil society groups.
- Greater support for the representation of small states (such as for travel for national negotiators and experts to relevant negotiations) and their coalitions (such as through support for the ACP Secretariat and Offices of the Commonwealth Secretariat in Geneva).
- Greater focus on support that is long term and predictable, which provides governments with a higher degree of autonomy to hire and retain experts of their choosing on a long-term basis.

2.8 Outreach and stakeholder engagement: options and proposals

A final aspect of the ‘regime’ management function of the WTO relates to its outreach to and engagement of other international organisations and stakeholders, ranging from parliamentarians and NGOs to the private sector and academics.⁷⁴

Small states have a particularly strong interest in boosting opportunities for non-government stakeholders in the trade policy-making process, at both the national and the international level. It is well established that input from stakeholders is vital for countries to develop robust trade policy objectives to pursue at the international level. Given shortfalls in government capacity, small states can particularly benefit from informed input from national stakeholders. This in turn requires opportunities for national stakeholders to monitor and understand the dynamics of WTO negotiations, to analyse what is at stake for them and to communicate with relevant government officials about public concerns, economic priorities and expectations. More broadly, the WTO’s processes for outreach to and engagement with non-government stakeholders have an impact on the perceptions of the WTO’s public accountability and legitimacy, which can have an impact on the likelihood that national parliaments and stakeholders will support and implement agreements reached by small state negotiators.⁷⁵

Small states would also benefit from greater opportunities for a wider range of relevant international organisations to provide or share information in WTO negotiations, or to better understand the WTO’s rules and dynamics, including organisations such as the Commonwealth Secretariat, UN development organisations and regional development banks, which are very active in their countries in regard to national economic development. However, at present, the WTO membership has not extended observership of its Committees to all relevant international organisations.

For small states, discussions of WTO reform are an opportunity to ensure adequate routine mechanisms and processes for constructive engagement of stakeholders – whether from parliaments, unions, NGOs, academia or the business sector – in ways that feed into national and international decision-making processes. In this endeavour, they would not be alone. As the Doha Round languishes, a range of WTO members and the Secretariat have noted the need for more effective measures to ensure the engagement of capitals, businesses and stakeholders in the WTO negotiation process, as well as in the WTO system more broadly.

However, at present, the WTO differs from many other international organisations in that it lacks a process for accreditation of non-government actors, whether civil society or private sector, to observe and/or input into its regular activities.⁷⁶ Similarly, the WTO's regular committees and negotiating processes are not open to stakeholder or expert observation, except where such organisations or individuals are part of national delegations. Stakeholders must thus rely on conventional lobbying techniques to influence governments; briefing papers, press statements and informal meetings to provide factual input or advice; and second-hand journalist, WTO or delegate reports to garner information on the substance and nuances of discussions that occur.

Options that small states should consider supporting include:

- opening WTO regular committees to observation by relevant IGOs;
- opening WTO regular committees to stakeholder observation where discussions on technical issues or experiences are occurring and where external experts are well poised to offer input and advice;
- involving stakeholder organisations in their WTO delegations and in meetings related to their national/regional TPRs;
- deeper consideration by the WTO membership of routine mechanisms and processes for constructive engagement of stakeholders – whether from parliaments, unions, NGOs, academia or the business sector – in the WTO's regular committees, and related initiatives and work. This discussion would be greatly facilitated by taking a function-by-function approach, rather than, for instance, by focusing on only the WTO's negotiation function.

2.9 Interface with global economic governance: options and proposals

A final set of systemic issues for small states vis-à-vis the WTO system concern the complex relationship between trade policy and broader development strategy in the context of debates on the broad architecture of global economic governance.⁷⁷ The proliferation of RTAs and PTAs, and other regional integration arrangements, continues and rightly spurs growing attention to the question of their implications for the multilateral trading system and small states.⁷⁸ Co-ordination between the WTO and other actors in the international system for the pursuit of sustainable development goals is a further core systemic challenge relevant to small states.

2.9.1 Trade in the context of development strategy and institutions

Small states have long emphasised the need for stronger alignment of the WTO with development goals.⁷⁹ This in turn is closely linked to wider debates about appropriate national economic policies in the global economy, and differences in views among appropriate economic strategies and paradigms with regard to policies on investment, trade, industrial policy and government spending. For small states, the core government priority is to address pressing national economic and social development challenges; trade policy is seen as one component of a bigger policy package that includes monetary and fiscal policies and financial deregulation. Together, these policies can condition trade dynamics and play a much more important part than trade in shaping the economic forces that affect their societies. Notably, most small states rely heavily, and even more so than many other developing countries, on development assistance from donors and an array of international institutions to finance many aspects of their government activity, the implementation of their development strategies, and also debt relief.

Given their distinct position in the global economy, small states thus have a particularly high interest in greater coherence between the many global institutions and policies charged with managing intersecting macroeconomic issues (i.e. on trade, finance, debt and development).⁸⁰ The impact of the global financial crisis on trade has spurred new emphasis on the importance of global co-operation to ensure predictable financing for developing country exports, whether through commercial banks, bilateral export credit and risk management facilities, or multilateral organisations.⁸¹ In regard to the WTO, small states have clear reasons for working to ensure that the WTO's role and position in global economic governance promotes their interests, including through attention to the WTO's relationship with other agencies within the multilateral trading system, such as UNCTAD and the ITC; the broader UN system and its post-2015 Development Agenda and the Sustainable Development Goals (SDGs); the Bretton Woods Institutions and development banks active at the intersection of trade, debt and finance;⁸² the G-20 process; and bilateral, regional and plurilateral trade agreements and integration arrangements.

Alongside calls for more coherent global economic governance are calls for better placing of the WTO in the context of the suite of international arrangements and commitments to address social issues, human rights, culture and environmental challenges, including those with major economic implications such as systems for managing climate change (Stilwell 2009). There are, however, many challenges to constructive, coherent interaction and co-ordination among the multiplicity of other institutions and rules affecting trade and sustainable development.⁸³ Many proposals have been advanced, some of which remain relevant even after several decades.⁸⁴ Notably, the WTO Secretariat has made increasing efforts to collaborate at the technical level with other international organisations, particularly with regard to monitoring Aid for Trade and protectionist measures (with the OECD), and with UNEP, the WHO and the International Labour Organization (ILO) on specific studies on the intersection of trade rules and the environment, health and employment.⁸⁵

Examples of options that small states could consider advancing include calling for:

- clarification of the role of the WTO vis-à-vis other international institutions and its relationship with them on specific issues and activities that collectively impact on the ability of small states to pursue their economic and social policies;
- recommendations for interactions among the WTO, the UN, international financial institutions and regional development banks to focus on development priorities;
- assurance of the possibility for observership of WTO processes by all relevant international organisations;
- a more holistic and coherent approach by the WTO, UN and international financial institutions, as well as emerging global economic forums such as the G-20 – and their member states – to global economic integration from a development perspective (e.g. in trade, financial, environmental and technology governance systems);
- a greater voice and participation of small states across international organisations and particularly in regard to their co-ordination and collaboration;
- greater deference to the UN as the most representative forum for global economic decision-making (Puri 2011). This could include bolstering the role of the UN and UNCTAD in efforts to achieve more effective, coherent and development-enhancing co-ordination of global economic policy, and as the repository of development-focused knowledge and experience. A further proposal is for a UN Global Economic Coordination Council as a more democratic alternative to the G-20 process. It would be established at a level equivalent to the UN Security Council, to be charged with independent international analysis, supported intellectually through contributions and participation from all the relevant global institutions and members of the UN Secretariat and the WTO (UN 2009b);
- a mechanism for ensuring greater representation of small states' interests in the G-20 process;
- greater attention to improving arrangements for South–South regional integration and trade co-operation (Bernal et al. 2004), in particular by strengthening UNCTAD's role in promoting South–South trade through its Global System of Trade Preferences among Developing Countries (GSTP);
- boosted member state engagement in the WTO's Committee on Development and its Working Groups on Trade, Debt and Finance, and on Technology Transfer, to promote a more integrated approach to trade policy-making and other macroeconomic and sustainable development strategies;
- improved co-ordination among international organisations on their monitoring activities to boost accountability across regimes to international commitments.

2.9.2 Beyond the WTO: RTAs, PTAs and bilateral agreements

Most small states are involved in a number of international trade arrangements beyond the WTO, whether RTAs, bilateral free trade agreements (FTAs), PTAs or regional economic integration arrangements. Notably, many small states conduct the majority of their trade through RTAs or PTAs. Moreover, the number of regional and plurilateral agreements among the WTO membership as a whole is increasing. Since early 2013, over 500 RTAs had been notified to the WTO. Recent examples include the negotiations for a Trans-Pacific Partnership Agreement and for a Transatlantic Trade and Investment Partnership between the EU and the USA, as well as negotiations among countries such as Korea, China and Japan.

For small states, the focus of major trading partners on regional and bilateral FTAs (considered by many powerful states as more efficient processes for liberalisation) has a number of implications. First, compared with a multilateral setting, where coalition building can bolster their individual power, small states are usually at a greater disadvantage in a smaller group setting because their individual and collective negotiating power is weaker. For small states, the asymmetries of FTA negotiations with more powerful countries (such as those in the EU) are cited as examples of the unfairness of global trade arrangements and the pressures they face to sign trade deals that may undermine their ability to promote development (Heidrich and Tussie 2009).⁸⁶ Many countries submit to deals that they acknowledge are unfair, conceding with strategic grounds that the economic costs may be offset by the benefits of stronger political relations with particular trading partners and boosted development and military assistance. Negotiations between the EU and ACP countries to conclude Economic Partnership Agreements continue to spur considerable controversy owing to concerns about the relationship between such preferential arrangements and WTO rules, and also owing to concerns about the asymmetric strength of the countries involved and the push by the EU for agreements that go beyond market access to include regulatory measures (Bilal and Grynberg 2007; Erasmus 2009; Faber and Orbie 2009). Furthermore, preferential market access programmes (such as the US General System of Preferences and the African Growth and African Opportunity Act) also attract criticism on matters such as their complex rules of origin (which in practice diminish the level of market access actually achieved).

Second, the engagement of small states in RTAs and PTAs, and the fact that much of their trade occurs under their rules (rather than WTO rules), also raises a systemic challenge in regard to dispute settlement because it means they are less able to turn to the WTO's DSU to resolve disputes where they arise and enforce their rights. In that regard, small states have much less security and predictability with respect to trade rules than other players in the trading system.

Notably, many small states express support for greater regional integration as a complement or alternative to multilateral co-operation. Beyond FTAs with developed countries, small states participate in a growing number of bilateral trade agreements as well as regional co-operative arrangements (such as the Association of Southeast Asian Nations (ASEAN)) and economic unions with varying degrees of institutionalisation, such as the West African Economic and Monetary Union

(WAEMU), the Common Market for Eastern and Southern Africa (COMESA) and the South Asian Association for Regional Cooperation (SAARC). Many small states are also part of regional integration initiatives, including the OECS and CARICOM, or regional co-operation initiatives such as the Pacific Islands Forum.

Most small states appreciate the importance of better management of the intersection of RTAs and the WTO. However, existing efforts within the WTO system to increase the transparency of FTAs do not thus far address the need that small states have for better analysis of the range of agreements and their implications, particularly regarding their compatibility with WTO agreements. In 2006, for instance, members reached an agreement to create a transparency mechanism for regional trade agreements, which sets out requirements for WTO members that are signatories to RTA to notify the CRTA of information regarding the signing and implementation of agreements (including information on the agreements scope, rules of origin requirements and tariff concessions, as well as import data). A further initiative is the WTO Secretariat's launch of I-TIP, an online database that provides information on RTAs and PTAs.⁸⁷ There has not been consensus among WTO members on what part WTO processes could or should play in enabling critical scrutiny or potential censure of such agreements.

Options that small states could consider advancing include calling for:

- guidelines on transparency of RTA and PTA negotiation processes, the incorporation of multilateral principles (such as SDT) in such agreements, and rules of origin requirements in RTAs and PTAs;
- greater analysis by the CRTA and WTO Secretariat through mechanisms to better capture and analyse the content and implications of RTAs in addition to existing mechanisms that gather and promote information flow about them;
- extended Aid for Trade to support the functioning and effectiveness of Small State Regional Integration Efforts and institutions, through boosted provision of Aid for Trade through regional economic communities as one way to boost their effectiveness. This would help support a system of 'open regionalism', that is, strong regional institutions respectful of a rules-based global order (O'Campo 2011).

2.10 Conclusion

In 2015, the forthcoming WTO Ministerial Conference and the 20th anniversary of the WTO are opportunities that small states can seize to boost the responsiveness of the WTO to their needs. Building on the options and recommendations set out in this paper and elsewhere, the lead up to the 2015 Ministerial Conference is a time for ministers from small states to clearly articulate their priorities on systemic issues and to work together with other groups, both developed and developing, to advance these. At the Ministerial Conference and beyond, they should call for members to embark on political processes that would enable progress on institutional improvements and strengthening of the WTO that would benefit the system as a whole, with a special emphasis on the particular needs of small states.

Many WTO members already concur on the need for processes – both formal and informal – to discuss proposals for reform and strengthening of the WTO, as well as the post-Doha agenda for the organisation (WTO 2009b).⁸⁸ Although some reform advocates prefer to postpone such discussions for fear of distracting political attention from the Doha Round, others recommend that a systematic process of intergovernmental reflection can and should be delinked from the substantive agenda and day-to-day processes of the WTO. Members could, for instance, create a standing body to review the functioning of the multilateral trading system, in effect institutionalising the process of thinking about the WTO's future (Meléndez-Ortiz and Biswas 2011). Alternatively, discussion of reforms could be advanced through a new senior officials body at the WTO (a revamped CG-18), Ministerial Conferences, a Leaders Summit or the WTO General Council. Informal dialogue among members is also a viable concurrent approach that small states could pursue.

Notes

- 1 See, for instance, Melendez et al. (2012). For an example of news reports, see www.theguardian.com/world/2014/aug/01/wto-future-doubt-india-blocks-deal (accessed 28 January 2014). In mid-October 2014, the WTO Director-General began urgent 'crisis' talks among members on how to advance the stalled negotiations. See Jones (2014a, 2014b).
- 2 This chapter does not aim to address the challenges that small states face when organising themselves at the national/regional level to devise and advance their trade policy objectives at the international level (see Jones et al. 2011). It also does not aim to address the substance of the Doha Round of WTO negotiations. A longer version of this paper has been published by Deere Birkbeck (2015).
- 3 In analysing small states, this study adopts the lists of small states identified by the Commonwealth Secretariat and World Bank (2000). (See Annex 1 to this book for a list of Commonwealth small states that are WTO members.)
- 4 For a review of the key debates on the WTO's systemic challenges and institutional reforms to date, see Deere Birkbeck (2015). For a review of the extensive range of proposals already on the table, see Deere Birkbeck and Monagle (2009).
- 5 Compare, for instance, the table of contents of the volume edited by Krueger (1998) to that of Steger (2009a) and Cottier and Elsig (2011).
- 6 See Bluestein (2009), Bohne (2010), Cottier and Elsig (2011) Hoekman (2012), Hufbauer and Schott (2012), Steger (2009a, 2009b), Steger and Shpilkovskaya (2009), TWN et al. (2003), Action Aid et al. (2000) and Oxfam International et al. (2001), EC Directorate-General for Trade (2005).
- 7 Elsig (2007a), Ricupero (2001) and Third World Network (1999).
- 8 See Consultative Board (2004). The initiative was preceded by earlier efforts within the GATT system, such as the Leutwiler Report (Leutwiler et al. 1985). The Sutherland Report spurred two journal special issues in which scholars debated the analysis and recommendations of the report. See, for instance, Pauwelyn (2005) and Wolfe (2005). Two former WTO Directors-Generals have also published articles or books with their reflections (e.g. Moore 2003, 2004; Sutherland 2005).
- 9 See Warwick Commission (2007). The Warwick Commission proposed a number of institutional changes at the WTO, including increasing the size of the WTO Secretariat, expanding the powers of the Director-General and revising the process for reaching new trade deals.
- 10 See Deere Birkbeck (2009b) and WTO (2001, 2009c, 2009d).
- 11 See www.wto.org/english/thewto_e/dg_e/dft_panel_e/dft_e.htm (accessed 2 February 2014).
- 12 See Deere Birkbeck and Monagle (2009), Croome (1999), Gallagher (2005), van Grastek (2013) and WTO (2007a, 2007b). Also see Petersmann (2005a, 2005b) and Cottier (2007).
- 13 At the 2009, 2011 and 2013 WTO Ministerial Conferences, for instance, member states articulated a number of priorities for strengthening the WTO, including greater fairness and efficiency in

the WTO's accession process; strengthening the WTO's monitoring process; reinvigorating the functioning of the WTO's regular committees; and improving the delivery of Aid for Trade. See, for instance, WTO (2009a, 2009c, 2009d).

- 14 Structural constraints that small states face in negotiations include power asymmetries, the rules and procedures of trade negotiations, and weak capacity to enforce their rights in international markets, as well as a prevailing discourses and ideas in trade negotiations that generally favour the interests of larger players (see Jones et al. 2011). For more on the challenges facing small states in international trade, see Bora et al. (2005) and Smith (2009).
- 15 See, for instance, Evenett (2008) and Low (2009a).
- 16 Specific proposals include bolstering the regularity and purpose of the Ministerial Conference; boosting the role of ministers and political leaders in the work of the WTO; reviewing the mandate of the Director-General and Secretariat; and reinforcing the role and operations of the General Council (see Deere Birkbeck and Monagle 2009). See also Deere Birkbeck (2012).
- 17 See, for instance, Stoler (2012) and WTO (2012).
- 18 The CG-18 group was created in 1975 by the GATT's contracting parties. It became a permanent body in 1979 and held its last meeting in 1987 as the Uruguay Round negotiations were taking off. The focus of the group was to engage responsible senior officials from capitals in a small but representative group of 18 countries. It met two to four times per year. Its purpose was to be an issue-oriented consultative body rather than to address management issues. However, GATT contracting parties that were not members of the group were not able to either attend or receive documents. The CG-18 did not take any decision but rather made recommendations to the entire membership (Blackhurst 2001).
- 19 Evenett (2008).
- 20 For differing views on this question, see Lang and Scott (2009) and Steinberg (2009).
- 21 For discussion of public participation in the WTO, see Bonzon (2014).
- 22 See Elsig (2007a, 2007b, 2010).
- 23 South Centre (2005).
- 24 Blackhurst (1998) and Steger (2009a).
- 25 Lee (2011) also argues that the WTO Advisory Centre on WTO Law should also be supported by the WTO's regular budget.
- 26 Ismail (2008, 2009a, 2009b, 2009c), Jawara and Kwa (2003), Odell (2010), Panke (2012a, 2012b) and Wilkinson (2006a, 2009a, 2009b). For analyses that seek to draw lessons from other international organisations, see Alvarez-Jimenez (2009).
- 27 Beyond the WTO, the challenges small states also face in bilateral and regional processes is well documented (such as for Free Trade Agreements with the USA and Economic Partnership Agreements with the EU) (Erasmus 2009; Bilal and Grynberg 2007).
- 28 WEF (2014), WTO (2011), Hoekman (2014a, 2014b), Hoekman and Mavroidis (2013, 2014), and Jones (2014a, 2014b). Also see Lawrence (2006) on the case for 'club' agreements.
- 29 Hoekman and Mavroidis (2014).
- 30 For proposals on the topic of the single undertaking and variable geometry, see Cornford (2004), Cottier (2007), Cottier and Takenoshita (2003), Draper (2010), Gallagher and Stoler (2009), Lanoszka (2008), Low (2009a, 2009b), Patel (2003) and Rodriguez Mendoza and Wilke (2011).
- 31 For views on power politics at the WTO, see Goldstein (2002, 2009), Steinberg (2002), Jawara and Kwa (2003), Jones (2009), Kim (2010), and Narlikar and Wilkinson (2004).
- 32 See, for instance, Cottier (2003, 2006, 2009), Ehlermann and Ehring (2005), Elsig (2007a, 2009), Elsig and Cottier (2011), MacMillan (2010) and Van Grassek and Sauvé (2006).
- 33 See Cottier (2009).
- 34 They attribute the ongoing difficulties concluding the Doha Round to a combination of factors, including the hangover of previous asymmetries in negotiating outcomes, substantive divergences of interests among key trading partners and the challenges of domestic politics within major players. A similar point is also made in Consultative Board 2004.
- 35 See, for instance, African Group (2000), CAFOD et al. (2002), Consumers International (2000), Kaukab et al. (2004), Khor (2006), Ismail (2008, 2009c), UK Parliament (2003), Stiglitz and Charlton (2005) and Wilkinson (2006b).

- 36 While debate on SDT continues, in December 2013, the Bali Ministerial Conference established a mechanism to review and analyse the implementation of special and differential treatment provisions. See www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm (accessed 28 January 2014).
- 37 See, for instance, Hoekman (2005).
- 38 Jawara and Kwa (2003), Narlikar (2001, 2002, 2004), Nordstrom (2002) and Rolland (2007, 2010).
- 39 See Deere Birkbeck and Harbourd (2011), Kahler and Odell (1989), Narlikar (2003), Narlikar and Odell (2006), Patel (2007) and Yu (2008).
- 40 See Das (2002), Odell and Ortiz Mena (2005), Odell (2006), Tussie and Glover (1993), Tussie and Lengyel (2002) and Wilkinson (2006a).
- 41 The analysis in the remainder of this section draws from Deere Birkbeck and Jones (2012).
- 42 On the appropriate role of the WTO Secretariat, see South Centre (2002, 2003, 2008).
- 43 As discussed in Elsig (2007a, 2007b, 2009).
- 44 See, for instance, Jones et al. (2010) and Page (2003).
- 45 See Kaukab (2011), CUTS International (2009a, 2009b), Gallagher et al. (2005), Jones et al. (2010), Halle and Wolfe (2007) and Saner (2010).
- 46 See www.wto.org/english/tratop_e/devel_e/dev_wkprog_smallleco_e.htm (accessed 14 January 2014).
- 47 See, for instance, FairTrade Campaign (2010).
- 48 In many cases, greater investment in the working relationships among delegates is needed to ensure smooth intra- and inter-group co-ordination, particularly given the high turnover of delegates for some countries.
- 49 Adhikari and Dahal (2003), Charveriat and Kirkbride (2003), Primo Braga and Cattaneo (2009, 2011) and Imboden (2012).
- 50 See WTO/COMTD/LDC/19.
- 51 See Nottage (2012). See also Deere Birkbeck (2015), for a more detailed discussion, and Bartels (2012) and Bohanes and Garza (2012).
- 52 Nottage also argues that the limited use of the dispute settlement system by many of the smaller developing countries may also be because the trade preferences of greatest importance to them are often provided under preferential trading arrangements, rather than WTO rules.
- 53 The review has also taken up the issue of external transparency – what kind of access the public might have to panel proceedings or their input into the procedure by means of amicus curiae briefs – and how to deal with dormant cases.
- 54 See Mercurio (2009) and Nordström and Shaffer (2008).
- 55 Ghosh (2008) observes that this capacity may grow as countries trade more, particularly if the emphasis of capacity-building shifts from not only self-evaluations but also to monitoring foreign trade barriers.
- 56 Other procedural innovations include earlier submissions of factual presentations in the case of RTA monitoring and longer comment periods for SPS notifications.
- 57 The 2008–2009 global economic crisis spurred renewed interest in a strengthened role for the WTO in monitoring trade policies and imbalances to help avert protectionist pressures (Baldwin and Evenett 2009; Lamy 2007; Mavroidis 1991, 1992; Wolfe 2010). See, for instance, the work of the Global Subsidies Initiative (monitoring subsidies by WTO members) at www.globalsubsidies.org, and of the Global Trade Alert (monitoring protectionism) at www.globaltradealert.org (accessed November 2014).
- 58 For recent proposals on ways to improve the TPR, see Chaisse and Matsushita (2013).
- 59 As noted by Elsig et al. (2013), there are several proposals to widen the TPR's mandate (e.g. Chaisse and Matsushita 2013; Abu-Ghazaleh 2013), engage more stakeholders in the TPR process (Hoekman 2012), take a greater stance on the performance of countries (e.g. Kessing 1998; Zarhnt 2009) or promote wide discussion of the reports within countries (Zahrnt 2009). A number of options have also been put forward to boost the participation of developing countries and the substantive benefits of the process for them (Laird and Valdés 2012).
- 60 http://stats.oecd.org/Index.aspx?DataSetCode=TIVA_OECD_WTO
- 61 www.wto.org/english/res_e/statis_e/itip_e.htm

- 62 See also Tussie (2009), Tussie and Lengyel (2002) and Francois (2001).
- 63 See WTO (2006).
- 64 WTO (2010a, 2010b)
- 65 www.wto.org/english/news_e/sppl_e/sppl262_e.htm
- 66 www.wto.org/english/tratop_e/devel_e/a4t_e/enhance_if_e.htm (accessed 28 January 2014).
- 67 www.standardsfacility.org (accessed 28 January 2014).
- 68 www.wto.org/english/tratop_e/devel_e/teccop_e/ittc_e.htm (accessed 28 January 2014).
- 69 www.wto.org/english/tratop_e/devel_e/d3ctte_e.htm (accessed 28 January 2014).
- 70 CUTS et al. (2006).
- 71 CUTS et al. (2006), Deere (2005), DFID (2001), ICTSD and IISD (2003), OECD (2001), UNECA (2009), Urpelainen (2009), and WTO and OECD (2009).
- 72 Njinkeu and Cameron (2008), Tandon (2004).
- 73 www.wto.org/english/tratop_e/devel_e/a4t_e/4th_AFT_Summary_Report_side_events_E_v4.pdf (accessed 28 January 2014).
- 74 On the engagement of parliaments, see Hilf (2003) and Shaffer (2004a).
- 75 See, for instance, Charnovitz (2000), Esty (1998) and Marceau and Pedersen (1999).
- 76 For early analyses of the WTO's engagement with civil society, see Esty (1998), Charnovitz (2000), Halle (2007) and Oxfam (2000).
- 77 See, for instance, Akyuz (2009) and Peet (2009).
- 78 See, for instance, Bhagwati (2008), Low et al. (1999) and Tanijuchi (2007).
- 79 Together, these concerns have spurred efforts to enshrine the principles of SDT and of 'policy space' into the governance arrangements that impact global trade, whether at the bilateral, regional or multilateral level (Rodrik 2001; Qureshi 2009, and RIS 2007),
- 80 Akyüz (2004, 2009), Khor (2001), Rhagavan (2000), Rodrik (2001), Peet (2009), Puri (2011), South Centre (2009), UNDP (2005, 2009), UNCTAD (2010), and UN (2009a, 2009b).
- 81 Abreu (2009).
- 82 For views on this matter, see Auboin (2007) and Bello (2000).
- 83 See Meléndez-Ortiz and Biswas (2011) and Stilwell (2009).
- 84 See, for instance, Raghavan (1997), Deere Birkbeck and Meléndez-Ortiz (2009), Deere Birkbeck (2011), Hoekman (2001), Mattoo and Subramaniam (2009).
- 85 See, for instance, WTO and ILO (2009), WTO and UNEP (2009), and WTO and WHO (2002).
- 86 For instance, although developing countries successfully negotiated concession in the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights and public health, many have found that bilateral FTAs undermine their ability to use such flexibilities (Abbott 2004).
- 87 www.wto.org/english/res_e/statis_e/itip_e.htm.
- 88 See, for instance, Dadush (2009), Deere Birkbeck (2009a), Draper (2010) and WEF (2010, 2014).

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Chapter 3

Commonwealth Small States and Least-developed Countries in World Trade Organization Dispute Settlement

Chapter 3

Commonwealth Small States and Least-developed Countries in World Trade Organization Dispute Settlement

Hunter Nottage

3.1 Introduction

The World Trade Organization (WTO)'s binding dispute settlement system has been heralded as the 'jewel in the crown' of the multilateral trading system. The establishment of the WTO in 1995 included a new 'Understanding on the Rules and Procedures Governing the Settlement of Disputes' (DSU) that contains innovations that resulted in a paradigm shift from the General Agreement on Tariffs and Trade (GATT) trading relations based on economic power and politics to a WTO system based on the rule of law. The resulting increased legality of the WTO was initially hailed to benefit smaller countries considerably, of which many are developing countries and least-developed countries (LDCs). As Steger and Hainsworth (1998) commented shortly after the creation of the WTO, the shift 'is particularly beneficial for smaller countries, as without the rules and procedures of the DSU...they would not have the necessary bargaining power vis-à-vis the larger powers.'

Despite these perceived benefits, data from the past 17 years demonstrate that the vast majority of developing countries have not participated actively in the WTO dispute settlement system (Nottage 2009a). In particular, the Commonwealth small states and LDCs have initiated only 2 of the 450 WTO disputes to date. The fact that a group of 36 countries, that represents over 20 per cent of the WTO membership has initiated less than 0.5 per cent of all WTO disputes raises a number of questions that this chapter attempts to address.

In particular, Section 3.2 of the chapter provides the first specific evaluation of the participation of Commonwealth small states and LDCs in WTO dispute settlement and poses the question of whether or not that participation should be greater despite those countries' small shares of global trade. Section 3.2 highlights that a spectrum of other WTO members, from large well-resourced developed countries to small developing countries, have participated in WTO dispute settlement to a greater extent than those countries' shares of world trade might suggest. The chapter therefore queries if Commonwealth small states and LDCs might also draw greater benefit from the multilateral trading system (MTS) if they were to participate more in the dispute settlement system, particularly because, paradoxically, small states and LDCs may be more reliant on WTO dispute settlement than larger countries when confronted with illegal trade barriers.

Section 3.3 of the chapter then analyses if the limited participation of the Commonwealth small states and LDCs in WTO dispute settlement may be due to the special constraints and limitations they face. Section 3.3.1 evaluates the significant human and financial costs that small states and LDCs face when initiating and litigating a WTO dispute. Section 3.3.2 then focuses on the problem that many small states lack resources within government and their private sectors to identify and communicate potentially illegal trade barriers to WTO legal experts. Sections 3.3.3 and 3.3.4 identify two commonly perceived constraints for small states: (1) the inability of small economies to effectively enforce a favourable ruling; and (2) fears of political or economic retaliation from larger countries. The chapter notes, however, that these perceived concerns may not arise frequently in practice.

In addition, Sections 3.4 and 3.5 of the chapter provide thoughts on Commonwealth small state and LDC third-party participation in WTO disputes, as well as on the untapped potential of using alternative dispute resolution (ADR) to resolve WTO disputes involving small countries.

The chapter concludes with certain proposals. It highlights a number of tentative solutions to mitigate the high costs of WTO litigation for Commonwealth small states and LDCs and discusses mechanisms to improve private sector and government capacity to identify and communicate trade barriers to WTO lawyers. It also proposes dialogue and experience sharing in order to assuage fears with respect to well-publicised retaliation constraints that may not occur frequently in reality. Throughout, the chapter draws from specific examples and case studies to highlight its major conclusions.

3.2 Evaluation of the participation of Commonwealth small states and LDCs in WTO dispute settlement

3.2.1 Data on actual participation

For many of the Commonwealth's small states and LDCs, international trade accounts for over 50 per cent of gross domestic product (GDP) (Commonwealth Secretariat 2010: 8). Nonetheless, Commonwealth small states and LDCs have initiated only two WTO disputes to date. In 2003, Antigua and Barbuda initiated a dispute against the USA regarding measures that affect the cross-border supply of gambling and betting services.¹ In 2004, Bangladesh initiated a dispute against India regarding an anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh.² In 1999 and 2000, Trinidad and Tobago was the only Commonwealth small state to be subject to a WTO complaint, which was initiated by Costa Rica regarding provisional anti-dumping duties imposed on the importation of macaroni and spaghetti.³ As a result, Commonwealth small states and LDCs have been complainants in less than 0.5 per cent of the 450 WTO disputes to date and defendants in less than 0.25 per cent of those disputes.⁴

The participation of Commonwealth small states and LDCs as third parties has been greater than their participation as complainants or defendants. Pursuant to the DSU, any WTO member may participate in a WTO dispute as a third party where

they have a substantial systemic or commercial interest. Engagement as a third party permits those WTO members to make their views known to the panel and Appellate Body hearing a dispute and can also serve as a means to gain familiarity and experience with the dispute settlement system. To date, 16 Commonwealth small states and LDCs have participated as third parties in the WTO dispute settlement system. As such, Commonwealth small states and LDCs make up 21 per cent of the 79 WTO members that have participated as third parties in WTO disputes – a figure that is broadly consistent with their 23 per cent share of the total WTO membership. Nonetheless, as discussed in Section 3.4 of this chapter, this activity has been highly concentrated in ten disputes and, consequently, Commonwealth small states and LDCs have only participated as third parties in 5.2 per cent of all established panels.⁵

3.2.2 Should participation be greater?

A common characteristic of all 36 Commonwealth small states and LDCs is that they individually account for minute shares of global trade.⁶ WTO statistics on shares of global trade in goods, services and intellectual property rights for these countries, over the past five years, demonstrate that, collectively, they account for an aggregate world trade share of between 0.528 per cent and 0.783 per cent. This low relative participation in world trade is not surprising when one considers that the Commonwealth defines small states as countries that have populations of fewer than 1.5 million people and that the only Commonwealth LDC that is not a ‘small state’, Bangladesh, is one of the poorest countries in the world and is consequently classified as ‘least-developed’ by the United Nations.⁷

It might, therefore, be argued that the limited participation of these countries in WTO dispute settlement simply reflects their limited participation in world trade. As Francois, Horn and Kaunitz explain, ‘it is highly likely that a country that exports many products to many markets and in large volumes will encounter more illegalities than a country that exports a few products in limited amounts to a few markets’ (Francois et al. 2008). A number of economic studies confirm a correlation between a country’s share of world trade and its participation in WTO dispute settlement (e.g. Horn et al 1999; Bown 2005; Bohanes and Garza 2012). If this criterion were used to evaluate the participation of Commonwealth small states and LDCs in WTO dispute settlement, one might conclude that their participation is ‘adequate’, as it is more or less in line with their share in global trade (i.e. 0.5 per cent participation as a complainant in all disputes is broadly consistent with a 0.6 per cent participation in global trade).

Concluding that a country’s participation in WTO dispute settlement is ‘adequate’ if it correlates with that country’s share of world trade does, however, have certain limitations. For one, statistics demonstrate that a number of other countries participate more actively in WTO dispute settlement than their shares of world trade. Notably, five of the six most active complainants in WTO dispute settlement fall into this category: the USA (12.4 per cent share of world trade compared with 22 per cent of initiated disputes); Canada (3 per cent share of world trade compared with 7.3 per

cent of initiated disputes); Brazil (1 per cent share of world trade compared with 5.5 per cent of initiated disputes); Mexico (1.8 per cent share of world trade compared with 4.7 per cent of initiated disputes); and India (1.5 per cent share of world trade compared with 4.7 per cent of initiated disputes). These figures suggest that large and well-resourced governments, from both developed and developing countries, have found it worthwhile to litigate in WTO disputes to a greater extent than their world trade shares.

Furthermore, a similar phenomenon can be witnessed with respect to developing countries with small global trading stakes. This is particularly evident for the countries from Central America, many of whom have been active in a number of WTO disputes, despite accounting for world trade shares far smaller than the aggregate 0.6 per cent world trade share of the Commonwealth small states and LDCs. Honduras, for instance, has been a complainant in eight disputes despite having a world trade share of only 0.05 per cent. As a result, it participates in disputes at a ratio of 34:1 of its world trade share. Other small traders that are active in WTO disputes are Guatemala (eight disputes initiated, despite a 0.07 per cent share of world trade), Costa Rica (eight disputes initiated, despite a 0.08 per cent share of world trade), Panama (eight disputes initiated, despite a 0.09 per cent share of world trade) and El Salvador and Nicaragua. As Raul Torres of the WTO Secretariat observes, 'at least as far as Latin America is concerned, it is not true to say that developing countries do not participate sufficiently in the dispute settlement mechanism' (Torres 2012: 7). These figures suggest that even countries with small global trading stakes have seen utility in enforcing their existing rights through the WTO dispute settlement system. Torres concludes that this active participation 'enables Latin America to make full use of the tools offered by the multilateral trading system to defend their export markets, which are of crucial importance in their efforts to achieve development through economic growth' (Torres 2012: 19). One might query whether the Commonwealth small states and LDCs are doing the same.

This practice of other countries at least raises the possibility that Commonwealth small states and LDCs might draw greater benefits from the multilateral trading system if they were to participate more in WTO dispute settlement, despite their relatively small trading stakes. In fact, paradoxically, small states and LDCs may be more reliant on WTO dispute settlement than larger countries when confronted with illegal trade barriers. As Shaffer notes, small developing countries tend to export a narrower array and volume of exports to a relatively small number of markets. As a result, a single trade restriction can have higher relative and per capita stakes for that small and less-diversified economy (Shaffer, 2003a: 15). Commercial operators within the country may therefore struggle to divert exports to alternative markets. For these reasons, the rapid removal of trade restrictions through WTO dispute settlement can be imperative for companies within small states, precisely because of the limited range and destinations of their exports.

For all these reasons, this chapter queries if the limited dispute settlement participation of Commonwealth small states and LDCs is solely attributable to small trading stakes and suggests that it may also be due to the special constraints that these countries face

when they attempt to access the WTO dispute settlement system. Section 3.3 of this chapter provides a critical evaluation of those constraints.

3.3 Analysis of the special constraints faced by Commonwealth small states and LDCs when accessing the WTO dispute settlement system

3.3.1 The reality of small trade shares in terms of the relative costs of WTO litigation

Small trade shares make the relative costs of WTO litigation high for Commonwealth small states and LDCs

The small trade shares and government budgets of Commonwealth small states and LDCs accentuate one of the major constraints that many developing countries face when accessing the WTO dispute settlement system – the human and financial costs of participating in WTO litigation.

The challenge for small states and LDCs is that dispute settlement action involving smaller trade stakes are not offset by smaller litigation costs. Consequently, as any WTO dispute involving a Commonwealth small state or LDC is likely to involve low levels of trade, the *relative* costs of litigation will be higher for those countries, especially in light of the high opportunity costs of investing in WTO litigation as opposed to other pressing social needs (Shaffer 2006: 185).

A number of WTO members and commentators argue that the WTO dispute settlement system is ‘overly complicated and expensive’, resulting in insurmountable ‘human resource as well as financial implications’ for developing countries.⁸ Ambassador Bhatia of India has observed that, even for a large developing country, the high costs of WTO litigation are a ‘major deterrent’ for using the system.⁹

Concerns of developing countries regarding the high costs of WTO litigation stem from many governments lacking sufficient internal WTO legal and technical expertise to conduct disputes themselves. Where internal expertise is lacking, governments are required to hire external legal counsel and contract economic and scientific evidence at considerable cost.

Legal costs

The cost of hiring private legal counsel to litigate WTO disputes has increased exponentially in recent years. Commentators have estimated that ‘a “litigation only” bill of US\$500,000 to an exporter for a market access case is likely to be fairly typical’ (Bown and Hoekman 2005: 870). Legal fees can of course be much higher, with reports of fees for parties in panel proceedings in excess of US\$10 million (see Nordström and Shaffer 2007).

These increased legal costs can be attributed, in part, to the multiple stages of WTO dispute settlement under the DSU whereby challenged measures may be subject to reviews by a panel, the Appellate Body, an arbitrator determining the reasonable

period of time to comply, further reviews to determine compliance and arbitration on the level of suspension of concessions.¹⁰ As a result, it can take several years of litigation to resolve a single WTO dispute. Furthermore, the 500 pages of WTO treaty text and ever-increasing volume of WTO jurisprudence contained in hundreds of panel and Appellate Body reports means that WTO lawyers competent to litigate in WTO disputes are highly specialised and able to charge premium fees. The binding nature of WTO dispute settlement also means that governments (and the companies behind them) are taking each dispute far more seriously, which seems to lead to more detailed and costly submissions. Finally, it has been observed that the lack of retrospective remedies for businesses affected by illegal protectionist measures gives respondents an incentive to further complicate, and hence delay, the dispute settlement process (Busch and Reinhardt 2000).

Costs of economic and scientific inputs

The costs of participation in these multiple stages of WTO dispute settlement are compounded by a trend towards increasingly technical submissions. The WTO agreements that came into effect in 1995 include new legal standards that hinge on detailed scientific or economic determinations that were not as central under the GATT. To litigate successfully, parties in a dispute often need to provide considerable scientific or economic evidence to support their position.

For example, with the introduction of the 'Agreement on the Application of Sanitary and Phytosanitary Measures' (SPS Agreement), scientific evidence of human, animal and plant risks has been heavily litigated.¹¹ Similarly, provisions requiring detailed economic analysis have been the subject of a number of recent disputes under the 'Agreement on Subsidies and Countervailing Measures' (SCM Agreement) and the 'Agreement on Agriculture'.¹² In these disputes, success requires the input of technical experts that may also need to be contracted externally at additional costs. Challenges accessing scientific technical expertise may explain why developing countries have hardly initiated WTO dispute settlement proceedings under the SPS Agreement, whose legal tests require parties to present considerable scientific evidence to support their claims.¹³ In contrast, developed-country governments have brought a number of disputes under the SPS Agreement.

The resource constraints that stem from providing these scientific and economic inputs should not be underestimated. Over the past three years, WTO members have litigated three significant disputes under the 'Agreement on Technical Barriers to Trade' (TBT Agreement). These disputes tackled behind-the-border non-tariff measures such as a dolphin-safe labelling scheme on tuna, country-of-origin requirements on meat products and a ban on certain flavoured tobacco products.¹⁴ In each instance, the panels relied heavily on evidence of a technical nature when making their determinations. In the light of the former WTO Director-General's recognition of the 'growing importance' of such non-tariff measures (Lamy 2012: 3), and their prevalence in the agricultural sector (Lamy 2012: 8),¹⁵ a developing country would be at an enormous disadvantage in a WTO dispute if it did not have access to technical expertise.

The Advisory Centre on WTO Law

In 2001, a group of WTO members established the Advisory Centre on WTO Law (ACWL) as an independent inter-governmental organisation with the mandate to provide developing countries with support in WTO dispute settlement proceedings, as well as legal advice and training on WTO law.¹⁶ In recognition of the cost constraints faced by developing countries, the ACWL provides its legal services to developing countries for free or at heavily subsidised rates. These services are financed largely from an endowment fund of developed-country and developing-country contributions.

Although legal advice and training are provided for free to ACWL developing-country members and all LDCs, support in dispute settlement proceedings is charged based on hourly rates that vary between CHF40¹⁷ and CHF324. The hourly rate applied depends upon the ACWL's categorisation of each developing country based on either its LDC status or its share of world trade and income per capita. These dispute settlement fees are subject to ceilings, such that the *maximum* ACWL fee for representation at the consultations, panel and Appellate Body stages of a WTO dispute would be:

- CHF34,160 for an LDC (at an hourly rate of CHF40);
- CHF138,146 for a 'Category C' ACWL member (at an hourly rate of CHF162); and
- CHF207,522 for a 'Category B' ACWL member (at an hourly rate of CHF243).¹⁸

Consequently, the ACWL's capped dispute settlement fees are likely to be considerably less than those ordinarily charged by commercial law firms.¹⁹

As a result of this fee structure, it has been commented that the ACWL 'has largely addressed many of the capacity constraints' faced by developing countries in WTO dispute settlement procedures (Abbott 2007: 12; Bown and Hoekman 2005: 875). Pertinently, the economists Bown and McCulloch have demonstrated that the reduced costs of ACWL legal representation in WTO litigation correlates with developing-country ACWL members bringing disputes over considerably lower values of lost trade than non-ACWL member developing countries (Bown and McCulloch 2009). This finding is significant, as it confirms that, when legal costs are reduced, developing countries have brought WTO disputes involving relatively low trade values. This is an important observation for the Commonwealth small states and LDCs that account for small global trade shares.

The services of the ACWL have been well utilised since its inception. In total, 31 developing countries have acceded to the ACWL and used its dispute settlement, legal advisory and training services. The ACWL has also assisted the 43 LDCs that are currently WTO members or in the process of WTO accession, predominantly with legal advice and training. With respect to WTO dispute settlement assistance, to date, the ACWL has provided support in 40 dispute settlement proceedings, which represents over 15 per cent of all proceedings initiated since 2001. This includes representing Bangladesh, the only LDC to initiate a WTO complaint, in its dispute

against India over anti-dumping duties on batteries. Nonetheless, as explained below, the majority of Commonwealth small states have not joined the ACWL.

Non-LDC Commonwealth small states have generally not joined the ACWL

Developing countries that are not LDCs need to pay an ACWL accession fee to be eligible to use the ACWL services. As with ACWL dispute settlement fees, the ACWL accession fee varies according to the ACWL's categorisation of each developing country based on its share of world trade and income per capita. Thus, the 12 Commonwealth small states that fall into the ACWL's 'Category C' would normally need to pay an accession fee of CHF81,000 and the 9 Commonwealth small states that fall into the ACWL's 'Category B' would probably need to pay an accession fee of CHF162,000 before they could avail themselves of the ACWL's services.²⁰

Only 2 of these 21 non-LDC Commonwealth small states have, however, acceded to the ACWL: Mauritius in 2003 and Seychelles in 2012. As a result, 19 of the non-LDC Commonwealth small states are currently not eligible for the ACWL's free legal advice or subsidised legal support in dispute settlement proceedings. It is unclear why these countries have not acceded to the ACWL when 31 other developing countries have considered it worthwhile. One possible explanation is that their small populations, and minute disaggregated global trade shares, mean that it may be difficult for their governments to justify the upfront budgetary outlay for ACWL accession in the absence of an imminent WTO dispute. This possible explanation is accentuated by the fact that many Commonwealth small states have relatively high per capita incomes, despite their small populations and, consequently, are likely to face the ACWL 'Category B' accession fee. The most extreme example is St Kitts and Nevis, which has a population of only 52,000 but a likely ACWL accession fee of CHF162,000.

For these Commonwealth small states, failure to accede to the ACWL and consequently access free or low-cost WTO legal services on the basis of a perception of a small chance that their country would initiate a WTO dispute may result in a 'self-fulfilling prophecy'.²¹ As noted above, statistics confirm that it was only once countries had access to the ACWL's subsidised legal services that they brought disputes over smaller trade shares. Thus, until the legal cost constraint has been addressed, it is difficult to predict what disputes Commonwealth small states might bring.

Tentative solutions for the future

Despite the creation of the ACWL, there have been a number of other proposals in the context of the DSU Review Negotiations to address the cost constraints faced by developing countries when accessing the WTO dispute settlement system (see Bartels 2014). One proposal put forward by a coalition of developing countries has been a separate dispute settlement fund established within the WTO (Bartels 2014).

Some have queried why a separate fund would be necessary in the light of the existence of the ACWL.²² As highlighted above, one explanation might be the

ACWL accession fees that might be difficult for countries with small populations to justify. Although these accession fees were calibrated to take into account differences between developing countries, the relatively small number of accessions from low-population Commonwealth small states (CSS) might indicate that further thinking and solutions are required. One solution, for instance, might be for aid agencies to pay the ACWL accession fees of these countries. Another solution, perhaps, would be for the ACWL General Assembly to reconsider the accession conditions for countries that are considered 'small and vulnerable economies' within the WTO.²³ A counter-argument might be that it is simply a question of educating Commonwealth small states (CSS) on the value of ACWL accession, not just for dispute settlement support but also for its free legal advisory and training services.²⁴ Certainly, these ACWL services were deemed to be sufficient for Seychelles, with a population of only 84,000, to accede in 2013 as a 'Category B' ACWL member and for Mauritius to do so in 2003.

A further important consideration is that any solution to mitigate the costs of WTO dispute settlement needs to address not only legal fees but also the costs of scientific and economic expertise. In recognition of the fact that successful WTO litigation will often depend on the quality of the technical expertise presented by the parties, the ACWL has a technical expertise fund specifically dedicated to subsidising the costs of contracting such expertise. The fund is currently over CHF200,000 and has been used on four occasions to assist developing countries to acquire scientific, economic and domestic law expertise presented in disputes. It has been referred to by the United Nations Conference on Trade and Development (UNCTAD) as an 'important development', as developing countries now 'have access to the Fund to help finance the scientific and technical expertise needed to participate in WTO dispute-settlement proceedings'.²⁵ Any alternative mechanism considered within the context of DSU Review Negotiations ought to address this important cost constraint for many developing countries.

3.3.2 Constraints identifying and initiating potential disputes

The importance of public-private partnerships to 'name, blame and claim'

Even if the financial costs of hiring WTO lawyers and technical experts were addressed, access to WTO legal experts is of little use if countries lack *domestic mechanisms* to identify and communicate trade barriers to those experts in the first place. In this regard, Abbott notes that developing countries may still be at a disadvantage when initial steps are taken to 'identify the trade barrier' that 'clearly has to precede any help with legal evaluation' (Abbott 2007: 12–13).

A WTO member's participation in dispute settlement activities will be a function of its ability to identify trade barriers faced by the private sector. As Shaffer comments, pre-requisites for a country's effective use of the WTO dispute settlement system are mechanisms to 'perceive injuries to its trading prospects, identify who is responsible, and mobilize resources to bring a legal claim or negotiate a favourable settlement' (Shaffer 2006: 179).

This ‘naming, blaming and claiming’ (Shaffer 2006: 179)²⁶ process is dependent upon effective domestic procedures for gathering and processing information on trade barriers. It is an area in which many developing countries lack capacity. This can be contrasted with the procedures in most developed countries such as the European Union (EU), the USA and Japan, where their governments have trade barrier assessment mechanisms.²⁷ It has been suggested by some that developing countries should request the assistance of development agencies and foundations to assist them in identifying trade barriers faced by their private sectors (see, generally, Shaffer 2006: 184). Perhaps the most pragmatic market-oriented solution, however, would be to strengthen public–private networks to assist export sectors to communicate trade barriers to the government. The majority of developed-country governments have fostered such co-ordination with the private sector and some of the more active developing-country litigants, notably Brazil, have taken significant steps in this direction (see Shaffer 2003b). Nonetheless, for the majority of Commonwealth small states and LDCs, the lack of effective domestic mechanisms to identify and communicate trade barriers faced by the private sector to WTO experts remains a real limitation curtailing their participation in the WTO dispute settlement system.

Tentative solutions for the future

There have been a number of initiatives in recent years that have attempted to address the domestic constraints that developing countries face to identify and communicate potential claims to WTO experts.

In some Commonwealth small states, such as Barbados, the government has actively supported business associations to develop the necessary skills to influence trade policy and regularly solicits the input of the private sector on trade matters through a dedicated ‘private sector trade team’ (Jones et al. 2010: 39–40). Furthermore, since 2003, the International Centre for Trade and Sustainable Development (ICTSD) has evaluated various developing countries’ experiences in the trade area in an attempt to discern certain best practices in enhancing public–private partnerships concerning trade barriers (see, for instance, Shaffer and Melendez-Ortiz 2010). These have been communicated through regional dialogues with both government officials and representatives of the private sector. Another institution that is focused on building private sector awareness in this area is the International Trade Centre (ITC), in particular its Business and Trade Policy Unit. Educating the private sector about the WTO, the remedies it provides and the appropriate contact points within national governments that can enforce market access commitments is essential.

Commonwealth small states and LDCs that wish to deepen the domestic capacity of their private sectors and government officials to identify and communicate potentially WTO-inconsistent trade barriers to WTO lawyers for evaluation may wish to avail themselves of the assistance of these organisations. This appears to be an area in which the Commonwealth Secretariat is ideally placed to assist in the light of its specific work programmes on public–private partnerships and small states.²⁸

3.3.3 De-bunking the myth that countries need large trade shares to achieve compliance in WTO disputes

It has often been observed that a fundamental constraint limiting the utility of the WTO dispute settlement system for developing countries is the inability for many of them to enforce positive rulings against larger non-complying WTO members.

The DSU permits retaliation against non-complying WTO members through the suspension of trade concessions or obligations, as well as through countermeasures.²⁹ The limitation of these retaliation rules, from a Commonwealth small state and LDC perspective, is that countries with small domestic markets are unlikely to be able to impose sufficient economic or political penalties through trade sanctions within the larger WTO members to generate the requisite pressure to induce compliance. This limitation has led to some commentators characterising the WTO's retaliation rules as 'virtually meaningless' (Footer 2001) for small countries and to a common perception that it is 'a waste of time and money for developing countries to invoke the WTO's dispute settlement procedures against industrialised countries' because 'the developing country has no effective way to enforce the ruling'.³⁰

The retaliation request of Antigua and Barbuda, one of the smallest WTO members with approximately 90,000 inhabitants, against the USA in the 'United States – Gambling' dispute provides an illustration of the retaliation difficulties that exist where there is an asymmetry in market size. As Antigua and Barbuda stated in its request for retaliation, 'ceasing all trade whatsoever with the United States (approximately US\$180 million annually, or less than 0.02 per cent of all exports from the United States) would have virtually no impact on the economy of the United States, which could easily shift such a relatively small volume of trade elsewhere'.³¹ A similar statement was made by the arbitrator examining the ability of Ecuador to effectively retaliate against the EU by withdrawing tariff concessions in the 'EC – Bananas' disputes. Ecuador imports less than 0.1 per cent of total EU exports, leading the arbitrator to observe that 'given the fact that Ecuador, as a small developing country, only accounts for a negligible proportion of the [EU]'s exports of these products, the suspension of concessions is unlikely to have any significant effect on demand for these [EU] exports'.³² The arbitrator queried if the objective of inducing compliance 'may ever be achieved where a great imbalance in terms of trade volume and economic power exists between the complaining party seeking suspension and the other party'.³³

Furthermore, it has been observed that '[p]erhaps the biggest disadvantage of WTO sanctions is that they bite the country imposing the sanction' (Charnovitz 2002). If one subscribes to the benefits of trade liberalisation, it makes sense that retaliation through trade barriers will be a sub-optimal policy that amounts to 'shooting oneself in the foot' (see Bronkers and Van den Brock 2006). This concern with WTO retaliation was also raised by Antigua and Barbuda in its request for retaliation against the USA. Antigua and Barbuda consists of two small islands and is heavily reliant on imports. As 50 per cent of those imports are from the USA, Antigua and Barbuda expressed concern that retaliating through import restrictions would have a 'disproportionate adverse impact on Antigua and Barbuda by making these products and services

materially more expensive to the citizens of the country.³⁴ Retaliatory restrictions on goods or services from the USA were argued to have ‘a much greater negative impact on Antigua and Barbuda than it would on the United States.’³⁵ Similarly, the arbitrator examining Ecuador’s request for retaliation against the EU in ‘EC – Bananas’ noted that ‘in situations where the complaining party is highly dependent on imports from the other party, it may happen that the suspension of certain concessions or certain other obligations entails more harmful effects for the party seeking suspension of concessions than for the other party.’³⁶

The positions articulated by Antigua and Barbuda and Ecuador regarding the weaknesses of the WTO retaliation rules for developing countries are sound. They have led some to the conclusion that ‘countermeasures are a more or less ineffective instrument in the hands of “smaller” players’ (Bagwell et al. 2004) and that, ‘as a practical matter,’ trade sanctions ‘can probably only be adopted by developed country Members, or large, advanced developing countries’ (Renouf 2005).

Arguments as to why Commonwealth small states and LDCs are likely to obtain compliance from even large countries if they succeed in WTO dispute settlement

While not disputing that the WTO’s retaliation rules are likely to be ineffective if applied by Commonwealth small states and LDCs against a larger non-complying country, this reality ought to be tempered by the fact that, in the vast majority of WTO disputes to date, compliance *has* occurred. This practice suggests that an inability to retaliate effectively will often remain a theoretical constraint and should not automatically deter Commonwealth small states and LDCs from using the WTO dispute settlement system.

Evaluations of the GATT and WTO dispute settlement data demonstrate high rates of compliance with dispute settlement rulings. One analysis of the first ten years of the WTO dispute settlement system indicates a successful implementation rate of adopted panel and Appellate Body reports of 83 per cent (Davey 2005: 46–8). Only 10 of the 181 initiated disputes examined in that analysis resulted in no implementation or disagreement over implementation (Davey 2005: 47). A separate study, covering the period until March 2007, describes the ‘generally positive record of Members in complying with adverse rulings’ (Wilson 2007). The study notes that, of the 109 adopted panel and Appellate Body reports, 90 per cent found violations of WTO law, and that in ‘virtually all of these cases the WTO Member found to be in violation indicated its intention to bring itself into compliance and the record indicates that in most cases it has already done so’ (Wilson 2007).

A key finding for the Commonwealth small states and LDCs is that these high compliance rates are not limited to those WTO disputes brought by large countries. Similar compliance rates have been observed when smaller and developing countries have obtained favourable rulings. As one study found:

WTO dispute settlement experience to date does not suggest that responding Members have a manifestly worse record of compliance with DSB rulings in cases where the complaining Member was a small or developing country than in

cases where the complaining Member was another type of developing country or developed country. (Malacrida 2008)

This practice of high compliance with WTO dispute settlement rulings, even when the complainant was a small developing country, suggests that the capacity to retaliate effectively is often not a significant factor for government compliance with adverse rulings. In the words of Hudec, 'enforcement is a more complex process than mere retaliation' and governments often comply with dispute settlement rulings for reasons other than a fear of retaliation (Hudec 2002: 81).

These other factors include the fact that: (1) some parts of the defendant government and its constituents usually want the conduct that has been found to be inconsistent with WTO law to be removed, simply because it is good policy; (2) the defendant government is likely to see a long-term value in preserving the legitimacy of the legal system for when it may need to rely on it for its own purposes; and (3) the shaming pressure caused by other governments wishing to preserve the legitimacy of the legal system should not be underestimated (Hudec 2002: 82–3).

Furthermore, WTO practice demonstrates that the high compliance rates observed in WTO dispute settlement have not required members to regularly request or impose retaliatory measures. Of the 60 WTO disputes where retaliation was possible – as the reasonable period of time to comply had expired without compliance being achieved – members requested the right to retaliate in only 17 disputes and imposed retaliatory measures in only 5 (Nottage 2009b). Thus, although the WTO dispute settlement body has authorised retaliation on occasion, it seems fair to say that 'retaliation has been the exception rather than the rule' (Nottage 2009b). From these figures, one might extrapolate that, in the vast majority of disputes, the catalyst for compliance does not appear to have been the threat of retaliation.

Nonetheless, on those rare occasions where a defendant is a larger economy and does not voluntarily comply with adverse rulings, the weaknesses of WTO retaliation rules for small developing countries are real and will undermine the utility of WTO dispute settlement. For this reason, current DSU Review Negotiation proposals, as well as the potential for cross-retaliation, deserve continuing attention (see Bartels 2014).

Tentative solutions for the future

As noted above, in the majority of WTO disputes, compliance has occurred even when small developing countries with little capacity to retaliate have been successful complainants. It is illustrative that one of the very first WTO disputes involved successful legal claims brought by the relative minnow Costa Rica against its much larger cousin, the USA (WT/DS24). This practice suggests that an inability to retaliate effectively will often remain a theoretical constraint. This suggests that one solution to this perceived limitation of the WTO dispute settlement system is to communicate these facts to Commonwealth small states (CSS) and LDCs in a manner that will result in them not automatically being deterred from initiating WTO dispute settlement proceedings on this basis alone.

3.3.4 The unquantifiable constraint: fears of political or economic retaliation

The special aid and trade relationships that Commonwealth small states (CSS) and LDCs have with OECD countries

Some commentators have noted that developing countries and LDCs may be unwilling to initiate WTO dispute settlement proceedings against developed countries because of their particular vulnerability to ‘retaliation’ in other areas, such as development assistance or preferential market access (Bown and Hoekman 2005: 863). It has been observed that ‘there may be little that a small developing country can do to counter threats to withdraw preferential tariff benefits or foreign aid ... were the country to challenge a trade measure’ (Shaffer 2006: 193).

It is undeniable that the Commonwealth’s small states and LDCs are particularly dependent upon aid and trade preferences granted by developed and, increasingly, large developing countries. It is also undeniable that many officials from these small states *perceive* that they will be subject to possible reprisals in these areas if they were to initiate a WTO dispute. A 2011 study that analysed the perceptions of Commonwealth small states’ trade negotiators, based on interviews with more than 80 trade negotiators from 30 small states, confirms that these officials commonly ‘perceive themselves to be operating under a high level of threat from large states’, including ‘fears of possible aid or trade reprisals’ which ‘severely constrains ... their determination to persist’ with offensive requests on trade matters (Jones et al. 2010: 45).

Nonetheless, as explained below, it is not clear that Organisation for Economic Co-operation and Development (OECD) countries would in fact apply political and economic pressures on a Commonwealth small state or LDC were it to initiate a WTO dispute.

The lack of evidence that OECD countries apply political or economic pressure on countries that initiate WTO disputes

It is impossible to determine objectively whether aid or preferential trade retaliation would be applied by OECD countries against Commonwealth small states or LDCs were they to initiate WTO disputes, as so few small states, and only one LDC, have brought WTO dispute settlement proceedings to date.³⁷

There are, however, certain arguments as to why such retaliation is unlikely to be applied in reality. First, increasingly, developed-country governments’ aid and trade portfolios are managed by separate ministries in an intentional effort to de-link these two spheres. Second, there is very little evidence that such political or economic retaliation has been applied by WTO members in the 450 disputes initiated to date. Third, although this cannot be empirically proven, the number of WTO disputes between countries with close political, economic and security relationships over the past 17 years appears to suggest that, for the main users of the system, initiating a WTO dispute is seen first and foremost as a means to settle a discrete commercial matter as opposed to an aggressive political action that would warrant reprisals in other spheres of the countries’ bilateral relations.

Nevertheless, it is apparent that officials in many small states and LDCs *perceive* that retaliation – on a political, aid or preferential market access level – might flow from the initiation of a WTO dispute. This in turn may have a chilling effect on their participation. Romano has written that, of all the factors affecting the decision to litigate, ‘perhaps the most fundamental one, is ... the willingness to utilise international judicial bodies’ (Romano 2002).

Tentative solutions for the future

Despite a common *perception* that small states and LDCs that initiate WTO disputes against larger countries are likely to be subject to retaliation on political, aid or preferential market access levels, there is little evidence that such pressures would be applied *in reality*.

It may be worthwhile for the Commonwealth countries of Bangladesh and Antigua and Barbuda to communicate their experiences on this specific issue to other Commonwealth small states and LDCs. As noted, Bangladesh initiated a WTO dispute against its largest regional neighbour, India, and Antigua and Barbuda launched a WTO dispute against the USA. They are in ideal positions to explain if initiating these disputes resulted in political or economic retaliation by the larger country subject to the complaint. If not, such a dialogue may well assuage the fears that decision-makers in other Commonwealth small states and LDCs often refer to, but that may be unlikely in practice.

3.4 The effective participation of Commonwealth small states and LDCs as third parties in WTO disputes

Articles 10 and 17.4 of the DSU provide that any country with a substantial commercial or systemic interest in a WTO dispute may participate as a third party. Engagement as a third party permits a country to make its views known to the panel or Appellate Body hearing a dispute and can serve as a means to gain familiarity and experience with the WTO dispute settlement system.

As noted in Section 3.2.1 of this chapter, 21 Commonwealth small states and LDCs have participated as third parties in WTO disputes. This figure represents a 21 per cent share of the total 79 WTO members that have participated as third parties. This apparently active role ought to be tempered, however, by the fact that this participation has been highly concentrated in ten WTO disputes, in particular the ‘EC – Bananas’ and ‘EC – Export Subsidies on Sugar’ disputes. Thus, Commonwealth small states and LDCs have participated as third parties in only 5.2 per cent of all established WTO panels.³⁸

3.4.1 The importance of third-party participation in those disputes that directly affect Commonwealth small states’ and LDCs’ interests

It is important that Commonwealth small states and LDCs participate as third parties in the WTO disputes in which they have a commercial or systemic interest so that their views are heard by panels and the Appellate Body making the decision on the

case. It is reassuring, therefore, that Commonwealth small states and LDCs have mobilised as third parties in certain disputes. Specifically, five Commonwealth small states participated as third parties in the early 'EC – Bananas' dispute that challenged preferential market access granted by the EU to bananas from the African, Caribbean and Pacific group of states (ACP), and ten Commonwealth small states and LDCs joined the 'EC – Export Subsidies on Sugar' disputes that challenged, among other things, EU export subsidies provided to ACP sugar producers. Nonetheless, such participation could be greater, especially when one considers that 11 of the 21 Commonwealth small states and LDCs that have participated as third parties have done so in only a single dispute.

Participation as a third party is seen as useful for the main users of the WTO dispute settlement system. For instance, the EU, the USA and China are third parties in almost all WTO disputes, which suggests a belief that third parties are able influence the outcomes of disputes.

For the Commonwealth small states and LDCs, participation as a third party entails obvious resource constraints. Nonetheless, the human and financial costs are far less than participating as a complainant or respondent, as third parties are under no obligation to make any written or oral submissions and can limit any submissions they do make to those issues of principal concern. In the 'EC – Bananas' and 'EC – Export Subsidies on Sugar' disputes, for instance, many Commonwealth small state third-party submissions focused on the economic and social implications of removal of the preferences and subsidy schemes, as opposed to their legality.

3.4.2 The value of third-party participation as a learning exercise

Another benefit of third-party participation is that it provides a unique means to gain exposure to, and familiarity with, the WTO dispute settlement system. As such, third party participation can serve as a valuable training tool for delegates from Commonwealth small states and LDCs who wish to learn how the WTO dispute settlement system operates in practice. Participation as a third party need not be daunting, as a country need not make submissions and need not take sides in the dispute. If a country desires to take a more active role, however, even if participating solely for training purposes, it may be worth noting that the ACWL recently changed its rules so that it is able to represent any LDC, as a third party, for free in a WTO dispute.

3.5 The untapped potential of alternative dispute resolution for Commonwealth small states and LDCs

The WTO's DSU permits WTO members to resolve their trade disputes through ADR mechanisms that differ from normal panel and Appellate Body procedures.³⁹ In particular, Article 5 of the DSU refers to the possibility of making use of 'good offices, conciliation and mediation', and Article 25 permits members to resolve disputes through 'arbitration'. These mechanisms provide the key advantage that they permit

WTO members to resolve disputes expeditiously compared with the longer time frames required for panels and the Appellate Body to complete their determinations.

Expeditious WTO dispute settlement through ADR could be particularly attractive to Commonwealth small states and LDCs. The faster a WTO dispute is resolved, the lower the legal fees. Indeed, on those few occasions where WTO members have opted to use ADR to resolve their WTO trade disputes, the rulings were issued extremely quickly.⁴⁰ The 2001 Copyright Arbitration pursuant to Article 25 of the DSU,⁴¹ the 2005 *sui generis* Banana Tariff Arbitrations⁴² and the WTO Canned Tuna Mediation⁴³ illustrate this point.

It is a curiosity that, at a time when the WTO dispute settlement system's panel and Appellate Body procedures have been subject to criticism for the time and cost to complete proceedings (see Kennedy 2011), these ADR options have been rarely invoked. In contrast, domestic legal systems and private parties in international commercial disputes are increasingly turning to ADR to avoid lengthy and expensive litigation. This trend towards ADR outside the WTO is particularly clear in the context of private international commercial disputes, where arbitration has superseded litigation as the preferred means of dispute settlement (see Nottage and Bohanes 2007: 213).

One explanation as to why ADR has rarely been invoked in the WTO is that, in contrast to panel and Appellate Body proceedings, it requires voluntary agreement by *both* parties. A respondent may not be comfortable agreeing to an expedited procedure for a range of reasons, including domestic industry pressures to maintain a protectionist measure for as long as possible or not wishing to be seen by domestic constituents as conceding too easily through a mediated settlement.

Few commentators are aware, however, that the normal limitation – that ADR pursuant to Articles 5 and 25 of the DSU is available only ‘if the parties to the dispute so agree’ – does not apply when a developing country or LDC invokes certain special ADR procedures. Article 3.12 of the DSU gives any developing country ‘the right to invoke’ special 1966 Procedures in lieu of standard panel procedures in any dispute against a developed country.⁴⁴ Those 1966 Procedures in turn mandate that the WTO Director-General ‘shall consult’ with the parties through his or her good offices. In effect, these special procedures *require* that the WTO Director-General provides good offices at the request of any developing country involved in a dispute with a developed country. Furthermore, Article 24.2 of the DSU provides that the WTO Director-General ‘shall... offer’ good offices, conciliation and mediation in *any* dispute involving an LDC.

These special DSU provisions provide a unique opportunity for Commonwealth small states and LDCs to invoke expeditious ADR procedures to resolve their WTO disputes. The track record of these procedures is impressive. In 2007, Colombia invoked Article 3.12 of the DSU for the first time in an attempt to resolve over 20 years of GATT and WTO bananas litigation between the EU and a number of Latin-American banana-supplying countries. That request resulted in WTO Director-General Pascal Lamy providing two years of his ‘good offices’

and culminated in the 2009 ‘Geneva Agreement on Trade in Bananas.’⁴⁵ That final agreement is considered to have ended, once and for all, ‘one of the most technically complex, politically sensitive and commercially meaningful legal disputes ever brought to the WTO.’⁴⁶

To conclude, ADR as a means of WTO dispute settlement has enormous untapped potential. It has been highly effective on the rare occasions that it has been utilised, and there seems little reason why Commonwealth small states and LDCs should not consider its use if they were to initiate WTO disputes in the future. For similar reasons, Commonwealth small states and LDCs should support efforts in other WTO bodies to facilitate rapid, interest-based solutions to trade barriers.⁴⁷

3.6 Conclusion

The WTO’s dispute settlement mechanism has the potential to be of considerable benefit for small developing countries. It permits even the smallest and weakest economic powers to enforce the rules under which they trade and therefore provides unprecedented security and predictability in their trading relations.

Despite these potential benefits, this chapter demonstrates that the 36 Commonwealth small states and LDCs have initiated a mere 0.5 per cent of all WTO disputes. Although this share of WTO disputes is in line with the Commonwealth small states’ and LDCs’ small share of global trade, the chapter highlights that a number of other countries, from well-resourced developed countries to small developing countries, have found it worthwhile to participate in WTO disputes to a greater extent than their world trade shares.

For that reason, the chapter queries whether the limited participation of Commonwealth small states and LDCs in WTO disputes is solely attributable to their small trading stakes or, instead, to the special constraints these countries face when they attempt to access the WTO dispute settlement system.

The chapter critically evaluates a number of those constraints and reaches the following tentative conclusions on how to improve Commonwealth small state and LDC participation in WTO dispute settlement in the future:

1. It is critical that Commonwealth small states and LDCs have cost-effective access to lawyers and technical experts able to represent them in WTO disputes. Data confirm that, when developing countries have access to subsidised legal services, they bring WTO disputes over considerably lower values of lost trade. Unfortunately, the majority of non-LDC Commonwealth small states have not joined the ACWL, which was created to address this legal cost constraint. Creative thinking is required on how these countries could access subsidised legal services, whether through facilitated ACWL accession or through other proposals in the ongoing DSU Review Negotiations.
2. Access to subsidised WTO lawyers will be of little use unless Commonwealth small states and LDCs improve their *domestic capacity* to identify and communicate potentially inconsistent trade barriers to relevant legal experts. Strengthening

public–private partnerships on trade barriers has been effective in a number of other countries and could be replicated in Commonwealth small states and LDCs with the technical assistance of various organisations that are working in this area.

3. The inability of most small developing countries to enforce WTO dispute settlement rulings through trade sanctions will often remain a theoretical constraint and should not overly deter Commonwealth small states and LDCs from using the WTO dispute settlement system. Nonetheless, to address those rare occasions when countries do not voluntarily comply with dispute settlement rulings, cross-retaliation and the compliance proposals in the current DSU Review Negotiations deserve continuing attention.
4. There is no evidence that OECD countries or large developing countries would apply retaliation on a political, aid or preferential market access level were a Commonwealth small state or LDC to initiate a WTO dispute against one of them. To assuage this widely perceived fear, Bangladesh and Antigua and Barbuda may wish to share their experiences on this specific concern, as complainants, with other Commonwealth small states and LDCs.
5. The participation of Commonwealth small states and LDCs in disputes as third parties should be encouraged, not only to convey views in disputes of special interest but also as a means to gain familiarity with how the WTO dispute settlement system operates in practice.
6. Commonwealth small states and LDCs should seriously consider making use of the ADR options provided under the DSU to resolve their trade disputes. On the rare occasions that these alternative mechanisms have been utilised, they have been effective, expeditious and cost-effective.

Despite the Commonwealth small states' and LDCs' relatively small shares of global trade, providing these countries with the capacity to enforce their legal rights through the WTO dispute settlement system is important. Building that capacity to litigate is likely to also permit Commonwealth small states and LDCs to more effectively settle trade frictions 'outside court' but 'in the shadow of the law' (Shaffer 2003a: 6). It is hoped that this chapter has highlighted a number of areas for further work to improve the participation of Commonwealth small states and LDCs in the new, legalised multilateral trading system where, indeed, '*right* perseveres over *might*' (Gappah and Lacarte-Muro 2001).

Notes

- 1 Panel Report, 'United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services', WT/DS285/R, adopted 20 April 2005, modified by Appellate Body Report, WT/DS285/AB/R ('United States – Gambling').
- 2 Request for Consultations by Bangladesh, 'India – Anti-Dumping Measure on Batteries from Bangladesh', WT/DS306/1, 2 February 2004.
- 3 Requests for Consultations by Costa Rica, 'Trinidad and Tobago – Provisional Anti-Dumping Measure on Imports of Macaroni and Spaghetti from Costa Rica', WT/DS185/1, 19 November 1999, and WT/DS187/1, 20 January 2000.

- 4 For the purposes of this chapter, each individual request for consultations pursuant to the DSU is counted as a separate WTO dispute. At the time of writing, there had been 451 such requests.
- 5 Section 3.4 of this chapter evaluates this third-party participation in greater detail and makes certain proposals for the future.
- 6 Bangladesh accounts for the greatest share of world trade, with a total contribution of only 0.103 per cent. Of the 36 Commonwealth small states and LDCs, 33 account for less than 0.05 per cent of world trade, with 17 of those accounting for less than 0.015 per cent of world trade. These figures are based on the WTO statistics used to determine members' individual contributions to the WTO budget for 2011. Available at: www.wto.org/english/thewto_e/secre_e/contrib_e.htm
- 7 The Commonwealth Secretariat has defined 'Commonwealth small states' as any Commonwealth country with a population of fewer than 1.5 million people, and also includes six countries that have slightly higher populations but that have many similar characteristics to that group. All of the Commonwealth's LDCs are small states apart from Bangladesh. See Commonwealth Secretariat (2010).
- 8 See Bown and Hoekman (2005: 889). This view has been espoused by a number of developing countries in the context of negotiations on DSU review.
- 9 Presentation by the Ambassador and Permanent Representative of India to the WTO, 'Settling Disputes Among Members', at the WTO Public Forum 2008, Session 6, 24 September 2008. Available at: www.wto.org/english/forums_e/public_forum08_e/programme_e.htm
- 10 These stages are set out in, respectively, Articles 11, 17, 21.3(c), 21.5 and 22.6 of the DSU.
- 11 To date, seven disputes concerning the SPS Agreement have resulted in rulings by the WTO dispute settlement body.
- 12 For example, the Panel Report, 'United States – Subsidies on Upland Cotton', WT/DS267/R, and Corr.1, adopted 21 March 2005, modified by Appellate Body Report, WT/DS267/AB/R ('United States – Upland Cotton'); the Panel Report, 'European Communities – Export Subsidies on Sugar', WT/DS265/R, WT/DS266/R and WT/DS283/R, adopted 19 May 2005, modified by Appellate Body Report, WT/DS265/AB/R, WT/DS266/AB/R and WT/DS283/AB/R ('EC – Export Subsidies on Sugar'); the Panel Report, 'European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)', WT/DS316/R, modified by Appellate Body Report, WT/DS316/AB/R, adopted on 1 June 2011; and the Panel Report, 'United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)', WT/DS353/R, modified by Appellate Body Report, WT/DS353/AB/R, adopted on 23 March 2012.
- 13 The only developing countries to have initiated dispute settlement proceedings under the SPS Agreement are Argentina (in WT/DS293) and, if deemed 'developing', China (in WT/DS392).
- 14 See WT/DS381, WT/DS384/386 and WT/DS406.
- 15 While the importance of non-tariff measures 'has intensified' under the WTO, it should be noted that 82.5 per cent of all GATT disputes also involved challenges to non-tariff measures. See Santana and Jackson (2012).
- 16 As of November 2012, the services of the ACWL were available to the 31 developing countries that had become members of the ACWL and the 43 LDCs that were WTO members or in the process of acceding to the WTO. See ACWL website (www.acwl.ch).
- 17 CHF refers to the Swiss Franc.
- 18 Of the 36 Commonwealth small states and LDCs, 11 are LDCs, 12 fall into 'Category C' and 9 fall into 'Category B'. Cyprus would be the only 'Category A' ACWL member and would face a maximum dispute settlement fee of CHF276,969.
- 19 One commentator suggests that 'developing countries can face fees ranging from US\$200–\$600 (or more) an hour when they hire private law firms to advise and represent them in WTO cases'. See Shaffer (2003: 16). At the same time, it should be noted that some private law firms have represented developing countries at reduced fees as part of their pro bono programmes or to gain increased exposure to WTO litigation.
- 20 These accession fees can be paid in installments over five years. The precise terms and conditions for accession to the ACWL, including the accession fee, are negotiated between the ACWL General Assembly and the country seeking to accede. The quoted accession fees were those paid by the original acceding members and have been applied, to date, to all subsequent acceding developing countries.

- 21 A self-fulfilling prophecy is a prediction that directly or indirectly causes itself to become true by the very terms of the prophecy itself. The twentieth-century sociologist Robert K Merton is credited with coining the expression in his book *Social Theory and Social Structure* (e.g. when Roxanna falsely believes her marriage will fail, her fears of such failure actually cause the marriage to fail).
- 22 Comments from Pascal Lamy at the tenth anniversary conference of the ACWL. Report of the Conference, 'The ACWL at Ten: Looking Back, Looking Forward', 4 October 2011, at 4. See the ACWL website (www.acwl.ch).
- 23 See WTO Ministerial Declaration, WT/MIN(01)/DEC/1, 14 November 2001, paragraph 35. ('We agree to a work programme, under the auspices of the General Council, to examine issues relating to the trade of small economies. The objective of this work is to frame responses to trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO Members'.)
- 24 The ACWL provides approximately 200 legal opinions to its members and LDCs per year. It also runs a training programme for Geneva-based diplomats and a small secondment programme for capital-based officials. See ACWL Document, 'How to Use the Services of the ACWL: A Guide for Developing Countries and LDCs', October 2011. See the ACWL website (www.acwl.ch).
- 25 See UNCTAD Report of the Commission on Trade in Goods and Services, and Commodities, at its Seventh Session, 3–6 February 2003, TD/B/EX(31)/4, TD/B/COM.1/58, p. 33, pp. 107–108.
- 26 I have borrowed this phrase from Gregory Shaffer who pioneered most of the work in this area.
- 27 Resulting in (1) the European Commission Market Access Database, (2) the USTR Annual National Trade Estimate Reports on Foreign Trade Barriers and 'Special 301' Reports on intellectual property and (3) Japan's Ministry of Economy, Trade and Industry Annual Reports on the WTO Inconsistency of Trade Policies by Major Trading Partners.
- 28 Including the Commonwealth PPP Network (CP3N). See Commonwealth Secretariat (2010: 17).
- 29 Article 22 of the DSU and Articles 4.10 and 7.9 of the SCM Agreement. This chapter refers to these enforcement options, collectively, as 'retaliation rules'.
- 30 This common perception is referred to, and then critiqued, in Hudec (2002: 81).
- 31 Recourse by Antigua and Barbuda to Article 22.2 of the DSU, 'United States – Gambling', WT/DS285/22, 22 June 2007, p. 3.
- 32 Decision by the arbitrator, European Communities – Regime for the Importation. Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU ('EC – Bananas III (Ecuador) (Article 22.6 – EC)'), WT/DS27/ARB/ECU, 24 March 2000, p. 95.
- 33 *Ibid.*, paragraph 73.
- 34 Recourse by Antigua and Barbuda to Article 22.2 of the DSU, 'United States – Gambling', pp. 2–3.
- 35 *Ibid.*
- 36 Decision by the arbitrator, 'EC – Bananas III (Ecuador) (Article 22.6 – EC)', paragraph 73.
- 37 Shaffer (2006: 193) states that threats of this nature have been 'confirmed in a number of interviews, including with a former member of USTR'. In contrast, Abbott (2007: 14) notes that 'there is not much empirical evidence that this has actually happened'.
- 38 Not all requests for consultations have proceeded to the establishment of a panel. To date, the 451 consultations requests have resulted in 191 panels, which have given rise to 106 appeals.
- 39 In dispute settlement theory, a distinction is typically made between *legal* means of dispute resolution and *diplomatic* means of dispute resolution. Diplomatic means of dispute resolution include so-called ADR mechanisms, such as good offices, conciliation and mediation, and are characterised by non-binding decisions based on the parties' underlying interests. Legal means of dispute resolution include litigation and are characterised by a binding decision based on the law. Technically, arbitration falls within the category of the *legal* means of dispute resolution, as it results in a binding decision. It is considered part of 'ADR' for the purposes of this chapter, however, as it is an 'alternative' to the dominant WTO dispute resolution practice of panel and Appellate Body litigation.
- 40 See the detailed analyses in Nottage and Bohanes (2007) and Nottage (2009c).
- 41 Award of the arbitrators, 'United States – Section 110(5) of the US Copyright Act', Recourse to Arbitration under DSU Article 25, WT/DS160/ARB25/1, 9 November 2001 (the 'Copyright Arbitration').

- 42 On 1 August 2005, the arbitrator issued its award in *European Communities – The ACP-EC Partnership Agreement – Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/616, and on 27 October 2005 the arbitrator issued its Award in *European Communities – The ACP-EC Partnership Agreement – Second Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/625 (the ‘Banana Tariff Arbitrations’).
- 43 Communication from the Director-General, ‘Request for Mediation by the Philippines, Thailand and the European Communities’, WT/GC/66 of 16 October 2002. This mediation was not requested pursuant to Article 5 of the DSU but followed the procedures in that provision.
- 44 Decision of 5 April 1966 on Procedures Under Article XXIII, BISD 14S/18.
- 45 The Geneva Agreement on Trade in Bananas, 15 December 2009, WT/L/784.
- 46 See presentation by Nottage (2010) and WTO news item, ‘Historic Signing Ends 20 years of EU – Latin American Bananas Disputes’, 9 November 2012.
- 47 In particular, current proposals in relation to non-tariff barrier review mechanisms and the ongoing discussions on ad hoc mediation on SPS matters.

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Chapter 4

What Do Small and Poor Developing Countries Need from the Multilateral Trading System?

Chapter 4

What Do Small and Poor Developing Countries Need from the Multilateral Trading System?

L Alan Winters

4.1 Introduction

The participation of small and poor developing countries in multilateral trade negotiations has given rise to a plethora of analyses and polemics about what can/should/might be agreed and, implicitly, whose fault it will be when agreement is not reached. It is neither an attractive nor a particularly constructive position to be in, and certainly not one that fills the independent observer with much hope. This chapter takes a slightly different slant by going back to basics to ask a more fundamental question – what do small and poor developing countries need from a trading system? – and then working out from there what to make of the multilateral trade negotiations. Its purpose is not to create a shopping list or a negotiating position for World Trade Organization (WTO) negotiations, but rather to help prioritise issues for the group of least-developed countries (LDCs) and to put into perspective what we actually end up with (which, of course, I am not attempting to predict). It is thus basically a normative exercise.

I argue that trade is an essential part of the cocktail to deliver economic growth and development to poor countries, albeit only one part. The multilateral trading system needs to deliver predictability for producers and consumers in developing countries (in any country, actually). It is, however, overly complex and its simplification would help in releasing skilled bureaucrats and negotiators from the grind of WTO negotiations to focus more on delivering the myriad of other important services for their countries. Using these two criteria, predictability and simplicity, I examine three potential areas of constraint on trading by poor countries: market access in goods, the costs of trading and the costs of providing services. Within each, I examine several proposals that are currently prospective negotiations in the WTO and seek to prioritise them.

4.2 Small and poor developing countries

For shorthand, I shall refer to the small and poor developing countries as SPCs; this group, which I do not define precisely, is not a club or a negotiating group but an analytical construct that indicates countries whose economic mass is so small that they represent a threat to hardly any other country's interests, offer rather small economic opportunities to other countries and are broadly seen to warrant some sort of special treatment. The group is similar but not identical to the LDCs, a group

Table 4.1 Statistics on LDCs and small countries (World Bank definitions), 2010

| As a percentage of world total | LDCs | Small countries |
|---|---------|-----------------|
| Population, total | 12.18% | 0.41% |
| GDP (current US\$) | 0.93% | 0.23% |
| Exports of goods and services (BoP, current US\$) | 1.03% | 0.40% |
| Imports of goods and services (BoP, current US\$) as a percentage of world average | 1.17% | 0.37% |
| GNI per capita, Atlas method (current US\$) percentage of GDP | 7.38% | 53.77% |
| Exports of goods and services (% of GDP) | 95.88% | 160.50% |
| Imports of goods and services (% of GDP) | 124.09% | 182.83% |

Notes: GDP, gross domestic product; GNI, gross national income; BoP, balance of payments

Source: World Development Indicators, World Bank

which figures in several of the topics below, because the WTO Enabling Clause permits discrimination in favour of LDCs.

Table 4.1 reports a few statistics for the LDCs and for small economies (as defined by the World Bank), groups that overlap somewhat: small and vulnerable economies are a recognised group within the WTO, but attract no preferential treatment in their own right. While not wishing to get into a debate about exactly which countries should warrant which preferences, the data in Table 4.1 suggest that granting anything to small countries would be unlikely to be disruptive. Although LDCs contain perhaps 12 per cent of the world's population, they are very poor, with a gross domestic product (GDP) per head of only 7.5 per cent of the world average. Small economies contain less than 0.5 per cent of the world's population, but are wealthier, with GDP per head about half the world average. Overall, LDCs and small economies account for less than 1 per cent and less than 0.25 per cent of world GDP, respectively, and about 1 per cent and 0.4 per cent, respectively, of world exports.

4.3 Trade as part of the development cocktail for SPCs

International trade has a fundamental role in stimulating income (or more loosely in facilitating growth); see, for example, the Commission on Growth and Development (2008) or Winters and Masters (2013). It permits countries to specialise in goods for which world prices exceed those that would be available at home, reap economies of scale, improve performance in the face of external competition and benefit from better inputs and technologies available from abroad. In each case, the benefits are more important to small countries than to large ones and we do indeed see small countries trading more than larger ones (Table 4.1). All these things require long-term commitments in terms of investment, skills, etc. The purpose of trade agreements – of which the WTO set of covered agreements is the paramount example – is to create sufficient predictability to allow the benefits of trade to be manifest.

We have overwhelming evidence of the link between trade and income and very strong evidence from a variety of sources that a good part of it reflects causation from trade to income. There has emerged in recent years, however, a suggestion that the gains from trade or trade liberalisation have been lower for poorer countries (e.g. Chang et al. 2009). Researchers have variously located the problems in areas such as inflexible labour markets, poor education levels, poor incentives to invest in new enterprise and poor institutions, but, to date, no definitive culprit has emerged, other than being poor.

However, this result may, in fact, just be a statistical artefact associated with the fact that most of the trade liberalisations that we have observed among poor countries were in Africa in the 1990s, during which time Africa had many growth problems unrelated to trade. However, what these results do remind us of is that there is far more to growth and development than just trade and trade policy, and this alone ought to be enough to teach us that a great virtue of trade policy and the trading system should be simplicity. To waste valuable resources – public and private – negotiating trade interventions of uncertain value is not much short of crazy.

4.4 What are the key constraints on trade?

Given the analysis above, what factors are stopping SPCs from gaining the maximum benefits from their international trade, and to what extent are these amenable to negotiation? From the answers to these questions, what priority should SPCs place on trade negotiations, given the manifest need for progress on the domestic agenda at the same time?

4.4.1 Market access in goods

Negotiations in the WTO tend to focus most on this aspect of market access and this is true of the Doha Development Agenda. There are a number of specific issues related to market access, but for most SPCs I doubt that they are actually the most binding of the constraints on their international trade. One exception, of course, is cotton, where continuing distortions from subsidies and import restrictions clearly impact heavily on the Cotton-4 (Benin, Burkina Faso, Chad and Mali). Here, the problem is not so much the significance of the issue but the ability to bring it to a successful conclusion, given US resistance.

The more general issue of market access resides in duty-free, quota-free (DFQF) access. Most developed WTO members already provide either full or apparently nearly full DFQF market access to LDC products. According to Elliott (2010), Australia, the European Union (EU), New Zealand, Norway and Switzerland have implemented DFQF access for LDCs for 100 per cent of products, that is, no exceptions. Canada's programme spans 99 per cent of products, excluding only some sensitive agricultural products (dairy, poultry and eggs); Japan offers about 98 per cent product coverage, with exclusions for fish, footwear, rice and sugar. The USA does not have a programme specifically targeting LDCs, but provides duty-free access to African countries under the African Growth and Opportunity Act. Thus, if all Organisation for Economic Co-operation and Development (OECD) countries offered complete DFQF access,

LDC exports might increase by only up to US\$2 billion (Bouët et al. 2010). This is certainly desirable, but it is not critical.

More important is the fact that a number of emerging-market countries have now started DFQF programmes. These are large and currently much more dynamic markets and opening these up would be worth much more – if Brazil, India and China move to 100 per cent DFQF, then all WTO LDCs could have an average increase in exports of up to 44 per cent, valued at US\$8 billion for these countries (Bouët et al. 2010) – reflecting the higher tariffs that these countries have (see also Chapter 1). However, of course, it will also be more difficult politically. The big attraction to developed countries of offering DFQF is that almost no domestic production activity is put at risk by exports from LDCs – the (small) burden is borne by other low-income countries whose exports are displaced. In contrast, for emerging markets, there are still activities that compete with LDCs and whose protection would be reduced by DFQF. Nonetheless, this is a goal more deserving of negotiating capital than OECD DFQF and, if there is no progress in the Doha Round, maybe the G-20 or another forum would do.

Once one has accepted DFQF as the route to market access in goods, one is immediately confronted by rules of origin (ROOs). These can eliminate the benefits of tariff preferences if they mean that LDCs cannot take advantage of the preferences because, as SPCs, they cannot generate the required amounts of value added or transformation to meet the ROOs. In addition, the complexity of ROOs imposes a disproportionate burden on small exporters. The one-time costs of devising and proving compliant production structures apply equally to small values of trade, and the repeated fixed per-consignment costs penalise countries that tend to have small consignments (see Hayakawa et al. 2013).

The EU has taken steps towards loosening its ROOs over the past few years and SPCs would have a strong interest in further steps by the EU and in other DFQF markets following suit. One should not underestimate the political difficulties that such improvements would pose, as all traders know that ROOs are just as protective as tariffs. However, the returns to progress on ROOs would be great. For exporters, and even for importers, simplification would offer resource savings, whereas liberalisation would allow SPC exports to grow. The LDC Group submission for Bali (TN/C/W/63) makes some sensible suggestions based on simple value rules with exceptions for a few specific sectors. These again are worth arguing for, although I must note that the gain from liberal ROOs is capped by the size of the most-favoured nation (MFN) tariff avoided through the preferences in question. This again suggests that the emerging markets should receive as much attention as the OECD ones, especially as the former may not already have such well-established ROOs.

The LDC Group proposal also deals with regional cumulation. However, it wisely notes that, although such provisions are 'laudable and highly desirable', cumulation is not a substitute for liberal ROOs. It is both bureaucratically complex and restrictive on the sources of inputs that may be used. If ROOs are genuinely liberal, the SPC producers can source their inputs worldwide and increase their competitiveness as a result. Finally, I note that preferential ROOs are not a traditional topic of negotiation

within the WTO, and this will reinforce the difficulties of getting action in the WTO. It might be useful for the international community to start considering alternative ways of and forums for harmonising and simplifying preferential ROOs.

4.4.2 Trading costs

Market access is permissive – it removes barriers that might be faced at the border – but for many SPCs the more critical issue is getting to the border in the first place. The challenges are both physical (trade logistics) and bureaucratic (the need to both design and market goods that satisfy the importers' regulations and standards). Both the Aid for Trade (AfT) initiative and trade facilitation potentially deal with these issues, and the challenge is to ensure that they actually meet SPCs' requirements.

First, however, it is important to realise that discussion of standards raises an issue to which SPCs have considerable exposure but little leverage. There is a growing interest in plurilateral agreements within the WTO and a clear trend towards mega-regional arrangements outside it. In both cases, the large players are aiming to design rules and regulations that will operate between themselves. For a plurilateral agreement, the story is that any developing country can join the agreements subject to accepting its conditions, and one hears similar suggestions (not very plausibly) about the mega-regional arrangements too. In both cases, there is no provision for negotiation before post-establishment accession (not that SPCs could ever expect to be able to extract many concessions – consider the accession process to the WTO), and so rules that may eventually affect SPCs quite significantly are being written now with no SPC representation at all. I find this alarming – just as I did 10 years ago (see Schiff and Winters 2003). SPCs have a lot to gain from the introduction of common regulations across markets, because this would reduce the fixed costs of supplying different markets, but they have a lot to lose if those regulations effectively exclude them from markets now or are so tough that they preclude transitions towards achieving them in future.

The solutions to these dilemmas are not easy, but they seem to me to include elements such as the following:

- where WTO plurilateral agreements liberalise market access, they should, wherever possible, be applied on a MFN basis;
- wherever possible, exceptions should be made to standards for small scale and artisanal products from poor countries. For health and safety regulations, this may not be possible or wise – we do not want products from developing countries labelled as unsafe – but in other cases it may be;
- developing-country interests should be represented in negotiations, even if such countries have no prospect or interest in immediate membership. This may be done through, for example, the WTO Secretariat, the World Bank, the Commonwealth Secretariat or a non-official body;
- a means must be found to manage this representation in a way that assuages developing country fears but does not absorb a lot of domestic capacity; we cannot

afford a further diversion of SPC talent from the issues of domestic growth and development towards international negotiations which may bear no fruit;

- the costs of representation need to be met by binding and additional technical assistance budgets; and
- binding and additional technical assistance budgets need to be provided over long periods to aid developing countries and specifically SPCs to meet standards over the long run.

Concern over trade costs leads immediately to the trade facilitation agenda. This is important, especially for small isolated economies where trade costs are inevitably high (Winters and Martins 2004). A Trade Facilitation Agreement was reached in Bali in 2013 during the WTO Ministerial Conference that promises to significantly boost global trade. The trade facilitation provisions aim to simplify export/import processes, including customs rules and procedures. For the first time, the implementation of commitments is made conditional upon the existence of appropriate capacity. There are questions about how to balance trade facilitation with other domestic priorities, but, overall, this seems to be a case where SPCs would benefit from an agreement. It would be better to have an agreement with good technical assistance and financing than no agreement at all.

Aid for Trade should also feature in this discussion – not only in terms of financing physical infrastructure, but also to support standards activities, policy and even, possibly, development. AfT has become quite an industry over the past eight years and has aroused some concerns that it is out of control, with donors logging projects as AfT when they actually have nothing to do with trade. Hallaert (2013) argues that the initiative must be more focused on the specific needs of the trading sector. There is validity in this view, but, conversely, the strengthening of market access will clearly need both private and public investment to be fully effective (e.g. building local supply response capacity and trade infrastructure) and AfT could play a useful part in this. The recent Fourth Aid for Trade Review in July 2013 argued for much more focus on integrating developing countries into value chains.

Aid for Trade is not strictly a Doha issue, but it is intimately connected to it and could still, as originally intended, provide much-needed lubrication to get the negotiating machinery working again. With aid facing stronger and more widespread fiscal challenges, there will be no alternative other than to try to ensure that AfT is spent wisely and generates observable results; therefore, scrutiny, monitoring and evaluation will increase, and SPCs would do well to welcome and advance such goals. Not all projects lend themselves to the narrow evaluation creed of randomised controlled trials, but no developed country is going to keep lending or giving without serious attempts to assess what the benefits are.

4.4.3 Services

The Ministerial Conference of 2011 formalised a so-called services waiver, which permits members to waive MFN obligations under the General Agreement on Trade

in Services (GATS) in order to grant preferential market access to LDC services and service firms – a sort of enabling clause for services. With services such a dominant part of the world economy (e.g. even LDC economies have service shares of GDP above 40 per cent, and services may account for up to 30 per cent of the value of a typical manufacture; see the recent World Input–Output Tables and an increasing part of world trade, helping LDCs to enter the market seems an obvious step. However, it is worth recalling that preferences for goods have been disappointing so one needs to keep this initiative in perspective.

The WTO's Eighth Ministerial Conference in December 2011 adopted a decision on a 'services waiver', allowing WTO members to provide preferential treatment to services and services suppliers of LDCs. This waiver decision, however, does not guarantee that members actually grant preferences to LDCs. The decision of 2013 notes that no WTO member has yet made use of the services waiver since its adoption in 2011. It also recognises the need to strengthen LDCs' domestic services capacity in order to make use of existing opportunities and any preferences afforded to them. According to the decision, ministers will instruct the Council for Trade in Services to initiate a process with the aim of promoting the expeditious and effective operationalisation of the LDC services waiver. Studies are being undertaken to establish the sectors in which LDCs might possibly be competitive. This group of sectors is likely to be quite small and so the chances of there being a significant overlap between the preferences offered to LDCs and LDC capacity to produce is likely to be correspondingly small. For example, one area in which LDCs have a comparative advantage is tourism, but this allows little scope for preferences, because developed countries do not restrict their residents' travel. Another important area of potential is supplying services through the temporary mobility of labour (Mode 4). The benefits could be huge, but few developed countries show much stomach for such mobility and even fewer show any willingness to commit and bind such concessions for large groups of countries (let alone the whole GATS membership). Thus, Mode 4 has long been a disappointment (see, for example, Winters (2005) for some of the reasons why) and the waiver, per se, is unlikely to correct this.

However, if the services waiver were to permit agreements between an individual developed or emerging market and an individual SPC, it could have a significant role. I am opposed to bilateralism in trade relations and would like to see Mode 4 prosper. However, given that, in truth, Mode 4 is pretty similar to temporary migration, it seems to me that, in this case, an exception might be tolerated. Several of the more enlightened bilateral schemes have demonstrated the potential of temporary mobility to raise incomes in SPCs. For example, deriving partly from two pieces of research commissioned by the Commonwealth Secretariat (Winters et al. 2003; Winters and Martins 2004), New Zealand's Recognised Seasonal Employers Scheme allows workers from poor Pacific Islands to work for the agricultural season in New Zealand. A formal evaluation shows that affected households from Vanuatu and Tonga experienced average increases in income of over 30 per cent (Gibson and McKenzie 2010) and, in Vanuatu (population 245,000), 2,500 workers benefit each year (*Vanuatu Daily Post*: www.dailypost.vu/content/vt38-billion-rse-5-years).

4.5 Conclusion

This exercise in prioritisation leads me to suggest that SPCs should focus their efforts in the WTO on:

- DFQF and ROOs with emerging markets, but simple ones;
- a decent settlement for financing trade facilitation, but, again, sufficiently simple to allow easy implementation and monitoring;
- a seat at the table of plurilaterals and (almost unimaginable) the mega-regionals, supported by sufficient technical assistance so as not to divert too many resources from other governmental tasks; and
- a modification to the waiver to allow bilateral labour mobility deals plus an explicit willingness by OECD countries to negotiate such deals.

SPCs should also be robust in the face of disappointment and remember that the trading system already delivers significant benefits to them, even if the rate of advance is slow. Predictability is worth a great deal and this depends on system credibility. It would be seriously damaging to themselves if the SPCs contributed to the collapse of the system because they could not get even more from it.

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Chapter 5

Building Trade Capacity of Small States:
Strategic Approaches to Aid for Trade

Chapter 5

Building Trade Capacity of Small States: Strategic Approaches to Aid for Trade

Mohammad A Razzaque

5.1 Introduction

Having emerged from the World Trade Organization (WTO)'s 2005 Hong Kong Ministerial Conference, the Aid for Trade (AfT) initiative is set to mark its tenth anniversary. It continues to attract huge attention in global trade policy discourse, particularly in the context of supporting trading capacity of developing countries. The financial and technical assistance provided under AfT aims to tackle developing countries' supply-side constraints so that they are able to effectively participate in global trade. It is this underlying but specific trade purpose that distinguishes AfT from the rest of traditional overseas development assistance (ODA). Although the term 'Aid for Trade' is relatively new in multilateral trade-policy discourse, aid flows serving similar intended purposes have long existed and have been regularly reported by donors. The trade dimensions as highlighted in AfT received renewed focus under the Doha Round of multilateral trade negotiations, as many developing countries realised that their lack of supply-side capacity prevented them from effectively participating in and benefiting from the expansion of global trade and investment activities.

This new emphasis has contributed to an increased allocation of ODA and other financial flows towards AfT, and all major donors have now attached a special priority to trade-related assistance, with a formal mechanism established for monitoring such flows and their impact on developing countries' capacity to trade. It is against this backdrop that, from the perspectives of the poorest and small states, one of the most important developments during the troubled Doha Round – which has now been running for 14 years – has been the inclusion of AfT in trade talks.

In general, the discussions on AfT have tended to treat beneficiaries as a fairly homogeneous group of developing countries. However, recipient countries differ on a variety of factors and needs, which are important to acknowledge in devising any AfT strategy. Small states, in particular, have certain unique and inherent characteristics that determine their external competitiveness and trade performance. These factors need to be given special attention when considering AfT support for building trade capacity.

This chapter puts AfT in the context of trade challenges and realities of small states. It provides a snapshot of AfT resources received by these countries, makes some observations on their effectiveness based on the studies available and highlights some strategic issues in making AfT more effective in small states.

5.2 External competitiveness of small states and their need for AfT

This chapter uses the Commonwealth Secretariat definition of small states.² The group of small states includes mostly African, Caribbean and Pacific small and island states. Owing to their small populations, the domestic market is limited in these countries. As a result, most of their firms are small and medium-sized enterprises with limited opportunities for reaping the benefits of economies of scale and investing in research and development.³ Remoteness and isolation are typical features of small states that result in their high trading costs, due to both small consignment size and high shipping costs. Small domestic markets in combination with high trading costs contribute to the lack of competition and efficiency of product and factor markets. All this leads to a higher cost of doing business.⁴ In addition, most small states suffer from general developmental challenges such as poor investment climate, weak institutions and inadequate human capital resources. The interactions of these challenges are manifested in higher unit production costs, making small states' exports uncompetitive in global markets.

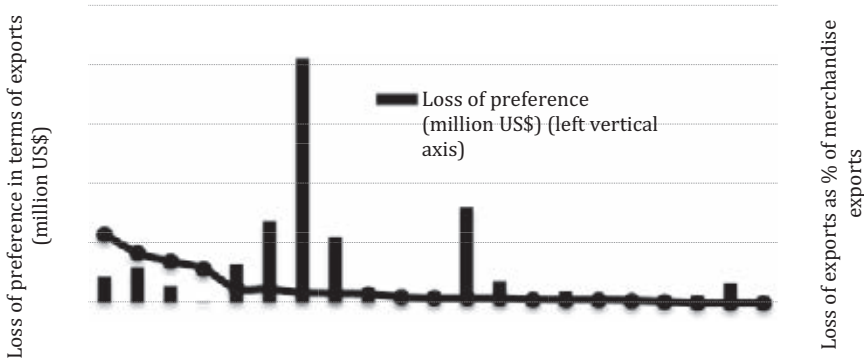
The comparative disadvantage of small states, arising largely from their inherent characteristics, is reflected in their declining relative significance in world trade (Razzaque 2011). In both merchandise and services exports, small states have seen their share of global trade dwindling. At the individual country level, nearly 70 per cent of these countries has suffered from declining share. Given that one of the principal purposes of AfT is to promote supply response from developing countries, the rationale for providing AfT support to these countries cannot be overemphasised.

The small size of the domestic market will imply that small states are likely to be more dependent on international trade for economic growth. Their weak trade capacity is thus already affecting their overall economic performance. Although small states have relatively high per capita income, mainly owing to their small populations, among other global regions since the 1990s they have experienced one of the lowest rates of per capita growth of gross domestic product (GDP). In recent times, their annual compound economic growth has been lower than that of the least-developed countries (LDCs) and of Sub-Saharan Africa (SSA).

Small states, like LDCs, also suffer from a lack of diversification in their production and export structures. On the whole, more than three-quarters of their exports are primary commodities and fuels. On an index of export diversification, which compares individual countries' export structures to the world average, ranging from a value of 0 (for highly diversified, reflecting the world average) to 1 (highly concentrated and thus very different from the world average), the average value of small states has been found to be 0.73, compared with 0.22 for the developing countries as a group (Razzaque 2011).⁵ Given the above, the prospect of growth and economic diversification in small states is determined by their capacity and nature of export trade.

Another important rationale for AfT to small states arises from the need for trade-adjustment support. Studies find that these countries are most vulnerable to loss of trade preferences as a result of multilateral and regional trade liberalisation

Figure 5.1 Estimated loss of preference for small states



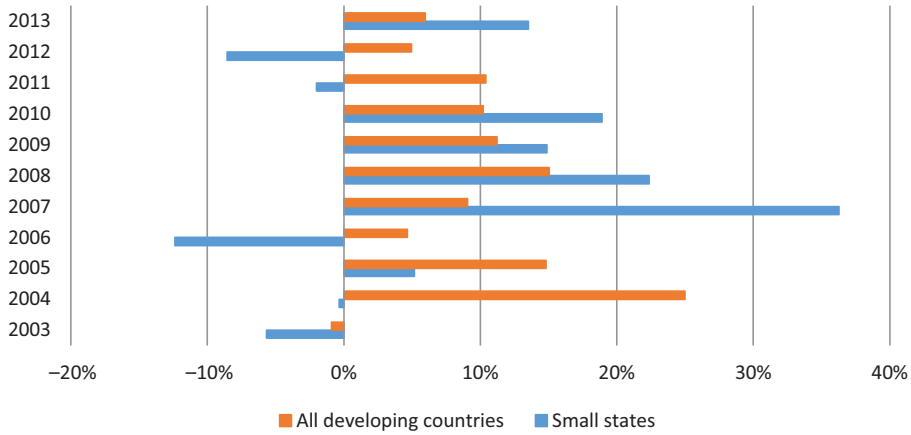
Source: Cali and Razzaque (2013)

programmes. As the exports of these countries are highly concentrated, most often around a few product lines for which preferences exist, any loss of favourable treatment can have disastrous consequences. A Commonwealth Secretariat-sponsored study showed that, by the measure of trade preference as a percentage of the trade-weighted average world market price of the countries’ exports, the countries most exposed to preference loss were Mauritius, St Lucia, Belize, St Kitts and Nevis, Guyana, Fiji Islands, Dominica, Seychelles, Jamaica, St Vincent and the Grenadines, and Swaziland (Milner et al. 2011). When measured as a proportion of countries’ total merchandise exports, potential export losses as a result of preference erosion are very large for St Vincent and the Grenadines (58 per cent), St Lucia (42 per cent), Dominica (35 per cent) and São Tomé and Príncipe (29 per cent), as shown in Figure 5.1. As summarised in Cali and Razzaque (2013), based on various estimates, about 15–29 per cent of the total estimated loss of all developing country exports as a result of preference erosion comes from small states. Considering that the proportion of the population in small vulnerable economies (SVEs) is just about 2 per cent of the total population of developing countries experiencing such losses, small states bear a much higher than proportionate share of the costs of preference erosion. Drawing on Caribbean regional experience, Nurse and Greene (2014) list significant drops in exports of rice, bananas and sugar as results of the erosion of trade preferences into the European Union (EU) market on account of WTO liberalisation. (Therefore, the peculiar country characteristics, together with the trade shocks facing them, make small states’ integration into the world economy a daunting prospect.)

5.3 AfT flows to small states

AfT disbursed to all small states stood at US\$583 million (in constant 2013 prices) in 2005 when WTO members, at their Hong Kong Ministerial Declaration, adopted the role of the WTO in monitoring AfT flows. Since then, AfT flows have almost doubled to US\$1.2 billion in 2013, the most recent year for which information is currently available. During the same period, total global AfT flows have also seen an almost identical rise from US\$20 billion to about US\$40 billion. However, annual

Figure 5.2 Growth of AfT received by small states and all developing countries



flows have been much more volatile in small states (Figure 5.2). In 2013, the 49 small states in our sample accounted for 2.99 per cent of total global AfT endowment. This is considerably higher than the lowest share of 2.43 per cent in 2006 but much lower than the share of 4.18 per cent enjoyed by small states in 2002 (Figure 5.3).

AfT commitments by donors for small states have been significantly higher than the amounts actually disbursed (Figure 5.4).⁶ Indeed, accumulated annual shortfalls between 2002 and 2012 are estimated to be close to US\$3 billion in constant 2013 prices. This is more than three times the amount of AfT resources received by small states in 2013.

The relative significance of AfT in total ODA in small states and developing countries is comparable: 23 per cent in the case of the former compared with 26 per cent in the latter, with both figures corresponding to 2011. However, there are certain small states where AfT has much greater prominence, for example Cape Verde, Gabon, Grenada, Jamaica and Papua New Guinea. Table 5.1 shows country-specific AfT

Figure 5.3 Small states' share in all AfT disbursed (%)

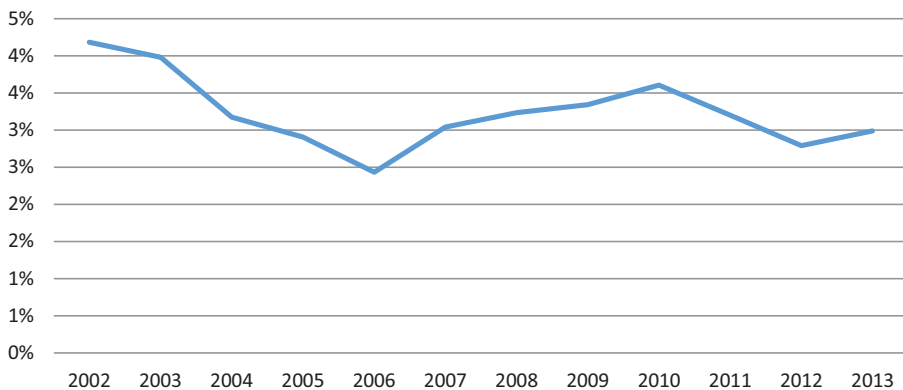
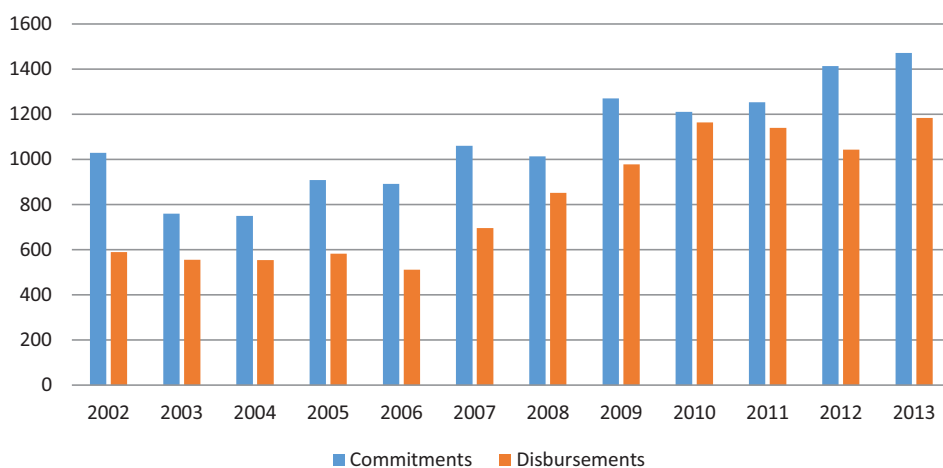


Figure 5.4 AFT flows in small states: commitments versus disbursements (in constant 2013 US\$ millions)

Notes: Authors' estimates based on the Organisation for Economic Co-operation and Development Creditor Reporting System database. The combined total of ODA flows associated with sectors 200 and 300 are being considered as total AFT flows

Table 5.1 AFT disbursed (in 2013 constant US\$ millions)

| | 2002 | 2005 | 2008 | 2010 | 2013 |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| All developing countries | 14,096.9 | 20,049.0 | 26,327.4 | 32,271.0 | 39,618.0 |
| All small states | 589.3 | 582.6 | 851.3 | 1,163.1 | 1,183.3 |
| Antigua and Barbuda | 9.5 | 5.7 | 0.4 | 5.8 | 0.3 |
| Bahamas, The | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Bahrain | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Barbados | 0.0 | 0.7 | 0.2 | 10.7 | 0.0 |
| Belize | 0.0 | 1.7 | 10.5 | 11.8 | 16.2 |
| Bhutan | 22.4 | 37.4 | 20.4 | 84.5 | 56.3 |
| Botswana | 1.9 | 19.4 | 10.6 | 23.6 | 10.6 |
| Brunei | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Cape Verde | 25.3 | 46.3 | 99.1 | 161.4 | 59.7 |
| Comoros | 5.8 | 6.0 | 3.4 | 8.2 | 12.4 |
| Cook Islands | 0.3 | 0.3 | 1.6 | 3.1 | 5.1 |
| Cyprus | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Djibouti | 16.3 | 4.1 | 16.6 | 28.2 | 17.8 |
| Dominica | 13.9 | 3.6 | 11.3 | 16.7 | 11.9 |
| Equatorial Guinea | 4.4 | 0.6 | 0.6 | 0.4 | 0.2 |
| Fiji | 0.7 | 12.8 | 7.8 | 9.0 | 12.0 |
| Gabon | 35.0 | 31.2 | 19.8 | 52.6 | 23.2 |
| Gambia, The | 22.3 | 18.9 | 16.6 | 32.0 | 34.4 |
| Grenada | 3.6 | 0.7 | 1.8 | 8.8 | 1.3 |
| Guinea-Bissau | 20.0 | 17.0 | 29.0 | 13.4 | 9.4 |
| Guyana | 9.7 | 6.7 | 36.2 | 62.8 | 57.1 |
| Jamaica | 22.6 | 35.4 | 74.2 | 55.0 | 47.0 |
| Kiribati | 9.6 | 13.9 | 6.6 | 3.6 | 32.7 |

Table 5.1 (continued)

| | 2002 | 2005 | 2008 | 2010 | 2013 |
|----------------------------------|-------|-------|-------|-------|-------|
| Lesotho | 38.2 | 9.0 | 21.2 | 23.4 | 20.0 |
| Maldives | 4.7 | 0.4 | 6.5 | 31.8 | 1.0 |
| Malta | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Marshall Islands | 1.3 | 1.9 | 2.4 | 10.1 | 13.8 |
| Mauritius | 4.9 | 2.5 | 4.2 | 17.2 | 93.4 |
| Micronesia | 5.9 | 11.5 | 9.8 | 13.3 | 23.2 |
| Montenegro | 0.0 | 0.3 | 27.9 | 23.0 | 78.9 |
| Namibia | 36.5 | 32.9 | 36.6 | 56.7 | 57.9 |
| Nauru | 0.0 | 3.1 | 14.5 | 1.0 | 5.0 |
| Niue | 0.3 | 1.6 | 3.5 | 5.1 | 5.1 |
| Palau | 13.6 | 7.0 | 12.1 | 7.2 | 14.2 |
| Papua New Guinea | 144.2 | 103.5 | 139.1 | 131.8 | 198.5 |
| Samoa | 16.3 | 12.5 | 10.2 | 32.5 | 20.1 |
| São Tomé and Príncipe | 8.2 | 8.8 | 8.4 | 5.5 | 12.9 |
| Seychelles | 1.3 | 2.7 | 2.1 | 4.6 | 3.1 |
| Solomon Islands | 6.4 | 19.7 | 12.4 | 27.5 | 43.2 |
| St Kitts and Nevis | 6.9 | 0.7 | 0.4 | 2.7 | 0.2 |
| St Lucia | 14.5 | 9.2 | 12.5 | 23.0 | 9.7 |
| St Vincent and the Grenadines | 1.7 | 6.5 | 16.7 | 4.3 | 2.3 |
| Suriname | 5.5 | 6.8 | 38.8 | 25.4 | 17.3 |
| Swaziland | 4.0 | 26.4 | 11.4 | 9.3 | 35.7 |
| Timor-Leste | 34.2 | 38.8 | 36.4 | 44.2 | 66.3 |
| Tonga | 7.0 | 4.0 | 4.6 | 32.6 | 34.4 |
| Trinidad and Tobago | 0.5 | 2.6 | 0.4 | 1.4 | 0.0 |
| Tuvalu | 4.1 | 1.0 | 4.5 | 1.6 | 4.6 |
| Vanuatu | 5.6 | 6.9 | 47.8 | 36.2 | 14.8 |

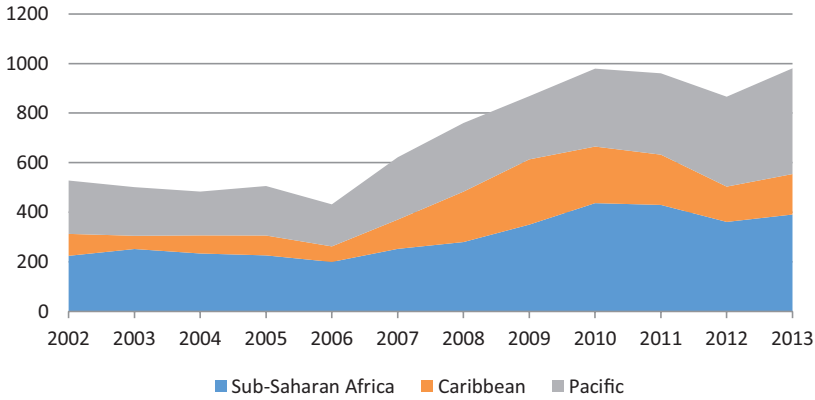
Source: Organisation for Economic Co-operation and Development Creditor Reporting System database

flows for different years. A close look at the table reveals that AfT flows are far from predictable, as there exists over time significant fluctuations.

In our sample of small states, 14 are from SSA and 14 are from the Pacific and 13 are from the Caribbean.⁷ Of the resources available to small states in 2013, Pacific states received about 36 per cent, whereas African states received a share of 33 per cent. The Caribbean small states received only 14 per cent. Over time, the significance of Pacific countries as recipients of AfT has increased (Figure 5.5).

Although there has been no specific aid programme to deal with the problems arising from the inherent features associated with smallness and remoteness, when a comparison is made on the basis of per capita aid received, small states have historically shown higher levels of AfT.⁸ This is mainly attributable to small populations of small states vis-à-vis indivisibilities in investment projects. For example, a trade-related infrastructure project such as a bridge or an airport funded by AfT would cost a similar amount across countries. However, the AfT per capita of that project would be considerably higher in a small than in a large receiving country.

Figure 5.5 AfT flows in small states by region (constant 2013 US\$ millions)



In terms of major AfT donors to small states, the EU has consistently been the largest donor. Australia and Japan are the other major donors, with the former more than doubling its assistance in recent years. Other relatively large donors include France, Portugal, the USA, Germany and the Netherlands.

The distribution of spending of AfT in small states across the main categories of AfT is broadly in line with that for other developing countries. The largest share accrues in economic infrastructures, followed by aid to productive sectors. AfT policy and regulations are relatively small, while – despite its critical relevance to small states – the aid for supporting trade-related adjustments has so far been almost non-existent.

5.4 Effectiveness of AfT small states

5.4.1 Approaches to study AfT effectiveness

There are several ways of studying the effectiveness of AfT. A popular approach has been to study individual AfT projects (e.g. case studies) and to qualitatively, in most cases, infer information about their general effectiveness. A related approach also relies on qualitative methodologies; however, rather than studying specific projects, it aims to capture general trends emerging from donor-, sector- and country-specific projects. Perhaps the most rigorous and challenging approach is to employ well-specified quantitative/empirical methodologies, mostly using econometric techniques, to find out the net overall impact (e.g. quantitative macro assessment). All the approaches have their inherent advantages and disadvantages. Case studies offer very useful insights, providing details of issues specific to individual projects that are most likely to be overlooked in a broad assessment. The generalised qualitative approaches can help obtain a broader perspective beyond individual projects. However, when the objective is to ascertain the overall AfT effectiveness, individual project evaluations cannot indicate very much. As the evidence arising from the evaluation of specific trade-related aid programmes on trade performance is likely to be mixed, a macro study aiming to understand the overall effectiveness is appealing to policy-makers and analysts. This examination is, however, challenging, because of the difficulties associated with isolating the impact of AfT programmes

on the recipient's economy and also owing to data limitations and unavailability of appropriate quantifiable indicators.

The Third Global Review of Aid for Trade, held in 2011, is a prominent example of evaluation of AfT projects based on case studies. Based on a call for such studies from the WTO and the Organisation for Economic Co-operation and Development (OECD), the Global Review received 269 case studies on individual projects. They provided very rich and insightful perspectives, narrating various elements of the implementation and results achieved. Despite the usefulness of such an approach, the review could not provide a broad assessment, for example, of whether or not a country/donor had been generally successful in an AfT initiative. Arguably, this is a more realistic approach, given the heterogeneity of the projects and the qualitative information that it generated on various issues. Nevertheless, the quest for generalising the findings based on an empirical methodology, which is commonplace in the most economics fields, could not be met. Furthermore, the case study approach is subject to a serious selection bias: project managers are likely to be less inclined to report on projects that have not been successful. Therefore, one important question was: if the individual projects were so successful and if the submitted studies were a good sample, why was it not reflected in the overall economic performance of the countries? One obvious reason is that, given the needs of the countries, supply-side capacity interventions remain extremely limited.

Using qualitative approaches, Basnett and Engel (2013) evaluated country and donor experiences and their potential to provide insights into effectiveness. They considered various barriers and examined circumstances that affected outcomes at four phases of the AfT cycle: (1) determining priorities including the identification of binding trade-related constraints on growth; (2) structuring AfT delivery, examining particularly what is known about different delivery instruments; (3) the design and implementation of projects and programmes, focusing on delivery of national and regional AfT programmes; and (4) monitoring and evaluation, including different methodologies used and how this informs ongoing and future programmes at the global, regional, national and project levels.

The authors suggest that, despite the overall positive impact, many individual projects are failing to deliver results. Improving the effectiveness of AfT requires not only the identification of the most binding constraints to trade, but also tackling of the bottlenecks within donor and recipient institutions that impede successful implementation of projects at various stages throughout the project cycles. This, according to Basnett and Engel (2013), requires an understanding of the nature and causes of co-ordination failures and information asymmetries specific to the institutional structure and political economy of recipient countries and regions, as well as donor agencies.

Another qualitative approach is that used by Ancharaz et al. (2013), where the authors use the Paris principles of aid effectiveness to offer insights into the dynamics of AfT on the ground. The methodology uses a combination of quantitative indicators and information gathered from interviewing key stakeholders. The findings suggest that AfT works best when flows are additional and predictable, projects are owned by the

recipients' countries, donor objectives are aligned with host governments and local absorptive capacity exists, among other requirements.

Massa (2013) provides a comprehensive survey of the quantitative studies on AfT that have emerged over recent years. She finds that empirical evidence on the impact of AfT is scarce, but a number of studies have been attempted. The review shows that several econometric techniques with different degrees of sophistication have been used to assess the impact of AfT on trade and other economic performance factors in recipient countries, especially at the macro level. The methodologies include gravity model specifications, difference-in-difference estimations, panel data estimations and various econometric regression techniques, with each technique having its own advantages and disadvantages. The review suggests that AfT impacts vary considerably depending on the type of AfT intervention, the income level and geographical region of the recipient country, and the sector to which AfT flows are directed. Major issues identified in Massa (2013) include the fact that (1) the evidence on the impact of specific AfT interventions is still limited; (2) differences in AfT effectiveness by productive sector have been considered only to a limited extent; (3) the evidence on the actual effects of AfT at the micro level is scarce; and (4) databases on AfT need to be improved.

Finally, Cadot et al. (2014) conducted a survey of studies to highlight that a multiplicity of approaches is needed to learn what works and what does not. The authors found some evidence for an emphasis on reducing trade costs through investments in hard infrastructure (ports and roads) and soft infrastructure (such as customs). Support to exporters is found to lead to diversification across products and destinations, but the review could not confirm that the benefits were durable.

5.4.2 Empirical evidence relevant to small states

Most of the empirical studies available in the literature aim to ascertain if support measures can help reduce trade costs. They focus mainly on the whole group of developing countries. The unique challenges of small states are rarely considered. Our literature search seems to suggest that there exists only one study, Cali et al. (2011), that has examined small states' situation in particular using robust econometric techniques.

By using a large cross-country dataset of developing countries over a considerable period of time, this Commonwealth Secretariat-supported study (Cali et al. 2011) has made an attempt to offer more systematic evidence on the overall effectiveness of AfT in small states. As mentioned earlier, although the specific term 'Aid for Trade' is relatively new in multilateral trade-policy discourse, the concept is not. The OECD has long been reporting data on such flows to individual developing countries that are comparable to the six categories of trade-related assistance identified by the WTO (namely trade policy and regulations; trade development; trade-related infrastructure; building productive capacity, including private-sector development; trade-related adjustment, including support for adjustment associated with changes to international trade regimes; and other trade-related needs). This allowed Cali et al. to study the overall impact of AfT, and the various AfT types, using a panel dataset.

The underlying empirical work was carried out by constructing a theoretically consistent analytical framework to understand the routes through which AfT contributed to trade performance. This framework was then utilised in building empirical specifications, linking trade-related indicators to AfT and its various components while controlling for a host of other factors that can also affect countries' performance. Three types of impact were analysed: (1) the impact of AfT facilitation on the cost of trading (as measured by the time and costs of importing and exporting); (2) the impact of aid to economic infrastructure and of aid to productive capacity on total exports; and (3) the impact of aid to economic infrastructure and of aid to productive capacity on sectoral exports. Although the AfT data by recipient countries came from the OECD Creditor Reporting System (CRS) database on aid disbursements, the information on the cost and time of trading, aggregate and sector-specific exports, and other investment climate-related variables were compiled from different World Bank sources.

The key results emerging from the above mentioned empirical research suggest that a particular category of AfT, namely *aid for trade facilitation*, is likely to have had a significant cost-reducing effect on handling export and import trade in developing countries. The doubling of this type of aid is associated with a decrease in the cost of importing of 5 per cent. Small states are found to register particularly high returns on AfT facilitation, which is consistent with these countries' having, on average, higher unit transaction costs on exports (as these are spread over smaller volumes of exports).

The results further suggest that *aid to economic infrastructure* increases overall exports for developing countries, and more so for small states, whereas *aid to productive capacity* has no significant effect on exports. The weak effect of *aid to productive capacity* may be partly explained by a poor identification strategy, as this type of aid is mostly sectoral and thus should be measured against sectoral exports. When sectoral aid is used to explain the variation in sector-specific exports, a positive impact of AfT is found on tourism and mineral exports. This is an important result, considering the relevance of tourism in the export basket of small states. However, other sectors such as food and manufacturing exports, for which empirical analyses could be undertaken, do not appear to benefit from increased AfT flows.

One priority issue for small states is to achieve export diversification and structural transformation of their economies. Overwhelming dependence on primary commodities made the export sector critically reliant on tariff preferences that have been subject to erosion as preference-donor countries have undertaken either unilateral or regional trade liberalisation measures. Increased trading capacity for these countries will naturally lead to the need to generate supply response from non-traditional sectors. It is in this sense that export capacity-building should be linked to AfT support. There is no credible empirical work on small states that links structural transformation and AfT flows. However, one recent study (Cirera and Winters 2015) has addressed the same issue in the context of SSA. Given that export structures of SSA and small states are comparable (Razzaque 2011), some important insights may be obtained from this study.

The study by Cirera and Winters (2015) used econometric techniques to find out if AfT programmes have assisted the process of structural transformation in African

countries. They first assessed the impact on trade flows and trade costs, which are the main channels of transmission from AfT flows to structural change, and then examined the direct impact on structural change. Using a rich dataset on trade and aid flows for SSA countries from 1995 to 2010, the study showed that AfT flows appear not to have had any statistically significant impact, and the only positive impact that can be identified is a reduction in the time of exporting and importing. Overall, the results suggest that factors other than AfT flows explain different experiences in relation to structural change in SSA.

5.5 Strategic approaches to AfT to make it effective

One important issue to consider for building trade capacity is that AfT strategy needs to be in line with countries' broad development objectives. Despite the general recognition of the significance of achieving structural transformation, adopted policy options may be lacking in triggering the required changes. Generating supply response from non-traditional sectors can require going beyond across-the-board improvements in policy and enabling environments. Selective support mechanisms may be required without introducing any substantial policy reversals. The oversimplification of action programmes should be avoided to highlight the importance of specific tasks. One encouraging development has been that development partners and donor communities are increasingly supporting these specific interventions to promote export supplies.

Another factor is that the realities of small states can be quite different. Therefore, action programmes that are successful elsewhere may not be effective for many small states. At the outset, it is worth noting that, in the global AfT architecture, the peculiarities of small states are not well recognised; as a result, donor support programmes tend to be quite generalised. However, various regional and national initiatives seem to suggest that, within these standardised interventions, there now exists flexibilities for innovation.

The Global Reviews of Aid for Trade have helped secure development partners' greater response and engagement with the elated stakeholders to make trade components of their programmes more prominent. The policy discourse on AfT is vibrant and dynamic. Policy-makers, trade negotiators and other stakeholders regularly pay attention to the design of AfT projects, the trends in AfT flows and various AfT components, results and outcomes, and topical issues as programmes are implemented, as well as other aspects, and they often share experiences and best practice. There has been noticeable sharing of information and discussion of all relevant issues.

Against this background, small states can now be effectively strategic in demanding and utilising AfT resources that would help them to build trade capacity aligned to their developmental objectives. There is a huge and rapidly growing literature base, in which trade projects are being implemented and lessons derived thereof. Many factors highlighted in the literature are likely to be relevant for a large majority of recipient countries. As part of this chapter, a few strategic issues for small states are highlighted below.

5.5.1 Adequacy and predictability of AfT support

Although AfT resources have increased, it is important to recognise that their availability is still extremely low in comparison with the need of small states. Comparison of per capita aid disbursed will be misleading because of the small population sizes of small states. Infrastructure and public sector projects suffer from lack of economies of scale in countries with small populations.

Another factor associated with AfT flows is their predictability. Despite the expansion of trade support measures, their volatility is an important concern. This volatility can result in a loss of momentum in trade capacity-building projects, hamper implementation of associated economic policies and reform measures, and discourage private sector investment. However, it is worth mentioning that volatility has been a general problem affecting not only small states but also other countries, particularly in Africa (UNECA 2014).

Again, in spite of generally increasing trends, the resources disbursed fall short of commitments on a regular basis. The reasons for this phenomenon need to be better understood. This phenomenon could be an indication of a problem of absorptive capacities of recipient countries. However, as pointed out in UNECA (2014), such a tendency adds to unpredictability concerns and should be linked to the ‘mutual accountability’ pillar of the Paris Declaration of Aid Effectiveness. The regular gap between commitments and disbursements suggests that lessons are not being learnt in designing and implementing projects.

The lack of adequacy, unpredictability and volatility of flows should be put into perspective. If these problems persist, recipient countries should consider reviewing project implementation. Under these circumstances, rather than spreading resources over many different projects, the option of fewer successful projects should be looked into. Without sustained and deepened support, building trade capacities will be extremely challenging.

5.5.2 Trade costs and global value chains

Two issues that have added much dynamism to AfT policy discourse are trade costs and participation in global value chains (GVCs). The Fourth Global Review of Aid for Trade in 2013 was on the theme of ‘connecting to global value chains’, while the theme of the Fifth Review in 2015 was ‘reducing trade costs for inclusive, sustainable growth’. Many AfT projects are focused on helping countries reduce trade costs, thereby enhancing recipient countries’ external competitiveness. The support provided, particularly to trade facilitation measures, has generally been found to have a positive impact, cutting time-to-trade and costs of handling goods at borders. However, as GVC-led trade has become more prominent, there has been increased emphasis on improved trade facilitation measures, among others, as a means for being more competitive and plugging in to international production networks. Although there are many factors that determine countries’ participation in GVCs, tackling excessive trade costs has been singled out as requiring the most policy attention.

Tackling trade costs of small states effectively requires a recognition of the need for actions that would go far beyond improved trade facilitation measures. There are inherent structural characteristics related to the trade costs of small states that can result in the systemic exclusion in GVCs, given the adverse effects of economic geography on external competitiveness. As well as suffering from the small size of their domestic markets, the situation of many small states is further exacerbated by their unfavourable geographical location, as reflected in the very long distances between them and the global centres of commercial activities. This inflicts serious disadvantages in terms of excessive trade costs.

In a Commonwealth Secretariat study, Razaque and Keane (2015) analysed data from a pioneering World Bank–UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific) project (Arvis et al. 2013) that provide trade costs between bilateral trading partners of up to 178 partners. Measured in *ad valorem* equivalent terms, the analysis finds that the average trade cost for the group of small states is at least 50 percentage points higher than that of the overall developing country group. When compared with the developed-country average, such cost disadvantages are three times higher. While developed countries have experienced significant falls in trade costs and developing countries show a generally declining trend, this is not true for the group of small states.

While the geographical distance between the bilateral partners exerts the largest impact on trade costs, other factors such as liner shipping connectivity has also been shown to have important bearings (Arvis et al. 2013). Indeed, the liner shipping connectivity index (with a high index value showing better connectivity) and trade costs are strongly and inversely correlated. Inherent structural characteristics of small states severely inhibit their prospects of improved shipping connectivity. Being far away from end markets will also result in longer export times to destinations from many small states, particularly those in the Pacific.

These excessive costs have serious implications for trade in general and for participation in GVCs in particular. A 10-percentage point increase in transport costs has been found to reduce trade volumes by about 20 per cent (Limao and Venables 2001). In addition, for a small price-taking country, *ad valorem* transport costs of 20 per cent on both final output and intermediate goods have been found to reduce the domestic value added (and thus GDP), including wages and profits, by 60 per cent when intermediate goods account for 50 per cent of costs. The implication of this is that, because of geographical location alone, foreign firms might be reluctant to move or relocate their production to these countries, even when wages are low (Redding and Venables 2004).

Although this issue of structural characteristics affecting participation in trade and GVCs is illustrated with the case of small states, many low-income developing countries, particularly in SSA, also suffer from similar disadvantages. The typical policy prescriptions of liberalised environment and good domestic policies automatically attracting foreign direct investment (FDI)- and value chain-led trade are likely to be less relevant to these circumstances.

Given the above, the typical policy prescription of trade openness and good domestic policies automatically attracting FDI- and value chain-led trade is likely

to be ineffective. It has been argued that distance matters more in supply chains and, even with today's information and communication technology revolution, global production networks are likely to remain concentrated in low-wage nations that are near, or even contiguous with, high-technology nations (Baldwin 2011).

This cost disadvantage of small states must be considered within the context of available value-added shares being low at the entry-level stages of the global production network. Based on the review of literature by Razzaque and Keane (2015), it is argued that GVCs are characterised by highly asymmetric distribution of value added, in which high value-added activities are retained by lead firms, whereas low value-added activities are disbursed to developing countries.⁹ Excessive trading costs vis-à-vis low value-added share in GVCs results in participation in GVCs being a daunting prospect for many small states.

The above has important policy implications for small states' AfT strategy. Of course, improved trade facilitation measures are important for these countries to improve their competitiveness. However, it will be extremely difficult to tackle the inherent structural factors (e.g. distance from major markets and weak shipping connectivity) with the help of AfT. Therefore, relying on trade facilitation alone to generate automatic supply response to enable countries to participate in GVCs needs to be assessed holistically. Where exports currently exist, improvement in trade logistics will help expand sales. Otherwise, generating supply response will require more sector-specific interventions.

The structural factors acting as constraints to trade generally means there is natural protection accorded to certain domestic activities, the growth of which is limited because of market size. However, the development of certain sectors can have special characteristics resulting in export success (e.g. brand products, exports with strong geographical indication). Services sectors may have a good potential for development, as many countries are already dependent on sectors such as tourism. Trade policy options and support measures available should be combined to develop these sectors, rather than considering investment in trade facilitation alone.

5.5.3 Building export capacity through targeted projects

As is suggested from the above, for small states, building productive capacity, particularly in sectors with export potential, should be considered a priority and this is an area where a strategic approach to AfT can be most useful. Supporting specific sectors is often considered not an ideal approach, but within a relatively open trade regime such a policy option is worth considering, especially when there are inherent structural disadvantages and supply responses are generally weak. A major criticism of AfT programmes has been that donors and relevant implementing agencies rely heavily on the broad architecture of trade support programmes and do not give sufficient consideration to enterprise development (Cirera 2009).

It is rather encouraging to find that some of the sectoral initiatives in small states are currently already under way. The Caribbean Rum Sector Programme is one example. The purpose of this scheme was to assist the sector with enhancing competitiveness

and move towards higher value products. According to OECD (2014), the interventions were extremely successful, as they resulted in the introduction of new brands in the EU market. A 20 per cent rise in female employment in the sector has also been reported. The programme was implemented with direct involvement of the private sector in each of the Caribbean Community and Common Market (CARICOM) countries. Another similar example is the Caribbean Trade and Private Sector Development Programme (CTPSD), under which about 200 companies and business support organisations were awarded grants.

One significant finding that came out of the empirical study by Cali and Razzaque (2013), also referred to earlier, is the lack of relationship between AfT provided to production sectors and sector-specific export response. It is essential to obtain further insights into the nature of support provided to the production sectors. Because of the structural factors described above, export success from all sectors will be difficult. Therefore, the selection of enterprises for support will be a delicate task.

One related issue is the adequacy of support. As mentioned above, AfT resources remain very small for small states. Capacity development at the enterprise level requires sustained efforts in terms of both resource and policy efforts. One component of AfT, known as the support for trade-related adjustments, has not been utilised much. There can be various adjustment requirements, ranging from tackling export shortfalls to capacity development for dealing with new trade measures and provisions. Nevertheless, adjustment support remains negligible. It has been argued that one of the main reasons for low utilisation of such assistance could be the problem of defining 'adjustment' (Silva 2013). Another potential reason could be the AfT reporting system's bias away from emphasising trade-related adjustment needs. The top recipients of AfT are mostly large, non-LDC and non-small state developing countries; for many of the top recipients, AfT priorities are dominated by non-trade-related adjustment categories, such as the need to improve infrastructure or to address gaps in trade facilitation. However, another reason that has been suggested is donors' reluctance to fund programmes with an explicit focus on adjustment. Whatever the reason for this may be, any potential adjustment support can also be utilised to develop specific sectors.

5.5.4 Regional integration

The small size of markets provides a strong rationale for regional integration. The traditional regional trading arrangement models that relied on exchange of tariff preferences to promote intra-regional trade are being replaced with schemes that consider deeper integration with the objectives of expanding markets, leveraging investible resources and harnessing region-wide trade and growth opportunities. Therefore, there has been a lot of emphasis on AfT targeted at regional initiatives helping to promote regional linkages between firms and producers, with the objective of facilitating development of the regional production network.

Small states under consideration here have broadly seen two types of regional integration initiatives. One is the Economic Partnership Agreements (EPAs)-led North-South integration, whereas the other is South-South integration involving

countries within their geographical neighbourhood. EPAs are largely preference based, in which the earlier non-reciprocal system that are favourable to African, Caribbean and Pacific group of states (ACP) countries have been/are being transformed into reciprocity-based arrangements. On the other hand, South–South integration within ACP regions is far more elaborate and aims to develop a regional trade network through the so-called ‘corridor approach’, as well as co-ordinated investments border customs related to hard and soft infrastructure.

Promoting regional integration has become prominent within AfT programmes, with significant investment being made in developing various corridors in Africa with the objective of facilitating uninterrupted and smooth flow of goods. Although some African small states are expected to benefit from these initiatives, improving regional connectivity in the Pacific and Caribbean remains a challenge. This also makes establishing a regional production network a difficult task. Although, for African small states, corridor approaches can help to reduce transport times and costs, thus addressing a major constraint to regional and international trade, it has been argued that recent examples have yet to prove their broader impact at the local or regional level (Byiers and Lui 2013).

5.5.5 Role of emerging economies

The emergence of developing countries as a major driving force of global trade flows has important implications for small states. Trade with fast-growing developing countries offers opportunities for specialisation, efficiency gains, export market diversification and investment flows. In response to the rise of the BRICS nations, there has been a recent resurgence in interest on South–South trade and co-operation as a vehicle for promoting trade-led development in the weaker Southern economies. Large developing countries are now also providing improved market access to others. Some of them, particularly China, have also become important providers of aid resources.

However, the nature of small states’ participation in South–South trade is a cause for a number of concerns. Small states’ exports to the South are predominantly primary commodities (Razzaque and Gosset 2015). This tendency towards international specialisation in trade greatly limits the participation of many.

One particular issue is that aid flows from emerging economies are not well documented and, currently, it is not clear how they link to AfT projects supported by other donors. Small states can consider undertaking co-ordinated mechanisms so that available aid resources from all sources are utilised in a coherent manner. In developing export sectors, as pointed out above, resources from emerging economies can be particularly useful. In addition, in certain cases, FDI can be attracted from emerging economies to develop export sectors to take advantage of trade preferences that are available elsewhere.

5.6 Conclusion

Small states face some unique challenges that have important consequences for their participation in global trade. Given this, the importance of AfT cannot

be overemphasised in building export capacities. These countries have become marginalised in global trade and the economic landscape, and, given their critical dependence on international trade, only robust export performance would help boost growth performance.

Although AfT flows have been on the rise, there exists significant scope for addressing the needs of small states much more effectively. Given challenges such as remoteness and isolation, excessive transportation costs and the need for hard and soft infrastructure development, the current level of support provided is greatly inadequate. In particular, assistance provided under one component of AfT, known as the support for trade-related adjustment costs, has been negligible. The empirical evidence that is available for small states seems to suggest that, although the support for trade facilitation has generally resulted in favourable outcomes, AfT provided to enhance productive capacity has not had any discernible positive impact on export performance.

As AfT continues to attract a lot of attention among all major donors, small states can be strategic in demanding and utilising AfT resources that would help them to build trade capacities to support their developmental objectives. First and foremost, the level of AfT flows to small states is greatly inadequate and volatile, with yearly disbursements falling short of commitments. Small states need to be proactive in working with donors to address these issues.

Owing to inherent characteristics, trade costs for small states are excessive, which makes participation in GVCs very difficult. Although trade facilitation measures can generally help improve competitiveness, cost disadvantages are so huge that generating export responses from non-traditional sectors will require a significant effort. One strategic approach will be to consider sector-specific export-promotion initiatives. There are already some such donor-supported projects; however, scaled-up and sustained efforts from both a policy and a resource perspective will be required. Regional integration initiatives for small states need to be better understood, as the popular approaches to promote cross-border regional co-operation may not be equally appropriate for island states. Finally, trade supporting resources from emerging economies should be mobilised and co-ordinated in line with the national priorities.

Small states can also benefit further from engaging more effectively with the ongoing relevant policy discourse. The current AfT architecture has a general focus on trade-related impediments and does not consider their special challenges, resulting in very generalised support measures. Small states should play a proactive part so that their special circumstances are well articulated and attract wider attention. This can also make the AfT regime more innovative and effective.

Notes

- 1 The author is Adviser & Head of International Trade Policy, Commonwealth Secretariat, London, UK. The views expressed in this chapter are those of the author and do not necessarily represent those of the Commonwealth Secretariat.
- 2 According to this definition, independent states with populations of fewer than 1.5 million people are considered small states. There are, however, a few exceptions, where countries have slightly larger populations but are thought to have similar characteristics as small states.

- 3 See, among others, Qureshi and te Velde (2008) for a more complete analysis of the challenges faced by small states.
- 4 There are few studies that have investigated the relationship between a country and the costs of doing business. Various competitiveness and trade logistics indicators do reveal that many small states have weaker performances. Using cross-country primary data from about 100 countries, Winters and Martins (2005), in a Commonwealth Secretariat study, provided robust evidence that business costs, particularly those associated with transportation and labour, are significantly higher in small states.
- 5 This is based on the widely used United Nations Conference on Trade and Development (UNCTAD) export diversification index.
- 6 The phenomenon of disbursements being smaller than commitments is not found only in relation to small states. Globally, the shortfalls between disbursements and commitments have been quite significant.
- 7 There are also five small states from Asia and three from Europe.
- 8 For example, it is estimated that the per capita AfT flows in SVEs in 2009 were about five times higher than the developing-country average.
- 9 Based on their review of the literature, Razzaque and Keane (2015) reported that coffee and cocoa producers received just 10–15 per cent of the final retail price. In the case of apparels, the corresponding figure is higher, at 30 per cent, but this margin included two-way shipping costs (imports of raw materials and exports of final products).

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Chapter 6

Small States' Services Trade: Enhancing Participation in the Multilateral Trading System and Beyond

Chapter 6

Small States' Services Trade: Enhancing Participation in the Multilateral Trading System and Beyond

Estella Aryada

6.1 Introduction

Services are part and parcel of today's social and economic fabric, proving to be critical for small states' development and helping them overcome their inherent disadvantages of smallness and remoteness. Services such as health and education are vital to improving livelihoods; environmental services help to alleviate the impact of economic activities on the environment; and transport, telecommunications, financial and business services facilitate trade and reduce transaction costs, which are often exorbitant in the case of small states. Services such as tourism transform local communities and contribute to the preservation of culture and heritage, whereas developments in information and communication technology (ICT) transform business models, catalysing innovation and creating avenues for the diffusion of information and knowledge. Chapter 1 of this book highlighted the main trends in the services sector for Commonwealth small states. This chapter, although looking at a broader group of small states,¹ goes deeper into the analysis of services, outlining the key services sectors for small states, some areas of concern and developments at the multilateral level.

Services are defined by three inter-related characteristics.² First, services are intangible; while the multilateral trading system (MTS) through the World Trade Organization (WTO) has established rules that govern trade in services, in practice, most services are actually embodied in the conceptualisation, production, marketing, distribution and consumption of goods. Because of their intangible nature, services need to be packaged in a way that embodies the service rendered, such as an insurance policy document or architectural drawings. This need for packaging has implications for cross-border export. In the past, documents and discs had to be shipped to distributors and consumers using postal services, which was costly in both time and money, rendering distant suppliers uncompetitive. However, this competitive disadvantage has almost been obviated by developments in ICT, enabling distant suppliers, including small states, to compete in growing markets such as call centres and higher education, among others. Second, services such as entertainment and personal care derive their uniqueness and value from the person providing them. This personal aspect gives rise to heterogeneity, as a spa experience, for example, has the potential to deliver a variable experience, depending primarily on the therapist and the preference

Table 6.1 Economic indicators by country group

| | Period | World | Low and middle income | Small states |
|--|-----------|-------|-----------------------|--------------|
| Average annual GDP growth | 2000–2010 | 2.8 | 6.4 | 3.9 |
| Services trade (% of GDP) | 2009 | 11.5 | 9 | 28.0 |
| Workers' remittances and compensation of employees received (% of GDP) | 2009 | 0.7 | 1.9 | 4.1 |
| Inbound tourism expenditure (% of exports) | 2009 | 6.4 | 6.3 | 33.1 |
| Services (% of total exports) | 2009 | 21.2 | 14.8 | 28.8 |

Notes: GDP, gross domestic product

Source: World Bank (2011)

of the consumer. Services are said to be perishable, in that a tourism experience, for example, is enjoyed in the moment and cannot be stored for future consumption. Of course, services are dynamic and therefore these characteristics do not apply across the board: legal and construction services have less potential for variability than personal, cultural and recreational services; the ability to codify and standardise is essential for the successful outsourcing of many business services. Nevertheless, these qualities create opportunities for service providers, industry groups and even countries to establish market presence. In particular, this inelasticity of substitution provides avenues for differentiation between small states that have similar characteristics and sources of comparative advantage. Thus, although the features of carnivals in Antigua and Barbuda and Belize are similar, the experience in each country is different, and appeals to different market segments.

The true value of services is notoriously difficult to estimate. World Bank figures indicate that the global share of services to gross domestic product (GDP) has grown from 55 per cent in 1980 to 70 per cent in 2013 (World Bank 2014a). Measuring services by value added indicates that around 45 per cent of the value of exports in the world economy comes from services (World Bank 2014a). Growth in services is often enabled and accompanied by investment in intangible assets, such as digitised information and intellectual property. The value of service intangibles (including data, branding and intellectual property) has even been known to outstrip investment in tangibles in the manufacturing sector (Low 2013).

The value of the service sector to small states in terms of its share in growth, employment, competitiveness, export and investment, among others, is significant and growing. In 2009, the world average of services trade as a share of GDP was 11.5 per cent, while the corresponding figure for small states was 28 per cent, rising to 30 per cent in 2013. Similarly, the share of services in total exports is higher in small states (28.8 per cent in 2009 compared with the world average of 21.2 per cent) (World Bank 2011). Table 6.1 shows selected indicators and highlights the relatively high importance of services trade for small states' economies.

6.2 Trends and key sectors in small states' services trade

Total world exports of services more than quadrupled between 1980 and 2002, from approximately US\$400 billion to US\$1.6 trillion.³ Commonwealth small states saw a similar trend, with earnings from commercial services increasing from approximately US\$4 billion to over US\$16 billion in 2002.⁴ Growth in services continued through the 2000s but was interrupted by the recession of 2009, when international trade in services fell by 12 per cent (UNCTAD 2011). WTO reports indicate that the impact of the recession was variable: transport, financial services and construction saw the sharpest decline, whereas computer and information services and royalties and licence fees were more resilient. Financial services in small states are largely driven by demand in the economies that were hard hit by the recession; therefore, the contraction in the USA and Europe had a concomitant effect in small states. The Caribbean region in particular saw the collapse of a regional insurance conglomerate with holdings in sectors including banking, real estate and media, among others. As regards tourism, world tourist arrivals decreased by 4 per cent, with the decline most pronounced in Europe (-13 per cent) and North America (-11 per cent). This decline in demand had an immediate and severe impact on small states: the travel exports of Mauritius and Seychelles fell by 23 per cent, with a similar pattern evident in Cape Verde (18 per cent), Maldives (10 per cent) and The Bahamas (10 per cent) (WTO 2010). However, the impact of the recession was less severe for the small states in the Pacific region. A study of Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu concluded that this was largely a result of the comparatively limited exposure of their financial systems and the relative stability in their main trading partners: Australia and New Zealand (Kida 2009). Similarly, small states in Africa suffered the indirect consequences of the slowdown, but the impact was not as severe as in the Caribbean.

The wide diversity of small states precludes meaningful generalisations, and growth in service trade has been concentrated in four economies.⁵ A broad review of the main regions that are home to small states (Africa, Asia Pacific and the Caribbean) highlights a few differences. A comparative analysis of the economies of small states and larger countries in Africa suggests that key features of small states – such as their relative size disadvantage – are less significant in Africa, as the low purchasing power parity makes nearly all markets relatively small (Dömeland and Sander 2007). Furthermore, small states have a higher export diversification index than larger countries in Africa owing in part to their success in exporting services, notably tourism and financial services. African small states have better connectivity (roads and telecommunications) and the contribution of the services sector to GDP was higher than the average for Sub-Saharan Africa, particularly in Botswana, Cape Verde, Mauritius, Seychelles and São Tomé and Príncipe.

The Asia Pacific region represents some of the most remote and widely dispersed islands, resulting in significantly higher trading costs and undermining export competitiveness. Between 2005 and 2011, tourism accounted for close to 90 per cent of GDP in Maldives and 50 per cent in Palau, while remittances comprised about 30 per cent of GDP in Samoa and Tonga in the same period (Tumbarello et al. 2013). In

the Pacific Island countries, tourist arrivals have been growing at an estimated 6 per cent per year since 2000, notably in Fiji, Samoa and Vanuatu (Chen et al. 2014).

The services sector has been the main driver of growth in the Caribbean over the past three decades. Services grew at an annual average rate of 5 per cent between 1978 and 2004, expanding the share in GDP from 61 to 68 per cent (Kida 2006). This was largely due to the rapid expansion of tourism: tourist arrivals doubled between 1980 and 1989, from 6.9 million to 12.4 million a year. To compete with neighbouring countries to attract more tourists and foreign investment, countries in the region invested heavily in infrastructure such as airports, ports, cruise facilities, hotels and tourist attractions (national parks, boardwalks, urban shopping centres, etc.). The resulting construction boom was a big factor in the growth of the industry sector in much of the region (Kida 2006). Currently, the services sector accounts for more than 60 per cent of employment in the small states in the Caribbean region, with the exception of St Kitts and Nevis. The true value of employment in services may be even greater than its impact on output, as tourism tends to be more labour intensive than industry or agriculture (World Bank 2014b).

With support from partners (including the Commonwealth Secretariat, the Caribbean Aid for Trade and Regional Integration Fund (CARTFUND), the European Commission and the Inter-American Development Bank), almost all small states in the Caribbean region have undertaken assessments to identify non-tourism services that can be harnessed for competitiveness and export growth. Emerging sectors include health and wellness, higher education, information technology (IT)-enabled services and selected professional services. The main drivers of competitiveness include proximity to large markets, ease of access relative to competitors, availability of skill and good infrastructure. In some sub-sectors, the recommended market strategy is to target the region and diaspora in selected countries, building capacity, exposure and linkages to build competitiveness in the longer term. Nonetheless, tourism and financial services continue to be important.

Despite regional variations, the importance of tourism, health services and IT-enabled services for small economies cannot be ignored. In seeking ways to enhance their competitiveness and improve their services exports in these three key service areas, small states are driven by the need to:

- add value to traditional tourism to overcome volatility;
- secure higher incomes and more employment opportunities for skilled professionals who are underemployed or unemployed at home;
- inject a new dynamism to counter economic stagnation or moving into higher value services;
- adapt to the changing global trade environment, in particular the expiry of preferential trade regimes and new and deeper regional trade agreements.

6.2.1 Tourism

Tourism is by far the most important sector for the vast majority of small states. Small island developing states in particular have been popular holiday destinations for many

decades and have adapted to changing market needs, including the traditional (sun, sea and sand) holiday during the 1960s; special interest packages (sports, adventure, culture) in the 1980s; and luxurious, tailor-made holidays (spa tourism, 'wellness', honeymoons and weddings) and cruises, as well as eco-tourism, in recent years (Bishop 2010). Tourism also confers other non-economic benefits on small states, including a renewed interest in local arts and crafts; improvements in educational, leisure, communication, medical and other facilities in the host countries; a general awareness of the man-made and natural aesthetic assets; and a broadening in the outlook of the local population (Briguglio and Briguglio).

The World Economic Forum ranks countries' competitiveness in tourism and travel based on 14 variables⁶ under the broad categories of regulatory framework, business environment and infrastructure, and human, cultural and natural resources. Of the 140 countries ranked in 2014, only 15 were small states. The best performing of these are Barbados and Cyprus. Although data problems preclude the inclusion of many small states, the index suggests that small states rank high on *prioritisation of travel and tourism* and *ground transport infrastructure*.

According to the World Travel & Tourism Council, the contribution of travel and tourism to GDP in the Caribbean (which is dominated by small states) was higher than the global average of 3.3 per cent of GDP in 2013 (World Travel & Tourism Council 2014). The direct contribution of travel and tourism to GDP in the Caribbean region in 2013 was US\$15.3 billion (4.4 per cent of GDP) and is forecast to grow by 3.5 per cent per annum to US\$22.3 billion (4.5 per cent of GDP) by 2024. This trend primarily reflects the economic activity generated by industries such as hotels, restaurants and other leisure services, travel agents, airlines and other passenger transportation services (excluding commuter transport). The total contribution of travel and tourism to employment (including wider effects from investment, the supply chain and induced income impacts) was over 1.9 million jobs in 2013 (11.3 per cent of total employment). This is expected to have reached 2.3 million in 2014. Investment in tourism and travel made up 11.3 per cent of all capital investment in the region in 2013. This is the highest across 12 sub-regions.⁷

Tourism has a wide range of backwards and forwards linkages and can therefore potentially contribute to poverty alleviation through agricultural transformation, and rural community, culture and social development. Tourism is a labour-intensive sector with high female participation; it provides a wide range of opportunities for work, both unskilled and skilled working full or part time; it creates opportunities for micro-enterprises and small enterprises, as start-up costs are often low; and it can also provide opportunities for minority communities. It has, for instance, been argued that tourism was a main factor behind the graduation of Botswana, Cape Verde and Maldives from the status of least-developed country (LDC) (DEVCO and UNWTO 2013).

Studies looking at the dynamic effects of tourism on growth suggest that, in some cases, tourism contributes more to growth than other sectors; for instance, increased air travel for tourism can reduce the cost of air freight to the destination, providing new transport routes for exporters of fresh products (Subramanian and Matthijs, as cited in Qureshi and D te Velde 2008). Tourism is an important catalyst for growth

in other services including construction, personal care and transport, among others. Furthermore, tourism can potentially increase local demand and provides an outlet for produce that may not meet export standards.

However, small states need to be careful about the way in which they govern their tourism sectors to ensure that they are reaping the benefits and avoiding the potential risks. First, hotels and resorts require large capital investment to build and operate. The resources, linkages and expertise are, on the whole, not available in small states; therefore, a large part of the industry is in foreign ownership. This in itself is not problematic; however, the hotel and resort industry is highly concentrated and is becoming increasingly vertically integrated. In 2012, analysis by Ernst and Young suggested that the top six hotel groups represent approximately 46 per cent of the hotel supply globally (Clifton 2013). As larger hotel groups seek to standardise services as part of their business strategies and to preserve brand identity, many are sourcing goods and services in bulk. Because of their characteristics, small countries are effectively locked out of such supply chains. Small states have responded to this consolidation by putting in place measures to protect certain services. The impact of foreign investment and resort enclaves has further limited the opportunity for (1) traditional economic activity to expand; (2) innovative and entrepreneurial activities to develop sustainably; and (3) local people to compete beyond the 'niche market'. The export-oriented model of resort tourism could result in developments that are not in the long-term interest of small states (Briguglio and Briguglio).

Second, although tourism employs a large proportion of the workforce, the nature of employment (type of job, role and salary) is not necessarily equitable (Commonwealth Secretariat 2013). Typically, expatriate workers make up a high proportion of those employed in key positions, leaving many local employees in unskilled, low-paid jobs with little chance of career advancement.

Third, the potential linkages with agriculture have been difficult to realise in practice: '... there is little evidence to suggest that the international tourism industry has been successful in developing backward linkages to local agriculture sufficient to stimulate growth in the agrarian sector' (Momsen 1998). This is of particular importance to small states, where micro-enterprises and small and medium-sized enterprises may be unable to guarantee the volumes, quality and uniformity required by hotel operators. However, data limitations also come into play.

Fourth, tourism as an industry depends on the whims and fancies of foreign travellers, whose decision to visit a particular destination is influenced to a very large extent by conditions outside the control of the country (including, for example, economic conditions and reports in the popular press in the tourist's country). Other economic dangers often associated with tourism in any country (but which are especially important in small states because of their dependence on tourism) include seasonal unemployment and a rapid increase in the price of land, often accompanied by speculation (Briguglio and Briguglio).

Finally, tourism appears to have a high potential for 'leakage', arising from:

- import of materials and equipment for construction and consumables, such as food and drinks;

- repatriation of income and profits earned by foreigners and foreign businesses;
- interest payable on foreign loans;
- overseas promotional expenditure (Turner 2010; Cole and Morgan 2010).

6.2.2 Health

Health and wellness services include four distinct but inter-related types of services:

1. **Medical:** general treatment and surgery for improved health or cosmetic purposes.
2. **Wellness:** therapeutic packages that may not necessarily be curative, but are designed to improve well-being through the management of stress, weight or ageing.
3. **Care:** management of adverse health conditions; includes recuperation, palliative and elderly care.
4. **Research and diagnostic services:** development and trials for medical and cosmetic preparations.

Exports through Mode 1 (cross-border) are realised when health-care professionals use the internet and postal services to care for patients abroad for consultation, follow-up and treatment. With access to the requisite technology, 'telemedicine' can include the provision of real-time medical services. Mode 2 (consumption abroad) is by far the most common, with patients travelling from their home countries to seek health and medical services abroad. Commercial presence (Mode 3) can take various forms, ranging from the establishment of medical facilities in a foreign location to joint venture arrangements, licensing and management contracts. Exporting through Mode 4 occurs when health-care workers move abroad to provide their services on a temporary basis.

The main reasons for seeking health and wellness services abroad include comparable or better quality care at a lower cost; shorter waiting periods; ease of access to procedures or treatment that may be subject to controls at home; and availability of advanced technology for treatment and surgery.

Small states are exporting medical and wellness services primarily through Modes 2 and 4. Several small states, including Mauritius, Jamaica, Trinidad and Tobago and Cayman Islands have been successful in attracting investment in medical tourism, providing jobs and creating business opportunities in other sectors of the economy. Although strong development indicators such as the availability of infrastructure and a stable macro-economic and political environment are important, a number of additional factors come into play, including the factors outlined below.

Proximity and ease of travel from populous destinations: Patients travelling to consume health and wellness services aim to minimise the discomfort and time associated with travel. The Caribbean is within easy reach of clients based in the USA and Canada: flying time to Jamaica from Miami and Toronto takes less than two and four hours, respectively. Islands such as Barbados, Dominica and Jamaica share the

same time zone as the east coast of the USA and Canada, minimising the effects of jet lag. Having a common language, being well attuned to the business culture, tastes and preferences of the American consumer, and familiarity with the American health insurance system also works in favour of the Caribbean.

Reputation as a holiday destination: A strong brand image in tourism acts as a lever for the health and wellness sector. Tour and travel operators can provide information and arrange flights much more quickly than to less well-known destinations. As prospective clients are already aware of the region's tourism products, the decision to travel to the same exotic location for a medical procedure or to combine it with tourism is relatively more easily made.

Availability of good facilities and skilled personnel: A recent McKinsey survey estimates that 40 per cent of all medical travellers travel in search of advanced technologies (Ehrbeck et al. 2008). Some countries in the Caribbean have made significant investments in training health personnel and equipping medical facilities.

In small states, exporting health services through Mode 4 is not a deliberate strategy; rather, it is a result of rising demand for health-care workers worldwide and the growth and diversity of international recruitment agencies. Exporting health care is part of a global trend. Nonetheless, studies suggest that, in some instances, small states are targeted by recruitment agencies or by employers directly. A 2007 study of the USA-based nurse recruitment industry identified 11 agencies working in the Caribbean (Pitmann et al. 2007). There is no doubt that the negative impact of the outflow of health-care professionals is relatively higher for small states (owing to smaller numbers of professionals and the higher public costs in training them). However, the experience across small states is variable, reflecting the specific conditions in different countries. Furthermore, the line between temporary movement (which falls under the General Agreement on Trade in Services (GATS)) and permanent migration (which is outside the remit of the WTO) is blurred, and the available data do not reflect this distinction. Evidence suggests high intra-regional flows of professionals among the small states in the Caribbean and Pacific region – Fijian nurses go to Palau and Marshall Islands; Guyanese nurses move to the British Virgin Islands and eventually to more developed countries such as the USA (Connel 2009).

Several proposals have been forwarded to control the movement of professionals to ensure that the migration is temporary, that they are treated fairly and that their home country reaps some benefit. These include the Commonwealth Code of Practice of International Recruitment of Health workers (2003) and national initiatives such as the UK Code of practice for international recruitment for National Health Service employers. However, the impact of global codes and protocols is limited, mainly because the codes are non-binding. A number of bilateral initiatives have yielded some positive results. These include an initiative in St Vincent where nurses were trained for the US market. At the time of hiring, US partners would reimburse the government for each nurse trained. In Jamaica, some nurses split their time between Miami and Jamaica (Salmon et al. 2007). Other long-term solutions include deepening and modernising the health sector to provide a wider range of opportunities for the professionals and improving the remuneration of health-care workers.

Where they succeed in attracting external investment in medical tourism, small states face challenges with regard to domestic regulation. The export orientation of the health care system can have the unintended result of creating a system in which foreign clients have access to high-quality services that are not readily available to nationals. The result is a tiered system arising from two major conditions. First, the profit motive of the private sector means that health-care providers will seek to service clients who can pay. Where resources are directed to caring for foreign clients to the exclusion of local patients, the result may be the alienation of the poor and other marginalised groups in society. Second, private providers tend to offer more attractive conditions of work. The consequence of this could be under-resourced public facilities on which the majority of the population relies.

A range of policy options can be used to address this inequality, including:

- charging a levy on foreign patients which is then used to subsidise local patients, either directly through treatment or indirectly by building or equipping public facilities;
- introducing a system for foreign specialists to tutor local professionals in various fields;
- bonding arrangements whereby health professionals can join the private sector only after serving in the public sector for a given period of time;
- requirements for facilities exporting their services to reserve a minimum percentage of beds, persons and equipment hours for local clients or disadvantaged groups.

Finally, small states need additional capacity to manage a globalised, dual health-care system. Challenges here include limited market knowledge, insufficient funds and inadequate technical and managerial expertise. A wide range of clinical issues need to be addressed, including control of unfamiliar and hospital-acquired infections, assurance of quality and ethical standards and use of unauthorised or counterfeit drugs, among others. Political questions also come into play: what role should the private sector play in health care? How far should the government go in opening the sector to foreign providers and patients? Strategic choices must be made on what niches to develop and markets to target, how best to mobilise investment and how to ensure the availability of the required human resources. A host of managerial issues need to be addressed, including human resource planning, ensuring value for money and dealing with foreign insurance providers, especially when malpractice claims arise.

6.2.3 IT-enabled services

Studies suggest that a well-developed ICT sector contributes to faster growth, because it helps households, firms and regulators to engage in activities more efficiently. In particular, ICT has facilitated access to knowledge and information, reduced transaction costs and enabled the closer integration of supply chains. Digital technologies and solutions have become key enablers for productivity, innovation and growth in the world economy. The internet accounts for 15–20 per cent of GDP

growth in many countries, including developing ones, and its importance continues to grow (Pélissié du Rausas et al. 2011; Manyika et al. 2013; UNCTAD 2013). The internet continues to enable and inspire new business models that could have a disruptive impact. The peer-to-peer distribution model that began with music has morphed into the ‘sharing economy’, in which almost every possible commodity (e.g. rental cars, unused office space, accounting help) can be bought and sold on the internet, providing opportunities to monetise idle assets (Bughin et al. 2013). A direct consequence of this is ‘servicification’, where non-services sectors in the economy produce, buy and sell more services than before (Low 2013).

Four key drivers of this phenomenon are:

1. increasing geographical dispersion of supply chains with specialisation;
2. the drive to cut costs and improve efficiency;
3. the desire to deepen customer relationships by providing services related to their products and meeting consumer demands; and
4. the differentiation of products to acquire advantage through market segmentation (Rentzhog and Anér 2014).

This has led to rapid growth in IT-enabled services, which broadly comprise business process outsourcing (BPO) (such as contact centres and data entry services) and knowledge process outsourcing (analytics and research). It is estimated that the global spend on BPO increased by 4.9 per cent to reach US\$1.9 trillion in 2012 (Parikh and Mukherji 2013). AT Kearney’s Global Services Location Index (GSLI)⁸ analyses and ranks the attractiveness of 51 locations for outsourcing. The index comprises the categories below:

1. **Financial attractiveness:** compensation costs, infrastructure costs, tax and regulatory costs.
2. **People skills and availability:** remote services sector experience and quality range, labour force availability, education and language, attrition risk.
3. **Business environment:** country environment, infrastructure, cultural exposure, security of intellectual property.

Mauritius (36) and Jamaica (45) are the only small states included in the 2014 report, but many small states (including Trinidad and Tobago, Grenada, Belize and Barbados) have an IT-enabled services sector, however nascent. With the exception of the small states that have established a global presence in IT-enabled services (Mauritius and Jamaica), further growth is likely to arise out of the continuing trend of outsourcing, not only in the private sector but also in government. More importantly, a rising number of companies are locating services closer to their markets or country of origin – ‘nearshoring’. This is partly because of the need to counter the perception that outsourcing organisations were ‘exporting jobs’, a view that gained ground during the recession. An additional factor is customer driven. In some industries, clients have negative experiences with the quality of services delivered from abroad (language, accents, providing additional information, etc.). Other considerations

Table 6.2 Small states' average broadband cost and speed by region, 2013

| Region | Broadband cost (% of GNI per capita) | Broadband speed (Mbit/s) |
|-----------|--------------------------------------|--------------------------|
| Africa | 13.2 | 0.62 |
| Asia | 5.4 | 1.3 |
| Caribbean | 5.4 | 1.9 |
| Pacific | 83.3 | 2.2 |

Notes: GNI, gross national income.

Source: adapted from International Telecommunications Union (2014)

include regulatory processes, customer privacy and intellectual property.⁹ Finally, organisations are increasingly building nearshoring into their global BPO strategies for greater flexibility, quicker resolution of issues and avoidance of the risks of over concentration in one location.

Many small states are well positioned to benefit from this trend owing to a number of factors:

- cultural affinity with the key markets, notably US proximity, which results in lower overhead costs for clients;
- a strong, customer-facing business culture;
- unemployment, especially among young people, and low attrition costs;
- government support (e.g. fiscal incentives, training).

Small states still face a number of challenges with regard to the provision of IT-enabled services. The cost of bandwidth in many of them is still comparatively high and speeds are comparatively low, most notably for Pacific small states (Table 6.2) (International Telecommunications Union 2014). This is partly a result of historical monopolies in telecommunications, the reform process of which has been lengthy. For instance, in the Caribbean region, Cable & Wireless's monopoly in telecommunications was guaranteed by local laws. In one case, its exclusivity licence ran as far into the future as 2020. Cable & Wireless's charges for international telephone service were well above those in other countries of similar size and geography; these high costs were a burden to individual consumers and companies alike (Favaro 2008). Other challenges relate to the sustainability of the sector, especially where it is exclusively dependent on a few clients based in the USA.

6.3 Negotiating services in the WTO: where do small states stand?

The importance of the WTO to small states derives from their defining characteristics: openness to international trade and the resultant vulnerability to changes in prices of imports and exports; small population sizes that prevent the realisation of economies

of scale; and the lack of competitiveness owing to high production, transport and transaction costs, among others. The vast majority of small states became part of the WTO in 1995 and 1996, the exceptions being Cape Verde (2008), Samoa and Vanuatu (2012) and Seychelles (2015). Small states comprise about 20 per cent of the WTO's membership. Most are classified as developing countries, although there are a few developed countries (e.g. Malta) and LDCs (Lesotho, Maldives). Three small states (Bhutan, São Tomé and Príncipe and The Bahamas) are among the 21 countries in the process of WTO accession.

Arguably, the lead up to the Third WTO Ministerial Conference in Seattle (1999) marked the beginning of small states' engagement with the WTO. Small states' issues were initially raised by Bolivia and were subsequently re-echoed by Mauritius, Barbados, Sri Lanka and Trinidad and Tobago, as well as the World Bank and Commonwealth Secretariat. The key issues raised in submissions to the Intersessional Committee of the WTO General Council and the Committee on Trade and Development in the lead up to Seattle were the need:

- to avoid abrupt removal of preferential trade regimes, as they partly compensated for small states' lack of comparative advantage, and abrupt removal would make it difficult for small states to integrate into the MTS;
- to improve telecommunications linkages with small states;
- for arrangements to ease the high legal cost of the WTO Dispute Settlement procedures for small economies;
- to streamline and accelerate procedures for accession to the WTO;
- to reduce WTO subscription fees of small states (Commonwealth Secretariat and World Bank 2000).

A range of proposals were made to the Ministerial Conference, including enhanced market access, longer transition periods, assistance to modernise key sectors and fast tracking regional integration, among others. The Seattle Ministerial Conference collapsed, but the 2001 Doha Round saw agreement by the General Council that small economies would be a standing item on its agenda and that the Committee would hold dedicated sessions and report regularly on small state issues.¹⁰ As regards services, subsequent proposals and reports reaffirm the overall objectives of the Doha Development Agenda (DDA), with a small states' focus in the overall pace of liberalisation, export diversification, market access and technical assistance. Specific reference was made to 'trade-related concerns of small states' in Annex C of the Hong Kong Ministerial Conference in 2005. Subsequently, the Small Vulnerable Economies (SVE) Working Party on Domestic Regulations made a range of proposals on qualification and licensing requirements and procedures, technical standards and transparency in access to relevant information on legislative, regulatory and administrative measures.¹¹ Post-2008, the SVE agenda focused on operationalising the ministerial decision of 2011,¹² which called for the dedicated session of the Committee to examine the effects of non-tariff measures (NTMs) on the exports of small economies. The WTO Secretariat was instructed to provide relevant information and factual analysis for discussion among

members in the Committee's dedicated session on, among other things, the challenges and opportunities experienced by small economies when linking into global value chains for trade in goods and services. An early harvest of the 2011 ministerial decision was the decision to grant a waiver to LDC services exporters,¹³ with a view to accelerating the process of securing meaningful preferences for LDCs' services. By the Bali Ministerial Conference in 2013, the waiver had not been effective. Among others, the Ministerial Conference mandated the General Council to initiate a process that aimed to promote the expeditious and effective operationalisation of the waiver, periodically review the progress and make recommendations on steps for its further enhancement. Developed and developing members in a position to do so were encouraged to indicate sectors and modes of supply where they intended to provide preferential treatment to LDC services and service suppliers.¹⁴ A collective LDC request identifying the sectors and modes of supply of particular export interest was submitted in July 2014¹⁵ comprising a wide range of proposals, including:

- horizontal and sector-specific requests to waive Article XVI, Market Access and Article XVII, National Treatment, restrictions on LDC services suppliers. The sectors of particular interest to the LDC small states are travel, hospitality and conferences; banking, non-bank and insurance; transport and logistics, education and training, ICT and BPO;
- waiving Mode 1, 3 and 4 restrictions on 74 services.

Operationalising this waiver has potential benefits for LDC small states such as Lesotho, Solomon Islands and Vanuatu.

LDCs have also emphasised the presence of NTBs in the services sector, which inhibit market access in services trade and requested preferential treatment for licensing/work permit/visa fees, recognition of qualification of LDC professionals and accreditation of LDC institutions (WTO 2014c). In response to the Collective Request of the LDCs, the Council for Trade in Services (CTS) convened a high level meeting in February 2015, in which over 25 members indicated services sectors and modes of supply to which they would give preferential treatment to the LDCs (WTO 2015). There was active engagement from developed and developing countries in a position to do so. The majority of the 74 services sectors in which LDCs requested preferences came under the purview of discussion. Some of these preferences include expanding access for the temporary movement of business people and professionals from LDCs for a range of services (Mode 4); waiving fees for business and employment visas; not imposing Economic Needs Tests (ENTs); and extending durations of stay of LDC professionals. These will be implemented once the members have completed their domestic processes. Members also mentioned various technical assistance initiatives to improve LDC services export capacity, such as training programmes for service suppliers and support to upgrade infrastructure (Rahman and Jahan 2015). The question that has recently been raised in certain development forums is whether or not a similar approach to the LDCs services waiver can be adopted for small states in the WTO to boost their services trade. Obviously, much will depend on the success in operationalising the LDCs waiver in the very first instance.

Since the launch of the DDA, significant progress has been made in raising the issues of small states in the WTO, as explained in Chapter 1. However, with the lack of progress of GATS negotiations, the issues remain largely unaddressed, with the exception of the LDC services waiver. At the same time, there is growing interest among the larger, more developed, economies in plurilateral negotiations such as:

- The Transatlantic Trade and Investment Partnership (TTIP) – a proposed Free Trade Agreement between the EU and the USA.
- The Trans-Pacific Partnership (TPP) – comprising 12 countries in the Asia Pacific region, with the aim of enhancing trade and investment, to promote innovation, economic growth and development, and to support the creation and retention of jobs.
- The Trade in Services Agreement (TiSA) – bringing together 23 parties, including the EU-28 and the USA, covering about 70 per cent of global services trade.

These initiatives are taking place on the side line of the MTS and now have a tendency to dominate the scene on trade in services to the extent that the goal of achieving international participation and consensus seems to have been replaced by the goals of regional harmonisation and integration, and enhanced state-to-state relationships.

It is difficult to assess the impact of TiSA on small states, as negotiations are ongoing. Nonetheless, the intention of maximising TiSA compatibility with GATS is encouraging, but it also raises concerns that TiSA could be similarly restricted. However, TiSA could effectively replace GATS, or provide an avenue for small states to pursue additional market access, alongside more robust regulatory disciplines and/or greater transparency and predictability. The mere declaration of intent to participate in TiSA would send a powerful signal from small states about their interests to play at the upper echelons of services rule-making and market opening. Ultimately a choice for governments to make, it would be essential to ensure that the far-reaching implications of joining TiSA are well understood and that the decision is based on a thorough understanding of the benefits and costs (of which there is ample potential for both) (Primack 2014).

The current MTS presents a number of obstacles for small states, one key area of which is their ability to influence negotiations (see Chapter 2). The issues here relate to the structure of the WTO, the strategic importance of small states and their export capacity. The all-member Ministerial Conference is the WTO's decision-making body and meets every two years. Oversight of GATS is provided by CTS under the guidance of the General Council. The work of the CTS is, in turn, executed through subsidiary bodies: the Committee on Financial Services, the Committee on Specific Commitments, the Working Party on GATS Rules and the Working Party on Domestic Regulation. WTO records indicate that, since 1995, Barbados has been the only small state to have chaired the CTS (in 2007) and any of the subsidiary bodies (Committee on Specific Commitments in 2010), making it impossible to draw meaningful insights on the advantages of occupying leadership committee positions.

The work of putting mandates and agreements into effect takes place in Geneva and requires close co-ordination and collaboration not only with like-minded members in Geneva, but also abroad. Maintaining an effective presence in Geneva is vital for keeping abreast of ongoing negotiations, let alone advancing positions (see Chapter 1). Effective negotiations require technical expertise, backstopping support in capitals, building strategic alliances and attendance of major meetings and events. Small states find the cost of participation prohibitively high. Consequently, many drop out of the process, attend only selected meetings or become heavily dependent on funding from multilateral financial institutions and bilateral donor agencies in developed countries, whose interests may not be aligned to those of small states (Bernal 2008). A further complication is that, when it comes to commitments and preferences, the WTO recognises developing countries and LDCs. No similar grouping exists for small states.

Although decision-making in the WTO is by consensus and all countries carry equal weight, some analysts maintain that, in practice, consensus is driven by powerful countries and their allies, and the level of influence a country can exert through the WTO mechanisms is largely determined by their share of world trade (Hartmann and Scherrer 2003). With their small domestic markets and insignificant share of world trade, small states have limited leverage in the world trading system. Although this weakness applies to all trade, it is more significant in services trade. This is because of the reciprocal nature of services negotiations, where exporters are granted better access to target markets in return for domestic reforms. Given the scale of their industries, small states' offensive interests are likely to be modest. Similarly, strong members do not have that much interest in small countries, owing to their limited market size. Some analysts argue that these factors combine to constrain the prospects of negotiating significant additional market access, slowing down overall progress in GATS.¹⁶

Does the problem lie with small states or with the MTS? To answer this, it is necessary to assess small states' performance in GATS negotiations. The services market access to negotiations in the WTO is based on a request and offer approach. From the information available, some 15 small states have submitted offers in the current round of multilateral trade negotiations. In total, 71 initial offers were made by WTO members. Some of the sectors in which offers were made by the small states include tourism, business services and telecommunications – sectors of strategic interest to small state members. However, GATS has effectively stalled. The apparent lack of interest and ambition of small states must be juxtaposed with the experience in other agreements, such as the Economic Partnership Agreement (EPA). In several regards, the Caribbean Forum (CARIFORUM) EPA goes beyond the commitments and rules governing services trade in the WTO and creates a detailed framework of rules on investment. The EPA also features many WTO-plus (i.e. improvements on existing rules and/or commitments) and GATS-X (i.e. new rules, sectors or commitments not covered by GATS provisions). These include, for instance, improvements in access to the EU market for commercial presence and especially the temporary entry of natural persons and the treatment of cultural industries. It also features a dedicated focus on tourism, with a set of disciplines targeting the potentially anti-competitive conduct of large tourism intermediaries. Still, the EPA is more limited as regards the

depth of commitments scheduled in areas where GATS commitments already existed (Sauvé and Ward 2012). This suggests that the MTS needs tweaking if it is to fully serve the interests of small states.

With regard to services in WTO agreements, the key area of concern for small states appears to be policy space arising from the GATS provisions in market access and domestic regulation. The role of the government is arguably more critical in small states owing in part to the limited number of market players (which makes monopolies and oligopolies more prevalent) and the nature of the private sector (dominated by small and medium-sized enterprises). Some analysts argue that these factors necessitate greater state involvement to control the adverse effects of dominant market behaviour, and to support the enterprise sector in overcoming the inherent structural challenges it faces. By extending coverage of the Dispute Settlement Body (DSB) to tourism and small states in particular, GATS rules on market access 'have the potential to weaken the basic notions of protection, conservation, and the ability of local communities and national governments to regulate tourism and tourist behaviour' (Turner 2010; Cole and Morgan 2010). This arises when, for instance, government initiatives aiming to support micro enterprises and small and medium-sized enterprises are deemed restrictive and challenged by transnational corporations in the Dispute Settlement Body.

The efficacy of GATS in relation to tourism in small states has been questioned by some, who suggest that GATS does not address the major problems that small states face in promoting tourism, such as ease of access to passports and visas (Thakur 2008). Furthermore, it does not confer substantial added value in market access, as countries that have a comparative advantage in tourism were already taking steps to attract foreign investment outside GATS and have overcome any market access restrictions (Thakur 2008).

It is pertinent to ask whether GATS can support small states to maximise their opportunities and address the challenges of exporting health and wellness services. It appears that small states have covered significant ground in attracting investment and exporting professionals in the sector, in spite of the lack of progress of GATS in DDA.

Can the issues in the ICT sector mentioned in the previous section be addressed in GATS? Small states have raised the need for support to modernise their telecommunications infrastructure throughout the DDA. GATS Article IV contains the general obligation to increase participation of developing countries in world trade through 'negotiated specific commitments ... relating to the:

- strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis;
- improvement of their access to distribution channels and information networks; and
- liberalization of market access in sectors and modes of supply of export interest to them.¹⁷

Developed country members also are required to establish contact points to facilitate access by developing country members' suppliers to information concerning the 'commercial and technical aspects of the supply of services; registration, recognition and obtaining of professional qualifications; and the availability of services technology'¹⁸. The intention certainly exists, but many of the issues, the resolution of which would benefit small states, remain unanswered to date.

6.4 Conclusion

In assessing the opportunities and challenges faced by small states in navigating the MTS, it is important to consider a number of key global trends. First is the impact of technology, particularly the internet, which continues to influence innovation and trade in a dynamic and sometimes disruptive way. Second is servicification, which has made it even more difficult to isolate, measure and value the contribution of services. Third is the emergence of mega-regional trade agreements, notably TiSA, initiated and driven mainly by large, developed economies.

The MTS is vital for small states because of their defining characteristics: openness to international trade and the resultant volatility; vulnerability to natural hazards and climate change; small population sizes that prevent the realisation of economies of scale; and lack of competitiveness owing to high production, transport and transaction costs, among others. Small states have been engaged in the WTO and GATS for more than 20 years, during which time their major interests have not changed: enhanced market access and assistance to modernise key sectors, particularly ICT. Small states such as Mauritius, Jamaica and Malta provide important lessons in using tourism and financial services as a platform to stimulate other sectors. Whether this can be replicated is questionable because of the specific circumstances prevailing in different small states. Nonetheless, identifying services with export potential, targeting specific countries, regions or states and addressing any emerging market entry challenges through relevant channels, including the MTS, appears to be a concrete approach.

Within this global context, it remains clear that, from the services waiver, there is the potential for huge gains for LDC small states in sectors of export interest, such as tourism or financial services, but the operationalisation of the waiver would need to be successfully implemented. Other small states can contemplate emulating a similar approach in the WTO DDA negotiations, a way to enhance their participation in the MTS through services trade. There are, nevertheless, a number of key challenges to be addressed for the benefits of services agreements to reach the population of small states, including the development of soft and hard infrastructure services and other elements of productive capacities, including human resource development. There also needs to be efforts to develop mutual recognition agreements. Strictly on the negotiations side, identifying strategic markets and making concerted efforts for market entry – continued lobbying, systematic recording of barriers, negotiations to relax entry requirements and promotion of joint ventures – will certainly help in the process. Such momentum is essential to unlock the potential for services development in small states. In this regard, the use of a market-driven approach to

negotiate market access for sectors with proven competitive advantage in regional and bilateral agreements (EU–EPA, Caribbean–Canada) could be instructive.

Notes

- 1 This chapter looks at a broader collection of small states, as defined by the World Bank.
- 2 Trade in services are defined based on four modes of supply in the WTO General Agreement on Trade in Services. See Article 1 of the GATS (https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).
- 3 Estimated using data from UNCTAD stat (2015). <http://unctadstat.unctad.org/EN/>
- 4 Estimated using data from UNCTAD stat (2015). <http://unctadstat.unctad.org/EN/>
- 5 Cyprus, Jamaica, Malta and Mauritius. From Bora et al. (2004).
- 6 Policy rules and regulations; environmental sustainability; safety and security; health and hygiene; prioritisation of travel and tourism; air transport infrastructure; ground transport infrastructure; tourism infrastructure; ICT infrastructure; price competitiveness in the travel and tourism industry; human resources; affinity for travel and tourism; natural resources; and cultural resources.
- 7 World Travel & Tourism Council sub-regions: (1) North Africa, (2) Sub-Saharan Africa, (3) Caribbean, (4) Latin America, (5) North America, (6) North East Asia, (7) Oceania, (8) South Asia, (9) South East Asia, (10) European Union, (11) Other Europe and (12) Middle East.
- 8 <https://www.atkearney.com/documents/10192/5082922/A+Wealth+of+Choices.pdf/61c80111-41b2-4411-ad1e-db4a3d6d5f0d>
- 9 Ibid.
- 10 Doha Ministerial Declaration (WT/MIN(01)/DEC/1), p. 35, and the Work Programme on Small Economies Framework and Procedures (WT/L/447), paragraph 2.
- 11 JOB(06)/66/Rev.2.
- 12 WT/L/844.
- 13 WT/L/847.
- 14 WT/MIN(13)/W/15.
- 15 S/C/W/356.
- 16 Note that, in contrast to goods, there is no generalised system of preference for services. In other words, developing countries do not have non-reciprocal preferential access to developed country service markets.
- 17 GATS Article IV, available at: https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm
- 18 See GATS Article IV (2), available at: https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm.

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Annex 1: List of 31 Commonwealth Small States

Antigua and Barbuda
The Bahamas*
Barbados
Belize
Botswana
Brunei Darussalam
Republic of Cyprus
Dominica
Fiji Islands
Grenada
Guyana
Jamaica
Kiribati*
Lesotho
Maldives
Malta
Mauritius
Namibia
Nauru*
Papua New Guinea
St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
Samoa
Seychelles
Solomon Islands
Swaziland
Tonga
Trinidad and Tobago
Tuvalu*
Vanuatu

*Not in the WTO