

Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination *

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Summary

Poverty remains a serious global issue, and nearly half of the world's populations are still living below the poverty line. International trade has been a vehicle for successful economic development for some developing economies in East Asia, including South Korea, Taiwan, Hong Kong, Singapore, and more recently, China. With the success of their trade-based economic development policies and the export-driven development strategy, all of these countries escaped from poverty.

Can other developing countries duplicate this success and also bring their populations out of poverty? Some factors, including political stability, organized government support, educated workforce, availability of foreign markets, and financial resources such as foreign loans, have been considered essential for the success of this export-driven economic development strategy. These factors are not present in many developing countries, particularly least-developed countries (LDCs), thus making it difficult for them to pursue successful trade-based development policies to break the circle of poverty.

The author suggests "microtrade," defined as international trade of small quantities of locally-produced products (LPPs) produced on a small scale, as an alternative way to provide those living in LDCs with income sufficient to reduce or eliminate poverty. Microtrade, unlike the export-driven development policies undertaken at a national level, is not based on the development of large-scale export industries, which cannot be initiated by many LDCs. This article provides a discussion of the theoretical basis of microtrade and its regulatory framework from the perspective of international trade law.

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I. Introduction: Poverty, Trade, and Regulatory Issues

The world today has shown unprecedented technological and economic advances. Much of the world population, however, does not share in this prosperity, and poverty remains one of the most serious global problems. Despite considerable efforts by international organizations, governments, and NGOs, the situation has not improved significantly, and nearly half of the world population is still living below the poverty line.¹ This calls for new approaches that can lead to new solutions to the poverty problems around the world. This paper proposes a theoretical and regulatory framework for a new type of international trade to improve the economic status of populations in least-developed countries (LDCs).² This new type of trade is named “microtrade.” “Microtrade” is a term devised by the author to describe international trade on a small scale, based primarily on manually produced products using small amounts of capital and low levels of technology available at a local level in LDCs. Microtrade is conceived as a means to raise income to reduce or eliminate poverty where no other conventional means of economic development³ is either available or sufficient to overcome poverty.

Poverty is most serious in LDCs, but also exists in other more advanced developing countries and even in developed countries. The poverty issue in the latter groups of countries is a problem of income distribution in those countries, and it is not within the purview of this paper. This

¹ For poverty lines, the World Bank uses references set at consumption levels of USD 1.25 per day (the mean of the national poverty lines for the 15 poorest countries of the world) and USD 2 per day (the median poverty line for the developing world) at 2005 prices. It has been estimated that in 2005, 1.4 billion people had consumption levels below USD 1.25 a day and 2.6 billion (48% of the world population) under USD 2 per day. “The poverty line” refers to the latter in this paper. See World Bank, *Poverty: At A Glance*, available at:

<<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20040961~isCURL:Y~menuPK:435040~pagePK:148956~piPK:216618~theSitePK:430367,00.html>>. See also, Y.S. Lee, *Reclaiming Development in the World Trading System* (New York: Cambridge University Press, 2009), chapter 1.

² Least-developed countries (LDCs) are the poorest countries around the world. While poverty is found among the populations in both developed and developing countries, it is most prevalent in LDCs. The United Nations currently designates forty-nine countries as LDCs. The list is reviewed every three years by the Economic and Social Council (ECOSOC). The following three criteria are used to identify LDCs in its latest 2009 triennial review:

- i) a low-income criterion, a low-income criterion, based on a three-year average estimate of the gross national income (GNI) per capita (under \$905 for inclusion, above \$1,086 for graduation);
- ii) a human capital status criterion, involving a composite Human Assets Index (HAI) based on indicators of: (a) nutrition: percentage of population undernourished; (b) health: mortality rate for children aged five years or under; (c) education: the gross secondary school enrolment ratio; and (d) adult literacy rate; and
- iii) an economic vulnerability criterion, involving a composite Economic Vulnerability Index (EVI) based on indicators of: (a) population size; (b) remoteness; (c) merchandise export concentration; (d) share of agriculture, forestry and fisheries in gross domestic product; (e) homelessness owing to natural disasters; (f) instability of agricultural production; and (g) instability of exports of goods and services.

<www.unohrrls.org/en/ldc/related/59/>.

³ Those means include economic opportunities such as employment or business opportunities arising from domestic sale of goods and services, as well as from conventional international trade of mass-produced manufactured products or primary products utilizing economies of scale.

paper focuses on the poverty issue in LDCs and addresses ways in which poverty can be reduced or eliminated by improving the income of populations in LDCs through the proposed new type of international trade, “microtrade.” The mechanism of microtrade and its legal framework are discussed in the next two sections.

The solution to the prevalent poverty problems in LDCs should come from economic development which will provide the majority of LDC populations with the economic capacities to meet the material requirements of daily life above the poverty level. While aid and donations from other countries, international bodies, NGOs, and private individuals are an important source of temporary relief for impoverished populations in LDCs,⁴ aid and donations are not a lasting solution to poverty without viable economies. All countries that have escaped from poverty in the last fifty years, such as some East Asian economies, including South Korea, Taiwan, Hong Kong, Singapore, and more recently China, did so through successful economic development and not through aid and donations.

In all of the successful development cases, world trade has been a crucial element in their success, as extensively studied by a number of leading scholars such as Rodrik, Amsden, and Wade.⁵ LDCs do not typically have sufficient domestic markets for goods and services to support economic development, due to the low purchasing power of the local population. World trade opens up affluent foreign markets for the goods and services produced in developing countries, and economic development has been achieved by taking advantage of those foreign markets through export. This development strategy is called “export-oriented development policy” and has been employed successfully by what used to be developing economies in East Asia, such as South Korea, Taiwan, Singapore, and Hong Kong, in the 1960s through to the 1990s with remarkable success.⁶

This success has not been replicated in most LDCs throughout the world.⁷ Various political, social, and economic problems deter LDCs from undertaking large-scale development initiatives

⁴ Official Development Assistance (ODA) to LDCs totaled over USD 23.4 billion in 2008. OECD, *ODA by Recipients*, available at: <<http://stats.oecd.org>>.

⁵ See *infra* notes 18, 19, 20, and 21.

⁶ These four economies have undergone rapid industrialization since the 1960s and have been named “Newly Industrializing Countries” (“NICs”). All of them have passed the threshold for the high-income country status as classified by the World Bank (GNI per capita of 11,906 USD or more based on 2008 data). Four decades ago, these countries were poor, with economies dependent on the production of cheap primary products. Between 1961 and 1996, South Korea increased its GDP by an average of 9.80 percent per annum, Hong Kong by 9.58 percent, Taiwan by 10.21 percent and Singapore by 9.95 percent. Alan Heston, Robert Summers and Bettina Aten, *Penn World Table Version 6.2*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania (September 2006). In the same period, the export growth rate of these four economies ranged from around 15% to nearly 30%. Export was an “engine” for the high economic growth in all of these countries.

⁷ From 1980-1990 the average annual economic growth rate for LDCs was -0.4%. From 1990-2000, it was a mere 1.3%. In the same period, the average growth rate for the other developing countries was 1.8% and 3.4%, respectively. United Nations Commission on Trade and Development (UNCTAD), *The Least Developed Countries*

that have been successfully completed in the East Asian countries. Microtrade is proposed as an alternative way to overcome supply constraints that LDCs typically have, such as insufficient capital and low levels of production technology; allowing residents in LDCs to export local products, *albeit* on a much smaller scale than the scale achieved by Newly Industrializing Countries (NICs)⁸, to affluent foreign markets with an objective of generating income which will be beyond the poverty level. In facilitating exports from LDCs, some of the regulatory issues in international trade law will also need to be addressed. Part IV of the GATT, which has long been considered to be a set of rules that are declaratory, but not effective with binding force, along with some other reform proposals in international trade law can be used as a regulatory basis to facilitate microtrade.

This paper introduces the concept of microtrade and offers preliminary discussions on the mechanism and regulatory framework for microtrade. Section II discusses the concept of microtrade and its mechanisms. Section III addresses relevant regulatory issues. The legal framework for international trade, as represented by the disciplines of the World Trade Organization (WTO), are relevant as those rules regulate the measures of government in international trade which can also be applied to microtrade. Consideration is given to possible reforms of the regulatory framework to facilitate microtrade. Section IV draws conclusions and offers suggestions to promote microtrade.

II. Microtrade: A New Type of International Trade

A. Microtrade – Linking World Market with Local Production

According to United Nations (U.N.) statistics, more developing countries became poorer by the beginning of the millennium than they were fifty years ago, and very few countries have escaped from poverty.⁹ This clearly shows that economic development has not been facilitated successfully in most developing countries, particularly LDCs. The economic and human welfare situation in LDCs is in fact dire. Average GNP per capita of the LDCs was a mere USD 454 in 2006,¹⁰ and the average proportion of population living under USD 1 a day among 22 LDCs was 43.6%.¹¹ Life expectancy was 51.6 years¹² compared to 79.3 years in developed countries.¹³ The

Report 2008, p. 139, Statistical Index: Data on Least Developed Countries, Table 1, GDP per capita and population: levels and growth.

⁸ *Supra* note 6.

⁹ According to the U.N. Human Development Report 2003, fifty-four countries had become poorer by the beginning of the new millennium than in 1990, as measured by GDP per capita. United Nations Development Program, *U.N. Human Development Report 2003* (New York: Oxford University Press, 2003), p. XX.

¹⁰ *Supra* note 7.

¹¹ The covered period is 1990-2003. U.N. Office of the High Representative for the Least Developed Countries, *Selected Economic and Social Indicators for LDCs (2005)*, available at: <www.un.org/special-rep/ohrlls/ldc/2005%20socio-econ%20indicators.pdf>.

infant mortality rate was 9%¹⁴ compared to 0.51 % in developed countries.¹⁵ Diseases have been killing millions of people in LDCs every year. As of 2005, 11.7 million people in LDCs were estimated to have been infected by the HIV virus, which comprised nearly 3% of the entire population.¹⁶ Armed conflicts have added to the suffering in LDCs, and millions of people have been killed or have become refugees. Attaining political stability and economic development will be necessary to stop this human tragedy in LDCs.

There are a number of difficulties with promoting economic development in LDCs. The following factors have been cited as reasons for sluggish economic progress and prevalent poverty in LDCs: poor social and industrial infrastructure, insufficient capital and low levels of technology, low literacy rate and education level, lack of entrepreneurship and management expertise, insufficient political leadership for economic development coupled with political instability, corruption and weak government institutions with absence of effective administrative support, and even some cultural issues deterrent to economic development.¹⁷ Most of these problems will be difficult to solve in the short term. Large-scale development initiatives and the subsequent economic development in East Asia were possible because those countries, despite the initial capital and supply constraints, did not suffer from some of the cited problems and were strong in certain key elements for development such as high literacy rate, strong political leadership, and effective administrative support from government.¹⁸

¹²UNCTAD (2008), *supra* note 7, p. 146, Statistical Index: Data on Least Developed Countries, Table 8, Indicators on Demography.

¹³ OECD, *Health Data 2009* (the cited statistics are for 2006), available at: <www.oecd.org>.

¹⁴ UNCTAD (2008), *supra* note 7, p. 146, Statistical Index: Data on Least Developed Countries, Table 8, Indicators on demography.

¹⁵ OECD (2009), *supra* note 13.

¹⁶ UNCTAD (2008), *supra* note 7, p. 147, Statistical Index: Data on Least Developed Countries, Table 9, Indicators on health.

¹⁷ See A. F. Petrone (ed.), *Causes and Alleviation of Poverty* (Nova Science Publications, 2002). For the effect of culture on development, see Amartya Sen, *Culture and Development*, World Bank Paper (December 13, 2000), available at:

<http://info.worldbank.org/etools/docs/voddocs/354/688/sen_tokyo.pdf>.

¹⁸ Kwang-Suk Kim and Joon-Kyung Park, *Sources of Economic Growth in Korea: 1963–1981* (Korea Development Institute, 1985), p. 6. Factors such as political and social stabilities, effective technocratic bureaucracies and organized government support, strong political leadership, educated workforce, strict work ethics, and higher ratio of savings are cited as important factors for the successful economic development of South Korea and the other NICs. Dani Rodrik has also suggested an ideal institutional arrangement between the public and private sectors to be in place in order to facilitate development. Dani Rodrik, *Industrial Policy for the Twenty-First Century*, paper prepared for UNIDO (September 2004), available at:

<www.hks.harvard.edu/fs/drodrik/UNIDOSep.pdf>. According to Rodrik, the working institutional arrangement is dependent on the existence of effective cooperation and communications between the public and private sectors. Nonetheless, Rodrik also stresses that some measures of transparency and accountability should be imposed to prevent the moral hazards associated with government support. *Ibid*, pp. 20–21.

The East Asian countries have moved beyond poverty by successfully undertaking a series of export-oriented economic development initiatives, which included promoting large-scale export industries.¹⁹ Contribution of international trade to economic development and the role of government in successful development cases have been widely studied and well documented.²⁰ Leading scholars such as Amsden and Wade have studied the industrial policies adopted by the East Asian countries and concluded that the governments had directed investments to certain key industries and intervened in international trade in various ways (by using subsidies and limiting foreign imports) while engaging in trade and promoting exports.²¹ While there is a question as to whether such government interventions have always been successful in promoting economic development, there is little doubt that the development initiatives made by the government and followed by the private sector have led to the economic growth that drove the East Asian countries out of poverty.²² Given the constraints and the problems discussed above, however, it will not be feasible for many LDCs to undertake large-scale development initiatives, either by the private sector or by the government. The working institutional arrangement between the private sector and the public sector as described by Dani Rodrik²³ is not found in many LDCs, and it is not likely to be seen in the foreseeable future.²⁴

Microtrade will be an alternative approach to reduce or eliminate poverty where an LDC economy is not supported by a well-functioning government and effective administrative assistance, and where the private sector as a whole does not function to make economic progress. Microtrade will be essentially a local initiative which uses the mechanism of international trade but will not require large-scale industrial initiatives promoted by the East Asian countries in their rapid development periods. The essence of this new approach is to enable LDCs residents to export locally-produced products (LPPs) to the more affluent markets of developed countries and

¹⁹ For an evolution of industrial policies of the NICs, see Mari Pangestu, “Industrial Policy and Developing Countries”, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds.), *Development, Trade, and the WTO: A Handbook* (World Bank, 2002), p. 153, Table 17.1.

²⁰ See A. O. Krueger, “Trade Policies in Developing Countries”, in R. W. Jones and P. B. Kenen (eds.), *Handbook of International Economics, Vol. 1* (New York: North-Holland, 1984), pp. 519–569; R. Findlay, “Growth and Development in Trade Models”, in R. W. Jones and P. B. Kenen (eds.), *Handbook of International Economics, Vol. 1* (New York: North-Holland, 1984), pp. 185–236; T. N. Srinivasan, “Trade, Development, and Growth”, *Princeton Essays in International Economics No. 225* (December 2001); G. K. Helleiner (ed.), *Trade Policy, Industrialization, and Development* (Oxford: Oxford University Press, 1992); World Bank, *The East Asian Miracle* (New York: Oxford University Press, 1993).

²¹ See Alice H. Amsden, *Escape from Empire: The Developing World's Journey through Heaven and Hell* (Cambridge: MIT Press, 2007); Alice H. Amsden, *Asia's Next Giant: South Korea and Late Industrialization* (New York: Oxford University Press, 1989); Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton: Princeton University Press, 2003).

²² *Supra* notes 6, 21.

²³ *Supra* note 18.

²⁴ Peter Leeson and Claudia Williamson have taken one step further and argued that the absence of a government, rather than the presence of a repressive LDC government, has offered a better condition for economic development. Peter Leeson and Claudia Williamson, *Anarchy and Development: An Application of the Theory of Second Best*, 2 *The Law and Development Review* 1 (2009), 77-96.

thereby generate levels of income that will be beyond the poverty level. The distinction between microtrade and conventional trade lies in the use of the price difference as described below, rather than the economies of scale, which require mass production capacities that many LDCs lack and cannot obtain in the near future. The examples of possible LPPs for microtrade include portable items of every-day use, for ease of shipping and distribution, which can be produced without high-level technology or costly production facilities, such as cups and dishes, utensils, small furniture, musical instruments, art objects, ornaments, toys, etc.²⁵

The price difference between LDCs and developed countries coupled with the higher purchasing power of consumers in developed countries²⁶ can generate higher levels of income for LPP producers in LDCs engaged in microtrade, compared to that which can be generated from local transactions. A monthly income of USD 75 per capita is required to graduate from the current LDC category and, presumably, to eliminate the most extreme levels of poverty. USD 75 is less than the price of a well-made wooden chair for a dinner table in many developed countries. The large differences in labor costs between developed countries and LDCs will render the cost of producing labor-intensive products to be only a small fraction of the production cost in developed countries, which will then be reflected in the price. As production of labor-intensive LPPs on a small scale does not require large industrial initiatives that may not be possible in LDCs, microtrade is a new approach to link the world market with local production in LDCs towards elimination of poverty, alternative to the export-oriented economic development policies on large scales. The next subsection discusses the economic mechanism of microtrade.

B. Economic Mechanism of Microtrade

A simple economic model can be constructed to explain the mechanism of microtrade and assess possible earning from microtrade. The earning for the LDC producer from microtrade (E_m) can be expressed as the total revenue generated in the foreign market ($P_f \times Q_f$), minus costs of microtrade to be borne by the producer, including production cost (C_p), distribution cost including the cost of locating the distributors and customers in developed countries and the revenue shares taken by distributors (C_d), shipping cost (C_s), and regulatory cost including customs (C_r). (“ P_f ” denotes the price in the foreign market, and “ Q_f ” denotes the quantities sold

²⁵ For the ease of transportation, storage, and distribution, manufactured products, rather than agricultural products which tend to be less-value added per unit than manufactured products and thus attract lower profits, will be more likely candidates for microtrade. Stringent SPS requirements of developed countries may also create difficulties at the customs of the importing developed countries for the passage of agricultural products from LDCs, which will be another reason to choose manufactured products, rather than agricultural products, for microtrade.

²⁶ The average price level of consumption for forty-seven LDCs was measured at 39.2 in 2007 (USA = 100.6) while that figure for OECD countries was 118.3 in the same year, showing nearly a three-time difference between LDCs and developed countries. Data compiled from *Price Level of Consumption* (Purchasing Power Parity over GDP/Exchange Rate in Current Prices), Alan Heston, Robert Summers and Bettina Aten, *Penn World Table Version 6.3*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania (August 2009).

in the foreign market. All of the above costs are the portions of the costs to be borne by the producers in accordance with the terms to be set between the producer and the other parties to the transaction.)

$$E_m = (P_f \times Q_f) - C_{p,d,s,r}^{27}$$

Certain qualifications will have to be made for microtrade to be economically viable. First, the earning retained by microtrade should be at least equal to or greater than the earning that can be retained by the LDC producer from domestic sale of the LPP (E_d). Otherwise, there will be no point of engaging in microtrade. The earning from domestic sale can be illustrated as the following:

$$E_d = (P_d \times Q_d) - C_{p,d',s',r'}^{28}$$

Another point of consideration is any foregone earning from other economic opportunities alternative to engaging in microtrade (E_o), such as getting a job at a local company for wage or becoming a migrant worker in another country. Where this earning is greater than the earning to be generated from microtrade ($E_o > E_m$), microtrade will not be economically viable for the LDC producer. Thus the final conditions for microtrade will be as follows:

$$E_m = (P_f \times Q_f) - C_{p,d,s,r} \text{ where } E_m \geq E_d \text{ and } E_m \geq E_o^{29}$$

²⁷ The author previously considered that the earning for the LDC producer from microtrade (E_m) can be expressed as the share of the total revenue generated in the foreign market and retained by the LDC producer, $S_m(P_f \times Q_f)$, minus costs of microtrade to be borne by the producer. Y.S. Lee, "Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination", 2 *The Law and Development Review* 1 (2009), 373-374. However, the revenue share taken by the distributors can be considered as being included in the distribution cost (C_d), and the microtrade equation is adjusted to: $E_m = (P_f \times Q_f) - C_{p,d,s,r}$ for simplicity.

²⁸ The costs associated with domestic sale will comprise of production cost (C_p), costs of domestic distribution ($C_{d'}$), shipping (C_s) and regulatory costs (C_r). While production costs are expected to be identical, the other costs are expected to be higher in case of microtrade.

²⁹ Professor Jai Sheen Mah has commented that microtrade may also take place even if E_m is not necessarily equal or greater than E_d because the producers can sell products in both domestic markets and foreign markets at the profit maximizing point. However, it will be difficult for LDC producers with limited information to decide how much LPPs should be sold in each of the domestic and foreign markets to maximize profit. Thus the equation represents the LDC producer's decision based on the expected revenue and the costs per given unit of LPP. Also, the commentator has also pointed out that the accurate analysis of the E_m and E_o may not be made without consideration of a time sequence (i.e. a long-term and short-term analysis might be different). Again, the equation represents the decision of the LDC producers at a given point of time as to whether he or she should engage in microtrade or pursue any other economic activity, who may not discern a long term effect from a short term effect. In fact, yet another commentator has emphasized the highly limited information that LDC producers have and suggested that the equation should be further simplified to include only price terms. The cited microtrade equation represents a middle position between these two.

As seen above, microtrade can be profitably engaged only if the extra revenue generated from the price difference between the domestic and foreign markets ($P_f - P_d$) and also from the possible difference in the sale quantities between the two markets, which is to be retained by the LDC producer, exceeds the amount of the extra costs associated with microtrade ($C_{p,d,s,r} - C_{p,d',s',r'}$) which is to be borne by the producer. Given the significant difference in labor costs that exist between LDCs and developed countries, substantial differences in prices are expected to exist for most labor-intensive LPPs.³⁰ The higher purchasing power of developed country consumers³¹ also may lead to the higher quantities sold in the markets of developed countries provided that LPPs can be admitted into developed country markets and the shipping can be managed.³²

The costs associated with microtrade, such as shipping costs, can be substantial, and the success of microtrade will depend on the minimization of costs. In addition, there will be potentially complex logistical issues associated with microtrade such as market access issues, including identifying market demand and relaying the information to the appropriate local producers in LDCs, locating retailers and consumers in developed country markets, and shipping products to foreign destinations. LPP producers in LDCs with limited financial resources may not be in a position to bear these costs and meet potentially complex logistical requirements. Relatively small profits that can be generated from microtrade may deter major international trading companies from assisting LDC producers to export LPPs to developed country markets. Thus the proposed microtrade scheme introduces certain elements of voluntary assistance to minimize the costs and address logistical issues as further discussed below.

Elements of microtrade are already observed in developed countries where local shops get small quantities of goods directly from communities in developing countries.³³ Those shops may have

³⁰ See also *supra* note 26.

³¹ While the average GNP per capita of LDCs was USD 454 in 2006, *supra* note 7, the minimal threshold per-capita income of high income countries set by the World Bank is USD 11,906, which is over twenty-six times higher in income per capita.

³² Another view has been raised by Professor Won-Mog Choi that given the (likely) low quality of products which can be produced in LDCs, developing countries, rather than developed countries with sophisticated consumer taste and high consumer standards, will be more likely destinations for LPPs. Given the weaker purchasing power and the lower price level of developing countries, compared to those of developed countries, microtrade with other developing countries will be likely to generate less income for LDC producers than microtrade with developed countries. NGOs such as Oxfam have successfully marketed products from LDCs in developed countries.

³³ A score of individual stores in developed countries, such as those of Oxfam, sell hand-made goods from developing countries and return profits to the developing country producers. The microtrade scheme proposes to organize and systemize these efforts on a global scale with the assistance of an open online database and financial devices such as microfinance as explained below. The microtrade proposal also addresses regulatory issues on a global scale. Also, a point was made by a reviewer that the “fair trade” movement should be considered in the context of microtrade. A distinction should be made between microtrade and the fair trade movement in that the former focuses on finding small quantities of tradable, locally-produced products in LDC communities and raising income for LDC populations to escape from the extreme levels of poverty by selling LPPs in developed country

business relations with developing country communities and receive goods from them, or the shop owner may have travelled overseas and located suitable products in a developing country as the following anecdote suggests. One autumn day of 2004, the author was shopping at a local carpet and tapestry store in Minneapolis, Minnesota, and found a small piece of hand-made tapestry. It was beautifully woven, and the marked price was only USD 7! It turned out that the shop owner had traveled in a developing country in South Asia on vacation and came across a town where a group of women had been weaving tapestries. He liked the tapestries, negotiated the price with the townspeople, and ended up paying 50 cents for the piece that the author later bought, and a bit more for larger pieces. He then carried the purchased tapestries with him to his store in Minneapolis and sold them at prices several times higher than what he originally paid.

The preceding anecdote validates at least one important element of the microtrade scheme: substantial price differences based primarily on the differences in labor costs exist and can generate extra income for those engaged in microtrade. With respect to the cost elements, the shop owner assumed the costs of shipping, customs, and marketing and sale. However, this cannot always be a typical pattern of microtrade: i.e. retailers in developed countries cannot always be expected to take the trouble of visiting LDCs, locating suitable LPPs, and shipping them at their own cost, where all these costs and the risk of traveling to LDCs may exceed the expected profit. As mentioned, it will also be difficult for major trading companies to help LPP producers in LDCs by engaging in trade for them where LPPs produced on a small scale may not be profitable enough for them. Thus, the cost and logistical issues need to be approached in another way, and this is where voluntary assistance can play an essential role.

The minimization of the costs of microtrade through voluntary engagement with transactional logistics by third parties, which is explained in each of the cost areas as below, will enable LDC producers to capture more of the profits to be generated from microtrade. The remainder of this subsection attempts to address some of the logistics issues associated with microtrade and explain how those issues can be resolved by voluntary engagement.³⁴ As shown below, the use of information technology will be particularly essential for the success of microtrade.

markets, while the latter focuses on increasing profit margins for developing country producers with existing trade of mostly agricultural products rather than manufactured products, which is often done on a much larger scale than envisaged for microtrade.

³⁴ Many of the problems facing microtrade such as lack of market information and difficulties with shipping and transportation may indeed be found in trade from developing countries in general. Some of the proposed solutions may be applicable to developing country trade more generally, but the voluntary and charitable nature of the suggested solutions may reduce their applicability to general trade where the need for trade is not as intense from the perspective of poverty elimination. More general solutions, such as building better, commercial market information network and better infrastructure for transportation, require considerable resources and time, thus alternative solutions with charitable elements have been proposed to address immediate problems associated with microtrade.

a. Matching Supply and Demand

All trade, including microtrade, can take place only when there is a demand for goods to be supplied in trade. In the preceding episode, the tapestry shop owner immediately knew when he saw beautiful tapestries that there was demand for them in Minneapolis and a profit to be made. However, it will be generally difficult to expect retailers in developed countries to visit LPP producers in LDCs, purchase the LPPs, and ship them for sale in a developed country market as done in the preceding episode. A mechanism that links the market information in developed countries and LPP suppliers in LDCs is necessary. For microtrade to be feasible, relevant market information should be conveyed to LPP producers in LDCs.

One would think that problems with communication and transportation resulted from long distances between LDCs and developed countries³⁵ will make this information transmission difficult, if not entirely impossible. However, the recent developments of the internet technology may enable volunteers to transmit market information at relatively small costs. The following would be a possible scenario.

Numerous NGOs, religious groups, and individuals from developed countries are currently working in LDCs and travel back to their home countries on a regular basis. Some of them may be organized to identify LPPs that can be produced in towns and communities where they are working and can also be sold in the markets of developed countries where they are based. For instance, certain fashion streets in a developed country city may have an appetite for types of ornaments made in a particular place in an LDC. This information can be transmitted to the local ornament producers in the LDCs by those from the developed country city who are also working in the relevant LDC area where such ornaments can be produced. It will be more effective if this type of market information can be uploaded and stored on an open online database which will be accessible by anyone, including interested retailers, and also interactive. The information on the open database can be viewed either by local producers who have internet access or by anyone else who can relay the information to the local LPP producers. The governments of LDCs and developed countries, as well as international organizations and NGOs, may also help organizing and running this online information database.³⁶

³⁵ The physical distance is amplified by the fact that most of LDCs are located in the southern hemisphere while most of developed countries are located in the northern hemisphere. In this respect, the role of a few developed countries in the southern hemisphere, such as Australia and New Zealand, will be important for microtrade.

³⁶ A question has been raised as to what incentives exist for commercial operators (or even NGOs) to publicize sensitive commercial information about market opportunities overseas, and thereby potentially undermining the activities of existing market players. Such assistance will require a charitable motive with a recognition that trade is better than handing out aid to those living under poverty. Perhaps it is why an international organization devoted to microtrade might be necessary to help collect and process market information. For a further discussion of the possible microtrade organization, see Lee (2009), *supra* note 27, pp. 380-384.

The internet access will be an important component of the microtrade scheme. It would be ideal for each town or community in LDCs to have at least one computer station or terminal that has internet connectivity, including mobile devices such as a laptop and a mobile phone with internet capability, (and of course, at least one person who can access the database and relay the necessary information to the locals) so that the local producers can access relevant market information for the identification of LPPs to be produced and microtraded. This means that the facilitation of microtrade will require establishment of internet access throughout LDCs around the world. The feasibility of this undertaking will be an issue. The internet usage rate and the availability of personal computers are very low in LDCs. As of 2006, there were on average only 19 personal computers per 1000 inhabitants and an average of 91 internet users per 1000 inhabitants in LDCs.³⁷ 26 LDCs had less than 10 personal computers per 1000 inhabitants, and 21 LDCs had less than 10 internet users per 1000 inhabitants.³⁸

However, the low internet usage rate and the small per-capita number of personal computers in LDCs does not necessarily mean that setting up at least one personal computer with internet capability per each town and community will be altogether impossible. The recent development of wireless communication technology suggests that it is possible for more LDCs, perhaps with the help of other countries and international organizations, to build the necessary internet infrastructure at a much lower cost than was ever possible in the past.³⁹ As for the availability of computers, suggestions have been made that personal computers and laptops that have internet capability can be made available for as low as USD 100 per unit.⁴⁰ Low cost laptops have initially been contemplated for school education in developing countries, but it can also be used to facilitate microtrade. The possibility of low-cost internet access based on wireless technology and the availability of inexpensive computers will enable more LDCs to build the necessary communication infrastructure for microtrade.

b. Shipping and Distribution

Another important issue with microtrade will be shipping and distribution of LPPs to the retail stores and consumers in developed countries. In many LDCs where road networks and transportation systems are poor, shipping can be a significant problem. International shipping

³⁷Compiled from UNCTAD (2008), *supra* note 7, p. 150, Statistical Index: Data on Least Developed Countries, Table 12, Indicators on Communication and Media.

³⁸ *Ibid.*

³⁹ Internet connection can be provided wirelessly through “reception towers” built in regular distances, without setting up costly infrastructures for wired connections. Non-profit organizations such as “Geekcorps” have helped developing countries acquire internet access wirelessly. For more information, see the Geekcorps webpage at <www.geekcorps.org>. Satellite-based, commercial wireless internet providers are also available in Africa. See relevant information available at: <www.satsig.net/ivs-africa.htm>.

⁴⁰ See Gregory M. Lamb, “A Closer Look at What ‘\$100 Laptop’ Will Be”, *The Christian Science Monitor*, 29 January 2007, available at: <www.csmonitor.com/2007/0129/p13s01-stct.html>.

will be more difficult for landlocked LDC countries with no direct access to the sea.⁴¹ For many localities in LDCs, international shipping service is either unavailable or prohibitively expensive for the local producers. The other issue will be locating distributors and retail services in developed countries which are willing to sell LPPs from LDCs. The difficulties with communication will be a considerable challenge to locating adequate distributors and retail services in developed countries.

As for the shipping and distribution problem, there will be two possible solutions. One will be creating an association of local producers with common resources and collective bargaining powers to negotiate with international commercial shippers and distributors in developed countries and set terms for shipping and distribution.⁴² This solution may work for those local producers who can collectively produce large quantities of products in strong demand in developed country markets. It will not, however, work for many LDC local producers who produce on a smaller scale and therefore have little bargaining power, and are unable to amass sufficient common resources to use international commercial shippers or to negotiate with commercial retailers in developed countries.

The other possible solution, which will be more feasible for the smaller LPP producers in LDCs, will require voluntary assistance from third parties, such as aid workers and religious missionaries⁴³ from developed countries who are working in LDCs. They can on a voluntary basis deliver LPPs produced in the areas of LDCs where they are located to the places in developed countries when they travel back home where the LPPs are in demand. Relevant international organizations, governments, NGOs, and private corporations can help organize this “voluntary shipping network” for microtrade by using the open online database described above.⁴⁴ “Voluntary shippers” can register online and upload information on their availability.

⁴¹ It has been reported that export is generally hampered for a landlocked African LDC with a poor road network compared to an adjacent country with seaports. Francis Mangeni, “How Far Can LDCs Benefit from Duty-Free and Quota Free Market Access? The Case of Uganda with Respect to the EU Market”, in Y.S. Lee (ed.), *Economic Development through World Trade: A Developing Country Perspective* (Kluwer Law International, 2008), p. 428.

⁴² Some examples of producers associations in developing countries are: Bangladesh Knitwear Manufacturers & Exporters Association (BKMEA) <www.bkmea.com>, The Christmas Décor Producers and Exporters Association of the Philippines (CDPEAP), Fresh Produce Exporters Association of Kenya (FPEAK), and Ethiopian Horticulture Producers and Exporters Association (EHPEA).

⁴³ It has been estimated that there are well over 200,000 aid workers and 40,000 missionaries, many of whom are working in LDCs. See Adele Harmer, Katherine Haver and Abby Stoddard, *Providing Aid in Insecure Environments: Trends in Policy and Operations*, Humanitarian Policy Group Report, Overseas Development Institute (London, September 2006), available at:

<www.cic.nyu.edu/internationalsecurity/docs/hpgreport23.pdf>.

See also, Werner Ustorf, *Response to Wilhelm Dupre*, 1 *Implicit Religion* 1 (1998), 41-46.

⁴⁴ It has also been pointed out by a reviewer that most NGO organizers use commercial providers for transportation and distribution. The voluntary shipping network is necessary for those NGOs and individuals who do not have the resources for using commercial providers. Commercial shippers can join the shipping network by providing free services or services at a reduced fee.

LPP producers in LDCs as well as retailers and distributors in developed countries can also make online registration as to their need for shippers. International shipping companies and trading companies can also make contributions by entering this shipping network and providing services free of charge or at a reduced fee.

c. Financing and Production

Those in LDCs who are interested in producing LPPs for microtrade may not be able to do so because they do not even have the small amount of resources required to produce LPPs or sufficient credit or assets to borrow from commercial lenders. Microcredit, devised by the 2006 Nobel Laureate Muhammad Yunus, has attained considerable success in providing small capital to those in developing countries who cannot otherwise borrow from commercial lenders.⁴⁵ Alternative credit devices such as microcredit can provide financial assistance for the production of LPPs and perhaps for the other steps of microtrade as well. Governments that have available capital can also provide financial support for microtrade in the form of grants and other subsidies. Lenders can help LPP producers by advancing money to the local LDC producer on credit of the buyer who places an order and agrees to pay the lender and subsequently collecting money from the buyer.

As LPPs are likely to be labor-intensive rather than capital-intensive, microtrade will be an ideal venture for small capital lending available by financial devices such as microfinance. The aim of this lending will be to enable those in LDCs with limited capital resources to gain maximum benefit from microtrade. As mentioned, small, portable products that can be produced with simple tools and relatively brief training will be ideal for financing.⁴⁶ However, products that require considerable skills and production techniques, such as sophisticated tapestries and art pieces, can also be good LPP candidates for microtrade where local residents already have the necessary skills to produce them. Where possible, governments, NGOs, and international organizations can help train local residents in LDCs to produce LPPs that can attract consumers in the markets of developed countries.⁴⁷

⁴⁵ A large body of literature on microfinance is available. See De Aghion, Beatriz Armendáriz and Jonathan Morduch, *The Economics of Microfinance* (Cambridge: The MIT Press, 2005); Brigit Helms, *Access for All: Building Inclusive Financial Systems* (Washington, D.C.: Consultative Group to Assist the Poor, 2006); Madeline Hirschland (ed.), *Savings Services for the Poor: An Operational Guide* (Bloomfield, Connecticut: Kumarian Press, 2005); Shahidur R. Khandker, *Fighting Poverty with Microcredit* (Bangladesh edition, Dhaka: The University Press, 1999); Joanna Ledgerwood and Victoria White, *Transforming Microfinance Institutions: Providing Full Financial Services to the Poor* (World Bank, 2006); Graham A.N. Wright, *Microfinance Systems: Designing Quality Financial Services for the Poor* (Dhaka: The University Press, 2000); Muhammad Yunus, *Creating a World Without Poverty: Social Business and the Future of Capitalism* (New York: Public Affairs, 2008).

⁴⁶ Agricultural products may not be suitable for microtrade. See *supra* note 25.

⁴⁷ Art and craft, which will be good LPPs for microtrade, have been included in priority products recommended by the Uganda Export Promotion Board for export. See Mangeni (2008), *supra* note 41, p. 436.

C. Facilitating Microtrade – Proposal for an Institutional Framework

Microtrade raises a number of logistical issues, including identifying supply and demand for LPPs, organizing shipping and distribution, obtaining financing, and facilitating production. The preceding discussion reveals that a global information network in the form of an open online database will be an essential element for microtrade. Such an information network will have to be managed and upgraded on a constant basis. It might be possible to maintain the proposed online information database for microtrade solely with voluntary participation.⁴⁸ However, forming an organizational structure will be a more efficient and reliable way to manage the important online database network. An international organization devoted to microtrade will also be helpful to facilitate and promote microtrade by organizing microtrade activities on a global scale. The remainder of this section provides a discussion of the objectives and form of this organization, proposed functions, and its justifications.

a. Objective and Form

The objective of the proposed organization (“microtrade organization”) will be the promotion of the economic welfare of LPP producers by facilitating microtrade. The proposed microtrade organization will not only be expected to perform logistical functions to promote microtrade worldwide, but also to cooperate with sovereign states on regulatory issues for importation of LPPs, which is further discussed in the subsequent section. The microtrade organization will also be expected to cooperate with relevant international bodies on international trade, including the World Trade Organization (WTO) and the United Nations Commission on Trade and Development (UNCTAD). One possible form of the microtrade organization will be a non-profit, a non-governmental organization (NGO) operating on a global scale.⁴⁹ While the microtrade organization as an NGO will function as an autonomous and independent organization, free from political pressure from governments, it may not then have an adequate legal status in the international community to solicit cooperation from and conduct negotiations with sovereign states and other international organizations.

Another possible form, taking into consideration the latter need, will be an intergovernmental organization (or international governmental organization, IGO) that has a recognized

⁴⁸ Certain online databases and information networks are managed by voluntary participation of anonymous participants. For example, an online encyclopedia, “Wikipedia”, is maintained and updated by voluntary participation of mostly anonymous participants.

See <<http://en.wikipedia.org/wiki/Wikipedia>>. One way to maintain and update the online database for microtrade will be to use this voluntary participation model.

⁴⁹ For instance, members of the Law and Development Institute (LDI), a newly incorporated international institute on law and development based in Sydney, Australia, have shown interest in promoting academic research in microtrade and undertake microtrade projects.

For the LDI, see <www.lawanddevelopment.net>.

international legal status as an intergovernmental agency, such as various agencies of the United Nations and the WTO.⁵⁰ Forming the microtrade organization as an IGO will require consensus among sovereign states and perhaps relevant international organizations. If the microtrade organization takes this form, sovereign states that wish to promote microtrade will be able to participate in the organization as members and become the integral decision-making parties in this organization. Obtaining this type of recognized legal status will have an advantage in cooperating with sovereign states and other international organizations more easily and effectively. However, forming the microtrade organization as an IGO may also carry the risk of having it dominated by international politics.⁵¹ It may also have the effect of limiting participation by other NGOs and private individuals, as shown in the cases of other IGOs such as the WTO. Ways to reduce bureaucracy and increase private sector participation should also be sought.

Yet another possible form for consideration may be a sub-body of an already established organization such as the WTO. Currently, the Committee on Trade and Development (CTD) is organized within the WTO to address development issues with international trade.⁵² Consideration can be given to forming the microtrade organization as a sub-committee under the CTD. However, the limited mandate of the CTD and its resulting inability to affect fundamental development issues associated with trade indicates that a microtrade agency as a sub-body would have similar limitations.

b. Functions

The functions of the microtrade organization will include undertaking logistics for microtrade, such as managing the online database for microtrade, monitoring microtrade activities, and assisting parties to microtrade by creating a favorable regulatory and economic environment for microtrade in cooperation with sovereign states, relevant international organizations such as the WTO, NGOs, and private corporations.

As for the logistics, particularly the online database, the microtrade organization can create, manage, and upgrade the online database and other forms of information networks for microtrade with the assistance of voluntary private participants, governments, and other international organizations. The database and information networks will be expected to include all necessary information to conduct microtrade, including: i) supply of individual LPPs, such as place of production, characteristics and functionality of the product, possible quantities, qualities, and

⁵⁰ An IGO is formed by a treaty among sovereign states, which will give the IGO an international legal personality. IGOs have membership of sovereign states and other IGOs.

⁵¹ For politics involving international organizations, see Margaret P. Karns and Karen A. Mingst, *International Organizations: The Politics and Processes of Global Governance* (Boulder, Colorado: Lynne Rienner Publishers, 2004).

⁵² See Lee (2009), *supra* note 1, pp. 43-45, for more discussions of the CTD.

prices; ii) demand for LPPs, including interested distributors, retailers, and consumers; iii) any shipping information, including availability of voluntary shipper as to the time, place, and deliverable destinations; iv) availability of finance and terms of lending; and v) any other relevant information such as regulatory information applicable to microtrade. As discussed above, relevant data can be uploaded and downloaded by anyone, but the organization will be expected to manage the uploaded information in the database with necessary verifications.

The microtrade organization will be expected to cooperate with governments of developed countries and participating developing countries to promote free access of LPPs into their markets. If necessary, the organization may also be expected to negotiate with sovereign states to allow tariff-free and quota-free importation of LPPs. This favorable treatment will be justified because the objective of microtrade is to relieve populations in LDCs of absolute poverty through international trade, which is an objective that has consensus of the international community, as reflected in the U.N Millennium Development Goals.⁵³ Similar favorable trade treatments have been offered by major economies, such as the European Union.⁵⁴ For this favorable regulatory treatment to apply, questions may be raised as to the specific requirements for an LPP to qualify for the preferential treatment. The microtrade organization can also play an important role in devising specific requirements that will minimize abuse, based on a period of monitoring and assessment.

Beyond the tariff-free, quota free treatment of LPPs, the microtrade organization may also negotiate with developed countries to provide further incentives for microtrade such as exemption of other domestic taxes and fees, if any, that may be uniformly applicable to all identical or comparable products. As discussed in the subsequent section, the current legal framework for international trade under the auspices of the WTO provides a legal basis to promote microtrade. International financial agencies such as the World Bank can provide financial support to facilitate microtrade. In addition, private corporations may also participate in this endeavor. For instance, major international shippers may render assistance to microtrade by charging lower fees or, where possible, exempting them altogether for shipping qualified LPPs for microtrade to destinations in developed countries. In all of these efforts, the proposed microtrade organization may play a constructive role as an organizer and coordinator.

⁵³ The U.N. Millennium Development Goals (MDGs) aim to end poverty by 2015. For more details of the MDGs, see U.N. report, “UN to Review Progress on the Millennium Development Goals”, available at: <www.un.org/millenniumgoals>.

⁵⁴ The “Everything-but-Arms (EBA)” scheme by the European Union is an exemplary trade concession scheme for LDCs. It is an initiative of the European Union which allows all imports to the EU from the LDCs to be admitted duty free and quota free, with the exception of armaments. The EBA scheme is incorporated into the GSP Council Regulation (EC) No 2501/2001.

c. Justification

In this world laden with local, national, and international bureaucracies, a question may well be raised as to the justification for yet another international organization. Perhaps the justification can be found in the rationale for microtrade itself. Currently, tens of billions of dollars in aid flow from the governments of developed countries to poor nations annually.⁵⁵ Despite the significance of aid, it has not improved the overall economic conditions of those countries.⁵⁶ Large-scale economic development initiatives, such as those undertaken successfully in the East Asian countries, are not found in many LDCs and their emergence appears unlikely in the foreseeable future. In these circumstances, microtrade offers a new approach for the elimination of poverty in LDCs through international trade, which will potentially reduce the need for massive but ineffective capital influx into LDCs in the form of aid. Thus, there will be clear economic justification for setting up an international organization, regardless of whether it takes the form of an international NGO or an IGO, to promote microtrade coherently and effectively throughout the world.

It will be, however, important to organize the microtrade organization so as to minimize the inefficiencies of bureaucracies, particularly if it is to be formed as an IGO. The WTO presents a useful structural model. The WTO has a relatively small secretariat, with less bureaucracy than some of the larger international organizations, but has effectively engaged with sovereign state members.⁵⁷ The proposed microtrade organization can follow this model, creating a small but effective team of administrators. The organization should also have an open organizational apparatus that allows active participation of not only sovereign states and IGOs but also NGOs, private corporations and individuals who wish to assist with microtrade.⁵⁸

III. Setting Regulatory Framework to Support Microtrade

For microtrade to be a successful device to help populations in LDCs and to eliminate poverty, LPPs will have to be freely admitted to the markets of developed countries.⁵⁹ Rules of international trade control this issue, and thus need to be considered. Currently, WTO disciplines

⁵⁵ *Supra* note 4.

⁵⁶ See for the ineffective nature of aid, Dembisa Moyo, *Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa* (Farrar, Straus and Giroux, 2009).

⁵⁷ See Mike Moore, *Ten Years of the WTO: A Success Story of Global Governance*, 2 *Zeitschrift: Internationale Politik und Gesellschaft* (2005).

⁵⁸ In this respect, the proposed microtrade organization will be distinguished from the governance structure of the WTO where participation of private entities and individuals is limited.

⁵⁹ Also, rampant corruptions and inefficiencies of customs in many LDCs should be addressed. Perhaps international assistance can be directed towards correcting customs problems in LDCs with education of customs officials, proper supervision, and effective sanction, so that LPPs may be processed for exportation without undue delays and unnecessary hindrances at customs.

regulate the conduct of 153 sovereign member states on international trade. This section examines rules of international trade that will be relevant to the facilitation of microtrade.

A. Rules of International Trade

A preceding discussion underscores the necessity to adopt favorable trade terms for microtrade: that is, quota-free and tariff-free treatment. However, this treatment will be an exception to a core provision of the WTO rules which requires the most-favored nation (MFN) principle, prohibiting discrimination in accordance with the origin of product. Article 1.1 of the General Agreement on Tariffs and Trade (GATT), which constitutes the integral part of the current WTO disciplines, provides in relevant part:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.⁶⁰

This provision sets out the general principle of non-discrimination for international trade. The notable exception to this rule is the authorization of free trade agreements (FTAs) and customs unions under GATT XXIV which offer preferential treatments to member states of FTAs and customs unions. Another important MFN exception, which will be relevant to microtrade, is the general preferential schemes (GSPs) that provide lower tariff rates for imports from developing countries under certain criteria prescribed by the offering state.⁶¹ Various GSP schemes, including the aforementioned EU's "Everything-but-Arms" (EBA) scheme⁶² that offers quota-free and tariff-free treatment for imports from LDCs, have been implemented. The preferential, quota-free and tariff-free treatment for microtrade may also qualify as a GSP scheme approved under the current WTO rules.

It should be noted, however, that the preferential treatment for microtrade will be distinguished from the other preferential trade schemes for imports from developing countries in that these other schemes provide preferences on a particular country-group and product-group basis while

⁶⁰ WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations* (Cambridge University Press, 2003), p. 424.

⁶¹ GSPs are approved as an exception to the MFN principle under the "Enabling Clause". GATT, Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979 (L/4903).

⁶² *Supra* note 54.

the preferential treatment for microtrade offers preference for LPPs which exclude mass-produced industrial products. This exclusion will be necessary: as the point of preference for microtrade is providing assistance for LDC producers with limited productive capabilities, there will be no need to provide the microtrade preference for products that are mass-produced at industrial facilities. So far no GSP schemes seem to offer preference based on the distinction between products produced locally on small scales and those mass-produced at industrialized facilities. The question is whether a preferential treatment can be offered based on this type of distinction. Two issues will have to be considered: a legal issue under relevant WTO rules and a logistical issue of classification.

As for the legal issue, the relevant rules authorizing GSPs under the WTO disciplines are the GATT Enabling Clause⁶³ and the 1971 GSP Decision,⁶⁴ as the former incorporates GSPs as described in the latter.⁶⁵ The Preamble of the 1971 GSP Decision describes a GSP as a “generalized, non-discriminatory, nonreciprocal preferential tariff treatment in the markets of developed countries for products originating in developing countries”.⁶⁶ Recent WTO jurisprudence has interpreted the elements described in the preamble of the 1971 Decision, “generalized”, “non-discriminatory”, and “nonreciprocal” as binding requirements for GSPs.⁶⁷ Thus it is necessary to consider whether the provision of a GSP based on the proposed production distinction of LPPs will be consistent with these requirements.

There are two selection criteria in the microtrade preference which need to be reviewed against the GSP requirements. One is the product restriction to LPPs, excluding mass-produced industrial products, and the other is the restriction of beneficiaries to LDCs. First, the product limitation to LPPs is a generalized product classification rather than a specialized one in accordance with the product origin.⁶⁸ While some of the positive conditionalities of the GSPs have been challenged and declared inconsistent with WTO requirements by WTO dispute settlement panels and the WTO Appellate Body,⁶⁹ product selections by GSP schemes have been widely practiced without challenge. The product restriction for the microtrade preference is distinguished from the product selections in the other GSP schemes, for the preference based on

⁶³ *Supra* note 61.

⁶⁴ The Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of “generalized, non-reciprocal and non discriminatory preferences beneficial to the developing countries” (BISD 18S/24) (L/3545).

⁶⁵ Enabling Clause, *supra* note 61, para. 2(a), footnote 3.

⁶⁶ *Supra* note 64.

⁶⁷ WTO, *European Communities – Conditions for the Granting of Tariff Preferences for Developing Countries*, Report of the Panel, WT/DS246/R (1 December 2003), para. 7.38, WTO, *Report of the Appellate Body*, WT/DS246/AB/R (7 April 2004), paras. 142-147. See also, Lorand Bartels, *The WTO Enabling Clause and Positive Conditionality in the European Community’s GST Program*, 6 *Journal of International Economic Law* 2 (2003), 507-532.

⁶⁸ The term, “classification” is used in a generic sense and does not mean product classifications under Harmonized System Code (HS Code).

⁶⁹ WTO (2003), *supra* note 67.

LPPs will depend on the manner in which a product in question has been produced: mass-produced products at industrial facilities will be excluded. Nothing in the relevant GSP rules⁷⁰ or in the WTO jurisprudence⁷¹ seems to suggest that this type of product selection will be inconsistent with the rules. Secondly, limiting the beneficiaries of the microtrade preference to LDCs will be consistent with GSP requirements, since paragraph 2(d) of the Enabling Clause authorizes special treatment to LDCs among developing countries. The preceding examination suggests that the microtrade preference scheme will be consistent with the GSP requirements.

The logistical issue of the preference limited to LPPs will be entirely a different issue which requires a further discussion. While it may make sense to limit the preference to LPPs traded on a small scale and not to the mass-produced industrial products,⁷² setting clear standards to distinguish between these two types of products will be a considerable challenge. The same product, for instance a chair, which will be classified identically under the Harmonized System Codes (HS Codes) may or may not benefit from the preference depending on the manner in which it has been produced. A chair produced manually in a small quantity may pass for the LPP qualification for the microtrade preference while mass-produced chairs may not. The current product classification system used to impose tariffs such as HS Codes does not classify products based on the manner of production. Thus different classification criteria will be necessary to determine qualified LPPs.

A possible classification method may be certification by a third party or approval by the importing countries following self-declaration by the LDC producer or trader based on the manner of production as well as production and trade volumes and values in a given period of time. Other possible elements for the determination of LPPs may include: the impact that the imported products may have on domestic producers; general income levels of the place of the product origin, and the extent of contribution by the microtrade of the particular product towards improving the economic conditions of the LDC producer. Sovereign states will be recommended to adopt rather liberal and lenient approaches in determining qualified LPPs for the microtrade preference because LDCs have minimal capacity to export mass-produced products, and thus it is unlikely that their exports will have significant adverse economic impact on domestic producers in developed countries.

⁷⁰ *Supra* notes 61, 64.

⁷¹ *Supra* note 67.

⁷² The necessity of the separate preferential microtrade scheme may lie in the distinction between the purpose of microtrade and that of the other GSPs: the former is to provide assistance for elimination of poverty among the populations in LDCs that can engage in small-scale productions while the latter is to provide assistance for economic development of developing countries at national levels. The present country-and-product based GSP preferences often exclude products that can threaten domestic producers in the importing countries. Mass-produced textile products are a good example. The separate preference scheme for LPPs which are produced and traded on a small scale thus unlikely to pose any significant threat to the domestic producers of importing countries, will provide LDC producers with another channel for access to developed country markets where other country-and-product based preferential schemes may not be available for the particular product.

The most ideal regulatory treatment will be the adoption of a duty-free, quota-free GSP scheme for LDCs on all products, such as the EBA scheme by the European Union.⁷³ Under this type of GSP scheme which is applied to all products, the potentially complex classification and approval of the qualified LPPs will not be necessary for customs purposes. The EBA scheme is a positive step towards achieving the WTO objective of assisting developing countries with economic development through trade,⁷⁴ and needs to be adopted by all developed countries and participating developing countries.⁷⁵ The share of world trade by LDCs still remains miniscule,⁷⁶ and additional supports in favor of LDC trade need to be considered. For instance, as mentioned, exemption of products of LDC origins, including microtraded LPPs, from any applicable domestic fees and taxes will help facilitate LDC trade.

B. Regulatory Facilitation of Microtrade - Provisions of GATT Part IV and Proposal for the WTO Agreement on Development Facilitation

Microtrade will be further facilitated by the adoption of preferential regulatory treatment in the context of “special and differential treatment” (SDT) in WTO disciplines. Various WTO provisions, including the provisions of Part IV of the GATT (Articles XXXVI - XXXVIII), the Enabling Clause, and other separate SDT provisions in relevant WTO agreements prescribe special and differential treatment to the exports from developing countries.⁷⁷ The SDT principle may be extended to form a regulatory basis for imposing an affirmative obligation on developed countries to facilitate microtrade. Examples of such affirmative obligation under the SDT principle are found in the WTO agreements. Article 9.1 of the Agreement on Safeguards prohibits importing countries to adopt safeguard measures (emergency import restraining measures) against the products imported from developing countries where the portion of such imports is minute. It provides:

⁷³ *Supra* note 54. The proposed separate preference for microtrade will be a second best measure where the duty-free, quota-free preferential trade scheme in favor of LDCs is not available. LDC exporters will lose the preference limited to microtrade where LPP exports do not meet the requisite criteria for microtrade. A concern has then been raised that it will put a cap on the economies of scale that can be enjoyed by LDC exporters. Given that a fear for increased importation that may result from the economies of scale is an important reason to not allow the general, EBA-type preference in the first place, the preferential scheme for microtrade will have to put an inherent limitation on the economies of scale by limiting traded values and quantities.

⁷⁴ The preamble to the WTO Agreement provides in relevant part: “*Recognizing* further that there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development”. WTO (2003), *supra* note 60, p. 4.

⁷⁵ Y.S. Lee (2009), *supra* note 1, p. 38.

⁷⁶ The share of world trade by LDCs was mere 0.088% in 2007. WTO, *International Trade Statistics 2008* (Geneva, 2008).

⁷⁷ 145 such provisions are scattered throughout several WTO agreements, understandings, and GATT articles. Twenty-two are applied exclusively to LDCs. For a review of the special and differential treatment (S&D) provisions in the WTO, see WTO, *Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions – Note by Secretariat*, WT/COMTD/W/77 (25 October 2000).

Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.⁷⁸

The similar rationale can be applied to the import of LPPs where its quantities and values are limited so as to obligate the importing countries to not apply any tariffs, quotas, or any other trade measures and to guarantee free admittance of LPPs into the markets of developed countries.

The broader principles of Part IV of the GATT, which aims to accord SDT to imports from developing countries, may also provide legal justifications for affirmative obligations on the part of developed countries to facilitate microtrade. Article XXXVI⁷⁹ emphasizes the vital role of export earnings in economic development and provides for the authorization of special measures to promote trade and development,⁸⁰ which may include preferential treatment in favor of microtrade. Article XXXVII⁸¹ also elaborates commitments on the part of developed countries to assist with the economic development of developing countries. The provisions of this article obligate developed country WTO members (“Members”) to accord high priority to the reduction and elimination of import barriers to products of particular export interest to developing country Members, and to refrain from introducing or increasing import barriers to such products.⁸² The provision also obligates developed country Members to adopt measures to provide a greater scope for the development of imports from developing countries.⁸³ Special regard is to be given to the trade interests of developing countries in the application of trade measures against imports.⁸⁴ These principles are applicable to microtrade where exportation of LPPs would be vital to LDCs’ efforts to eliminate poverty.

Despite the impressive array of developed-country obligations and noble principles in favor of assisting developing countries expressed in the aforementioned provisions of GATT Part IV,

⁷⁸ WTO (2003) *supra* note 60, pp. 279-280.

⁷⁹ WTO (2003), *supra* note 60, pp. 468-469.

⁸⁰ Article XXXVI also clarifies that there should be no expectation of reciprocity on the part of developed countries for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries.

⁸¹ WTO (2003), *supra* note 60, pp. 469-471.

⁸² WTO (2003), *supra* note 60, p. 469. With respect to this commitment, paragraph 1 of Article XXXVII provides in relevant part, “The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible give effect to the following provisions.” *Id.* This provision allows developed countries to avoid this commitment by, for instance, legislating for restraints on imports from developing countries.

⁸³ *Ibid.*, para. 3.

⁸⁴ *Ibid.*

these provisions are largely declaratory: those obligations are not enforced with any binding sanctions in case of breach.⁸⁵ Thus the author has argued that a more specific set of SDT rules need to be provided in WTO disciplines.⁸⁶ A separate set of rules, entitled “the Agreement on Development Facilitation (ADF)”, has been proposed to provide a more coherent and comprehensive set of standards for the SDT and for the regulatory obligations to be imposed on developed countries to assist with economic development.⁸⁷ Specific provisions on the facilitation of microtrade can be included in the ADF. A clear set of requirements for qualified LPPs for microtrade preference, and some of the mandatory obligations for the promotion of microtrade, such as quota-free and tariff-free treatment, can be set out in those provisions.

Mandatory facilitation for microtrade may also include reasonable relaxation of rules of origin. The complex and stringent rules of origin adopted by major developed economies have been a significant obstacle to the export by developing countries, particularly LDCs.⁸⁸ While it will be preferable to have rules of origin relaxed across the board, preferential application of the rules should be considered in favor of LPPs if the general relaxation of the rules would not be possible. The rationale is that if the preferential treatment of LPPs is to allow free importation of limited quantities of LPPs into the markets of developed countries, there would be little point to apply a high level of scrutiny in determining the origin of the product. If local LDC producers can somehow utilize foreign materials and components in making small quantities of LPPs to export, this should be encouraged and supported and not be hampered by stringent rules of origin. The standards set for the relaxed rules of origin can also be provided in the relevant ADF provisions. In addition, the ADF may include provisions to mandate expeditious processing of LPPs at customs so as to avoid undue delays at borders.

C. Proposal for the Council on Trade and Development in the WTO

The author has also discussed the need to create a separate council on trade and development within the WTO to better facilitate economic development in the context of WTO activities with a broader mandate to affect fundamental development issues than the current CTD, and made a proposal to set up the Council on Trade Development.⁸⁹ The proposed functions of this Council

⁸⁵ Petros C. Mavroidis, *The General Agreement on Tariffs and Trade: A Commentary* (Oxford: Oxford University Press, 2005), pp. 267, 270; R. Howse and M. J. Trebilcock, *The Regulation of International Trade* (3rd ed., Oxford: Routledge, 2005), p. 475; Lee (2009), *supra* note 1, pp. 32-35; M. Matsushita, T. J. Schoenbaum and P. C. Mavroidis, *The World Trade Organization: Law, Practice And Policy* (2nd ed., Oxford: Oxford University Press, 2006), p. 766; and Robert Hudec, *Developing Countries in the GATT Legal System* (Aldershot, Hampshire: Gower Publishing, 1987).

⁸⁶ Lee (2009), *supra* note 1, pp. 47-48 and Y.S. Lee, *Development and the World Trade Organization: A Proposal for the Council for Trade and Development and the Agreement on Development Facilitation (ADF)*, 6 *Asper Review of International Business and Trade Law* (2006), 190-204.

⁸⁷ *Ibid.*

⁸⁸ Stefano Inama, *Market Access for LDCs: Issues to Be Addressed*, 36 *Journal of World Trade* 1 (2002), 115.

⁸⁹ Lee (2009), *supra* note 1, pp. 43-45 and Lee (2006), *supra* note 86, pp. 187-189.

include monitoring of compliance by WTO members with development facilitation provisions in WTO disciplines, including those of the proposed ADF.⁹⁰ The author has also proposed mandatory reports to the Council to be made by all developed country Members and participating developing country Members on their development facilitation activities.⁹¹ Facilitation of microtrade can be made part of the mandatory monitoring and reporting items, which may include:

- Survey of microtrade and the status of LPP importation
- Facilitation of microtrade through preferential regulatory treatment and active policy measures in compliance with relevant WTO provisions
- Disclosure of any trade or financial measures that adversely affect the importation of LPPs, as well as any complaints made by relevant LDCs and their dispositions by the importing country
- Any future plans to facilitate and support microtrade

The Council may also cooperate with the proposed microtrade organization for the promotion and facilitation of microtrade. The regulatory basis for such cooperation is articulated in Article XXXVIII of the GATT⁹² which requires institutional efforts by the WTO to provide assistance with development. These efforts include collaboration with other relevant international organizations in the matters of trade and development including: analyzing the development plans and policies of individual developing country Members; seeking feasible methods to expand trade for the purpose of economic development; and examining trade and aid relationships with a view to devise measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed. The Article also requires monitoring of the development of world trade with special reference to the growth rate of developing country Members' trade as well as the establishment of institutional arrangements as may be necessary to implement these provisions.⁹³ If the proposed microtrade organization is to attain an IGO status, the cooperation between the WTO and the microtrade agency will be mandated by the provision of Article XXXVIII.

⁹⁰ Lee (2006), *supra* note 86, pp. 204-207.

⁹¹ *Ibid.*

⁹² WTO (2003), *supra* note 60, pp. 471-472.

⁹³ *Ibid.*

IV. Conclusion: Trade Rather Than Aid

Former U.S. President Bill Clinton, Microsoft founder Bill Gates, and so many other prominent individuals have emphasized the importance of giving.⁹⁴ Aid is indeed important and has saved many lives in places of extreme poverty. Nonetheless, severe poverty will not be eliminated unless the populations in LDCs achieve the level of economy that will bring them out of poverty through economic development. Economic development cannot be achieved solely by aid and requires development of viable industries. Unfortunately, many LDCs do not have the requisite educational, industrial, financial, and political capabilities to initiate large-scale economic development projects that have been undertaken successfully by some of the East Asian countries. Economic development has not been successful in most of the LDCs, and crushing poverty still exists.

The author suggests microtrade as an alternative way to improve the economic status of impoverished people in LDCs which cannot meet industrial and political conditions to initiate economic development at a national level. Small-scale productions of LPPs can help LDC producers when LPPs are exported into the markets of developed countries in which those products can be sold at much higher prices.⁹⁵ There are potentially complex logistical issues in microtrade with substantial cost implications. It is hoped that voluntary assistance will reduce the costs to the extent that earnings from microtrade will enable people in LDCs to reduce or eliminate the most extreme forms of poverty. The advent of the internet and the accessibility of an online database will be essential for the microtrade scheme. Microcredit can be a useful device to finance production of LPPs and microtrade.

Regulatory issues will also be important for the facilitation and promotion of microtrade. The proposed preferential treatment in favor of microtrade may be authorized under the existing exceptions to the MFN requirement of WTO disciplines, such as GSP schemes. Indeed, the current environment in international trade shows considerable emphasis on development, as reflected in the Doha Development Agenda (DDA),⁹⁶ and it is also hoped that support can be found for microtrade in this new environment.

Microtrade is not proposed as a preferred means of economic development where other, more efficient economic opportunities exist. As shown in the preceding discussion, there will be no point to engage in microtrade where domestic sale of goods and services can yield more profits

⁹⁴ See Bill Clinton, *Giving: How Each of Us Can Change the World* (Knopf, 2007). Bill Gates has also founded the largest private foundation in the world, "Bill & Melinda Gates Foundation", with the aims to enhance healthcare and reduce extreme poverty. <www.gatesfoundation.org>.

⁹⁵ *Supra* note 26.

⁹⁶ For the Doha Development Agenda, see WTO, *Doha Development Agenda: Negotiations, implementation and development*, available at: <www.wto.org/english/tratop_e/dda_e/dda_e.htm>.

for LDC producers or where there are other economic opportunities that provide higher income for LDC residents such as employment opportunities arising from large-scale international trade based on mass-production of manufactured products or primary products.⁹⁷ Microtrade will be an important alternative device to reduce or eliminate poverty in LDCs where such opportunities do not exist. They do not indeed seem to exist in many LDCs, and extreme poverty has persisted for several decades. The basic premises of microtrade is that the higher prices in developed country markets and the higher purchasing power of consumers in developed countries justify export efforts,⁹⁸ just as shown during the economic development process of the East Asian countries. Microtrade is conceived and promoted in this context, *albeit* on a much smaller scale, to improve the economic status of impoverished people in LDCs.

It is to be noted that the proposed microtrade scheme and the large-scale economic development initiatives at national levels such as those undertaken by the East Asian countries in the past have different scopes and objectives: the purpose of the latter development initiatives is industrialization of the nation and improvement of the economic level on a national scale. All of the NICs had attained the level of developed economy by the 1990s through economic development on a national scale.⁹⁹ However, this is not the objective of microtrade. Microtrade does not aim to replace large-scale economic development initiatives undertaken at national levels. The aim of microtrade is a much more modest one, to generate a level of sustainable income through small-scale trade, which will be sufficient to bring LDC people out of poverty on an individual, family, or perhaps a community basis. Thus, the microtraded LPPs will be types of products that do not require high level of capital or mass production capacities, but those that can be manufactured inexpensively with low levels of technology and shipped and sold in the markets of developed countries for a profit. Microtrade can be promoted separately from, or concurrently with, large-scale economic development initiatives.

On a final note, the author acknowledges that the economic efficiency of microtrade may be questioned even in cases in which transactions of microtrade appear successful and generate income for LDC producers beyond the poverty level. In economic terms, voluntary assistance will be a cost, even if it may not be a financial cost for LPP producers. Thus the microtrade scheme may be challenged on the ground that the income generated by microtrade may not justify the associated costs, including voluntary assistance, which may arise from the inefficiency of production and trade on a small scale. The economic efficiency of microtrade will have to be assessed on case-by-case basis, but even where microtrade does not appear economically efficient in the beginning, trade will still be a better way to provide productive assistance than giving handouts. The economic case for microtrade can also be made on the ground that successful microtrade will create market demands for LPPs, which may over time reduce costs as

⁹⁷ Large-scale export industries provided a large number of employment opportunities for the local residents in the East Asian countries during their rapid development periods since the 1960s.

⁹⁸ *Supra* notes 26, 31.

⁹⁹ *Supra* note 6.

demand grows and production and trade volume increases. As a result, a transition from microtrade to larger-scale international trade may occur, lifting LPP producers from poverty onto the path of higher economic development. As mentioned, where no other economic option is available, which would be more viable and profitable for LDC residents, microtrade can be an alternative option,¹⁰⁰ and those producing LPPs and gaining income from microtrade will not develop passive reliance on external aid. A meaningful start to overcome poverty should begin by overcoming such reliance, and microtrade can provide a way out of passive reliance to achieve life free from poverty.

¹⁰⁰ $E_m = (P_f \times Q_f) - C_{p,d,s,r}$ where $E_m \geq E_d$ and $E_m \geq E_o$. See the preceding analysis in II.B above.

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