

SMALL ISLAND DEVELOPING STATES AND INTERNATIONAL TRADE: SPECIAL CHALLENGES IN THE GLOBAL PARTNERSHIP FOR DEVELOPMENT

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[In the United Nations Millennium Declaration and Millennium Development Goals ('MDGs'), UN Members resolved to address the special needs of small island developing states ('SIDS'). One part of this is ensuring that the international trade regime contributes to their development. These issues have been discussed both in the UN system, as part of the implementation and review of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States, and in the World Trade Organization, primarily through the WTO Work Programme on Small Economies. This article examines proposals made in these contexts to enhance the competitiveness of SIDS in a free global market and their effective participation in the multilateral regime. Responses to these proposals show some willingness to provide assistance to SIDS, but resistance to the recognition of further exceptions for certain subcategories of developing countries, reflecting larger debates about special and differential treatment for developing countries in the WTO. It is concluded that if, as seems likely, limited recognition of SIDS needs will be provided within the trade regime, the international community must take its assistance commitments seriously, and it will be beneficial to maintain linkages between SIDS trade issues and the broader context of the MDGs.]

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I INTRODUCTION

If, as is sometimes suggested, a society can be judged by the way it treats its most vulnerable members, the response to small island developing states ('SIDS') is an important test for the international community. The physical, geographical, economic and demographic characteristics of these states create special challenges for them and result in a degree of inherent vulnerability that must be taken into account in strategies for their development. The United

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Nations and other international organisations, such as the World Bank, the Commonwealth Secretariat and the World Trade Organization, have recognised the unique difficulties confronting SIDS.¹ In the *United Nations Millennium Declaration*, UN Members resolved to address the special needs of SIDS,² and this is included as one of the targets of the global partnership for development in the Millennium Development Goals ('MDGs').³

One aspect of the response to SIDS is ensuring that the international trade regime accommodates their needs and contributes to their development. This article examines the concerns that have been raised by SIDS with respect to existing trade rules and reforms that have been proposed. In the WTO and elsewhere, small states have been arguing that special provisions are required to address the inherent disadvantages they face in the global trading system. These arguments must be situated and assessed within the context of larger debates about the relationship between trade and development, and the optimal trade rules for the promotion of development. This article therefore explores the intersection between two targets of the MDGs: developing an 'open, rule-based, predictable, non-discriminatory' trading system that is committed to development and poverty reduction (Target 12) and addressing the special needs of SIDS (Target 14).

This subject is one of critical importance to the Pacific region, home to a number of the world's SIDS, and more generally, given that a substantial proportion of the world's states are SIDS. It is also a highly topical subject, since a number of significant developments are occurring in 2005. Trade issues were prominent on the agenda of the January 2005 International Meeting for the Ten-Year Review of the Barbados *Programme of Action for the Sustainable Development of Small Island Developing States*.⁴ The international community will assess progress on the MDGs at a summit convened by the UN General Assembly in September 2005. Meanwhile, discussions are continuing within the WTO on trade issues for 'small, vulnerable economies' in the lead-up to the Sixth Ministerial Conference in December 2005. This article examines some recent proposals for 'special and differential treatment' ('SDT') for SIDS made in these contexts, which form part of a larger debate on trade and small developing economies. After introducing the category of SIDS and the MDGs, this article will consider the activities of the WTO Work Programme on Small

¹ See, eg, Commonwealth Secretariat/World Bank Joint Task Force on Small States, *Small States: Meeting Challenges in the Global Economy* (2000) 3 <[http://wbln0018.worldbank.org/html/smallstates.nsf/\(attachmentweb\)/final/\\$FILE/final.pdf](http://wbln0018.worldbank.org/html/smallstates.nsf/(attachmentweb)/final/$FILE/final.pdf)> at 1 October 2005 ('Commonwealth Secretariat/World Bank Report'); *Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States*, as contained in *Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States*, ch I, res 1, annex I, UN Doc A/CONF.207/11 (13 January 2005) ('*Mauritius Strategy*').

² GA Res 55/2, UN GAOR, 55th sess, 8th plen mtg, agenda item 60(b), [17], UN Doc A/RES/55/2 (8 September 2000) ('*Millennium Declaration*').

³ As contained in the annex to *Road Map towards the Implementation of the United Nations Millennium Declaration: Report of the Secretary-General*, UN GAOR, 56th sess, agenda item 40, UN Doc A/56/326 (6 September 2001) ('*Road Map*').

⁴ As contained in *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, pt 1, res 1, annex II, UN Doc A/CONF.167/9 (October 1994) ('*Barbados Programme of Action*').

Economies ('WPSE')⁵ and relevant aspects of the follow-up to the *Barbados Programme of Action*.

II SMALL ISLAND DEVELOPING STATES

According to the UN, there are 51 SIDS in the world.⁶ Although the exact figures will vary depending on the measures used, by any calculation they make up a significant proportion of the world's states: for example, the 37 SIDS that are UN Members represent almost one-fifth of the UN Membership.⁷ This category represents the intersection of three groups — small states, island states, and developing or least-developed states — which all face significant challenges in their own right. Consequently, SIDS are among the most vulnerable states in the international community.

There is no consistent definition of 'small states'. A population threshold of 1.5 million is often used, although some states with somewhat larger populations may be included on the ground that they share the relevant characteristics,⁸ and higher thresholds have been suggested, along with other measures such as land area and total gross domestic product.⁹ Subcategories of 'very small' or 'micro' states can also be identified, although again with some variation in thresholds.¹⁰ There is considerable diversity within the group of small states. However, they

⁵ See *Work Programme on Small Economies*, WTO Doc WT/L/447 (2002) [2] (Framework and Procedures) ('WPSE').

⁶ UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, *List of Small Island Developing States* (2005) <<http://www.un.org/special-rep/ohrlls/sid/list.htm>> at 1 October 2005 ('*List of SIDS*'). Most of the countries on this list are also members of the Alliance of Small Island States ('AOSIS'): AOSIS, *Members and Observers* (2004) <<http://www.sidsnet.org/aosis/members.html>> at 1 October 2005.

⁷ *List of SIDS*, above n 6.

⁸ Commonwealth Secretariat/World Bank Report, above n 1, 3. The UN list of SIDS also includes, for example, Papua New Guinea, with a population of 5.4 million, and the Dominican Republic, with 8.8 million: *List of SIDS*, above n 6.

⁹ Tom Crowards, 'Defining the Category of "Small" States' (2002) 14 *Journal of International Development* 142, 142–9. Crowards also notes that the commonly used cut-off points have declined over the last several decades, due in part to the increasing numbers of states and of small states in particular: at 145.

¹⁰ For example, the Commonwealth Secretariat/World Bank Report defines 'micro-states' as having populations of less than 50 000: above n 1, 3. Another study uses approximately 12 000 as the cut-off for the smallest 'micro-economies' group and approximately 200 000 for the 'very small' group: L Alan Winters and Pedro Martins, 'When Comparative Advantage Is Not Enough: Business Costs in Small Remote Economies' (2004) 3 *World Trade Review* 347, 360. Crowards, above n 9, suggests that 0.5 million is a commonly used cut-off for 'micro' states: at 145.

tend to share certain characteristics and challenges, which have been widely recognised.¹¹

The small land area of these states places pressure on natural resources. Fresh water will often be scarce and its supply easily threatened. The resource base of small states is typically narrow and this is reflected in the production of a narrow range of goods and services. As a result, there are limited opportunities for diversification, leaving producers and the national economy vulnerable to depletion of key resources, global fluctuations in prices and other factors largely beyond their control. The narrow resource base and small area mean that small states are extremely vulnerable to natural disasters and environmental change, because these have the potential to wipe out the supply of key resources for the whole country. This is compounded by the fact that small island states are particularly susceptible to natural disasters such as hurricanes. In the longer term, a rise in sea levels may threaten the very existence of some small island states, and in the short term, disasters and environmental degradation often affect the entire population and physical environment, with potentially devastating consequences.¹²

A small population often means limited institutional capacity in the public and private sectors. Government departments and private firms are relatively small, affecting their capacity and competitiveness, respectively. Economies of scale cannot be achieved in production by small firms, or in the provision of public services.¹³ These services are thus relatively costly to provide, and this may be exacerbated by high transport costs.¹⁴ At the same time, sources of revenue are limited, with many small states relying heavily on tariffs for a substantial proportion of public revenue. The economies of small states tend to be relatively 'open' to trade and investment, and rely heavily on them. However, access to external capital is limited and many small states are dependent on official development assistance.¹⁵

¹¹ See, eg. Commonwealth Secretariat/World Bank Report, above n 1, 5–19; Richard Bernal, 'Special and Differential Treatment for Small Developing Economies' (Paper presented at the OECD Global Forum on Trade: Special and Differential Treatment: Thinking Outside the Box, Bridgetown, Barbados, 28–9 June 2005) 9–12; Michael Witter, Lino Briguglio and Assad Bhuglah, 'Measuring and Managing the Vulnerability of Small Island Developing States' (Paper presented at the UN Development Programme Global Roundtable: Vulnerability and Small Island Developing States: Exploring Mechanisms for Partnership, Montego Bay, Jamaica, 9–10 May 2002) 9–10 available at <<http://www.undp.org/bpoa%2B10/docs/EconomicVulnerability.pdf>> at 1 October 2005; *Barbados Programme of Action*, above n 4, [4]–[11]; *Declaration of Barbados*, as contained in *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, pt 1, res 1, annex I, [III]–[IV], UN Doc A/CONF.167/9 (October 1994) ('*Barbados Declaration*').

¹² See generally Commonwealth Secretariat/World Bank Report, above n 1, 5–19; Bernal, above n 11, 13; Witter, Briguglio and Bhuglah, above n 11, 9–10; *Barbados Programme of Action*, above n 4, [4]–[11], [18]–[20]; *Barbados Declaration*, above n 11, [III]–[IV].

¹³ Commonwealth Secretariat/World Bank Report, above n 1, 18. See also Bernal, above n 11, 16.

¹⁴ FAO, *Small Island Developing States: Agricultural Production and Trade, Preferences and Policy*, FAO Commodities and Trade Technical Paper 7 (2005) 17 available at <http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5795e/y5795e00.htm> at 1 October 2005 ('*FAO Paper*'); Winters and Martins, above n 10, 350; Bernal, above n 11, 16.

¹⁵ Winters and Martins, above n 10, 10.

A large proportion of small states are islands or multi-island states,¹⁶ so the SIDS category is an important one. The fact that many small states are islands compounds some of the difficulties they face. Many of these states are physically remote and isolated. Remoteness entails dependence on transport providers and high transport costs, which are already higher for small volumes;¹⁷ this raises the price of imports and exports. Even within individual multi-island states, high costs and difficulties with market access exist. In addition, effective public administration is difficult and expensive. Remoteness discourages foreign producers and service providers, and the domestic market may be too small to support more than one producer, so that competition in the domestic market is limited.¹⁸ Thus small size and geographic location work together to exacerbate certain difficulties.

From this brief summary, it will be appreciated that small states, and especially small island states, face significant challenges in a number of related areas.¹⁹ Although small states tend to do relatively well on some development indicators (such as education and health), they often have more poverty than their per capita income would suggest.²⁰ For SIDS, a crucial concern is the extent to which size and remoteness or insularity affect their development and economic performance. These issues have been the subject of a long and continuing debate, in which key questions include the extent to which the characteristics of SIDS constrain economic growth and whether these effects can be neutralised or minimised by appropriate policies and actions on the part of SIDS.²¹ Discussion has also focused on the concept of vulnerability, which in this context refers to volatility in economic growth,²² or more broadly, 'exposure to exogenous shocks over which the affected country has little or no control, and relatively low resilience to withstand and recover from these shocks'.²³

Although the precise relationship between size, economic growth, and vulnerability has not been established,²⁴ the vulnerability of small states, and especially SIDS, has emerged as an important concern.²⁵ While all developing countries tend to experience volatility because of their dependence on exports of primary products and on external capital flows, some characteristics common to

¹⁶ Of the 45 small developing states identified in the Commonwealth Secretariat/World Bank Report, 34 are islands: above n 1, 5.

¹⁷ *FAO Paper*, above n 14, 17; Winters and Martins, above n 10, 350; Bernal, above n 11, 16.

¹⁸ *FAO Paper*, above n 14, 17.

¹⁹ For greater detail see discussion in Part IV(B).

²⁰ Commonwealth Secretariat/World Bank Report, above n 1, 16. This is thought to be due to uneven distribution of income, especially in multi-island states.

²¹ For a survey of literature, see, eg, *Small Economies: A Literature Review*, WTO Doc WT/COMTD/SE/W/4 (2002) (Note by the Secretariat). See also Harvey W Armstrong and Robert Read, 'The Phantom of Liberty?: Economic Growth and the Vulnerability of Small States' (2002) 14 *Journal of International Development* 435, 435–6.

²² Fen-May Liou and Cherng Ding, 'Positioning the Non-Least-Developed Developing Countries Based on Vulnerability-Related Indicators' (2004) 16 *Journal of International Development* 751, 752.

²³ Commonwealth Secretariat/World Bank Report, above n 1, 19.

²⁴ Armstrong and Read, above n 21, 452.

²⁵ See, eg, Witter, Briguglio and Bhuglah, above n 11; University of the West Indies Centre for Environment and Development, *The Growing Vulnerability of Small Island Developing States* (2002) <<http://www.un.org/special-rep/ohrlls/sid/sid2004/Univ.%20of%20W.Indies-Growing.pdf>> at 1 October 2005.

SIDS make them particularly vulnerable, such as lack of economic diversification, export dependence and susceptibility to damage from natural disasters.²⁶ Thus it is widely accepted that vulnerability is strongly correlated with the SIDS category: almost all of the states classified as ‘most vulnerable’ are small states, and about two thirds of these are islands.²⁷

Given the importance of vulnerability, it has been suggested that an alternative category of ‘small and vulnerable states’ would be more appropriate to identify countries in need of special consideration.²⁸ As will be seen below, discussion in the WTO has revolved around the category of ‘small economies’ or ‘small, vulnerable economies’. This category includes SIDS, along with others such as landlocked developing countries, which have also been recognised as requiring special consideration.²⁹ Even the boundaries of the SIDS category itself are somewhat flexible; a few countries commonly included in the list of SIDS are not in fact islands, but rather small coastal states which share most of the determinative characteristics.³⁰ Many would argue that the SIDS category does represent a distinctive intersection of characteristics that requires separate consideration. However, this category cannot easily be defined in strict or absolute terms, and it will be seen below that the question of the degree to which SIDS characteristics are shared by other developing states has important implications for the proposed responses to their challenges.

III THE MILLENNIUM DEVELOPMENT GOALS

In 2000, the Members of the UN unanimously adopted the *Millennium Declaration*, committing themselves to a broad and ambitious set of objectives in the areas of peace, security and disarmament; development and poverty eradication; environmental protection; human rights, democracy and good governance; protection of vulnerable populations; meeting the ‘special needs of Africa’; and strengthening the UN.³¹ With respect to development and poverty eradication, Members resolved to achieve certain specific goals by the year 2015.³² These goals were later elaborated in a report of the UN Secretary-General setting out a ‘road map’ for implementation of the *Millennium Declaration*,³³ and distilled into the eight goals now known as the MDGs and their associated targets.³⁴

Most of the MDGs and targets relate to specific issues or sectors, for example health indicators such as child and maternal mortality, or the incidence of HIV/AIDS, or education. Goal 8, however, is a much broader, overarching goal: to ‘[d]evelop a global partnership for development’.³⁵ It is therefore not

²⁶ See, eg. Bernal, above n 11, 13–14; Witter, Briguglio and Bhuglah, above n 11, 4–8.

²⁷ Commonwealth Secretariat/World Bank Report, above n 1, 20.

²⁸ *FAO Paper*, above n 14, 72.

²⁹ See below Part IV(A).

³⁰ See *List of SIDS*, above n 6; examples include Belize and Guyana.

³¹ Above n 2.

³² *Ibid* [19].

³³ *Road Map*, above n 3.

³⁴ *Ibid* annex.

³⁵ *Ibid*.

surprising that the largest number of targets and indicators are related to this last goal. Of particular interest for this article are the following targets:

Target 12. Develop further an open, rule-based, predictable, non-discriminatory trading and financial system

Includes a commitment to good governance, development, and poverty reduction — both nationally and internationally

...

Target 14. Address the special needs of landlocked countries and small island developing states

(through the *Programme of Action for the Sustainable Development of Small Island Developing States* and the outcome of the twenty-second special session of the General Assembly)³⁶

The scope of these two targets is extremely broad. Target 12, especially, is all but overwhelming as a single objective, and Target 14 incorporates the whole of the *Barbados Programme of Action*.³⁷ Their inclusion in the MDG agenda is important, as some progress toward these targets is an essential precondition for the full achievement of others, but they are so broadly stated that it is necessary to focus on smaller parts of them in order to allow meaningful discussion.³⁸ This article is specifically concerned with one issue at the intersection of these two targets, that is, development or reform of the trading system as one means of addressing the special needs of SIDS. It is nevertheless important to consider the issue within its context as part of a larger global agenda.

A *The Millennium Development Goals and International Trade*

While essential to the MDG ‘compact’,³⁹ the eighth MDG calling for a ‘global partnership for development’ is ambitious and arguably still the furthest from being realised.⁴⁰ Although reversing the downward trend in official development assistance is a major concern,⁴¹ the MDGs are also concerned with international trade as ‘an important engine of growth’ and development.⁴² This approach is mirrored by that of the *Monterrey Consensus of the International Conference on Financing for Development*,⁴³ which followed the *Millennium Declaration* and MDGs in 2002. According to these documents, the ‘partnership for development’ must address not only official development assistance, but also

³⁶ Ibid.

³⁷ Above n 4. See also below Parts III(B) and IV.

³⁸ To make matters even more difficult, Target 12, unlike the other targets, has no specific indicators attached to it: see *Road Map*, above n 3, annex.

³⁹ Sakiko Fukuda-Parr, ‘Millennium Development Goals: Why They Matter’ (2004) 10 *Global Governance* 395, 398.

⁴⁰ Ibid 401.

⁴¹ *Road Map*, above n 3, [135].

⁴² Ibid [137].

⁴³ *Monterrey Consensus of the International Conference on Financing for Development*, as contained in *Report of the International Conference on Financing for Development*, res 1, UN Doc A/CONF.198/11 (22 March 2002) (‘*Monterrey Consensus*’). See especially ch II(C): ‘International Trade as an Engine for Development’, [26]–[38].

debt, foreign direct investment and other private resources, technical cooperation, and trade.⁴⁴ The focus on international trade is based on the understanding that liberalisation of trade can, and should, benefit developing countries by promoting growth, generating employment and increasing foreign exchange earnings;⁴⁵ but that to date, the main beneficiaries have been industrialised, ‘upper-middle-income’ countries.⁴⁶

The recommendations made in the context of the MDGs and the *Monterrey Consensus* with respect to trade are familiar and echo many of the concerns raised by developing and least-developed countries (‘LDCs’) in the WTO. They include, for example, ensuring market access for developing country products; addressing the abuse of anti-dumping measures as a barrier to developing country exports, and the impact of non-tariff barriers; facilitating the accession of developing countries and LDCs to the WTO; and providing greater support for capacity-building and technical assistance.⁴⁷

These issues, among others, are currently under discussion in the Doha Round of WTO negotiations, also referred to as the ‘Development Round’ or ‘Doha Development Agenda’, launched by the *Doha Declaration* adopted at the Fourth Ministerial Conference in 2001.⁴⁸ The *Doha Declaration* expresses an intention to place the needs and interests of developing countries ‘at the heart of the Work Programme adopted in this *Declaration*’ and to ‘make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development’.⁴⁹ Progress in the Doha Round is therefore crucial to the realisation of the eighth MDG and Target 12, and recent MDG documents urge states to commit to the successful conclusion of these negotiations.⁵⁰ As will be seen below, addressing the particular difficulties of SIDS and other ‘small, vulnerable economies’ in the context of international trade is also part of the *Doha Work Programme*.⁵¹

⁴⁴ *Ibid*; *Millennium Declaration*, above n 2.

⁴⁵ *Monterrey Consensus* [26]–[27]; *Road Map*, above n 3, [137].

⁴⁶ *Road Map*, above n 3, [137].

⁴⁷ *Monterrey Consensus*, above n 43, [26]–[28]; *Road Map*, above n 3, [137]–[138]; *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, 59th sess, agenda items 45 and 55, UN Doc A/59/2005 (21 March 2005) (‘*In Larger Freedom*’). Issues relating to the *TRIPS Agreement* and public health have received specific attention in relation to Target 17 of the MDGs: see *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 1C (*Agreement on Trade-Related Aspects of Intellectual Property Rights*) 1869 UNTS 299.

⁴⁸ *Ministerial Declaration*, WTO Doc WT/MIN(01)/DEC/1 (14 November 2001) (‘*Doha Declaration*’).

⁴⁹ *Ibid* [2].

⁵⁰ *In Larger Freedom*, above n 47, [55]; *Implementation of the United Nations Millennium Declaration: Report of the Secretary-General*, 59th sess, agenda item 56, [68], UN Doc A/59/282 (27 August 2004); UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (2005) 212 <<http://www.unmillenniumproject.org/reports/index.htm>> at 1 October 2005.

⁵¹ *Doha Work Programme*, WTO Doc WT/L/579 (2004) (Decision Adopted by the General Council on 1 August 2004).

B *Target 14, Small Island Developing States, and
the Barbados Programme of Action*

In the *Millennium Declaration*, UN Member States ‘resolve to address the special needs of small island developing States’.⁵² Both the *Millennium Declaration* and MDG Target 14 refer to, and incorporate, the *Barbados Programme of Action*.⁵³ This document was the outcome of an international conference in 1994, and it has provided the main focus for efforts to address SIDS development concerns. The preamble recalls the challenges faced by SIDS, and links the *Barbados Programme of Action* to the *Rio Declaration on Environment and Development*⁵⁴ and *Agenda 21*,⁵⁵ both outcomes of the 1992 UN Conference on Environment and Development. The *Barbados Programme of Action* summarises the case for special consideration of SIDS by stating that:

Although they are afflicted by economic difficulties and confronted by development imperatives similar to those of developing countries generally, small island developing States also have their own peculiar vulnerabilities and characteristics, so that the difficulties they face in the pursuit of sustainable development are particularly severe and complex.⁵⁶

The preamble affirms that SIDS are ‘a special case for both environment and development’,⁵⁷ a statement that has been repeated in subsequent documents.⁵⁸

The *Barbados Programme of Action* then outlines actions, policies and measures to be undertaken at the national, regional and international levels in relation to 14 ‘priority areas’: climate change and sea level rise; natural and environmental disasters; waste management; coastal and marine resources; freshwater resources; land resources; energy resources; tourism; biodiversity; national institutions and administrative capacity; regional institutions and technical cooperation; transport and communication; science and technology; and human resource development.⁵⁹ The 15th section deals with implementation, monitoring and review.⁶⁰

In addition to the *Millennium Declaration*, several subsequent UN documents have referred to, and urged the implementation of, the *Barbados Programme of Action*. In 1999, the UN General Assembly held a special session to discuss the implementation of the *Barbados Programme of Action*, and adopted the

⁵² Above n 2, [17]. See also *Road Map*, above n 3, [151]–[155].

⁵³ Above n 4. See *Millennium Declaration*, above n 2, [17]; *Road Map*, above n 3, annex.

⁵⁴ As contained in *Report of the United Nations Conference on Environment and Development*, annex I, UN Doc A/CONF.151/26/Rev.1(Vol I) (12 August 1992).

⁵⁵ As contained in *Report of the United Nations Conference on Environment and Development*, annex II, UN Doc A/CONF.151/26/Rev.1(Vol.I) (12 August 1992).

⁵⁶ Above n 4, [3].

⁵⁷ *Ibid* [14].

⁵⁸ See *Plan of Implementation of the World Summit on Sustainable Development*, as contained in *Report of the World Summit on Sustainable Development*, 17th plen mtg, res 2, [58], UN Doc A/CONF.199/20 (4 September 2002) (*‘Johannesburg Plan’*); *Declaration and State of Progress and Initiatives for the Future Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States*, GA Res S-22/2, UN GAOR, 22nd special sess, 5th plen mtg, annex, agenda item 8, preamble, UN Doc A/RES/S-22/2 (28 September 1999) (*‘Declaration and State of Progress and Initiatives’*).

⁵⁹ *Barbados Programme of Action*, above n 4, [18]–[65].

⁶⁰ *Ibid* [66]–[135].

Declaration and State of Progress and Initiatives,⁶¹ outlining areas requiring urgent attention within the priority areas of the *Barbados Programme of Action*. The *Declaration and State of Progress and Initiatives* elaborates further the section on implementation in the *Barbados Programme of Action*,⁶² and suggests a comprehensive review of implementation in 2004.⁶³ The 2002 *Johannesburg Plan* calls for a range of actions 'at all levels' to support sustainable development in SIDS, capacity-building in areas such as health care and waste management, and poverty eradication initiatives.⁶⁴ The *Monterrey Consensus* reaffirms commitment to the *Barbados Programme of Action* and declares international support for it to be 'indispensable'.⁶⁵

Established in 2001, the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States is responsible for coordinating the implementation of the *Barbados Programme of Action*.⁶⁶ Implementation has been the subject of regular monitoring and reports.⁶⁷ An international meeting to comprehensively review progress on implementation 10 years after the *Barbados Programme's* adoption was held in Mauritius from 10–14 January 2005, only weeks after the tsunami of 26 December 2004 dramatically and tragically illustrated the vulnerability of island and coastal communities. Not surprisingly, then, disaster warning, preparation and response had a high profile in the discussions, but the meeting also considered a wide range of environmental, social and economic issues. The meeting produced the *Mauritius Declaration* and *Mauritius Strategy*, which reaffirm commitment to the *Barbados Programme of Action* and set out the measures to be taken by SIDS, with the support of other states and the UN, for its implementation.⁶⁸

IV SMALL ISLAND DEVELOPING STATES AND INTERNATIONAL TRADE

Trade issues had a prominent place on the Mauritius agenda, and were among the most contentious issues at the meeting (the most contentious being climate change).⁶⁹ The profile of trade issues for SIDS has steadily increased since the

⁶¹ Above n 58.

⁶² *Declaration and State of Progress and Initiatives*, above n 58, [24]–[48].

⁶³ *Ibid* [47].

⁶⁴ Above n 58, [58]–[60].

⁶⁵ *Monterrey Consensus*, above n 43, [19].

⁶⁶ See *Third United Nations Conference on the Least Developed Countries*, GA Res 56/227, UN GAOR, 56th sess, 92nd plen mtg, agenda item 106(b), [1], UN Doc A/RES/56/227 (24 December 2001).

⁶⁷ See, eg, *Further Implementation of the Outcome of the Global Conference on the Sustainable Development of Small Island Developing States: Report of the Secretary-General*, UN GAOR, 56th sess, agenda item 111(e), UN Doc A/56/170 (10 July 2001); Committee on Sustainable Development, Economic and Social Council, *Review of Progress in the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States: Report of the Secretary-General*, 12th sess, agenda item 3, UN Doc E/CN.17/2004/8 (11 March 2004) ('*Review of Progress*').

⁶⁸ *Mauritius Declaration*, agenda item 9, [1], UN Doc A/CONF.207/L.6 (13 January 2005); *Mauritius Strategy*, above n 1, [1]–[6].

⁶⁹ UN, *Mauritius Conference Highlights: 11 January 2005* (2005) <<http://www.un.org/smallislands2005/coverage/highlights/sids-highlights050111-eng.pdf>> at 1 October 2005.

Barbados Conference.⁷⁰ The catalyst for much of this discussion has been the negotiation of regional trade agreements, notably an agreement creating the Free Trade Area of the Americas, where the question of differentiated treatment for smaller economies has been a key issue.⁷¹ Regional agreements among Pacific Island countries and recent negotiations between countries of the African, Caribbean and Pacific ('ACP') group and the European Union have also focused attention on challenges for SIDS in international trade.⁷² The more recent work in the WTO builds on the awareness raised by these discussions.

The growth in relative importance of trade as a concern for SIDS can be seen in the fact that trade is not included among the 14 priority areas in the 1994 *Barbados Programme of Action*. However, it is discussed in the section on implementation, where it is said that at the national level:

In order to achieve greater and more stable export earnings, small island developing States should seek to develop a more diversified production structure for goods and services that exploits existing or potential comparative advantages and is consistent with environment and development policies that are mutually supportive.⁷³

At the international level, enhanced market access for the exports of SIDS, efforts to assist SIDS to increase production and exports, and better functioning international commodity markets are called for.⁷⁴ The UN General Assembly special session *Declaration and State of Progress and Initiatives* document notes that

the potential benefits to small island developing States from globalization and trade liberalization will be severely constrained unless their limitations and vulnerabilities are further recognized by the international community ...⁷⁵

and urges progress on market access and improving competitiveness, as well as consideration of SDT for SIDS.⁷⁶ The Secretary-General's *Review of Progress* prior to the Mauritius meeting drew attention to problems of economic volatility; dependence on trade preferences which were being eroded by multilateral liberalisation; the impact of graduation from least-developed country status; and responses to SIDS subsidy measures designed to compensate for their inherent

⁷⁰ This conference took place 25 April – 6 May 1994.

⁷¹ See, eg, José Rivas-Campo and Rafael Benke, 'FTAA Negotiations: Short Overview' (2003) 6 *Journal of International Economic Law* 661, 677–8. See generally Mario Gutiérrez, 'Is Small "Beautiful" for Economic Integration?' (1996) 30 *Journal of World Trade* 173. See also Ministers Responsible for Trade, *FTAA — Free Trade Area of the Americas: Third Draft Agreement*, FTAA.TNC/w/133/Rev.3, 21 November 2003, available at <http://www.ftaa-alca.org/FTAADraft03/Index_e.asp> at 1 October 2005.

⁷² A full discussion of these issues is beyond the scope of this article. For further discussion of SIDS and regional trade agreements (focusing on Pacific Island countries), see Barbara von Tigerstrom, 'Development and the International Trade Regime: Challenges for South Pacific Island States' in Geoff Leane and Barbara von Tigerstrom (eds), *International Law Issues in the South Pacific* (2005) 229. See also Patsy Lewis, 'Unequal Negotiations: Small States in the New Global Economy' (2005) 30 *Journal of Eastern Caribbean Studies* 54.

⁷³ *Barbados Programme of Action*, above n 4, [77].

⁷⁴ *Ibid* [96]–[98].

⁷⁵ *Declaration and State of Progress and Initiatives*, above n 58, [34].

⁷⁶ *Ibid* [34]–[35].

disadvantages.⁷⁷ It noted that the

rationale for recognizing SIDS as a special category of countries in need of differentiated and favourable treatment by their economic partners has been underlined recently in various relevant fora, including the World Trade Organization.⁷⁸

As alluded to in the Secretary-General's *Review of Progress*, at the same time that preparations were under way for the review of the *Barbados Programme of Action*, SIDS were increasingly making their voices heard within the WTO and elsewhere, arguing that the challenges they face in international trade require special consideration. The category of SIDS had already been recognised as 'a special case for both environment and development';⁷⁹ now it was being explicitly argued that they should be treated as 'a special case in the field of trade'.⁸⁰ The ongoing debate about such claims was reflected in the outcomes of the Mauritius meeting. An early negotiating draft of the *Mauritius Strategy* included quite extensive provisions outlining the difficulties of SIDS in international trade and measures to be taken to address those difficulties.⁸¹ The final text of the *Mauritius Strategy*, as agreed at the meeting, contains only shorter statements regarding the challenges faced by SIDS and far more modest calls for action — mainly technical assistance and continued negotiations in the WTO — omitting mention of more contentious proposals for 'special treatment' in the trade regime.⁸²

A 'Small, Vulnerable Economies' and the WTO

Although they seem to have been set aside at the Mauritius meeting, such proposals continue to be debated as part of the Doha Round in the WTO. A group of 'small economies' or 'small, vulnerable economies' has for a number of years been seeking recognition of the difficulties faced by SIDS and other small, vulnerable economies in the world trading system. Despite making up a substantial proportion of the world's states and of WTO Members,⁸³ this group collectively accounts for less than one per cent of trade among WTO Members.⁸⁴

⁷⁷ *Review of Progress*, above n 67, [32]–[34], [106].

⁷⁸ *Ibid* [33].

⁷⁹ See above nn 52–55 and accompanying text.

⁸⁰ UN, 'Small Islands Claim Preferential Trade Status in Lead-Up to Mauritius International Meeting' (Press Release, 30 April 2004) available at <http://www.un.org/smallislands2005/pressrelease_1.html> at 1 October 2005.

⁸¹ *Draft Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States*, agenda item 9, [65]–[67], [90]–[93], UN Doc A/CONF.207/L.1 (8 November 2004) ('2004 Draft Mauritius Strategy'). This draft is based on an earlier document: Inter-Regional Preparatory Meeting of Small Island Developing States for the International Meeting to Review Implementation of the Programme of Action on the Sustainable Development of Small Island Developing States, *AOSIS Strategy for the Further Implementation of the BPOA* (2004) <http://www.sidsnet.org/docshare/other/20040206162842_AOSIS_strategy_final_version.pdf> at 1 October 2005.

⁸² *Mauritius Strategy*, above n 1, [65]–[67], [91]–[93].

⁸³ As an indication, the group of 23 members of the small, vulnerable economies group named on recent communications would represent approximately 15 per cent of all WTO members: see, eg, *Fiji*, WTO Doc WT/MIN(03)/ST/87 (2003) [1] (Statement by the Honourable Kaliopate Tavola on behalf of Small Vulnerable Economies) ('*Fiji Statement*').

⁸⁴ *Ibid* [6].

Although the WTO regime is, in many respects, based on the formal equality of its Members,⁸⁵ the relative lack of economic power of the group has undoubtedly made it more difficult for them to insist on priority being given to their concerns. These concerns have been raised and acknowledged on several occasions without any concrete measures being taken,⁸⁶ but at the Fourth Ministerial Conference at Doha in 2001, pressure from a group of SIDS resulted in the establishment of a formal mechanism to consider their situation.⁸⁷ The *Doha Declaration*, in setting out the mandate for the current round of negotiations, includes the following paragraph:

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 the 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. The General Council shall review the work programme and make recommendations for action to the Fifth Session of the Ministerial Conference.⁸⁸

This WPSE has been progressing in dedicated sessions of the WTO Council on Trade and Development, and commitment to it was reaffirmed in the General Council's decision of 1 August 2004.⁸⁹ A closer look at the WPSE, set within the larger context of current debates about SDT for developing countries in the WTO, will illuminate more precisely what is meant by proposals for treatment of SIDS as a 'special case', and the prospects for their acceptance.

⁸⁵ Notably, each WTO Member has one vote at the meetings of the Ministerial Conference and the General Council, the highest decision-making bodies of the WTO: *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3, art IX(1) (entered into force 1 January 1995)

⁸⁶ See *Dominica*, WTO Doc WT/MIN(96)/ST/127 (1996) (Statement by The Honourable Norris Charles, Minister for Trade and Marketing); *Saint Lucia*, WTO Doc WT/MIN(96)/ST/98 (1996) (Statement by His Excellency Mr Edwin Laurent, Ambassador, Permanent Representative to the WTO); *Ministerial Declaration*, WTO Doc WT/MIN(98)/DEC/1 (1998) [6] (adopted 20 May 1998); *Preparations for the 1999 Ministerial Conference, Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc WT/GC/W/361 (1999) (Communication from Barbados, Dominica, Fiji, Grenada, Jamaica, Lesotho, Mauritius, Papua New Guinea, Saint Lucia, Solomon Islands, and Trinidad and Tobago); *Preparations for the Fourth Session of the Ministerial Conference: Issues of Concern to Small Economies*, WTO Doc WT/GC/W/441 (2001) (Communication from Antigua and Barbuda, Barbados, Dominica, Dominican Republic, Fiji Islands, Grenada, Haiti, Jamaica, Maldives, Mauritius, Papua New Guinea, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Solomon Islands, and Trinidad and Tobago). For a summary of earlier proposals by small states in the WTO, see Anthony Gonzales, *Policy Implications of Smallness as a Factor in the Lomé, FTAA and WTO Negotiations* (2000) 38–44 <<http://crnm.org/documents/studies/Policy%20Implications%20of%20Smallness%20-%20Gonzales.pdf>> at 1 October 2005.

⁸⁷ Witter, Briguglio and Bhuglah, above n 11, 19. As the category of SIDS has not been accepted for use in the WTO, the Work Programme was defined in terms of 'small, vulnerable economies' instead; a large proportion of this group are SIDS.

⁸⁸ *Doha Declaration*, above n 48, [35].

⁸⁹ *Doha Work Programme*, above n 51, [2].

Countries within the SIDS grouping are developing countries or LDCs and as such, are eligible for various forms of SDT under the WTO agreements.⁹⁰ For example, there are provisions allowing developing countries greater flexibility in implementing their obligations under the WTO agreements.⁹¹ These may take the form of exemptions, lesser or more flexible commitments, or longer transitional time periods for compliance.⁹² There are also provisions for technical assistance to be provided to developing countries in the implementation of their obligations, participation in dispute settlement, and preparation of trade policy review reports.⁹³ A further category of provisions requires developed country Members to take account of the interests of developing countries in implementing the WTO agreements and applying trade policies.⁹⁴ Finally, there are provisions designed to increase market access for developing countries.⁹⁵ This involves reducing trade barriers, including tariffs, for products from developing countries, so that these countries will have greater trading opportunities.

Developed countries have agreed that, in reducing their tariffs and other barriers for developing country products, they do not expect developing countries to reciprocate with equivalent reductions — a departure from the usual expectation of reciprocity in trade concessions.⁹⁶ Preferential tariffs and other differential and more favourable treatment of developing countries that would otherwise violate the ‘most-favoured nation’ treatment principle, have been permitted — first by a temporary waiver,⁹⁷ and since 1979 by a permanent decision known as the *Enabling Clause*,⁹⁸ now incorporated as part of the *GATT 1994*.⁹⁹ The *Enabling Clause* provides that notwithstanding the most-favoured nation obligation in art I of the *GATT 1947*, ‘contracting parties may accord

⁹⁰ The WTO Secretariat has identified 145 SDT provisions in the WTO agreements: *Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions*, WTO Doc WT/COMTD/W/77 (2000) Table 1 (Note by the Secretariat). These fall into six categories: provisions aimed at increasing developing countries’ trade opportunities; provisions requiring Members to safeguard the interests of developing countries; flexibility of commitments, action, and use of policy instruments; transitional time periods; technical assistance; and provisions relating to LDCs: at [3].

⁹¹ *Ibid* [11]–[12].

⁹² *Ibid* [11]–[14].

⁹³ *Ibid* [15].

⁹⁴ *Ibid* [9]–[10].

⁹⁵ *Ibid* [8].

⁹⁶ See *General Agreement on Tariffs and Trade*, opened for signature 30 October 1947, 55 UNTS 187, art XXXVI(8) (entered into force 1 January 1948) (*‘GATT 1947’*); *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex IA (*General Agreement on Tariffs and Trade*) 1867 UNTS 190 (*‘GATT 1994’*).

⁹⁷ *Generalized System of Preferences*, GATT BISD, 18th Supp, 24, GATT Doc L/3545 (1971) (Waiver Decision, adopted on 25 June 1971). The Generalized System of Preferences is a scheme of voluntary, non-reciprocal tariff preferences granted by developed countries on products of interest to developing countries. Developing countries grant mutual preferential treatment to each other under the Generalized System of Trade Preferences.

⁹⁸ *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, GATT BISD, 26th Supp, 203, GATT Doc L/4903 (1979) (Multilateral Trade Negotiations Decision, adopted on 28 November 1979) (*‘Enabling Clause’*).

⁹⁹ Article 1(b)(iv) stipulates that decisions of the *GATT 1947* Contracting Parties form part of the *Agreement*.

differential and more favourable treatment to developing countries, without according such treatment to other contracting parties'.¹⁰⁰ This applies to preferential tariffs granted by developed countries to developing countries under the Generalized System of Preferences, as well as mutual reduction of tariffs and non-tariff barriers among developing countries.¹⁰¹

The various forms of SDT are intended to address the difficulties or challenges that developing countries face in the international trading system, and to ensure that developing countries benefit from increased trade liberalisation. They also reflect different theories of the relationship between trade and development that have prevailed over the years, and the existing mixture of provisions reveals some persistent tensions between these theories. For example, the early approach that favoured protection of domestic producers as a way of promoting industrialisation of developing countries is reflected in the provisions of the *GATT 1947* allowing exceptions for this purpose.¹⁰² The introduction of preferential market access for developing countries (such as that allowed by the *Enabling Clause*) was intended to facilitate 'export-led growth' as a development strategy; developing countries were not expected to reciprocate by liberalising their own markets.¹⁰³ More recently, however, the prevailing belief has been that reciprocal liberalisation is also good for developing countries by encouraging more efficient domestic production. As a result, the currently dominant approach favours 'full integration' of developing countries into the free trade regime, with some allowance for initial difficulties with adjustment (in the form of temporary exemptions, for example) and some provision of assistance (for example, technical assistance in implementing commitments or to facilitate participation in the WTO). This dominant approach and some of the tensions underlying various forms of SDT can be seen in the proposals and responses regarding treatment of small, vulnerable economies.

Much has been written about the difficulties facing developing countries in the international trade regime and the debates within the WTO about the adequacy of, and reforms to, existing SDT provisions. The *Doha Declaration* and a decision on 'Implementation-Related Issues and Concerns'¹⁰⁴ establish a framework for reviewing SDT and addressing the difficulties encountered by developing countries in implementing their obligations. The part of this debate that is of particular interest to SIDS — discussion of the treatment of 'small, vulnerable economies' in the multilateral trade regime — links into a larger issue regarding differentiation among developing countries. Despite the widespread recognition of vast differences in the needs and capacities of developing countries, the same rules apply, with few exceptions, to all of them: 'Singapore and Korea are supposed to be treated the same way as Ghana and Saint Lucia;

¹⁰⁰ *Enabling Clause*, above n 98, [1].

¹⁰¹ *Ibid* [2].

¹⁰² *GATT 1947*, above n 96, art XVIII, allowing governmental assistance by developing countries to so-called 'infant industries'.

¹⁰³ *Enabling Clause*, above n 98, [5].

¹⁰⁴ *Implementation-Related Issues and Concerns*, WTO Doc WT/MIN(01)/17 (2001) (Ministerial Conference — Decision of 14 November 2001).

Argentina and Brazil the same as the Maldives and Senegal'.¹⁰⁵ The extent to which SDT responds appropriately to the actual difficulties of various developing countries is an important measure of its legitimacy, which is increasingly under challenge.

Currently, the only subcategory of developing countries that is consistently given official recognition and special treatment in the WTO regime is that of LDCs. The *Enabling Clause* formally recognised LDCs as a subcategory of developing countries, providing for 'special treatment' of LDCs in the context of preferences. It also urged developed countries to 'exercise the utmost restraint in seeking any concessions or contributions' by LDCs and not to expect any 'concessions or contributions that are inconsistent with the recognition of their particular situation and problems'.¹⁰⁶ In respect of many of the SDT provisions in WTO agreements, LDCs are provided with additional protections, flexibility or assistance as compared to other developing countries. Apart from LDCs, distinctions between developing countries are formally recognised in only a small handful of instances in the WTO.¹⁰⁷ This is in contrast to the practice of other institutions, such as the World Bank, which differentiate among developing countries according to income level and other factors,¹⁰⁸ and bilateral assistance programs, which can be tailored to particular needs of different countries.

Two distinct types of claims can be identified within the WPSE and the *Mauritius Strategy*: firstly, calls for assistance (for example financial or technical assistance) to help address limitations with respect to capacity, competitiveness, or diversification; and secondly, requests for amendments or exceptions to existing rules in the WTO agreements as a form of additional SDT for SIDS (and other small, vulnerable economies). The responses from other WTO members in the WPSE and the Mauritius outcome both suggest that the latter type of claim is much more contentious. This is not surprising, given that the former merely builds on the usual practice of attempting to provide assistance matching particular developing country needs. In contrast, the latter — claims for a different set of rules to apply — challenges the prevailing 'one size fits all' approach of SDT in the WTO. The WPSE mandate in the *Doha Declaration* explicitly states that the objective of the WPSE is *not* to create a subcategory of WTO Members.¹⁰⁹ In addition, this second type of claim challenges the prevailing view which, as outlined above, assumes that all developing countries are able, perhaps with some assistance, to implement their WTO obligations and

¹⁰⁵ Constantine Michalopoulos, 'Trade and Development in the GATT and WHO: The Role of Special and Differential Treatment for Developing Countries' (Working Paper No 2388, World Bank, 2000) 24.

¹⁰⁶ *Enabling Clause*, above n 98, [2(d)], [6]. The *Enabling Clause* also provides that '[p]articular account will be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs': at [8].

¹⁰⁷ See, especially, *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1876 UNTS 3 (entered into force 1 January 1995), annex 1A (*Agreement on Subsidies and Countervailing Measures*) 1869 UNTS 14, art 27.2(a) (*'Agreement on Subsidies and Countervailing Measures'*). This provides for an exemption from the prohibition on export subsidies for developing countries with a per capita income of less than US\$1000 as well as for LDCs.

¹⁰⁸ See Michalopoulos, above n 105, 35.

¹⁰⁹ *Doha Declaration*, above n 48, [35].

to benefit from trade liberalisation. We can see how these tensions play out by examining some of the proposals in greater detail.

B *Helping Small, Vulnerable Economies Compete in a Free Global Market*

At the root of many of the calls for ‘special treatment’ is a concern that, for SIDS and other small, vulnerable economies, it will be difficult or even impossible to compete in a liberalised global market.¹¹⁰ As noted above, there is a substantial body of literature in economics debating the effects of smallness and the extent to which size (whether inevitably or at least typically) affects economic performance.¹¹¹ A subset of this literature deals specifically with the impact on trade and states’ ability to compete in a free trade environment. There is a wide range of views on these issues, but some experts have suggested that

there may be some very small economies that face such great absolute disadvantages that exporting at world prices is either impossible or generates factor incomes that are too low to subsist. In the limit free trade could mean no trade for these economies.¹¹²

These disadvantages are related to the characteristics of SIDS outlined earlier and, in particular, to the ‘combined economic effects of two shared characteristics’: their ‘smallness’ and their ‘islandness’, or remoteness.¹¹³ Most of the literature has focused on the effects of size on economies, but in the context of international trade, the intersection of size and remoteness is particularly significant. One recent study by L Alan Winters and Pedro Martins, attempting to quantify these effects, noted the difficulty of separating the effects of size and insularity or remoteness — particularly since they are so often found together — but accepted that location, especially isolation from centres of economic activity, also has an important economic impact.¹¹⁴

It is often suggested that the production of goods and provision of services for export is more costly in SIDS economies, so that it is difficult for exporters to compete in a free global market. Economies of scale cannot be realised by small local producers.¹¹⁵ This restricts, in particular, the ability of small economies to export products that are subject to economies of scale.¹¹⁶ The cost of materials

¹¹⁰ See, eg, *Work Programme on Small Economies*, WTO Doc WT/COMTD/SE/W/12 (2005) [4] (Communication from Antigua and Barbuda, Barbados, Bolivia, Cuba, Dominican Republic, El Salvador, Fiji, Guatemala, Honduras, Jamaica, Mauritius, Mongolia, Nicaragua, Paraguay, Sri Lanka, Trinidad and Tobago) (*WPSE 2005 Communication*).

¹¹¹ See *Small Economies: A Literature Review*, above n 21; Armstrong and Read, above n 21, 438–9.

¹¹² Winters and Martins, above n 10, 348.

¹¹³ *FAO Paper*, above n 14, 15. This paper suggests that “‘islandness’ here refers to countries surrounded by water or with large, low-lying coastal areas’: at 15. Remoteness explains why a few states are considered SIDS although they are not in fact islands: see above n 30 and accompanying text.

¹¹⁴ Winters and Martins, above n 10, 355. The other important category from the perspective of geography is land-locked countries, given their dependence on bordering states for access to external markets.

¹¹⁵ Commonwealth Secretariat/World Bank Report, above n 1, 18. See also Bernal, above n 11, 15.

¹¹⁶ *Trade and Economic Performance: The Role of Economic Size?*, WTO Doc WT/COMTD/SE/W/5 (2002) [27] (Note by the Secretariat) (*‘Trade and Economic Performance’*).

and other inputs is high, especially when they must be imported. Transport is expensive, both because of the remoteness of many islands' geographical locations and because unit costs for shipping small quantities are generally higher.¹¹⁷ In addition, producers may be reliant on monopoly carriers, restricting their ability to bargain for lower prices.

The Winters and Martins study concluded that business costs were significantly higher for 'micro' and 'very small' economies (with populations of approximately 12 000 or less, and less than 200 000, respectively). In respect of micro-economies, in particular, the data indicates that they 'face very large competitive challenges indeed'.¹¹⁸ In 'small' economies (with populations of roughly 1.5 to 4 million) the cost inflation factor still existed but was 'small enough to be overcome by good management'.¹¹⁹ Again, because most of the countries in these categories were also islands, the results may indicate the impact of both size and insularity. Winters and Martins suggest that when excess costs are of a sufficient magnitude comparative advantage is 'not really the critical concept', since these economies are at an *absolute* disadvantage in respect of *any* economic activity they might choose to pursue.¹²⁰ Thus, the smallest countries may, in effect, have no viable exports. Not everyone agrees with these conclusions, of course. Some argue that the assessment is unduly pessimistic, insist that comparative rather than absolute advantage is still most important for small economies, and emphasise the possibility of reducing costs.¹²¹

Even accepting that the excess business costs in SIDS can be reduced and that most SIDS (except perhaps the very smallest) have *some* viable exports, it seems clear that they still face significant competitive challenges. Small domestic markets, especially combined with remoteness, mean limited competition among domestic producers and resulting inefficiency.¹²² Natural disasters and other hazards, to which SIDS are prone, regularly disrupt production and divert resources.¹²³ Dependence on a small number of products is cause for concern because of the volatility that results. However, diversification is difficult, due to a typically narrow resource base¹²⁴ and restrictions on the kinds of products that

¹¹⁷ *FAO Paper*, above n 14, 17; Winters and Martins, above n 10, 350; Bernal, above n 11, 16; Commonwealth Secretariat/World Bank Report, above n 1, 6. The WTO Secretariat review, *Trade and Economic Performance*, found that transport costs were higher for islands but not necessarily for small countries generally, and land-locked countries faced the highest transport costs of all: above n 116, [20]–[24]. Although only a weak correlation was found between population size and transport costs, it was also found that higher transport costs were correlated with a smaller share of world trade: at [24]–[25].

¹¹⁸ Winters and Martins, above n 10, 372–4. They estimate a cost inflation factor of 36 per cent for manufacturing and 58 per cent for tourism.

¹¹⁹ *Ibid* 374.

¹²⁰ *Ibid* 375.

¹²¹ See, eg, Satish Chand, 'Trade Gains for Small Island Economies' (2004) 3 *World Trade Review* 409, 409; Christopher Findlay, 'Policy Reform in Small "Remote Economies"' (2004) 3 *World Trade Review* 422, 425; Enrico Spolaore, 'Is Small Really So Ugly?' (2004) 3 *World Trade Review* 447, 451.

¹²² Commonwealth Secretariat/World Bank Report, above n 1, 7.

¹²³ *Ibid* 11; *FAO Paper*, above n 14, 17.

¹²⁴ Commonwealth Secretariat/World Bank Report, above n 1, 10–11; *FAO Paper*, above n 14, 17.

can be competitively exported because of cost and economies of scale issues.¹²⁵ Although not all of these problems are insurmountable, it has been noted that 'strong small economies are an exception'.¹²⁶

Like other developing countries, SIDS have been calling for greater access to markets of developed countries, especially in respect of agricultural products and other exports of particular importance to developing countries and LDCs.¹²⁷ However, for SIDS, because of the disadvantages they face, market access on equal terms with other countries is unlikely to be enough to enable them to increase exports; *preferential* access may be required. Preferential market access is being threatened in two ways.

The first is preference erosion: as the level of tariffs decreases through successive rounds of negotiations and tariff bindings, the value of trade preferences is being gradually eroded.¹²⁸ Tariff preferences only provide an export advantage where particular countries' products enjoy a significant margin of preference over products from elsewhere. When the overall level of tariffs decreases, this margin is eroded. Therefore, even when tariff preferences are maintained, their value is gradually diminishing. This type of preference erosion can be seen as a by-product of the gradual liberalisation of trade through tariff reductions, and as such it may be difficult or even impossible to avoid.

The second threat, with a more dramatic impact on SIDS, has been from elimination of preference arrangements in response to challenges within the WTO based on the most-favoured nation principle. Market access for key products like sugar and bananas has historically been provided by means of complex preferential trading arrangements, most notably by the EU.¹²⁹ A long and complex dispute over the EU scheme for bananas pitted the EU and the ACP countries receiving preferential market access, on the one hand, against other developing countries excluded from preferences, backed by the United States (whose large fruit corporations have substantial interests in banana production),¹³⁰ on the other. Following a series of decisions finding that the EU was in violation of its *GATT* and WTO obligations,¹³¹ the EU was forced to modify its bananas regime and to seek a waiver for a transitional period.¹³² These developments directly affected the African and Caribbean ACP countries, and also had wider implications. The dispute resulted in US\$200 million worth

¹²⁵ *Trade and Economic Performance*, above n 116, [29].

¹²⁶ *FAO Paper*, above n 14, 16.

¹²⁷ See, eg, *Report of the Proceedings of the Interregional Preparatory Meeting of Small Island Developing States for the International Meeting to Review Implementation of the Barbados Programme of Action on the Sustainable Development of Small Island Developing States* (2004) 3 <http://www.sidsnet.org/docshare/other/20040326110230_Summary_report_of_Nassau_Meeting.pdf> at 1 October 2005 ('*Interregional Preparatory Meeting Report*').

¹²⁸ Michalopoulos, above n 105, 24; Alexander Keck and Patrick Low, 'Special and Differential Treatment in the WTO: Why, When and How?' (WTO Staff Working Paper No ERSD-2004-03, WTO, 2004) 10-11; Frank Garcia, 'Beyond Special and Differential Treatment' (2004) 27 *Boston College International and Comparative Law Review* 291, 304.

¹²⁹ See, eg, Gordon Myers, *Banana Wars — The Price of Free Trade: A Caribbean Perspective* (2004) 1-4; *FAO Paper*, above n 14, 54.

¹³⁰ See Myers, above n 129, 43-5, 75-100.

¹³¹ For an overview of these disputes, see especially *ibid* chs 10, 13-14.

¹³² See *European Communities — Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas*, WTO Doc WT/MIN(01)/16 (2001) [1] (Decision of 14 November 2001).

of trade sanctions by the US against the EU,¹³³ providing a sharp incentive to the EU to ensure the WTO-compatibility of its preferential trade arrangements. More recently, the EU's sugar regime, part of which involves preferential arrangements for ACP sugar, has been successfully challenged in the WTO, with important implications for SIDS that rely on the sugar industry.¹³⁴ More generally, regional trade agreements providing preferential terms for developing country parties, or the subcategory of SIDS, are also vulnerable to challenge.¹³⁵

Although the loss and erosion of preferences is a concern for all developing countries, it has a disproportionate impact on certain 'preference-dependent' countries, that is, those whose exports are concentrated in products that have benefited from substantial preferences and in markets where preferences are offered. Furthermore, vulnerability to the impact of preference erosion also increases where 'a country's broader macroeconomic framework is fragile'.¹³⁶ The countries with these characteristics, including 'in particular, a number of small island economies', will likely 'face serious adjustment challenges as the value of their trade preferences erodes'.¹³⁷ Some SIDS have been heavily dependent on preferential market access for exports of key products, and changes to the regimes for sugar and banana exports in particular have had a significant impact on island economies.¹³⁸ The disappointing economic performance of many island economies and the significant reduction in SIDS' global market share for merchandise trade in recent years have been attributed to the loss of preferences,¹³⁹ and it has been suggested that the loss of preferences would compromise the growth and stability of small economies.¹⁴⁰ Preferential market access was a prominent issue in the lead-up to the Mauritius International

¹³³ 'Dispute Settlement Update: Bananas: *US-EC Steel*' (2001) 5(43) *Bridges Weekly Trade News Digest* <<http://www.ictsd.org/weekly/01-12-20/story2.htm>> at 1 October 2005.

¹³⁴ See *European Communities — Export Subsidies on Sugar*, WTO Doc WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, AB-2005-2 (2005) (Report of the Appellate Body).

¹³⁵ See generally Lewis, above n 72. See also von Tigerstrom, above n 72.

¹³⁶ Katerina Alexandraki and Hans Peter Lankes, 'The Impact of Preference Erosion on Middle-Income Developing Countries' (Working Paper No 169, International Monetary Fund, 2004) 27.

¹³⁷ *Ibid.*

¹³⁸ *Ibid* 26 (noting that Mauritius and St Lucia in particular were highly vulnerable because of their dependence on sugar and banana preferences, respectively); *FAO Paper*, above n 14, ch 4; *Work Programme on Small Economies: Concrete Proposals to Address Certain Specific Concerns and Problems Affecting the Trade of Small Economies*, WTO Doc WT/COMTD/SE/W/3 (2002) [2] (Communication from Barbados, Belize, Bolivia, Dominican Republic, Guatemala, Honduras, Mauritius and Sri Lanka) ('*WPSE Concrete Proposals*'); *Work Programme on Small Economies (Further Elaboration of Key Proposals Outlined in WT/COMTD/SE/W/3)*, WTO Doc WT/COMTD/SE/W/11 (2004) [1] (Communication from Barbados, Fiji, Mauritius, Papua New Guinea, Solomon Islands and Trinidad and Tobago) ('*WPSE Further Elaboration*'); *Summaries of Panel Discussions: Panel Two, Special Challenges Facing Small Island Developing States in Trade and Economic Development*, agenda item 8, [8], UN Doc A/CONF.207/7/Add.2 (12 January 2005) ('*Summaries of Panel Discussions*'); *Review of Progress*, above n 67, [8].

¹³⁹ *Review of Progress*, above n 67, [8]–[9]; *Report of the Caribbean Regional Preparatory Meeting to Review the Programme of Action for the Sustainable Development of Small Island Developing States* (2003) [65] <http://www.sidsnet.org/docshare/other/20031104134625_Final_Report_of_the_Caribbean_Regional_Meeting_on_SIDS.doc> at 1 October 2005.

¹⁴⁰ *Committee on Trade and Development — Third Dedicated Session — Note on the Meeting of 4 November 2002*, WTO Doc WT/COMTD/SE/M/3 (2003) [23], [24] (Barbados; Mauritius) ('*Note on the Meeting of 4 November 2002*').

Meeting and has also been raised in the WPSE, where it has been argued that the erosion and elimination of preferences has ‘compounded the vulnerability of the small economies’.¹⁴¹

A 2002 proposal in the WPSE suggests an agreement that ‘the liberalization process shall preserve the existing margins of preference for products exported by small economies’.¹⁴² This is proposed to be done through ‘grandfathering’ of existing market access arrangements, rather than temporary waivers which give little security to producers.¹⁴³ It has also been suggested that the *GATT 1994* rules regarding free trade agreements be modified to allow regional trade agreements in which small economies would receive preferential treatment on a non-reciprocal basis.¹⁴⁴ In the preparations for the Mauritius International Meeting, SIDS urged the preservation of trade preferences.¹⁴⁵ The *2004 Draft Mauritius Strategy* includes, as one of the actions required to address SIDS concerns, ‘[r]ecognition of WTO for the maintenance of non-reciprocal preferences for small island developing States’.¹⁴⁶ An additional paragraph calling for extension of trade preferences as well as measures to address or offset the impact of preference erosion contained many bracketed passages indicating suggestions for deletions or alternative wording — an indication of its contentious nature.¹⁴⁷ The final agreed text of the *Mauritius Strategy* merely notes the erosion of preferences as one of the challenges and issues of concern for SIDS,¹⁴⁸ and states that ‘[r]ecognition of the importance of long-standing preferences and of the need for steps to address the issue of preference erosion’ is among the high-priority efforts required to address SIDS’ concerns.¹⁴⁹

In arguing for the maintenance of trade preferences favouring small, vulnerable economies, it has been pointed out that given the small economies’ very small share of world trade, preferences for these countries’ products would result in minimal distortion and little impact on other trading partners.¹⁵⁰ Nevertheless, the outcome at Mauritius and the discussions thus far in the WPSE

¹⁴¹ *WPSE Further Elaboration*, above n 138, [2].

¹⁴² *WPSE Concrete Proposals*, above n 138, [1]. See also Bernal, above n 11, 18–19; Witter, Briguglio and Bhuglah, above n 11, 21.

¹⁴³ *WPSE Further Elaboration*, above n 138, [4]–[5]. ‘Grandfathering’ refers to the practice of allowing existing arrangements to remain in place as exceptions to subsequently adopted obligations which would otherwise not allow them.

¹⁴⁴ *WPSE Concrete Proposals*, above n 138, [2]. See also *WTO Negotiations on Agriculture: Proposals by Small Island Developing States (SIDS)*, WTO Doc G/AG/NG/W/97 (2000) [6] (Communication from Dominica, Jamaica, Mauritius, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago).

¹⁴⁵ See, eg, *Report of the AIMS Regional Preparatory Meeting to Review Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States (2003)* [42] <<http://www.un.org/smallislands2005/preparatory.html>> at 1 October 2005; *Interregional Preparatory Meeting Report*, above n 127, 9–10.

¹⁴⁶ *2004 Draft Mauritius Strategy*, above n 81, [67(f)].

¹⁴⁷ *Ibid* [92(d)].

¹⁴⁸ *Mauritius Strategy*, above n 1, [65], [67(f)].

¹⁴⁹ *Ibid* [92(c)].

¹⁵⁰ *WPSE Concrete Proposals*, above n 138, [1]. See also *Fiji Statement*, above n 83, [6]. This point has been made with reference to SDT generally, for example by Bernal, above n 11, 2–3; Michael Davenport, Commonwealth Secretariat, *A Study of Special and Differential Arrangements for Small Economies: Interim Report* (2001) 6 <[http://wbln0018.worldbank.org/html/smallstates.nsf/\(attachmentweb\)/ComSecDeMinimis/\\$FILE/ComSecDeMinimis.pdf](http://wbln0018.worldbank.org/html/smallstates.nsf/(attachmentweb)/ComSecDeMinimis/$FILE/ComSecDeMinimis.pdf)> at 1 October 2005.

give little indication that these arguments are likely to succeed. Within the Generalized System of Preferences authorised by the *Enabling Clause*, there is the potential for additional preferences to be given to some developing countries on the basis of their particular needs. In a recent decision, the WTO Appellate Body determined that the *Enabling Clause* does not require identical treatment to be given to all developing countries, and that more preferential treatment of some is permissible — provided that it is objectively based on their particular needs, there is a sufficient nexus between the measures and these special needs, and the preferences are available to all developing countries sharing those needs.¹⁵¹ The case for such measures is strengthened to the extent that special needs are recognised in international instruments and the measures are designed as rational responses to those needs.¹⁵² On these criteria the case for additional preferences for SIDS is arguably quite strong; the trade and development challenges specific to this group have been objectively assessed and recognised by international bodies.¹⁵³ However, this applies to only unilaterally granted preferences under the GSP, the value of which is limited by a number of factors, notably the lack of security they provide to developing countries.¹⁵⁴ The potential for such measures is unlikely to be of much comfort to SIDS as compensation for the loss of more stable preferential arrangements such as those for bananas or sugar, and does not address the broader problem of erosion.

Given that appeals for the maintenance of preferences are not likely to meet with much success, a number of other requests for assistance or special treatment to boost SIDS' ability to compete in international trade must also be considered. The *Mauritius Strategy*, although it stops short of calling for the maintenance of preferences, urges recognition of the importance of preferences and of the need to address the issue.¹⁵⁵ Some proposals have suggested that additional assistance should be provided to SIDS to compensate for, or to help them adjust to, the loss of preferences.¹⁵⁶ These are in addition to more general requests for assistance to enhance the competitiveness of small island producers;¹⁵⁷ to help them address the 'inherent structural disadvantages' of small and remote economies;¹⁵⁸ and to

¹⁵¹ *European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries*, WTO Doc WT/DS246/AB/R, AB-2004-1 (2004) [163]–[165] (Report of the Appellate Body). The EC drug arrangement preferences in issue did not meet these conditions because they were not based on objective criteria and were not available to all similarly situated countries: at [180]–[184].

¹⁵² *Ibid* [163]–[164]. The impugned measures in this case did not meet these criteria, so the challenge to them was successful, but the report leaves open the possibility that other differential preferences would be permitted if properly designed.

¹⁵³ See, eg, the *Millennium Declaration*, above n 2, [17]; *Barbados Programme of Action*, above n 4; *Barbados Declaration*, above n 11; and the work of the World Bank and the Commonwealth Secretariat on this issue: Commonwealth Secretariat/World Bank Report, above n 1, 5–19.

¹⁵⁴ Michalopoulos, above n 105, 24–5.

¹⁵⁵ *Mauritius Strategy*, above n 1, [92(c)].

¹⁵⁶ See, eg, *2004 Draft Mauritius Strategy*, above n 81, [67(h)]; *Interregional Preparatory Meeting Report*, above n 127, 10.

¹⁵⁷ *Summaries of Panel Discussions*, above n 138, [10]–[12].

¹⁵⁸ *WPSE Further Elaboration*, above n 138, [5].

address limitations on SIDS' supply capacity.¹⁵⁹ This could include measures designed to address high production and transport costs, to help identify and exploit market niches, or to develop necessary infrastructure and skills to increase export capacity and competitiveness. It has further been proposed that SIDS trading partners and international or regional financial institutions develop measures and incentives to increase investment in small economies, particularly SIDS.¹⁶⁰

Finally, one of the more controversial proposals in this context has involved allowing SIDS to use subsidies to compensate for disadvantages and make their products more competitive in global markets. In general, export subsidies are prohibited under the WTO *Agreement on Subsidies and Countervailing Measures*.¹⁶¹ Developing countries are provided with a transition period within which to phase out these subsidies, while low-income developing countries (with a per capita gross national product of less than US\$1000) and LDCs are exempt from the prohibition altogether.¹⁶² Those small economies which are not LDCs or low-income developing countries are therefore required to gradually eliminate export subsidies.¹⁶³ Proposals in the WPSE have argued that these rules do not give enough flexibility to small economies, which may need to continue providing export subsidies to compensate for the 'inherent cost disadvantages and resource constraints' faced by their producers.¹⁶⁴ It is therefore proposed that small economies receive the same exemption from the export subsidy prohibition as LDCs and low-income developing countries.¹⁶⁵ Similarly, the *2004 Draft Mauritius Strategy* listed, among the actions required, the need for recognition by the WTO of subsidies to be maintained by SIDS and 'exemption by [the] WTO of small island developing States from the rules on subsidies that require the phasing out of existing fiscal incentives'.¹⁶⁶

This last proposal was apparently contentious,¹⁶⁷ and it does not appear in the *Mauritius Strategy* agreed at the January 2005 meeting.¹⁶⁸ The proposal to exempt small economies from the prohibition on export subsidies was met with

¹⁵⁹ *Interregional Preparatory Meeting Report*, above n 127, 10; *Work Programme on Small Economies: An Approach to Framing Responses to the Trade-Related Problems of Small Economies (Revision)*, WTO Doc WT/COMTD/SE/W/13/Rev.1 (2005) 5 (Communication from Antigua and Barbuda, Barbados, Bolivia, Cuba, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, Solomon Islands, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago) ('*WPSE Approach to Framing Responses*').

¹⁶⁰ *2004 Draft Mauritius Strategy*, above n 81, [67(j)]; *WPSE Further Elaboration*, above n 138, [7].

¹⁶¹ See above n 107, art 3.

¹⁶² See *ibid*.

¹⁶³ Although the eight year transition period has since passed, it is possible to apply for extensions and many developing countries have done so: *ibid* art 27.4.

¹⁶⁴ *WPSE Further Elaboration*, above n 138, [9]. See also *WPSE Concrete Proposals*, above n 138, [3].

¹⁶⁵ *WPSE Further Elaboration*, above n 138, [8].

¹⁶⁶ *2004 Draft Mauritius Strategy*, above n 81, [67(j)]. See also Bernal, above n 11, 19; Witter, Briguglio and Bhuglah, above n 11, 20.

¹⁶⁷ *2004 Draft Mauritius Strategy*, above n 81, [67(j)]. The draft indicates the EU proposed deleting the relevant passage and the US proposed deleting the whole section in which it appeared.

¹⁶⁸ *Mauritius Strategy*, above n 1.

'concern' and some resistance in the WPSE,¹⁶⁹ although it was noted that there might be other ways of accomplishing the same objective, for example through special procedures for extensions of developing countries' subsidy programs.¹⁷⁰ This indicates that other WTO Members may be prepared to consider requests to retain subsidies on a temporary, case-by-case basis, but not to recognise an additional subcategory of developing countries that would be entitled to a permanent exemption. Views on the appropriateness of subsidies in this context are mixed,¹⁷¹ but the willingness to allow such policies to continue on an ad hoc basis, without entrenching them in additional exceptions, suggests that the response to these proposals is based more on concerns about creating additional subcategories of Members than on the merits of the proposals.

C *Effective Participation in the Multilateral Regime*

Another serious concern that is expressed throughout the Mauritius and WPSE documents relates to the capacity constraints experienced by small countries in the trading system. These limit their ability to participate effectively in WTO (and regional) negotiations and in dispute settlement proceedings, as well as to implement their obligations under WTO agreements. Small developing states have limited human and financial resources and small administrations, and the remoteness of most island states makes it costly to send staff to Geneva or other centres. All of these factors limit participation in key negotiations.¹⁷² Small states have

very limited capacity in capitals to formulate and administer trade policy. Most of them either have no mission in Geneva or have very small ones. ... [b]ecause they have very limited administrative, financial and human capacity ... [they] have faced greater difficulties in coping with [WTO rules and procedures].¹⁷³

There are a number of possible responses to these challenges. The most obvious, and least contentious, is the provision of financial and technical assistance to help develop capacity and facilitate participation in the multilateral system.¹⁷⁴ Proposals in the WPSE request the donor community to consider 'contributing funds to help strengthen or establish missions to [the] WTO' for those that otherwise cannot do so; this would be in addition to existing technical assistance provided by the WTO Secretariat and bilateral donors.¹⁷⁵ The *2004 Draft Mauritius Strategy* also called for enhanced and integrated programs of

¹⁶⁹ See, eg, *Committee on Trade and Development — Second Dedicated Session — Note on the Meeting of 1 July 2002*, WTO Doc WT/COMTD/SE/M/2 (2002) [16], [17], [20] (Chile; Peru; US) ('*Note on the Meeting of 1 July 2002*').

¹⁷⁰ See, eg, *Note on the Meeting of 4 November 2002*, above n 140, [13], [27] (US; Sri Lanka). The *Procedures for Extensions under Article 27.4 for Certain Developing Country Members*, WTO Doc G/SCM/39 (2001), adopted at the Doha Ministerial Conference, provide a mechanism to extend the transition period for certain developing countries.

¹⁷¹ See, eg, Michalopoulos, above n 105, 25–6; Bernard Hoekman, 'Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment' (2005) 8 *Journal of International Economic Law* 405, 415–16; Winters and Martins, above n 10, 376.

¹⁷² *Interregional Preparatory Meeting Report*, above n 127, 7.

¹⁷³ *WPSE Concrete Proposals*, above n 138, [4].

¹⁷⁴ *Summaries of Panel Discussions*, above n 138, [10]–[12].

¹⁷⁵ *WPSE Concrete Proposals*, above n 138, [5].

technical assistance, cooperation and capacity-building.¹⁷⁶ The agreed text of the *Mauritius Strategy* ‘recognize[s] the importance of intensifying efforts to facilitate the full and effective participation by small economies, notably small island developing States, in the deliberations and decision-making process of [the] WTO’.¹⁷⁷ It includes as matters of priority:

- (g) Developing human resources and institutional capacity to address trade-related issues of interest to small island developing States, as well as the analysis and formulation of appropriate policies and the development and resourcing of appropriate infrastructure required to address issues relating to sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT);
- (h) Continuing the commitment of the international community to the Doha Development Agenda Global Trust Fund, which provides valuable assistance to developing-country members, particularly those without Geneva representation, to participate more actively in the Doha round of negotiations and [the] WTO more generally.¹⁷⁸

Cooperation among SIDS, through regional institutions or otherwise, is also suggested as a way of addressing capacity issues. This could include joint, shared or regional representation in Geneva, and other WTO members are requested to support and accommodate this possibility.¹⁷⁹ In the WPSE, it has also been suggested that small economies having difficulty implementing rules and procedures under some WTO agreements due to capacity issues should be able to designate a regional body as their ‘competent authority’ for the purposes of those agreements, rather than having to maintain a national office in each case.¹⁸⁰ Other WTO members seem to be open to these suggestions, although it remains to be clarified exactly how regional mechanisms would operate.¹⁸¹

Further clarification is also required of proposals for additional flexibility or other means of addressing difficulties that have been experienced with implementing obligations. The WPSE proposals suggest that in respect of trade remedies (such as anti-dumping), rules and procedures ‘should address the circumstances of the small economies’¹⁸² and should be ‘simplified’ for them.¹⁸³ Also, they suggest that additional flexibility is required in respect of the ‘time-frames and notification requirements’ for sanitary and phytosanitary or technical measures.¹⁸⁴ A US response to these proposals requests clarification of what exactly is contemplated and how it would extend existing flexibility.¹⁸⁵ It

¹⁷⁶ *2004 Draft Mauritius Strategy*, above n 81, [67(c)], [92(c)].

¹⁷⁷ *Mauritius Strategy*, above n 1, [66].

¹⁷⁸ *Ibid* [92].

¹⁷⁹ *Ibid* [92(i)]; *WPSE Concrete Proposals*, above n 138, [5].

¹⁸⁰ *WPSE Concrete Proposals*, above n 138, [4(I)], [4(III)].

¹⁸¹ See, eg, *Questions from the United States and Initial Responses in regard to Proposals Contained in WTO Document WT/COMTD/SE/W/3*, WTO Doc WT/COMTD/SE/W/7 (2002) 1–2 (Questions of the US on Proposals related to Small Economies) (*‘Questions from the US’*).

¹⁸² *WPSE Concrete Proposals*, above n 138, [4(I)].

¹⁸³ *Ibid* [4(II)].

¹⁸⁴ *Ibid* [4(III)]. See also *Interregional Preparatory Meeting Report*, above n 127, regarding requests to ‘relax some of the implementation disciplines’ for SIDS: at 9.

¹⁸⁵ *Questions from the US*, above n 181, 2.

also indicates that the US is 'sensitive to suggestions that would lower requirements for vigorous enforcement'.¹⁸⁶ Technical assistance is, however, also accepted as a means of dealing with some of these difficulties.¹⁸⁷

Capacity constraints create difficulties for SIDS in two specific contexts that may prove more challenging to address, because they also raise larger systemic issues. The first of these is dispute settlement; the second is accession to the WTO. Within the WPSE, the limited capacity of small WTO members to 'either mount or defend cases ... [or] participate effectively as third parties in cases' is raised as a distinct issue.¹⁸⁸ Specific proposals to address the problem include facilitation of small states' participation; the right to compensation in the event that a small economy successfully challenges another Member's measures, even regardless of the 'losing' party's subsequent compliance with its obligations;¹⁸⁹ and the encouragement or enforcement of the use of mediation and good offices in disputes involving small economies.¹⁹⁰ The challenges for small developing states in the context of dispute settlement have been widely acknowledged. The WTO dispute settlement system has been praised as a rules-based mechanism which 'provides an opportunity for economically weak smaller countries to challenge trade measures taken by more economically powerful Members'¹⁹¹ and there have been a few examples of small developing countries successfully challenging the measures of much larger and more powerful trading partners.¹⁹² However, it is also recognised that developing countries and LDCs, especially small ones, face significant constraints because of the human and financial resources required to participate effectively in dispute settlement. The practical difficulties for small developing countries in gaining any real benefit from even a favourable decision — given their limited capacity to effectively retaliate in the event of non-compliance — are among the factors that have prompted calls for reforms to the system.¹⁹³ Proposed reforms, including some very similar to those made within the WPSE, continue to be debated in a separate set of negotiations

¹⁸⁶ *Ibid* 1.

¹⁸⁷ *WPSE Concrete Proposals*, above n 138, [4(III)]; *Mauritius Strategy*, above n 1, [92(b)].

¹⁸⁸ *WPSE Concrete Proposals*, above n 138, [4(IV)]. See also *WPSE Approach to Framing Responses*, above n 159, 5.

¹⁸⁹ *WPSE Concrete Proposals*, above n 138, [4(IV)].

¹⁹⁰ Under the *Understanding on Rules and Procedures Governing the Settlement of Disputes* compensation (in the form of the grant of trade concessions) is voluntary, to be agreed by negotiation between the parties, and is only available where the 'losing' party fails to comply with the recommendations of the dispute settlement report: *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1876 UNTS 3 (entered into force 1 January 1995), annex 2 (*Understanding on Rules and Procedures Governing the Settlement of Disputes*) 1869 UNTS 401, art 22 ('DSU'). Mediation and other forms of alternative dispute settlement may be undertaken voluntarily if agreed to by both parties: art 5.

¹⁹¹ Julio Lacarte-Muró and Petina Gappah, 'Developing Countries and the WTO Legal and Dispute Settlement System: A View from the Bench' (2000) 3 *Journal of International Economic Law* 395, 400.

¹⁹² Most recently, for example, the challenge by Antigua and Barbuda in *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc WT/DS285/AB/R, AB-2005-1 (2005) (Report of the Appellate Body).

¹⁹³ See, eg, Marco Bronkers and Naboth van den Broek, 'Financial Compensation in the WTO: Improving the Remedies of WTO Dispute Settlement' (2005) 8 *Journal of International Economic Law* 101, 102.

on the *DSU*.¹⁹⁴ As might be expected, then, the response to the WPSE proposals has been that these issues would be better addressed within the dispute settlement negotiations.¹⁹⁵ The challenge for SIDS will be to try to ensure that their voices are heard and their particular circumstances addressed in the context of these negotiations.

Finally, the difficulties of small, vulnerable states in the context of accession to the WTO also raise issues which are systemic in nature as well as being of particular concern to SIDS. Accession is an important issue for SIDS, given that a considerable number of them are not yet Members of the WTO¹⁹⁶ and will be required to complete the process of accession if they wish to become Members. This process, involving the preparation of documents and a series of bilateral negotiations and working party sessions, can be lengthy and complex. It demands a significant investment of human and financial resources that may stretch the capacity of SIDS governments to their limits.¹⁹⁷ This aspect can be addressed, at least to some degree, by improved financial and technical assistance; as we might expect, then, there have been requests for assistance specifically targeted to the accession process.¹⁹⁸ The agreed text of the *Mauritius Strategy* includes among the priority items ‘[f]acilitation of the accession of small island developing States, where appropriate, through enhanced technical assistance’.¹⁹⁹

Further proposals relating to accession in the *2004 Draft Mauritius Strategy* and the WPSE point to other, more intractable, problems concerning the accession process itself. The *2004 Draft Mauritius Strategy* calls for ‘simplification’ and ‘acceleration’ of accession procedures for SIDS as well as ‘facilitation’ of their accession.²⁰⁰ The proposal made within the WPSE is that:

Small economies that are acceding to [the] WTO should not be required to accept more obligations than small economies that are founder Members of [the] WTO, nor obligations that founder Members have not themselves undertaken.²⁰¹

¹⁹⁴ See *ibid* 106–9 for a brief summary of some proposals regarding remedies. See also Institute of International Economic Law, *DSU Review* <<http://www.law.georgetown.edu/iiel/research/projects/dsureview/synopsis.html>> at 1 October 2005.

¹⁹⁵ See, eg. *Questions from the US*, above n 181, 3; *Note on the Meeting of 1 July 2002*, above n 169, [16], [20] (Chile; US).

¹⁹⁶ Of the 39 members of the AOSIS, 23 are current members of the WTO, seven are observers (meaning they have initiated but not yet completed the accession process) and nine are not members or observers; see AOSIS, *AOSIS Members and Observers* <<http://www.sidsnet.org/aosis/members.html>> at 1 October 2005; WTO, *Members and Observers* (2005) <http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> at 1 October 2005.

¹⁹⁷ For example, it was estimated that the accession process cost Vanuatu about US\$300 000 between 1995 and 1999, when its annual GDP was about US\$300 million: ‘WTO Accession Update’ (1999) 3(43) *Bridges Weekly News Update* <<http://www.ictsd.org/monthly/bridges/BRIDGES8-3.pdf>> at 1 October 2005.

¹⁹⁸ Ratnakar Adhikari and Navin Dahal, ‘LDC Accession to the WTO: Learning from Nepal, Cambodia and Vanuatu’ (2004) 8(3) *Bridges Monthly Review* 3, 3 <<http://www.un-ngls.org/SAWTEE.doc>> at 1 October 2005.

¹⁹⁹ *Mauritius Strategy*, above n 1, [92(b)].

²⁰⁰ *2004 Draft Mauritius Strategy*, above n 81, [67(a)], [92(b)].

²⁰¹ *WPSE Concrete Proposals*, above n 138, [7]. See also *WPSE Approach to Framing Responses*, above n 159, 5.

These proposals point to more fundamental difficulties that require more than just assistance with the existing process; they suggest that the process or the rules governing it need to be modified.

Currently the terms of accession must be agreed between the acceding state and the existing Members of the WTO. This can result in acceding states having to make commitments beyond those that are strictly required by the WTO agreements themselves ('WTO-plus commitments') or those accepted by other Members. It also means that developing countries and LDCs do not necessarily receive the benefit of SDT to which founding WTO Members are entitled; as part of the terms of accession they may be required to waive some of these special provisions, such as transitional periods or exemptions. Although the WTO is said to be a 'rules-based' system, the terms of accession largely depend on negotiating power, with existing Members having the upper hand since their disagreement can block a prospective Member's accession. Concerns have been raised about LDCs and small economies, in particular, being disadvantaged in the accession process, in terms of both the strains that the process places on their limited institutional capacities and the obligations which they accept as a condition of accession.²⁰² The experience of Vanuatu, whose accession was put on hold in 2001, is often cited as an example of the difficulties faced by SIDS and LDCs in this context.²⁰³ Like other acceding LDCs, Vanuatu (and more recently Samoa) faced demands for WTO-plus commitments that were beyond those made by other similarly situated Members and arguably inappropriate to their development needs.²⁰⁴

The difficulties of acceding LDCs have received some attention, although attempts to address them appear not to have had much practical effect.²⁰⁵ The WPSE proposal suggesting that acceding small economies 'should not be required to accept more obligations than small economies that are founder Members of WTO, nor obligations that founder Members have not themselves undertaken' would bring the treatment of small economies into line with that recommended for LDCs in the WTO General Council's guidelines on accession of LDCs.²⁰⁶ These guidelines exhort Members to 'exercise restraint in seeking concessions and commitments' from LDCs; provide that SDT 'shall be applicable to all acceding LDCs'; and require transitional periods and assistance to be given to acceding LDCs for the implementation of their obligations.²⁰⁷

²⁰² See, eg, Roman Grynberg and Roy Joy, 'The Accession of Vanuatu to the WTO: Lessons for the Multilateral Trading System' (2000) 34(6) *Journal of World Trade* 159, 160; Adhikari and Dahal, above n 198, 3; Jane Kelsey, 'Acceding Countries as Pawns in a Power Play: A Case Study of the Pacific Islands' (Paper presented at the WTO Public Symposium: Multilateralism at the Crossroads, Geneva, Switzerland, 27 May 2004) available at <<http://www.arena.org.nz/pacwto.htm>> at 1 October 2005 ('Pacific Islands Case Study'). See also Witter, Briguglio and Bhuglah, above n 11, 21.

²⁰³ Grynberg and Joy, above n 202, 159–3; Adhikari and Dahal, above n 198, 3–4; Kelsey, 'Pacific Islands Case Study', above n 202; Witter, Briguglio and Bhuglah, above n 11, 8. Vanuatu is both a SIDS and an LDC.

²⁰⁴ Grynberg and Joy, above n 202, 159–3; Adhikari and Dahal, above n 198, 3–4; Kelsey, 'Pacific Islands Case Study', above n 202; Witter, Briguglio and Bhuglah, above n 11, 8.

²⁰⁵ Adhikari and Dahal, above n 198, 4.

²⁰⁶ *Accession of Least-Developed Countries*, WTO Doc WT/L/508 (2003) (Decision of 10 December 2002).

²⁰⁷ *Ibid* 2.

However, acceding LDCs have been unable to insist on compliance with these guidelines in accession negotiations and it appears that their impact has been limited.²⁰⁸ In the *2004 Draft Mauritius Strategy*, the EU had suggested alternative language urging the use of these guidelines for LDCs, ‘many of which are also small island developing States’, although not for all SIDS.²⁰⁹

Responses to the WPSE proposals indicate that other WTO Members may not be particularly sympathetic to these concerns or willing to undertake the reforms that would be required to address them.²¹⁰ It has been suggested that the accession process is ‘inherently flawed’ given the imbalance of power between existing and acceding Members, which results from the way the process is designed, ‘rather than simply [from] the size disparity between LDCs and small vulnerable States like Vanuatu on the one hand and large WTO members such as the US, the EU and Japan on the other’.²¹¹ Although size and economic vulnerability exacerbate the problems identified with the process, these problems can arguably only be addressed by fundamental changes to the accession process, not by any amount of pleading for ‘restraint’ in certain cases. It appears, however, that the existing membership of the WTO is likely to be more amenable to less ambitious requests (for further assistance, in particular) than to these more far-reaching proposals.

D *Other Issues*

The issues and proposals discussed above are not the only ones that have been raised within the WPSE and elsewhere.²¹² Given the variety and complexity of relevant concerns, it is beyond the scope of this article to discuss them all, but a few are mentioned here to highlight the need to keep the particular circumstances of SIDS in mind when a wide range of trade and development issues are discussed. For example, the ‘graduation’ of states from least-developed to developing status, which has significant implications for their trade obligations (among other things) is an issue for SIDS, which may continue to have very vulnerable economies even when other indicators suggest they should no longer be classified as LDCs.²¹³ The WPSE proposals suggest that ‘small economies would be particularly affected by the sudden withdrawal of benefits that WTO accords to LDCs’ given the difficulties they already face, and that ‘[p]rovisions ensuring a smooth transition’ from LDC status must be agreed.²¹⁴

²⁰⁸ Adhikari and Dahal, above n 198, 4.

²⁰⁹ *2004 Draft Mauritius Strategy*, above n 81, [67(a)]. This language does not appear in the *Mauritius Strategy*, which merely notes accession as one of the ‘issues of special concern’ to SIDS: *Mauritius Strategy*, above n 1, [67(a)].

²¹⁰ See, eg, *Note on the Meeting of 1 July 2002*, above n 169, [15], where the US representative stated that the existing approach, which already had ‘a great deal of flexibility’, was preferable.

²¹¹ Grynberg and Joy, above n 202, 172.

²¹² For a recent list of proposals see, eg, Bernal, above n 11, 18–23.

²¹³ Economic vulnerability is one of the factors taken into account in determining LDC status; the others are income and ‘human assets’: UN Committee for Development Policy, *Report on the Sixth Session*, UN ESCOR, Supp 13, ch IV, [2], UN Doc E/2004/33 (2004).

²¹⁴ *WPSE Concrete Proposals*, above n 138, [6].

These calls were repeated in the *Mauritius Strategy*.²¹⁵ The loss of tariff revenue as a result of trade liberalisation has also been raised as an issue of particular concern for small developing states which typically have a narrow revenue base and tend to be dependent on tariff revenue.²¹⁶ Some advisers have suggested that governments can compensate for these effects, for example by introducing or raising sales taxes, but others have voiced concerns about the adequacy of these solutions and their potential adverse effects.²¹⁷ Since maintaining high tariffs is unlikely to be widely viewed as an acceptable option, states will have to explore other ways of adjusting to this loss of revenue, including both immediate and long-term support from donors. Recent proposals also emphasise several issues in respect of trade in services, such as market access for services of interest to small, vulnerable economies and facilitation of services exports.²¹⁸

A final issue of critical importance to note here is food security: SIDS are highly dependent on trade for food security, both in the sense that a large and increasing proportion of their export earnings is spent on food and also that they depend on imports for food consumption.²¹⁹ A group of SIDS has made proposals regarding food security in the context of the WTO negotiations on agriculture²²⁰ and it is mentioned at several points in the *Mauritius Strategy*.²²¹ Progress on this issue will require coordinated strategies in a number of areas, as well as further discussion within the agriculture negotiations at the WTO.

V CONCLUSIONS

As discussions are still ongoing, it is premature to make any definitive assessment of progress, but developments to date indicate a number of challenges. The Mauritius International Meeting and WPSE have increased awareness of the difficulties facing SIDS and provided opportunities for dialogue, but very little in the way of concrete outcomes has yet resulted. There is a growing sense of urgency as the Sixth WTO Ministerial Conference approaches and, with it, the opportunity to put forward recommendations for

²¹⁵ 2004 Draft *Mauritius Strategy*, above n 81, [63]–[64], [67(b)], [92(f)]; *Mauritius Strategy*, above n 1, [63]–[64], [67(b)], though note that, in the latter, it is absent from the agreed list of ‘high priority’ actions: at [92].

²¹⁶ Commonwealth Secretariat/World Bank Report, above n 1, 9; Bernal, above n 11, 12; Witter, Briguglio and Bhuglah, above n 11, 20. These note that for some small states, taxes on external trade make up more than half of total tax revenues.

²¹⁷ World Bank, *Embarking on a Global Voyage: Trade Liberalization and Complementary Reforms in the Pacific* (2002) 34, 45–7; Commonwealth Secretariat/World Bank Report, above n 1, 9; Jane Kelsey, Pacific Network on Globalisation, *Big Brothers Behaving Badly: The Implications for the Pacific Islands of the Pacific Agreement on Closer Economic Relations (PACER): Interim Report* (2004) <<http://www.arena.org/nz/bigbully.pdf>> at 1 October 2005.

²¹⁸ *WPSE Approach to Framing Responses*, above n 159, 4.

²¹⁹ *FAO Paper*, above n 14, 4–7.

²²⁰ *WTO Negotiations on Agriculture: Proposals by Small Island Developing States (SIDS)*, above n 144, [7]–[9].

²²¹ *Mauritius Strategy*, above n 1, [8], [35]–[37], [67(i)], [78bis(h)].

action, after two years of discussion in the WPSE.²²² The Chair of the special sessions has expressed determination to ‘deliver concrete responses’ to the Ministerial Conference and scheduled monthly informal meetings throughout 2005.²²³ Of course, even if definite proposals are brought to the Ministerial Conference, there is no guarantee that they will be adopted — as was seen most recently at the Fifth Ministerial Conference in Cancún, there is a real potential that lack of agreement on this and other issues could prevent any meaningful outcome.²²⁴

The meeting records of the WPSE reveal ongoing difficulties in obtaining agreement on the approach to discussions, much less a consensus on recommendations. Recently, a new three-step approach was adopted, which would involve identifying first, the characteristics of small, vulnerable economies; second, the trade-related problems attributable to those characteristics; and finally, potential responses to those problems. However, participants have differing views about the order in which these steps should be considered and how they relate to each other.²²⁵ A more substantial disagreement concerns the extent to which it is possible to avoid creating new subcategories of Members in this discussion. Recall that the WPSE mandate specifically proscribes the creation of subcategories; the Chair of the WPSE-dedicated sessions has remarked on the difficulty created by this mandate which ‘forbids the creation of a new sub-category while calling for action on the needs of small economies’.²²⁶ The three-step approach focuses on characteristics, rather than subcategories, and all three steps are to be discussed ‘without naming any group of countries’, apparently in order to avoid defining subcategories.²²⁷ It is not clear, however, that avoiding mention of specific countries will get around the subcategories issue; it would seem that any proposals involving differentiated treatment (such as exceptions available to Members with certain characteristics or problems) are likely to run into the same objection. Some participants have indeed expressed concerns that ‘negotiations on characteristics implied the creation of a new category of Members’.²²⁸

The ‘indicative list’ of characteristics and problems produced under the new approach includes specific reference to island countries as well as other small, vulnerable economies.²²⁹ Recent submissions have also noted that there are

²²² Numerous comments to this effect by state representatives are recorded in *Committee on Trade and Development — Eighth Dedicated Session — Note on the Meeting of 3 November 2004*, WTO Doc WT/COMTD/SE/M/8 (2005). See also *Committee on Trade and Development — Tenth Dedicated Session — Note on the Meeting of 6 April 2005*, WTO Doc WT/COMTD/SE/M/10 (2005) [7], [23] (*‘Note on the Meeting of 6 April 2005’*).

²²³ *Note on the Meeting of 6 April 2005*, above n 222, [7]–[8].

²²⁴ See, eg, *Dominica*, WTO Doc WT/MIN(03)/ST/120 (2003) (Statement by the Honourable Francis Osborne Riviere, Minister of Foreign Affairs, Trade and Marketing).

²²⁵ *Note on the Meeting of 6 April 2005*, above n 222, [4]–[5]. See also *Committee on Trade and Development — Ninth Dedicated Session — Note on the Meeting of 21 February 2005*, WTO Doc WT/COMTD/SE/M/9 (2005) [4]–[6].

²²⁶ ‘CTD: Focus on S&D, Small Economies’ (2004) 8(10) *Bridges Monthly Review* 8, 8 <www.ictsd.org/monthly/bridges/BRIDGES8-10.pdf> at 1 October 2005.

²²⁷ *Note on the Meeting of 21 February 2005*, above n 225, [3].

²²⁸ ‘Talks on Small Economies Move towards Solutions’ (2005) 9(19) *Bridges Weekly Trade News Digest* <<http://www.ictsd.org/weekly/05-06-01/story3.htm>> at 1 October 2005.

²²⁹ *WPSE 2005 Communication*, above n 110, [7].

precedents for a characteristic-specific approach to differentiated treatment.²³⁰ Such an approach would be consistent with recent suggestions for a new model of SDT in general, which would be more responsive to the particular circumstances of diverse developing countries.²³¹ Nevertheless, other Members continue to be resistant to differentiation and to question the extent to which the characteristics put forward are linked to small economies.²³² These disagreements reflect fundamental differences as to the best approach to SDT and the distinctiveness of the SIDS or 'small, vulnerable economies' groups which are not likely to be quickly resolved.

Another important issue in the WTO context is the division of labour between various parts of the *Doha Development Agenda*. It has been suggested that the problems being discussed in the WPSE should instead be dealt with in other relevant negotiating bodies.²³³ Small economies themselves have raised issues particular to their circumstances outside the dedicated sessions of the WPSE, for example in relation to services, agriculture and fisheries.²³⁴ There is a trade-off between the focused attention to the particular needs of small economies that is possible in the dedicated sessions and the need to integrate or 'mainstream' the issues raised there into the negotiations on relevant topics. The ideal situation is probably to maintain a set of coordinated discussions simultaneously in the WPSE and the relevant negotiations, but this will present significant, perhaps overwhelming, challenges for small states whose capacity to participate is already stretched to the limit.²³⁵

Considering all of these challenges, the prospects for meaningful progress at the Sixth Ministerial Conference do not appear to be particularly encouraging, and one can understand the frustration of participants who feel that the debate is 'going in circles' rather than moving forward.²³⁶ The WPSE is not alone in struggling to fulfil its mandate, of course; negotiations on many issues, also relevant to SIDS, including agriculture, non-agricultural market access, services

²³⁰ *WPSE Approach to Framing Responses*, above n 159, 1–2.

²³¹ See, eg, the proposal of Keck and Low for an 'implicit threshold approach' to SDT in which access to SDT on a provision-specific basis would be based on measurable criteria: Keck and Low, above n 128, 25–8. See also Bernard Hoekman, Constantine Michalopoulos and L Alan Winters, 'More Favourable and Differential Treatment of Developing Countries: Towards a New Approach in the WTO' (Working Paper No 3107, World Bank, 2003) 18–20; Michalopoulos, above n 105, 33; Hoekman, above n 171, 416–17; Davenport, above n 150.

²³² See *Note on the Meeting of 21 February 2005*, above n 225. See also 'Talks on Small Economies Move towards Solutions', above n 228, 5; 'GC: Progress on TRIPS and Public Health, Small Economies also Stuck' (2005) 9(27) *Bridges Weekly Trade News Digest* <<http://www.ictsd.org/weekly/05-07-27/wtoinbrief.htm>> at 1 October 2005.

²³³ See, eg, *Questions from the United States*, above n 181, 3; *Note on the Meeting of 1 July 2002*, above n 169, [16], [20] (Chile; US); *Note on the Meeting of 3 November 2004*, above n 222, [5]; 'Talks on Small Economies Move towards Solutions', above n 228, 4–5.

²³⁴ See, eg, *WTO Negotiations on Agriculture: Proposals by Small Island Developing States (SIDS)*, above n 144; *Communication from Antigua and Barbuda, Belize, Fiji Islands, Guyana, Papua New Guinea, the Maldives, Solomon Islands and St Kitts and Nevis*, WTO Doc S/FIN/W/29/Rev.1 (2003) (The *GATS* and the *Annex on Financial Services: International Regulations and Financial Services — Revision*); *Fisheries Subsidies*, WTO Doc TN/RL/W/136 (2003) (Communication from Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St Kitts and Nevis).

²³⁵ See *Note on the Meeting of 6 April 2005*, above n 222, [15]–[16].

²³⁶ Barbados, as quoted in 'GC: Progress on TRIPS and Public Health, Small Economies also Stuck', above n 232, 9.

and SDT have lagged behind schedule and produced disappointing results, despite increased activity.²³⁷

Regardless of the approach taken to discussions in the WPSE, there remains the issue noted above, that claims to assistance (financial and/or technical) or accommodation (of regional implementation mechanisms or joint representation at the WTO, for example) have tended to receive warmer responses from other trading partners than claims to differentiated obligations. From the perspective of SIDS, this is not an ideal situation, since promised assistance may never materialise, whereas differentiated obligations could provide greater certainty. At the same time, it should be acknowledged that the economic arguments supporting some of the claimed exceptions or other differentiated obligations — the right to maintain higher trade barriers or to continue export subsidies, for example — are strongly contested.²³⁸ In addition, existing mechanisms (such as ad hoc extensions or waivers) could provide some flexibility, although they still carry a degree of uncertainty. Refining procedures for these and generating data to support applications based on the vulnerability of SIDS economies would therefore be worthwhile. It is also true that ‘trade problems’ will not always require ‘trade solutions’;²³⁹ that is, the most appropriate measures may not always be found within the trade regime itself, although this fact tends to be obscured by the current focus of discussion on the WTO WPSE. However, there is a legitimate concern that assistance, especially technical assistance, is offered as both a ‘panacea’ and a ‘placebo’.²⁴⁰

If, as seems likely, various forms of assistance and cooperation are to be the dominant response to the challenges facing SIDS in international trade, a few important implications follow.

First, there is arguably a strong onus upon those countries that have favoured this response at the expense of other approaches to show good faith by following through on the proposals and actually committing to significant measures of support. It would be manifestly unfair for such countries to argue in favour of these measures and then later refuse to implement them, but there is a risk of this happening, given the negligible political and economic bargaining power of SIDS, unless the rest of the international community shows some vigilance and support. It may be true that SIDS and other small, vulnerable economies can overcome many of their structural disadvantages, but this will require both substantial effort by the SIDS themselves and meaningful cooperation by institutions and other states. The less other states are willing to concede in the way of differentiated obligations, the more they need to be willing to provide in the way of cooperation and assistance.

Second, the role of international and regional organisations besides the WTO becomes central with respect to these types of responses. The provision of technical and financial assistance and facilitation of cooperation to enhance

²³⁷ See *Report by the Chairman of the Trade Negotiations Committee to the General Council*, WTO Doc TN/C/5 (2005).

²³⁸ See, eg, Winters and Martins, above n 10, 376; Aaditya Mattoo and Arvind Subramanian, ‘The WTO and the Poorest Countries: The Stark Reality’ (2004) 3 *World Trade Review* 385, 403–5.

²³⁹ *Note on the Meeting of 21 February 2005*, above n 225, [4].

²⁴⁰ Bernal, above n 11, 21.

capacity and reduce costs are all activities in which relevant UN agencies, international financial institutions and regional institutions will have important roles. Given that many of the challenges will require complex, multifaceted solutions, the role of the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States is also crucial to ensure coordination among all of the relevant actors. It will equally be important to develop and use expertise specific to this context, in order to ensure that proposed initiatives adequately appreciate and respond to the complexity and special circumstances of these countries. For example, a recent suggestion that 'for a small country, comparative advantage in just one activity is sufficient'²⁴¹ seems to ignore critical concerns about vulnerability and diversification that would make reliance on a single economic activity extremely dangerous. Similarly, encouraging SIDS to target services as an alternative to exporting goods undoubtedly has some merit, but needs to be approached cautiously given that high costs²⁴² and capacity issues present barriers to competitively services trade. Effective strategies are likely to be complex, requiring a high level of expertise and coordination.

To return to the MDGs, addressing these issues as part of the larger MDGs agenda is also valuable for several reasons. It should help focus attention on SIDS' concerns in discussions of a range of development issues. In addition, there is a need to ensure that proposed solutions to trade challenges do not undermine other goals reflected in the MDGs and the *Barbados Programme of Action*, such as environmental sustainability. The vulnerability of SIDS has several facets, and efforts to address one must not exacerbate others. Framing trade issues as part of a comprehensive sustainable development agenda is important in this regard. At the same time, measures to implement other parts of the broader agenda — for example, human resource development, institutional capacity building, or transport and communications development — should have a beneficial effect on trade. In view of this, it is unfortunate that main focus currently seems to be on the WTO WPSE, which is not necessarily well placed to produce the most effective response. Although discussion within the WTO is vital, it is not sufficient in itself and must form just one part of a broader effort. The activity of the UN in implementing the *Mauritius Strategy* and the MDGs will be crucial in that effort.

With all of the pressing issues facing the WTO and the UN, it would be easy to lose sight of the difficulties facing SIDS, which directly affect relatively small numbers of people. However, as the title of the Mauritius meeting, 'Small Islands, Big Stakes' indicates, even though the numbers may be small, the impact of current challenges is not. The concept of vulnerability captures the situation of facing significant risks, while at the same time having a limited capacity to respond — a situation which calls for collective action. Crafting an effective response to the challenges of SIDS in the global economy is therefore an important test of the ability of the trade regime and other international institutions to respond to the varied circumstances of Member countries. It is also

²⁴¹ Anthony Venables, 'Small, Remote and Poor?' (2004) 3 *World Trade Review* 453, 456.

²⁴² See Winters and Martins, above n 10. This study assessed business costs relating to services as well as manufacturing; it found that for tourism, micro-economies have a cost inflation factor of 58 per cent, even greater than for manufacturing: at 372–4.

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a test of the solidarity shown by the international community in meeting the needs of its most vulnerable members as part of the 'global partnership for development'.