



The **E15** Initiative

STRENGTHENING THE GLOBAL TRADE AND INVESTMENT SYSTEM
FOR SUSTAINABLE DEVELOPMENT



The Future of the Global Trade and Investment Architecture: Pursuing Sustainable Development in the Global Economy

Carolyn Deere Birkbeck and Kimberley Botwright

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E15 Expert Conversations on the
Global Trade & Investment Architecture

Overview of Issues, Challenges and Debates

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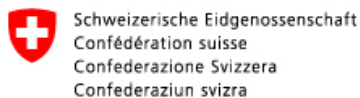
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EXECUTIVE SUMMARY

The global trade and investment architecture (GTIA) plays a critical role in shaping the organisation and structure of international commerce – from production and distribution to consumption. In so doing, the architecture impacts trade and investment outcomes, with a range of economic, social, and environmental implications. Yet the GTIA faces a suite of tensions and questions—some longstanding and some new—about whose interests it best advances, its distributional impacts, as well as its responsiveness to changing market forces and needs, and political demands.

A critical review of the GTIA is necessary on several grounds. First, the implications for the GTIA of several “game changers” in the global trade and investment arena demand attention, including the rise of emerging economies and subsequent shifts in economic and geo-political dynamics; the growth of the digital economy; the upsurge of global value chains (GVCs) and international production networks; and new inter-governmental commitments in the United Nations’ (UN) 2030 Sustainable Development Agenda. Numerous references to trade and investment in the 2030 Agenda’s Sustainable Development Goals (SDGs) signal increasing recognition of the ways trade and investment flows, rules, and policies can exacerbate social and environmental challenges but may equally be part of the solution to these. The world’s new to-do list also raises questions about where and how the GTIA needs updating to facilitate more sustainable development.

Second, ongoing changes in the trade and investment landscape—in what is traded and among whom, as well as in the types of negotiations and cooperation that governments pursue—give rise to new opportunities and challenges, spurring numerous questions about how the GTIA can respond and should evolve. As the GTIA is populated by a growing multitude of bilateral and regional deals, questions about the political and practical significance of mega-regional and plurilateral approaches abound, as do their implications for faltering multilateral trade negotiations and the role of the World Trade Organization (WTO). In addition, the growth of trade in services, developing countries’ boosted share of world trade and investment, the growth of South-South trade, and increasing intersections between trade and investment flows, all present a changing scene for the GTIA. Further, the rise of GVCs—combining goods, services, investment, intellectual property (IP), and know-how—alters the mechanics of international commerce and complicates the traditional boundaries of trade and investment disciplines.

Meanwhile, governance arrangements still fail to adequately address many long-standing challenges, most notably

enduring developing country calls for greater action to address their needs. In addition, the proliferation of private standards and the emphasis of contemporary trade and investment diplomacy on “behind the border” regulatory matters are just two examples of how the contours of cooperation are evolving and the array of actors expanding. They also highlight the rising interest in moving beyond treaty negotiations to new modalities for cooperation, from soft law approaches and technical cooperation to public-private partnerships.

Third, the GTIA faces pressures to help tackle a growing list of economic, social, and environmental challenges. Mounting public concerns about rising inequality, vulnerability in the global economy, and demands for greater inclusiveness set the context in which policy debates on trade and investment occur. Multiple, intersecting crises—in food, migration finance, pandemics, climate change, and security—generate political pressures on the GTIA to respond. For example, the trade and investment system is increasingly called upon to assist in the transition to a low-carbon economy. Meanwhile, a range of labour unions and civil society groups view contemporary trade and investment agreements as inextricably linked to a globalisation process associated with a range of ills—from unemployment to migration pressures; the rising power of large corporations; and threats to national regulatory powers, among others.

In national parliaments, recurring disputes between legislators confident in open markets and those who disdain these accompany heated debates on proposals to integrate provisions on labour, the environment, human rights, and development considerations into new trade and investment deals. The financial crises of recent years have rightly revived debate about the suite of flanking policies and national institutions required for closer international integration to serve national sustainable development priorities. The ensuing domestic politics of trade and investment drive both expectations of the international architecture and pressures on it.

Against this backdrop, governments, stakeholders, and experts offer a regular supply of policy proposals to address the various game changers, trends, and challenges at hand. What is less prevalent, however, is critical thinking on their implications for the trade and investment architecture. And yet questions abound. Is the contemporary GTIA adequately equipped to respond to the gamut of challenges and dynamics it faces? Are the various components of the GTIA achieving their intended purposes and are they moving collectively in the right direction? Where does the GTIA perform well and where are there gaps, systemic problems, or structural weaknesses? Looking ahead, what changes or improvements to the architecture are needed urgently, and over the medium term? And what are the scenarios if governments and stakeholders fail to act—what kinds of problems, challenges, or crises may emerge?

This overview paper presents a mapping of the GTIA and a scoping of some of the core issues and debates at hand. Looking across the global trade and investment landscape, it proposes a set of key game changers, emerging issues, and enduring challenges that raise questions for conversations on the future of the GTIA.

The paper does not assume or promote the notion that a perfect “divine architecture” exists or that such an architecture could be negotiated among governments with diverse political and economic interests. As a scoping exercise designed to spur conversations among experts, the paper does not take positions on where reforms are most urgent or advocate particular options. However, we do view the architecture as open and evolving, where change is a constant. The GTIA’s evolution over several decades illustrates that governments and stakeholders have the power to shape the GTIA, albeit with varying degrees of power and influence. It also reflects the multiple and sometimes competing goals for international cooperation on trade and investment. As such we emphasise the need for critical examination of assumptions on the visions and principles as well as the purposes and rationales—economic, strategic, political, social and environmental—that shape international cooperation on trade and investment and associated governance arrangements.

Although we adopt the familiar term “architecture,” we use it as short hand for an evolving ecosystem comprising international agreements, arrangements, institutions, and processes as well as private initiatives and public-private efforts. Together, this ecosystem establishes the global playing field for trade and investment, as well as the formal and “default” rules of the game. It also serves numerous practical functions ranging from platforms for negotiation and dispute settlement to the provision of Aid for Trade.

Across the ecosystem, a diversity of actors—governments, industry, international organisations, research institutions and civil society groups—have and exert different kinds of power. Material resources and economic might are clearly at play, but power is also expressed through legal agreements, through ideas embedded in policy advice and capacity building, and through discourse. The architecture thus reflects wider political and economic power relations—and asymmetries—and is also a framework through which power dynamics are expressed. Some players are dominant across the system and some on discrete parts of the architecture; while large multinational enterprises (MNEs) drive agendas for inter-governmental cooperation on many trade and investment issues, civil society groups play a leading role on the incorporation of many social and environmental considerations.

Moving beyond a more traditional focus on the global “trade architecture,” the ambit of the E15Initiative is on a broader “trade and investment” architecture. Although widely analysed as two separate legal regimes, with distinct foundations, there are strong grounds for considering

these together in this scoping exercise—the growing intersections of flows mentioned above; the push to widen the regulation of international investment to better serve sustainable development priorities; the growing number of agreements that already link trade and investment; and the fact that responses to many social and environmental challenges call for coherent approaches to the international regulation of both trade and investment. The call to combine considerations of the future of the trade and investment architectures reflects this latter quest for greater coherence and the need for constructive discussion; it does not imply a position for or against a more unified global or multilateral architecture nor a view on what it might look like.

Setting aside partisan, special, or national interests, the vision underpinning the E15Initiative’s work on the GTIA is of an architecture that serves the international community’s commitment to sustainable development, driven by concerns for ensuring that trade and investment flows, rules, and policies help foster environmental integrity, equity, inclusiveness, and human well-being. On this basis, the landscape of the GTIA that we map out includes the wider constellation of international agreements, institutions, laws, processes, and actors that intersect with the “core” trade and investment architecture. Our mapping also underscores the GTIA’s links to wider global governance arrangements and processes on issues ranging from finance and development aid to security and the environment.

Debates and questions on the future of the GTIA can be usefully clustered into four themes, namely: its scope; its existing and potential governance functions; its internal complexity; and its links to wider global governance processes.

On scope, for instance, there are numerous questions about the principles that should undergird international cooperation on trade and investment as well as about issues, existing and emerging, that demand greater attention within the architecture or require new collaborative frameworks. Questions are also plentiful on the GTIA’s governance functions, whether some are missing and which deserve greater attention, bolstering, or rethinking.

The internal complexity and fragmentation of the GTIA raises questions about subsidiarity, the intersection of its many rules, and the division of labour among a plethora of inter-governmental institutions and processes, as well as the appropriate response to the rise of private sector initiatives. There are also numerous debates on how the GTIA can be better informed by wider global governance processes and contribute to these. How, for example, can the GTIA be anchored more concretely in priorities expressed in the 2030 Agenda and contribute to the implementation of the SDGs? What should be the role of platforms such as the UN and the Group of Twenty (G20) on trade and investment?

The role of national governments is clearly critical across the GTIA. This paper underscores that the ways governments

organise decision-making processes at the domestic level – including the provisions they make for transparency and public participation – matter to the GTIA's future, as do the ways national governments interact with the GTIA's various components and contribute to its functions.

This overview paper is broad in scope, but so is the topic at hand. It is offered as a starting point for a journey meant to inspire reflection on future of the GTIA in a complex, rapidly evolving, and yet fragile world.

INTRODUCTION

This overview paper sets out a landscape of key trends, challenges, and strategic questions on the future of the global trade and investment architecture (GTIA). Stepping back from the multitude of *policy* issues and proposals presented by the various E15Initiative Expert Groups and Task Forces (listed in Annex A), it is intended to serve as a “conversation starter” that focuses discussion on challenges facing the *architecture* for trade and investment.

As part of the diagnostic phase of the E15’s work on the GTIA, the paper aims to capture the components of the global governance ecosystem relevant to trade and investment, and to identify key assumptions, debates, as well as competing views on strengths and shortcomings in the architecture. To create a common basis for conversations among experts with diverse views and areas of expertise, the paper also offers a review of major game changers, evolving trade and investment trends, enduring and emerging economic, social, and environmental challenges, and geopolitical tensions that prompt and fuel debates on the future of the GTIA. It also provides an extensive bibliography for those interested in further exploration of the issues outlined.

The paper does not attempt to cover comprehensively or in detail the vast landscape of the GTIA or the full range of debates on its future, nor does it propose a systematic assessment of the performance and shortcomings of the current architecture. We seek here to raise questions to spur conversation, but not to offer specific options or recommendations on the future evolution of the architecture. An options paper, to be published in 2016, will include a strategic overview of key architecture options, combining ideas emerging from the E15Initiative conversations on the GTIA, blogs and think pieces on the GTIA, the E15Initiative Expert Groups and Taskforces, and the broader scholarly and policy literature.

The normative starting point of this paper’s analysis is that the GTIA should advance the international community’s overarching commitment to sustainable development. This vision reflects the commitments embodied in the UN’s 2030 Sustainable Development Agenda and recognises that the many trade and investment targets and provisions included in the SDGs create a new context for discussions on the future of the GTIA. Although the term “sustainable development” has many components and its own share of ambiguities, it is the best available concept for evoking an agenda that integrates a concern for economic and social development, along with the imperative of environmental protection. We do not propose any particular “divine

architecture” to achieve that vision, nor presume that one exists or would be politically feasible.

Part A of the paper explores the evolving GTIA ecosystem. To introduce the analysis, it revisits assumptions on why governments seek to cooperate on trade and investment, setting out the range of rationales that drive their quest for cooperation and the variety of challenges they may seek to address through international trade and investment diplomacy. It then maps out the core components of the GTIA, highlighting its growing complexity, and expanding scope. It identifies inter-governmental rules, agreements, and institutions as part of the architecture, and also political processes, cooperative arrangements, voluntary standards, third-party certification schemes, and private sector partnerships and practices that can set default rules of the game and shape trade and investments flows. In so doing, the paper emphasises an “inner core” of trade and investment-related actors, and also a wider set of global governance frameworks, actors, commitments, and processes—on economic, social and environmental issues—that provide services on trade and investment. This “outer ring” can impact, or intersect directly and indirectly with the inner core of the trade and investment ecosystem, making it worthy of consideration as part of the architecture.

Part A also introduces the range of practical functions the GTIA serves—and is called upon to serve—from agenda setting, rule making, policy dialogue, and regulatory cooperation to treaty administration, dispute settlement, and capacity building. It notes that the architecture currently serves these functions to varying degrees, and with varying levels of success, and that some of the functions may be more important in the future. Further, it highlights the diversity of rules, actors, institutions, and processes involved in animating each function, and the various levels of subsidiarity at which they operate—multilateral, regional, bilateral, plurilateral, and national. Some actors are very prominent in some functions, but less so in others.

In Part B, the paper explores the context for discussion on the future of the GTIA. The first section presents current dynamics and future scenarios in trade and investment flows and policies, highlighting trends that affirm the enduring relevance of longstanding challenges facing the GTIA—such as developing country concerns about inclusiveness—as well as concerns that constitute new grounds for reflection on priorities for trade and investment cooperation, and thus on the future of the GTIA.

The second section of Part B reviews a set of wider economic, social, environmental and geopolitical dynamics and challenges that have implications for how we think about priorities for cooperation in the area of trade and investment, as well as the future of the GTIA and the demands it faces. We underline in particular those challenges that, although not always central preoccupations of insiders within the trade and investment communities, are nonetheless high on the agendas of politically significant policymakers and

stakeholders at the national level. Through their influence on the domestic politics of trade and investment diplomacy, and also on the priorities that international cooperation on trade and investment is called upon to serve, such challenges influence the expectations of the GTIA, and also shape the demands upon it.

To summarise the analysis, Part B concludes with a matrix of game changers, evolving trends and enduring tensions that we propose matter most to the future of the GTIA, noting examples of how and where these raise questions for the GTIA in terms of its scope and functions, its internal workings, and its relationship to wider global governance systems.

In Part C, the focus turns to prominent scholarly and policy debates on the GTIA organised in four thematic areas, along with key questions for consideration by those engaged in the E15Initiative conversations on the GTIA. First, it reviews tensions over the appropriate scope of the GTIA in terms of the principles that should undergird international cooperation, the issues for which international cooperation is required, and how these should be addressed. Second, it explores what governance functions are missing in the GTIA and which deserve greater attention, or rethinking. Third, the paper reviews how the internal complexity of the GTIA raises questions about the “division of labour,” subsidiarity, and coherence among its many components. Fourth, the paper takes up how the GTIA can be better informed by wider global governance processes and contribute to them.

Across the GTIA, the role of national governments is critical. Part D explores how dynamics at the national level in terms of the process of trade policymaking and institutional arrangements for interacting with the various components of the GTIA matter to its future. Part E concludes with a set of cross-cutting questions and early suggestions on structural weaknesses in the GTIA to inspire the conversations.

PART A:

THE GLOBAL TRADE AND INVESTMENT ARCHITECTURE

1. WHY INTERNATIONAL COOPERATION ON TRADE AND INVESTMENT?

Is the contemporary GTIA achieving what it is supposed to? How has it evolved, and is it moving in the right direction? Are there gaps, systemic challenges or structural weaknesses, and what changes or improvements are needed? Responses to such questions reflect a multitude of assumptions about international cooperation on trade and investment—on vision, priorities, purposes, drivers, and impacts. As such, our analysis starts by setting out some of the key premises, beliefs, and theories that warrant critical interrogation and reflection.

1.1 DEBATES ON VISION, RATIONALES, AND ASSUMPTIONS

1.1.1 Visions

The trade and investment arena has long been notable for multiple, and sometimes clashing, views across and among governments and stakeholders on what they are trying to achieve through the GTIA. Different perspectives on what the goals and outcomes of cooperation ought to be give rise, in turn, to a diversity of visions on what the global architecture for trade and investment should look like. Moreover, modern trade and investment politics underscore that the visions and objectives of governments and stakeholders vary the different levels of the architecture—multilateral, plurilateral, regional, and bilateral.

For some the vision is of a global architecture that promotes and expands open markets for trade and investment across borders. Here, the architecture is seen as a tool for supporting robust, well-functioning markets and addressing the practical constraints that firms can face when conducting business internationally. For others the vision is of an architecture that serves broader public policy goals, such

as sustainable development, and that facilitates efforts to respond to key global public policy challenges (Allen et al. 2014; Deere Birkbeck and Meléndez-Ortiz 2009; Lamy 2013; Meléndez-Ortiz et al. 2012). In this vein, some advocates envision an architecture that facilitates and harnesses trade and investment in ways that foster sustainable development while preserving national political autonomy. Others put the emphasis more explicitly on the architecture as a vehicle for tackling the asymmetries between countries in their trade and investment relations, advancing development goals, and boosting inclusiveness. More broadly the architecture is widely viewed as a vehicle for promoting predictability and stability in an integrated global economy and international production systems.

Although a number of analysts argue that some of the apparent divergences in these visions are really a matter of emphasis and priority—and could be reconciled as complementary—others underscore fundamental differences between them and caution against wading into what they predict would be protracted and ultimately futile dialogues of the deaf. There is, nonetheless, growing attention to the importance of more open discussion on what the GTIA should be for and on how the multitude of different instruments, institutions and processes it comprises can collectively contribute (Deere Birkbeck 2009; Wilkinson 2014). As observed by former WTO Director General Pascal Lamy, “global actions require political will, clear projects and common institutions. But these three pillars can only be held together by a system of shared values: a sense of common purpose” (Lamy 2012).

1.1.2 Rationales

Why do countries pursue cooperation on trade and investment? There are diverse premises about the rationales, purposes and drivers that influence when and how governments and stakeholders pursue international cooperation on trade and investment (WTO 2007a).

Economists, for instance, emphasise that cooperation at the international level may be called for where collective action problems arise—to deal with negative spillovers such as beggar-thy-neighbour protectionism¹ and externalities

1 A classic example of such a negative spillover was the passage of the US Smoot-Hawley Act in the 1930s, which, although intended to help protect domestic agriculture and respond to economic depression, engendered a retaliatory response across the global economy with disastrous results.

resulting from a competitive race to the bottom, as well as information gaps—just as government intervention may be required at the national level to address market failures (Wolfrum 2006; Bagwell et al. 2002). Depending on the purpose at hand, the type of cooperation may also vary—legal agreements may be more appropriate to achieve some goals, whereas soft law approaches may be more effective for others. For instance, trade and investment agreements are often considered key vehicles to promote and “lock in” liberalisation and regulatory reforms in ways that protect against political pressures that might otherwise prompt their reversal (although scholars debate the evidence on the degree to which such agreements do actually transform domestic governance).² Specifically, treaty provision are pursued to establish requirements for transparency of trade and investment policy and measures; to ensure impartial referee systems for disputes; to expand market access and improve investment climates; and to forge common rules such as on the use of trade-distorting subsidies. Beyond traditional market access issues, governments also increasingly seek cooperation to minimise costs of regulatory barriers across borders (Hoekman and Mavroidis 2015).³ Vehicles for such cooperation include new trade and investment agreements, as well as arrangements for information sharing and for the provision of capacity building to government institutions and businesses in developing countries to meet new standards.

Scholars of international relations and international political economy, however, underscore that a wider set of motives and drivers also shape international trade and investment relations. Even as many governments espouse the virtues of free trade and deploy the rhetoric of open markets, mercantilist imperatives and domestic political pressures regularly dominate their international agendas on trade and investment (Rodrik 2013). Although some business groups push governments to maximise trade liberalisation and secure regulatory frameworks that minimise differences between countries, facilitate the movement of their goods, investment, and services, and enable global value and supply chains to function; other businesses lobby governments to protect their market share against competitive threats. Depending on prevailing political processes, governments may also succumb to pressures to protect those with established political ties, whether industry groups, state-owned enterprises, or labour unions. Driven by the pressures of domestic electoral cycles, the positions governments take in international trade negotiations more commonly reflect efforts to placate or please powerful interest groups and domestic constituencies than adherence to free trade theories.

Further, the content of international trade and investment arrangements—and the choices governments make about which forums and institutions to use for their negotiation—reflect strategic political considerations and agendas (Jupille et al. 2013). Powerful governments may, for example, pursue trade and investment deals as a political quid pro quo for closer cooperation on security

matters. Where several powerful countries are jostling for political influence on a particular country or region, such deals are also sought as a way to strengthen bilateral ties vis-à-vis competitors (Austermann et al. 2013). For poorer countries, the conclusion of agreements—even those with provisions they consider unfavourable—is often viewed as a concession necessary to secure wider political cooperation, build confidence among businesses in the government’s commitments to economic reforms, ensure a favourable climate for foreign investment, or to reinforce the foundations for continued development assistance.

In addition, the purposes for which countries pursue cooperation at the multilateral level may differ to those they pursue at the regional or bilateral levels, meaning the scope of cooperation can also vary. For instance, although US approaches to international cooperation—and associated global architectures—are often interpreted as reflecting a desire to expand a liberal world order, the specific priorities that the US administration seeks to advance through trade and investment diplomacy vary at both the multilateral and non-multilateral levels, and have evolved over time (Rose 2015). At the regional and bilateral level, the motivations driving trade and investment agreements range, for instance, from undergirding wider regional economic and political integration agendas, establishing building blocks for larger agreements, cementing strategic alliances, isolating non-members to force them to the negotiating table elsewhere, and tackling issues gridlocked in multilateral talks (Austerman et al. 2013).

1.1.3 Assumptions

Embedded in the various economic rationales for international cooperation on trade and investment are the assumptions of economic theories.

Since the 19th century, the intellectual groundwork for free trade has been embedded in theories of comparative advantage, which espouse trade and investment liberalisation as key to securing economic development, better living standards, wider product differentiation and choice, economies of scale, and so on (Irwin 2015). Although historically there have been different formulations of the

2 See, for instance, Aaronson and Abouharb (2014), Steinberg (2013), and Wolff (2015). Here the argument in favour of using agreements to “lock-in” reforms is that where national trade policies are prone to protectionist capture, trade reforms are at risk of reversal. Binding international commitments are thus a means of securing the credibility of reforms by reducing the scope for policy reversal. Because expansion by businesses into new markets tends to involve significant sunk costs, a core concern is that investors fearing reversal will either not invest or postpone investing. It is notable, however, that (i) in practice investors are deterred by a host of other factors; and (ii) there is a significant gap between actual commitments and bound commitments in both goods and services trade (especially the latter) in jurisdictions most prone to policy reversal.

3 Economists also emphasise pro-competitive forces such as the expansion of product varieties and positive incentives such as technology transfer as reasons to pursue trade and investment cooperation (Herdegen 2013).

concept of gains from trade,⁴ a core proposition of free trade theory is that unilateral liberalisation is welfare enhancing. Following this logic, global free trade would simply be a way of countries pursuing their own interest; there would not be a global collective action problem—as seen in the realm of climate change mitigation—that requires an international treaty mechanism or architecture. As noted above, however, the fact that governments do pursue treaty rules and enforcement mechanisms can be explained in economic terms as efforts by governments to prevent beggar-thy-neighbour policies,⁵ and also in terms of wider political economy considerations. For national decision-makers, international trade agreements that involve reciprocity are a way of creating coalitions in favour of trade, such as between consumers who gain as the result of greater competition from cheaper imports and exporters who gain from market access overseas. The political economy argument has also been used to explain the extension of trade rules into newer areas, for example, the incorporation of services and intellectual property in the Uruguay Round to offset protectionist constituencies in areas such as agriculture and textiles. Further, as noted above, agreements are pursued to improve the predictability of trade and investment regimes, by reducing the scope for policy reversal and more recently to address the suite of “non-tariff” measures that have arisen as tariffs have dropped.

Importantly, the theories behind trade and investment are not static. For example, the Prebisch-Singer hypothesis—that developing countries would face a continuing decline in terms of trade and hence had to favour import substitution industrialisation (ISI) policies to develop—was a dominant influence in the 1960s and 1970s and was reflected in the notion of special and differential treatment (S&DT) in the General Agreement on Tariffs and Trade (GATT). It also dovetailed with the high tide of the non-aligned movement and the politics of the New International Economic Order (NIEO) in the 1970s, where developing countries began to insist on greater scope for state sovereignty to improve social and economic outcomes for their people (Qureshi 2010). The ISI approach was subsequently dropped by many developing countries in the 1980s as they pursued unilateral liberalisation—driven in large part by policy advice from the World Bank and the IMF as part of wider structural adjustment programmes—which, in turn, was accompanied by greater engagement in the GATT and later the World Trade Organization (WTO).

In current trade and investment politics, debates on economic theories and their assumptions are by no means settled. Contemporary debates about how much openness is desirable, for whom and under what conditions reflect wider assumptions about what development models and global economic arrangements would facilitate fairer, more sustainable outcomes (Allen et al. 2014).⁶ Global economic instability has also yielded stronger recognition of the downsides and shortfalls of globalisation, raising questions about whether and how the global economy and further global economic integration can deliver on stronger social equity (Alam et al. 2010; Rodrik 2011; Stiglitz 2002, 2014). Do

currently poor countries have the same opportunity and path potential that industrial newcomers such as the Asian tigers experienced? Can least developed countries (LDCs) “leapfrog” high carbon growth models and instead pursue some form of green growth? Where do their opportunities lie and will these spur economic and institutional transformations of the kind that sustainable development demands? Further, post-2008, the struggle to recover from financial crises and concerns about social injustice have renewed interest in the concept of “embedded liberalism,” where national institutions and capacities to ensure social welfare and protection systems are considered vital for securing the potential benefits from open trade and investment.⁷ They have also consolidated interest among many governments in “policy space” for national regulatory decision-making.⁸

As the global economy evolves, assumptions about the linkages between liberalisation and growth are also increasingly called into question. Amidst concerns about a “jobless recovery” from recent financial crises, a mounting array of evidence suggests that the links between trade, economic growth and the anticipated gains in employment

4 “Smithian” gains from trade are attributable to specialisation in particular goods or tasks; once countries or firms start producing a good or undertaking a task, they have to keep seeking efficiency gains, but the possibility of such efficiency gains through specialisation is limited by the size of the market. While Adam Smith argued that trade increases the size of the market and therefore the scope for efficiencies through specialization, “Ricardian” gains from trade reflect differences in costs of production that make specialisation welfare enhancing for the parties involved. The Ricardian analysis was further formalised by the work of Eli Hecksher and Bertil Ohlin, who modelled comparative advantage in terms of relative endowments of factors of production, and represented the gains from trade as occurring through trade between nations that differ in their endowments. The literature on gains from trade also highlights the benefits of increasing returns to scale and product differentiation. See Dixit and Stiglitz (1977) and Krugman (1980).

5 According to the theory of optimal tariffs—countries that enjoy market power in goods can set tariffs to modify the terms of trade in their favour, a form of beggar-thy-neighbour strategy. The empirical relevance of the optimal tariff as a driver of international rules is disputed among scholars: while Bagwell and Staiger (1999) propose that concerns about optimal tariffs were a fundamental factor behind the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), Krugman and Obstfeld (1987) consider that it had no relevance. Nonetheless, it is well established that a fear of beggar-thy-neighbour policies, as witnessed in the years prior to and during the great depression, was one of the main motivations behind John Maynard Keynes’ argument in favour of an International Trade Organisation that was supposed to emerge, along with the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), from the Bretton Woods conference.

6 See Aaronson and Abouharb (2013) on the intersection between trade and human rights in conflict zones.

7 Political scientist, John Ruggie (1982) coined the term “embedded liberalism” to capture the idea that market forces need to be “embedded” in institutional contexts to protect populations from economic hard times. Ruggie explained the birth of the IMF and World Bank in the post-World War II period as an example of embedded liberalism in action, where the Bretton Woods Agreements sought to help re-build and stabilise global economic relations in this new context.

8 See UNCTAD (2015d) as well as Deere (2011) for a compilation of developing country views on the global trading system,

rates and wages are more tenuous than claimed (Rodrik 2011, 2015; UN 2015d). There is even greater ambiguity about the extent of welfare gains—and their distribution—across the broad array of different issues and sectors for which trade rules require regulatory reform. On the investment front, worries abound on the role of foreign actors in the national context with civil society groups at the forefront of calls on governments to safeguard their policy space, particularly for non-economic priorities.

1.2 WHAT DRIVES CHANGES IN THE ARCHITECTURE? ASSUMPTIONS ABOUT GOVERNANCE AND POWER

The evolving nature of the GTIA raises questions about what factors and actors drive change in the architecture. Analyses of how and where change occurs in turn embody numerous assumptions about the many different and subtle ways in which power plays a role, the nature of the state and national interests, the primacy of states and the potential for non-state actors to impact international trade and investment relations, and what makes for “good” governance.

1.2.1 Power and change in the GTIA

Assumptions about what drives and explains change in the GTIA. Whose interests have these changes served? What kinds of changes have not been successfully pursued? What kinds of changes in the architecture are politically plausible? Scholars of international politics offer a diverse set of theories, analytical approaches, concepts, and tools for analysing complex governance systems, regimes, and orders, as well as change in international organisations (Slaughter 2011). The international relations literature highlights that explanations for changes may vary by component of the architecture—what alters the prominence and role of key international institutions may differ from what and who drives changes in legal regimes and non-legal types of cooperation.

A key set of assumptions worthy of interrogation by those interested in the future of the GTIA relate to how power is acquired and exercised through the architecture, by which actors, and through what vehicles. Here the international relations literature offers several possible paths for exploration. A number of scholars emphasise the importance of understanding how unequal power has shaped and shapes the governance of global trade (Jones K. 2011, 2015; Kim 2010). Some analysts focus on “structural power” relations and asymmetries as key drivers of legal regimes, while others examine networks of power and influence. Scholars also emphasise that international “orders” are also shaped by powerful ideas and norms—such as changing ideas on trade and investment priorities and impacts—and the professional communities of experts, officials, academics, and lobbyists that advance and frame them. The ways in which cross-national technocratic and expert elites with

shared understandings and ideas can, for instance, advance particular norms discourses and shape global trade policy agendas have been well documented (Cho 2014a,b; Eagleton-Pierce 2013; Lang and Scott 2009; Strange 2013). Similarly, political economists have explored the constraining influence of institutional inertia and path dependency on the prospects for change and reform of international trade organisations (Wilkinson and Scott 2013; Jones K. 2015). But international organisations can sometimes acquire authority and exercise agency as actors in their own right, shaping their own activities and institutional future rather than merely serving member states or reflecting the agenda of the most powerful among them (Barnett and Finnemore 1999, 2004; Abbott et al. 2015). Whether the subject of change is a particular international organisation or a wider governance system, leadership from a major power or group of countries for whom change—or lack thereof—serves their interests may also be decisive.

1.2.2 The national interest, state power and non-state actors

The notion of “national interest” is often invoked in international trade and investment diplomacy, but also embodies a set of assumptions. Political scientists in the “realist” or neo-realist tradition maintain that the primacy and potency of state power should not be underestimated, particularly the capacity of the strongest states to assert their agendas and deflect, undermine, or accommodate civil society concerns according to state interests (Drezner 2013). Political scientists, however, regularly debate the extent to which it makes sense in many fields to speak of “national” or “state” interests as traditionally defined (Guibernau 2013). National governments have layers of priorities in their international relations and may advance different perspectives on the national interest depending on the forum, policy issue—security, economic, social, or environmental—and audience at hand, sometimes due to the complexities of coordination among ministries and sometimes for tactical reasons. With the reality of a highly interconnected world, the rise of transnational alliances—whether of civil society, business, cities, or regions—on a range of global issues further complicates the prospect of discerning discrete “national interests” (Hale and Held 2011; Djelic and Quack 2010; Mann et al. 2013). In addition, the interests asserted by different states are often deeply contested back home among citizens and within parliaments; they regularly reflect the agenda of dominant interest groups that can capture policymaking processes rather than a more broadly defined set of public priorities.

Assumptions also abound regarding the role and relevance of non-state actors in international trade and investment relations, as well as on the scope for cooperation that does not

9 On this note, there is growing interest in how private foundations and other philanthropic actors can stand alongside governments and inter-governmental organisations—and sometimes challenge them—as actors capable of setting global agendas and mobilising action and resources around them (Moran 2014). The most prominent example of this is the Gates Foundation in the global health arena.

take the form of new international treaties. Just as civil society, broadly understood, comprises a diverse range of different actors—from unions and social movements to NGOs, think tanks and private foundations⁹—with strategies that range from revolutionary to constructive engagement, the business sector also comprises a range of actors, from multinational enterprises (MNEs), to state-owned enterprises, medium-sized companies, small firms, and private consulting companies.

Scholars of international relations offer a growing range of examples of how the actions and initiatives of non-state actors can complement, challenge and alter the evolution of formal inter-governmental arrangements (Weiss and Wilkinson 2014). Although the extent of civil society influence over inter-governmental negotiations and outcomes varies widely, there is growing recognition of the contribution non-governmental organisations (NGOs) can make to them by sharing on-the-ground experience (Koppell 2010). Further, non-state actors are prominent players in efforts to forge more multi-stakeholder, less state-centric processes for dialogue and negotiation of international norms, as well as in an array of public-private partnerships (Scholte 2011). The imperatives of sustainable consumption and production, for instance, spur both civil society and industry frustrated with inter-governmental efforts to seek market-based solutions such as through private standard-setting.

Finally, scholars sceptical of state-centric assumptions about trends in world politics draw attention to the rise of private authority, and in particular transnational corporate power in global governance systems (Cutler 2003, Clapp and Fuchs 2009; Sell 2003; Hall and Biersteker 2002) as well as the growing privatisation of global regulation (Büthe and Mattli 2011; May 2015; Pauly and Coleman 2009; Schirm 2004; Van der Meulen 2011).

1.2.3 "Good" Governance, Multilateralism and Principles of Governance

Debates about what makes a "good architecture," the prospects for multilateralism, and what would constitute "good" global governance of trade and investment reflect numerous assumptions as well.

Across global policy areas, there are examples of growing complexity, regime "complexes" (Hale and Held 2011; Keohane and Victor 2011) and fragmentation of governance regimes (Young and Peterson 2006; Johnson and Trebilcock 2013, Van Asselt 2014). In both the trade and investment arenas, fragmentation is widely noted (Blanchard 2014; Delimatsis, 2011; Johnston and Trebilcock 2013). A multitude of assumptions underpin debates about whether, when and why such fragmentation matters. Is a pluralistic, multi-layered architecture or a unitary architecture more desirable? When and why are multilateral approaches most desirable? And why do crises of multilateralism—the slow pace, limited ambition, and recurring breakdown of

efforts to address challenges facing the global economy and the commons—persist across the international system (Alexandroff 2008; Besada and Kindornay 2013; Bouchard et al. 2013; Feenstra and Taylor 2014; Pauwelyn et al. 2014)?

In light of the hurdles moving inter-governmental processes to conclusion, to what extent and when are formal international laws and regimes the appropriate response to collective action problems? On a range of global policy concerns—from sustainability to human rights—impatience with the slow progress of international negotiations and global governance arrangements is shifting attention to local governments, city mayors, and the private sector for practical action over top-down, treaty-based approaches that rely on national level leadership (Esty and Provost 2015; Ruggie 2014). The current push in the climate policy arena illustrates the growing interest of governments in aggregating a set of realistic "bottom up" efforts by states and stakeholders over the search for comprehensive, integrated binding multilateral treaty commitments (Keohane and Victor 2011). In the trade and investment arena too, as noted above, there is already growing action on private standard-setting, guidelines, best practices, public-private partnerships, and corporate social responsibility (CSR), and self-regulation efforts (Mattli and Woods 2009; Koenig-Archibugi and Zürn 2006) alongside more traditional inter-governmental arrangements. Such trends are vital considerations for those interested in the future of the GTIA. Where are international laws still vital for advancing environmental and social agendas, and for trade and investment cooperation (Shawkat et al. 2010)? Where might new and "informal" modes of law making and global governance produce stronger, swifter or more concrete outcomes, and what are their constraints (Pauwelyn et al. 2012; Shaffer et al. 2015)? How do and can international organisations play a role in helping orchestrate the growing network of such efforts as a complement to 'older' models of governance that focus on treaties to achieve international regulatory goals (Abbott et al. 2015; Abbott and Snidal 2009, 2010; Ruggie 2014)?

For some, the problems facing multilateralism in trade and investment are procedural. Some analysts argue the problems lie with stultifying consensus-based decision-making procedures and the ways in which the WTO's consensus-based approach means that one country, or a handful of them, can delay the conclusion of deals (Narlikar 2015). Others assign blame to an over-reliance on exclusive, un-transparent informal consultations that alienate excluded players and constrain the prospects for bridge-building and forging deals that reflect the diversity of interests at stake. Others highlight the technical complexity of the issues under discussion as central, while still others insist that shifting power dynamics hold the answer as a handful of developed countries are no longer able to force their agenda on others (Lesage 2015) and fundamental differences of interests and values are less easily pushed aside (Ismail 2009, 2011). Whereas the US previously dominated the global agenda, and was able to underwrite much of the financing for the liberal world order, the rise of Brazil, Russia, India, China,

and South Africa (the BRICS nations) and coalitions of developing countries have without doubt complicated multilateral negotiation processes. Just as a wider set of policymakers and experts from emerging and developing countries are asserting perspectives on the global economic architecture and shaping its contours,¹⁰ at the WTO they are also challenging the more straightforward but non-inclusive and Quad-dominated approach to agenda-setting and deal-making (Baracuh 2012; Deere Birkbeck 2011; Narlikar 2011, 2013) (see Section 6.3 for further discussion).

Finally, numerous explicit and implicit assumptions shape debates on what governance in the GTIA “should” look like and on the principles that would undergird “good governance.” Whereas some analysts view efficiency and effectiveness as the primary benchmark for assessing the quality of governance arrangements, and their performance, others prioritise principles such as inclusiveness, transparency, and accountability as more important—not just for securing legitimacy and “good outcomes,” but also because they are fundamental to the spirit of democracy.

2. THE GTIA AS AN EVOLVING ECOSYSTEM

2.1 COMPONENTS OF THE GTIA: AN ANALYTICAL FRAMEWORK

The GTIA is an increasingly complex, multi-dimensional ecosystem. Figure 1 offers a two-dimensional mapping of core elements of that ecosystem. Together with the accompanying discussion in Section 3 below it is intended to provide a broad overview of the GTIA with illustrative examples of the diversity of actors, institutions, and processes involved, as well as the various levels of subsidiarity at which they operate—multilateral, regional, bilateral, plurilateral, and national. Although this snapshot cannot come close to capturing the history, trajectory, and power dynamics of a system that has evolved tremendously over the past 30 years, a mapping of what constitutes the GTIA is nonetheless a vital launching point for conversations on its future.

We propose that the GTIA should be understood as the constellation of inter-governmental, governmental and stakeholder instruments and undertakings that establish

the playing field for global trade and investment; set the rules and “default rules” of the global market place; and/or animate one or more of the architecture’s practical functions, ranging from the provision of platforms for negotiation and dispute settlement to the provision of Aid for Trade (see Section 2.2 below). These undertakings include formal international treaties, institutions, processes, declarations, and arrangements—multilateral, regional, plurilateral, or bilateral—that address trade and investment either as their core purpose or as part of wider public policy agendas. Beyond “codified” international rules, it also includes informal, “soft law” and unilateral measures and processes that can that impact how trade and investment occur and are disciplined (Shaffer et al. 2015) as well as private and public-private initiatives that aim to influence inter-governmental outcomes on trade and investment or alter market dynamics to advance particular ends.

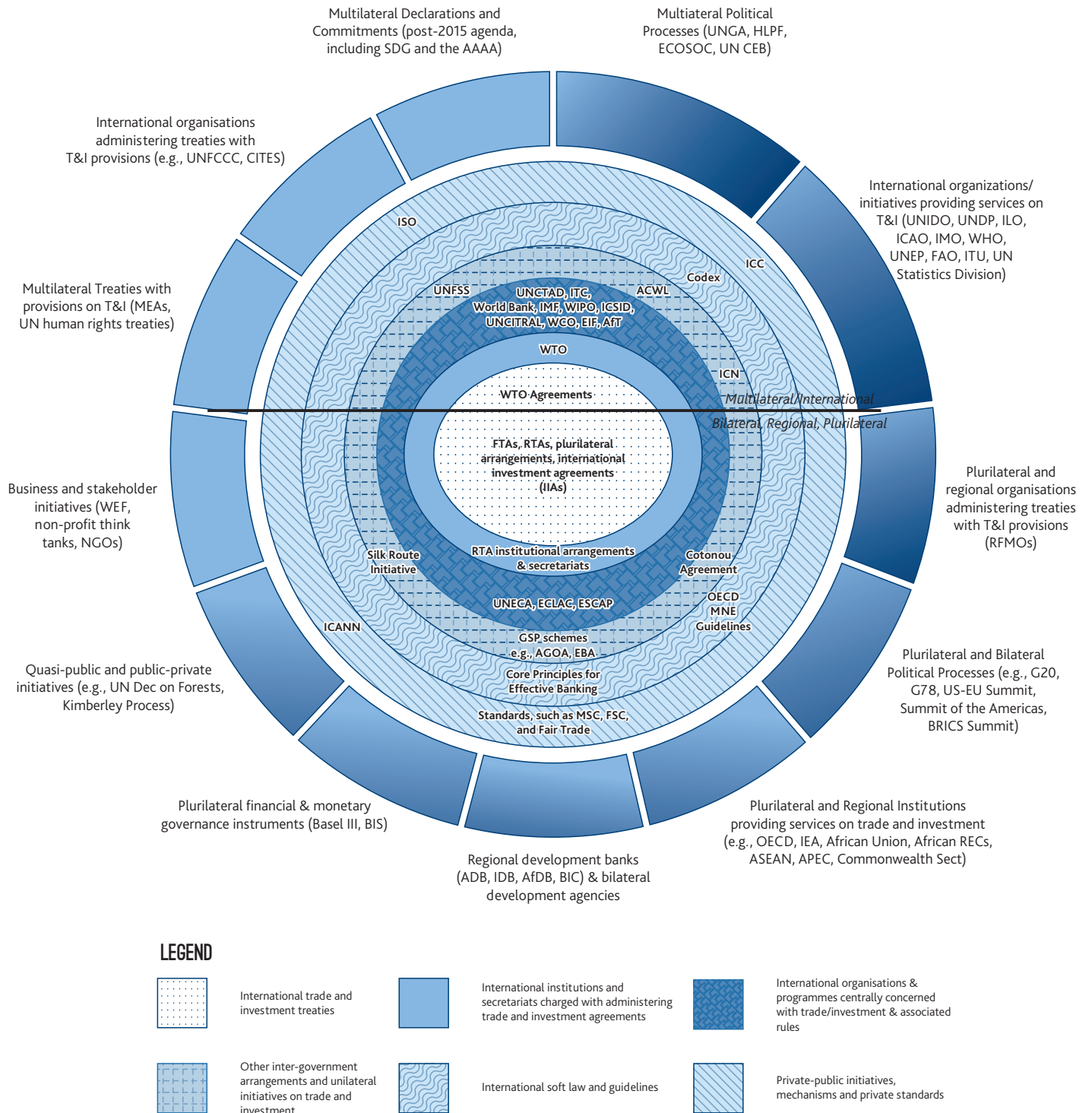
Figure 1 illustrates the “inner” core of the GTIA in a series of concentric circles moving from binding laws and associated institutions to international organisations and arrangements, international soft laws, and public-private initiatives and private practices that are centrally concerned with trade and investment. To underscore the growing scope and complexity of the landscape, the outermost concentric circle of Figure 1 depicts an array of wider components of the GTIA—such as international environmental treaties with trade and investment provisions, as well as international and regional organisations that provide services on trade and investment, and political processes that generate commitments and declarations that intersect with and shape the international agenda on trade and investment. We recognise, however, that there will be different perspectives on which components belong in the “inner” or “outer” circle. The key point is that the core trade and investment architecture—and the market and political forces that it reflects and shapes—has numerous intersections with wider global trends and governance, on finance and development assistance as well as the environment, food security, and health, among others. As such, we propose that where rules, policies and institutions touch on trade and investment, they should also be considered as part of the GTIA.

Neither Figure 1 nor the following description proposes to assess the relative influence of different components of the architecture or the power of the various actors, nor do we seek to capture their many interactions. The GTIA reflects wider political and economic power dynamics—and asymmetries—and is also a framework through which such power relations are expressed. A diversity of actors—governments, companies, international organisations, research institutions and civil society groups—have and exert different kinds of power across the ecosystem. Material resources and economic might are clearly at play, and power is also expressed through legal agreements, through ideas embedded in policy advice and capacity building, and

¹⁰ See, for instance, Kawai et al. (2014).

FIGURE 1:

The GTIA Ecosystem: An Illustrative Mapping of Treaties, Institutions, Processes, Partnerships, and other Instruments



through discourse. Some powerful states are dominant across the system and can have a decisive influence on the market place through unilateral trade measures; others are active only on discrete issues and parts of the architecture. While lobbying by large multinational enterprises (MNEs) and industry associations drive agendas for inter-governmental cooperation on many trade and investment issues, for instance, civil society groups play a leading role on the incorporation of many social and environmental considerations.

Finally, our analysis in this paper recognises that the GTIA is underpinned by a collection of national trade and investment laws, regulations, and institutions as well as court decisions, parliamentary processes and stakeholder consultations, all of which influence negotiations of international trade and investment laws and their implementation.

2.2 COMPONENTS OF THE GTIA: A FUNCTIONAL APPROACH

One way to guide reflection on the future of the GTIA is to consider the practical functions that it serves and is called upon to serve. In Table 1, we delineate 12 functions that are provided by the architecture, albeit with varying degrees of success: strategic oversight and policy dialogue; negotiation and rule-making; dispute settlement; treaty administration, monitoring and compliance; assessment and evaluation; statistics; regulatory cooperation, dialogue, and standard-setting; research; interface with the broader system of global economic governance; and outreach and stakeholder engagement.

Table 1 provides illustrative examples of the diversity of actors, state and non-state, institutions, and processes involved in animating each function, as well as the various levels of subsidiarity at which they operate—multilateral, regional, bilateral, plurilateral, and national. It does not represent various actors' relative weight or influence within the GTIA nor is it prescriptive or exhaustive. We also acknowledge that some actors are very prominent for some functions, but less so in others, and also that some of the functions are less well served at present, but may be increasingly important in the future.

TABLE 1:

GTIA Functions and Illustrative Examples of the Diversity of Actors Engaged

Source: Authors own. The table neither represents various actors' relative weight or the influence of their activities, nor is it prescriptive or exhaustive. For ease of representation, organisations are referred to in the short hand. For more details, see Part A, Section 3 of this paper.

Functions	Multilateral	Regional, Bilateral, Plurilateral	National	Non-state actors
Strategic direction, agenda-setting, policy dialogue	UNGA, ECOSOC, HLPF, WTO, UNCTAD	G20/G7, OECD, APEC, ASEAN, African Union, EU Council, OAS etc.	Executive, trade/economic ministries, legislative bodies	NGOs, think tanks, academia, private sector and industry associations, multi-stakeholder initiatives.
Negotiation and rule-making	WTO, WIPO	Regional, plurilateral, and bilateral trade and investment processes, regional economic organisations, BIS	Parliaments, legislative trade committees, civil service, GSP schemes	Lobbying by industry associations, civil society, academia
Dispute settlement	WTO (DSU), UNCITRAL, ICSID	BITs with ISDS arrangements, Energy Charter Treaty	National courts, Hong Kong International Arbitration Centre, LCIA	ICC, ACWL, private sector and pro bono lawyers, academia.
Treaty administration, including of transparency and notification provisions	WTO Secretariat and various WTO Committees, UNCITRAL, UNCTAD, WIPO, MEAs of various international treaties with trade provisions	Regional economic communities and unions, plurilateral committees, including, GPA and ITA Committees	Trade/economic ministries responsible for notifications	
Monitoring of implementation, compliance and trends	WTO TPRM, UNCTAD, World Bank, Secretariats of MEAs, UNEP, IUCN, FAO, etc.	OECD, G20/G7, RECs, EU institutions, Kimberley Process, NAFTA, Pharma Review etc.	Trade/economic ministries, government agencies, and legislative bodies	Civil society, private companies and industry associations, as well as initiatives undertaken by independent research centres and universities.
Assessment and evaluation	World Bank, ECOSOC, UNEP, UNOHCHR, UNCTAD	OECD, ADB, EU etc.	Legislative bodies and inter-ministerial bodies in some countries that conduct impact assessments	Diversity of think tanks, NGOs, academic centres, business groups including ICC, and unions.
Statistics	UN Statistics Committee (UN Comtrade), WTO, UNCTAD, World Bank, IMF, FAO, WIPO	OECD, IEA, ADB, EU etc.	National statistical offices	Initiatives such as Global Trade Alert, NGOs, and industry associations
Regulatory cooperation, regulation dialogue, and standard-setting	WTO SPS, TBT Committees, WCO, Codex Alimentarius, ITC, UNFSS, ITU, ICN, UNCTAD, etc.	UNECE and other UN regional economic commissions, OECD, APEC, EU, regional or bilateral cooperation initiatives among regulatory authorities	Diversity of national regulatory authorities	ISO, private standards such as ICANN, IETF; non-profit initiatives such as MSC; individual national standard-setting institutions such as the American Standards Institute
Research	WTO, UNCTAD, ITC, World Bank, IMF, UNDESA, WIPO etc.	OECD, APEC, ADB, IADB, EU, Commonwealth Secretariat, etc.	Trade ministries, national development agencies, national research facilities such as the Congressional Research Service	NGOs, think tanks, academia, and industry associations.
Capacity-building and Aid for Trade	WTO, UNCTAD, ITC, UNIDO, WCO, World Bank, IFC, MIGA, EIF, UNEP, UNDP etc.	UN regional economic commissions, regional development banks (ADB, AfDB, IADB, EBRD, AIIB) and regional cooperation initiatives (ASEAN, APEC), and others, such as the Commonwealth Secretariat	Trade ministries, national development banks, export promotion agencies	NGOs, academics, investors and multinational enterprises, development consulting companies, philanthropic foundations, private sector partnerships, including through WBCSD, among others
Cooperation and interface with wider international rules, institutions, processes	WTO, FAO, UNIDO, UNEP, UNDP, ITU, UNCLOS, UNCTAD, ILO, WHO, OHCHR, UNFCCC, other MEAs, including Stockholm, Rotterdam, Basel Conventions, Montreal Protocol, ICAO, IMO, World Bank etc.	ADB, AfDB, IADB, EBRD, ASEAN, APEC, other EU institutions such as ETS etc. BIS, Basel Committee on Banking Supervision, FSB on financial architecture.	Other government ministries, business promotion agencies, consumer protection agencies, food and drug regulatory agencies, other specific regulatory bodies	WEF, academia, civil society, ICC, WBCSD
Outreach and engagement with stakeholders	UNDESA, WTO, UNCTAD, World Bank, etc.	OECD, EU Commission, African Union, IADB, etc.	National business associations, trade unions, NGOs, Inter-Parliamentary Union (IPU)	WEF, ICC, WBCSD, ITU, diversity of NGOs and trade unions

3. A DESCRIPTIVE MAPPING OF THE GTIA

3.1 THE GTIA'S INNER CIRCLE OR CORE

3.1.1 Trade and investment rules, agreements, and dispute settlement arrangements

The legal framework that forms the foundation of the GTIA comprises multilateral, regional, plurilateral, and bilateral treaties and agreements. At the legal centre of the GTIA are the comprehensive multilateral trade rules established by the WTO and its binding dispute settlement regime.

The GTIA is also comprised of several thousand bilateral, regional, and plurilateral trade and investment treaties, some with accompanying dispute settlement arrangements. As of April 2015, 449 regional trade agreements (RTAs) had been notified to the WTO, of which 262 were in force, while 67 new free trade agreement (FTA) negotiations were launched in 2014 alone.¹¹ Notably, the use of the term preferential trade agreement (PTA) has grown in recent years, but it is sometimes used in different ways by scholars and by officials in the trade arena. According to the WTO, the term RTA covers the realm of all reciprocal trade deals between two or more partners—including bilateral deals, customs unions, and mega-regional agreements—while the term preferential trade arrangements—note, not agreements—refers to unilateral trade preferences, including non-reciprocal deals, discussed further below. However, some analysts use the terms FTAs and PTAs interchangeably, while those doubtful of the “free trade” nature of FTAs increasingly characterise them as preferential in light of the special arrangements granted to participants (Dür and Elsig 2014).

While some older FTAs focused primarily on tariff-cutting measures, a number of longstanding and new RTAs establish customs unions and free-trade areas such as the European Union Customs Union, the Eurasian Economic Union, the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Caribbean Community (CARICOM), the Asian Free Trade Area (AFTA), and South America's Mercosur. Nonetheless, the degree of ambition around future integration and implementation varies widely, as does the design and content of agreements, the number of members, the geopolitics, the portion of global trade concerned, and their institutional arrangements (Dür and Elsig 2014; Dupont 2014; Haftel 2013). Some RTAs are one element of a wider economic or political integration effort—such as the European Union (EU)—while others are less so (WTO 2011). Some trade deals are furnished with

relatively light infrastructure to oversee implementation—the North American Free Trade Agreement (NAFTA) springs to mind—and others, such as Mercosur, have more extensive institutional arrangements but its effectiveness in rule implementation is weaker. The Pacific Alliance, a regional integration initiative involving Chile, Colombia, Mexico and Peru, comprises not only an expanding set of agreements and negotiations on a range of trade matters, but also includes projects such as an integrated stock market and joint embassies in several countries.

Over time, however, PTAs and RTAs that are now often not strictly regional have been moving from shallow to deeper visions of integration covering a range of issues beyond tariffs—including services, IP, technical barriers to trade, and competition policy (WTO 2011). For example, one-third of the PTAs in force in 2011 contained services commitments, compared to less than a tenth in 1990 (WTO 2011). The scope of a number of bilateral and regional trade agreements has also expanded in the last two decades to include a growing number of investment chapters and to address some social and environmental concerns. Examples include NAFTA's investment chapter, which in 1994 signalled a new era where investment issues were addressed in a significant trade deal (Hufbauer and Moran 2015), as well as its parallel accords on environment and labour cooperation, and chapters on each topic in the US-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) and the US-Peru Free Trade Agreement (PTPA).

There are also a growing number of trade agreements among developing countries—such as the longstanding Asia-Pacific Trade Agreement (APTA), the Global System of Trade Preferences Among Developing Countries (GSTP), and the recently launched Tripartite Free Trade Agreement (TFTA) in Africa. In addition to bilateral agreements between developed and developing countries, such as the bilateral US FTAs with Chile, Peru, Panama, and Colombia, a number of regional efforts are under discussion by a range of developed and developing countries, such as the Regional Comprehensive Economic Partnership (RCEP) negotiations, or a possible Free Trade Area of the Asia-Pacific (FTAAP) between the 21-nation Asia-Pacific Economic Cooperation (APEC) alliance (APEC 2014). Further, although only one has now been completed, the ongoing negotiations for the Transatlantic Trade and Investment Partnership (TTIP) and the now-sealed Trans-Pacific Partnership (TPP) propose two mega-regional agreements with broad scope and membership, which together would cover well more than half of world trade and gross domestic product (GDP) implying a potentially significant impact on the rules of the game for trade and investment.

¹¹ See Regional Trade Agreements Information System (RTA-IS) at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>. In comparison, in 1995, 22 FTAs were signed and in effect, and no new negotiations were launched. See <http://aric.adb.org/fta>.

PTAs such as the US African Growth and Opportunity Act (AGOA) with certain eligible sub-Saharan African (SSA) countries, and the EU's Economic Partnerships Agreements (EPAs) with Africa, Caribbean, and Pacific (ACP) countries extend trade preferences on a unilateral basis, but with possible plans to move these to a reciprocal basis in a 20 or 30-year time frame. Thirteen countries have also currently notified Generalised System of Preferences (GSP) schemes to the United Nations Conference on Trade and Development (UNCTAD) secretariat that provide generalised, non-reciprocal, and non-discriminatory trade preferences to developing and least developing countries, granting reduced or zero tariff rates over the most-favoured nation (MFN) rate for select products. For example, the EU's "Everything but Arms" grants duty-free, quota-free (DFQF) access to all products originating from LDCs, except for arms and ammunitions.

A range of plurilateral agreements has been pursued over the years. Some agreements have been brought into the WTO on an MFN basis and included the participating members' schedules of concessions such as the Information Technology Agreement (ITA); other plurilaterals have been concluded under Annex 4 of the Marrakesh Agreement establishing the WTO, including the Agreement on Trade in Civil Aircraft (TCA) and the Government Procurement Agreement (GPA), among others. They are intermingled in the traditional part of WTO members' schedules but are not multilateralised. New plurilateral efforts are, moreover, under way in various areas where progress has slowed in the WTO's Doha Round trade talks. These include, for example, a planned tariff-cutting Environmental Goods Agreement (EGA) currently under discussion between 17 WTO members, and the negotiations on a Trade in Services Agreement (TISA) between 23 WTO members, with the EU's 28 members counted as one country in both instances. The precise individual relationship between these plurilateral efforts and the WTO is yet to be defined, although EGA participants have signalled that it will be an "open" plurilateral, meaning that it is both open to all WTO members and concessions will be applied on an MFN basis to the entire membership. Further, the Basel III Accord, a plurilateral financial agreement, negotiated through the Basel Committee on Banking Standards, hosted by the Bank for International Settlements, has several dimensions that impact trade in financial services (Singh 2012).

On the investment side, the ancient Friendship, Commerce and Navigation treaties that first introduced foreign investment rules have evolved into more than 3,000 international investment agreements (IIAs), starting in the 1960s (UNCTAD 2015a; Miles 2015; Pauwelyn 2014). Today rules on international investment are found in bilateral investment treaties (BITs), the investment chapters of regional and bilateral FTAs, and in investment contracts, domestic laws, and general customary international law. Other relevant international treaties with investment provisions include WTO-related agreements such as the General Agreement on Trade in Services (GATS), which addresses foreign investment as one mode of supply of

services (foreign commercial presence); the Agreement on Trade-Related Investment Measures (TRIMs), which deals with investment measures undertaken by members in relation to trade of goods; and the Energy Charter Treaty (ECT), which has energy-specific investment and dispute settlement provisions for recourse by both states and investors (Hobér 2010).

The scope of IIAs varies, but many include provisions for state-state and investor-state dispute settlement (ISDS), as well as provisions requiring states to liberalise rules on foreign investment—known as pre-establishment rights—in either the services or non-services sectors. IIAs generally also include limitations on economic requirements placed on foreign investors (performance requirements), national treatment, and MFN obligations. They also provide for minimum standards of treatment, including fair and equitable treatment in accordance with customary international law, and prohibitions against expropriation without adequate compensation (Mann 2008). Most IIAs refer to the International Centre for Settlement of Investment Disputes (ICSID) Convention, under the World Bank Group, for the settlement of investment disputes by conciliation, arbitration, or fact-finding (Kalicki and Joubin-Bret 2015).

In addition, the UN Commission on International Trade Law (UNCITRAL) Arbitration Rules are broadly used to help settle disputes, as are private mechanisms such as the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), and the Hong Kong International Arbitration Centre (HKIAC) rules, which also offer an arbitration venue. The UNCITRAL is also home to the Convention on Contracts for the International Sale of Goods (CISG) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. UNCTAD's work in this field is also relevant in providing policy analysis and recommendations, including through its flagship annual "World Investment Report" and its Investment Policy Framework for Sustainable Development, as well as serving as a venue for discussions on the future of the investment regime.

3.1.2 Growing number of international bodies active on trade and investment

At the multilateral level, soon boasting 162 members, the WTO is the core trade institution, with a broad range of functions from norm setting to dispute settlement, as well as an ongoing accession process.

Alongside the WTO in Geneva is UNCTAD, which maintains a range of responsibilities, including for notifications related to the GSP and statistics, research, policy advice and capacity building on trade and investment. Although the UNCTAD has also administered various international commodities agreements aimed at stabilising the prices of export products crucial for development, attention to these has waned (Toye and Toye 2004). Nonetheless, the UNCTAD's Common Fund

for Commodities, which is focused on financing development projects to enhance social and economic development in commodity-dependent countries, remains in place as part of the associated trade architecture.

Also in Geneva, the International Trade Centre (ITC), a joint agency of the UN and the WTO, works to strengthen the export success of small businesses in developing countries. Both the UNCTAD and the ITC are also players in the WTO's Aid for Trade Initiative, and the multi-donor programme known as the Enhanced Integrated Framework (EIF) designed to support the integration of LDCs into the global trading system, each of which involve many other multilateral and regional partners such as the African and Asian Development Banks, the European Bank for Reconstruction and Development (EBRD), the UN Development Programme (UNDP), and bilateral development agencies.

In addition, the UN's World Intellectual Property Organization (WIPO) has a formal relationship with the WTO regarding the provision of technical assistance, and a number of its multilateral IP agreements serve as the basis for the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) or are cross-referenced in it. The inter-governmental World Customs Organization (WCO), which maintains the "Harmonised System" (HS) of international product nomenclatures for the trade system, is also increasingly engaged on issues such as trade facilitation and Aid for Trade (WCO 2015). The independent Advisory Centre on WTO Law, largely financed by government contributions, seeks to provide developing countries and LDCs with legal support in regard to WTO rules and disputes.

The World Bank and the IMF host a range of activities on trade. Both agencies have mandates to build greater coherence in global economic policymaking, particularly given the growing intersection of finance, monetary, development, and debt policies with rules for trade and investment. The World Bank is among the largest historical multilateral providers to the Aid for Trade Initiative (WTO and OECD 2015) and is broadly involved in a plethora of other similar trade-related activities, ranging from trade finance, research, policymaking support, and training to grants and loans for trade-related infrastructure and export promotion, mostly targeting the world's poorest economies, including through involvement in the EIF (Hoekman 2013a).

On the investment side, the World Bank also serves as the host of ICSID, and the International Finance Corporation (IFC), which provides investment, advice, and asset management services for the private sector in developing countries, and helps to steer the trade and competitiveness global practice (World Bank 2015a). The World Bank Group runs the Multilateral Investment Guarantee Agency (MIGA) to help promote investment in developing countries by providing political risk insurance. As part of the World Bank's diagnostic work on trade and competitiveness, its experts also provide advice on investment policy in so far as this is linked to trade performance.

The IMF is increasingly relevant to international decision-making on trade and investment rules. Several WTO agreements require consultations with the IMF secretariat on monetary reserves, balance of payments, and foreign exchange arrangements.¹² In addition, the IMF is a partner in trade and development initiatives such as Aid for Trade and the EIF, and offers technical advice to countries that can have implications for trade policy (Cottier et al. 2014).

A number of regional initiatives—ranging from the Association of Southeast Asian Nations (ASEAN) to Africa's eight RECs and the UN's five regional economic commissions, including the Economic Commission for Europe (UNECE) and the Economic Commission for Latin America and the Caribbean (ECLAC), as well as regional development banks such as the Inter-American Development Bank (IADB) and the Asian Development Bank (ADB)—provide policy advice, host capacity-building efforts, and conduct research on trade and investment. They also steward practical initiatives, such as efforts to boost investment in infrastructure that can sometimes impact trade opportunities and flows as significantly as new rules. New players like the Asian Infrastructure Investment Bank (AIIB) are also expected to engage on trade-related matters (Wolff and Rogowsky 2015). Meanwhile, through its "Bogor Goals," the APEC has targeted free and open trade within the region by the end of the decade, which in turn has stimulated a number of trade and investment activities within its secretariat and various inter-governmental committees.

At the plurilateral level, the inter-governmental OECD is regularly active in advising states, investors, and other stakeholders on a range of issues associated with foreign trade and investment. It is also home to the Development Assistance Committee (DAC) that monitors and shares statistics on official development assistance (ODA) critical for helping to track Aid for Trade flows.

3.1.3 Soft law plays a central role

A variety of soft law instruments play a role in the GTIA (Footer 2010; Low 2015). "Soft law" generally refers to arrangements that are non-justiciable and non-binding; whereas some are widely ignored, others are widely respected and implemented (Shaffer and Pollack 2010; Abbott and Snidal 2000). In the trade and investment arena, examples of soft law range from normative best-endeavour provisions in WTO agreements; best practices, guidelines and voluntary standards; transparency and review mechanisms, as well as arrangements for the exchange of information and consultation (Low 2015). Soft laws may arise from formal consultations and negotiations among States, and also from initiatives undertaken by non-state actors.

¹² For example, countries may apply trade restrictions in the event of a difficulty with balance of payments, but WTO members through the organisation's Balance of Payments Committee will assess the compatibility of these restrictions based on the IMF's determination of a particular country's situation (IMF 2014).

Standards set by some international standard-setting bodies such as the Codex Alimentarius Commission, run by the World Health Organization (WHO) and the UN Food and Agriculture Organization (FAO), are referred to as soft law. Codex establishes international food standards, guidelines, and codes of practice contributing to the safety, quality, and fairness of international food trade. It is referenced in the WTO Agreement on the Application of SPS Measures and serves as a touchstone for dispute settlement (WTO 2007c).

Plurilaterally defined soft law standards relevant to the GTIA have also been deployed in recent years, for example, the Basel Committee's Core Principles for Effective Banking Supervision (BCBS 2012) and the OECD Guidelines for Multinational Enterprises (OECD 2011a) designed to encourage responsible business conduct, among other goals.¹³ Such standards can diffuse widely through technical cooperation and policy dialogue among relevant government agencies.

In other instance, standards are agreed through non-state processes. Although scholars debate their status as soft law, such standards are nonetheless sometimes referred to or deferred to in international trade law. The International Standards Organisation (ISO), for instance, has a non-governmental membership largely comprising national standards associations composed of private industry groups and businesses, which together work to establish standards on a multitude of issues (such as the ISO 14001 environmental standards). Although ISO standards are not legally binding *per se*, they have been interpreted as "relevant international standards" as alluded to in the WTO's TBT Agreement and can also become a *de facto* condition of the market place (Krut and Gleckman 2013). The ISO also works closely with other international standards development organisations, such as the non-governmental International Electrotechnical Commission on standards for electric and electronic products and the UN's International Telecommunication Union (ITU). The private sector-based ICC, meanwhile, maintains its "Incoterms," or international commercial terms rules providing a set of international rules for the interpretation of the most commonly used trade terms in international commerce, which are considered by some legal scholars as having the status of soft law (Ramberg 2011). The proliferation of private standards is treated separately below.

3.1.4 Diverse cooperative arrangements and unilateral efforts

Cooperative arrangements among international or regional organisations—and among national government authorities—also count as important components of the GTIA.

The UN Forum on Sustainability Standards (UNFSS) offers an example of a new collaborative effort in the GTIA among international organisations (Sumaila, Bellman and Tipping 2014), facilitating research and dialogue around voluntary or private sustainability standards, and identifying the sustainable development value of these.

The APEC region has long illustrated the potential for extensive economic cooperation efforts to occur outside the context of negotiations for formal rules. APEC's effort to liberalise tariffs on a list of 54 environmental goods to 5 percent or less by the end of 2015, for instance, targets applied and not bound tariffs. The APEC-54 initiative also illustrates how regional efforts can have wider implications, as the Environmental Goods Agreement (EGA) talks subsequently launched at the WTO built on the APEC list (Sugathan 2014). Similarly, the APEC's ongoing push towards a Services Cooperation Framework (ASCF) is designed to provide a common strategic direction and coherence to the region's approach to services competitiveness (Stephenson 2015).

In addition, the OECD is home to a number of cooperative efforts to establish guidelines and best practices that touch trade and investment, and which generally rely on transparency and peer pressure for implementation. These include its Arrangement on Officially Supported Export Credits and MNE Guidelines,¹⁴ its MNE Guidelines (noted above), its Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD 2013), and its work with the G20 to modernise international tax rules, culminating in the conclusion in 2015 of a set of consensus-based international standards and measures to tackle tax avoidance, tax base erosion and profit shifting (BEPS) (OECD 2015a), to name a few.

Newer inter-governmental efforts include the Chinese-led re-establishment of the historic Silk Road, with both an economic and maritime component, to link more than 60 countries representing 4.4 billion people and 29 percent of world GDP.¹⁵ Although questions abound on how countries will address tensions and conflicts that may arise along the Road, the initiative highlights that cooperative efforts can dramatically change the trade landscape and opportunities without any formal negotiation of treaties (Cheng 2015).

The International Competition Network (ICN) provides an example of cooperative initiatives among national regulatory agencies, in this instance, national competition authorities. In a global economy where mergers and cartels can transcend jurisdictions, the ICN operates as an informal network that aims to address practical anti-trust enforcement and policy issues by promoting procedural and substantive benchmarks for competition authorities, as well as pro-competitive, efficiency-seeking conduct by companies (Mariniello et al. 2015).

¹³ Given their plurilateral nature, such efforts to generate regulatory benchmarks do not formally fall within the strict interpretation of "international standards" as defined in WTO law such as the General Agreement on Services (GATS), at least not so much as those established by "relevant organisations," defined as "bodies whose membership is open to the relevant bodies" of all WTO members (Gari 2015).

¹⁴ See the Export Credits Arrangement text at <http://www.oecd.org/trade/xcred/theexportcreditsarrangementtext.htm>.

¹⁵ Some experts have described the Silk Route as a response to the US's "pivot to Asia strategy" framed as a political rebalancing of influence in the region.

In addition, unilateral initiatives by governments with significant political and market power can shape the international economic opportunities and regulatory environment for some producers more significantly than international laws. A prominent example is the US Trade Representative's (USTR) Special 301 Report. Conducted annually since 1989, it presents a unilateral review of IP protection and enforcement in US trade partners under the auspices of encouraging effective protection and enforcement (Froman 2015). The report defines a so-called "Special 301 Watch List" that can lead to unilateral trade sanctions such as through withdrawal of trade benefits. A further example is the array of unilateral trade measures deployed by states or trading blocs that are large markets for fish in order to combat illegal, unreported, and unregulated fishing (IUU) (Haughton 2015). Since 2010, for instance, the EU has pursued a unilateral system designed to identify trade partners engaged in IUU fishing, putting in place trade bans if countries fail to pursue recommended regulatory reforms (Young 2015). A further example is the EU's Emissions Trading System (ETS), which is being watched closely by trade partners for its potential trade and investment impacts on third parties, including through the de facto imposition of requirements to undertake specific climate measures (Bartels 2012).¹⁶

3.1.5 Public-private cooperation and private initiatives

Beyond the "formal" arena of inter-governmental agreements and processes, there are numerous private initiatives, partnerships, and cooperative efforts among stakeholders—some of which also involve governments—to address specific social or environmental challenges through tools designed to influence international demand, trade, and supply chains. In particular, a diversity of private and voluntary standard-setting initiatives is increasingly important component of the GTIA (Liu 2009; Marx et al. 2012; Reed et al. 2013; van der Meulen 2011).

Non-governmental initiatives to set private voluntary standards and establish third-party certification schemes for goods abound and are expanding. Key among these are product labelling initiatives that aim to command price premiums from consumers for sustainable production methods, carbon and water footprints, respect for labour rights, geographical source, and "bio" or organic content.

Private eco-labelling efforts are particularly prominent in the environmental field. The Marine Stewardship Council (MSC), born out of a partnership between the WWF and Unilever, has created a world recognised eco-labelling programme for sustainable seafood, although like most labelling initiatives, its sustainability criteria and certification processes have faced some criticism, particularly in terms of the challenges they can present for developing country producers and exporters. Other examples include the multi-stakeholder, non-profit Roundtable on Sustainable Palm Oil that has developed a set of environmental and social criteria, which companies must comply with to produce Certified Sustainable Palm Oil (CSPO).

Fair trade certification schemes have also taken hold for a variety of commodities and food products, seeking to mitigate the adverse impacts of world market prices and industry concentration vis-à-vis more vulnerable producers, although several have faced criticism for not delivering adequately on stated development aims (Cramer et al. 2014). The food sector is especially notable for the many industry initiatives ranging from private standards, audits and certification schemes to contract provisions and self-regulation initiatives that aim to shape global production and distribution chains (van der Meulen 2011; Swinnen and Vandermoortele 2011).

At the multilateral level, the Kimberley Process offers an example of a partnership between governments, civil society, and industry to establish an international regulatory certification scheme. Born out of a UN process in 2003, the scheme aims to prevent "conflict diamonds" from entering the mainstream rough diamond market—by limiting trade across international borders to other participants in the scheme, and provided they comply with certain procedures—and was granted the legitimacy of multi-year WTO waivers (Grant 2014). Less formally, multi-stakeholder initiatives such as the New York Declaration on Forests issued in September 2014 by a coalition of governments, NGOs, and industry included several commitments relevant to trade and investment, such as on certification schemes and green public procurement, to address deforestation along the supply chain (Gulbrandsen 2015). The World Business Council for Sustainable Development's (WBCSD) efforts to establish public-private partnerships on a range of low-carbon technologies such as renewables and biofuels as well as in the chemicals sector, among others, also reflect the growing interest in looking beyond inter-governmental arrangements toward practical approaches to spurring the changes in international markets needed to contribute to the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties effort and delivery on the SDGs.

In the context of the growing need for companies to cooperate across global value chains, business-to-business standards (B2B) and the importance of corporate quality management system have grown. There is also an expanding array of standards in the context of services and the digital economy, including, for example, the Internet Corporation for Assigned Names and Numbers (ICANN). In digital trade, industry associations increasingly take action by themselves to regulate in areas that move too fast for governments to regulate. Examples include the Internet Engineering Task Force (IETF), tasked with making the internet architecture work better, including through its Internet Standards Process; the World Wide Web Consortium (W3C) working

¹⁶ A prominent example has been the EU's attempt to expand the scope of the ETS to cover the entire duration of flights taking off and landing in the bloc, which has sparked significant competitiveness concerns among its trade partners

on developing web standards;¹⁷ and proposed dynamic performance standards to help regulations respond to rapid technological change (Bieron and Ahmed 2015).

International companies can also set “default standards” for trade and investment by setting the terms for private contractual arrangements that shape interactions, opportunities, and outcomes for domestic firms, investors and national governments in global supply chains. This may include contractual clauses on issues as diverse as licensing of IP rights and access and benefit sharing in relation to bio-prospecting activities or research and development on genetic resources. With the rise of corporate social responsibility (CSR) initiatives across industries in the global market place, many companies now also include provisions on compliance with health and safety standards and labour practices in contractual arrangements (UNEP 2011a). Further, in the digital economy, examples of private business practices that can set default standards include the use of technological solutions to control cross-border use of goods—such as technological protection measures by the entertainment and software industries that prevent copying and control where CDs and DVDs are used. The growing need for online traders keen to attract customers to adopt one of a handful of recognised software programs that secure online transactions is an example of how certain practices can become default standards with impacts that mimic those of formal regulations.

Non-state actors also fulfil various functions in the GTIA, such as serving as hosts of high-level political dialogue, for instance, the World Economic Forum (WEF) and the International Centre for Trade and Sustainable Development (ICTSD); as alternative monitoring mechanisms, such as Global Trade Alert; as sources of capacity building and technical assistance from development consulting firms and NGOs; and as lawyers hired by governments to lead WTO litigation.

3.2 THE GTIA'S OUTER CIRCLE

As suggested above, the GTIA is located within and connected to wider global governance frameworks, albeit in a complex and messy fashion. The following discussion identifies political declarations, commitments, and processes that can be seen as part of the GTIA to the extent that they set and shape priorities for action, as well as international treaties and organisations not already mentioned that although not centrally concerned with trade and investment include provisions or contribute services on trade and investment.

3.2.1 Political declarations, commitments and processes

Through the UN General Assembly (UNGA), governments have forged numerous UN declarations and commitments on global challenges that are relevant to trade and investment

governance, most recently the new 2030 Sustainable Development Agenda with its SDGs. The agenda establishes priorities and targets for international cooperation across a range of policy areas for an inclusive, sustainable future, and is to be tracked at the global level by the UN Economic and Social Council (ECOSOC) and its High Level Political Forum (HLPF), as well as through disaggregated voluntary monitoring at the regional and national levels. The SDGs include both direct and indirect targets for trade and investment as elaborated in Part B of this paper. Preceding the 2030 Sustainable Development Agenda, and now largely integrated in it, are a range of other UN declarations, such as the Istanbul Declaration and Programme of Action for LDCs for the Decade 2011–2020, the Small Island Developing States Accelerated Modalities of Action (SAMOA) Pathway, the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024, and regional efforts such as the African Union’s Agenda 2063, which each include commitments on trade and investment in the development context. In addition, the freshly agreed Addis Ababa Action Agenda (AAAA) on financing for development looks to deploy a range of trade and investment tools.

Other UN processes, such as the UN Chief Executives Board for Coordination (CEB), which gathers heads of various UN agencies as well as the WTO’s Director General, review priorities and internal coordination on a biannual basis, and also take up trade and investment matters from time to time though the UN has no formal overarching strategy on trade and investment. On some trade matters, the UN Security Council has also weighed in, adopting two resolutions in 2014 on wildlife poaching in the Central African regions, for instance. (Evidence that poaching and illicit international trafficking of natural resources and wildlife are increasingly conducted by transnational organized criminal groups, sometimes in cooperation with armed extremist groups, has also spurred action on the part of the UN Office on Drugs and Crime, the UN Crime Commission and INTERPOL.)¹⁸

A number of non-UN governance processes also set political, economic, and normative priorities that shape agendas for trade and investment. The Group of Twenty (G20), for example, has gained an increasingly prominent position in global economic governance since the 2008 global financial crisis. While governments continue to debate exactly what its role on trade could and should be, its high-level declarations routinely incorporate statements on international trade and investment, spurring new initiatives, such as post-crisis monitoring of trade measures. The G20 meetings hosted by China in 2016 will include formal trade ministers’ meetings, building on those hosted by Turkey in 2015. In addition, the leaders’ declaration from

17 | See “About W3C” at <http://www.w3.org/Consortium/>.

18 | See <http://www.un.org/press/en/2014/dsgsm811.doc.htm>, and <http://www.traffic.org/home/2014/1/30/un-security-council-targets-poaching-and-wildlife-trade-with.html>.

the most recent Group of Seven (G7) meeting under the Germany presidency resulted in commitments to monitor implementation of environmental and labour standards in supply chains, among many other topics (G7 Leaders 2015). Similarly, the African Union convenes regional meetings of trade ministers, as do Brazil, Russia, India, China, and South Africa as part of their annual BRICS Summit. Informal exchanges of views and "mini-ministerials" of varying kinds among senior trade and investment officials are frequently held alongside formal inter-governmental processes. These include bilateral processes, such as the US-EU Summit and the US-China Strategic and Economic Dialogue, regional processes such as the Organization of American States (OAS) and its Summits of the Americas, plurilateral processes such as the OECD ministerial, and multilateral ones such as the annual meetings of the World Bank and the IMF, as well as high-profile multi-stakeholder meetings such as the annual WEF Davos meetings.

Finally, an array of other global political endeavours and governance frameworks efforts can have implications for trade and investment, ranging from the global financial architecture to the UN climate talks and the deliberations of the Committee on World Food Security. The global financial architecture, for instance, has numerous implications for trade and investment, particularly in a world where capital is ever-mobile and linked to exchange rates, access to credit, and other key commercial services (Baldwin 2009). While a mapping of the important intersections between the GTIA and international financial system is beyond the scope of this paper, a nod to some of the key institutions informing the global economic landscape within which trade and investment takes place is important. This includes institutions responsible for global economic stability and informing financial and monetary regulation, such as the IMF, the Bank for International Settlements (BIS) with 60 central banks as members, which is home to the Basel Committee on Banking Supervision Secretariat and the Basel III Accord. The BIS is also home to the Financial Stability Board (FSB), which acts as a coordinating body for the development of regulatory, supervisory, and other financial sector policies by bringing together relevant senior officials from G20 countries, alongside Hong Kong, Singapore, Spain, and Switzerland as key financial centres, and international regulators such as the European Central Bank and European Commission. FSB members have committed themselves to implementing a number of international financial standards that will also have an impact on trade in financial services (Griffith-Jones et al. 2010).

3.2.2 Wider international treaties with trade and investment provisions

International economic law is increasingly interwoven with other global governance cooperative arrangements such as international environmental and human rights law (Herdegen 2013). Alongside trade and investment rules, a number of other international treaties and processes also incorporate provisions on trade and investment. Prominent multilateral

agreements with provisions that touch directly or indirectly on trade and investment include the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), each of which, for instance, includes provisions relevant to the interpretation of IP provisions in trade agreements (Chapman 1998).

Similarly numerous multilateral environmental treaties include provisions on trade, for example, the Montreal Protocol on Substances that Deplete the Ozone Layer, the UNFCCC, the trade-dedicated Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on Biological Diversity (CBD), as well as the Basel, Rotterdam, and Stockholm Conventions on hazardous waste, hazardous chemicals, and persistent organic pollutants respectively. In addition, a number of sectoral agreements in the fisheries sector also have trade-relevant provisions, including the UN Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement, and the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement). These, in turn, are supplemented by trade-related measures taken by some regional fisheries management organisations. In the health arena too, the WHO Framework Convention on Tobacco Control includes provisions on trade and trade-related issues such as IP.

3.2.3 The wider constellation of international organisations active on some aspects of trade and investment

In addition to the core international organisations active on trade and investment outlined above, a wider constellation of international organisations provides services on trade and investment—hosting dialogue, implementing projects, providing technical assistance, or conducting research on particular trade and investment topics. These include the UN Statistics Division, which maintains commodity statistics (UN Comtrade), the UN Environment Programme (UNEP), the UN Industrial Development Organization (UNIDO), the UN Development Programme (UNDP), the International Labour Organization (ILO) on trade and employment, the Office of the High Commissioner for Human Rights (OHCHR) on the impact of trade and investment on the fulfilment of human rights obligations, and the UN FAO on trade and food security. The work of the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) are both trade relevant. In particular, the IMO has been granted a governance mandate to address marine pollution and greenhouse gas emissions (under the Kyoto Protocol) resulting from international shipping, thereby linking it to the nexus of trade, environment, and climate change issues. The International Energy Agency (IEA), providing policy advice for its 29 member countries and data on global energy markets, is important given the rising interest in shifting energy markets, clean energy trade and energy security. At the regional and plurilateral level too, a number of institutions for political cooperation support their members on the trade front. One

example is the Commonwealth Secretariat's support to LDCs and small island developing states (SIDS) on trade through technical assistance, policy advice and research activities.

3.3 BACK TO THE NATIONAL LEVEL: INTERSECTIONS WITH THE GTIA

What happens at the national level in terms of trade and investment-related decision-making is critical to the GTIA. National government agencies regularly play a role in animating most of the GTIA's functions. Decisions at the national level on consultation processes for trade policymaking and the composition of delegations for international negotiations impact the GTIA's negotiation function and its perceived legitimacy. Similarly, national decisions on the resources for development assistance can influence the orientation and impact of GTIA's capacity-building function.

Actions by national governments and rulings by national courts can also have a range of extra-territorial impacts. This paper has already highlighted examples of how national monitoring efforts, such as US Special 301 reviews of IP protection in foreign markets, can shape the international trade and investment policy environment within which countries and companies operate (Deere 2008), as can national decisions regarding eligibility for unilateral preferences, such as through GSP schemes (Blanchard and Shushanik 2015).

Furthermore, as noted above, the GTIA is underpinned by a collection of national trade and investment laws, regulations and institutions as well as court decisions, parliamentary processes and provisions for stakeholder consultation, all of which influence negotiations of international trade and investment laws and their implementation. Other relevant policies include those related to special economic zones and exclusive economic zones, as well as processes related to tariff levels, anti-dumping duties, countervailing, and safeguard duties.

The GTIA increasingly interfaces with decisions taken "behind the border" by both national legislators and national regulatory authorities on matters as diverse as the environment, health, taxation, competition policy, anti-trust, intellectual property, customs rules and procedures, and other regulatory activities. Beyond ministries of trade or commerce, the array of domestic actors that have an impact on trade and investment opportunities beyond home turf include national standard-setting bodies such as the American Standards Institute (ANSI), national trade facilitation bodies, trade promotion agencies, consumer protection bodies, and food and drug regulatory agencies, as well as sector-specific regulatory authorities, such as the National Pharmaceutical Pricing Authority in India, the European Medicines Agency in the EU, and the Coffee

and Cocoa Regulatory Authority in Cote d'Ivoire. The ICN, noted above, is one example of efforts to build stronger cooperation across borders among national competition and consumer protection authorities.

4. HOW IS THE ARCHITECTURE EVOLVING? SOME CROSS-CUTTING TRENDS

As noted above, the modern GTIA is not static; it is an open architecture that has evolved considerably over the past 60 years. The mapping above underscores that even in its current iteration the architecture is not inert, but still evolving. Responding to the varied demands of stakeholders and governments for international cooperation across a wide range of topics, several new elements are under development or in play, as illustrated by the UNFSSS initiative on standards, the formation of the Silk Route initiative, and the mega-regional negotiations. Our mapping also reveals a number of cross-cutting trends in how the architecture is evolving.

First, there is rising interest in new modalities for international cooperation. One manifestation of this is the growing attention to plurilateral and other "club" modalities for forging international agreements, which harness the political will of countries keen to forge ahead on particular issues. The mapping also reveals growing interest in soft law modalities for cooperation and new arrangements (such as APEC's work on services), and the increasing number of private standards as complements to or substitutes for government regulations. Amidst debates on the fragmentation and future of international economic law as a tool for advancing social agendas (Trachtman 2013; Petersmann 2012; Alam et al. 2010), there is growing interest in regulatory cooperation and dialogue as alternative or complementary vehicles for international problem solving.

Second, the GTIA is increasingly complex, with an expanding number of issues and growing intersections between trade, investment, global economic governance, and other areas of international decision-making, alongside the rise of non-multilateral approaches (Molle 2013; Siebert 2003). The GTIA is populated by a multitude of legal regimes that reflect different rationales and purposes of cooperation and

a host of international organisations performing a variety of practical functions. The WTO's status as the political centre of the regime is in question, although it remains the legal heart and a significant actor. The growing pluralism of the system underscores the importance of questions about legal relationships between trade, investment, and non-trade regimes, as well as their dispute settlement systems, and about the coordination and division of labour among the growing array of relevant international and regional institutions, forums, and processes.

Third, the mapping highlights the rise of a diversity of non-state actors in the architecture. Private companies and industry groups are, for instance, not just drivers of market forces addressed by the architecture, but key players animating GTIA functions—hosting and participating in policy dialogue; providing resources Aid for Trade; driving agendas for regulatory cooperation; and creating “default standards” through their private contractual and business practices. Further, think tanks, NGOs, private law firms, and research centres act not only as advocates for particular laws, policies, institutional reforms, or outcomes, but also as providers of services that help fulfil various functions of the GTIA.

Fourth, the mapping reveals the growing role of South-South cooperation and of the BRICS nations in advancing specific initiatives, agreements, and institutions for international trade and investment cooperation and in the GTIA.

A full exploration of the drivers shaping such trends is beyond the scope of this paper. A number of dynamics that have clearly played a role—such as the changing composition and nature of trade; the rise of emerging economies in the last two decades; the new multi-polarity in global governance alongside frustration with multilateral processes; and the growing recognition that trade and investment policies are relevant to a broader set of social and environmental public policy objectives—are among the topics taken up in Part B.

PART B:

GLOBAL TRENDS AND CHALLENGES: WHICH MATTER MOST FOR THE GTIA AND HOW?

International trade and investment flows, dynamics, and policies are constantly evolving. This section reviews key trends, noting how these are relevant to the GTIA. An array of wider political economic, social, and environmental trends also impact wider public policy frameworks within which trade and investment decision-making occurs and to which negotiators and policymakers in both areas are regularly called upon to respond. Contemplation of the future of the GTIA must thus also take into account how this wider context generates expectations on governments in the pursuit of international trade and investment cooperation, and thus pressures on the GTIA. The section concludes by identifying game changers, evolving trends, and enduring challenges for international cooperation on trade and investment, noting specific questions that they provoke about the scope and functions of the GTIA, its internal workings, and its intersections with wider global governance frameworks.

5. TRENDS AND EMERGING ISSUES IN TRADE AND INVESTMENT

The types of cooperation that governments, businesses, and stakeholders seek through the GTIA are shaped by changing trade and investment trends and policy debates. Understanding such trends and future scenarios is vital to a coherent reflection on the challenges facing the GTIA and its future.¹⁹ This section focuses on key trends, dynamics and future scenarios as well as policy challenges—both emerging and longstanding—in trade and in investment that have implications for the GTIA. It then turns to the growing intersections between trade and investment flows and their regimes.

5.1 SHIFTING TRADE TRENDS AND POLICY CHALLENGES

5.1.1 Trade flows and dynamics

Since 1980, the global economy roughly tripled in size but trade has grown by a factor of six over the same period (IISD and UNEP 2014). In 2013, total merchandise exports weighed in at US\$18.3 trillion, while total exports of commercial services reached US\$4.6 trillion. In the same year, growth in world merchandise trade dropped to 2.2 percent, well below the 5.3 percent average growth rate for the two decades preceding the 2008–2009 financial crisis. Services trade, meanwhile, hit an average annual growth of 5 percent over 2012 (WTO 2014). Recent estimates suggest that 2015 is unlikely to see a significant rebound in global trade figures, particularly in the face of a slowing Chinese economy (Donnan 2015).

Statistics on the slowing growth of merchandise value and volumes should not, however, lead us to conclude that international trade is of declining importance; indeed for many countries trade remains responsible for a major proportion of their GDP. In addition, some argue that such statistics do not yet properly capture rises in trade for products such as software and digital goods where the geographic location of transactions is not always clear.²⁰ Further, in an increasingly interconnected global economy, international trade—particularly trade in services—has a tremendous impact on domestic production and output trends (Hoekman 2015a). Although the significance of trade and investment agreements commonly continues to be assessed in terms of their impact on flows of international goods, services, and finance, their effect can also increasingly be found in how they shape domestic regulatory environments, with deep implications behind the border on how production and consumption are organised.

19 Key sources for forward-looking scenarios on the future of world trade and driving forces include Fontagne et al. (2014), UK (2009), UN (2014, 2015d) and WTO (2013b).

20 See for instance comments by James Manyika of the McKinsey Global Institute in <http://www.economist.com/news/finance-and-economics/21636089-fears-are-growing-trades-share-worlds-gdp-has-peaked-far>.

Key changes over the past two decades have been the rise of developing countries in terms of both exports and imports, the increasingly dominant role played by China, and the growth of South-South trade. Developing economies accounted for around 43 percent of world merchandise trade in 2013, up from 28 percent two decades ago, although the world's poorest countries accounted for just 1.1 percent of world merchandise exports, amounting to US\$215 billion (UNCTAD 2014b). China moved from the world's 30th largest merchandise exporter to the leading position in 2011, dethroning the US, if the 28 members of the EU are not counted as a single unit (UNCTAD 2014b).

The content of what is traded is also changing. Trade in services and commodities have been among the fastest growing components of world trade, far outpacing trade in manufactured goods. Nonetheless, the agriculture sector remains of vital economic importance to many developing countries in terms of employment, and to powerful constituencies in many developed nations (WTO 2014h). Between 1990 and 2011, the share of agricultural products in world merchandise exports dropped from 12 to 9 percent, while fuels and mining products increased from 14 to 23 percent (WTO 2013b). Extractive industries are particularly important for South-South trade, and mineral fuels have dominated South-South exports over the last decade (UNCTAD 2013a: 30). Ores, metals, precious stones, and non-monetary gold come in second place for the largest rise in South-South exports between 2005 and 2012. South-South agricultural exports registered the second slowest increase in the same period, with labour-intensive and resource-intensive manufactures coming in last (UNCTAD 2013a).

New trade opportunities have opened up as both technology and societies evolve. The rise and spread of the internet and electronic data flows have launched a digital economy and spurred the uptake of e-commerce (Kuner 2013; Meltzer 2015). In 2013, the value of global B2B e-commerce was estimated at more than US\$15 trillion while global business-to-consumer (B2C) e-commerce accounted for an estimated US\$1.2 trillion in the same year (UNCTAD 2015b). Numerous services are now tradable online or through digitally connected services from banking and travel, to buying and selling goods, renting music and films, and downloading applications or "apps" directly to mobile phones and portable devices.

Further, the digital economy and the internet provide the technological infrastructure that underpins many international trade and investment patterns, creating new international markets, such as for trans-border data flows, which governments now struggle to regulate (Kuner 2013). In regard to the knowledge economy, creative industries and the Internet, international rules and national policies on knowledge, technology, ideas, and data—and rights to control and profit from them—matter more than ever before. Trade and investment rules, however, appear to fall woefully behind the realities of a digital economy, spurring numerous debates on how trade governance should respond

to the digital age (Cottier and Burri 2012). Similarly, rapid advances in science such as in the areas of biotechnology and nanotechnology are changing not only the research and development (R&D) landscape but also adding to the range of products and production methods available in the global economy, while generating debates about IP laws, fears around environmental, health, and social risks, and ethical concerns that regularly play out in the trade and investment arena (WEF 2015).

Meanwhile, in a world of fast-paced virtual trading, a number of other new international markets—such as for trade in permits for carbon emissions and water—are emerging. Like data flows, these may require attention from the GTIA, but also involve new set of actors not traditionally involved in the trade policymaking arena. In the case of data flows, for instance, the ITU and national regulatory agencies concerned with data protection, data privacy laws, and national security are engaged when these complex and tense issues touch on trade (Kuner 2013; European Commission 2015b; ITU 2015). In the case of carbon, international trade in emissions permits is under consideration by some countries, with some experts looking at the scope for a club of national carbon markets (Mizrach 2012).

Alongside the questions that new markets raise, international trade governance faces perennial challenges linked to black markets. Although coordinated efforts to address many forms of illegal trade have been stepped up over the years, burgeoning and vicious trade nevertheless continues in a diversity of illegal, illicit, and harmful goods and services, including people, human body parts, narcotics and arms, illegal timber and fish products, hazardous wastes, wildlife and exotic species, and highly-processed, low-nutrition food (Efrat 2010; Nellemann et al. 2014; Naim 2006; Stuckler et al. 2012). As global consumption grows and consumption patterns change, so to do problems of how and where to dispose of waste around the globe—from the growth of wasted food across the world²¹ to the cross-border challenges and economic costs of disposing growing volumes of solid garbage and waste—from e-waste to plastic, chemical and nuclear wastes (Hoorweg and Bhada-Tata 2012; Rucevska et al. 2015). A 2015 UNEP report estimates that between 60 and 90 percent of the world's electronic waste, worth nearly US\$19 billion, is illegally traded or dumped annually (Rucevska et al. 2015).

The much vaunted rise of global value and supply chains (GVCs) and international production networks (IPNs)—combining goods, services, investment, IP, and know-how—has complicated how we think about how trade happens and traditional trade disciplines.²² The global integration of

21 | Roughly one third of the food produced for human consumption globally is wasted, approximately 1.3 billion tonnes with a value of US\$1 trillion (Rucevska et al. 2015).

22 | See for instance, Aldonas (2014), Draper and Freytag (2014), Elms (2013), Stephenson (2013), Baldwin (2014b), and Hoekman (2015b).

production and supply chains is underscored by the increase of trade flows in intermediate inputs, which represent more than half of OECD imports and nearly three-fourths of imports of large developing economies such as Brazil and China, and also by the growing importance of the logistics and shipping industries and associated services (Coe 2014). New statistical efforts to measure trade in value-added (TIVA) from the OECD and the WTO, meanwhile, signal that services—such as transportation, communications, and business services—represent nearly half the value of world trade and play a central role in GVCs and IPNs (Stephenson 2013). Further, while it is commonplace to analyse trade flows between countries, recent analysis emphasises the importance of understanding the role of MNEs in GVCs. According to some estimates, MNEs may be linked to as much as 80 percent of gross global trade in one way or another, while intra-company trade accounts for around one-third of world trade. Similarly, MNEs are estimated to control around a two-thirds of the world's FDI stock, thus placing them at the heart of the further entwining of trade and investment (Sauvant 2015; Lanz and Miroudot 2011).

For the GTIA, the rise of GVCs prompts questions about the ways in which governments negotiate trade and investment rules, and how to address rules and policies on cross-cutting issues such as competition that impact how trade occurs in practice (Aldonas 2014). In GVCs, an array of rules negotiated in silos may affect single decisions by companies. Further, the ways in which international rules and negotiations have been structured for historical and institutional reasons no longer reflect the horizontal and vertical ways in which the world now does business. The rise of GVCs also poses challenges to traditional approaches to gathering statistics; classifying, measuring, and monitoring trade flows, and particularly trade in value-added; and to negotiating and administering trade rules. Although China's iPhone exports, for instance, are frequently valued as worth several billion US dollars per year, closer examination reveals that the total value-added of China's iPhone exports is far less, with imported parts and components from Germany, Japan, the Republic of Korea and the US collectively accounting for the bulk of the value added (Xing 2012).

The significance of GVCs and their implications for policymakers, particularly for developing countries, is nonetheless debated (Ferrantino 2010, 2012; Cattaneo et al. 2010; Gereffi 2014; Kowalski et al. 2015; Neilson et al. 2014; OECD et al. 2013). How much and in what ways should the rise of GVCs alter current policy and institutional priorities within developing countries on matters such as industrial policy or infrastructure development (Low and Tiajaja 2013; Estevadeordal et al 2014)? A number of development analysts highlight that the engagement of developing countries, particularly the poorest, in GVCs is uneven, highlighting the constraints on their participation and the challenges GVCs can present, such as for agri-food systems and smallholder farmers (McCullough et al. 2008).

In sum, the shifting landscape of trade flows places fresh demands on trade governance frameworks, alongside longstanding tensions (Bieron and Ahmed 2015; Rentzhog and Anér 2014). The growth of trade in services and in the digital economy has, for instance, reignited debates on the traditionally thorny questions around trade rules on the movement of labour (Brau and Pinna 2013) and over variations in national regulatory preferences.

5.1.2 Trade policy debates

On trade policy, although the WTO's membership continues to rise through successive accessions, the push for new negotiating approaches has intensified as the global trade body's Doha Round and the focus on the development aspects of the negotiations have withered. Even though the 2013 Bali WTO ministerial conference produced a "package" of decisions for LDCs and a new Trade Facilitation Agreement (TFA), both geopolitical and commercial interests have led governments and industry stakeholders to advance trade talks outside the multilateral system, spurred on by demands for disciplines that go far beyond those considered at the WTO.

Over the past several decades, the GTIA has become populated by an escalating number of plurilateral, regional, and bilateral trade agreements, and a proliferation of accompanying dispute settlement arrangements. Numerous negotiations are currently underway (Box 2) and their implications for GTIA are hotly debated (see discussion in Part C, Section 9). Among these, the two so-called mega-regional negotiations on the TPP and the TTIP cover the largest proportion of global trade—25 and 40 percent respectively—and are expected to most fundamentally change the global trade landscape (Lim et al. 2012; Morin et al. 2015). Nonetheless, upon the recent conclusion of the TPP deal, a number of analysts emphasised that significance of the agreement remains to be seen—such as the effectiveness of its efforts to bind "behind the border reforms" (Evenett 2015)—and will not remove the need for multilateral approaches, particularly on regulatory matters. Other prominent examples are the pursuit by some countries of TiSA; expansion of the ITA; bids to secure an EGA; efforts to forge "consolidation" RTAs; and dozens of on-going bilateral negotiations on trade and investment.

On the regional front, efforts at stronger political and economic integration abound, but face numerous challenges. The African Union, for instance, is keen to boost intra-African trade and establish a Continental Free Trade Area (CFTA) that knits together existing sub-regional agreements by 2017 (African Union 2012). Whereas the TPP represents the US's effort to shift its priorities eastwards and respond to the growing role in the region of China which is not a part of the pact (Chiffelle 2015), the Asian giant answered with a push in 2014 for a "roadmap" to eventually realise an FTAAP under the umbrella of the APEC (APEC 2014). Negotiations launched in 2012 by ASEAN members and their FTA partners on a RCEP have since moved relatively slowly, although they

would cover areas such as investment, IP, rules of origin, e-commerce, and goods and services trade.

Notably, a number of countries have simultaneously been negotiating partners in ASEAN, RCEP and TPP negotiations, each of which have different processes, concepts and goals for integration (Dupont 2014). In Latin America, the Pacific Alliance established in 2011 between Colombia, Chile, Mexico, and Peru is geared towards further liberalising goods, services, people, and capital in the region and strengthening relations with Asia-Pacific countries. In contrast to traditional approaches that bundle a multitude of trade and investment issues into a broader package of negotiations, the Pacific Alliance is approaching negotiations on issues sequentially, completing and implementing new agreements before moving onto subsequent topics. Meanwhile, Bolivia's recent accession to the Mercosur customs bloc—which also includes Argentina, Brazil, Paraguay, Uruguay, and Venezuela—has served to fuel concerns among some critics around trade tensions and politics among members of the South American common market. Meanwhile, the EU continues to expand its membership, and therefore its single market, albeit with reluctance from some member states. The challenges posed by a potential "Grexit" or "Brexit," and popular and legislative backlash against the Brussels bureaucracy in some countries continue to raise questions about the long-term prospects of the European integration effort (Young and Peterson 2014).

Although the WTO's negotiation function has slowed, a growing range of governments is making use of its dispute settlement function, resulting in a regular flow of WTO trade disputes and decisions (WTO 2014e). Across the trade arena, the relevance of non-tariff, behind-the-border barriers to trade is growing, alongside restrictive import and export trade measures (WTO 2015c). For example, a July 2015 meeting of the WTO Committee on SPS Measures saw a record number of specific trade concerns raised, many covering questions around import approval of biotech products and food bans (WTO News 2015). Since the 2008 financial crisis spurred a collapse of global trade, there have been efforts to dissuade governments from taking measures that would constrain flows (Baldwin 2009). In 2015, a regular joint trade monitoring exercise by the WTO and the OECD, meanwhile, reveals that since the 2008 crisis, G20 countries put in place 1,360 trade restrictive measures, of which only 329 have been removed (WTO 2015b). The wider WTO membership put in place 2,416 measures, excluding trade remedies, in the same period and less than 25 percent of these have been removed. At the same time, however, WTO members adopted more trade-liberalising measures in the last year than during previous reporting periods (WTO 2014i). Nonetheless, critical analysts highlight the rise of "murky protectionism," which refers to measures that do not directly violate WTO obligations and are often more difficult to detect and monitor than those that do; they can include a range of measures such as the use of health and safety regulations to restrict imports, anti-dumping measures, and clauses in stimulus and bailout packages that discriminate in favour of domestic producers (Baldwin and Evenett, 2009; Evenett 2014).

The key policy debates that animate trade diplomacy increasingly focus on regulatory matters, both at the border (such as customs and other trade facilitation matters) and "behind" the border, as trade and investment officials work to help businesses in their country attract investment, participate in GVCs, move into more value-added production modes, and secure access to markets. Keen to reduce the excess costs that regulatory differences can impose on the speed and ease of business transactions, business groups are spurring a growing focus among governments on different types of "regulatory cooperation," from commitments to greater transparency and information exchange to mutual recognition and harmonisation, and on how to incorporate these into trade agreements (Cottier 2006; Hoekman and Mavroidis 2015). A number of regulatory cooperation efforts are taking place at the bilateral, plurilateral or regional level, such as through the OECD and APEC. Moreover, last year's Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU had an entire chapter dedicated to regulatory cooperation, and included a number of substantive chapters on non-tariff and regulatory measures, ranging from TBT and SPS to mutual recognition (Sinclair et al. 2014). However, amidst recurring concerns about global economic prospects, many governments also want to preserve national regulatory autonomy, prompting calls for international frameworks that focus on better responding to and managing the realities of heterogeneous regulatory systems and priorities over a quest for uniformity.

Intensified debates on the use of exchange rates by some governments to boost competitive advantage in trade underscores the blurring lines between trade policy and wider international economic policies. Fears that countries will pursue loose monetary policies in the face of slow economic growth despite potential impacts on their trading partners have grown in recent years, as central banks in the US, the EU, and Japan have undertaken several rounds of quantitative easing. While the G20 and the G7 have both issued statements pledging to refrain from competitive devaluation, a recent move by China to allow the market to play a greater role in setting the value of its currency, consequently lowering the value of the renminbi by the second-largest amount in two decades (Donnan 2015), serves to demonstrate the likely persistence of concerns about "currency wars."

The role of global shipping networks in the global economy is a nascent, but important, area of trade policy discussion, with a recent joint study by ESCAP and the World Bank arguing that container shipping connectivity is a "more significant determinant of trade costs than the indicators for logistics performance, air connectivity, costs of starting a business, and lower tariffs combined" (Arvois et al. 2013). Although more ships are becoming larger over time, the global shipping industry is increasingly dominated by fewer companies and the structure of global networks of shipping services favours those countries at its centre, where countries such as China, Germany, the Republic of Korea, the United Kingdom and the US have best connections globally as well as with each other (UN 2014: 36).

TABLE 2:

Examples of Variations in Trade Negotiations Under Way or Planned Outside the WTO

Name	Participants	Global coverage	Scope	Timeline
Mega-regional RTAs				
Trans-Pacific Partnership (TPP)	Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, US	36.3 percent of world GDP, 25.5 percent of world trade (2014)	Comprehensive market access; other goods trade issues including trade remedies, RoO, SPS, TBTs; services; investment; intellectual property; government procurement; SOEs; environment; labour; capacity building; horizontal issues, including regulatory coherence, regional integration, transparency, and development.	Builds on the 2005 Trans-Pacific Strategic Economic Partnership. US joins in 2008. First round of TPP negotiations held in 2010. Participants concluded negotiations in early October 2015, and will now need to secure ratification of the pact's terms in their respective domestic legislatures before entry into force.
Transatlantic Trade and Investment Partnership (TTIP)	EU, US	30 percent global merchandise trade, 40 percent world trade in services, nearly half of global GDP (2013).	Market access; services; public procurement; RoO; regulatory coherence, standards, mutual recognition, TBTs; sustainable development; energy; IP and GIs; competition; investment.	Negotiations launched in July 2013. Initially aimed for completion by end 2014.
Regional Comprehensive Economic Partnership (RCEP)	10 ASEAN member states and those countries with existing FTAs with ASEAN – Australia, China, India, Japan, Republic of Korea, and New Zealand.	Almost half the world population, 30 percent of global GDP, over 25 percent world exports.	Goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, and dispute settlement.	Launched in November 2012. Negotiations ongoing.
Consolidation RTAs				
Continental Free Trade Area (CFTA)	54 African countries	Combined population of more than one billion and GDP of more than US\$1.2 trillion.	Single continental market for goods and services; free movement business persons and investments; trade facilitation; expedite regional integration processes; path towards a Continental Customs Union by 2019, set up African Economic Community (AEC).	December 2010. Agreed roadmap for establishing CFTA in January 2012 with indicative date of 2017. Negotiations due to commence in 2015. Build on existing Tripartite FTA negotiations; Eastern African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC).
Plurilateral agreements				
Trade in Services Agreement (TISA)	24 WTO members: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Switzerland, Turkey, the US, and Uruguay. Of these, the EU has no free trade agreements on services with Chinese Taipei, Israel, Pakistan, and Turkey.	70 percent of world trade in services.	Based on the WTO's General Agreement on Trade in Services (GATS). Open markets and improve rules in areas such as licensing; financial services; telecoms; e-commerce; maritime transport; and free movement.	Talks formally started in March 2013. Basic text agreed in September 2013. No set deadline for agreement.

Further, there is a multitude of debates on which social and environmental issues should be addressed through trade and investment rules, and how. Pressures on developed country governments, and also a growing number of developing country governments, to protect the environment and labour standards in the face of expanding trade relations has spurred a growing number of provisions and chapters on these matters in trade and investment agreements (UNEP 2011a; UNCTAD 2010). They have also prompted calls to use trade measures to help phase out environmentally harmful, trade-distorting subsidies that drive overcapacity in fishing fleets (spurring negotiations on this topic at the WTO), as well as fossil fuel use.²³ Meanwhile, the clean energy industry is already subject to an escalating number of retaliatory trade remedies, and scrutiny of clean energy trade could increase in the future. Over the last five years, countries have imposed nine anti-dumping (AD) and seven countervailing duties (CVDs) on products associated with solar photovoltaic (PV) cells or wind energy, and launched more than two dozen WTO AD and CVD investigations on these (Ang and Steenblik 2015).

Finally, there is growing attention in trade policy debates to the rise of non-state initiatives, led by NGOs, individual companies, industry associations or both, to establish private voluntary standards and third-party certification schemes for goods and services, as discussed earlier. The proliferation of such initiatives raises questions about the appropriate role of the private sector in the push for private standards, their credibility as assessors of matters such as sustainability, their implications for trade and investment rules and flows, the risks and opportunities that arise for developing country exporters, and the interaction between private standards and government responsibilities in relation to trade law, as illustrated by the long-running “Tuna” dispute in the WTO (Aerni 2013; Blanford 2015; Thorstensen et al. 2015).

5.1.3 Cross-cutting trade policy debates on inequality, inclusiveness and development

A cross-cutting set of trade policy debates relates to the position and interests of developing countries in the GTIA. Although the focus and intensity of concerns have fluctuated and evolved over time, there are enduring calls for greater responsiveness to the interests of developing countries and their various stakeholders (Ismail 2008, 2009; Stiglitz and Charlton 2005). Developing countries express consistent procedural concerns about the structure of decision-making processes across the GTIA and substantive concerns that their development priorities are inadequately addressed.

Although their individual circumstances and constraints vary widely, many developing countries lack both the investment and supply-side capacity to take advantage of new trade opportunities, as well as the resources and institutional frameworks needed to implement trade-related adjustment, compensate losers, and comply with the many new standards and behind-the-border regulatory changes that trade agreements demand. Developing country

governments increasingly acknowledge the importance of GVCs but face numerous challenges in securing participation and potential benefits from them. Across sectors, countries continue to face a complex set of market access barriers, including enduring tariff escalation and subsidies in foreign markets; difficulties keeping up with constantly evolving regulations and private standards in export countries; preference erosion;²⁴ and problems with the numerous rules of origin (RoO) requirements that accompany preferential arrangements (Uganda on Behalf of the LDCs Group 2014).

There has been some good news over the years. A majority of the WTO's developed country members now provide full or significant market access to products from LDCs and five developing country members—Chile, China, India, Korea, and Chinese Taipei—and have notified DFQF schemes of some description (WTO 2014c). Further, the rise of the multi-stakeholder Aid for Trade Initiative reflects a broad acknowledgement of the many challenges facing developing countries, and channels significant resources to help, which reached US\$55.4 billion in 2013 (WTO and OECD 2015).²⁵ But debates continue about the overall size, allocation, and accessibility of resources (Lammersen, 2015; te Weld and Razzaque 2013; UNCTAD 2012). For many of the poorest countries, the eventual entry into force of the TFA could help to alleviate the high costs of engaging in international trade. The TFA is particularly notable for creating a facility to help ensure members receive the necessary external support and capacity building to take advantage of the deal (Mwape 2012).

While the rise of China, India, and Brazil in global trade illustrates the possibilities for countries to significantly shift their position, it has complicated the dynamics of trade negotiations. It has also prompted debate on the idea of “developing country” trade concerns. In the WTO context, for instance, there have been calls for some emerging economies to “graduate” from developing country status, which is self-designated at the WTO, and new approaches to S&DT. Facing competitive threats, developed countries, and also some developing countries, increasingly call for more issue-specific and differential approaches to special treatment in trade and investment, and suggest that China, India, and other emerging economies should also take on further responsibilities and obligations. Nonetheless, there are strong proponents of a continuing political need for

23 Although renewables represented approximately 59 percent of net additions to global power capacity last year and the annual growth in renewables investment continues at a healthy rate (REN21 2015), fossil fuel subsidies continue to distort markets and send wrong signals to investors (Coady, Parry, Sears and Shang 2015).

24 See for instance, Elliot (2014) and Blanchard and Hakobyan (2015).

25 Since the Aid for Trade initiative was launched in 2006, US\$246.5 billion has been disbursed for trade financing programmes and projects and US\$190.4 billion in trade-related other official flows (OOFs). Economic infrastructure has attracted the largest share of disbursements, 52.4 percent between 2006 and 2013, followed by building productive capacity at 44.5 percent, and trade policy and regulations at 3.1 percent.

solidarity among developing countries, and of the enduring relevance of some collective concerns and action.

Meanwhile, even for poorer countries, pressures are mounting to update earlier approaches to special treatment. The EU's intention, as expressed in the Cotonou Agreement (the latest agreement in the history of ACP-EU Development Cooperation), is that its negotiations with ACP countries for EPAs should pave the way towards reciprocal trade relations by phasing out all trade preferences (to address the WTO incompatibility of previous arrangements) and progressively removing trade barriers (Jones 2014). In a fundamental overhaul of decades of non-reciprocity, for instance, the CARICOM has completed and is implementing a "full EPA," covering a broad range of trade issues, including IP. But the path is proving more contentious in many African countries, where most of the agreements that have been initialled are "goods only" agreements, and even here governments have subsequently called for new negotiations or are moving very slowly towards ratification. That many African members of regional economic communities include both developing countries and LDCs complicates EPA negotiations. In the East African Community, for instance, Tanzania is eligible for special treatment under the EU's Everything but Arms (EBA) initiative, but Kenya is not and must instead pursue a reciprocal approach.

Two further policy challenges of particular importance to developing countries, and many developed countries, relate to trade finance and trade opportunities for small and medium-sized enterprises (SMEs). Up to 80 percent of global trade is supported by some form of financing or credit insurance but many poor countries continue to lack critical access to the international financial system. While the availability of trade finance has improved after a dramatic drop during the 2008 financial crisis, it still falls well short of estimated needs, particularly for developing countries, as the continuing effects of the crisis have lowered risk appetite.²⁶ The value of unmet demand for trade finance in Africa, for instance, is estimated at between US\$110 and US\$120 billion and represents one-third of the existing market (Azevêdo 2015). Meanwhile, although SMEs represent a sizeable and rising share of economic and employment growth, accounting for about 95 percent of global enterprises and 70 percent of private sector jobs worldwide, a disproportionate burden of trade-related fixed costs falls on them, and many continue to face particular trade finance, market, or credit access challenges (Jansen, Roberts Taal and Virdee 2014).

Over the past decade governments of both developing and developed countries have expressed growing interest in a trade and investment architecture that secures regulatory autonomy and policy space. There is renewed interest in harnessing industrial policy to help countries insert themselves in such production and distribution networks, including to advance environmental agendas (Curiak and Singh 2015; Low and Tijaja 2015). There has also been belated acknowledgement—as now expressed in the context of the Aid for Trade Initiative—of the need for a careful

sequencing of trade reforms and for trade obligations commensurate with capacities underpinned by fulfilled commitments for external support. This ideal repeatedly proves difficult, however, to realise in the throes of the mercantilist bargaining that typifies international trade negotiations.

5.2 SHIFTING INVESTMENT TRENDS AND POLICY CHALLENGES

5.2.1 Investment flows

Across countries of all levels of economic development, most governments are keen to attract foreign investors. To facilitate foreign investment, governments create investment incentives, establish investment promotion authorities, actively brand their country as an attractive investment site, and forge international investment agreements that address the admission, treatment and protection of foreign investments within their territory (Ecorys 2013). Although the financial crisis prompted some G20 members to relax some conditions for international investment to spur new FDI, there is also growing interest among governments in more proactive investment policy regimes that promote greater sharing of benefits between investors and host countries, help foster local capacities and linkages to local industries, protect environmental and social standards, and channel investment toward sustainable industries (OECD and UNCTAD 2014). The concomitant policy expertise in facilitating sustainable investment is, however, as yet nascent (Sauvant and Hamdani 2015).

In the last 30 years, FDI inflows and outflows have broadly increased, albeit more erratically than world exports, which have risen steadily over time (WTO 2013b: 141). By the end of 2014, the total world FDI stock was US\$27 trillion,²⁷ with developing countries emerging as the majority host group of inflows. The OECD also reports growth in South-South FDI over a 10-year period from 1999, both in terms of value, and as a percentage of world FDI (OECD 2014: 14).

While ODA continues to be a major source of revenue for LDCs, countries further up the development ladder are increasingly relying on FDI and remittances from citizens working abroad, with the latter totalling an estimated US\$404 billion compared with OECD country ODA flows of

26 See recent reports of the WTO's Working Group on Trade, Debt, and Finance, as well as the expert group of high-level trade finance practitioners.

27 In 2014, global FDI inflows declined by 16 percent from the previous year to an estimated US\$1.23 trillion, out of step with moderate growth in global GDP and trade flows. Recent trends vary, however, at the sector level. Future FDI scenarios remain uncertain, partly due to volatile commodity markets, regional conflicts, and slow growth prospects in emerging economies, although some models suggest FDI flows could increase over the next few years (UNCTAD 2015c).

US\$134.8 billion in 2013 (Ratha et al. 2014). In 2014, FDI in LDCs as a group increased to US\$23 billion, while developing countries received their highest level of inward FDI flows at US\$681 billion (UNCTAD 2015c).

5.2.2 Investment policy debates

The international investment regime is complex and fragmented; it comprises a growing number of IIAs, often with expanding regulatory implications, as well as customary international law; the decisions of tribunals; various voluntary governmental, inter-governmental, and non-governmental standards; and a collection of other voluntary and mandatory instruments as well as add-ons from other various international deals (Pauwelyn 2014). The rise of IIAs has been accompanied by growing scrutiny of the transparency of negotiations, their non-discrimination and development provisions, and their arbitration arrangements (Moran 2002; Schill 2015). Since the NAFTA, some governments have also worked to extend the scope of trade agreements to include more substantive rules on investment, as reflected now in the TTIP negotiations, which aim to cover both trade and investment more comprehensively than prior agreements.

Overall 356 ISDS cases have been brought to tribunals under investment treaty provisions dating back to the 1980s.²⁸ According to an UNCTAD database on ISDS rulings, thirty-seven percent of these were found in favour of the state, 28 percent were settled, and investors won 25 percent.²⁹ However, a more critical review of the methodology and evidence has concluded that investors have in fact won 72 per cent of decisions on jurisdiction and 60 percent of decisions on the merits of the case (Mann 2015).³⁰ On the one hand, the deployment of ISDS provisions to settle cases can be seen as a positive use of formal legal mechanisms to enhance the rule of law and depoliticise disputes. On the other hand, beyond arguments over scorecards of who “wins or loses” disputes in the ISDS system, an array of civil society groups voice concerns that the boom of investment arbitration and ISDS rulings negatively impacts public interest regulations and dissuades states from adopting new measures (regulatory chill). Proposals abound for new approaches to ISDS that better balance investor protections with rights of state and obligations of investors, and for more transparent and balanced dispute settlement procedures with appropriate appeals mechanism (see for instance, proposals for a World Investment Court and a global investment appeals mechanism) (Gereffi & St. John 2015; Bernasconi-Osterwalder and Rosert 2014; Johnson et al. 2015). (See Section 8.1.4 for further discussion).

There are also calls for wider reforms of international investment regimes, not only to more clearly safeguard public policy priorities and protect the sovereign rights of governments to regulate for environmental or social ends, but also to promote stronger policy coherence and business incentives for investment that serves sustainable development goals (Lin 2015; Johnson et al. 2015; Pauwelyn

2014). UNCTAD estimates that US\$2–3 trillion a year in additional investments will be required to implement the SDGs in developing countries and underscores the importance of boosted private sector investment in key areas (UNCTAD 2014c, 2015c). To help make investment work for sustainable development and inclusive growth, UNCTAD has presented a suite of options for national investment policies and for IIA provisions. Some of the most recent IIAs already signal a move toward this more expansive “positive” investment agenda (UNCTAD 2015e). There is also growing interest in how a new generation of investment agreements could help boost green finance, address barriers to investment in areas such as clean energy (OECD 2015b) and incorporate provisions for corporate social responsibility as well as measures that would preserve developing country scope to negotiate and manage the terms of public-private partnerships in ways that best respond to local needs (Jones, E. 2015; UNCTAD 2015e).

A related set of policy debates stem from attempts to establish a multilateral institutional framework for investment. Although unsuccessfully mooted in the past (with an Organisation for Economic Co-operation and Development [OECD]-framed Multilateral Agreement on Investment [MAI] in the 1990s and efforts to insert the so-called “Singapore Issues” in the Doha Round), the topic has re-emerged re-emerged: proposals include calls for new multilateral investment negotiations at the WTO, a non-binding investment facilitation framework, and greater G20 leadership, through for instance agreement on a working framework to move the investment agenda forward (Blanchard 2014; Lin 2015).

5.3 INTERSECTIONS BETWEEN TRADE AND INVESTMENT

5.3.1 Intersecting trade and investment flows

The intersections between investment flows and trade have significantly increased over the last few decades. With the rise of integrated international production systems, firms locate production across the globe according to the most suitable conditions, and increased FDI and trade now often go hand in hand. Between 1970 and 2013 the ratio of goods and services exports to global GDP rose from 14 to 29 percent, for instance, while in the same period the ratio of FDI stocks to global GDP rose from 6 to 34 percent. The composition of FDI stock has shifted in recent

28 See “Database of Investor-State Dispute Settlement” at <http://unctad.org/en/Pages/DIAE/ISDS.aspx>.

29 Ibid.

30 In this work, Mann observes that “states never win; they only do not lose. Only investors win awards of damages, states may at best, receive an award of costs” (2015:1).

years from natural resources to manufacturing, and now to services, corresponding to the shifting needs of GVCs and technological advances (Hufbauer and Moran 2015). MNEs, in particular, have built value chains in a global workshop, boosting firm-level outward FDI, often in knowledge-intensive areas. Recent studies of the US economy highlight further links between trade and investment, showing that FDI can generate an increase in two-way merchandise trade due to factors such as increased firm competitiveness, technological capacities, and market power (Hufbauer et al. 2013). Even in the world's poorest nations, there is evidence that countries with the highest FDI are those most engaged in international trade, as FDI can stimulate positive spillovers to trade-related infrastructure and export-oriented industries (Makki 2004; UNCTAD 2013a,b).

5.3.2 Complex, fragmented investment regimes and intersections with trade

Although trade and investment are increasingly linked, international regulatory regimes in each area have distinct historical origins and have largely remained separate over the last 50 years. In taking the decision to move forward with the GATT in 1948, governments abandoned a more comprehensive architecture that would also have encompassed investment (Miles 2015). As such, trade laws and investment laws are widely analysed as two separate legal regimes. The WTO, for instance, is not centrally concerned with cross-border investment, just as IIAs are not concerned with trade in goods per se. However, there are some commonalities and overlapping aspects among the regimes. Moreover, a number of regional trade agreements, such as the NAFTA, deal with investment, as do a growing number of FTAs and mega-regional trade negotiations. At the multilateral level, the WTO also addresses investment, but in a more discrete manner. Further, the evidence of the intermingling of trade and investment flows now prompts growing reflection on what some characterise as an artificial separation between the trade and investment regimes (Hufbauer 2014). Proponents of this view argue that the incorporation of investment into trade agreements is not only justified but vital given the changing realities of economic activity (Hufbauer and Moran 2015; Quick 2015). Meanwhile, efforts to formulate investment provisions in new mega-regional trade deals provoke alarm among many public interest advocates, particularly in light of un-transparent negotiations and draft texts. What is clear is that the way in which investment is treated in mega-regional agreements is likely to generate new approaches to international investment rules, with the potential to shape the contours of the ISDS system and national investment policymaking for decades to come.

6. WIDER TRENDS AND CHALLENGES THAT SHAPE PRESSURES AND EXPECTATIONS ON THE GTIA

Beyond the trade and investment arena, a range of wider global economic, social, and environmental trends, challenges and imperatives drive political pressures on the GTIA, shaping the landscape in which trade and investment decision-making takes place and to which it is called upon to respond. In addition to shifting geopolitical dynamics, this section provides a flavour of key game changers, enduring tensions, and emerging challenges that form the backdrop against which the GTIA is judged and its outcomes scrutinised, and which shape the context for discussions on GTIA its future. It then briefly sets out the new commitments that the international community has undertaken to address through the SDGs, many of which have trade and investment dimensions.

6.1 GLOBAL ECONOMIC AND SOCIAL TRENDS AND CHALLENGES

A multitude of global economic and social trends impact the political debates and constraints facing governments in regard to trade and investment. Even where the causal links between particular social or economic outcomes and specific trade and investment agreements are tenuous or difficult to prove, such agreements are nonetheless regularly criticised as symbolic of or embedded in wider policy agendas. The following discussion does not aim to assess whether or how trade rules and policies help overcome or further contribute to the challenges at hand. Instead, it seeks to demonstrate how these challenges contribute to public pressures, perceptions and expectations on the core issues that the GTIA must acknowledge and respond to. They also impact the politics behind global trade and investment negotiations, interpretation of the rules, and implementation. Moreover, although some national trade and investment policymakers keenly feel domestic political pressures to respond to many of these trends and future scenarios, and some are central preoccupations in other parts of the global governance architecture, they can fade from view in the heat of international trade and investment negotiations.

The following discussion highlights that assessments, perceptions and priorities with respect to trade and investment vary widely among international organisations, stakeholders and national policymakers, and often differ to those of officials responsible for international trade and investment diplomacy.

6.1.1 Economic and social game changers

Since the 2008 financial crisis, the intersections between trade and investment policies and rules, on the one hand, and broader economic policies such as finance and monetary policy, on the other, have deepened. With the global economic policy agenda focused on addressing financial instability, restoring growth, and boosting employment rates, key priorities for economic policymakers include exploring ways that the international monetary system can better prevent and build resilience to financial shocks and spillovers, boost the environment for FDI, expand market access, and spur innovation (Cadot et al. 2015). Despite the return to sluggish growth, financial worries persist, with debt increases in major emerging economies such as China, the risk of asset bubbles, contagion effects in hyper-connected markets, financial instability in some regions, and concerns about competition devaluations and currency wars. Meanwhile, commodity markets remain volatile and expected growth rates in many developing countries may be lower in years to come. The recent dramatic drop in oil prices, for instance, has presented challenges for some exporting countries, while igniting debate over the impact on renewable energy markets.

With higher growth rates in emerging economies than developed countries, the former have become increasingly powerful in the international economy, altering traditional negotiation dynamics in the GTIA. In particular, the BRICS nations more than doubled their share of global GDP from less than 10 percent in 2000 to 21 percent in 2013. Similarly, other low- and middle-income economies saw their share increase from 7 percent in 2000 to 12 percent in 2013 (Cœuré 2014). The world's poorer countries, however, saw their real GDP growth slow from an annual rate of more than 7 percent between 2000 and 2008 to an average of 5.6 percent in 2013 (UNCTAD 2014b). These figures highlight that the market size, structure, endowments, and diversification of economies, and thus their economic strength, varies widely. Such factors contribute to their resilience, capacity to weather shocks, and the resources available to governments to compensate losers from economic transformations, such as those unleashed by changing market forces and policies on trade and investment.

6.1.2 Enduring and mounting economic and social tensions

The international community is growing, with the world's population expected to rise from 7.3 billion in 2015 to around 9.6 billion by 2050. Population growth has

already increased the international market for goods and services, particularly among the growing middle classes in developing countries, stimulating tremendous increases in the scale, quality, and diversity of goods, as well as decreases in price, alongside low-quality, single-use consumer products.³¹

Progress on reducing poverty in aggregate terms over the past decades underscores that quality of life is improving for millions of people.³² However, some 702 million people—just under 10 percent of the global population—continue to live below the World Bank's updated international poverty line of US\$1.90 a day in 2015 (World Bank 2015b) and poverty rates in many industrialised countries are growing.³³ Further, estimates of global poverty reductions are far less a cause for optimism after accounting for the “China effect,” where the Asian giant has achieved remarkable reductions of extreme poverty for millions of its people,³⁴ and given recurring debates on how best to define, measure, and monitor changes in the extent of poverty.³⁵ Hunger, poor health, inadequate access to education, and gender discrimination, among other crippling factors, continue to haunt sizeable segments of the population worldwide, including in China despite its poverty reduction efforts.³⁶ And there are persistent concerns that the world's very poorest—the “bottom billion”—will remain trapped in poor, economically stagnant, conflict-ridden, or declining countries, particularly in sub-Saharan Africa (Collier 2008), where the World Bank estimates that half of the world's neediest live (World Bank 2015b).

31 LDCs are expected to have the highest population expansion rates. Although rates vary among countries, overall, the fastest growing segment of the global population are those over 60. They accounted for 12 percent of the population in 2014, and are expected to grow to 21 percent by 2050. The aging of developed country populations presents a well-documented set of challenges to the ability of economies and their working populations, to sustain social compacts. In Africa, however, the population aged 15–24 is increasingly rapidly. The proportion of adolescents on the continent is expected to rise from 18 to 30 percent in 2050 and decline in other major geographic regions. Although many adolescents are now healthier and more likely to attend school, this is not the same everywhere, with mounting pressure in many communities on children to work, formally and informally, or marry, often to the detriment of the formal education vital to prospects of long-term prosperity (UN 2014).

32 The proportion of undernourished people in developing regions, and global under-five mortality have declined by more than half since 1990; primary school enrolment in developing regions has reached 91 percent; 2.6 billion people have gained access to improved drinking water; and ozone-depleting substances have been virtually eliminated (UN 2015a).

33 The updated poverty line, released in October 2015, incorporates new information on differences in living costs across countries based on purchasing power parity (PPP) exchange rates. According to the World Bank, the higher value of the line seeks to reflect the fact that new PPPs for 2011 yielded a relatively lower purchasing power for the world's poorest countries (World Bank 2015b).

34 On food security, for instance, China's progress has in many ways obscured the deep problems that remain in sub-Saharan Africa. Many Chinese do, however, continue to remain very poor and income inequality abounds in the nation.

35 See, for instance, Ravaillon (2015) and Reddy and Lahoti (2015).

36 The poorest countries have the highest poverty rates, but the most populous countries—China and India—harbour the greatest numbers of the world's poor people.

While a number of institutions point to increasing efforts by developing countries to fuel their own development and move away from “aid dependency,” poorer regions and countries remain heavily reliant on external assistance, particularly those that are heavily indebted and affected by conflict or internal political turmoil (De Jayendu and Gonzales 2014). These challenges spill over into the trade and investment arena as such countries struggle to compete in international trade and investment markets and engage in relevant negotiations. Although the Aid for Trade Initiative seeks to respond, the needs remain great and will do so for many years. There are regular calls for more integrated, coherent approaches that recognise the links between the multiple facets of international economic policymaking and development assistance (Akyüz 2009; Allen et al. 2014).

Income inequality is also the source of enduring political tensions, with the jaw-dropping and rising gap between the world’s very richest and poorest³⁷ fuelling public campaigns against social injustice and a scramble by governments for more inclusive growth (European Commission 2010; OECD 2011c). Income disparities between developed and developing countries, and also within them (Birdsall et al. 2006; Stiglitz 2015), spur concerns about the worsening and globalisation of inequality, and its impact on societies (Bourguignon 2015; Wilkinson and Pickett, 2009; Piketty 2014).³⁸ Here, developed countries are also impacted by rising poverty and economic insecurity alongside the erosion of social contracts and high unemployment rates (Stiglitz 2012, 2015). Although predictions on the prospects for global income convergence vary, some experts suggesting that globalisation, technological progress, deregulation of labour markets, and misguided macroeconomic policies will in fact sustain or even exacerbate the gap between the poorest and the richest (UNDP 2014). For instance, much -discussed recent analysis predicts a further steady concentration of wealth, resulting in eventual soaring inequality (Piketty 2014).

In the wake of a series of financial crises, the priority that national governments attach to restoring employment growth forms an important part of the political context that shapes international trade and investment diplomacy. Services, the world’s fastest growing sector, employed almost half the world’s workers in 2013, with a further third in agriculture, and just over 20 percent in industry (ILO 2014: 23). Meanwhile, the informal economy accounts for as much as 50 to 80 percent of Africa’s GDP and 90 percent of new jobs (Steel and Snodgrass 2008). But current predictions are for a poor global employment outlook in the short term (ILO 2014, 15; UN 2015d).³⁹ Further, technological changes are ushering in new business models, boosting labour productivity growth and increasing wages for some, but a broad decrease in real wages for many developed countries. When in work, a large number of employees continue to remain uncovered by employment protection legislation despite modest improvements in recent years, and there has been mixed progress on the

quality of work and working conditions.⁴⁰ In the United States, for instance, evidence of declining real wages over the past several decades has focused attention again on the impacts of openness on the national economy. Policy debates on international trade and investment deals routinely highlight concerns about their impacts on labour markets—on job insecurity, real wages, and dwindling benefits packages (on matters such as health insurance) as well as renewed calls for the incorporation of labour rights protections in international economic deals and for a stronger focus on “decent work” (ILO 2012, 2015).

Migration is a further enduring tension. As the absolute number of unemployed people grows across the world, political instability intensifies, and climate threats materialise, migration pressures are likely to intensify. The world is already increasingly one of people on the move, with growing volumes of migration—legal and illegal, short and long term, professional and unskilled—alongside rising numbers of refugees and internally displaced people due to civil wars and conflict.⁴¹

Importantly, migration flows are not only from developing to developed countries, but also among these. South-South migration accounted for the largest share of global flows (UN DESA 2013).⁴² Although in mid-2015, political

37 The poorest two-thirds of the world’s population are estimated to receive less than 13 percent of world income, while the richest 1 percent claim nearly 15 percent. The 85 richest people in the world, the elite of the so-called “super-rich,” have the same wealth as the 3.5 billion poorest people. See UNDP (2014: 21).

38 Household income inequality as measured by the Gini index has increased for both high- and low-income countries. According to the Gini index, household income inequality increased by 9 percent for high-income countries from the early 1990s to the late 2000s and by 11 percent for low- and middle-income countries (UNDP 2013).

39 More than 201 million people were unemployed around the world in 2014, with this figure expected to increase by some three million in 2015, and a further eight million in the following four years. Youth, in particular, continue to be disproportionately affected by unemployment in both developed and developing countries, which, in turn, has been recognised as a key factor driving political unrest, and in some countries, the resort to extremism (ILO 2015: 23).

40 Less than 2 percent of employees in low-income countries are legally covered by unemployment benefits or an employment guarantee, compared to 35.9 percent in 2013 in middle-income countries, and 85.3 percent in high-income countries, where this has increased by 11.7 percentage points since 1990 (ILO 2015).

41 There were 232 million international migrants, equal to 3.2 percent of the global population in 2013, up from 175 million in 2000 and 154 million in 1990. Some two billion people, meanwhile, live in the context of some form of extreme violence, with so-called fragile states harbouring high poverty rates.

42 In some instances this migration is linked to the vagaries of politically defined borders that do not reflect historical and cultural links across borders, such as in West Africa, but is predominantly also driven by the quest for jobs and livelihoods. Domestic workers travel from rural or poor communities for informal employment by wealthier citizens in countries across Asia and the Middle East. For such countries, the “export” of these workers has established remittances from salaries sent to support families and communities back home as a key source of foreign income (Ratha et al. 2014).

perceptions of the challenges of asylum seekers appeared to shift, at least in Europe, the general trend among developed country governments is defensive and hesitant on migration, throwing the disparities and underlying tensions in the global economy into sharp relief. In the GTIA context, migration pressures raise questions about the scope of the trade agenda on the movement of labour, and also about how best to stimulate dialogue and action among international agencies concerned with international flows that involve people, whether as refugees, workers, or economic migrants, including the WHO, the ILO, the United Nations High Commissioner for Refugees (UNHCR), the World Bank, and the WTO (Betts 2011).

The recent Ebola crisis, meanwhile, has reignited awareness of the growing potential for the spread of infectious diseases through the international movement of goods and people.⁴³ And although growing middle-class incomes in many developing countries are associated with improved health outcomes and governments have made progress on some core health indicators across their populations, continued challenges persist around unequal access to affordable, high-quality health systems, care, and medical technologies (UN 2015a). The rise of cancer, diabetes, and obesity is spurring debate on how global producers can drive changes in changes in food, alcohol, and tobacco consumption, putting trade rules relevant to global tobacco and trade in processed food in the spotlight (WHO 2015; Stuckler et al. 2012; Clark et al. 2015).

6.1.3 Public pressures: protests and alternatives

In the past several years, poor economic outlooks in many countries, media attention, and public opposition to the rise of the super-rich, and a global financial industry operating beyond regulatory controls have consolidated popular opposition—as exemplified by the “Occupy Movement”—to neo-liberal economic policies and austerity as a vehicle for economic recovery (Ostry et al. 2015). They have also reinvigorated concerns about global economic arrangements in general, and international trade and investment agreements specifically as symbols of the ills of “globalisation.” The recent outpouring of public and scholarly concern about the TPP and TTIP echoes many themes of the “Battle of Seattle” at the 1999 WTO Ministerial Conference, for instance (Khan et al. 2015). Around the world, civil society groups campaign about the implications of trade and investment deals on matters as diverse as the food system (Patel 2012), diet, health outcomes and public health services (Hawkes et al. 2009; Kapczynski 2015; Khan et al. 2015; Reynolds and McKee 2015; Weiss 2015), and human rights (OHCHR 2015; Grover 2014). The intensity of recent campaigns against the TTIP and TPP also suggests that governments have lost the trust of vocal segments of their public when it comes to trade and investment deals (Krugman 2015a, b).

Growing recognition of the dangers for the global economy of the private financial sector’s rising power vis-à-vis

governments (Skidelsky 2010) has inspired a post-crisis renaissance of, and tolerance for, discussion of alternatives to neo-liberal economic policies that, even a decade ago, were deemed not politically viable or economically misguided. There is for instance, a vibrant debate on how and where governments may be more proactively and effectively involved in facilitating economic opportunities for their citizens, and what this implies for global economic architectures (Lamy 2013; Lang 2011; Hausmann et al. 2013; Mazzacuto 2013; Rodrik 2008; Stiglitz et al. 2013).⁴⁴ In addition to spurring a new round of public and parliamentary concerns about the accountability of global economic decision-making, such debates have also revived calls from scholars and social movements for instilling a stronger commitment to democratic and “bottom-up” deliberation across global governance, ranging from proposals for a stronger role for the UN to proposals for some form of a world parliament (Gill 2015).

There is also growing scrutiny by governments and citizen groups of the MNEs that dominate production, income, trade, and GVCs in the global economy. The ownership of MNEs continues to be concentrated in developed countries, although the number of Chinese, Indian, and Brazilian international firms is growing. While offering prospects for efficiency gains and cost savings through economies of scale, border-spanning conglomerations have raised concerns in forums such as the G20 about tax avoidance and evasion, known formally as “base erosion and profit shifting” (BEPS). Meanwhile, concentration of market share in key sectors and industries spurs public policy and competition concerns about the consolidation of global power in a handful of companies and threats to national sovereignty, particularly where these can impact public health and food security (Clapp and Fuchs 2009; Hoffman 2013). In the pharmaceutical sector, for example, the ten largest drugs companies based in the US and Europe control over one-third of the market. Around 500 companies control 70 percent of the world’s food choices (Hoffman 2013).

The last few decades have also seen growing political momentum and interest in new kinds of indicators for economic and social progress, notably those that emphasise quality of life measures as a complement or alternative to GDP-based evaluations. These emphasise the importance of the quality of growth and “decent work”

43 In a bid to stem the rapid spread of the virus, travel bans were issued, borders closed, and trade relations and networks suffered a hard blow amid significant GDP losses in the countries most affected by the outbreak (Bridges Africa 2015). Estimates from the World Bank suggest that Liberia, Guinea, and Sierra Leone suffered GDP losses of US\$2.2 billion.

44 For example, a 2014 G20 Leaders’ Communique from a gathering held in Brisbane, Australia, in November 2014 called for policies that take full advantage of GVCs and that encourage greater participation and value addition by developing countries. In the last few years, institutions such as the World Bank and the IMF have also produced research re-examining the use of industrial policy, particularly in the wake of the 2008–9 financial crisis (Aghion and Cagé. 2012; Lin, 2012; Stiglitz et al. 2013).

for example, giving greater weight to human dignity, social cohesion, health, education, and environmental values. Moreover, amid the enthusiasm for new technologies and shifting scientific frontiers that promise new economic opportunities, ways of organising work, environmental benefits, and social innovations, governments face copious political challenges. These range from public fears about the health, environmental and social risks and consequences of new technologies, to distributive effects, such as on jobs and the competitive advantage of countries.

6.2 ENVIRONMENTAL IMPERATIVES AND PLANETARY BOUNDARIES

The list of challenges facing the GTIA is vast when it comes to sustainability and environmental issues. Here again, we identify key game changers and enduring tensions that shape expectations and demands on the GTIA.

6.2.1 Environmental game changers

The latest evidence on the scale of climate change; unsustainable use of natural resources, both renewable and non-renewable; biodiversity loss; pollution of air, land, and oceans; and desertification underscore the breadth and intensity of environmental risks—not only to the environment in its own right, but also to economic opportunities, human health, livelihoods, and investors around the world (CDB 2014a; Oxfam 2012; Pachauri 2014; WEF 2011). A growing number of scientists now refer to the “Anthropocene” as a new era of the earth’s geological evolution due to the intensity of human impacts on its surface, air, and oceans over the past two centuries (Steffen et al. 2011). According to some researchers exploring the earth’s capacity to cope with man-made impacts, four of nine “planetary boundaries” have been crossed to date (Steffen et al. 2015). Faced with the prospect of mounting environmental constraints and scarcity, there is a rising threat of international conflicts over natural resources, from water and fisheries to arable land (Lee 2012; WEF 2011). Trade and investment regulatory issues linked to these enormous environmental challenges abound. With global demand for both renewable and non-renewable resources growing alongside challenges of sustainability and scarcity, trade and investment policies are increasingly used, for instance, as instruments to secure access to vital natural resources (Garcia 2013; Kugelmann and Levenstein 2010) and viewed as key targets for the incorporation of stronger environmental considerations (Lee 2011; Cordonnier Segger et al. 2011). The following discussion highlights some key examples of why and how environmental imperatives and planetary boundaries matter to the GTIA.

Growing recognition that inaction on environmental issues, especially global climate change, will generate high economic costs is also spurring interest in knock-

on impacts for trade and investment flows and how to better address environmental imperatives. UN climate scientists suggest that the climate change driven by rising temperatures could result in economic costs between 0.5 and 2 percent of GDP—from extreme weather events, infrastructure damage, disrupted supply chains, food and agriculture challenges, health issues, and ecosystem degradation, among others—and will be much higher if greenhouse gas emissions are not abated below a two-degree Celsius rise from pre-industrial levels (Global Commission on the Economy and Climate 2014). There are numerous questions about how the emerging post-2020 climate regime, which is likely to be structured around bottom-up, semi-voluntary national climate action plans, will be enforced; on how trade and investment policies could contribute to climate goals; on where climate-related trade and investment measures could help boost enforcement; and on how these can be made compatible with trade and investment rules.⁴⁵

The ascendance of climate change up the global policy agenda has also prodded interest among many governments, international organisations, and stakeholder groups in “green growth” and the transition to a “green economy” (European Commission 2010; ILO 2012; OECD 2011b; UNEP 2011b; ILO 2012). Although both concepts inspire critical debate on how much they can indeed foster environmental sustainability (Barbier 2012; Bina 2012), they have certainly spurred considerable interest in “greener” trade and investment and how the GTIA could help advance progress (IISD and UNEP 2014; Meléndez-Ortiz 2011; UNEP 2011b).

Meanwhile, according to some estimates, the costs of inaction to halt biodiversity decline would give rise to increasing and cumulative annual losses to the value of nearly US\$14 trillion by 2050 (BioRes 2013). Changes in ocean acidity from greater carbon dioxide in the air, moreover, could result in damages to coral reefs, costing US\$1 trillion per year by the end of the century (CBD 2014b). Other estimates pin the financial damage from plastics to marine ecosystems at US\$13 billion each year (UNEP 2014a). Fish and fisheries products are the most traded food commodities in the world, but marine degradation heaps pressure on stretched commercial stocks, presents food security risks, and threatens livelihoods (Schmidt 2015; Sumaila et al. 2014).

The global economy also faces growing intersections between multiple crises—in energy, food, and water—where international trade and investment flows are central. With energy as the lifeblood of the global economy and essential to daily necessities, energy security continues to be a concern for many countries, particularly in the context

⁴⁵ On the challenges facing climate governance and the quest for an appropriate architecture, including its relationship to the world trading system, see Aldy (2009); Barrett (2011); Messerlin (2012); and Petsonk and Keohane (2015).

of interconnected and volatile energy markets. Meanwhile, 1.3 billion people around the world still lack access to electricity meaning governments face the twin challenges of de-coupling economic growth from greenhouse gas (GHG) emissions and ensuring modern, safe energy for all.⁴⁶ The IEA expects a 37 percent growth in global energy demand by 2040 from current levels, with much of this coming from emerging economies (IEA 2014). In addition, global demand for food could double between now and 2050. However, to tackle greenhouse gas emissions in the agricultural sector, the demand for more food will need to be grown on similar levels of land and climate change is expected to affect agricultural yields, spurring concerns about food production and security. Meanwhile, water scarcity already affects 40 percent of the world's people, with one billion people lacking access to safe drinking water (UN 2015a) and this figure is projected to increase, as are conflicts over competing water uses (e.g., for power generation and irrigation). Conversely, energy helps to deliver clean water, and both water and energy are linked to the governance of food and land use. The water-energy-food nexus, and efforts to regulate international markets for each, will also likely intensify in the years ahead (Borgia et al. 2014; Dubois et al. 2014).

Furthermore, international trade and investment are central forces transforming how food is produced and consumed around the world, stretching the relevance of multilateral arrangements on agricultural trade, rules, and domestic support set up several decades ago (ICTSD and WEF 2013a; Schmidhuber and Meyer 2014). In the investment arena too, "land grabs" to secure productive land for food production (Kugelman and Levenstein 2010) and the expansion of global supermarket chains in growing urban areas of developing countries raise concerns about the erosion of local food systems, food security, livelihoods and community structures, on the one hand, and about the health impacts of cheap, highly processed food, on the other. These concerns in turn prompt proposals for how countries can better negotiate investment contracts as well as investment rules to reflect sustainable development imperatives (Cordonnier Segger et al. 2011; Smaller 2013) (as discussed in Section 5.2 above).

6.2.2 Enduring and mounting environmental tensions

In the face of weak environmental governance and lax penalties, international trade has long been recognised as a direct driver of environmental degradation in some areas. Key examples are illegal international trade in wildlife estimated to be worth between US\$50 and US\$150 billion annually, with illegal fisheries alone fetching between US\$10 and US\$23.5 billion per year, and illegal logging between US\$30 and US\$100 billion (UNEP 2014b). Multilateral and regional governance efforts to catch offenders have intensified of late, and in some forums governments are using trade measures to promote compliance. Examples of the adoption or threat of "compliance measures" include trade bans by the CITES and trade measures undertaken to combat IUU fishing (Young 2015).

In a globalised economy, retailers and consumers regularly purchase goods produced in unsustainable ways in other countries, thus "exporting" environmental costs. GHG emissions provide a case in point. Emissions embedded in international trade account for almost a quarter of the global total. The relationship between the movement of goods around the world and emissions is, however, complex.⁴⁷ Around 90 percent of global trade is carried by sea, and the shipping industry accounted for an annual average of 3.1 percent of global carbon dioxide emissions between 2007 and 2012 (Maritime Knowledge Centre 2012). The potential for new shipping routes in the face of receding polar ice has stirred up geopolitical, safety, and conservation debates. The burgeoning volumes of waste, including hazardous and e-waste, that are traded internationally provide another example of the externalisation of environmental costs.

Increased competition over natural resources has seen some governments use trade tools such as export quotas to protect key industries and resources at home or secure those abroad. When export markets falter, commodity prices and demand fluctuate, which in turn impacts trends in raw material extraction. Meanwhile, China's use of export controls on rare earths ran afoul of WTO judges in 2014, returning to the fore questions of how to design natural resource conservation measures while adhering to global trade rules. Elsewhere, longstanding concerns about the sustainability of extractive industries driven by rising international demand spur calls for international rules that better foster "sustainable investment" by addressing concerns about their wider social and political impacts and regulating them in ways that support wider national development efforts.

As mentioned above, debates continue on the risks that new technologies can pose to the environment and public health, spurring new rounds of debate on the application of the precautionary principles in the trade and investment arenas. The differences brewing between the US and the EU over regulatory cooperation on endocrine disrupting chemicals (EDCs) offer a clear example of such dynamics, as does the pending launch by Japan of a WTO dispute calling into question South Korea's fisheries import ban and additional testing and certification requirements in the wake of the Fukushima nuclear disaster in 2011.

⁴⁶ GHG-intensive fossil fuels account for nearly 82 percent of today's global primary energy supply and one-third of annual man-made emissions.

⁴⁷ On the one hand, imported goods may be less carbon intensive than domestic products, even taking into account transport emissions. On the other hand, maritime and aviation emissions have increased rapidly in recent years and are expected to continue to grow, prompting questions on environmental costs or trade-offs in the context of global commerce. See, for instance, Vöhringer et al. (2013).

6.3 CHANGING GEOPOLITICAL DYNAMICS AND EMERGING ECONOMIES

Among the many geopolitical dynamics relevant to the future of the GTIA, this section emphasises two; concerns about political insecurity and the rising political influence and weight of the BRICS economies.

In the post-Cold War and post-9/11 world, the wider political context for the GTIA is shaped by security concerns on issues ranging from energy security to transnational terrorist threats. Enduring wars in Iraq, Syria, and Afghanistan, the rise of the Islamic State in Iraq and Syria (ISIS), the enduring Israeli-Palestinian conflict, and the Ukrainian crisis, as well as numerous civil and sub-regional conflicts in Africa have a range of economic implications (Spiegel 2012; Fels et al. 2012; Herd and Kriendler 2013). Such examples of political instability can, for instance, contribute to the disintegration of markets, as well as threaten the security of key trade routes,⁴⁸ and disrupt gas and oil supply vital to economies dependent on energy imports. For governments drawn into regional conflicts or impacted by them, these demand significant high-level political energy and resources, at the risk of diverting attention away from international economic diplomacy. Further, concerns about political security—and vulnerability—shape strategic political alliances, as well as rifts and mistrust that influence trade and investment negotiations and the domestic politics that inform them (Dieter and Quack 2010; Fels et al. 2012).

The re-emergence of China (Li 2013; Morrison 2015) and the growing economic and political weight of Brazil, Russia, and India (Spiegel 2012; Fels, Kremer and Kronenberg 2012; Maguire and Lewis 2013; Lo and Hiscock 2014) have been game changers for the GTIA and for global governance in general in the last decade or so. The rise of the G20 and renewed efforts to reform governance at the IMF and the World Bank reflect fundamental changes in the global economy with an eastward shift of the world's economic centre of gravity (Cœuré 2014; Wouters and Odermatt 2014).⁴⁹ Although the US has enduring influence on many aspects of international economic policy and, along with Europe, continues to dominate many international organizations (Stone 2011), the degree to which it remains a "hegemonic power" is widely debated. Emerging powers favour a more multipolar vision and seek a stronger role in a range of multilateral institutions, including the WTO (Lesage 2015; Michalopoulos 2013).⁵⁰ In the trade and investment arena, one implication of the rise of multipolarity is that no single economic, political, or development model any longer reigns supreme in negotiations (Lamy 2011). Multipolarity has also altered traditional configurations for WTO negotiations—as illustrated by the shift from the Quad (US, EU, Canada and Japan) as the key agenda-setters and dealmakers to a G-5 (US, EU, Brazil, China and India) and now a G-7 in trade negotiations (the G-5 plus Japan and Canada). Although the rise of the BRICS has been accompanied by more inclusive approaches to WTO decision-making, giving more developing

countries and their coalitions a voice in key negotiations, they have complicated and slowed the prospects for deal-making on many issues and power remains concentrated in the hands of a small, albeit more diverse subset of WTO members (Hoekman 2013b; Narlikar 2011, 2013; Subramaniam and Mattoo 2011).

Although critics of US hegemony welcome such power shifts, there is also a broad recognition that the decline of a singular power willing to take on global leadership and the associated financial burdens complicates global cooperation on numerous fronts (Reich and Lebow 2014; Sachs 2012; Subacchi 2015). Some propose that the current geopolitical reality is of a "G-Zero" world, where no country wishes to take charge and where clubs such as the G20 could produce new conflicts not cooperation (Bremmer 2012, 2013; Bremmer and Rothkopf 2012; Bremmer and Roubini 2011). Others propose a G-3 world, in which China take a stronger place at the table (Khanna and Leonard 2011). The rise of powers in each of the world's regions and the interest of many governments in stronger regional economic integration, also provokes debate on where and how regionalism is effective, and how it can complement, complicate or foster global cooperation efforts (Nakagawa 2012; Gardini; Fanta et al. 2013).

Meanwhile, numerous scholarly efforts are underway to better understand the strategic priorities of the BRICS nations (Chan 2011; De Coning et al. 2014) particularly China's approach to global governance and global policymaking (Paus et al. 2009; Saeed 2012), as well as its relationship to traditional powers (Austermann et al. 2013). Both individually and collectively the BRICS countries are increasingly assertive in promoting new approaches to international trade and investment cooperation and in calling for updated international governance structures (Efsthathopoulos 2015).⁵¹ The push to launch a new BRICS

48 Regional insecurity can also increase the danger and cost of piracy on the high seas (insurance premiums for the Gulf of Aden have increased tenfold), which means that shipping could be forced to avoid the Gulf of Aden/Suez Canal and go around the Cape of Good Hope. This would add considerably to the costs of manufactured goods and oil from Asia and the Middle East (Middleton 2008).

49 The IMF reforms agreed to four years ago would have shifted more power to developing and emerging market economies. However, these reforms have since stalled as a result of the US Congress' failure to ratify the implementing legislation domestically (Bridges Africa 2014).

50 Russia and India have been most explicit in this respect. See, for instance, <http://www.bne.eu/content/story/lavrov-slams-west-un-speech-calls-multipolar-world>. In 2000, US academic Kenneth Waltz predicted the evolution toward a multipolar world by the end of the century. Some scholars underscore the role that smaller regional powers (such as Turkey and Nigeria) could play in the multi-polar configuration, but with less prospect of them asserting a global leadership role (Sachs 2012).

51 In the July 2014 Fortaleza Declaration, the BRICS nations committed to "raise our economic cooperation to a qualitatively new level. To achieve this, we emphasise the importance of establishing a road map for intra-BRICS economic cooperation." In addition, the Declaration makes a reference to the vision of an open world economy, continued efforts for a successful conclusion of the WTO Doha Round, and simultaneous recognition of the importance of regional trade agreements. Paragraph 22 reaffirms the role of the UNCTAD as the focal point in the UN system dedicated to consider the interrelated issues of trade, investment, finance, and technology from a development perspective (BRICS 2014a, 2014b).

Development Bank to finance infrastructure and sustainability projects in emerging and developing countries from 2016, together with the Beijing-based AIIB, seemingly emerged from the desire to move away from a longstanding dependence on the IMF and the World Bank,⁵² although BRICS leaders have said that their new initiative is meant to complement existing multilateral institutions.⁵³

6.4 THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT: A GAME CHANGER

The international community has spent the last five years stitching together various processes to craft a global sustainable development vision to take over from the Millennium Development Goals (MDGs), tackle persistent issues, and address new challenges.⁵⁴ The resulting post-2015 development agenda, or the "2030 Agenda for Sustainable Development" as it is now formally known, commits to achieving sustainable development in its three dimensions—economic, social, and environmental—in a balanced and integrated manner (UN 2015c). The 29-page-long text, adopted by UN members at a high-level summit held in New York in September 2015, consists of five sections: a preamble; a declaration with shared principles and commitments as well as a call for action; a list of SDGs and targets (Box 1); a set of means of implementation (MoI) and a revitalised global partnership for development; and details on the follow up and review needed to put the agenda into action. The 2030 Agenda also recognises that the full implementation of the outcome of the UN Financing for Development Process, the Addis Ababa Action Agenda (AAAA) adopted by the UN General Assembly at the end of July 2015, will be critical for the realisation of the SDGs and targets.

Together, these landmark outcomes set a new global governance context, calling for reflection on where the GTIA might need to respond and evolve in response. As a framework to focus action, the SDGs are designed to be universal, transformative, inclusive (by tackling inequality)

and integrated (by placing social and environmental issues on the same footing as economic development) (Bhattacharya et al. 2014). Regarding the means to achieve the agenda or "means of implementation," the 2030 Agenda and the AAAA underline international trade and investment, along with flanking policies and an enabling domestic environment, as engines for inclusive economic growth and as key potential contributors to sustainable development. Private business activity, investment, and innovation are also singled out as major drivers of productivity, inclusive economic growth, and job creation.

6.4.1 UN Sustainable Development Goals: trade and investment dimensions

Trade and investment tools and policies feature across the SDGs either as targets or as means to achieve a specific target (see Annex B). Arguably trade and investment are indirectly relevant to all of the goals. Several systemic trade-related targets are included, for instance, under SDG 17, focused on MoI for the goals as a whole. These targets are largely grounded in a multilateral vision of trade, referring to a universal, rules-based trading system and urging the conclusion of the Doha Round. Reference is also made to increasing the exports of developing countries, with a view to doubling those from LDCs, alongside implementing DFQF market access for their exports consistent with WTO decisions. There is also mention of the need to ensure that preferential RoO applicable

52 The AIIB caused a stir when plans to launch it were unveiled in 2013, with major European powers such as the UK, Germany, France, and Italy applying to be founding members.

53 The New Development Bank, as it will be called, will have US\$100 billion in initial authorised capital at its disposal. The BRICS countries will initially underwrite half that amount, US\$50 billion, with each putting forward equal contributions of US\$10 billion. The New Development Bank is meant to mirror the World Bank, and the Contingent Reserve Arrangement (CRA) will be set up similarly to the IMF, according to the Brazilian Ambassador José Alfredo Graça Lima, Under-Secretary-General for Political Affairs II in the Brazilian Foreign Affairs Ministry (Santos 2015).

54 See, for instance, UN (2013).

BOX 1:

Origins and Scope of the SDGs

At the 2012 UN Conference on Sustainable Development (Rio+20), a follow up to the 1992 UN Conference on Environment and Development (UNCED), governments launched a process for devising a set of global SDGs and created a dedicated working group to hammer out a proposal. In the Rio+20 process, governments unpacked sustainable development as a model that fosters poverty eradication, sustained economic growth, enhanced social inclusion, improved human welfare, the healthy functioning of the planet's ecosystems, and opportunities for employment and decent work for all. Following nearly 18 months of meetings, the Open Working Group (OWG) on the SDGs identified 17 goals and 169 targets, which largely represent those adopted in the 2030 Agenda with a few minor tweaks. The SDGs cover an expansive set of issues, including ending poverty in all its forms everywhere, tackling world hunger, achieving gender equality, ensuring access to modern energy, building resilient infrastructure, moving towards sustainable consumption and production patterns, conserving oceans, and taking urgent action to combat climate change.

to imports from LDCs are transparent and simple, and contribute to facilitating market access.

The specific trade-related targets or MoI targets integrated into other SDGs cover topics such as correcting distortions in agricultural markets with references to the Doha Round mandate; fisheries subsidies reform with a mention of WTO negotiations; developing sustainable regional and trans-border infrastructure; rationalising inefficient fossil fuel subsidies; and tackling illegal wildlife trade. Increasing aid for trade support for developing countries is included as a target to achieve SDG 8 on promoting sustained, inclusive, and sustainable economic growth.

Within the systemic targets under SDG 17, UN members pledge to adopt and implement investment promotion regimes for LDCs. Investment is then singled out as a means to implement the poverty eradication goal, while FDI is positioned as a means to implement SDG 10 on reducing inequality within and among countries. SDG 7 calls for the promotion of investment in energy infrastructure and clean energy technology to secure sustainable energy for all. It also emphasises investment in rural infrastructure, agricultural research and extension services, technology development, and plant and livestock gene banks to help increase agricultural productive capacity in developing nations and the world's poorest countries.

These trade and investment-related aspects of the SDGs place demands not only on specific policy action at the national level, such as domestic support reform and establishing the right enabling investment frameworks, but will also necessitate international cooperation (Bellman and Tipping 2015). This is particularly the case with the systemic trade targets in SDG 17, for example, or the development of regional infrastructure, tackling illegal wildlife trade, or correcting distortions in agricultural markets, to name a few.

Progress may also require action at the architecture level, such as better cooperation among the relevant international agencies tackling challenges such as sustainable energy, or new rules that would spur more sustainable investment flows. Reflection will also be needed on the principles that trade and investment agreements must respect to deliver on the SDG's development commitments (UNCTAD 2013c, 2014c, 2015d) and goals for climate action.⁵⁵ Efforts across a range of inter-governmental agencies and non-state actors will also be needed to accurately review progress on the trade and investment targets of the SDGs, which raises questions about the global architecture needed for monitoring and assessment (Tipping and Wolfe 2015).

6.4.2 Financing for development

In 2015, the AAAA (UN 2015b) signalled an enhanced political commitment to addressing the challenges of development finance and to creating an enabling

environment at all levels for sustainable development. The document identifies financing actions that can be mutually supportive for the implementation of the 2030 Sustainable Development Agenda, and recognises the intersections of trade and investment. Although questions about implementation and monitoring abound, the AAAA nonetheless represents the most comprehensive commitment to updating and strengthening cooperation towards coherent finance, trade, and technology policies and frameworks for development.

In terms of the GTIA, the AAAA recognises the importance of an open, non-discriminatory, transparent, and equitable trading system to encourage long-term investment in productive capacities. The document calls on WTO members to implement decisions already taken at ministerial conferences, alongside ratifying the TFA, and commit to exploring how market-oriented incentives can be used to address poor access to trade finance.

The trade section of the AAAA also calls for the promotion of LDC exports, an increase in world trade in a manner consistent with the SDGs, a prompt conclusion of the Doha Round, and commits governments to continue to implement S&DT for developing countries. The document reaffirms the right of WTO members to take advantage of flexibilities in the Agreement on TRIPS. It also recognises the role of regional trade for economic growth and commits to integrating sustainable development into trade policy at all levels. Calls are made for collaboration between a range of stakeholders, including multilateral development banks, to address gaps in trade, transport, and transit-related regional infrastructure. Mention is made on the role of the multi-stakeholder Aid for Trade Initiative, crafting trade and investment agreements with appropriate safeguards, and building capacity in LDCs to benefit from opportunities generated by international trade and investment agreements. Countries resolve to enhance global support to tackle illegal wildlife trade and trafficking in hazardous waste and minerals through national regulation and international cooperation. Enhanced capacity will be sought to tackle illegal, unreported, and unregulated building, including by expanding institutional arrangements. Moreover, the WTO General Council is invited to consider how the global trade body can contribute to sustainable development.

Other specific investment-related aspects in the AAAA include a recognition of the need for targeted actions and investments to help achieve gender equality, promote opportunities for youth and children, deliver essential public services to all, fight malnutrition and hunger, tackle the infrastructure gap, and develop clean technologies, among others. Recognising that there are investment gaps

⁵⁵ Notably, the SDGs include a climate action goal pointing to the work under the UNFCCC, but it does not include any references to the role of trade, although one target indicates that climate change measures should be integrated into national policies, strategies, and planning.

in key areas for sustainable development, the document pledges to develop policies, and where appropriate, strengthen regulatory frameworks to better align private sector incentives with public goals. The AAAA aims to promote both public and private investments in energy infrastructure and clean energy technologies, and also commits to encourage investments in a range of areas to promote food security.

6.5 WHAT TRENDS AND CHALLENGES MATTER MOST TO THE GTIA'S FUTURE AND HOW?

The preceding discussion intentionally reviewed a broad range of trends and policy debates that raise questions about the GTIA and its future. Looking ahead, which of these are “first order” concerns for trade and investment

cooperation? Where are the potential gains from cooperation particularly high, or the magnitude and nature of negative spillovers especially significant? Which trends pose special constraints on cooperation or alter the way in which it may be attained? And what do answers to these questions imply for the future direction of the GTIA?

We conclude this section with a table that, drawing from the discussion above, proposes a set of key game changers, evolving trends, and challenges that the trade and investment communities are called upon, or likely to be called upon, to respond to, noting questions they pose for the GTIA (Table 2). In so doing, we acknowledge that perceptions and assessments of which trends and challenges matter most for the GTIA will vary widely by country and interest group. The intentionally non-exhaustive table nonetheless aims to stimulate discussion on where the needs and opportunities for international cooperation are greatest and their implications for the GTIA.

BOX 2:

Background on the UN Financing for Development Process

The outcome document from FfD3, held in Addis Ababa, Ethiopia in July 2015 serves to update the multilateral development finance framework. Secured in the face of debates around a new global tax authority and the breadth of application of the principle of Common but Differentiated Responsibilities (CBDR), the AAAA provides a new development finance roadmap cognisant of the principles of sustainable development. The document acknowledges the dramatic changes in development and geopolitical landscapes over the past decade. Accordingly, the FfD3 outcome builds on commitments made at past conferences, including on trade and investment and a wider set of issues, ranging from technology flows to migration.

TABLE 3:

Game Changers, Evolving Trends and Enduring Tensions: Implications for the GTIA

Issues and trends	Examples of questions on implications for the GTIA			
Game changers	Scope—principles and issues	Functions	Internal complexity-subsidiarity	GTIA in global governance
Conclusion of the UN 2030 Sustainable Development Agenda and SDGs, with numerous commitments and indicators relevant to trade and investment	How, and where, to respond to pressures to integrate principles and issues of sustainable development into trade and investment cooperation?	How to bolster the GTIA's functions of policy dialogue, impact assessment, and regulatory cooperation with an eye on sustainable development outcomes? How can the GTIA respond to the call in the SDGs for monitoring of trade and investment outcomes? How to incorporate stakeholder inputs into assessments of trade and investment's role in advancing the 2030 Agenda's goals?	How to clarify the division of labour among international institutions and processes in animating the GTIA functions and tasks allocated by the 2030 Sustainable Development Agenda? How to boost inter-agency synergies on trade and investment for sustainable development outcomes?	How to boost the GTIA's coherence with global governance regimes for sustainable development? Where is greater legal, institutional, or political coordination needed?
Urgency of global action on climate change	How and where should climate issues be addressed in the GTIA? How to respond to the needs and dynamics of a new post-2020 climate architecture? How and where does climate action require specific commitments to complementary action within the GTIA such as through new, side, or club-like agreements?	How to ensure an appropriate architecture for monitoring and assessment of trade and investment-related climate impacts and conversely the ways in which trade policies and rules can constrain or enhance climate action? Can, should, and how might the GTIA's functions be harnessed to play a role in boosting climate-smart investment?	How to improve transparency of provisions across many trade and investment regimes that have climate implications? How to ensure coordination between trade and investment efforts and wider initiatives across the international system to support climate action, climate finance, and climate adaptation for the world's poorest?	How to promote coherence of the GTIA with the actions of international processes and organisations concerned primarily with climate action?
Growing evidence and understanding of planetary boundaries and risks of ecosystem degradation	Is there a case for reinforcing principles related to environmental objectives in trade and investment agreements? Is there a need for new approaches to addressing instances where countries have different environmental values, preferences or tolerances for risk, or do current principles suffice?	How to boost the GTIA's monitoring and assessment functions to help integrate environmental considerations and scientific evidence into negotiation and implementation of trade and investment rules?	How to promote information-sharing and coordination among actors in the GTIA on the environmental dimensions of trade and investment arrangements—on the challenges, the opportunities, and the evidence? How to promote more learning and reflection on where and how unilateral, bilateral, regional, and mega-regional approaches have worked, and where multilateral approaches might be more desirable? Is there a need to clarify the intersections of relevant laws, or particular provisions of them, to avoid conflicts between environmental agreements and those for trade and investment?	How to build stronger linkages between international environmental decision-making processes and institutions and those in the trade and investment arena?
Changing nature of trade and investment—the growing intersections of trade and investment, and the rise of global value chains, the digital economy, and increasingly tradeable services	How to best respond to calls for greater attention to a number of cross-cutting regulatory issues—from investment to competition? Are a new set of rules needed to regulate the digital economy? Are emerging business models that rely on data constrained in current governance and, if so, what do these models need from the architecture in response? What needs to be done to reconcile traditional trade and investment policy instruments with the technological innovations that underpin the reality of services trade, including e-commerce, digital trade and data transfers? What changes to investment regimes are needed to serve sustainable development?	Through which functions should the GTIA address new issues? Should greater cooperation be advanced through new rules, greater policy dialogue, stronger transparency, more effective aid for trade, or regulatory cooperation? How to better monitor new trade and investment patterns?	How to respond to calls for “horizontal GVC-oriented” approaches to trade and investment decision-making? Is there a need to move beyond or complement traditional vertical negotiations in goods, services, and investment with more sectoral and cross-cutting approaches? Should policymakers heed calls to end an apparent “dichotomy” between the trade and investment? What new models already exist for this?	How to keep an eye on wider global governance objectives in a world of long and complex global value chains? What types of international cooperation can best respond to sustainable development challenges within international supply chains. In light of GVCs, what architecture options could support greater practical coherence between rules in the GTIA and other relevant agreements such as on human rights and arrangements on double taxation? How to connect decision-making within trade and investment regimes, with debates and policy action relevant to trade and investment matters that occurs in other areas of global economic governance?

Issues and trends	Examples of questions on implications for the GTIA			
Game changers	Scope—principles and issues	Functions	Internal complexity-subsidiarity	GTIA in global governance
Rise of emerging economies and new multi-polarity in global economic governance	How does the rise of emerging economies impact principles such as S&DT, inclusiveness and transparency in the GTIA? Are changes needed and where? How might growing multipolarity impact which issues are most important for attention in the GTIA?	How to engage BRICS nations more centrally in the range of GTIA functions, such as aid for trade, research, South-South investment, or development cooperation? How might the rise of BRICS also shape the possibilities and need for new approaches to cooperation, such as through policy dialogue and on regulatory matters?	How does multi-polarity change the way in which governments can should approach decision-making, negotiations and cooperation on trade and investment? What are its implications for the prospects of negotiations and cooperation at multilateral, plurilateral and regional levels—and the dynamics between these?	How much do BRICS initiatives—from new development banks to the Silk Route Initiative—alter the dynamics of the GTIA? How does the growing multipolarity of global governance more widely impact the future of governance in the trade and investment arena?
Evolving economic, investment, and trade trends	Scope—principles and issues	Functions	Internal complexity-subsidiarity	GTIA in global governance
Dwindling role of multilateral negotiations and rise of plurilateral, regional, and bilateral approaches	How to revived the principle of multilateralism in trade and investment relations? What principles govern or should govern RTA arrangements? How to ensure plurilateral approaches are inclusive?	How and where can governments boost strategic oversight and the spaces for high-level policy dialogue in the GTIA? What institutional reforms might be needed to strengthen the deliberative function of the multilateral trading system? ? What architecture inputs are needed to help assess RTAs' impact on sustainable development?	Is the rise of RTAs, fragmentation, and complexity in the GTIA a crisis or opportunity? How can the WTO be strengthened to revive multilateralism in trade? How to overcome the current deadlock in multilateral negotiations? What can be learned from RTAs? When and how could they be leveraged for eventual multilateralisation? Should governments seek to reconcile the "spaghetti bowl" of FTAs and how? How can the transparency of RTA rules be enhanced?What role or reforms are needed in relation to partner UN trade-relevant organisations such as the ITC and the UNCTAD? Where is greater coherence needed in the IIA regime and where might multilateral interventions on investment be useful or feasible	How to boost coordination among the multitude of trade and investment rules and institutions relevant to the GTIA's various functions?
Effects of financial crises on trade and investment alongside intersections with monetary policy	What financial and investment issues warrant more attention in the architecture?	Which knowledge tools or expertise need to be enhanced to bring greater clarity to the international trade-finance-development nexus? How can the coherence of capacity-building initiatives on trade, finance, investment and development be enhanced internationally, regionally, and locally?	What improvements to trade and investment rules, processes or institutions, might be needed to address the intersections with global decision-making on finance? Should the GTIA be doing more to bring the supply and demand of capital together, particularly with an eye on development, and the investment needs of poorer countries?	How to better address the linkages between trade, investment, finance, and monetary policy in global economic governance? Where do collaborations and coordination need to be strengthened? What avenues are available? What should the G20's role in trade be? Should the UN have a greater role in global economic coordination, through the ECOSOC, UNCTAD, or another body?
Growing interest in "behind the border" cooperation and growing use of non-tariff barriers to trade, as well as the rise of private standards	What sorts of "behind the border" issues would most benefit from attention in the GTIA and yield greatest outcomes for sustainable development? What principles should underpin the growing attention to regulatory cooperation and the rise of private standards in the GTIA?	Beyond the GTIA's negotiation function, what other functions could help advance regulatory cooperation? Given the spectrum of possibilities for regulatory cooperation, could the WTO better serve as platform for dialogue in this area beyond its traditional role as a venue for negotiation?	How and where best to monitor and assess the impacts of the various commitments to regulatory cooperation emerging in RTAs? How to boost transparency in this area? Could the WTO play a role in leveraging bilateral and regional integration efforts to boost regulatory cooperation and how?	Which international institutions could take a lead role in boosting coherence, consultation, and cooperation in the area of regulation? What role could the WTO play in leveraging the many initiatives on regulatory cooperation efforts among trade-related bodies? Is the work of the UNFSSS adequate to address concerns on the rise of private standards and what other approaches might also be needed?

Issues and trends	Examples of questions on implications for the GTIA			
Enduring and mounting tensions	Scope	Functions	Internal complexity-substitutability	GTIA in global governance
Challenges facing many developing countries, particularly LDCs, in participating and benefiting from the GTIA	Which issues most relevant to developing countries are missing in the GTIA? Are there options for "better" S&DT provisions and what would they look like? How could S&DT With the increasing reliance in developed countries on private standards, which are increasingly higher, evolve rapidly, and are Could greater use of SD&T principles in private standards and third-party certification initiatives help developing country suppliers? How could principles of transparency be implemented to better enable developing country exporters keep up with the rapid expansion and evolution of standards?	Where can the functions provided by the GTIA better serve the needs and interests of developing countries? Can synergies be sought through initiatives such as Aid for Trade to also deliver more explicitly on sustainable development and climate action? How to ensure developed countries deliver on WTO development-related decisions and commitments?	How to integrate development considerations into new arrangements such as mega-regionals to minimize negative impacts for third parties, particularly poorer countries? What principles or processes with regard to transparency or possibilities for observing negotiations could be adopted? How could trade and investment-related international organisations improve their coordination to deliver stronger outcomes for developing countries?	Where does global economic governance fail to serve the needs of the world's poorest economies and what action could be taken in the trade and investment arena to address these shortfalls? How to promote greater "development" coherence among the many components of global economic governance? How to ensure that the GTIA works to support the needs of developing countries vis-à-vis wider global challenges, for example, climate change?
Variable engagement from the business sector on trade and investment architecture	Is there a need to clarify principles with respect to business engagement in trade and investment processes and negotiations at the national, bilateral, regional, or multilateral levels? What issues are most important for stimulating engagement by the diversity of relevant businesses with the architecture?	What formal or informal mechanisms could be established to enhance dialogue with and participation of the private sector in the GTIA's various functions? How to monitor private initiatives—such as standards or labelling initiatives—that matter for the GTIA, and what mechanisms could provide for greater input of relevant stakeholders? What GTIA functions could help harness harnessing or coordinate relevant private-sector investment for a wider range of sustainable development outcomes? How to identify opportunities for the private sector to partner with the public sector for optimal trade and investment outcomes?	What cross-GTIA reforms, coordination, forums, or innovations are needed to help streamline the complexity and opacity of dealing with the GTIA from a private sector perspective? How to better communicate about the role, rules and functions of the GTIA to non-trade and investment experts in business? How best to ensure dialogue between the diversity of relevant private sector actors and economic policymakers?	How could the various components of the GTIA learn from the strengths and pitfalls of the business engagement efforts of other international organisations and processes?
Public and civil society concerns about accountability, transparency, participation, and legitimacy of the GTIA. Debates on the impacts of trade and investment—on growth, employment, income inequality, public health, food security, environment, and market concentration and corporate power. Populist and nationalist backlash against "globalisation" and "open markets" linked to rising concerns about economic insecurity and migration pressures.	How to better build "public interest" principles and considerations into the GTIA? What principles with regard to transparency and public engagement are needed?	How to boost the opportunities for public engagement and transparency of the GTIA's functions? How to address asymmetries in capacities to launch and act in dispute settlement proceedings in both the trade and investment arenas? How, and where, should governments boost transparency in international trade negotiations? Can civil society trade monitoring efforts be better leveraged to boost participation and transparency? What forums might be considered, or lessons learned on dialogue with civil society on trade and investment policy? At what levels can and should this take place?	How to restore public confidence in the accountability of a complex GTIA with opaque internal workings? Does the GTIA need to be more flexible vis-à-vis national policies supporting multilateral environmental and social commitments? If so, how to achieve this?	How to foster more effective relations and engagement with parliaments and stakeholder groups—from the private sector to trade unions and environmental groups across the many components of the GTIA and at the national level? How to ensure that interests from both developed and developing countries are adequately represented? How could international organisations better coordinate outreach and engagement with civil society? How to better assess and communicate GTIA outcomes and impacts on wider public policy objectives?

PART C:

THE GLOBAL TRADE AND INVESTMENT ARCHITECTURE AND GOVERNANCE CHALLENGES

This section explores four major areas in which challenges and questions on the future of the GTIA arise: 1) the scope of the GTIA, particularly with reference to its underlying principles and issues; 2) the functions of the GTIA; 3) the complexity of the GTIA; and 4) the roles and responsibilities of the GTIA in wider global governance.

7. THE SCOPE OF THE GTIA: PRINCIPLES AND ISSUES

7.1 DEBATES ON PRINCIPLES AND ISSUES FOR THE GTIA

Numerous debates are underway about the scope of the GTIA, both in terms of the principles that should underpin it and the issues that it should address. Amidst evolving trade and investment flows and challenges, growing linkages to wider public policy challenges, and the increasing diversity of stakeholders active in related debates, the GTIA is regularly called upon to address a widening scope of issues. While a substantive assessment of the particular principles and issues under debate is beyond the scope of this paper, the following analysis highlights some of the key discussions and questions that arise.

7.1.1 Principles

Although there appears to be a wide consensus on the importance to the GTIA of a number of core principles and values, questions abound on how each is to be applied and put into action in a changing global landscape. Perceptions of what governments and stakeholders mean when they invoke particular principles and values can also vary widely.

The GTIA is underpinned by a general principle in favour of openness. Although in practice most countries argue for a nuanced approach, few are in favour of liberalisation all the time or against all forms of protection. The multilateral trading system has long been characterised by a commitment to a rules-based approach to trade relations, both to help manage power politics and to provide security and maintain openness in times of economic crisis. In the wake of the most recent financial crisis, for instance, WTO disciplines were widely viewed as having acted as a bulwark against protectionism in the form of raising tariffs, although many countries did still introduce other protectionist measures. In the multilateral arena, the principles of MFN, where countries cannot discriminate between their trading partners, and national treatment, stipulating that imported and locally produced goods should be treated equally, are considered core principles. However, WTO members have concluded hundreds of bilateral agreements that derogate from the MFN principle, and the application of the principle to regional and plurilateral agreements is a complex matter.⁵⁶

The principle of multilateralism is widely viewed as the most desirable foundation for international trade and investment cooperation because it offers the greatest potential for rules with universal coverage. For instance, there is broad recognition that multilateral approaches remain the best option for rules on subsidies because these offer the prospect of more global coverage and greater gains in terms of market access than bilateral or regional rules. For smaller and weaker countries, multilateral negotiations offer the potential to build great bargaining power through coalitions with other countries, whereas in bilateral negotiations they must go it alone with more powerful economic partners. As such, the principle of multilateralism is frequently invoked as preferable in terms of fairness and inclusiveness. On inclusiveness, the idea is that an effective and inclusive global trading system is a global public good—for the purposes of legitimacy, for producing fair outcomes and for promoting predictability and stability in global trade relations (Mendoza

⁵⁶ Regional agreements under WTO rules are permitted as long as these cover nominally all trade and all modes of supply and most sectors. Plurilaterals, if not included in Annex 4 to the WTO Agreement, have to be applied on an MFN basis. FTAs are also governed differently under the GATT and the GATS.

2003; Puri 2011). The legitimacy of international agreements is, for instance, undermined when the capacity of developing countries to implement them is weak or absent. For developing countries, appeals to principles of inclusiveness in the WTO context often go hand in hand with the principle of “consensus-based decision-making,” which places priority on the consent of all members. The principle of fairness is regularly invoked, but also intensely debated. What constitutes “fair trade” to some may be considered “unfair trade” by others. Fair trade schemes that aim to boost protections for developing country workers and producers may be viewed by others as posing unfair constraints on their access to markets.

One of the most frequently invoked principles in the GTIA is that trade and investment agreements, and their associated institutions, should better advance development. As noted above, debates emerge across the GTIA on the degree to which developing countries and LDCs participate in, and benefit from, the global trading system, as do arguments on how the system can and should be tailored to respond to their needs, and on what can be done to better translate principles of development into action. These debates manifest themselves in various ways. Across the GTIA, for instance, there are calls to respect national “policy space.” At the WTO many developing countries appeal for restoring attention to the development values and ambition embodied in the 2001 Doha Development Agenda (now more commonly referred to simply as the Doha Round), as well as more effective operationalisation of principles such as S&DT (Stiglitz and Charlton 2004; Ismail 2013). The principle of S&DT remains highly valued by most developing countries as a rhetorical and strategic tool used to assert broad, collective political positions in negotiations. However, there are numerous calls to view afresh the principles needed to address the challenges facing the diversity of developing countries (Conconi and Perroni 2015). There have long been proposals for more flexible, issue-specific approaches to S&DT, and to differentiate more between different types and circumstances of developing countries (Meléndez-Ortiz and Dehlavi 1999). For some, this can be addressed by ensuring that agreements enable sequencing and pacing of reforms in light of development needs and institutional capacities, flanked by Aid for Trade. There are also, however, calls for substantive differences in trade obligations, rights, and privileges depending on development needs and opportunities. Further, there is growing interest in approaching the question of development, and also SD&T, from the perspective of improving the ability of developing countries over time to finance their own development. The SDGs, for instance, offer a new way of looking at differentiated capacities, allowing for the prospect that not all countries will be able to do everything in the expansive agenda, but many will try to do some things that reflect their needs.

A further principle that regularly emerges in discussion of the GTIA is sustainable development, as included in the Preamble to the Agreement Establishing the WTO. The

new SDGs strengthen the relevance of the sustainable development principle to the wider range of actors and processes in the GTIA, both in terms of ensuring trade and investment rules and policies do not run counter to the spirit of the SDGs and also in terms of harnessing them to respond to sustainable development challenges ahead.

Ongoing differences between the EU and the US on biotechnology, particularly on genetically modified organisms (GMOs) for crops and food, clearly illustrate the struggles within the GTIA on the “precautionary principle.” They highlight divergent views among some governments on how to assess impacts and adjudicate different views, both scientific and value based, on where and how countries should be able to regulate international trade on the basis of the precaution amid WTO principles of non-discrimination (Josling 2015; Patterson and Josling 2002). Such debates frustrate those keen to smooth trade by promoting regulatory convergence, but also reflect strongly held public concerns that many democratic governments and parliaments are committed to reflecting.

Across the international trade and investment arena, governments, experts, and stakeholders regularly appeal to the importance of transparency of measures and policy. More broadly, the principle of transparency is also invoked as a core component of accountability, informed decision-making, and good governance, although numerous tensions arise on its implementation. Civil society groups, for instance, call for greater transparency of international negotiations on trade and investment and in dispute settlement proceedings. Governments, however, express a variety of views on how much transparency is necessary, for which stakeholders transparency should be enhanced, and how to go about such improvements, noting the trade-offs that can emerge between transparency and the efficiency of decision-making. As noted at the start, competing visions on the goals and outcomes of the GTIA spill over into a multitude of perspectives on the effectiveness of commonly-invoked principles and the ways they are applied, as well as on the whether and where there is a need for new principles to guide the system.

7.1.2 Issues: old and vexed, missing and new

Governments have long struggled through negotiations to define what trade and investment is about—even what counts as part of trade and investment—and how to address new and emerging “non-trade” issues, and the intersections among them. There is considerable diversity in the range of issues on the table for greater attention in the GTIA. In each case, the state of play varies widely, as do the demanders, interests, and politics at hand. For some issues, governments have forged deals but challenges remain on how to implement them more effectively. Other issues are on the agenda with some political momentum but with no consensus on how to make decisions or approach them; and still other issues are not on the agenda at all due to technical challenges or political opposition.

A number of goods and services long omitted from the formal multilateral trade architecture have significant trade value ranging from energy and certain commodities to e-commerce.⁵⁷ Although WTO rules cover fuels,⁵⁸ they appear deliberately not to be a focus of decision-makers in the WTO context. Numerous calls exist for such “missing” issues to be more directly addressed in the GTIA. Many proposals have been made, for instance, to update international trade rules to reflect the growth of the digital economy and e-commerce, tackle the rise of trade in data, and contribute to the climate agenda. Other “new issues” on the trade table include calls for greater attention to challenges of cross-border taxation; innovation; the responsible use of balance of payments provisions when countries face crises; export restrictions (Cardwell and Kerr 2011); and concentrations of market power. There are proposals for a new generation of international commodity agreements to help stabilise commodity markets (Stoler 2011). In addition, although IP protection is not a new issue for the GTIA, there are continuing efforts to expand its scope, in particular by using FTAs to boost minimum requirements for IP protection and enforcement amidst recurring resistance from consumer and development advocates (Correa 2013; Shadlen 2005; Shaffer and Brenner 2009).

The case of TRIPS-plus standards underscores that some so-called new issues have been around so long that they are best understood as “vexed issues.” For instance, there have long been discussions on how and whether the global trading system should address the movement of skilled and unskilled labour (Brau and Pinna 2013). There are also longstanding discussions on investment, with resurgent proposals for more comprehensive and updated multilateral rules on investment. Importantly, although there are calls to move beyond “yesterday’s” negotiating agenda on trade, many of the “older issues”—trade in industrial goods, agricultural goods, and services—have tough dimensions that continue to divide governments and remain key priorities for many countries and stakeholders. On agricultural trade, for instance, concerns about food security, livelihoods, and sustainability concerns persist, giving rise to calls for new approaches. Similarly, longstanding concerns about a competitive “race to the bottom” in environmental and labour standards spur continued debates on how and whether labour issues should be incorporated into trade arrangements (Jackson et al. 2008; IISD & UNEP 2014). For instance, the potential role of trade agreements in promoting labour standards, an issue that has never taken hold at the WTO, has re-emerged as a topic among stakeholders in the context of the TTIP and TPP negotiations.

The expanding scope of issues on the table for some form of international cooperation has numerous implications for the GTIA. While the various issues often present discrete challenges, and discussions on them have their own political dynamics, there are some common threads in terms of the questions they raise for the architecture.

First, most of the old, new, and vexed issues raise questions about intersections of the GTIA with other “non-trade and investment” international laws, goals, architectures and processes and with national government agencies and laws, as well as private initiatives. Across various forums, recurring debates arise on how to manage the intersections between trade and investment, on the one hand, and wider public policy objectives, on the other. Where and how do trade rules, measures, and flows present risks? How can these risks best be addressed and how should the GTIA respond? And, conversely, in what ways could trade and investment rules and flows be harnessed to achieve broader public welfare goals?

As noted above, governments have for many years closely negotiated what constitute trade and “non-trade” issues, and whether or not certain “non-trade” issues should be on the trade and investment agenda. Some governments and stakeholders fervently oppose even general inter-governmental discussion of some of the “trade and” issues for fear that these will creep onto the trade negotiating agenda. Over the past 15 years, however, there has been growing recognition of the ways in which many supposed non-trade issues are in fact deeply impacted by trade or relevant to it. Environmental issues such as fisheries subsidies, for instance, are on the WTO’s Doha negotiating agenda and also feature in the TPP. The adoption by some countries of policies to reduce greenhouse gas emissions has restored interest in clarifying trade rules on numerous fronts. Further, with the AAAA’s call to integrate sustainable development into trade policymaking at all levels, we can expect the “trade and” focus of future negotiations on trade and investment questions to intensify. As the economic drivers of many of the sustainable development challenges become more globalised or internationalised, solutions increasingly imply changes to “behind the border” measures and regulatory regimes. This, in turn, underscores that the time may have come to think afresh about novel, less fragmented ways to address the many new and vexed issues that cut across trade, investment, and finance within the framework of global cooperation for sustainable development.

The fact that a range of “old issues” already in the trade architecture are not well addressed raises questions about whether old issues could be better addressed through new approaches. Governments also have numerous ways of making progress where the issues are contentious. As we have seen elsewhere in this paper, options include plurilateral approaches, side agreements, provisions that differentiate

⁵⁷ The global trade value of electrical energy services was estimated by the International Energy Agency at more than US\$ 37.2 billion in 2012 (IEA and OECD 2014; UNCTAD 2014a). According to the WTO, the trade value of business to consumer (B2C) reached US\$1.2 trillion in 2012, and US\$12.4 trillion in the case of business to business (b2b) e-commerce (WTO 2013c).

⁵⁸ The trade values of oil, gas, and coal were US\$1.7 trillion, US\$268.9 billion, and US\$125.6 billion in 2012, according to Comtrade global export data (Selivanova 2007; Goldthau and Witte 2010).

responsibilities, or extended deadlines. When such routes are chosen, however, how do we ensure incorporation of crosscutting principles, such as inclusiveness, sustainable development, and transparency? The choice of issues may require looking for new negotiation modalities or types of cooperation, for instance, through policy dialogue rather than rule-making or through capacity building and transparency rather than harmonisation. Such choices may, in turn, call for the adaptation and strengthening of some of the GTIA's functions. Even those issues that primarily demand action at the national level may have implications for the GTIA's functioning in the area of capacity building, technical assistance, and Aid for Trade.

Second, where governments do agree on the need for action to better protect or advance “non trade and investment concerns,” questions arise about the kinds of actions that can be taken within the GTIA. One option is to inject public interest and sustainable development concerns into trade agreements through existing legal infrastructure such as the WTO's GATT Article XX and its agreements on TBT and SPS measures. Already, for instance, WTO agreements include preambles and a set of safeguards, exceptions, exemptions, and other flexibilities that create the legal framework for addressing public interest considerations. Further options include clarifying trade rules regarding the scope that governments have to regulate based on production and process methods (PPMs) where these raise environmental or social concerns. In addition, there is also the possibility of concluding complementary side agreements or chapters on environmental, labour, or others issues. There are diverse views, however, on the extent to which such approaches have been or will be effective or sufficient; on how the effort to secure environment, human rights and social objectives through trade rules may disadvantage developing countries; and on whether they would adequately safeguard international public interest agreements, such as on environment and tobacco control as well as potential future agreements on climate change, from trade challenges.

Conversely, another option is to ensure that negotiators in “non trade” areas better understand and account for trade policy measures and rules. In practice, numerous “non-trade” agreements regularly refer to trade in a number of forms, including provisions for trade-related measures in the case of non-compliance; statements of deference to trade principles; assertions of principles in the case of conflicts of international laws; and declarations of mutual supportiveness (Pauwelyn 2003). Although some legal debates about intersecting laws have been addressed in WTO disputes to date, political debates and legal questions continuously arise, particularly on new issues. For instance, in the climate arena, there are debates about the intersection of rules established by the WTO's GATS Agreement, the ICAO, and the IMO, and questions from those who propose sanctions as an incentive for compliance in climate clubs on how to make these “WTO safe.”

A further set of challenges for the GTIA derive from the ways that trade and investment dispute settlements can “reach” into other areas of public policymaking, thus, by default, expanding scope. For instance, disputes at the WTO have seen governments challenge each other on a range of domestic regulatory issues with international trade linkages, from eco-labelling to public morals, tobacco control, food safety, and renewable energy.

7.2 SCOPE OF THE GTIA: QUESTIONS FOR CONVERSATIONS

7.2.1 Principles

- Are the principles currently invoked in the GTIA adequate? How do they fall short in a 21st century context and how can their relevance be addressed? Are new principles needed or should the focus instead be on clarification, interpretation, and implementation of existing ones?
- How can principles of transparency and inclusiveness be better incorporated across international trade negotiations at whatever level of subsidiarity?

7.2.2 Issues

- Which new—and vexed—issues should be taken up in the GTIA and where? Who should set the agenda and decide? And what if views on priorities and how to address them diverge?
- What is the array of options for addressing new or vexed issues in the GTIA and through what functions? Does the particular issue demand greater cooperation in terms of new rules, greater policy dialogue, stronger transparency, more effective Aid for Trade for developing countries, or regulatory cooperation? In what ways might the GTIA need to be adapted to respond?
- Does the issue demand action alongside the trade and investment system, through joint action with other parts of the international system, or through treaties in other areas? Where are clarifications needed on the division of labour and intersection of international trade and investment rules, and treaties in other areas? Does the issue require specific commitments to complementary action in the GTIA, such as through complementary or side agreements? Or are such commitments and actions best deferred to the national or regional levels?

8. FUNCTIONS OF THE GTIA

As documented in Part A, the GTIA serves a range of governance “functions”—such as facilitating the negotiation of new rules; providing for the settlement of trade and investment disputes; enabling regulatory cooperation; and monitoring of compliance with agreements—each of which involves an array of different actors, from international organisations to regional ones, national governments, experts, and stakeholders (see Box 1). Given the expanding demands on the GTIA and its growing complexity — comprising not only international treaties but also initiatives ranging from cooperative arrangements to voluntary standards—it is also important to consider how well the GTIA serves the various functions required, and where adjustments, improvements or new efforts are needed. The following discussion takes a functional approach to the future of the GTIA, highlighting debates on the various functions it serves or could serve.

8.1 FUNCTIONS OF THE GTIA: AN OVERVIEW

8.1.1 Strategic oversight and policy dialogue

Many governments, industry and citizen groups, and scholars express frustration with the absence of a clear process for strategic oversight of the GTIA as a whole. In particular, they lament the limited opportunities for multilateral, inclusive, and multi-stakeholder dialogue on the strategic direction of the system, or on new, emerging, or “difficult” issues. Where can governments boost transparency and oversight of multilateral and non-multilateral rules in the GTIA, review the core dynamics and trends in trade policy, and consider new modes of trade and investment cooperation? Where, for instance, can governments potentially set transparency guidelines for non-multilateral negotiations? Where in the GTIA should governments keep track of their implementation of the new SDGs and on how well the system as a whole addresses the needs of the poorest countries?

8.1.2 Negotiation and rule-making

Proposals abound for new approaches to the GTIA’s negotiation and rule-making function. Here we focus on issues related to the principles and process of negotiations (debates on subsidiarity in rule-making—in other words, at which level negotiations should take place—are taken up in section 9).

At the multilateral level, dissatisfaction with the pace of negotiations has revived debates on the relevance of the WTO’s consensus principle and single undertaking approach

and is spurring exploration of alternative, hybrid or “menu” regimes with flexible and multi-speed arrangements (Wolfe 2005, 2009). Frustration with the time and compromises necessary to negotiate new binding rules has also prompted interest in other options for cooperation on international trade and investment from soft law approaches and regulatory cooperation to more market-based initiatives such as voluntary standards described in Part A, Section 3.

Amidst a rising number of informal, “secretive”, and/or exclusive processes for concluding trade and investment deals, there are mounting public and parliamentary frustrations with closed and non-transparent negotiation processes. Although informal and closed processes, defended by participants as necessary for open communication and consensus-building, will likely always have a place as a means to build international cooperation, they raise questions about the legitimacy of the international rules forged, constrain the prospects implementation, and can also fuel fears and suspicion among those excluded (Melendez-Ortiz and Abdel-Latif 2014). While the growing use of coalitions in WTO negotiations has transformed the nature of “Green Rooms” and other informal processes long-maligned for lack of accountability, they have not put to rest concerns about the transparency and inclusiveness of WTO negotiations dominated by major players. Similarly, a number of new plurilateral and regional negotiations have sparked concerns from countries that are not participating—either because they choose not to or because they have not been invited to join them. In both scenarios, those excluded or “left out” often argue for opportunities to observe and provide input into negotiations, particularly where the outcomes may have a significant impact on them, whether by changing market opportunities or by establishing new regulatory standards that they may later find themselves under pressure to implement. Notably, while mega-regional negotiations for the TTIP and TPP have not provided any formal opportunities for engagement by observers, members of the Pacific Alliance have opened negotiations to over 35 observer countries.⁵⁹

Across the GTIA, there is also debate on what new approaches to negotiations may be required where governments seek to tackle behind-the-border issues and respond to the rise of GVCs (Draper and Freytag 2014) (see discussion in section 8.1.3 below). Further, sustainable development challenges impose new demands on trade and investment negotiation processes, including for modalities that better enable governments to juggle mercantile priorities with the broader public policy imperatives. The conclusion of the SDGs, for instance, relied on extensive stakeholder consultation and input, thereby strengthening the ultimate result. In the trade and investment arena too, stronger mechanisms for transparency and for the consultation and engagement of a diversity of stakeholders—from the private sector to civil society—as sources of expertise, on-the-ground experience, and practical solutions

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in negotiations on trade and investment will also be vital if the GTIA is to foster cooperation that serves sustainable development.

Finally, developing countries raise numerous concerns about the negotiation function in the GTIA. They highlight that differences in national capacities on trade and investment policy, rules and negotiations, and the depth of national consultation processes, can create asymmetries along all stages of negotiations—from issue identification to agenda setting, and from day-to-day negotiations to the final stages of deal-making. At the WTO, particular concerns have arisen about accession negotiations, and there are calls for mechanisms to better support the coalitions that developing countries forge, particularly the smallest and poorest, to represent their interests.

8.1.3 Regulatory cooperation

Changing trade and investment realities have provoked growing interest in the role of the GTIA in regulatory cooperation in recent years. As trade negotiations move increasingly to “behind the border” issues, many different spheres of domestic regulation come under scrutiny, from environment to health and social policies. The approaches, vehicles, and forums chosen for undertaking regulatory cooperation vary widely, sparking debate about how to balance the push to reduce costs to business by smoothing regulatory differences between jurisdictions with familiar “right to regulate” concerns (Breckenridge 2015).

Cross-border regulatory cooperation can take several forms, ranging from information exchange and transparency commitments to mutual recognition of standards and harmonisation of regulations. Such cooperation can occur through many vehicles and institutional mechanisms, not only trade and investment treaties (Steger, 2012). Even where countries are not bound by international laws, regulatory norms and practices can spread—both consensually and non-consensually—through legal transplantation; political dialogue and unilateral pressures from more powerful countries; the diffusion of policy ideas; mimicry and emulation of foreign practices and institutional arrangements; day-to-day technical cooperation among networks of national regulators; and corporate lobbying, as well as through training, technical assistance and capacity building (Skyles 2015).

At the core of the multilateral trading system, the WTO includes some disciplines related to regulatory policies, although nowhere does it impose harmonisation or recognition arrangements for all members. The SPS Agreement provides some requirements regarding health and safety-related norms for agricultural products, referring to an indicative list of international bodies promoting SPS norms, while the TBT Agreement tackles technical requirements imposed at the national level on goods encouraging the use of international standards where these exist. Conformity assessments of procedures for technical

product regulations are also covered by WTO rules and refer to relevant recommendations by international standardising bodies in most cases. Regarding services, the GATS calls on WTO members to develop necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not act as a trade barrier (Lim 2014). The agreement also provides for the establishment of mutual recognition on some matters such as licensing, but does not require WTO members to recognise equivalent foreign regulations. The TRIPS agreement, meanwhile, requires minimum standards of protection for IP (Hoekman and Mavroidis 2015).

Although the WTO’s regular committee work can smooth tensions on regulatory cooperation issues, allowing members to ask questions about each other’s policies and helping them avoid resort to the global trade body’s dispute settlement arm (Wijkström 2015), the WTO does not, however, have a place for evaluating the negative impacts of regulatory differences on trade and investment flows, or for supporting processes to reduce them. Members are required to submit some tens of thousands of notifications of regulatory measures, but these transparency requirements do not require members to indicate the potential effects on trade (Wolfe 2015c). If there were an appetite among WTO Members for greater multilateral guidance in this area, a number of proposals exist for critical mass and plurilateral agreements to improve regulatory coherence (Bollyky 2015). Further, in light of the multiplying challenges to effective implementation of rules on some regulatory issues—such as traditional subsidies disciplines—there is growing interest in new cooperative frameworks or mechanisms, such as mechanisms that could help coordinate subsidies policies among nations.

In many countries, there is a wide gap between trade negotiations and regulators; not only that national authorities tend to regulate in silos, they also rarely consider the trade and investment impacts of their policies and decisions, or lack the mandates and procedures to do so (Mavroidis 2015). At the national level, there are well-documented challenges to bringing together the wide range of state and non-state players relevant to regulatory matters to inform trade and investment negotiations. The assumptions, methodologies, and processes of regulatory decision-making differ in important ways to those deployed in the trade arena. National regulatory processes also involve intricate checks and balances, transparency procedures, processes for gathering evidence, and review, and systems vary widely among countries. In many cases, changes require parliamentary scrutiny, and the terms of regulations—and the nuances of their interpretations—are regularly disputed in domestic court systems. As such, international negotiations that touch regulatory cooperation raise questions about how to pursue coordination and coherence across borders without threatening sovereign regulatory autonomy or democratic decision-making processes. The emphasis on stronger coherence and cooperation on regulatory matters also spurs calls from developing countries for more Aid for Trade in this

area (Cattaneo 2015). No matter how mercantilist trade and investment negotiators are or would like to be in negotiations, they alone are not vested with the authority to “trade away” the regulatory norms that politicians and national regulators have put in place. Conversely, trade and investment negotiators do not control many of the policies and regulations about which critics of trade deals raise concerns.

At present, the GTIA does not provide any particular incentives and mechanisms to encourage national regulators to consider and assess the trade and investment effects of regulatory decisions, and although some trade and investment negotiators work to engage regulatory authorities in dialogue on options for international cooperation, this tends to be ad hoc. Further, there are calls for greater transparency of national and regional regulatory reform processes so that foreign countries can provide input and feedback; such transparency it is argued would boost the prospects for coherence among national regulations, and better enable industries to prepare themselves for the kinds of regulations likely to be approved. Although solutions to such problems may primarily require action at the national level, could the GTIA provide incentives or facilitate progress in this respect? Are there ways in which the modalities of international trade and investment negotiations could usefully be adapted to spur greater transparency at the national level and to facilitate coordination and the engagement of regulatory authorities on a more systematic basis? What implications do the various different models for international cooperation on regulatory matters have for the various components and functions of the GTIA, and where in the GTIA could lessons and options be shared and discussed?

8.1.4 Dispute settlement

On dispute settlement, among the numerous issues that arise for the GTIA, we focus here on five. First, although the field of international trade law is often noted for the strength of the WTO’s dispute settlement and remedies systems, there has been a proliferation of trade and investment-related dispute settlement mechanisms (DSMs) at the regional, bilateral, and plurilateral levels (Marceau and Wyatt 2010). Most FTAs contain establish procedures for dispute resolution among signatory countries although their design and functioning vary widely. For example, the EU has included DSMs in all its bilateral trade agreements concluded after 2000, modelled on the WTO dispute settlement system (European Commission 2015a). As such DSMs become more prevalent, and more far-reaching, numerous questions arise, such as about their intersection with WTO procedures and rulings (Kuijper 2010), potential jurisdictional conflicts, and the implications of transnational lobbying and foreign venue shopping in dispute settlement (Eckhardt and de Bièvre 2015).⁶⁰

Second, on the investment front, there is debate about ISDS mechanisms and the nature of investment resolution rules. As noted in Part B, Section 5.2.2, the prospect of investment rules being incorporated into the final EU-US TTIP deal has

rekindled fierce public debate on both sides of the Atlantic, with critics arguing that ISDS clauses could curb countries’ sovereign right to regulate in the public interest; that ISDS mechanisms detail rights but too few responsibilities for investors, and that they privilege private rights-holders over states, as well as public interest organisations that have no standing in such cases. Although ISDS rules have already been included in all EU trade and investment agreements since 2009, the TTIP negotiations are focusing attention on how such provisions can be adapted and improved. Numerous old and new reform proposals exist, including: calls to create a permanent multilateral investment court or an appellate mechanism to arbitrate investment disputes (Bridges 2015) and proposals update international investment resolution rules outdated in an era of deep supply chains (Lester 2015). There are also calls to reform the ICSID and for governments to make greater use of the room for strategic manoeuvre available to them before and during the arbitration of disputes (Gertz and St John 2015). Already through the UNCITRAL countries have agreed to rules on the transparency of international investment proceedings.

Third, as noted in Part C.1, numerous questions arise about the relationship between dispute settlement arrangements in the trade and investment arenas, and the proliferating array of specialised international courts, dispute settlement systems and tribunals in other areas, such as those established by multilateral environmental agreements (MEAs), which can also touch trade and investment law. Notwithstanding the principles of the Vienna Convention on the Law of Treaties, the challenges of addressing conflicts of norms between the various courts are well-documented (Kuijper 2010).

Fourth, concerns about fairness are also often raised in connection with the GTIA’s dispute settlement function. Across the many trade and investment DSMs, asymmetries persist in terms of access to justice for the smallest and poorest countries, the enforcement of rulings, and capacities to deal with trade remedies. Many developing country governments and companies face challenges in identifying where and how violations of trade and investment agreements are harming their interests.

Fifth, and following from the aforementioned issues, there are numerous calls to boost the transparency of dispute settlement proceedings and opportunities for public engagement in them, and to constrain the potential for their abuse by powerful business interests. Where trade measures threaten their transnational business interests, there is a growing incidence of lobbying by firms to persuade governments to file a WTO case against their own government, or other governments (such as in disputes on gambling, tobacco and anti-dumping). Such trends suggest a growing resemblance between trade disputes and investment

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An effort to systematically identify the DSMs in RTAs that have been notified to the WTO and were in force at the end of 2012 provided a typology of them based on their nature and design (Chase, Yanovich, Crawford and Ugaz 2013).

disputes, where investor-state disputes regularly arise (Eckhardt and de Bièvre 2015).

Finally, an often-overlooked dimension of dispute settlement in the GTIA is the extra-territorial influence of national rulings. In some instances, companies take their trade or investment-related grievances directly to national courts in jurisdictions where their company or a subsidiary has standing. In some markets, the international impact of national court rulings can be significant. For instance, decisions of the US Supreme Court and the US Federal Circuit on the interpretation of IP laws such as in the area of patentability criteria set powerful precedents that are emulated in other national courts and reflected in the decisions of patent offices around the world.

8.1.5 Treaty administration, transparency and monitoring

A core aspect of the administration of international trade and investment treaties relates to the transparency of trade and investment policies and measures. Transparency is also critical to help track trade and investment trends and outcomes. Transparency is, for instance, increasingly important in light of the 2030 Sustainable Development Agenda, where commitments to monitoring progress are relevant to the GTIA because many of the SDGs have targets in the area of trade and investment, which demand appropriate tracking (Tipping and Wolfe 2015).

At the WTO, numerous agreements call for notifications of changes in trade policy and the use of trade measures, such as non-tariff barriers and SPS measures or export restrictions (Fliess 2014). The global trade body has several additional monitoring processes and transparency provisions within its agreements, and their number has grown. These include notification requirements embedded in some WTO agreements such as for subsidies; the monitoring activities of the WTO's regular committees; and institutionalised surveillance mechanisms such as the TPRM, which periodically reviews the trade policies of all WTO members. There is, for instance, growing interest in boosting the technical work of WTO bodies like the TBT Committee and the SPS Committee that are responsible for receiving and reviewing notifications, with proponents arguing that this work helps ensure some measure of transparency in regulations, which, in turn, limits the scope for conflict (Wijkström 2015).

Some basic monitoring of RTAs and plurilateral trade agreements is undertaken at the global level, with the WTO secretariat maintaining two databases for these based on members' notifications. For members of the WTO's plurilateral trade agreements, the TPRM examines trade policies and practices with respect to them (WTO 1994). In practice, however, many RTAs are not notified to the WTO, making proper tracking of trade deals at the multilateral level complex (WTO 2015a). There has been some strong resistance, moreover, to assessments of the impact of RTAs and PTAs on the WTO system.

In the Aid for Trade area, mechanisms for monitoring have improved; through, for instance, the Global Review of Aid for Trade and the expansion of the TPRM's scope for monitoring Aid for Trade flows (Agboghoroma 2009). On the SPS front, notifying members are expected to mention how their policies would affect others.⁶¹ At the insistence of developing countries, for instance, the Committee on Trade and Development (CTD) rather than the Committee on RTAs (CRTA) is the forum for reviewing RTAs among developing countries. With regard to SPS measures, developing countries secured provisions calling on developed countries to advise how new standards they adopt would offer S&DT to developing nations.

Many bilateral and regional agreements also call for notification and transparency. In practice, however, transparency falls well short of these principles with widespread failures to comply effectively with notification requirements. Complaints about the failures by countries to fulfil their notification obligations regularly arise in the work of the WTO's regular committees and also in WTO negotiations. For instance, notifications feature as a key aspect of the WTO's ongoing agriculture talks, with key players arguing that countries need to update data submissions on farm support to discuss trade policies and possible new concessions.

Beyond the WTO, there are numerous efforts to provide up-to-date information on trade and investment measures, flows, and policies. While some of these are led by international organisations such as UNCTAD (which provides statistical databases on trade, FDI, external financial resources and commodities as well as an Investment Policy Hub), independent stakeholder initiatives that provide online databases of protectionist measures and fossil fuel subsidies illustrate how non-state actors can also feed into GTIA functions (Casier et al. 2014).⁶² Indeed, there is growing recognition of ways stakeholders could contribute to WTO notification and surveillance processes.

In addition to calls for more timely notifications of trade measures (Josling 2014), there is growing emphasis on the need for early warning of potential and actual regulatory reforms in foreign markets. Further, as mentioned above, many governments and business groups, particularly in developing countries, call for mechanisms to monitor the vast array of various private standards and certification schemes in the global market place, for which notification requirements do not exist.

61 | Other procedural innovations include earlier submissions of factual presentations in the case of RTA monitoring, and longer comment periods for SPS notifications.

62 | See, for instance, the work of the Global Subsidies Initiative (monitoring subsidies by WTO members) at <http://www.iisd.org/gsi/>, and of the Global Trade Alert (monitoring protectionism) at www.globaltradealert.org.

Although the WTO's TPRM is the GTIA's most comprehensive process for reviewing and boosting the transparency of the trade policies and practices of countries, its focus is limited to WTO rules. Moreover, critics argue that it does too little to help countries explore how they can better take advantage of the multilateral trading system, identify what additional support they need, or reinforce development-oriented national trade policymaking. There are several proposals around to widen the TPRM's mandate (Chaisse and Matsushita 2013), engage more stakeholders in the TPRM process (Hoekman 2011), take a stronger stance on the performance of countries (Kessing 1998; Zahrnt 2009), and promote wide discussion of the reports within countries. At present, the TPRM reports have an uneven approach to the most contentious trade policies of members—sometimes they are analysed in detail and sometimes they are not described at all—and they do not include detailed analysis of key provisions of RTAs to which the country belongs or the implications of RTA membership.⁶³ It has also been argued that the TPRM reviews are too infrequent, every four years for developing countries and less frequently for LDCs, to serve as a dynamic tool for policy dialogue. In addition, a number of options have been put forward to boost the participation of developing countries and the substantive benefits of the TPRM process for them (Laird and Valdés 2012).⁶⁴

There are also many proposals for harnessing the TPRM as a tool for integrating development and other dimensions—ranging from environment to labour, gender, and human rights considerations—into trade policymaking by incorporating impact assessments of WTO agreements (discussed further below). Further, there are calls to consider stronger roles for other international organisations, experts, and stakeholders in the TPRM process, which could help make the process more dynamic and produce higher quality reports (Deere Birkbeck 2009). At present, although the WTO secretariat staff responsible for the TPRM sometimes meet with national stakeholders, such as the private sector and labour unions, the TPRM process does not have any specific mechanisms to spur such inputs, nor is non-state actor participation allowed in TPRM meetings in Geneva.

Finally, as already alluded to above, the challenge of tracking the trade and investment-related indicators of the SDGs is renewing interest in monitoring. Recent research highlights the suite of actual and possible review mechanisms, and the challenges of coordination and information-sharing among the many inter-governmental institutions, processes and committees involved, as well as non-governmental actors (see Annex C for examples of potential review mechanisms for trade-related targets) (Tipping and Wolfe 2015).

8.1.6 Assessment and evaluation

At present, there is no formal, routine process in the GTIA for assessing the economic benefits and costs of trade and investment flows, rules and policies for different

countries or groups of stakeholders, nor for assessing their range of non-trade impacts—on social indicators or on the environment. Where assessments do take place, they occur on an ad hoc basis, and there are no mechanisms for systematically integrating such evidence into trade and investment decision-making processes across the many layers of GTIA. The “assessment” function, currently missing in the GTIA, is likely to emerge as increasingly important in future years, particularly in the course of efforts to monitor implementation of the 2030 Agenda and also due to the political pressures on governments to show how their international trade and investment agendas address public concerns on issues such as inequality, employment, food security, and the environment. Further, some developing countries underscore that more systematic assessments are important to help them gather evidence needed to persuade others of trade and investment difficulties they face, and the opportunities they require through trade and investment regimes.

The push to assess the potential the impacts of proposed trade rules before new deals are concluded, and to evaluate the impacts of existing ones, is not new. There have been numerous efforts to devise methodologies and pilot studies for ex-ante and ex-poste assessments of how trade rules impact development, sustainable development, the environment, gender, poverty, human rights, and labour at various levels beyond the WTO. At the international level, UNEP carries out environmental or sustainability impact assessments (SIAs) on trade negotiations, and several UN bodies have commissioned studies of human rights impacts. Assessments also sometimes take place at the national level, led by governments such as in the EU, the US, and Canada and also sometimes by non-state actors. Such assessments, however, generally focus only on domestic impacts, and while some seek to be independent assessments, others approach the task with particular political agendas or outcomes in mind. As in the case of monitoring efforts, there is mounting attention to the contributions that non-governmental actors—from business and NGOs to research institutions and networks of scholars—can make to assessment and evaluation both by conducting through independent assessments and also through input into governmental efforts (Casier et al. 2014).

Numerous proposals are on the table for how the GTIA that could more systematically and effectively perform

⁶³ In the case of the EU, there are questions of the efficacy of the review for the bloc as a whole and individual member states in terms of reflecting compliance across areas with disaggregated competence in the bloc.

⁶⁴ On the procedural front, participation in TPRM meetings is dominated by a relatively small sub-set of WTO members. Although the TPRM may assist smaller developing countries in forming an overview of their trade regimes as a whole, the process rarely attracts high-level participation, and the poorest and smallest countries participate only minimally in discussions of the performance of other WTO members. And, in terms of peer review, the TPRM process is more actively used by developed than developing countries—such as through submission of advance questions to countries—meaning that the direction of peer pressure flows more against the latter.

an assessment function. The relevance of attention to GTIA's assessment function has been clearly underscored by recent international agreement on the SDGs, which will require not only monitoring, but also some assessment of progress and of the factors that aid or constrain such progress.⁶⁵ In the WTO context, several proposals exist for incorporating greater assessment and evaluation of the impacts of existing and proposed agreements, either through the TPRM as noted above, or through a new mechanism. There have also been calls for a more coherent approach that links impact assessments of WTO agreements on developing countries to studies of the impacts of IMF and World Bank conditionalities. In addition, there are proposals for an ombudsperson function in the WTO that could receive complaints from stakeholders about development impacts of rules as well as challenges arising from lack of implementation of trade deals, which in turn could also boost the organisation's transparency and accountability.

8.1.7 Aid for trade and capacity-building

In terms of the GTIA's capacity-building function, the core vehicle is the Aid for Trade Initiative, which engages a remarkable array of international organisations, bilateral donors, and recipient countries in the effort to boost assistance to developing countries. Back in 2006, the WTO Taskforce on Aid for Trade emphasised the importance of additional, predictable, sustainable, and effective financing for meeting aid for trade objectives (WTO 2006). However, there are divergent views among beneficiaries and analysts on the extent to which the initiative is well targeted and effective, and whether it addresses developing country priorities and countries in greatest need (WTO and OECD 2015; Gamberoni and Newfarmer 2014). Moreover, the needs are constantly evolving: alongside outstanding needs for greater attention to supply side capacity building and trade-related adjustment (te Weld and Razzaque 2013), are calls for greater assistance on regulatory frameworks and GVCs (Gameroni and Newfarmer 2014; Cattaneo 2015; Hallaert 2013). In addition, efforts to make progress on the new integrated aims of the SDGs could give rise to increasing technical barriers resulting from environmental or social measures. We can thus expect greater pressure on Aid for Trade to help poor countries deal with the greater burden of compliance with these measures (WTO and OECD 2015).

The 2015 Aid for Trade review identified a number of lessons learned through the initiative's implementation to date including: providing high-level support for Aid for Trade projects, designating coordinating bodies to help manage these; ensuring private sector involvement, and properly managing risk (WTO and OECD 2015). Further, recent research concludes that the most effective Aid for Trade programmes are those that adopt a regional approach to tackling trade challenges while using finance from a combination of different donors, including South-South cooperation and engagement with the private sector (Timmermans 2015). The continued need for sustained and additional donor contributions also highlights the

importance of monitoring and assessing how well countries fulfil commitments to providing Aid for Trade. In addition, there are calls that implementation of the Aid for Trade Initiative should go hand in hand with efforts to implement the the 2030 Sustainable Development Agenda.

8.1.8 Measuring and analysing trade and investment

Several of the areas highlighted above bring us to the "research and statistics" function of the GTIA. As GVCs emerge as central to international trade and investment, efforts to devise appropriate methodologies and processes for capturing their dynamics and implications demand expert and financial resources (OECD and WTO 2012; Jansen 2014). To provide the right, comprehensive information to build an accurate picture of GVCs and their dynamics, the quest to obtain firm-level data may require action to spur collaboration among a multiplicity of national and international institutions and the private sector. Another statistical challenge for the GTIA is how to better gather comprehensive statistics on trade and investment in the world's poorest countries, particularly because informal cross-border trade is of great significance in regions such as Africa where a high percentage of the population is involved (Njiwa 2013).

National capacities to conduct research on trade trends, the implications of new agreements, and the potential gains and losses for different segments of society vary widely. Lack of adequate, policy-relevant research constrains the ability of governments to identify their negotiating interests and the range of options available to promote or safeguard their national trade, investment and sustainable development interests, and to act in ways that also support wider international public policy goals (Tussie 2009; Jones et al. 2010). Although international and regional institutions are working to fill these gaps, the needs far exceed them, particularly in terms of research that captures the policy implications of changing trade and investment dynamics, and helps the poorest and smallest countries discern how these impact their specific trade interests, policy options, and negotiation priorities.

Given the enduring capacity gaps in developing countries, what measure could be taken collectively and individually by the various international agencies with budgets for research on trade and investment? How could they boost the relevance, timeliness and targeting of research to meet developing country needs; support national research institutions and analytical capacities that could serve as durable sources of expertise over time; and ensure that research is communicated and disseminated in ways that are most effective and useful to developing countries? Where and to what degree is such research a global, versus regional or national issue, and through what vehicles can donors best coordinate, prioritise and allocate their resources?

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See <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

8.1.9 Outreach and stakeholder engagement

A final function of the GTIA concerns outreach and engagement with stakeholders, ranging from other IGOs and parliamentarians, to civil society groups, the private sector and academics (Hilf 2003; Shaffer 2004).

Parliaments and stakeholders express numerous complaints about poor opportunities for input into the many bilateral, regional, and plurilateral trade and investment negotiations underway, as exemplified by campaigns against the TTIP, TPP, and TiSA. As many of these lack an institutional framework such as that provided by the WTO for multilateral negotiations, critics argue that there is too little predictability or security in transparency procedures, release of draft negotiating texts, or opportunities for public consultations; and indeed that these differ widely depending on the negotiating party. The rise of soft law instruments, efforts to boost regulatory cooperation, and private standards for international trade and investment also raise questions about their transparency and the opportunities and vehicles for public input and review. Concerns about outreach and stakeholder engagement have also been debated for some 20 years at the WTO.

As the Doha Round languishes, calls persist for more effective engagement of capital-based policymakers, business and stakeholders in the direction of WTO negotiation processes as well as in the global trade body's system more broadly. Notably, over the past five years, there has been a marked disengagement of many NGOs and businesses from the WTO, in large part because of the sense that negotiations were not advancing.

The WTO differs from many other international organisations in that it does not offer any routine mechanisms and processes for constructive engagement of stakeholders, whether from parliaments, unions, NGOs, academia, or the business sector, in ways that feed into decision-making processes to ensure trade rules respond to public concerns and expectations. The WTO lacks, for instance, a process for accreditation of non-government actors, whether civil society or private sector, to observe or input into its regular activities (Halle et al. 2007; Bonzon 2014).⁶⁶ The WTO's regular committees and negotiating processes are not open to stakeholder or expert observation, except where such organisations or individuals are part of national delegations, or where information is communicated between international organisations around specific issues.⁶⁷ Stakeholders must instead rely on conventional lobbying techniques to influence governments; briefing papers, press statements, and informal meetings to provide factual input or advice; and second-hand journalist, or delegate reports to garner information on the substance and nuances of the discussions that occur.

Stakeholders can, however, seek ad hoc accreditation for WTO ministerial conferences. The secretariat provides various spaces and opportunities for stakeholders to

host events and distribute materials alongside formal ministerial proceedings and to observe the opening and closing ceremonies of the conferences. Further, several measures have been taken to increase opportunities for public participation in the non-negotiating aspects of the organisation's work, such as through opening some aspects of the dispute settlement process, and hosting an annual WTO Public Forum in Geneva. The WTO secretariat also makes efforts to engage a diversity of stakeholders in a variety of its other regular activities, including through invitations to serve as speakers in conferences, expert meetings, and trainings.

Historically, developing countries have been cautious on the push for a more democratic or open WTO, mostly because they feared that the primary beneficiaries would be stakeholders from developed countries, which would thus reinforce the overall dominance of developed countries in trade-related decision-making. More recently, however, although some understandably fear further pressures on already complex negotiation processes, there is growing understanding that stakeholders not only have interests, experience, and input that warrant consideration by trade and investment negotiators, but also that their engagement is vital for ensuring the legitimacy and approval of ultimate outcomes, and may also provide the key to moving negotiations in some areas forward.

In some instances, WTO committees invite other international organisations to present inputs, such as the involvement of the CITES in the global trade body's Committee on Trade and Environment (CTE). Unlike some other international organisations, however, the WTO membership has not broadly extended observership of its committees to all relevant international organisations. This means that WTO committees frequently discuss certain issues without systematic input or information-sharing from other relevant international regimes or organisations, which in turn also loses a potential opportunity for better understanding the WTO's rules and dynamics.

8.2 FUNCTIONS: QUESTIONS FOR CONVERSATIONS

- What governance functions are missing or underperforming in the GTIA? What functions are in need of reform and how?
- How can the GTIA's functions be designed in ways that respond to concerns about effectiveness, inclusiveness, legitimacy, and transparency?

⁶⁶ For early analyses of the WTO's engagement with civil society, see Esty (1998), Charnovitz (2000), and Halle (2007).

⁶⁷ The CITES Secretariat, for instance, has presented at the WTO's CTE.

- Where are there needs and opportunities for non-governmental actors to play a stronger role in the various functions of the GTIA? Where do the comparative advantages of initiatives undertaken by business, unions, research institutions, NGOs, and other stakeholder organisations lie? Where have they been most effective and how could they be better harnessed to enhance trade and investment cooperation in ways that support sustainable development? What are the risks and challenges from greater non-state involvement in certain GTIA functions in terms of transparency, accountability, and inclusiveness?

9. INSIDE THE GTIA COMPLEX

The growing complexity of the GTIA gives rise to a number of challenges “internal” to the GTIA, that is, in respect to the functioning of its core institutions, and its intersections with a growing number of trade and investment agreements. In this section, we focus on questions related to two such challenges: first, the place and role of multilateralism and the WTO within the GTIA; and second, the proliferation of RTAs.

9.1 THE FUTURE OF MULTILATERALISM AND TRADE DEALS BEYOND THE WTO

9.1.1 Whither the WTO?

As the WTO marks its 20th anniversary, recurring standstills in the Doha Round talks have spurred considerable discussion on “what ails the Doha Round” (Wolfe 2015b; Messerlin and van der Marel) and more broadly on the organisation’s future (Elsig 2013, 2014; Francois and Hoekman 2015; Meléndez-Ortiz et al. 2012; WEF 2015a). As the intensity of public debate on globalisation rises and falls, and the salience of specific trade challenges shifts, so does the debate on systemic issues facing the WTO.⁶⁸ Although the WTO is the key international organisation dealing with rules between countries on trade, interpretations of its mandate vary widely among its membership, as do views on what its core purposes, priorities, and orientation should be, which, in turn, shape visions for its future (VanGrasstek 2013; WTO 2014d; WEF 2015b; Hoekman 2014; Jackson 2002, 2012).⁶⁹ This section provides a taste of the debate thus far and a sample of key questions on the table.

Since its launch in 1995, the issue of WTO institutional reform—whether it is needed, in what form, and through what kind of process—has been an ever-present issue for

the organisation and its increasingly diverse membership (WTO 2007a, 2007b; Petersmann 2014). Recurring collapses of WTO negotiations have spurred examinations of the organisation on numerous fronts—effectiveness, its responsiveness to developing country needs, as well as its legitimacy, accountability, and transparency (Bacchus 2004; Bonzon 2014; Das 2007; Dhar 2014; Elsig 2007; Ricupero 2001; TWN 1999; Wolfe 2015a)—and a number of high-level efforts, such as the Sutherland Report, have explored the systemic challenges facing the WTO.⁷⁰ In 2009, growing concerns about the strategic direction of the WTO was one of the reasons that members resumed the practice of holding biennial ministerial conferences—called for in the WTO’s mandate, but which had lapsed in practice—and agreed to discuss ways to improve and strengthen the functioning of the multilateral trading system.⁷¹ Although WTO members endorsed the need for such reflection again at the 2011 WTO Ministerial Conference and the commissioning of a report by then-Director General Pascal Lamy from a panel of eminent experts on the future of the global trading system in 2012 (WTO 2013a), they are yet to take any decisions or provide guidance on a process to advance efforts to improve and strengthen the WTO. Meanwhile, the proliferation of RTAs⁷² and emerging mega-regional agreements (Stoler 2014) motivate considerable discussion on how to reassert the WTO’s role as the core locus of trade governance.

The past 20 years of the WTO show that some improvements and reforms are within the realm of the possible. The WTO’s General Council and ministerial meetings have made several formal decisions that alter how the global trade body works (Gallagher 2005; WTO 2007a;

68 | Calls from member states and scholars for attention to “systemic” challenges facing the WTO have been most acute at specific junctures in its relatively short history, most notably following the Seattle, Cancun, and Hong Kong WTO Ministerial Conferences, and also in the face of the ongoing failure of members to conclude the Doha Development Agenda. Compare, for instance, the table of contents of the volume edited by Krueger (1998) to that of Steger (2009). For debate on the future of the WTO in light of the ailing Doha Round, see Bluestein (2009), Bohne (2010), Cottier and Elsig (2011), Hufbauer and Schott (2012), Ismail (2009), Jones K. (2010, 2015), Steger (2009), and WEF (2015a).

69 | Efforts to take stock of its performance highlight ongoing debates about how well the organisation has achieved the purposes for which it was established and responded to the new challenges that have emerged.

70 | In 2004, former WTO Director General Supachai Panitchpakdi commissioned a consultative board of experts, led by former Director-General of the GATT and the WTO Peter Sutherland, to present proposals for institutional reform. The Sutherland Report was followed in 2007 by an independent commission on the future of the WTO supported by Warwick University. The Warwick Commission proposed a number of institutional changes, including increasing the size of the WTO Secretariat, expanding the powers of the Director-General, and revising the process for reaching new trade deals. The initiative was preceded by earlier efforts in the GATT system, such as the Leutwiler Report (GATT Secretariat 1985). See Consultative Board (2004) and Warwick Commission (2007).

71 | See Deere Birkbeck (2009), WTO (2009a), and WTO (2009b). The latter were both communications from WTO member states regarding the Geneva WTO Ministerial Conference held in 2009.

72 | For a discussion on this topic, see Baldwin and Low (2009).

Deere Birkbeck and Monagle 2009; Hoekman 2011), and the secretariat has undertaken a number of administrative, and incremental or informal changes to how the day-to-day work of the organisation is implemented. However, concrete guidance from members on how to move forward has been slowed by divergent views on whether existing changes have been sufficient; on where the greatest problems lie and the feasibility, desirability, and necessity of further reform; and on whether discussion of such matters would divert from, or could complement, political attention to completing the Doha Round, altogether. Meanwhile, stakeholders and scholars express a range of views on whether future reforms should be incremental or if a more radical constitutionalization or structural overhaul is in order. Further, there are debates on the degree to which the processes for such reform should be viewed as essentially technical or wider political undertakings (Petersmann 2014; Nelson 2014).

To date, the majority of proposals on the future of the WTO focus on its negotiation function. Given the failures of the Doha Round, there are a multitude of views on how much can be salvaged from the Doha Development Agenda (DDA) or whether to abandon it together, and the subsequent move by many big players to bilateral, regional, and plurilateral forums as a faster way to reach trade agreements, particularly on so-called new issues (Cottier, 2009; ICTSD and WEF 2013b; Deere Birkbeck and Monagle 2009; Hoekman 2011). Across such debates, there is often tension between proposals focused on promoting greater efficiency, and those aiming to boost inclusiveness, transparency and accountability (Wolfe 2015a; Narlikar 2011, 2015; Petersmann 2014). For instance, recent WTO ministerial decisions to pursue “new negotiating approaches” have spurred fears among many developing countries, particularly the WTO’s poorest and smallest economies, of an erosion of “multilateralism” and the consensus-based approach they consider the best available options for asserting their interests. Some analysts offer proposals on how variable geometry, critical mass and plurilateral approaches can be advanced in ways that preserve the multilateral spirit of WTO negotiations, while others raise alarm about dispersion of energy across and beyond an already overloaded multilateral agenda, noting that a number of longstanding negotiation topics remain relevant and urgent, but unresolved.

While scholars debate the options for future negotiations—from new decision-making procedures to a stronger role for the Secretariat and new approaches to the principle of consensus and voting—as well as the viability of launching and concluding new “Rounds” of negotiations at the WTO (Odell 2015), some governments have launched plurilateral negotiations as a practical way to move forward on issues that were not advancing with the entire WTO membership. Although the launch of plurilateral negotiations on services outside the WTO and on a non-MFN basis has stirred considerable debate—in part because it threatens the balance struck in the DDA between negotiations organised around three pillars—the launch of negotiations in the WTO

on environmental goods has proved comparatively less contentious, both due to the lower economic significance of the potential deal and also because the negotiations are seen as a positive way to advance the global climate agenda.

A further issue relates to the balance between the WTO’s negotiation and dispute settlement functions. Languishing negotiations raise numerous challenges for WTO dispute settlement proceedings where panellists lack updated and clear rules on the key topics under dispute (Goldstein and Steinberg 2007; Quick 2013). Views on how serious this problem is vary among members and legal experts, according to their opinions on how activist members of WTO panels and appellate bodies should be in their rulings. Some suggest that the WTO’s dispute settlement function may overstep its mandate when asked to reach decisions in the absence of guidance from the organisation’s “legislative arm” on issues that arise in disputes, particularly where these relate to new issues (Watson 2013). Other analysts suggest, however, a more expansive, interpretative role is desirable (Mitchell and Sheargold 2010).

Many of the questions and debates noted above on the numerous functions of the GTIA (see Part C, Section 8) also arise in discussions on the future of the WTO. For instance, dissatisfaction with inadequate spaces in the GTIA for strategic direction and high-level policy dialogue spur proposals to forge greater space for this “missing middle” in the WTO (Evenett 2009), such as through enhanced or new processes for senior political-level engagement, or by bolstering the work of the WTO’s regular committees. In addition, among proposals to boost the monitoring and transparency of RTAs in the GTIA, are numerous suggestions and debates on how to give the WTO a more effective role. Similarly, as noted above, there are many proposals to improve the WTO’s notification processes and its TPRM so that they can better serve as catalysts for transparency and policy dialogue within and among countries. On the capacity building function, there are also calls for boosting the effectiveness and development orientation of the WTO secretariat’s training and activities for developing countries. Questions also arise about the appropriate direction and audiences for the WTO’s research, analysis (WTO 2014j), and statistical work⁷³—and how best to make decisions about priorities and strategies for engaging and supporting developing country researchers, and cooperation with other international agencies in the production of joint analyses and associated allocation of resources.

Finally, with the evolving nature of trade and investment flows and dynamics, and their intersections with a diversity of public policy issues and behind-the-border regulations, how can the WTO deepen its collaboration with other relevant international agencies and better promote appropriate coordination within member governments? As the Doha Round fizzles, fears of disengagement from multilateral

73 | Examples of statistical reports regularly published by the WTO, see WTO (2014h), WTO (2014b), WTO (2014a), WTO (2014g), and WTO (2014f).

approaches spur debates on how to boost the WTO's outreach and external transparency to an expanding array of non-government stakeholders, from parliaments to civil society and business groups (Bonzon, 2014).

Together, the range of options and proposals on the table for updating and strengthening the WTO as a vehicle for multilateralism in trade also have implications for the much-debated matters of Secretariat's role and mandate—including its scope for taking initiative, the range of its activities, the role of its Director General, and the resources the institution requires (Nordstrom 2005; Elsig 2014; Hoekman 2011; Deere 2009). Even in the face of efforts by Member States to tightly constrain the scope of the WTO Secretariat's mandate and role, the Secretariat and several Director Generals have found subtle and careful ways to take initiative in some areas, albeit in less assertive ways than the Secretariats of many other international organisations (Barnett and Finnemore 1999, 2004; Abbott et al. 2015).

9.1.2 Trade deals beyond the WTO

The numerous deals clinched beyond the WTO—preferential, bilateral, regional, or plurilateral—provoke an array of views on whether these are “good or bad” for the global trading system, its governance and development, and also on their implications for multilateral trade architecture specifically.⁷⁴ Some FTAs are far more economically significant, and cover larger portions of world trade, than others. Moreover, FTAs may not only set a template for future negotiations, but can also serve as tools for rewriting the “rules of the game” for national regulations relevant to trade.

Some experts argue that bilateral and regional deals further complicate an already overly complex policymaking arena (Abbott 2014; Lejárraga 2014) and amplify some of the costs that companies face in international trade. Other analysts view regional deals as mechanisms for consolidating a multitude of smaller arrangements, thus simplifying trade rules for governments while reducing transaction costs and boosting economies of scale for business (ICTSD and WEF 2013c). RTAs can provide a vehicle for establishing rules among like-minded countries that are contentious at the multilateral level. A number of RTAs, for instance, incorporate stronger IP, environmental and social provisions than multilateral agreements, although their effectiveness and desirability is contested (George 2013, 2014). On the one hand, for instance, proponents of mega-regional FTAs see these as ways of tackling 21st century trade realities and concerns by forging “coalitions of the willing” to address new issues. On the other hand, the TTIP and (now completed) TPP negotiations have provoked intense debate about their implications for the scope of the GTIA and the future of multilateralism (Lim et al. 2012).

Together, the TTIP and TPP negotiations cover the majority of US export and import markets, thus potentially diminishing incentives for one of the world's most significant economic players to pursue multilateral approaches.

Further, although proponents view the prospect that TPP and TTIP provisions—such as TRIPS-plus provisions on IP standards and enforcement—may later be multilateralized as an opportunity, others view such possibilities with great concern. Along with the TISA negotiations, they have also reignited debate on accountability and transparency in trade and investment negotiations, and highlighted that industry groups have secured greater access to information and opportunities for consultation than civil society groups.

Bilateral and regional trade agreements can also present challenges for developing countries, both those in which they participate and those from which they are excluded. Asymmetries present in all trade negotiations between countries of different economic size are amplified in bilateral and regional negotiations, particularly those in which middle and low-income developing countries negotiate with global powers such as the US, China, or the EU.

The content of preferential trade arrangements such as the AGOA, and the EPAs between the EU and the ACP countries, have spurred numerous debates due to conditionalities and limits on the scope of market access. The conclusion of some bilateral FTAs and RTAs has alarmed some middle-income countries concerned that other nations are gaining more “preferred” treatment in richer markets, and LDCs argue that MFN-based trade liberalisation in these deals would weaken the value of current non-reciprocal preferential arrangements for their exports (Hoekman and Mavroidis 2015). Even where developing countries pursue regional and South-South deals as a way of building regional economic markets and collective economic weight, more economically powerful developing countries, such as South Africa, Brazil, and India, dominate negotiations with less powerful neighbours.

Notably, even agreements from which developing countries are excluded can impact them. The standards and regulatory provisions incorporated in bilateral FTAs can, for instance, be “diffused” to other countries through technical cooperation and policy advice, or because they are seen as a template or starting point for future negotiations. For this reason, countries that are not parties to key mega-regional negotiations lament the lack of transparency about their content, secrecy with regard to draft texts, and the limited opportunities for observers. Even countries with no legal obligations to undertake particular reforms often purposively mimic standards included in FTAs and emulate institutional frameworks perceived as necessary for inserting themselves in GVCs, ensuring market access and attracting FDI.

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See, for instance, Bhagwati (2008), Baldwin (2014a,b), Brown and Stern (2011), Estevadeordal (2013), Evenett (2015), Gantz (2013), Heydon (2014), Lester and Mercurio (2009), Mavroidis (2011, 2015), Mavroidis and Sapir (2015), and Nakitomi (2014).

9.2 INSIDE THE GTIA: QUESTIONS FOR CONVERSATIONS

- Where are multilateral approaches to cooperation, decision-making, and action on trade and investment required, and how can multilateralism be revived and strengthened? For what purposes should the spectrum of alternative approaches—regional, bilateral, and plurilateral—be considered?
- What problems does the complexity of the GTIA generate and solve, and for which countries and stakeholders? How can specific challenges arising from complexity be addressed and opportunities harnessed? How can the transparency of FTA negotiations and their outcomes be enhanced?
- What ought to be the WTO's future role in the GTIA? How can the WTO be strengthened to help revive multilateralism in trade?

10. THE GTIA AND WIDER GOVERNANCE FRAMEWORKS

10.1 ROLES AND RESPONSIBILITIES

A number of global governance frameworks intersect with the GTIA. In this section, we focus on questions of strategic leadership and coordination on trade and investment in the wider context of global governance. Although there are a multitude of global governance forums and processes relevant to the GTIA, we concentrate here on two particularly political significant initiatives, the G20 as the most prominent political forum for global economic governance and the UN's 2030 Agenda for Sustainable Development and its SDGs, which establish the international community's overarching goals for the next 15 years.

10.1.1 Strategic leadership amidst multiple players and processes

Despite questions about its inclusiveness, transparency, effectiveness, and accountability, the G20 now undoubtedly

serves as the core forum for dialogue and coordination on challenges facing the global economy, although largely only for national leaders and other senior policymakers from a limited set of the world's major advanced and emerging economies. The G20 membership currently accounts for 85 percent of the global economy, 76 percent of international trade, and two-thirds of the world's population. Leaders from G20 economies meet annually, as do finance ministers, central bank governors, trade ministers, as well as senior officials on specific issues. Dominated by financial questions since its formal inception in the wake of the Asian financial crisis of the late 1990s and without a permanent secretariat, the G20 agenda has nonetheless broadened over time, and the group has eclipsed fora such as the G7, although the latter continues to attract attention. No other international processes command the same level of regular high-level engagement, particularly by heads of state, on global challenges, economic policy, and increasingly areas pertinent to sustainable development.

But questions abound on how, whether, and to what extent the G20 should seek to influence trade and investment policymaking, and also how trade ministers should respond to this process. The WTO secretariat has been included along with other international economic institutions within the G20 process, but not all members concur on what the secretariat's mandate should be in that context. Many of the countries driving global trade and investment agendas are active in the G20, but there appears to be little appetite among them or the many more excluded countries to harness the G20 as a forum for negotiating trade or investment rules.

In recent declarations, the G20 has appealed for restraint in the application of protectionist measures, prompted regular trade monitoring to help stymie such tendencies, called for increased trade and competition to boost economic growth and living standards, underscored the importance of keeping multilateral negotiations on track, and emphasised that the wider universe of trade deals should support the multilateral trading system (MTS). To date, however, the G20 has only marginally served as a space for coordination among governments on trade. Although informal, behind-the-scenes exchanges on trade matters and among trade ministers occur alongside G20 meetings, governments have not formally used the G20 platform as a forum for broader strategic policy dialogue and guidance on trade and the future of the GTIA.

In short, although the G20 is a rising force in the global economy, it does not currently fill the gap in terms of the need for a forum for strategic policy dialogue on the GTIA, not just among the relevant economic ministries but also among the various international economic agencies and wider, loosely connected set of processes and institutions relevant to the global economic agenda and sustainable development.

10.1.2 Coordinating international actors on trade, investment and sustainable development

Analysis in this paper has underscored the many intersections among the plethora of international organisations active on specific trade and investment-related matters. The GTIA also involves a network of governments and stakeholders scattered around the globe. However, coordination between the GTIA and other regimes, processes, and actors in an pursuit of sustainable development goals remains a core systemic challenge. As noted in Part C, Section 8, strategic guidance and oversight on the roles and responsibilities of the various agencies and processes in respect of the GTIA's many functions is missing. De facto, there are numerous examples of overlap, turf wars, and wasteful competition, as well as of issues falling through the cracks. Although examples of cooperation among these organisations exist, there are recurring instances of infighting for resources, lost time, poor communication, and reinventing the wheel at the staff and project levels.

There is, however, growing interest in greater coherence between many relevant global policies and institutions, particularly with regard to macroeconomic policy issues. The impact on trade and investment of the global financial crisis has highlighted, for instance, the importance of global cooperation among international organisations and private actors to ensure predictable financing for developing country exports, whether through commercial banks, bilateral export credit and risk management facilities, or multilateral organisations. Similarly, there is wide acknowledgement of the complex relationships between trade and investment policies, on the one hand, and development policy, on the other, as well as related policies on debt, finance, and monetary matters. This underscores that the activities of development agencies, such as the Bretton Woods institutions, are central to the future of the GTIA as is the work of other inter-governmental and regional economic organisations and development banks.⁷⁵ However, although some coordination occurs through the Aid for Trade Initiative, there are persistent challenges of policy coherence and coordination in global economic governance to advance development priorities (Auboin 2007; Wouters and Odermatt 2014).

Another area where more coordination is sought, and also greater clarity on roles and responsibilities, relates to the intersection between the UN, the wider system of development agencies, and the many trade and investment arrangements and institutions. Calls to boost the UN's role in global economic governance—such as the 2009 proposals by a UN expert commission for a new Global Economic Coordination Council—often attract support from a number of developing countries, but scepticism from many developed countries (UN 2009; Stiglitz 2009). However, the recent conclusion of the 2030 Sustainable Development Agenda has revived discussion of the need for a stronger UN role in political coordination on sustainable development issues, which could also encompass consideration of wider

global economic issues and also the intersection with trade and investment. Although the details of the UN's role and the architecture for review and follow-up of the 2030 Agenda remain a work in progress (Halle and Wolfe 2015), there is growing interest in how the HLPF and ECOSOC more broadly could take up such a role, particularly given the political engagement that the UN successfully galvanised through such forums to conclude the new Agenda.

Just as the emergence of the 2030 Agenda is focusing attention on the challenges of coordination among governments, international organisations and stakeholders on sustainable development, it is also prompting reflection on how to coordinate action on the trade and investment matters included in the SDGs. Already, numerous studies suggest ways in which trade rules and policies could contribute to progress on the SDGs, as well as proposals on the specific contributions that agencies such as the WTO and UNCTAD could make (Roberts 2014; Hoekman 2015b; Kean and Melamed 2014; Bellmann and Tipping 2015). A key question is where in the UN system to insert and anchor responsibility for greater attention to trade and investment matters in ways that advance sustainable development and how to better coordinate the activities of UN agencies already engaged on this front. In this respect, UNCTAD's quadrennial Conference in 2016 offers a political opportunity to explore some of the options, and in that context, both the division of labour within the UN system as well as the specific roles of agencies such as UNCTAD in the GTIA.

Although many proposals for more constructive, coherent interaction, and coordination among the multiplicity of other institutions and rules affecting trade and sustainable development have been advanced, there are many challenges. When considering possible improvements, the rationales and drivers for cooperation—and constraints—must be evaluated. First and foremost, a considerable part of the coherence problem stems from the apparent inability and unwillingness of governments to rationalise the situation and allocate resources their resources accordingly.

Second, there is a need to understand where governments allocate resources among the suite of relevant international agencies and why. Although governments contribute to the WTO on a GDP basis, they have been cautious about the expanding the organisation's activities. The WTO secretariat's budget, for instance, is small compared to other actors in the trade and investment arena, and far more government resources for international trade and investment flow to other organisations. Growing recognition that trade is not just about products that cross borders, and that a plethora of issues and flanking policy instruments are relevant, means that Geneva-based institutions are considered by many to be increasingly marginal. Relative to multilateral development banks (MDBs), for instance,

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Together, these concerns have spurred efforts to enshrine the principles of S&DT and of policy space into the governance arrangements that impact global trade, whether at the bilateral, regional, or multilateral levels.

Geneva-based trade institutions have superior legal and technical expertise on trade and investment rules, but limited financial resources (with the exception of WIPO), their staff have little on-the-ground development or real-world business expertise, and their secretariats lack field-based staff or presence. Nonetheless, these agencies collectively compete, albeit sometimes unintentionally, with the MDBs and a plethora of regional bodies active at the country and regional levels. Additional proposals long on the table on the table include calls to better specify the division of labour between the UNCTAD, the WTO and the ITC, and also to explore ways to merge some of their activities.

Third, although there are recurring calls for the UN to have a greater role in global economic coordination (Akyüz 2009), the reality is that the major governments “vote” with their financial resources, providing more funds to the World Bank, the regional development banks, and the IMF. Most UN agencies work only sporadically with regional development banks, and rarely on trade and investment issues. Further, at present, trade and investment are not seen as critical by most UN negotiators and agencies. Based in Geneva, the UN’s core agency on trade and investment, the UNCTAD, is not really influential in New York, the UNCITRAL has a specific commercial investment agenda, and no other UN body is pushing a trade agenda, although several do have activities on trade and investment (such as UNCTAD and UNIDO). Indeed, the UN does not have a clear overarching objective on trade and investment, and has a poor track record of engaging the trade and investment communities, as evidenced by the minimal attention to trade in the MDGs and limited mobilisation of the trade community to provide input to the SDGs. By default, the WTO secretariat is left to attempt some leadership on trade and investment matters in the SDGs, but the membership has been unable to provide a broader global agenda, given its preoccupation with the Doha Round, and it remains unclear how it will respond to calls made in the AAAA.

Finally, in terms of constraints on cooperation, the direction and activities of international organisations is significantly, influenced by the demands and preferences of their Member States, or the most powerful among them. Here, it is important to recall that the institutional design of key organisations for global economic governance—the WTO, the World Bank, the IMF and the FSB—and of the many other international organisations relevant to trade and investment varies, as do their membership, political origins, and mandates (Wouters and Odermatt 2014). While this diversity underscores the importance of a division of labour among organisations according to comparative advantages, it can also limit the range of possible interaction, and the freedom and flexibilities to take collaboration forward, particularly on the part of secretariats. For instance, the fact that the WTO’s work largely concerns legal treaties means that members watch the direction of activities and associated budget more closely.⁷⁶ Further, even if secretariats of other international organisations or non-governmental bodies active on trade and investment may have more autonomy

and scope for interpretation of their mandates than the WTO, their major donors nonetheless carefully track and work to influence how money is spent.

10.2 THE GTIA IN GLOBAL GOVERNANCE: QUESTIONS FOR CONVERSATIONS

- As the scope and functions of the GTIA expand, how can governments and stakeholders better define the roles and responsibilities of the many international institutions, processes, and actors—multilateral, plurilateral and regional—that animate its activities?
- How could the resources and expertise of development agencies—from the World Bank to the various parts of the UN system—be better harnessed to support a GTIA that serves sustainable development? What approaches would foster greater coherence between trade and investment negotiations, on the one hand, and international public policy agendas and commitments to address sustainable development challenges, on the other? What should the G20’s role in trade and investment be, and what of trade’s role in the G20?
- What mechanisms could promote better coordination among the policy agendas of a plethora of international economic institutions and processes in favour of sustainable development outcomes? What roles should member states have in securing greater transparency and dialogue?
- What strategies could help anchor the GTIA more concretely and centrally in wider UN priorities, such as the SDGs? And how could the various components of the GTIA be better harnessed to achieve the SDGs? How, for instance, can the numerous agencies and treaty secretariats work together to foster trade and investment arrangements that promote sustainable development?

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The flexibility of the WTO secretariat lies mostly in the reports and analysis that it carries out, such as monitoring WTO members’ recourse to protectionist measures launched by former Director General Lamy in the wake of the financial crisis, and its convening capacity, from which the Aid for Trade Initiative was launched.

PART D:

NATIONAL TRADE AND INVESTMENT POLITICS AND PROCESSES: INTERSECTIONS WITH THE GTIA

In the changing global landscape for trade and investment, governments face numerous challenges at the national level in their efforts to define appropriate purposes for their international policy agendas, ensure relevance, secure legitimacy and promote buy-in. These challenges, in turn, have a number of implications for the kinds of cooperation that are politically viable at the international level and thus for the GTIA.

11.1 INTERSECTIONS BETWEEN THE GTIA AND NATIONAL POLITICS AND PROCESSES

11.1.1 Accountability, participation, and transparency at the national level key but complex

In the international trade and investment arena, governments face recurring political concerns of accountability. Although the processes and mechanisms vary, parliaments and some constitutions widely delegate significant power to governments to negotiate agreements, limiting the formal role of legislatures to approving them once concluded or to passing implementing legislation.

In the US, for instance, the renewed Trade Promotion Authority (TPA) gives legislators the opportunity to set out principal US negotiating objectives in trade deals, and allows agreements concluded by the executive to be submitted to the Congress for a straight up-or-down vote, thereby limiting a proliferation of amendments on packages negotiated with international partners. In so delegating significant powers, however, the U.S. Congress also insisted on accountability measures—the TPA legislation includes a provision that would strip a trade deal of the “fast track” provision if it emerges that the executive branch failed to meet TPA’s consultation or transparency requirements.

However, around the world, parliamentarians responsible for implementing trade deals call for a greater say in the formation of trade and investment policy and review of international treaty texts before approval. EU parliamentarians responsible for ratifying and overseeing implementation of trade deals, for example, have raised numerous political concerns about transparency of the TTIP negotiations (Lange 2015). In turn, at the national level, parliamentarians in many EU countries call for less Brussels-based opacity in these processes.

Further, there are persistent calls for greater opportunities for public consultation and participation in trade and investment decision-making. That participation is a central aspect of democratic governance is well established. It provides the foundation for dialogue among diverse views, provides governments the information required to adjudicate among competing interests, and offers opportunities for substantive input, information exchange, and feedback on the rules and arrangements that shape the environment in which citizens do business and live. However, governments regularly fail to ensure the engagement of the diversity of industry and citizens’ groups necessary for trade and investment rules to address public policy goals and to attract the political commitment required for their implementation (Halle and Wolfe 2007). What are the appropriate processes for policy formulation on trade and investment at the national level? How should governments compose their delegations and select experts for international negotiations and what arrangements are needed for public transparency?

Lobbying and legal advocacy by civil society organisations and industry organisations, such as the ICC, and through vehicles such as the OECD’s distinct business and trade union advisory committees, make them a central part of the GTIA’s dynamics. But practices for including private sector and public interest representatives in government delegations and consultation processes on international trade and investment negotiations vary by country. In setting their agenda for trade and investment negotiations, governments widely prioritise the mercantilist interests of the most vocal and politically powerful trade lobbies. Capture by entrenched interest groups crowds out not only wider public interest considerations, but also sometimes companies that represent future sources of employment growth and newer business models. In governments driven by the politics of electoral cycles, officials may therefore spend their limited resources for trade and investment diplomacy on fighting battles for particular industries rather than advancing longer term agenda’s that might yield greater social benefits.

11.1.2 Internal coordination for engagement with an increasingly complex GTIA

In the trade and investment policy arenas, most governments struggle to coordinate with the many other relevant areas of domestic policymaking such as environment, health, and tax, as well as competition policy, anti-trust, and IP. As the

breadth and depth of trade and investment policymaking grow, governments face concerns from the public and also from “non-trade” government agencies on the scope of trade and investment deals, their implications for national sovereign powers and democratic processes, such as national processes for decision-making on regulatory matters, and the poor transparency of negotiations. Numerous proposals for greater inter-ministerial consultation and coordination on international trade matters exist and the number of governments working to respond to this imperative is growing (Saner 2010).

Evolving trends in the GTIA may also call for new approaches to how governments think about organising and providing leadership for their national trade and investment policymaking and diplomatic representation. At present, trade ministries and negotiators now widely lead international trade and investment negotiations, with varying degrees of input from inter-ministerial bodies. However, the many intersections between domestic policy arenas and international trade and investment treaties, and the growing attention to international regulatory cooperation alongside rule-making, highlight the need for stronger coordination within national governments and raise questions about where responsibility should lie. In some cases, it may be that foreign affairs ministers, charged with coordinating across international issue areas, may be better locations for cross-cutting agendas in the area of trade and investment, or indeed the officers of presidents or prime ministers, which may have a unique ability to forge a common agenda and coordinate across the range of domestic and international policy areas. Some governments are already pursuing such approaches.⁷⁷

11.1.3 Critical views on globalisation and opposition to trade and investment agreements

As noted at the start of this paper, the economic transformations sought through trade and investment agreements create winners and losers. Further, economic theory has long taught that trade gains may impact widely across society but are felt concretely by few, while losses will particularly affect certain communities. Few societies, however, have the institutional capacities and financial resources to effectively compensate and provide new opportunities to the latter. Trade negotiators regularly acknowledge the mercantilist nature of negotiations and concede that wider public policy considerations are not easily accounted for. However, in the face of public concerns, many policymakers resort to familiar mantras about the benefits of openness and free trade. The struggle in mid-2015 over US President Barack Obama’s request for the TPA in the US Congress underscores, however, that many stakeholders and citizens do not believe this rhetoric. Although the US Congress ultimately passed the TPA legislation, this outcome relied on numerous concessions (such as the transparency and consultation requirements noted above) as well as the approval of Trade Adjustment Assistance (TAA) designed to support US workers displaced by trade. The surrounding

debates illustrate a recurring trend in parliaments around the world when legislation on international trade and investment deals is at stake.

Fuelled by concerns about the impacts of trade and investment deals, critics present a range of views from revolutionary to reformist (see Part B, section 6). In light of growing doubts that current approaches to global economic integration can arrest mounting inequality or environmental degradation, governments need to make a more coherent case for international cooperation on trade and investment, and to consider new approaches that respond more directly to calls for greater attention to the quality of growth and employment, livelihoods, public health, environmental sustainability, the protection of food security, and the defence of national sovereignty. As noted in Part C, Section 8, better monitoring, transparency, dialogue, consultation, and research efforts will be needed to help bring clarity to these debates.

The narrow prevailing focus on communicating better with disgruntled publics to “make them better understand the benefits” of open trade and investment agendas is clearly out-dated. Rather, international diplomacy on trade and investment demands a parallel dialogue at the national level, where policymakers are rightly being called upon to listen to and integrate the public’s concerns, priorities, and values into national trade and investment policy agendas, while helping them to appreciate wider international dynamics and pressures. Only by consulting and engaging the public will national governments be able to advance improvements to the GTIA that address shared global commitments to sustainable development.

11.2 NATIONAL TRADE POLITICS AND PROCESSES: QUESTIONS FOR CONVERSATIONS

- What implications do pressures to address an expanding range of issues in the GTIA have for how governments approach national political processes for trade and investment decision-making?
- Which parts of government and which stakeholders need to be involved in trade and investment decision-making and how does this impact the ways national governments should organise themselves for international cooperation on this issue? Conversely, how does it also impact the ways international processes should be designed to facilitate appropriate participation?
- What transparency and participation mechanisms are needed to boost the ability of stakeholders—from industry to unions and civil society to parliaments—to provide evidence for and voice their interests in trade and investment policymaking?

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For example, Kenya and Ireland have ministers with joint responsibilities for foreign affairs and trade.

PART E:

CLOSING REMARKS: STRUCTURAL WEAKNESSES AND NEXT STEPS

This paper has worked to provide a common basis for conversations among a diverse group of experts on the future of the GTIA. As noted in the introduction, using this paper to stimulate discussion, the next phase of the E15 Initiative in this thematic area will be to gather concrete proposals through a series of expert conversations, and then to analyse and present them through an options paper published in 2016.

To pave the way for these conversations, we conclude the paper by returning to a core cross-cutting question posed at the start. In light of evolving trade and investment trends and global policy priorities, where do some of the key, cross-cutting structural weaknesses in the GTIA lie in terms of its ability to advance sustainable development, and how can governments and stakeholders respond with the necessary action and changes?

To spur discussion this paper yields some initial suggestions on structural weaknesses. For instance, it has highlighted the absence of a strategic vision and roadmap to implement inclusive trade and investment as called for in the 2030 Sustainable Development Agenda and the AAAA. In light of the increasingly intertwined nature of global economic trends, and environmental and social challenges, the range of issues that stakeholders bring to the trade and investment arena for discussion will continue to grow and evolve. The paper has highlighted that calls to strengthen mechanisms for monitoring and assessment for trade ends and with these other objectives in mind exist for a range of issues. For example, while views vary on whether and to what extent multi-layered rules and institutions in the GTIA can be positive or negative, there is no dispute that there is an important gap in monitoring RTAs and their transparency. Further, from subsidies to standards, climate impacts, and environmental degradation to implementation of the SDGs, there are calls for improvements in the GTIA's scope, monitoring function, and relationship to wider governance ends, among other issues raised in this paper.

The difficulties countries have been facing addressing new and vexed issues at the multilateral level reflect divergent interests and political priorities, but they also reflect structural weaknesses in decision-making and negotiation processes, most notably at the WTO. Some argue that the move away from multilateral negotiations is itself a structural weakness. Others contend that the Doha mandate

must be swiftly wrapped up to move multilateralism onto new, pressing areas. Why is it proving so difficult for the multilateral system and the WTO to respond and how could this be addressed through architecture arrangements? And how could the global trade body better serve as an effective, responsive, and transparent forum for multilateral action, particularly on the host of challenging trends facing the international community in the years ahead? And what is the role for the global trade architecture in helping players to navigate the proliferation of RTAs and harnessing them to bolster multilateralism?

This paper has pointed to the changing nature of trade and investment, the growing intersections of trade and investment, and diverging rates of annual trade growth across various sectors. This new landscape also demands attention from policymakers and stakeholders in identifying how the system can better serve the reality of today's global economy. Looking across the many "behind-the-border" issues at hand, for instance, a key weakness identified in the paper relates to poor incentives and mechanisms within the GTIA to spur national regulators to assess the trade and investment effects of regulatory decisions, and the paucity of process or spaces that engage regulatory authorities in dialogues with trade and investment officials on options for international cooperation. A related structural challenge is that international rules and negotiations have been structured for historical and institutional reasons in silos that neither reflect how business now works vertically through GVCs, nor the cross-cutting horizontal nature of issues such as investment, competition, and the digital economy. This, in turn, may demand new approaches to the architectural approach, as well as to the trade and investment disciplines. Cooperation with a host of wider efforts to manage the world's often-turbulent global financial system, and on intersections with monetary policy and development efforts, will also need to be considered.

With all these new trade and investment dynamics, challenges, and questions, the paper underscores the need to take a step back and consider how the GTIA can better serve the needs of the world's neediest. This, in itself, will be critical to realising a 2030 Sustainable Development Agenda that promises to leave no one behind, to constructing a world able to respond to dire global economic imbalances and conflicts that drive migration, and to deriving systems that better address the many health, education, food, energy,

infrastructure, and many other urgent gaps that demand attention in the poorest economies.

As the conversations advance, these questions and others in this paper, must be considered in light of the political realities and possibilities for international cooperation. As this effort is forward looking, however, we encourage participants to avoid limiting their proposals only to those deemed politically realistic in the short term, but also to consider medium-term options and ideal scenarios.

ANNEX A

List of E15 Initiative Thematic Groups and Taskforces

- Agriculture and Food Security
- Clean Energy Technologies
- Climate Change
- Competition Policy
- Digital Economy
- Extractive Industries
- Finance and Development
- Fisheries and Oceans
- Functioning of the WTO
- Global Trade and Investment Architecture
- Global Value Chains
- Industrial Policy
- Innovation
- Investment Policy
- Regional Trade Agreements
- Regulatory Coherence
- Services
- Subsidies

ANNEX B

Direct Trade and Investment Language and Targets in the Sustainable Development Goals

Sustainable Development Goal	Targets with trade or investment language
Goal 1. End poverty in all its forms everywhere	1.b. Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions.
Goal 2. End hunger, achieve food security and improved nutrition, and promote sustainable agriculture	2.a. Increase investment, including through enhanced international cooperation in rural infrastructure, agricultural, research and extension services, technology development and plant and livestock gene banks in order enhance agricultural productive capacity in developing countries, in particular least developed countries.
	2.b. Correct and prevent trade restrictions and distortions in world agricultural markets including by the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round
	2.c. Adopt measures to ensure the proper functioning of food commodity markets and their derivatives, and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility
Goal 3. Ensure healthy lives and promote well-being for all at all ages	3.b. Support research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration which affirms the right of developing countries to use to the full the provisions in the TRIPS agreement regarding flexibilities to protect public health and, in particular, provide access to medicines for all
Goal 7. Ensure access to affordable, reliable, sustainable, and modern energy for all	7.a. By 2030 enhance international cooperation to facilitate access to clean energy research and technologies, including renewable energy, energy efficiency, and advanced and cleaner fossil fuel technologies, and promote investment in energy infrastructure and clean energy technologies
Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	8.a. Increase Aid for Trade support for developing countries, particularly LDCs, including through the Enhanced Integrated Framework for LDCs
Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation	9.1. Develop quality, reliable, sustainable and resilient infrastructure, including regional and trans-border infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all
	9.3. Increase the access of small-scale industrial and other enterprises, particularly in developing countries, to financial services, including affordable credit and their integration into value chains and markets
Goal 10. Reduce inequality within and among countries	10.a. Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with WTO agreements
	10.b. Encourage ODA and financial flows, including foreign direct investment, to states where the need is greatest, in particular LDCs, African countries, SIDS, and LLDCs, in accordance with their national plans and programmes
Goal 12. Ensure sustainable consumption and production patterns	12.3. By 2030 halve per capita global food waste at the retail and consumer level, and reduce food losses along production and supply chains, including post-harvest losses
	12.4. By 2020 achieve environmentally sound management of chemicals and all wastes throughout their life cycle in accordance with agreed international frameworks and significantly reduce their release to air, water and soil to minimise their adverse impacts on human health and the environment
	12.7. Promote public procurement practices that are sustainable in accordance with national policies and priorities
	12.c. Rationalise inefficient fossil fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimising the possible adverse impacts on their development in a manner that protects the poor and the affected communities
Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development	14.4. By 2020, effectively regulate harvesting, and end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices and implement science-based management plans, to restore fish stocks in the shortest time feasible at least to levels that can produce maximum sustainable yield as determined by their biological characteristics
	14.6. By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation* * Taking into account ongoing WTO negotiations, the Doha Development Agenda, and the Hong Kong Ministerial Mandate
	14.b. Provide access of small-scale artisanal fishers to marine resources and markets
Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss	15.6. Ensure fair and equitable sharing of the benefits arising from the utilisation of genetic resources, and promote appropriate access to genetic resources
	15.7. Take Urgent action to end poaching and trafficking of protected species of flora and fauna, and address both demand and supply of illegal wildlife products
	15.8. By 2020 introduce measures to prevent the introduction and significantly reduce the impact of invasive alien species on land and water ecosystems, and control or eradicate the priority species
	15.a. Mobilise and significantly increase from all sources financial resources to conserve and sustainably use biodiversity and ecosystems
Goal 17. Strengthen the means of implementation and revitalise the global partnership for sustainable development	15.c. Enhance global support to efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities
	17.5. Adopt and implement investment promotion regimes for least developed countries
	17.7. Promote development, transfer, dissemination, and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed
	17.10. Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO including through the conclusion of negotiations within its Doha Development Agenda
	17.11. Increase significantly the exports of developing countries, in particular with a view to doubling the LDC share of global exports by 2020
	17.12. Realise timely implementation of duty-free, quota-free market access on a lasting basis for all least developed countries consistent with WTO decisions, including through ensuring that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access

N.B.: It should be noted that the above list represents targets where explicit trade and investment-related language is used in the proposed SDGs. It is arguable, however, that, in the context of a new sustainable economic growth architecture, it will be important to ensure trade policy coherence across the broad spectrum of the framework's aims and targets, most of which have an indirect bearing or link with trade and investment.

ANNEX C

Summary of Possible Trade-related Indicators and Review Mechanisms for the SDGs

Source: Tipping and Wolfe (2015).

Trade-related elements	Potential indicators and sources	Potential mechanisms for review
Cluster 1: Subsidies and commodities trade		
Agricultural market distortions	WTO notifications, OECD data and reviews	WTO Agriculture Committee and TPRM OECD Committee for Agriculture
Fisheries subsidies	WTO notifications, OECD data, civil society estimates	WTO SCM Committee and TPRM OECD Fisheries Committee, FAO
Fossil fuel subsidies	IEA, OECD data	OECD/IEA Country Reviews, G20, UNFCCC, TPRM
Commodity markets	UNCTAD commodity prices, FAO Commodity Markets Review	UNCTAD Trade and Development Commission, Global Commodities Forum
Cluster 2: Access to water, energy, medicines		
TRIPS flexibilities	Use of TRIPS flexibilities, acceptance of amendment, WHO monitoring	WTO TRIPS Council, WIPO Committee on Development
Cooperation on water technology	Levels of trade, tariffs on water management-related goods	WTO Committee on Trade and Environment, TPRM APEC Committee on Trade and Investment OECD Environmental Policy Review
Cooperation on clean energy technology	Levels of trade, tariffs on clean energy	OECD Environment, Energy Reviews IEA Country Reviews UNCTAD Investment Reviews
Cluster 3: Economic diversification, global value chains, trade facilitation		
Economic diversification	Developing country and LDC export diversification by destination, product	UNCTAD Competition Policy Peer Reviews WTO TPRM
Access to financial services	Draw on work by World Bank, IMF	WTO Committee on Trade in Financial Services
Increase Aid for Trade	Aid for Trade by recipient, donor (WTO, OECD data)	Global Aid for Trade Review
Quality infrastructure, participation in GVCs	WTO Trade Facilitation Agreement World Bank logistics indicators WTO-OECD TIVA database	WTO Trade Facilitation Committee, OECD Trade Committee, and DAC
Infrastructure, industry with environmental technologies	Trade, tariffs on environmentally sound technologies	WTO Trade and Environment Committee, TPRM APEC Committee on Trade and Investment
Implement S&DT in WTO	WTO Annual Report UNCTAD LDC Report	WTO S&DT Monitoring Mechanism UNCTAD Trade and Development Board
Transparent, sustainable government procurement	Transparency, sustainability of procurement	WTO TPRM
Cluster 4: Illegal extraction and trade in natural resources, trade in hazardous chemicals and waste		
Environmentally sound management of wastes	UNEP Global Chemicals Outlook	Basel Convention Implementation and Compliance Committee, UNEP
Access and benefit sharing of genetic resources	ABS measures (Convention on Biological Diversity)	Convention on Biological Diversity
Poaching, trafficking of wildlife	IUCN Red List, CITES Review of Significant Trade	CITES, WTO Committee on Trade and Environment
Cluster 5: Multilateral trading system, regional trade, and investment agreements		
Developing country participation in global governance	WTO accessions Participation in RTAs	WTO General Council, RTA Committee, UNCTAD Trade and Development Board
Investment promotion in developing countries	UNCTAD Investment Policy Monitor	UNCTAD Investment Policy Reviews
Dissemination of environmental technology	Trade in environmental goods and services	WTO Committee on Trade and Environment, TPRM OECD Environmental Policy and Energy Reviews
Cluster 5: Continued		
International capacity building	Aid for Trade expenditure, Enhanced Integrated Framework for LDCs	WTO Committee on Trade and Development, WTO Standards and Trade Development Facility OECD DAC
Strengthen multilateral trading system, complete DDA, combat protectionism	Trade Restrictiveness Indicator (WTO-UNCTAD-World Bank-ITC) Average tariffs, prevalence of non-tariff barriers by sector, level of development Bali package implementation	WTO General Council, WTO Trade Monitoring Report UNCTAD Trade and Development Commission
Increase developing country exports (DFQF, ROO)	Developing country, LDC exports Average tariffs faced by LDCs, preference utilisation by LDCs	WTO Committee on Trade and Development, Sub-Committee on LDCs
Cluster 6: Policy coherence for sustainable development		
Domestic enabling environment for trade	World Bank CPIA, Global Report	WTO TPRM, UNCTAD Investment, Competition Policy Peer Reviews, African Peer Review Mechanism
Strengthen regional integration and trade agreements	ADB regional integration indicators OECD, UNCTAD data on "depth" of regional agreements	UN Regional Commissions Forums on Sustainable Development WTO Committee on Regional Trade Agreements
Investment agreements with safeguards for sustainable development	UNCTAD World Investment Review	UNCTAD Investment Policy Reviews, World Investment Forum OECD Trade Committee
Policy space for sustainable development	Constraints in aid or loan agreements	OECD Development Assistance Committee, UNCTAD Trade and Development Commission

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