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Industrial Policy, LDCs and the WTO Regime

by Keith Nurse

1 Introduction

The key economic challenge facing LDCs and other developing countries in the contemporary global context is how to improve production structures that will expand domestic value-added and win markets at home and abroad. Indeed, it is recognized by the OECD that "to address the new development challenges, some developing countries are implementing industrial policies to sustain growth by diversifying and upgrading domestic production."[1] From this perspective industrial policy holds great promise for LDCs which are seeking to boost their global competitiveness and facilitate sustainable economic growth and development.

In this regard, a key issue is the interface between trade policy and industrial policy given the importance of trade to the structure of the economy in most LDCs. Understanding the dimensions of policy space at the multilateral trade level is a major consideration. As such the key provisions and rules of the WTO, as the core multilateral trade institution, needs to be taken into account in designing an industrial policy agenda. This is so because industrial policy and government intervention are generally viewed as inconsistent with the liberalization agenda of WTO rules that aim to restrict discriminatory, arbitrary and non-transparent trade actions by member states. For example, Bohannes argues that "if Members actively and deliberately pursue targeted industrial policies — fostering structural adjustment of the national economy or seeking to ensure its greater market share — through high product or environmental standards, they may run afoul…"[2] Notwithstanding Bohannes' view, it is arguable that the WTO regime favors LDCs seeking to implement industrial policy to some extent. As such it is argued that

> WTO rules relate to only a subset of the policies typically associated with industrial policy. WTO rules do not exist to prevent state intervention per se, typically discouraging certain forms of intervention that harm certain (not necessarily all forms of) foreign commercial interests. And even when binding WTO rules exist, their enforcement is not undertaken by an independent referee, but rather by self-interested and adversely affected WTO members…[3]

It is also recognized that given the normative nature of international trade law that the WTO regime "is determined less by its mandate to remove trade barriers, than by it's background processes by which some governmental activities are made visible as trade barriers, while the rest are not." [4] Another key consideration is that the global trade regime has become increasingly institutionalized through the WTO (e.g. dispute settlement body) but also through the work of the IMF, World Bank and international banking consortia.[5] This issue is of particular importance to LDCs because for example the IMF policies have significant impact on trade policy formulation on account the HIPC (Heavily Indebted Poor Countries) initiative and the related PRGF (Poverty Reduction and Growth Facility) lending mechanism.[6] As such, the WTO is not the only game in town when it comes

1 OECD (2013) Perspectives on Global Development 2013: Industrial Policies in a Changing World. Paris, p. 1.

2 Bohanes, Jan. (2015) WTO Dispute Settlement and Industrial Policy. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. www.e15initiative.org/. Bohannes (p. 4- 5) points, for instance, to the prohibition under Article 2.2 of the TBT Agreement and 5.6 of the SPS Agreement and argues that "under these provisions, national measures may be found to be more trade restrictive than necessary to achieve the legitimate policy objectives stipulated in those agreements, such as product safety, environmental protection, or public health."

3 Vinod K. Aggarwal and Simon J. Evenett "Do WTO rules preclude industrial policy? Evidence from the global economic crisis" Pg 494.

4 Andrew Lang, World Trade Law after Neoliberalism: Re-Imagining the Global Economic Order (Oxford: Oxford University Press, 2011).

5 See Girvan, Norman and Ana Luisa Cortez (2013) Enabling International Environment. Eds. José Antonio Alonso, Giovanni Andrea Cornia and Rob Vos in Alternative Development Strategies For The Post-2015 Era. (Bloomsbury Academic, London and New York).

6 See Saner, Raymond and Guilherme, Ricardo (2007) "The International Monetary Fund's Influence on Trade Policies of Low-income Countries: A Valid Undertaking? Journal of World Trade 41(5): 931-981.

to taming the industrial policy aspirations of developing countries. It is on this basis that it is argued that developing countries face a more constrained trade policy context than the now developed economies had to deal with in their process of industrial transition.[7] Managing countries' ambitions in this arena has become more poignant in recent years with the revival of industrial policies among developed and emerging economies particularly in the aftermath of the global economic crisis of 2008.[8]

The aim of the paper is to consider the provisions within the WTO multilateral trade regime which impact on the policy space for LDCs which are interested in pursuing industrial policies as latecomers. The paper first provides a brief overview of the LDCs economies and export structures. Then the paper explores the debates and perspectives on industrial policy taking into account the requirements of multilateral trade policy. The next section of the paper looks specifically at the provisions within the WTO regime and assesses the scope for policy space for industrial policies by LDCs including an assessment of the recently concluded Nairobi package. The final section provides some examples of how LDCs could implement industrial policies drawing on the experience of developing countries that have achieved some level of success.

2 LDCs Exports in Perspective

Least Developed Countries (LDCs) represent the most impoverished, fragile segment of the global community. 48 states are currently classified as LDCs by the United Nations[9] based on criteria such as per capita income, human assets and economic vulnerability. LDCs are home to approximately 12 per cent of the world's population[10] but they only account for a mere 1 percent of global trade in goods and less than 2 percent of world GDP.[11] This is in spite of the fact that LDCs possess a substantial labour cost advantage, plentiful natural resources and expanding domestic markets on account of a rising youth population.[12]

LDCs are a heterogenous group of countries comprising small island states, landlocked countries, conflict states, mostly agriculture or extractive or fuel export economies but what they generally have in common are largely undiversified economies with extremely high levels of trade specialization. As figure 1 illustrates LDCs exports are dominated by the earnings from the fuel exporting economies to the tune of 52.6% in 2010 and 46.1 in 2014. Outside of the "other" the next biggest product exports are in clothing and food with export shares of 16.3% and 8.9% for 2014, respectively. The other product exports are raw materials (2.9%), other semi-manufactures (3.6%) and textiles (1.4%). What is observed is a high concentration of exports in low value-added raw materials, commodities, and manufacturing (e.g. clothing and textiles) that suffer from declining terms of trade and fetch low (and volatile) prices in global markets.

7 See Chang, Ha-Joon. (2002). Kicking Away the Ladder: Development Strategy in Historical Perspective. (London: Anthem Press).

8 Tu Xinquan and Lin Guijun (2011), The revival of industrial policy: how should the WTO address it? ICTSD, Trade and Development Symposium: Perspectives on the Multilateral Trading System, Decemer 2011, Available at: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=144670 (accessed 2016-01-13).

9 List Of Least Developed Countries (as of 11 December 2015) at http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf

https://www.wto.org/english/thewto_e/minist_e/min11_e/brief_ldc_e.htm

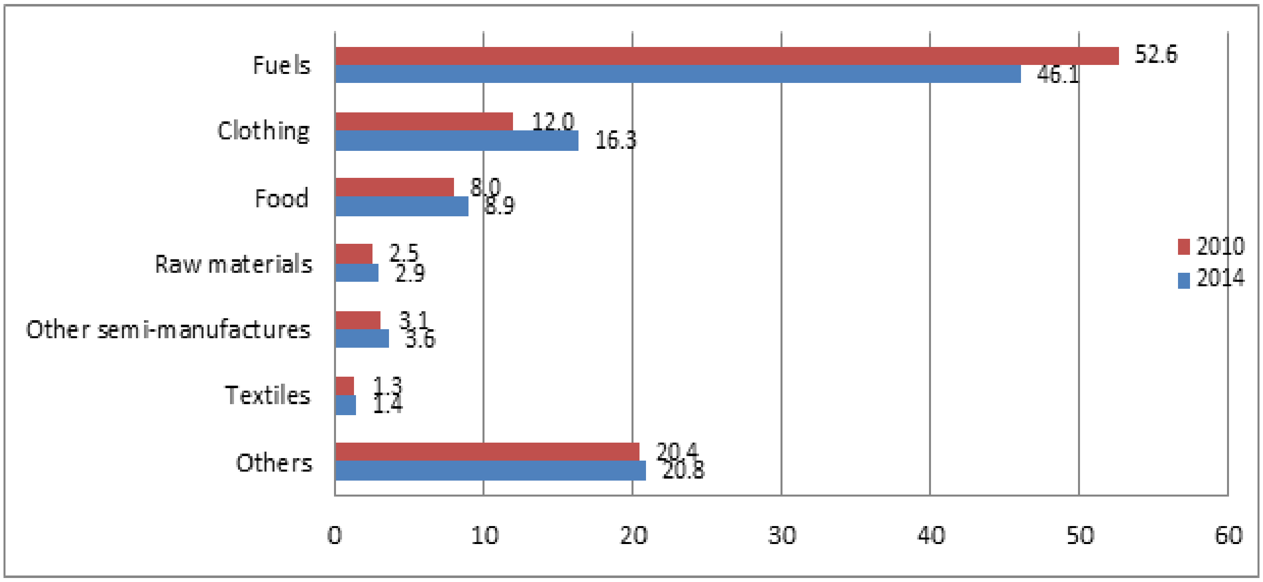
10 UN-OHRLLS-UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

11 UN-OHRLLS-UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

12 Ramdoo, Isabelle. Industrial Policies in a Changing World: What Prospects for Low-Income Countries? E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. www.e15initiative.org/ at p.1

Figure 1

Exports of LDCs by Major Product, 2010 and 2014 (%)



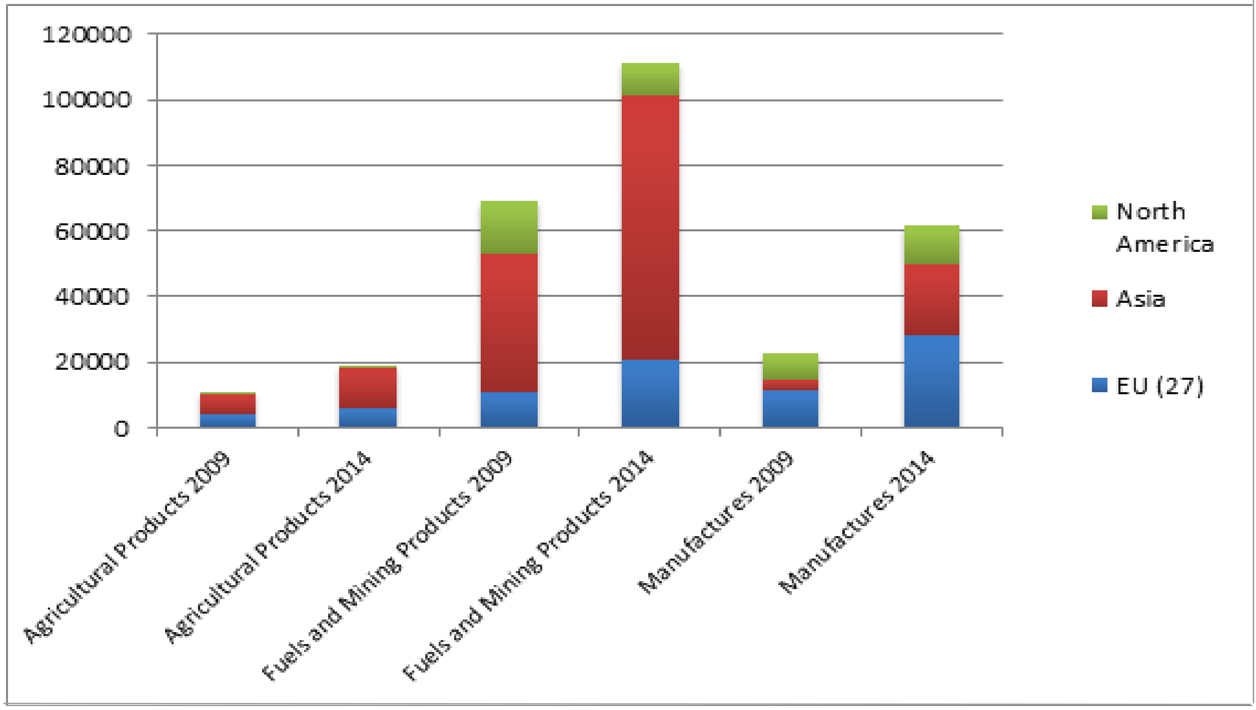
Source: WTO International Trade Statistics

The markets for LDCs product exports has shifted over time with Asia and the EU almost doubling imports thereby accounting for an increasing share of imports particularly of fuels and mining between 2009 and 2014. North America's share of fuels and mining imports dropped by approximately 40% during the same period. Asia's imports of LDCs agricultural products also doubled between 2009 and 2014 while EU imports grew by 37% and North America by 25%. In terms of manufactures Asia also had the most dramatic growth of over 600% in imports between 2009 and 2014 albeit from a small base. The EU, which is the largest market for LDCs manufactured imports, expanded by almost one and a half times whereas North America grew by 45%. In summary, what is evident is that the main source of demand for LDC products is coming from Asia and it has been rising at a very rapid rate thanks mainly to China. A slow down in the Chinese economy will have an impact on the LDCs goods import trajectories going forward.

The exports of LDCs reflect the structure of the economy as exemplified by the GDP share of the goods and services sectors in these economies. Figure 3 shows that over the last decade and a half that the structure of the economy in LDCs has not changed much. In 2000 goods and services combined accounted for 24% of GDP peaking at 35% in 2008 but dropping thereafter in 2010 and 2014 to 28.7% and 27%, respectively (see Figure 2). The goods share of GDP grew from 21% in 2000 to 31% in 2008 and declined in 2010 (25.3%) and 2014 (23.1%). Commercial services over the period have stayed in the range of 3 to 4% of GDP indicating that the services sector occupies a small share of the LDC economies in the aggregate. The services sector, and tourism in particular, is a major sector of the economy for the small island states like Vanuatu (36.9%), Sao Tome and Principe (18%), Comoros (11%), Solomon Islands (9.4%), and Haiti (7.3%) as well as for larger territories and land-based economies such as The Gambia (27.6%), Cambodia (23.5%), Madagascar (11%), Uganda (9.2%), Bhutan (7.2%).

Figure 2

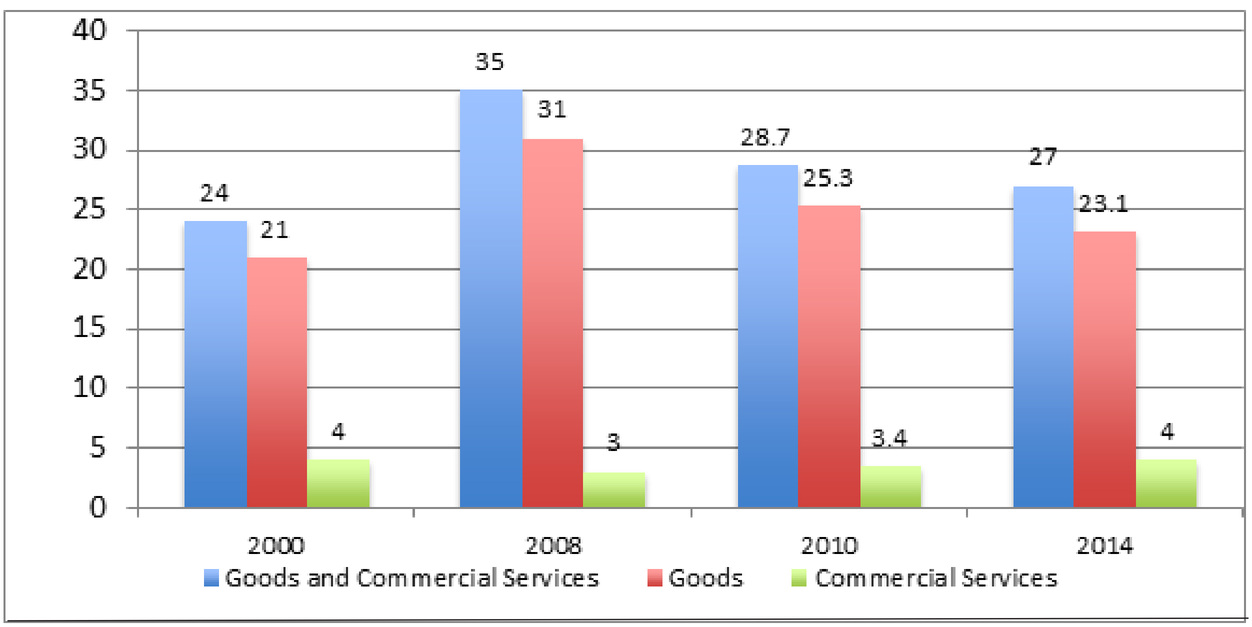
A Imports of Agricultural Products, Fuels and Mining and Manufactures of the EU, Asia and North America from LDCs 2009 & 2014, US$mn



Source: WTO International Trade Statistics

Figure 3

Ratio of Exports of Goods and Commercial Services to GDP of LDCs, 2000 - 2014 (%)



Source: WTO International Trade Statistics

When the services element is disaggregated it shows that travel (i.e. tourism) accounts for the largest share of value of commercial services exports averaging 50% of the period (see Figure 4). The other main services export is transport which averages 20%. Where these countries have diversified into tradeable and commercial services (e.g. tourism, transport, services) domestic firms principally operate at the low end of the global value chain.

The tourism sector is playing a more important role among LDCs. For instance, travel receipts from international tourism arrivals has grown by 11% on average per year between 1995 and and 2014 with earnings of US$15 billion. This growth is reflected in the significant increase in the number of visitors over the period which has grown from 4 million to 25 million visitors and a jump in GDP shares from 1.2% in 1995 to 1.6% in 2014.[13]

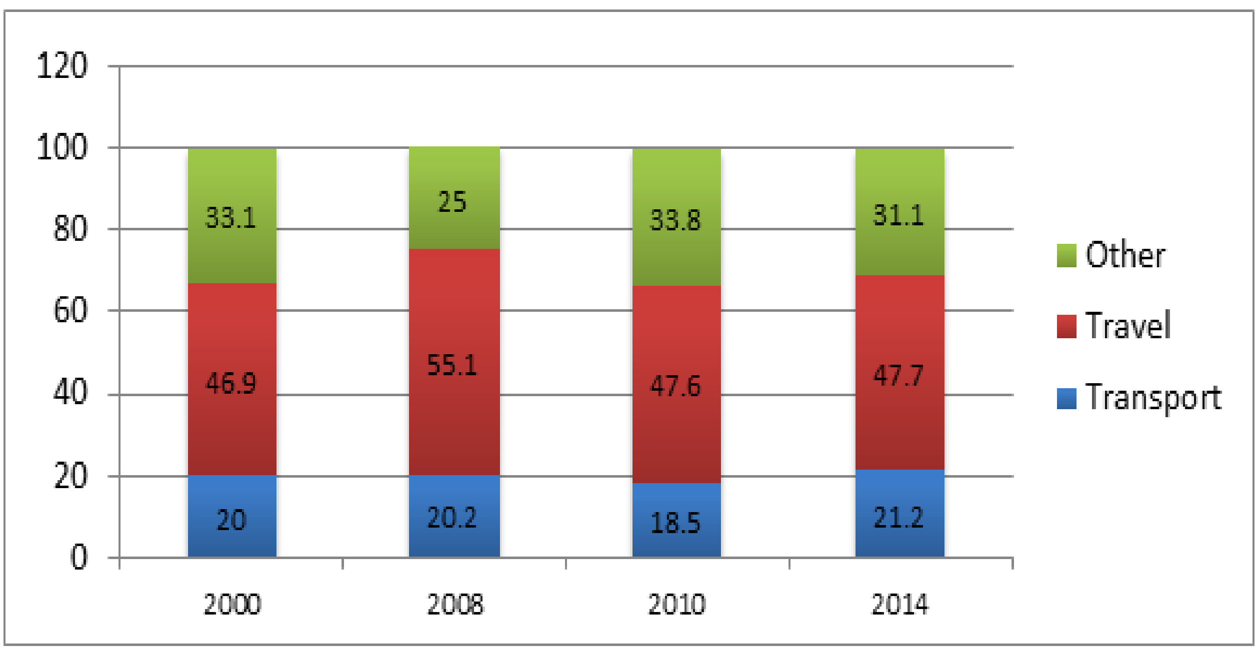
13 See WTO International Trade Statistics 2015, p. 34.

Based upon the above analysis it can be argued that the experience of the LDCs over the last two to three decades has been one of limited diversification as exemplified by a narrow range of low-value-added, low-technology goods and services exports.[14] On the upside there has been some diversification in terms of key markets with the significant rise of Asia as an importer of LDCs agricultural, manufactured and fuel products. This presents new challenges as well with the apparent slowdown in the Chinese economy. Tourism and other services exports are on the rise but from a very low base and it is yet to make a significant impact on GDP and export shares. These trends and challenges suggest an increased need for proactive and strategic approaches to industrial upgrading to reduce vulnerabilities and build resilience in the contemporary global context.

14 See Keith Nurse and Ginelle Greene “Aid for Trade and Economic Diversification: The Case of Barbados” in Marion Jansen, Mustapha Sadni Jallab and Maarten Smeets, eds. Connecting to global markets challenges and opportunities: case studies presented by WTO chair-holders. (Geneva: WTO, 2013): pp: 159-176.

Figure 4

LDCs Exports of Commercial Services, 2000 - 2014 (%)



Source: WTO International Trade Statistics

3 Industrial Policy and LDCs

The global economy has been experiencing a period of rapid technological and systemic change in the last two decades or more, with significant implications for growth and development as traditionally conceived. The ongoing global economic downturn along with the rise of the Big South (e.g. China, India, Brazil, South Korea, South Africa) is resulting in a process of deindustrialization, slow growth and structural unemployment, particularly among LDCs. These trends along with issues like climate change adaptation and reduced development cooperation suggest an increased need for LDCs to pursue industrial policy and an innovation-driven growth agenda to avoid the commodity and low value-added traps, especially in the context of anaemic growth among traditional trade partners in the developed market economies.[15]

This underscores the point that "development is a moving target" and that development strategy needs to be informed by a reading of the techno-economic trajectory of the global economy as well as an understanding of the changing policy environment.[16] The other key point is that much of the debate is carried on without a clear understanding of the policy challenges of latecomers and small states catching up. These economies are generally faced with relatively small home markets; an overdependence on export markets; low levels of financial and human resources for technology development; high administrative and logistics costs; strong vested interests and high levels of rent-seeking.[17]

Industrial Policy refers to "government efforts to alter industrial structure to promote productivity based growth."[18] In more specific terms, industrial policy can be defined as government intervention in promoting industrialization in a context where market failures significantly constrain industrial upgrading, and where market-driven conditions fail, or take too long, to emerge.[19] In essence, industrial policy is designed to alter the allocation of resources (e.g. from declining to rising sectors, or to correct externalities) among economic activities and impact on what would otherwise have been the market outcome.

The role of the state is considered critical because it is the largest economic and political actor in most national economies and it is the institution that implements the business and legal framework for economic development. Industrial policy also involves the active participation of non-governmental organizations such as business, trade or industry associations as well as research institutions (e.g. universities) and even trade unions. For example, Rodrik advocates that industrial policy should be pursued as a partnership between the government and private actors 'with the aim of uncovering where the most significant obstacles to restructuring lie and what type of interventions are most likely to remove them.[20]

Industrial policy includes a wide array of policy instruments, from the traditional trade (e.g. tariffs) tax and credit policies to policies that facilitate technological upgrading and learning, export promotion and human resource development. It could also

15 See Ashwini Desphande and Keith Nurse, eds. The Global Economic Crisis and the Developing World: Implications and Prospects for Recovery and Growth (London: Routledge, 2012).

16 Carlota Perez "Technological Change and Opportunities as a Moving Target" CEPAL Review (2001) 75: 109 - 130.

17 See Rainer Kattel, Tarmo Kalvet and Tiina Randma-Liiv "Small States and Innovation" in Robert Steinmetz and Anders Wivel, eds. Small States in Europe: Challenges and Opportunities. Surrey: Ashgate, 2010: 65-85.

18 The World Bank, 1992 'The East Asian Miracle- Economic Growth and Public Policy' at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1993/09/01/000009265_3970716142516/Rendered/PDF/multi_page.pdf

19 See Sanjaya Lall (2005) "Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness" in Ariel Buria, ed. The IMF and the World Bank at Sixty. London: Anthem Press.

20 Dani Rodrik (2004) Industrial Policy For The Twenty-First Century at p.3

include ancillary business support services such as in-house technical assistance and trade facilitation in terms of export promotion, marketing, sales and distribution. Additionally, industrial policy allows for coordination mechanisms and networking opportunities for stakeholders, which are often lacking in free markets, especially in developing countries. This allows transactional costs to be lowered, which ultimately facilitate increased market entry and reduce uncertainty and risk, especially for small and medium-sized enterprises. In short, the goal of innovation governance is to "coordinate economic change, to promote experimentation, and to preserve diversity."[21]

The case for market interventions does not accord with neoliberal economic thought, which gained in ascendancy in developing countries during the structural adjustment decades of the 1980s and 1990s. The argument is that markets optimize resource allocation and that interventions distort resource allocation thus affecting the maximization of growth. The faith in the market-led approach derives from the "disillusionment with import substitution, planning and public-sector led development" as well as the neoliberal interpretation of the success of the Asian newly industrializing countries.[22]

On the other hand, it is recognized that industrial policy is not an unqualified success. There are some problems, which have plagued efforts in various countries. It is noted that state intervention can (1) distort relative prices and lead to resource misallocation and a loss of economic efficiency; (2) introduce an additional complex political element since they provide a popular remedy for import-competing firms reluctant to adjust to trade liberalization; and, (3) inspire countervailing measures and competition among governments to outspend one another thereby squandering resources.[23]

Proponents of industrial policy argue that the assumption of free markets implicit in mainstream approaches does not accord with the reality of imperfect competition in most global industries. Secondly, the notion that competitiveness flows automatically from 'getting prices right' is not borne out by the experience of most developing countries, including the Asian NICs. And, thirdly the argument that state intervention is necessarily sub-optimal and allows for rent-seeking among special interests groups, thereby impeding growth, also does not accord with the Asian NIC experience. [24]

In the 1990s, industrial policy was a key driver in sustained economic growth for East Asian Economies such as the Republic of Korea, Singapore, Indonesia and China.[25] The key lessons from these countries is that industrial policies are multi-dimensional processes, which need to be activated as a package. First, they involve domestic policies that are targeted and tailor-made to stimulate the development of specific sectors or industries. They provide incentives and support to contain market failures or negative externalities. Second, they include complementary soft policies that are cross-sectoral and inter-disciplinary given their relevance to various sectors of the economy. These consist of economic policies such as macro-economic, financial, fiscal, trade, investment, and infrastructure (including utilities) policies, social policies such as education, health or land policies, and sectoral policies such as agriculture or services policies. Finally, although not defined in the traditional sense as industrial policies, countries need to factor in major policies and decisions taken by lead firms, in particular when the latter control the buyer or the supplier ends of global value chains (GVCs). Such policies have a significant impact on industrial activities within countries as they often direct investment to particular locations.

21 See Kosacoff, B. & A. Ramos. (1999) "The Industrial Policy Debate" CEPAL Review 68: 35-60.

22 See Sanjaya Lall (2005) "Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness" in Ariel Buria, ed. The IMF and the World Bank at Sixty. London: Anthem Press.

23 See Leipziger, D et al (1997) "Mercosur: Integration and Industrial Policy" The World Economy 20.5: 585-603.

24 See Sanjaya Lall (2005) "Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness" in Ariel Buria, ed. The IMF and the World Bank at Sixty. London: Anthem Press.

25 Baocheng Ji, 'China's economic recovery and the China model' Journal of Chinese Economic and Business Studies Vol. 8, No. 3, August 2010, 215–226 at 219

Industrial policy is a highly contested policy arena. There are those who argue that industrial policy is about picking winners and that often governments get it wrong due to the power of vested interests. On the other hand, there are those who argue that industrial policy once executed with clear strategy and foresight can generate significant returns beyond what markets can facilitate. There is a level of truth in both views and in many respects the real question is not whether or not to have industrial policy but what type of industrial policy is appropriate for the historical context and the industrial capabilities of the respective economies and firms.

4 The WTO Framework for Industrial Policy in LDCs

Currently 48 states are classified as LDCs by the United Nations[26] based on criteria such as per capita income, human assets and economic vulnerability. Of the 48 LDCs, 31 states are members of the World Trade Organization, while an additional 12 countries are at various stages of the accession process. The WTO regime requires states to start accessions negotiations within five years of having become observers.

Article XI: 2 of the Marrakesh Agreement establishing the World Trade Organization accepts the classification of LDCs by the United Nations for the purposes of the WTO agreements. Article XI: 2 provides "[t]he least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."

The WTO regime is premised on a system of rules dedicated to open, fair and undistorted competition with the goal of constraining beggar-thy-neighbour policies. For instance, the rules on non-discrimination (most-favoured-nation and national treatment) as well as those on dumping (exporting at below cost to gain market share) and subsidies aim to secure fair conditions for trade. Several of the other WTO agreements (e.g. in agriculture, intellectual property, services) also aim to support fair competition. The agreement on government procurement (a "plurilateral" agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries.

In general terms the existing WTO framework offers flexibilities for LDCs, thereby facilitating the use of industrial policy in these economies. The WTO regime provides for (i) numerous exceptions provisions in different agreements, which take into account the special circumstances of LDCs;[27] (ii) under "special and differential treatment" provisions permit LDCs to derogate from the application of certain provisions of the agreements;[28] and (iii) under special exemptions or waivers LDCs are granted longer transitional periods to implement certain agreements, such as TRIPS.[29]

The broad range of provisions targeted at LDCs can be categorized accordingly to the sector. Annexe I provides a listing of the key provisions in the areas of goods, services, intellectual property and other areas such as subsidies and countervailing measures, aid for trade and government procurement.

26 List Of Least Developed Countries (as of 11 December 2015) at http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf

https://www.wto.org/english/thewto_e/minist_e/min11_e/brief_ldc_e.htm

27 World Trade Organization, https://www.wto.org/english/thewto_e/minist_e/min11_e/brief_ldc_e.htm

28 The special and differential treatment (S&D) provisions (see page: Work on special and differential provisions) are contained in WTO agreements to give developing countries, in particular least developed countries, special rights and which give developed countries the possibility to treat developing countries more favorably than other WTO Members. An overview of special and differential treatment for least-developed countries can be found in document WT/COMTD/W/135.

29 Ramdoo P 7

5 Trade in Goods

The Agreement establishing the WTO refers to sustainable economic development as a WTO objective in its chapeau and provides that international trade should facilitate the economic development of LDCs. Article XVIII of the General Agreement on Tariffs and Trade (GATT), in combination with the Decision on Safeguard action for Development Purposes and the Declaration on Trade Measures Taken for Balance-of-payments Purposes, and the Understanding on the Balance-of Payments Provisions of the GATT 1994 vests developing countries with the right to restrict imports. Such restrictions may be justified on the basis of objectives to build a particular industry, or assist with balance-of-payments challenges. Ministerial Decision on a Special Safeguard Mechanism for Developing Countries WT/MIN(15)/W/45 allows developing countries to temporarily increase tariffs on imported goods. The Ministerial Decision on Cotton WT/MIN(15)/W/48 declares that cotton from LDCs should be given duty-free and quota-free access to developed markets and to developing markets where possible, from January 1, 2016. It also requires that developed countries ban cotton export subsidies immediately, but permits developing countries do so at a later date.

Part IV of the GATT provides that where developed countries grant trade concessions to developing countries they ought not to anticipate reciprocal offers from developing countries. Further, Art. XX of the GATT permits LDCs to impose restrictions on multi-national corporations to prohibit importation and sale of certain medicines on the grounds of public health. In General, Waivers are permitted under Art. IX:3 of the WTO Agreement and the June 1999 General Council Decision on Waiver regarding Preferential Tariff Treatment for LDCs WT/L/304 allows developing country members to provide preferential tariff treatment to products of LDCs extended until 30 June 2019 in decision WT/L/759.

The WTO Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause) allows developed members to give differential and more favourable treatment to LDCs. The Enabling Clause provides the WTO legal basis for the Generalized System of Preferences (GSP). Under the GSP, developed countries offer non-reciprocal preferential treatment to products originating in developing countries. Pursuant to The Ministerial Decision on Export Competition WT/MIN(15)/W/47 developed members have committed to remove most export subsidies immediately while developing countries are not required to do so before 2018. Developing members may also cover marketing and transport costs for agriculture exports until the end of 2023. Table 1 provides a list of the various countries which currently have GSPs and LDC-specific duty free treatment.

6 Trade in Services

Article IV of the General Agreement on Trade in Services (GATS) encourages the increased participation of developing countries in world trade while Article XII permits developing countries and countries in transition to impose restrictions on trade in services for reasons of balance-of-payment difficulties.

The WTO Ministerial Conference in December 2011 adopted a waiver WT/L/847 to allow developing and developed-country members to offer preferential treatment to services and service suppliers from LDCs.

Under the Ministerial Decision on Implementation of Preferential Treatment in Favour of Services and Service Suppliers of LDCs and Increasing LDC Participation in Services Trade (WT/MIN(15)/W/39) the waiver period for which LDC services and service suppliers may be granted preferential treatment was extended for 15 years until 31 December 2030.

Several WTO members have demonstrated intentions to assist LDCs by providing preferences for LDC services and suppliers in specific sectors. The sectors most frequently cited are in professional skills and business services, logistics/transport services, business process outsourcing and ICT, and services

Table 1

List of GSP and LDC-Specific Duty Free Agreements

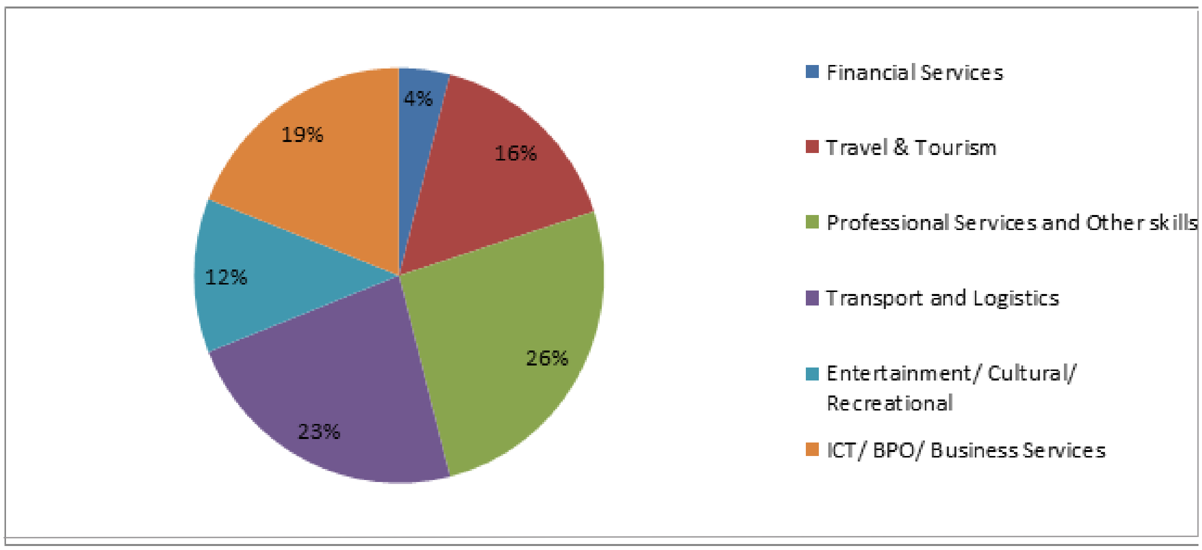
Name	Type	Sub-	Providers	Initial Entry Into Force
Generalized System of Preferences- Australia	GSP	1	Australia	1-Jan-74
Generalized System of Preferences – Canada	GSP	1	Canada	1-Jul-74
Generalized System of Preferences – European Union	GSP	2	European Union	1-Jul-71
Generalized System of Preferences – Iceland	GSP	0	Iceland	29-Jan-02
Generalized System of Preferences – Japan	GSP	1	Japan	1-Aug-71
Generalized System of Preferences – New Zealand	GSP	1	New Zealand	1-Jan-72
Generalized System of Preferences – Norway	GSP	2	Norway	1-Oct-71
Generalized System of Preferences – Russian Federation, Belarus, Kazakhstan	GSP	1	Belarus; Kazakhstan; Russian Federation	1-Jan-10
Generalized System of Preferences - Switzerland	GSP	1	Switzerland	1-Mar-72
Generalized System of Preferences – Turkey	GSP	2	Turkey	1-Jan-02
Generalized System of Preferences – United States	GSP	1	United States	1-Jan-76
Duty-Free Tariff Preference Scheme for LDCs	LDC- specific	0	India	13-Aug-08
Duty-free treatment for African LDCs – Morocco	LDC- specific	0	Morocco	1-Jan-01
Duty-free treatment for LDCs – Chile	LDC- specific	0	Chile	28-Feb-14
Duty-free treatment for LDCs – China	LDC- specific	0	China	1-Jul-10
Duty-free treatment for LDCs – Chinese Taipei	LDC- specific	0	Taipei, Chinese	17-Dec-03
Duty-free treatment for LDCs – Kyrgyz Republic	LDC- specific	0	Kyrgyz Republic	29-Mar-06
Duty-free treatment for LDCs – Thailand	LDC- specific	0	Thailand	9-Apr-15
Preferential Tariff for LDCs – Republic of Korea	LDC- specific	0	Korea, Republic Of	1-Jan-00

related to the tourism industry. Figure 5 shows the frequency with which sectors are covered in signals announced to date.

The GATS agreement aims to liberalize trade in services. The agreement covers four different modes. Mode 1 addresses Cross-border supply. This involves Internet consultation, and education services. Mode 2 addresses consumption abroad, and focuses on incidents where patients seek treatment abroad or are abroad when they need treatment. Mode 3 concerns foreign commercial presence and enables foreign companies, to invest in commercial operations, such as health management and insurance in other Member states. Mode 4 concerns the movement of natural persons, as opposed to companies, particularly the temporary movement of a commercial provider of services such as, a doctor from his country to another country to provide his or her service contractual services. Figure 6 reflects the percentage of WTO members signaling each mode of supply.

Figure 5

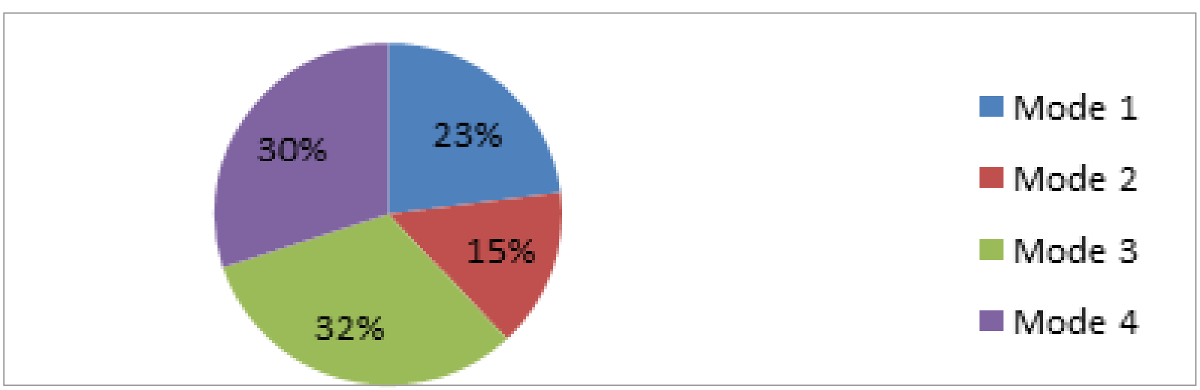
Frequency with which Services Sectors are covered[30]



30 Drake-Brockman, J., Greenidge, A., Lan, J., and Zhao, Q. (2015). Making the Most of the LDC Services Waiver. Geneva: ITC, p.13.

Figure 6

Percentage of WTO members signaling each mode of supply[31]



31 Drake-Brockman, J., Greenidge, A., Lan, J., and Zhao, Q. (2015). Making the Most of the LDC Services Waiver. Geneva: ITC,. At p.13.

7 Trade in Intellectual Property Rights

Some exemptions and waivers provide LDCs with extended transitional periods for agreements such as TRIPS.[32] While LDCs are bound by the TRIPS Agreement, Article 66.1 of the TRIPS Agreement caters for a transition period, which allows LDCs to delay protecting intellectual property. Article 66.1 was introduced based on recognition that LDCs are handicapped by economic and institutional constraints in their efforts to comply with the TRIPS Agreement in its entirety and it places LDCs under no obligation to protect trademarks, copyright, patents or other types of intellectual property. On 11 June 2013, pursuant to (Document IP/C/64), WTO members resolved to extend the deadline for LDCs to protect intellectual property under the WTO's TRIPS agreement until 1 July 2021, with a further extension possible.[33] However, LDCs have the option to protect intellectual property if they elect to do the same.[34] Article 67 of TRIPS governs provisions of technical assistance.

LDCs may also impose restrictions on multinational corporations to prohibit the importation and sale of certain medicines on the grounds of public health, under the 2001 Doha Development Agenda declaration on TRIPS and Public Health. Such policies, coupled with the suspension of issuing pharmaceutical patents are consonant with Article XX of the GATT which facilitates the adoption of measures which are necessary to protect human health[35]. The need to build the capacity of LDCs services trade was discussed at a high-level meeting of the WTO Services Council on 5 February 2015.

8 Other Areas

The WTO regime facilitates special treatment and assistance for the development of LDCs, and increasing trade opportunities through market access. Additionally, mechanisms such as export processing zones (EPZs) are not prohibited under the WTO regime. Article 8 of the WTO Agreement on Subsidies and Countervailing Measures (SCM) permits: "assistance for research and development (R&D), assistance for disadvantaged regions, and assistance to adapt existing facilities to meet environmental regulations."

Assistance for LDCs is also permitted under the Aid for Trade program. In December 2005, the Sixth Ministerial Conference in Hong Kong established a new WTO work programme on Aid-for-Trade. Article 57 of the Hong Ministerial Declaration observes '[…] Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access. However, it can be a valuable complement to the DDA.[…]'. LDCs also benefit from the Enhanced Integrated Framework (EIF), a global Aid for Trade partnership for LDCs, which assists LDCs in tackling obstacles to trade to become more competitive players in global trade. Key areas of focus are value chains, monitoring and evaluation, private sector development, infrastructure development and regional trade integration.

Public procurement regulation is generally designed to ensure that public entities specify desired goods or services in a transparent manner prior to purchasing those goods or services. Cost-effectiveness, a healthy bidding process, and proper implementation are important for success. Public procurement strategy can

32 Ramdoo, Isabelle. (2015) at p.7

33 World Trade Organization, The least developed get eight years more leeway on protecting intellectual property https://www.wto.org/english/news_e/news13_e/trip_11jun13_e.htm

34 World Trade Organization, https://www.wto.org/english/thewto_e/minist_e/min11_e/brief_ldc_e.htm

35 The text of GATT Article XX :"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement [the GATT] shall be construed to prevent the adoption or enforcement by any contracting party of measures: ...

be used by poor governments to give preference to domestic suppliers in specific industries, thereby promoting their sustained growth and competitiveness.[36] The WTO Government Procurement Agreement (GPA) specifically caters for those states with ambitions of pursuing industrial policy in the development of green technology. Article X(6) of the revised GPA on technical specifications provides 'A Party, including its procuring entities, may – for greater certainty – in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.'

In the case of public procurement policy, the cost includes a stock of readily available procurement professionals domestically, in addition to policies which conform to the requirements of the WTO order.[37] Ideally, the agreement must contain enough space for governments to promote local industry, with provisions for proper accountability to other states.

9 The Nairobi Package

On December 19th 2015, the WTO secured the "Nairobi Package", at the close of the Tenth Ministerial Conference. This agreement marks a new era in preferential treatment for LDCs in trade of agricultural goods and services as it introduces greater policy space for the WTO's poorest members to pursue industrial policy. The "Nairobi Package" includes a Ministerial Decision on Export Competition WT/MIN(15)/W/47, which contains a commitment to abolish export subsidies for farm exports. Under this decision, developed members have committed to remove most export subsidies immediately. However developing countries are granted the opportunity for gradual transition, and are not required to do so before 2018. Developing members may also cover marketing and transport costs for agriculture exports until the end of 2023. The Ministerial Decision on Export Competition decision is supported by safeguards to ensure that other export policies are not used as a hidden form of subsidies. These safeguards include rules on state ventures engaging in agriculture trade, limits on the advantages of financing support to agriculture exporters, and disciplines to ensure that food aid does not negatively affect domestic production.

The WTO members also adopted a Ministerial Decision on a Special Safeguard Mechanism (SSM) for Developing Countries WT/MIN(15)/W/45 at Nairobi which acknowledges the right of developing countries to temporarily increase tariffs on imported goods. Another laudable decision for LDCs is Ministerial Decision on Cotton WT/MIN(15)/W/48 which recognizes the importance of the cotton industry to LDCs. The decision contains three agriculture elements: market access, domestic support and export competition. The decision declares that cotton from LDCs should be given duty-free and quota-free access to developed markets of developed countries, and to developing markets where possible, from 1 January 2016. The decision also requires that developed countries ban cotton export subsidies immediately while it permits developing countries to do so at a later date.

The Nairobi Decision expands on The Bali Decision on 2013, which introduced several multilaterally agreed guidelines which allowed LDC exports to benefit from preferential market access. The Nairobi Decision provides greater detail on precise issues including methods for determining which products qualify as "made in an LDC" and which inputs from multiple sources may be combined together into the consideration of origin.

The Ministerial Decision on Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade WT/MIN(15)/W/39 was also adopted at Nairobi. Under this decision the waiver period for which LDC services and service suppliers may be granted preferential treatment was extended for 15 years until 31 December 2030. By January 2016, 21 WTO members

36 Mosoti, Victor (2014) 'The WTO Agreement On Government Procurement: A Necessary Evil In The Legal Strategy For Development In The Poor World? U. Pa. J. Int'l Econ.L. Vol 25:2, 600-601.

37 Mosoti (2014) U. Pa. J. Int'l Econ.L. Vol 25:2 at 598- 599, supra

had submitted notifications granting preferences to LDC services and service suppliers.

10 Promoting Industrial Policies through Innovation in LDCs

The above review and analysis suggests that LDCs are not unduly constrained by WTO rules and that there is significant scope for promoting industrial policy among LDCs given existing WTO rules. Indeed, the issue is that LDCs are far from being in a position to exploit the various exceptions and waivers outlined above. As such the problem may be better described as one of limited capacity among LDCs to maximize on the policy space that they currently enjoy under the WTO.

The scenario facing LDCs differs from that for emerging countries that are close to the technological frontier and are in a position to compete with advanced economies. Here the policy space is more constrained as exemplified by the cases at the WTO Dispute Settlement Body. Almost two-thirds of the DSB cases have developed countries as complainants and respondents. Middle-income countries also feature prominently accounting for close to one-third of the cases. There is only one case where a LDC is a complainant (DS308 Bangladesh requested consultation with India concerning anti-dumping measures on batteries imposed by India in 2004) and there are no cases where an LDC is a respondent. LDCs are only involved in the DSB cases as third parties and the majority of the cases involve commodities like sugar, bananas and cotton. The cases at the DSB are indicative of the asymmetries in global trade. As such it is argued that "WTO member countries have no litigation requests against low-income countries because the latter have limited industrial foundation that could threaten developed and middle income economies."[38]

From this perspective the issue at hand is what kind of trade policy mix would facilitate industrial upgrading by LDCs. Developing countries have been utilizing trade policies to promote industrialization through import-substitution industries, export-oriented industries, export processing zones, resource-based industries and more recently industrialization through innovation.[39] Table 2 contrasts those policies which are necessary for a particular industrial policy with trade policy measures such as tariffs, trade taxes, quantitative measures, trade-related investment measures and subsidies. It shows that there is a fairly wide array of policy options with varying resource requirements and potential returns.

Most of the literature on industrial policy focuses on middle-income developing economies and emphasizes the manufacturing and agro-processing sectors, as opposed to the services (e.g. tourism, financial services, creative industries) and intellectual property sectors (e.g. copyright, traditional knowledge, geographical indications). These are the sectors that have significant growth potential in the emerging knowledge-driven global economy.[40] The services sector predominates among the small services driven LDC economies and would represent a key mechanism for industrial upgrading. Intellectual property driven industrial policy is also of utmost importance across the board to services, resource-based, agricultural and manufacturing economies as this provides a basis for value-addition and a mechanism to avoid the problem of the commodity trap. It is therefore recommended that greater emphasis be placed on industrial policies in the services and intellectual property sectors.

38 See Lee, K. Shin, W. and Shin, H. (2014) "How Large or Small is the Policy Space: WTO Regime and Industrial Policy" Seoul Journal of Economics, Vol 27:3.

39 See Low, P. and Tijaja, J. (2013). "Global Value Chains and Industrial Policies" pp.28-34 Think Piece for the E15 Expert Group on Global Value Chains, International Centre for Trade and Sustainable Development (ICTSD) and Inter-American Development Bank (IDB): p.32.

40 See Ok, Wooseok and Lee, Keun and Kim, Hyoseok (2014), Service-Led Catch-Up in the Indian Economy: Alternative Hypotheses on Tertiarization and the Leapfrogging Thesis (February 28, 2014). Seoul Journal of Econommics 27 (No. 1 2014): 1-40; and Zahler, Andrés, Leonardo Lacovone and Aaditya Mattoo (2014.) "Trade and Innovation in Services: Evidence from a Developing Economy," The World Economy, Wiley Blackwell, vol. 37(7), pages 953-979.

Table 2

Necessary settings for various strategies for industrial policy (without prejudice to WTO legal interpretation)[41]

	Different tariff levels	Differential export taxes	Quantitative restrictions	Trade-related investment Measures	Other subsidies	
					Domestic	Export
ISI	X		O	O	O	O
EOI	X		O	O	O	X
RBI	O	X	O	O	O	O
EPZs	X		O	X	O	X
ITI					X	

Key: ISI (Import substituting Industrialization); EOI (Export-oriented industrialization); RBI (Resource-based industrialization); EPZs (Export processing zones); ITI (Industrialization through innovation)

X- Essential Policy; O- Alternative intervention going in the same direction

41 Low, P. and Tijaja, J. (2013).

However, irrespective of which sector is being promoted the overarching issue is that LDCs face several distinct challenges in the implementation of industrial policies such as relatively small domestic markets with a high dependence on imported goods, technologies and management practices. This in part accounts for the weak demand for innovation driven enterprises and for investment in research and development which are key for the successful implementation of industrial policies. This is due to a variety of factors; local firms often consider R&D to be too expensive, relying on imported technologies may be more convenient, and innovation may be viewed as something beyond their capabilities. Regulatory frameworks, intellectual property rights institutions, and information and technical services are also either weak or non-existent." [42]

In this regard, LDCs generally lack the financial and human resources required to actively pursue innovation, making technical assistance or foreign direct investment key to technological upgrading. From this perspective, cluster development and value chain integration represents important mechanisms for LDC firms to overcome some of the challenges associated with diseconomies of scale. For example, it is observed "for small firms in less developed countries, participation in value chains is a means of obtaining information on the needs of global markets and of gaining access to those markets".[43] Participation in clusters and GVCs are no panacea. For instance, it is argued that at the same time that global production is being fragmented and made accessible to a wider range of producers so are some of the production segments becoming more commodified due to "low barriers to entry, global oversupply and declining terms of trade".[44] This suggests that the real issue at

42 See Alberto Melo, Innovation Systems in Latin America and the Caribbean. IADB (2001). p. 45.

43 See Carlo Pietrobelli and Roberta Rabellotti, eds. "Clusters and Value Chains in Latin America: In Search of an Integrated Approach" in Upgrading to Compete: Global Value Chains and SMEs in Latin America. Washington DC: IADB 2006: 1-40.

44 Alessia Amighini "Upgrading in International Trade: Methods and Evidence from Selected Sectors in Latin America" in Carlo Pietrobelli and Roberta Rabellotti, eds., Upgrading to Compete: Global Value Chains and SMEs in Latin America. Washington DC: IADB 2006: 222.

hand is how to move up global value chains or facilitate industrial upgrading.

It is increasingly recognized if not accepted that FDI and the participation of large domestic firms have not been sufficient to shift the path dependencies of most LDC economies and that a more dynamic and proactive policy agenda is required to break out of the commodity traps that are evident even among countries that are participating in GVCs. This is based on the argument that "FDI cannot drive industrial growth without local capabilities."[45] The promotion of innovation-driven enterprises (IDEs) is viewed not as a replacement but a complement to foreign firms and large local corporations because IDEs "retain high technology capabilities in the country and to lure back the scientific, technological and entrepreneurial diasporas." [46]

In effect, what is being proposed are institutional arrangements (e.g. through incubators, startup funds, networking with firms, suppliers, and relevant non-state actors) to facilitate the growth of innovation as a key input to the industrial upgrading process. At the same time, the greater the investment in domestic R&D, the greater the potential for absorbing and utilizing external research and innovation. This suggests that LDCs need to be proactive in terms of promoting innovation driven enterprises and increasing investment in R&D while attracting FDI and integrating into GVCs.

45 See Sanjaya Lall (2005) "Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness" in Ariel Buria, ed. The IMF and the World Bank at Sixty. London: Anthem Press: 224.

46 Carlota Perez "Towards the Latin American SME of the Future: Technological Dynamics and Social Inclusion" in SMEs as a Factor for Integration: 35 Years of Sustained Efforts by SELA. Caracas: SELA, 2011: 120.

Annex 1

WTO Measures Targeted at LDCs

GOODS	SERVICES	INTELLECTUAL PROPERTY	OTHER
WTO Instrument :The Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) Effect: enables developed members to give differential and more favourable treatment LDCs. The Enabling Clause provides the WTO legal basis for the Generalized System of Preferences (GSP). Under the GSP, developed countries offer non-reciprocal preferential treatment to products originating in developing countries.	WTO Instrument : GATS Art. IV Effect: Aims to increase the participation of developing countries in world trade. Refers to strengthening the domestic services competitiveness of developing countries through access to technology.	WTO Instrument : GATS Art. IV Effect: Aims to increase the participation of developing countries in world trade. Refers to strengthening the domestic services competitiveness of developing countries through access to technology.	WTO Instrument: Art. 8 of the WTO Agreement on Subsidies and Countervailing Measures (SCM) Effect: Permits assistance for research and development, assistance for disadvantaged regions, and assistance to adapt existing facilities to meet environmental regulations
WTO Instrument: GATT Art. XX Effect: LDCs may impose restrictions on multi-national corporations to prohibit importation and sale of certain medicines on the grounds of public health	WTO Instrument : GATS Art. XII Effect: Allows developing countries to restrict trade in services for reasons of balance-of-payment difficulties	WTO Instrument: TRIPS Art. 67 Effect: Requires developed country Members to provide, technical and financial cooperation in favour of developing and least-developed country Members in order to facilitate the implementation of the Agreement.	WTO Instrument: Aid for Trade partnership for LDCs Effect: Assists LDCs in tackling obstacles to trade to become more competitive players in global trade. Focuses on value chains, monitoring and evaluation, private sector development, infrastructure development, and regional trade integration.

GOODS (Continued)	SERVICES (Continued)	INTELLECTUAL PROPERTY (Continued)	OTHER (Continued)
WTO Instrument: GATT Part IV on non-reciprocal preferential treatment for LDCs. Effect: When developed countries grant trade concessions to LDCs they should not expect the developing countries to reciprocate.	WTO Instrument :Waivers (under Art. IX:3 of the Agreement Establishing the WTO); Waiver adopted by WTO Ministerial Conference in December 2011 Effect: enables developing and developed-country members to provide preferential treatment to services and service suppliers of LDCs WT/L/847. Under Ministerial Decision on Implementation of Preferential Treatment in Favour of Services and Service Suppliers of LDCs and Increasing LDC Participation in Services Trade WT/MIN(15)/W/39 The waiver period for which LDC services and service suppliers may be granted preferential treatment was extended for 15 years until 31 December 2030		WTO Instrument: Art. X(6) of the revised WTO Government Procurement Agreement on technical specifications. Effect: Allows states to prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment
WTO Instrument :Waivers (under Art. IX:3 of the Agreement Establishing the WTO); June 1999 General Council Decision on Waiver regarding Preferential Tariff Treatment for LDCs WT/L/304 Effect: Allows developing country members to provide preferential tariff treatment to products of LDCs (extended until 30 June 2019 in decision WT/L/759)			
WTO Instrument: GATT Art. XVIII, the Decision on Safeguard action for Development Purposes and the Declaration on Trade Measures Taken for Balance-of-payments Purposes and the Understanding on the Balance-of Payments. Effect: These provisions give LDCs the right to restrict imports to promote local industry, or assist in balance-of-payments difficulties.			

GOODS (Continued)	SERVICES (Continued)	INTELLECTUAL PROPERTY (Continued)	OTHER (Continued)
WTO Instrument: Ministerial Decision on Export Competition WT/MIN(15)/W/47 Effect: Developed members have committed to remove most export subsidies immediately while developing countries are not required to do so before 2018. Developing members may also cover marketing and transport costs for agriculture exports until the end of 2023.			
WTO Instrument: Ministerial Decision on a Special Safeguard Mechanism for Developing Countries WT/MIN(15)/W/45 Effect: Allows developing countries to temporarily increase tariffs on imported goods.			
WTO Instrument: Ministerial Decision on Cotton WT/MIN(15)/W/48 Effect: Declares that cotton from LDCs should be given duty-free and quota-free access to developed markets and to developing markets where possible, from 1 January 2016. Requires developed countries ban cotton export subsidies immediately, but permits developing countries do so at a later date.			