Fair Trading Commission Lecture

“Global Trends: Implications for Regulation and Fair Trade”

Delivered by H.E. Dr Marion Williams on the occasion of the

11th Annual Fair Trading Commission Lecture

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Deputy Chairman,

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Distinguished Guests,

Ladies and Gentlemen,

I am particularly honoured to be here this evening and to join the impressive list of speakers who have delivered this lecture in the past. I take the opportunity of congratulating the Fair Trading Commission for having the foresight to launch these lectures. They have been both informative and stimulating.

My address this evening is titled “Global trends: Implications for Regulation and Fair Trade” . It will draw on my exposure over the past several years to international organizations whose job it is to analyze trends, respond to them, develop regulations and to help to shape a global environment which delivers hope, opportunity, predictability, fairness and economic and social improvement to its member states. My emphasis this evening will be on business outcomes - which is the focus of some international organizations - many of which are located in Geneva, but which rarely make the limelight. While areas such as Health, Human Rights, and Climate Change are very important, and do impact on economic and business outcomes, emphasis will be placed in this presentation on how global trends, in particular in competition, intellectual property, International telecommunications, global value chains, out- sourcing, foreign direct investment, investment agreements, corporate growth and similar trends which impact on trade – and since trade depends on business - therefore on business. I will also indicate the implications for regulation.

The presentation will set the global context in which these key drivers of business development are taking place, the trends and challenges which are emerging, the regulatory framework which is being fashioned in response to rapidly emerging trends, the implications for future business, for regulation and fair trade, and in particular as these relate to small economies.

I will speak of the impact on trade rather than fair trade and by exception, where a trend leads to unfair trade, I will flag that particular trend as in need of reversal or review.

Global Context

Several developments form the global context in the areas were identified.

They include:

The rapid growth of emerging markets, and changes in relative competitiveness at the country and sector level;

The rise of South East Asian economies and the increasing dominance of China;

The growing interdependence of the global economy despite rising protectionism;

Volatility of commodity prices and concerns about food security;

Resumption of growth in Foreign Direct Investment, but an absence of geographical spread.

Other trends include:

An increased incidence of disputes both in the area of trade and in investments especially in bilateral investment treaties;

The cementing of outsourcing as a strategy for cutting costs; rapid growth in global value chains; concerns about added value and about failure to achieve any significant technology transfer to many developing countries;

Corporate concentration, the growth of mega corporations, jobless growth, declining labour shares and the growth of corporate savings, despite recent slowing of corporate concentration;

Also included in the list are:

The increase in initiatives aimed at concluding plurilateral trade agreements and concerns for their impact on multilateral negotiations;

A groundswell of international initiatives to recover tax revenues from corporations set up in international financial centres;

Aggressive emphasis on anti –cartel enforcement in developed countries and greater focus on regulation in the post crisis period;

We can also include:

The challenge of delivery of digital access to all and increasing concerns globally about cyber security and ICT governance;

Concerns about enforcement of the decisions of the dispute settlement body;

and global regulation and inroads into policy space of developing countries as they try to restructure and stabilize their economies.

In addition we can add:

Business forecasters predictions of mobility, connectedness, consumption anywhere, distributed output and rapidly changing technologies.

While the foregoing plethora of trends and forces represent the approximate context in which businesses operate and rule-making takes place, it is impossible to discuss them all. I will therefore focus on the most important trends as they affect trade and business and those which have a major regulatory dimension, either directly or indirectly.

Firstly, emerging markets. The last three decades have been marked by a tremendous growth in emerging markets. Many developing countries have experienced unprecedented growth and have integrated increasingly into the global economy. This has been reflected in an expanded composition of the "G20"; in discussions in the IMF about restructuring of that organization to take account of these changes; and by the increasing influence being exerted by emerging market economies in almost every forum.

Emerging Markets:

The growth of India, China and Brazil, in particular, as well as other parts of Asia and South America has simultaneously increased output in emerging economies and has facilitated the emergence of vibrant companies in these markets.[1] Higher prices for agricultural goods and natural resources have helped some developing countries achieve strong growth, and threaten to increase the significance of agricultural producers relative to manufacturing producers in a world where food security can become a more pressing issue. Meanwhile higher agricultural prices have been causing strains for net importers of these goods, among them, small economies in particular.

The recent annual report of the WTO notes that while growing interdependence among the world's economies have led to substantial benefits and have permitted countries to benefit more rapidly from growth and innovations in other parts of the world [2], the increasingly global nature of economic and financial relationships has meant that macroeconomic policies and shocks as well as defensive measures can impact seriously on trading partners and on economic and financial

[1] WTO Report 2014
[2]

cross- border relationships. The latter has led to a reluctant acceptance by the IMF to discuss the transmission effect of macroeconomic policy on trade, exchange rates and on competitiveness of the affected countries.

As the relative competitiveness of the world's economies underwent major shifts, the share of developing countries in global trade rose from 33 per cent in 2000 to 48 per cent in 2014. During that time the growth rate of GDP per capita of developing countries tripled to average 4.7 percent per annum compared to the 1990s, and now accounts for more than half of the world's output.[3]

Meanwhile, there has been a rise in protectionism. Research by the world Economic Forum shows that governments around the world have effected 1200 begger-thy-neighbour policies since the first G20 related summit in November 2008 and that growth in protectionist policies out-paced liberalization policies. Protectionist policies in the EU countries topped the list. Some of these measures were WTO- consistent, so making appeals for reversal more difficult.

Net importers meanwhile have been badly hit – and most small island developing states are net importers. The WTO's 2014 report notes that prices for food, energy, metals and minerals roughly doubled since 2000. Although prices have eased, in particular in recent months as oil prices have declined sharply. It is expected that the high-priced environment is likely to remain, as these prices are still twice as high compared with a decade ago.

Though extreme poverty has improved, the redistribution of income has remained challenging. Indeed, the world has observed widening

[3] Measured in purchasing power parity terms.

inequality of incomes within both developed and developing countries and among countries, with poverty and food security remaining major problems in many countries.

The implication of this growth of emerging market economies for developing countries presents an opportunity to develop networks and alliances with some of these countries which are now becoming powerful, but whose development is sufficiently recent for them to understand the challenges of development and place them in a strong position to speak and otherwise act in the interests of small economies.

The implication for regulation is that they are now moving into decision-making positions in several international organizations. This should give developing countries, and in our case small economies an opportunity to ensure that their views are taken into account.

Global Investment Trends

Global Foreign Direct Investment (FDI) trends prior to the global financial crisis had been rising. This trend was interrupted during the crisis, but since the decline in foreign direct investment recorded in 2012, global FDI growth has resumed. Inflows rose 9 percent in 2013 and are expected to continue to rise in the medium term.[4]

FDI flows to developed countries are estimated to represent 39 per cent of global flows, while those to developing economies are estimated at 54 per cent of the total in 2014. Developing and transition economies now constitute half of the top 20 recipients of FDI inflows. It is a trend on which we might wish to reflect. Where countries are not able to achieve price competitiveness at home, they are searching for other locations where it can be achieved. The EU competitiveness Report 2014, for

[4] UNCTAD projects that FDI flows could rise further in 2014, 2015 and 2016.

example, explicitly recommends foreign investment by European firms. Developed countries are not the only ones who can do this. For most developing countries, this is in essence what south-south co-operation is all about.

There is another statistic which should be indicative of changing stances on outward investment. It is that developing and transition economies together invested 39 per cent of global FDI **outflows**, (note that we are speaking of outflows) compared with only 12 per cent at the beginning of the 2000s. Partnering with foreign firms in targeted investment areas, by small economies limited by geographical size may offer opportunities.

Small economies have not been able to benefit as a group from the increase in foreign direct investment in the post crisis period, partly as a result of their small size, distance from markets and relatively high transportation costs, which make it more difficult for them to compete. An UNCTAD study on the Caribbean region found that distance explains around 20 per cent of the variance of maritime freight rates, while competition among liner shipping companies and economies of scale each have a far stronger impact on the freight rate. They found that when there are 5 or more competing carriers providing direct services, freight rates tend to be lower than when there are fewer providers.

The implication for trade and for regulation is that increasing FDI should be trade-enhancing but will could call for greater monitoring, while efforts should be made to ensure that it encourages innovation.

Outsourcing

Another important trend influencing business and trade has been outsourcing to specialist external service. International outsourcing enterprises have been developing at a rapid rate. According to predictions made by China Center for Information Industry Development, the compound average growth rate of global outsourcing industry (i.e domestic and foreign) in the future years will be about 7.6% per annum and its market share will soon exceed US$500 billion. Meanwhile, offshore as opposed to onshore outsourcing business has been growing at an annual rate exceeding 20%. It is predicted that the global offshore outsourcing business will account for 17% of the total outsourcing business in 2014. In many large developed economies, onshore outsourcing business accounts for a large share of IT spending.

During the financial crisis, offshore outsourcing business increased as a result of clients taking action to outsource part of their business to low-cost countries. Middle income countries in the Caribbean have not been major beneficiaries of outsourced business. Given our cost structures, the options are to target the more complex cases and processes which require those skills which may be in more limited supply in less developed jurisdictions.

Global value chains

While outsourcing generally refers to the delivery of business support services such as accounting, receivables management etc.; the term "global value chains" (GVCs) tends to refer to the wider manufacturing (and services) processes and related activities, also termed global supply or production chains (GSCs). While they are not new, they are now becoming common in many industries and now extend to an increasing number of developing countries.

By relocating production processes (i.e. R&D, concept, design, manufacturing, packaging, marketing, distribution and retailing) in different countries, transnational corporations (TNCs) take advantage of the best available human or physical resources in different countries, with a view to maintaining their competitiveness.

Although services offshoring is still largely related to low-skilled processes, middle- and high-skilled type of services are increasingly being provided in multiple jurisdictions, and may offer opportunities for small economies who have a pool of high-level skills in the professional fields.

Between 1995 and 2005, the main economies participating in GVCs were Republic of Korea, Chinese Taipei, India and China. However, LDC participation in GVCs where labour costs were also low, remain limited. A middle income country which has successfully accessed global value chains at the higher end of production, is Costa Rica and activities in Barbados have been referenced in an UNCTAD report.

The higher tariff on final products provides an incentive to localize assembly in large (or potentially large) consumer markets, or in countries enjoying free access to consumer markets. Though the global economic crisis of 2008-9 sharply reduced the trade in intermediate products - a category which is highly correlated with GVCs - the trend towards an increasing presence of developing countries in global manufacturing and trade in intermediate products and services has resumed.

Since small economies cannot offer large markets, they are at a disadvantage in this regard. Their options are more likely to bear fruit using the duty free access approach, possibly using negotiated treaty arrangements - provided that value- added rules permit - and benefitting from special tax exemptions where these exist.

To be able to rise along the value chain, an industrial or process upgrading is often required, and the point of entry into the global value chain needs to be carefully selected to maximize returns and avoid a race to the bottom. Of interest, in recent years, it has been observed that the differential between labour costs in China, South East Asia and developed countries is narrowing as labour costs there are rising, and the competitive margin may be narrowing.

While the chances of middle income countries being successful in this area are not as strong as low cost jurisdictions, there are nevertheless possibilities if investors can find opportunities higher up the value chain.

The implication for trade and for regulation are more indirect and relate to the growth of private standards, where producers must met exacting standards, sometimes at their costs in order to be part of the chain, thus eroding potential profitability, but nevertheless providing a modest business opportunity. The coffee trade is well known for this feature. Watchers note the fact that these private standards could gain international acceptability.

GVCs and Transfer of Technology:

Another important context in which developing countries are operating has to do with the difficulties being encountered in achieving technology transfer (or technology absorption which is now the preferred expression) from developed to developing countries. Yet, the most critical and necessary area of development which must be achieved if developing countries are to progress, is technology transfer. It is included here not because it is significant in its movement, but because of the lack of movement in many cases. International cooperation agreements between developed and developing states can help, but they are few, and may relate to infrastructure or agricultural development, or to international cooperation in the fields of research, education, employment or transport. However the key transfer takes place at the business- to- business level, as knowledge of production processes is one of the keys to industrial upgrading and export diversification.

So far, the evidence suggests that lead firms tend to outsource lower value- added activities (including final assembly), while retaining control over the higher value added areas of their core competencies, such as R&D, intellectual property, design and distribution. Lead firms, especially those of products or production technique/processes with high intellectual property content, may restrict technical and technological transfer to firms to whom they subcontract. Middle income countries may therefore stand a better chance of entering the chain profitably, at the early or late stages, where value added tends to be higher. However, they may need to compete with firms in the parent country.

Countries like Korea have framed their entire business orientation towards the achievement of higher levels of technology and it seems to be bearing fruit. However, their labour costs are substantially lower than those of the Caribbean, but selective movement in some areas may be possible.

Concentration of transnational companies and the growth of mega-corporations

Another important trend which affects business and trade with important implications for regulation is concentration. The past 15 years have seen increasing global corporate concentration. This was moderated to some extent during the financial crisis, but the trend has resumed, though in a modified way.

The world's 500 largest companies ranked by revenue grew by 2.5 % in 2013, and profits soared 27%. By 2014 China held the top 3 spots in the top 2000 companies in the world and 5 of the top ten places. (Forbes Global 2000). Asia has taken the lead with the greatest number of large companies followed by USA and Europe, compared with 11 years ago when North America held more than 50 percent of the largest companies in the world. Africa has added 7 companies to the list, among them 4 from Nigeria.

Corporate growth has been leading to the rise of mega- corporations for some time. As early as 2011, a study by showed that in an analysis of 43,000 transnational companies, 1318 companies with interlocking ownership represented 60% of global revenues and about 1% controlled 40 percent of the wealth in the group analyzed. These developments have implications for trade, competition and regulation.

Given the correlation of size with success, one of the possible lessons for small economies might be to grow their businesses through forming networks with regional and non-regional entities so as to scale up their operations, to reap more competitive size and benefit from economies of scale.

This leaves SMEs to perform the role of socio-economic provider of jobs. Countries seem to need both these business structures and to deliver on these twin tracks in order to be successful.

There are however, signs of change. Not all sectors where mega – corporations dominate are doing well. A study of the manufacturing sector in the US in 2012 showed that the "topple rate", as it was called, of large companies in this sector was growing. The sector may not however be typical of the profitability usually associated with mega-corporations.

This has implications for trade and regulation as we will discuss later.

Corporate growth, Employment Trends and jobless growth

With respect to corporate contribution to employment, evidence continues to indicate that small and medium sized enterprises contribute more to employment than large and mega-corporations. This too is a trend, but not a new trend. So while the above suggests that large entities have a better chance of profitability, SMEs tend to supply the employment requirements more effectively. An analysis of the data supports the observed emphasis on SMEs by governments in many developing countries.

It is important to state here that everything is relative, and many companies in the Caribbean that might be described as large corporations, would be classified as medium sized in larger economies. This is an important distinguishing factor to be considered. When translated to international markets, the size of such enterprises can be considered medium- sized and this is reflected in their competitiveness, and can place them at a disadvantage when competing with giant foreign companies.

Research shows that the global labor share has significantly declined over the last 30 years and that this decline was associated with a significant increase in corporate saving.[5] It is argued that whereas in

[5] Karabarbounis and Neiman (2012)

1975 a majority of global investment was funded by household saving, in recent years global investment is funded primarily from corporate saving.

These findings have implications for such issues as the role of capital markets and their efficiency. Large corporations may be engaging in self financing and may not be relying on stock markets to the same extent as in the past. This may suggest that there should be more funds available commercially for the financing of small and medium sized enterprises, and to the extent that it is underutilized, may partly explain what has been observed in some jurisdictions as slow credit growth in recent years.

Declining labour shares however, can improve competitiveness and hence trade, and depending on circumstances, but does not necessarily have implications for regulation. (That depends on context). The apparent financial self sufficiency of mega-corporations does make them less reliant on 3rd party support.

Implications of global trends for Regulation

Another significant global trend is that of aggressive regulation. Following the global crisis in the financial sector, which it was felt was partly attributable to lax regulation of financial institutions in particular, there has been a rush to ensure that large entities are appropriately regulated, and that failure to regulate will not lead again to financial or economic collapse. While this is best represented in enhanced regulatory measures in the financial sector, but it has not been limited to the financial sector. This Regulatory pressure has been a direct consequence of crises, scandals, and the forces of globalization, and has not only led to greater regulation, but has itself created new regulatory trends.

These include higher minimum capital ratios, higher quality of capital, tighter liquidity requirements and the introduction of non-risk weighted leverage ratios. The designation of a Resolution Authority, establishment of crisis management groups and enhancement of cross border cooperation are other features emphasized, as well as special criteria to be observed by systemically important financial institutions (SIFIs). These topics have been given considerable coverage, particularly immediately following the global financial crisis, so they will not be developed here.

At a more general level however, Denton's Report on Seven global regulatory trends to watch in 2014 cite a number of observations which are directly related to the new culture of greater vigilance.

The Report cites more aggressive anti-cartel enforcement. It notes that Competition Authorities around the world are vigorously pursuing domestic and international anticompetitive activities.

They also note that there is there is closer scrutiny of M&As under merger control rules. Also, antitrust authorities in major jurisdictions are more closely scrutinizing M&A deals, and raising competition concerns, whether or not such deals are reportable.

In the European Union, the United States and Canada, the pace of privacy and data protection reform and enforcement action has accelerated, and competition authorities in key jurisdictions are expected to continue to focus attention on antitrust issues arising from the exercise of intellectual property rights.

There is also continued pursuit to enjoin, and in some cases unwind, transactions which regulators believed likely to substantially lessen competition. Also, divestitures continue to play a significant role as parties consider preemptive measures so as to avoid attracting regulatory attention.

European Union Merger Regulation

Recent merger decisions also confirm aggressive enforcement in Europe. In 2014 the EU launched a Merger Simplification Package whose revisions expanded the scope of the simplified filing procedure to apply to a broader set of transactions.

Merger control decisions also revealed a stricter application of the procedural requirements for the supply of misleading information, failing to meet deadlines, breaching stand-still obligations, and a number of infractions which were formerly considered less serious.

For the most part small economies do not have to deal with as many of these issues on an on-going basis, given our small size. Indeed, despite the global trends in the direction of greater levels of regulation, it is important for small economies to avoid over-regulation. Many developed countries benefited from lower levels of regulation when they were at our stage of development. It is important that we strike the right balance between accelerated development and appropriate regulation, while maintaining vigilance and encouraging innovation.

New regulatory models in International Telecommunications Union

Modern and efficient telecommunications are a critical and absolute necessity for achieving rapid economic development and this too is being accompanied by increased regulation. A report on the state of the Internet for 2014 shows that internet speeds have been growing by 24 percent per year. (footnote Ikamai). Today, the countries with the greatest internet speed of communications include South Korea, Singapore, and Hong Kong, Japan and Switzerland. South Korea in particular, boasts the highest average connection speeds of 23.6 Mbp/s and the highest average peak connection. Also South Korea's fastest average download data rate was measured at 33 MBit/s, and was 40% faster than the next country, Japan, and 6 times faster than the world average of 3.8. It is no accident that South Korea is a rapidly growing economy, especially in the area of IT services.

In looking to the future challenges in telecommunications, the International Telecommunications Union (ITU), an important regulatory and standard setting arm for communications, sees future challenges as including; ensuring that the benefits of broadband are available to everyone. They identify the need for spectrum as a major goal and note the need to redefine universal access and service and to extend universal service beyond network deployment only. They also identify the need to provide access to the digital world to all, based on sustainable business models which can cater to areas such as e-education and e-health among other areas.

Regulatory trends and perspectives in IT

In addressing emerging regulatory trends in the IT world[6] , ITU called for development and promotion of favorable policies and regulatory frameworks, which are fair, transparent, stable, predictable and nondiscriminatory, that promote competition, foster continued technological and service innovation, and encourage investments on broadband infrastructure, services and applications.

The presentation recommended that governments in developing countries take steps to develop e-business enabling environments and adopt e-commerce regulations consistent with the cross-border nature of e-commerce.

Future Regulatory approaches in IT

The presentation noted that new legislation and regulations tend to lag technological change and tend to take place at a much slower pace. With respect to trends in internet governance, there are indications however, that the global trend of multiple regulators which has been in place for some time is likely to change. Currently, there are three entities involved in internet governance. The ITU, ICANN[7] and the IGF[8]. The current absence of a globally agreed internet governance structure suggests that a tidier solution is required.

Professionals in the field tend to have the same technical objectives. They are of the view that the international community must address the

[6] a presentation by the ITU on Emerging Regulatory Trends in the IT world .

The fastest internet connection speeds in 2014,according to Akamai was 111.64 Mbps Singapore, 100.46 Hong Kong, and 92.7 South Korea. Trinidad and Tobago at 13.44 was the fastest in the Caribbean, and was 73rd.

[7] Internet Corporation for Assigned names and Numbers

[8] Internet Governance Forum

internet–related risks and vulnerabilities faced by governments, corporations and citizens when ensuring digital growth and innovation.

Ideas on the future governance direction differ. Many developing countries see the ITU as the main international player in internet governance. The older and larger developed countries are more comfortable with multi-stakeholder arrangements, and tend to be less inclined to that solution.

Net neutrality and internet privacy will be the major agenda items. Whatever is decided, it will be important for developing countries, to use every opportunity to be part of the changing market dynamism. The pending decision about globalization of ICANN oversight, could provide the foundation for the future internet governance arrangement with possible impact for the share of developing countries in the growth of the sector.

There is agreement that an appropriate regulatory framework should balance the interests of suppliers and users, in areas such as the protection of Intellectual property rights, (IPRs), data protection and digital rights management, without disadvantaging innovation**.**

Markets from education to transport, retailing, healthcare and capital are responding to the challenges. E- education and, some aspects of e-health are already in place. Developing countries who are ramping up their systems may be in a position to lead in some of these areas.

The message from the ITU for developing countries, including small economies, is that it will be important that they work to increase the speed and efficiency of their telecommunications and hence of their IT environments as a critical requirement for success. Small economies have already identified that because of their small size and small markets that services, particularly services that can be sold electronically, offer a greater opportunity to escape diseconomies of scale but modern and cutting edge telecommunications are an essential part of that success.

At the global regulatory level, small economies may have to rely on the developing countries who are part of the decision-making group to represent their interests, but have an opportunity to submit comments and views on the way forward on the global IT governance system.

Intellectual Property Trends and the World Intellectual Property organization (WIPO)

With respect to intellectual property, there has been an increasing awareness in developing countries over the past 40 years in the area of intellectual property. This trend is continuing, and indeed developing countries are beginning to pay greater attention to the benefits of intellectual property.

Meanwhile, developing countries are seeking to protect their embryonic but growing pharmaceutical industries, and new medicines which they are developing from local plants, and securing them with new patents, while paying increased attention to the protection of genetic resources and cultural expressions.

Conventional IP statistics continue to climb. In particular, China has been in the forefront of this growth. Their leading status is exemplified in the growth of trademarks, for example. Over the course of the last four decades, the demand for trademarks has intensified to unprecedented levels. As early as 2001, China's trademark office had become the top recipient of trademark filings. There were 7 million trademarks issued in 2013, with China and US again leading the field.

In 2013, 2.6 million patents were issued, producing a growth rate over the previous year of 9%. A rather interesting statistic discloses that 81 percent of these patents were filed in China, US, Japan, the Republic of Korea and the European patent office. China also became the leader in patent filings in 2011.

In industrial designs, China was again the leader, followed this time by the EU office.

These statistics seem very closely associated with the rate of technological development at the national level and could be instructive to other developing countries.

Developing countries have shown increasing commitment to widen regional knowledge about IP and encourage businesses and individuals to secure their intellectual property rights. This is occurring in the Caribbean as well.

Branding, Innovation and Competition

[9] The rise of the internet has prompted brands to more easily transcend national borders. Branding has become a rising trend and has become recognized as an important source of market power from which companies can benefit when they innovate. Studies by WIPO suggest that branding generally complements innovation. WIPO's report on this topic indicates however, that this is a two-way street. In certain situations strong brands can create high barriers to trade, as new competitors may

[9] The 2014 Report of the World Intellectual property Organization

not be able to bear the high advertising costs of inducing consumers to switch to their products.

Nation branding

The Report notes that nations have always created their own brands. In an examination of branding, WIPO notes that some countries in the Caribbean have paid emphasis to the development of country brands. Throughout the last decade, countries have become much more aware of the leveraging power of a strong national brand. Just as companies manage their brands, countries too are increasingly involved in promoting their "brand", and in a more active and deliberate fashion. The idea is to promote a strong nation brand with certain quality image and reputation, in order to positively influence broader economic issues such as foreign direct investment and trade. As part of this strategy, since the late 1990s, many countries have succeeded in creating a distinctive country of origin sign.

[10] Existing estimates of tangible versus intangible investments across a number of high income countries and China, provided by WIPO, show interesting results. In some countries, intangible investments are larger than tangible investments – for example, in the UK, the US and also within the Europe, in particular France, Ireland, the Netherlands, Denmark and Finland. The broad category of intangible investments that include brand equity, namely economic competencies, is the largest component of intangible investment for Eurozone area countries, the UK and the US. For half of all countries for which data are available, economic competencies account for slightly more or just about equal the

[10] WIPO Report 2014

investments in other intangible assets as a proportion of value- added. This trend in intellectual property, branding and increased value of intangibles is expected to continue. The Caribbean is better known for its success in branding in the areas of culture and sports but there are possibilities for widening that coverage to include other areas.

Other developments which impact on regulation and fair trade

1. Increased incidence of investment disputes

A global trend in recent years which impacts negatively on business and trade relates to the increasing number of international disputes. Of the 3268 bilateral investment treaties and international Investment agreements in place in 2014, 43 known treaty based ISDM cases were initiated in 2014 alone. Several involved governments, some seeking to curtail the scope which governments have in determining fiscal policy, debt restructuring and in implementing adjustment measures to ensure macroeconomic stability. These had reached a peak in 2013 with as many as 59 cases going to the Investor State Dispute Settlement Mechanism (ISDM). Also, data show that 40 percent of new cases are against developing countries compared to a historical average of 28 per cent. In response, the United Nations Conference on Trade and Development (UNCTAD) has started a process involving a wide range of stakeholders with the intention of developing guidelines in this area, aimed at securing investor protection while giving governments policy space to stabilize their economies, while at the same time offering security and predictability to investors.

Meanwhile, a number of countries are reviewing their model International Investment Agreements (IIAs). Several now contain sustainable development provisions aimed at preserving regulatory space for public policies of host countries and or minimizing exposure to investment.

Indeed, the issue of policy space has been placed on the front burner in these discussions following the well publicized case of Argentina, which was forced to take structural adjustment measures and found itself facing court cases and dispute settlement mechanisms from private investors and state reprisals from governments.

This and other cases have led to a slowdown in bilateral treaties and investor-state Investment Agreements and is an area which developing countries have been treading cautiously of late.

There is great concern in particular about the investor-state system, which, it has been found elevates individual companies to the same status of sovereign states, empowering them to privately enforce a public treaty by challenging governments in extra- judicial tribunals with worrying implications for developing countries. It has raised interest about the need for regulatory guidelines to address the problem.

While most small economies are not directly involved, there interest lies in the precedents which could be set, and which could become important for them later.

Not as problematic but also worth noting as a measure of a greater willingness to contest and litigate, is the increase in matters placed before the Dispute Settlement body of the WTO, leading to the largest number of panels established since 2006, and the observation of the Chair in his 2013 report hat “disputes are coming in much greater numbers”. Twelve panels were established in 2013 compared with 3 in 2008, and the appeal activity was cited as representing 70 per cent of cases. The numbers for 2014 are not yet available.

The implications for trade and for regulation are clear. There is a greater willingness to contest and litigate and there is an expectation of increased workload for regulators.

2. The increase in attempts at plurilateral trade agreements and concern for their impact on multilateral negotiations

The rise in plurilateral trade arrangements (that is, arrangements comprising a number of different countries, not necessarily from the same geographical region) is also a noticeable trend which has important implications for multilateralism and for the trade of small economies in particular. Several plurilateral arrangements are currently being negotiated. These include mega FTAs such as the Trans Pacific Partnership (TTP) of 11 countries with Japan, The Transatlantic Trade and Investment Partnership (TTIP) of the European Union and the US; The Trade in Services Agreement (TISA) with about 23 countries, both developed and developing, and the Regional Comprehensive Economic Partnership (RCEP), which includes 16 countries which represent about 27 percent of global trade, as well as other comprehensive economic partnership .

Typically plurilateral arrangements do not contain flexibilities for small economies and do not include special and differential treatment for disadvantaged economies.

The trend is therefore a worrying one for small otherwise disadvantaged economies. Of more general concern, is the likelihood that it will lead to regulatory divergence, fragmentation, and multiple sets of rules and administrative requirements.

3. A groundswell of international initiatives to recover tax revenues from companies registered in international financial centres

It is well known that there have been several calls by developed countries for increased transparency and tax information sharing from international financial centres in recent years. It has led to several developments. In the OECD there is the International Exchange of Tax Exchange initiative which is expected to come into operation in 2017. There is also the Global Forum, made up of both OECD and non- OECD members which has as its objective, to work on tax transparency issues and has been in operation for many years . Barbados ahs indicated its intention to sign the Multilateral Convention on Mutual Administrative Assistance in Tax matters. There is also the US Foreign Account Tax Compliance Act (FATCA). Barbados is among those who have signed a commitment to be a part of the FATCA arrangement and is also a member of the Global Forum.

These initiatives have been expanded to include many countries and international financial centres outside the EU. Large centres in Europe like Switzerland have not been spared as they were in the early days of these initiatives. Several cantons in Switzerland, including Geneva have launched initiatives aimed at strategizing on how to ensure their future competitiveness in the face of these global moves.[11]

These global trends are not new but they have taken on a purposefulness and a pervasiveness in recent times, pressured no doubt, by fiscal pressures in the major capitals. In addition, for the first time international financial centres in developed countries are being

[11] A sovereign Companies in Switzerland the forgotten sector (2006, Mutlnational companies on the move. How Switzerland il win the battle (2007) Creative Switzerland: Fostering an Innovation Powerhouse! (2009) and Geneva, Vaud and MNCs: A Win-win scenario magnified (2013)

asked to share information on an automatic basis. The groundswell is relentless and seems to be gaining momentum.

What are the implication of these trends for trade and for regulation? Many small states with international business centres have taken the high road as did Barbados and have indicated willingness to sign on to these protocols and agreements. Given the reputational risk in the event of " naming and shaming" approach s used, the cost of not doing so can be severe. Small countries cannot afford the reputational risk. It is expected that there will be greater reward in compliance particularly since Barbados already has several double taxation agreements in place and is already a jurisdiction with a respected reputation for business.

However, it is important that while we continue making efforts to be compliant that we do not move faster than the competition, particularly the developed country competition, in the event that they find alternative approaches which could also be available to smaller jurisdictions.

Changing attitudes to Trade Measures taken by members which are "adverse to the interests of other members"

There are also signs that developed countries have less hesitancy about breaching the rules or the spirit of the rules where it is in their own interests or in the interests of associated entities, to the extent where their actions cause severe damage to the business of others. This is the case of rum in the Caribbean. There appears to be less concern now by offending members about their trade measures, even when the affected members are small economies. Also, lack of compliance with rulings can serve to discourage others from seeking redress from adverse trade impacts caused by the actions of other members.

The implication for trade and regulation is that it will be important for small economies to join forces with other countries who are calling for adherence to both the letter and the spirit of WTO guidelines, for a review of the dispute settlement system and a re-examination of the recourse options available where there is failure to comply with Rulings.

Implications of global trends for business

I will not summarize my findings, but I would like to observe that there are many factors in the environment in which business takes place that contribute to business success other than the traditional areas beginning with ideas, production, financing, management and marketing and sales. Awareness of trends can make a difference. The foregoing was based on facts and statistics.

I will now share the views of trend forecasters. Business forecasters (like WEF) also see several trends ahead. These include shifting consumer demands combining with new technologies to open the way for new channels and innovations, with implications for trade.

They observe that a range of shapers and influencers, from regulators to social networks are changing the dynamics of influence and choice. Within this landscape they see new players emerging, focused on consumer needs.

They also see production becoming more distributed, as customers and consumers increasingly co-create solutions and experiences, and as networks become a key organizing mechanism for innovation, production, marketing and sales. They expect that in a distributed world, relationships and partnering will become even more critical for business, as delivering on rising and complex demands and addressing complex issues will require collaboration among companies and individuals. There is one view that power will become more distributed as individuals become increasingly networked and that distributed consumption, production and power will become the norm. They see this taking place against a backdrop of economic and resource pressures and rising inequalities.

There are others who are more circumspect, while they agree that distributed consumption and production is likely to grow, there is greater hesitancy in agreeing that this will lead to distributed power, particularly where there is continued rising inequalities, as is also forecast.

Some forecasters think that the fight for distributed control and access will become increasingly the norm, and warn that as resource competition intensifies, protectionism could rise.

Other implications of global trends for fair trade and regulation

What significance then would this portend for the future of regulation? It suggests that governance, rather than rule-making aspects of regulation will become more important - where intentions and outcomes differ, and may need interpretation.

There is every indication that the world is likely to become more regulated, even as it becomes more distributed, but developing countries may have more input in rule-making. If plurilaterals succeed, the multilateral system and multilateral rule-making could be undermined.

Rule –making would revert to the few and the powerful, which was the reason in the first place for the establishment of international rule-making organizations.

Against the background foreseen by business forecasters of distributed networks and consumer- led solutions, we can expect that there will be pressures for greater regulation – and an increased level of litigation, but this could develop and grow into emphasis on greater coordination as more distributed systems will likely require more coordination.

In whatever direction regulation grows, it will be important to ensure that, governments retain sufficient policy space in order to equip themselves with levers on which they can rely to maintain economic stability. However, while governments negotiate it is the private sector which invests. It is therefore very important that they are in touch with global trends.