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INTERNATIONAL TRADE FOR POVERTY ALLEVIATION

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## Microtrade and Public Procurement: Facilitating “Aid for Trade” through Government Purchasing

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# Microtrade and Public Procurement: Facilitating “Aid for Trade” through Government Purchasing

Dae-in Kim and Joon Koo Yoo

## Abstract

The concept of Microtrade is noteworthy because it can be a realistic policy alternative for poverty reduction in least developed countries (hereinafter LDCs). For the successful implementation of this concept, the following issues must be addressed: 1) the creation of demand, 2) supply and demand matching, and 3) shipping and distribution. In addressing these issues, public procurement can be a useful tool.

In relation to creating demand, the preference for Microtrade products should be actively implemented. Public entities in developed countries can set targets for the purchasing of microtrade products and make efforts to meet these targets.

For supply and demand matching, an e-procurement system should be executed. Technical assistance for strengthening the e-procurement system in LDCs and registration assistance for local producers are necessary. In this process, donor countries' international development institutions can take an active role.

Incentives can be given to shipping companies which ship locally produced products (hereinafter LPPs) with very low costs. In the tendering stage of choosing shipping companies by donor countries' aid agencies, additional points can be given to enterprises which actively participate in providing shipping services for microtrade products.

Aid and trade should complement each other, and “Aid for Trade” should be integrated with public procurement. In the long term, establishing certification of microtrade products will definitely facilitate this integration.

**KEYWORDS:** microtrade, fair trade, aid for trade, public procurement, Least Developed Country (LDC), International Development Cooperation

**Author Notes:** The main idea of this paper was presented at Korea Development Institute (KDI) School by authors in June 27, 2011. The authors appreciate the useful comment by Professor Yong-Shik Lee.

## I. INTRODUCTION

Public procurement refers to the purchase of goods, services, and works by public entities. The public procurement market covers 15% of each country's average GDP. As each country spends huge amounts of money through public procurement, each government makes much effort to enhance transparency and efficiency in public procurement.<sup>1</sup>

There are many objectives of public procurement, such as transparency, efficiency, competition, fairness, and socioeconomic considerations. These objectives tend to conflict with each other, and the degree of emphasis on each objective differs according to each country's situation.<sup>2</sup>

Despite this diversity, public procurement which focuses on social considerations, otherwise known as "Socially Responsible Public Procurement" (SRPP), is gaining importance nowadays. SRPP means procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labor rights, social inclusion (including persons with disabilities), equal opportunities, accessible design for all, and consideration of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR).<sup>3</sup>

As this definition shows, SRPP covers a wide spectrum of social considerations. This paper focuses on the relationship between ethical trade and public procurement. Ethical trade is equated with Fair Trade in the EU. In this paper, however, the author focuses on microtrade, which is slightly different from Fair Trade, and deals with the relationship between microtrade and public procurement.

"Microtrade" is a term devised to describe international trade on a small scale, based primarily on manually produced products using small amounts of capital and low levels of technology available at a local level in LDCs. Microtrade was conceived as a means to raise income to reduce or eliminate poverty where no other conventional means of economic development was either available, or sufficient, to overcome poverty.<sup>4</sup>

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<sup>1</sup>See Peter Trepte, *Regulating Procurement—Understanding the Ends and Means of Public Procurement Regulation* (New York: Oxford University Press, 2004), pp. 3-9.

<sup>2</sup> See Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, Public Procurement Law Review no. 2 (2002), 103-110, and Louise Knight et al. (eds.), *Public Procurement: International Cases and Commentary* (New York: Routledge, 2007), pp. 16-22.

<sup>3</sup> European Commission, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* (Brussels, 2010), p. 7. For more details on links between public procurement and social policy, see Christopher McCrudden, *Buying Social Justice—Equality, Government Procurement, & Legal Change* (New York: Oxford University Press, 2007).

<sup>4</sup> Yong-Shik Lee, *Theoretical Basis and Regulatory Framework for Microtrade: Combining*

The microtrade concept is noteworthy because of its potential to reduce poverty in LDCs. As stated above, 1) the creation of demand, 2) supply and demand matching, and 3) shipping and distribution are requisites to successful implementation, and public procurement can also be useful. Before dealing with the relationship between microtrade and public procurement, part II of this paper overviews the microtrade concept and analyzes the similarities and differences between microtrade and Fair Trade.

In part III, this paper discusses combining Fair Trade and public procurement, and the implications for microtrade. Part III also examines whether and to what extent discussions in Fair Trade public procurement can be borrowed for integrating microtrade and public procurement. It is necessary to include discussions about “Aid for Trade” in facilitating microtrade through public procurement. Part IV of this paper will overview “Aid for Trade” and its implications for public procurement. Based on these discussions, part V of this paper will suggest possible alternatives for integrating microtrade and public procurement in 1) the creation of demand, 2) supply and demand matching, and 3) shipping and distribution.

## **II. OVERVIEW AND EVALUATION OF MICROTRADE THEORY**

### **A. Overview**

Lee’s article on the microtrade theory refers to the development history of East Asian countries, such as Korea, Taiwan, and China. In these countries, export-driven industrial policy was a major cornerstone in economic development. However, as LDCs lack the bases for export-driven industrial policy, this theory suggests LDCs should adopt a different policy.<sup>5</sup>

Microtrade was devised as an alternative development strategy. It is indicated that 1) matching supply and demand, 2) addressing shipping and distribution issues, and 3) supporting financing and production are necessary for facilitating microtrade. The first two elements are explained next.

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*Volunteerism with International Trade towards Poverty Elimination*, 2 *Law and Development Review*, (2009), 367-369.

<sup>5</sup> *Ibid.*

## 1. Matching supply and demand

In matching supply and demand, internet access is indicated to be an important component of the microtrade scheme:

It would be ideal for each town or community in LDCs to have at least one computer station or terminal that has internet connectivity, including mobile devices such as laptops and mobile phones with internet capability (and of course, at least one person who can access the database and relay the necessary information to the locals), so that the local producers can access relevant market information for the identification of LPPs to be produced and microtraded. This means that the facilitation of microtrade will require the establishment of internet access throughout LDCs around the world. The feasibility of this undertaking will be an issue.<sup>6</sup>

## 2. Shipping and distribution

As for the shipping and distribution problem, Professor Lee suggests the following solution:

One [solution] will be creating an association of local producers with common resources and collective bargaining powers to negotiate with international commercial shippers and distributors in developed countries and set terms for shipping and distribution. This solution may work for those local producers who can collectively produce large quantities of products in strong demand in developed country markets.<sup>7</sup>

## B. Evaluation

### 1. Comparison of microtrade and Fair Trade

To understand microtrade more clearly, a comparison of microtrade and Fair Trade<sup>8</sup> is necessary. Microtrade and Fair Trade are similar in that they are both ethical trades, but they also have different emphases.

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<sup>6</sup> *Ibid.*, pp. 377-378.

<sup>7</sup> *Ibid.*, pp. 378-379.

<sup>8</sup> See generally Alex Nicholls and Charlotte Opal, *Fair Trade—Market-Driven Ethical Consumption* (London: SAGE, 2005).

Fair Trade represents a new approach to the buyer-supplier transaction which aims at equality of exchange within a partnership approach, and is underpinned by a developmental, rather than a confrontational, agenda. Fair Trade is specifically defined by several key practices:<sup>9</sup>

- Agreed minimum prices, usually set ahead of market minimums.
- Focus on development and technical assistance via the payment to suppliers of an agreed social premium.
- Direct purchasing from producers.
- Transparent and long-term trading partnerships.
- Cooperative, not competitive, dealings.
- Provision of credit when required.
- Provision of market information to producers.
- Farmers and workers are organized democratically.
- Sustainable production is practiced.
- No labor abuses occurred during the production process.

microtrade and Fair Trade have the following commonalities:

- 1) Focuses on the poverty reduction policies in developing countries.
- 2) Matching demand and supply is a crucial point.
- 3) "Trade rather than aid" is emphasized
- 4) Provision of credit is indispensable ingredient.

Despite these commonalities, microtrade and Fair Trade have the following differences:

- 1) While Fair Trade puts more emphasis on "fair price," microtrade focuses more on "demand creation."
- 2) While Fair Trade is a more comprehensive concept which covers social, economic, and environmental considerations, microtrade focuses only on economic considerations.
- 3) While Fair Trade is applied to all developing countries, microtrade focuses on LDCs.

In considering these differences, microtrade should not be deemed redundant, but a useful concept which complements Fair Trade. The strength of microtrade is found in its targeted focus, i.e., microtrade focuses on LDCs, LPPs, and economic considerations. This clear focus can enable LDCs to implement more feasible, not just idealized, economic development strategies.

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<sup>9</sup> Nicholls (2005), *supra* note 8, pp. 6-7.

## 2. The limitations of microtrade theory

There are some limitations of microtrade theory. First, as those who implement this concept do so voluntarily, there can be limited implementation of this regime. While Professor Lee suggests various tools in international trade law to facilitate microtrade, he does not propose a domestic legal framework. This lack of a “domestic legal framework” should be addressed if microtrade is to be actualized.

Second, as the expression "trade rather than aid" shows, microtrade theory starts from understanding trade and aid as conflicting concepts. While developing countries should not be dependent on foreign aid and should strengthen domestic industries based on trade, trade itself needs many infrastructures, and aid can be a useful tool in establishing these infrastructures. Therefore, trade and aid should not be deemed conflicting concepts, but rather complementary concepts. “Aid for Trade” is a good example of this understanding.

Third, microtrade’s focus on manually produced local products can hinder overall industrial policy discussion in LDCs. Professor Lee probably did not intend that LDCs should stick to small-scale, manually produced local products only. However, if the differences between the East Asian development experience and that of LDCs are emphasized too much, microtrade can be misunderstood as the sole policy tool for poverty reduction in LDCs.

Despite these limitations, microtrade can be a useful means for poverty reduction in LDCs. With its clear focus on LDCs and LPPs, microtrade can be a sound complementary approach in relation with Fair Trade. In overcoming the limitations mentioned above, public procurement can be an efficient tool.

### **III. LINKING FAIR TRADE & PUBLIC PROCUREMENT AND IMPLICATIONS FOR MICROTRADE**

Most heated discussions about linking Fair Trade and public procurement can be found in the EU. The European Fair Trade Association (EFTA)<sup>10</sup> published a report on fair trade public procurement in Europe in 2010.<sup>11</sup> In this report, three models linking Fair Trade and public procurement are discussed. Each model gives some implications for integrating microtrade and public procurement.

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<sup>10</sup> The EFTA is an association of ten Fair Trade importers in nine European countries (Austria, Belgium, France, Germany, Italy, The Netherlands, Spain, Switzerland, and the United Kingdom). The EFTA was established informally in 1987 by some of the oldest and largest Fair Trade importers. It gained formal status in 1990.

<sup>11</sup> European Fair Trade Association, *State of Play of Fair Trade Public Procurement in Europe* (2010).

### **A. Basic model—the use of variants**

The basic model of linking Fair Trade and public procurement is the use of variants. The European Fair Trade Association explains this model:

If contracting authorities wish to buy Fair Trade products but have concerns, such as availability or additional cost of Fair Trade products, an option is to ask the potential bidders to submit variants. This is only possible when the award is done on the basis of the most economically advantageous tender (not on the lowest price only). In this situation, the contracting authority develops a set of minimal technical specifications which will apply to all offers. Additional Fair Trade criteria will be added to the technical specification for the Fair Trade variant offer only. When the bids are received, the authority can easily compare all offers.<sup>12</sup>

In order to be able to accept variants, the contracting authority needs to indicate in advance in the tender documents (indication in the contract notice is mandatory) that variants will be accepted, the minimum specifications that must be met, as well as specific requirements for presenting variants in bids (e.g., requiring a separate envelope for the variant).<sup>13</sup>

However, this model does not seem to facilitate microtrade. As the European Fair Trade Association indicates, Fair Trade criteria are not a minimum requirement in this model.<sup>14</sup> As microtrade is more focused on “demand creation” in comparison to Fair Trade, there are clear limitations on using only variants.

### **B. Conservative model—the inclusion of social criteria in contract performance clauses**

The second model is a conservative model which includes social criteria in the contract performance clause. This model was recommended by the European Commission. To complement the European Commission’s guide “Buying Green,”<sup>15</sup> the European Commission issued “Buying Social: A Guide to Taking

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<sup>12</sup> *Ibid.*, p. 48.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> European Commission, *Buying Green: A Handbook on Environmental Public Procurement*

Account of Social Considerations in Public Procurement"<sup>16</sup> with the goal of guiding contracting authorities in Europe to introduce social considerations in public procurement. It is a nonbinding document that does not constitute an official interpretation of EU law (this is only a prerogative of the courts, and ultimately of the Court of Justice of the European Union).<sup>17</sup>

The "Buying Social" guide includes a section on the use of social labels and their implications for ethical trade:

A contracting authority might want to purchase goods which make a contribution to sustainable development (hereinafter referred to as "ethical trade goods"). In this case, it can take appropriate considerations into account in the tender specifications, but it cannot require the products to bear a specific ethical trade label/certification, because this would limit access to the contract for products which are not certified but meet similar sustainable trade standards. This is a general principle that applies not only to ethical trade labels, but to all labels which require prior certification by the economic operators or of their products. Likewise, a contracting authority that wishes to purchase "bio" products cannot require a specific eco-label, but can ask, in the tender documents, for compliance with specific criteria for biological agriculture.<sup>18</sup>

The European Commission also elaborates on the rather theoretical distinction between technical specifications (that should be linked to the characteristics of the product or to its production process) and the performance clauses (that should be related to the execution of the contract).<sup>19</sup>

(a) Sustainability requirements may be incorporated in the technical specifications of a public tender, provided these criteria are linked to the subjectmatter of the contract in question, and ensure compliance with the other relevant EU public procurement rules and with the principles of equal treatment and transparency . . .

(b) Sustainability criteria (including social criteria) may also be incorporated in the contract performance conditions, provided they are linked to performance of the contract in question (e.g., minimum salary and decent labor conditions for the workers involved in performance of the contract) and comply *mutatis mutandis* with the other requirements

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(2004).

<sup>16</sup> European Commission (2010), *supra* note 3.

<sup>17</sup> European Fair Trade Association (2010), *supra* note 11, p. 49.

<sup>18</sup> European Commission (2010), *supra* note 3, pp. 31-32.

<sup>19</sup> European Fair Trade Association (2010), *supra* note 11, p. 49.

mentioned in paragraph (a) above and, more generally, with the conditions set out in the section of this guide on “[r]ules governing contract performance clauses.”<sup>20</sup>

The European Fair Trade Association believes that, in the case of Fair Trade, the EC interpretation implies that the social and economic criteria of Fair Trade would fit in the contract performance clauses, and the environmental criteria of Fair Trade would fit in the technical specifications.<sup>21</sup>

The discussions about this model have some limitations for microtrade. Although the Fair Trade label/certification system comprises the heart of this model, the label/certification system in microtrade has not developed yet, and implementation of this model formicrotrade is far off. Moreover, the products which are usually discussed in microtrade are hard to set criteria for in a label/certification system.

The discussions about this model show that complying with rules, such as EU directives, is crucial in combining public procurement with Fair Trade or microtrade. Contract performance clauses must comply with the rules set out in Article 26 and in Recital 33 of Directive 2004/18/EC. According to those rules, contract performance conditions can set social and environmental requirements, provided that these are compatible with Community law, are non-discriminatory, and are indicated in the contract notice or in the specifications. Tenderers must still be able to prove by any other means deemed appropriate that their products comply with the required specifications.<sup>22</sup>

Despite these limitations, this model shows important lessons for microtrade. The stage of public procurement—technical specifications or the performance clauses—in which preferences formicrotrade are provided should be carefully designed.

### **C. Progressive model—a comprehensive and practical approach to fair trade tendering**

Many contracting authorities across Europe refer to Fair Trade in several phases of the tendering process in a comprehensive approach to Fair Trade tendering.

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<sup>20</sup> European Commission (2010), *supra* note 3, pp. 31-32.

<sup>21</sup> European Fair Trade Association (2010), *supra* note 11, p. 49.

<sup>22</sup> *Ibid.*

1. The subject matter of the contract

Many contracting authorities directly mention Fair Trade in the subject matter of the tender. It enhances the transparency regarding what is expected for bidders. A possible wording could be "purchase of Fair Trade product or equivalent," with further description of Fair Trade criteria and verification in the requirements of the contract. The European Fair Trade Association believes this to be a sound tendering procedure similar to what is done in green procurement.<sup>23</sup>

This approach can be a very efficient tool for demand creation for Microtrade. However, the European Fair Trade Association mentions that other authorities, courts, or the European Commission might reject such an approach.<sup>24</sup>

2. The requirements of the contract

The European Fair Trade Association refers to combining Fair Trade and the contract requirements of the contract as follows:

We advise to avoid referring to specific Fair Trade labels as a criterion, as this could be seen as restrictive of market access. It is important to clearly define Fair Trade in accordance with EU rules on transparency and non-discrimination. Instead, we advise to describe in detail the social, economic, and environmental requirements that the contracting authority expects to be fulfilled by the tendered product.<sup>25</sup>

This approach has been judged as having limited applicability to microtrade. Microtrade is focused on LPPs, and it is difficult to describe the social, economic, and environmental requirements of these products in detail.

3. The awarding phase of the contract

The European Fair Trade Association refers to combining Fair Trade in the awarding phase of the contract:

The EU Directives allow contracting authorities to take into account either the lowest price, or the most economically advantageous tender, including without limitation the product price and other criteria directly linked to the subjectmatter of the procurement in the award phase. Article 53 of Directive

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<sup>23</sup> *Ibid.*, p. 50.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

2004/18/EC provides a nonexhaustive list of the possible award criteria that mixes characteristics of the products as well as aspects related to the execution of the contract. It includes social characteristics, and we believe this to be a sound way to give preference to Fair Trade products when Fair Trade criteria have not already been set as minimum requirements.<sup>26</sup>

The European Fair Trade Association indicates that these approaches can be rejected by courts or by the European Commission.<sup>27</sup> This problem can occur also in microtrade. However, in non-EU member states, this approach may work.

#### **IV. MARKET ACCESS OF LDCs AND TRADE FOR AID**

##### **A. Current Situation of market access of LDCs**

###### **1. Export structure of LDCs**

Since the WTO (which has its roots in the General Agreement on Tariffs and Trade (GATT)) launched on January 1, 1995, globalization with trade liberalization has sped up and expanded in the world. Yet, the global benefits of trade reform and market integration are not equitably mixed with two-speed globalization. For example, LDCs collectively exported less than 1% in the same share in 1980, and 29 LDCs in 1971 nearly doubled up to twice 48 LDCs in 2011.<sup>28</sup> Only 2–5% poverty reduction was achieved from 1990 to 2005, and 50% of LDCs still manage to live on \$1.25 per day per person.<sup>29</sup> The LDCs exports portion of world trade is only 0.6%, and LDCs have grown far more slowly than

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<sup>26</sup> *Ibid.*, p. 53.

<sup>27</sup> *Ibid.*

<sup>28</sup> A country is classified as an LDC when it meets three low-income criteria: 1) a three-year average GNI per capita of less than \$905 US dollars, which must then exceed \$1,086 US dollars to leave the categorization (just three countries that were classified as LDC have since escaped the LDC poverty classification); 2) human resource weakness (based on indicators of nutrition, health, education, and adult literacy), and 3) economic vulnerability (based on instability of agricultural production, instability of exports of goods and services, economic importance of non traditional activities, a concentration of merchandise exportation, a handicap of economic smallness, and the percentage of the population that has been displaced by natural disasters). See Report of the Fourth UN Conference on LDCs, UNLDC-IV (Istanbul, 9-13 May 2001), UNCTAD, *The LDCs Report 2008*, p. 52. Since the LDC category was classified, only three countries—Botswana, Cape Verde, and the Maldives—have graduated to developing-country status.

<sup>29</sup> See generally UNCTAD, *The Least Developed Countries Report (2008)*, p. 52 and accompanying text.

world trade has over the past decades. Even LDCs' total volume of world commodities exports have declined.

The product structure of LDCs has changed little since the concept of LDCs originated in the 1960s. Primary commodities, mainly minerals and tropical agricultural products, comprise over 80% of total products produced, and most are exported as raw materials with very little processing. Manufactured products, mainly textiles and clothing, constitute 20% of LDCs' exports, but they are typical for only a few LDCs, particularly Bangladesh and Nepal.<sup>30</sup>

The exports of LDCs largely depend on unprocessed primary commodities and raw materials vulnerable to price volatility on world markets. Thus, LDCs' exports growth has been far more slack than world trade overall, and this is one of the main factors hindering their export activity. In addition, LDCs' exports growth severely limits the stimulus that the exports can provide to the domestic economies, and delays LDCs' participation in world trade.<sup>31</sup> With this perspective regarding their current economic situation, improvements in market access opportunities for LDCs need to be considered.

## 2. Market access conditions

The overall average applied tariff of LDCs' main exports in their developed country markets is 1.86%, and that of developing country markets is 10.48%. The LDCs' average applied tariff has been further reduced after the launch of the WTO. When aggregated together, about 70% of the products by tariff line imported to developed markets from LDCs enter DF (Duty Free) either under bound GSP<sup>32</sup> or specialized LDC preference schemes.<sup>33</sup> However, the figure differs from one developed country market to the next. Certain preference schemes exist for an extensive range of products, but they are restricted to some products under regional arrangements or other schemes (such as the Lomé Convention and the Cotonou Agreement), and provide to the beneficiaries almost unrestricted access to their markets.<sup>34</sup> Others provide practically no tariff line

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<sup>30</sup> See United Nations Commodity Trade Statistics Database (UN Comtrade), available at: <http://comtrade.un.org/db/> visited on 8 March 2012.

<sup>31</sup> See WTO/OECD, *Aid for Trade at a Glance 2011: Showing Results* (2011).

<sup>32</sup> GSPs are approved as an exception to the MFN principle under the "Enabling Clause." GATT, *Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*, L/4903 (28 November 1979). Regarding the legal basis of LDCs' preferential treatment, see Lee (2009), *supra* note 4, pp. 385-389.

<sup>33</sup> The "Everything-but-Arms" (EBA) scheme by the EU and "African Growth and Opportunity Act" (AGOA) by the US are exemplary trade concession schemes for LDCs.

<sup>34</sup> The Cotonou Agreement is the most comprehensive partnership agreement between developing countries, LDCs, and the EU. Since 2000, it has been the framework for the EU's relationship with 79 countries, from Africa to Caribbean to Pacific.

from among all the main imports from LDCs entirely DFQF (Duty-Free-Quota-Free). Although the levied duty of LDCs' exports for many products is small and unlikely to affect market access significantly, products they export which continue to face relatively high applied tariffs (over 5%) in developed country markets are beef, asparagus, cigarettes, processed wood, clothing, and footwear. Together, these account for about 10% of LDCs' total exports to developed country markets, and for some individual LDCs, they account for a substantially higher share.<sup>35</sup>

Of the most significant results of the Uruguay Round (UR), the removal of quantitative import restrictions and other nontariff barriers (NTB) affecting merchandise trade has in the past limited LDCs' exports.<sup>36</sup> Quantitative restrictions and other NTB can create a particularly serious obstacle to LDCs' exports because of their more limited means to gain information about the measures and to meet the involved procedural requirements. The same goes for Rules of Origin requirements in the case of tariff preferences. From LDCs' perspective, a general rule about overseas market access restrictions is likely to be simpler and more transparent.

### 3. Problems of DFQF market access

The LDC Group has been negotiating in the WTO for DFQF market with simple and transparent Rules of Origin since the start of the UR. In preparations for the Hong Kong Ministerial Meeting in 2005, LDCs made elaborate efforts to obtain an implementable decision that the ministers would pass. The decision in Hong Kong was better than those that resulted from past negotiations, but still fell short of the expectations of the LDCs.<sup>37</sup>

First, although the decision covers 100% of products originating from all LDCs,<sup>38</sup> there is a loophole that allows developed countries or available developing countries to self assess whether they are in a position to provide 100% product coverage and, if this is not the case, they can provide DFQF market

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<sup>35</sup> See generally WTO/OECD (2011), *supra* note 31.

<sup>36</sup> GATT rules generally ban the use of quotas on imports and exports; however, there are certain formal and informal exceptions allowing for the use of quotas and similar measures in the areas of unprocessed raw materials, textiles, and clothing. These measures significantly affect LDCs' exports to developed countries. See generally M. Matsushita, T. Schoenbaum and P. Mavrodias, *The World Trade Organization* (New York: Oxford University Press, 2002), ch. 6.

<sup>37</sup> See UNCTAD, *Erosion of Trade Preferences in the Post-Hong Kong Framework: From "Trade is Better than Aid" to "Aid for Trade"* (2007). In this regard, G20 leaders in the Seoul Summit urged WTO members to pass the full implementation of DFQF; however, they failed to discuss the LDCs' proposal in the eighth ministerial meetings in 2011.

<sup>38</sup> The level of product coverage and the inclusion of all LDCs should be regarded as major achievements for the LDC negotiators.

access to 97% of LDCs' products.<sup>39</sup> Given that the export bases of most LDCs are extremely limited and developed countries have about 6,000 to 10,000 tariff lines, an exclusion of 3% of tariff lines amounts to about 180 to 300 tariff lines. This may sound like a lot, but if the 3% exclusions constitute lines of LDC exports, then the provision of 97% DFQF to LDCs is commercially meaningless.<sup>40</sup> For two-thirds of LDCs, their top three exports make up to over 60 % of their total exports, thus it is not possible to take advantage of the DFQF preferential access. Even though 97% of product markets are free to LDCs, these chances do little benefit if LDCs do not produce any of these products. Moreover, this high concentration in only three types of export products means that an LDC's entire exports may be classified under a few tariff lines; this classification is dependent on product characteristics.<sup>41</sup> For example, Nepal, Bangladesh, and Guinea Bissau's top three exports comprise more than 80% of each country's entire exports, which translates to only a few tariff lines.<sup>42</sup> This assumption is also confirmed by the slow reductions in developed countries' average tariffs on LDCs' key products from 1996 to 2009—agricultural (4% to 1.8%), clothing (8% to 6%), and textile (4.2% to 3.9%).<sup>43</sup>

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<sup>39</sup> The proposal for DFQF market access for LDCs' products in developed nations' markets was first put forward at the eighth session of the United Nations Conference on Trade and Development (UNCTAD VIII) held in Cartagena in 1992. Since then, little progress was made until the WTO Ministerial in Doha in 2001, where the idea was revitalized and set out in the Doha Declaration. The thirty-two LDC members up to and throughout the Hong Kong ministerial continuously pushed the issue, but their efforts came to naught with the final declaration agreed to by all WTO members. See (WT/MIN(05)/DEC).

<sup>40</sup> UNCTAD (2008), *supra* note 29 and accompanying text.

<sup>41</sup> See John Tabari, *WTO Doha Round and South Asia: Linking Civil Society with Trade Negotiations*, CUTS International (2006).

<sup>42</sup> See WTO, Report, "Market Access for Products and Services of Export Interest to LDCs, Sub-Committee on LDCs" (WT/COMTD/LDC/W/46) 2009.

<sup>43</sup> *Ibid.*

Table: 1 Tariff Lines in Selected Developed Countries' Markets

Market	Total No. of Tariff Lines	DFQF Market Access for 97% of Total Tariff Lines	No. of Tariff Lines Able for Exemption of DFQF Market Access (3% of total tariff lines)
Australia	6,102	5,919	183
Canada	8,497	8,242	255
EU	10,404	10,292	312
Japan	9,296	9,017	279
New Zealand	7,414	7,192	222
Norway	7,165	6,950	215
Switzerland	8,477	8,223	254
United States	10,496	10,181	315

*Source: WTO, Sub-Committee on LDCs, Negotiating Group on Market Access, "Note by the Secretariat," – WTO Report on LDCs, (22 February 2006)*

The decision in Hong Kong found that the implementation date of DFQF market access should be by 2008 or by the start of the implementation period of the DDA.<sup>44</sup> However, there is no set time limit for the 3%. The steps taken by members to implement DFQF have been the object of scrutiny at the Committee on Trade and Development (CTD). Members have reviewed the implementation of the decision to grant DFQF market access to LDCs' exports. Regular reports are submitted by countries on measures which they are taking into account for implementation of the decision. However, even in the eighth ministerial meetings, the full implementation of DFQF market access was not yet accomplished due to discrepancies between the US and other members, and among developing countries.<sup>45</sup> In addition, the monitoring mechanism of CTD is extremely weak,

<sup>44</sup> See F(WT/MIN(05)/DEC), *supra* note 39. In the G7 challenges paper of May 25, 2007, the chair of the Committee on Agriculture suggested that "[e]ven if that last 3% cannot be achieved by the commencement of the implementation period, it is something to aim for by the end." However, this suggestion was dropped from the chair's Draft Modalities papers, presumably because of strong opposition from some developed country members, and because the LDCs will struggle to get an implementation date introduced for the 3%.

<sup>45</sup> Although the Hong Kong Ministerial Declaration envisages developing country members providing LDCs with DFQF market access, the language used in the Declaration is not binding. This was intentional, as the LDCs needed the support of the developing countries to get the decision on DFQF market access passed in Hong Kong. As it was, some developing countries, in particular Pakistan, objected strongly to the provision of DFQF market access to all LDCs because this provision could adversely affect their exports. This implies that if the inclusion of some tariff

and no other legal enforcement system like the WTO's Dispute Settlement Understanding (DSU) can be administrated on developed countries that do not comply with the decision.<sup>46</sup>

Table: 2: Preferential Tariff Scheme and DFQF Commitment in Selected Countries' Markets

Countries	Preferential Tariff Scheme	Share of Imports in World Imports from LDCs	DFQF Commitment
EU	Cotonou (ACP), EBA under GSP	17.5%	All products except arms
US	AOGA(Africa), LDC-GSP(Asia)	16.2%	90%
Japan	GSP-DFQF MA	2.4%	98%
China	DFQF MA(Forum on China-Africa cooperation)	21.4%	60%
India	DF Tariff Preference Scheme	0.6%	85%
Brazil	DFTP	0.4%	65%
Australia	DFQF entry	0.2%	100%

Source: WTO, Sub-Committee on LDCs, Negotiating Group on Market Access, WTO Report on LDCs, (2009)

## B. Aid for trade

### 1. Development agenda for LDCs' trade facilitation

Trade has the potential to be an engine for growth that lifts millions of people out of poverty. Many LDCs, however, face barriers that prevent them from benefiting

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lines into the LDC DFQF provisions would have an adverse effect on the exports of developing countries, then the developed country making the concessions to the LDCs had a right not to include these lines in the concessions. At the time of the decision, the main reasons for the inclusion of this phrase were to protect garment exports into the US from some developing countries from competition from a few LDCs. See generally UNCTAD (2008), *supra* note 37.

<sup>46</sup> Arguably, commitments through ministerial decisions are enforceable, and LDCs can exercise their rights to complain through the WTO's Dispute Settlement Understanding (DSU). However, even ignoring the strengths and weaknesses of such a legal case, the track record of LDCs' participation in DSU proceedings suggests that such a course of action is unlikely.

from a world-trading system. As mentioned above, some of these barriers are in the export market, which the Doha Round of multilateral trade negotiations aims to reduce or eliminate. These include NTB (Non-Trade Barriers), which are increasing in significance, as well as traditional tariff barriers.<sup>47</sup>

But internal barriers such as lack of knowledge, excessive red tape, inadequate financing, and poor infrastructure<sup>48</sup> can be just as difficult for exporters to overcome. Targeting these “supplieside” constraints is what Aid for Trade is all about. Aid for Trade is part of overall development aid, but has the specific objective of helping developing countries, in particular LDCs, play an active role in the global trading system and to use trade as an instrument for growth and poverty alleviation. It is not a substitute for trade opening, but a necessary and increasingly important complement.<sup>49</sup>

The Aid for Trade initiative was launched at the Hong Kong Ministerial Conference in 2005. It was initiated in response to the realization that market access was not enough, and more activities were needed to address the constraints faced by LDCs. Not only is Aid for Trade about mobilizing funding, but the initiative focuses on policy coherence, having WTO members use trade as vehicles for their development agenda. This may induce LDCs to promote their regulatory business and trade policy rights in order to take advantage of opportunities in regional and global markets. For donors, it is about bringing trade initiatives into their programming of development aid and taking necessary steps to increase demand from LDCs by making more resources available.<sup>50</sup>

Aid for Trade’s strategy for market access is relatively effective for the ODA coworking partnership to connect NGOs and IGOs, and to connect bilateral and multilateral aid. In regards to an NGO-IGO partnership, while IGOs concentrate on mass-scale infrastructure, building productive capacity, funding, and trade-related adjustment, NGOs are able to collect information and distribute databases to developed countries or IGOs. It can also induce bilateral and multilateral donors to participate in monitoring and pairing LDCs’ needs, and to promote local

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<sup>47</sup> See generally WTO/OECD (2011), *supra* note 31.

<sup>48</sup> Investing infrastructure is urgently needed to link LDCs’ products to global markets. For example, in sub-Saharan Africa alone, annual infrastructure needs are \$17–22 billion a year, while spending is about \$10 billion. Transport costs for trade within Africa are more than twice as high as those within Southeast Asia, and it takes 116 days to move a container from a factory in Bangui in the Central African Republic to the nearest port. Power outages in Malawi average 30 days a year, causing product damage and delays in production and packaging that add 25% to costs.

<sup>49</sup> See WTO, *Third Global Review on Aid for Trade* (2011).

<sup>50</sup> Despite the impact of the economic crisis, Aid for Trade flow has continued to grow, albeit at a slower rate. In 2009, Aid for Trade reached approximately \$40 billion US dollars, an increase of 60% in real terms since 2005. The WTO-OECD Report highlights that while many donors predict that future budget cuts in development assistance are likely, Aid for Trade will remain a priority. See WTO/OECD (2011), *supra* note 31.

ownership.<sup>51</sup> To do this, Aid for Trade's strategy is able to bridge "supply" and "demand" for both donors and recipients' need to improve cooperation and involve the private sector. The challenge of Aid for Trade is to marshal the efforts of many participants, and to create the right incentives so that recipients and donors work together to more effectively consider financial resources flowing from increased private investment, and so that trade easily dwarfs government aid.<sup>52</sup>

## 2. Role for the WTO

The WTO is not a development agency and should not become one. Its core functions are trade liberalization, and increasing trade, rule making, and dispute settlement. However, the WTO does have roles and responsibilities to ensure that relevant agencies and organizations understand the trade needs of WTO members and work together more effectively to address them.<sup>53</sup> The WTO is well placed to mobilize, monitor, and evaluate Aid for Trade. Needless to say, the WTO has direct interests in ensuring that all its members benefit from trade and WTO agreements. It is a multilateral, consensus-based organization where developing countries, LDCs, and developed countries have equal weight. It has also institutional experience in reviewing complex policy areas through its Trade Policy Review Mechanism.<sup>54</sup>

Aid for Trade for LDCs, as discussed above, needs all its participants to work cooperatively, such as donors, recipients, and IGOs. The WTO is able to monitor and evaluate Aid for Trade for LDCs' development on three levels. On a global level, with OECD-DAC partnerships, it will assess whether additional resources are being delivered, and identify where gaps lie. Thus, as it increases transparency on pledges and disbursements, it must highlight where improvements should be made. Based on self-evaluation, the WTO needs to share best practices across countries and make plans for finer details on Aid for Trade coverage in donor level. Finally, using self-assessments at country and regional levels, the WTO must be able to focus on whether LDCs' needs are being met, proper resources are provided, and Aid for Trade is effective using on-the-ground perspectives.<sup>55</sup>

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<sup>51</sup> See WTO, *Aid for Trade: Case Story of Jamaica and Tanzania* (2011).

<sup>52</sup> Since 2006, experts have been working in Geneva to develop an "Enhanced Integrated Framework" (EIF) that will support governments in LDCs in building trade capacity development measures into overall national growth strategies. The EIF is a unique partnership model with beneficiaries, donor, and IGOs, such as the UN Development Programme, the WTO, the WB, the IMF, and UNCTAD. The EIF puts a strong emphasis on local ownership of development strategies.

<sup>53</sup> See Agreement Establishing the World Trade Organization (WTO), arts. II, V.

<sup>54</sup> See Agreement Establishing the World Trade Organization (WTO), *supra* note 53, arts. IV, IX.

<sup>55</sup> For more detail, see WTO/OECD, *Aid for Trade at a Glance 2011: Showing Results* (2011) and WTO, *Aid for Trade: Case Story of Jamaica and Tanzania* (2011).

### 3. Aid for trade and public procurement

The WTO-OECD categorized Aid for Trade in six areas: i) trade policy and regulation, ii) trade development, iii) trade-related infrastructure, iv) productive capacity building, v) trade-related adjustment, and vi) other trade-related needs.<sup>56</sup> Public procurement can be linked in various ways with Aid for Trade.

For example, technical assistance to an “e-government system”(including e-procurement) in developing countries can be a good tool for strengthening “trade-related infrastructure.” Industrial policy through a host country’s public procurement can contribute to “productive capacity building.” In integrating microtrade and public procurement, the synergies between aid and trade should be carefully considered.

The WTO Government Procurement Agreement (GPA) recognizes the development, financial, and trade needs of developing countries, in particular LDCs, and allows special and differential treatment in order to meet countries’ specific development objectives (Article V:1). Development objectives of developing countries should be taken into account in the negotiation of coverage of procurement by entities in developed and developing countries (Article V:3, 5–7). Article V also contains provisions on technical assistance (Article V:8–11); establishment of information centers giving information on procurement practices and procedures in developed countries (Article V:11); special treatment for LDCs (Article V:12–13); and a review of the application of Article V (Article V:14–15). As an exception to the general prohibition of offsets, developing countries may negotiate, at the time of their accession, conditions for the use of offsets, provided these are used only for the qualification to participate in the procurement process, and not as criteria for awarding contracts (Article XVI).<sup>57</sup> These clauses also show the close relationship between Aid for Trade and public procurement.

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<sup>56</sup> WTO/OECD (2011), *supra* note 31.

<sup>57</sup> The Agreement on Government Procurement (GPA) is to date the only legally binding agreement in the WTO focusing on the subject of government procurement. It is a plurilateral treaty administered by the Committee on Government Procurement, which includes the WTO members that are parties to the GPA, and thus have rights and obligations under the Agreement. Its present version was negotiated in parallel with the Uruguay Round in 1994, and entered into force on January 1, 1996. On December 15, 2011, negotiators reached a historic agreement on the outcomes of the renegotiation of the Agreement. This political decision was confirmed on March 30, 2012 by the formal adoption of the Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement (GPA/113). For more details, see [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

## V. PROPOSAL FOR INTEGRATION OF MICROTRADE & PUBLIC PROCUREMENT

Based on the above discussions, microtrade and public procurement can be integrated in ① the creation of demand, ② supply and demand matching, and ③ shipping and distribution as explained below.

### A. Creation of demand

Preference for microtrade products should be actively implemented. In the microtrade system, public entities in developed countries can set the target for the purchasing of microtrade products and make efforts to achieve this target (such as 4% of overall purchasing). This system is modeled after the Preference for Small and Medium Sized Enterprise (SME), which is actively implemented in many developed countries.<sup>58</sup>

There can be a few obstacles in the microtrade system. First, it can be argued that developed countries have no incentives to use it. Through a preference for SME products, developed countries can gain opportunities to strengthen their domestic SMEs. However, a preference for microtrade products has no such merits, and public entities in developed countries can consider this system cumbersome, which is detrimental to efficient public procurement.

Second, it can be argued that it is difficult to legally obligate public entities in developed countries to purchase microtrade products, because this obligation is not compatible with the non-discrimination doctrine in the WTO regime.

But these arguments are not totally persuasive. First, soft laws such as OECD DAC Guidelines can be actively implemented for introducing this preference system. OECD DAC Guidelines, such as untied aid, are already well established and give a "sense of obligation"<sup>59</sup> to OECD DAC member countries. If the awareness for microtrade's importance is enhanced, this soft law approach can be actualized.

Second, as was mentioned above, the WTO GPA allows special and

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<sup>58</sup> The 8(a) Program in the United States is a typical form of helping small businesses seeking business development assistance. Named for Section 8(a) of the Small Business Act, this program was created to help small and disadvantaged businesses compete in the marketplace. It also helps these companies gain access to federal and private procurement markets. For more details, see <http://www.sba.gov/content/8a-business-development>.

<sup>59</sup> "Sense of obligation" is referred to as a main characteristic of soft law. For more details, see Allison Christians, *Hard Law, Soft Law, and International Taxation*, 25 Wisconsin International Law Journal, (2007).

differential treatment in relation to LDCs. As this special and differential treatment is allowed in a limited scope, any detrimental effect to freetrade can be minimized.

In regard to microtrade's demand creation, it is recommended that donor countries' international development institutions in LDCs purchase microtrade products. This preferred purchasing contributes to host countries' ownership, and can be compatible with untied aid related to the OECD DAC Guidelines.<sup>60</sup> In this purchasing scheme, production and consumption occur in the same country (LDC), and therefore this cannot be considered "trade" in a strict sense. However, it is notable that an LPP can be actively purchased through this process.

## **B. Supply and demand matching**

For the close matching between microtrade's supply and demand, it is necessary to actively use e-procurement. There can be two options: 1) LPPs are registered in LDCs' e-procurement systems and donor countries' procuring agencies participate as customers; 2) LPPs are registered in donor countries' e-procurement systems and donor countries' procuring agencies participate as customers.

There are hindrances to both options. In the first option (using LDCs' e-procurement systems), weak e-procurement infrastructure in LDCs will be a big obstacle. In the second option (using donor countries' e-procurement systems), the producer of LPPs will have difficulties in registering in donor countries' e-procurement systems.

However, these obstacles can be overcome. In regard to the first option, it should be remembered that many efforts are made to strengthen e-procurement systems in developing countries worldwide.<sup>61</sup> In the second option, donor countries' international development institutions (such as USAID, JICA, and KOICA) which have local offices in LDCs can provide counseling services to local producers for registration concerns.

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<sup>60</sup> OECD, *DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance* (1987).

<sup>61</sup> For more details, see UN ESCAP, *E-Procurement* (2006).

### C. Shipping and distribution

Incentives can be given to shipping companies which ship LPPs with very low costs. Donor countries' international development institutions procure huge amounts of shipping services annually. In the tendering stage of choosing shipping companies, additional points can be given to enterprises which actively participate in providing shipping services to microtrade products.

There can be a counterargument to this incentive system, as it hinders fair competition. However, as many recent efforts have been made to link Corporate Social Responsibility (CSR) and public procurement,<sup>62</sup> a reasonable range of incentives can be given to enterprises which actively participate in microtrade.

## VI. CONCLUSION

The concept of microtrade is noteworthy because it can be a viable policy tool to alleviate poverty in LDCs. To properly implement it, issues such as ① the creation of demand, ② supply and demand matching, and ③ shipping and distribution must be considered, and in so doing, public procurement can be valuable.

In relation to the creation of demand, a preference for microtrade products should be positively considered. In this system, public entities in developed countries can set targets for the purchasing of microtrade products and make efforts to achieve these targets.

For the supply and demand matching, an e-procurement system should be actively implemented. To this end, technical assistance for strengthening e-procurement systems in LDCs and counseling local producers in registration are necessary. In this process, donor countries' international development institutions can take an active role.

Incentives can be given to shipping companies which conduct shipping of LPPs with very low costs. In the tendering stage of choosing shipping companies by donor countries' aid agencies, additional points can be given to enterprises which actively participate in providing shipping services to microtrade products.

Aid and trade should complement each other, and "Aid for Trade" should be integrated with public procurement. In the longterm, establishing certification of

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<sup>62</sup> See Christopher McCrudden, "Corporate Social Responsibility and Public Procurement," in Doreen McBarnet et al. (eds.), *The New Corporate Accountability—Corporate Social Responsibility and Law* (New York: Cambridge University Press, 2009).

microtrade products will definitely facilitate this integration. The concrete way to establish a certification system is left for future research.

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