**Small Businesses in the WTO: Small Fish in a Big Pond or Globalization 3.0**

Kitsuron Sangsuvan

I. Introduction ....................................................................................... 342

II. Small Businesses as International Enterprises ........................ 351
    A. What is Small Business? ............................................................. 351
    B. The Role of Small Businesses in the Economy ....................... 353
    C. Small Businesses in Globalization 3.0 ..................................... 356
    D. How Important Are Small Businesses to the Global Economy? 360
    E. Internationalization of Small Businesses ................................. 363

III. Interaction Between Small Businesses and the WTO ............... 367
    A. What Is the WTO? .................................................................. 367
    B. The Role of the WTO in Small Businesses ............................... 370
    C. Differences between Small Businesses and Multinational
       Corporations under the WTO .................................................. 377

IV. The Reform of the WTO Rules in the Context of Small Businesses ................................................................. 382
    A. Analyzing the Current WTO Rules .......................................... 383
    B. How Does the New WTO Rule (Trade Facilitation) Affect
       Small Businesses? ................................................................. 389

V. Conclusion ....................................................................................... 395

Small businesses are the backbone of the economy in many countries. Small businesses are viewed as the source of entrepreneurship by creating new products that incorporate new ideas. Small businesses can create new jobs, new industries, and new innovation, which will increase economic growth. The existence of small businesses is considered an essential element of a healthy competitive market. Nowadays, small businesses are becoming a player in the new era of international trade and globalization. Small businesses are also encouraged to go global or expand their opportunities outside the country. Since international trade is regulated and controlled by the World Trade Organization (WTO), international small businesses are under the WTO system. However, interaction between small businesses and the WTO seems to be blurred and has not been addressed yet. This article will address the role and difficulties of small businesses in international trade. The article will discuss whether and how the WTO contributes to international small businesses. The article will examine whether the WTO rules should be
reformed in order to respond to the new era of globalization and the growth of international small businesses. The article will also address how the new Trade Facilitation Agreement under the WTO affects small businesses.

I. INTRODUCTION

Entrepreneurship and small business are increasingly growing. Many countries around the world recognize the importance and benefits of entrepreneurship and small business. They use entrepreneurship and small business policy as a mechanism to promote their economic development. However, the role of entrepreneurship and small business in the economy has merely changed significantly over the last 50 years.1 “During the early post World War II era, the importance of entrepreneurship and small business seemed to fade.”2 At the same time, it was recognized that the entrepreneurship and small business sector needed protection for social and political reasons, but not on the grounds of economic efficiency.3 This idea has been drastically changed in recent years. Entrepreneurship and small business has emerged “as the engine of economic and social development throughout the world.”4 “Since the early 1970s, there has been a very substantial increase in policy interest in the economic role of the small” businesses.5 This growth in interest has been worldwide.6 Many governments have increasingly attributed

2. Id.
3. Id.
6. OLIVER PFIRRMAH & GÜNTER H. WALTER, SMALL FIRMS AND ENTREPRENEURSHIP IN CENTRAL AND EASTERN EUROPE 1 (2002) (“[I]nterest in small firms and entrepreneurship has spread over the last two decades from the U.S. and England to the rest of Europe, first Western and then Eastern Europe, as well as to the former Soviet Union.”).
important “economic roles to such firms – employment generation, the development and introduction of new and improved products and processes, and the maintenance and enhancement of competitive forces.” Therefore, small businesses are becoming a vital policy strategy to achieve economic growth and development. Small businesses will also likely continue to play a major role in economic growth throughout the next decade.

As a critical policy, small business is “big” business for governments today. This is because “small businesses make a significant contribution to the local and regional economy.” Small businesses are also the engine which stimulates economic growth, employment, and competitiveness in a global market. Many countries thus engage in promoting small businesses and use small business policy as an economic development strategy. More significantly, small businesses “now comprise a substantial proportion of new enterprises in Europe, Asia, North America, and elsewhere.” In the United States, “small businesses are the backbone of the economy and the primary source of jobs.” “As the driver of the free enterprise system, small business generates a great deal of energy, innovation, and profit for millions of

7. JOHNSON, supra note 5, at 1.
9. Id.
12. See ZOLTÁN J. ÁCS & LÁSZLÓ SZERB, GLOBAL ENTREPRENEURSHIP AND DEVELOPMENT INDEX (2012) ("Entrepreneurship policy joins a list that includes reforms to countries’ macroeconomics, exchange rates, trade and industrial policies, and improvements in governance. As a part of their poverty reduction and economic development programs, both national governments and major international organizations are beginning to focus on improving the business and investment environment for entrepreneurship.").
Americans.” According to the U.S. Small Business Administration (SBA), small businesses represent over 99.7% of all employer firms and create 64% of net new jobs over the past 15 years in the United States. In Europe, the Small and Medium-sized Enterprises (SMEs) are the backbone of Europe’s economy, providing a potential source for jobs and economic growth. There are more than 23 million SMEs in the Europe Union, which represents 99% of European undertakings. They are Europe’s net job creators and employing more than 100 million employees, firmly anchored in their local and regional communities, and are a guarantee of social cohesion and stability.

In China, small businesses account for most of economic growth and job creation. According to the Ministry of Industry and Information Technology, small businesses account for 80% of China’s urban jobs.

---

16. Small Business Administration, Mission, http://www.sba.gov/about-sba/what_we_do/mission (last visited Mar. 15, 2014) [hereinafter SBA] (“The U.S. Small Business Administration was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interest of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation. Small business is critical to the economic recovery and strength, to build America’s future, and to helping the United States compete in today’s global marketplace. The SBA helps Americans start, build and grow businesses. Through an extensive network of field offices and partnerships with public and private organizations, SBA delivers its services to people throughout the United States, Puerto Rico, the U.S. Virgin Islands and Guam.”).
20. Id.
There are also many small business owners in mainland China today.\textsuperscript{23} Since China’s economy is still at an early stage of economic development with rapid growth and the transition from a planned/command economy to a market-oriented economy, there are numerous and increasing opportunities for Chinese people to set up small enterprises.\textsuperscript{24} In developing countries, small businesses provide employment and economic development, increase the productivity of economy, and bridge the gap between technology efforts and the commercialization of innovation.\textsuperscript{25} Small businesses typically account for more than 90% of all firms outside the agricultural sector, constitute a major source of employment, and create significant domestic and export earnings.\textsuperscript{26} Small business development also emerges as a key instrument in poverty reduction efforts.\textsuperscript{27} As a result, a number of developing countries have recently focused on small business and launched programs to assist small businesses and domestic entrepreneurs.\textsuperscript{28}

Meanwhile, international trade and global business has become an important economic force today.\textsuperscript{29} Goods and services produced in one part of the world are available in all parts of the world.\textsuperscript{30} Businesses are also drawn to doing business across national borders and have become increasingly global in nature.\textsuperscript{31} For instance, companies purchase raw materials from foreign suppliers, assemble products from components made in several countries, or sell finished goods or services to customers

\begin{thebibliography}{99}
\bibitem{23} \textsc{Chinese Entrepreneurship in a Global Era} 54 (Raymond Sin-Kwok Wong ed. 2008).
\bibitem{24} \textit{Id}.
\bibitem{25} \textsc{Ilan Alon}, \textsc{Service Franchising: A Global Perspective} 36 (2006).
\bibitem{27} \textit{Id}.
\bibitem{28} Zoltan Acs \& Nicola Virgill, \textsc{Entrepreneurship in Developing Countries}, 6 \textsc{Found. and Trends in Entrepreneurship} 1, 2 (2010).
\bibitem{29} A.C Fernando, \textsc{Business Environment} 479 (2011).
\bibitem{30} Marios I. Katsioloudes \& Spyros Hadjidakis, \textsc{International Business: A Global Perspective} 366 (2007).
\bibitem{31} Fernando, \textit{supra} note 29, at 479.
\end{thebibliography}
in other countries.  

Thus, the success of businesses depends not only on the domestic economic environment but also on international trade or global markets. Business firms are now encouraged to have a global vision in order to correspond with the world’s economic systems. In particular, business firms have to recognize and react to international business opportunities, be aware of threats from foreign competition, and effectively use international distribution networks to obtain raw materials and move finished products to customers. Those absolutely include small businesses as well.

Fortunately, small businesses have recently been encouraged to think globally and expand their businesses outside the country. This opportunity will typically help small businesses increase revenue “by selling more products to end-users or intermediaries in more foreign markets.” Small businesses “can do this with their own sales force or through contracted distributors or representatives.” Moreover,

32. Id.
34. GERARDO R. UNGSON & YIM-YU WONG, GLOBAL STRATEGIC MANAGEMENT 28 (2008) (“Going global has become a way of conducting business for some United States firms, while others have been operating predominantly as domestic firms...In recent years, access to foreign markets has been made possible as worldwide economic development has progressed and domestic markets have opened their doors to foreign firms. As more companies go global, the dynamics of globalization gradually change the business environment.”).
35. LAWRENCE GITMAN & CARL MCDANIEL, THE FUTURE OF BUSINESS: THE ESSENTIALS 70 (2008) (“Global vision is the ability to recognize and react to international business opportunities, be aware of threats from foreign competition, and effectively use international distribution networks to obtain raw materials and move finished products to customers.”).
36. WILLIAM M. PRIDE ET AL., BUSINESS 158 (10th ed. 2010) (International trade or global business will become more important to small business owners).
38. GERALD I. SUSMAN, INTRODUCTION TO SMALL AND MEDIUM-SIZED ENTERPRISES AND THE GLOBAL ECONOMY 1 (Gerald I. Susman ed. 2007).
39. Id.
globalization and instant worldwide communications are rapidly shrinking distances at the same time that they are expanding business opportunities. Products that sell at home are now more likely to be introduced very quickly abroad, with little or no adaptation in many cases for small businesses. The role of television programs, movies, the Internet, and print media in shaping cultural tastes throughout the world has eased the entry of small businesses into international markets. Many small businesses can then enter foreign markets or increase their opportunities in other countries. At the same time, governments have also attempted to launch measures or programs to help small businesses grow and succeed internationally. For example, the U.S. government established the State Trade and Export Promotion Program (STEP), a 3-year pilot trade and export initiative authorized by the Small Business Jobs Act of 2010. Funded by federal grants and matching funds from the states, the STEP Program is designed to help increase the number of small businesses that are exporting and to raise the value of exports for those small businesses that are currently exporting.

Furthermore, an emergence of new globalization enables and drives small businesses to go global or participate in international trade. As Thomas Friedman, Foreign Affairs Columnist for *The New York Times*, described in his book “*The World Is Flat,*” there are three different stages of globalization taking place throughout history. The first was

40. P RIDE ET AL., supra note 36.
41. L ONGENECKER ET AL., supra note 37, at 448.
42. Id.
45. Id. (explaining that the STEP grants will help provide: (1) support for small business participation in foreign trade mission and foreign market sale trips; (2) subscription to services by the Department of Commerce; (3) website translation fees; (4) design of international marketing media; (5) trade show exhibitions; (6) participation in training workshops; and (7) other export initiative determined to be appropriate by the SBA).
“globalization 1.0” which was countries globalizing. The second was “globalization 2.0” which was companies globalizing. The third is new “globalization 3.0” which is shrinking the world from a size small to a size tiny and flattening the playing field at the same time. What is really new about this era is that we now have individuals that can compete, connect, and collaborate globally as individuals. This provides equal opportunity for everyone to take part. In the business context, globalization 3.0 is an important period which allows small businesses, small groups, or individual to be part of international trade. Size does not necessarily matter as long as they are able to compete or connect with other entities around the world through technology. For instance, “Amazon.com and eBay.com are two of the most popular retail destinations on the web. Both allow individuals and small businesses to sell products to the millions of web surfers who visit and shop their sites.” By offering their products for sale through the web, small businesses can reach and exchange goods and services with customers in distant markets – across the country or around the world. Therefore, the term “globalization and international trade” is not only limited to countries and large companies, but also includes small businesses.

International trade or global business is regulated and controlled by the World Trade Organization (WTO). The WTO is a multilateral trading system, which establishes the structural background for international trade or trade relations between countries through

47. Id.
48. Id.
49. Id.
50. Id.
51. Id. at 11.
52. Id.
54. Id.
consensus among its member.\textsuperscript{56} The WTO, which has also stood as the institutional embodiment of an economic model, is based on the idea of free market and free trade being a key to social and economic prosperity. The WTO has four basic objectives: “to set and enforce rules for international trade, to provide forum to negotiate and monitor trade liberalization, to improve policy transparency, and to resolve trade disputes.”\textsuperscript{57} As a set and enforcement of the rules, the WTO administers a host of agreements that contain detailed rules regulating international trade or international economic activity.\textsuperscript{58} Those agreements provide the legal ground-rules for international commerce.\textsuperscript{59} The goal of those trade rules is to help producers of goods and services, exporters, and importers conduct their business.\textsuperscript{60} Those rules are also trying to help trade flow as freely as possible.\textsuperscript{61} Businesses or companies can thus gain benefits from the WTO rules and policies. This would embrace small businesses who are becoming a new player in the world trading system.

However, an interaction or combination between small businesses and the WTO seems to be blurred. The WTO also seems to be distant from small businesses. Small business owners often question whether their businesses can expand or compete in international markets.\textsuperscript{62} Many owners do not want to try, but only focus on local communities.\textsuperscript{63}

\begin{itemize}
\item \textsuperscript{57} World Trade Org. Secretariat, \textit{From GATT to the WTO: The Multilateral Trading System in the New Millennium} 8 (2000) [herinafter WTO Secretariat].
\item \textsuperscript{58} Debra P. Steger, \textit{The Culture of the WTO: Why It Needs to Change}, 10 J. Int’l Econ. L. 483, 483 (2007).
\item \textsuperscript{59} \textit{What is the World Trade Organization?}, World Trade Org., http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (last visited Mar. 16, 2014).
\item \textsuperscript{60} \textit{Id.}
\item \textsuperscript{61} \textit{Id.}
\item \textsuperscript{62} Financing Your Small Business Exports, U.S. Small Bus. Admin., http://www.sba.gov/content/financing-your-small-business-exports-foreign-investments-or-projects (last visited Mar. 16, 2014) (“Many small businesses think they are too small to compete in the world market.”).
\item \textsuperscript{63} Pride et al., \textit{supra} note 36, at 158 (“Small businesses, which are expected to remain the dominant form of organization in the country, must be prepared to adapt to
Accordingly, the WTO or multilateral trading system is probably not important and relevant to them. In fact, small businesses have a growing share in international trade. Small businesses can be the important engine of global economic growth as well. At the same time, the WTO is the joint product of legal, economic, and political ideas, as well as real-world developments in each of these fields. The WTO would focus on or help small businesses in the global economy. Recently, the WTO has agreed on a new trading term for the first time since its foundation in 1995, with effective procedures, which would help small businesses in international trade. This is called a “Trade Facilitation Agreement.” This Agreement will likely persuade small businesses to go global and recognize the importance of the WTO. The question may, however, arise how small businesses have a role in international trade or globalization 3.0 and how the WTO, especially the Trade Facilitation Agreement, can affect or have a role in small businesses.

This article will mainly explore and address the relationship and interaction between small businesses and the WTO. Part II of this article will discuss potential small businesses in the local and global economy and how small businesses participate in international trade. In particular,
this part will examine the definition of small business, the role of small businesses in the economy, the emergence of small businesses in the new era of globalization or globalization 3.0, the importance of small businesses in international trade, and the internationalization of small businesses. The discussion and analysis will be based on business theories, which help to see the picture of international small businesses. This will also emphasize and confirm the idea that small businesses are able to go global. Part III of the article will analyze interactions and relationship between small businesses and the WTO. It will specifically discuss the anatomy of the WTO, the role of the WTO in small businesses, and differences between small businesses and multinational corporations under the WTO. Finally, Part IV of the article will address the reform of the WTO rules in the context of small businesses and how the Trade Facilitation Agreement can affect small businesses. This part will analyze the current WTO rules and address the potential role of the Trade Facilitation Agreement in small businesses.

II. SMALL BUSINESSES AS INTERNATIONAL ENTERPRISES

A. What is Small Business?

The concept of an “entrepreneur” is often used to interpret “small businesses.” The term “entrepreneur” is linked to small businesses because it involves the processes of recognizing opportunities and the development of ventures. Basically, an entrepreneur is one who creates a new business in the face of risk and uncertainty for the purpose of achieving profit and growth by identifying significant opportunities and assembling necessary resources to capitalize on them. Small business is

69. HATTEN, supra note 15, at 24 (“Entrepreneurship and small business management are both processes, not isolated incidents.”).

70. FANG ZHAO, ENTREPRENEURSHIP AND INNOVATIONS IN E-BUSINESS: AN INTEGRATIVE PERSPECTIVE 181 (2006) (“The three primary reasons that people become entrepreneurs and start their own firms are: (1) To be their own boss – because either they have had a long-time ambition to own their own firm or they have become frustrated working in traditional jobs; (2) Pursue their own ideas – some people are naturally alert, and when they recognize ideas for new products or services, they have a desire to see
an enterprise that is small compared to large companies in an industry.  
Small business has geographically localized operations, is financed by only a few individuals, and has a small management team. Forms of small businesses include: (1) a sole proprietorship; (2) partnership; (3) corporation; (4) Limited-Liability Company; or (5) Non-Profit Corporation.

There is no universal definition of “small business.” The term “small business” is usually defined by the number of employees of the firm. Other criteria may include sales revenue, the total value of assets, and the value of owners’ equity. As a result, the definition of “small business” differs from country to country. In the United States, SBA defines a small business as an “independent business having fewer than 500 employees.” “However, the definition of ‘small’ still varies by industry.” For example, small manufacturers fall in the 500-worker range whereas all wholesale trade industries must employ fewer than

those ideas realized; and (3) Realize financial rewards – this motivation is typically secondary to the first two and often fails to live up to its hype.”)

71. Longenecker et al., supra note 37, at 7.
72. Id.
73. Shahid Alikhan & Raghunath Mashelkar, Intellectual Property and Competitive Strategies in the 21st Century 101 (2009); Gail Buyske, Banking on Small Business: Microfinance in Contemporary Russia 40 (2007); Darren Lee-Ross & Conrad Lashley, Entrepreneurship & Small Business Management: In The Hospitality Industry 2 (2009) (“Any attempt at rigid definition of the term entrepreneur . . . (should) be avoided . . . because whatever attributes are selected, they are sure to prove excessively restrictive, ruling out some feature, activity, or accomplishment of this inherently subtle and elusive character.”).
74. Hatten, supra note 15, at 5.
75. Id.
76. Audretsch et al., supra note 1, at 44; OECD, SME Policy Index: Eastern Partner Countries 2012 Progress in the Implementation of the Small Business Act 100 (2012) (In the Eastern European region, each country has a different definition for the SME sector, in most cases the key criterion for classification being the number of employees. Other criteria, such as turnover and total assets may also apply).
100. In Canada, the definition of “small business” varies according to different sources. According to Canadian Industry Profiles, a small business is defined as one with revenue between $30,000 and $5 million while a medium business has revenues between $5 million and $25 million. Statistics Canada defines small business as firms with less than 500 employees and less than $50 million in annual revenues. The Canadian Council of Ministers of the Environment also defines business size based on the number of employees: a small business has less than 50 employees while a medium business has 51 to 500 employees. In the European Union (EU), the European Commission establishes three types of enterprises: (1) small and medium-sized enterprises which have fewer than 250 employees and have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million; (2) a small enterprise which has fewer than 50 employees and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million; and (3) a micro-enterprise which has fewer than 10 employees and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

B. The Role of Small Businesses in the Economy

Small businesses have been criticized by many economists or commentators. Some commentators have believed that small businesses have “little importance in market economies, which have been for the
most part dominated by large, national and multinational enterprises.”

“Large enterprises have been equated with government lobbying, manipulating prices and direct and indirect dictation of market forces [whereas] the opportunities for small businesses would tend to be limited.” Small businesses have a lower profitability, survival, and growth compared larger firms. Small businesses are not considered the real engine of job creation. “Small firms are also disproportionately concentrated in areas of the economy that tend to have lower productivity growth.” Additionally, many small businesses fail every year. The SBA found “that 69% of businesses do not last past seven years, and 56% fail in less than four years.” Helping or promoting small businesses may be good politics, but it is not necessarily good economics. Thus, “small entities’ positive spillovers . . . are not independently a valid reason to favor them through the legal system.”

On the other hand, other commentators have argued that small businesses comprise the largest portion of businesses in most developed and developing countries, offer the greatest potential for employment creation and contribute positively to economic growth, competitiveness, and productivity. Van Praag and Versloot also noted that there is


86. Id.


89. Id.

90. See Pride et al., supra note 36, at 142; Azhdar Karami, Strategy Formulation in Entrepreneurial Firms 19 (2007).

91. Susan C. Awe, The Entrepreneur’s Information Sourcebook: Charting the Path to Small Business Success (2012).


93. Id.

94. See Panos G. Piperopoulos, Ethnic Female Entrepreneurs,
evidence of four economic benefits of small businesses. First, small businesses make a positive contribution to job creation. Second, they are integral to innovatory processes that bring new ideas and new products or services to the market. Third, they promote productivity and economic growth. Finally, small business managers are an important outlet for people seeking higher “utility” — either in terms of achieving greater income or job satisfaction. In addition, small business is considered another form of new businesses. Small business provides innovation and technology in the economy through new products and processes. Small business can also find new opportunities in new markets. However, some small businesses are successful while others fail. Among other things, small business still contributes to employment and economic growth which are important to an economy.

http://www.isbe.org.uk/EthnicFemaleEntrepreneurs (last visited Sep. 4, 2014); THE ENTREPRENEURIAL SOCIETY: HOW TO FILL THE GAP BETWEEN KNOWLEDGE AND INNOVATION 1 (Jean bonnet et al. eds., 2010) (“In recent years, entrepreneurship has re-emerged as an important component underlying economic growth in Europe and North America. . . . Small businesses are important to economy vibrancy, employment growth and wealth creation for almost all world economies.”); BRIAN J. CORBITT & NABEEL A. Y. AL-QIRIM, E-BUSINESS, E-GOVERNMENT & SMALL AND MEDIUM SIZE ENTERPRISES: OPPORTUNITIES AND CHALLENGES 135 (2004) (“Small businesses make up a major portion of businesses in developing countries (in some countries the percentage is higher than in developed countries.”); LEO-PAUL DANA ET AL., HANDBOOK OF RESEARCH ON EUROPEAN BUSINESS AND ENTREPRENEURSHIP 494 (2008) (“In modern economies economic activity by small firms is increasingly important for achieving economic growth.”).

95. THE OXFORD HANDBOOK OF BUSINESS AND GOVERNMENT 600 (David Coen et al. eds., 2010).
96. Id.
97. Id.
98. Id.
99. Id.
101. Id.
102. Id.
103. Id.
104. Id.
According to the Organization for Economic Co-operation and Development (OECD), small businesses create more than 95% of enterprises and account for 60% to 70% of employment in OECD countries. Small businesses can then strengthen OECD economies during the period of the global economic slowdown. Additionally, OECD countries rely on the drive of a business sector which has a significant role in their economies. Small businesses will be a critical part of the economy which creates income in the countries. A strong small business sector is considered a powerful engine for driving country development. As a result, OECD countries have established policy promoting and supporting small businesses.

C. Small Businesses in Globalization 3.0

Big businesses are not the only ones to benefit from globalization. New connections between the world’s markets have recently opened doors for small businesses as well. One of the greatest explanations for an emergence of small businesses in globalization is produced by Thomas Friedman. In The Lexus and the Olive Tree, Thomas Friedman basically defined the term “globalization” as the “international system

105. OECD, supra note 87, at 7. OECD countries are Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Members and partners, OECD, http://www.oecd.org/about/membersandpartners/ (last visited Sept. 9, 2014).

106. ORG. FOR ECON. CO-OPERATION AND DEV., OECD SMALL AND MEDIUM ENTERPRISE OUTLOOK 7 (2002).

107. Id.

108. Id.

109. OECD, OECD SME AND ENTREPRENEURSHIP OUTLOOK 2005 (2005) (“Governments continue to support SMEs in strengthening their knowledge and technology base.”).

110. DAVID ANDREWS, BUSINESS WITHOUT BORDERS: GLOBALIZATION 24 (2011)

111. Id.
that replaced the Cold War system.”

“Globalization is the integration of capital, technology, and information across national borders, in a way that is creating a single global market and, to some degree, a global village.”

Thomas Friedman continued identifying the stages of globalization in his book “The World Is Flat.” As mentioned above, globalization can be divided into three stages: globalization 1.0, 2.0, and 3.0.

Globalization 1.0 took place during 1500s to 1800s. Globalization 1.0 made the world a small place: it changed from a large size to a medium size. Globalization 1.0 involved states and physical movement. This particularly means that the process of globalization was driven by physical power such as horsepower, wind power, and steam power. States also allowed physical power to break down walls and merge the world together. In Globalization 1.0, the questions arose where states fit into global competition and opportunities and how we could participate in globalization and work together with others through states.

Globalization 2.0 began in the 1900s and ended around the turn of the 21st century. Globalization 2.0 made the world smaller: it changed from a medium size to a small size. This means that the process of globalization was driven by multinational corporations. These corporations joined globalization to gain new markets and labor. Additionally, there were two parts of Globalization 2.0. The first part was driven by transportation costs; the second half was powered by

113. Id. at 7-10.
114. FRIEDMAN, supra note 46, at 10.
115. Id. at 9.
116. Id.
117. Id.
118. Id.
119. FRIEDMAN, supra note 46, at 9.
120. Id.
121. Id.
122. Id.
123. Id.
124. Id.
telecommunication costs. In this era, there was the emergence of global economy, free movement of goods, and global market. Hardware – from steamships and railroads to telephones and mainframe computers – was the dynamic force driving this globalization. “The questions arose where companies fit into the global economy, how they can take advantage of the opportunities, and how we join globalization and work together with others through companies.”

After the emergence of Globalization 1.0 and 2.0, Globalization 3.0 has taken place in 2000. Globalization 3.0 makes the world become the smallest place: it changes from the small size to the tiny size. Globalization 3.0 also helps people or companies work together or compete globally. More importantly, they can easily participate in Globalization 3.0. Software – all sorts of new applications – has been used to generate a global network which provides connections to all communities. The questions still arise where we fit into the global competition and opportunities and how we can collaborate with others globally. Additionally, all people and companies are empowered by Globalization 3.0. This is different from Globalization 1.0 and 2.0 which were mainly operated by European and American people and companies. Globalization 3.0 will then be influenced by all entities and everyone can join this.

Globalization 3.0 can refer to an open opportunity for small businesses to expand internationally. Globalization 3.0 can increase the size of markets into which domestic producers, small businesses, or individuals can sell their goods or services, giving them more

125. FRIEDMAN, supra note 46, at 10.
126. Id. at 10.
127. Id.
128. Id.
129. Id.
130. Id.
131. FRIEDMAN, supra note 46, at 10.
132. Id.
133. Id.
134. Id. at 11.
135. Id.
136. FRIEDMAN, supra note 46, at 11.
opportunities to benefit. The Internet is an attractive and powerful strategic tool for small businesses to have a role in globalization 3.0. “More particularly, the advent of Internet-based electronic commerce offers considerable opportunities to small businesses to expand their customer base, enter new product markets, and rationalize their businesses aboard.” Small businesses can also use e-commerce or the Internet to “customize products and services, manage supply process and inventories, and reduce the time between order and delivery.” Meanwhile, “customers can access a small business’s home page from anywhere in the world” with the Internet. Further, small businesses can become “increasingly globalized, often on the basis of inter-firm linkages and clusters” in globalization 3.0. A new communication tool or the Internet again helps small businesses to reach or connect with other foreign partners located in another part of the world. For example the Internet can “establish a partnership between a small company that produces something and other small companies that know their target markets very well.” Small businesses can also be “more involved in international strategic alliances and joint ventures” with large companies with the Internet. Larger multinationals can then collaborate with small businesses to “gain technological advantages, to economize on R&D, to minimize the lead-time for new products and serve emerging markets.” Additionally, small businesses may “reach across borders to form international alliances and ventures composed of globalized firms.”

Before participating in globalization 3.0, small businesses should determine whether their companies are up to the task. Small businesses may have to study the social, technological, economic, and political forces in a foreign market “to figure out how best to adapt products and

138. Id.
139. LONGENECKER ET AL., supra note 37, at 239.
140. OECD, supra note 137, at 5.
141. EDUARDO DA COSTA, GLOBAL E-COMMERCE STRATEGIES FOR SMALL BUSINESSES 151 (2001).
142. OECD, supra note 137.
143. Id.
144. Id.
ensure smooth entry.” Small businesses may also have to determine political and economic risk in other countries. “Political risk is the potential for a country’s political forces to negatively affect the performance of small businesses operating there; it varies greatly across nations.” “Economic risk is the probability that a government will mismanage its economy and affect the business environment in ways that hinder the performance of firms operating there.” In addition, “going online, exploiting the Internet, and engaging in electronic commerce” in globalization 3.0 can raise problems and obstacles. Small businesses must deal with several issues such as managing expanding information flows, cross-border taxation, transaction security and dispute settlement, and must be able to build public recognition and trust beyond national borders. “The cost of acquiring the required technologies and skills can be disproportionately high for smaller companies” as well. Small businesses may thus have to be aware of those issues.

D. How Important Are Small Businesses to the Global Economy?

International trade contributes to growth, development, and prosperity. “As part of a virtuous circle of policy and circumstance, international trade helps to lift millions out of poverty and spread the benefits of higher living standards.” “International trade can improve economic growth, bring great benefits to people, and support more

145. Longenecker et al., supra note 37, at 239.
146. Id. at 467.
147. Id.
148. Id.
150. Id.
151. Id.
“It can also bring nations closer together, fostering mutual understanding and contributing to world peace.” Nowadays, globalization has been developed, which affects international trade. “A combination of new technologies, social adaptation, policy openness, and innovative business models has led to intensified economic, social and political interdependence.” Small businesses are more engaged in the global economy or international trade through a highly complex set of arrangements. Small businesses also have an increasing role in international trade. “For example, in the United States, 97 percent of all exporters are small businesses.” “They definitely account for the largest group of U.S. exporters and are a major user of imported goods.”

Small businesses can be one of the most powerful drivers of new global competition in the modern global economy. Traditionally, markets were segmented: large companies competed in international markets while smaller businesses remained local or regional. However, since the communication and technology revolution transformed society, the competition increasingly becomes global. Technology and information can quickly be transferred across borders. Markets around the world have to be developed or adapted to the new change. Furthermore, the drivers of globalization are removing the barriers that segregated the competitive space of the small and large firms. Firms of all sizes have begun to share the same competitive space. It is

---

154. Id.
155. Id.
156. Id.
157. SBA, supra note 16.
159. MICHAEL SCHAPER & THIERRY VOLERY, ENTREPRENEURSHIP AND SMALL BUSINESS: A PACIFIC RIM PERSPECTIVE 4 (Janette Whelan Publ’g Consultancy ed. 2011).
160. DANA, supra note 152, at 213.
161. SMALL FIRMS IN GLOBAL COMPETITION 10 (Tamir Agmon & Richard L. Drobnick eds., 1994) [hereinafter SMALL FIRMS].
162. Id.
163. Id.
164. DANA, supra note 152, at 213.
165. Id.
becoming increasingly difficult for independent small firms to thrive on their own unless they are globally competitive. Small businesses may also become a competitor with other firms in the international competitive landscape. As these emerging models of international business competition involve both the small and the large enterprises, each firm can rely on different sets of capabilities and skills and invoke different strategies as a basis of competition in the global environment. If small businesses particularly focuses and specializes in a sophisticated product for which world demand is limited, it is able to develop firm-specific advantage and to nurture them into globally competitive advantages.

“Moreover, small businesses are becoming more involved and are playing increasingly significant roles in global supply chains.”

“Basically, global supply chains are worldwide networks of suppliers, manufacturers, warehouses, distribution centers and retailers through which raw materials are acquired, transformed, and delivered to customers.” The embrace of globalization is also reflected in the rise of global supply chains. The production process today often involves several countries, each specializing in different tasks along the supply chain, from the earliest product stages to final consumption. “International organizations consider small businesses as important drivers of development and are supporting their entry into international markets through global supply chains.” Small business may then act as distributors, producers, and customers in the supply chain. More importantly, small businesses can act as important suppliers to larger

166. *Id.*
167. *Id.*
168. *Id.* at 213.
169. SMALL FIRMS, supra note 161, at 12.
172. WTO, supra note 153, at 22.
173. *Id.*
174. PARK ET AL., supra note 170, at 115.
companies or multinational corporations. Recently, small businesses have also been integrated as suppliers of commodities and low cost labor in developing countries and as innovators and technology specialists in developed countries. The former has been documented through extensive empirical studies of the global agricultural, apparel, and electronics industries. The latter has been seen in the advance skills contributed by machinery suppliers in Germany and Switzerland.

E. Internationalization of Small Businesses

Once small businesses decide to expand internationally, the next step is to plan and establish a strategy that matches their potential. Throughout most of the 20th century or globalization 1.0 and 2.0, many small businesses were hesitant to step into the world of global trade. However, globalization 3.0 can encourage or increase the internationalization of small businesses. Many small firms are now confident and show signs of accelerated internationalization. Additionally, there are several ways of internationalizing small businesses. For most small businesses, the first step toward globalization is a decision to export a product to other countries or to import goods

175. David Smallbone & Friederike Welter, Entrepreneurship and Small Business Development in Post-Socialist Economies 28 (2008) (Small businesses can contribute to economic development through their complementary linkages with other businesses, such as via supplier and customer relationships. In a mature market context, it has been estimated that up to two-thirds of small firms rely on some kind of supply role to other firms for their livelihood. By acting as suppliers to larger companies, small businesses contribute to the external competitiveness of these firms, which together comprise economic systems or networks. In this context, many small firms act as specialist suppliers to large companies of parts, subassemblies, components or (increasingly) services, which are often produced at a lower cost than large companies can achieve in-house, thereby contributing to enhanced price competitiveness).

176. Id.
177. Id. at 116.
178. Id.
179. Longenecker et al., supra note 37, at 453.
180. Id.
181. Id.
from abroad to sell in the domestic market. These initial efforts are often followed by more sophisticated non-export strategies, such as licensing, franchising, forming joint ventures, forming strategic alliances, or even foreign direct investment.

First, importing and exporting are the most common form that small businesses engage in international trade. They are relatively low cost and low risk. Small businesses can market and distribute their products in other countries without incurring the expense of supporting costly operations in those markets. Second, licensing and franchising are a medium level of internationalization for small businesses. Licensing is a form which allows one business to sell the rights to use a business process or product to another business in a foreign country. Franchising is a business form which allows a firm to produce and market a branded product or services for an initial fee and (usually) a supply contract. Both licensing and franchising provide low cost and low risk for small businesses. They also provide little control and low returns.

Third, joint ventures and strategic alliances are a high level of internationalization. Joint ventures are an agreement in which two businesses form a partnership to produce goods or services in another country. Strategic alliances are cooperative business activities formed by two or more independent firms for various strategic purposes.

182. Id.
183. Id.
185. MARCELLA KELLY & JIM MCGOWEN, BUSN 315 (3rd ed. 2010).
186. LONGENECKER ET AL., supra note 37, at 454.
187. HATTEN, supra note 15, at 375.
188. DAVID NEEDLE, BUSINESS IN CONTEXT: AN INTRODUCTION TO BUSINESS AND ITS ENVIRONMENT 37 (2010).
189. Id.
191. HATTEN, supra note 15, at 375.
192. NAM-HOON KANG & KENTARO SAKAI, OECD SCIENCE, TECHNOLOGY AND INDUSTRY WORKING PAPERS 2000/5, INTERNATIONAL STRATEGIC ALLIANCES: THEIR ROLE
joint ventures, strategic alliances can be formed for relatively short period or for many years, depending on the goals of the participants. However, there is a difference between strategic alliances and joint ventures. 193 Joint ventures generally involve an element of shared ownership or involve fairly restrictive contractual obligations. 194 Strategic alliances only occur when two companies agree to cooperate on a specific venture or have an arrangement to share facilities. 195 Both joint ventures and strategic alliances are considered high cost and high risk investments. 196 Finally, foreign direct investment is the highest level of internationalization. 197 Foreign direct investment is the establishment and expansion of operations of a firm in a foreign country. 198 Foreign direct investment relates to the purchase of physical assets or a significant amount of the ownership of a company in another country to gain control over operations. 199 Foreign direct investment carries more risk and control than with other forms, and “small businesses rarely start out their global [business] with [foreign] direct investment.” 200

In addition, there are at least two ways that small businesses can go global. First, small businesses become a gradual global firm. 201 This means that “firms internationalize through various processes slowly and incrementally over time.” 202 “The foundation for the model is the process of acquisition, integration, and knowledge development and an ever-increasing commitment of resources to international markets.” 203 Firms can learn more about global business and incrementally develop

193. NEEDLE, supra note 188, at 38.
194. Id.
195. Id.
196. JAMES P. NEELANKAVIL & ANOOP RAI, BASICS OF INTERNATIONAL BUSINESS 167 (2009).
197. HATTEN, supra note 15, at 377.
198. JEFF MADURA, INTRODUCTION TO BUSINESS 118 (2006).
199. Id.
201. CAVUSGIL & KNIGHT, supra note 13, at 1.
203. Id. at 157-58.
themselves to compete in foreign markets. For example, “[d]uring their initial expansion, [small businesses] will enter countries similar to their domestic market and use processes that require lower costs and commitment, such as exporting. Over time, they will enter more, and increasingly dissimilar, countries.” If their businesses are growing, small businesses will be able to “expand their entry modes, moving from exporting to foreign direct investment.” Second, small businesses can start as born global firms. This means that small businesses can start and operate from day one in global markets as a global player, selling goods abroad or servicing its customers wherever they are to be found. Small businesses can also “seek to derive significant competitive advantage from the use of resources and the sale of outputs in multiple countries.” However, “the number of born global firms in a transition economy is still quite small.”

However, it is difficult for small businesses to expand into international markets by themselves. Governments have to encourage and help small businesses to internationalize. In particular, governments may have to find and establish effective strategies for helping and supporting small businesses to internationalize. For example, in the United States, small businesses are aided and assisted by the SBA, the Department of Commerce, and other Federal and State agencies to increase their ability to compete in international markets. This aid and assistance includes:

205. WILLIAM BYGRAVE & ANDREW ZACHARAKIS, ENTREPRENEURSHIP 142 (2010).
206. Id. at 143.
207. Id.
208. LONGENECKER ET AL., supra note 37, at 466 (Small companies called born-global firms are increasingly being launched with cross-border business activities in mind).
209. DANA, supra note 152, at 375.
210. Id.
211. CANDIDA BRUSH, INTERNATIONAL ENTREPRENEURSHIP: THE EFFECT OF FIRM AGE ON MOTIVES FOR INTERNATIONALIZATION 5 (2nd ed. 2013) (For instance, the U.S. government is encouraging greater participation in international trade by small businesses: “One important mission of the U.S. Small Business Administration is to encourage small and medium-sized firms to export their products to other nation.”).
(1) enhancing their ability to export; (2) facilitating technology transfers; (3) enhancing their ability to compete effectively and efficiently against imports; (4) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade; (5) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and (6) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.213

Governments may also provide support in the form of resources and advice, comprehensive country market information, export credit guarantees, trade mission, and in some cases, target country representative offices.214

III. INTERACTION BETWEEN SMALL BUSINESSES AND THE WTO

A. What Is the WTO?

The WTO is an international organization which was created on January 1, 1995.215 The WTO establishes “the common institutional framework for the conduct of trade relations among the member states.”216 More specifically, the WTO administers the multilateral trading system or international trade in global economy.217 Like other

213.  Id. § 631(b)(1).
215.  WTO, supra note 153 (The WTO began life on January 1, 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. It did not take long for the General Agreement to give birth to an unofficial, de facto international organization, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations. The last and largest GATT round, was the Uruguay Round which lasted from 1986 to 1994 and led to the WTO’s creation. Whereas GATT had mainly dealt with trade in goods, the WTO and its agreements now cover trade in services, and in traded inventions, creations and designs (intellectual property)).
216.  Agreement Establishing the World Trade Organization, art. II
217.  The WTO Agreement Series: Agreement Establishing the WTO, WTO 1
organizations, the WTO provides the functions of the organization, its structure, the qualification for membership, and decision-making procedures and requirements.\textsuperscript{218} The WTO is also trying to increase cooperation with global economic policy-making.\textsuperscript{219} In addition, the WTO consists of a “treaty and an international organization.”\textsuperscript{220} As a treaty, it includes legally binding rights and obligations among member countries. It also provides instruments for clarifying the rights and establishing compliance or non-compliance among member states.\textsuperscript{221} As an international organization, the WTO establishes forums to operate the trading system and applies international trade rules to member countries.\textsuperscript{222}

The objectives of the WTO have been established through the Preamble.\textsuperscript{223} More particularly, the objectives of the WTO are: “(1) the increase of standards of living; (2) the attainment of full employment; (3) the growth of real income and effective demand; and (4) the expansion of production of, and trade in, goods and services.”\textsuperscript{224} In order to achieve

\textsuperscript{218} Id.

\textsuperscript{219} Id.

\textsuperscript{220} DONALD MCRAE, THE OXFORD HANDBOOK OF INTERNATIONAL TRADE LAW 55 (Daniel Bethlehem et al. eds., 2009).

\textsuperscript{221} Id.

\textsuperscript{222} Id. (“To some extent, this distinction between treaty and international organization is blurred. The treaty provisions define the scope of the international organization. It consists of a framework for a reciprocal exchange of obligations – in that sense it is contractual in nature. As an international organization, the WTO provides a framework for the rules regulating the international trading regime, and in this sense may seem more normative than contractual, perhaps even something constitutional. As an intergovernmental organization, the WTO is an international actor that interacts with other actors in the international system, including other international organizations both governmental and non-governmental. As a creature of international law, it is also a body that interprets and applies international law, in particular the provisions of the WTO agreements themselves. As a result, the WTO plays a role in the broader field of international law.”).

\textsuperscript{223} WTO Agreement, supra note 217, at 1.

these objectives, two key instruments are required: “(1) the reduction of tariff barriers and other barriers to trade; and (2) the elimination of discriminatory treatment in international trade relations.”

Furthermore, the functions of the WTO can be found in Article II (1) and Article III of the WTO Agreement. More specifically, those functions consist of: “(1) administering the WTO trade agreements; (2) providing forum for trade negotiations; (3) handling trade disputes; (4) monitoring national trade policies; (5) technical assistance and training for developing countries; and (6) cooperation with other international organizations.”

The WTO includes several trading agreements. The WTO also establishes the fundamental principles which run throughout all of WTO agreements. These principles includes: (1) trade without discrimination; (2) freer trade; (3) predictability; (4) promoting fair competition; and (5) encouraging development and economic reform.

In trade without discrimination, “Most-Favored-Nation” (MFN) and “National Treatment” are two basic legal obligations which animate the entire regime. MFN refers to “non-discrimination among the foreign products or firms of members of the WTO on the basis of their nationality.” National treatment refers to non-discrimination against foreign-produced products, as for example through taxes or other regulations that put foreign products at a competitive disadvantage against similar domestically produced goods. In freer trade, lowering

---

225. Id.
227. Id. at 84-85.
229. Id.
230. Id.
232. Id.
233. Id.
trade barriers is one of the most obvious means of encouraging trade. In predictability, foreign companies, investors and governments should be confident that trade barriers (including tariffs and non-tariff barriers) will be certain and should not be raised arbitrarily; tariff rates and market-opening commitments are “bound” in the WTO. In promoting fair competition, a country is discouraged to provide “unfair” practice such as export subsidies and dumping products at below cost to gain market share. Finally, in encouraging development and economic reform, developing countries are given more time to adjust, greater flexibility, and special privileges. “These principles are considered the foundation of the multilateral trading system which could bring greater certainty to international markets, enhancing economic welfare in and reducing political tensions between [states].”

B. The Role of the WTO in Small Businesses

Even though only governments have legal standing in the WTO, international trade is not only limited to international organizations, policy makers, and governments. International trade also includes business as a traditional non-state actor. Business is a key player in advancing globalization and contributing to the international trading

235. Id.
236. Gaspar et al., supra note 33, at 13.
237. Id. at 14.
238. Bansal, supra note 234.
This is because international trade or trading activities are now mainly participated and operated by businesses. Governments may now only have a role in adopting trade policy measures and protecting the interests of business. Moreover, most disputes arise when businesses (importers or exporters) are "adversely affected by the measures allegedly violating the WTO agreement." Although member governments are the only complainants or respondents in the WTO Dispute Settlement, business is an important entity, which participates in the WTO trade and is affected by host countries. For example, in the

241. Saleem Shaikh, Business Environment 750 (2nd ed. 2010) ("A characteristic of the multilateral trading system is the importance it assigns to conducting business in a predictable and transparent manner."); Trade liberalisation statistics, WTO, http://www.gatt.org/trastat_e.html (last visited Mar. 12, 2014) ("51 of the 100 largest economies in the world are corporations. The Top 500 multinational corporations account for nearly 70 percent of the worldwide trade; this percentage has steadily increased over the past twenty years.").

242. Hannah Murphy, The Making of International Trade Policy: NGOs, Agenda-Setting and the WTO 23 (2010) ("According to several scholars, business influence on the international trade regime pre-dates the WTO. For example, Ostry explains that American MNCs played key roles in establishing the global trading system as it exists today as corporations were the only actors other than states allowed to influence the Uruguay Round negotiations and the transformation of the GATT into the WTO. Sell and May contend that pharmaceutical MNCs were instrumental in having international IP rules placed on the negotiating table during the Uruguay Round, leading to the eventual constitution of the TRIPS Agreement. Critics of TRIPS have observed that IP rights are a form of protection for business actors, illustrative of the WTO’s treatment of business as a ‘special’ interest group. Further, Tuerk claims that corporations based in developed countries play a major role in determining countries’ market access requests for trade in services liberalization under the WTO’s General Agreement on Trade in Services (GATS).”).

243. Muchie & Xing, supra note 240, at 43 ("States will continue to be the dominant players on the world stage, but governments will have less and less control over flows of information, technology, disease, migrants, arms, and financial transactions, whether licit or illicit, across their borders.").


245. Id. ("The only participants in the dispute settlement system are the Member governments of the WTO, which can take part either as parties or as third parties. Other international organizations, and regional or local governments are not entitled to initiate dispute settlement proceedings in the WTO.").
EU’s banana case, the U.S. was a complainant not only because its interest in services was associated with EU banana imports from Latin America, but also because a major producer of bananas in Latin America is a U.S. multinational firm. A U.S. multinational firm was a key entity mainly playing and participating in international trade. Accordingly, business “is actively involved in the multilateral trading system and participates in public activities of the WTO.” Business is also considered an important entity for governments and the WTO. “Without business, there would be no trade and no WTO.” At the same time, according to the WTO Business Survey, “95% of businesses believe that works of the WTO are vital for businesses.”

Even though the WTO primarily deals with the rules of trade between countries, the organization has a role in small businesses. Like multinational corporations or big businesses, the WTO can contribute to small businesses in several ways. First, “the WTO trading system plays a vital role in creating and reinforcing” stability and confidence to small businesses. The WTO provides stability and confidence for small business through trade rules. Typically, all businesses largely depend on the level of confidence. When the economy is doing well, business

---

246. WTO SECRETARIAT, supra note 57, at 25 (“The dispute settlement system is not well designed for this reality of multinationals having much of their production in other than their host country. Nor is it designed to cope with the inevitable conflicts that will arise between host governments and multinational firms, including those involving bribery and corruption.”).


248. Id.

249. Id.


252. Id.

people are likely to invest or expand. 254 “When the world economy is in turmoil,” business is also affected by crisis. 255 Businesses can lose confidence in the economy and are reluctant to invest or expand. 256 Trade rules under the WTO can stabilize the world economy and business by discouraging sharp backward steps in policy and by making policy more predictable. 257 They will deter protectionism and increase certainty for business. 258 In other words, they can be confidence-builders for small business. Second, the WTO contributes to predictability against uncertain business environment. 259 Usually, individuals or small businesses seek the kind of predictability they think will increase their capacity to general wealth or gain profits. 260 Binding commitments under the WTO are similar to promise, resulting in predictability. 261 “When countries agree to open their markets for goods or services, they bind their commitments.” 262 “These binding commitments or promise could then give small business a clear view of their future opportunities and create certain business environment.” 263 “With predictability, investment is also encouraged; jobs are created.” 264 “Consumers can fully enjoy the benefits of competition – choice and lower prices.”

Third, the WTO can help small business by improving market access. The term “market access” refers to government-imposed conditions which affect the entry of goods to the market of another country. 266 “Market access conditions consist of tariff and non-tariff barriers.”

254. Id.
255. WTO Peace, supra note 251.
256. DRANSFIELD, supra note 253.
257. WTO Peace, supra note 251.
258. Id.
259. Id.
260. EDGARDO BUSCAGLIA & WILLIAM RATLIFF, LAW AND ECONOMICS IN DEVELOPING COUNTRIES 14 (2000).
261. WTO Peace, supra note 251.
262. Id.
263. Id.
264. Id.
265. Id.
267. Id.
Improving market access could then mean the reduction of tariff barriers and non-tariff barriers. “In an economic sense, market access can affect the competitive relationship between imported and domestic goods.”

For instance, “if the tariff on a particular imported good is eliminated or reduced, the imported good will be in favor; foreign companies will gain greater market access.” This will open new markets in other countries and create new trade flows. Small businesses can increase their sales in the foreign market and to receive a higher price. Foreign companies or small businesses can expand their markets, seek growth opportunities in other countries, and make their production and distribution systems more efficient. They can also reduce their dependence on the economies of their home countries. As a result, small businesses will receive great benefits when WTO members seek to reduce tariff barriers or improve market access through the regular WTO work program and negotiations.

“Fourth, the WTO can help small business to have access to information through transparency. Information is an important resource that companies always use in order to operate their business.”

“If information is complete and accurate, there may be no


270. Buiske, supra note 73, at 107.

271. Id.


273. Pride et al., supra note 36, at 168 (“Many organizations increasingly find that they cannot afford to ignore information. Eternal environment conditions—including the economy, consumer markets, technology, politics, and cultural forces—are all changing so rapidly that a business that does not adapt probably will not survive. And to adapt to change, the business must know what is changing and how it is changing. Most companies gather information about their competitors to increase their knowledge about changes in their industry and to learn from other companies’ failures and successes.”).

274. Id. at 168.
risk for business.” On the other hand, a decision made without any information is a gamble. Individuals and companies involved in trade have to know as much as possible about trade information and conditions. Like big businesses or multinational corporations, small businesses need full information or knowledge of other members’ trade rules and practices in order to take advantage of trade benefits conferred by members WTO commitments. Thus, it is important that regulations and policy as trading information are transparent under the WTO.

Transparency is a basic pillar of the WTO, and it is a legal obligation embedded in Article X of the GATT and Article III of the General

---

275. *Id.*
276. *Id.*
278. *Id.*

(1). Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

(2). No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments there for, shall be enforced before such measure has been officially published . . . .
“Transparency” can basically refer to “degree to which trade policies and practices, and the process by which they are established, are open and predictable.”

“The transparency function [within] the WTO fills information gaps, enables compliance, and assists parties to uphold their rights.”

Transparency is also an instrument for facilitating communication between WTO members on issues.

In addition, there are two types of transparency: external and internal transparency. External transparency is the exercise of reporting the public about the WTO’s work, activities, and the negotiations. For example, “[t]he WTO’s website has tried to ensure the transparency of WTO activities.”

Internal transparency is the practice of reporting information among member countries. Specific measures, policies or laws have to be reported through domestic publication and regular ‘notifications’ to the WTO. The WTO will review each country’s trade policies through the trade policy reviews.

The trade policy reviews are considered a useful resource that small businesses can use to determine the implications of trade policies in each country. With transparency, small business can gain accurate and clear information about policies, rules, and regulations. This would help small businesses make informed decisions and comply with international trade agreements.


282. Id.

283. Bernard M. Hoekman & Michel M. Kostecki, The Political Economy of the World Trading System 43 (3rd ed. 2013); Bernard M. Hoekman & Petros C. Mavroidis, The World Trade Organization: Law, Economics, and Politics 19 (2007) (WTO members are required to publish their trade regulations, to establish and maintain institutions allows for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO.).


285. Id.

286. Id. at 7.

287. Id. at 4.

288. Id.

Small businesses make the decision on internationalization. Small businesses can also gain benefits from both internal and external transparency. “From an economic perspective, transparency can help [small business] reduce uncertainty or risk related to trade policy.”290 “Such uncertainty [or risk] is associated with lower investment and growth rates and with a shift in resources toward nontradables.”291

C. Differences between Small Businesses and Multinational Corporations under the WTO

Although the WTO has tried to open up trade opportunities for all, “small businesses have difficulty entering a market dominated by well-established, large multi-national corporations.”292 Multinational corporations also have a much greater role than small businesses in the world economy.293 “The growth and power of multinational corporations is enormous and [unprecedented].”294 “[Multinational corporations] account for about a third of world output and two-thirds of world trade.”295 “Most significantly, around a quarter of world trade occurs [within] multinational corporations.”296 Multinational corporations are the key international traders that regularly operate across national borders.297 Because of their vast size and financial, technological, and material resources, multinational corporations mainly dominate and gain

290. Id.
291. Id.
293. See KATSILOUDES, supra note 30, at 16 (“‘The multinational corporation’ economic and political muscle makes them highly visible.”); C. Fred Bergsten, Preface to THEODORE H. MORAN, FOREIGN DIRECT INVESTMENT AND DEVELOPMENT, at ix (2011) (“[T]he operation of multinational corporations have become central to the world economy at large.”); NATHAN M. JENSEN, NATION-STATES AND THE MULTINATIONAL CORPORATION 1 (2008) (“Multinational Corporations (MNCs) play a critical role in the global economy.”).
295. Id.
296. Id.
from the structure of the world economy and international trade. Multinational corporations can create “a large number of jobs, greater investment, and significant tax revenue for the areas in which they operate.” More importantly, “these companies’ transactions involve large amounts of money.” They also have the ability to overcome trade problems, save on labor costs, and tap new technology.

On the other hand, small businesses are the new players in international trade and still need to improve their sustainability. Small businesses still own the three characteristics: (1) small businesses have “a relatively small share of their market place”; (2) small businesses are “managed by owners or part-owners in a personalized way and not through a [formalized] management structure”; and (3) small businesses are independent business, “in a sense of not forming part of a larger enterprise.” There are also several reasons for small business failure: “(1) lack of experience; (2) insufficient capital (money); (3) poor location; (4) poor inventory management; (5) over-investment in fixed assets; (6) poor credit arrangement management; (7) personal use of business funds; and (8) unexpected growth.”

Even many born-global small businesses confront a number of significant constraints: lack of economies of scale, lack of financial and knowledge resources, and aversion to risk taking. In addition, small businesses fail because of competition and low sales. There is no way that small businesses can directly compete against multinational corporations. The majority of small businesses trade within competitive markets, small profit margins, and low growth rates. Larger companies or multinational corporations can stay in competitive markets with expensive, complicated, and

298. Id.
299. KATSILOUDES & HADIDAKIS, supra note 30, at 16.
300. Id.
301. LAMB ET AL., supra note 297, at 397.
304. CAVUSGIL & KNIGHT, supra note 13, at 42.
Successful business methods. Multinational corporations are large enough to command advantage conditions when it comes to transport, planning, energy, investment and the regulatory environment, or to move their business to where the conditions suit their needs. Small businesses cannot do so.

Small businesses have more difficulty in trade barriers than multinational corporations. According to the OECD, many business surveys on trade barriers indicate that tariff barriers cause problems for large and small companies that want to have market access in other countries. They also indicate that non-tariff barriers with customs procedures and domestic regulations cause difficulty for small and large businesses. Nevertheless, small businesses “are more vulnerable to the effects of trade barriers than larger companies.” “Large companies or multinational corporations possess the resources to leverage internationalization risks in various ways; by diversifying operations, possessing in-house trade or international departments, creating economies of scale, and strongly lobby for favorable laws and regulations.” This would help large companies deal with or overcome trade barriers effectively. By contrast, small businesses “tend to have limited resources and a lower threshold to absorb risks, especially when operating in intensely competitive markets” or international trade. High tariffs could then have a stronger effect on small businesses. For example, “high tariffs [can] serve as added taxes on . . . exports and imports, driving up the cost of small businesses’ products and narrowing their potential market.” As a result, when faced with high tariffs or

306. Id.
308. Id.
310. Id.
311. Id. at 10.
312. Id.
313. Id.
314. USTR, supra note 158.
trade barriers, small businesses: (1) “may have to bypass a market completely, forgoing an opportunity to grow their business, hence becoming more susceptible to increasing import pressure in their home market;” (2) “have limited capabilities to influence the trade policy process;” (3) “may find it difficult to make production changes in response to fixed-cost barriers;” (4) “incur additional variable costs that could impair their competitiveness;” and (5) “may be unable to benefit from participating in global value chains.”\textsuperscript{315}

In order to strengthen small businesses to compete or enter into international markets, it is vital that small businesses receive assistance and support from their governments and the WTO. For internal problems such as the lack of knowledge, experience, and financial resources, governments should provide assistance and support for small businesses to compete internationally. For example, the SBA established the Office of International Trade “to enhance the ability of small businesses to compete in the global marketplace”\textsuperscript{316} and support small businesses in international trade development.\textsuperscript{317} “The Office of International Trade works in cooperation with other federal agencies and public- and private-sector groups to encourage small business exports and to assist small businesses seeking to export.”\textsuperscript{318} “Through 19 U.S. Export Assistance Centers, the Office of International Trade also directs and coordinates SBA’s ongoing export initiatives in an effort to encourage small businesses going global.”\textsuperscript{319}

For external problems such as trade barriers, balanced trade, fair competition, or other obstacles to market access, the WTO should provide special assistance or support for small businesses. This can only be achieved by trade negotiations. However, the process is much more difficult than governmental assistance and takes a long time. Generally, a government will consult with private sector representatives to find the

\textsuperscript{315} Fliess & Busquets, supra note 309, at 10.
\textsuperscript{318} Id.
\textsuperscript{319} Id.
issues. A government will later negotiate with other governments to reduce trade barriers or provide special benefit for small business. If parties cannot reach a compromise, assistance or support for small businesses will not exist. In some circumstances, governments may establish specific agreements to reduce tariffs in some sectors (such as the WTO Information Technology Agreement). For instance, in the United States, one of the Office of the U.S. Trade Representative’s objectives is to help small businesses by removing tariff and non-tariff barriers in global trade. The U.S. government has also tried to reduce trade barriers through the trade negotiations under the WTO. Since small businesses confront prohibitive barriers such as paperwork and inconsistency in customs policies and regulations, the government is trying to remove those prohibitive barriers. This would increase the free flow of trade in small businesses. The WTO should be used to increase the efficiency of the trade rules dealing with customs procedures which will increase the free movement of goods and services. Thus, the U.S. government is trying to establish some other agreements, such as the WTO Agreement on Customs Valuation. The U.S. government collaborates with other WTO members to create technical assistance and increase trade and investment for all members and small businesses.

However, small businesses may have a great advantage over large companies in the global economy. Small businesses can change products and internal operations faster to take advantage of evolving technologies. In contrast, large companies often overcome extensive bureaucratic procedures when adopting new products or new management operations. The bureaucratic procedures of large

320. Fliess & Busquets, supra note 309, at 11.
321. Id.
322. USTR, supra note 158.
323. Id.
324. Id.
325. Id.
326. Id.
327. Id.
329. Id.
organizations slow down decision making, often leading to missed opportunities in the international marketplace.\textsuperscript{330} Therefore, speed is considered the small business advantage\textsuperscript{331} and a global business strategy.\textsuperscript{332} When large companies are slow to react to rapidly changing conditions, fast-moving entrepreneurs can use their competitive advantage of speed.\textsuperscript{333} Being first to market, they can capture significant sales before the large competitors can react.\textsuperscript{334} The small business advantage is particularly important for the multinational company because, increasingly, the global economy mandates rapid change to take advantage of new markets.\textsuperscript{335}

IV. THE REFORM OF THE WTO RULES IN THE CONTEXT OF SMALL BUSINESSES

There are a number of reasons that the WTO should be reformed at this time in the history of the multilateral trading system.\textsuperscript{336} “A major challenge for this decade is how the international system responds to the dramatic transformation taking place in the global economic and geopolitical landscape.”\textsuperscript{337} This should also include the emergence of small businesses in globalization 3.0. Even though small businesses can go global and gain benefits from the WTO, they still need special assistance and support in order to conduct or expand their business internationally.\textsuperscript{338} Typically, foreign “markets are important for any firm to grow and become more competitive, as extending the market reach is a condition for any firm to expand.”\textsuperscript{339} “What small firms lack is the
ability to know foreign market opportunities and to establish a market presence abroad.” Small businesses are less capable to enter or compete in foreign markets. Small businesses often encounter unique problems and prospects when entering global competition. More particularly, small businesses “find it increasingly difficult to compete on price at home and abroad against competitors or multinational corporations, which have lower resource costs than they do.” Small businesses may need different treatment from multinational corporations, or large companies in the international trading system. Thus, the WTO should have specific rules dealing with or supporting the emergence of international small businesses. However, the question may still arise whether the current WTO rules are sufficient to help small businesses in globalization 3.0 and whether a new trade facilitation agreement could be able to help small businesses.

A. Analyzing the Current WTO Rules

The WTO has been criticized for more than 10 years. For instance, WTO has not covered other important issues in the international trading system. The WTO has no general role in creating a global level


340. Id.
341. Id.
342. CULLEN & PARBOTEAAH, supra note 328, at 277.
343. SUSMAN, supra note 38, at 1.
345. WTO SECRETARIAT, supra note 57, at 7 (“The Uruguay Round certainly did not handle all the key issues confronting the international trading system, and new challenges have since arisen. Thus, as well as digesting the latest agreements, the WTO needs to address such issue as the calls to use the WTO and its dispute settlement procedures for issues only peripherally related to trade (environment, labor, human rights more generally), the continuing growth of regional trading arrangements, the rapidly
playing field in the regulation of labor markets, antitrust, financial markets, and environmental protection.346 Nor does the WTO have a role in regulating trade flows of oil, endangered species, conflict diamonds, armaments, or many other commodities in which there is substantive international law.347 The only level playing field at issue in the WTO is the use of measures that distort trade such as subsidies, tariffs, and nontariff barriers.348 However, the Doha Round, the latest round of trade negotiations among the WTO members, has been recently established to “reform the international trading system through the introduction of lower trade barriers and revised trade rules.”349 “The Round was officially launched at the WTO’s Fourth Ministerial Conference in Doha, Qatar, in November 2001.”350 The work program covers about 20 areas of trade.351 The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries.352 Unfortunately, the Doha Round has not been successful yet.353 WTO members “continue to disagree on prospective liberalization [or tariff reduction] in the areas of agriculture and nonagricultural market access (NAMA), and this rift has expanding importance of foreign investment and competition policy, the surge in applications from (especially former socialist) countries wishing to join the WTO, the changing nature of services trade because of the information revolution, and the recent backlash against globalization.”).

347. Id.
348. Id.
350. Id.
351. Id.
352. Id.
353. BOSSCHE & ZDOUC, supra note 224, at 93. The agenda of the Doha Round, agreed upon more than a decade ago, may have become in view of the rapidly changing reality of international trade, outdated, i.e. insufficiently focused on more pressing problems faced by the multilateral trading system today (such as export restrictions and trade-related energy and investment issues). Id. Failure to update and add to the current WTO rules in order to keep these rules adapted to the ever-changing reality of international trade and the needs of the WTO Members will weaken the rule-based multilateral trading system and result in a “creeping return of law of the jungle.” Id.
delayed the discussion of other important issues on the negotiating agenda.”

In fact, the WTO seems to be far behind from the new era of globalization or international trade. Many WTO rules seem to be unable to address new issues in international trade or cooperate with globalization 3.0 effectively. More particularly, those rules may not be sufficiently effective to help or support small businesses to succeed internationally. Perhaps, one of the reasons is that the WTO just totally relies on the philosophy of the GATT 1947. Originally, the GATT was simply an agreement, but it did more than survive. The GATT was also a major force in the history of the international economy. The GATT developed from fears of a return to the “beggar-thy-neighbor” protectionism of the Great Depression and the need to bring recovery, stability, and the growth to the world economy in the wake of the World War II. This was because, before the World War II or the early 1930s, countries imposed protectionism policies on international trade to protect their markets. Significantly, in the Great Depression, governments were concerned that imports would cause their people to lose their jobs. Governments then raised their trade barriers or took many protectionist measures, “including quota restrictions, which choked off

356. Id.
357. Joseph E. Stiglitz, Globalization and Its Discontents 107 (2003). The beggar-thy-neighbor policies of the 1930’s are generally thought to have played an important role in the spread of the Great Depression. Each country hit by a downturn tried to bolster its own economy by cutting back on exports and thus shifting consumer demand to its own products. A country would cut back on exports by imposing tariffs and by making competitive devaluations of its currency, which made its own goods cheaper and other countries’ more expensive. However, as each country cut back on imports, it succeeds in “exporting” the economic downturn to its neighbors. Id.
358. Narlikar et al., supra note 355, at 103.
360. Id.
international trade. These mistakes concerning economic policy were a major cause of the disasters that led to the World War II. Political leaders of the United States and elsewhere also made statements about the importance of establishing postwar economic institutions that would prevent these mistakes from happening again. Among other things, the GATT was created as a tool to avoid a repeat of the destructive trade tensions or economic mistakes. After the adoption of the GATT,

362. Id.
363. Id.
364. Understanding the WTO: Basic, supra note 359. The original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two “Bretton Woods” institutions, the World Bank and the International Monetary Fund. Id. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. Id. The draft ITO Charter was ambitious. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services. Id. The aim was to create the ITO at a UN Conference on Trade and Employment in Havana, Cuba in 1947. Id. Meanwhile, 15 countries had begun talks in December 1945 to reduce and bind customs tariffs. Id. With the Second World War only recently ended, they wanted to give an early boost to trade liberalization, and to begin to correct the legacy of protectionist measures, which, remained in place from the early 1930s. Id. This first round of negotiations resulted in a package of trade rules and 45,000 tariff concessions affecting $10 billion of trade, about one fifth of the world’s total. Id. The group had expanded to 23 by the time the deal was signed on 30 October 1947. Id. The tariff concessions came into effect by 30 June 1948 through a “Protocol of Provisional Application.” Id. And so the new General Agreement on Tariffs and Trade was born, with 23 founding members (officially “contracting parties”). Id. The 23 countries were also part of the larger group negotiating the ITO Charter. Id. One of the provisions of GATT says that they should accept some of the trade rules of the draft. Id. This, they believed, should be done swiftly and “provisionally” in order to protect the value of the tariff concessions they had negotiated. Id. They spelt out how they envisaged the relationship between GATT and the ITO Charter, but they also allowed for the possibility that the ITO might not be created. Id. The Havana conference began on 21 November 1947, less than a month after GATT was signed. Id. The ITO Charter was finally agreed in Havana in March 1948, but ratification in some national legislatures proved impossible. Id. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces. Id. In 1950, the United States government announced that it would not seek Congressional ratification of the Havana Charter, and the ITO was effectively dead. Id. So, the GATT
international trade surged, and was much more stable.\textsuperscript{365} The GATT 1947 was therefore considered a successful agreement to reduce tariffs to a lower level.\textsuperscript{366}

When establishing the WTO, the philosophy of the GATT 1947 was transferred to the WTO.\textsuperscript{367} In every particular, “the basic purpose of the GATT was to constrain governments from imposing or continuing a variety of measures that restrain or distort international trade.”\textsuperscript{368} “The basic objective of the GATT rules was to liberalize trade so that the market can work to achieve the policy goals established for the system.”\textsuperscript{369} The thrust of the General Agreement was also to channel all border protection against imports into the tariff, and to provide for agreements for tariff reductions.\textsuperscript{370} Those ideas have obviously been adopted in the WTO. For example, one of the WTO’s purposes is “to encourage the progressive liberalization of international trade and to remove protectionist barriers,” that states place on imports and exports which distort trade flows and decrease overall prosperity.\textsuperscript{371} Additionally, the WTO rules, extending to other areas outside the GATT system such as agriculture, textiles, and services, mainly rely on the philosophy of the GATT.\textsuperscript{372}

\begin{thebibliography}{9}
\bibitem{} became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995. \textit{Id.}
\bibitem{} \textit{Id.}
\bibitem{} BOSSCHE & ZDOUC, \textit{supra} note 224, at 83-84. The reduction of trade barriers and elimination of discrimination were the two main instruments of the GATT 1947, but the WTO Agreement aims at constituting, as the Preambles states in its fourth recital, the basis of an integrated, more viable and more durable multilateral trading system. \textit{Id.}
\bibitem{} JACKSON, \textit{supra} note 361, at 22-23. Such measures included tariff, quotas, international taxes and regulations which discriminate against imports, subsidy and dumping practices, state trading, as well as customs procedures and a plethora of other non-tariff measures which discouraged trade. \textit{Id.}
\bibitem{} \textit{Id.} at 23.
\bibitem{} \textit{Id.}
\bibitem{} For example, according to the Preamble of the General Agreement on Trade in Services (GATS), Members wish to establish a multilateral framework of principles
\end{thebibliography}
However, new international trade today is more complex, and probably grows faster than the WTO. This means that the idea of international trade is not only about trade between countries or a reduction in trade barriers, but also includes all business activities that can involve exchanges across national boundaries. “The challenge confronting the global trading system [or the WTO is, for example] is to develop an international structure that supports growth of global electronic commerce for all.” As Thomas Friedman argued in his book, when the Internet and e-commerce became robust, the world shrank from a size small to a size tiny. The availability of cheap labor and telecommunications all over the world has had the effect of creating a “flat” world. No matter where a company is physically located or what a business size is, it can compete for customers who may be located

and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries. They also desire the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants.

373. GEOFFREY PIGMAN, CONTEMPORARY DIPLOMACY 140 (2010).
374. Id. (By the early twenty-first century, trade rules have become vastly more extensive and complex. Trade rules today not only consist of permitted levels of tariffs, quotas, and other barriers to trade, but also allowed levels of subsidies and other government subventions to industries that engage in trade, health and safety standards for trade goods, and a common global system of classification of traded merchandise, the Harmonized System of Tariff Classification (HSTC). Trade rules apply not only to trade in goods, as they did in the nineteenth century, but also to trade in services, to foreign investment regulations affecting trade, and to intellectual property protection. Trade rules impose limitations and prohibitions on various ‘unfair’ trade practices, including the selling of goods abroad below the price at which they are sold in the home country (known as ‘dumping’), trade in counterfeit or great market goods, trade in products made by child or prisoner labor, and goods manufactured under unsafe working conditions.).
375. PRIDE ET AL., supra note 36, at 73.
378. Id.
Thus, an emergence of small businesses through the Internet and e-commerce is a new phenomenon of international trade. However, the current WTO rules may not be able to apply to globalization 3.0, but still primarily focus on globalization 1.0 and 2.0. The current WTO rules would also apply to both small businesses and multinational corporations equally. This may not be able to provide an equal opportunity and effective support for small businesses because they are still different from multinational corporations. Only reducing tariff may probably not be sufficient to help small businesses, so the WTO needs to find a way to help and support an emergence of international small businesses. This reform will also likely improve global business environment and help the WTO to meet the challenges of the 21st Century.

B. How Does the New WTO Rule (Trade Facilitation) Affect Small Businesses?

Although the Doha Round of Trade Negotiations has no issues on small businesses, it established a potential agreement which can affect or benefit small businesses in international trade. “At the ninth ministerial conference of the WTO, held in Bali, Indonesia, [from December 3 to 7, 2013,] the ‘Bali Package’ was formally adopted by ministers.” More particularly, those issues related to food security in developing countries and cotton and other provisions for least developed countries. “The package also includes export subsidy reductions and obstacle reduction when agricultural products are imported through quotas.” Most significantly, the Bali package also

379. Id.
382. Id.
383. Id.
includes the Trade Facilitation Agreement,\textsuperscript{384} which can help small businesses in international trade.

Generally, “formalities, procedures and paperwork in international trade and transport are generated by the need for both governments and industry to monitor and control the movement of goods and the transfer of services and by the necessity of safeguarding every party’s legitimate interests.”\textsuperscript{385} For example, governments have to collect tariff revenues, control the cross-border movement of illegal drugs, arms, protected species, hazardous waste, and other controlled products and collect relevant information for operational and statistical purposes. Businesses have to comply with each country’s particular requirements. However, trade procedures and documentation can be a major obstacle to international trade. Cumbersome procedures can discourage economic activity and make it difficult for businesses to participate in regional and global production networks.\textsuperscript{386} “[B]usinesses have to be more aware of the costs involved in taking goods across borders, such as waiting time.”\textsuperscript{387} “[B]usinesses [can also] suffer both direct border-related costs, such as expenses related to supplying information and documents to the relevant authority, and indirect costs, such as those arising from procedural delays, lost business opportunities and lack of predictability in the regulations.”\textsuperscript{388} More importantly, small businesses are most severely affected by inefficient procedures\textsuperscript{389} because of their relatively small scale of operation.\textsuperscript{390} Trade facilitation has then been created to

\textsuperscript{384}. Id.


\textsuperscript{388}. Id.

\textsuperscript{389}. Id. at 3

\textsuperscript{390}. \textit{ASIA-PACIFIC ECONOMIC COOPERATION} (APEC), \textit{APEC’S SECOND TRADE FACILITATION ACTION PLAN} 1 (2007), \textit{available at}
improve border procedures and reap greater benefits from international trade.

Due to global economic growth, “trade facilitation has become an important issue in international trade along with the reduction of trade barriers.”\(^\text{391}\) It is also essential that trade procedures are simple, predictable, and transparent in order to increase the free flow of goods as much as possible.\(^\text{392}\) Thus, “trade facilitation involves all the measures which facilitate or drive the free flow of trade.”\(^\text{393}\) Trade facilitation can be used to cover other sorts of non-tariff barriers, product examination, and obstacles to labor mobility.\(^\text{394}\) More particularly, trade facilitation can save time, money, and energy for all entities.\(^\text{395}\) Trade facilitation can reduce the transaction costs and complication of international trade, while preserving the standards of government control.\(^\text{396}\) Nowadays, the basic principles and norms on trade facilitation have been established to regulate trade procedures and practices. All countries could apply trade facilitation to the transactions without considering the methods of intervention and the degree of sophistication of their information management systems.\(^\text{397}\)

In the WTO, trade facilitation has been discussed since Singapore Ministerial Conference in December 1996.\(^\text{398}\) In July 2004, WTO


\(^\text{391.}\) \textit{Id.}\n
\(^\text{392.}\) \textit{Id.}\n
\(^\text{393.}\) OECD Policy Brief, supra note 387, at 2.\n
\(^\text{394.}\) \textit{Id.}\n
\(^\text{395.}\) UNESCAP, supra note 386.\n
\(^\text{397.}\) Secretariat of the UNCTFEB, supra note 385, at 8.\n
\(^\text{398.}\) \textit{Trade Facilitation: Background}, WTO, http://www.wto.org/english/tratop_e/tradfa_e/tradfa_intro_e.htm (last visited Mar. 19, 2014) (member direct the Council for Trade in Goods to undertake exploratory and analytical work…on the simplification of trade procedures in order to assess the scope for WTO rules in this area.).
member countries launched negotiation on trade facilitation contained in “July package.”\textsuperscript{399} WTO member countries agreed to clarify and improve GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations).\textsuperscript{400} Among other things, WTO member states individually or jointly submitted proposals to the Negotiating Group.\textsuperscript{401} “After several months of revisions, the Trade Facilitation Agreement was finally agreed by member countries at the Bali Ministerial Conference in December 2013.”\textsuperscript{402}

Originally, in paragraph 27 of Ministerial Declaration, the declaration recognized the case for “further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area.”\textsuperscript{403} In other words, the negotiation on trade facilitation would include transparency and the freedom of transit, fees and formalities which involve importing and exporting transactions.\textsuperscript{404} Eventually, the trade facilitation decision has produced a multilateral agreement which will simplify and harmonize international trade procedures.\textsuperscript{405} The agreement will be legally binding and the biggest modification of the WTO.\textsuperscript{406} Moreover, the objectives of trade facilitation under the WTO are to (1) increase customs procedures; (2) create easier, faster, and cheaper trade; (3) establish clarity, efficiency and transparency in international trade procedures; (3) remove bureaucracy and corruption, and (5) increase technological advances.\textsuperscript{407} The trade facilitation “also provides provisions on goods in transit, which

\textsuperscript{399} Id.

\textsuperscript{400} Id.

\textsuperscript{401} Id.

\textsuperscript{402} Id.


\textsuperscript{404} OECD Policy Brief, supra note 387, at 2.

\textsuperscript{405} Bali Package, supra note 381.

\textsuperscript{406} Id.

\textsuperscript{407} Id.
aroused the interest of landlocked countries to open up international trade through ports in other neighboring countries.\textsuperscript{408}

Furthermore, the Trade Facilitation Agreement provides special assistance for developing and least developed countries by updating their infrastructure and training customs officials.\textsuperscript{409} Small businesses in developing and least developed countries could gain benefits from this deal. The benefits of trade facilitation to the world economy are measured to provide between $400 billion and $1 trillion by cutting costs of trade by between 10% and 15%. This would boost the flows of international trade, a business environment, and foreign investment in global economy.\textsuperscript{410} However, the content of trade facilitation adopted in Bali is not finalized yet although there is no change in the substance.\textsuperscript{411} The content will still be examined and revised to ensure the language in the agreement is legally correct and widely acceptable.\textsuperscript{412} Among other things, the WTO member states can begin to transform their customs practice and boost the efficiency of cross-border transactions.

The Trade Facilitation Agreement establishes binding commitments across WTO members to expedite movement, release and clearance of goods, improve cooperation among WTO members on customs matters, and increase customs efficiency and effective collection of revenue.\textsuperscript{413} Most importantly, the Trade Facilitation Agreement is expected to help small businesses by improving market access. As President Barack Obama stated,

\begin{quote}
This new deal, and particularly the new trade facilitation agreement, will eliminate red tape and bureaucratic delay for goods shipped around the globe. Small businesses will be among the biggest winners, since they encounter the greatest difficulties in navigating the current system.
\end{quote}

\textsuperscript{408} Id.
\textsuperscript{409} Id.
\textsuperscript{410} Id.
\textsuperscript{411} Id.
\textsuperscript{412} Id.
By some estimates, the global economic value of the new WTO deal could be worth hundreds of billions of dollars.414

As Small Business & Entrepreneurship Council Chief Economist Ray Keating also said,

Red tape and complexity affect small firms much harder than big guys or multinational corporations that staff legal experts and have the international operations whereby they can deal with that much more easily than smaller firms. Any time you’re able to remove or lower trade barriers, that’s going to be a good thing.415

As a result, small businesses will likely gain the greatest advantage from the Trade Facilitation Agreement.

According to the Office of the United States Trade Representative (USTR), small businesses will be able to have access to new export opportunities through measures like transparency in customs practices, reduction of documentary requirements, and processing of documents before good arrive.416 The resulting Trade Facilitation Agreement will have great benefit to small business exports.417 The Agreement will make it easier for small businesses to navigate customs procedures and sell their customers around the world.418 Small businesses will have new and better opportunities to benefit from international trade.419 The Agreement will provide increased transparency and access to customs documents, regulations and procedures, and will publicize other information required for small businesses to engage in trade.420 By providing this information


416. USTR Saving Money, supra note 413.

417. USTR WTO Benefits, supra note 414.

418. Id.

419. Id.

420. Id.
in a comprehensive online publication, small business exporters will have a “how to” guide for trading with the WTO members, right at their fingertips. 421

Another benefit small business will receive is access to expedited shipping channels. 422 This is particularly important to small businesses that are developing their logistics capacities. 423 By providing access to shipping channels and express carriers, small businesses around the world will have better access to global supply chains and can export their goods in a more cost-efficient and timely manner. 424 The reduction of documentary requirements, processing of documents before goods arrive, use of electronic payments, and quick release of perishable goods are measures in the agreement which can further reduce costs for small businesses exporters. 425 The success of small businesses will play an important role in the growth of the global economy. 426 According to the World Bank and World Economic Reform, bringing countries even halfway to best practice in trade facilitation would add 4.7% to world GDP, with much of the growth supported by small businesses. 427 Expedited customs procedures and improving technological and shipping capabilities of small businesses, are key ways to “eliminate the red tape” and help small business engage in international trade and access its many job-creating benefits. 428

V. CONCLUSION

Small businesses are very important to the domestic and global economy. As the driver of the free enterprise system, small businesses create a great deal of energy, innovation, benefits, and jobs for billion people. This would increase economic growth and development.

421. Id.
422. Id.
423. USTR WTO Benefit, supra note 414.
424. Id.
425. Id.
426. Id.
427. Id.
428. Id.
Additionally, small businesses today are encouraged to think globally and do their businesses in other countries. This may be because the rapidly increasing role of emerging economies in international trade, value creation, and global growth present new opportunities for small businesses in global markets. As Thomas Friedman also stated, the world is now in the stage of globalization 3.0. This means that individuals or small entities can easily join globalization through the Internet or networks. Thus, globalization 3.0 can increase the sizes of the markets and provide the great opportunity for small businesses to participate in international trade or global businesses.

The WTO is the international body dealing with the global rules of trade between countries. Its main function is to ensure that trade flows as smoothly, predictably, and freely as possible, with a level playing field for all its member countries. Although the issue of small businesses and the WTO has not been discussed, it is quite clear that the WTO has a role in small businesses. More particularly, the WTO can help small businesses by providing stability, predictability, market access, and transparency. Recently, the WTO has established the Trade Facilitation Agreement to expedite movement, release and clearance of goods, improve cooperation among WTO members on customs matters, and increase customs efficiency and effective collection of revenue. This Agreement is expected to provide the great benefits for small businesses in international trade. However, the WTO should still provide special assistance and support for small businesses in order to succeed internationally. At the same time, the WTO should also be developed along with the growing change in order to respond to the new form of international trade and meet the challenge of the 21st century.