

GROWTH AND DEVELOPMENT: ECONOMIC AND LEGAL CONDITIONS

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I INTRODUCTION

The evidentiary data detailing the economic state of low-income developing and least developed countries ('LDCs') is both well known and relatively uncontroversial. On the whole, these nations can be characterised as having a low per capita gross domestic product ('GDP'), unfortunate standards of living and extremely poor levels of health and services. Moreover, these nations have high levels of unemployment, large deficits and general economic instability. Many of these nations are also plagued by poor governance.¹

The gap between the rich and poor is wide, with rich countries accounting for 55 per cent of world real income (at purchasing power parity) despite the fact that they contain less than one-sixth of the world's population.² By contrast, low income countries, with 41 per cent of the world's population, account for only 11 per cent of world income.³ In total, the average real incomes of the rich countries are 14 times larger than that of poor countries.⁴ This disparity increases when individual countries are compared – for instance, the average income of the US is 75 times greater than the average income in Sierra Leone.⁵ In fact, every one of the 986 million people (almost 18 per cent of the total world population) living

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1 On governance, see UK Department for International Development ('DFID'), *Governance, Development and Democratic Politics* (2007) <<http://www.dfid.gov.uk/pubs/files/governance.pdf>> at 28 August 2007. See also, World Bank, *Governance Matters 2007: Worldwide Governance Indicators 1996–2006* (2007) <<http://info.worldbank.org/governance/wgi2007/>> at 28 August 2007.

2 Martin Wolf, 'Globalisation, Poverty and Growth' (Paper presented at the Commonwealth Scholarship Commission – Commonwealth Institute, London, 11 November 2002) 4. Available from <<http://www.csfp-online.org/hostcountries/uk/2002welcome1.pdf>> at 28 August 2007.

3 Ibid.

4 Ibid.

5 Ibid.

below a dollar a day lives in poor developing and LDC countries.⁶ Unsurprisingly, a range of other data, such as infant mortality, life expectancy, disease rates, health and education expenditures, unemployment rates and crime rates, are similarly distorted.⁷

One continent – Africa – best illustrates the above situation. Africa, as a whole, is not simply stagnant but is in decline. In fact, only 35 million Africans (out of a total of 600 million) currently have higher incomes than they have ever reached before.⁸ More specifically, Freeman and Lindauer found that 36 per cent of Africans have lower per capita income levels than those first achieved before 1960; 6 per cent have lower per capita income levels than achieved in 1970; 41 per cent have lower per capita income levels than 1980 levels; and 11 per cent have lower per capita income levels than 1990 levels.⁹

Fortunately, a number of developing countries and LDCs are not experiencing negative or stagnant growth. Some developing countries are growing at a rapid pace – and some African countries are even growing at a faster rate than developed countries.¹⁰ It is for this reason that the question must be asked: why

6 'Another day, another \$1.08', *The Economist* (London), 26 April 2007, 90. In 2004, for the first time since the statistic began being counted (1990), the number of people living under one US dollar (US\$1) a day was less than one billion. The total, 986 million, represents slightly less than 18 per cent of total population, down from a high of nearly 1.25 billion people – approximately 30 per cent of population – in 1990: *Ibid.*

7 See, eg, Beryl Leach, Joan E Paluzzi and Paula Munderi, *Prescription for Healthy Development: Increasing Access to Medicines* (2005) United Nations Millennium Project: Task Force on HIV/AIDS, Malaria, TB, and Access to Essential Medicines – Working Group on Access to Essential Medicines, 26 <<http://www.unmillenniumproject.org/documents/TF5-medicines-Complete.pdf>> at 2 September 2007; Gary S Becker, Tomas J Philipson and Rodrigo R. Soares, 'The Quantity and Quality of Life and the Evolution of World Inequality' (Working Paper No 9765, National Bureau of Economic Research, 2003); Philip Stevens, *The Diseases of Poverty and the 10/90 Gap* (2004); World Health Organization ('WHO'), *The World Medicines Situation* (2004) ch 7 <http://www.searo.who.int/LinkFiles/Reports_World_Medicines_Situation.pdf> at 1 September 2007; Robert E Black, Saul S Morris and Jennifer Bryce, 'Where and Why are 10 Million Children Dying Every Year?' (2003) 361 *The Lancet* 2226. For similar statistics, see UK Department for International Development, *Increasing Access to Essential Medicines in the Developing World: United Kingdom Government Policy and Plans* (2004) 7 <<http://www.dfid.gov.uk/Pubs/files/accessmedicines.pdf>> at 2 September, 2007; WHO, *The World Health Report 2002 – Reducing Risks, Promoting Healthy Life* (2002) <<http://www.who.int/whr/2002/en/>> at 2 September 2007; (1993); David E Bloom and Ajay S Mahal, 'Does the AIDS Epidemic Threaten Economic Growth?' (1997) 77 *Journal of Econometrics* 105 (1997); William D Nordhaus, 'The Health of Nations: the Contribution of Improved Health to Living Standards' (Working Paper No W8818, National Bureau of Economic Research, 2002); John Gallup and Jeffrey Sachs, 'The Economic Burden of Malaria' (Working Paper No 52, Center for International Development at Harvard University, 2000); WHO, *The World Health Report 2000 – Health Systems Improving Performance* (2000) <<http://www.who.int/whr/2000/en/>> at 2 September 2007; Guillem López-Casasnovas, Berta Rivera and Luis Currais (eds), *Health and Economic Growth: Findings and Policy Implications* (2005). On the effects on the young, see World Bank, *World Development Report 2007: Development and the Next Generation* (2007) <<http://go.worldbank.org/N17EUZ4T31>> at 2 September 2007.

8 Richard Freeman and David Lindauer, 'Why Not Africa?' (Working Paper No W6942, National Bureau of Economic Research, 1999) 2.

9 *Ibid.*

10 For instance, countries as varied as India, Vietnam, China and Uganda have, since 1980, grown at above average rates and dramatically reduced poverty rates: Wolf, above n 2, 19.

are some developing countries and LDCs growing while others are essentially stagnating in a 'poverty trap'?¹¹

The simple answer is that these stagnant countries generally have, *inter alia*, low levels of education and training, a decrepit or non-existent infrastructure, ever-present (or often recurring) ethnic and civil instability, and high levels of corruption and mismanagement in both the public and private sector.¹² It can also be said that, generally speaking, these nations have for decades often engaged in poor economic planning, ranging from planned economies to reliance on import substitution to blindly adopting Western solutions without fully understanding the specifics of the proposals or the consequences.¹³

While the reasons stated may be causes and may be symptoms, no one can for certain state all the reasons why some nations have succeeded and others have failed. However, most low income developing countries and LDCs have for long periods engaged in economic planning which stressed high barriers to both exported and imported goods and services. Most of these nations have also discouraged foreign investment with a host of policy choices as well as general social, economic and political instability. On the other hand, countries which have liberalised their economies since 1980 are growing considerably faster and reducing more poverty than countries which have not attempted active engagement with the global world. In fact, a number of studies conducted in the 1990s found that trade liberalisation, openness and increased levels of trade are associated with increased levels of growth.¹⁴ More recently, a prominent study conducted by Dollar and Kraay also concluded that countries which engaged in

¹¹ For an interesting debate on the role of aid in development, see Jeffrey Sachs, *The End of Poverty: Economic Possibilities of Our Time* (2005), for the view that increased aid will significantly assist the poor; William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (2006), for the view that increased aid will produce little return without structural change; Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It* (2007), for a middle ground view generally sceptical of increased aid efforts.

¹² See generally UN, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (2005) <<http://www.unmillenniumproject.org/reports/fullreport.htm>> at 2 September 2007. *The Economist* recently pointed to domestic 'misguided economic policies, mismanagement, poor maintenance, sloppiness, tribalism and corruption' for the steady decline of the Kenyan economy: 'Going up or down', *The Economist* (London), 9 June 2007, 49, 50.

¹³ The Institute for Trade and Commercial Diplomacy ('ITCD') defines the term import substitution as '[a] policy of promoting domestic production of goods that otherwise would be imported. Such programs may involve a combination of domestic subsidies and import restrictions, and are often justified on grounds of conserving foreign exchange' (see also 'infant industry protection'): ITCD, *Glossary* <http://www.itcdonline.com/introduction/glossary2_i-p.html> at 2 September 2007.

¹⁴ See, eg, T N Srinivasan and Jagdish Bhagwati, *Outward-Orientation and Development: Are Revisionists Right?* (1999) Economic Growth Center – Yale Univ <http://www.econ.yale.edu/growth_pdf/cdp806.pdf> at 2 September; Jeffrey Sachs and Andrew Warner, 'Economic Reform and the Process of Global Integration' (1995) (1) *Brookings Papers on Economic Activity* 1. While Rodriguez and Rodrik found fault with several such studies, more recent studies addressed the criticisms and still found that liberalism and openness directly relate to increased levels of growth: Francisco Rodriguez and Dani Rodrik, 'Trade Policy and Economic Growth: A Skeptic's Guide to the Cross-National Evidence' in Ben Bernanke and Kenneth Rogoff (eds), *National Bureau of Economic Research – Macroeconomics Annual 2000* (2001) 261; cf David Dollar and Aart Kraay, 'Trade, Growth and Poverty' (Working Paper No 2615, World Bank Policy Research, 2001) 13–21, which details the new variables addressing the faults of earlier studies.

large-scale post-1980 ‘globalising’ (or liberalising) had considerable rates of growth, lower inflation, expanded trade, larger tariff reductions and significantly reduced levels of poverty, while those nations which did not engage in any concerted liberalisation efforts suffered and largely stagnated.¹⁵

This article does not presume to know or attempt to solve all the problems of the developing world. This article is also not meant to be a definitive study, but instead merely introduces the issues and, while offering recommendations and conclusions, hopes to spark genuine debate. More specifically, this article suggests several basic international conditions which appear to be necessary to improving living standards and growth: (1) open and liberalised economic engagement; (2) export-oriented trade strategies; and (3) an appropriate legal and regulatory framework. Part II introduces and details the necessary conditions for growth and (while acknowledging differences between regions, countries and levels of development) highlights their use through illustrative case studies. Part III asks the question whether such conditions for growth remain relevant in the context of agricultural dependent nations and, with the assistance of case studies, finds in the affirmative. Part IV acknowledges that trade alone cannot meaningfully improve the situation in any country and offers several brief interdisciplinary recommendations for both developing countries/LDCs and the developed world in order to assist growth and development in the former.

II NECESSARY CONDITIONS FOR GROWTH

This section introduces three inter-related conditions necessary for sustained growth and development: (1) open and liberalised economic engagement; (2) export-oriented trade strategies; and (3) an appropriate legal and regulatory framework. It then provides a case study showing how the above three factors significantly assisted the Republic of Korea (‘Korea’ or ‘South Korea’) in its growth and development.

A Three Conditions for Growth

1 *Open and liberalised economic engagement*

There can be no doubt that stagnant nations must improve the efficiency and quality of both their industrial and agricultural industries as well as their service sectors through, *inter alia*, improved infrastructure, targeted assistance, increased transparency, exposure to competition, and many other factors.¹⁶ Publicity generated from International Monetary Fund (‘IMF’) and World Bank loans and programs of the 1990s that attached numerous conditions, including across the

15 See generally Dollar and Kraay, above n 14. See also L Alan Winters, ‘Trade Liberalisation and Poverty: What are the Links?’ (2002) 25 *The World Economy* 1339.

16 Deputy Managing Director of the IMF, Anne Krueger, stated: ‘...the potential gains from greater openness ... is of vital importance for maintaining and accelerating growth and poverty reduction. Experience shows that open trade regimes are essential for sustainable rapid growth. While a liberalized trade regime is not sufficient condition for rapid growth, there is no instance of sustained rapid growth in its absence’: Anne O Krueger, ‘Trade Policy and the Strategy for Global Insertion’ (Paper presented at the Conference on Latin America in the Global Economy, Notre Dame, Indiana, 19 April 2005).

board one-size-fits-all 'structural adjustments' which failed to take account of local situations and environments, cast such structural adjustments in a negative light.¹⁷ But this does not change the fact that poor, stagnant and desperate nations must undertake significant structural adjustments in order to open and liberalise their economies so they can benefit from global economic engagement.

Those who advocate an isolationist anti-import platform (so-called modern mercantilism), either through import substitution or a pro-export stance, fail to recognise several important political and economic realities. These include, but are certainly not limited to the fact that reciprocal market openings allow all parties to gain through expanded trade (and to claim 'victory'); that increased imports allow for a wider variety of goods at lower prices, improved allocation of resources and the importation of necessary inputs at lower prices; and that protection hampers the creation of competitive domestic industries, especially export oriented growth which brings in needed foreign currency.

Capital is a necessary (but not sufficient) ingredient for economic success.¹⁸ Capital is directly responsible for boosting technology, productivity, investment, savings and, ultimately, for the growth of a nation. Developed countries have more capital, more advanced technologies and higher levels of productivity and growth than developing countries.¹⁹ They also, in the long-term, have significantly higher rates of growth.²⁰ It is therefore not surprising that those developing countries which have recently opened and liberalised their economies – that is, improved conditions for investment and trade – have grown faster and reduced more poverty than those countries which continued with isolationist policies. In fact, Dollar and Kraay found that of 73 developing countries studied,

17 See, eg, Joseph Stiglitz, *Globalization and its Discontents* (2002). The IMF and World Bank have also failed by attempting to stabilise nations with financial support when it is (or should be) obvious that deeper problems will prevent any progress or change. For instance, despite the fact that a Tutsi-led rebel army had invaded Rwanda in 1990 and the Hutu-led government was at the very least complicit in massacres throughout early 1991 (which led to full-scale genocide by 1994), the IMF believed the country had made a 'credible effort toward social and economic development' and extended structural adjustment loans to assist in further development. The World Bank also extended loans and credits through 1993. Trade was not the problem, and structural adjustments would have made no difference to either the economy or the social situation as the country descended into civil war and genocide: Easterly, above n 11, 150.

18 For instance, the UN Conference on Trade and Development ('UNCTAD') has stated that increased foreign direct investment ('FDI') is 'of particular importance' and 'key for economic growth and development' in LDCs, while also acknowledging that FDI alone is not a 'panacea' and 'cannot solve the underlying problems facing many least developed countries': UNCTAD, *FDI in Least Developed Countries at a Glance* (2001) Preface. See also, Richard N Cooper, 'Growth and Inequality: The Role of Foreign Trade and Investment' in Boris Pleskovic and Nicholas Stern (eds), *Annual World Bank Conference on Development Economics 2001/2002* (2002) 107, 108. See *contra*, Maria Carkovic and Ross Levine, *Does Foreign Direct Investment Accelerate Economic Growth?* (2002) World Bank <http://www.worldbank.org/research/conferences/financial_globalization/fdi.pdf> at 5 September.

19 In fact, in a country with sound and stable policies, FDI can actually increase in the wake of a 'financial crisis' and the flight of portfolio investment. See Robert Lipsey, 'Foreign Direct Investment in Three Financial Crises' (Working Paper No 8084, National Bureau of Economic Research, 2001). On productivity, see Robert E Hall and Charles I Jones, 'Why do some countries produce so much more output per worker than others?' (1999) 144(1) *Quarterly Journal of Economics* 83.

20 See generally, Eduardo Borensztein, Jose De Gregorio and Jong-Wha Lee, 'How Does Foreign Direct Investment Affect Economic Growth?' (1998) 45 *Journal of International Economics* 115.

'liberalisers'²¹ have around four times faster real income growth than inward looking economies.²² Moreover, in recent years, liberalising developing nations have grown at twice the rate of developed countries and have outgrown non-liberalising developing countries by an even more considerable margin.²³

Growth Rates ²⁴	1960s	1970s	1980s	1990s
Developed Countries	4.7	3.1	2.3	2.2
Globalising/Liberalising Developing Countries	1.4	2.9	3.5	5
Non-Globalising/Liberalising Developing Countries	2.4	3.3	.8	1.4

These statistics demonstrate that, despite the well-worn argument that developing countries economically benefited from the import substitution years of the 1960s and 1970s,²⁵ the gains made by the globalisers/liberalisers in the 1980s and 1990s more than make up for the short term gains that resulted from inward looking policies.²⁶

Moreover, along with accelerated growth rates, these globalising nations also managed to significantly reduce inflation rates and expand their overall levels of trade.²⁷ In fact, trade now accounts for 33 per cent of the liberalisers' GDP (up from 16 per cent in the early 1980s).²⁸

Studies have also shown that increased national growth rates are positively correlated to growth in the poorest 20 per cent of a nation's income distribution.²⁹ In other words, when a nation grows the poor in that nation also benefit. In fact,

21 Among other things, the globalisers have significantly reduced import tariffs by an average of 22 percentage points (from 57 to 35 per cent), compared to 11 points for the non-globalisers (31 to 20 per cent): Dollar and Kraay, above n 14, 9, 28.

22 Ibid 9. In total, 18 of 24 liberalising developing countries increased their per capita growth rates, with some experiences quite large increases (such as Argentina, 8.4 percentage points of growth; China, 3.9; Dominican Republic, 7.7; Mexico, 6.5; and the Philippines, 6.2). However, as a reminder that trade is not a cure for every ailment, there are a very few liberalisers who have not grown. These nations, such as Haiti and Rwanda, have had large-scale non-trade factors influencing growth, most notably sustained civil war: at 8.

23 Ibid 10, 17.

24 Ibid 10, 30.

25 Ibid 10, citing Dani Rodrik, *Making Openness Work: The New Global Economy and the Developing Countries* (1999).

26 Ibid. See also, Diego Puga and Anthony J Venables, 'Agglomeration and Economic Development: Import Substitution vs Trade Liberalisation' (1999) 109(455) *The Economic Journal* 292, finding that while both import substitution and liberalisation can lead to growth in a wide range of sectors, the latter ultimately leads to higher levels of welfare.

27 Dollar and Kraay, above n 14, 25.

28 Ibid 9, 28. During the same period, the trade to GDP ratio for developed countries increased from 29 to 50 per cent for the rich countries while the ratio for non-globalisers actually declined from 60 to 49 per cent.

29 See David Dollar and Aart Kraay, 'Growth is Good for the Poor' (Working Paper No 2587, World Bank Policy Research, 2001); Martine Ravallion, 'Growth, Inequality, and Poverty: Looking Beyond Averages' (2001) 29 *World Development* 1803. See also Dollar and Kraay, above n 14, 22, 31.

despite the popular assertion that openness, liberalisation and growth harms the poor, several studies have shown that there is virtually no relationship between increased growth in a nation and inequality, meaning the growth rate experienced by the poor is as strong as it is for the wealthy.³⁰ In any case, emphasising the distribution of growth gains is potentially misleading, as a change of equity distribution is not needed for poverty reduction.³¹ For instance, Vietnam has recently experienced huge gains in GDP as it has liberalised its economy, but the equality distribution of the country's wealth has not changed. Thus it cannot be said that the poor of Vietnam have not benefited from the nation's growth. In fact, the poverty rate in Vietnam has been reduced from 75 to 37 per cent in the first ten year period (1989-1998) following the beginning of the liberalisation efforts.³² This example illustrates a broader principle: economic growth reduces poverty.³³

Dollar and Kraay summarise the economic data by stating:

[E]xamination of individual cases suggests that trade openness leads to declining inequality between countries, and declining poverty within countries. The poor countries that have reduced trade barriers and participated more in international trade over the past twenty years have seen their growth rates accelerate. In the 1990s they grew far more rapidly than the rich countries, and hence reduced the gap between themselves and the developed world. At the same time the developing countries that are not participating in globalization are falling further and further behind. Within the globalizing developing countries there has been no general trend in inequality. Thus, rapid growth has translated into dramatic declines in absolute poverty in countries such as China, India, Thailand, and Vietnam.³⁴

This is not to suggest that a one-size-fits-all approach to liberalisation and economic engagement should be adopted. Instead, the key for each nation is to acquire a deep understanding of itself and its situation and surroundings before

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- 30 Dollar and Kraay, above n 14, 4, 24, 32–3. Of course this is not to suggest that trade does not have winners and losers; it does. But this does show that the 'losers' do not disproportionately come from the poorest of a nation. To counteract the 'losers', nations should have social protection measures (unemployment insurance, retraining, etc). Others have likewise found no significant relationship between increased trade or income and inequality: See, eg, Shaohua Chen and Martin Ravallion, 'What Can New Survey Data Tell Us about Recent Changes in Distribution and Poverty?' (1997) 11(2) *The World Bank Economic Review* 357. One early study found that inequality rises at low levels of development before declining at higher levels of growth: Simon Kuznets, 'Economic Growth and Income Inequality' (1955) 45(1) *The American Economic Review* 1. More recent studies refute this and find no significant rise in inequality at any stage of development: see, eg, Dollar and Kraay, above n 29; Robert Barro, 'Inequality and Growth in a Panel of Countries' (2000) 5 *Journal of Economic Growth* 5. One recent study, however, found a link between increased FDI and, not only growth, but also inequality: Parantap Basu and Alessandra Guariglia, *Foreign Direct Investment, Inequality, and Growth* (2005) University of Nottingham
<http://www.nottingham.ac.uk/economics/leverhulme/research_papers/05_41.pdf> at 5 September 2007.
- 31 Dollar and Kraay, above n 14, 5, 11. China did have increased inequality, but massively less poverty. Most others, including Costa Rica and the Philippines, were stable, while in others, including Malaysia, and Thailand, inequality declined.
- 32 Ibid 3.
- 33 Wolf, above n 2. Dollar and Kraay concluded that 'growth on average does benefit the poor as much as anyone else in society, and so standard growth-enhancing policies should be at the center of any effective poverty reduction strategy': Dollar and Kraay, above n 29, 28.
- 34 Dollar and Kraay, above n 14, 12.

making the appropriate, targeted structural adjustments.³⁵ For instance, countries with vast reserves of natural resources, such as South Africa, Nigeria and Ivory Coast, have traditionally been the main recipient of foreign direct investment ('FDI') in Africa. These nations have long relied on their abundance of natural resources to attract and maintain foreign investment, despite sometimes unstable governments, unfriendly investment laws, inflexible employment laws and poor infrastructure and transportation links.³⁶ By contrast, other African countries without rich supplies of natural resources traditionally suffered from these same ailments. While some structural reforms would indeed benefit nations both with and without natural resources, the need for structural reforms among nations without large reserves of natural resources is imperative to attract *any* large-scale foreign investment (whereas reforms in nations with an abundance of natural resources would attract *more* (and diversified) investment).³⁷ Several African countries without large reserves of natural resources have recently successfully restructured their laws in an attempt to improve their business climate and increased inward FDI. These nations, which include Mozambique, Namibia, Senegal and Mali, have also managed to convince foreign investors that the risks generally associated with African (and LDC) investment have been reduced.³⁸ In so doing, these nations were able to attract substantial inflows of FDI, even though other African nations may have larger local markets and/or more abundant natural resources.

That being said, Morrisset concludes that substantial trade liberalisation and a sustained period of growth have historically both been needed to attract the attention of large-scale investors. More specifically, and in addition to macroeconomic and political stability, countries successful in attracting FDI have also focused on several aspects of their legal and economic systems:³⁹

- reforming trade policy to liberalise and open the economy;⁴⁰
- offering attractive privatisation programs;⁴¹
- modernising the mining and investment legal and regulatory framework;⁴²

35 See, eg, Douglas Brooks and Hal Hill (eds), *Managing FDI in a Globalizing Economy: Asian Experiences* (2004).

36 Traditionally, about 60 per cent of FDI in Africa is allocated to oil and natural resources: Jacques Morisset, 'Foreign Direct Investment in Africa – Policies Also Matter' (Working Paper No 2481, World Bank Policy Research, 1999) 5; UNCTAD, *Foreign Direct Investment in Africa: Performance and Potential* (1999). This is a long-standing problem, as many African countries have relied on natural reserves (such as gas and oil) and not exploited or sought other areas of growth. See Miria Pigato, *Foreign Direct Investment in Africa: Old Tales and New Evidence* (2000) World Bank <<http://www.worldbank.org/aft/wps/>> at 5 September 2007.

37 Morisset, above n 36, 5, finding that approximately 65 per cent of total FDI inflows to Africa in 1996 and 1997 were concentrated in South Africa, Nigeria, and Ivory Coast. These nations also accounted for about 65 per cent of the sub-continent's GDP during the same period.

38 Ibid 7–10, and especially 15–18.

39 Ibid 11–15, 19–20.

40 See also Assaf Razin, Efraim Sadka, Tarek Coury, 'Trade Openness and Investment Instability' (Working Paper No 8827, National Bureau of Economic Research, 2002).

41 See also Asian Development Bank, *Asian Development Outlook 2004* (2004) Part 3 (Foreign Direct Investment in Developing Asia), 232–4.

- entering into international investment agreements;⁴³
- developing priority projects (that have a multiplier effect on other investment projects);⁴⁴ and
- engaging in an active campaign (led by high ranking government officials) to improve the image of the nation as an FDI location.⁴⁵

In essence, in order to attract investment (domestic and especially foreign), all nations (and especially those nations recovering from social and/or political strife) must demonstrate their worthiness to investors in the form of strategic, sound and stable financial and trade laws and policies, financial incentives and attractive growth and profit potential and the backing of domestic laws with binding international commitments which provide recourse to effective dispute settlement.⁴⁶

The case study of South Korea below will illustrate this point further, but it must also be stressed that open and liberalised economic engagement is not only

42 See, eg, World Bank, *Characteristics of Successful Mining Legal and Investment Regimes in Latin America and the Caribbean Region* (1995) <<http://www.natural-resources.org/minerals/CD/regions.htm>> at 5 September 2007. See also, Islamic Republic of Afghanistan, *Afghanistan National Development Strategy – A Policy for Private Sector Growth and Development* (2007) Aga Khan Development Network <http://www.akdn.org/enablngenvironment/govpaper_privsector.pdf> at 5 September 2007.

43 Anthony Ho, 'National Key FDI Policies and International Investment Agreements Development' (Working Paper No 2004001, Shanghai University Economics, 2004); UNCTAD, *World Investment Report 2000* (2000).

44 See, eg, *The Joint Ministerial Statement of the Initiative for Development in East Asia* (12 August 2002) The Ministry of Foreign Affairs of Japan <<http://www.mofa.go.jp/region/asia-paci/idea0208-2.html>> at 5 September.

45 See also, Louis Wells, 'Cutting Red Rape: Lessons from a Case-Based Approach to Improving the Investment Climate in Mozambique' in James Emery et al (eds) *Administrative Barriers to Foreign Investment* (2000); David Wheeler and Ashoka Mody, 'International Investment Location Decisions: The Case of US Firms' (1992) 33 *Journal of International Economics* 57. The positive impacts of these changes are already being seen in many of the African countries. For instance, in Mali, the stability brought about by democracy (the nation recently held its fourth straight democratic election) has allowed structural economic changes to take hold. Foreign investment has already transformed the country from one that relied almost exclusively on the cotton industry to one that produces large amounts of gold and experiments with other fledgling industries (from cereals to oil). Unsurprisingly, the stability and economic progress has led to an increase in aid money, which of course should be used to garner even more progress, growth and development. 'Swathes of Desert but Oases of Progress', *The Economist* (London), 5 May 2007, 46. For a comprehensive review of FDI in Asia, including the structural changes made (and still needed) in numerous Asian countries, see *Asian Development Outlook 2004*, above n 41.

46 For these reasons, some commentators strongly advocate the negotiation of a multilateral agreement on investment ('MAI'). See, eg, Zdenek Drabek, 'A Multilateral Agreement on Investment: Convincing the Sceptics' (Working Paper No ERAD-98-05, WTO Economic Research and Analysis Division, 1998). Efforts to negotiate a MAI have stalled many times, the latest instance being the OECD-led negotiations which collapsed in the late 1990s. For more on those negotiations and other attempts at a MAI, see Jürgen Kurtz, 'A General Investment Agreement in the WTO? Lessons from Chapter 11 of NAFTA and the OECD Multilateral Agreement on Investment' (2002) 23 *University of Pennsylvania Journal of International Economic Law* 713.

helpful to the desperately poor nations.⁴⁷ In fact, Australia has immensely benefited from the wide-ranging structural adjustments of the 1980s and early 1990s which improved the competitiveness of the nation as well as its growth prospects.⁴⁸ Australia has historically been a wealthy nation with a much higher ratio of exports to GDP than the world average (in other words, it has always been export dependent).⁴⁹ However, by the 1970s protectionism and other inward looking policies had raised trade barriers and created inefficient labour and capital markets. In fact, while Australia had the world's highest per capita income in 1913, by 1990 it had dropped to 15th highest per capita income. Australia's ranking in the World Development Index dropped in a similar fashion (see table below).

Liberalisation in the 1980s and early 1990s created an open economy and hastened growth and development. This liberalisation came in the form of a massive structural adjustment which included such measures as (1) reducing tariff rates (from an average of 25 per cent to 5 per cent ad valorem); (2) renewed export strategies; and (3) other economic and monetary reforms (ie, floating the Australian dollar, ending price regulations, etc). The results were almost immediate. Australia's economic growth since the mid-1990s has been stronger than at almost any time since federation and for the first time in history the Australian economy has outpaced the OECD average.⁵⁰ More specifically, Australia's average per capita income has risen at an accelerated pace – climbing from \$9845 in 1980 to \$32,183 in 2004 (measured in US dollars at purchasing power parity).⁵¹

As a result, Australia has risen from 15th to 7th position in the OECD's GDP per capita rankings.⁵² Inflation has also been tamed⁵³ and, largely as a result of falling tariff rates and increasing competitiveness, the prices of personal goods

47 Morisset notes that the actions recommended above are very similar to those that have been identified with the success of other small countries with limited natural resources in attracting FDI, such as Ireland and Singapore, in recent decades: Morisset, above n 36, 20. For more on Ireland and Singapore, see, eg, David O'Donovan, 'Economy-Wide Effects of Direct Foreign Investment: The Case of Ireland' (Paper presented at the Inter-American Development Bank, Washington, DC, 18 September 2000); Poh Kam Wong, 'From Using to Creating Technology: The Evolution of Singapore's National Innovation System and the Changing Role of Public Policy' in Sanjaya Lall and Shujiro Urata (eds), *Competitiveness, FDI and Technological Activity in East Asia* (2003); David McKendrick, Richard Doner and Stephan Haggard, *From Silicon Valley to Singapore: Location and Competitive Advantage in the Hard Disk Drive Industry* (2001).

48 See, eg, the WTO's recent Trade Policy Reviews of Australia: WTO, *Trade Policy Reviews: Australia June 1998* <http://www.wto.org/English/tratop_e/tpr_e/tp76_e.htm>; WTO, *Trade Policy Reviews: Australia September 2002* <http://www.wto.org/english/tratop_e/tpr_e/tp202_e.htm>; WTO, *Trade Policy Reviews: Australia – Continuing the reform agenda would solidify impressive economic performance* (2007) <http://www.wto.org/english/tratop_e/tpr_e/tp279_e.htm> at 5 September 2007.

49 See Angus Maddison, *Monitoring the World Economy 1820–1992* (1995); IMF, *World Economic Outlook Database 2007* <<http://www.imf.org/Pubs/FT/weo/2007/01/index.htm>> at 5 September 2007.

50 See The Conference Board and Groningen Growth and Development Centre, *Total Economy Database* (2007) Groningen Growth and Development Centre <<http://www.eco.rug.nl/ggdc>> at 5 September 2007.

51 See Annex 1, below. See also, Globalis, *Australia: Gross National Income per capita* <http://globalis.gvu.unu.edu/indicator_detail.cfm?IndicatorID=140&Country=AU> at 5 September 2007.

52 The Conference Board and Groningen Growth and Development Centre, above n 49.

53 For historical data, see Reserve Bank of Australia, *Measures of Consumer Price Inflation* <<http://www.rba.gov.au/Statistics/Bulletin/G01hist.xls>> at 5 September 2007.

have been dramatically reduced and are now on par with those in other developed countries.⁵⁴ Finally, increased efficiency has led to improved competitiveness (for each 1 per cent cut in Australian tariffs, output was boosted by 0.15 per cent).⁵⁵ All of this has substantially lifted Australia's living standards, to the point that it now ranks third in the UN's Human Development Index after having been out of the top ten for almost thirty years.⁵⁶

UN 'Human Development Index'⁵⁷

Year	Ranking
1870	1
1913	2
1950	2
1975	12
1990	14
2001	5
2006	3

2 *Export-oriented strategies*

The second condition for growth and development is the adoption of export-oriented trade strategies. Encouraging production of targeted, export-oriented industrial and agricultural products as well as the promotion of the services industry brings a number of tangible benefits.⁵⁸ For instance, increased access to large foreign markets allows industry to take advantage of greater efficiencies from increased production. Such efficiencies should then, in turn, allow for even greater production (and the cycle should then repeat). In addition, export orientation promotes efficiencies gained from specialisation and provides significant incentives to innovate and increase international competitiveness. Moreover, an export oriented economy allows for an influx of foreign currency, which not only provides monetary stability but also, and just as importantly,

54 For instance, while a new mid-sized family car cost the equivalent of more than three years salary in the 1970s, the same new car now costs approximately six months salary. Moreover, as a direct result of tariff reductions, electronics and household goods have significantly fallen in price since the late 1990s. For instance, in 1999 a portable compact disc player selling for US\$49 in the United States sold for A\$299 in Australia. Even after accounting for the exchange rate, Australian consumers paid four times more for the same Japanese made product as American consumers. Today, similar products are sold in Australia at similar – although still more expensive – price levels to those in the US. For historical data, see Australian Bureau of Statistics ('ABS') <<http://www.abs.gov.au>> at 5 September 2007.

55 Ibid.

56 United Nations Development Programme ('UNDP'), *Human Development Report 2006* <<http://hdr.undp.org/hdr2006/statistics/>> at 5 September 2007.

57 Nicholas Crafts, 'Globalization and Growth in the Twentieth Century' (Working Paper No 00/44, IMF, 2000); UNDP, *Human Development Report 2002* (2003); UNDP, *Human Development Report 2006* (2007).

58 See generally, Asian Development Bank, above n 41; Fouad Abou-Stait, 'Are Exports the Engine of Economic Growth? An Application of Cointegration and Causality Analysis for Egypt, 1977–2003' (Working Paper No 76, African Development Bank – Economic Research, 2005); Ari Kokko, 'Export Led Growth in East Asia: Lessons for Europe's Transition Economies', (Working Paper No 142, European Institute of Japanese Studies – University of Stockholm, 2002).

enables the importation of needed capital inputs and equipment. The importance of export orientation will be further demonstrated in the case study involving Korea below.

3 Legal and regulatory framework

In recent years, a number of developing countries have begun creating the necessary conditions for growth by structurally adjusting their economies and becoming export-oriented in their respective approaches to trade. The changes have led to a rapid increase in the total amount of investment in developing countries. In fact, such inflows grew from US\$104 billion in 1980 to US\$472 billion in 2005.⁵⁹ This FDI has had a dramatic effect on a number of countries, often leading directly to the construction of new facilities (or the updating of older facilities) where products are produced for large export markets (products which usually receive preferential access to developed markets).⁶⁰

These changes have also led to increased investment, which is used not only to promote financial and monetary stability, but also as a device for export promotion. The end result is that jobs are created, living standards rise and poverty rates fall.

However, in order to truly benefit from the economic and trade policy changes detailed in the preceding two sections, nations must also implement important changes to their legal and regulatory framework. Such legal and regulatory changes are needed in order to provide certainty for the business community,

59 Anil Kumar, *Does Foreign Direct Investment Help Emerging Economies?* (2007) Federal Reserve Bank of Dallas <<http://www.dallasfed.org/research/eclett/2007/el0701.html>> at 6 September 2007. As Kumar points out, FDI as a share of GDP is growing rapidly – from 18 per cent in 1990 to 36 per cent in 2005 (led by China, whose foreign investment rose from US\$3.5 billion in 1990 to US\$60 billion in 2004). But while China has increased its inflow of FDI, it is still not reaching its potential as its laws and general uncertainties continue holding back investment: Edward Graham and Erika Wada, 'Foreign Direct Investment in China: Effects on Growth and Economic Performance' in Peter Drysdale (ed) *Achieving High Growth: Experience of Transitional Economics in East Asia* (2001).

60 UNCTAD, *World Investment Report 2002* (2002). In fact, the UNCTAD report shows that 50 per cent of Chinese exports, 21 per cent of Brazilian exports, 15 per cent of Korean exports and 90 per cent of Ireland's exports are not locally owned but instead owned by multinational companies. Brazil is one of the latest economic success stories. In the last few decades, it has emerged from a military dictatorship that advocated import-substitution to become a thriving democracy advocating open, liberalised and export-oriented economic policies. During this same period, the Brazilian Government has also overhauled the legal and regulatory framework through a combination of tariff reductions, lower tax rates, improved business regulations and protections and an emphasis on the rule of law and fighting corruption. Brazil is far from perfect, but its situation has unquestionably improved. Brazil now has a trade surplus of almost US\$50 billion (it exports US\$140 billion worth of goods and imports US\$90 billion) and foreign investment is considerable. Moreover, Brazil became a net exporter of capital in 2006 (led by Companhia Vale do Rio Doce ('CVRD'), which purchased Canada's Inco to become the second largest nickel producer and Gerdau, which became the largest producer of long steel in the Americas by buying operations in nine countries, including the US). The changes have also had a positive social effect. For instance, the percentage of Brazilians living below the poverty line has been reduced from nearly 36 per cent in 1992 to 23 per cent in 2005. Whereas in the mid 1990s 17 per cent of children aged 7 to 14 did not go to school, nearly all students are now enrolled in school (and the number of graduates has tripled in little more than a decade): 'A Special Report on Brazil', *The Economist* (London), 14 April 2007, 3–9, 12–14. As noted, developing countries are now becoming FDI exporters; see UNCTAD, *World Investment Report 2006* (2006).

traders and investors. In fact, a properly designed legal and regulatory framework is another 'necessary' component to growth and development as the lack of legal and regulatory stability not only increases the cost of doing business for all traders (both locals and foreigners) but is also responsible for investors (again both domestic and foreign) redirecting their capital elsewhere.⁶¹ A strong legal and regulatory framework involves a number of factors, certainly including the establishment of strong institutions (such as a central bank, judicial system, economic regulatory agencies, etc). Empirical studies have shown that countries with strong political, legal and economic institutions grow faster than those countries with weak institutions.⁶² Moreover, it has recently been shown that government regulation of business is an 'important determinant of growth'; thus, governments should assist growth and development by identifying and implementing appropriate business regulations.⁶³

Taking this point back to basics, this article uses four measures to define the terms 'legal and regulatory framework' and to assess the stability and certainty of countries. The measures are as follows:⁶⁴

- Property rights;
- Regulatory and bureaucratic (in)efficiencies;
- Rule of law, enforcement and corruption and bribery; and
- Policy stability.

For most measures, the *Doing Business in 2007* publication will be used to illustrate and provide examples of the relevant point being made.⁶⁵ This report shows the extent of the differences (including costs) involved in a number of business related activities (such as starting a business, dealing with licences, employing workers, registering property, gaining credit, protecting investors,

61 See, eg, UNCTAD, *World Investment Report 2003* (2003).

62 See, eg, Daron Acemoglu, Simon Johnson, and James A Robinson, 'The Colonial Origins of Comparative Development: an Empirical Investigation' (2001) 91 *American Economic Review* 1369; Dani Rodrik, 'Where has all the Growth Gone? External Growth Collapses' (1999) 4 *Journal of Economic Growth* 385; Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'Courts' (2003) 118 *Quarterly Journal of Economics* 453.

63 Simeon Djankov, Caralee McLiesh, Rita Ramalho, 'Regulation and Growth' (2006) 92 *Economics Letters* 395. An example of a failure of institutions to properly manage and regulate was seen in the 1990s financial crisis in Mexico. During this time, Mexican banks issued too many loans for which they failed to collect re-payment (this was predominantly as a result of insufficient bankruptcy laws and an inefficient judicial system). As a result, Mexican credit expanded too rapidly and the value of the peso collapsed. A government bailout of financial institutions was expected and the date of the bailout all but publicly announced. The owners of the banks (and their directors), therefore, manipulated the system by lending themselves large sums (on which they eventually defaulted) after the bailout was expected but before it occurred! The final cost of the bailout to Mexico was equal to 15 per cent of its GDP: Easterly, above n 11, 99–100.

64 These factors are adopted from the five factors of 'transparency' developed in Zdenek Drabek and Warren Payne, 'The Impact of Transparency on Foreign Direct Investment' (Working Paper No ERAD-99-02, WTO Economic Research and Analysis Division, 1999) 5–6. See also, Dollar and Kraay, above n 29.

65 The World Bank Group, *Doing Business in 2007* (2006) <<http://www.doingbusiness.org>> at 6 September 2007.

paying taxes, trading across borders, enforcing contracts and closing a business). Generally speaking, *Doing Business in 2007* shows that developed countries and developing country liberalisers rank far better than do other developing countries and LDCs. For each category, illustrative sample countries have been chosen: a developed country (Australia), an early liberaliser (Singapore), a liberalising developing country (Mauritius), a typical lower middle income developing country which is generally ambivalent towards liberalisation (Dominican Republic), and two low income African countries, one who has recently begun the liberalisation process (albeit sporadically and at times half-heartedly) and another who has not done so (Ghana and Sierra Leone, respectively).⁶⁶

First, the importance of property rights in complementing the growth and development of a nation is often overlooked and underestimated; the reality, however, is that a lack of property rights tremendously impacts upon the development of a nation.⁶⁷ Property rights are an important part of a modern economy. They are used to promote foreign investment and, perhaps as importantly, technology transfer from multinationals.⁶⁸ In addition, strong intellectual property protection fosters creativity, innovation and technological reform within the nation while at the same time promoting confidence within the business community and with trading partners. Put simply, nations cannot attract or develop new research and investment without property rights.⁶⁹ Business and investors must be confident that they have at least a reasonable chance for a return on an investment before entering and developing a market.

It is therefore unsurprising that high income nations, as well as those developing countries which have embraced the global market, have a high degree of protection and respect for personal and private property rights (including intellectual property rights) while countries which have not taken steps to

66 Ibid. Overall, Singapore ranks first in terms of 'ease of doing business' in *Doing Business 2007*; Australia ranks eighth; Mauritius 32nd; Dominican Republic ranks 117th; Ghana ranks 94th; and Sierra Leone ranks 168th.

67 See, eg, Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000), which links property rights to increased credit, capital and development; Simeon Djankov et al, above n 62, which also stresses that an appropriate form of protection and enforcement must be chosen in each particular circumstance. The obvious example here is Zimbabwe, which, as a result of many factors, including unstable and illogical property rights, has lost valuable FDI. Unlike Zimbabwe, South Africa has redistributed land more equitably by attempting to preserve efficiencies by ensuring adequate compensation and prohibiting (with rare exceptions) the subdivision of redistributed/expropriated farms: 'Why Land Reform is so Tricky', *The Economist* (London), 5 May 2007, 45.

68 See generally, Beata K Smarzynska, 'Composition of Foreign Direct Investment and Protection of Intellectual Property Rights: Evidence from Transition Economies' (Working Paper No 2786, World Bank Policy Research, 2002).

69 Several empirical studies have demonstrated the link between strong intellectual property protection and increased foreign investment. See, eg, Richard Rapp and Richard Rozek, 'Benefits and Costs of Intellectual Property Protection in Developing Countries' (1990) 24(5) *Journal of World Trade* 76; Keith Maskus and Guifang Yang, 'Intellectual Property Rights, Foreign Direct Investment and Competition Issues in Developing Countries' (2000) 19 *International Journal of Technology Management* 22; Amy Jocelyn Glass and Kamal Saggi, 'Intellectual Property Rights and Foreign Direct Investment' (2003) 56 *Journal of International Economics* 387. For this reason, it is not surprising that property rights were one of the first things many former Soviet states revised after gaining independence.

liberalise or effectively plan their economic development have low regard for both intellectual property and personal and private property.⁷⁰

One simple example of this point can be seen through a comparison of the procedures, time and costs associated with 'registering property' in various countries. In Singapore, only three procedures are needed, taking a total of nine days and costing 2.8 per cent of the property value (this puts Singapore in 12th place for the category of 'registering property'). In Australia, which ranks 27th in the category, five procedures are needed taking five days and costing 4.8 per cent of the value of the property. Meanwhile, less developed nations which have not recognised the importance of property rights (and generally not embraced sound trade and investment policies) rank considerably lower. For instance, the Dominican Republic ranks 126th in the category with seven procedures needed taking 107 days and costing 5.1 per cent of the value of the property; while Ghana, ranked 113th, seven procedures are needed taking 382 days costing 1.9 per cent of the value of the property; and in 168th ranked Sierra Leone eight procedures are needed taking 235 days and costing 15.6 per cent of the value of the property. Of course, it must be noted that there are irregularities in every category, and here, while Mauritius is a highly successful liberalising nation ranked 32nd overall in 'Doing Business 2007' (and subject to a case study later in this article), it only ranks 156th in the category of 'registering property', as six procedures are required taking 210 days and costing 15.8 per cent of the value of the property. This does not detract from the general point, and in fact makes the additional point that every country can reduce inefficiencies and provide more transparency and security by focusing on and improving upon weaknesses specific to their circumstances.

Second, the efficiency of a nation's bureaucracy can significantly influence the business environment and, naturally, whether foreign traders and investors enter or stay in a nation. If the government bureaucracy is stable and predictable, both local and international traders and investors feel secure that their business is secure. On the other hand, if the government bureaucracy is unpredictable or unstable (and possibly corrupt), the risk to the business increases on a number of levels, including the costs of doing business and the long-term viability and stability of the business or investment. Perhaps more importantly, the costs associated with regulatory compliance are a significant burden upon developing nations.

On this point, the 'Doing Business in 2007' publication directly proves the point that inefficient and bureaucratic laws and regulations discourage business and investment. For instance, it takes two procedures and two days to start a business in 2nd ranked Australia (at a cost of 1.8 per cent of per capita income); six procedures and six days (at a cost of 0.8 per cent of per capita income) to start a business in 11th ranked Singapore; and six procedures lasting 46 days and costing 8 per cent of per capita income in 30th ranked Mauritius. By contrast, it

70 For useful case studies, see Padma Desai, *Going Global* (1997). See also Louis Putterman, 'Property Rights in China: Shifting and Unbundling Ownership' (1996) (1) *Economic Reform Today* 14, detailing how property reforms beginning in 1978 leading to private property 'ownership' increased agricultural and industrial output in China.

takes ten procedures and 73 days, at a cost of 30.2 per cent of per capita income, to start a business in 119th ranked Dominican Republic; nine procedures lasting 26 days and costing an astonishing 1194.5 per cent of per capita income in 80th ranked Sierra Leone; and twelve procedures lasting 81 days and costing 49.6 per cent of per capita income in 145th ranked Ghana (which also includes an onerous minimum capital requirement of 23.2 per cent of per capita income). Another study producing similar statistics led a group of commentators to write:

[E]ven aside from the costs associated with corruption and bureaucratic delay, business entry is extremely expensive, especially in the countries outside the top quartile of the income distribution.

...

Entry is regulated more heavily by less democratic governments, and such regulation does not yield visible social benefits. The principal beneficiaries appear to be the politicians and bureaucrats themselves.⁷¹

The trend continues in the 'dealing with licenses' category, where in 8th ranked Singapore licensing requires 11 procedures and 129 days, costing 22 per cent of per capita income; in 29th ranked Australia licensing requires 17 procedures and 140 days, costing 13.8 per cent of per capita income and in 49th ranked Mauritius licensing requires 21 procedures and 145 days, costing 13.7 per cent of per capita income. By contrast, in 77th ranked Dominican Republic licensing requires 17 procedures and 165 days, costing 240.1 per cent of per capita income; in 83rd ranked Ghana licensing requires 16 procedures and 127 days, costing 1314.1 per cent of per capita income; and in 156th ranked Sierra Leone licensing requires 48 procedures and 236 days, costing 218.4 per cent of per capita income.

The 'trading across borders' category produces similar results, with liberalisers requiring less procedures (meaning not only expediency but also less opportunity for corruption and bribery) taking a shorter period of time and costing a lot less money than the non-liberalisers. For instance, 23rd ranked Australia requires exporters to complete six documents taking nine days at a cost of US\$795 per container and importers to complete five documents and twelve days at a cost of US\$945 per container. Meanwhile, in 4th ranked Singapore, exporters need only five documents and six days at a cost of US\$382 per container while importers require six documents and three days at a cost of US\$333 per container; and 21st ranked Mauritius requires exporters to complete five documents taking 16 days at a cost of US\$683 per container while importers must complete seven documents and 16 days at a cost of US\$683 per container. By contrast, the non-liberalisers require far more procedures for both importers and exporters taking a longer period of time and costing a significant amount of money. For instance, in 55th ranked Dominican Republic, exporters need seven documents and seventeen days at a cost of US\$770 per container while importers require 11 documents and 17 days at a cost of US\$990 per container, while 61st ranked Ghana requires exporters to complete five documents and 21 days at a cost of US\$822 per container while importers require nine documents and 42 days at a cost of

71 Simeon Djankov, Rafael La Porta, Florencio Lopez-De-Silanes and Andrei Shleifer, 'The Regulation of Entry' (2002) CXVII(1) *The Quarterly Journal of Economics* 1, 35.

US\$842 per container. In 124th ranked Sierra Leone, exporters need seven documents and 29 days at a cost of US\$2,075 per container while importers require seven documents and 33 days at a cost of US\$2,218 per container.

The longstanding liberalisers also generally fare much better in 'protecting investors' than do the non-liberalisers, but this time with the sometimes liberaliser – Ghana – ranking quite high. In this category, Singapore ranks second, Australia 46th, Mauritius 11th and Ghana 33rd.⁷² By contrast, the non-liberalisers do not offer nearly as much protection for investors, with Dominican Republic ranking 135th and Sierra Leone 99th.

The third measurement, the rule of law, enforcement and level of corruption and bribery, is another determinant of a nation's growth and development. Weak rule of law can harm the prospects of a nation on a number of levels; for instance, complicated, ever-changing or non-existent licensing procedures and processes increase inefficiencies and instability and reduce trader and investor confidence in the nation's economic prospects. Moreover, an unstable judicial system where enforcement is unpredictable, illogical and arbitrary likewise increases inefficiencies and general instability in the business environment of a nation. Quite obviously, a lack of rule of law can considerably influence decisions as to when or if (and how much) to invest in a nation. Numerous studies substantiate the preceding two inter-connected claims, showing that government inefficiency and weak rule of law adds to the cost of doing business.⁷³ Moreover, the effective enforcement of laws is just as important as the rule of law itself. Quite simply, government laws, regulations and policies which are not enforced or generally unknown to the business community will certainly impact upon the level and success of traders, business and investment as well as on a nation's macroeconomic conditions which affect rate of growth.

Once again, *Doing Business in 2007* provides a useful example of the rule of law and enforcement by measuring a nation's success in 'enforcing contracts'. In this category, the early-liberaliser and the developed nation rank quite highly and the sometimes liberaliser ranks well, whereas the recent liberaliser and recalcitrant liberaliser could improve and the non-liberaliser ranks very poorly. More specifically, Singapore ranks 23rd and requires 29 procedures taking 120 days costing 14.6 per cent of the claim to enforce a contract; 7th ranked Australia requires 19 procedures taking 181 days and costing 12.8 per cent of the claim; and 50th ranked Ghana requires 29 procedures taking 552 days and costing 13 per cent of the claim. Meanwhile, 109th ranked Mauritius requires 37 procedures taking 630 days and costing 15.7 per cent of the claim; 108th ranked Dominican Republic requires 29 procedures taking 460 days and costing 35 per cent of the claim; and 166th ranked Sierra Leone requires 58 procedures taking 515 days and costing 227.3 per cent of the claim.

72 The high level of investor protection provided by Ghana is an example of an African nation attempting to secure investment through additional protection not offered by other, competitor nations (particularly given the unstable history of investment regulations in the region). The same, of course, was done by other nations such as Singapore, Hong Kong and Ireland. Such behaviour is a brilliant example of tailoring structural adjustments to the particular needs of a country.

73 OECD, *The OECD Report on Regulatory Reform* (1997).

The level of corruption and bribery is another determinant to the growth and development of a nation. Corruption and bribery appear on multiple levels, but are often the result of large bureaucracies which restrict or limit economic activity without explicit government approval, such as through multiple layers of complex licensing processes, multiple approval processes and price controls. Corruption and bribery impact upon the legal and regulatory framework of a nation by reducing transparency, certainty and stability. This, in turn, increases inefficiencies, raises the cost of doing business and, depending upon the strength of the beneficiaries of the illegal payments, has the ability to cripple not only a business but an entire industry. The long-term effects of corruption and bribery are well known – corruption and bribery reduces growth, restricts trade, distorts the size and composition of government expenditure, reduces public expenditures, weakens the financial system, strengthens the underground economy, increases investor uncertainty and thereby reduces the level of foreign investment, increases the income gap between the wealthy and poor and deepens levels of poverty.⁷⁴ Corruption and bribery also significantly weaken a nation's ability to govern itself effectively, and more specifically, to improve public health and aid efforts. Moreover, rampant corruption and bribery generally weaken international opinion of the nation and its ability to maintain stability. Selowsky and Martin developed the link between economic policies and corruption when it found that the level of openness, in terms of transparency and liberalisation, in trade and investment policies is directly related to levels of corruption; meaning the more open the trade and investment policies, the less corruption in the nation, and vice versa.⁷⁵

Building upon the above, corruption is perceived to be endemic in poorer nations. In fact, this is demonstrated every year in Transparency International's *Corruption Perceptions Index* ('CPI'), which in its latest report (2006) showed 'a strong correlation between corruption and poverty'. More specifically, the Index showed:

Almost three-quarters of the countries in the CPI score below five (including all low-income countries and all but two African states) indicating that most countries in the world face serious perceived levels of domestic corruption. Seventy-one countries - nearly half - score below three, indicating that corruption is perceived as rampant. Haiti has the lowest score at 1.8; Guinea, Iraq and Myanmar share the penultimate slot, each with a score of 1.9. Finland, Iceland and New Zealand share the top score of 9.6.

Countries with a significant worsening in perceived levels of corruption include: Brazil, Cuba, Israel, Jordan, Laos, Seychelles, Trinidad and Tobago, Tunisia and

74 See Sanjay Pradhan, *Anticorruption in Transition: A Contribution to the Policy Debate* (2000) 23, citing 15 studies on this point. Drabek and Payne show a country's attractiveness to foreign investors is 'closely linked' with the transparency of its policies and a 'quite strong' relationship between the two (meaning slight increases in transparency will result in increased investment): Drabek and Payne, above n 64, 24. A 2005 report estimated the total amount of bribes being paid in Russia at US\$316 billion annually, equivalent to three-fifths of Russia's GDP (meanwhile Russia collected just US\$118 billion in tax revenue in 2004): Arkady Ostrovsky, 'Bribery in Russia up Tenfold to \$316bn in Four Years', *The Financial Times* (London), 21 July 2005.

75 See Marcelo Selowsky and Ricardo Martin, 'Policy Performance and Output Growth in the Transition Economies' (1997) 87 *American Economic Review* 349.

the United States. Countries with a significant improvement in perceived levels of corruption include: Algeria, Czech Republic, India, Japan, Latvia, Lebanon, Mauritius, Paraguay, Slovenia, Turkey, Turkmenistan and Uruguay.⁷⁶

This link between corruption and poverty can be seen in our illustrative countries, with low income countries having a high level of corruption and the more developed countries having the least amount of corruption. The following table further illustrates the point.⁷⁷

Nations	GDP per capita (2000)	Corruption Ranking (1 being least corrupt)
Singapore	\$29434	5
Australia	\$25835	9
Mauritius	\$15121	42
Dominican Republic	\$6497	99
Ghana	\$1392	70
Sierra Leone	\$684	142

The link between corruption and poverty is not merely interesting to note, but also has serious implications for growth and development in the world's poorest countries. For instance, Transparency International's CPI report notes that bribery and corruption cost Kenya approximately US\$1 billion annually, a significant figure considering more than half the population lives on less than US\$2 per day.⁷⁸

Another survey from the same outfit – the *Report on the Transparency International Global Corruption Barometer 2006*⁷⁹ – also links corruption with poverty and provides further compelling data. For instance, bribery rates are highest in poor African and Latin American countries, with the services being the most common area (with police, registries and permits, and utilities the most affected specific sectors). In Africa alone, more than 70 per cent of those surveyed had paid a bribe to someone in the legal system/judiciary in the preceding 12 month period; over half paid a bribe to the police; over half also paid bribes to someone in the education system; 32 per cent had paid bribes in the registry and permits sector, and over 20 per cent had paid bribes to tax revenue officials.⁸⁰ The Report finds a high rate of corruption in the following

76 Transparency International, *2006 Corruption Perceptions Index* (2006) <http://www.transparency.org/news_room/in_focus/2006/cpi_2006#pr> at 6 September 2007. Drabek and Payne also showed that the least transparent countries are the most corrupt: Drabek and Payne, above n 64, 24.

77 It must be noted that companies based in developed countries with low levels of corruption are nevertheless paying bribes worldwide (albeit less than companies based in developing countries). See Transparency International, *Leading Exporters Undermine Development with Dirty Business Overseas* (Press Release, 4 October 2006), noting that Swiss companies are the least likely to pay bribes, followed by Swedish, Australian, Austrian and Canadian companies.

78 Transparency International, above n 76.

79 Transparency International, *Report on the Transparency International Global Corruption Barometer 2006* (2006) <http://www.transparency.org/policy_research/surveys_indices/gcb/2006> at 6 September 2007.

80 Ibid 9.

developing country institutions: political parties, parliament, business/private sector, police, legal system/judiciary, media, tax revenue, medical services, education system, military, utilities, registry and permit services, NGOs and religious bodies.⁸¹ Unsurprisingly then, the Report finds that 'frequent bribe-paying is the norm' in Africa (64 per cent of households paid a bribe in a 12 month period), Latin America (17 per cent) and among newly independent states (12 per cent).⁸² It also concludes that 'bribery in poor and transitional countries represents a major impediment, one that holds back human development and economic growth.'⁸³

The fourth factor impacting growth and development, as it relates to the legal and regulatory framework of a nation, is the general stability of that nation's policies and laws. Again, and quite obviously, the risk level of a business increases when a nation's policies and laws are unpredictable and at risk of changing summarily. Such risks are especially damaging for large-scale infrastructure projects, where business interests may have to initially invest millions of dollars.⁸⁴ Policy changes, whether they simply add costs to the project or amount to a threat of nationalisation, create a negative environment causing immediate capital flight.⁸⁵ Even more significantly, business interests will be less willing to invest in the nation in question long after the uncertainty passes, thus causing long-term harm to the nation and its people.⁸⁶ This pattern has been repeated a number of times over, and recent cases include Bolivia, Indonesia and Nigeria.⁸⁷

It must be stressed that the negative international image created by all of the above legal and regulatory shortcomings does not dissipate as soon as conditions within a nation change. In other words, the negative impression that the world has of a particular nation remains long after increased transparency, structural

81 Ibid 13.

82 Ibid 7, 17–18. Bribe-paying was deemed 'moderate' in Asia-Pacific (7 per cent) and Southeast Europe (9 per cent) and bribes were 'seldom paid' in North America (2 per cent) and in the EU + regional groupings (2 per cent). Ibid 7, 17.

83 Ibid 8.

84 Freeman details the frustration of companies dealing with partially liberalised, transitional economies in Nick Freeman, 'The Prospects for Foreign Direct Investment in the Transitional Economies of Southeast Asia' in Frank Bartels and Nick Freeman (eds), *The Future of Foreign Investment in Southeast Asia*. See also, Suma Athreye and Sandeep Kapur, 'Private Foreign Investment in India: Pain or Panacea?' (2001) 24(3) *World Economy* 399.

85 Numerous studies have shown the uneven effects of FDI on host nations, with a strong causal link between the policies of the host nation and the success of the FDI in improving the growth of that host nation. See, eg, Ewe-Ghee Lim, 'Determinants of, and the Relation Between, Foreign Direct Investment and Growth: A Summary of the Recent Literature' (Working Paper No 01/175, IMF, 2001).

86 Numerous studies have proven that it takes a considerable amount of time to change ones reputation and for public opinion and business interests to react to a government's positive regulatory or policy changes: See, eg, Morisset, above n 36, 10.

87 In Bolivia, economic mismanagement led to 25,000 per cent inflation and the general decline of the state. Economic reforms were initiated, but could not take hold in the prevailing political and social climate and liberalised policies were abandoned, causing further economic decline: Daniel Kaufman, Massimo Mastruzzi and Diego Zavata, 'Sustained Macroeconomic Reforms, Tepid Growth: A Governance Puzzle in Bolivia' in Dani Rodrik (ed), *In Search of Prosperity: Analytical Narratives on Economic Growth* (2003) 345–8.

changes, liberalisation and generally more favourable business and investment conditions are implemented. Therefore, countries should not and cannot expect increased transparency (or any other economic or legal changes) to immediately lead to increased investment, opportunities and growth.⁸⁸

B Case Study: Republic of Korea

The rapid transformation of a number of East Asian nations, from poor, dependent nations with low skill levels and an even lower industrial base into modern, sophisticated economic marvels is well documented. This section is not meant to be a fully comprehensive historical or economic review, but instead is meant to serve as a short illustration of how one of these so-called newly industrialised nations – the Republic of Korea (or South Korea) – used the methods detailed in the previous section to completely transform itself from struggling developing country to economic giant in less than three decades.⁸⁹

Korea's success is even more remarkable when one considers that, throughout the period between 1945 and 1961, Korea had one of the lowest rates of per capita GDP in the world and was struggling with the lasting effects of 35 years of Japanese colonial rule (who intentionally destroyed many industrial assets prior to vacating in 1945), partition and civil war (the Korean War). As such, the nation was fraught with additional burdens, such as political turmoil, a shortage of raw materials, a lack of managerial manpower and heavy military spending.⁹⁰

The Korean recovery story begins in the period following Japanese rule, when the US effectively occupied the territory and kept it propped up with large-scale aid. This time period was dominated by a large amount of refugees, high inflation, industrial chaos and declining production in all sectors.⁹¹ Economic and social recovery began in 1948, but all was lost with the outbreak of the Korean War in 1950, which destroyed much of what had been reconstructed in the late-1940s and 'again resulted in the complete disappearance of commercial and government financial trade'.⁹² During the war, exports declined significantly and the nation was heavily dependent on imports financed by aid for almost all of its goods (food, materials, equipment, clothing, etc).⁹³ Korean manufacturing was almost decimated, illustrated by the fact that 1948 output levels were only 15 per cent of 1939 levels.⁹⁴

88 Several studies make this point, either directly or indirectly. See, eg, UNCTAD, *Foreign Direct Investment in Africa: Performance and Potential* (1999) <<http://www.unctad.org/en/docs/poiteiitm15.pdf>> at 6 September 2007.

89 See generally, Thomas Andersson and Carl J Dahlman, *Korea and the Knowledge-Based Economy: Making the Transition* (2000).

90 Jong-Wha Lee, *Economic Growth and Human Development in the Republic of Korea, 1945–1992* (1996) UNDP 2 <http://hdr.undp.org/docs/publications/ocational_papers/oc24aa.htm> at 6 September 2007.

91 Anne Krueger, *The Developmental Role of the Foreign Sector and Aid* (1979) 8–10.

92 Ibid 10, 28.

93 Ibid 28–29. During this time, imports represented 12.9 per cent of GDP while exports accounted for only 2 per cent of GDP: at 30. Partition and the Korean War not only created mass refugees, chaos and desperation but also left South Korea with very few industrial manufacturing plants as Korea's industrial base was concentrated in the North: at 2, fn 6.

94 Ibid.

Recovery began in 1953 due to large scale foreign aid, which between the 1953 to 1960 period funded over 70 per cent of imports (with a peak of 87 per cent in 1957) and approximately 95 per cent of foreign savings.⁹⁵ At this time, Korea's trade and financial regime was protectionist and based upon the import substitution model.

Import levels were kept low through a combination of high tariffs, quantitative restrictions, a complex import licensing system and exchange rate controls, leading to high levels of barter trade at Korean ports.⁹⁶ As a direct consequence of the scarcity of imports, corruption increased dramatically and became widespread as imports were sold on the black market at a large premium.⁹⁷ At the same time, exports were negligible, and even then generally existed as a result of aid.⁹⁸ The import substitution policies of the 1950s actually discouraged production for export by sheltering the domestic market and setting an unattractive exchange rate.⁹⁹ This led to a sharp reduction in exports, which were worth US\$40 million in 1953, before the policy changes; they did not reach that level again until 1961.¹⁰⁰ Finally, the monetary policy necessary to maintain the import substitution regime was unstable, with the currency overvalued and inflation out of control.¹⁰¹

In the early 1960s, Korea's trade and monetary policy shifted away from import substitution and reliance on aid to one emphasising export orientation.¹⁰² Krueger states that the trade and economic restructuring 'result[ed] [in] the start of exceptionally rapid growth of exports, the beginning of private capital inflows into Korea, and also the continued diminution of both the absolute and the relative importance of aid'.¹⁰³

Since the advent of the economic transformation, Korea has grown and developed at an almost unprecedented rate.¹⁰⁴ As demonstrated through both per capita income and economic growth (see Annex 1), as well as through its monetary and fiscal successes, including its high savings and investment ratios, Korean growth over the last twenty years is virtually unrivalled.¹⁰⁵ Not only did Korea close the income gap with the OECD countries in this period, but it also

95 Lee, above n 90, 2–3; Krueger, above n 91, 41, 66.

96 Krueger, above n 91, 73.

97 Ibid 42, 166.

98 Lee, above n 90, 3. Exports only accounted for 3.3 per cent of GDP: Ibid.

99 Krueger, above n 91, 43–57.

100 Ibid 57–60.

101 Ibid. Lee, above n 90, 3. Inflation stayed over 10 per cent from 1945–1961 and susceptible to large-scale rises. For instance, inflation rose 1600 per cent in the three months following liberation in 1945 and 1700 per cent during the civil war.

102 See Krueger, above n 91, ch 3 ('Transition to an Export Economy').

103 Ibid 82. Krueger also states that the 'Korean policy switch is perhaps the most dramatic and vivid change that has come about in any developing country since World War II'.

104 Since the early 1960s, South Korea has grown at almost 9 per cent each year. Between 1966 and 1975 exports grew at 40 per cent per annum. To illustrate the shift from aid to growth, in 1960, South Korean exports totalled US\$32 million while it received US\$270 million in US aid. By 1975, Korean exports totalled over US\$5 billion (US\$ 4.6 billion of which came from manufactured goods): Lee, above n 90, 3.

105 Significantly, Korea continued to grow despite significant price increases in oil in the 1970s and 1980s and in raw materials in the 1970s, and despite the Asian financial crisis in the late 1990s.

managed to spread the benefits of development to a large portion of its population.¹⁰⁶ For instance, the rate of poverty has fallen quite dramatically and now compares favourably to the OECD countries.¹⁰⁷

Korea's rise was not accidental nor did it occur through mere happenstance. Instead, Korea managed to transform its economy, living standards and status in the world with forethought and planning which resulted in the undertaking of significant structural adjustments. The table below illustrates how these structural adjustments resulted in a complete overhaul of the Korean economy. For instance, Korea's per capita GDP increased from US\$82 in 1960 to US\$16,291 in 2005. The nation also transformed itself from a mainly agrarian economy, with manufacturing accounting for less than 15 per cent of GDP in 1960, into a nation where manufacturing accounts for 32 per cent of GDP. In the process, Korea has also transformed its capabilities. In 1960, major Korean industries were involved in the manufacture of wigs, eyelashes, clothes and plywood (these were Korea's major exporting industries). By 2005, however, Korea's technological capabilities had changed and it had become a world leader in several sophisticated industries. For instance, looking at its major industries, Korea is the world's largest shipbuilding nation, it ranks fifth in terms of automobile production, third in the semiconductor industry and it has the world's fifth largest steel industry.

Korea	1960	2005
GDP per capita (in US\$)	82	16,291
Share of Manufacturing (in GDP(%))	14.4	32.0 (2004)
Major Industries	Wigs Eyelashes Clothes Plywood	Shipbuilding Automobile Semiconductor Steel

Source: DoHoon Kim, 'Trade Promotion and Economic Development in Korea' Presentation to the United Nations Economic Commission for Africa (UNECA), Slide 3, available at http://www.uneca.org/atpc/documents/Mainstreaming/trade_promotion_korea.ppt#3.

It should also be noted that Korea's major industries are all now highly sophisticated, export oriented industries with high barriers to entry. Thus, it is

106 Unemployment was cut from over 8 per cent in 1960 to 4 per cent by 1975: Krueger, above n 91, 219. Moreover, a 1993 World Bank publication called Korea's progress 'growth with equity': World Bank, *The East Asian Miracle* (1993) 11.

107 See Kyoung-sook Seo, Status of Poverty Statistics in the Korea (2004) Korea National Statistical Office <http://btis.mogaha.go.kr/aspfile.asp?orgfname=Korea.doc&realfname=ATT23056_2.dat> at 6 September 2007.

clear that Korea's structural adjustments focused on developing export-oriented strategies that would allow it to be internationally competitive in terms of both price and quality. The statistics bear out this claim, as Korea's exports as a percentage of GDP have consistently risen since 1960 (from 3 per cent in 1960 to 36 per cent in 2005).

Export share of GDP (%)

1960	1965	1970	1975	1980	1985	1990	1995	2000	2005
3	9	14	24	28	32	26	24	34	36

Source: DoHoon Kim, 'Trade Promotion and Economic Development in Korea' Presentation to the United Nations Economic Commission for Africa (UNECA), Slide 4, available at http://www.uneca.org/atpc/documents/Mainstreaming/trade_promotion_korea.ppt#4.

The reason for focusing on export orientation is clear – Korea's domestic market for manufacturing goods is limited (in fact, in 1960 it was almost non-existent) and it has a poor endowment of natural resources. It should also be noted, if not stressed, that such a radical transformation takes time to implement and requires a committed government not only willing to undertake the structural adjustments and economic re-orientation but also the necessary legal and regulatory changes needed to secure stable and long-term prosperity.¹⁰⁸ Thus, Korea did not instantly create globally competitive, highly technical industries. Instead, it began its transformation by increasing exports of agricultural and low-end products and only gradually shifted to sophisticated manufactures. More specifically, throughout the 1960s Korea capitalised on its abundance of unskilled and cheap labour to manufacture and export labour intensive products. During the 1970s, Korea began utilising its newfound skilled labour force (especially its engineers) and began successfully building its heavy and chemical industries.¹⁰⁹ Finally, in the 1980s, Korea began using its newfound researchers and scientists for the development and cultivation of technology-related industries.

The above clearly shows how Korea slowly transformed itself from producing and exporting agriculture and low-skilled manufactures to eventually focusing on quite sophisticated industries. The following table shows the percentage change in Korean exports from the period between 1961-1971.¹¹⁰

¹⁰⁸ See generally Krueger, above n 91; Lee, above n 90.

¹⁰⁹ Interestingly, the active encouragement of certain heavy industrial activities, such as chemicals, actually slowed growth as the industries were prematurely targeted: Lee, above n 90, 4, fn 10.

¹¹⁰ It should be noted that during 1960s and 1970s, the period when Korea developed major industries, export growth outpaced GDP growth. Moreover, the real value of exports substantially increased, rising 30 per cent per annum from 1962 to 1973: Lee, above n 90, 3.

Korea: Change in Export Structure	1961	1966	1971
Agricultural Products	28.6%	9.6%	4.3%
Fishery Products	19.2%	10.4%	4.6%
Mining Products	24.5%	22.5%	2.2%
Manufacturing Products	27.7%	67.5%	88.9%
Total	100.0%	100.0%	100.0%

Source: DoHoon Kim, 'Trade Promotion and Economic Development in Korea' Presentation to the United Nations Economic Commission for Africa (UNECA), Slide 11, available at http://www.uneca.org/atpc/documents/Mainstreaming/trade_promotion_korea.ppt#11.

Such a radical transformation could not have occurred without stable policies which promoted regulatory efficiencies and property rights; all backed by the rule of law. As such, the Korean government played an important role in supporting industrial growth, as well as allowing the market to select specific industries worthy of support. For instance, the government implemented strategies to encourage FDI and capital inflows to make up for the insufficiency of domestic savings.¹¹¹ The government also initiated pro-growth monetary policies, including increased savings, a devalued currency (by almost 100 per cent against the US dollar) and government backed credit schemes. Several Korean policies also both explicitly and implicitly encouraged export growth, including:

- allowance for retaining foreign exchange earnings;
- eliminated and/or reduced import controls, licensing schemes and tariff rates;
- financial support, in the form of loans and grants for exporters at preferential rates;
- tax concessions;
- fiscal policy in favour of key industrial firms;

¹¹¹ Ibid.

- export targets set by the government; and
- awards from the President.¹¹²

Without question, Korea used the ‘free market’ to its advantage, but it did not rely on it exclusively to lead it to future prosperity. In fact, the above has demonstrated that the government played a very active role in promoting growth and development and cajoling Korean industry to improve its focus and efficiency. More specifically, the government combined a policy of encouragement (through such measures as monetary and fiscal reforms, export targets and presidential awards), effective subsidies (in the form of financial support and tax concessions) and targeted tariff reductions to enable the importation and widespread availability of goods such as food, energy, capital goods and equipment necessary to develop industry. Thus, while some commentators often claim that Korea used a large-scale import-substitution strategy to fuel its growth, such an assertion is misleading. As stated above, Korea’s brief import substitution phase was not an economic success and was quickly abandoned in favour of export orientation.¹¹³ To illustrate, while import substitution was emphasised in manufacturing throughout the 1950s, the industrial share of GDP actually dropped and the nation remained dependent on the agriculture sector. In this regard, Krueger states: ‘Import substitution clearly failed in its purpose in the sense that manufacturing had not become a dominant sector’.¹¹⁴ Moreover, while some individual industries did experience growth, these successes occurred in areas where imported goods never had much of a market share. For instance, the textile and clothing industry expanded through the 1950s, but imported textiles and clothing only accounted for 15 per cent of domestic demand prior to the 1950s.¹¹⁵

In addition, modern advocates of import substitution often forget, or fail to mention, that Korea’s import substitution focused only on light industry and that ‘instead of emphasising further import substitution in machinery, durable consumer goods and their intermediate inputs, ... Korea changed its industrialisation strategy from import substitution to export promotion in the early 1960s.’¹¹⁶ The reason behind this shift is clear: the economy had stagnated and Korean leaders did not believe the policy would be feasible in the long term with heavier manufactured goods, due to the small size of the Korean market and the heavy capital requirements necessary to successfully implement import

112 DoHoon Kim, ‘Trade Promotion and Economic Development in Korea’ (Paper presented at the Ad-hoc Expert Group Meeting on Mainstreaming Trade into National Development Strategies – UN Economic Commission for Africa, Casablanca, 29 May 2006) Slide 8, <http://www.uneca.org/atpc/documents/Mainstreaming/trade_promotion_korea.ppt#8> at 6 September 2007.

113 Moreover, perhaps anticipating the claim that import substitution is a necessary condition which primes a nation for subsequent liberalisation and export growth, Krueger argues that Korea’s period of import substitution was too brief for this theory to be correct.

114 Krueger, above n 91, 62.

115 Ibid 64.

116 Ibid 64 (quoting Kwang Suk Kim).

substitution policies.¹¹⁷ Moreover, Korean leaders also realised that Korea was resource poor, and therefore could not depend upon resource-based export revenue.¹¹⁸ Importantly, they also realised that the nation had a large, educated workforce and could make use of the low wage base in gaining a comparative advantage in the export of manufactures.¹¹⁹

Of course, it must be conceded that Korea did grow by about 5 per cent per annum in the 1950s and that any growth in that decade resulted from import substitution, which directed resources primarily to the domestic market.¹²⁰ But of course, the effect of massive US aid on the Korean economy throughout the 1950s cannot be underplayed.¹²¹ In addition, when compared to Korea's growth rate resulting from export orientation, the 1950 growth rate is quite poor. Moreover, when one considers that 20 per cent of the manufacturing industries propped up under import substitution had not returned to pre-1953 levels of production by 1964, it becomes even more apparent that the government mismanaged resource allocations and hampered economic growth.¹²²

Finally, the financial and monetary regime behind the import substitution policies, including keeping the exchange rate artificially high, were 'unrealistic and chaotic' and were responsible for fostering high rates of inflation and large shortages of domestic goods and inputs, harming both consumers and industry.¹²³

Korea's sustained economic success began with the concerted effort of a dedicated government to abandon the policy of import substitution in favour of a liberalised, export-oriented economy. In this regard, quantitative restrictions were reduced or eliminated and tariff levels reduced,¹²⁴ incentives were offered to promote exports,¹²⁵ and monetary policy was normalised to take advantage of export potential.¹²⁶

III CAN THE SUCCESS OF THE NEWLY INDUSTRIALISED COUNTRIES BE REPLICATED?

The three conditions for growth identified in this article have manifestly worked in Asia and elsewhere (such as Ireland). But can the same recipe yield similar successes in other poor nations? This is, of course, a loaded question without a clear and definite answer. Instead, each situation and country must be assessed on a case-by-case basis.

117 Ibid 85 (quoting Kwang Suk Kim).

118 Ibid.

119 Ibid. For information on Korea's growth in education and training during this period, see Lee, above n 90, 5–11.

120 Krueger, above n 91, 41, 65.

121 For a summary of US aid to Korea see *ibid*, 11–13 (for the period from 1945 to 1949); 23–8 (1950–53); 65–9, 75–81 (1953–1960).

122 Ibid 166.

123 Ibid 202. The inflation rate was stabilised in the 1960s, averaging 12.3 per cent between 1962 and 1973 and remaining under 10 per cent between 1965 and 1971: Lee, above n 90, 3–4.

124 See Krueger, above n 91, 89–92.

125 Ibid 92–9. See also 99–116.

126 Ibid 83–4, 86–9.

It must be remembered that success in the newly industrialised countries centred upon a shift in emphasis from agriculture to industrial output and increasing export orientation. Whether a similar strategy can work for agricultural economies who, due to a number of factors (location, a lack of natural resources, etc), are unlikely to be able to engage in such a large-scale shift of production patterns to successfully industrialise, remains to be seen.

Reliance on agriculture as a main source of income is an inherently risky strategy owing to a number of characteristics and variables, including a high level of instability (due to price fluctuations, natural disasters, etc). However, several other characteristics of agriculture which factor in its success, or failure, are not unique, and in fact are seen in many other industries. Such factors include a heavy reliance on proper management and diversification, and intermittent restructuring to increase productivity and growth (through measures which impact upon, *inter alia*, infrastructure, tax credits and land reform).¹²⁷ Moreover, while most agriculturally dependent nations are still 'developing', others such as Australia and New Zealand have successfully built healthy and productive agriculturally-based economies. The emergence of these two nations as agricultural powerhouses did not occur naturally. Rather, it was the result of careful and prolonged planning – in other words, proper management. Both nations always had a strong legal and regulatory framework, and both nations also realised they had relatively small markets and that export opportunities were therefore needed to ensure the health of their industries. Moreover, both nations realised their relative comparative advantage was in agricultural products and that a free market economy with few barriers would thus benefit them. Therefore, in addition to advocating for the lowering of barriers worldwide, they also let the market decide which agricultural products farmers should grow. Instead of attempting to control production activities from the top down, both Australia and New Zealand allowed farmers to decide what to grow and how much to grow. Thus, the respective governments encouraged growth and development by focusing on properly managing the industry through a market approach which (1) did not interfere either directly or indirectly (with, say, production targets, set prices or high subsidies for certain products); (2) did not curtail production or efficiencies (through, for instance, high tariffs on necessary inputs such as tractors or fertiliser or misguided land reform or distributions); and (3) actively encouraged export orientation (through efforts to open up world markets to their products, assisting growers in exporting products, etc).¹²⁸

127 On infrastructure, a significant relationship exists between the days taken to ship products and the overall volume of trade. See Simeon Djankov, Caroline Freund and Cong S Pham, 'Trading on Time' (Working Paper No 3909, World Bank Policy Research, 2006). See also, Elhanan Helpman, Marc Melitz and Yona Rubinstein, 'Trading Partners and Trading Volume' (Working Paper No W12927, National Bureau of Economic Research, 2007). On the importance of biotechnology and technological advancement for the reduction of poverty and sustainable growth in Africa, see Sami Zaki Moussa, 'Technology Transfer for Agriculture Growth in Africa' (Working Paper No 72, African Development Bank – Economic Research, 2002).

128 It should also be noted that both nations, especially Australia, still protect farmers through high quarantine measures.

A Case Studies

Perhaps more relevant to the debate today is the fact that a strategy which emphasises effective planning, proper management of the national economy (and specific sectors within it) by the government and an export-oriented approach continues to work for nations at all levels of development. Two case studies are used to illustrate this point. The first shows how a country identified above as a 'sometimes liberaliser' – Ghana – had mismanaged its best cash crop – coffee – for decades, through ineffective and inefficient government intervention, until changes in government policy improved the prospects for both coffee growers and the national economy. The second example illustrates how government stability, planning and effective policy implementation can transform one nation – Mauritius – from a poor, small island dependent on a handful of crops and foreign aid into bona fide success story.

1 Ghana

Today, Africa's growth and development unquestionably lags behind that of all other continents. While some seem to believe that this is merely Africa's fate, this does not have to be the case. In fact, Africa has only recently become the world's basket case. In the 1960s, the promise of African growth was strong. At the same time, many commentators believed that Asia would forever linger in stagnation and poverty. During this period, countries such as Ghana and South Korea had similar levels of development – in fact, Ghana's per capita income and exports per capita were both higher than Korea's – and many expected Ghana to develop at a much faster rate in the coming decade.

Of course, we know the reverse has occurred. Africa, for the most part, stuttered under its newfound independence from colonialism through a mixture of civil instability, violence, war, corruption and mismanagement. Meanwhile, certain Asian nations focused on internal stability, education and the liberalisation of their economies (embracing exports and specialisation). The results for both African nations and Asian liberalisers were almost immediate. For instance, by 1972, Korea's exports per capita overtook Ghana's. In 1976, Korea's income level surpassed Ghana's. And quite strikingly, while Korea's exports increased by 400 times between 1965-1995 (in current dollars), Ghana's increased only four times, with its real earnings per capita fell to a fraction of their earlier value.¹²⁹

Unfortunately, much of Africa today remains in relative decline. But there are success stories. In fact, Ghana is perhaps becoming one of them. As mentioned above, the 'sometimes liberaliser' is attempting to transform its economy through, among other things, significant structural adjustments. The measures appear to be working (but must be undertaken on a larger scale), as Ghana is one of the fastest growing LDC economies, with one of the fastest poverty reduction

129 World Bank, *Can Africa Claim the 21st Century?* (2000) 19
<<http://siteresources.worldbank.org/INTAFRICA/Resources/complete.pdf>> at 28 August 2007.

rates in Africa (falling from a third to a quarter of the population).¹³⁰ Like many LDCs, Ghana's economy is reliant on few industries, most notably gold, timber and cocoa.¹³¹ Ghana's economic transformation in the area of cocoa production is a noteworthy example of an LDC implementing large scale structural adjustments in order to improve not only production, but also land management, price, and rural development.

The Ghanaian economy is heavily reliant on cocoa production, with over 1.5 million Ghanaians involved in the sector.¹³² Cocoa accounts for 45 per cent of exports and its production has recently contributed between 4 and 14.7 per cent of tax revenue (between 1995-2000).¹³³ Cocoa is not consumed locally, but instead is wholly exported (mainly to the US or EU, where cocoa is not grown locally). Cocoa production in Ghana is based on small-scale production, with many farms passed down through generations (interestingly, many Ghanaian women own cocoa farms).¹³⁴

The history of cocoa production in Ghana is one of instability and waste. For the most part, Ghana has played a major role in the world production of cocoa. In fact, from the 1920s to the 1960s it was the world's largest producer (averaging 450,000 tonnes per annum).¹³⁵ However, its production then dropped suddenly and between 1970 and 1983 Ghana transformed itself into an insignificant producer (with only 159,000 tonnes of output per annum).¹³⁶ The reason for the decline of the industry is clear: the government took full control of the production of cocoa. The initiation of a complicated payment scheme for tonnes produced was directly responsible for a large portion of the decay of the industry, for a number of reasons. For instance, the government set production quotas and set producer prices irrespective of world prices (and often times below world prices).¹³⁷ Growers were frequently underpaid. Growers were also confronted

130 Ghana is one of the African countries on the verge of success. Its real GDP growth reached 6.2 per cent in 2006, led by strong export growth and a few specific sectors, including agriculture (particularly cocoa), mining, construction, and services. The growth occurred as a result of structural reforms, that began in the early 1990s, which led to an improved business environment (including, recently, improvements to fiscal reporting requirements and the deployment of a new computerised payroll management system). In addition, inflation fell below 10 per cent at the end of March 2007. However, a surge in demand caused energy shortages, and the fiscal deficit (including grants) expanded to 7.7 per cent of GDP in 2006 (more than 2.5 percentage points higher than in the mid-year supplementary budget). During this period, Ghana continued to accumulate international reserves and, largely due to massive debt relief under the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative ('MDRI') as well as sound macroeconomic policies, Ghana's external debt dropped to 22 per cent of GDP, from about 120 per cent in 2000). See IMF, *IMF Executive Board Concludes 2007 Article IV Consultation with Ghana* (2007) <<http://www.imf.org/external/np/sec/pn/2007/pn0764.htm>> at 6 September 2007.

131 Pauline Tiffen, Jacqui MacDonald, Haruna Maamah and Frema Ose-Opare, 'From Tree-minders to Global Players: Cocoa Farmers in Ghana' in Marilyn Carr (ed), *Chains of Fortune: Linking Women Producers and Workers with Global Markets* (2004) 11, 11.

132 Ibid 13.

133 Ibid 12-13.

134 Ibid 12.

135 LaVerle Berry (ed), *Ghana: A Country Study* (1995) US Library of Congress, 'Cocoa' chapter <<http://countrystudies.us/ghana/>> at 6 September 2007.

136 Ibid

137 Ibid

with considerable licensing barriers – not only resulting in inefficiencies but as importantly, numerous layers of corruption and bribery.¹³⁸ The total level of control asserted by the government quickly led to a sense of disempowerment for producers, and while feeling more like ‘tree minders’ rather than ‘owners’, they let their trees age and rot (with the unkempt trees triggering widespread disease).¹³⁹

Ghana began its first wave of structural adjustments in 1979. Implementing these over five years, Ghana attempted to provide more producer incentives while minimising opportunities for corruption and bribery through a number of changes. For instance, while the Ghana Cocoa Board (‘Cocobod’) maintained set producer prices and its export monopoly, it undertook changes such as (i) reducing staff by 40 per cent (many of whom it is reported were on the books but never actually employed); shifting the transport and processing of cocoa to the private sector; (iii) removing subsidies for production inputs (fertilisers, insecticides, fungicides and equipment) while at the same time reducing tariffs on inputs; and (iv) implementing an automatic payment system to reduce instances of ‘bad’ cheques being passed to producers, multi-layered corruption and systemic inefficiencies.¹⁴⁰

From the 1990s onwards, the government continued its (partial) liberalisation by raising producer prices from 29 per cent of FOB (free on board) sales to 60 per cent, assisting buyers in operating and transport costs, facilitating commercial loan and microfinance agreements and generally providing greater incentives for private traders.¹⁴¹ Additionally, the government significantly restructured the production of cocoa by, among other things, replacing decrepit trees and those lost to drought, adding hectares of production,¹⁴² upgrading infrastructure (including existing roads, building feeder roads and roads to fertile areas and borders, etc), increasing research and development into such areas as combating drought and disease, and increasing productivity.¹⁴³ Finally, the government restructured the industry by largely privatising the marketing board, while ensuring it more or less retained the export monopoly ostensibly to ensure quality control.¹⁴⁴ However, by licensing 30 per cent of production and export to private enterprises, the government has begun the process of encouraging private responsibility and competitiveness.

The results of these changes have been very encouraging. Not only is the industry making better use of its land, becoming more efficient and producing more cocoa (production increased from 228,000 tonnes per annum in 1986 to 255,000 tonnes in 1994 to 305,000 tonnes in 2000 to a record 740,000 tonnes in 2004–05),¹⁴⁵ but more importantly the culture of farming has been transformed.

138 See generally, Tiffen et al, above n 131.

139 Ibid 14.

140 Ibid 12–14, 22; Berry, above n 135.

141 Tiffen et al, above n 131, 13.

142 Berry, above n 135.

143 Government of Ghana (Ministry of Finance), *Ghana Cocoa Sector Development Strategy* (1999).

144 Ibid; Tiffen et al, above n 131, 13.

145 International Cocoa Organization, *Annual Report 2005/2006* (2007) 13

<http://www.icco.org/pdf/An_report/anrep0506english.pdf> at 6 September 2007; Berry, above n 135.

In particular, the privatisation efforts have been an unqualified success. For instance, one notable privatisation success is the Kuapa Kokoo, a cooperative which has positioned itself as a major exporter of 'fair trade' cocoa to the UK and US.¹⁴⁶ Privatisation has allowed the farmers of the cooperative to take control of production and use local knowledge of conditions to increase both their production capabilities and the quality of the product. Moreover, greater insight into markets, contacts and planning control have increased their profit margin while the increased loan funding and capital that have come about as a result of privatisation have facilitated expansion and growth. Perhaps as importantly, growing responsibility resulting from privatisation provided greater dignity to members of the cooperative. Under tight government planning control, the community had no control over such major decisions as growing and production patterns and price, and as a result did not have an interest in the ultimate success of the industry. Now, with the freedom to make business decisions and 'fair trade' opportunities available, the farmers are thriving.

2 *Mauritius*

Mauritius is a small, isolated, multicultural nation of 1.2 million citizens with limited natural resources. Based on the combination of these factors, one would expect it to be poor, economically stagnant and troubled by both civil and social instability. This, however, is not the case. Since gaining independence in 1968, Mauritius has been a stable, democratically governed nation that has successfully integrated the ethnically diverse cultures of its citizens, notably Indian, Chinese, black African and European (predominantly French and British).¹⁴⁷ At the same time, Mauritius has successfully developed a niche export oriented agricultural industry as well as, more recently, focusing on its growing industrial, financial, and tourist sectors. Importantly, it has also succeeded, where many developing countries have failed, in demonstrating its ability to adapt with changing times. As a result, Mauritian infrastructure, healthcare and outlook continue to improve.

Mauritius traditionally relied upon economic aid for its welfare in the form of grants, loans and preferential trade agreements. In this regard, it focused its domestic industries on two products, sugar and textiles. These were chosen not so much because Mauritius had a natural advantage in those products, but also due to the fact that it benefited from aid in the form of generous European Community sugar quotas and due to the quota system under the *GATT/WTO Agreement on Textiles and Clothing* ('ATC').¹⁴⁸ These benefits, however, faced serious market disruption and increased competition with the restructuring of the

146 See Tiffen et al, above n 131, 14–23, 27–40.

147 Barbara Wake Carroll and Terrance Carroll, 'Accommodating ethnic diversity in a modernizing democratic state: theory and practice in the case of Mauritius' (2000) 23 *Ethnic and Racial Studies* 120.

148 See *Trade Policy Review Body: Trade Policy Review: Mauritius*, WTO Doc WT/TPR/S/90 (2001) (Report by the Secretariat).

EU sugar system as well as the expiration of the ATC in 2005.¹⁴⁹ Both industries have also suffered from 'preference erosion' through the lowering of general tariffs in developed countries, thereby reducing the value of the preferences granted to certain developing countries.¹⁵⁰ While these changes have destroyed several industries and economies, the Mauritian economy as a whole has not been affected, with broad-based reforms ensuring that growth rates continue at around 5 per cent per year.¹⁵¹

The Mauritian success, of course, does not involve a simple formula. Instead, it is multifaceted and multidimensional. However, the three conditions for growth identified in this article played a major part in its success – Mauritius has created an open, liberalised and export-oriented economy which encourages business opportunities and investment. It also has a stable government which has created a legal and regulatory framework which, among other things, is well run, efficient and not plagued by corruption or bribery, recognises and protects property rights and is enforced through the rule of law.

A more complete analysis of the Mauritian success story reveals a proactive government which actively created and managed the economy in order to avoid disappointment and failure. The use of the term 'managed', however, in no way implies centrally planned. What is meant by 'manage' is that the government did not merely engage in tariff reductions and privatisation and hope for the best, but instead carefully planned each phase of the liberalisation process in order to build competitive industries and for Mauritius to become an attractive FDI designation.¹⁵² An important part of this process was a review of what was working and what more needed to be done. For instance, while Mauritius did engage in significant liberalisation efforts, including the targeted reduction of tariff rates to aid development (tariffs now average 20 per cent, with 50 per cent of product lines entering the country duty free),¹⁵³ it also undertook considerable reforms to improve the business environment, namely simplifying its tax system, opening itself to air access, and advanced economic restructuring (including the

149 On the cause of the EC sugar reformation, see Stephen J Powell and Andrew Schmitz, 'The Cotton and Sugar Subsidies Decisions: WTO's Dispute Settlement System Rebalances the Agreement on Agriculture' (2005) 10 *Drake Journal of Agricultural Law* 287. On the expiration of the ATC, see John A Hall, 'China Casts a Giant Shadow: The Developing World Confronts Trade Liberalization and the End of Quotas in the Garment Industry' (2006) 5 *Journal of International Business and Law* 1.

150 For instance, the contribution of the Mauritian export processing zone has been reduced by 5–6 per cent, reducing its overall share in the economy from 12 to 9 per cent. In addition, the zone has lost at least 20 companies, resulting in employment falling from 90,700 in December 2000 to 68,000 in December 2004: Emilio Sacerdoti and Gamal El-Masry, 'Mauritius must step up its competitiveness' (2005) 34(14) *IMF Survey* 224–5 <<http://www.imf.org/external/pubs/ft/survey/2005/080105.pdf>> at 6 September 2006.

151 The Mauritian economy averaged 5.5 per cent growth between 1980 and 2004. Over the same period, annual per capita income has tripled in Mauritius while it has stagnated in Sub-Saharan Africa: Ibid.

152 For information and statistics, see generally The Mauritius Chamber of Commerce and Industry <<http://www.mcci.org>> at 6 September 2007.

153 See The Commonwealth Secretariat, *Mauritius* <<http://www.thecommonwealth.org/Templates/HSInternal.asp?NodeID=148388>> at 6 September 2007.

development of new sectors and industries).¹⁵⁴ Importantly, the government did not simply impose reforms or new grand projects upon the nation. Instead it entered into extensive public/private dialogues and collaboration in order to identify potential problems at an early stage so these could be managed and minimised. Thus, while other countries suffered (and still suffer) as a result of reduced EC sugar quotas and the expiration of the ATC, Mauritius identified the potential economic problems which would result from the shifting trade patterns and worked hard to reshape its industries to maintain competitiveness.¹⁵⁵ Importantly, and somewhat uniquely for a small developing nation, Mauritius demonstrates an entrepreneurial spirit, willing to adapt and experiment through, among other things, product specialisation and the exploitation of 'niche' industries.

The successes of the Mauritian 'management' can be seen in a number of industries. For instance, while the substantial reduction of EC sugar quotas has without a doubt hurt the industry, it anticipated the lowering of the quotas and proactively sought to minimise the harm.¹⁵⁶ Through government and industry research and planning, the industry has maintained its market through a combination of focusing on specialty sugars, increased research and development (ie, focusing on reducing costs and environmental damage by using renewable energy or less water) and by increasing competitiveness through such measures as cutting production factories and costs.¹⁵⁷

Moreover, in recent years Mauritius has diversified its economic activity to include a wide range of industries.¹⁵⁸ For instance, both the government and industry invested in the creation of free, modernised port facilities, as well as investing in research into increasing productivity (ie, by removing bottlenecks), in order to assist trade flows.¹⁵⁹ Such investment resulted in the nation becoming a regional hub for a number of activities. For instance, Mauritius has become a regional seafood hub focused on value-added activities such as transformation and processing, before exporting the seafood to other markets (predominantly

154 Ibid; Sacerdoti and El-Masry, above n 150; Andrew Stoler, 'Mauritius: Co-operation in an Economy Evolving for the Future' in Peter Gallagher, Andrew Stoler and Patrick Low, *Managing the Challenges of WTO Participation: 45 Case Studies* (2005) 362; Customs House Brokers Association, *The Republic of Mauritius* <<http://www.customshousebrokers.com/about.htm>> at 6 September 2007; The Mauritius Chamber of Commerce and Industry, above n 152.

155 For instance, Mauritius realises that in order to compete in the textiles industry, it must specialise in high-value niche markets: Sacerdoti and El-Masry, above n 150. The IMF calls Mauritian reforms in this and other areas 'promising': See IMF, 'More active role encouraged for private sector as Mauritius adjusts' (2006) 35(4) *IMF Survey* 52.

156 Mauritius was a major benefactor of the EC Sugar Protocol, as it was permitted to export 510,000 tonnes (40 per cent of the total EC quota) of raw sugar cane to the EC duty free and at a price three times the international free market price. The recent reforms reduce the price paid to Mauritian growers by 39 per cent and is expected to result in a loss of \$125 million in export revenue: Sacerdoti and El-Masry, above n 150.

157 The industry still accounts for 15 per cent of Mauritius' merchandise exports: Ibid.

158 Ibid.

159 See *The Mauritius Freeport* <<http://www.efreeport.com>> at 6 September 2007.

Europe).¹⁶⁰ Mauritian enterprises are also making use of the improved port facilities to import raw agricultural products from other African countries (including potatoes, tomatoes and maize) before adding value in Mauritius and exporting the products elsewhere.¹⁶¹ In many cases, Mauritian enterprises are investing in neighbouring countries in order to own and control the entire production chain. Correspondingly, Mauritius has also successfully offered investment incentives that have attracted a significant amount of foreign investment to exploit such regional activities.¹⁶² Mauritius has also managed to create a highly successful niche tourism market (which is largely Mauritian owned), focusing on the high end market and emphasising the low environmental impact of its industry.¹⁶³ Finally, Mauritius has positioned itself as a financial services hub specialising in offshore banking activities.¹⁶⁴

Above all else, Mauritius has shown the ability to adapt and experiment in order to meet new challenges and keep growing. Instead of letting the reduction of sugar quotas and the expiration of the ATC reduce growth and increase poverty, Mauritius has adjusted those industries while also seeking out new opportunities. Even there, it has not been successful at every new venture (rice cultivation and the creation of a centre for light engineering have essentially failed while the jury is out on its venison venture), but the nation has not wallowed in its failures; it has moved on and experimented with other enterprises. The above demonstrates not only the entrepreneurial spirit of Mauritius, but also how a small, isolated nation can be an economic success through an open export-oriented economy which provides security to business and investors through a stable and secure legal and regulatory regime. Mauritius is, of course, not perfect. The financial state of the economy still requires constant monitoring, as its inflation rate is high and the current account deficit and public debt remain quite large.¹⁶⁵ But as compared to the state of several other similarly situated countries, Mauritius is an unqualified success story and a model for others.

IV CONCLUDING ANALYSIS

This article set out to demonstrate that certain trade and investment policies, in combination with a stable and appropriate legal and regulatory framework, are

160 See Republic of Mauritius – Ministry of Agro Industry and Seafood, *Seafood Hub* <<http://www.gov.mu/portal/sites/moasite/fish/seafoodhub.htm>> at 6 September 2007. For a profile of a company's operations at the Port Louis Seafood Hub, see Mauritius Freeport Development Co Ltd, *Seafood Hub* <<http://www.mfd.mu/centre/seafoodhub.htm>> at 6 September 2007.

161 See Stoler, above n 154.

162 See Board of Investment – Mauritius, *Value Proposition* <<http://www.boimauritius.com/Detail.aspx?PageId=1037>> at 6 September 2007; UNCTAD, *Investment Policy Review: Mauritius* (2001).

163 The industry is now the nation's third largest source of foreign exchange and accounts for 8 per cent of employment. The number of tourists grew by 340 per cent from 1985 to 2000 and remained strong even after the terrorist attacks of September 11, 2001. Sacerdoti and El-Masry, above n 150, 225.

164 For instance, the Mauritian financial system is one of the most well capitalised and profitable markets in Africa: *Ibid.*

165 See IMF, above n 155.

necessary for sustained economic growth. However, as noted above, these conditions for growth may be necessary but they are not sufficient. Trade alone is not going to cure all of the ills of the developing world. Thus, while it is certainly true that nations grow through economic engagement backed by a properly functioning legal regime,¹⁶⁶ and sound financial, trade and investment laws and management, such engagement must be mixed with, *inter alia*:

- sustained civil stability;
- upgraded infrastructure;
- increased education;
- upgraded healthcare;
- reduction of corruption and bribery;
- good governance;
- independent economic institutions; and
- targeted state assistance.

Domestic stability, lasting policies which allow changes to take hold and enforcement measures all undoubtedly play a large role in enabling trade to lead to increased development and poverty reduction. For this reason, countries with similar populations, natural resources and education levels have far different fates: contrast Australia v Argentina, Chile v Venezuela, South Korea v North Korea, ‘old’ China and India v ‘new’ China and India, etc.¹⁶⁷

Developed countries can, of course, assist by promoting trade with developing countries and through increased, targeted assistance (such as aid-for-trade initiatives, capacity building, etc).¹⁶⁸ Importantly, developed countries must also reduce tariff rates on developing country products, especially on agricultural products and other products of interest. The removal of tariff peaks on processed goods is especially important as they discourage a shift to higher value-added products and keep developing country workers on the low end of the production line (an example of a tariff peak would be allowing raw cocoa to enter duty free but subjecting the processed form of cocoa – butter, power, liquor, etc – to high tariffs).¹⁶⁹ Overall, it is estimated that the removal of developed country barriers

166 Thorsten Beck and Ross Levine, ‘Legal Institutions and Financial Development’ in Claude Menard and Mary M Shirley (eds), *Handbook of New Institutional Economics* (2005) 251.

167 The link between ‘bad’ government and/or government policies and poverty has been confirmed by numerous studies. See, eg, William Easterly, Jozef Ritzen and Michael Woolcock, ‘Social Cohesion, Institutions, and Growth’ (Working Paper No 94, Center for Global Development, 2006).

168 See UN (*Investing in Development*), above n 12. However, of the eight countries to experience significant growth in the period from 1950 to 1975 (China, Hong Kong, India, Indonesia, Singapore, South Korea, Taiwan and Thailand), only three countries – Indonesia, South Korea and Taiwan – had higher than average aid-to-GDP ratios: Easterly, above n 11, 51.

169 See Australian Department of Foreign Affairs (‘DFAT’), *South–South Trade: Winning from Liberalisation* (2004) 4 <http://www.dfat.gov.au/publications/south_south/index.html> at 6 September 2007. See also, Tiffen et al, above n 131, 12, 24–6, detailing how tariff peaks on processed forms of cocoa affect growers in Ghana.

could be worth over US\$100 billion a year to developing nations (a figure which is almost double the current total amount of aid received by developing countries).¹⁷⁰

Developed countries must also reduce agricultural support for their own industries, in particular support which encourages exports or is 'market distorting' in that it reduces the worldwide price of the good in question. Market distorting support is often seen in agricultural products, with subsidies reducing world prices by an estimated 3–12 per cent (depending upon the commodity)¹⁷¹ and reducing the output of East Asia and the Pacific by US\$37 billion annually (a figure five times greater than the amount of aid received in those regions).¹⁷²

However, as this article indicates, developing countries must be proactive and carefully develop responsible policies and implementation measures. Fostering an open and liberalised economic system which embraces the world is a critical step on the path to growth and development. Such a move can only allow for specialisation, greater returns on exports and encourage foreign investment. Importantly, the removal of trade barriers among developing countries would also have a substantial effect on the wealth of developing countries. In fact, the removal of developing country barriers to trade would have as large an effect on developing countries as would the removal of developed country barriers.¹⁷³ This surprising result is due to the fact that the vast majority of developing countries import the bulk of food products, even staple grains, and therefore are subject to the high tariff rates of the developing world. This is particularly the case in agricultural, where tariffs average 62 per cent, and are an average of 75

170 Paul Collier and David Dollar, *Globalization, Growth, and Poverty: Building an Inclusive World Economy* (2002) 9. See also Kevin Watkins and Penny Fowler (Oxfam Campaign Reports), *Rigged Rules and Double Standards: Trade, Globalisation, and the Fight Against Poverty* (2002).

171 Kimberly Ann Elliott, *Agriculture and the Doha Round* (2007) Center for Global Development 6 <<http://www.cgdev.org/content/publications/detail/12219>> at 6 September 2007. See also, Kym Anderson and Will Martin, 'Agriculture, Trade Reform, and the Doha Agenda' in Kym Anderson and Will Martin (eds), *Agricultural Trade Reform and the Doha Development Agenda* (2005) 3; Kimberley Ann Elliott, *Can Doha Still Deliver on the Development Agenda* (2006) Institute for International Economics <<http://www.iie.com/publications/pb/pb06-5.pdf>> at 6 September 2007.

172 The Hon Alexander Downer, Minister for Foreign Affairs, 'The Livestock Revolution: A Pathway from Poverty' (Speech delivered at the Crawford Fund Conference, Canberra, 13 August 2003) <http://www.ausaid.gov.au/media/release.cfm?BC=Speech&ID=812_6241_5875_6417_7855> at 6 September 2007.

173 Kym Anderson and Will Martin, 'Agricultural Trade Reform and the Doha Development Agenda' (Working Paper No 3607, World Bank Policy Research, 2005) 8–9. Anderson and Martin state that developing countries that 'delay their own reforms or [reform] less than developed countries ... could reduce substantially [their] potential gains' from further global trade reform.

per cent in Africa and 34 per cent in Asia.¹⁷⁴ In total, approximately 70 per cent of tariffs paid by developing countries go to other developing countries (resulting in a loss of US\$62 billion per annum).¹⁷⁵

As has been demonstrated, however, trade and financial policies cannot truly be effective in assisting the growth and development of any nation without the backing of a sound legal and regulatory framework which recognises and protects property rights, whose bureaucracy and institutions operate efficiently and effectively, where policies are enforced through the rule of law, with minimal levels of corruption and bribery, and by governments who are willing to stay the course and thereby deliver both economic and legal stability to their country.

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- 174 DFAT, *Advancing African Agriculture Through Trade Reform* (2003) 11 <http://www.dfat.gov.au/publications/advancing_african_agriculture/advancing_african_agriculture.pdf> at 6 September 2007. For more on trade in agriculture and the potential effect of reforms, see Kym Anderson, Will Martin, and Dominique van der Mensbrugghe, 'Doha Merchandise Trade Reform: What Is at Stake for Developing Countries?' (2006) 20(2) *The World Bank Economic Review* 169; Elliott, *Agriculture & the Doha Round*, above n 171; Kym Anderson, *Agriculture, Developing Countries, and the WTO Millennium Round* (1999) Carlton University Department of Economics <http://www.carleton.ca/economics/seminars/seminars_archive.htm> at 6 September 2007; Kym Anderson and Will Martin (eds), *Agricultural Trade Reform and the Doha Development Agenda* (2005); Alex F McCalla and John Nash (eds), *Reforming Agricultural Trade for Developing Countries* (2007) vol 2, quantifying the impact of multilateral trade reform; Jean-Christophe Bureau, Sébastien Jean and Alan Matthews, 'The Consequences of Agricultural Trade Liberalization for Developing Countries: Distinguishing Between Genuine Benefits and False Hopes' (Working Paper No 2005-13, Centre D'Etudes Prospectives et D'Informations Internationales, 2005); Antoine Bouet, Jean-Christophe Bureau, Yvan Decreux and Sébastien Jean, 'Multilateral Agricultural Trade Liberalisation: The Contrasting Fortunes of Developing Countries in the Doha Round' (2005) 28 *The World Economy* 1329.
- 175 DFAT, above n 169, 4.

Annex 1

Real GDP per capita (in US\$)¹⁷⁶**The Americas**

	ARG	BOL	BRA	CND	CHL	DR	JAM	MEX	US
1950	1156	445	294	1537	N/A	N/A	N/A	469	1867
1960	1685	485	570	2271	1108	483	735	800	2802
1970	2688	748	1131	3864	1848	780	1190	1409	4878
1980	6007	1849	3892	10687	3745	2254	1987	4164	11990
1990	6832	2222	5792	18331	5949	3446	3766	5701	22530
1995	9793	2559	6506	20972	9560	4772	4493	6243	27234
2000	11332	2929	7194	26821	11430	6497	4521	8082	34365
2004	12315	N/A	N/A	31600	15161	N/A	N/A	8883	39535

Argentina, Bolivia, Brazil, Canada, Chile, Dominican Republic, Jamaica, Mexico, United States

Europe and Oceania

	AUS	IRE	NOR	ESP	UK
1950	1725	695	1226	493	1269
1960	2371	1140	2049	1050	2147
1970	4129	2173	3823	2560	3518
1980	9845	5746	11404	6503	8559
1990	17124	11675	18578	12833	16346
1995	21015	15610	23351	15278	19511
2000	25835	24948	33092	19536	24666
2004	32183	30583	37357	23481	29462

Australia, Ireland, Norway, Spain, United Kingdom

¹⁷⁶ The following statistics were compiled using the Penn World Table Version 2. Alan Heston, Robert Summers and Bettina Aten, *Penn World Table Version 6.2*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania (September 2006).

Asia

	CHN	HK	DRK	SK	IND	JAP	SIN	TAI
1950	N/A	N/A	N/A	N/A	120	371	N/A	N/A
1960	94	657	N/A	300	187	1006	876	296
1970	139	1889	112	692	313	3257	1761	817
1980	452	7402	558	2533	717	8676	7056	3282
1990	1411	18962	1488	8612	1563	18439	16176	9727
1995	2535	25048	1345	13485	1974	21727	24490	14325
2000	4002	27236	1379	15702	2644	23971	29434	19184
2004	5772	31668	N/A	19354	N/A	26658	31709	21446

China, Hong Kong, Dem. Rep. of Korea (North Korea), Rep. of Korea (South Korea), India, Japan, Singapore, Taiwan

Africa

	DRC	RC	GHN	MAU	MZB	SL
1950	N/A	N/A	N/A	802	N/A	N/A
1960	N/A	200	410	815	170	N/A
1970	358	342	516	1124	271	336
1980	656	1159	897	3247	629	574
1990	848	1961	1053	8113	896	900
1995	482	1571	1250	11101	779	880
2000	359	1286	1392	15121	1093	684
2004	417	N/A	N/A	18552	N/A	N/A

Democratic Republic of Congo, Republic of Congo, Ghana, Mauritius, Mozambique, Sierra Leone, Singapore, Taiwan