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Changing the Power Balance at the WTO: Is the Capacity-Building Agenda Helping?

Background Paper for the 2005 Human Development Report

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INTRODUCTION

Developing countries require assistance, and should be assisted, to maximise the potential gains of their participation in the multilateral trading system. Since the launch of the Doha Round, there has been a sizeable increase in both developed country commitments to trade-related technical assistance and capacity building (TACB) and in debates about the appropriate purpose and nature of that assistance. Here, two trends are worth noting. First, a series of complaints about the effectiveness of assistance have emerged, ranging from concerns about donor-driven assistance, biased objectives and inadequate needs assessments to poor donor coordination and evaluation, fluctuating resources, poor conceptualisation, weak support for local institutions, and inadequate linkages to broader development strategies. Second, there has been a revitalisation of interest in trade-related TACB for activities related to the development of trade capacity (i.e., activities aimed at building supply-side capacity, supporting economic transition, adjustment and diversification, improving competitiveness, meeting technical standards, increasing access to trade finance, infrastructure development, and trade promotion in specific productive sectors).[2]

While acknowledging the urgent need for TACB to build trade capacity in developing countries, this paper calls for greater critical attention to the second major dimension of trade-related TACB—that related to the participation of developing countries in the world trading system (e.g., in negotiations and in dispute settlements processes) and to the legal, regulatory and policy aspects of the implementation of trade agreements.[3] This paper concurs on the need for more demand-driven, efficient, coordinated and service-oriented TACB, but also argues that helping developing countries leverage their participation in the trading system requires moving beyond the bureaucratic tinkering and political exhortation that characterises much of the contemporary debate.

In examining trade-related TACB, it is important first properly to consider its political dimensions. At the launch of both the Uruguay and Doha Rounds of multilateral trade negotiations, the promise of trade-related TACB was deployed as a bargaining “carrot” to build developing country support for agreement (Whalley, 1999; Tandon, 2002). Further, implicit in the discussion of TACB is a recognition that the outcomes of negotiations are often asymmetric and that trade obligations place particular burdens on developing countries, particularly in areas with rapid deadlines for compliance.[4] Many developing countries argue that their obligations to implement resource-intensive WTO disciplines should be linked to their capacity and considered in light of their other development priorities. While trade-related TACB is considered vital to address their financial, institutional and human resource constraints, developing countries insist that the promise of assistance should not be

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[2] The case for greater ‘aid for trade’ has, among others, been taken up by UK government officials (Brown, 2004; Prowse, 2005), but also by the new European Trade Commissioner (Mandelson, 2005) and by staff at the World Bank (Hoekman, 2004; Rugabiza & Rantzien, 2005) each of which have offered proposals for financing, structuring and administrating increased finance.

[3] The challenges related to improving capacity to trade (including institutional capacity to administer agreements) are taken up in a related background paper also commissioned for the 2005 Human Development Report. See, Jensen (2005).

[4] Beyond obligations to reduce trade barriers, the Uruguay Round agreements also require developing countries to undertake a range of regulatory and administrative reforms (including the formation of intellectual property systems, the upgrading of sanitary, technical and phytosanitary standards, and improvements in import licensing procedures and customs valuations). As noted by Finger (1999), the Round did not take into account the cost of implementing these reforms. For many of the least developed countries, the cost of implementation has been estimated as the equivalent of a full year's development budget, much of which may have been more productively devoted to other development purposes.

used as a salve to facilitate their acquiescence to unbalanced rules or to divert attention from their key negotiation priorities—including the revision of the most onerous obligations, and the meaningful operationalisation of provisions on SDT (e.g., including greater flexibility in implementing and complying with obligations) (Whalley, 1999).

Noting this political context, and that unequal political and economic power relations are a defining feature of the global trading environment, this paper argues that achieving a fair and predictable trading environment—a goal to which all WTO Members purportedly aspire—requires a fundamental overhaul of the way in which TACB for trade negotiations, regulation and policy reform is pursued.

More specifically, to extract maximum benefit from their participation in the trading system, TACB efforts must recognize the need to challenge the existing balance of power in trade decision-making, empower developing countries to act independently with respect to domestic reforms, and take seriously the need to build developing country power in international negotiations. To realise these objectives, developing countries require, at minimum:

1. a team of technically competent, diplomatically-savvy negotiators in Geneva that can participate effectively and persuasively in ongoing negotiations and decision-making;

2. an equally informed back-up team in capital able to articulate the various national interests, negotiating objectives and strategies, as well as a layer of expertise external to government (in business, academia, research centres and NGOs) that can provide trade policy advice to government;

3. an effective domestic policymaking process which involves a spectrum of relevant government agencies and draws systematically on expertise and advice external to the government;

4. an ability to forge, maintain and service effective coalitions with other countries on particular issues of negotiation; and

5. the capacity to use the WTO's dispute settlement process to defend and advance their rights.

In each of these five areas, developing country capacities fall far short of their needs. Existing TACB efforts rarely devote adequate attention to these issues; where assistance is available it is often poorly conceived and delivered. On the negotiation front, for example, TACB still fails even to ensure that the poorest developing countries are 'in the room' far less 'at the table' in any meaningful sense.

Part A of this paper briefly introduces the context and key components of TACB for trade negotiations and policy reform, as well as the main actors involved. Part B reviews some of the most commonly-cited problems with trade-related TACB.[5] Building on this review, Part C highlights five areas related to negotiations and trade policy reforms where developing country needs for TACB are high, but where TACB resources are currently lacking, misdirected or miss the mark. Part D concludes with recommendations for possible reforms to TACB in the area of trade negotiations, policy and regulatory reform. Essential elements of this reform must include: a) a new institutional approach which insulates available funding from political pressures and promotes independent advice; b) a commitment to building long-term policy capacity in developing countries; and c) a willingness to help developing countries participate effectively in the international process—on their own terms.

[5] While this paper focuses primarily on WTO-related issues, many of the TACB-related challenges also arise in the regional and bilateral trading context.

PART A

TACB FOR TRADE NEGOTIATIONS AND POLICY REFORM: AN OVERVIEW

In practical terms, TACB for trade policy, negotiations and rules implementation usually consists of activities such as seminars, workshops, training programs in trade rules and procedures, courses on negotiating skills, legal advice and assistance with preparing draft laws, technical missions, the provision of manuals, guides, documents, and/or support for research and data collection.

This kind of TACB involves partnerships among a great number of agencies in both donor and recipient countries, each of which usually has its own distinct priorities, operating arrangements, timeframes and financial resources. Donors include multilateral and bilateral development agencies, NGOs, industry groups, academic centres, think tanks and philanthropic foundations.[6] Key multilateral agencies involved in implementing trade-related TACB include the International Trade Centre, UNCTAD, UNDP, World Bank, WTO, AITIC. Also engaged are regional organizations and development banks (such as UNECLAC and the Inter-American Development Bank) as well as UN specialized and voluntary agencies (including WHO, FAO, WCO, WIPO, UNEP and UNIDO) in their respective areas of competence.[7]

On the developing country side, the range of actors involved includes Ministries of Trade, Foreign Affairs, Health and Agriculture as well as specialized agencies (such as customs and standards offices) and an increasing number of NGOs, academic centres, research institutions and business groups.

PART B

COMMONLY-CITED PROBLEMS WITH TRADE-RELATED TACB

A review of recent evaluations of trade-related TACB reveals a recurring set of shortcomings—in its quantity but also in its conceptualisation, quality and delivery.[8] The key challenges commonly referred to in the literature include:

I. Inadequate assessment and articulation of needs

Developing countries rarely lead decision-making regarding the allocation of trade-related TACB. The quality and relevance of trade-related TACB is constrained by inadequate needs assessments, failures to consult with a wide-range of actors to define priorities, and limited developing country capacity to participate actively its design (Makombe, 2003). In many instances, developing countries fail to know exactly what to ask for and poorly articulate their needs. As such, they often receive sub-standard services and lack the capacity properly to absorb the assistance that is on offer.

II. Donor-driven priorities

[6] For specific information on these programs, see the Trade-Related Assistance and Capacity Building Database (established jointly in 2002 by the Secretariats of both the WTO and the OECD) which maintains details and funding levels of the TACB activities of bilateral, regional and multilateral donors (http://tcbdb.wto.org.). Disappointingly, the database omits the many activities supported independently by non-profit organizations, private foundations, and universities.

[7] UNIDO, for example, is working to help assist with the development of the productive capacities of industry and to build capacities to produce exportable products. The FAO is similarly working in the agricultural sector, particularly to help countries meet product standards. The WHO provides considerable support to developing countries with respect to the implementation of public-health friendly intellectual property policies.

[8] These studies include reviews of multilateral programs such as JITAP and the Integrated Framework as well as bilateral trade-related TACB programs. See, for example, WTO/OECD (2003), Bretton Woods Project (2002), Da Silva & Weston (2002), Ladd, (2003), Solignac Lecomte (2001), Reality of Aid Network (2003), Prowse (2002), Rajapartirana et al (2000), Rowden (2001), and Tan (2002).

Trade-related TACB is too often biased toward donor priorities and economic interests (Makombe, 2003). Bias can take the form of negative discrimination (where donors avoid funding activities that could hurt their short-term domestic interest), positive discrimination (where donors prioritize assistance that might assist their domestic economies), tied-aid, or buy-offs (Lecomte, 2001; Reality of Aid Network, 2003).

In 2001, for example, TACB for the so-called "new issues"—a Northern trade priority—represented over 50 percent of TACB spending for trade policy and regulation (trade and competition (23 percent), trade facilitation (17 percent) trade and environment (8 percent), trade and investment (3 percent)) (see Table 1). This figure stands in stark contrast to the mere one percent of trade policy and regulation TACB devoted to agricultural issues—the undisputed priority issue for developing countries (Oxford Policy Management, 2003:18). Even where developing countries have systematically identified and presented their needs to the donor community (as has been the case with the New Economic Partnership for Africa (NEPAD)), the donor community remains more focused on its own initiatives than on strengthening those proposed by developing countries.

Table 1. Commitments for trade-related TACB in the area of trade policy and regulation (2001)

	Records	Total spending US$m	% total
Total	2,284	466	
Trade mainstreaming in PRSPs/development plans	269	95	20
Technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS)	210	58	12
Trade facilitation procedures	145	77	17
Customs valuation	58	4	1
Tariff reforms	3	0	0
Regional trade agreements (RTAs)	15	3	1
Accession	56	10	2
Dispute settlement	125	1	0
Trade-related intellectual property rights (TRIPS)	59	9	2
Agriculture	72	5	1
Services	88	5	1
Tariff negotiations – non-agricultural market access	235	8	2
Rules	63	1	0
Training in trade negotiation techniques	52	3	1
Trade and environment	66	37	8
Trade and competition	109	108	23
Trade and investment	29	13	3
Transparency and government procurement	12	2	0
Trade education/training	618	26	6

Source: Oxford Policy Management (2003: 81) and OECD/WTO trade-related capacity building project database: http://www.tcbdb.wto.org. Note that the database is too incomplete to devise figures for 2002 or 2003.

Multilateral TACB has not escaped pressures from particular donors. A key example cited in this regard is the earmarking by the EU of its contributions to WTO-administered TACB for work related to the Singapore Issues (Oxford Policy Management, 2003). Concerns about this led to the establishment of the WTO's Doha Development Agenda Trust Funds (though informal conversations with WTO staff confirm that earmarking still takes place and that some countries continue to tie resources to specific projects of interest to them).

III. Biased content

In addition to complaints about bias in the choice of priorities for trade-related TACB, there are also concerns about bias in its design and delivery. Legal and technical advice often devotes too little attention to ensuring developing countries know how to exploit options that could help them to accommodate public policy and development objectives. The tendency for the objectives and orientation of TACB most frequently and inappropriately to focus on donor rather than recipient interests is most pronounced in bilateral programs. One example is the United States' use of TACB monies to promote greater levels of intellectual property protection and enforcement in developing countries beyond TRIPS requirements to the benefit of U.S. industries. A further example is that of assistance provided by USAID in Nigeria and Uganda—which failed properly to advise countries of the flexibilities available to them by the Doha Declaration on TRIPS and Public Health (MSF, CPTech & Oxfam International, 2002; Musungu, 2003; Pengelly, 2003).

In the context of strong economic, political and ideological tensions about appropriate economic policies, it is difficult for international organisations to implement 'neutral' technical assistance. Moreover, it is often the case that in addition to the independent and objective advice they expect from international organisations, developing countries also need sources of assistance that are in fact biased toward advancing their interests. Beyond 'neutral' training trade about rules, rights and obligations, developing countries need advice and training that helps them explore and evaluate the best possible options and strategies to achieve their distinct public policy objectives.

IV. Inadequate donor evaluation and coordination

Over the past several years, the donor community has become increasingly attuned to the need for greater coordination and inadequate attention to evaluation. In particular, there is recognition of the need for tools and indicators for the evaluation of trade-related TACB and for greater transparency regarding the size and purpose of different TACB initiatives (OECD, 2001 & 2003; WTO (2000; 2001a & 2001b; WTO/OECD, 2002 & 2003). Without adequate financial information about the specific technical aspects of cooperation programmes, it is difficult to monitor, assess or improve the contribution of TACB to the trading prospects of developing countries (Pengelly, 2003).[9] Of particular concern is the tendency to evaluate only individual projects or programmes of particular institutions or initiatives rather than their impact on broad trade and development objectives. Moreover, the design and delivery of many training programmes and workshops fail to meet best practices for ensuring a meaningful transfer of knowledge and skills (Kostecki, 2001).

V. Inadequate funding

Post-Doha, many developed countries have boosted their participation in multilateral initiatives and programmes, such as the WTO's Doha Development Agenda Global Trust Fund, the Integrated Framework, and the Joint Integrated Technical Assistance Programme (JITAP) (see Annex 1 for a brief summary of these programs). By far the largest supporters of multilateral TACB as a proportion of their GDP are Germany, Sweden, the United Kingdom and Norway—with the United States and Japan lagging far behind (see Table 1).

[9] A series of further challenges to evaluating TACB were identified at a 2004 OECD meeting, including attribution problems, time lags, difficulties evaluating the quality of processes and engaging local actors in evaluations, difficulties disseminating and internalizing results of evaluations in donor agencies and partner countries. See Carey (2004).

Yet despite efforts to increase its quantity, TACB resources fall far short of both the commitments made and of developing country needs. Resources are particularly scarce in key areas stated as priorities by developing countries. In some instances, donor commitments to increase trade-related TACB represent a diversion of resources from other pressing development priorities rather than an allocation of new resources. Moreover, while support for multilateral TACB has increased over time, many donors prioritise bilateral programs which they are free more explicitly to link to their own objectives (USTR/USAID, 2002; DFID, 2004a/2004b; CIDA, 2003).

Box 1. Contributions to the WTO Regular Budget

Contributions to the Regular Budget of the WTO are made according to a Members' share of world trade in goods and services. This means that developing countries which are heavily engaged in trade sometimes pay more than countries with a far higher GDP per capita and Human Development Index. In 2004, China, Korea, and Mexico were the 9th, 12th and 14th highest contributor to the WTO's regular budget—ahead of developed countries such as Switzerland, Sweden, Austria, Australia, Ireland, Denmark and Norway (see Annex 3).

VI. Weak support for local capacity

A lack of imagination in design and delivery often compromises the effectiveness of available TACB resources. Frequently-cited problems include: lack of investment in local expertise and institutions, duplication, and over-reliance on short-term, one-off or stand alone approaches (ICTSD &IISD, 2003). Donors too often favour their own Northern consultants, project managers and private sector actors for the provision of TACB over long-term investments in developing country consultants, legal teams, NGOs, universities or think-tanks.

VII. Weak linkages to broader development strategies

Post-Doha, donors have intensified discussion of the importance of TACB for development and poverty reduction and the need for strengthened dialogue among trade policy and development experts.[10] To date, however, donor efforts to make TACB a more integral part of development cooperation policies have fallen short of expectations. Efforts to integrate trade and TACB needs assessments into Poverty Reduction Strategy Papers (PRSPs) are reported to have thus far yielded little impact on a country's trade strategy or negotiating positions. A diverse range of actors (the Overseas Development Institute, the IMF, Christian Aid and Novib) have, for example, expressed a common concern that, to date, PRSPs have said very little about trade policy and that any attention that is paid to trade is inadequate (Bieckmann, F. & C. van der Borgh, 20002; Ladd. 2003; Luke, 2002; UNDP, 2001; Koliadina & Lankes, 2003).[11] Moreover, some analysts have questioned whether the PRSP process—can provide the comprehensive development framework needed for considering trade strategies (Ladd, 2003; UNDP, 2001).

Table 2. Contributions to Multilateral TACB Trust Funds (2003)
(USD thousands)

	ITC	JITAP	Integrated Framework	WTO Trust Funds	TOTAL

[10] A key indicator of this trends is the increased number of high levels meetings among trade and development communities, including a DFID-led Trade, Growth and Poverty Conference in December 2003 (which included examination of how to improve the trade policy content of PRSPs in practice at the country level), and an OECD-DAC/WTO Meeting on Trade Capacity Building from 2-3 March 2004 in Paris,

[11] Ladd (2003), for example, argues that "[T]rade policy choices are rarely underpinned by a holistic analysis of poverty in each country. PRSPs fail to consider the impacts of trade on different groups of poor and vulnerable people. Effects are not disaggregated between consumers, producers and employers, between urban and rural populations, or by gender. Dimensions of poverty beyond income—risk and insecurity, access to services, and empowerment—are almost completely ignored."

Australia				366	366
Austria				230	230
Belgium	26			482	508
Canada	1301	429	671	421	2,823
Denmark	1676	120	1000	728	3524
Finland	290	86		488	864
France	621	26	538	1553	2738
Germany	1283			1204	2487
Iceland				11	11
Ireland	169		236	121	525
Italy	402			1152	1554
Japan		25		705	730
Korea	10			210	220
Liechtenstein				15	15
Luxembourg				164	164
Netherlands	1715	68	250	1226	3259
Norway	1471	220	2000	956	4647
Spain	136			226	362
Sweden	1549	151		2122	3822
Switzerland	5272		300	558	6130
United Kingdom	350	138		909	1397
United States	250		400	2238	2888

Source: See www.wto.org, www.intracen.org, and www.oecd.org as well as the joint OECD-WTO trade capacity building database at http://tcbdb.wto.org.

PART C

UNDER-ADDRESSED DEVELOPING COUNTRY PRIORITIES AND AREAS OF OUSTANDING NEED

The following discussion reviews five areas critical to developing countries that achieve inadequate attention. It makes the case that without far greater emphasis in each of these areas, trade-related TACB will continue to fall far short of the mark. So long as TACB continues gingerly to turn a blind eye to critical power dynamics in the world trading system, it will fall far short of addressing the core of developing country needs with respect to their participation in the world trading system.

I. Negotiating resources in Geneva and for Ministerial meetings

"Some 30-35 developing countries, including Brazil, Egypt, India and some LDCs like Bangladesh, are effective and active participants at WTO…and accordingly exert an influence on the rule-making processes…The rest of the developing countries, including many of the LDCs, are currently little more than spectators…if they are present at all" (CIPR, 2001).

Developing countries are out-gunned in multilateral trade negotiations—both in terms of basic representation and in terms of the size and skills of the negotiating teams they are able to field. It is openly acknowledged that some least-developed countries (LDCs) lack the capacity to participate meaningfully at all in WTO negotiations and decision-making.

In 2004, thirty three developing countries (either WTO Members or countries in the process of accession) still lacked permanent representation in Geneva (see Table 3). A major reason cited for their absence is the cost of setting up and running a mission.[12]

[12] A 2001 Commonwealth Secretariat Study estimated the total cost of setting up and running a 3 to 4 person mission in Geneva to be approximately $340,000 per year (Weekes *et* al, 2001). Given increasing costs of living, most agree that

Table 3: Developing countries without representation in Geneva[13]

Antigua and Barbuda	Armenia	Bahamas*
Belize	Central African Republic	Chad
Dominica	Equatorial Guinea*	Fiji
Gambia	Grenada	Guinea Bissau
Guyana	Lao People's Democratic Republic*	Malawi
Maldives	Namibia	Niger
Papua New Guinea	Saint Kitts & Nevis	Saint Lucia
Samoa*	Sao Tome and Principe*	Seychelles*
Sierra Leone	Solomon Islands	St Vincent & the Grenadines
Suriname	Swaziland	Tajikistan*
Togo	Tonga*	Vanuatu*

*WTO Observers (in the process of accession)

Developing country negotiators have far fewer negotiators on average in Geneva than their more powerful trading partners. With a combined population of around 900 million people, the 'Quad' group of countries (Japan, EU, Canada and the United States) have double the number of professional staff permanently stationed in Geneva than for the entire developing world (representing 4.1 billion people) (see Table 4). Whereas the EU fields some 140 professional staff tasked with Geneva-based trade negotiators,[14] the average least developed country Mission has an average of just two professional staff tasked with trade policy. While the Quad countries together field one negotiator for every 4.8 million citizens, developing countries field only one negotiator for every 10 million citizens (see Table 4). Norway has one negotiator per every half million of its citizens. India, on the other hand, has one Geneva-based negotiator for each 150 million of its citizens (see Table 5).

Table 4. Comparison of number of negotiators in Geneva for Quad, OECD, and developing countries[15]

	Combined number of negotiators	Total population (millions)	Number of citizens (millions) per 1 Geneva negotiator
Quad	183	894.8	4.89
OECD	222	1,199.3	5.40
Developing Countries	406	4,123.4	10.1

Table 5. Number of citizens (millions) per professional negotiator in Geneva[16]

Norway	0.56
Singapore	0.6
New Zealand	0.76
Switzerland	0.90
Netherlands	2.80
Canada	2.85
European Union*	3.33

$340,000 per year would likely cover only salaries and living expenses, but not operational costs related to the running of a mission in Geneva.

[13] Source: www.wto.org/english/tratop c/devel c/genwk c.htm, "WTO organizes 'Geneva Weeks' for non-resident delegations", viewed on 19/11/2004.

[14] This figure combines staff at the EC mission, the representative of the EU Council and the staff of EU member country Mission. This figure was derived from information in Annex 3.

[15] Sources: Population (HDR 2004), Number of professional staff (WTO Directory, 2002). See also Annex 3 for a breakdown of statistics by country.

[16] Sources: Population (HDR 2004), Number of professional staff (WTO Directory, 2002).

Japan	5.78
Kenya	10.5
South Africa	11.2
Mexico	11.33
Nigeria	12.09
Tanzania	12.1
Mali	12.6
Brazil	14.69
Mozambique	18.5
Bangladesh	28.76
Pakistan	29.98
China	117.72
India	149.3

* EU figures includes individual EU Member state negotiators and EU negotiators. Annex 2 presents a breakdown of EU figures.

A further way to capture the imbalance in negotiating power is to consider the level of representation relative to the importance of trade to a country's GDP. The United States and EU both have large trading interests to protect—hence the size of their delegations. But many developing countries also have important trading interests to advance. In most instances, the relative importance of trade to developing country economies is far higher than for developed countries. In the United States, for example, trade accounts for 25 percent of its GDP and it fields 16 permanent negotiators in Geneva to represent its interests. Malawi and Togo, on the other hand, have no permanent representation in Geneva despite the fact that trade accounts for 86 percent and 79 percent of their GDP respectively (see Table 6).

Table 6. Comparison of trade as a proportion of GDP and number of professional negotiators in Geneva[17]

Country	**Average trade to GDP, 1990-2002**	**Number of professional negotiating representatives in Geneva**
United States	24.58	16
Zambia	74.35	6
Zimbabwe	74.11	5
Togo	79.29	0
Sri Lanka	83.10	2
Senegal	73.60	5
Philippines	75.08	8
Panama	79.57	3
Nicaragua	90.69	6
Mali	65.96	1
Malawi	86.02	0
Honduras	91.06	5

[17] Sources: Trade/GDP figures from World Development Indicators (April 2004), number of professional staff (WTO Directory 2002 combined with verbal updates from some delegates in Missions). See also Annex 3.

Costa Rica	83.64	4

Even those developing countries with representation in Geneva often lack the resources to monitor and participate effectively in the multiplicity of negotiations and discussions simultaneously under way. The Doha Round launched negotiations in over 20 areas and the ongoing work of the WTO involves almost 50 different committees, councils or working groups which meet on a regular basis.

Many Missions simply abandon the effort to monitor or attend the full range of WTO meetings—let alone to contribute substantively—instead conceding that they can only devote attention to two or three core issues. In some developing country Missions, even those delegates listed as covering WTO issues may also be charged with other UN agencies such as UNCTAD, the ILO or WIPO. A comparison of three Missions illustrates the point. The Permanent Mission of Canada dedicates one of its professional staff solely to the ongoing discussions on environment and trade. In the Tanzanian Mission, one of its two trade professionals is charged with handling not one, but three of the most ‘complex and high stakes issues—services, non-agricultural market access, and trade facilitation—as well all UNCTAD meetings. The other is charged with agriculture, dispute settlement, TRIPS and Rules issues, while sharing responsibility for all other issues, such as technical barriers to trade, sanitary and phytosanitary standards, subsidies and development. Even a middle-income developing country like South Africa faces severe challenges—with just one person dedicated to handling agriculture, TRIPS, and trade and environment as well as other miscellaneous issues that arise. While countries may be able to ‘show up’ to meetings, few can hope to contribute substantively far less to solve problems or lead negotiations.

Developing country governments can also rarely match the depth of government attention that developed countries can dedicate to each of the WTO negotiation areas (and often also for each particular bilateral or regional negotiation). The United States, for example, regularly flies teams of staff to Geneva for particular issue-specific negotiations. By contrast, many developing country officials arrive in Geneva with little understanding of trade matters (and the skills they acquire are not often well-used when they return home). Even where countries have benefited from assistance to train staff, many lack the resources to fly the relevant skilled professionals from capital to attend negotiations.

Staffing and financial shortages place developing countries at a particular disadvantage as the number of parallel meetings proliferates in the lead up to and during Ministerials and mini-Ministerials. Even where developing countries have expertise in their capitals, few can afford to devote significant resources to sponsor large delegations. At the Doha WTO Ministerial, the EU boasted an official delegation of some 508 individuals (including some 50 delegates from the European Commission), Japan had 159 delegates, Canada had 62 and the United States had 51. At the smaller end of the scale, countries such as Haiti had only one representative (Jawara, 2003).

Finally, countries in the process of WTO accession face enormous pressures from individual WTO Members to take on GATT-plus commitments and few have a strong presence in Geneva. While these countries have a particular need for strong negotiating capacity and for independent advice, the sources available to them are limited. While the power balance is perhaps inevitably tilted against acceding countries, it is possible that stronger representation in Geneva and better equipped negotiators might be better able to resist some of the more onerous deals (Oxfam, 2003b).

Few systematic efforts have been made to assist developing countries to increase the quantity and quality of their representation in Geneva. The WTO finances an annual ‘Geneva’ week—where it hosts government officials from those countries with no representation in Geneva to inform them of recent developments in the WTO. The WTO also provides funding for interns to serve in developing country missions in Geneva. While important, such WTO initiatives fall far short of addressing fundamentally the lack of permanent or adequately staffed, resourced and supported Missions. Moreover, it is not always clear, however, that countries are selecting appropriate individuals for available trainings—with some coming several times and others hailing from not directly relevant ministries (CUTS-Africa Resource Centre, 2001).

A further complication for developing countries—particularly the smallest and least-developed—is the task of devising trade policy positions amidst a complex array of intersecting multilateral, regional, sub-regional, and bilateral negotiations. Many West African countries, for example, face the task of analysing the inter-sections between their negotiations as part of the EU-ACP Economic Partnership Agreements on the one hand and WTO negotiations on the other. Zambia provides another example; its trade officials juggle concurrent negotiations related to the WTO, the Southern African Customs Union (SACU), the Southern African Development Community (SADC), the African Growth and Opportunity Act (AGOA) with the United States, and Economic Partnership Agreements (EPA) with the European Union.

II. Asymmetries in access to 'back up' and expertise

The effectiveness of most developing countries in Geneva is severely undermined by a lack of technical and substantive 'back up' from capital on the specific issues under discussion and on the implications of different proposals for domestic priorities. A focus only on the number of negotiators in Geneva thus underestimates the power asymmetries at play and the depth of relative developed country negotiating strength.

Developed countries (and some of the larger developing countries) benefit from expert analysis and substantive advice from officials in their capitals and also beyond government from academia, independent research centres/think tanks, domestic industry groups, and NGOs. In advancing their trade policy, the European Commission and USTR use both formal and informal channels to acquire advice from a wide spectrum of government agencies as well as from industry and from civil society. Diagram 1 and 2 contrast examples of the 'back up' support from which EU officials in Geneva benefit to that available to an LDC such as Tanzania.

The following indicators highlight the contrast in access to expertise:

- <u>Size of trade policy units</u>: Compared to developing countries, OECD countries generally have a far greater number of capital-based staff devoted to trade policy and to assisting Geneva-based negotiators. It is difficult to extract clear numbers from governments regarding the total number of staff or resources they dedicate to international trade negotiations. In some instances, trade policy expertise is highly concentrated in one agency (such as Trade or Foreign Affairs) while in other instances, the country's trade policy capacity is spread across a number of agencies. Conservative estimates are that the United States and EU each have well over 500 government officials dedicated full-time to advancing their respective trade strategies. Tanzania, on the other hand, has less than 10 government trade policy staff that it can draw from. St. Lucia has a domestic trade policy unit of just two. Middle income countries tend to have a greater number of staff, but still far less than their developed country counter parts. South Africa has around 15 dedicated trade policy professionals from across its Ministries devoted to ongoing negotiations and Brazil has an estimated 150 staff engaged in ongoing trade policy discussions.

Diagram 1: Tanzania: Limited Access to 'back up' expertise

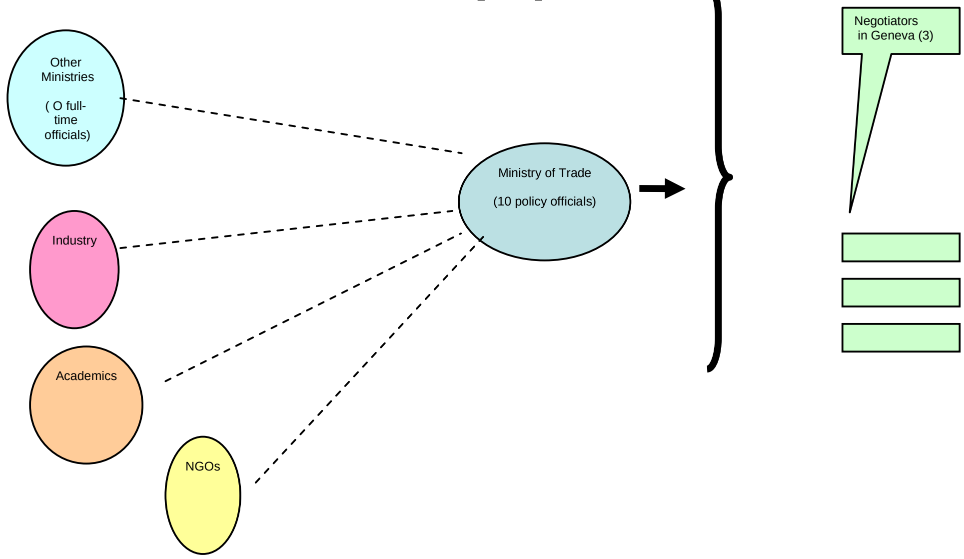
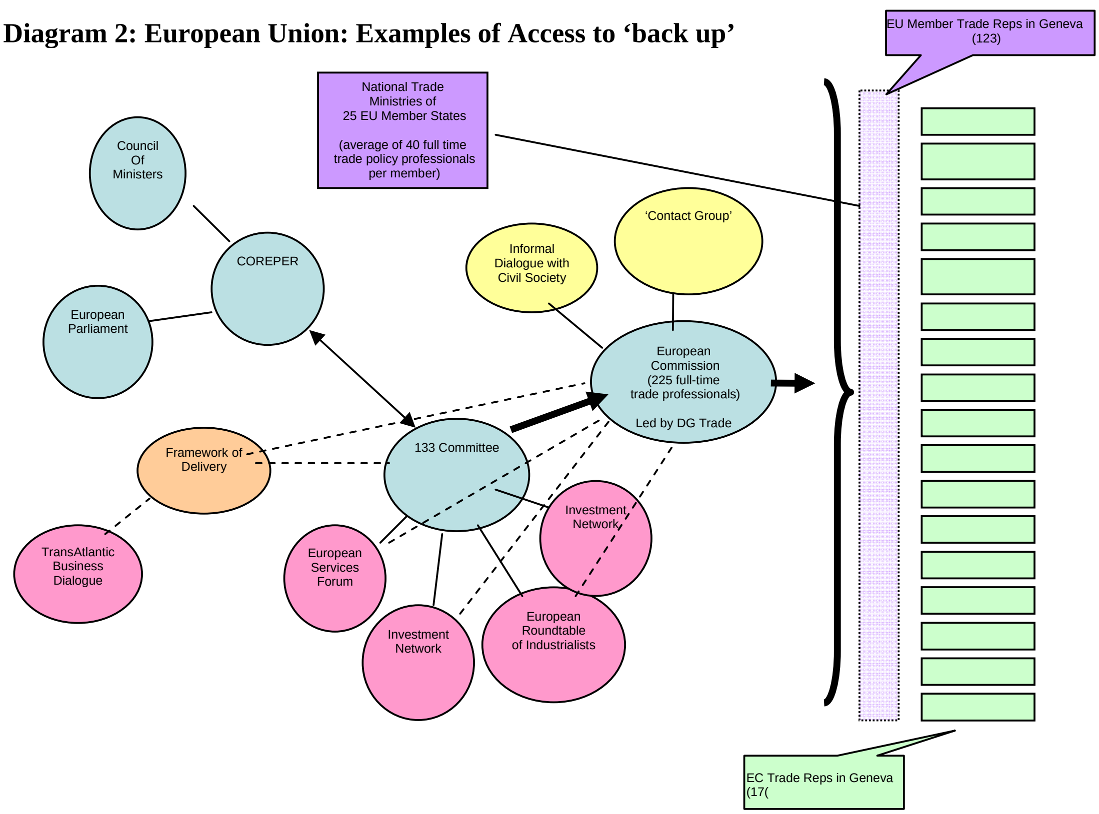


Diagram 2: European Union: Examples of Access to 'back up'



<u>Notes on EU Policy Process</u>: The European Commission is the negotiator on behalf of 25 Member States. The European Council of Ministers is the decisionmaker—the Mandate on which the commission negotiates is determined by the Council who then also approves the result of the negotiation. The European Parliament is informed by Commission of trade development and gives assent on major treaty ratifications. There is no formal provision for consultation. The 144 Committee is a permanent dialogue and sounding board between the Commission and Member States on trade policy (consultative role). National trade officials represent the Council on this Committee. The 'Contact Group' is comprised of a dozen CSO and private sector groups who meet 5-6 times years to advise the DG Trade. COREPER: The Committee of all 15 permanent representatives in Brussels. The Framework of Delivery is a strategy produced by the TransAtlantic Business Dialogue which draws together government and industry groups from the United States and Europe.

- Number of think tanks and research centres active on trade policy. The most influential trading nations have access to a range of think-tanks and research centres which produce regular in-depth reports on negotiation topics and national trade priorities but also on the trading system more generally. The United States, for example, benefits from detailed studies by think-tanks such as the Institute for International Economics, the Brookings Institution, the Center for Strategic International Studies, the RAND Institute and the Heritage Foundation. It also benefits from a series of research units internal to government. Together, these think-tanks generate reports, books and studies each year on almost every topic of negotiation, including detailed information on domestic interests, foreign trading partners, and trade priorities. Australia provides another example—where its leadership of the Cairns Group was supported by the government's investment in trade policy expertise in its dedicated agricultural research think tank—the Australian Bureau of Agricultural and Resource Economics (ABARE).

  While no developing country comes close to matching developed country capacities to monitor and analyse the interests of their trading partners, they would do well to learn from the example of several of the larger developing countries.[18] South Africa, for example, has several specific independent research centres devoted to trade economics and law—such as Trade and Industry Policy Strategies (TIPS) and the Trade Law Centre for Southern Africa (TRALAC). Brazil, India and China each also have a cluster of think tanks and economic research centres from which they can draw advice in devising their trade policies. Most developing countries, however, are limited in domestic sources of advice to small groups of academics informally organized in a university-based research centre or to a handful of industrial leaders or civil society groups. Geneva-based delegates from Egypt and the Philippines, for example, could not name a single think-tank in their countries upon which they would call for trade policy advice. A Tanzanian delegate could name only two potential domestic sources (the Economic and Social Research Foundation and the University of Dar Es Salaam) to which he might turn for trade policy advice—but could not name a particular instance in which he had received concrete advice and acknowledged that neither potential source offered any particular expertise in trade policy.

- Active involvement of domestic lobbies. In preparing for international negotiations, the United States and EU benefit from the active efforts of domestic industry and NGO lobbies (see Box 2 for two illustrations). These lobbies can articulate clear negotiating objectives, provide precise data, propose concrete negotiating language and offer advice on negotiating tactics. They also supplement government resources by directly lobbying other countries. The EU and United States each also have clear processes for harnessing that input (see section on policymaking process below). Few developing countries have either industry associations with equally sophisticated trade policy agendas or consultation processes that enable them systematically to draw on expertise where available. While there are public concerns about excessive private sector influence on EU and US trade policymaking—the important point here is simply that the success of developed country negotiators is due in part to their access to highly specialized domestic sources of substantive and technical support.[19]

[18] Information regarding domestic research capacity draws from informal discussions with negotiators about the domestic sources they can reliably draw on in their negotiations.

[19] NGOs concerned about transparency in the EU and U.S. trade policymaking process have, for example, raised concern that industry lobbies exercise too much control over the market for information on which trade decision-making depends; they have argued that their governments must also look beyond industry advice to draw on expertise from a broader range of interest groups, particularly those with public interest-oriented agendas. In the EU, for example, NGOs have argued for greater transparency of the decision-making process, greater opportunities for public and parliamentary input, requirements for the disclosure of lobbying activities by major companies and a Code of Conduct for Commissioners which specifies limitations on their potential to shift to industry positions after leaving office (Trocaire, 2003; European Commission 2004).

Box 2. Examples of developed country reliance on industry advice

The United States, trade and intellectual property

The United States boasts a system of some 20 advisory committees charged with supporting the development of its international trade strategy. In the area of intellectual property, for example, USTR is mandated by Congress to seek advice and input from its Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15). ITAC-15 has a membership of fifteen representatives of US companies and industry associations (see Table 7).

The combined economic weight of several industries represented on ITAC-15 is greater than many WTO Member states and translates into a formidable capacity to influence policy debate. The pharmaceutical industry provides a case in point. The Pharmaceutical Research and Manufacturers Association of America represents more than 100 brand name drug companies and is reported to have spent $14.3 million in 2002 on lobbying in the United States. In addition, individual pharmaceutical companies spent a combined $91.4 million on lobbying U.S. policymakers to adopt their preferences on a range of policy issues—including on the trade front (Oxfam, 2003a). Moreover, several industry associations have a capacity for monitoring, research and policy analysis that far exceeds that of many developing country missions. Each year, for example, the Biotechnology Industries Association (BIO), PhRMA and the International Intellectual Property Alliance (IIPA) submit 20-50 page reports to USTR on the state of play with intellectual property legislation and enforcement in over 50 countries, including detailed country studies.

The European Union, the United States and trade in services

The services negotiations provide a similar example of the ways in which US and EU officials benefit from the substantive and technical support from industry lobbyists and research to help them develop and advance their agenda.

The idea of a services agreement at the WTO was originally advanced—almost 20 years ago—by a small group of major US corporations. According to its web-site, the US Coalition of Service Industries (CSI), "played a major role in shaping" GATS and the 1997 WTO Telecommunications and Financial Services Agreements. Moreover, it states that "CSI's ability to use services trade negotiations to advance the industries of its members is unmatched". [20] Similarly, throughout the GATS negotiations, the European Commission's position has been informed by groups such as the European Services Forum (ESF)—a network of representatives from the European services sector (see Table 8 for ESF's membership).

The ESF directly monitors and provides advice to EU governments—from detailed research documents to negotiating proposals. It also lobbies other developed country governments and the WTO Secretariat for the liberalisation of services markets through the WTO GATS negotiations. Negotiation documents and European Commission papers frequently circulate between industry and the Commission (Palast, 2001). In correspondence with the ESF on the GATS negotiations, the European Commission affirmed their dependence on industry when it noted that it "would very much welcome industry's input to this exercise, both in terms of finding out where the problems currently lie and in making specific requests. Without ESF input the exercise risks becoming a purely intellectual one."[21]

[20] See home page of the U.S. Coalition of Services Industries (CSI) http://www.ucsci.org/about/ viewed on 30/1//2004.
[21] In its Post-Cancun Trade and Investment Strategy (December 2003), UNICE for example argued that services offers tabled by the EU's trading partners are "highly insufficient" and called on EU negotiators to "continue to press for

Few TACB resources are devoted to strengthening the capacity of developing countries to propose and defend independent trade policy positions and objectives (Prowse, 2002). The WTO does provide basic trainings—in Geneva and at the regional level—to assist developing country policymakers to understand the rules and issues at stake at the WTO. The WTO is also undertaking efforts to build a network of developing country academic centres with capacity to run its basic three-month trade policy courses in the field. While the WTO may well be the best positioned institution for the provision of technical legal advice on the history and content of WTO agreements—it is far from clear (even by internal accounts) that it is the best institution to offer any more extensive guidance to developing countries regarding the interpretation and implementation of their WTO commitments or consolidation of their negotiating positions.

Beyond the rules and technicalities of ongoing negotiations, countries need help to identify their specific national interests and priorities in respect of WTO rules and negotiations and to think through different scenarios for how best to advance them. At present, the research, analysis and training favoured by donors is often too loosely tailored to be of direct use to particular countries in negotiations (Tekere, 2001). Developing country negotiators report that they are most often provided general macro-economic studies whereas they also have a need for industry-specific studies linked to practical questions of negotiation (Kostecki, 2001).

Where donors do support focused research initiatives, there is frequently an over-reliance on Northern consultants and developed country think-tanks. In the UK, for example, a large proportion of DFID funding is channeled through domestic research centres such as the Institute for Development Studies (IDS) and the Overseas Development Institute (ODI), rather than directly to developing country counterparts.

The development of national trade policy capacity requires building long-term institutional capacity both within and external to government in developing countries. Yet, trade-related TACB from official sources rarely provides systematic support to build durable in-country institutional capacity to analyze and inform trade policy issues (ICTSD & IISD, 2003). Developing countries do currently have some regional and international think-tanks and NGOs from which they can draw trade policy advice—including the European Centre for Development Policy and Management (ECDPM), the South Centre, the International Centre for Trade and Sustainable Development (ICTSD), International Lawyers and Economists Against Poverty (ILEAP), Third World Network—but such organizations rarely have the resources or mandate to get involved in the specific task of analyzing specific country sectors and options. Poorer and smaller countries can sometimes benefit from studies by regional centres but these rarely compensate for what might have been gained from a domestically-oriented research and capacity.

The Canadian IDRC is one of the few donor institutions which has worked systematically to build research capacity and durable institutions in developing countries—including through its support for institutions such as TIPS in South Africa and for networks such as the Trade Knowledge Network (which fostered collaboration among developed and developing country researchers on issues related to trade and sustainable development). Again, however, some participants in this network have complained that it is far easier to acquire donor support for research on topics such as 'sustainable development' (which match with donor priorities) than to acquire support for their own proposals for much-needed analyses of particular domestic trade priorities and options.

ambitious and significant results in these areas." Similarly, the European Services Forum (ESF) has advised the EU that: "Trade in services should take centre stage as it has the most to bring to the EU economy. The existing offers are rather disappointing... many major emerging countries have still not tabled any initial offers and this needs to be remedied." (European Services Forum, New ESF Priorities for the DDA, 5th November 2003). This high level of ambition was subsequently reflected in a communiqué issued by the European Commission three weeks later, "[services' negotiations] … are clearly one of the areas… where the EU has much to gain. Services should therefore be maintained at the top of the EU's negotiating agenda."

The development of local capacity would help foster the articulation of the variety of perspectives and informed engagement of national stakeholders—vital to a healthy process of trade policy development within a country. To this end, donors should give far greater consideration to actors outside government as repositories of long-term capacity from which governments could draw over time—beyond the tenure of particular government officials. In providing assistance, the focus should be on establishing multi-disciplinary teams, including experts and former negotiators from other developing countries, as well as different perspectives on issues. Ideally, donors would also support links between developing country research NGOs, think tanks and academic centres with international NGOs and think-tanks active on the issues. Moreover, in approaching the task of building research capacity, a key challenge is to ensure a balance between economic research and practical policy/legal analysis.

Table 7. Examples of members of the USTR's ITAC-15

Pharmaceutical Research and Manufacturers Association (PhRMA)	**International Intellectual Property Alliance (IIPA)**	**Biotech Industries Organization (BIO)**
PhRMA groups some 50 leading research-based pharmaceutical and biotechnology companies in the United States.	IIPA's members are the Association of American Publishers (AAP), Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Independent Film & Television Alliance (I.F.T.A.), the Motion Picture Association of America, and the Recording Industry Association of America (RIAA)	BIO is a membership association of over 1,000 companies, academic institutions and biotechnology centers from around the world.

Table 8. Members of European Services Forum (ESF)

Austria (1)	**Italy**
UNIQA Versicherungen AG (www.uniqa.at)	Poste Italiane S.p.A (www.poste.it)
Belgium (4)	Telecom Italia (www.telecomitalia.it)
DHL Worldwide Network SA (www.dhl.com)	**Netherlands (2)**
Microsoft EMEA (www.microsoft.com)	Royal Ahold NV (www.ahold.com)
UNICE (www.unice.org)	TPG (TNT Post Group) (www.tntpost.com)
White & Case LLP. (www.whitecase.com)	**Portugal (1)**
France (8)	Portugal Telecom (www.telecom.pt)
Ernst & Young (www.ey.com)	**Spain (2)**
AXA Group (www.axa.com)	Espacio y Entorno SL (www.arqinex.es)
IBM Europe, Middle East & Africa (www.ibm.com)	Telefónica (www.telefonica.es)
France Telecom (www.francetelecom.fr)	**United Kingdom (16)**
Gide, Lorette, Nouel (www.gide.fr)	Accenture (www.accenture.com)
La Poste (www.laposte.fr)	Arup & Partners (www.arup.com)
Veolia Environnement (www.veoliaenvironnement.com)	Barclays PLC (www.barclays.com)
Germany (7)	British Telecommunications plc - BT (www.bt.com)
ARD (www.ard.de)	Clifford Chance (www.cliffordchance.com)
Commerzbank AG (www.commerzbank.com)	EDS EMEA (www.eds.com)
Deutsche Telekom AG (www.deutschetelekom.de)	Herbert Smith (www.herbertsmith.com)
Metro AG (www.metro.de)	KPMG (www.kpmg.com)
TUI - Touristik Union International Gmbh - (www.tui.com)	Lloyd's of London (www.lloyds.com)
SIEMENS AG. (www.siemens.com)	Marks & Spencer plc (www.marks-and-spencer.co.uk)
Ed ZÜBLIN A.G. (www.zueblin.de)	mmO2 (www.mmo2.com)
Greece (1)	PricewaterhouseCoopers

	(www.pwcglobal.com/uk)
National Bank of Greece (www.ethniki.gr)	Prudential Plc. (www.prudential.co.uk)
	Royal Bank of Scotland (RBS) (www.royalbankscot.co.uk)
	UNIVERSAL MUSIC Group (www.umusic.com)
	Vodaphone (www.vodaphone.co.uk)

III. Inadequate domestic trade policymaking processes

A key source of developed country strength in international negotiations is, as alluded to above, the existence of a domestic trade policymaking *process* which enables them to draw on a range of domestic expertise—from both government and non-government actors—to formulate their trade strategies and monitor compliance of foreign countries with WTO commitments. Most developing countries, by contrast, have weak domestic processes for aggregating interests and for ensuring that trade policymakers take advantage of available expertise and information.

From a development perspective, the failure to put in place adequate domestic trade policy making processes has important distributive consequences. In India and Brazil, for example, civil society groups complain that their government's growing interest in listening to the voice of domestic industry groups is yet to be matched by equal attention to non-industry voices such as those of rural producers and farmers. Representatives of the poor rural constituencies are, for example, rarely invited to participate alongside industry as part of government delegations to international trade negotiations.

Moreover, while there is increasing recognition of the importance of participatory trade policymaking processes, donors devote few resources to supporting such processes or the capacity of particular domestic players to participate therein. It is often NGOs and private philanthropic foundations which pick up the slack—financing the efforts of NGOs and public-interest research centres to build capacity to engage in trade policy debates and to advocate for more participatory domestic trade policymaking processes.

IV. Inadequate support for developing country coalitions

A strategy used by many developing countries to achieve better outcomes in international trade negotiations is to form coalitions with other developing countries. Several such coalitions exist, including the G90, the G20 and the Caricom Regional Negotiating Machinery. A central challenge to the sustainability and usefulness of such coalitions is the availability of analytical back up. Few active developing country coalitions have the internal research and legal capacity necessary to support their efforts to advance a proactive negotiating agenda. In the agricultural area, for example, the G20 has the benefit of considerable substantive leadership from Brazil, and the contribution of significant analytic support from India. But many other coalitions, such as the G90 and the 'Special Products' group, fare less successfully in part because they can not rely on the same direct access to expertise. Instead, most developing country coalitions depend on *ad hoc* contributions from international agencies, NGOs, government officials and individual researchers.

Developing countries have also organized themselves in regional groups such as the African Union. Again, however, neither the AU in general or its office in Geneva receive the kind of support necessary for them to play an active role in backstopping the various African coalitions or African participation in other coalitions. One ongoing resource to which developing country governments have access in Geneva is the South Centre—an intergovernmental organization of developing countries—which has played an important role in backstopping the work of coalitions such as the Like-Minded Group of countries in the lead-up to the Doha Ministerial. In the past year, several developing countries have stepped up their own financial contributions to this Centre.

Only a small handful of bilateral donors have demonstrated a willingness to support developing coalitions with a distinct political mission; primarily because their negotiation objectives may be at odds with those of powerful donor nations. One exception is the UK's DFID which has played a behind the scenes role in some instances (e.g., in the lead up to the Cancun WTO Ministerial, DFID helped Action Aid's efforts to support the G90 coalition in the agricultural negotiations).

V. Imbalanced access to justice

WTO Members need to be able to rely on the dispute settlement mechanism to ensure their trading partners fulfill negotiated WTO commitments. Effective understanding of, and access to, the WTO's dispute settlement procedures is vital to securing the enforcement and maintenance of each WTO Member's rights. The evidence, however, reveals that the WTO dispute settlement process has yet to be of direct use to most of the poorest developing countries.

The United States is the highest user of the WTO's Dispute Settlement System—bringing a total of 76 cases against other WTO Members (see Table 9). Taken as a group, developing countries have been relatively pro-active in dispute settlement, bringing a total of 64 cases against Quad countries (whereas the Quad has bought 43 cases against developing countries). (See Table 10 and Annex 5 for a summary of WTO disputes by major groupings). That said, the group of developing countries that has brought disputes to the WTO is very small—with several of the same countries involved in multiple disputes. Many other developing countries either abandon or never launch dispute settlement proceedings because of the political and financial costs of pursuing such action. Of all the disputes, only one dispute has been brought by an LDC (Bangladesh versus India) (see Table 11). In addition, no African country has made use of the dispute settlement mechanism (though four African countries recently joined as third parties in the Brazilian cotton case against the United States).

Table 9. U.S. Participation in the WTO's dispute settlement system[22]

The US is the highest user of the Dispute Settlement System bringing 76 cases against other Members	76 Cases
Amount of money donated by the US to support the Advisory Centre on WTO Law	0

Table 10. Developed and developing countries in the dispute settlement system[23]

Number of cases bought by the Quad against developing countries	43
Number of cases bought by developing countries against the Quad	64

Table 11. The WTO dispute settlement mechanism: Little use to the poorest[24]

Number of Cases brought by Least Developed Countries against Developed Countries	0
Number of Cases brought by Least Developed Countries against Developing countries (Bangladesh bought case against India (Ds307)	1
Number of Cases brought by African countries against any WTO Member	0

[22] Source: WTO dispute database at http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm. Viewed at 1/11/04. See also Annex 5 for a summary of WTO disputes by country.
[23] Source: WTO dispute database at http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm. Viewed at 1/11/04. See also Annex 5 for a summary of WTO disputes by country.
[24] Source: WTO dispute database at http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm. Viewed at 1/11/04. See also Annex 5 for a summary of WTO disputes by country.

Table 12. Summary of WTO disputes to date[25]

	As plaintiffs			
As defendants	United States	EC	Japan	Canada
European Communities	14	0	7	4
United States	0	26	1	3
Japan	6	5	0	1
Canada	4	3	1	0
Developed Countries	32	5	0	3
Developing Countries	20	24	3	2
Least Developed Countries	0	0	0	0

	As defendants			
As plaintiffs	United States	EC	Japan	Canada
European Communities	26	0	5	7
United States	0	14	6	12
Japan	7	1	0	0
Canada	12	7	0	0
Developed Countries	17	10	1	1
Developing Countries	32	30	0	2
Least Developed Countries	0	0	0	0

* Note that in some instances several countries have joined a dispute, so the numbers do not total exactly.

A range of institutional, financial and political factors constrain developing country use of the WTO's dispute settlement process, including:

- Inadequate human resources and expertise. Few developing countries have the in-house technical expertise to cope with the legal complexity of WTO disputes or can afford to devote the necessary staff time to this task.

- Inadequate monitoring capacity. Few developing countries have the capacity to monitor the international trading environment, identify violations of WTO commitments by other Members, or demonstrate impacts on their domestic industries. In part, the acquisition of such capacity depends on the sophistication of domestic industry groups and their awareness of international trade obligations.

- Inadequate financial resources. The financial cost of disputes/litigation presents a high barrier for developing countries. The costs of running a WTO dispute vary considerably—depending on internal government resources, costs of external legal advice, the length and complexity of the dispute, the kind of evidence the country needs to gather and studies it may need to commission, and the possibility of re-allocating internal budgetary and staff resources to cover a dispute. In some instances, the capacity of a country to take on a case depends on the level of interest of a domestic industry group and their willingness to contribute toward the legal costs. The minimum cost of leading a WTO dispute was estimated by ACWL staff at an average of $1-2 million per case, though costs are often higher.

[25] Source: WTO dispute database at http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm. Viewed at 1/11/04. See also Annex 5 for a summary of WTO disputes by country.

- Fear of consequences. Many developing countries—particularly those most dependent on foreign assistance and concessional trade arrangements with more powerful trading partners—avoid launching disputes on the grounds that the political risk of irritating major trading partners may outweigh any potential benefit of winning a case.

Developing countries have different approaches to running WTO cases. Some countries, such as Brazil, use a combination of internal resources and international law firms. While Brazil has made an internal commitment also to building its in-house capacity to run disputes, others have assessed that they would be better served to rely primarily on international legal advice. India, for example, uses the services of the ACWL when involved in disputes. The Philippines relies on a combination of internal expertise located in Geneva and the ACWL. In recent years, the establishment of several pro-bono services in international law firms for developing countries has provided another option for some countries. Developing countries also often rely on informal advice provided by experts in their countries and occasional *ad hoc* legal support from bilateral sources, philanthropic donors, or pro-bono support from NGOs and academics.

One of the few bright spots in the dispute settlement arena was the creation in 2001 of the Advisory Centre on WTO Law (ACWL) (see Box 3). Established independently of the WTO, the ACWL is designed explicitly to help even the playing field for developing countries on the assumption that the proper balance of rights and obligations for all Members under the WTO can only be maintained if all Members have effective and affordable access to, and an equal opportunity to participate in, WTO dispute settlement proceedings. Importantly, neither the United States, the EU nor Japan—three of the most powerful trading entities and the highest users of the dispute settlement system—is a Member of the ACWL. Nor, to date, have any of these three made a financial contribution to the ACWL (see Table 13). Indeed, the European Commission opposed and originally tried to block the establishment of the Centre (even though several EU countries are ACWL Members) (SEATINI, 2001).

While the ACWL represents an important attempt to address the financial impediments to developing countries participation in dispute settlement proceedings, it far from addresses the range of problems that constrain the ability of developing countries, and particularly LDCs, to realize the potential benefits of their membership of the dispute settlement system. Still unaddressed are the challenges developing countries face in terms of knowing when their rights are being violated by other countries. Most importantly, the fact that no LDC has mounted a case against a developed country, despite the ACWL's offer of discounted legal advice, provides a strong indication that legal aid does not and perhaps can not address the over-riding structural problems of political risks and consequences (Annex 6 provides a summary of the cases for which developing countries have sought ACWL advice).

Box 3. The Advisory Centre on WTO Law (ACWL)

Co-owned and administered by its Member States (see Table 10), the Advisory Centre on WTO Law provides the following services to developing countries, and in particular the least developed among them:

- Legal advice on WTO law
- Support to parties and third parties in WTO dispute settlement proceedings
- Training of government officials in WTO law through seminars and traineeships

For cases where the ACWL is unable to provides support through its own lawyers due to a conflict of interest, it relies on a roster of law firms and individuals who have registered their ability to provide external legal counsel services to least developed countries and to members of ACWL. These include Baker & McKenzie, Clyde & Co., King & Spalding, O'Connor and Company, Sidley Austin Brown & Wood LLP, Thomas and Partners, Vermulst Waer & Verhaeghe, and White & Case.

The ACWL is funded through an Endowment Fund and Legal Fees.

- Endowment Fund**:** Members from developing countries, separate customs territories or economies in transition pay a one-time financial contribution (in accordance with their capacity to pay) to the Endowment Fund.[26] Least developed countries are not required to make such payments to enjoy all the benefits. Each of the developed country members of the Centre – Canada, Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Sweden and the United Kingdom - has contributed US $1,000,000 or more to the Endowment Fund and/or committed to pay at least US $1,250,000 in multiyear contributions to finance expenditures in the first five years of operations.

- General legal advice: Free for Members and all least developed countries up to a maximum number of hours. For developing countries that are not ACWL Members the hourly rate varies between CHF405 (US$250) and CHF567 (US$350), depending on their share of world trade and per capita income.

- Support in WTO dispute settlement proceedings: Fees for ACWL Members for legal services in WTO dispute settlement proceedings range from CHF 162 to CHF 324 per hour depending on the countries share of world trade and per capita income. Least developed countries pay CHF 40 per hour. The hourly fees charged by the ACWL for its support in dispute settlement proceedings are based on a time budget adopted by the Management Board.

Table 13. ACWL Members

Signatories	Signatories	Non-Signatories (by accession)
Canada	Hong Kong, China	Jordan
Denmark	India	Mauritius
Finland	Kenya	Oman
Ireland	Latvia	Turkey
Italy	Nicaragua	El Salvador
Netherlands	Pakistan	Chinese Taipei
Norway	Panama	Indonesia (March 2004)
Sweden	Paraguay	
United Kingdom	Peru	**In process of ratification**
	Philippines	Switzerland
Colombia	Thailand	
Dominican Republic	Tunisia	
Ecuador	Uruguay	
Egypt	Venezuela	
Guatemala		
Honduras		

PART D

CONCLUSION AND REFORM PROPOSALS

Too little TACB is directed toward building developing country capacity in the area of trade policy, negotiations and regulation. Where assistance is provided, it too often reflects donor priorities rather than the needs of particular countries. While sometimes well-intentioned, discussion on TACB reform frequently amounts to a bureaucratically-driven ‘tinkering’ around the edges. Rarely does assistance reflect a true commitment to confronting and addressing the failure of TACB to provide fundamental assistance to countries where—politically—they need it most. This paper has thus argued that there is an urgent need to shift TACB from the symbolic

[26] Developing country contributions vary with the share of world trade and income per capita, and range from 81,000 to 486,000 Swiss francs per year.

realm to focus on what ought to be the real goal: helping developing countries bolster their relative power in the world trading system.

I. Build a more independent system for the design and provision of TACB

It is now commonplace for donors to argue that developing countries should lead the design, orientation, focus and implementation of TACB (OECD, 2001 & 2003; UNDP, 2002). But ongoing efforts to improve the effectiveness of TACB rarely get to the heart of the problem—the supply-driven nature of most TACB. Instead of gearing assistance towards priorities identified by donors, such as on straightforward compliance with WTO agreements, developing countries should be able to receive advice regarding prospective WTO-related reforms and options from independent sources. The challenge is not to continue reiterating old reform proposals but to refocus attention on thinking through mechanisms and approaches which will help:

- de-link TACB from donor economic priorities,
- insulate TACB from political pressures and bias,
- put developing countries in the drivers' seat,
- increase available financial resources,
- reduce bureaucratic constraints on tailoring assistance to meet country needs, and
- build developing country power in the trading system.

Advancing this agenda requires that donors think 'outside the box' about solutions. A commitment among donors to a more institutionally 'independent' approach to TACB could be one way of achieving this end while also improving the stability, predictability and more rapid dispersion of TACB funding. A more independent and 'competitive' approach to TACB could, for example, stimulate a greater focus on long-term local capacity, draw on the diversity of local expertise and stakeholders, better match independent international expertise with national needs, and ensure greater tailoring of legal and policy advice to development objectives.

One possible approach would be to establish a new facility for TACB within existing institutions—one which enables TACB to be devised and implemented at arms' length from the influence of particular donors. Models for similarly 'insulated' units within multilateral organizations from which lessons might be learned include the Operations and Evaluations Department and the Inspection Panel at the World Bank.

Alternatively, donors and recipients could fulfil their legal commitments to TACB by channelling resources through mechanisms outside existing institutional structures in ways that separate financing from the actual management and use of TACB resources. One option is the creation of an independently-administered and independently-governed 'fund' external to any current agency (building on, for example, the model of the Global Environmental Facility for TACB related to key international environmental agreements or the Advisory Centre for WTO Law). WTO Members would be asked to re-channel and increase their existing support for TACB in the area of negotiations and implementation to this fund. Amongst other advantages, this would mean a reduction in the amount of TACB administered bilaterally and that the WTO Secretariat's role in technical assistance would be focused on its area of comparative advantage—basic technical education about WTO Agreements—leaving advice on interpretation and implementation of rules to other sources.

Developing countries (or groups thereof) could approach the Fund for independent advice related to negotiations and implementation. Annual contributions could be made on the basis of a percentage of exports for rich and middle-income countries with a weighted transfer in favor of the poorest/smallest countries. This arrangement would put greater power in the hands of developing countries to specify particular needs, match developing country requests with appropriate technical assistance from a range of possible sources, and enable competitive selection of the providers that offers the most attractive proposal for meeting those needs.

Countries could, for example, choose then to 'hire' particular providers (whether NGOs, IGOs, institutions, experts, academics, or the WTO secretariat) listed on a roster of interested and available TA providers who would bid to provide particular kinds of assistance.
Such an institution could be governed by an independent Board of experts nominated by donors and recipients. While it is not the focus of this paper, such an independent structure could also be used to manage a wider-range of trade-related assistance, including TACB to build capacity for trade.

II. Support stronger developing country representation in Geneva.

The future strength and legitimacy of the multilateral trading system will depend critically on measures to close some of its more glaring democratic deficits. As noted above, many developing countries are prevented from maintaining adequate missions at the WTO by cost. A step in the right direction would be to add a levy to the regular budgetary contributions of the most powerful WTO Members earmarked specifically to make real the membership of the poorest countries by expanding their representation in Geneva.

III. Support long-term independent sources of expertise and back-up in capitals

Donors should diversify the number of suppliers and recipients of assistance; they should prioritize organizations that have the greatest potential to provide independent and responsive advice unencumbered by bureaucratic constraints and donor-driven strategic agendas. By harnessing and strengthening a broader range of local and regional research university hubs, private sector consultants, think-tanks, and non-governmental organizations in developing countries, the durability and long-term cost-effectiveness of TACB will be enhanced (ICTSD & IISD, 2003; Reality of Aid Network, 2004: 17).

IV. Implement professional standards for technical assistance

To help improve the quality of technical assistance, developing countries should be empowered to veto the donor's choice of technical assistance provider. Moreover, developing countries need access to experts to review the proposed style and format of technical assistance to ensure that it is delivered in a way that maximises its effectiveness and usefulness. Resources should not, for example, be squandered on research which is not properly targeted or presented in ways that best meet countries' needs.

Countries could agree to develop a set of guidelines and a professional certification scheme or code of ethics for providers of technical/legal assistance and policy advice to developing countries. These should include strong requirements for disclosure to developing country recipients of the professional background of consultants and any potential conflicts of interest, as well as principles of professional responsibility. The duty should be on the provider to make known to clients their positions, expertise and relationships with other relevant organisations. Requirements on donor agencies to make transparent their roster of consultants and providers would help aid transparency in this respect. These measures should, in turn, be combined with the broader professional concept of the "duty to refer" where providers should be called on to acknowledge their institutional limitations or lack of knowledge or local expertise that impede ability to provide appropriate assistance.[27]

[27] This proposal is elaborated in Musungu (2003) and Deere (2005) with respect to TACB in the area of intellectual property and trade.

V. Improve support for mainstreaming trade policy reforms into broader development and poverty reduction strategies

Trade-related TACB must not be seen simply as a tool through which to achieve compliance with WTO rules or to reduce the resistance of developing countries to new WTO disciplines. Instead, it should focus on enabling countries to assess the complex role of international trade in their national development strategies and to weigh the pros and cons of different options. This means supporting a domestic policymaking process that helps countries place WTO commitments in the context of broader national development strategies.

Support for policy analysis, research and advice must be designed in ways that developing countries acquire advice on a range of different policy options and implications.[28] Greater emphasis should be placed on helping countries devise estimates of the implementation cost of new WTO commitments to national budgets, identify their needs for assistance, assess the appropriate transition and sequencing of policy reform to meet WTO obligations, monitor the social and economic impacts of the implementation of new trade policies, and develop appropriate responses.

The mainstreaming of trade into development strategies will also rely on institution-building at the national level, particular in respect of the effective coordination of trade policymaking and implementation. Developing countries should also agree to commit to building the capacity not only of their economic and trade ministries, but also to promote more effective inter-agency coordination of trade policy and permanent processes for consultation with necessary stakeholders in business, NGOs, academia and trade unions.

VI. Cost of compliance audit

The impacts on developing country budgets of the implementing new WTO agreements should be properly assessed. In most instances, the costs to developing countries of building the institutional and human resource capacities to meet WTO commitments exceed what their budgets or aid can realistically meet and risk the diversion of precious resources from other national priorities. A "cooling off" period should be incorporated into trade negotiation processes during which an assessment of the budgetary cost of implementation for developing countries of proposed commitments is conducted (in addition to other assessments of development, social and environmental implications of the agreements). This mechanism would help all parties ensure that they are fully aware of the implications of the deals and trade-offs made in negotiations and that these remain within the scope of what they can realistically achieve.

VII. Improve monitoring and independent evaluation

Working in collaboration, donor and recipient countries need to improve mechanisms for monitoring and evaluation of trade-related TACB. In addition to existing efforts to reduce duplication and minimize reporting requirements (and other administrative procedures which stretch the absorptive capacity of developing countries), there is a need for indicators of effectiveness, comparative analyses of the impact of TACB, and guidelines regarding good practices in the design and implementation of assistance. In so doing, the focus should be not just on the technical implementation of a particular project but also on its overall contribution to the

[28] At least two recent conferences have explicitly addressed questions of how TACB can help improve the quality of research and research capacity in developing countries. For a summary of the discussions at a March 2001 IDRC meeting entitled "Trade Policies in Developing Countries: What Role for Capacity Building and Research?" (see Joekes & Medhora, 2001). A second conference "International Layers and Economists Against Poverty (ILEAP): Launch of a New Initiative", held in Nairobi from May 4-6 2002, featured several papers which reviewed developing countries needs and experience with Technical Assistance and Capacity Building in Trade & Trade-Related Law & Policy. See www.ileapinitiative.com.

ultimate goals of ensuring that countries put in place trade policies, institutions, and initiatives that advance their development.

Several measures should be taken to institutionalise ongoing processes of monitoring and evaluation and to ensure that lessons learned translate into improved practice. A rolling programme of external TACB impact evaluations should be undertaken, published and actively made available to developing countries, with the results openly discussed among donors and beneficiaries. Proposals for independent ex-poste and ex-ante peer reviews of trade-related TACB should also be taken up. In addition, an independent review panel should be established to which developing countries could turn for feedback on the potential usefulness of a proposed technical assistance package and suggestions for improvements. Finally, governments should strengthen the use of the WTO's Trade Policy Review Mechanism to monitor developed country actions to meet their obligations to provide trade-related TACB.

Importantly, the potential and success of each of these recommendations will rest upon developing country efforts to push for more effective TACB and to make it work for them. Developing countries need to exercise stronger national leadership to articulate TACB needs and extract the most value out of available TACB resources.

Annex 1. Summary of Multilateral TACB Initiatives

Joint Integrated Trade Assistance Programme (JITAP)

The JITAP was developed jointly by the WTO, the ITC and UNCTAD to provide technical assistance to African countries.[29] Established in 1998, its objectives include:

- to build national capacity to understand the multilateral trading system
- to adapt the national trading system of targeted countries to the obligations and conditions of the multilateral trading system, and
- to help countries enhance readiness of their exports to participate in the trading system so as to enable them to reap the benefits of trade.

The JITAP began by providing capacity-building to eight African country partners to the end of 2002 (Benin, Burkina-Faso, Côte d'Ivoire, Ghana, Kenya, Tunisia, Uganda, and the United Republic of Tanzania—four of which are LDCs). A second phase of JITAP was launched in early 2003, adding an additional eight countries (Botswana, Cameroon, Malawi, Mali, Mauritania, Mozambique, Senegal and Zambia) and proposing greater attention to needs arising from other TACB programmes in Africa, such as the NEPAD, the Cotonou Agreement and the Integrated Framework. Thirteen donors are contributing to the funding of the programme, currently amounting to US$10 million. The Programme is funded through a Common Trust Fund (CTF) supported by a number of donor countries. The CTF is composed of two windows: Window I, where funds are contributed by donors to support programme development activities in countries facing shortage of resources; and Window II, where contributions are ear-marked for specific countries. The activities are only implemented when the resources are made available in cash to the three executing organizations. Most partner countries have contributed to the programme activities in the form of counterpart funding.

Key recommendations for improvement of the JITAP have included increased financing, greater support for the development of capacities at the national level to discuss and elaborate on multilateral trading system issues, stronger emphasis on building human resource capacities through the engagement of local institutions, and a deeper focus on supply-side issues to expand export opportunities (de Silva & Weston, 2002).

The Integrated Framework

The Integrated Framework (IF)—a programme jointly managed by the WTO, UNCTAD, the World Bank, the IMF, the International Trade Centre, and the UNDP—was launched in 1997 to help maximize the effectiveness of the resources used to help least-developed and other low-income countries respond to trade challenges and needs in the context of broader development strategies and policies.[30] By providing more coherent trade-related technical assistance, the IF aims to assist in integrating trade issues into national development strategies.[31]

In the face of lack of coordination, the IF aims to coordinate the responses of the various agencies and development partners (each in their own sphere of competence) to the TACB needs identified by each of the LDC governments and national stakeholders.

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[29] See http://www.jitap.org and JITAP (2004).

[30] The IF is convened by a Working Group (responsible for management) which includes 10 members—two of which are LDCs— and a Steering Committee (which provides overall policy direction and includes representatives from agencies, donors and LDCs).

[31] For further information on the Integrated Framework, see www.integratedframework.org

The first step toward receiving support through the IF is the Diagnostic Trade Integration Study (DTIS). These studies identify supply-side constraints, the sectors of greatest export potential and recommend appropriate plan of action including policy reforms, technical assistance priorities, and institutional capacity needs. This Plan of Action is then to be integrated into a country's national development plan (such as the Poverty Reduction Strategy Process (PRSP)) and subsequently implemented in partnership with the development cooperation community.

The IF Trust Fund (created in 2001) has two funding instruments which rely on voluntary contributions from bilateral and multilateral donors: Window I (which finances preparation of the Diagnostic Study) and Window II (which provides bridging money for small assistance or capacity-building activities that are part of the DTIS matrix). Funding of the implementation Action Plans relies primarily on bilateral donors as part of their overall responses to national poverty reduction strategies.

While the IF has recently launched a revised second phase, several recent reviews have highlighted a number of ongoing factors limiting the effectiveness of the IF (Rajapartirana *et al*, 2000; Hormeku, 2003: 4; Prowse, 2002). These include:

- the conflicting mandates of the agencies involved,
- emphasis on technical assistance over direct aid and infrastructure,
- disorganization and confusion about which agency to approach for which kind of assistance,
- inadequate resources,
- weak transparency of implementation, particularly in respect of the selection and criteria for the selection of beneficiary countries,
- inadequate focus on primary commodity dependence and other factors important to the trade of LDCs, and
- inadequate developing country leadership or scope for leadership in the preparation of the diagnostic studies.

WTO Technical Assistance

Since Doha, the WTO has sought to play a more prominent role in the delivery and design of TACB. In Doha, the WTO Members endorsed a *New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration*. To ensure long-term funding of the WTO's technical assistance activities, a Doha Development Agenda Global Trust Fund (GTF) was established in 2001, which relies on voluntary contributions from Members. It received pledges of around US$15.7 million in 2002 (more than double the amount anticipated) enabling the WTO to undertake an unprecedented level of activity.

According to the WTO's 2003 technical assistance and capacity building work program, the main activities it pursues are trade policy courses, the development of new training tools, short-term trade policy courses, distance learning services, internships, "legal clinics", and three month trade policy courses in and outside Geneva. The substantive focus of WTO assistance is generally in three areas: rules implementation, utilization of the system, and enhancing the ability of Members to follow negotiations.

There are contrasting views on the quality of WTO assistance and the extent to which the WTO Secretariat should have a role in the provision of TACB. While the creation of the GTF represents a positive effort to address earlier criticism that the WTO's TACB had been open-ended, short-term, contingent and too often earmarked for particular purposes, not all Member States agree that capacity-building by the WTO Secretariat is the appropriate focus for expansion.

In terms of design, WTO assistance has been criticized for an overly formulaic, top-down approach. Common complaints are that too few resources move beyond the provision of one-off seminars and trainings for a limited number of officials, and that too little systematic attention is paid to tailoring WTO assistance to the particular circumstances and strategic needs of countries.

The substantive focus of WTO TACB also attracts considerable informal complaints from developing countries. In advising countries how to comply with WTO commitments, the Secretariat has been criticized for offering narrow interpretations of the flexibilities and options countries have in respect of the implementation of their WTO obligations. As developed countries continue to work to push new issues onto the WTO negotiating agenda, there have also been concerns that the limited absorptive capacity of developing countries is too often consumed by TACB programmes which focus on issues of primary interests to donors and not recipients.

Recent efforts to improve the long-term impact of WTO assistance include foreign partnerships with developing country academic centres in the provision of WTO training courses; forging joint research projects; shifting the focus of trainings toward the regional level; establishing 6 month internships at the WTO for developing country doctoral students; and increasing the amount of WTO training which is out-sourced to contacts in the field. In informal conversation, several WTO Secretariat staff acknowledged that the selection of consultants and partners is influenced by the confidence of WTO staff in what constitutes the 'right kind of people' and views.

UNCTAD[32]

UNCTAD has been providing assistance to developing countries in the area of trade negotiations since the GATT Tokyo Round: its mandate on "trade and development" has always included support for the effective participation of the developing countries in multilateral trade negotiations. At UNCTAD IX (Midrand, 1996) and UNCTAD X (Bangkok, 2000), this mandate was strengthened in view of the establishment of the WTO with the launching of two UNCTAD technical assistance instruments: the "Positive Agenda" and the Commercial Diplomacy Programmes. The mandate to provide support to regional trade agreements among developing countries was also strengthened. In February 2002, UNCTAD´s Secretary-General announced a "post-Doha technical assistance and capacity building plan" based on specific requests made to the UNCTAD secretariat by the developing countries.

As a standing program of the UN, UNCTAD derives its core income from the UN headquarters. Any special programmes are funded from extra-budgetary contributions (the main contributors to which are the EU, Norway and Switzerland with the US making no extra-budgetary commitments).

Many developing countries and civil society groups hope to strengthen UNCTAD's role in TACB relative to that of the WTO. For these constituencies, UNCTAD is the most favoured of the international agencies involved in trade and development because it is considered to be the agency most reliably focused on the concerns of developing countries. They have noted with concern the shift of donor resources away from UNCTAD and toward the WTO's "development" program (despite the WTO's limited capacities on this front) and the World Bank. That said, there have also been concerns expressed about the efficiency and limitations of UNCTAD's technical assistance—from both developing and developed countries. Complaints from the developing country perspective have included disappointment with the bureaucratic approach to providing assistance and the difficulties in offering dynamic solutions to particular problems or negotiating issues that arise. UNCTAD's ability to be flexible and to tailor assistance to particular countries is constrained by the political processes necessary to build consensus on the appropriate orientation of assistance and research, and the need not to work in favour of any particular country to the disadvantage of others (Patel, 2002).

[32] The source for this information is the UNCTAD website, www.unctad.org

On the other hand, the United States has long expressed reservations about the political and substantive focus of UNCTAD's work. Concerned that UNCTAD's work bolsters a more difficult and combative climate for trade negotiations, the United States has argued that UNCTAD ought to confine itself to a tightly-defined research and analysis role, with only a limited technical assistance and capacity building function.

The IMF and the Trade Integration Mechanism (TIM)

The IMF, working with the World Bank, works to address the issue of the availability of adequate trade financing for developing countries, particularly in times of financial crisis. In early 2004, the IMF introduced a new policy—the Trade Integration Mechanism—to help reassure low income developing countries that they will receive assistance from the international community to deal with adjustment difficulties they encounter from the loss of trade preferences likely to result from any lowering of most-favoured nation (MFN) tariffs in the Doha Round. That is, the TIM makes funds available only for countries which suffer damages as a result of *others'* liberalisation (i.e., where countries could lose preferential market access or the benefit of subsidised agricultural products).

Since its announcement, the TIM has provoked a variety of responses. While few argue against the concept of the TIM, and many welcome it as a useful step forward, a number of developing country members argue that the TIM's focus on balance of payment problems is too limited as it is restricted to damages inflicted by changes in the multilateral regime. Questions have also arisen as to the methodology used for calculating damages caused to a country by others' liberalization, the potential use of conditionalities, and the fact that assistance will come in the form of loans—not grants—which could add to the existing debt burden of countries. Some NGOs have offered a broader critique of the TIM arguing that its real purpose is simply to neutralize or delegitimise developing countries concerns about the adjustment costs of further liberalisation, serving in reality as a new "insurance policy" to entice developing countries back to the multilateral trade negotiation table (Powell, 2004).

The World Bank

The World Bank has significantly stepped up its support to trade activities in recent years—augmenting resources and staff, and establishing a new Trade Department in 2002 to coordinate its trade-related policy, research and capacity-building. These activities include: trade lending operations, support for domestic policy reform, institutional building, training of government officials and researchers to formulate policy, undertaking analytical work and research, participate in the preparation of the Diagnostic Trade Integration Studies in the context of the IF (and leading the IF Steering Committee), contributing to the IF Trust Fund, and assisting developing countries to meet product standards.[33] In the latter area, the Bank is implementing trade facilitation projects to improve quality standards in developing countries. The World Bank also leads the Standards and Trade Development Facility—an inter-agency partnership with the WTO, FAO and WHO—which will deliver technical assistance for food safety and related standards. The Bank's activities in trade-lending include adjustment lending to support trade reforms, loans for export development, insurance schemes, and loans for trade financing (primarily lines of credited to private sector exporters and importers in developing countries). Finally, the Bank's lending also includes loans for strengthening institutions (such as physical infrastructure and building capacity in customs administration).

[33] The recognition of international standards in the WTO opens the prospect of disputes against those countries that do not comply (where as formerly international standard-setting organizations only set voluntary guidelines). The needs in this area are numerous, including support to meet the costs of the implementation requirements of the TBT and SPS agreements (which can amount to an entire year's development assistance budget in some least developed countries), support in compliance and meeting the costs of establishing and maintaining certification facilities, and support for developing country representation in international standard-setting organizations.

The diversity of the Bank's activities in trade limit the usefulness of any general observations about the lessons and/or limitations about their effectiveness. Suffice to say that suggestions have been offered from the academic and NGO community about a broad range of these activities.[34] A common theme of these contributions is a concern that the World Bank's activities embody a bias toward particular kinds of economic policy advice (e.g., a prima facie preference for unilateral liberalization) and that the expansion of the World Bank's activities and the substantial resources it can bring to bear may crowd out attention to alternative economic proposals and the role of agencies with deeper experience on trade/development issues (e.g., UNCTAD).

Critics have also raised questions about how much of a role the World Bank should play in improving the mainstreaming trade into PRSPs via the IF. On the one hand, there are concerns that the PRSP processes themselves have limitations (UNDP, 2001). While efforts are ongoing to improve the quality of PRSPs, the effort to employ multi-stakeholder strategies in their development has been partial at best. On the other hand, there are concerns that the Bank pursues a formulaic commitment to advocating aggressive trade liberalization measures, even for the most vulnerable countries (Powell, 2002). Critics suggest that the World Bank's role should be restricted to providing loans or grants to fund initiatives identified in TACB assessments, leaving developing countries themselves to be in the lead on diagnostic studies with the assistance of other relevant international organizations and non-State actors (Powell, 2002). Importantly, while World Bank critics raise questions about the Bank's ideas about the nature of a "good" trade policy, it is important also to note that the interests of bilateral donors may also simply be to impose a policy that is good for the donors.

[34] See, for example, Bretton Woods Project (2002), Ladd, (2003), Reality of Aid Network (2003), Rowden (2001), and Tan (2002).

Annex 2. Trade negotiators representing EU Member interests in Geneva[35]

The EU fields 1 negotiator per every 3.33 million of its people.

	Negotiators	Population	HDI Rank	GDP	Status
Austria	5	8.1	14	204.1	Developed
Belgium	8	10.3	6	245.4	Developed
Denmark	5	17	17	172.9	Developed
France	6	59.8	16	1,431.30	Developed
Finland	5	5.2	13	131.5	Developed
Germany	9	82.4	19	1,984.10	Developed
Greece	7	11	24	132.8	Developed
Ireland	4	4.4	10	121.40	Developed
Italy	5	57.5	21	1,184.30	Developed
Luxembourg	2	0.4	15	21.00	Developed
Netherlands	6	16.8	5	417.90	Developed
Portugal	4	10	26	121.60	Developed
Spain	11	41	20	653.10	Developed
Sweden	4	9	2	240.30	Developed
United Kingdom	9	59.1	12	1,566.30	Developed
Cyprus	3	0.8	30	10.10	Developing
Czech Republic	4	10.2	32	69.50	Developed
Estonia	5	1.3	36	6.50	Developing
Hungary	4	9.9	38	65.80	Developed
Latvia	2	2.3	50	8.40	Developing
Lithuania	2	3.5	41	13.80	Developing
Malta	3	0.4	31	3.90	Developing
Poland	4	38.6	37	189.00	Developed
Slovak Republic	3	5.4	42	23.70	Developing
Slovenia	3	2	27	22.00	Developing
General EC*	17				
Totals	**140**	**466.4**		**9,040.70**	

* Note that this figure includes both professional staff of the Permanent Delegation of the European Commission to Geneva and also the staff of the Office of Liaison of the General Secretariat of the Council of the European Union.

[35] Data in this table were drawn from the 2002 *WTO Directory* , the latest official directory published by the WTO.

Annex 3. Trade negotiators per Mission in Geneva[36]

Shading denotes Least Developed Country.

Country	Number of professional trade staff/negotiators	Population (2002)	Citizens per negotiator	HDI Rank	Contributions to WTO Budget (2004)
Unites States of America	16	329.7	20.61	8	25,259,391
Germany	9	82.4	9.16	19	14,250,795
Japan	22	127.2	5.78	9	10,261,866
United Kingdom	9	59.1	6.57	12	9,116,628
France	6	59.8	9.97	16	8,354,347
Italy	5	57.5	11.50	21	6,663,198
Canada	11	31.3	2.85	4	6,315,258
Netherlands	5	16.8	2.80	5	5,487,774
China	11	1,294.90	117.72	94	5,228,175
Hong Kong, China	7	7	1.00	23	5,121,415
Belgium	8	10.3	1.29	6	4,300,878
Korea, Republic of	18	47.4	2.63	28	3,870,942
Spain	11	41	3.73	20	3,867,884
Mexico	9	102	11.33	53	3,580,334
Singapore	7	4.2	0.60	25	3,242,936
Chinese Taipei	14		0.00		3,210,565
Switzerland	8	7.2	0.90	11	2,344,679
Sweden	4	9	2.25	2	2,238,521
Austria	5	8.1	1.62	14	2,205,079
Malaysia	4	24	6.00	59	2,086,784
Australia	9	19.5	2.17	3	1,849,231
Ireland	4	4.4	1.10	10	1,841,263
Thailand	13	62.2	4.78	76	1,588,231
Denmark	5	17	3.40	17	1,529,119
Brazil	12	176.3	14.69	72	1,524,478
Norway	8	4.5	0.56	1	1,370,419
Indonesia	8	217.1	27.14	111	1,300,828
India	7	1049.5	149.93	127	1,282,088
Turkey	12	70.3	5.86	88	1,187,374
Poland	4	38.6	9.65	37	1,123,706
Finland	5	5.2	1.04	13	1,017,574
Portugal	4	10	2.50	26	909,903
Israel	4	6.3	1.58	22	902,768
Philippines	8	78.6	9.83	83	902,343
United Arab Emirates	2	2.9	1.45	49	839,051
Czech Republic	4	10.2	2.55	32	817,258
South Africa	4	44.8	11.20	119	783,254
Argentina	9	38	4.22	35	741,787
Hungary	4	9.9	2.48	38	685,063
Greece	7	11	1.57	24	656,188

[36] Data in this table were drawn from the WTO Directory, most recently published in September 2002 by the WTO Secretariat. Some figures were updated based on personal conversations with staff in Missions. The figures here refer only to professional staff tasked with substantive engagement on trade policy issues (not administrative, financial or secretarial staff).

Luxembourg	2	0.4	0.20	15	549,865
Venezuela	7	25.2	3.60	68	523,426
Chile	5	15.6	3.12	43	498,958
Egypt	11	70.5	6.41	120	413,461
New Zealand	5	3.8	0.76	18	400,664
Colombia	5	43.5	8.70	73	351,620
Kuwait	2	2.4	1.20	44	314,698
Nigeria	8	120.9	12.09	151	306,670
Slovak Republic	3	5.4	1.80	42	306,166
Romania	4	22.4	5.60	69	282,094
Slovenia	3	2	0.67	27	254,823
Pakistan	5	149.9	29.98	142	251,867
Morocco	5	30.1	6.02	125	248,615
Croatia	2	4.4	2.20	48	221,297
Peru	9	26.8	2.98	85	208,728
Tunisia	3	9.7	3.23	92	206,769
Dominican Republic	4	8.6	1.72	98	200,700
Panama	3	3.1	1.03	61	184,416
Oman	2	2.8	1.40	74	177,983
Bangladesh	5	143.8	28.76	138	168,545
Costa Rica	4	4.1	1.03	45	161,896
Bulgaria	2	8	4.00	56	155,698
Sri Lanka	2	18.9	9.45	96	149,221
Ecuador	9	12.8	1.42	100	131,458
Lithuania	2	3.5	1.75	41	129,848
Angola	4	13.2	3.30	166	128,345
Bahrain	4	0.7	0.18	40	117,049
Qatar	4	0.6	0.15	47	112,392
Jordan	3	5.3	1.77	90	102,660
Macao, China	6		0.00		102,580
Estonia	5	1.3	0.26	36	102,566
Cuba	5	11.3	2.26	52	102,558
Cote d'Ivoire	5	16.4	3.28	163	101,153
Guatemala	6	12	2.00	121	101,001
Cyprus	3	0.8	0.27	30	97,792
El Salvador	5	6.4	1.28	103	96,231
Uruguay	8	3.4	0.43	46	91,518
Jamaica	3	2.6	0.87	79	88,242
Paraguay	6	5.7	0.95	89	81,886
Latvia	2	2.3	1.15	50	80,133
Malta	3	0.4	0.13	31	75,323
Kenya	3	31.5	10.50	148	72,143
Zimbabwe	5	12.8	2.56	147	70,577
Iceland	3	0.3	0.10	7	68,903
Brunei Darussalam	5	0.3	0.06	33	65,720
Trinidad and Tobago	5	1.3	0.26	54	64,177
Ghana	3	20.5	6.83	131	61,013
Mauritius	7	1.2	0.17	64	62,497
Honduras	5	6.8	1.36	115	60,916
Gabon	4	1.3	0.33	122	56,196
Botswana	4	1.8	0.36	128	56,112
Myanmar	4	48.9	12.23	133	52,916

Papua New Guinea	0	5.6	0.00	126	48,105
Namibia	0	2	0.00	114	43,304
Cameroon	2	15.7	7.85		41,662
Former Yugoslav Republic of Macedonia					40,140
Bolivia	3	8.6	2.87	141	40,071
Liechtenstein	4		0.00		40,057
Tanzania	3	36.3	12.10		38,534
Congo	3	3.6	1.20		38,534
Senegal	5	9.9	1.98	157	35,251
Barbados	5		0.00	29	30,467
Nicaragua	6	5.3	0.88	118	30,443
Democratic Republic of the Congo	2	51.2	17.07	168	30,506
Uganda	3		0.00	146	27,287
Zambia	6	10.7	1.78	164	25,690
Fiji	0	0.8	0.00	81	25,649
Swaziland	0	1.1	0.00	137	25,636
Armenia	0	3.1	0.00	82	24,084
Antigua and Barbuda	0	0.1	0.00	55	24,084
Belize	0	0.3	0.00	99	24,084
Benin	1	6.6	6.60	161	24,084
Burkina Faso	5	12.6	1.40	175	24,084
Burundi	2	6.6	3.30	173	24,084
Central African Republic	0	3.8	0.00	169	24,084
Chad	0	8.3	0.00	167	24,084
Djibouti	1	0.7	0.70	154	24,084
Dominica	0	0.1	0.00	95	24,084
Gambia	0	1.4	0.00	155	24,084
Georgia	2	5.2	2.60	97	24,084
Guinea	2	8.4	4.20	160	24,084
Guinea-Bissau	0	1.4	0.00	172	24,084
Guyana	0	0.8	0.00	104	24,084
Kyrgyz Republic	2	5.1	2.55	110	24,084
Lesotho	1	1.8	1.80	145	24,084
Malawi	0	11.9	0.00	165	24,084
Mali	1	12.6	12.60	174	24,084
Mauritania	4	2.8	0.70	152	24,084
Niger	0	11.5	0.00	176	24,084
Rwanda	1	8.3	8.30	159	24,084
Sierra Leone	0	4.8	0.00	177	24,084
Solomon Islands	0	0.5	0.00	124	24,084
Suriname	0	0.4	0.00	67	24,084
Togo	0	4.8	0.00	143	24,084
Haiti	2	8.2	2.05	153	24,082
Mozambique	2	18.5	9.25	171	24,080
Maldives	0	0.3	0.00	84	24,069
Saint Vincent and the Grenadines	0	0.1	0.00	87	24,058
Saint Lucia	0	0.1	0.00	71	24,058
Mongolia	5	2.6	0.52	117	24,055
Albania	2	3.1	1.55	65	24,050
Saint Kitts and Nevis	0		0.00	39	24,043
Grenada	0	0.1	0.00	93	24,042
Madagascar	3	16.9	5.63	150	24,040

Moldova	2	4.3	2.15	113	19,220
European Communities	17		0.00		
Cambodia	4				
Nepal	2				

Annex 4. WTO Members by category as of October 2004

There is no formal WTO definition of what qualifies as a ‘developing country’. The claim for ‘developing country’ status is determined by individual Member States. Some countries classify themselves as developing countries for some agreements and not others. The category of Least Developed Country is determined by UNCTAD according to a fixed set of criteria.

Developed Countries	Developing Countries	Developing Countries (cont)	Least Developed Countries
Australia	Albania	Kenya	Angola
Austria	Antigua and Barbuda	Kuwait	Bangladesh
Belgium	Argentina	Kyrgyz Republic	Benin
Canada	Armenia	Latvia	Burkina Faso
Czech Republic	Bahrain	Liechtenstein	Burundi
Denmark	Barbados	Lithuania	Cambodia
Finland	Belize	Macao, China	Central African Republic
France	Bolivia	Malaysia	Chad
Germany	Botswana	Malta	Democratic Republic of the Congo
Greece	Brazil	Mauritius	Djibouti
Hungary	Brunei Darussalam	Moldova	Gambia
Iceland	Bulgaria	Mongolia	Guinea
Ireland	Cameroon	Morocco	Guinea-Bissau
Italy	Chile	Namibia	Haiti
Japan	China, Peoples Republic	Nicaragua	Lesotho
Korea, Republic of	Colombia	Nigeria	Madagascar
Luxembourg	Congo	Oman	Malawi
Mexico	Costa Rica	Pakistan	Maldives
Netherlands, Kingdom of	Cote d'Ivoire	Panama	Mali
New Zealand	Croatia	Papua New Guinea	Mauritania
Norway	Cuba	Paraguay	Mozambique
Poland	Cyprus	Peru	Myanmar, Union of
Portugal	Dominica	Philippines	Nepal
Slovak Republic	Dominican Republic	Qatar	Niger
Spain	Ecuador	Romania	Rwanda
Sweden	Egypt	St. Kitts and Nevis	Senegal
Switzerland	El Salvador	Saint Lucia	Sierra Leone
Turkey	Estonia	St. Vincent and the Grenadines	Solomon Islands
United Kingdom of Great Britain	European Communities	Singapore	Togo
United States of America	Fiji	Slovenia	Tanzania
	Former Yugoslav Republic of Macedonia	South Africa	Uganda
	Gabon	Sri Lanka	Zambia
	Georgia	Suriname	
	Ghana	Swaziland	
	Grenada	Chinese Taipei	
	Guatemala	Thailand	
	Guyana	Trinidad and Tabago	
	Honduras	Tunisia	
	Hong Kong, China	United Arab Emirates	
	India	Uruguay	
	Indonesia	Venezuela	
	Israel	Zimbabwe	
	Jamaica		
	Jordan		

Annex 5. Summary of WTO disputes

Country	As plaintiff	%	As defendant	%	Total Involvement in WTO Disputes %
United States	74	21.96	81	26.29	24.03
European Communities	63	18.69	52	16.88	17.83
Canada	25	7.42	11	3.57	5.58
Brazil	21	6.23	12	3.9	5.12
India	16	4.75	16	5.19	4.96
Argentina	10	2.96	15	4.87	3.87
Mexico	14	4.15	10	3.25	3.72
Korea	11	3.26	13	4.22	3.72
Japan	11	3.26	13	4.22	3.72
Chile	9	2.67	10	3.25	2.95
Australia	7	2.77	9	2.92	2.48
Thailand	10	2.96	1	0.32	1.7
Turkey	2	0.59	7	2.27	1.39
Philippines	5	1.48	3	0.97	1.24
Indonesia	3	0.89	4	1.29	1.09
Guatemala	5	1.48	2	0.65	1.09
Honduras	6	1.78	0	0	0.93
Hungary	4	1.19	2	0.65	0.93
Peru	2	0.59	4	1.29	0.93
Ecuador	2	0.59	3	0.97	0.78
Colombia	4	1.19	1	0.32	0.78
New Zealand	5	1.48	0	0	0.78
Poland	3	0.89	1	0.32	0.62
Pakistan	2	0.59	2	0.65	0.62
Switzerland	4	1.19	0	0	0.62
Egypt	0	0	3	0.97	0.47
Nicaragua	2	0.59	1	0.32	0.47
Venezuela	1	0.3	2	0.65	0.47
Czech Republic	1	0.3	2	0.65	0.47
Belgium	0	0	3	0.97	0.47
Costa Rica	3	0.89	0	0	0.47
Ireland	0	0	3	0.97	0.47
Dominican Republic	0	0	2	0.65	0.32
China	1	0.3	1	0.32	0.32
Uruguay	1	0.3	1	0.32	0.32
Romania	0	0	2	0.65	0.32
Trinidad and Tobago	0	0	2	0.65	0.32
France	0	0	2	0.65	0.32
Panama	2	0.59	0	0	0.32
Slovak Republic	0	0	2	0.65	0.32
Malaysia	1	0.3	1	0.32	0.32
South Africa	0	0	2	0.65	0.32
Bangladesh (LDC)	1	0.3	0	0	0.15
Croatia	0	0	1	0.32	0.15
Antigua and Barbuda	1	0.3	0	0	0.15
Hong Kong	1	0.3	0	0	0.15
Chinese Taipei	1	0.3	0	0	0.15

Norway	1	0.3	0	0	0.15
Slovakia	0	0	1	0.32	0.15
Greece	0	0	1	0.32	0.15
Netherlands	0	0	1	0.32	0.15
Sweden	0	0	1	0.32	0.15
Denmark	0	0	1	0.32	0.15
Portugal	0	0	1	0.32	0.15
Sri Lanka	1	0.3	0	0	0.15
Singapore	1	0.3	0	0	0.15

Annex 6. Examples of disputes for which the ACWL has provided advice

- For Indonesia, in the consultations phase in Korea - Anti-dumping Duties on Imports of Certain Paper from Indonesia
- For Bangladesh, in the consultations phase in India - Anti-dumping Measures on Batteries from Bangladesh
- For Ecuador, in the consultations phase in Ecuador - Definitive Safeguard Measures on Imports of Medium Density Fireboard
- For Honduras, in the consultations phase and in the panel proceedings in Dominican Republic – Measures Affecting the Importation of Cigarettes
- For Nicaragua, in the consultations phase in Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua
- For Thailand, in the consultations phase and in the panel proceedings in EC - Customs Classification of Frozen Boneless Chicken Cuts
- For Thailand, in the consultations phase and in the panel proceedings in EC - Export Subsidies on Sugar
- For the Philippines, in the consultations phase in Australia – Certain Measures Affecting the Importation of Fresh Pineapple
- For the Philippines, in the consultations phase and in the panel proceedings in Australia - Certain Measures Affecting the Importation of Fresh Fruit and Vegetables
- For Ecuador, in the panel proceedings in Turkey – Certain Import Procedures for Fresh Fruit
- For India, in the pre-appeal stage in EC- Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India
- For Paraguay, in the panel proceedings as a third party in EC - Conditions for the Granting of Tariff Preferences to Developing Countries
- For India, in the panel and Appellate Body proceedings in European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries
- For India, in the panel proceedings in US – Rules of Origin for Textiles and Apparel Products
- For Peru, in the panel and Appellate Body proceedings in EC – Trade Description of Sardines
- For India, in the panel and Appellate Body proceedings in India – Measures Affecting the Automobile Industry.
- For Pakistan, in the Appellate Body proceedings in United-States - Transitional Safeguard Measures on Cotton Yarn

Provided through the hiring of external legal counsel

- For Columbia, Ecuador, Peru and Venezuela, in their participation as third parties in EC - Conditions for the granting of Tariff Preferences to Developing Countries

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