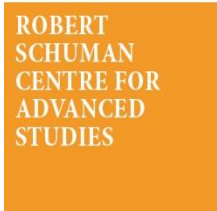




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Representing Developing Countries before the WTO:  
The Role of the Advisory Centre on WTO Law  
(ACWL)

Niall Meagher



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
Global Governance Programme

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RSCAS Policy Paper 2015/02

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## **Abstract**

Since its inception in 2001, the Advisory Centre on WTO Law (ACWL) has enabled developing and least developed countries to understand and participate in the WTO legal system, thereby enhancing the credibility of that system. For the ACWL to succeed, it was essential that its users could be sure that the legal advice they received was independent of any political agenda of either developed countries that fund the ACWL or of the ACWL itself. Hence, the ACWL was created as an independent, impartial, and non-political source of legal advice. These factors have been key to the ACWL's success. The ACWL has developed an excellent reputation for the quality, credibility, confidentiality, and impartiality of its advice. While the ACWL does not remedy all of the legal capacity constraints facing its users in participating in the WTO legal system, it is now recognized as an essential part of the system.

## **Keywords**

"WTO law"; "developing countries"; "legal aid"; "ACWL"; "public good".





## **1. Introduction\***

The Advisory Centre on WTO Law (ACWL) is a unique institution in international law. It is an intergovernmental organization, located in Geneva, which was established in 2001 for the express purpose of providing legal aid to developing and least-developed countries (LDCs).<sup>1</sup> The creation of the ACWL was a direct response to the success of the WTO's dispute settlement process and the consequent need to ensure that developing and least-developed countries could have equal access to that process. All countries, both developed and developing, have a vested interest in the viability of the rules-based multilateral trading system, including the WTO dispute settlement procedures. The founding Members of the ACWL recognized that the credibility and acceptability of the system and those procedures can only be ensured if all Members of the WTO can effectively participate in it.

The success of the ACWL to date reflects both the extent of the demand for legal assistance to participate in the WTO legal system and, just as importantly, the careful thought that went into structuring the ACWL as an impartial, independent and non-political entity to meet that demand. It is also due to the cooperation between the developing countries that use the ACWL and the developed countries that contribute to the financing of an independent organization for the common good of the multilateral trading system and, in particular, its weaker members.

The purpose of this paper is to explain how and why the ACWL was created, how it fulfills its mandate, and what lessons can be drawn from its achievements to date.

## **2. What is legal aid?**

To place the ACWL in its broader context, it is worthwhile to reflect on the nature and purpose of legal aid. In the oft-quoted axiom of Anatole France, "the law, in its majestic equality, forbids rich and poor alike to sleep under bridges, beg in the streets, or steal bread". But the rich are less likely to sleep under bridges or beg in the streets than the poor and are far better able to defend themselves if accused of doing so. As our understanding of justice has evolved, we have come to recognize that for the law truly to have any majestic equality, a party's chances of success in a legal proceeding should depend solely on the strength of that party's case, rather than the size of the party's purse and ability to hire the best lawyers.

In many countries, this recognition has led to the acceptance of a right to legal representation in court proceedings, initially in criminal matters but also in other types of cases. This has led, in turn, to the creation of free legal aid programmes, either state- or privately-funded, to provide this legal representation. These programmes are now recognized in many countries as an essential means of ensuring the equality and, hence, the acceptability to everyone that is subject to it, of the system of justice in those countries.

For the most part, however, we are familiar with the concept of legal aid as a feature only of domestic legal systems. Until recently, the potential need for legal aid in the international legal system may not have occurred to many people. Yet international legal systems are no different from domestic legal systems in that they feature equally stark disparities between haves and have-nots in terms of their access and ability to participate in the system. Just as a poor individual may lack resources to

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\* This paper expands on the points made in a presentation of the same title in the EUI Department of Law's Dispute Settlement in the WTO: The Floor to Practitioners series on Tuesday, 25 February 2014. I would like to thank Professor Petros Mavroidis for the invitation to speak in this series. I would also like to thank Alberto Pallechi for his assistance. The views expressed in this paper are those of the author alone and should not be ascribed to the ACWL or to its Members. All errors are, equally, the sole responsibility of the author.

<sup>1</sup> In this paper, the terms "country" and "countries" include separate customs territories.

participate in a legal proceeding against a large company in a domestic legal system, a developing country may lack resources to take on a wealthy developed country in an international tribunal. There is no reason *a priori* why the developing country should not receive legal aid to participate before the international tribunal in the same manner as the poor individual receives legal aid to participate in the domestic courts. The truism that the acceptability of a system of justice to all that are subject to it depends on the equal access of all to that system applies to both domestic and international systems of justice. In the words of Judge Guillaume, President of the International Court of Justice: "Access to international justice should not be impeded by financial inequality".

There are, of course, significant differences between domestic and international legal systems in terms of organizing and putting into operation a system of legal aid. The questions of how to structure, finance, and manage a system of legal aid are by no means uncomplicated in a domestic system. These questions also posed considerable challenges in creating, in the form of the ACWL, an international legal aid programme.

### 3. Why do we need legal aid in the WTO system?

In retrospect, there are several reasons why the need for legal aid became particularly apparent in the WTO system. Under the GATT, dispute settlement was not binding, in that a defending party could "block" either the creation of a dispute settlement panel or the formal adoption of a panel's report.

The creation of the WTO in 1995 brought fundamental changes to the GATT dispute settlement process. Now, defending WTO Members could not block the establishment of a dispute settlement panel or the adoption of its report – in effect, creating a fully binding system of dispute settlement for the first time. In addition, the WTO Appellate Body was created to consider appeals of legal issues decided by WTO panels, thereby creating a two-tier system of adjudication. This was also a more or less unprecedented innovation in international law. In the words of the WTO panel in the *India – Quantitative Restrictions* dispute, "under the WTO, the rule of law has been strengthened through increased automaticity of dispute settlement and detailed integrated dispute settlement procedures. All the more so in this context of thickening of legality".

The dispute settlement system has been one of the crowning successes of the WTO system. In the words of the United States Trade Representative, Ambassador Michael Froman, the WTO dispute settlement system is "second to none as a respected forum for the resolution of international frictions." In addition to its quality, the quantity of the jurisprudence is impressive: in a little less than 20 years, there have been 110 Appellate Body reports, almost 200 panel reports, and 45 various other arbitrators' reports.

The WTO legal system is not limited to the formal dispute settlement process. It also includes the ongoing work of the WTO in its various committees and institutions. The work of these bodies includes both the negotiation of new legal texts and the resolution of hundreds of "specific trade concerns" raised by WTO Members against each other and resolved each year in the context of reviews of WTO Members' trade policies and the proceedings in WTO committees. All of this work takes place in the shadow of the WTO dispute settlement system and is informed by the jurisprudence of WTO panels and the Appellate Body. This also places a heavy burden on developing countries to understand and be able to defend their legal rights under the WTO system.

Moreover, it is worth recalling that while many GATT-era agreements were plurilateral agreements, binding only on those parties that accepted them, countries joining the WTO were required to accept almost all new and revised WTO agreements on the basis of a "single undertaking". This meant that many new WTO Members were, for the first time, subject to many different and increasingly complex agreements covering a wide range of issues relating to trade in goods and services and trade-related aspects of intellectual property. The burden of mastering this new legal

system was especially difficult for developing countries that had not been GATT contracting parties and were, therefore, entirely new to the multilateral trading system.

Finally, it is important to recall that the basic principles of the GATT and the WTO system, such as the most favoured nation clause and the principle of national treatment, are, at their core, principles of equal treatment and non-discrimination. It would not be consistent with the core values of these principles were WTO Members to be equally bound by these principles but not equally capable of defending their rights and obligations under them.

Thus, the credibility of the existing WTO/multilateral trading system depends on the ability of *all* WTO Members to be able to assert their rights and to defend themselves in the WTO. The willingness of WTO Members, and especially developing country Members, to take on further rights and obligations also depends on their confidence that they fully understand those obligations and, where necessary, will be able both to assert their legal rights and fully defend themselves against challenges by other Members on an equal basis within the framework of the WTO legal system.

In these circumstances, *all* WTO Members have an interest in the accessibility of the WTO dispute settlement system, and the WTO legal system generally, to *all* WTO Members, regardless of their wealth or resources. Again to quote Ambassador Froman, "the DSB has helped to quell protectionism through *its accessibility to all WTO Members*, by its very existence and by its excellence" (emphasis added).

#### **4. Why provide legal aid through the ACWL?**

The WTO agreements acknowledge the problem described above. Article 27.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) recognizes there may be "a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members". The DSU addresses this problem by requiring that the WTO secretariat "make available a qualified legal expert . . . to any developing country Member which so requests". At present, the WTO has under contract two of the leading experts in WTO law to provide this service on a part-time basis.

Article 27.2 further stipulates, however, that these experts must "assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat". This imposes a severe restriction on the ability of the experts to advise individual Members in dispute settlement proceedings or on legally controversial issues, on which the employees of the WTO cannot be seen to favour one legal position over another.

In the late 1990s, developing countries raised concerns that the WTO legal system was becoming too complicated and too burdensome for them to be able to participate fully in the system. The resources available under DSU Article 27.2 were simply not enough. To address this problem in a manner that did not compromise the impartiality of the WTO Secretariat, WTO Members preferred to set up an independent intergovernmental organization that would provide legal assistance to developing and least-developed countries. Agreement to establish the ACWL was reached at the WTO Ministerial Conference in Seattle in 1999 and the ACWL began operations two years later. At the ACWL's inauguration ceremony, the then Director-General of the WTO, Michael Moore, said that "Today, and within the framework of the WTO dispute settlement system, the ACWL takes another, almost revolutionary, step forward in international adjudication, by establishing itself as the first true centre for legal aid within the international legal system". Article 2.1 of the Agreement Establishing the ACWL provides that "the purpose of the [ACWL] is to provide legal training, support and advice on WTO law and dispute settlement procedures to developing countries, in particular to the least developed among them, and to countries with economies in transition".

Thirteen years later, the ACWL consists of nine fulltime lawyers. It has assisted developing and least-developed countries in over 40 WTO dispute settlement proceedings (almost 20 per cent of the

disputes in that period); provides these countries with over 200 legal opinions on a wide variety of issues of WTO law free of charge each year, and conducts extensive training courses and seminars. As explained below, the ACWL's services are currently available to 74 WTO Members.

## **5. How is the ACWL structured?**

As a "spin off" of the WTO, it made sense to structure the ACWL as an intergovernmental organization. This was also necessary to enable the ACWL staff to live and work under the same terms and conditions as their counterparts in the WTO Secretariat.

Moreover, the structure of an intergovernmental organization was a very suitable means of providing the kinds of services that the ACWL would provide. In the words of one commentator, "an international organization can provide collective goods and take advantage of a variety of economies of scale, specialization, and pooling of resources more effectively than states can do on their own" (Guzman, p 15). Thus, the ACWL is a public good that pools the legal experience of its developing country Members and the LDCs in the very specialized field of law generally and in WTO dispute settlement procedures in particular and enables each of them to draw on this expertise to defend their own interests as needed.

There were four other main challenges facing the founders of the ACWL in devising its structure and governance.

**First**, the ACWL would be financed in large part by developed countries that would not be entitled to its services and, for the reasons explained in the following paragraph, could not have direct control over its operations. This required the developed countries to be able to commit to providing funding to an organization that while in the long term serving the policy goals of those countries in terms of the viability of the multilateral trading system, might in the short term, provide legal support to developing countries with positions opposing those of the developed countries.

**Second**, in the words of Claudia Orozco of Colombia, one of its main founders, the ACWL "had to be politically independent . . . from the policies of donor countries and from user developing countries". Thus, no Member could have any influence over how the ACWL provided legal advice to the developing and least-developed countries. As one commentator has stated, "the autonomy of the ACWL was of the utmost importance to the signatories of the agreement establishing it. An ACWL that was an extension of developed countries' hegemony would have been worse than not having one at all" (Mshomba, p. 93).

**Third**, the ACWL's mandate is limited to legal advice. It therefore had to act in a non-political manner and not take positions on issues of policy on which its Members and the LDCs might have very different views. It was very important to the founders of the ACWL that it avoid the "Frankenstein" problem whereby it might have ended up becoming a monster "impact[ing] the system in ways that harm, rather than help, the interests" of its developing country Members and LDCs that seek its advice (Guzman, p. 2).

**Fourth**, the ACWL had to be able to guarantee the confidentiality of its advice. Developing and least-developed countries would not be willing to use the ACWL unless they could be absolutely confident that the nature of their legal concerns or the advice they receive would not be disclosed publicly or reported to any other party, including the ACWL's developed country Members.

These challenges were met by devising a multi-level structure for the management of the ACWL. The purpose of this structure is to ensure that the ACWL can work independently and in a non-political manner.

Under this structure, the ACWL is governed jointly by its developed and developing country Members. All of the ACWL's Members – developed and developing – participate in the ACWL's

General Assembly, which meets at least twice a year. The General Assembly evaluates the performance of the ACWL, elects the Management Board, adopts the annual budget proposed by the Management Board, and adopts regulations proposed by the Management Board relating to certain other matters.

The Management Board takes the decisions necessary to ensure the efficient and effective operation of the ACWL. Accordingly, it appoints the Executive Director in consultation with Members, prepares the ACWL's annual budget for approval by the General Assembly, supervises the administration of the ACWL's Endowment Fund, and initiates proposals on regulations on specific matters for adoption by the General Assembly.

The Management Board comprises representatives of developed country Members, each category of developing country Members, and the least-developed countries. The members of the Management Board are selected "on the basis of their professional qualifications in the field of WTO law or international trade relations and development". Importantly, in order to ensure the independence, impartiality, and confidentiality of the ACWL's work, the members of the Management Board serve in their personal capacities and are not representing their governments or countries of origin. They serve for renewable two-year terms.

The Executive Director, in turn, is responsible for the day-to-day operations of the ACWL.

This structure has been essential in enabling the ACWL to gain a strong reputation for the independence and impartiality of its advice. This reputation has been key to the growth and success of the ACWL.

## **6. Who are the Members of the ACWL?**

All Members of the WTO and countries in the process of acceding to the WTO are entitled to join the ACWL. LDCs that are Members of the WTO or are in the process of acceding to the WTO are automatically entitled to the services of the ACWL without having to become Members.

The ACWL has 11 developed country Members: Australia, Canada, Denmark, Finland, Ireland, Italy, Netherlands, Norway, Sweden, Switzerland, and the United Kingdom. As discussed below, these countries have provided the bulk of the funding for the ACWL.

The ACWL has 31 developing country Members that have acceded to the Agreement Establishing the ACWL and paid a "membership fee" in the form of a contribution to the ACWL's Endowment Fund. For the purposes of determining the amounts of these countries' contributions on joining the ACWL, developing countries are divided into three categories according to their level of income and share of world trade. Category A developing countries pay a contribution of CHF486,000; Category B, CHF162,000; and Category C, CHF81,000.

In addition, there are presently 43 LDCs that are Members of or in the process of acceding to the WTO that are automatically entitled to the services of the ACWL. Thus, 74 countries – almost half of the membership of the WTO – are currently entitled to the services of the ACWL.

## **7. How is the ACWL financed?**

The ACWL is co-financed by its developed and developing country Members. The original plan was that the ACWL would, after an initial 5-year transitional period, be financed from the income from its Endowment Fund and legal fees. However, this original plan was premised on the expectation that the ACWL would have at most five lawyers on its staff at the end of the transitional period. This plan proved to be overly ambitious – largely because the ACWL was much more successful than anticipated. At the end of the original transitional period, therefore, it was already clear that the

income from the Endowment Fund and the legal fees would not be sufficient to fund the ACWL, which by then already had a staff of eight lawyers.

Since the original transitional period ended in 2006, the ACWL has continued to receive additional funding in the form of voluntary contributions from the developed country Members listed above. Going forward, the ACWL will likely continue to be funded by the revenue from the Endowment Fund, which provides a guarantee of the independence and viability of the ACWL, as well as voluntary contributions from the developed countries listed above (and hopefully others).

The challenge faced by these developed countries in financing the ACWL should not be understated. While the ACWL has an excellent reputation for quality and accountability, it is unusual for these countries to fund an aid project over which they cannot, for essential reasons, exercise direct control. Thus, donor countries that wish to retain sole control over the use of their funds, to fund projects seeking pre-defined results, or to fund projects that serve short-term political goals, may find it difficult to provide funding to the ACWL. However, these concerns have not deterred the ACWL's developed country Members. In the words of former ACWL Executive Director Frieder Roessler, "the developed countries that have decided to fund the ACWL are convinced that the integration of developing countries and LDCs into the WTO's legal system and decision-making system benefits all Members of the WTO, that access to legal expertise is essential to that integration and that the legal advice of an institution micro-managed by donors and serving political ends would not be credible and would not be sought".

## **8. How does the ACWL operate?**

As explained above, the ACWL has a very clear mandate. It is to provide legal advice and training on WTO law, as well as assistance in WTO dispute settlement proceedings, to the countries entitled to its services.

In addition, Article 6 of the Agreement Establishing the ACWL provides that each developing country Member and qualified LDC is entitled to the services of the ACWL. Thus, the ACWL must make its services *equally* available to all of its Members and the LDCs. In practice, this means that the ACWL can respond only to the requests of Members and LDCs for advice; it cannot propose to individual Members that they pursue particular legal issues. To do so would be to deprive other Members of their equal opportunity to avail of the services of the ACWL with respect to that legal issue. For this reason, the ACWL can provide services only at the request of the developing countries and LDCs (no "ambulance chasing").

It is also worth re-emphasizing that the ACWL provides only *legal* advice, not political or strategic advice. This is necessary to ensure the ACWL's neutrality and impartiality as between its various Members and the LDCs. For this reason, the ACWL does not take positions of its own on any legal issues. Instead, it simply provides advice on the current state of the law: it advises on what the law *is*, not what it *should be*. This, again, is necessary to ensure that all ACWL Members and LDCs have equal access to the ACWL's services in accordance with Article 6 of the Agreement Establishing the ACWL. An individual country would be disadvantaged in its ability to access the ACWL's services if the ACWL, as an institution, took positions of its own that might not be consistent with the policy of that individual country.

The requirement that the ACWL does not take any positions of its own is also necessary to ensure that the ACWL does not fall prey to the "Frankenstein" problem referred to above of the possibility of the ACWL doing more harm than good by pursuing its own agenda. From an internal management perspective, I would also emphasize how helpful it is for the ACWL to know exactly what it is supposed to do and, as importantly, what it is *not* supposed to do. Having a clear, non-political mandate enables us to focus all our energies on doing what we are supposed to do and on doing it as well as possible.

Finally, the ACWL's legal advice is strictly confidential. The ACWL does not disclose: (i) the identity of the individual countries that seek its advice; (ii) the nature of the issues on which each country seeks advice; (iii) the content of the advice provided; or (iv) details of how that advice was used by the requesting country (even where the ACWL knows this). The reasons for this should be obvious. To illustrate with a practical example, assume that developing country A is considering imposing an import ban on goods produced by developing country B and seeks the advice of the ACWL on whether the measure would be WTO-consistent. Country A does not want Country B to know it is/was considering imposing a ban on its products. While these concerns apply to all lawyers, they are particularly sensitive in the WTO environment, which involves relations between sovereign governments, as well as between sovereign governments and their private stakeholders. In addition, these concerns are exacerbated in situations where the country requesting the advice may have concerns regarding measures being taken by larger, politically more influential and resource-rich developed countries. The country requesting the advice of the ACWL is, of course, free to disclose or discuss that advice as it sees fit.

Against this background, we will discuss briefly the services provided by the ACWL under each of the three aspects of its mandate.

### ***Legal Advice***

As noted, the ACWL provides about 200 legal opinions each year free of charge to its developing country Members and the LDCs entitled to its services.

The theory is that the ACWL is supposed to provide developing countries and LDCs with the same "in-house" capacity as enjoyed by developed countries. For example, officials of the European Commission can get in-house legal advice free of charge from their staff lawyers. The ACWL provides the same capacity to its users. Again, the ACWL operates in this respect as a public good, pooling the collective knowledge and expertise of developing countries in the WTO in the ACWL and making that expertise available to each of the developing and least-developed countries individually as requested.

Over the years, the ACWL's legal opinions have covered virtually every aspect of WTO law. They fall into three general categories: (i) legal questions regarding participation in the institutions and activities of the WTO, such as accessions, trade policy reviews, committees, and negotiations (on which the ACWL is limited to commenting on how proposed texts would affect existing rights and obligations); (ii) legal questions regarding developing and least-developed countries' own compliance with their WTO obligations; and (iii) legal questions regarding the consistency with WTO law of measures taken by other WTO Members.

### ***Dispute Settlement Support***

Since its establishment, the ACWL has been involved in more than 40 WTO dispute settlement proceedings. This represents almost 20 per cent of the total number of disputes initiated in the WTO in that period. A list of these disputes may be found in the ACWL's Report on Operations.

An interesting feature of this work is that it was originally anticipated that the ACWL would be primarily involved in assisting developing countries in disputes against developed countries. Increasingly, however, disputes *between* developing countries are becoming more frequent, indicating the increased importance of "south-south" trade to developing countries.

Unlike its legal opinions, the ACWL charges fees for assistance in dispute settlement proceedings. As with the "membership fees" paid by developing countries upon joining the ACWL, the fees for assistance in dispute settlement proceedings vary according to the level of income and share of world trade of the country in question. The *maximum* fees that would be payable by each category of country

for the ACWL's assistance in the three main phases of dispute settlement proceedings (consultations, panel, and Appellate Body) are as follows: Category A: CHF 276,696; Category B: CHF 207,522; Category C: CHF 138,348; and LDC: CHF 34,160.

These fees are significantly lower than those charged by private law firms, estimates of whose fees for a typical WTO dispute settlement proceeding can range from CHF 400,000 to CHF 600,000. The original purpose of the fees (in addition, of course, to revenue generation) was to discourage "frivolous cases". Experience has shown, however, that "frivolous" cases are not very likely. First, due to its non-political and impartial nature, the ACWL provides a realistic assessment of the chances of success in any potential WTO dispute, thereby discouraging "frivolous" disputes. In any event, experience has shown that governments are, for the most part, more dispute-averse than litigious, even in the WTO. WTO Members will generally prefer to resolve disputes – except the most intractable – by means other than litigation. To the extent, therefore, that "frivolous cases" are unlikely, the question arises whether the ACWL's fees should be modified.

One misconception regarding the ACWL's assistance in WTO dispute settlement proceedings we have sometimes heard is that the ACWL does not assist in preparing for a dispute. This is incorrect: the ACWL is frequently involved – at the request of the government in question – in every step of developing a potential WTO dispute. Moreover, the ACWL has a Technical Expertise Fund available to help defray the costs of any scientific, economic, or other expert technical assistance that may be required to prepare and conduct a dispute (or, indeed, to provide any other legal advice).

If two countries entitled to ACWL services seek advice in the same dispute, the ACWL, like other lawyers, applies the first-come-first-served rule. This, of course, impinges on the rights of the second country under Article 6 of the Agreement Establishing the ACWL to the services of the ACWL. To resolve this problem, the ACWL has created a Roster of External Counsel, consisting of many of the leading lawyers and law firms in the field of WTO law. These lawyers and law firms have agreed to assist any ACWL Member that is denied the direct assistance of the ACWL due to a conflict of interest on equivalent terms as the ACWL would have had the conflict not existed. The country affected selects its lawyer from the Roster, without any recommendation or interference by the ACWL. In these cases, the ACWL bills both countries according to the fee schedule listed above (increased by 20 per cent when both countries seek the ACWL's assistance). The ACWL then pays the lawyer representing the second country the amount paid by that country to the ACWL plus a premium. To date, the Roster has been used in six disputes.

Research involving a comparison of WTO disputes in which the ACWL was not involved with disputes in which the ACWL provided assistance indicates that the ACWL is achieving the goal of enabling WTO Members to defend their interests in cases where they would not otherwise be able to do so. Professor Chad Bown has found that "with the ACWL's assistance, developing countries are able to enforce their market access rights for much more of their trade". He concluded that the ACWL "may be shifting the composition of cases that arrive before the DSU toward enforcing smaller-scale market access cases of interest to poor countries".

### ***Training Activities***

The third aspect of the ACWL's operations is its training activities, which are an important supplement to its legal advisory and dispute settlement work. Drawing on its experience in dispute settlement proceedings and other legal issues, the ACWL conducts a weekly training course on WTO law at its offices for Geneva-based delegates of its developing country Members and the LDCs. The course includes a moot court exercise and an optional exam. The ACWL also conducts *ad hoc* seminars on topics of interest, such as panel or Appellate Body rulings and other topics of WTO law. These seminars can also be conducted at the request of individual countries.



For budget reasons – and again respecting the requirement that the ACWL must make its services equally available to all eligible countries – the ACWL cannot travel to individual capitals at its own expense to conduct training programmes. However, the ACWL can and does participate in training programmes funded by other organizations on this basis. In addition, the ACWL is increasingly conducting training activities by internet and videoconference.

In 2005, the ACWL launched the Secondment Programme for Trade Lawyers, under which lawyers from the governments of LDCs and developing country Members join the staff of the ACWL as paid trainees for a nine-month term starting in mid-September and ending in mid-June of the following year. The Programme gives government lawyers an opportunity to work with, and learn from, a team actively involved in WTO legal issues and dispute settlement proceedings. To date, 23 government lawyers from 13 developing countries and six LDCs have participated in the Programme. This programme has been a considerable success. In the words of one recent participant from Samoa, it was "an unforgettable learning experience. It was even more rewarding to be able to work alongside and be taught by experts in WTO law. I was also exposed to a higher level of working environment". The Secondment Programme provides lawyers from developing and least-developed countries with a unique opportunity to work as practicing lawyers in a setting dedicated to WTO law. The ACWL is currently considering expanding this programme from three to four lawyers per year.

## **9. How has the ACWL been perceived?**

The ACWL has generally been perceived to be a success, in two respects. First, in the words of former WTO Director-General Pascal Lamy, the ACWL "plays a crucial role in maintaining a viable and credible rules-based multilateral trading system". Similarly, Australia's Ambassador to the WTO, Mr. Tim Yeend, stated that the ACWL "performs an important and unique function that serves to strengthen the WTO system". Thus, the ACWL serves an essential role in ensuring the functioning of the WTO system.

Secondly, the ACWL directly benefits the countries it serves. As noted, Professor Chad Bown has found that the ACWL enables developing countries to defend their interests with respect to smaller volumes of trade in a cost-effective manner. In a study of Africa's participation in the WTO, Professor Richard Mshomba concluded that "the ACWL is a shining example of how technical assistance can and should be delivered".

The ACWL's users also consistently praise its work. In annual surveys of the users of the ACWL's advice, they consistently describe it as "highly satisfactory" (73 per cent in 2013) or "very satisfactory" (25 per cent in 2013). Users describe the ACWL's legal advice as "well focused and provid[ing] precise guidance" and the ACWL as "a very reliable source for counsel and guidance, as well as a crucial institution for developing countries to be able to correctly enforce their rights in the WTO".

The ACWL has some perceived weaknesses also. One is that it does not address or remedy all of the internal capacity constraints affecting developing and least-developed countries. These constraints affect these countries' ability to liaise with their private sector interests on identifying and preliminarily engaging on potential trade concerns. Another concern expressed is that the ACWL does not have sufficient resources to extend its work sufficiently beyond Geneva and into regions. To this end, it has been suggested that regional ACWLs should be created.

There has been some interest in establishing a counterpart to the ACWL in the area of investor-state disputes under ICSID procedures. This is another area in which the legal capacity constraints of developing countries are perceived to place those countries at a systemically-unfair disadvantage. To date, these efforts have not yet come to fruition. The size and complexity of ICSID disputes, on average, compared to WTO disputes, as well as other practical constraints, may inhibit the creation of an ACWL-like organization in this field.

## **10. What is the future?**

The future of the ACWL is difficult to predict. As a Member- and thus demand-driven organization, the ACWL does not control its own destiny. At a minimum, its continued success depends on its users maintaining their confidence in the quality, impartiality, and independence of the services it provides. The ACWL's dedicated and hard-working staff will continue to do their utmost to maintain that confidence. Equally importantly, the future of the ACWL depends on the continued cooperation between its developed and developing country Members and on the continued willingness by its developed country Members to fund the ACWL as an independent, impartial, public good that operates for the common benefit of all WTO Members.

In large part, the destiny of the ACWL also depends on the evolution of the WTO legal system. As long as the WTO continues to address the trade concerns of its Members, whether informally through its committees or other means, or in formal dispute settlement proceedings, there should be continued demand for the ACWL's services. It can also be expected that as more and more developing countries focus on trade concerns, they will increasingly appreciate the importance of a clear understanding of how the WTO legal system can be used to defend their interests and will turn to the ACWL for assistance in this regard. An event such as the successful completion of the Doha Development Round, with new legal texts to be interpreted, could result in a substantial increase in demand for the services of the ACWL. On the other hand, any broad erosion in confidence in the WTO dispute settlement system or the multilateral trading system generally as a means for addressing trade concerns could also result in a decrease in demand for the ACWL's services.

Nevertheless, based on the increasing demand in recent years and the very favourable reactions to its work to date, the future of the ACWL should be assured. Most commentators recommend continuing and expanding the resources available to the ACWL. Thus, one study has concluded that "More support should be given to the Advisory Centre on WTO Law as it has proven that it can provide high quality legal services at a relatively low cost for developing countries" (Horlick and Boekmann). It is difficult to disagree with this conclusion . . .

## **References and Further Reading:**

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