

Summary and Author's Concluding Observations

Introduction

This Summary is organised as follows. It begins by describing the structure of the book. This is followed by a brief overview of the assistance provided in various subject areas under the Commonwealth project, and how it helped member countries in deciding on the approach they could adopt in the discussions and negotiations at the World Trade Organization (WTO). The concluding section is an assessment of the achievements of the project and the constraints faced. An Author's Addendum looks at the contribution of several special features of the project in facilitating positive results, despite the constraints.

Structure of the Book

This book is divided into three parts. Part One provides background information and consists of two chapters. Chapter 1 describes the main features of the rules-based system created by the World Trade Organization (WTO) and what it does. It also explains how the work done in the organisation is different to that done in other organisations, and why the delegations from developing countries need technical assistance to participate in the highly technical and legal discussions and negotiations held under its auspices. Chapter 2 looks at how the Commonwealth project for providing assistance and advice to the members of the Geneva Group of Commonwealth Developing Countries came to be established.

Part Two consists of seven chapters that present an overview of the assistance provided to the members of the Group in discussions leading to the launching of the Doha Development Round of Negotiations in November 2001, and later after the round was launched, for participating in the negotiations on subjects covered in the agenda. Chapter 3 describes the problems that were encountered and how these were resolved resulting in the launching of the Doha Round. This is followed by accounts of the assistance and advice provided to the members of the Group since the launching of the Round to enable their participation in the discussions and negotiations in the following subject areas:

- Liberalisation of trade in agricultural products (Chapter 4)

- Agricultural commodity issues (Chapter 5)
- Liberalisation of trade in non-agricultural products (Chapter 6)
- Liberalisation of trade in services (Chapter 7)
- Role of industrial policy in attaining the Doha objectives (Chapter 8)
- Agreement on TRIPS and public health (Chapter 9)
- Trade facilitation (Chapter 10)

Part Three is devoted to a more detailed description of the assistance provided to individual delegations (Chapter 11), as well as the assistance provided in the period prior to the launching of the Doha Round (1997–2001) and the work done under the joint Commonwealth/International Trade Centre project (Chapter 12).

The working papers and other papers prepared in pursuance of the work done under the project are available for reference from the Commonwealth Secretariat's library, Tel: +44 (0) 207 747 6164, Email: library@commonwealth.int

Overview of the Assistance Provided

The Group selected the subjects on which the assistance of the Adviser was required.

Modalities for negotiations on agricultural and non-agricultural products

In agriculture, the papers prepared suggested that the extent to which Commonwealth developing countries could reduce their tariffs should take into account that production in almost all these countries was undertaken by poor farmers at subsistence level and, as such, the sector was not expected to benefit from efficiency gains that accrue following the liberalisation of trade. They should further be entitled to exclude from tariff reductions those products for which the existing level of protection was considered necessary for the maintenance of the livelihood of poor farmers and for ensuring food security.

In the industrial sector the analysis showed that if new measures to liberalise trade were to result in new investment and industrialisation, and not in de-industrialisation and increased unemployment as had happened in the past in some of the African countries, it was necessary that tariffs be reduced gradually and by small percentages. In addition, those sectors of industry that needed the existing level of protection should be excluded from tariff reductions.

In both the agricultural and non-agricultural sectors the assistance provided helped member countries to press developed countries for maximum reductions in tariffs and for removal of other barriers affecting trade in products of interest to them (chapters 4 and 6).

Agricultural commodity issues

One of the other major achievements is that the assistance provided enabled member countries of the Group that are heavily dependent on export earnings of primary commodities, to get included in the agenda for negotiations measures that could be taken under the legal framework of WTO to address the problems stemming from the persistent decline of commodity prices. Subsequent negotiations resulted in the inclusion of separate procedures for negotiations on improvement of the rules in the General Agreement on Tariffs and Trade (GATT) relating to international commodity agreements, in the modalities for agricultural products. These procedures would, inter alia, recognise that commodity-producing countries could enter into arrangements for stabilisation of prices without inviting consuming countries to participate in such arrangements, as required under the GATT rules (Chapter 5).

Trade in services

The papers prepared identified sectors in which the member countries of the Group could make requests to developed countries for liberalisation of trade. In deciding the sectors they should liberalise the papers emphasised the need to ensure that at national level there were effective mechanisms in the sectors to regulate the activities of the service enterprises. Commitments to bind the liberalisation measures on a legal basis should be given only if a regulatory mechanism was in place, or was being developed, to take into account the changes in competition that would result from liberalisation. Alternatively the countries making requests for liberalisation should be persuaded to provide the assistance necessary for building up such a mechanism (Chapter 7).

Adoption of a national industrial policy to support liberalisation measures

The paper prepared explained that there was a growing view amongst economists and policy-makers that liberalisation of trade does not automatically lead to economic development. In most cases, it becomes necessary to adopt appropriate 'industrial policy' under which governments provide incentives for investment in new industries through such measures as the establishment of industrial estates. Governments must also ensure they were able to rescue agricultural producers or industries that were being hurt by dumped or subsidised imports by imposing anti-dumping or countervailing measures. In certain situations, it may also be necessary for governments to provide increased protection by using the flexibility provided to developing countries

under the GATT rules to increase protection for the development of new industries. The analysis in the papers has enabled countries belonging to the African, Caribbean and Pacific (ACP) Group of States to table legal-based texts for improving the rules of the Agreement on Anti-dumping Practices (ADP) and the Agreement on Subsidies and Countervailing Measures (ASCM) to facilitate the developing countries to apply such measures in appropriate cases. They have also tabled a text seeking clarifications of the rules of GATT Article XVIII for improving the procedures for the WTO to examine the measures taken by developing countries for providing increased temporary protection for the development of new industries or for the development of recently established industries (Chapter 8).

TRIPS and public health

The Agreement on Trade Related Aspects of Intellectual Property (TRIPS) was added to the body of multilateral rules in 1995 when the WTO was established. It provides inter alia that all countries must protect the exclusive rights of patent holders to market the products for which they hold patents at prices to be determined by them for a minimum period of 20 years.

Prior to the adoption of the Agreement, a large number of developing countries provided protection to patents for pharmaceutical products for a period of only five to seven years. This had enabled the pharmaceutical industries in these countries to produce generic versions of products for which patents had expired in the country and to sell them in the domestic market and in other countries where the patent was either not registered or had expired at prices that were substantially lower than those charged by patent-holding company. The developing countries were apprehensive and had therefore argued that the adoption of the rule requiring all countries to provide protection for a minimum period of 20 years would, by preventing them from producing generic versions, have a serious impact on prices and on the ability of their governments to make drugs available to the people needing them at prices they could afford. Their apprehensions proved to be justified soon after the adoption of the TRIPS Agreement. Prices of pharmaceutical products became a controversial subject of public debate as a result of high prices charged by the pharmaceutical companies for new drugs that were needed in developing countries for treatment of diseases such as HIV and AIDS.

Against this background, the main focus of the work done under the project was to assist delegations in examining how the rules of the TRIPS Agreement could be improved and clarified to ensure that people in developing countries could have access to drugs at prices they could afford. The TRIPS Agreement leaves it open to countries to compel a patent holder to grant a licence to a domestic producer to produce a generic version of the patented product, particularly in cases where he or she is charging unreasonably high prices. However the rules provided that such compulsory licences

should be granted ‘predominantly’ for sales in the domestic market. The rules thus prevent companies that produce generic versions under compulsory licences from exporting. Further, the provisions permitting countries to grant a compulsory licence to a pharmaceutical company in the country to produce a generic version were of advantage only to those countries with a well-established manufacturing industry. A large number of developing countries, particularly the least-developed countries or those at a lesser stage of development, did not have national industries producing pharmaceutical products and so were in no position to take advantage of the provisions.

The working paper on the subject prepared under the project therefore proposed that the rules on compulsory licences in the Agreement should be modified to permit the governments of countries with a well-established pharmaceutical industry to also grant compulsory licences for the production of generic versions for export to least-developed and other low-income countries that did not have a manufacturing industry. The paper also suggested procedures that would have to be adopted to ensure supplies of these generic versions were not diverted to other countries.

The members of the Group who were actively participating in the negotiations in this area, generally agreed that the approach suggested in the paper provided a basis for the 2003 Decision taken on ‘Access to Medicines at Affordable Prices by Countries with no Manufacturing Capacities’ and the amendment to the relevant rules in the TRIPS Agreement that were subsequently adopted (Chapter 9).

Trade facilitation

A handbook on trade facilitation (Rege and Kataric 2007) published by the project proved useful not only to trade officials in national capitals and negotiators in Geneva but also to chambers of commerce, and research and other organisations interested in work in this area. The handbook topped sales at the WTO bookstore for over a year, and a number of delegations have time and again emphasised its usefulness in terms of the detailed points and suggestions it makes (Chapter 10).

Assistance to individual delegations

One of the key innovative aspects of the project was a hotline to make provision for assistance on request to individual delegations. This included, inter alia, providing clarifications on the legal issues raised in the discussions, giving opinions on compatibility with WTO law and practice of the laws, rules and regulations that countries proposed to adopt, and preparing papers on issues of special interest to the requesting delegations in the discussions (Chapter 11).

Assistance provided pre-Doha

From 1997, when it was established, to mid-2001 the main thrust of the project was on the preparation of papers that would explain in simple language the main features

of the various agreements and their rules. Papers were also prepared on the new subjects – trade and investment, trade and competition policy and transparency in government procurement – included in the WTO work programme adopted at the 1996 Singapore Ministerial Meeting for study and analysis. These enabled the member countries of the Group to examine whether these subjects should be taken up for negotiations on rule making if a new round were to be launched. All the papers were compiled in a manual on the world trading system (Rege 1999), which has been used widely not only by the delegations from developing countries and officials from their national capitals as a useful reference material on WTO law and practice but also by academic institutions, the business community and the general public. Its usefulness for all those who have an interest in WTO work is evident from the fact that it has been translated into nine languages – Arabic, Cambodian, Chinese, French, Romanian, Russian, Spanish, Ukrainian, and Vietnamese.

The assistance provided during the period also aimed at preparing delegations for participation in meetings on how the development dimension could be included in the agenda, if a new round of negotiations was launched. Considerable emphasis was placed on helping members of the Group in preparing formal submissions to appropriate WTO committees. The submissions identified in more specific ways the problems they were encountering in applying the rules of the various WTO Agreements at national level.

When the Commonwealth project started the Adviser was working on a joint Commonwealth/International Trade Centre project on some of the WTO related issues, and a decision was taken that he should continue to do this work. One of the major achievements of the work done under the joint project is the publication of a book on the challenges encountered by exporters in developing countries in meeting international trade standards (Rege and Gujadhur 2004). In analysing the difficulties the book emphasises that one of the important reasons is their inability to participate effectively in the technical-level discussions that take place in international standardisation organisations when the standards are being formulated and makes recommendations on the technical assistance that may be required to improve their capacities for participation in international standardisation activities. The publication has been well received particularly by persons who are involved in standardisation activities, and by trade officials and WTO officials associated with the work on technical regulations and sanitary and phytosanitary measures (Chapter 12).

Assessment of the Project's Achievements and Constraints

From what is stated above, it is evident that the work done under the project has been able to make a useful contribution. However, in evaluating how far this work has improved the participation of member countries of the Group in WTO activities, particularly in the negotiations held under its auspices, it is necessary to bear in mind

that assistance for this purpose is also being provided by a number of other international organisations. In fact the project was conceived and implemented to provide more focused attention on the needs of the member countries by complementing the analytical work on trade and development problems of developing countries that was being done by the UN Conference on Trade and Development (UNCTAD) on issues under discussions and negotiations in WTO. A number of other intergovernmental organisations like the Agency for International Trade Cooperation (AITIC) and non-governmental organisations such as South Centre and Third World Network are also active in providing assistance in this area. In addition, the Economic Affairs Division of the Commonwealth Secretariat provides assistance from London on certain subject areas under discussions in WTO. Member countries therefore had wide choices in deciding which agency they would like to rely for assistance and advice in a particular area.

It would appear that in deciding on a broad approach that could be adopted in the negotiations on liberalisation of trade in agricultural and non-agricultural products, the members of the Group relied greatly on the working papers prepared by the Adviser under the project. Further, it would appear that the member countries have relied heavily on the advice and assistance provided by the Adviser in most of the rule subject areas (such as trade facilitation, anti-dumping and other trade remedy measures and special and differential treatment to developing countries) where his insights into the trade and development problems of developing countries, and knowledge and understanding of WTO law and practice were important factors in securing clarification of the existing rules or adoption of new rules in the negotiations.

Findings in the evaluation reports

The pivotal role that the project played in providing assistance was reflected in the periodic reviews undertaken by the Group and in the reports of independent experts. For instance, in the major review of the first two years of the project, the Group unanimously agreed that the assistance programme had made ‘a positive contribution in assisting delegations in improving their understanding of the technical and highly complex issues under discussions in WTO’. The assistance provided on request to individual delegations on specific matters of interest or concern to them, was found to be ‘most valuable, particularly as such assistance was not available from UNCTAD or other agencies ... providing technical assistance on WTO related matters’. In subsequent reviews most of the members reaffirmed that the high quality of the papers had helped them in deciding on approaches that could be adopted in the discussions.

Independent experts commissioned by the Commonwealth Secretariat to conduct external evaluations echoed this positive assessment by members of the Group. In 2000, Mr Percy Mistry from the UK-based Oxford International Associates, after reviewing a number of background papers, stated that they were ‘commendable’ in respect to

their quality, substantive content and style with the pertinent arguments presented in a direct, non-technical way. 'They are neither condensing (as papers prepared by experts often are) nor abstruse containing mainly expositions and factual analysis that are objective, impartial and understandable. They simplify complex technical issues and terminology and can be understood by officials without specialised knowledge of trade economics or of procedural technicalities. They report on, and analyse the implications of, positions being taken by different countries on different issues without being partisan.'

In 2001 independent consultant Professor Mike Faber identified as an 'exceptionally valuable quality' the way in which the papers analysed a proposal or an obligation so that 'different governments or organisations can see exactly how the measure under scrutiny will affect them, and can make up their own minds on how they can respond to it'.

Mr Peter Tulloch, former Director of the WTO, evaluated the work done under the project in 2003. After interviewing ambassadors from the Commonwealth developing countries and officials from Geneva-based international organisations engaged in providing assistance, Mr Tulloch reaffirmed in his report that the majority of the members of the Group 'attached great value to the Adviser's work, which they see as filling a unique niche, providing information and advice which is genuinely driven by their demands, is timely, responds to their priorities and is available at short notice...' (Chapter 2).

Constraints faced

This assessment of the achievements of the project would not however be complete without reference to the difficult period the project went through from about the middle of 2002 to nearly the beginning of 2004. Some of the donor countries that were financing the project considered the papers prepared under the project often suggested negotiating approaches that in their view were not always consistent with the liberal and open trade policies developing countries should follow in the fast globalising economy. These donor countries therefore insisted that the papers should be made available to them for scrutiny and comments at the same time as they were submitted to the Group for discussions and review. The Group strongly resisted this proposal. A compromise solution was found in early 2004 when the donor countries agreed to give up their demand to see the papers before they were finalised, and, in return, the developing countries agreed to change the composition of the then existing Advisory Committee to include representatives of donor countries. The new Advisory Committee that was established consisted of three representatives of recipient countries and two from donor countries, and its main function would be to deal with the project's administrative aspects on the basis of quarterly reports to be submitted by the Adviser. The work of the Group went smoothly after this mechanism was adopted (Chapter 2).

Author's Addendum: Concluding Observations

In my view the project had six special features that contributed to the positive results, despite the constraints mentioned above.

First, the members of the Group were all Commonwealth developing countries and as such shared common historical ties and more or less the same systems for administration of laws and regulations. This enabled me to focus on their common trade and development interests in the background analytical papers and to make for their consideration, suggestions on the approaches they could adopt in the discussions and negotiations in WTO.

The practice of encouraging the active participation of the officials from the Missions in the preparation of the papers also enhanced the effectiveness of the assistance provided. The process began with discussions with officials from member countries who had requested the paper and reaching agreement with them on an outline of the issues to be covered. After the draft paper was ready, it was discussed in meetings held at expert level, in which officials from the Missions of all member countries took part. The purpose of these meetings was twofold; to brief the officials on the main points and to get their views on the suggestions made in regard to the approach members could adopt in the discussions and negotiations in WTO. The draft, which was revised taking into account the comments and views expressed in the expert-level meetings, was finalised only after its consideration at policy level in Ambassador-level meetings.

The expert-level meetings were generally arranged during lunch breaks, over sandwich lunches, in order to facilitate attendance by officials in between the morning and afternoon WTO meetings, which are held on almost every workday of the week.

The active involvement of the officials from the Missions in the preparation of the papers created a feeling of 'ownership' on their part, and encouraged them to take an active interest in the work of the Group. In addition, the detailed briefings on the issues covered by the papers, provided by the Adviser during the expert-level meetings, strengthened their capacity to participate effectively in the discussions and negotiations on the subjects in WTO.

Second, efforts were also made, wherever possible, to get the views of officials from capitals on the issues on which work was being done. The officials attending the expert-level meetings were requested to send the draft papers to capitals to get instructions on whether or not the approach suggested in the paper should be followed, before they were considered at the Ambassador-level meetings. Further, in order to ensure greater involvement of capital-based officials in the work of the Group, wherever possible, they were invited to attend seminars or workshops that were arranged to finalise the papers.

Third, the acceptance by those overseeing the project at the Commonwealth Secretariat that since I was working for the Group they did not need to be shown the papers I prepared in draft form for prior approval, contributed greatly both to the smooth operation of the project and efficiency in delivery of the assistance. The practice developed for sending the papers to the Secretariat after they were finalised in the expert-level meetings. If the Secretariat had any comments the Director of the Special Advisory Services Division or his representative made these known in the Ambassador-level meetings. The general approach of the Secretariat was that since these were papers of the Group and not of the Secretariat, it was for the members of the Group to ensure that they generally supported the views expressed in them. In adopting this approach the Secretariat was trying to ensure that the project was in practice member-driven.

Fourth, the flexibility available to me for providing assistance on request to individual delegations on a personal and confidential basis, in addition to that provided in pursuance of the work programme adopted by the Group, enhanced the usefulness of the assistance provided overall. As such assistance was not being provided by any of the Geneva-based organisations the delegations found it most useful, particularly as I was able to provide it almost immediately on request because of my long experience of working on WTO-related issues.

Fifth, it was recognised right from the beginning that even though as developing countries members of the Group had commonality of interest, given their widely differing levels of development it would not be possible for the Group as a whole to take joint positions in the discussions and negotiations in WTO. Thus members started out using the mechanism of the Group for discussions and exchange of views on the basis of papers prepared under the project, and no time was spent on lobbying for or building up joint positions. It was generally left to each delegation to decide on the position it would like to adopt in the discussions and negotiations in WTO, taking into account the points made in the papers. The Group therefore acted as a 'think tank' on issues on which papers were prepared. However, members of the Group belonging to the African and Caribbean regions who considered they may be able to take joint positions because their countries are at the same stage of development, were able to use the mechanism of the ACP or African Groups for building up joint positions based on the papers prepared under the project.

Finally, one of the most important factors that contributed to the positive results of the project was the personal interest shown by the Ambassadors who were elected as Chairpersons in the work of the Group. They demonstrated great confidence in my efforts, and despite their heavy work schedules all of them showed a willingness to meet with me at short notice for informal reviews of the work being done and to exchange views on further work that could be organised.

Part One

**The WTO rules-based system and the
Commonwealth Project**

