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The Project and the Modalities Adopted

Introduction

The previous chapter described the main features of the WTO multilateral trading system and the legal nature and extreme complexity of the issues underlying the need of developing countries for technical assistance to participate in the discussions and negotiations. This chapter focuses on the assistance that was being provided to developing country members by various organisations at the time when WTO came into existence. It explains why some of the ambassadors of Commonwealth developing countries requested technical assistance from the Commonwealth Secretariat to enable them to participate fully and more effectively in the discussions and negotiations, and how this action led to the establishment of the Geneva Group of Commonwealth Developing Countries.

Technical Assistance from GATT to WTO

At the time of its establishment the WTO along with other international organisations like UNCTAD were providing technical assistance to developing countries to enable them to participate more effectively in discussions and negotiations. The two forms of assistance provided were training of government officials in WTO law and practice and the arrangement of seminars and workshops on issues under discussions and negotiations in WTO.

Training of officials

Soon after the establishment of GATT, the member countries recognised that developing countries were at a serious disadvantage in participating in the discussions and negotiations due to their lack of technical expertise. To help developing countries to build a cadre of officials with such expertise, the GATT Secretariat began arranging training programmes for officials from developing countries. Three courses, each lasting for about three months, were arranged separately for officials from English, French and Spanish-speaking countries. These courses focused on explaining the main objective of the multilateral trading system, the framework of rights and obligations created by the various agreements, and the work that was being done.

Since the establishment of the WTO the scope and content of these training programmes has been widened. In addition to Geneva, training programmes are being offered at regional centres in Asia, Africa and the Caribbean in co-operation with universities and research institutions. A new entity, the Institute for Training and Technical Cooperation, has been established within the WTO Secretariat with responsibility for arranging such training programmes and for providing other trade-related technical assistance.

Seminars and workshops

In 1973 the GATT Secretariat started arranging seminars and workshops at country and regional levels to brief government officials on the work that was being done, particularly on the issues on which it was expected new rules would be developed. UNCTAD arranged similar workshops and seminars in the period when the preparatory work for launching of the Uruguay Round of negotiations was underway in GATT. After the new round was launched the focus shifted to briefing officials from developing countries on the issues under negotiations.

There was, however, a significant difference in the approaches adopted by the two organisations. Secretariat officials in the seminars and workshops arranged by the GATT, given the need to maintain strict neutrality as officials of a negotiating body, confined themselves to explaining facts and different views that were expressed by delegations from developed and developing countries. In contrast, the officials in seminars arranged by UNCTAD often shared with the participants the views of UNCTAD or their own personal views on the approaches developing countries could take on the issues under discussion or negotiation in the WTO.

Despite these steps to build the capacities of developing countries to participate in WTO activities, the Geneva-based delegations of most of these countries found that they lacked the knowledge and expertise to do so effectively. Three factors were responsible for this. First, the establishment of WTO had broadened the scope of negotiations from trade in goods to include trade in services and trade-related aspects of intellectual property. Second, as previously noted, countries that had not become members of the GATT's associate agreements (e.g. on technical barriers to trade, anti-dumping and countervailing measures) in the earlier period, found that as a result of the decision taken while establishing the WTO they had automatically become members and were bound by the obligations. A third factor compounded their problems; as a result of pressures mainly from some of the major developed countries, four new subjects – trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation – were included in the WTO's work programme at the first Ministerial Meeting held in Singapore, in December 1996. A number of the ambassadors and the officials posted in the missions found they did not have the required expertise in most of these areas, and they were not getting detailed briefs from their governments on the approach they could adopt in the discussions. In some cases the briefs received were cursory and

lacked in-depth analysis as the officials responsible at national level for their preparation did not have the required expertise. The result was that many of them found they were taking positions under a 'veil of uncertainty' as to whether their national interests were being effectively protected (Rege 1999).

Establishment of the Commonwealth Project

These difficulties prompted some of the ambassadors from Commonwealth developing countries to take action. They held consultations on the desirability of requesting the Commonwealth Secretariat to provide the services of a Geneva-based trade expert to advise and assist them in the negotiations. There was a precedent for the request: during the Uruguay Round, the Commonwealth Secretariat had established an office in Geneva and posted one of the Secretariat officials to work as an adviser.

The informal consultations resulted in the preparation of a non-paper identifying the areas in which assistance would be required and broad indications of the modalities that could be adopted by the adviser in providing such assistance. It was agreed with the Commonwealth Secretariat that the programme of work of the adviser would have to be carefully drawn to ensure it complemented that being done by UNCTAD and WTO and did not lead to unnecessary duplication. It was also recognised that in order to ensure the advice and assistance provided contributed to the effective participation of the recipient delegations, it was necessary that the adviser appointed was a senior person who could liaise directly with Ambassadors. Further qualifications included expertise in WTO law and practice as well as in-depth knowledge and understanding of the trade and development problems of developing countries.

At a meeting held in February 1997, the Secretariat confirmed that it was in principle agreeable to the proposal. It was agreed with the ambassadors of all Commonwealth developing countries that the adviser should be initially appointed on a pilot basis, after which time the project would be evaluated.

The Geneva Group and its Constitution

The Commonwealth Secretariat completed the selection procedures in July 1997 and appointed Mr Vinod Rege, a Geneva-based consultant who, besides being a former Director of WTO, is also an economist specialising in the trade and development problems of developing countries. Following confirmation of the appointment, a meeting was arranged to formally establish the Geneva Group of Commonwealth Developing Countries and agree the modalities that should be followed by the Adviser in providing assistance. The invitees to the meeting included the ambassadors of all missions of Commonwealth developing countries in Geneva. The meeting took decisions regarding the composition of the Group and the logistical arrangements that would be made for the work of the Adviser (Box 5).

Box 5: Institutional framework of the Group and terms of reference for the Adviser

Following is a summary of the decisions taken at the meeting of Geneva-based ambassadors of the Group of Commonwealth Developing Countries held in Geneva, 7 July 1997, which established the Group and adopted its constitution.

Composition of the Group

- The Group shall consist of all developing country members of the Commonwealth that have missions in Geneva. It shall meet periodically for discussion and exchange of views on subjects of interest to them in WTO work.
- The Group shall elect one of its members as Chairman. The Consultant appointed by the Commonwealth Secretariat to provide technical assistance and advice to those countries for their improved participation in WTO activities, shall act as its secretary.

Bureau and Advisory Committee

- There shall be a Bureau consisting of the Chairman of the Group and the Advisory Committee of Ambassadors.
- The Advisory Committee shall consist of seven members. Of these, three shall be elected from among the African developing countries and two each from the Asian and Caribbean countries belonging to the Commonwealth.
- Senior officials nominated by the Commonwealth Secretariat shall be ex-officio members of the Advisory Committee. The Adviser shall also be an ex-officio member of the Advisory Committee.

Modalities for assistance and advice provided by the Consultant

- In providing assistance and advice the Adviser should, where possible, lay emphasis on arranging informal meetings of interested delegations to brief them on the issues under discussions in WTO. He may invite experts from the WTO, UNCTAD, International Trade Centre and other international organisations to participate in such meetings where he considers it appropriate and desirable.

Background papers

- The papers prepared by the Adviser to provide a basis for discussions in such meetings, should be brief and practical in orientation. They should explain, in simple language, the WTO law applicable in the subject areas and analyse the possible implications of further liberalisation of trade and of the proposals for the development of rules covering new subject areas for trade and economic development in the Commonwealth developing countries.
- In addition, he should bring to the attention of interested delegations analytical papers and articles published by academic and research institutions on subjects that are under discussion in the WTO, and where possible circulate these.

Response to individual confidential requests

- In cases where a delegation requests the Adviser to prepare a paper on a subject of particular interest or for a legal opinion on a specific point of concern, he should make the paper available only to the requesting delegation. It would be for the requesting delegation to decide whether the paper should be made available to others.
- In his periodic reports to the Commonwealth Secretariat the Adviser may indicate broadly the subject areas on which such papers were prepared, in order to provide transparency. He should also try to ensure that there is a reasonable balance between the time devoted for the preparation of such papers and the other work he is expected to do in accordance with the work priorities determined by the bureau.

Techniques used for the provision of assistance

Taking into account the provisions in the Group's constitution three techniques were used for providing practical assistance, as follows:

Participation of officials in preparing background papers

The first step in drafting a paper involved the preparation of an outline by the Adviser in co-operation with the officials from delegations who had shown an active interest. For this purpose, the Adviser spent considerable time in briefing them on the implications of the issues to be covered. When the draft paper was ready it was discussed at so-called 'expert level meetings' of officials from missions and revised taking into account the comments made and views expressed. The papers, revised and approved at the expert level meetings, were later discussed in 'ambassador level meetings' to exchange views on the suggested policy approaches that could be adopted by the member countries of the Group in the discussions and negotiations. Senior officials from the Commonwealth Secretariat were invited to attend these meetings and to contribute their views.

Right from the beginning it was recognised that it would not be possible for the Group as a whole to build common positions on issues under negotiations because of the different stages of development of the countries. The delegations therefore used the papers for improving their understanding of the issues under discussions and to raise the points, when appropriate, in the WTO meetings. However, as the work proceeded members of the Group belonging to the African and Caribbean regions considered that in some cases they might be able to use the points made in the papers to develop joint submissions to the negotiating groups. These members subsequently developed the practice of discussing the background papers and legal-based texts more broadly in the ACP and African groups to gain the support of non-Commonwealth countries in the regions. This broader support made it possible to submit them either as African or ACP proposals.

Training in subject areas

From time to time, seminars and workshops were arranged for officials from the missions as well as officials from the capitals dealing with the subjects at national level. These seminars and workshops involved training in subject areas required for application of the rules of the WTO agreements (e.g. pre-shipment inspections and customs valuation). They also covered subject areas that required further work at the national level to decide on whether the subjects suggested by other delegations should be included in the agenda for negotiations (e.g. transparency in government procurement and trade facilitation).

The background papers prepared by the Adviser and some other experts provided a basis for discussions at the seminars and workshops. Officials from the capitals who were invited to attend were required to submit papers on the practices and policies pursued by their governments in the subject areas. They were also required to give their views on the difficulties encountered in the application of existing rules, and, where the subject matter related to new areas, on whether the subject could be included in the agenda for negotiations.

Briefing and training programmes

Meetings to brief ambassadors and new officials in Geneva on the WTO rules and the work being done in the organisations were held from time to time almost every year. Such briefing meetings were often arranged at the request of delegations on one or two specific subjects on which they considered they needed in-depth preparation.

In 2001 and 2002, more intensive training was arranged for officials from Commonwealth Developing Countries attending the trade policy courses for English-speaking countries organised by the WTO's Institute of Training and Technical Co-operation. Under the programme, the Adviser assisted each of the officials attending the two-week programme in preparing a paper on a subject discussed in the WTO, which in their view was of crucial importance to their specific country. Even though the programme was found to be useful and to be making a positive contribution, it was discontinued in the latter part of 2003 after undergoing a difficult period, as explained later in this Chapter.

Assistance to individual delegations

The mandate for the work of the Adviser stipulated the provision of assistance to individual delegations. Roughly 20 per cent of the Adviser's working time was spent on providing assistance over the phone or in face-to-face meetings in the form of discussions and exchange of views on a particular issue, and in some cases, preparation of detailed background papers. The advice sought varied from securing clarification on legal issues and on how to respond to the points raised by other delegations in the WTO meetings, to the approaches that could be adopted on whether subjects like 'labour rights and WTO rules' should be taken up for discussions in the negotiations.

The Appointment of the Adviser

The Adviser started working from 1 August 1997. The initial appointment was for a period of six months. In the beginning the funds required for the project were provided from the Commonwealth Fund for Technical Co-operation (CFTC). Later on the project was brought under the umbrella of the Trade and Investment Access Facility (TIAF), a special fund made available to the Commonwealth Secretariat by

four donor countries: Australia, Canada, New Zealand and the UK. After the first evaluation, which was undertaken by the Advisory Committee in co-operation with the Commonwealth Secretariat, it was decided to extend the project.

Reviews and Evaluations

From the project's inception, the Group in co-operation with the Secretariat developed the practice of periodic review and evaluation of the work done by the Adviser to ensure that the assistance provided was effective in meeting the identified needs of the member countries. In a major internal review of the work done prior to the expiry of the first two-year period, the Group unanimously agreed that it had been positive.

Members described the assistance programme as 'most useful' and considered that it 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 'was found most valuable, particularly as such assistance was not available from UNCTAD or other agencies providing technical assistance on WTO related matters'.

In addition to the internal evaluation, independent experts also assessed the work done under the project. One such evaluation conducted in 2000 by the UK-based Oxford International Associates observed:

'A review of a number of background papers prepared by the Adviser recently indicates that their quality, substantive content and style are commendable. They have been written to inform policy-makers of key issues and present the pertinent arguments in a direct, non-technical way. They are neither condescending (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' (Mistry and Saplegivi 2000).

In a subsequent evaluation, independent consultant, Professor Mike Faber, also attested to the usefulness of the advice and assistance provided by the Adviser in improving the participation of Group members in the WTO discussions and negotiations. Professor Faber reaffirmed that the papers prepared by the Adviser were objective and enabled the countries to analyse the different proposals and make their own decisions on the approaches to adopt. In particular, his report observed:

'They (the papers prepared by the Adviser) are well formed, up to date and clearly written. They have another, exceptionally valuable quality. They analyse a proposal or an obligation in such a way 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...' (Faber 2001).

To evaluate the role and further requirements of the Adviser, the Secretariat appointed an independent consultant to undertake a cost-benefit analysis of the proposal for providing office facilities and research support. After interviewing the relevant parties, the consultant reported that the majority of the members of the Group...

‘...attach 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 ... They emphasised the usefulness for small delegations in Geneva to have a readily on hand source of expertise in the rapid and complex areas of WTO negotiations, appreciate the Adviser’s long standing knowledge of the GATT and WTO system and the rapid response and flexibility of having an individual present (in Geneva)...’ (Tulloch 2002).

However, the project met with some initial criticism. For example in August 2003, *The Guardian* newspaper in the UK published an article stating that donor countries were unhappy with some aspects of the project relating to the new issues of trade and investment, trade and competition policy, transparency in government procurement and trade facilitation. According to the article there was a feeling among some donors that the background papers did not support the negotiating approach of the donor countries to get these subjects included in the agenda for the negotiations for rule making.

Compromise solution

Ultimately, at meetings held in Geneva, the shared values of the Commonwealth family prevailed and enabled a compromise solution to be found. The donor countries agreed to give up their demand to see the background papers before they were finalised. In return the developing countries agreed to change the composition of the Advisory Committee to include representatives of donor countries. The Advisory Committee that was established consisted of three representatives of Asia, Africa and Caribbean recipient countries and two representatives of donor countries. It would meet every four months to review the work done by the Adviser on the basis of reports submitted by him. The reports should provide an overview of the work done under each of the items included in the work programme for the year and the number of days devoted to such work.

It was recognised that the basic objective of the review was to ensure greater transparency of the work done by the Adviser and not to review or scrutinise the papers prepared by him. However, the Group was encouraged to make available to the donor members of the Advisory Committee those papers that had already been discussed in the Group and could therefore be circulated more widely.

Following the establishment of the Advisory Committee and the re-appointment of the Adviser the uncertainty about the future of the project came to an end. As envisaged in the compromise solution, the Advisory Committee met regularly every fourth month and the Group started the practice of making available to the donor members

some of the background papers after members had used them in deciding on the approach they could adopt in the discussions or negotiations in WTO.

The first two meetings of the Advisory Committee were held in Geneva after which agreement was reached to meet virtually, with face-to-face meetings taking place only if requested by a member. The arrangement worked to the satisfaction of all parties. However, by 2008 the funds made available under TIAF had been exhausted and the project was reorganised in consultations with the members of the Group, taking into account the funding constraints and the progress made in the negotiations. It was agreed that the Geneva-based Adviser should be responsible for providing assistance in selected rules-based areas in which a large number of member countries had been unable to participate actively in the negotiations.

References

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Part Two

**Assistance provided on subjects in the agenda of the
Doha Round**

