

# 12

## Main Features of the Assistance Provided in the Pre-Doha Period (1997–2001)

---

### Introduction

Prior to the establishment of WTO, the multilateral trading systems consisted of GATT and of its associate agreements, which elaborated on some of its provisions. However membership of the Associate agreements was optional. As a result while all developed countries had become their members, only a few developing countries had acceded to them.

The situation changed dramatically towards the end of the Uruguay Round when the negotiations for the establishment of the WTO commenced. It was decided that since the multilateral trading system was a single undertaking, members of the WTO should be bound by all of its legal instruments. A large number of developing countries that had not acceded to the associated agreements of GATT suddenly found they were legally bound not only by the main provisions of GATT but also by its associate agreements. Simultaneously they became bound by the two other major legal instruments negotiated in the Uruguay Round and made part of the WTO system – GATS, which laid down rules applicable to trade in services, and the Agreement on TRIPS, which prescribed rules applicable in the area of trade-related aspects of intellectual property.

Thus, with the establishment of WTO the developing countries found they would have to broaden the institutional framework they had adopted at national level to deal with these additional legal instruments. Moreover they were required to post senior officials in Geneva who could represent them in the various committees that were established under the provisions of these legal instruments. These developments provided major challenges to the national administrations in most of these countries since they did not have in their bureaucracies, officials with the expertise in the various fields that were covered by the multilateral trading system. Indeed, broadening the scope of the multilateral trading system to cover trade in services and trade-related aspects of intellectual property rights implied that knowledge and understanding of WTO rules was necessary not only for officials from ministries with functions related to trade in goods, but also for officials from ministries dealing with the new subjects (e.g. ministries of finance, telecommunications and education).

## **Difficulties encountered by developing countries**

As a result many of these countries faced serious problems in applying some of the rules of the various WTO Agreements at national level. These problems often arose because of the lack of expertise on the part of the officials in applying the rules. The preliminary analysis and examination of these problems, however, also revealed that the difficulties in applying the rules in certain areas arose because in formulating them, not enough attention was paid to the trading and administrative realities prevailing in developing countries. These countries therefore considered that it would be necessary in the work in WTO to give priority to identifying these problems and to securing changes in the rules that would go towards resolving these implementation problems.

These problems were further compounded by the decision taken at the first Ministerial Conference held in 1996 after the establishment of WTO, to include four new subjects for study and analysis – trade and investment, trade and competition policy, transparency in government procurement and trade facilitation – with a view to deciding on whether they should be taken up at an appropriate time for negotiations on rule making. This decision was taken following pressures from developed countries. By about the middle of 1997 the major developed countries also started pressing for a new round of negotiations to be launched as early as possible for further liberalisation of trade both in goods and services and for rule making in the new subject areas included in the work programme. They emphasised that the WTO member countries were under an obligation to launch such negotiations for liberalisation of trade in agricultural products and in services. This was because the Agreement on Agriculture and GATS provided that negotiations in the areas covered by them should commence within five years of them coming into effect – that is before the end of 2000. Instead of confining negotiations to these two subject areas it would be desirable if a round of negotiations covering subjects of interest to all countries, were launched in the near future (Rege 1998a).

In order to assist delegations from developing countries in dealing with the problems which they encountered as a result of these developments, WTO and other international organisations like UNCTAD adopted intensive programmes for holding workshops and seminars in developing countries, both at country and regional levels. These organisations also made efforts to provide on request assistance to these countries to build at national level the necessary institutional framework for co-ordination among the various ministries involved in WTO-related work and for the implementation of some of its rules.

However, most of the officials posted in Geneva from the developing countries found that while they had some knowledge of the rules of GATT and how it worked, they had very limited understanding of the detailed rules laid down in the associate agreements of GATT or of the rules of GATS and the Agreement on TRIPS. In the

situation, soon after the appointment of the Adviser, the Group decided that in providing assistance he should give priority to helping delegations to:

- Improve their knowledge and understanding of the WTO rules-based system and of the new subjects that were included in the WTO work programme for study and analysis;
- Decide on the approach they could adopt on the proposals that were being made for launching of a new round of negotiations.
- Identify the problems encountered in applying the rules at national level (Implementation Issues);

Following is an overview of the specific assistance provided under these priority areas.

### **Improving understanding of WTO rules and new subjects**

To brief delegations and to improve their understanding of the rules of WTO system and of the issues that were under discussions, a two-pronged approach was adopted.

#### *Background papers*

First was the preparation of background papers that used simple language to explain the complex rules laid down in the various WTO Agreements. The subject areas covered included all of the associated agreements of GATT that were negotiated in the Uruguay Round, and the main features of GATS and of the Agreement on TRIPS.

In relation to the negotiations on new subjects to be included in the WTO work programme for study and analysis, papers were prepared providing an overview of the discussions that were taking place. These papers prepared by the Adviser summarised the views expressed in the papers prepared by OECD, UNCTAD and other organisations on the desirability and appropriateness of taking up these subjects for rule making in the WTO.

After the circulation of the papers meetings were arranged, first at the level of officials from the missions and later at Ambassador level, for briefings and discussions on the points made and issues raised. To facilitate attendance the meetings were held during lunch periods over a sandwich lunch.

In order to ensure that these papers were available for further examination at national level, to governments and also to the general public, these papers were included in the *Business Guide to the World Trading System* published by the Commonwealth Secretariat in co-operation with the International Trade Centre (Rege 1999a). The Adviser also met individually with officials who considered that they needed further clarification and information on certain aspects that were not fully covered by the papers, and where necessary made available to them the required additional information. The

practice was also adopted of holding special meetings every six months or so to brief new ambassadors and officials on the WTO system and its ongoing work.

### *Securing rule changes to find solutions for implementation problems*

A comprehensive document prepared in April 1999 (Rege 1999b) provided members of the Group with a broad picture of the implementation problems confronting many developing countries. The document analysed on an agreement-by-agreement basis the problems these countries face in implementing the rules at national level or in taking full advantage of the benefits that were expected to accrue to their trade from the application of the rules by other countries. It included an easy access 'check-list' of the issues.

The document was well received by the members of the Group and some of the members – Kenya, Mauritius, Tanzania, Uganda and others – requested the WTO Secretariat to circulate it as a 'non-paper' to WTO members. The non-paper made a useful contribution in clarifying the nature of the problems encountered by developing countries and provided a basis for exchange of views on the modifications that needed to be made in the rules to find solutions to the problems.

As a result of the examination made at national level, countries belonging to African and other Groups tabled a number of proposals. The proposals set out specific suggestions for modifications of the rules in GATT and its associate agreements (such as those on technical barriers to trade, sanitary and phytosanitary measures, and customs valuation) as well as GATS and the Agreement on TRIPS. The main body responsible for negotiations on these proposals is the Special Session of the Committee on Trade and Development. The Special Session has developed a practice of referring the proposals that call for modifications in the rules of the associate GATT Agreements for examination at technical level by the Committees established under these Agreements.

Delegations from member countries of the Group often consulted the Adviser, both before submitting the proposal and during the negotiations to get his views on changes made by delegations. The negotiations have so far resulted in agreements being reached on over 75 per cent of the proposals that were tabled for modifications of the rules to make them more responsive to the needs of the developing countries. Negotiations to find solutions to the remaining proposals on implementation issues are continuing.

### **Adopting an approach on proposals for launching a new Round**

The assistance provided for this purpose aimed to explain the techniques and modalities that could be adopted for negotiations on trade in agricultural and non-agricultural products and trade in services to ensure the development needs of developing

countries are fully taken into account. For this purpose detailed papers were prepared explaining the procedures that were adopted in the nine rounds of negotiations held since the establishment of GATT.

At the request of some members of the Group, papers were also prepared examining whether it would be desirable for developing countries to commence negotiations for liberalisation of trade among developing countries on a preferential basis, as a part of the negotiations to be held under the auspices of WTO. The framework for development of such trade among developing countries existed under the UNCTAD Generalised System of Trade Preferences (GSTP). The papers examined whether it would be in the interest of developing countries to negotiate in WTO for expansion of the country coverage of the GSTP and of the preferential concessions already exchanged as an integral part of a new round, in order to provide a more binding basis for the preferential concessions. These papers also examined whether negotiations for exchange of concessions on a preferential basis, on a multilateral basis among developing countries as a group, would help to mitigate the disadvantages some of them are likely to face as a result of the growing trend among developing countries towards forming regional economic groupings and providing for trade on a preferential basis among their members (Rege 1998b).

However, in the discussions that took place in the Group on the basis of the papers, some of the members considered that it would be desirable and appropriate to continue with such negotiations in UNCTAD. These members also considered that bringing the negotiations under the umbrella of WTO would not be viewed favourably by some of the developed countries.

### *Workshops*

The work done on briefing delegations, through the preparation of papers and subsequent discussions in the Expert- and Ambassador-level meetings was complemented by workshops organised in two subject areas, Pre-shipment Inspection and Transparency in Government Procurement.

The main objective of the Workshop on Pre-shipment Inspection was to have free and open exchange of views on the effectiveness of the role played by the companies providing such services in achieving the objectives of increasing customs revenue and reducing corruption in the countries using them. The workshop also examined whether it may be possible for these countries to gradually reduce their dependence on such services by improving the capacities of their customs officials through computerisation of customs services and training of officials. The Commonwealth Secretariat published the report on the workshop as a book (Rege 2000).

The objective of the Workshop on Transparency in Government Procurement, held in July 2001, was to assist member countries of the Group to examine whether it would be possible for them to accept a discipline that would require the procurement

authorities in their countries to do away with the practice of purchasing goods locally, even though they were available at lower prices from foreign suppliers, in order to promote development of domestic industries. The Commonwealth Secretariat published the report on the workshop as a working paper (Rege 2001).

One of the special features of these two workshops was that the officials who had experience of work at national level in the subject area of concern were invited to present papers giving their views. The discussions were based on these presentations by the national experts and the keynote papers identifying the issues prepared by the Adviser. The invitees to the workshops included in addition to national experts and Ambassadors and officials from the Missions, representatives of WTO and other international organisations (e.g. WCO, World Bank, IMF, and UNCTAD) and of non-governmental organisations like South Centre and Third World Network. In the case of the Pre-shipment Inspection workshop, representatives of the Federation of Pre-shipment Inspection Companies were also invited to attend.

### **Identifying problems in implementing the rules at national level**

To assist developing countries to deal with the problems they faced in implementing the rules a two-pronged approach was adopted. One approach was to arrange, where possible, training programmes on the new rules for officials. The second was to help them in securing changes in the rules that presented problems of implementation.

#### *Training programmes*

Two types of training programmes were arranged during the period of the project. The first aimed at providing training of officials from developing countries in practical application of the rules. The second aimed at improving the understanding of the trade policy officials of the rules of the WTO system, in areas selected by them.

#### *Training customs officials in the practical application of the rules of the Agreement on Customs Valuation*

In arranging these training programmes priority was given to training of customs officials in applying the rules of the Agreement on Customs Valuation. The subject of customs valuation was chosen in light of complaints by the customs administrations in a number of developing countries that the rules of the Agreement were suitable for application only by developed countries where, as a result of the low rates of duties, the practice of undervaluation of imported goods by traders was not prevalent. The application of the rules in their countries, however, presented serious problems to them as traders resorted to the practice of undervaluation of goods and other customs-related malpractices in order to reduce the duties on imported goods.

A four-week training programme for senior customs officials from 18 Commonwealth countries in Africa, Asia and the Caribbean was organised in Mumbai, India, in May 2000 in co-operation with WTO and WCO and experts from the India Customs Administration. The main responsibility for training was taken up by the India Customs Administration experts. It was decided to organise the training programme in a developing country like India rather than in a developed country because the similarities in the trading environment between India and the countries from which the officials came meant they were more likely to find the practices followed in applying the rules more relevant for situations in their countries than would be the case if training was arranged in a developed country.

The senior customs officials who participated found the training programme most useful in helping them to take steps for the application of the rules in their countries. The module that was developed for practical training at customs ports was used in follow-up seminars organised by the Commonwealth Secretariat (Sathapathy 2000a, 2000b).

#### *Intensive training at policy level*

A programme was also adopted for training of trade policy officials from the Commonwealth developing countries to improve their knowledge and understanding of the WTO system. The programme focused on specific trade policy issues that participants considered were of importance to their countries.

It involved six of the 30 or so officials from Commonwealth developing countries who attended a three-month training course organised by WTO in Geneva, in 2001. The Commonwealth Secretariat provided stipends for six of the participants to stay on for an extra week in Geneva for intensive briefing and training by the Adviser. For this purpose, each of the participants was requested to choose, before coming to Geneva and in consultation with their government, a WTO-related subject on which he/she would write an analytical paper. The subject chosen reflected those areas in which the country proposed to take measures for implementation of the rules or where it was facing implementation problems. The Adviser remained in touch with the participants on an informal basis during the period of the WTO course and provided them guidance and information on where and how they could obtain source material needed for the preparation of their papers. He also arranged expert-level briefings for them with the officials from the WTO Secretariat who were responsible for work on their chosen subjects. The Adviser spent the first two days of the extra week reviewing the draft papers in one-to-one discussions with the authors. Participants used the next three days to finalise their papers.

The programme was considered to be a very useful contribution, as it enabled officials attending the WTO training course to consider in more detail how to address some of the issues that might arise at national level in relation to the application of the

rules. Unfortunately, however, it had to be discontinued after two years of its operation, because of the disruption in mid-2003 that stalled the project (see Chapter 2).

## **Work under the Commonwealth/International Trade Centre joint project**

At the time the Commonwealth Geneva project was established the Adviser was working on the WTO-related project jointly organised by the Commonwealth Secretariat and the International Trade Centre. It was decided that he should continue to work on these projects. The two organisations have published two books from the work done under this project.

The *Business Guide to the World Trading System* (Rege 1999a) explains in simple user-friendly language the rules of GATT and its associate agreements, GATS and the Agreement on TRIPS. While the rules are explained in a manner that is easy to understand, care has been taken to ensure that they correctly reflect the legal situation. Each of the chapters has a section that explains the implications of the rules for the business of trade. In addition to explaining the rules of the Agreement and the developments since WTO came into existence, the book provides an overview of the discussions that were taking place in the new subject areas that were included in the work programme of WTO for study and analysis: trade and investment, trade and competition policy, transparency in government procurement and trade facilitation. This part of the Guide was largely based on the briefing papers the Adviser prepared for briefing the Group.

The Rt Honourable Clare Short, UK Minister of Trade at the time, formally launched the book at a ceremony arranged in London by the Commonwealth Secretariat and the International Trade Centre. It has been well received not only by the trade officials and negotiators but also by the business community. The officials from the Geneva-based missions to WTO still find it a useful reference on issues under discussions and negotiations in the organisation. It has been translated into several languages including French, Spanish and Chinese.

*Influencing and Meeting International Standards: Challenges for Developing Countries* (Rege, Gujadhur and Fraz 2003) is the other book published under the joint Commonwealth-International Trade Centre project. The experience has shown it is not possible for a large number of developing countries to participate in the activities of international standardisation organisations because of the lack of financial resources and the required knowledge and technical capacities. As a result the standards and specifications they apply to their products are not fully reflected in the standards adopted by international standardisation organisations. This creates difficulties for in exporting to countries with technical regulations and SPS measures based on international standards.



In order to get further insight into the nature of the problems developing countries face in participating in international standardisation activities and in meeting international standards, the Commonwealth Secretariat and the International Trade Centre decided to undertake case studies in six countries. These case studies were undertaken separately by experts in the field of technical regulations and by those who had expertise in SPS measures. The Adviser in collaboration with ITC's Senior Adviser on Standards and Quality Management, Mr Shyam Gujadhur, prepared a report summarising the findings and conclusions of the case studies (Rege, Gujadhur and Fraz 2003). The report also identified the technical assistance that may have to be provided to developing countries to improve their participation in international standardisation activities and their capacities to meet technical regulations and SPS measures applied by countries to which they export. The report was reviewed and finalised at a meeting held in Geneva in which experts responsible for the preparation of case studies participated.

The report was published in two volumes. The first volume contains background information on WTO rules applicable in the area of technical regulations and sanitary and phytosanitary measures, findings from the case studies and recommendations on technical assistance needs. The second volume provides information on the constitution of the international standardisation organisations and on the procedures followed by them in formulating standards. The volume also contains reports of the case studies undertaken by the experts. The publication has been well received particularly by persons involved in standardisation activities and by trade officials and WTO negotiators associated with the work on technical regulations and SPS measures.

One of the important recommendations in the report is for the Commonwealth Secretariat and the International Trade Centre to establish 'mentoring and twinning' arrangements to facilitate delivery of technical assistance by countries that have the capacity to provide it, to the countries needing such assistance. The role of the two organisations would be confined to bringing together the mentor country and the country or countries that are interested in twinning with it. The countries involved would be left to negotiate the actual areas of assistance and the terms and conditions on which it would be provided. Developing countries could use the framework to obtain assistance to participate in the technical level discussions in international standardisation organisations on the formulation of standards as well as in other areas, such as adopting at national level technical regulations or sanitary and phytosanitary measures.

After the publication of the report, a workshop to examine how the recommendations contained in the report could be implemented and to decide on the programme for technical assistance was arranged in Geneva (22–24 June 2005). The workshop was attended by experts in the areas of technical regulations and sanitary and phytosanitary measures. The participants recommended early implementation of the recommendations in the report, particularly those relating to 'twinning and mentoring'.

They noted that the arrangement could facilitate South–South co-operation as in most cases there was a considerable degree of similarity among developing countries in the standards and specification they applied to products produced and exported by them (ITC 2005).

## References

- ITC (International Trade Centre). 2005. Report on the Interactive Workshop on ‘Influencing and Meeting International Standards: Challenges for Developing Countries’. Project Document: INT/W/1/2A.
- Rege, V. 1998a. Launching in WTO Negotiations Among Developing Countries for Further Liberalisation of Trade. March.
- 1998b. Role of Multilateral and GSTP Negotiations in Meeting the Challenges Posed by Regionalism.
- 1999a. *Business Guide to the World Trading System*. London: Commonwealth Secretariat and International Trade Centre.
- 1999b. Checklist of Issues Relating to the Implementation of WTO Agreements and Rules. April.
- 2000. Pre-shipment Inspection: Past and Future. London: Commonwealth Secretariat.
- 2001. Transparency in Government Procurement. Working Paper 2 of the Geneva Group of Commonwealth Developing Countries. London: Commonwealth Secretariat, July.
- Rege, V, S K Gujadhur and R Fraz. 2003. *Influencing and Meeting International Standards – Challenges for developing countries*. Geneva: International Trade Centre, UNCTAD and WTO; London: Commonwealth Secretariat.
- Sathapathy, C. 2000a. ‘Implementation of WTO Agreement on Customs Valuation’. *Economic and Political Weekly* (India) June 17.
- 2000b. Note on Actions that need to be taken for the Implementation of the Recommendations Made at the Mumbai Training Course on Customs Valuation, October.