

## Technical Assistance & Capacity Building *Can WTO Serve Developing Countries?*

—Gregory Shaffer\*

*When developing countries agreed to enter into new trade negotiations at Doha, Qatar, they obtained a commitment that the Round, dubbed the 'Doha Development Round', would address issues pertinent to their development, and that they would receive capacity building (CB) assistance, which would facilitate their participation in the negotiations and the integration of their economies into the international trading system. The Doha Ministerial Declaration dedicated more text to the CB than to any other issue. Whether these CB commitments are appropriately tailored towards serving developing country's interests, however, remains a challenge.*

### Grasping the Concept of TACB at the WTO

A central conundrum for effective World Trade Organisation (WTO) Technical Assistance (TA) lies in how the Secretariat views its CB role *vis-à-vis* its conventional sense of its 'mandate'. WTO members and its Secretariat often refer to the WTO as a 'contract organisation'; which implies that it is a 'member-driven' institution that facilitates the negotiation of trade agreements, helps oversee implementation of the resulting contractual commitments, and issues judicial decisions over these commitments when requested. WTO Secretariat officials thus traditionally view their role as one of servicing negotiations, servicing member oversight of obligations, and assisting with dispute resolution. CB, however, is a quite different endeavour.

One's view of WTO substantive rules will shape one's appreciation of WTO capacity building projects. As J Michael Finger, senior Economist for Trade Policy, World Bank (WB) Schuler, Consultant, Development Research Group, WB and others maintain, WTO rules represent political choices reflective of contractual bargaining, many of which are not pro-development, such as the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement.

WTO Secretariat officials, therefore, face a dilemma. If they travel to developing countries simply to 'promote' existing WTO rules, they could be engaged in a "soft" form of enforcement. They thus would elide the political and development choices implicated by the rules. They would cut off what could be valuable discussion as to how developing countries can shape the rules through implementation and renegotiation in order to advance trade-related development objectives. If, on the other hand, the Secretariat provides a forum for raising awareness about the current rules and different positions regarding them, then it can help developing country officials critically engage with the rules in light of their perceptions of national interests.

WTO Secretariat officials correctly stress that the WTO is not a development agency mandated to provide development consultancy or to finance the provision of development needs. Yet now that the WTO has received significant funding for trade-related CB, the WTO Secretariat receives requests for programmatic funding from some developing country members. As a result, there again is tension between the Secretariat's understanding of its 'mandate' and the call for enhanced WTO trade-related 'CB' initiatives.

There are at least four competing rationales for WTO trade-related TA efforts, which can overlap and conflict:

1. to facilitate trade liberalisation;
2. to support specific trade-related aspects of a country's development strategy. (There may be little that the WTO can do in this respect, except improve the way in which it coordinates with development institutions);
3. to assist with the implementation of WTO agreements (Implementing obligations under the WTO agreements, however, can entail significant costs, potentially distracting resource-strapped developing country officials from other priorities. If trade-related CB programmes are simply created to help developing countries implement their WTO obligations, they will serve more limited (and possibly donor-driven) goals); and

### Box 1: Developing Countries and Capacity Constraints

All developing countries suffer from capacity constraints that impede the ability to promote their interests through the WTO, although these constraints vary widely. The least-developed members are in the most strained situation. A significant number of WTO members do not have a single representative in Geneva to even consider choosing from among over 70 different WTO councils, committees, working parties and other groupings that can involve over 2,800 meetings each year. Because of the capacity constraints, many developing countries are less able to advance their interests in WTO negotiations, before the WTO committees, and in dispute settlement.

Not surprisingly, they face considerable trade barriers for the product markets of greatest importance to their economies, which developed countries label as 'sensitive'. A 2001 World Bank (WB) report maintained, "The prevailing pattern of protection in the world today is biased against the poor in that barriers are highest on goods produced by poor people – agriculture and unskilled labour-intensive manufacturers and services". Similarly, many developing countries are less able to shape their internal implementation of WTO rules in a manner that protects their interests.

Sources: Gary Sampson, *Trade, Environment and the WTO: The Post-Seattle Agenda* 24 (2000); John Braithwaite and Peter Drahos, *Global Business Regulation* 196 (2000); World Bank, *Global Economic Prospects and the Developing Countries: Making Trade Work for the World's Poor* (2001) and *World Trade Review*, 1, 29 (2002).

4. to enhance the capacity of developing countries to participate in the negotiation, interpretation and enforcement of international trade rules. (Although this latter empowerment objective may overlap with the others, it is much broader, adopting more of a process-based approach. Its aim is to enhance developing countries' capacity to define their own trade objectives and policies).

## Challenges to Implementing TACB Programmes

WTO technical assistance and capacity building programs face at least four major inter-related challenges.

### *The Challenge of Coherence with Development Strategies*

TA projects can be random and uncoordinated. Because donors like to take 'credit' for assistance projects, they prefer not to provide substantial funding through international organisations or common funds. As Susan Prowse, Department for International Development (DFID), UK, writes, different agencies thus often support 'a vertical multiplicity of trade-related assistance initiatives with little to no horizontal coordination'. (Prowse S., "The Role of International and National Agencies in Trade – Related Capacity Building", *The World Economy*, 2002)

Part of the conundrum is that a country needs capacity to coordinate, rationalise, and absorb the TA provided. As Devendra Panday writes, "integrating and transforming (donor assistance) into a coherent national strategy and then implementing the strategy is a very difficult proposition for a poor country whose coordinating capacity is swamped from all directions". (Panday D. R., "Technical Cooperation and Institutional Capacity Building for Development: Back to the Basics", 2002)

Implementing a trade-related TA strategy, moreover, must respond to the dynamics of the WTO system. Developing countries must also respond to regional and bilateral trade

negotiations. They thus need 'flexibility' in the formulation of TA requests in order to participate effectively in multiple, complex negotiations. But this understandable desire for 'flexibility' can lead to a lack of coherence so that WTO technical assistance is not integrated into long-term strategies.

### *Conflict with Development Objectives*

Government officials in every country respond to their constituents, whether they are protectionist or export-oriented. TA is not necessarily 'free'. Donors may 'tie' aid to profit national companies and consultants. The TA provided may respond to donor priorities. For example, the implementation of intellectual property protection, especially in the manner desired by some richer countries, is not a priority for the poor. Yet, the first organisation with which WTO signed a 'Cooperation Agreement' for the provision of TA was the World Intellectual Property Organisation (WIPO). (WT/COMTD/W/90, 2001)

In July 1998, the WTO and WIPO announced a new joint initiative 'to help developing countries which are members of the WTO meet the January 1, 2000 deadline – less than a year and a half away – for conforming with the TRIPs Agreement'. (WTO Press Release, 1998)

Consequently, many developing countries view the WTO Secretariat's provision of TA with some circumspection because the TA could be advancing the interests of the major donors by promoting "soft" forms of enforcement. Thus, CB is likely to be more effective if the Secretariat members conduct the mission not to 'promote' a rule, but rather to clarify it and engage about it in an open-ended manner.

### *The Need to Avoid Dependency*

For most development specialists, the measurement of a development project's success lies not in the quantity of assistance, but in the extent to which the project empowers a country to devise and implement effective strategies on its own over time. The temptation to become dependent on aid can be high. Some developing countries that are strapped for funds may conform to donor demands simply to get the funds.

When developing countries become dependent on external funding, whether for WTO matters or otherwise, TA programmes could actually undermine the development of local capacity. WTO resources may be too limited and missions too sporadic to create dependency, at least in the short term. Yet, unless TA is absorbed within developing countries institutionally and socially in a broad-based manner, it will have little long-term impact.

### *The Challenge of Ensuring Sustainability*

Most funding to WTO technical assistance efforts is channelled through *ad hoc* donations provided by individual WTO members. These donors wish to see payoffs from the funds that they provide. If trade-related TA does not generate desirable results, then it could be discontinued. Donor governments have thus understandably demanded improvements in the evaluation and reporting of how WTO capacity building efforts work.

The problem, however, arises in the definition of success and its timeline. Is success to be measured by whether the Doha Round is concluded? Or whether it leads to market access in sectors desired by particular developing countries? Or are CB programmes now to be institutionalised within the WTO so that their objectives are longer term? Certainly, the Doha Round will not in itself resolve developing countries' trade-related capacity needs.

#### **Box 2: Trade Liberalisation and Development**

Trade is widely recognised as important for development, especially for countries with small internal markets which otherwise benefit from less specialisation, fewer economies of scale, and less competition. There is considerable evidence that a larger market made possible by trade facilitates specialisation, so that productivity improves and costs decrease.

Development, however, is a much broader objective than trade liberalisation. Development analysts may agree on the importance of trade, but they often disagree over the scope and timing of internal trade liberalisation. Some high-growth Asian countries, such as Hong Kong and Singapore were more free-trade oriented, while others, such as Japan, Korea, China, and Chinese Taipei, were more mercantilist. While all these WTO members have moved toward freer trade, the rapid jump in their development was not because of uniform liberal trade policies.

The East Asian countries' experience demonstrates the importance of internal trade related capacity both within the government and the private sector. Exports may have been central to the growth models of East Asian countries, but so was a strong state having a competent bureaucracy and a private sector subject to internal competition.

Although all development contexts differ, countries can learn from each other's successes and failures. In a globalising world, they can 'scan globally, reinvent locally'. The East Asian experience suggests that TA will be of less value without a competent state bureaucracy, engaged private sector, and civil society with a developing skill base to absorb it.

### Box 3: Historical Overview of the WTO's TACB Programmes

TA efforts have become more important aspects of policy since World War II. As Peter Morgan remarks, 'the approach to TA that began in the late 1940s... became, for the first time, an issue of public policy... TA was now to be managed as a public sector activity'. The underlying assumption was that developing countries lacked important skills and abilities and that outsiders could fill these gaps." The term TA referred to skill transfers to foster modernisation.

After a couple of decades, development analysts switched their focus to that of 'technical cooperation', which was later complemented by the term 'CB' to highlight the importance of local 'ownership' and 'absorption' of TA to bolster recipients' ability to pursue their development goals.

The provision of TA and CB has changed over time within the WTO. When the WTO came into force, the scope of coverage of trade rules expanded. The resulting demands on developing countries spurred complaints about the costs of adaptation to the new system.

The WTO first launched a fund for TA for least developed countries (LDCs) in September 1995. Soon after, at the Singapore Ministerial meeting of December 1996, the WTO announced a broader Integrated Framework for Trade-Related TA for the LDCs (the 'IF'). The IF, coordinated out of the WTO, brings together six international agencies: United Nations

Conference on Trade and Development (UNCTAD), International Trade Centre (ITC), United Nations Development Programme (UNDP), WTO, International Monetary Fund (IMF), and the WB, to collaborate with bilateral donors to ensure greater coherence in the provision of trade-related TA in LDCs. The WTO, UNCTAD, and ITC concurrently launched a Joint Integrated TA Programme (JITAP) to selected Least Developed and other African countries.

However, analysts criticised the early WTO technical assistance programs, including the IF and JITAP efforts. Overall funding was limited and the WTO Secretariat was unschooled in the provision of TA, which lay outside its traditional competence.

With the launch of the Doha Round in 2001, and the creation of the Doha Development Agenda Global Trust Fund, trade-related TA and CB programmes increased. In 2003, funds for WTO capacity project projects from the annual budget and the new trust fund slightly exceeded CHF 30mn (US\$22.9mn). Such projects initially continued to focus on the more limited objectives of trade liberalisation and rule implementation. An audit of the TA Plan for 2003, for example, criticised the plan's implementation for a lack of coherence, maintaining that the Secretariat was largely servicing *ad hoc* requests.

Sources: Peter Morgan, *Development Policy Journal*, 2002; WTO Press Release/23, 1995; Michel Kostecki, *ICTSD Resource Paper No. 2*, 2001.

Some Secretariat observers maintain that it may be politically difficult for donors to significantly curtail TA now that it has been somewhat more institutionalised within the WTO. Donors' perceptions of WTO capacity building projects' effectiveness in achieving certain goals, however those goals might be defined, will nonetheless shape future funding decisions.

### WTO TACB Efforts at Present

The Secretariat prepared a new CB plan in 2004 that was to be more 'quality-oriented, aiming at building long-term – i.e. sustainable, human and institutional capacity', setting forth clearer 'objectives' for each type of CB 'product'. (WT/COMTD/W/119/Rev.3, 2004) The 2004 Plan set forth a long list of 'products' that included Geneva-based, region-based, nation-based, and distance-learning activities.

According to the Secretariat, beneficiaries and donors supported the way that the 2004 plan operated. The Secretariat hopes that courses held in developing countries, in particular, can foster the creation of 'academic networks with institutions of higher learning' in developing countries. Over time, the Secretariat would like the regional partners to assume 'a growing share of the responsibility of the courses', with the Secretariat overseeing quality control. Moreover, the IF and JITAP programs were revamped in 2003 and 2004, in order to better 'aim at mainstreaming trade within national development strategies'. (WT/IFSC/W/7/Add.1, 2002) Both programmes were expanded to cover more countries in 2003.

Skeptics, nonetheless, question whether WTO trade-related CB will be reoriented in practice. They suspect that WTO CB programs will continue to focus on 'rules' and on developing countries' implementation obligations because of a restrictive 'interpretation' of the WTO's rule-oriented mandate which is pressed by donor countries monitoring the WTO's budget. As one developing country representative remarked, "the donors were careful that the Doha trust fund went into the WTO where they could control it, and not into another organisation". As he concluded: "the delivery modes may be better, but the orientation is likely to be the same".

### Potential Adaptations

Strategies to capitalise on new opportunities so that developing countries, donors, and the WTO Secretariat can build on current developments include the following:

#### Developing Countries

- First, developing countries need to ensure that the absorption of trade-related TA becomes broader-based by increasing institutional coordination to include multiple government departments, the private sector, and civil society representatives. TA and CB endeavours will be most sustainable if they permeate broadly through institutions and societies. Donor capture is less likely if a broad array of stakeholders is included.
- Trade-related CB will be more effective if it also takes into account, directly or indirectly, local constituent requests, including those of the private sector, academics, and other civil groups, as part of a bottom-up process. If developing countries are to participate in the shaping of the international trading system to facilitate their economic development and if they are to take advantage of WTO rules, they will need to work with the private sector to enhance the resources at their disposal. They will need strong public-private business and civil society networks to provide government representatives with greater negotiating leverage and persuasive authority on trade matters implicating their development interests.
- Developing countries could benefit from mechanisms to pool their resources at the regional and international levels via policy networks. (Braithwaite J., "Methods of power for development: weapons of the weak, weapons of the strong," *Michigan Journal of International Law*, 2004) Most developing countries will never have the capacity to follow and advance their interests effectively in the WTO system by acting alone. The WTO's "regional" TA programmes could, at least in theory, facilitate this coordination. Although strategies for pooling resources have their limits,

they need to be compared with the alternative of each developing country working on its own, in which case the trading powers can more easily play developing countries off of each other. (Drahos P., "When the Weak Bargain with the Strong: Negotiations in the World Trade Organisation," *International Negotiation*, 2003 and Shaffer G., "How to make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies," ICTSD Monograph, Geneva, March 2003)

#### *WTO Secretariat and Development Institutions*

- Members could continue to attempt to integrate development orientations within the Secretariat itself. Institutionalising a CB component in the WTO could, in particular, play a transformative role for the Secretariat. Such institutionalisation could induce the Secretariat to become more aware of the development context of trade so that not all WTO rules are viewed as ends in themselves, but rather as tools that can be applied and, where appropriate, adapted to different development contexts.
- To the extent that the WTO Secretariat lacks the independence to engage with developing country representatives and stakeholders in an open way about the interpretation and application of WTO rules, then developing countries should ensure, where appropriate, that representatives from development agencies and other consultants who have greater independence are included in relevant WTO trade-related 'CB' projects. The Consultative Board to the Director General on 'The Future of the WTO' recently recommended that a 'semi-independent agency' under 'WTO management' should be created for the provision of trade-related TA.
- As the scope of WTO rules continues to expand, a single set of disciplines becomes less appropriate for all WTO members. Article XXXVI of Part IV of GATT 1994 expressly provides that 'the less-developed countries should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.' In practice, however, developing countries often have only received longer transition periods to implement new WTO obligations, periods that by now have largely elapsed. There is a role for greater differentiation of members based on less-developed countries' capacities and levels of development. That variation can be implemented through conditioning implementation of some provisions on defined development thresholds and through enhanced special and differential treatment provisions.
- The Trade Policy Review Mechanism (TPRM), in particular, could be given a greater development orientation when applied to developing countries. IF, the JITAP, and the WTO's TA programmes called for trade strategies to be integrated into development plans, and so the TPRM should

be adapted accordingly. TPRM implementation reviews could examine the ways in which a developing country has mainstreamed trade policy as part of a development strategy.

#### *Donors*

- CB initiatives are more likely to be effective if donors view them as longer-term foundational issues to enhance developing country trading options in the global economy, and not as shorter-term concessions as part of a trade negotiation package.
- Developed countries' definition of their national interest can change. Today, the unstable security situation that the world confronts offers opportunities and sets constraints for trade-related development strategies. Developed and developing countries' security interests are both ultimately linked with global development. Thus, the 2002 US National Security Strategy states, "A world where some live in comfort and plenty, while half of the human race lives on less than US\$2 a day, is neither just nor stable. Including all of the world's poor in an expanding circle of development and opportunity is a moral imperative and one of the top priorities of US international policy".
- Donor governments need to actively support development programs before their own publics so that there is broader-based political support. Donors could, in particular, increase the profile of development agencies within government cabinets, and integrate them into their trade policy networks. CB initiatives will also be more effective if donor development agencies coordinate among each other, including through common development vehicles, a process that the Organisation for Economic Cooperation and Development (OECD) Development Assistance Committee has attempted to facilitate.

#### **Conclusion**

The WTO Secretariat now provides a broader spectrum of products for technical assistance. This has been somewhat more demand-driven, resulting in a better understanding of WTO rules and negotiating dynamics among a broader network of developing country government officials. WTO observers note that developing countries have been much more engaged in the Doha Round of trade negotiations than they were in the past, suggesting much greater 'ownership' of the TA provided. (Such engagement could, however, also result from assistance from organisations and networks that are independent of the WTO, rather than through the WTO itself).

Ultimately, the role of CB programmes should be to empower developing countries to take advantage of trade-related opportunities, including through shaping WTO law and tariff concessions to facilitate development goals, deploying WTO rights in dispute settlement, and implementing WTO law more effectively toward development ends.

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