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EVALUATION OF TRADE-RELATED TECHNICAL ASSISTANCE THREE GENEVA BASED ORGANISATIONS: ACWL, AITC AND QUNO

Nora Plaisier and Paul Wijmenga (ECORYS/NEI Rotterdam)

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POLICY AND OPERATIONS EVALUATION DEPARTMENT

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PREFACE

A major objective of Netherlands' foreign policy is the integration of developing countries in the world trading system. Trade-Related Technical Assistance (TRTA) is considered one of the key instruments to contribute to this integration, next to removal of trade barriers to developing countries. TRTA is a collective term for different types of technical assistance aimed at strengthening the trade-related knowledge base, trade-related negotiation capacity, national trade policy and/or capacity to trade of developing countries.

Whereas many donors and agencies have strongly committed themselves at ministerial conferences of the World Trade Organisation (WTO) to the provision of TRTA, little is known about the results of such assistance. Though the percentage of Official Development Assistance spent on TRTA has been declared an indicator of the Millennium Development Objective of 'further developing an open trading and financial system that is rule-based, predictable and non-discriminatory', very few question actual effects.

To assess the efficiency, effectiveness, and relevance of various types of TRTA as supported by the Netherlands Ministry of Foreign Affairs, IOB started an evaluation of this instrument in June 2003. A major element of this evaluation is the assessment of results of seven selected programmes: four multilateral programmes and three international NGOs or intergovernmental organisations. Each of them is considered to be exemplary of the strategic principle of the Netherlands of providing support through multilateral channels and international organisations.

This document contains the results of the evaluation of three Geneva-based international NGOs or intergovernmental organisations. Part A deals with the Advisory Centre on WTO Law (ACWL), Part B concerns the Agency for International Trade, Information and Cooperation (AITIC) and Part C is about the Quakers United Nations Office (QUNO). Every one of these organisations wants representatives of developing countries to better understand, to participate and/or to profit more from the WTO as a forum, rule-making body and dispute settlement agency in the field of international trade. In separate IOB-working documents the results have been published of the evaluations of two major TRTA-programmes of the United Nations Conference on Trade and Development (UNCTAD), the Integrated Framework (IF) in Ethiopia and Yemen, and the Joint Integrated Technical Assistance Programme (JITAP) in Burkina Faso and Tanzania. IOB publishes such documents to make (interim and data-rich) products of IOB evaluations accessible to stakeholders, specialists and a wider public interested in results of development aid (see www.euforic.org/iob for electronic versions).

A team of consultants of ECORYS-NEI has conducted the measurements of results of the seven selected programmes, following the general terms of reference for the IOB-evaluation and specifying these in a design for the measurement of results of the selected programmes. The team consisted of Mr. Paul Wijmenga (lead consultant), Mr. Piet Lanser, Mr. Richard Liebrechts and Mrs. Nora Plaisier. The evaluation research in Geneva of QUNO, AITIC and ACWL was done by Mrs. Nora Plaisier

within 17 days in the period October 2003 – March 2004. On behalf of IOB the team was supervised by Dr. Otto Hospes, who as evaluator of IOB also takes responsibility for the overall evaluation of TRTA.

Rob D. van den Berg
Director Policy and Operations Evaluation Department (IOB)
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Special and sincere thanks go to Mr. Brewster Grace (executive director of QUNO at the time of the field research), Dr. Esperanza Duran (director of AITIC) and Mr. Frieder Roessler (executive director of ACWL) for providing comments on an earlier draft of the evaluation report of their organisation. Mr. Robert Malin did a great job as language editor. Hélène de Jong and Ingeborg Ponne, supporting staff of IOB, skilfully upgraded the format of the working document to match IOB-standards. The authors accept responsibility for any error or lack of clarity that may be left.

Finally, the authors – together with IOB – hope that the series of working documents on TRTA will contribute to the international debate on the role and results of the selected providers of TRTA and can be helpful for the methodological design of new evaluations meant to assess results of TRTA.

ACRONYMS

AB	Appellate Body
ACP	African, Caribbean and Pacific States
ACWL	Advisory Centre on WTO Law
AIF	Agence Intergouvernementale de la Francophonie
AITIC	Agency for International Trade Information and Cooperation
CBD	Convention on Biological Diversity
CIDA	Canadian International Development Agency
CHF	Swiss Franc
DFID	UK Department for International Development
DGIS	Directorate General for International Co-operation
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Communities
EUR	Euro
EWS	Early Warning System
FWCC	Friends World Committee for Consultation
FTAA	Free Trade Agreement of the Americas
FTE	Full-time equivalent
GBP	British Pound Sterling
GSP	Generalised System of Preferences
ICTSD	International Centre for Trade and Sustainable Development
IOB	Policy and Operations Evaluation Department of the Netherlands Ministry of Foreign Affairs
IGO	Intergovernmental Organisation
ILI	International Law Institute
LAC	Less Advantaged Country
LDC	Least Developed Country
NGO	Non-Governmental Organisation
NRU	Non-Residents' Unit
QPSW	Quaker Peace & Social Witness
QUNO	Quaker United Nations Office
SIECA	Secretaría de Integración Económica Centroamericana
SPS	Sanitary and Phyto Sanitary measures
TBT	Technical Barriers to Trade
TETF	Technical Expertise Trust Fund
TRIPS	Trade Related Aspects of Intellectual Property Rights
TRTA	Trade Related Technical Assistance
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
USD	United States Dollar
WCO	World Customs Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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PART A
ADVISORY CENTRE ON WTO LAW

1 THE ADVISORY CENTRE ON WTO LAW (ACWL)

1.1 History of ACWL

After the establishment of the WTO in 1995, it soon became clear that many developing countries did not have access to the organisation's dispute settlement mechanism (see *Box 1.1*), because they lacked expertise in WTO law and in the management of complex trade disputes. Most of these countries also faced financial and institutional constraints to acquire such expertise. On the initiative of two Geneva-based delegates of the Netherlands and Colombia, informal brainstorming meetings started in 1998 to examine ways in which a level-playing field could be created for countries to access the dispute settlement mechanism. A representative group was formed, which consisted of 12 to 14 people from different regions and from countries with different levels of economic development. During the meetings of this group, the idea for the Advisory Centre on WTO Law (ACWL) was born. An important aspect of ACWL is that it is independent from the WTO secretariat, which has to maintain its neutrality and can therefore not actively assist developing countries in dispute settlement proceedings. It was agreed to establish ACWL in Geneva as an Intergovernmental Organisation (IGO).¹

In December 1999, during the WTO Ministerial Conference in Seattle, 29 developing and developed countries signed the 'Agreement Establishing the Advisory Centre on WTO Law'. After all conditions for entry into force of this agreement were met, ACWL was officially established in July 2001.² In the period between the signature of the agreement and its entry into force, the organisational structure and procedures were further specified, so that ACWL could immediately start its operations in 2001.

The objective and tasks of ACWL are to provide legal training, support and advice on WTO law and dispute settlement procedures to developing countries, in particular the least developed among them, and to countries with economies in transition. Since its establishment, four more countries have become members of ACWL, which brings the total number of members to 33. In January 2004, three new countries were in the process of acceding to ACWL (for a full listing of ACWL's members, see Section 5.1).

¹ Venezuela submitted a proposal in the WTO for the creation of an independent unit in the WTO Secretariat, as a Swiss foundation (see Van der Borght, 1999). In the end, countries decided to create a separate IGO however.

² The conditions are: 1) the deposit of at least 20 instruments of ratification, acceptance or approval; 2) the contributions to the endowment fund exceeds USD 6 million; and 3) the total annual contributions exceed USD 6 million.

Box 1.1 The Dispute Settlement Understanding (DSU) of the WTO

Although a procedure for settling disputes also existed before 1995, the Uruguay Agreement made the process more structured with the 'Understanding on Rules and Procedures Governing the Settlement of Disputes' (DSU). Under the DSU, the dispute settlement procedure has more clearly defined stages and the rulings are more difficult to block than before.

The Dispute Settlement Body (DSB), consisting of all WTO members, is responsible for the settling of disputes. It has the authority to establish a panel of experts to consider the case and to accept or reject the findings of this panel or the results of the appeal. It also monitors the implementation of the rules and recommendations and can authorise retaliation. Dispute settlement consists of the following stages (with the duration of each stage shown in brackets):

- Consultations: Countries first have to try to resolve the dispute themselves (up to 60 days);
- Panel Stage: If the consultations fail, the complainant can ask for a panel to be appointed (45 days to set up a panel, plus six months for the panel to conclude). The report of the panel becomes a ruling or recommendation within 60 days unless a consensus in the DSB rejects it;
- Appeal: both parties can appeal the ruling of a panel. Each appeal is heard by three members of the Appellate Body (AB). The AB consists of seven members, which are appointed by the DSB for a period of four years. The AB members are individuals with experience in international trade law and should not be affiliated to any government. The appeal can uphold, modify or reverse the panel's findings and conclusions. Appeals should not last more than 60 days, with an absolute maximum of 90 days. The DSB has to accept the appeals report within 30 days- rejection is only possible by consensus;
- Implementation phase: if the defendant country loses, it must follow the recommendations of the DSB immediately or within an agreed period of time. If it fails to achieve this, it has to enter into negotiations with the complainant to determine a mutually acceptable compensation. If after 20 days, no agreement has been reached, the complainant may ask the DSB for permission to impose limited trade sanctions against the other party.

Disputes mostly occur between two members ("the parties"), although sometimes a group of countries act as complainants in a dispute. Countries can also request to become a third party in a dispute. This happens if they have a substantial interest and have notified their interest to the DSB. They have the right to be heard by the panel or to make written submissions and to attend some of the panel meetings.

Source: WTO website

1.2 Organisation of ACWL

Management

ACWL has three governance levels to manage the organisation: the General Assembly, the Management Board and the Executive Director.

The General Assembly consists of representatives of all member countries. According to the Agreement establishing ACWL, the General Assembly also includes representatives of the Least Developed Countries (LDCs) that are members of the WTO or that are in the process of accession to the WTO. The Rules of Procedure of the General Assembly provide however that "Each member shall be represented by an accredited representative"; and in practice only representatives of ACWL Members have participated in the General Assembly. This General Assembly meets at least two times a year and monitors the financial administration of the ACWL, adopts the annual budget, and oversees its functioning .

The Management Board is an independent body with specific functions entrusted to it. The General Assembly appoints members of the Management Board, which consists

of five representatives of ACWL member countries (three nominated by developing countries and countries in transition, and two nominated by developed countries), a representative of the LDCs and the Executive Director. The persons in the management board serve in their personal capacity and are selected on the basis of their professional qualifications in the field of WTO law or international trade relations and development. The Management Board takes the decisions necessary to ensure the efficient and effective operation of ACWL and reports to the General Assembly.

The Executive Director is appointed by the Management Board and represents ACWL externally, appoints staff and manages the day-to-day operations and submits an independent audit of the budget to the Management Board and the General Assembly.

Membership

All countries can become members of ACWL, subject to approval by the General Assembly. An important feature of ACWL is that both developed countries and developing countries or economies in transition can become a member (although only developing countries and economies in transition are entitled to the services of ACWL), and that all countries have to make a financial contribution to become a member of the ACWL. LDCs do not need to become a member of ACWL to make use of its services.

ACWL has classified developing countries and economies in transition into three different categories, according to their share in world trade and per capita income (see Table 1.1). A country's share in world trade is based on the data for calculating WTO contributions, while for GNP per capita World Bank data are used. The category of a country determines the level of its membership contribution and fees.

Table 1.1 Definition of country categories in ACWL

Category	World Trade Share (%)	GNP per capita
Category A	≥ 1.5	High income countries
Category B	≥ 0.15 and < 1.5	Upper middle income countries
Category C	< 0.15	-

As of January 2004, ACWL had one member in category A, ten in category B and eleven in category C. For two members (Jordan and Oman), no information is available on their country category. The classification of countries will be reviewed at least once every five years. For an overview of the amounts that the different categories of members need to pay, see Chapter 3.

1.3 Relationship with the Netherlands

The Netherlands led the creation of ACWL together with Colombia. The Netherlands' Mission acted as Chair/Secretary of the Preparatory Committee and administered the interim account of ACWL before entry into force. It was one of the signatory countries of the Agreement for the establishment of ACWL in December 1999 and committed a total amount of USD 2,250,000. Both the Ministry of Foreign Affairs and the Ministry of Economic Affairs have made contributions to ACWL. The Ministry of Foreign Affairs provided USD 1 million to the capital fund and USD 125,000 for the annual

contribution to ACWL (for an explanation of the funding structure of ACWL, see Chapter 3). The Ministry of Economic Affairs contributed USD 125,000 for the annual contribution in 2001 and USD 250,000 to the annual contributions for the following four years (2002-2005).

In 2002, ACWL decided to establish a Technical Expertise Trust Fund to be able to prepare the underlying technical dossier in complex dispute settlement proceedings. The Netherlands Ministry of Foreign Affairs has contributed CHF 250,000 (EUR 171,500) to the Trust Fund for a period of three years.

The government of the Netherlands is also involved in the governance of ACWL. The head of the economic department of the Permanent Mission of the Netherlands represents the Netherlands in the General Assembly. The chairman of the General Assembly is the former deputy head of the Mission of the Kingdom of the Netherlands in Geneva (currently working at the Netherlands Ministry of Foreign Affairs in The Hague), who was involved in the creation and development of ACWL.

The Netherlands Court of Audit ("Algemene Rekenkamer") was the auditor of ACWL for the first two years. At present, the UK National Auditor is responsible for the control of the accounts. ACWL is the first IGO to have been audited in accordance with international accounting standards. The Ministry of Foreign Affairs is Depository of the ACWL Agreement.

1.4 Scope of the Evaluation

This study will evaluate ACWL in the period dating from its creation in July 2001 to December 2003.

The focus of the evaluation will be on assessing membership of ACWL and the results of legal advice and support to (third) parties in WTO dispute settlement procedures. In addition, the effects of the first training courses will be explored.

The quality of ACWL's work will only be assessed by looking at the outcome and impact of their activities. This means that the beneficiaries will be asked about their experience with ACWL's services, and that research will be done on the follow-up of the legal advice provided. As the services provided by ACWL are confidential, there is no opportunity to assess the advice from a legal perspective.

The design for the evaluation of ACWL is presented in Annex 1.

2 VIEWS FROM THE CONTRACTOR

2.1 Objectives

The goal of ACWL is to enable developing countries to better understand their rights and obligations in the WTO, and to provide them with an equal opportunity in the WTO dispute settlement proceedings. ACWL provides three types of services to achieve this goal: general legal advice on WTO law, support to parties and third parties in the dispute settlement process and training on WTO law. While the first two services are responses to specific requests of countries, the training is intended to increase the capacity of delegates with respect to WTO law. In the long run, this increased capacity is likely to lead to a lower demand for the first two services.

According to the contractor, indicators of success for ACWL will be very difficult to find. The problem is that one cannot know if countries would anyway have started dispute settlement cases without ACWL. In some cases in which ACWL has provided support, the delegates have explicitly stated that without ACWL the case would not have been brought to the Dispute Settlement Body (DSB), but in other cases, the Executive Director thinks the country would have started a case anyway. The number of cases that are won with the support of ACWL is also not a good indicator in his view: sometimes, the outcome of a case is very difficult to predict. If ACWL was judged on the number of cases won, it would become very risk-averse.

Although many countries that are members of ACWL could probably afford to hire a private law firm, they often have insufficient expertise to guide or control these lawyers in disputes. This is reflected for example in the fact that in some cases, too many complaints are made. This involves a lot of work, while many of these complaints will not make the case much stronger. ACWL also sometimes advises countries not to go ahead with a case, because the chances of winning are too limited. ACWL fills a niche because it can provide advice that is commercially unbiased.

2.2 Membership of ACWL

By January 2004, ACWL counted 33 members: 9 Developed countries and 24 developing countries or economies in transition. Two developing countries (El Salvador and Chinese Taipei) and one developed country (Switzerland) were in the process of accession.

The Executive Director likes to see membership as a “revealed preference” of countries. ACWL has compiled a table in which all developing countries involved as a party in one or more dispute settlement cases are listed. In total, 32 developing countries are on this list, divided into three groups: 6 Countries that have only been involved in one case (“infrequent users”), 20 countries that have been involved in between 2 and 15 cases (“occasional users”) and 6 countries that have been involved in more than 15 cases (“experienced users”). The Executive Director sees the occasional users as the most important group for ACWL, because countries in the group of infrequent users have insufficient interest in becoming a member and countries in the group of experienced users have built up expertise themselves. From

the occasional user group, 17 out of 20 countries have become a member of ACWL.³ In the group of experienced users, one country is a member of ACWL, and in the group of infrequent users, two countries are members. Table 2.1 provides a summary of the table provided by ACWL.

Table 2.1 Membership of ACWL and participation in WTO dispute settlement proceedings*

	Member of ACWL	Non-member
One-time users	Chinese Taipei (1), Hong Kong (1)	Antigua and Barbuda (1), China (1), Sri Lanka (1), Singapore (1)
Occasional users	Thailand (12), Turkey (9), Philippines (8), Peru (7), Guatemala (6), Indonesia (6), Colombia (5), Honduras (4), Ecuador (4), Pakistan (4), Nicaragua (3), Venezuela (3), Egypt (2), Dominican Republic (2), Uruguay (2), Panama (2)	Costa Rica (3), Malaysia (2), South Africa (2), Trinidad and Tobago (2)
Experienced users	India (29)	Brazil (34), Argentina (23), Korea (19), Chile (18), Mexico (17)

* The number of cases in which the country was a party (complainant or respondent) is indicated between brackets.

Source: ACWL, based on data from worldtradelaw.net on 15 November 2003

With more countries becoming members, the chance that there will be disputes between members will also increase. So far, there has only been one case where several ACWL members with opposing interests in a dispute asked for the support of ACWL. This concerns a dispute on the EU’s Generalised System of Preferences (GSP) case. In this case, India was the complainant against the European Communities, and a group of Andean countries were third party to the dispute. This conflict of interest between members was solved through providing financial support to the Andean countries so that they could hire a private law firm. The basic rule is that the country that first comes to ACWL (usually the complainant) gets support from ACWL, although LDCs will always have priority over other countries. The contractor did not think that there would be many disputes between members, as disputes often involve countries with large markets, and the current members in general do not have big domestic markets. If more countries from the group of experienced users (see Table 2.1) were to become a member, however, more problems could be expected.

Countries that have never been a party in WTO dispute settlement proceedings probably do not see the need to become a member, especially since membership involves substantial costs and procedural burdens, as it is an international agreement that needs to be signed. The Executive Director compared it with going to a dentist: “you only go when it really hurts”. Countries also need to have a basic understanding of their rights and obligations in the WTO to assess whether another country is violating WTO rules and there is a reason for starting dispute settlement proceedings. ACWL can provide support on specific requests, but it does not actively help countries to identify their needs other than through training. According to the Executive Director, other organisations like UNCTAD or the South Centre have a

³ Please note that this is based on ACWL membership as of March 2004. At that time, Indonesia had decided to become member of ACWL.

bigger role to play here. He noted that an important requirement for making countries more aware of their trade interests is to have a good link between the government and the private sector, but it goes beyond the scope of ACWL to improve this link.

ACWL does not actively try to attract new members, although it has recently prepared a brochure. It feels that it is more important to provide the opportunity for countries to use commercially neutral advice.

2.3 Funding

When ACWL was established, it was envisaged that in the first five years its operations would be financed from multi-year contributions from donors. After this five-year period, operations would be financed from the return on investment from an endowment fund and from the fees paid by members. At the time of the evaluation, the prospects of financial sustainability after the first five years were less optimistic however. Both the return on investment of the endowment fund and the revenues from fees had been lower than anticipated. On the other hand, the multi-year contributions can potentially be used for a period of more than five years. It has so far not been decided how the possible financial shortages in the future will be solved. Both the Executive Director and the chairman of the General Assembly prefer to attract more funding from donors rather than to increase the fees for ACWL's services. It was noted that increasing the fees for support in the dispute settlement proceedings would mean that fees for category A-members would come very close to what commercial law firms would charge. Introducing fees for the provision of general legal advice would probably reduce the demand for this service, but this would also mean that ACWL would not be able to fully achieve its objectives. There is therefore a need to find a good balance. The possibility of setting a maximum for the amount of legal advice a country can receive has so far not been used.

The Executive Director is not actively looking for other donor countries. He does not want to get involved in the negotiations of membership and the decision of who can or cannot join; he prefers to leave this to the General Assembly. He feels that the ACWL member countries have an interest in trying to achieve more burden sharing between countries. A number of developed countries cannot be convinced of the benefits of funding ACWL; they feel that they would fund their opponents in the dispute settlement system.

2.4 Future performance

No major changes are expected in the near future. Membership will increase, but not many more countries are expected to join in the near future. Both the Executive Director and the chairman of the General Assembly felt that ACWL should not become too big. The Executive Director felt that its efficiency might be improved. For its internal organisation, ACWL has adopted the same procedures as used by the WTO (e.g. labour conditions, procurement, etc.), but these procedures are not always very appropriate for a small organisation like ACWL. Because the use of these procedures also gives credibility to the donors and users, only some small changes will be proposed.

ACWL is also thinking of providing more training to officials in capitals in the future. A plan for an internship programme has been developed, but so far, donors have not been prepared to fund this. The Executive Director also has ideas to provide on-line training courses, but this plan still needs to be further developed.

On the questions as to whether something will be done with the general lessons learnt in the provision of legal advice or support in the dispute settlement process, the Executive Director was hesitant. He said that most cases are very specific, which makes it very difficult to identify general lessons without breaking confidentiality. All topics on which legal advice is provided are listed on the website however; if countries are interested in getting the information, they can always make a similar request for information to ACWL.

3 INPUT

3.1 Funding of ACWL

The core of ACWL's funding is the Endowment Fund. All donor countries that are members of ACWL (with the exception of the United Kingdom and Canada) have contributed USD 1 million to this Endowment Fund. Also developing countries, economies in transition and customs territories that are members of ACWL are obliged to pay a one-time contribution to the Endowment Fund. The contributions from the latter group vary with the share of world trade and income per capita and range from USD 50,000 to USD 300,000. The total commitments to the Endowment Fund when ACWL was created amounted to USD 7,950,000.

A second source of income is the fees paid for ACWL's services. The general legal advice that ACWL offers is free for members of the Centre and for LDCs, but non-members pay a rate between USD 250 to 350 per hour, depending on the category (see *Section 1.2*). For support in dispute settlement proceedings, all countries are obliged to pay for the services rendered, although members and LDCs get a discount for these services. Non-members again pay a fee between USD 250-350 per hour, depending on their category. LDCs pay USD 25 per hour, member countries of category C USD 100, of category B USD 150, and of category A USD 200. For the first five years of ACWL, the fees are added to the Endowment Fund.

When ACWL was created, the idea was that after, the first five years of operation, it's annual budget would be funded from three sources:

- I. The revenues from the Endowment Fund;
- II. The fees for the services provided by ACWL;
- III. Any voluntary contributions from governments, international organisations or private sponsors.

For the first five years, ACWL would be financed from voluntary contributions and from multiyear contributions made by donor countries. When the ACWL Agreement was signed, donor countries agreed to contribute in total USD 7.25 million in the form of multiyear contributions.

Up to 2003, ACWL has had sufficient funds to cover its expenditures, and no problems are expected over the first five years of operation. At this stage, it is not clear if ACWL can become financially sustainable after these first five years, because the investments of the endowment funds have yielded less than originally foreseen and also the fee income was lower than expected. Chapter 7 addresses the issue of financial sustainability in more detail.

In addition to the funding for its core activities, ACWL created a Technical Expertise Trust Fund (TETF) to be better able to provide support in cases that involve complicated technical issues. Dispute settlement cases in the WTO are increasingly technical, in particular in relation to the WTO Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary measures (SPS). Disputes relating to these agreements require specialist expertise, and many developing countries do not have this expertise in-house or they lack the means to hire such expertise on an ad-

hoc basis. As ACWL did not have a sufficiently large provision in its budget to prepare these technical cases, it was decided to create the TETF. Developing countries and countries in transition that are members of ACWL as well as LDCs can make use of the TETF, with the maximum disbursement for an individual request being CHF 100,000. The countries still have to pay for part of the costs, but get a subsidy from the Trust Fund varying from 20 percent for category A members to 90 percent for LDCs.

As of December 2003, the contributions to the TETF amounted to CHF 708,160. Denmark contributed CHF 373,160, Norway CHF 250,000 and the Netherlands CHF 85,000. The Netherlands' total contribution to the TETF is CHF 250,000, but this amount will be allocated in three instalments. The United Kingdom has pledged an amount of GBP 80,000 (approximately CHF 188,000).

3.2 Budget and costs

Given that ACWL was created in July 2001, financial details are only available for 2001 and 2002. For both years, total expenditures were lower than foreseen (see Table 3.1). For 2002, more detailed figures are available.

Table 3.1 Budget and expenditures, 2001-2002

	Budget (CHF)	Actual expenditures (CHF)
Expenditures 2001	1,163,000	569,000
Expenditures 2002	2,462,000	1,614,000
<i>Of which:</i>		
Staff costs	1,180,000	1,137,000
Staff overhead costs	40,000	8,000
Temporary assistance	110,000	57,000
Communications	55,000	26,000
Building facilities	210,000	149,000
Permanent equipment	220,000	150,000
Expendable equipment	40,000	12,000
Contractual services	50,000	27,000
External legal counsel	300,000	6,000
Missions	40,000	2,000
Training activities	60,000	16,000
Various expenditures	107,000	24,000
Unforeseen expenditure	50,000	-

Table 3.1 shows that in 2002, only the expenditures on staff were in line with the budget. Staff costs are by far the most important costs of ACWL's operations. Expenditures on all other items were much lower than foreseen.

The budget for 2003 amounted to CHF 2,551,100. At the date of this evaluation the information on actual expenditures was not yet available, but the estimated expenditures were CHF 2,100,000. The proposed budget for 2004 is CHF 2,648,000, but if the plans to hire an additional senior lawyer are achieved the budget will

increase to CHF 2,922,400. A breakdown of the budgets for 2003 and 2004 (proposed) is presented in Table 3.2.

Table 3.2 Breakdown of the budget for 2003 and the proposed budget for 2004

	2003 (CHF)	2004 (CHF)
Staff costs	1,407,300	1,792,300
Staff overhead costs	35,000	35,000
Temporary assistance	155,000	175,000
Communications	30,000	33,000
Building facilities	217,000	262,000
Permanent equipment	80,000	50,000
Expendable equipment	30,000	25,000
Contractual services	65,000	75,000
External legal counsel	300,000	300,000
Missions	20,000	20,000
Training activities	60,000	30,000
Various expenditures	101,800	75,100
Unforeseen expenditure	50,000	50,000
Total	2,551,100	2,922,400

3.3 Staff and consultants

When ACWL started its operations in July 2001 it only had 2 staff members. The size of the staff gradually expanded and by the end of 2003 ACWL had 9 employees: The Executive Director, six other lawyers, an office manager and a secretary. At the time of the evaluation, ACWL was in the process of attracting an eighth lawyer.

The use of external legal counsel has been limited so far. It has only happened in one case where several ACWL members were involved in one dispute; in that particular case another law firm was hired to provide advice to one of the parties in the dispute. In addition, external experts were hired with the money of the TETF for two cases related to SPS measures. According to the Executive Director, no external legal counsel has so far been hired due to a lack of capacity at ACWL for its regular operations, and it is not expected that such legal counsel will be hired for this purpose in the future.

3.4 Time span for preparing activities

There is only limited information on the time spent on the various activities. In the interview with the Executive Director it was indicated that ACWL spends 40 percent of its time on legal advice, 40 percent on dispute settlement and 20 percent on training.

Figures for the first nine months of 2003 show that in that period, legal advice has been provided 29 times. This has taken 607 hours in total, but the time for each consultation differs considerably: it ranges from 3 to 40 hours.

ACWL has prepared a time budget to give countries an indication of the time spent on dispute settlement cases. This specifies the minimum and maximum number of hours

charged for activities in the various stages of dispute settlement proceedings. For consultations, the number of hours that ACWL budgets to support a country lies between 23 and 70 hours; in the panel stage the number of hours is in the range of 149 to 401 hours, whereas support for the appeal stage is estimated to cost between 240 and 635 hours. According to the Executive Director, this time budget has never been exceeded.

4 OUTPUT

ACWL produces three types of output: Legal advice on WTO Law, support to parties and third parties in dispute settlement proceedings and training to government officials on WTO Law. This chapter gives an overview of all output produced until December 2003.

4.1 Legal advice on WTO Law

ACWL provides legal advice on WTO law free of charge to LDCs and to ACWL members, with the exception of developed country members. The legal advice is also available to non-members, but they pay a fee for these services, ranging between USD 250 and 350 (see Chapter 3).

The legal advice can take different forms; it can be about the viability of initiating disputes, about the compliance of national laws and regulations with WTO law, or about the legislative aspects of the negotiations (e.g. legal language used in proposals). This latter category is far less important in terms of use than the first two.

Table 4.1 gives an overview of the legal advice that has been given so far. For reasons of confidentiality, no information could be provided on which countries have requested legal advice on which topics so far. This information is only available by country group, i.e. LDCs, members, and non-members. There is also no information about the content of the advice that has been provided. The table does not include the requests on minor issues that have been addressed orally.

Table 4.1 An overview of the legal advice provided by ACWL from July 2001-December 2003

No.	Legal advice on:
<i>Legal advice to LDCs</i>	
1	The implications of par. 6 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health
2	The WTO-consistency of certain subsidies
3	The viability of initiating a dispute under Article VI of the GATT 1994
4	The viability of resort to Article XVIII of the GATT 1994
<i>Legal advice to members</i>	
5	Legal issues arising under the enlargement of the European Communities in respect of a product subject to WTO disciplines
6	WTO-consistency of a WTO member's proposed customs valuation legislation
7	Proposed safeguard mechanism for exchange rate reasons
8	Paragraph 6 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health
9	Representation rights of WTO Members
10	Issues relating to subsidies on agricultural products under Article 9 of the Agreement on Agriculture
11	Import licensing issues for agricultural products
12	Tariff classification issues for agricultural products
13	The WTO-consistency of tariff preferences in favour of least developed countries
14	The WTO-consistency of certain proposals on rules of origin
15	Article 21.3 (b) of the DSU
16	The legal status of safeguard measures on products not subject to tariff concessions
17	The WTO consistency of safeguard measures on steel
18	An agreement concluding negotiations under Article XXVIII of the GATT 1994
19	Article 24.4 of the TRIPS Agreement
20	The consistency of an internal regulation dealing with the importation of industrial products with Articles III and XI of the GATT 1994
21	The consistency of an internal regulation with Article III of the GATT 1994
22	The consistency of an internal regulation with Article III of the GATT 1994 and the SPS Agreement
23	The WTO-consistency of proposed amendments to domestic legislation exempting certain products from internal taxes
24	The consistency of proposed legislation with the provisions of the TRIPS Agreement on patents
25	The consistency of proposed legislation with the provisions of the Agreement on Customs Valuation
26	The viability of initiating a dispute relating to Article XXI of the GATT 1994
27	The provisions of the GATT 1994 relating to tariff renegotiations
28	The viability of initiating a dispute relating to Article V of the GATT 1994
29	The viability of initiating four separate disputes under the GATS
30	The viability of initiating a dispute under the Agreement on Rules of Origin
31	The viability of initiating a dispute relating to the most-favoured-nation clause of the GATT 1994
32	The viability of initiating a dispute under the provisions of the TRIPS Agreement on geographical indications
33	The viability of initiating a dispute relating to the GATT 1994 and the SPS Agreement
<i>Advice to developing country non-members</i>	
34	The WTO-consistency of a proposed state-trading enterprise
35	The relationship between the GATS and investment provisions of a proposed FTA

Source: ACWL website

4.2 Support in dispute settlement proceedings

One of the main reasons for the creation of ACWL was to provide support to developing countries, LDCs and economies in transition in the dispute settlement proceedings with a view to improving their participation in the multilateral trading system. Unlike the legal advice, support in the dispute settlement proceedings is not free of charge, but members and LDCs get a subsidy on the fee rates. LDCs pay USD 25 per hour, and members pay a fee ranging between USD 100 and USD 200 per hour. Non-members pay an hourly rate of between USD 250 and USD 350 (see also Chapter 3). The reason for asking a fee for support in the dispute settlement is to prevent countries from starting frivolous cases.

ACWL works in close partnership with delegates of the countries requesting support in the dispute settlement proceedings. Before the dispute settlement proceedings are initiated, ACWL lawyers prepare a detailed legal opinion on the strengths and weaknesses of the case. ACWL lawyers and delegates work together to prepare for consultations, to draft written submissions and oral statements and to prepare the answers to the panel's questions (for an explanation of the dispute settlement proceedings, see Box 1.1 in Chapter 1).

Table 4.2 provides an overview of the dispute settlement proceedings where ACWL has provided support to one of the parties to the dispute. In the descriptions, first the country that is accused of violating WTO rules is indicated, followed by the name of the case. The third column lists the countries to which ACWL has provided support, with the phase in which they gave this support between brackets. Where the country is presented in bold, it means that this country has brought the case to the WTO. As can be seen from Table 4.2, in almost all cases (12 out of 14), the developing countries receiving support from ACWL were the complainants.

In one case (no. 10), two parties with opposing interests asked for the support of ACWL in the dispute settlement proceedings: India as a complainant and Colombia, Ecuador, Peru and Venezuela as third parties in the dispute. In this case, ACWL provided its support to India and provided for an external legal counsel to the countries that were third party.

Table 4.2 Support of ACWL in WTO dispute settlement proceedings, July 2001-December 2003

No.	Dispute Settlement Proceedings	Support to:
1	Ecuador - Definitive Safeguard Measures on Imports of Medium Density Fireboard	Ecuador (<i>consultations phase</i>)
2	Dominican Republic – Measures Affecting the Importation of Cigarettes	Honduras (<i>consultations phase and panel proceedings</i>)
3	Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua	Nicaragua (<i>consultations phase</i>)
4	EC - Customs Classification of Frozen Boneless Chicken Cuts	Thailand (<i>consultations phase and panel proceedings</i>)
5	EC - Export Subsidies on Sugar	Thailand (<i>consultations phase and panel proceedings</i>)
6	Australia – Certain Measures Affecting the Importation of Fresh Pineapple	Philippines (<i>consultations phase</i>)
7	Australia - Certain Measures Affecting the Importation of Fresh Fruit and Vegetables	Philippines (<i>consultations phase and panel proceedings</i>)
8	Turkey – Certain Import Procedures for Fresh Fruit	Ecuador (<i>panel proceedings</i>)
9	EC- Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India	India (<i>pre-appeal stage</i>)
10	EC – Conditions for the Granting of Tariff Preferences to Developing Countries	India (<i>consultations phase and panel proceedings</i>)
11	US – Rules of Origin for Textiles and Apparel Products	India (<i>panel proceedings</i>)
12	EC – Trade Description of Sardines	Peru (<i>panel and Appellate Body proceedings</i>)
13	India – Measures Affecting the Automobile Industry	India (<i>panel and Appellate Body proceedings</i>)
14	United-States - Transitional Safeguard Measures on Cotton Yarn	Pakistan (<i>Appellate Body Proceeding</i>)

Source: ACWL website

4.3 Training on WTO Law

ACWL conducts three types of training programmes: A regular course on WTO law and procedures, the hosting of an annual lecture on dispute settlement issues and occasional meetings or seminars.

The regular training course is provided to government officials of developing countries or customs territories, countries with economies in transition and LDCs on WTO dispute settlement procedures and jurisprudence. The course is provided once a year and consists of weekly courses (during lunch) of two hours, over six months. The first course finished in April 2003; 22 officials were awarded with the Centre's certificate of training. In October 2003, a second course started, which will end in April 2004. The two courses have different programmes: The first focused on the procedural aspects of dispute settlement proceedings, while the second focused more on the jurisprudence in the WTO cases to date, and examined the general principles that emerged from these cases.

The annual lecture has taken place two times so far: in 2002 Professor John H. Jackson was the speaker, and in 2003 Professor Claus-Dieter Ehlermann provided the lecture.

ACWL invited two other experts to make a presentation. In June 2002, Julio Lacarte-Muro (former Appellate Body member) chaired a discussion in Spanish on the review of the DSU. In June 2003, Professors Marc Busch and Eric Reinhardt presented the results of their research on “Developing Countries and the GATT/WTO dispute settlement system.”

There have also been plans to organise internships at ACWL or to provide an online training course for people in the developing country members’ capitals. These plans have so far not materialised.

5 OUTCOME

In the design for the evaluation of ACWL (see Annex 1), three indicators of outcome of ACWL's services were identified:

- I. The number and type of follow-up actions undertaken by officials on the general legal advice provided by ACWL;
- II. Results of the dispute settlement procedures following the legal advice of ACWL;
- III. The acquired knowledge and expertise of individual beneficiaries (ex-participants of training activities and clients).

The main source of information for these indicators is the interviews that have been held with the beneficiaries of ACWL's services. Indicator 2 can to some extent also be assessed by looking at the results of dispute settlement procedures on the WTO website, but the perspectives from delegates provide additional insights into the developments in these disputes, as a number of them had not yet come to an end at the time of the evaluation. Delegates of the following countries have been interviewed in Geneva: Thailand, Peru, El Salvador, India, Venezuela, Pakistan, the Philippines, Ecuador, Paraguay, Nicaragua, Honduras, and Guatemala.

To get an impression of the size or magnitude of the outcome, the following section first discusses the outreach of ACWL's activities in terms of the number and kind of beneficiaries.

5.1 Outreach of ACWL's activities

ACWL membership

As of 1 January 2004, ACWL had 33 members: 9 Developed countries and 24 members entitled to the services of ACWL (i.e. developing countries or customs territories and economies in transition). Of the 24 members entitled to the services of ACWL, 20 countries were signatories to the Agreement establishing ACWL, while four countries acceded to ACWL in 2003: Jordan, Mauritius, Oman and Turkey. At the time of the evaluation, three other countries were in the process of accession: Chinese Taipei, El Salvador and Switzerland. In the course of 2004, Indonesia also applied for membership. Table 5.1 lists all members of ACWL as of 1 January 2004. As indicated in Chapter 2, most member countries entitled to the services of ACWL have already had some experience in dispute settlement proceedings (see Table 2.1).

Two countries had signed the agreement for establishing ACWL in Seattle in 1999, but have so far not fulfilled the requirements for membership: Bolivia and Zimbabwe.

Next to the members, all LDCs that are members of the WTO or who are in the process of becoming a member are also entitled to the services of ACWL; they are not required to become a member of ACWL.

Table 5.1 List of ACWL members as of 1 January 2004

Members entitled to the services of ACWL		Developed country members
Colombia	Nicaragua	Canada
Dominican Republic	Oman	Denmark
Ecuador	Pakistan	Finland
Egypt	Panama	Ireland
Guatemala	Paraguay	Italy
Honduras	Peru	Netherlands
Hong Kong, China	Philippines	Norway
India	Thailand	Sweden
Jordan	Tunisia	United Kingdom
Kenya	Turkey	
Latvia	Uruguay	
Mauritius	Venezuela	

Users of ACWL's services

Because the legal advice is confidential, we do not know which countries have made use of these services. According to the contractor, all member countries entitled to the services of ACWL have made use of the services, except Egypt. Legal advice to LDCs has been provided two times so far.

Although ACWL has provided support in 14 different dispute settlement cases, the number of countries that received this support is only 7, because several countries have used the assistance of ACWL in two or more disputes. Countries that have only made use of the services in one case are Honduras, Nicaragua, Peru and Pakistan. Countries that have made use of the services in two or more cases are Ecuador (2), Thailand (2), the Philippines (2) and India (4). It should be noted that countries sometimes also receive advice from ACWL when they are third party to a dispute. This support is not recorded separately in ACWL's files however.

All members and LDCs were invited to the training. In the first course, 22 delegates participated and obtained a certificate at the end of the course. For the second training course, in total 46 delegates applied, from 34 different countries. Of these 34 countries, 21 countries are ACWL members (no developed countries), 2 countries were in the process of accession to ACWL, 7 countries were LDCs, and four were other developing countries. The actual attendance of delegations to the training is lower, with just under 30 participants. The participation of other developing countries is not based on specific criteria. If the number of participants becomes too high, ACWL intends to develop criteria for participation in its training. According to the Executive Director, many of the participants of the first course also participated in the second course.

Non-member countries have used the services of ACWL on only two occasions, just after ACWL was created. LDCs, which are also entitled to the services of ACWL, have only made limited use of ACWL's services so far: They have asked for legal advice twice and a number of LDC delegates have participated in the training. ACWL's services are thus primarily used by its members.

5.2 Follow-up actions of the legal advice

From the interviews with the Executive Director and the delegates, it became clear that the intensity of use of the general advice is very different among members. Some only use the services occasionally, while others contact ACWL frequently to seek their advice. Also, the kind of advice differs per country; a number of countries mainly use the advice of ACWL in possible dispute settlement cases, or as a third party in dispute settlement cases, while other countries also consult ACWL on the compatibility of new domestic legislation with WTO rules. A small number of countries indicated that they also used the services in the negotiations, mainly for asking explanations of the implications of texts used in proposals.

All interviewed delegates appreciated the legal advice. Both the quality of the advice and the fast response to requests were highly valued.

The follow-up actions of the legal advice differ per type of advice. When the advice considers the possibility of dispute settlement, delegates appreciated the input of ACWL on the choice of whether or not to go ahead with the case. Almost all respondents indicated that they followed up the advice of ACWL in this respect, although a number of delegates indicated that they do not always agree on all points with ACWL. They noted that while ACWL is often right from a legal point of view, countries also have to take into account both domestic and international political considerations. This can be a reason for these countries to sometimes include arguments in a case that ACWL recommended to exclude. The delegates who raised this point also noted however that ACWL is willing to take into account these political considerations. One delegate emphasised the fact that ACWL gives advice on political considerations in dispute settlement cases and saw this as an important advantage.

With respect to the legal advice that ACWL provides on the compatibility of (proposed) domestic law with WTO rules, it was clear that the delegates themselves are mainly a link between ACWL and their respective capitals: the requests come from the capital, the delegates pass it onto ACWL, and send the advice from ACWL back to the capital. They are therefore themselves not closely involved in the follow-up of this advice. The delegates indicated that the advice is taken into account in the capital in formulating new laws.

In terms of legal advice in the negotiations, ACWL mainly contributes to a better understanding by delegates of the negotiations. Those delegates who were interviewed did not point to any specific follow up actions as a result of this advice, although the advice did in some cases enable them to form their negotiating position or even write a proposal.

5.3 Results of dispute settlement proceedings supported by ACWL

As demonstrated in Section 4.2, ACWL has assisted its members in 14 dispute settlement cases. While the countries supported by ACWL have achieved some positive results in their cases, it should also be noted that six cases have not yet come to an end. Table 5.2 gives an overview of the status of the 14 cases.⁴

Table 5.2 Status of the dispute settlement proceedings in which ACWL provided support

No.	Country supported by ACWL	Case	Status
1	Ecuador	Ecuador - Definitive Safeguard Measures on Imports of Medium Density Fireboard	Dispute still in consultations phase
2	Honduras	Dominican Republic – Measures Affecting the Importation of Cigarettes	Honduras has requested to set up a panel
3	Nicaragua	Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua	Dispute was settled
4	Thailand	EC - Customs Classification of Frozen Boneless Chicken Cuts	Thailand has requested a panel
5	Thailand	EC - Export Subsidies on Sugar	Thailand has requested a panel
6	Philippines	Australia – Certain Measures Affecting the Importation of Fresh Pineapple	Dispute was settled
7	Philippines	Australia - Certain Measures Affecting the Importation of Fresh Fruit and Vegetables	Philippines has requested a panel
8	Ecuador	Turkey – Certain Import Procedures for Fresh Fruit	Dispute was settled
9	India	EC- Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India	India wins the case in appeal
10	India	EC – Conditions for the Granting of Tariff Preferences to Developing Countries	Panel rules in favour of India, now in appeal
11	India	US – Rules of Origin for Textiles and Apparel Products	India loses in panel stage
12	Peru	EC – Trade Description of Sardines	Peru wins in appeal
13	India	India – Measures Affecting the Automobile Industry	India loses in panel stage and withdraws its appeal
14	Pakistan	United-States - Transitional Safeguard Measures on Cotton Yarn	Pakistan wins case in appeal

⁴ It should be noted that if a case is won, this does not mean that all claims are accepted: in most cases only part of the claims are accepted. For this evaluation, we consider a case as won, if national laws, regulations or other measures of the respondent country are found to be inconsistent with WTO rules and therefore need to be revised.

As can be seen from Table 5.2, three cases have been won by the country supported by ACWL (no. 9, 12 and 14), two cases have been lost (no. 11 and 13), three cases have been settled (no. 3, 6 and 8) and six other cases are still in process (no. 1, 2, 4, 5, 7 and 10). In the cases that were settled, the countries supported by ACWL in case no. 3 and 8 felt that the case was settled in their favour, while in case no. 6 the Philippines pineapple industry decided that they would work with the standards applied by Australia and therefore did not go on with the dispute. It is difficult to predict the outcome of the ongoing disputes, but it should be noted that there have been positive developments in at least two cases: in case no. 7, the Philippines indicated that Australia has revised its draft assessment regarding the regulation of fresh fruits, which now seems to incorporate some of the concerns that the Philippines raised in the dispute. Also in case no. 10, the prospects are positive as India has won the panel stage of the dispute.

All interviewed delegates were very positive about the support of ACWL in the dispute settlement proceedings. Even in the two cases that were lost, the country did not lay the blame on ACWL; it was noted that not all cases can be won, and that it is hard to predict the results of a case beforehand. Countries that had achieved positive results in the dispute settlement process considered the input of ACWL as crucial.

The respondents felt that ACWL has built up a lot of expertise and experience over recent years. Most respondents therefore felt that ACWL could provide support in the dispute settlement process at least as well as other private law firms, and many respondents even felt ACWL was better, because ACWL works on WTO issues all the time and has therefore built up a lot of expertise over the last few years. There was great appreciation of the expertise and experience of the Executive Director, but also the quality of the other staff was rated positively. It should be noted that not all countries could compare the quality of ACWL with the quality of private law firms, because not all countries have had experience with private law firms in the dispute settlement process.

The appreciation for ACWL is also reflected in its expected future involvement in new dispute settlement cases. Most delegates indicated that they are likely to ask for the support of ACWL in all future disputes in which they may become involved. Only a few delegates noted that in some cases they would perhaps seek additional support from private law firms. Nevertheless, even in most of these cases the countries would also ask ACWL for advice. Countries that indicated that a private law firm might in some cases be involved gave different reasons for this: One noted that the choice for a firm will depend on the private sector, and another country noted that, in anti-dumping cases, private law firms are better able to provide support, because these firms have already been involved in the case before it was brought to the WTO. Some other delegates could not indicate on which factors their choice would depend.

5.4 Acquired knowledge and expertise of beneficiaries

All respondents indicated that ACWL had contributed to their expertise on WTO law. This knowledge was especially gained through the training, but also through the general legal advice and the support in the dispute settlement cases, although these services often relate to very specific WTO rules, while the training courses are much broader. With respect to the dispute settlement cases, one delegate noted that an important difference with a private law firm is that private law firms often completely

handle the case, while ACWL actively involves delegates in the process, which leads to capacity building. Another delegate noted that from the experience of working with ACWL, countries become more aware of the different steps and procedures in dispute settlement proceedings and learn for example where they can find information on specific issues. Some respondents explicitly noted that the expertise they gained from ACWL helped them to participate more actively in the negotiations.

After the training course of October 2002-April 2003, ACWL asked participants to fill out an evaluation form. In total 14 of these forms were returned. All delegates were very positive about the course. They indicated that it was very useful, and most explicitly noted that it had increased their knowledge and understanding of dispute settlement in the WTO. The most often made recommendation was that it would be good to include some more practical exercise and to examine some cases in more depth. This recommendation has been followed up in the course that is currently provided (see Section 4.3). The Executive Director noted, however, that although delegates asked to do more practical exercises, in practice they often had no time for this. Other recommendations made were to provide more information on the history of the DSU and to make more information available in French, but these recommendations have so far not been followed up. In the interviews, a positive point stressed by the delegates was that ACWL provides very technical information about the agreements, as they go into the provisions of the agreement. This distinguishes them from other organisations that explain WTO agreements, such as the WTO secretariat.

As well as the training course, delegates were very positive about the seminars organised by ACWL. The focus on practical issues regarding WTO law was highly appreciated, because delegates can use the knowledge on these issues in their daily activities.

6 IMPACT

In the design for the evaluation of ACWL (see Annex 1), the following two indicators for impact were identified:

- I. More dispute settlement cases requested by developing countries;
- II. Positive results for developing countries in dispute settlement procedures.

This chapter will look at each of these two impact indicators in turn.

6.1 Dispute settlement cases requested by developing countries

Because developing countries now have the opportunity to get support in the dispute settlement process from ACWL, even if they are not members, one could expect that the number of dispute settlement cases brought to the WTO by developing countries would increase. Table 6.1 provides information on the total number of cases that have been brought to the WTO from 1995 to 2003, and the number of cases that have been brought by developing countries.⁵ It should be noted that sometimes developing countries bring a case to the WTO with other countries, including developed countries.

Table 6.1 Number of cases brought to the DSB of the WTO, 1995-2003

Year	Total number of cases	Cases brought by developing countries	(% of) Cases brought by developing countries
1995	22	9	40.9
1996	42	15	35.7
1997	46	7	15.2
1998	44	7	15.9
1999	31	7	22.6
2000	30	14	46.7
2001	27	21	77.8
2002	34	17	50.0
2003	28	17	60.7
Total/average	304	114	40.6

Source: Own calculations based on data on the WTO website

Table 6.1 clearly shows that, despite the fluctuations in the cases per year, developing countries have become more active in using the dispute settlement mechanism to defend their rights in the WTO. It should be noted, however, that the number of developing countries active in the dispute settlement procedures is limited; in total 27 different countries have brought cases to the WTO. Countries from Latin America and Asia have participated most actively. Remarkably, no African countries have ever been involved in the dispute settlement proceedings as a complainant.

⁵ The number of cases is based on the cases listed on the WTO website. It should be noted that dispute settlement cases may be interlinked and dealt with jointly (e.g. only panel is established). This is not taken into account in the figures in this *Chapter*.

Traditionally, developing countries were involved in disputes more often as a respondent than a complainant. Since 2001, however, the number of disputes in which developing countries are a complainant has exceeded the number of disputes in which they are a respondent (see Table 6.2). Although it is too early to draw any firm conclusions from the developments over the last years, it may indicate that developing countries have become more WTO-compliant, while at the same time they are better aware of possible WTO violations of other members, or they have increased their capacity to act against these violations.

Table 6.2 Developing countries as complainants and respondents in disputes, 1995-2003

Year	Total number of cases	No. of cases in which developing countries were a respondent	No. of cases in which developing countries were a complainant
1995	22	5	9
1996	42	20	15
1997	46	20	7
1998	44	11	7
1999	31	14	7
2000	30	18	14
2001	27	12	21
2002	34	6	17
2003	28	10	17
Total	304	116	114

Source: own calculations based on data from the WTO website

It is also interesting to see if the members of ACWL have become more active in the dispute settlement proceedings. Looking at the period before the agreement establishing ACWL was signed (1995-1999) and the period after its signing (2000-2003), there is a slight increase in the number of cases brought to the WTO by the current members of ACWL per year: From 1995 to 1999, ACWL members were involved as complainants in on average 6 cases per year, while this figure increased to 6.75 in the period 2000-2003. Looking at the 24 individual members entitled to the services of ACWL, 9 countries brought on average more cases to the WTO each year after the creation of ACWL than before, while 5 countries brought fewer cases (although it should be noted that the differences are very small). Since 2000, 13 member countries have not brought any disputes to the WTO.

Although these figures seem to indicate that ACWL has had no significant impact on the number of disputes brought to the WTO by its members, it should also be kept in mind that it is also involved in discussing the viability of initiating disputes. It could well be the case therefore that the number of disputes has in some cases declined because ACWL has advised countries not to bring a case to the WTO. From the interviews with the delegates, it is clear that this has happened on a number of occasions.

In addition, some delegates explicitly noted that ACWL has given them the confidence that the system works and that small countries can also be successful in cases against large countries like the USA. Some countries also said that without the support of ACWL they would not have gone ahead with all cases. ACWL provided them with the necessary support at affordable prices, especially when compared to

private law firms. This indicates that ACWL has had some positive impact on the participation of its members in dispute settlement proceedings.

6.2 Results for developing countries in dispute settlement procedures

Although developing countries seem to have become more active as complainants in the WTO over the last years (see *Section 6.1*), it is also interesting to see if there are any developments in the results they have achieved in the cases brought to the WTO. Table 6.3 shows the results of the cases in which developing countries were the complainant party.

Table 6.3 Results of the dispute settlement proceedings in which developing countries were involved as complainants

Year	No. of cases with developing countries as complainants	No. of cases won (in panel stage or appeal)	No. of cases lost	No. of cases settled
1995	9	4	1	4
1996	15	5	1	8
1997	7	3	-	4
1998	7	1	-	6
1999	7	2	-	5
2000	14	5	-	9
2001	21	7	-	14
2002*	17	4	1	8
2003*	17	unknown	unknown-	unknown
Total	114	31	3	58

* In 2002 and 2003 the number of cases does not equal the sum of the last three columns. Four cases in 2002 had not come to an end yet at the time of the evaluation. Of the cases in 2003, almost all cases were still in the process. There were no cases lost or won at the time of the evaluation, a limited number may have been settled, but this is not clear from the data of the WTO website.

Source: own calculations on the basis of rulings on the WTO website

Table 6.3 shows that there have not been any clear developments in the number of disputes won, lost or settled over the years. Because many of the disputes that started since the creation of ACWL have not yet come to an end, it is not possible to clearly identify the impact of ACWL in dispute settlement cases.

Remarkably, the number of dispute settlement proceedings brought to the WTO by developing countries that are lost is very low. A significant number of cases are won, but the majority of cases are settled.⁶ In most of these cases, a dispute is settled in favour of the complainant party.

It should be noted that if a country wins a case, it does not always mean that their case is won on all points. In most dispute settlement proceedings, the complainant

⁶ A dispute is considered as settled in this section if the WTO website only indicates that there have been requests for consultations, or requests to establish a panel, but there is no final panel or Appellate Body report.

country puts forward several arguments that the other party in the dispute acts inconsistently in respect to WTO rules. In most of the cases listed as won in Table 6.3, the panel or Appellate Body accepts only part of the arguments of the complainant country. It would therefore be interesting to analyse in more detail the number of arguments that are accepted or not in a case, to identify if there have been any developments in this respect and if the support of ACWL plays any role. Such a legal analysis goes beyond the scope of this evaluation however.

7 ASSESSING PERFORMANCE

This chapter presents the scores on the performance of ACWL. The scores on the efficiency, effectiveness and relevance follow from a uniform scoring methodology developed for all TRTA activities subject to this IOB evaluation. For the ranking, a five-point scale is applied: Poor (P), Weak (W), Fair (F), Good (G), and Excellent (E). An explanation of the rating methodology can be found in Annex 4.

7.1 Efficiency

Output delivered according to plan, budget and schedule (Score: Fair)

ACWL does not make annual activity plans for its operations. Of the three services it provides (general legal advice, support in dispute settlement proceedings and training), only the training can be planned. The other two services are fully demand-driven and the amount of time that will be spent on these activities is therefore difficult to predict.

ACWL prepares annual budgets that need to be approved by the General Assembly. In 2001 and 2002, the budget was significantly under spent, and also in 2003 the budget was not fully used. According to the Executive Director, the fact that the actual costs were lower than predicted in the first two years is because some developments took more time than expected, especially attracting lawyers to ACWL. Although he expects that from now on the actual costs will be more in line with the budget, he also noted that the budget will always include some provisions that may not be needed in practice, like the money reserved for hiring external lawyers in case there is a dispute between members, or unforeseen expenditures. While ACWL has never exceeded its budget, it should also be noted that ACWL has received rather generous funds from donors for its operations for the first five years (the funds are even likely to be sufficient for the first seven years).

It is interesting to note that ACWL was able to provide its services immediately after it became operational in July 2001. The activity report for July 2001-July 2002 shows that in the first twelve months, ACWL provided general legal advice to six countries, and provided support in six dispute settlement cases. The swift start of ACWL is also a sign of efficiency. The fact that its members have actively been involved in establishing ACWL has certainly contributed to the immediate demand for ACWL's services.

Although no quantitative data are available on the time ACWL needs to respond to requests, the beneficiaries indicated that the response has always been fast and often immediate.

Relationship between input and output (Score: Fair)

ACWL has a staff of nine persons, of which two support staff (a secretary and an office manager) and seven lawyers. When it started its activities, the staff only consisted of the Executive Director and an assistant. The number of outputs is

substantial for a small and new organisation like ACWL. It has delivered general legal advice 35 times, and has assisted its members in fourteen different dispute settlement cases. Dispute settlement proceedings are often complex and involve a considerable input to prepare. In addition, ACWL has developed and provided two training courses. The relation between inputs and outputs can therefore be rated at least as fair. The actual score might even be higher, but because there is little information available on the complexity of the cases as the legal advice is confidential, this cannot be confirmed.

ACWL seems to require only limited non-financial input from donors. These are represented in the General Assembly of ACWL, which meets twice a year. For the Netherlands, a representative of the Permanent Mission in Geneva attends these meetings. At the Ministry of Economic Affairs and the Ministry of Foreign Affairs in the Netherlands, the input is also very limited. All persons involved indicated that the time spent on ACWL is certainly less than half a day per month. The former delegate from the Netherlands (now working at the Ministry of Foreign Affairs) was actively involved in setting up ACWL and is currently chairman of the General Assembly. In the period from 1998 to 2002, he spent about 50 percent of his time on ACWL (but reportedly often outside office hours). Now that ACWL is up and running, he only spends around six days a year on ACWL.

Table 7.1 Efficiency

Indicator	Score
Realisation of output according to plan, budget and schedule	At least F
Relation input-output	At least F

Overall, the score of ACWL on efficiency is at least fair. In reality, the efficiency may even be good, but because ACWL does not prepare activity plans, and because the complexity of the legal advice and dispute settlement cases is unknown, this cannot be confirmed.

Overall score on efficiency: at least Fair (F)

7.2 Effectiveness

Contribution to knowledge and capacities of beneficiaries in the field of WTO trade law (Score: G)

All the delegates interviewed for this evaluation were very positive about the services of ACWL and indicated that the services have increased their knowledge and expertise on WTO law. The increased knowledge mainly comes from the training provided by ACWL; but delegates also learn more about how to deal with dispute settlement cases and about specific WTO rules through the legal advice and the support in the dispute settlement proceedings. The explanation of the technical provisions of WTO agreements was very much appreciated because it gives the delegates a better understanding of these agreements and leads to new insights.

Although the delegates felt that their knowledge and capacity had increased as a result of ACWL's services, most indicated that they would still need the services of

ACWL in the future. Many delegates stressed the need for more capacity building, especially in their capitals, and they hoped that ACWL could contribute to this in some way. Internships, national or regional seminars, intensive courses and more interaction with leading law schools were suggested as ways to achieve this. A number of countries even wanted to contribute financially to such initiatives.

Contribution to the participation of its beneficiaries in dispute settlement procedures (Score: G)

As mentioned in the previous section, ACWL has provided support to developing countries in 14 dispute settlement proceedings. A number of delegates noted that they could not have gone ahead with some of these cases without the support of ACWL. Delegates also noted that the support of ACWL has increased their capacity to participate in dispute settlement proceedings, although at the same time they acknowledged that they had to build up much more experience before they could handle dispute settlement cases alone. One delegate noted that ACWL’s active involvement of delegates in the process contributes to this capacity building. Another delegate noted that from the support of ACWL, the delegates learn more about the different procedures and steps in a dispute settlement case, what kind of input is required, where to find specific information etc., which will help them in future dispute settlement cases.

Also the legal advice provided by ACWL is important in this respect: Before a country decides to go ahead with a case or not, the beneficiaries consult ACWL on the viability of this case. ACWL helps the beneficiaries to decide whether to go ahead or not. This provides the delegates with more confidence in the dispute settlement proceedings, and helps them to better prepare and participate in these cases.

Table 7.2 Effectiveness

Indicator	Score
Contribution to knowledge and capacities of beneficiaries in the field of WTO trade law	G
Contribution to the participation of beneficiaries in dispute settlement procedures	G

Overall score on effectiveness: Good (G)

7.3 Relevance

In the design for the evaluation of ACWL (see Annex 1), three main questions for relevance were identified:

- I. To what extent has the outcome of ACWL contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?
- II. To what extent has the outcome of ACWL contributed to the capacity of the developing country to participate in dispute settlement proceedings?
- III. To what extent has the outcome of ACWL contributed to the formulation of a national policy of the developing country at the interface of trade and development?

The first and third indicators are two Dutch policy objectives for TRTA. The second indicator has been added to the relevance indicators as this is the main objective of ACWL and also in line with Dutch policy objectives. Table 7.3 indicates whether the applied relevance indicators are in the scope of the TRTA Programme (i.e. ACWL).

Contribution to the capacity of the developing country to negotiate and implement multilateral trade agreements (Score: F)

Section 7.2 showed that ACWL has increased the knowledge and capacity of developing country delegates in the field of WTO law. A number of delegates explicitly noted that this increased knowledge enables their country to participate more actively in the negotiations. While most delegates did not see a link with the implementation of WTO agreements itself, a number of countries noted that they are able to introduce new domestic laws or regulations that are compatible with WTO rules, because they can seek advice from ACWL on the WTO compatibility. It should be noted that some delegates saw the link between ACWL's services on the one hand, and the capacity to negotiate or to design new laws or regulations on the other hand, only as a very indirect link. This also depends on the use that countries make of the general legal advice: countries that seek general legal advice on the negotiations or on domestic laws or regulations find ACWL to have a larger impact than the countries that mainly use the services of ACWL in (potential) dispute settlement proceedings. Overall, the impact of ACWL on the capacity to negotiate or implement multilateral trade agreements therefore seems fair.

Contribution to the capacity of the developing country to participate in the dispute settlement procedures (Score: G)

For ACWL, the most important objective is to make countries better aware of their rights in the WTO and enable them to defend their rights. In the previous section it was concluded that its effect on the participation of its beneficiaries in dispute settlement proceedings is good. One delegate even noted that "there are no other organisations [than ACWL] that provide this tangible support that has a direct impact on the ability of a country to participate in the WTO."

ACWL might have an impact on the participation in the dispute settlements not only of its members, but also of other developing countries, because they are entitled to the services of ACWL (although at a higher cost). Non-members can also learn from some of the submissions that developing countries have made in the dispute settlement proceedings with the support of ACWL, which are put on ACWL's website. In *Chapter 6*, an analysis was made of the participation of all developing countries in the WTO dispute settlement proceedings. This indicated that developing countries seem to have become more active over recent years in bringing new disputes to the WTO. While developing countries had traditionally been involved in dispute settlement proceedings more as respondents than as complainants, in the last three years the number of cases in which they have been involved as a complainant has exceeded the number of cases in which they are a respondent.

Developments in the number of dispute settlement cases brought to the WTO by the members of ACWL do not give a clear picture. It should be noted that most of ACWL's members have also been active in dispute settlement proceedings in the past (see Section 7.5). Although a number of member countries have started more

cases, other countries brought fewer cases to the WTO. In general, the difference in the number of cases brought to the WTO by ACWL member countries before and after its creation is small.

To conclude, whilst in general developing countries have brought more disputes to the WTO over recent years, this development does not seem to have taken place for the members of ACWL. Nevertheless, the delegates that have made use of the support of ACWL in the dispute settlement proceedings were very satisfied with this, and they did not feel that ACWL could have performed better. Some delegates explicitly noted that without ACWL their country would not have gone ahead with all cases (see also Section 7.2). ACWL could provide these countries with the necessary support at affordable prices, especially when compared to private law firms. In addition, the decision to start a dispute does not only depend on the possible support a country can get. Delegates made it clear that only large commercial interests and political considerations (domestic and international) determine whether a country will bring a complaint to the WTO.

From the interviews with delegates, it also followed that the outcomes of the dispute settlement cases have given their countries confidence that the system works, and that smaller countries can also be successful in cases against big countries like the USA.

The effect of ACWL on the participation of developing countries in dispute settlement proceedings is therefore scored as good.

Contribution to the formulation of a national policy of the developing country at the interface of trade and development (Score: W/F)

As ACWL focuses more on legal issues than policy issues and does not directly work with national policy makers or other parties involved in the formulation of national policy, the contribution of ACWL to national policy formulation can only be very indirect. ACWL does play a role for some of its members in checking the compliance with WTO rules of new national laws, regulations or other measures (see above). A number of delegates noted that ACWL looks at the WTO rules from a development perspective when providing legal advice, which distinguishes them from most other legal advisors.

Table 7.3 Relevance

Indicators	Indicator within the scope of the TRTA programme	Score
Increased capacity of the developing country to negotiate and implement multilateral trade agreements	No	F
Increased capacity of the developing country to participate in the dispute settlement procedures in the WTO	Yes	G
Contribution to formulation of a national policy of the developing country at the interface of trade and development	No	W/F

Overall score on relevance: Fair (F)

7.4 Financial Sustainability

The financial structure of ACWL has been designed with the intention of making the organisation independent and financially self-sustainable. Because the largest part of its costs would be paid from the endowment fund, its advice can remain commercially unbiased. Private law firms are less likely to recommend a country not to go ahead with a case, or to limit the number of legal arguments, because this limits the time they can spend on a case. The current financial structure also ensures that donors can have no influence on individual dispute settlement cases.

As the financial situation now stands, ACWL will probably not be financially sustainable after five years. Because of the downturn on the financial markets in recent years, the return on investments from the endowment fund has not reached the expected 6.5 percent. Also, the revenues from fees are lower than foreseen. ACWL spent more time on general legal advice than expected, which is provided free of charge.

On the positive side, the annual contributions that donors have committed for the first five years will probably not be fully spent during this time, because the actual costs were lower than budgeted for the last years. This money might be used to finance ACWL's operations for another two years.

There are a number of options to make ACWL financially sustainable in the future. One would be to ask the donors for another round of multi-annual contributions so that no money from the endowment fund would be needed in the coming years. A second option would be to attract more donors. Although the chairman is trying to expand the number of donors, which led to the accession of Switzerland last year, it is not clear if there is an active policy for this. A third option would be to increase the fee levels charged for support in the dispute settlement proceedings or to start charging fees for the general legal advice. In addition, a limit can be set on the amount of services of ACWL a member can use each year. Both the chairman and the Executive Director were not in favour of these last two options, because they felt that this would limit the capacity for ACWL to achieve its objectives. From the interviews, it became clear that raising fees would indeed have this effect: many countries said that if the rates would be increased they would not be able to use the services of ACWL at all, or not to the same extent as they now use these services. Quite a number of delegates noted that they already have problems in fulfilling their financial commitments to ACWL. A limit on the maximum number of hours of services for members would also mean that ACWL is not able to provide support to all requests.

The issue of financial sustainability needs to be further explored in the coming period. It is also important to take into account different scenarios for ACWL's membership; given that the membership of ACWL can be expected to further increase, the effects of these additional users on costs needs to be carefully considered. Any solution for ensuring financial sustainability should preserve the commercially unbiased nature of ACWL's support and also its independence from donors in individual dispute settlement cases.

7.5 Membership

As ACWL's membership is expanding, it is likely that the number of disputes between members, or between members and LDCs, will increase (or the number of disputes where members are a third party to a dispute), especially if some of the larger developing countries join. From the 114 dispute settlement cases brought to the WTO by developing countries between 1995 and 2003, 46 were between two (or more) developing countries. Up until now, there has only been one dispute that involved several members of ACWL: In the GSP case against the EC, ACWL supported India as the complainant party. Colombia, Ecuador, Peru and Venezuela were a third party in the dispute. These Andean countries found a private law firm to support them in the dispute settlement proceedings, and this was partly financed by ACWL.

In general, the rule is that the countries coming to ACWL first get its support, although LDCs will always receive priority. This rule means that usually the complainant party gets the support from ACWL. From the interviews, it became clear that some countries are worried of how this rule will affect them in the future. Most delegates prefer to receive the support from ACWL instead of a private firm. Some countries specifically questioned the role of ACWL in support of a third party if it already supports another party in the dispute. This seems to relate to the GSP case, where India was a complainant and supported by ACWL. A group of Andean countries had opposing interests in this dispute and could not get the support of ACWL but instead found a private law firm to support them. It seems that ACWL has also provided some support to other ACWL members that were a third party in this dispute and that had the same interests as India. A number of delegates questioned if this should be allowed.

Although some countries raised concerns about the rules for disputes between members, they did not want to further comment on it because they preferred to discuss these concerns in the General Assembly. No delegates had alternative proposals to change the rules in this respect however. If membership grows further in the coming years, solutions for this issue will need to be further explored.

Another point to be noted is that ACWL mainly attracts developing countries that are already quite active in the WTO. Most of the members are active in the negotiations and have also been involved in dispute settlement cases in the past. According to the Executive Director, this is to be expected: only countries that expect to make use of ACWL's services are prepared to become a member of an international organisation and to make a substantial financial contribution. It should be realised therefore that ACWL mainly supports countries that already have a basic understanding of their rights and obligations under the WTO. Countries that do not have this basic understanding do not see any direct benefits of joining ACWL. This also explains the limited use of ACWL's services by LDCs.

7.6 Conclusion

ACWL's performance

Although ACWL cannot make annual plans and there is no information on the legal complexity of the services of ACWL, the efficiency is rated as least as fair. The fast response to requests, the fact ACWL has not exceeded the budget so far, and that it has been able to produce a substantial number of outputs are clear indications that ACWL operates efficiently.

The effectiveness of ACWL is good as it has contributed to increased knowledge of delegates in the field of WTO law, and also increased the capacity of the beneficiaries to participate in dispute settlement proceedings.

On relevance, ACWL scores fair. The impact of ACWL on the participation of developing countries in the dispute settlement proceedings is good, as the number of cases brought to the WTO by developing countries has increased over the last years. The outcomes of the cases supported by ACWL have also increased the confidence of its members to participate in dispute settlement proceedings. In addition, ACWL contributes to some extent to the realisation of Dutch policy objectives: through its responses to specific requests and the increased knowledge of its beneficiaries, ACWL has had some impact on the negotiating capacity of developing countries, as well as in the formulation of WTO-compliant laws, although the extent of this impact differs per beneficiary country.

Future performance and issues for consideration

At the time of the evaluation, the future financial sustainability of ACWL was not assured. The different options available to make ACWL financially sustainable need to be further explored, taking into account that ACWL's services should remain commercially unbiased and affordable for members and LDCs.

If more countries become members of ACWL, the number of disputes involving members with opposing interests is likely to increase. The options for the allocation of ACWL's support may warrant some further discussion in the General Assembly, as a number of delegates have expressed some concerns in this respect.

Many interviewed delegates would like ACWL to further increase its capacity and to become more active in increasing the domestic capacity on WTO law in their countries.

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PERSONS INTERVIEWED

Part A

Representatives from ACWL:

- Mr. Frieder Roessler, Executive Director ACWL
- Mr. Otto Genee, Chairman of ACWL

Representatives from the following delegations in Geneva:

- The Permanent Mission of Ecuador
- The Permanent Mission of El Salvador
- The Permanent Mission of Guatemala
- The Permanent Mission of Honduras
- The Permanent Mission of India
- The Permanent Mission of Nicaragua
- The Permanent Mission of Pakistan
- The Permanent Mission of Paraguay
- The Permanent Mission of Peru
- The Permanent Mission of the Philippines
- The Permanent Mission of Thailand
- The Permanent Mission of Venezuela

Representatives from bilateral donors:

- Mr. van Renselaar, Netherlands Ministry of Foreign Affairs

Part B

AITIC Staff:

- Mrs. Esperanza Durán, Director AITIC
- Mrs. Christina Gmúr, Project Officer AITIC
- Mr. Falou Samb, Associate Officer AITIC

Representatives of bilateral donors:

- Mr. Nicolas Imboden, Executive Director IDEAS Centre Geneva
- Mr. Max Schnellmann, State Secretariat for Economic Affairs, Switzerland

Representatives from delegations in Geneva/ Brussels:

- The Permanent Mission of Angola
- The Permanent Mission of Bangladesh
- The Permanent Mission of Congo Brazzaville
- The Permanent Mission of Fiji
- The Permanent Mission of Guyana
- The Permanent Mission of the Gambia
- The Permanent Mission of Madagascar
- The Permanent Mission of Mauritania
- The Permanent Mission of Panama
- The Permanent Mission of Tanzania
- The Permanent Mission of Togo

- The Permanent Mission of Yemen
- The Permanent Mission of Zambia

Part C

Representatives from QUNO:

- Mr. Brewster Grace, Director QUNO
- Mr. Jonathan Hepburn, Programme Associate
- Mr. Geoff Tansey, Senior Programme Consultant
- Mr. Carlos Correa, Expert in the Consultative Panel
- Mr. Frederick Abbott, Expert in the Consultative Panel

Representatives from delegations in Geneva:

- The Permanent Mission of Argentina
- The Permanent Mission of Bangladesh
- The Permanent Mission of Brazil
- The Permanent Mission of Egypt
- The Permanent Mission of Guatemala
- The Permanent Mission of India
- The Permanent Mission of Indonesia
- The Permanent Mission of Kenya
- The Permanent Mission of Panama
- The Permanent Mission of Pakistan
- The Permanent Mission of the Philippines
- The Permanent Mission of South Africa
- The Permanent Mission of Zimbabwe

Other relevant persons in Geneva:

- Mr. Adrian Otten, Director WTO intellectual Property Division
- Mr. Christopher Bellman, International Centre for Trade and Sustainable Development

Representatives of bilateral donors:

- Ms. Inger Gregersen, Permanent Mission of Norway, Geneva
- Ms. Margriet Kuster, Netherlands Ministry of Foreign Affairs

ANNEX 1

DESIGN OF THE EVALUATION RESEARCH FOR THE ADVISORY CENTRE ON WTO LAW (ACWL)

A.1.1 Profile

Mission and objectives

In the agreement establishing ACWL, the purpose of ACWL is formulated as follows: to provide legal training, support and advice on WTO law and dispute settlement procedures to developing countries, in particular to the least developed among them, and to countries with economies in transition.

In its activity report from July 2001 to July 2002 this objective is stated again, but in addition, two reasons for the creation of ACWL are presented:

- I. To respond to the need of developing countries, least developed countries and economies in transition to better understand their rights and obligations under the WTO.
- II. To provide these countries with an equal opportunity to participate in WTO dispute settlement proceedings.

Activities and country coverage

ACWL provides three types of services: 1) legal advice on WTO law; 2) support to parties and third parties in WTO dispute settlement procedures; and 3) training to government officials in WTO law through seminars on WTO law and internships.

ACWL covers developing countries, countries in transition and least developed countries. Countries that are designated by the UN as LDCs and are also members of the WTO (or in the process of acceding to the WTO) are entitled to the services of ACWL without being a member. Developing and transition countries that are members have access to all services of ACWL against discounted rates (see budget). Non-members have only access to part of ACWL's services.

Budget of the organisation/programme

ACWL has an Endowment Fund in which founding members from developing and developed countries made contributions. Revenues from this Fund are used to finance operations after the first five years of operation. In addition, developed countries made 'multi-year contributions' which are used to finance the annual budget during the first five years of operations. As of June 2003, the total support for ACWL from these multiyear contributions and the contributions to the Endowment Fund amounted to USD 32.25 million. Nine developed countries have contributed USD 14.25 million and 23 developing countries USD 18 million.

Countries that use ACWL's services have to pay fees for legal advice. General legal advice is free for members and for LDCs up to a maximum number of hours, while non-member developing countries pay an hourly rate of between USD 250-350⁷. Fees for support in WTO dispute settlement proceedings are USD 100-250 for ACWL members and USD 25 per hour for LDCs. There are no reports on the total income of these fees.

In 2002 a Technical Expertise Trust Fund was established to finance the input from specialised technical experts in dispute settlement proceedings. Up until April 2003, CHF 708,160 (approximately EUR 475,000) was committed to this Fund.

Financial relationship with the Netherlands

In 1999, the Netherlands committed an amount of USD 2,250,000 to ACWL. The Ministry of Foreign Affairs contributed USD 1,125,000: USD 1 million for the Endowment Fund and USD 125,000 to the annual contribution to ACWL. The Ministry of Economic Affairs contributed USD 125,000 to the annual contribution costs in 2001 and USD 250,000 to the annual contributions for the following four years (2002-2005). In 2002, the Ministry of Foreign Affairs committed an additional amount of EUR 171,500 for the Technical Expertise Fund of ACWL. This support covers a period of three years (2002-2004).

Earlier evaluations

According to the information currently available, there have been no evaluations of ACWL so far.

A.1.2 Design for evaluation Research for ACWL

Selection and focus

The focus of the evaluation will be on assessing membership of ACWL and the results of legal advice and support to (third) parties in WTO dispute settlement procedures. In addition, the logic underlying the provision of training will be explored and what a first generation of trainees has gained from and done with the training provided by ACWL.

The quality of ACWL's work will only be assessed by looking at the effects and outcomes of their activities. This means that the beneficiaries will be asked about their opinion of ACWL's services, and that research will be done on the follow-up of the legal advice of ACWL. There will be interviews with beneficiaries in Geneva and in the capitals (by visits to Geneva, telephone and e-mail).

⁷ The exact fee is dependent on a country's share of world trade and per capita income.

Main questions:

1. Efficiency:

- a. Were outputs delivered according to plan, budget and schedule?
- b. What has been the relationship between the inputs and the outputs?

2. Effectiveness:

- a. Did the output of the ACWL contribute to knowledge and capacities of individual public officers of the developing country in the field of legal trade issues?
- b. To what extent has the work of ACWL enabled its beneficiaries to participate in the WTO dispute settlement procedure?

3. Relevance:

- a. To what extent has the outcome of ACWL contributed to formulation of a national policy by the developing country at the interface of trade and development?
- b. To what extent has the outcome of ACWL contributed to the capacity of the developing country to participate in the dispute settlement procedures?
- c. To what extent has the outcome of ACWL contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?

Evaluation matrix:

Types of Indicators	Sources of data	Research methods
<p><i>Of input:</i></p> <p>1. Total amount of financial resources for ACWL</p> <p>2. Number of ACWL staff and working days spent to carry out ACWL's activities</p> <p>3. Number of DGIS/ Economic Affairs staff and working days spent on ACWL</p>	<p>For 1-3: ACWL reports on operations</p> <p>ACWL files and ACWL staff</p> <p>DGIS and Economic Affairs staff</p>	<p>For 1-3: Dossier study and</p> <p>Interviews with ACWL staff members</p> <p>Interviews with DGIS staff and Economic Affairs staff</p>
<p><i>Of output:</i></p> <p>1. Number of general legal advices</p> <p>2. Number of legal advices for dispute settlement procedures</p> <p>3. Number of legal trainings to developing country officials (seminars, publications and internships)</p>	<p>For 1-3: ACWL reports on operations</p> <p>ACWL files and ACWL staff</p>	<p>For 1-3: Dossier study and</p> <p>Interviews with ACWL staff members</p>
<p><i>(Of outcome:</i></p> <p>1. Number and type of follow-up actions undertaken by officials of the general legal advice provided by ACWL.</p> <p>2. Results of the dispute settlement procedures following the legal advice of ACWL</p> <p>3. The acquired knowledge and expertise of individual beneficiaries (ex-participants of training activities and clients)</p>	<p>For 1-3:⁸</p> <p>1. (Ex) officials in developing countries involved in legal advice provided by ACWL and (draft) policy texts before and after legal advice;</p> <p>2. Involved officials of developing countries, WTO files, ACWL staff and files</p> <p>3. (Ex) participants of training and their superiors</p>	<p>For 1-3: Desk study and</p> <p>Interviews (face-to-face or by phone) with ex-participants and their superiors:</p> <p>Interviews with ACWL staff</p>
<p><i>Of impact:</i></p> <p>1. More dispute settlement cases requested by developing countries</p> <p>2. Positive results for developing countries in dispute settlement procedures</p>	<p>For 1-2: WTO files and staff,</p> <p>Developing country officials involved in trade disputes.</p>	<p>Desk study and Interviews</p>

⁸ The extent, to which the evaluation team can identify and access these sources of information, will depend on the information that will be provided by ACWL.

Specific questions:

Objectives and type of TRTA:

1. The objective of ACWL as stated in the agreement is very much input-oriented. What is the desired effect or impact of ACWL and how has this been monitored?
2. To what extent has ACWL focused on the implementation of current agreements, or instead on the dispute settlement procedure or negotiating new agreements?
3. What has been the main reason to provide training?
4. To what extent and how have ACWL services strengthened the capacity of clients to participate in international trade policy and regulation?

Demand-led approach:

5. Are there no general lessons for developing countries arising from specific requests? What has ACWL done with these lessons learnt?
6. To what extent are developing countries reactive or initiating in asking for ACWL's services? Are there any notable developments in this respect?
7. Have the clients of ACWL got a full understanding of their rights and obligations in the case of international trade policy and regulation for which they request legal aid?

Membership and funding:

8. Have there been any problems relating to the affordability of ACWL's services for developing countries?
9. Could ACWL perform mediation services in disputes between members?

Future performance:

10. The number of developing and transition country members is still low. Does ACWL intend to increase the number of members, and if so, what is the strategy for this?
11. Does the current financial structure make ACWL's activities sustainable?
12. What indications do exist that the performance of ACWL in terms of efficiency, effectiveness and relevance will drastically change in the coming 2-4 years?
13. To what extent do the future plans of ACWL in the field of TRTA concur with the Dutch policy objectives for financial support to TRTA?
14. What is the probability that the future outcomes of ACWL activities will contribute to the Dutch policy objectives in the field of TRTA?

ANNEX 2

DESIGN OF THE EVALUATION RESEARCH FOR INTERNATIONAL TRADE, INFORMATION AND COOPERATION (AITIC)

A.2.1 Profile

Mission and objectives

AITIC's goal is to help less-advantaged countries (LACs) to benefit from the multilateral trading system by assisting them in the active participation in the work of the WTO and other trade-related organisations in Geneva as well as the WTO negotiations.

Activities and country coverage

Free, targeted and personalised assistance is given to delegates from LACs in Geneva and to Member countries and Observers of the WTO that do not have a permanent presence in Geneva.

Other services provided by AITIC are briefing notes, workshops, training seminars and translation of documents on trade issues of interest to LACs. Specific services are provided to countries without a permanent representation in Geneva.

AITIC's activities are targeted at the least developed countries. The LACs include the 49 least developed countries as defined by the United Nations.

Budget of the organisation

AITIC was created in February 1998 as an association with the financial support of the Swiss government. The growing number of services provided by AITIC increased the budgetary needs of the organisation. At present, AITIC is funded by seven bilateral donors (by end of 2002 these seven developed countries provided initial funding to AITIC amounting to 18 million Swiss francs; also see next paragraph).

Financial relationship with the Netherlands

To expand the assistance to developing countries to participate more actively in the multilateral trading system and to attract more funding, AITIC's legal status was changed from that of an association into an Intergovernmental Organisation (IGO) in December 2002. The Netherlands supported the establishment of AITIC as an IGO and has committed EUR 2 million for the period 2003-2006 (The Netherlands has thus become the second bilateral donor after Switzerland).

Earlier evaluations

A study on the Assistance and Representation Needs of the Developing Countries without WTO Permanent Representation in Geneva ("The WTO Non-Residents"), Commonwealth Secretariat, August 2001.

A.2.2 Design for evaluation Research for ACWL

Selection and focus

Though AITIC is a relatively small Intergovernmental organisation, based in Geneva, it has provided services to a large number of representatives of LACs, often in Geneva, sometimes in the capitals of the LACs themselves. A selection will be made of the delegates from LACs that have enjoyed personalised assistance from AITIC, concentrating on delegates that have received a relatively large amount of support from AITIC. If not already included and if supported by AITIC, in addition, representatives of the selected countries for the evaluation research on the Integrated Framework (Chapter 2) and JITAP (Chapter 3) will be visited.

Main questions:

1. Efficiency:
 - a. Were output delivered according to plan, budget and schedule?
 - b. What has been the relationship between the input and the output of AITIC as an association?
2. Effectiveness:
 - a. Did the output of AITIC contribute to knowledge and capacities of individual representatives of the (developing) country in the field of trade and development? To what extent have the output contributed to more technical expertise of the individual beneficiaries? To what extent has AITIC's output contributed to negotiation skills of individual beneficiaries for participating in the multilateral trade talks?
3. Relevance:
 - a. To what extent has the outcome of AITIC contributed to the formulation of a national policy in the developing country at the interface of trade and development?
 - b. To what extent has the outcome of AITIC contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?

Evaluation matrix:

Types of Indicators	Sources of data	Research methods
<p><i>Of input:</i></p> <p>1. Amount of financial support</p> <p>2. Number of AITIC staff in general</p> <p>3. Number of working days spent on briefing notes, workshops/seminars, translation of documents, and personalised assistance</p>	<p>AITIC Activity and Financial Reports</p> <p>Project dossiers</p>	<p>Desk study and Interview AITIC Director</p> <p>Desk study and Interview DDE, Permanent Mission Geneva</p>
<p><i>Of output:</i></p> <p>1. Number and types of briefing notes produced</p> <p>2. Number and type of workshops and training seminars delivered</p> <p>3. Number and types of documents translated</p> <p>4. Number of non-residents that have been given personalised technical assistance</p>	<p>For 1-4: AITIC Activity Reports AITIC staff</p>	<p>For 1-4: Desk study and Interview AITIC Director</p>
<p><i>Of outcome:</i></p> <p>1. Application of the output provided by AITIC by individual beneficiaries (e.g. use of briefing notes, training materials, actual use of the personalised technical assistance)</p>	<p>For 1: Selection of trade policy-making body in LAC Capitals;</p> <p>Selection of LAC's trade missions in Geneva that have enjoyed personalized assistance from AITIC and/or participated in AITIC seminars/workshops;</p> <p>Evaluation questionnaires of workshops/seminars</p>	<p>1. Questionnaire (for trade-policy officers in capitals, see Q5.1). Interviews.</p>
<p><i>Of impact:</i></p> <p>1. Newly acquired positions taken by LACs (supported by AITIC) in WTO councils and subsidiary bodies on</p>	<p>1. AITIC executive director, selected LAC delegations</p>	<p>1. Interviews</p>

Types of Indicators	Sources of data	Research methods
Agriculture, Market Access for Industrial Products, GATS, TRIPS, and S'pore issues.		
2. WTO subjects where LACs cooperated and pooled resources	2. Selected LAC delegations	2. Interviews
3. Active participation of LACs in the WTO trade talks	3. Selected LAC delegations	3. Interviews
4. Negotiation results for LACs (that were personally assisted by AITIC)	4. Idem	4. Idem

N.B. Interviews with selected LAC delegations that participated in AITIC activities will also cover old delegates and the organisations they represented from the four countries in which fieldwork will be done in the course of this evaluation (see Chapters 2 and 3).

Specific questions:

Demand-led approach and ownership:

1. How does AITIC find out what are the prime trade interests and negotiations issues for the LACs? How does the organisation ensure that its services are genuinely demand-led? What is the demand for assistance by the individual delegates of LACs and WTO Non-Residents participating in trade talks in Geneva and in WTO negotiations? How are the needs of those individual delegates established? With respect to the briefing notes and training materials, is there overlap with other information providers?
2. Do AITIC's services for countries without a permanent mission in Geneva contribute to their institution building and ownership in the area of trade negotiations?

Target group:

3. Within the broad group of developing countries only a few large countries, such as Brazil and India, seem to be effective players in WTO negotiations. Why does AITIC concentrate on the least developed countries? What are the criteria for other developing countries to make use of AITIC's services?

Multiplier effects of TRTA

4. Can the failure of Cancun be considered a success of TA provided to developing countries? What role has AITIC played in this respect?

Future performance:

5. Will the new legal status of AITIC, changing from an association into an IGO, affect the organisation's comparative advantage as a small, flexible and non-bureaucratic association?
6. Will the (lack of) willingness of LAC delegate(s) to pay a fee for the personalised assistance provided by AITIC affect the future performance of AITIC?
7. The Netherlands Government has made a commitment to financially support AITIC for the period 2003-2006. What are the future plans of AITIC and how do they fit in with the Netherlands strategy for supporting TRTA?
8. What is the probability that the future outcome of AITIC interventions will contribute to Dutch policy objectives in the area of TRTA?

Q5.1 (Questionnaire / telephone interviews – trade policy-making body in LAC Capitals)

The evaluation-matrix serves as a framework for the telephone interviews. Specific questions for the trade-policy making officials are:

Effectiveness (outcome: output)

- What use have you made of AITIC's Internet Site?
- What use have you made of AITIC publications?

Relevance (impact: outcome)

- Have AITIC's services been instrumental for new trade policy analyses in your LAC Capital? If so, on what subjects?
- What has been the effect of AITIC's services on the interaction between your LAC Capital and the WTO delegation?
- Have the background notes and reports delivered by AITIC addressed the multilateral trade issues of largest importance to the trade policy-making bodies of the LAC Capitals?
- Has the trade policy-making body enhanced its capacity for dealing with WTO matters since 1998? If so, in what ways has AITIC been instrumental in this?
- Has AITIC assisted in enhancing your WTO representation in Geneva through facilitating networks or cooperation with neighbouring LACs or LACs with similar trading interests

ANNEX 3

DESIGN OF THE EVALUATION RESEARCH FOR THE QUAKERS UNITED NATIONS OFFICE (QUNO)

A.3.1 Profile

Mission and objectives

QUNO aims to represent a broad base of Quaker concerns for peace, justice and equitable solutions among others when these concerns arise in multilateral institutions in Geneva. In the debates on TRIP's, QUNO's goal is to strengthen the capacity and understanding of WTO developing country member governments, including those with a substantial biological diversity and genetic resources, to obtain greater equity and justice in the TRIPs negotiation process.

Activities and country coverage

Delivery of discussion and occasional papers, organising seminars and informal discussion meetings in Geneva, regional seminars in developing countries and discussion meetings in developed countries. The focus of QUNO's activities is in Geneva. The participants in QUNO activities are primarily government officials of developing countries in WTO decision-making bodies.

Budget of the organisation/programme

QUNO Geneva operates on two budgets, a core budget for its programme and administrative staff and a project budget funded from grants. Of the budget proposed by QUNO for the first project (see next paragraph) the Netherlands was approached to contribute 47 percent of the total costs, the other donors being the Rockefeller Foundation and the UK Department for International Development.

Financial relationship with the Netherlands

Grants were awarded by the Netherlands to QUNO for three projects. First, for 'The Trips Process: Negotiating Challenges and Opportunities' (Euro 143,391 for the grant period March 2001 to March 2002). Objective of the project is to strengthen the capacity and understanding of governments of developing countries that are WTO Members in the area of TRIPs, development of agriculture and biodiversity.

Second, for 'TRIPs Health & Medicines' (Euro 29,818.81 for the grant period July-December 2001). The objective of the second project is to build knowledge of WTO-delegations from developing countries regarding the relationship between protection of intellectual property rights and access to medicines and to support developing countries with the preparation of a declaration on this issue for the fourth WTO Ministerial Conference.

Third, for the TRIPS Phase III programme on Promoting participation in the post-Doha work programme (Euro 331,116 for the grant period September 1, 2002 to August 31, 2004). The objective of the third project is to support developing countries with taking an informed position with respect to trade-related aspects of intellectual property, thereby promoting interaction between the negotiators in Geneva and policy-makers and other groups at national level in developing countries.

Earlier evaluations

None.

A.3.2 Design for evaluation Research for QUNO

Selection and focus:

The strategic issues and projects as defined by QUNO will serve as entry points for the evaluation research. The representatives of countries participating in informal meetings organized by QUNO will be targeted for research.

Main questions:

1. Efficiency:
 - a. Was output delivered according to plan, budget and schedule?
 - b. What has been the relationship between the input and the output?
2. Effectiveness:
 - a. Did the output of QUNO contribute to knowledge and capacities of individual representatives of the (developing) country in the field of trade and development? To what extent has the output of QUNO contributed to expertise of the beneficiaries to negotiate and to active participation of developing countries in the TRIPS preparatory discussion meetings and negotiation process?
3. Relevance:
 - a. To what extent has the outcome of QUNO contributed to the formulation of a national policy of the developing country at the interface of trade and development?
 - b. To what extent has the outcome of QUNO contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?

Evaluation matrix:

Types of Indicators	Sources of data	Research methods
<p><i>Of Input:</i></p> <p>1. Amount of financial support to QUNO in total and per project</p> <p>2. Number of QUNO staff and working days spent to prepare, execute and manage projects</p> <p>3. Time span for preparing projects</p>	<p>For 1-3:</p> <p>- QUNO Narrative and Financial Reports, Contractual obligations; funding proposals, annual reports;</p> <p>-Executive director and supporting staff of QUNO: DDE; Permanent Mission of Geneva</p>	<p>For 1-3:</p> <p>Desk study and Interviews</p>
<p><i>Of output:</i></p> <p>1. Number and type of working papers, issue papers and occasional papers</p> <p>2. Number and type of informal meetings, regional and residential seminars</p>	<p>For 1-2:</p> <p>QUNO Activity Plans, Budgets, Narrative and Financial Reports QUNO Library</p>	<p>For 1-2:</p> <p>Desk study and</p> <p>Interview QUNO and ICTSD Representatives</p>
<p><i>Of outcome:</i></p> <p>1. Expertise of beneficiaries to formulate proposals for (re)negotiation on TRIPs</p> <p>2. Active participation of delegations from developing countries in talks on TRIPs in Geneva</p> <p>3. Interest on TRIPs in capitals of developing countries</p>	<p>1. (Re)negotiations of certain aspects of the TRIPs agreement; permanent missions from a selection of developing countries in Geneva; participants of seminars; assessment reports of workshops and seminars;</p> <p>2. Attendance lists of meetings of the TRIPs Council and minutes of related preparatory discussion meetings; WTO Secretariat, TRIPS Council.</p> <p>3. National Chambers of Commerce, Academics and policy-makers in developing countries (from EU-LDC network)</p>	<p>1. Interviews of a selected group of about five permanent missions of developing countries in Geneva, which participated in QUNO activities; Questionnaire to participants of seminars (Q4.1) and to appropriate policy-makers in capitals of developing countries (Q4.2)</p> <p>2. Interviews of WTO Secretariat and Chair TRIPS Council</p> <p>3. Questionnaire to appropriate policy-makers in capitals of developing countries (Q4.2)</p>
<p><i>Of impact:</i></p> <p>1. Declarations and proposals from developing countries on TRIPs and Health and on article 27.3 (b)</p> <p>2. (Pro)active role of developing countries during preparatory process on TRIPs for the Decision on TRIPS and Health</p>	<p>1. WTO Secretariat, selection of delegates of developing countries</p> <p>2. Selection of delegates of developing countries, TRIPS council of WTO</p>	<p>1. Interviews</p> <p>2. Interviews</p>

<p>of 30 August 2003.</p> <p>3. Legal clarity on flexibilities within TRIPs to apply compulsory licensing and parallel import provisions</p> <p>4. Strategy outline for a moratorium on legal actions against governments using generic medicines to combat medical urgencies</p> <p>5. Amendments of national laws to incorporate the compulsory licenses to protect public health</p> <p>6. Mandate for negotiating TRIPs articles 7 and 8 to arrive at a general exception clause for TRIPs obligations in relation to public health</p> <p>7. (Other) negotiation results for developing countries on TRIPs and Public Health</p>	<p>3. Separate Doha Declaration on TRIPs and Public Health and outcome of negotiations of August 30, 2003</p> <p>4. Selection of delegates of developing countries</p> <p>5. Selection of delegates of developing countries, WHO.</p> <p>6. Selection of delegates of developing countries</p> <p>7. QUNO experts F. Abbott and C. Correa; WHO documents; Seattle-, Doha-, and Cancun Ministerial Declarations compared; permanent missions of developing countries, missions of EU and USA in Geneva</p>	<p>3. Desk study</p> <p>4. Interviews</p> <p>5. Interviews and desk study</p> <p>6. Interviews</p> <p>7. Desk study and interviews</p>
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N.B. For interviews with permanent missions of developing countries in Geneva we intend to include, where relevant, the four countries in which fieldwork will be done at a later stage of the IOB evaluation.

Specific questions:

Capacity-building:

1. Regarding 'capacity' and 'understanding' that QUNO aims to strengthen, what is the definition applied by QUNO for these two concepts and how has QUNO monitored the progress realised in them?

Target group:

2. As mentioned in the above, QUNO's goal is to strengthen capacity and understanding of WTO developing country member governments. Within this broad target group, has QUNO focused on certain groups of developing countries? If so, are these the least developed countries, the developing countries engaged in the Cairns group, the G21 Group, or an African Group? How are the participants in the seminars and regional conferences selected? How does QUNO select the topics for TRTA activities?

Multiplier effects of TRTA:

3. Can a relatively small financial contribution have an effect on the negotiation results for developing countries regarding health?
4. Can the failure of Cancun be considered a success of TA provided to developing countries? What role has QUNO played in this respect?

Special issues on TRIPS:

5. Has the TRIPS agreement become more in conformity with sustainable development objectives and protection of health through access to medicines?

Future performance:

6. Since the first phase of the QUNO activities, developing countries have expressed their opinions on multilateral trade issues already more clearly. Quick scans of the Doha and Cancun Ministerial Declarations will show that there is a lot of attention for implementation concerns, technical assistance and capacity building for developing countries. The question arises what will be the focus and relevance of the QUNO activities in relation to TRIPs after Cancun? Apart from the public health issues, perhaps extension of the protection of geographic indications?
7. What indications do exist that the performance of QUNO in terms of efficiency, effectivity and relevance will drastically change in the coming 2-4 years?
8. To what extent do the future plans of QUNO in the field of TRTA concur with the Dutch policy objectives for financial support to TRTA?
9. What is the probability that the future outcome of QUNO interventions will contribute to the Dutch policy objectives in the field of TRTA?

Q4.1 (Questionnaire / telephone interviews participants of workshops and seminars):

- Position held of participant at the time of the workshop / seminar;
- Present position and description of current duties;
- Subjects dealt with during the QUNO workshop / seminar;
- How has the gained expertise been applied in practice?
- Benefits for the organisation where the participants work from the expertise gained during the workshop / seminar;
- Suggestions for models for future capacity building (e.g. location, duration and structure of the events);
- For what new areas a need for workshops and seminars is foreseen.

Q4.2 (Questionnaire / telephone interviews – trade policy-makers in capitals of developing countries):

Relevance of QUNO's activities for their organisation

- Reports received on topics dealt with at QUNO workshops and seminars;
- Instructions made by policy-makers for delegates on topics dealt with at QUNO workshops and seminars;
- Initiatives, if any, taken by the organisation following from QUNO's activities;
- Changes in trade policy in their country, if any, resulting from QUNO's activities.

Awareness of topics dealt with by QUNO

- Which organisations in their country have obtained an interest in the TRIPS Agreement;
- Media coverage and awareness of TRIPS issues in their country.

ANNEX 4

RATING METHODOLOGY

The performance of the TRTA activities subject to this IOB evaluation is assessed on the basis of a uniform scoring methodology. A five-point scale - Poor (P), Weak (W), Fair (F), Good (G), and Excellent (E) - is used for the scores on the efficiency, effectiveness and relevance of the six selected programmes/organisations.

This explanatory note illustrates how the scores on the above three performance indicators were made.

Generic performance indicators

Generic performance indicators for all six programmes were defined as follows:

- Efficiency is the relationship between outputs and inputs taking into account the delivery of outputs according to plan, budget and schedule.
- Effectiveness is the relationship between outcome and outputs with emphasis on the contribution of the programmes to increased knowledge and capacities of individual public officers of developing countries in the field of trade and development.
- Relevance is the relationship between impact and outcome with emphasis on the contribution of the programmes to: a) the formulation of a national policy of the developing country at the interface of trade and development; and b) the capacity of the developing country to negotiate and implement multilateral trade agreements.

Under relevance, the emphasis on trade policy formulation and trade negotiation capacity reflects two of the objectives that the Netherlands has for the support to TRTA. In the relevance tables a separate column – with the heading ‘Indicator within the scope of the TRTA programme’ - shows whether a programme/organisation does or does not have among its own objectives the contribution to these Netherlands objectives. This allows taking into account a difference between the objectives of the Netherlands and those of a programme/organisation when reading the scores on relevance.

Programme specific indicators

Specific evaluation matrices were designed for the individual six programmes, which can be found in a separate annex in each evaluation report. The more detailed performance indicators therein aim to reflect the specific features of each programme. The breakdown of the indicators into sub-indicators and sub-sub-indicators in each of the specific evaluation matrices are to avoid subjective assessments of results.

Below three examples are given of how the overall scores on efficiency (for IF-Yemen), effectiveness (for JITAP-Tanzania) and relevance (for QUNO) have been determined.

Efficiency IF-Yemen

For efficiency of IF there are two sub-indicators: 1) The input-output relationship of the IF process; and 2) The time span for delivering the DTIS.

For the first sub-indicator the evaluator looked at the input side at the sub-sub indicators: the amount of financial support allocated to the IF, the time inputs of agency staff involved in the DTIS, and the number of meetings of the national IF steering committee. As for the outputs the evaluator looked at the following sub-sub indicators: the national workshop, overview and analysis of existing TRTA, the draft or completed diagnostic trade integration study, and an overview of prioritised TRTA/CB projects.

The sub-sub indicators at the input side were looked at in relation to the quantity of the outputs produced. In addition, the quality of the sub-sub indicators at the output side were assessed and scored accordingly:

- Was the national workshop a one-off event only? Was there a broad participation from the private sector and civil society? The national workshop in Yemen did not have a broad participation; there had not been much follow-up realised between the time of the national workshop in June 2003 and the evaluation mission in November 2003. Hence, a score of weak on this sub-sub indicator.
- Has the DTIS produced an overview and analysis of existing TRTA? The technical assistance matrix in the DTIS for Yemen has the following shortcomings: i) it is unclear which type of action is implemented and which ones are proposed; ii) there is no analysis of the experience with the existing type of actions; iii) there is no connection between the type of actions and the main body of the DTIS report. Hence, a score of weak on this sub-sub indicator.
- Does the draft DTIS comply with the broad terms of reference for integration studies? Are the pro-poor aspects covered in the trade integration study? Linkages between poverty and trade were insufficiently paid attention to in the DTIS for Yemen; According the World Bank Sana'a Office the study was for about 70 percent based on input of the World Bank, making use of data and material from earlier World Bank reports. Hence, a score of Weak on this sub-sub indicator.
- Is there an overview of TRTA/CB priorities for submission to Window II? Four months after the national workshop there was not yet a list finalised with TRTA/CB projects ready to submit to Window II. Hence, a score of poor on this sub-sub indicator.

The unweighted average for the above sub-sub indicators gives a score of Weak - $(2+2+2+1)/4= 1.750$ for the first sub-indicator.

For the second sub-indicator the evaluator looked at the time between the first preparatory mission and the approval of the DTIS by the authorities of the country, for which a benchmark of one year was taken. In the case of Yemen this time span was in November 2003 already more than 22 months, hence a score of poor on this sub-indicator.

The unweighted average score for the two sub-indicators gives the overall score of poor for the efficiency of IF in Yemen, $(1.75+1)/2= 1.375$.

Effectiveness of JITAP-Tanzania

For the output-outcome relationship of JITAP-Tanzania nine sub-indicators were distinguished:

1. Were the Inter-Institutional Committees (IIC) functioning demonstrated by regular meetings? Only two out of five subcommittees have functioned in this way. Hence, a score of weak on this sub-indicator.
2. Have the workshops organised for Customs Officials increased the knowledge of the participants? The Customs Department in Tanzania was not satisfied with the results of the two ad hoc workshops. This Department expressed the need for more activities on technical and legal customs matters, which the JITAP workshops had not provided. Hence, a score of poor on this sub-indicator.
3. Number and type of completed Multilateral Trade System impact studies. Under the first phase of JITAP-Tanzania external consultants delivered two MTS studies. While Tanzania is lacking in terms of complying with WTO commitments, for instance on notifications, the responsible officials did not achieve any results with the impact studies regarding conformity checks and legal adjustments. Hence, a score of poor on this sub-indicator.
4. Are the reference centres, containing WTO and multilateral trade documentation, used by individuals? Two out of three reference centres were not functioning as such. Hence, a score of poor on this sub-indicator.
5. Have the training courses increased the knowledge and capacities of the participants? The participants of the training courses saw them as too short and not comprehensive enough. Little dissemination activities were found. Hence, a score of weak on this sub-indicator.
6. Network of trainers and MTS experts maintained? The degree of networking among trainers and MTS experts is minimal. An Institute of Multilateral Trade Systems was formed but is not operational. The utilisation of the Communication Discussion Facility is low and this facility has not contributed to strengthening the national network of trainers. Hence, a score of poor on this sub-indicator.
7. Are the Trade Secrets Guide and Export Financing Book found useful? The Trade Secrets Guide had not been brought out by JITAP. The Export Financing Book was given away for free by the BET. Hence, a score of poor on this sub-indicator.
8. Number and types of strategies developed for priority sectors/products. Two export development strategies for textiles & clothing and spices were developed with assistance of JITAP. The Board of External Trade prepared independently similar strategy reports for horticulture & mushrooms and fishery. Hence, a score of good on this sub-indicator.
9. Is the national enquiry point on standards functioning? The Bureau of Standards often has difficulties with their Internet connections. The photocopying machine supplied by JITAP to the Bureau of Standards was not operational as there were no funds for maintenance and toners. Hence, a score of weak on this sub-indicator.

The unweighted average for the above sub-indicators gives a score of weak for the effectiveness of JITAP in Tanzania, $(2+1+1+1+2+1+1+4+2)/9= 1.667$.

Relevance of QUNO

For the relevance of QUNO, two sub-indicators were used: 1) the capacity of the developing country to negotiate and implement multilateral trade agreements; 2) the formulation of a national trade policy at the interface of trade and development.

For the first sub-indicator, the evaluator looked at the following sub-sub indicators:

1. Has the increased knowledge of the beneficiaries led to an active participation in the TRIPS negotiations, in the form of participation in discussions in the TRIPS Council and of putting forward proposals? The beneficiaries of QUNO have been very active, both in the discussions and in putting forward proposals. Hence, a score of Good. (A score of excellent was not given because QUNO's beneficiaries are mainly from developing countries that already have always been quite active in the negotiations.)
2. Has the increased knowledge of beneficiaries and the joint meetings of developing countries at the QUNO office led to strategies and alliances between developing countries? It is difficult to analyse the strategies of developing countries because a strategy is not always visible, but it is very clear that the developing countries have adopted a common coordinated approach, especially by submitting joint proposals and making joint statements. Only on the par. 6 issue, there has been some differences in approach, but not on substance. Hence, a score of good/excellent.
3. Has the increased knowledge of the beneficiaries (through the two indicators above) led to positive negotiation results for developing countries? The Doha Declaration has been very important for developing countries, because it contained a number of important achievements for developing countries, e.g. that countries have the right to protect public health, not only in cases of health crises. The Decision on Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health is far from perfect, but the developing countries have been defending their rights actively, without their active participation, the agreement would definitely have been worse. On the other hand, external factors have also influenced the outcome of the negotiations, e.g. pressure from public opinion, and therefore the result cannot only be attributed to developing countries negotiators. Hence, a score of good.
4. Has the increased knowledge of QUNO's beneficiaries led to an increased capacity of developing countries to implement multilateral agreements? QUNO does not focus on the implementation of agreements. The capacity of countries to implement trade agreements will therefore not be increased as a result of QUNO's activities. Hence, a score of weak. (A score of poor was not given because the outcomes of the negotiations may help developing countries to implement trade agreements: there is now much more information available regarding the flexibility the TRIPS Agreement provides regarding health and there is less uncertainty.)

The unweighted average for the first sub-indicator on the basis of these four sub-sub indicators is $(4+4.5+4+2)/4= 3.625$.

For the second sub-indicator, we looked at the following sub-sub-indicators:

1. To which extent has QUNO focused on stakeholders in the national trade policy process. QUNO has had a number of activities in developing countries (regional seminars), where different stakeholders were brought together, and different stakeholders have sometimes also been invited to Geneva. Also publications are sent to a wide audience in developing countries. This only leads to more awareness in developing countries about the issues at stake, but leaves the effects on national trade policy uncertain. Hence, the score is weak.

2. To which extent does QUNO look at the relation between trade and development in national policy. QUNO has analysed what options developing countries have in the negotiations, and how these options relate to their development. This information has also been used for national policy, at least for determining a national position in the negotiations. Hence, a score of fair.

The unweighted average for the second sub-indicator on the basis of these two sub-indicators is $(2+3)/2= 2.500$.

The unweighted average score for the two sub-indicators gives the overall score of Fair for the relevance of QUNO: $(3.625+2.5)/2= 3.063$.

ANNEX 5

COMMENTS ON DRAFT EVALUATION REPORT

The (executive) directors of ACWL, AITIC and QUNO were asked to comment on the draft report of ECORYS in two ways: first, to address the factual correctness of data presented in chapters one till six, and secondly, to provide comments on the assessment of the performance in chapter seven.

The comments of the (executive) directors of QUNO and AITIC concerned factual correctness and use of language. These comments were addressed one by one by the consultants and a native-speaking language editor. The comments of the executive director of ACWL concentrated on the assessment of the performance. In response to these comments, ECORYS and IOB (further) explained the evaluation criteria and rating methodology used. Also, the presentation of the results in terms of efficiency and relevance was adjusted. As disagreement on the methodological approach remained, IOB agreed with the proposal of ACWL to include the comments of ACWL and response by ECORYS and IOB in the working document.

Comment of ACWL

Thank you very much for the draft evaluation report. The evaluation exercise was extremely useful for us because it provided us with a survey of the views of our Members on our work. Our factual comments are contained in the attachments. I would like to comment here on the criteria used to evaluate the Centre and the factual underpinnings of the "scores" given by the consultant.

I was very pleased to note that our Members give us excellent scores on legal support, legal advice and training. Your consultant found that:

- "All delegates that have been interviewed for this evaluation were very positive about the services of the ACWL".
- "There was great appreciation for the expertise and experience of the executive director, but also the quality of the other staff was rated positively".
- "All interviewed delegates were very positive about the support of ACWL in dispute settlement proceedings".
- "Most delegates prefer to receive support from the ACWL instead of a private law firm".
- "All interviewed delegates appreciated the legal advice. Both the quality of the advice and the fast response to requests were highly valued".
- "Delegates were very positive about the course"; "delegates were also very positive about the seminars organised by the ACWL".

These excellent ratings are not reflected in the concluding section of the report. We are therefore all very puzzled about the criteria used to evaluate the Centre and the methods used to arrive at "scores" on those criteria.

"Efficiency": The Centre was established to provide services that may be sought by the developing countries if they face legal problems or wish to bring a complaint. We can therefore not plan and budget our activities; we can only plan and budget the

framework within which we conduct our activities. The Centre can therefore not be evaluated against criteria suitable for clearly defined projects that have to be carried out in accordance with a plan, budget and time schedule, such as the building of a water supply network. The only way to evaluate our efficiency would be to examine how much time and money alternative institutions, for instance private law firms or academic institutions, would have spent on the same activities. This is essentially acknowledged in the report but nevertheless an attempt to rate the efficiency of the Centre is made. I believe that it would be preferable to either collect the facts necessary to evaluate the Centre's efficiency, or to refrain from passing a judgement on it.

"Effectiveness": In spite of the very positive comments of the users of the Centre, the rating on effectiveness is only "good". There is no explanation for this discrepancy. The only source on judgement of the Centre's performance that is independent of the assessment of its users is a comparison of the rise in complaints by Members of the Centre and by non-Members and a comparison of the cases that the Centre won and that it lost. However, as the report itself indicates, the evaluation period (2½ years) is much too short to draw any conclusions from these statistics and the large number of cases won is only indirectly related to our effectiveness. The test of the Centre's effectiveness should be whether developing countries are afforded the opportunity to participate in dispute settlement proceedings, not whether they are successful in the assertion of these rights in each of these proceedings. I would suggest that the evaluation be based either on the assessment of the users or on an independent assessment conducted in accordance with a reliable methodology. The present draft of the report does neither.

"Relevance": Only one of the criteria used to evaluate the relevance of the Centre is related to the objectives that the founders of the Centre sought to achieve (capacity to participate in dispute settlement proceedings). The other two (capacity to negotiate agreements and formulation of national policies) are objectives that have been left to other institutions. I do not understand why the Dutch government first decides to endorse the establishment of an institution with three precise objectives and would then want to examine whether that institution has also achieved two other objectives. In my view only the goals that the founders of the Centre, including the Dutch government, have assigned to the Centre can be the proper yardstick.

In sum, we believe that the report reveals very useful information and will certainly help us and our Members determine the future direction of the Centre. However, the report would no doubt be taken more seriously if the Centre was not evaluated against objectives it was not established to accomplish, if yardsticks were used that can effectively be applied to a project like the Centre and if the discrepancy between the "scoring" of the Centre in the eyes of the its users and those set out in the report were based on facts and explained in detail.

Response of IOB/ECORYS

General: All corrections and omissions are inserted into the final report. It should be noted that the comment no.3 (contribution of Canada to the Endowment Fund) and comment no.4 (amount of the multiyear contribution) do not correspond with the information on the ACWL website. We have changed the information according to the information you have provided in your comments.

Scoring methodology for efficiency: We agree that the efficiency of an organisation like ACWL is difficult to measure. The absence of an annual plan is only noted, it does not negatively affect ACWL's score on efficiency.

Comparing ACWL with other alternative institutions would be difficult, as we do not have precise information on the number of hours spent on different cases, nor on the exact activities that have been carried out, or on the complexity of the cases. Despite these problems, we felt that there are a number of indicators that point to a positive performance on efficiency, like the fast response rate to requests, an assumed level of complexity of dispute settlement cases, and the fact that ACWL became operational immediately after its establishment. Although there was insufficient information to confirm a score of good, we felt that the indicators for the positive performance justified a score of at least fair. The fact that the scores are "at least fair", will be made more visible in the scoring table.

Scoring methodology for effectiveness: This study is a performance-based evaluation. Although appreciation of the beneficiaries is an important element, we focus more on what they have been able to do with the support of ACWL, even if the evaluation period is short. Figures show that the number of cases brought forward by ACWL members has not increased significantly, and also not all cases have been won. In addition, a number of delegates have indicated that they would also have gone ahead with the case without ACWL, while some others indicated that the fee rates (although fair compared to private firms) are still (too) high to them. In view of these results, in combination with the positive points mentioned in the report, the effectiveness of ACWL is scored as good.

Scoring methodology for relevance: We have applied a uniform scoring methodology for all six programmes/organisations that have been evaluated. The indicators "contribution to the capacity of the developing country to negotiate and implement multilateral trade agreements" and "contribution to the formulation of a national policy of the developing country at the interface of trade and development" are Dutch policy objectives of TRTA. For the evaluation of ACWL, we identified a third relevance indicator: "contribution to the capacity of the developing country to participate in dispute settlement proceedings".

The uniform scoring methodology was used to provide the Netherlands Ministry of Foreign Affairs with a clear picture on how the different programmes/organisations contribute to the realisation of these Dutch policy objectives. We will clarify in our reports that these Dutch policy objectives are not necessarily the objectives of the programme/organisation under evaluation.

Comment of ACWL

I still fail to see on what grounds the rating "at least fair" is based. The only basis for the rating indicated in the report is the evaluation of our users and that has not been "at least fair". What is the point of rating the efficiency of an organisation, if there is no factual basis for that rating?

I remain puzzled by the grounds indicated to assess the effectiveness. Not all cases have been won, some countries would have gone ahead with a complaint anyway

and for some the fees are too high, says the commentator. However, should the Centre take only cases that can be won? Should the Centre refuse to support the cases that that would have gone ahead anyway? And should the fees be lowered (with the risk that we are asked to pursue frivolous cases)? To base a ranking on these factors, all these questions would have to be examined in the report and the answer would have to be yes.

As to relevance, the commentator notes that the report will clarify that the Dutch policy objectives are not necessarily the objectives of the Centre? However, this is not a reply to our point that the Dutch government has decided to co-found the Centre with the objectives set out in the Centre's Charter and that it is meaningless to evaluate the effectiveness the Centre against objectives that it was not created to pursue.

The problems arise from the fact that authors of the report on the Centre were requested to apply a uniform scoring methodology to six programmes or organisations and that this methodology can technically not be applied to the Centre. I suggest that this approach be reviewed before the report on the Centre is issued.

Response of IOB

Let me please make a distinction between (a) whether or not ECORYS has explained the rating of the performance of ACWL and (b) whether you can agree with this explanation. I do think that ECORYS has explained the rating of the performance. As disagreement may be based on lack of clarity of the explanation, I recap the rating methodology here - concentrating on the concerns raised in your last e-mail:

1. The evaluation of users has not been the only basis for the rating of efficiency. For measuring efficiency, ECORYS primarily used two sub-indicators: (1) delivery of outputs according to plan, budget and schedule and (2) the relationship between inputs and outputs (see paragraph 7.1).

- For the first sub-indicator ECORYS could only measure the delivery of outputs according to the budget, but not the delivery of outputs according to plan or schedule - such because of the demand-driven approach of ACWL. Making an extra effort and searching for other evidence of efficiency, ECORYS considered the ability to provide services immediately after it became operational as a sign of efficiency. Instead of giving the score of 'could not be determined' (which in the case of measuring efficiency can be taken as a sign of inefficiency), ECORYS decided to indicate what the efficiency is at least (namely: Fair).

- For the rating of the second sub-indicator, ECORYS collected data on staffing and output. Respecting the confidentiality of the legal advice, ECORYS could not judge the complexity of the output, meaning that it had to be careful in judging the second sub-indicator of efficiency. Instead of giving the score of 'could not be determined' (which in the case of measuring efficiency can be taken as a sign of inefficiency), ECORYS decided to indicate what the efficiency is at least (namely: Fair).

2. For measuring effectiveness, ECORYS used two sub-indicators: (1) contribution of ACWL to knowledge and capacities of beneficiaries in the field of WTO trade law and (2) contribution of ACWL to the participation of its beneficiaries in dispute settlement

procedures. Following your advice, the number of cases won was not taken as a sub-indicator for effectiveness. On both sub-indicators ECORYS scored a G(ood).

3. For measuring relevance, ECORYS used two objectives of the Netherlands in promoting (various types of) TRTA to judge to what extent (in this case) ACWL contributes to Netherlands policy objectives. This is what a donor wants to know when interested in the question 'are we funding the right channels, organizations, programmes'? In the last version of the report, ECORYS has indicated which objective falls or does not fall within the scope of ACWL.

4. The generic approach to the evaluation (using the evaluation criteria of efficiency, effectiveness and relevance) and the emphasis on measuring results was discussed at a workshop on April 7th in which the full reference group participated (including the Netherlands Ministry of Foreign Affairs). With a view to transparency, the participants wanted the generic approach and rating methodology to be better explained, not replaced. They also advised to qualify the different objectives as mentioned under relevance as either not within or within the scope of the organization. Both advises have been followed up by ECORYS.

PART B

AGENCY FOR INTERNATIONAL TRADE, INFORMATION AND COOPERATION

1 THE AGENCY FOR INTERNATIONAL TRADE INFORMATION AND COOPERATION (AITIC)

1.1 History of AITIC and the current transformation process

Following the establishment of the World Trade Organisation (WTO) in 1995, it was increasingly recognised that many developing countries had not actively participated in the negotiations and were also not involved in any major way in the activities of the WTO. The Swiss government therefore decided to set up a programme to strengthen the capacity of less-advantaged countries to lead to a more effective trade diplomacy. In 1997, a proposal was made for such a programme, which led to the establishment of the Agency for International Trade, Information and Cooperation (AITIC) in February 1998. Although an analysis in this proposal of the most appropriate juridical structure for the agency showed that it would be best to establish AITIC as an intergovernmental organisation (IGO), it was decided to set it up as a Swiss association, because this could be done more rapidly and thus become effective immediately.

After a number of years, it was clear that the work of AITIC was appreciated, as demand for its services began to increase. To improve its existing services, develop new services and expand its finances, the discussion on the most appropriate juridical structure started again. On the initiative of several developed and developing country members of the WTO, the Permanent Mission of Switzerland to the WTO initiated a series of meetings to explore the idea of developing AITIC into an IGO. At the WTO Ministerial Conference in Doha in November 2001, 63 signatories supported the AITIC Initiative on Trade-Related Capacity Building and Greater Participation in the International Trading System. A Task Force was created which further examined the development of AITIC and the feasibility of transforming it into an IGO (“or by any other means to improve the financial and functional basis of AITIC taking into account other organisations and their mandates”).

The Task Force presented its recommendations at the UN International Conference on Finance and Development in Monterrey in March 2002, , and Ministers decided to mandate it to draft an intergovernmental agreement on establishing AITIC as an IGO. In December that year, representatives of 7 developed countries and 12 developing countries signed the Agreement to transform the status of AITIC into that of an IGO and to provide it with broader funding. By January 2004, the number of developing country members had grown to 32. Although the transformation process was initially expected to be finished by mid-2003, then delayed until January 2004, this process had still not been completed at the end of 2003.

1.2 Relationship with the Netherlands

The Netherlands was one of the signatories of the Agreement to transform AITIC into an IGO. By signing and ratifying this agreement, it has become a Sponsoring Member of AITIC. It has committed EUR 2,058,000 for the first five years of operation. As a number of conditions for the Agreement to enter into force have not been fulfilled, no money has thus far been transferred to AITIC. The

Permanent Mission of the Netherlands in Geneva represents the Netherlands in the Preparatory Committee for AITIC's transformation.

1.3 Earlier evaluations of AITIC

There have been no earlier evaluations specifically focussing on AITIC. The Commonwealth Secretariat published a report entitled "A study on assistance and representation needs of the developing countries without WTO permanent representation in Geneva ("The WTO Non-Residents")" in August 2001. This report examined the assistance needs of non-residents and also paid attention to AITIC's activities for non-residents.

One of the main conclusions of the report was that non-residents needed more tailored assistance. AITIC was seen as having potential capacity to provide this personalised assistance, as it is independent of the UN and WTO intergovernmental systems and willing and able to provide more customised services. The authors of the report felt that AITIC had a key role to play as a "house" for expertise on both technical and country-specific issues, in collaboration with the WTO and UNCTAD training programmes, the Commonwealth Secretariat and IGOs like the South Centre. Although AITIC's non-resident unit "ranked highly with the non-residents", the report noted that the non-resident unit still needed to prove itself, because it was still in its infancy at the time of the report.

The report made a number of recommendations. AITIC would need more experts in order to provide more country-specific technical and policy assistance. Beyond a source of expertise, it could also become a "travel agent" for non-residents by giving them the resources for more regular visits to Geneva. The report noted that AITIC's status as a Swiss-funded NGO constrained its budgetary growth and the ability to attract the best experts and that transforming AITIC into an IGO would considerably ease these constraints. The report emphasised the need for collaboration and avoiding duplication for the organisations involved in TRTA in Geneva.

A number of quotes in the report from non-resident delegates showed that they generally appreciate AITIC's services. It was mentioned a few times however that it needed to expand so that it could provide more tailored assistance. The analysis and synthesis of important documents that AITIC provides were seen as good, although a number of respondents found them too general.¹

1.4 Scope of the evaluation

This evaluation covers the period from February 1998, when AITIC was created, up to December 2003. The evaluation is therefore focussed on AITIC achievements up to that date. As mentioned earlier, the Netherlands is a Sponsoring Member of AITIC and committed EUR 2,058,000 in December 2002 for the first five years of operation of AITIC as an IGO.

¹ See Weekes, J., Thompson, R. and Wang, A. (2001), p.35-36.

2 VIEWS FROM AITIC

This chapter provides information on the views of AITIC staff regarding the objectives of AITIC; its Cooperation with other organisations and the value added of AITIC; its target groups; and AITIC's transformation process. It is based on interviews held with AITIC staff in Geneva.²

2.1 Objectives

The basic aim of AITIC is to integrate Less Advantaged Countries (LACs) into the world trading system. AITIC recognises that it is impossible to monitor the progress in reaching this objective. In more concrete terms, AITIC has a two-tier approach: firstly, it tries to increase awareness of the WTO, and secondly, it aims to increase the knowledge of the countries, to enable them to participate more actively in the negotiations. At the present moment, most countries are aware of the importance of the WTO, but are still not very actively participating in the WTO. Often advisors and NGOs push countries and are writing the proposals for them; AITIC is not involved in these activities. Many developing countries in the WTO are constrained by the small size of their missions. It is not a goal of AITIC to increase the size of the missions in Geneva; a small mission is often a reflection of a lack of financial resources, not a lack of awareness of the importance of the WTO.

AITIC's Director stated that it is impossible to measure the impact of AITIC on a more active trade diplomacy on the part of the beneficiaries. AITIC does not want to influence the negotiations, as it has no advocacy mandate; rather it aims to provide objective knowledge. According to AITIC, the extent to which this knowledge is used in practice is difficult to ascertain,. Sometimes AITIC receives letters from officials, which show that AITIC's advice has been followed up. There is no systematic way of keeping track of this however.

AITIC monitors its output through its business plans and activity reports. It should be mentioned however that it is very difficult to make a business plan in a demand-driven organisation. According to the Director, the output always exceeds the expectations in the business plans.

2.2 Value added and cooperation with other organisations

The value added of AITIC lies in its demand-driven nature, especially the personalised assistance it offers. About one third of AITIC activities lie in the category of personalised assistance; another third are workshops and seminars and a the rest briefing notes. The topics for the seminars and briefing notes are also put forward by the beneficiaries. The added value of both the briefing notes and the conferences is that AITIC analyses and summarises the information available and translates all its documents into the three working languages of the

² In the AITIC office in Geneva, the following people have been interviewed: Esperanza Duran (Director of AITIC), Christina Gmür (Project Officer) and Falou Samb (Associate Officer).

WTO. The problem faced by small delegations does not result from a lack of information, but rather from the high volume of information. In addition, AITIC provides value-added in its output by constantly focusing on the interests and needs of the LACs. Some organisations are now producing similar information, e.g. the briefing notes and updates on the WTO negotiations by the International Centre for Trade and Sustainable Development (ICTSD), or by the WTO.

The appreciation for AITIC's activities is reflected in the increasing demand for its services. After seminars, participants fill in short evaluation forms, and these clearly demonstrate the appreciation of the participants. These forms often contain requests for follow-up activities. On the demand for AITIC's services, the interviewees (AITIC staff) had different responses. While one of the interviewees said that there was now sometimes more demand for its services than capacity to handle these requests, another interviewee said that until now demand has not exceeded this supply capacity. It was clear however, that a request for AITIC's services has never been turned down so far because of a lack of capacity. According to the first interviewee, people are served on a first-come, first-served basis. There are no specific guidelines for handling requests. It was noted that if demand exceeds supply in the future, the Board will have to make a decision on who will be served first. It was also mentioned that the number of requests are limited, often there is a big demand only once the products are in place, e.g. briefing notes on investment and competition policy.

AITIC Cooperates with other organisations in the field. It has a Memorandum of Understanding (MoU) with UNCTAD and a protocol with the *Agence Intergouvernementale de la Francophonie* (AIF), and it also closely Cooperates with the WTO Secretariat, the Commonwealth Secretariat, the ACP Secretariat and the South Centre. There is limited cooperation with NGOs, mainly through attending seminars and sending them publications. AITIC does not actively coordinate its activities with other NGOs working on trade-related issues. It was noted that this would take a lot of time as there are so many organisations, and that this time is better spent on AITIC's regular activities.

2.3 Target groups

AITIC has been established for the Less Advantaged Countries (LACs). This group includes the LDCs, transition countries (but not all of them, e.g. not the EU accession states) and small and vulnerable economies. There is no clear definition of LACs however. One of the interviewees said that some 90 countries could qualify as LACs.³ In the past, the definition was not so important, as beneficiaries did not have to be a member to make use of AITIC's services. AITIC's Agreement stipulates that AITIC's services shall also be available to non-member LACs with resource constraints after its transformation into an IGO. The Council of Representatives of AITIC will make a decision on the availability of its services to non-members.

³ In the course of the evaluation, AITIC provided an indicative list of countries that fall into the LAC category, which contains 103 countries.

By December 2003, there were 39 member countries (7 Sponsoring Members and 32 Participating Members).⁴ Membership is free of charge, although voluntary contributions are welcome. AITIC tries to increase the number of members, mainly by sending countries the instruction documents of how to join, and assisting them in the process.

All documents that AITIC produces are posted on the website. These are freely available, and it is therefore difficult to see to what extent non-members use these services. There are non-members on the mailing lists, including developed countries and intergovernmental organisations, but how many is difficult to say, as AITIC uses different mailing lists for different products. AITIC does not have a media strategy to increase its outreach.

Within countries, AITIC focuses on officials in the capitals or delegations. When organising a national or regional seminar, AITIC contacts officials in the relevant ministries. These officials are in turn responsible for inviting other relevant participants in their country, like the business community and NGO representatives.

2.4 AITIC's transformation process

Until now, AITIC has always been financed by the Swiss government, but it has always been independent. Some of AITIC's activities have been initiated and sponsored by other organisations or donors, e.g. the WTO sponsored the AITIC day in the Geneva week, and Australia has made a financial contribution to setting up a trade-related technical assistance programme targeting the Pacific Islands. When AITIC formally becomes an IGO it is not yet clear to what extent it can remain independent from its donors. According to the Director, the transformation process has been complex and very time-consuming so far, involving a lot of administrative issues.

The Director is currently very important to AITIC, as she does most of the substantive work and also has administrative responsibility for AITIC. If she left, many services could at least temporarily no longer be delivered.

At the end of 2003, 13 people were working at AITIC, but not all of them full-time. Although the budget will grow significantly, the number of people working for AITIC is not expected to grow to more than 20-21 people, because the organisation should not become too big, according to the Director.⁵ The budget increase will also be used to raise the salaries at AITIC, which is needed to attract high-level experts.

It is the intention to increase the number of Sponsoring Members. There is however very little time to make contacts with new donors and approach them with specific proposals for financing. There are some preliminary contacts with Australia, Canada and Japan. AITIC does not want to ask any fees for its

⁴ The term Participating Member is used for LACs that have signed the AITIC Agreement, as opposed to Sponsoring Members, which are the donor countries.

⁵ In the comments on the draft of this report, it was indicated that recent projections made by the Preparatory Committee is to have a staff of maximum 15 people by 2008.

services, but it does ask for voluntary contributions. It was noted that because the low fee rates, the [costs of] time spent would far exceed the benefits.

3 INPUT

Chapters 3 to 6 deal with the indicators that have been developed for respectively the input, output, outcome and impact of the Trade-Related Technical Assistance (TRTA) activities that are the subject of this IOB evaluation. The specific indicators selected for AITIC can be found in the evaluation matrix in Annex 2.

3.1 Budget and funding

AITIC's input have increased considerably since its establishment. When AITIC was launched, it had a budget of CHF 180,000. The increasing demand for AITIC's services led to an expansion of its activities and the budget was increased accordingly. Until the transformation process to an IGO is completed, the Swiss government will continue to be the main source of funding for AITIC's activities. Table 3.1 presents the contributions of the Swiss government from April 1998 to April 2002.⁶

Table 3.1 Contribution of the Swiss government for AITIC, 1998-2002

Period	Contribution (in CHF)
1998-1999	180,000
1999-2000	610,000
2000-2001	825,875
2001-2002	1,827,000

While the Swiss government is the only source of funding for AITIC's core budget, the Agency also receives funding from other sources for specific activities. In February 2002, AITIC signed a Protocol with the AIF. The total contribution from the AIF was EUR 174,450 (approximately CHF 258,326) for a period of two years. These funds are used to finance a position for a francophone trade expert, responsible for assisting non-resident francophone LDCs, and also for financing part of AITIC's translation activities. AusAID, the Australian Agency for International Development, has provided a grant of AUD 500,000 (approximately CHF 480,000) for two consecutive years, to strengthen the assistance to small islands, in particular those in the Pacific region. These funds have been used, among others, to finance a seminar in Fiji in May 2003, a national seminar in Vanuatu and a regional one in Brisbane in December 2003.

It should be noted that AITIC has also organised workshops and brainstorming sessions in cooperation with other organisations like the WTO and UNCTAD. The cost-sharing arrangements between the organisations for these events vary from case to case. With UNCTAD, AITIC has signed a Memorandum of Understanding (MoU), which stipulates that the two organisations will work together to strengthen the trade-related negotiating capacity of developing countries and economies in transition. For the financing of joint activities, the general rule is

⁶ All amounts are indicated in Swiss Francs (CHF) because all budgeting and reporting by AITIC is done in that currency. One Swiss Franc is around EUR 0,65.

“that all joint activities will be realised on the basis of an equitable sharing of expenses, and within the existing resources of both organisations.”

When the AITIC Agreement enters into force, the agency will receive financial support from other countries, namely its seven Sponsoring Members. Pledges totalling almost CHF 18 million from Denmark, Finland, Ireland, the Netherlands, Sweden, Switzerland and the United Kingdom have been made to support AITIC’s activities for the five years following its transformation into an IGO. Table 3.2 shows the support provided by the individual Sponsoring Members.

Table 3.2 Contributions from Sponsoring Members for its initially agreed contribution period following the establishment of AITIC as an IGO

Sponsoring Member	Contribution	Contribution (in CHF equivalent*)
Denmark	Danish Kroner 12,000,000	2,370,000
Finland	Euros 1,368,000	2,011,000
Ireland	Euros 1,400,000	2,058,000
Netherlands	Euros 2,058,000	3,018,000
Sweden	Swedish Kronor 13,000,000	2,072,000
Switzerland	Swiss Francs 4,000,000	4,000,000
United Kingdom	Pounds sterling 1,000,000	2,335,000

* Swiss franc equivalents are based on mid-point exchange rates on 12 September 2002, and are indicative only.

Source: AITIC website

Budget and Costs

A breakdown of the budget for AITIC’s activities is only available for two years: from 1 May 2000 to 30 April 2001 and from 1 May 2001 to 30 April 2002. The budget is not specified per type of activity, but only per type of costs. As no information could be made available to the evaluation team on expenditures, it is not possible to assess whether the actual costs per type are in line with what was originally envisaged. According to AITIC’s Director, an external accountant has verified that the accounts correspond to the original budgeting.

Table 3.3 AITIC’s budget 2000-2002, share of different cost categories (%)

Cost category	2000-2001	2001-2002
Equipment	3.0	2.1
Salaries	49.7	44.9
Social security control	12.4	9.3
External resources	12.1	5.5
Premises	7.9	4.1
Communications	11.3	10.1
Office supplies	1.2	1.1
General expenses	2.4	2.7
Creation of the non-resident unit	-	9.2
AITIC’s transformation process	-	11.0
Total	100.0	100.0

Source: AITIC Activity reports 2000-2001 and 2001-2002

3.2 Staff and consultants

Along with its expanding budget and activities, the number of staff working in AITIC has also increased. When AITIC was created, the staff consisted only of the current Director and an assistant. At the time of the evaluation, 13 people were working at AITIC, but not all of them full-time. The exact number of full-time equivalents (FTEs) is unknown.

It was indicated that the Director assumes almost all of the substantive work: no products are circulated before the Director has checked them. Last year, a former LDC delegate joined the Agency (with funding from the AIF) and is now also working on content. The rest of the staff are either junior professionals or work in supporting areas, such as legal issues, the website, translations, administration and documentation.

The use of external consultants is limited; AITIC only works with 1 or 2 on a regular basis. Their exact input in terms of days per year is unknown. It was indicated that the time saved by using an external consultant is limited, because their work often needs revision.

3.3 Time span for preparing projects

No information could be provided on the time span for preparing projects, as AITIC does not keep any time sheets. The activity reports provide some information on the time span between the requests for personalised assistance and the response to those requests. These figures show that the time span for responding to requests is limited. The activity reports show that in the period May 2000-May 2002, a total of 209 requests for personalised assistance were made. Of these requests, 115 were answered within one day, another 58 within a week, and 36 requests took longer than one week. This shows that on average the time span for responding to requests is short. For AITIC's other activities (back ground notes, the organisation of workshops and seminars) no information on time span is available.

Although budgets and business plans are prepared each year, the evaluation team could only avail itself of the business plan for the second year of AITIC's operation (1999-2000) and a draft business plan for 2002-2003. These do not specify the number of activities that will take place during the years in question.

4 OUTPUT

AITIC produces a range of output: it publishes background notes, makes translations, maintains a website, organises seminars, provides personalised assistance and offers specific services for non-residents. The following gives an overview of AITIC's output from the period 1998 to 2003.⁷ AITIC's reporting years run from 1 May to 30 April.

4.1 Documentation: publications, translations and the AITIC website

Background notes and working documents

AITIC produces different types of documents. These include summaries of developments at the WTO, more thorough analyses of topics on the WTO agenda, updates on forthcoming WTO meetings or analyses of other relevant trade-related issues. These background notes and working documents have so far been published around 4 to 6 times a year. An important service of AITIC is that it produces nearly all of its publications in the three working languages of the WTO: English, French and Spanish. There are only a few exceptions: of the 30 documents presented below, one document is only available in French, and four only in French and English. The following table gives an overview of all background notes and working documents produced by AITIC from 1998 to 2003.

In addition to the publications listed in Table 4.1, AITIC has published a glossary, entitled "Glossary of Commonly used International Trade Terminology with Particular Reference to the WTO." This is an extensive glossary, consisting of three parts. Part I explains international trade and WTO terms; part II describes trade-related international organisations, groups and agreements (in most cases with links to their website); and Part III lists acronyms and abbreviations as used in the Glossary. Given the very technical language of the WTO and the extensive use of abbreviations, this glossary is a very helpful tool for delegates from countries that are unfamiliar with WTO jargon or for newcomers, both to the delegations and in the capitals.

Most of AITIC's background notes are very concise: in general they do not exceed 10 pages. The background notes use language that is not as technical as the reports of meetings of the WTO and therefore easier to understand for non-trade experts, although also for AITIC's publications some basic knowledge of WTO terminology is required. The concise and non-technical nature of the background notes is very appropriate for delegates of LACs in Geneva and in EU capitals or for LAC officials in their respective capitals, because these people have limited time to devote to following the WTO.

⁷ The information in this section comes from AITIC's website, AITIC's activity reports and the publications "AITIC Documents", for the years 1999-2001. It should be noted that at the time of the evaluation the progress report for 2001-2002 was still a draft. For the year 2002-2003 the activity report had not yet been prepared, but some preliminary tables for this report were made available.

Table 4.1 AITIC's background notes and publication, 1998-2003

No.	Title	Date
1	WTO Ministerial Conference, second session (Geneva, 18 to 20 May 1998)	May 1998
2	Electronic commerce and other issues of interest for less-advantaged countries	May 1998
3	The Agreement on Rules of Origin of the WTO	June 1998
4	The World Trade Organisation Agreement on Textiles and Clothing (ATC)	June 1999
5	Electronic commerce within the framework of the WTO: Implications for the less-advantaged countries	Aug. 1999
6	Snapshot of the state of play on the preparations for the third session of the Ministerial Conference of the WTO	Nov. 1999
7	Failure of the Seattle Ministerial	Dec. 1999
8	The WTO Agreement on Customs Valuation	Feb. 2000
9	WTO: Post-Seattle progress and prospects	Feb. 2000
10	The UNCTAD X (French only)	Feb. 2000
11	UNCTAD X: assessment and prospects	March 2000
12	The importance of the WTO proceedings for members' capitals	May 2000
13	WTO progress report: May 2000	June 2000
14	Current situation on the Integrated Framework	Aug. 2000
15	The administration and implementation of the WTO Agreement on Customs Valuation	Oct. 2000
16	WTO situation report: March 2001	March 2001
17	The ACP-EU Partnership Agreement (Cotonou Agreement): trade measures	May 2001
18	Third United Nations Conference on the Least Developed Countries	July 2001
19	WTO situation report: September 2001	Sept. 2001
20	The WTO General Agreement on Trade in Services (GATS): Scope and negotiations	Dec. 2001
21	Agriculture negotiations: Current state and prospects	April 2002
22	The Doha Work Programme: The WTO Dispute Settlement Understanding	June 2002
23	WTO situation report	Oct. 2002
24	Negotiating tool: Trade in services negotiations: How to prepare a request/offer	Dec. 2002
25	Doha Work Programme negotiations on agriculture: Summary and commentary on the Chairman's draft mark one	Feb. 2003
26	Doha Work Programme negotiations on agriculture: Summary and commentary on the Chairman's draft mark one; update	March 2003
27	The Singapore issues: trade and investment in the WTO	July 2003
28	The Singapore issues: interaction between trade and competition policy	July 2003
29	WTO situation report: November 2003	Nov. 2003
30	Agriculture and the Doha Work Programme: where we are and how we got there	Nov. 2003

The Director of AITIC decides on which topics background notes will be published, based on the interest and requests of LAC delegates. There seems to be no formal mechanism for identifying the most pressing needs of the LACs.

The frequency of AITIC's publications varies. In some years, only four background notes have been published, while for example in 2002, the total figure reached 8. Also, the time lapse between different publications differs: sometimes two or even three background notes are published in one month, and sometimes there is a time lapse of 3 or 4 months between two notes. Although AITIC now uses its website to announce the subjects of forthcoming publications, it does not set a date for the release of these background notes.

Translations

AITIC has always attached importance to the translation of documents. It therefore not only produces its own documents in the three working languages of the WTO (and sometimes also in other languages, if there are requests for this), but it also translates documents from other organisations such as the WTO or UNCTAD on demand, when they are needed urgently and cannot await the translation. Although some of the organisations also translate their own documents into English, French and Spanish, AITIC indicated that there is often a considerable time lapse before these translations are made. AITIC can complete the translations more quickly.⁸

AITIC does not keep a record of all the translations it carries out. In 2003, AITIC recorded all the translations commissioned to other firms; this record does not include the translations carried out by AITIC itself. The list is kept because these translations are funded from the grant of AIF. This overview shows that from January to November 2003, 26 documents were translated. Of these 26 translations, 6 were translated on the initiative of AITIC, whilst the other 20 translations were requested by individual countries or groups of countries. The group of LDCs and the ACP countries have made several requests for translations. Most documents are short (10 pages or less); only in three cases the total number of pages exceeded 20. The type of documents that are translated can be very different: they range from reports of WTO meeting and statements in the WTO or regional forums, to newspaper and other articles or speeches.

AITIC's website

The website of AITIC can be found at www.acici.org. The site is available in English, French and Spanish. It contains a number of sections, the most important of which are:

- Documents: includes background notes, reports on meetings, and a number of articles;
- Trade Portal: contains useful links to other websites on trade, e.g. links to data sources, links to relevant organisations in the field and links to the legal texts of trade-related agreements;

⁸ In the comments on the draft of this report, it was indicated that AITIC no longer literally translates these documents, but summarises them in the translation process.

- AITIC's non-residents' unit (NRU): includes a description of the functions and activities of the non-resident unit (see Section 4.4);
- Media library: contains videos from various seminars.

Furthermore, the site contains information on AITIC's development, its collaboration with other agencies, news on AITIC and upcoming projects and a contact section.

Given the small size of AITIC, the website is of good quality and regularly updated.

4.2 Workshops and informal meetings

AITIC organises seminars and workshops in Geneva, often in cooperation with other organisations. To date, the Agency has organised an average of 5 seminars and workshops per year. AITIC also organises informal meetings for participants with particular interests, e.g. LDCs seeking accession to the WTO. Table 4.2 gives an overview of the seminars (co) organised by AITIC that are listed on the AITIC website and included in its activity reports. The website does not cover information on all seminars or meetings organised by AITIC, as the activity reports sometimes make reference to other seminars that are not listed under the reports section. It is not clear why there are no reports on these seminars posted on the website, but according to AITIC's Director this is partly due to the fact that some meetings related to sensitive issues or participants wanted the information to remain confidential.

Table 4.2 AITIC's seminars, 1998-2003

No.	Subject	Coorganiser	Date
1	The Uruguay Round Agreements- Implications for agriculture, forestry and fisheries in the less-advantaged countries	FAO	22-23 Sept. 1998
2	Textiles and Clothing: Implications for the less-advantaged countries	WTO	7 June 1999
3	The positive agenda in Central America, held in Santa Domingo, Dominican Republic	UNCTAD, SIECA and state secretary of external relations of DR	9-11 Aug. 1999
4	Electronic commerce: implications for the less-advantaged countries	WTO and ILI	3 Sept. 1999
5	Informal meeting on countries in transition and the WTO Ministerial Conference in Seattle	UNECE	14 Oct. 1999
6	Improving developing country access to the dispute settlement mechanism of the WTO	WTO	25 Feb. 2000
7	LDCs in the process of accession to the WTO	-	10 May 2000

(Table 4.2 continued)

8	Follow-up meeting on improving developing country access to the dispute settlement mechanism of the WTO	-	18 May 2000
9	The issues at stake for the less-advantaged countries in the Agreement on Customs Valuation	WTO, WCO and World Bank	6 Nov. 2000
10	The issues at stake for the less-advantaged countries in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)	WTO and WIPO	24 Nov. 2000
11	Multilateral Forum on the Negotiations on Services at the WTO	UNCTAD and SIECA	21-24 March 2001
12	Senior Officials Consultations on Aspects of the Third United Nations Conference on the Least-Developed Countries (LDC III) and Other Trade-Related Issues	ACP Secretariat	12 May 2001
13	Brainstorming session on trade and environment	UNCTAD	25 Feb. 2002
14	Anti-Dumping: practical and legal issues in the post-Doha scenario	UNCTAD	28 Feb.-1 March 2002
15	The implementation of the WTO Agreement on Customs Valuation	-	27 May 2002
16	Informal brainstorming forum on the political economy of the WTO agriculture negotiations	UNCTAD	17 May 2002
17	Various post-Doha topics and preferential access to markets held at the Ministry of Trade, Luanda – Angola	-	4-6 Nov. 2002
18	The legal aspects of the Doha Work Programme with a special focus on Special and Differential Treatment	-	4 July 2003
19	Trade-related capacity building for small Pacific states, held in Suva, Fiji	-	14-16 May 2003
20	Briefing preparing for the Fifth WTO Ministerial Conference Cancun	UNECE	7 July 2003
21	AITIC Day of the Geneva Week for non-residents	-	13 July 2003
22	National seminar, held in Vanuatu	-	3-5 Dec. 2003
23	Regional seminar for Pacific islands, held in Australia	-	9-11 Dec. 2003

In addition to the seminars listed in Table 4.2, a seminar was held in Congo-Brazzaville on 24-26 July 2002, in cooperation with the national government. There is no information on this seminar on AITIC's website or in their activity reports, however. There have been five other conferences in developing countries, as can be seen in Table 4.2: The Dominican Republic (1999), Angola (2002), Fiji, Vanuatu and Australia (2003). The seminars in Fiji, Vanuatu and Australia took place with funding by a grant from AusAid. The seminars in Angola and Congo were organised in cooperation with and on the request of these two countries' respective governments.

AITIC also regularly attends conferences organised by other organisations. During 2000-2001, AITIC attended some 16 meetings from other organisations; in 2001-2002, this number increased to 25, and in 2002-2003 as many as 39 meetings were attended. The meetings vary from lunch meetings to four-day seminars. Although the majority of these were held in Geneva, some of the meetings took place in other European cities or in developing countries.

4.3 Personalised assistance

AITIC provides personalised assistance in response to specific requests from LAC delegations. The nature of these requests varies considerably: they range from simple questions requesting a specific document or explaining WTO terms to more complex requests, e.g. questions on specific WTO obligations, notifications or possible interpretations of WTO provisions. AITIC makes a distinction between four different types of personalised assistance: 1) dispatch of documents; 2) drafting of notes and advice; 3) verbal response and meetings; and 4) logistical support. The number of personal requests has steadily increased: in the period 1998-1999, AITIC received 39 requests, while figures for 2001-2002 indicates that this number has grown to 126. Most requests concern the dispatch of documents and verbal response and meetings. Table 4.3 gives an overview of the number and types of personalised assistance for the period 2000-2002.⁹

Table 4.3 Number and type of requests for personalised assistance, 2000-2002

Type of assistance provided	2000-2001	2001-2002
Dispatch of documents	38	46
Drafting of notes and advice	18	15
Verbal response and meetings	24	50
Logistical support	3	15
Total	83	126

For the period May 2002 - March 2003, more detailed information is available on the type of requests. During this period, a total of 71 requests were made. The overview shows that the forwarding or translating of AITIC and other organisations' documents is enough to satisfy most requests.. Only in a limited number of cases has more specific advice been provided.

4.4 Services for non-residents

Soon after its establishment, AITIC became aware of the needs of the WTO member and observer countries that do not maintain a permanent mission in Geneva. In response to those needs AITIC established its Non-Resident Unit (NRU), in October 2000. The official inauguration took place on 28 June 2001. According to AITIC's website, the unit provides the following services:

⁹ It should be noted that the figures in this table are the figures from May 2000-April 2001 and the figures for May 2001- April 2002; the latter figures are preliminary.

- Publication of the Early Warning System (EWS), which provides an overview of upcoming WTO meetings and information on the agenda of these meetings, when available;
- Analytical services, by making a list of specific needs of countries and also a list of specific assistance priorities;
- Logistical support, in the form of temporary office space, meeting rooms, secretarial services and Internet access and access to AITIC's reference centre, etc. to non-resident officials attending meetings in Geneva;
- Regular communication with the contact persons in the LAC capitals, keeping them up to date on developments in the WTO, informing them about assistance provided by other organisations and sending them relevant documents.

Currently, there are 32 WTO members or observers that have no permanent representation in Geneva. Of these 32 countries, according to AITIC's website 8 are represented through their capitals, while the others are represented from other European capitals, mainly Brussels and London. AITIC also cooperates with the ACP Secretariat (based in Brussels) and the Commonwealth Secretariat (based in London) to stay in contact with the non-resident delegations, keeping them informed of developments in the WTO.

So far, there is only limited information available on the specific services that have been delivered to non-residents. Table 4.4 shows the different types of services requested by non-residents.¹⁰ The large increase in the sending of documents can be explained by the fact that the EWS was only launched in the second year of NRU operations. Figures for the supply of AITIC's regular documents are not included in this table. It is unclear if the missing data for dialogue/information and support to establish a representation in the period 2002-2003 mean that these services have not been provided or if these data have not yet been compiled. Nevertheless, the figures seem to indicate that analytical services and communications with the contact points have been limited: the EWS, translations and the provision of logistical services are the most important services for the non-residents.

Table 4.4 Use of the different type of services for the non-residents, 2001-2003

Type of service	2001-2002*	2002-2003
Logistical services (use of office space, meeting rooms, etc.)	12	38
Dialogue/information	4	-
Sending of documents (e.g. EWS)	2	1441
Support to establish a representation in Geneva	2	-
Translation of documents	10	16
Total	30	1495

* The services for the non-residents started in July 2001; all data are preliminary.

¹⁰ It should be noted that the type of services in this table do not always correspond to the service categories listed at the beginning of this paragraph, and the link between the different service categories is therefore not always clear.

On AITIC's website it can be seen that the Early Warning System (EWS) has been published 9 times so far, with the first publication in June 2002. While the first 5 editions of the EWS in 2002 were published on an irregular basis and the time periods they covered often overlapped, this improved in 2003, when the EWS was published four times with clear three-month intervals in between each publication. In addition to the EWS, the non-residents also receive AITIC's regular publications.

5 OUTCOME

This chapter examines the outcome of AITIC's activities. In the design of this evaluation, outcome has been defined as the application of the output provided by AITIC to individual beneficiaries. In other words, the main question is how the beneficiaries have made use of AITIC's activities in practice.

The main sources of information for this are the interviews that have been held with developing countries' delegates, both in Geneva, in the delegates' respective capitals or in other European cities (the non-residents). Representatives from 13 countries have been interviewed, both those with Geneva missions and a number of non-residents. These countries are Angola, Bangladesh, Congo Brazzaville, Fiji, Guyana, the Gambia, Madagascar, Mauritania, Panama, Tanzania, Togo, Yemen and Zambia. Six other countries' representatives were also approached (most of whom were officials from their capitals), but their answers were either not received in time, or the respondents were unable to cooperate due to their busy schedules or a lack of experience in working with AITIC. Interviews have also been held with two (former) staff members from the Swiss government that have been involved in AITIC's establishment and operation.

To get an impression of AITIC's target groups and of the size or magnitude of the outcome, the following section first discusses the outreach of AITIC's activities in terms of the number and kinds of beneficiaries.

5.1 Outreach of AITIC's activities

AITIC's target groups and membership

When AITIC was established in 1998, its target group was referred to as the "Less Advantaged Countries" (LACs). According to a preliminary report¹¹ written by AITIC's Director in 1997, this group includes the LDCs but also countries that are "at the bottom of the income per capita scale and which have traditionally had a weak participation in the international trading system." It was indicated that the criteria of insufficient international trade expertise would provide the necessary flexibility to admit countries into the LAC category. At that time, some 60 developing countries were identified as fitting into this category, plus a number of economies in transition. It was explicitly mentioned that AITIC should also target WTO members with no permanent delegation in Geneva. Most countries without a permanent delegation are represented from their missions in other European capitals (notably Brussels, London and Paris). In addition, it was indicated that the capitals should also be informed about AITIC's developments, however pro forma.

In the first years of AITIC's existence, the definition of a LAC did not matter very much, as countries did not have to be a member of AITIC to make use of its

¹¹ This document was the basis of which AITIC was started. It is confidential but has been made available for the evaluation.

services. This may change with the transformation of AITIC into an IGO, although the AITIC Agreement explicitly states that the services provided to Participating Members shall also be available to non-member, resource-constrained developing countries and countries with economies in transition. There have already been discussions about the availability of services to non-members, but so far the proposal was that the difference between members and non-members would be simply that in the case of limited capacity, Participating Members would get priority. From the documentation on the transformation process so far, the requirements for membership and therefore the definition of LACs have not been further discussed.

Table 5.1 List of AITIC members as of 31 December 2003

	Country	Date of signature or ratification
1	Algeria	10 January 2003
2	Benin	14 February 2003
3	Bhutan	9 December 2002
4	Bolivia	9 December 2002
5	Burkina Faso	6 June 2003
6	Burundi	19 June 2003
7	Cambodia	3 March 2003
8	Cape Verde	12 November 2003
9	Cuba	9 December 2002
10	Dominican Republic	9 December 2002
11	Ecuador	9 December 2002
12	Ethiopia	9 December 2002
13	Gambia	24 November 2003
14	Guinea	20 October 2003
15	Guyana	13 September 2003
16	Haiti	9 December 2002
17	Honduras	30 January 2003
18	Jordan	7 July 2003
19	Mauritania	23 July 2003
20	Mauritius	24 March 2003
21	Nepal	9 December 2002
22	Nigeria	31 March 2003
23	Nicaragua	10 October 2003
24	Paraguay	9 December 2002
25	Republic of the Congo	3 February 2003
26	Senegal	23 December 2002
27	Sri Lanka	20 May 2003
28	Sudan	9 December 2002
29	Togo	9 December 2002
30	Vanuatu	12 September 2003
31	Yemen	25 March 2003
32	Zambia	9 December 2002

Up to January 2004, 32 countries had become Participating Members of AITIC. Of these 32, 18 belong to the category of LDCs as defined by the UN. Some low- or middle-income developing countries have also joined, such as a number of island economies (e.g. Mauritius, Sri Lanka), some Central American countries

and Jordan and Tunisia. Table 5.1 presents the list of AITIC's Participating Members, together with the date of signature or ratification of their membership.

During the interview process, most representatives from developing countries that were not yet a member of AITIC indicated either that they intended to become one or that their country was already in the process of joining. The representatives of countries that already had become members said they had done so because they were invited to and because they have appreciated the services of AITIC so far. While the lack of membership fees makes it easier for countries to become members, it is also important to keep in mind that non-members also benefit from AITIC's services. The fact that 32 countries have already joined AITIC and other countries indicated that they are planning to can therefore be considered a sign of their appreciation of AITIC's services.

Publications

AITIC's publications are sent to a wide audience. The mailing lists differ by type of publication. During the interviews it was indicated that the background notes were sent to all of AITIC's contacts, while other documents are only distributed to relevant delegates. The Director has compiled the mailing list on the basis of new contacts. This is reflected in the fact that for some countries there are more than 10 people on the mailing list (notably for Congo and Fiji, where seminars have been held), while for other countries the number of people can be limited to only 1 or 2 persons. As the database is compiled on the basis of new contacts, and not only on the basis of requests, it is not entirely demand-driven.

Limited information is available on the total number and type of documents dispatched. The activity report for 2000-2001 shows that 2,329 documents were dispatched in that year, most of which were background notes and reports on seminars and on questionnaires. In the period 2001- 2002, the total number of dispatched documents had increased to 2,923. By 2002-2003, the number had more than doubled, to 7,042. Table 5.2 shows the developments in the number and types of documents dispatched by AITIC. This table clearly shows that background notes are by far the most important category, followed by specific documents for non-residents and documents related to seminars. The rise in specific documents for non-residents reflects, among others, the publication of the EWS.

Table 5.2 Number and type of document dispatched by AITIC, from May 2000 to April 2003

Total number of documents, of which (in %):	2000-2001	2001-2002	2002-2003
	2,329	2,923	7,042
Background notes	52.2	57.9	43.0
Documents related to seminars	32.8	10.1	19.8
Specific documents for non-residents	3.7	20.4	20.6
Specific documents for LDCs	2.4	2.0	3.6
Documents related to AITIC's Development	-	7.4	8.2
Miscellaneous	8.9	2.2	4.8
Total	100.0	100.0	100.0

For the background note on investment published in July 2003, and also for the EWS published in the same period, AITIC has provided the complete mailing lists for all three languages. Table 5.3 gives an overview of the composition of the mailing lists by category for these two publications. In this table, the largest category of recipients of these two publications is located in the LACs.

Table 5.3 Composition of mailing lists for publications

Category	Briefing note on Investment, July 2003	EWS, July 2002
Total number of recipients, of which	626	147
Number of recipients of English version	337	93
Number of recipients of French version	238	54
Number of recipients of Spanish version	51	-
Number of recipients in Geneva	213	1
Number of recipients in other European capitals	71	43
Number of recipients in domestic capitals	342	103

AITIC website

Traffic statistics show that the use of AITIC's website is steadily increasing. Table 5.4 displays the number of visitors to the site for the period from October 2001 to April 2003, an average of 4,606 per month. Despite the increase in the number of visitors, the figures are still relatively low compared to the websites of some other organisations active in the field of trade. For example, the average number of visitors per month to the website of the International Centre for Trade and Sustainable Development (ICTSD, www.ictsd.org) is 11,610. The Trade Knowledge Network (TKN, www.tradeknowledgenetwork.net) has on average 9,375 visitors per month.¹² It should be noted however that it is very difficult to compare the use of websites. For example, ICTSD is larger than AITIC and also has a somewhat longer history, while the TKN is a research network, and therefore has a different character to AITIC.

For the year 2001-2002, there is also some information on the most viewed pages. These figures show that the trade portal (for an explanation, see Section

¹² Source: Boyer, D. and Krijnen, J. (2003).

4.1) is the most popular section of the website. AITIC has made several visits to delegations to demonstrate how this section of the website can be of use to them.

Table 5.4 Number of visitors to AITIC's website, monthly figures from October 2001 to April 2003

Months	Number of visitors
October 2001	3,788
November 2001	3,762
December 2001	3,556
January 2002	3,950
February 2002	3,519
March 2002	3,743
April 2002	4,123
May 2002	4,512
June 2002	4,266
July 2002	3,929
August 2002	4,123
September 2002	4,630
October 2002	5,247
November 2002	6,090
December 2002	5,737
January 2003	5,125
February 2003	6,449
March 2003	6,796
April 2003	4,180
Total number of visitors	87,525
Average number of visitors per month	4,606

Seminars

The number of participants in AITIC's workshops and seminars differs greatly. Some meetings have a more informal, "brainstorming" character, with the number of participants as small as five, while in more general seminars, the number can exceed one hundred. Although in the interviews it was indicated that the number of participants depends very much on the topic and the character of the meetings, it is not entirely clear on what grounds the invitations are made. Also, the composition of participants (by country category) differs per seminar. Representatives of LDCs, developing countries and economies in transition normally account for more than 60 percent of the participants and this proportion seems to have increased over the last year (although data are not available for all seminars). Other important participant categories are representatives of international organisations, developed countries and the private sector. Table 5.5 shows the number of participants in a selected number of workshops and seminars.

Table 5.5 Participants in a selected number of AITIC's workshops and seminars

Workshops and seminars	Date	Number of participants
Accession of LDCs to the WTO	10 May 2000	5
Follow-up meeting on the Dispute Settlement Mechanism of the WTO	18 May 2000	19
Seminar on Customs Valuation (organised with WTO, WCO, WB)	6 Nov. 2000	72
Seminar on the TRIPS agreement (organised with WTO, WIPO)	24 Nov. 2000	88
Session on trade and environment (organised with UNCTAD)	25 Feb. 2002	31
Anti-dumping seminar (organised with UNCTAD)	28/02-01/03 2002	104
Brainstorming on political economy of the agriculture negotiations (organised with UNCTAD)	17 May 2000	42
Meeting on the WTO agreement on Customs Valuation	27 May 2002	8
Seminar on the legal aspects of the Doha work programme with a focus on special and differential treatment	4 July 2003	36

AITIC also publishes data on the number of people invited to a seminar and the number of people that attended. These figures are available for 14 seminars. While for most seminars the participation rate (ratio of participants/invitees) was over 0.75, there have been 6 seminars where this rate ranged between 0.36 and 0.67. These relatively low participation rates imply either that the timing of the seminars was inappropriate (i.e. delegates too busy) or that the subject did not attract sufficient attention. According to AITIC's Director, the appropriate timing for a seminar is difficult to determine, as the WTO can sometimes plan unforeseen informal meetings at only a few days' notice.

Personalised assistance

Different types of countries make use of AITIC's personalised assistance, as can be seen in Table 5.6. While LDCs had always been the largest group of users of this assistance, in the period 2001-2002 the group of developing countries claimed this title. In that year, there were also a large number of requests from NGOs or IGOs. Requests from economies in transitions have been very limited over the last two years. It is interesting to note that in the period 2002-2003 (for which a breakdown by country category is not yet available), even a Minister of Foreign Trade and International Cooperation has made use of AITIC's personalised assistance on a number of occasions. The personalised assistance to a small number of developed countries consists of providing information about AITIC's past or prospective TRTA activities.

Table 5.6 Requests for personalised assistance by country category

Country category	1998-1999	1999-2000	2000-2001	2001-2002
Least Developed Countries	15	24	39	44
Developing Countries	10	15	32	47
Countries in Transition	11	14	6	3
Developed countries	2	3	3	9
NGO/IGO	1	7	3	23
Total	39	63	83	126

Services for non-residents

As the NRU only started its operations in June 2001, there is limited information available on the use of the services of this unit (see Section 4.4). Statistics on the distribution of the EWS is provided under the information on publications (see Table 5.2 above). These figures showed that in July 2003 the mailing list for the EWS consisted of 147 people. Around one-third of the EWS are sent to country delegates in EU capitals, while two-thirds go to people in the LDCs' capitals, other developing countries and economies in transition.

Provisional data for the period July 2001-April 2003 show that the non-residents have made use of infrastructure services on 50 occasions: LDCs used them 33 times, other developing countries 13 times and regional organisations 4 times. Over the same period, there have been 26 translations of documents for non-residents: 8 for LDCs, 1 for other developing countries and 17 for regional organisations. For the two other categories of services to non-residents – dialogue/information and support to establish representation in Geneva- there are no details on the use of these services for the period 2002-2003. It is unknown whether this lack of information is due to the fact that these services have not been used or that the data have not yet been compiled. For the period July 2001-April 2002 the total number of dialogues/information was four, of which three with LDCs and one with another developing country. In that period, AITIC also provided support to the establishment of two representations of regional organisations in Geneva and one permanent mission for an LDC.

5.2 Appreciation and application of AITIC's output by its beneficiaries

Almost all country representatives were very positive about AITIC's services. From the interviews, it emerged that AITIC has found three niches in the market for trade-related technical assistance. The first is in the provision of services to the non-residents. The interviewed non-residents indicated that AITIC is (one of) the only organisation(s) which provides them with information about developments in the WTO. A second important niche is the provision of services in the three official languages of the WTO: English, French and Spanish. The respondents indicated that there are no other organisations like AITIC that work in French or Spanish. This is not only helpful for the delegates in Geneva, but also for the officials in capitals, who are often unable to read English documents. A third niche that AITIC fills is the provision of personalised assistance, although not all respondents were equally aware of this service (see below).

Despite the overall positive comments on AITIC, a number of respondents also pointed to some of its shortcomings, mainly related to the focus of its activities.

Many respondents noted that, due to its limited capacity, AITIC is not able to produce publications on developments in the WTO in all areas. While most respondents wanted AITIC to expand its coverage of WTO issues once it is able to grow its capacity, others also noted that it is important for AITIC to prioritise its focus. There should be more information on a limited number of topics, those that are most important for AITIC's target group(s). One country representative suggested that questionnaires should be sent to the beneficiaries to identify the most important topics. Regarding the focus of AITIC on the LACs, several delegates asked for more information focussed on LDCs. One delegate expressed concerns that if the group of members becomes too diverse with island economies, transition economies, etc. AITIC would not be able to pay sufficient attention to the specific needs of the LDCs. It was clear however that there are different needs and views on what the focus of AITIC should be. A final remark was that country representatives do not know which activities on what issues are coming up, so they cannot anticipate these activities.

Below is an overview of the appreciation of different output by the beneficiaries, and how they have been able to apply the knowledge gained from AITIC's services.

Appreciation of the different output of AITIC

AITIC's publications are very much appreciated. Several country representatives cited the non-technical language (as compared to WTO reports, for example) as an important advantage, although a small number also noted that the publications are still too technical for non-trade experts to understand. Also, the concise nature of the publications was appreciated, as this allows the country representatives to follow the debates in the WTO without having to read extensive documentation. The glossary was pointed out as an extremely helpful tool for the country representatives. One respondent noted that the fact that country representatives do not know when or on what topics publications will be released is a disadvantage.

While all non-native English-speaking respondents were very happy with the translations that AITIC makes, one respondent noted that there are sometimes delays in producing these translations, so that sometimes they arrived too late to be useful. Almost all respondents were positive about the website, although many indicated that they rarely visit it through lack of time. They receive the documents from AITIC, and contact AITIC directly if they are looking for something specific.

Not all respondents had participated in AITIC's seminars, but the ones that had were positive. One representative especially liked the fact that AITIC often uses people from other Geneva delegations as experts. One respondent regretted the fact that there had been fewer small seminars in AITIC over the last year, which may be due to the transformation process. For two seminars, the AITIC Day of the Geneva Week and a regional seminar in Fiji, the analyses of the evaluation forms that were filled out by the participants have been made available for this evaluation. These analyses (which are almost identical) show that, for both seminars, most participants rated the quality of speakers and material as good or excellent and indicated that the seminar had been useful for them because they received a better understanding of the issues. The only small element of criticism was that papers should have been distributed in advance, in order for participants to be better prepared.

Regarding the personalised assistance, it was remarkable that not all respondents were aware of this service of AITIC. Even a country representative listed as having made requests three times denied ever having received personalised assistance. This may be explained by the fact that requests for specific documents are counted as personal assistance, while not all delegates consider this as such. As became clear in Chapter 4, about half of the requests for personalised assistance are requests for existing documents or translations. Despite this confusion, all respondents appreciated AITIC's informal working methods, which allow direct contact with the staff. A number of respondents saw the personalised assistance as the most important service that AITIC offers. Others hardly used this. One respondent pointed out that assistance in the form of brainstorming on the strategy and approach for a country is not yet possible; the personalised assistance is not yet institutionalised and only carried out on a personal basis by the Director and, more recently, also by the Associate Officer.

The non-residents were positive about the services of AITIC. As mentioned earlier, many residents are not aware of the services provided by other organisations in relation to the WTO, and for them AITIC is a very important source of information. In addition, the logistical services that AITIC provides are very much appreciated.

Contribution of AITIC's output to the expertise of its beneficiaries

When assessing how the beneficiaries of AITIC have made use of the Agency's output in their work, it is important to be aware of the lack of capacity of delegations in the target group. In general, these delegations are very small. Many of the country representatives interviewed are responsible for following all topics in the WTO, and some also had to follow the activities of other Geneva-based organisations like UNCTAD and WIPO. This is in sharp contrast to developed countries and some larger developing countries, where delegates often follow only a limited number of topics within the WTO. Given the large number of meetings held in the WTO, it is impossible for small delegations to attend all of these. As a result of this limited capacity, most of these delegations are not very active in the WTO (in terms of fulfilling their obligations, making statements and submitting proposals), although there are some noteworthy exceptions.

It was clear from the interviews that, as the respondents were not able to follow all that is going on in the WTO, any information they could get was welcome. As for whether AITIC increased the personal knowledge of the country representatives, all respondents noted that AITIC's output have been useful for them, but in different ways. While many noted that AITIC has clarified the issues in WTO debates, others indicated that AITIC services have not really increased their knowledge of WTO issues, but rather helped in their work by providing information on meetings that they were unable to attend themselves. AITIC's information summarises and analyses the events and states the positions adopted by different countries, which allows the delegates to participate in the following meeting on that topic.

All respondents said that the information by AITIC has helped them to better understand the issues and therefore adopt a more informed negotiating stance. For delegations where the capital was more involved in the international trade negotiations, respondents indicated that AITIC's publications helped them to

report to their capitals. It should be noted that there is a difference between countries that saw AITIC as their main or only source of information (especially the Francophone countries and the non-residents) and countries that also use other sources of information, like the South Centre and ICTSD. In general, the latter group ascribed a smaller (but still positive) role to AITIC.

Regarding the possible overlap between the output of AITIC and other organisations, many delegates noted that there is some duplication, but that it is difficult to prevent and, in general, limited. They felt that all organisations have their own perspectives, and the respondents find it useful to get information on an issue from different perspectives. The comparative advantages of AITIC's services according to the respondents were that AITIC's output were seen as more analytical and with a better focus of the needs of developing countries. Also, the fact that AITIC only focuses on the WTO and not on other issues were seen as a plus of AITIC. As mentioned earlier in this section, the trilingual provision of AITIC's services and the informal and personal nature of contacts are also important characteristics. A final element that distinguishes AITIC from other trade-related organisations providing information on the WTO is that AITIC, unlike other organisations, has access to both formal and informal meetings of the WTO.

More information about the link between AITIC's activities and its impact on participation of its beneficiary countries in the WTO is provided in the next chapter.

6 IMPACT

This chapter examines the impact of AITIC. It looks more closely at the participation of AITIC beneficiary countries in the WTO and the possible role that AITIC has played in this context. It is important to be cautious in interpreting the results. There are many factors that influence both the participation of countries in the WTO negotiations and the positions that these countries take in negotiations. Sometimes a newspaper article can have more effect than an elaborate paper on this issue. Negotiations also take place on a very high political level, meaning that countries can take a position that is not always best for their interests in terms of content. For example, if powerful developed countries threaten to take away the trade preferences of developing countries, this will have an impact on this latter group's position. The role of technical assistance is not necessarily important at this level.

In the design for this evaluation, the following four indicators for assessing the impact of AITIC were identified:

- I. New positions adopted by LACs (supported by AITIC) in various WTO Councils and subsidiary bodies.
- II. WTO subjects where LACs cooperated and pooled resources.
- III. Active participation of LACs in the WTO trade talks.
- IV. Negotiation results for LACs (when personally assisted by AITIC).

Given the fact that the WTO deals with many different subjects, and that many different countries have made use of AITIC's services, it would be too time-consuming to find out if these countries have made statements or submitted proposals in all different WTO Councils or negotiating groups. It was therefore decided that the evaluation would only assess the impact of AITIC by asking country representatives about their experience in relation to the impact indicators above. It should be noted that one of the respondents is from a country still in the process of acceding to the WTO and was therefore not able to respond to these questions. This representative noted that his country had not received specific support in its accession process from AITIC, but neither had it requested support for this.

The following gives an analysis of the respondents' views on the four impact indicators.

6.1 Newly acquired positions taken by LACs

Almost all respondents said that AITIC has had an impact on the positions they have taken in the WTO on different issues. At the same time, many of these respondents also explicitly noted that this impact is only indirect, and that there are many other factors affecting their position. The contribution of AITIC is mainly that it helps countries to better understand the issues at stake so that they are able to adopt more informed negotiating positions. When asked about the areas in which AITIC has generated most impact, the respondents could often not specify. Five respondents identified the areas in which AITIC has been most

important to them, but these were different for each of the respondents. The identified areas are: TRIPS (and health), agriculture, services, customs valuation, special and differential treatment and the Singapore issues.

Two respondents indicated that they did not know whether AITIC had had an impact on the position that their country took during the negotiations because they only used AITIC's services to report to their capital.

The fact that almost all respondents claimed AITIC has had an impact on their position on WTO issues indicates that AITIC indeed generates significant impact. But since AITIC is not the only factor influencing countries' positions, the extent to which it does is difficult to define.

Because AITIC has had some impact on the position of countries in the WTO, this may also have a knock-on effect on the level of participation of countries in the WTO (Section 6.3) and maybe even on the negotiating results (Section 6.4). Given that this is only a very indirect link, one can assume that these effects are limited however.

6.2 WTO subjects where LACs cooperated and pooled resources

While a number of countries indicated that they often work with other countries in the WTO, only two said that AITIC has sometimes played a role in this, because countries meet each other in seminars. All others indicated that these groups had already been formed in the WTO itself or in other forums. Important country groups in which respondents participated are the African Group, the group of LDCs and the ACP group. One country noted that AITIC also plays a role in the current representation of the Pacific region in Geneva. Although AITIC did not play an important role in initiating this representation, it currently provides office space to them.

A number of respondents noted that they did not see the stimulation of cooperation between countries or the pooling of resources in the WTO as a goal of AITIC. It is interesting to note that one delegate thought the idea of cooperating and pooling of resources was a good one, although in practice often not effective. For example, in the group of LDCs there are too few experts, meaning that those countries who do have experts become focal points for too many areas of the WTO on behalf of that group. One LDC delegate said he was the focal point for more than five topics within the WTO.

Given that only two respondents indicated that AITIC has had some impact on their cooperation with other LACs, it seems the impact of AITIC in this area has been weak.

6.3 Active participation of LACs in the WTO trade talks

The participation in the WTO of the countries whose representatives were interviewed varied considerably. It ranged from non-resident countries that only came to the WTO once a year for the Geneva week, to countries that regularly attend meetings and have occasionally tabled proposals. One delegate said that

his main priority in Geneva was to find possible means and instruments for the provision of technical assistance to officials in his capital.

The level of increase in the participation of the countries concerned over the last years also varied per country. A number of respondents claimed that their personal knowledge had increased over recent years, but the participation of their country had not really increased, because their delegations remained small, and the countries therefore still not able to participate in all WTO meetings. Some respondents noticed more interest from their capital towards the WTO, which was reflected in larger delegations attending ministerial conferences, and chairing some sessions of country groups.

The countries of only a very small number of respondents had submitted proposals to the WTO (always in cooperation with other countries), and they all said that AITIC has not assisted the delegates in initiating or writing these proposals.

To conclude, although some respondents indicated that their participation in the WTO had increased, none of the respondents made a link with AITIC's activities. The impact of AITIC in this area should therefore be considered poor.

6.4 Negotiation results for LACs

The question of negotiating results for LACs personally assisted by AITIC was irrelevant to many of the participants, since many were not actively involved in the negotiations in the sense that they have tabled proposals. As mentioned above, the ones that have tabled proposals said that AITIC was not involved in this. Only one delegate, who claimed he had discussions with the Director of AITIC about the legal language used in the negotiations on TRIPS and health, felt that AITIC's input had had some impact on this debate. The role of AITIC was not further specified however.

Given that AITIC has not been involved in assisting the LACs in the preparation of proposals, AITIC was unable to generate any impact on the negotiating results for LACs.

7 ASSESSING PERFORMANCE

This chapter presents the scores on the performance of AITIC. The scores on efficiency, effectiveness and relevance follow a uniform scoring methodology developed for all TRTA activities that have been selected for measurement of effects at the level of individuals and countries as beneficiaries of TRTA. For the ranking, a five-point scale is applied: Poor (P), Weak (W), Fair (F), Good (G), and Excellent (E). An explanation of the rating methodology can be found in Annex 4.

7.1 Efficiency

Output delivered according to schedule, plan and budget (Score: could not be determined)

For this evaluation, only one business plan is available, for the period 1999-2000. In addition, there is a draft business plan for the period 2002-2003. Neither are very specific about the activities AITIC will undertake during the years in question; they mainly list what type of services will be provided, i.e. a general description of background notes, seminars, personalised assistance, etc. Only a small number of specific activities are announced in the business plan for 1999-2000, but not all of these seem to have been realised. Also the schedule of activities¹³ for 2002 as included in the draft business plan for 2002-2003 contains many publications and seminars on different topics that have never been carried out. The reasons for the cancellation of some of these specific activities are not clear.

Activity reports are available for the years 1998-1999, 2000-2001, and 2001-2002 (although the latter is still a draft). While these activity reports give a clear overview of AITIC's activities (in particular the last two contain detailed information), they do not link back to the original plans for that year.

Given the lack of activity reports and plans, it cannot be established whether the output have been delivered according to plan and schedule.

Figures are also lacking on AITIC's finances (see Chapter 3). There is only information regarding the total budget for each year. The budget is available for the years 2000-2001 and 2001-2002, but the breakdown of this budget is only given by type of costs, not by type of activity. There is no information on actual expenditures. The delivery of output according to budget can therefore also not be established.

While it is difficult for a demand-driven organisation to prepare a business plan with detailed activities, it would be possible to be somewhat more specific, for example on the number of background notes that will be published or the number of seminars that will be held. While key topics of interest to the LACs may change

¹³ It should be noted that the schedule of activities for 2002 was published only in June 2002, although the schedule may have been compiled earlier.

during the year, it is important to indicate the ways in which the demand from the LACs will be translated into AITIC output (see also Section 7.4).

Relationship between input and output (Score: could not be determined)

There is limited information available on AITIC's input: While 13 persons are working at AITIC, not all of them work full-time, and the number of FTEs is unknown. There is also no information on the exact input of consultants.

It is unknown how much time donors spend on AITIC. The input from the Dutch government in AITIC have been limited until now, because as explained earlier the Netherlands has not transferred any money to AITIC so far. One delegate from the Permanent Mission of the Netherlands is a member of the Preparatory Committee for AITIC's transformation process.

The lack of information on input makes it difficult to assess the relation between input and output. Nevertheless, given the fact that during most of AITIC's lifetime only the Director has been working on content¹⁴ and is therefore responsible for all publications, seminars (both the organisation of own seminars and participating in seminars of other organisations), and a large part of the personalised assistance, the number of output produced is substantial. The increases in the budget for AITIC's activities have led to an increase in the number of staff, but many staff are working in support areas, such as the website, documentation, administration, etc. Although their tasks are relevant for the services that AITIC provides, one can question whether it would have been better to attract more people to work on content. However, given that there is too little information about the input of the other staff members and the exact output that they produce, no firm statements can be made in this respect.

Table 7.1 Efficiency

Indicators	Score
Realisation of output according to plan, budget and schedule	Could not be determined
Relation input-output	Could not be determined

Given the lack of information on input, business plans, activity reports and financial details, the overall efficiency of AITIC cannot be assessed in the current evaluation framework.

Overall score on efficiency: Could not be determined

7.2 Effectiveness

The appreciation of AITIC's services is high. AITIC has found three niches in the market for trade-related technical assistance:

¹⁴ Although in the course of last year a former LDC delegate joined the staff with funding from AIF and is now also working on content.

- I. The provision of services to the non-residents;
- II. The provision of services in all three official languages of the WTO: English, French and Spanish;
- III. The provision of personalised assistance.

A weakness of AITIC as expressed by a number of respondents concerns the lack of focus of AITIC's activities, both in terms of topics that are covered and its target groups. Because AITIC is still a small organisation, it cannot cover all developments in the WTO. Some respondents noted that it would be good if AITIC better prioritised its focus. AITIC should only address those topics that are most relevant for the LACs and not try to cover everything. Regarding the target groups of AITIC, some respondents wanted more specific information for LDCs. Finally, it was noted that the services are sometimes non-transparent: as representatives do not know the timing or topics of forthcoming publications or seminars, they cannot plan around these activities.

Despite these short-comings, all interviewed country representatives indicated that the services provided by AITIC had helped them to better understand different WTO issues, either because AITIC has clarified issues for them, or because AITIC reports on WTO meetings that country representatives were unable to attend in person.

It was clear from the interviews that, because LACs have very limited capacity to follow the WTO, they have a great need for clear and concise information on current developments. AITIC is able to provide this, although it has too little capacity to report on everything, given its small staff. It was remarkable that many of the interviewed country representatives were not aware of the services provided by other organisations. Those respondents who were ascribed a smaller -but still positive- role to AITIC than other respondents in terms of its contribution to their knowledge on WTO issues.

Regarding the different services provided by AITIC, all were rated positively. The most remarkable result of the interviews was that not all respondents were aware of the personalised assistance that AITIC provides, while this is one of the Agency's core activities. Although this service is listed in AITIC's leaflet, the interviews show that there is room for more active promotion of this service to country representatives.

There are two areas of activity where AITIC's involvement can be questioned, although they form only a very small part of all activities. This concerns part of the translation services and attending the conferences of other organisations. While the translation services are a very important and distinguishing feature of AITIC, the question is whether they should do all the translations that they are currently carrying out. This mainly relates to the translation of official WTO documents. The WTO itself translates its documents in the three official languages of the organisation, but some country representatives indicated that the translations are often provided too late. Although this shows that there is a need for these translations, the question is whether or not AITIC should be responsible for making up for the shortcomings of the WTO.¹⁵ Secondly, the number of seminars

¹⁵ In the information provided in the comments on the draft report, it was indicated that AITIC has recently stopped this activity; it now summarises and translates the documents at the same time, so that there is no duplication (see also Section 4.1).

organised by other organisations that AITIC attends has been rapidly increasing over the last years. In 2002-2003, 39 seminars were attended. While AITIC should be aware of what other organisations are doing, and although sometimes the seminars are very short, it is important to identify AITIC's priorities, as attending these conferences places a limit on the time available for working on other activities.

The outreach of AITIC's activities has steadily increased over recent years. From the data available, AITIC seems to be increasingly capable of reaching its target groups.

Table 7.2 Effectiveness

Indicators	Score
Application of AITIC's output by beneficiaries	G
Added value (finding of niches)	G
Outreach	G

Overall score on effectiveness: Good (G)

7.3 Relevance

Regarding the relevance of AITIC, an assessment is made of the contribution of AITIC's work to the achievement of Dutch policy objectives in the field of TRTA.

In the design for this evaluation, two questions were identified to establish whether AITIC has contributed to the achievement of Dutch policy objectives:

1. To what extent has the outcome of AITIC contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?
2. To what extent has the outcome of AITIC contributed to the formulation of a national policy in the developing country at the interface of trade and development?

It should be noted that the first part of question 1 concurs with AITIC's goal, which is formulated as "to help less-advantaged countries (LACs) to benefit from the globalisation process in general and the multilateral trading system in particular by assisting them in taking a more active part in the work of the World Trade Organisation (WTO) and other trade-related organisations in Geneva, as well as the negotiations under the auspices of the former." Table 7.3 indicates whether or not the Dutch policy objectives for TRTA are within the scope of the TRTA programme (i.e. AITIC).

Contribution to the capacity of the developing country to negotiate and implement multilateral trade agreements (Score: W)

Most interviewed country representatives indicated that AITIC has had an impact on the position that they took in the WTO because they better understood the issues at stake. Nevertheless, the respondents also indicated that this impact has been indirect and there are other factors that have also had an effect on their position. Looking at the effects on the negotiating capacity of countries, it should be noted that most countries on which AITIC focuses its assistance were and are still not very active in the WTO. For many of AITIC's target countries, the

delegations had not grown in number of staff, and therefore the increase in capacity can only be limited. While all respondents said they had a better understanding of the issues, most countries never submitted a proposal to the WTO. The countries whose representatives said that they had become more active in the WTO indicated that this was not the result of AITIC. One respondent noted “AITIC is simply too insignificant for this”, referring to the limited capacity of AITIC. The impact of AITIC on the capacity of LACs to negotiate multilateral trade agreements is therefore weak.

AITIC does not focus on the implementation of the agreements, although it has done some more practical work on customs valuation. In the countries in which seminars have been held, there may have been some impact on the implementation of WTO agreements, but in general this will be limited, as AITIC concentrates more on current WTO developments.

In conclusion, the contribution of AITIC to the capacity of countries to negotiate and implement multilateral trade agreements is weak.

Contribution to the formulation of a national policy in the developing country at the interface of trade and development (Score: W)

Although AITIC focuses on the WTO and not on more general national trade policies, a small number of country representatives indicated that a better understanding of WTO issues has also helped them to formulate better trade policies in their respective capitals. In particular, the fact that AITIC focuses on development has contributed to this. However, given that AITIC targets its services on the Geneva delegates and on non-residents in other EU capitals, and given that the capitals are only on the mailing list and not involved in other AITIC activities (with a few exceptions), the contribution is rather limited.

Table 7.3 Relevance

Indicators	Indicator within the scope of the TRTA programme	Score
Capacity of the developing country to negotiate and implement multilateral trade agreements	Yes	W
Contribution to formulation of a national policy of the developing country at the interface of trade and development	No	W

Overall score on relevance: Weak (W)

7.4 Specific issues

Demand-led approach

AITIC is a demand-driven organisation. This becomes most apparent from the personalised assistance that it offers: delegates of LACs can ask specific questions of AITIC. Also, the topics on which publications are made or seminars are organised are based on AITIC’s contact with these delegates. Although it

appeared from the interviews that AITIC's services meet the demands of its beneficiaries, there seems to be no system in place for identifying the needs of LACs. If they are only based on informal contacts, this may imply that countries most often in contact with AITIC also have a larger impact on AITIC's workload. The suggestion of one of the interviewed delegates to send out questionnaires to the LACs (or at least to AITIC's members) to identify their most pressing needs seems a valuable idea in this context. This will ensure that AITIC is working on the most pressing needs of the LACs and may at the same time increase the feeling of 'ownership' amongst beneficiary countries.

In addition, the personalised assistance could be better systemised. There are currently no guidelines for handling requests for personalised assistance. If the number of requests grows in the coming years it is important that there are clear guidelines for handling these requests. This will increase transparency and ensure that AITIC is able to handle all requests in the absence of the Director.

Finally, the mailing list for AITIC's publications has so far been compiled by the Director on the basis of new contacts. It would be good to allow interested parties to subscribe to the publications themselves, e.g. through the website. This would give a clear indication of the demand for AITIC's publications.

Future performance

The budget and staff of AITIC has rapidly increased since its creation. While the organisation started its activities in 1998 with only the current Director and an assistant, the organisation currently has a staff of 13 people and its budget has increased accordingly. In December 2002, the Agreement to transform AITIC into an IGO was signed. The IGO status will provide AITIC with a broader funding base so that it can further expand its services. Given the increase in requests for personalised assistance, the expanding mailing list for the publications and growing membership of AITIC, there is certainly a demand for the further expansion of AITIC's services. This was also clear from the interviews, where respondents indicated that an increase in the capacity of AITIC would allow the Agency to follow more topics in the WTO, and to further expand its personalised assistance so that it becomes more institutionalised. Staffing plans show that AITIC intends to expand the number of staff to 21 people by 2007.¹⁶ A Deputy Executive Director will be installed, and the number of counsellors, junior professionals, translators and interns will also grow.

Even with an increase in staff to 21 people, AITIC will remain small. Hence, it is unlikely that AITIC will lose its comparative advantage as a flexible and non-bureaucratic organisation. The expansion of its capacity will allow the organisation to become more solid. Currently, the Director has many responsibilities within AITIC, as reportedly nothing leaves the Agency before she has seen it. While this has so far not led to any major problems, it makes the organisation very vulnerable: if the Director were to leave, many activities could not be carried on by the rest of the staff. A change in the organisational structure with more senior staff would reduce this vulnerability.

¹⁶ Information provided in the comments on the draft of this report indicate the maximum number of staff will be 15 by 2008 (see also Section 2.4).

It is unclear if the current envisaged financial structure will make AITIC financially sustainable when it becomes an IGO. This will depend on the extent to which the demand of LACs for AITIC's services further increases in the coming years. If the demand is larger than AITIC's capacity, this may lead to financial problems or to a situation where AITIC is not able to respond to all requests. When the AITIC Agreement was signed, it was decided that LACs could become a member of AITIC and make use of the services without making a financial contribution. Most delegates indicated in the interviews that they would not be able to pay for AITIC's services. A small number said that if the personalised assistance was more elaborate, comprehensive and country-specific, they would be willing to pay a fee for that. Currently, this type of personalised assistance is not provided. The fee income would be a good indicator of the value delegates place on this service.

AITIC will not drastically change its activities when it becomes an IGO. The increase in its capacity will be mainly used to further expand its current services. This is likely to contribute to a better understanding of the multilateral trading system amongst the LACs. The fact that the increase in the services offered by AITIC may lead to more detailed and elaborate personalised assistance may result in a more active participation of countries in the WTO. The active participation will also depend on their capitals however: if they do not increase the size of their delegations, it is unlikely that countries can become very active players. Nevertheless, a better understanding of issues at stake in the negotiations will at least make countries more aware of what they sign up to in the WTO. In the Uruguay Round, this was not always the case.

7.5 Conclusion

AITIC's performance

Due to a lack of data, the efficiency score cannot be determined.

The effectiveness is good, as AITIC's services have helped to increase the knowledge of the beneficiaries. With its personalised assistance, its trilingual character and its focus on non-residents, it has found a niche in the market for TRTA. The services are highly appreciated and the demand for its services is increasing.

AITIC's relevance is weak. Although the knowledge of its beneficiaries has increased, these groups are in general still not very active in the WTO. This means that AITIC has only had a very limited impact on the capacity of its beneficiary countries to negotiate and implement multilateral trade agreements. AITIC also seems to have had a very limited impact on the formulation of national trade policy at the interface of trade and development, as most of its activities are targeted towards the delegations in Geneva. AITIC therefore only partly contributes to the achievement of Dutch policy objectives.

Issues for consideration

There is scope for identifying demands of LAC delegates more systematically. This will help to increase the transparency and ownership of AITIC.

Some country representatives have noted that it would be good if AITIC could prioritise its focus, at least as long as it has no capacity to follow all developments in the WTO.

Future performance

Because AITIC's budget will increase once it becomes an IGO it will be in a position to further expand and improve its services and thereby address some of its current shortcomings. The IGO status will allow AITIC to attract high-level experts who can work on substance.

PART C

QUAKERS UNITED NATIONS OFFICE

1 QUNO's TRIPS PROGRAMME

1.1 QUNO: an introduction

The Quaker United Nations Office (QUNO) in Geneva is part of the global Quaker organisation, a religious organisation with a history of more than 300 years. The Quakers (also called "Friends") have offices all over the world, and membership is about equally divided between developed and developing countries. There are two Quaker offices that follow the UN and other international organisations: QUNO in New York and QUNO in Geneva. The Quakers have always shared the UN's aims and supported its efforts to abolish war and promote peaceful resolution of conflicts, human rights, economic justice and good governance.

QUNO in Geneva is managed jointly by Britain's Quaker Peace & Social Witness (QPSW) and the global Quaker body Friends World Committee for Consultation (FWCC). QPSW works with the Society of Friends in Britain and sees "equality, justice, peace, simplicity and truth as a challenge to alleviate suffering and seek positive social change." This organisation is active in several areas. Amongst others, it is active in peace-building work in other countries, works with the UK parliament, has activities on corporate social responsibility, and organises campaigns on peace. FWCC is set up to promote a better understanding among Friends over the world. These two organisations appoint the QUNO committee, which oversees the work of QUNO and sets priorities for the programme work.

As well as representing Quakers at the UN (QUNO has general consultative status with the UN ECOSOC and NGO observer status with the ILO and WIPO), QUNO facilitates dialogue and works on specific issues. The QUNO office in Geneva has three fields of work: trade and development, disarmament and peace, and human rights and refugee issues. The work on trade and development focuses on the International Labour Organisation (ILO) and the World Trade Organisation (WTO). One of the four topics in the field of trade and development is the relation between trade and intellectual property. QUNO's activities on this topic mainly deal with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1.2 History of QUNO's TRIPS programme

QUNO launched its TRIPS Programme in 1999. The Programme has its origins in concerns in the early 1990s of the QPSW about the environment and development.¹ QPSW started the Environmental Intermediaries Programme (EIP) on genetic resources, which tried to help Southern African countries to play an effective role in the negotiations for the revision of the International Undertaking on Plant Genetic Resources (IU) in the UN's Food and Agriculture Organisation (FAO). By the mid 1990s, it became clear that the TRIPS agreement of the WTO would also affect the future of genetic resources. After discussions with a range of missions in Geneva and with a number of experts in 1998, it was decided to move the work on genetic resources from the QPSW to QUNO in Geneva. QUNO would focus on the review of article 27.3(b) of the TRIPS agreement, for which there was a mandated review in 1999. This article provides for exclusions from patentability for certain living organisms.

¹ See Tansey, G. (2001).

Box 1.1 The WTO's TRIPS Agreement²

The Agreement on the Trade-Related Aspects of Intellectual Property Rights (referred to as the TRIPS Agreement) was negotiated in the Uruguay round (1986-1994) and entered into force in 1995. An important reason for concluding this agreement was that the extent of protection and enforcement of intellectual property rights (IPRs) varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. The TRIPS Agreement establishes minimum levels of protection that each government has to give to the intellectual property of other WTO countries.

IPRs usually give the creator an exclusive right over the use of his/hers creation for a certain period of time. This should stimulate innovation, and thereby also economic development. As a result of the exclusive rights of the intellectual property right holder, the right holder has a temporary monopoly for the duration of these rights, which can lead to higher costs for consumers as a result of higher prices. This tension between the longer-term benefits from innovation and the short-term costs to consumers has been recognised in the TRIPS Agreement and is reflected in the objective of the Agreement, which is formulated as follows. "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

The TRIPS Agreement has been one of the most controversial agreements of the WTO. There are three main issues of controversy:

- 1) The implementation of TRIPS. As many developing countries did not have an intellectual property rights regime, the TRIPS led to substantial administrative changes and costs.
- 2) The effect of TRIPS on welfare and North-South relations. The fact that most IPRs are held by companies in the developed world, makes TRIPS a north-south issue. In addition, it is feared that an increased level of IPRs limits technology transfers. This controversy played a central role in the TRIPS and health debate (see Chapter 6).
- 3) The moral, economic and ethical implications of IPRs related to living organisms. This relates to article 27.3(b) of the TRIPS Agreement. While this article provides the opportunity to exclude plants and animals other than micro-organisms from patentability, as well as essentially biological processes for the production of plants or animals other than non-biological and microbiological processes, countries are required to provide protection for plant varieties, either by patents or an effective *sui generis* system. This can have important implications for food security and for biodiversity.

QUNO's TRIPS Programme started with a policy discussion paper by Geoff Tansey, "*Trade, Intellectual Property, Food and Biodiversity: Key Issues and Options for the 1999 Review of Article 27.3(b) of the TRIPS Agreement*", which was financed by DFID. After this publication, QUNO organised a series of informal, off-the-record meetings in 1999 and in 2000 for developing country missions. During these meetings, missions could debate issues and develop confidence to engage with developed countries whose interest they saw as different from their own. In this first phase of the TRIPS Programme, the activities were funded from the Quakers' own resources (except for the discussion paper of Tansey). In 2001, it was decided to extend the range of participants and to broaden the range of stakeholders involved. To realise this, a number of donors were approached, among which the Netherlands.

² Sources: WTO website, the Global Trade Negotiations Homepage, and Tansey, G. (1999).

1.3 Relationship with the Netherlands

The Netherlands has supported QUNO's TRIPS programme from September 2000. The Directorate General for International Cooperation (DGIS) has given support to the TRIPS programme through three contracts, one of which is still running. In addition, the Permanent Mission of the Netherlands has supported two smaller projects. The following gives a brief overview of the contracts between QUNO and the Netherlands, in chronological order.

When QUNO decided to expand its activities in the TRIPS area, the Permanent Mission of the Netherlands granted CHF 15,000 to carry out a scoping exercise. This activity involved holding interviews with delegations, donors, and other organisations active in the TRIPS area, in order to come to a broadly supported proposal for the TRIPS Programme. This proposal laid the ground for the second phase of the TRIPS Programme. DGIS supported this programme with a grant of EUR 143,391, which is slightly more than 45 percent of the total budget for the second phase of the TRIPS Programme.³

During the second phase of the TRIPS Programme, there was an increasing demand for QUNO to also deal with the debate on TRIPS, health, and access to essential medicines. This demand came from the delegations, from other Quaker organisations and from some of the donors. In response to this, QUNO decided to supplement phase II of the TRIPS Programme to support developing countries efforts to address crucial issues in the TRIPS and Health debate. The Netherlands is the largest donor for this supplementary work, providing support of EUR 29.818,12, around 66 percent of the total costs of these supplementary activities.

When the second phase of the TRIPS Programme came to an end in 2002, a third phase was launched, as delegations expressed demand for a continuation of QUNO's work. A scoping exercise was held again to identify the interests among the participants in QUNO's activities. The Permanent Mission of the Netherlands in Geneva contributed CHF 10,000 (around EUR 6,500) to this scoping exercise, which was about 43 percent of the total costs.

The scoping exercise resulted in a proposal for the third phase of the TRIPS programme. This third phase will run for two years, but a budget has only been prepared for the first year. DGIS has committed EUR 331,116 for the third phase. In the first year, DGIS contributes EUR 165,558 to the costs, which is about 53 percent of the total budget for that year. One of the reasons for a separate budget for the second year is that the current director will step down, but will stay involved in the programme as a consultant. In addition, QUNO wanted to await the outcome of the Ministerial Conference in Cancun before planning their activities for the second year. Before the second year starts, QUNO will present the budget for that year. The support from the Netherlands for the second year will depend on the budget that will be presented, but will not exceed the amount committed in the first year.

1.4 Scope of the evaluation

This evaluation will examine the TRIPS programme of QUNO, as this is the only programme within QUNO that has been funded by the Netherlands. Moreover, within the trade and development field of work, this has been the area with most activities.

³ More information about total budgets and costs is presented in Chapter 3.

As became clear from the previous section, the TRIPS Programme consists of three phases:

- I. The first phase started with the publication of the paper of Tansey (1999). Following the publication of this paper, a number of informal meetings and seminars were organised. Because of the interest of delegations in QUNO's activities in this field, it was decided to expand the programme. The first phase was funded by the Quakers and ran from 1999 to February 2001.
- II. The second phase started in March 2001. In this phase, the range of participants, stakeholders and activities was extended. During this phase, additional funding was requested for supplementary activities on TRIPS and Health. The second phase came to an end in August 2002.
- III. In the third phase, the activities under the TRIPS Programme continue. This phase runs from September 2002 to the end of October 2004.

As proposals and activity plans have only been developed after the first phase, the focus of this evaluation will be on the second and third phase of the TRIPS programme.

2 VIEWS FROM THE CONTRACTOR

This chapter provides information on the views of the contractor regarding the objectives of QUNO's TRIPS Programme; its target groups; its cooperation with other organisations and the value added of QUNO; and the role of donors and funding. It is based on interviews held with the contractor in Geneva.⁴

2.1 Objectives

QUNO's objective for the TRIPS Programme is to strengthen the capacity and understanding of WTO developing country governments, to obtain greater equity and justice in the TRIPS negotiating process. QUNO does not however apply a definition for "strengthening the capacity and understanding," nor has QUNO stipulated criteria and indicators to assess whether it has reached this objective. During one of the meetings it was stated that QUNO's goals are two-fold: to improve knowledge of developing country governments (both legal and technical; content and process) and to maintain unity between developing countries. This second element was later rephrased in developing a strategy for the WTO as a whole (process of the negotiations and development concerns). As mentioned before, although QUNO does not apply any criteria or indicators to assess whether it has reached these goals, the interviewees felt that objectives were reached because there is an increasing demand for QUNO's services. Regarding the impact of QUNO, it was explicitly noted that it does not want any credit for negotiation results ("you can claim both successes and failures"), because there are many other factors that play a role in the outcome of the negotiations.

The proposals for the TRIPS programme clearly indicate the intended output of the programme. It can objectively be assessed whether these have been attained. Sometimes it is difficult to predict the output in advance however, as QUNO also works on demand. It is therefore necessary to have some flexibility. For example, sometimes delegations may ask for more informal Quaker House seminars (e.g. in the run up to the Declaration on TRIPS and Health), while in other times there are many other urgent WTO matters, and there is less demand for Quaker House meetings.

Regarding the objectives of the Netherlands in TRTA, QUNO sees itself contributing most to the second objective (increasing the capacity to negotiate and implement trade agreements that reflect development concerns), but also to some extent to the first objective (building a national trade policy process), as it pays attention to the question of how the TRIPS agreement can be translated into national legislation, taking the development dimension into account.

2.2 Target groups

The focus of the TRIPS programme is on developing countries, but developed countries are also regularly invited to participate in QUNO's activities. There is no strategy for targeting

⁴ In the QUNO office in Geneva, the following people have been interviewed: Brewster Grace (QUNO director and representative of the TRIPS Programme), Jonathan Hepburn (Programme associate), and Geoff Tansey (senior Programme Consultant).

certain developing countries more than others; QUNO does not for example only focus on LDCs. It was noted that QUNO has found that target strategies do not always work, as many of the countries that participate in QUNO's activities are ultimately self-selecting, based on interest and commitments to specific negotiations. Before QUNO actually invites delegates, it looks at which countries are likely to be interested in the subject and which countries are active in the negotiations. On most issues, regional groups pick one country to follow and participate in the negotiations on their behalf, because the countries have too little capacity themselves. Because QUNO has good contacts with the delegations, it requires only a few telephone calls to find out which countries to invite. It was stressed that QUNO does not want to focus on a limited number of countries, as this might lead to the politicising of QUNO's activities.

Within countries, QUNO mainly focuses on the Geneva delegations (70-80 percent), although governments in the capitals, experts and other organisations working in the field are also targeted. Real capacity building in the South is left to other organisations.

QUNO does not have an explicit media strategy. It was mentioned that "QUNO is not a brand that needs to be sold". Especially the informal and confidential character of the Quaker House meetings makes more media attention not desirable. Given the role the media played in the TRIPS and health debate, more media attention in other areas of development concern can be desirable to reach some results in the negotiations. The senior programme consultant felt that it would be better if other NGOs would pick this up, given the reasons mentioned earlier. QUNO could contribute by giving input to these NGOs. He mentioned that it would be good to find a broader audience for the background papers.

2.3 Cooperation with other organisations and value-added

When QUNO started its activities, the attention given to the TRIPS agreement was still relatively limited. QUNO was the first Geneva-based organisation that focused on the TRIPS agreement. Now there are other organisations that are dealing with the issue and QUNO attaches much importance to the issue of complementarity and avoiding overlap. It therefore has many contacts with other organisations. In Geneva, there is a coordinating group of NGOs dealing with TRIPS, which has regular meetings (ad hoc, but on average once every or every other month). During these meetings, it is discussed who will undertake what. In some activities, the cooperation with some organisation is much more intense, e.g. with ICTSD in the organisation of regional seminars.

The value added of QUNO lies in two things: its focus on only two elements of the TRIPS agreement and the attention paid to the negotiating process.

Regarding the thematic focus, QUNO only deals with the review of article 27.3(b) and with the TRIPS and health discussion. This was because the programme started from a Quaker programme on environment. As the review of article 27.3(b) would have important implications for genetic resources, it was decided to develop a special TRIPS Programme on it. When the debate on TRIPS and health started, both government delegations and other Quaker organisations asked QUNO to also pick up this issue. QUNO does not deal with other issues relevant to the TRIPS agreement, like geographical indications. An important reason for this is that geographical indications are not a matter of life and death and are therefore no priority for the Quakers. It therefore leaves this issue to other organisations dealing with TRIPS. In the near future, QUNO will keep focusing on TRIPS and Public Health, because following the decision on TRIPS and Public Health, the waiver that has been

agreed upon needs to be replaced by an amendment (for more details, see Chapter 6). QUNO will increasingly focus on the issues related to article 27.3(b) of the TRIPS Agreement, like disclosure, traditional knowledge, the convention on Biological Biodiversity (CBD) and compatibility with other forums, like WIPO, but also with bilateral and regional trade agreements.

The advantage of a narrow thematic focus is that it makes it possible to go into detail. There is a focus on the language of the texts of the agreement: how the text can be interpreted, what flexibility is provided and how this impacts on development.

QUNO feels it is unique in its focus on process. Although it is impossible to discuss process without content, it is estimated that the shares of attention to content and attention to process are 50-50 respectively. Notably, in the informal Quaker House seminars, developing country delegates come together and can exchange ideas, experiences, ask input from experts and try to develop a strategy for the WTO negotiations. The informal and demand-driven character of the meetings enables countries to develop a better understanding of the issues at stake and of each other's position in the debate. QUNO feels that its activities contribute to confidence building and solidarity amongst delegates, also because personal relationships are established between delegates, which is an important value added.

2.4 Funding and donors

Besides the Netherlands, Norway, DFID, the Rockefeller Foundation and Oxfam are important sponsors. Donors sometimes try to influence the activities of QUNO, but QUNO only accepts this if the requests of donors coincide with their own objectives, e.g. with the seminars organised in the Netherlands and Norway. These countries are both considered being pro-development. On the other hand, Switzerland wanted QUNO to write a paper on geographical indications, which QUNO rejected.

It has been a conscious decision not to charge any user fees for its activities. Developing countries lack the resources, and QUNO sees it as unfair to let developed countries pay if other countries receive the same services for free. Sometimes participants cover their own travel costs.

On the question of whether it is possible to have an impact on the WTO negotiations with only a small financial contribution, the response was positive. The senior programme consultant illustrated this with the development of the Doha declaration, where QUNO's cross-regional focus and its coordinating role have helped to come to a legally sound unanimous proposal for the TRIPS and Health declaration. He said that without QUNO's work, there would probably have been much more and weaker proposals.

3 INPUT

3.1 Budget, costs and funding

This section gives an overview of the budgets for the different phases of the TRIPS programme. To the extent possible, the costs are also presented. These are based on the reports sent to DGIS.

Phase II

A breakdown of the budget for the second phase of the TRIPS Programme is presented in Table 3.1.

Table 3.1 Budget for core activities in phase II

Budget	Amount (CHF)
3 Residential seminars	118,800
8 Quaker House seminars	18,400
Discussion papers & other publications	203,960
Regional seminars	47,750
Contingency	30,000
Interns	15,000
Administration overhead	43,391
Total	477,301

The total budget for the programme is CHF 477,301⁵, of which CHF 220,974 is funded by the Netherlands. Other donors in this second phase are the Rockefeller Foundation and the UK's Department for International Development (DFID), which have contributed CHF 198,663 and CHF 52,525 respectively.

When it was decided to do more on TRIPS and Health, QUNO approached donors again to finance the activities in this field. The budget for these supplementary activities is presented in Table 3.2.

⁵ All amounts are indicated in Swiss Francs (CHF) because all budgeting and reporting by QUNO is done in that currency. One Swiss Franc is around EUR 0,65.

Table 3.2 Budget for the supplementary activities in phase II

Budget	Amount (CHF)
Consultative panel honoraria	14,000
Consultative panel meetings	42,000
Geneva seminar with panellists	3,000
Two public outreach seminars	15,750
Discussion papers for seminars (printing and dissemination)	1,000
Administration	21,400
Office supplies and equipment	1,500
Communications	1,000
Contingency (15%)	14,950
Overhead (7.5%)	8,600
Total	123,200

At the time of the proposal, the total costs of the supplementary programme were estimated at CHF 123,200. DGIS would contribute one third of the costs of this programme; the other donors would be the Rockefeller Foundation and SIDA. The American Friends Service Committee would contribute to the local costs of organising the seminar in North America. The correspondence with DGIS shows that this budget has been lowered because QUNO was unable to attract funds for organising the seminar in North America. Also the travel costs of experts had been lowered. The total budget could therefore be reduced to CHF 65,665. Rockefeller contributed USD 7,500 and USD 5,000 came out of a special budgetary fund of QPSW. The original contribution of DGIS was increased by CHF 6,565.

The only information regarding the real costs of the programme are the financial reports that have been sent to DGIS. These reports only provide information on the activities that were earmarked for Dutch support. There is therefore no information on the total costs incurred by QUNO for the TRIPS Programme phase II. Nevertheless, the reports to DGIS provide some indication of the costs. Table 3.3 gives a comparison between the budget and the real costs regarding the Dutch contribution.

Table 3.3 Comparison of budget and costs in phase II, DGIS contribution

Activities	Budget (CHF)	Costs (CHF)
2 Residential seminars	79,200	79,200
8 Quaker House seminars	18,400	13,669
Discussion and other papers	77,957	69,555
Contingency	30,000	41,118
Overhead	15,417	15,265
Total	220,974	218,809

As can be seen from Table 3.3, total costs have not exceeded the budget. A breakdown of the costs per item shows that for some budget components, shifts have taken place. Most notable is the large costs under contingencies. This reflects the increased attention for the TRIPS and health debate, which was not foreseen when the budget for phase II was prepared. Also, within the first three cost categories, some shifts have taken place:

- I. For the residential seminars, travel and hotel costs were lower than expected, while fees, administrative staff and communications costs were higher than expected.
- II. Also for the Quaker House seminars, travel, hotel and food costs were lower while the costs of the administrative staff were higher than expected.
- III. For the discussion papers, nearly all costs were lower than expected, except the costs for administrative support and production & dissemination of the occasional papers.

The costs and budget of the supplementary activities on TRIPS and Health in the second phase cannot be analysed into more detail, as there is no breakdown available of the budget after it was lowered from CHF123,200 to CHF 65,665. The correspondence with DGIS shows that the costs for these supplementary activities have not exceeded CHS 65,665, as at the end of the second phase, a formal Decision of DGIS indicates that the definitive contribution is lower than foreseen.

Phase III

For the third phase, a two-year programme was proposed to the donors. A detailed budget was only provided for the first year. This was because the activities for the second year would to a large extent depend on the outcome of the WTO Ministerial Conference in Cancun in September 2003. In addition, the fact that QUNO's Trade and Development representative would retire in the second year but still work on the TRIPS Programme as a consultant would also affect the budget. The budget of the first year of the programme of the third phase is presented in Table 3.4.

Table 3.4 Budget for the first year of the third phase

Budget	Amount (CHF)
2 Residential seminars	69,000
10 Quaker House meetings	18,000
Organisation of seminars in North America	40,500
Costs for the consultative panel	75,000
Issue papers and occasional papers	54,000
General background documents	17,700
Programme consultant fees and travel	102,000
QUNO staff	84,000
Total	460,200

The total budget for the first year of the third phase amounts to CHF 460,200. DGIS contributes CHF 241,338 for this first year. Other donors are the Rockefeller Foundation and the Canadian International Development Agency (CIDA).

As the third phase is still running, there is no information available on the final costs of the programme. What is available is an overview of the expenses made from the Dutch contribution up to 31 July 2003. As it was agreed with the Ministry that the first year would run to 31 December 2003 instead of August, the table also presents the projected expenses for the period August-December 2003.

Table 3.5 A comparison of the budget and costs for the first year of the third phase

Activities	Budget (CHF)	Expenses (CHF) until 31/07/03	Projected expenses (CHF) 01/08/03 – 31/12/03
Quaker House seminars, incl. Honoraria for occasional papers	18.000,00	7.190,47	6.500,00
Consultative group honoraria, travel	75.000,00	23.129,63	54.000,00
Design, production, printing and distribution of issue & occasional papers	12.000,00	1.500,00	6.000,00
Programme consultant fees & travel	58.500,00	37.831,83	28.000,00
Quaker programme & administrative staff	46.000,00	46.534,48	16.000,00
Programme related administrative costs	18.500,00	3.583,87	15.000,00
Total costs	228.000,00	119.770,28	125.500,00

The fact that the total costs for the period from September 2002 to 31 December 2003 is higher than budgeted (a surplus of CHF 17,270.28) can partly be explained by the fact that the budget was originally planned for 12 months, instead of 16. This also explains the much higher costs for the programme and administrative staff (CHF 62,534 instead of CHF 46,000). A second reason for exceeding the budget is the larger input from one of the experts of the consultative panel in the fall of 2003, for meetings with delegations on TRIPS and health. QUNO has indicated that the budget for the second year will accordingly be lower, as this year will run from 1 January 2004 to 31 October 2004.

3.2 Staff and consultants

QUNO has a very small team of only 1.5 FTEs working on the TRIPS programme. QUNO's representative for Trade and Development works for 50 percent of his time on the TRIPS programme, while a Programme Assistant works full time for the programme. There is part-time assistance for administration.

QUNO closely works together with a senior project advisor for the TRIPS programme, who provides expert input, writes and oversees QUNO's publications and participates in meetings. Since QUNO has started its activities on TRIPS and health, a consultative panel has been established, which provides intellectual input by writing papers and attending meetings. The experts in this consultative panel are Fred Abbott, Carlos Correa, Mohan Kumar and Graham Dutfield. The senior advisors and the members of the consultative group are all hired as consultants. Their individual input into the TRIPS programme varies in time. Two experts of the consultative panel indicated that they could spend 20 to 30 days per year.

3.3 Time span for preparing projects

No information could be provided on the time span for preparing projects, as the QUNO office does not keep any time sheets. The contractor noted that it would also be difficult to define, because often one activity flows into another activity; e.g. sometimes you have worked on an issue in the informal Quaker meetings and if this issue is then discussed in a residential seminar, it does not take a lot of time to prepare it.

Looking at the number of activities organised by QUNO, one can conclude that the time span for organising the Quaker House meetings is quite limited, given that at times more than one meeting a week can be held. For the other activities, it is more difficult to assess the time span. For example, if there is a long period between two residential seminars, is that because it took much time to prepare it, or because there were strategic considerations relating to the timing of an event? According to QUNO, it is the second factor that accounts for the timing of the seminars: this timing is mostly determined on the basis of WTO processes and timing and workloads.

Phase II seems to have lasted longer than originally planned, while the first year of the third phase is also delayed. According to the contractor, these delays are related to the time required for attracting and receiving the funds from the donors, and also to the fact that the timing of QUNO's activities is very flexible: at times when there are intensive negotiations on TRIPS there are many meetings, while if there are developments in other WTO areas (like the Ministerial Conference in Cancun), QUNO's activities are limited

4 OUTPUT

4.1 Publications

QUNO publishes different kinds of publications: discussion papers, issue papers and occasional papers. Discussion papers aim to give an overview of a specific issue and present options for dealing with this issue. These papers are prepared in a consultative way: the author seeks feedback from people providing different perspectives. They are written in a reader-friendly way and format. Because the publications are very time-consuming and therefore also expensive, QUNO now wants to publish more issue papers. The main difference between a discussion paper and an issue paper is that the latter does not try to provide an overview, but rather presents the perspective of the author. Thirdly, QUNO produces occasional papers, which are more technical briefs, based primarily on expert presentations and on contributions from the Consultative Group. Finally, there is an 'other' category, which includes reports on seminars, some presentations at seminars, and smaller papers written by QUNO staff or consultants.

Table 4.1 gives an overview of all papers that have been published under the TRIPS programme so far, categorised by type of paper.

Table 4.1 Papers published by QUNO under the TRIPS Programme

No.	Publication	Date
<i>Discussion papers</i>		
1	Trade, Intellectual Property, Food and Biodiversity: Key issues and options for the 1999 review of Article 27.3(b) of the TRIPS Agreement, by Geoff Tansey	Feb. 1999
2	Traditional Knowledge and Intellectual Property: issues and options surrounding the protection of traditional knowledge, by Carlos Correa	Nov. 2001
3	Sui Generis Systems for Plant Variety Protection: Options under TRIPS, by Biswajit Dhar	April 2002
4	Food security, Biotechnology and Intellectual Property: Unpacking some of the issues around TRIPS, by Geoff Tansey	July 2002
<i>Issue papers</i>		
5	Regional and bilateral agreements and a TRIPS-plus world: The Free Trade Area of the America (FTAA), by David Vivas-Eugui	July 2003
6	Special and Differential Treatment of developing countries under TRIPS, by Constantine Michalopoulos	Nov. 2003
7	Multilateral Agreements and a TRIPS-plus world: The World Intellectual Property Organisation (WIPO), by Sisule F. Musungu and Graham Dutfield	Dec. 2003
<i>Occasional papers</i>		
8	Trade-offs and trade linkages: TRIPS in a negotiating context, by Peter Drahos	Sept. 2000
9	Micro-organisms, definitions and options under TRIPS, by Margaret Llewelyn and Mike Adcock	Nov. 2000
10	Generic drugs, compulsory licensing and other Intellectual Property tools for improving access to medicine, by Michael Gollin	May 2001
11	Exploring the hidden costs of patents, by Stuart Macdonald	May 2001
12	TRIPS disputes: Implications for the pharmaceutical sector, by Carlos Correa	July 2001
13	Some assumption on Patent Law and Pharmaceutical R&D, by Carlos Correa	July 2001
14	The TRIPS Agreement, access to medicines and the WTO Doha Ministerial Conference, by Frederick Abbott.	Sept. 2001

(Table 4.1 continued)

15	Geographical Indications and TRIPS, by Michael Blakeny	Nov. 2001
16	Compulsory licensing for Public Health needs: the TRIPS agenda at the WTO after the Doha Declaration on Public Health, by Frederick Abbott	Feb. 2002
17	Negotiating Intellectual Property: Mandate and options in the Doha work programme, by Jonathan Hepburn	Nov. 2002
18	Non-Violation Nullification or Impairment causes of action under the TRIPS agreement and the fifth ministerial conference: a warning and a reminder, by Frederick Abbott	July 2003
19	Establishing a disclosure of origin obligation in the TRIPS agreement, by Carlos Correa	Aug. 2003
20	Trade diplomacy, the rule of law and the problem of asymmetric risks in TRIPS, by Frederick Abbott	Sept. 2003
<i>Other papers</i>		
21	Development Cooperation, TRIPS, indigenous knowledge and genetic resources, by Jonathan Hepburn	April 2001
22	A development agenda for implementing TRIPS: Addressing biodiversity, food and health needs, report on the 4th residential seminar, by Jonathan Hepburn	Sept. 2001
23	A TRIPS Agenda for Development: Meeting food, health and biodiversity needs, report on the conference in The Hague, by Jonathan Hepburn	Oct. 2001
24	What did developing countries get in Doha? Some QUNO assessments of the WTO Ministerial Conference, by Brewster Grace and Jonathan Hepburn	Dec. 2001
25	Review of TRIPS Article 27.3(b): Proposals submitted in the WTO, by Jonathan Hepburn	April 2002
26	Promoting participation for negotiating food and biodiversity in the post-Doha TRIPS work programme, report on the 5th residential seminar, by Jonathan Hepburn	May 2002
27	Legal options for implementing par.6 of the Ministerial Declaration on the TRIPS agreement and Public Health, presentation of Marco Bronckers in the seminar in Norway	July 2002
28	Legal options for implementing par.6 of the Ministerial Declaration on the TRIPS agreement and Public Health, presentation of Frederick Abbott in the seminar in Norway	July 2002
29	The WTO TRIPS agreement and the protection of public health: implementing par.6 of the Doha Declaration, report on the seminar in Norway, by Jonathan Hepburn	July 2002
30	Daily dispatches on the WTO Ministerial Conference in Cancun	Sept. 2003

Table 4.1 shows that in total, 4 discussion papers have been published, 3 issue papers, 13 occasional papers and 10 other types of papers. The following gives a comparison of proposed versus produced publications:

- In the proposal for the second phase, 3 discussion papers were planned, plus an unspecified number of occasional papers. These plans have been achieved.
- In the proposal for the supplementary activities on TRIPS and public health, no reference was made to the number of papers that would be published; only that working papers would be prepared. Given that there are 5 occasional papers dealing explicitly with health or the pharmaceutical sector, this objective has been achieved.
- In the proposal for the third phase, 3 issue papers were planned, plus an unspecified number of working papers. In addition, in collaboration with a Quaker organisation in Canada, some background materials would be published, with a more introductory character. At the time of the evaluation, 3 issue papers had been published, while some background material was in the final stage of preparation.

The above comparison shows that the goals regarding the publications have to a large extent been achieved. Only in first year of the third phase is there some delay as 2 of the 3 issue

papers have been published only in November and December, and although the first year would originally end in September 2003, the background material has not yet been finished. The background material is expected to be published soon. In a series called "Denying access: Knowledge, resources and development", the titles of these briefing papers are:

- Patents, trade and health. Strong patent protection: how it affects access to medicines and development.
- Patents, trade and food: How patents and other forms of legal protection affect food security, the environment, and development.
- Patents, trade and development: how patents and other forms of legal protection affect individuals and society in developing and developed countries.

It should be noted that in all proposals, the number of occasional papers has not been specified, which makes it easy to achieve the targets. The occasional papers are however often written on the basis of the Quaker House informal meetings, which follow to a large extent what is going on in the TRIPS Council meetings or negotiations. This makes it difficult to predict the number of occasional papers. In any case, for a small organisation like QUNO, the number of papers is substantial.

The quality of the papers is high. All authors have a good track record in the field of TRIPS, for example, and almost all are academics and have written several publications in the field of TRIPS. While the discussion and issue papers have a more introductory character and are accessible to a wider audience, the occasional papers are very technical and are mainly intended for the delegates and people from capital. The latter papers provide analysis of and input for the discussions and negotiations in the TRIPS Council.

4.2 Quaker House meetings

Quaker House seminars are informal meetings for a small group of 10-15 delegates, held during lunchtime or at the end of the afternoon. The participants are mostly delegates from developing countries, but sometimes officials from capitals, developed country delegates, donor representatives and staff from other relevant organisations are also invited. These meetings can be used to exchange experiences, to discuss papers prepared by one of the experts, but also to informally explore strategies and options, and shape common positions in preparation for official meetings in Geneva. There is no fixed schedule for these meetings: when there are important developments in TRIPS, there are many, while for example in the run-up to Cancun, there were very few.

It is difficult to assess the Quaker House meetings, as the character of these meetings is confidential. There is therefore no information available about the dates and frequency of these meetings, the topics discussed, or the participants. For the sake of this evaluation, QUNO has provided the invitations and informal notes for some of these meetings, so that the evaluation team could get an impression of the meetings.

Regarding the number of informal meetings, the reports to the donors indicate that the planned number of meetings (8 per year) has been achieved. From the interviews with the contractor and delegations, it appeared that even more meetings than originally planned have taken place. Especially when there are intense negotiations in the TRIPS Council, the informal meetings are numerous. At these times, delegates sometimes met several times a week to discuss texts and strategies. For example, when the deadline on the decision on

TRIPS and Public Health was approaching last year, QUNO held 10 meetings in November-December 2002.

The consultative panel plays an important role during the informal meetings. This group of experts convened for the first time for QUNO's work on TRIPS and public health. In the third phase of the TRIPS programme the group of experts has been established as a formal consultative panel. Sometimes these experts are present at the meetings to give presentations, but in intense periods of negotiations, they have also been available through teleconferencing. Their most important contribution to these meetings is the advice and interpretation they can provide on legal, scientific and technical issues. Through QUNO, these experts are sometimes asked to give bilateral advice to a country.

From the informal notes of the Quaker House meetings, it can be seen that these meetings have a very informal character. Delegations are brainstorming on the interpretations of statements of other countries, the strategy for tackling the issues in the coming period, and the content of possible declarations or proposals. The experts play an important role in commenting and advising on these interpretations, strategies and formulations. They often present and explain the various options that governments have in the negotiations. In the informal notes that have been provided, neither QUNO nor the experts from the consultative group are themselves arguing for a certain strategy; this choice is left up to the countries.

4.3 Residential seminars

The residential seminars are two-day meetings organised just outside Geneva in Jongny-sur-Vevey, involving a larger and broader audience. On average, some 25 to 30 participants attend these meetings. According to the proposals the participants represent developing and developed country delegations to the WTO, experts from academic, governmental and NGO bodies, developed country bilateral aid agencies, relevant international agencies and industry. From the participant lists, it is clear that developing country delegations form the majority (see Section 5.1). For these meetings, discussion papers and other papers are distributed in advance. Selected participants introduce each agenda item, which initiates the discussion.

The following gives an overview of the residential seminars that have been held up until the time of this report. The first residential seminar is not reported, because this seminar took place before the real start of the TRIPS Programme.

Table 4.2 Overview of the residential seminars organised under the TRIPS Programme

No.	Residential Seminar	Date
2	TRIPS Article 27.3(b): Definitions, CBD compatibility and sui generis systems	10-11 Sept. 1999
3	Development Cooperation, TRIPS, Indigenous Knowledge and Genetic resources	6-7 April 2001
4	A Development agenda for implementing TRIPS: Addressing biodiversity, food and health needs	6-8 Sept. 2001
5	Promoting participation for negotiating food and biodiversity in the post-Doha TRIPS work programme	17-18 May 2002
6	Strategic options in intellectual property towards the Sixth Ministerial Conference	21-23 Nov. 2003

On the comparison between proposed vs. achieved output, the following remarks can be made:

- In the second phase of the TRIPS Programme, 3 residential seminars were planned, which were provisionally scheduled for April, June and October 2001. The number of seminars has been achieved, only the timing has changed, with the third seminar organised in May 2002.
- In the proposal for the supplementary activities on TRIPS and public health, no other residential seminars were proposed. The proposal only indicated that health issues would selectively be brought into the already planned residential seminars.
- In the third phase, 2 residential seminars were planned. Only one has taken place so far, on 21-23 November 2003.

The above comparison shows that the goals regarding the residential seminars have to a large extent been achieved. In the second phase all seminars have taken place, only one seminar was delayed. In the third phase the output is less than proposed with one instead of two residential seminars. According to QUNO's trade and development representative, this can be explained by the fact that the funding of one of the donors for the third phase was only received in February 2003. At that time, work in the WTO already intensified in the run-up to Cancun and QUNO did not think it could still organise a seminar. The representative felt it made sense to wait until after Cancun when the Doha agenda should have become clearer.

On content, the integration of public health issues in the residential seminars as proposed for the supplementary work for phase two has taken place; most notably in the last three residential seminars. The residential seminars address issues that are relevant for discussions in the TRIPS Council; these are not so focused on the discussions that are "hot" at that moment, but on longer-term issues. Reports of the meetings show that participation in the discussions is high.

4.4 Regional and national seminars

Because the negotiating processes do not only take place in Geneva, QUNO attaches importance to the organisation of national seminars (in developed countries) and regional seminars (in developing countries). In the national seminars, the meetings seek to promote wider public awareness of the issue under discussion. Although the majority of participants in national seminars are from the country where it is organised, there are also a large number of international participants (mainly from developed countries, plus delegates from developing countries). The organisation of these meetings rests primarily with national convenors, while QUNO assists in providing background information and securing participation of Geneva based experts and negotiators. In the regional seminars, QUNO closely works with ICTSD to convene meetings. With these regional seminars, the two organisations try to directly link the agenda issues between these regional dialogues and the Geneva seminars for negotiators. Participants therefore include various stakeholders from the region and developing country delegates in Geneva.

National seminars

So far, two seminars have taken place in developed countries: one in the Netherlands and one in Norway. The character of these two meetings differed, however, and the contractor

considers the seminar in the Netherlands as the only real national seminar. This because the seminar in Norway was not intended to attract a wider audience; the participants were mainly delegates from Geneva, plus only a small number of experts, NGOs, business representatives and people from capitals.

The number of national seminars is much smaller than expected. In the proposal for the second phase of the TRIPS Programme, five national seminars were proposed. Also in the proposal for the supplementary activities on TRIPS and health, workshops were proposed in European and North American capitals for NGOs, policy makers and the media. In the third phase, a seminar in Ottawa is proposed, in collaboration with the Canadian Quakers. (These plans are in big contrast with only one national seminar organised, although the meetings in Ottawa are still planned. The contractor admits that QUNO has a poor performance regarding these national seminars. The contractor now feels that the planned number of national seminars was simply too ambitious. When the proposal for the second phase was written, no work on TRIPS and public health was foreseen. Due to the limited number of people working at QUNO, the attention for health shifted the attention away from the national seminars. It was also indicated that it has been difficult to find suitable local partners for the organisation of these seminars, especially in North America. It should be organisations with "no baggage", i.e. they should not have an outspoken position. In addition, the planned seminar in North America could not take place because one of the donors would not contribute to this.

The report of the conference in the Netherlands shows that this type of conference is much more about explaining the issues at stake, and the options for and positions of developing countries. This was done both for the debate on TRIPS, health and medicines and for the debate on TRIPS, biodiversity, food, and farmers' rights. While providing detailed information about the debate, the seminar did not become too technical, which is important because many of the participants work on trade, health or sustainable development issues, but have no specific experience on the TRIPS Agreement.

Regional seminars

The delegates in Geneva had expressed the need to have input from local stakeholders in the negotiations. QUNO and ICTSD decided to work together on this, as ICTSD was already cooperating with organisations in the different regions. On the input of QUNO in these regional conferences, QUNO and ICTSD tell a different story. QUNO claims that it has been closely involved in the organisation of these conferences, mainly through providing assistance in developing the agenda and in recruiting participants from Geneva missions. ICTSD feels that the role of QUNO in the organisation was quite limited; ICTSD did 99 per cent of the organisational work, including the programme and identification of the participants. QUNO was always invited to the conferences, and always took the floor. Only in some cases they provided some comments and ideas for the conferences. The regional seminars were sometimes followed up with national seminars or field visits; QUNO was also often involved in this. Later, QUNO commented that QUNO played a big role mainly in the design of the regional seminars, i.e. more dialogue and less formal presentation of papers, and that it also played a role in getting the first major grant for these regional seminars.

All regional seminars are titled "Multi-Stakeholder Dialogue On Trade, Intellectual Property And Biological Resources". The following table gives an overview of the dates, places and regions where the regional seminars have been organised.

Table 4.3 Overview of the regional seminars organised under the TRIPS Programme

Region	Place	Date
Latin America	Cusco, Peru	22-24 February 2001
Eastern and Southern Africa	Nairobi, Kenya	30-31 July 2001
Central America	Tikal, Guatemala	20-22 September 2001
Asia	Rajendrapur, Bangladesh	19-21 April 2002
Western and Central Africa	Dakar, Senegal	30-31 July 2002

The regional seminars often consist of a general introduction into the issue, followed by national and regional experiences (especially on legislation) and perspectives. While the focus of the conferences was mostly on TRIPS, biodiversity and traditional knowledge, the seminars in Kenya, Senegal and Bangladesh also addressed the TRIPS and public health debate. The number of regional seminars is according to plan.

In the third phase of the TRIPS Programme, no regional conferences were planned. ICTSD has decided to integrate the regional conferences into the IPR programme of UNCTAD and ICTSD. The objective is somewhat different than that of the regional seminars with QUNO, as the conferences are no longer intended to feed into the Geneva negotiating process, but rather try to help in establishing regional centres of excellence on intellectual property rights. Given this change of focus, QUNO is no longer involved in these regional seminars.

4.5 Website

First of all, it should be noted that the website is not listed as a separate activity in QUNO's proposals, and it is therefore officially not an output. Nevertheless, the website is considered an important product for providing information about QUNO's activities, and therefore this section also pays attention to it.

The website of QUNO is available at <http://www.geneva.quno.info/>. This website was launched in June 2002 and is operated by Quäker Hilfe e.V., a support organisation of the German Quakers. The homepage gives information on the Quaker office in general; the site contains a separate section on trade, development and intellectual property. Within this section, there is a page on intellectual property, which contains a small introduction, with a link to the first discussion paper of QUNO in 1999, translated into five languages. During the evaluation, some changes were made on the website. First, the section contained a list of all the publications that are published under the TRIPS programme. All publications can be downloaded in PDF format. In December this was changed: publications are now categorised by programme (the TRIPS Programme is one of four programmes in the trade and development section). Although all publications are still available, they are not all included under the TRIPS Programme; a number of publications are now included under Trade and Finance. The reasons for this categorisation are unclear.

The strength of QUNO's website is that it is relatively simple. All publications that are not confidential are easy to find and download. The relatively simple manner in which the information is displayed makes it easy to maintain the website.

The site has a number of weaknesses. First, the introduction is outdated. For example, it refers to 132 WTO members, while there are now 148 members. Also, no reference is made on QUNO's work on public health; the introduction only addresses the patenting of life forms and genetic resources. Thirdly, there is very little information about QUNO's activities, both in

terms of regarding the type of activities and the specific areas that are covered. Finally, the long list of publications makes it difficult to see at a glance what is available. For most publications, you cannot see the date of when the papers were published. Nor are the publications grouped by theme or by type of publication. Some small changes could improve the accessibility of the information without making it much more time-consuming to maintain the website.

5 OUTCOME

This chapter examines the outcome of QUNO's TRIPS Programme. In the design for this evaluation, three indicators were identified to determine the outcome:

- I. The expertise of beneficiaries to formulate proposals for (re) negotiation on TRIPS;
- II. Active participation of delegations from developing countries in talks on TRIPS in Geneva; and
- III. Interest on TRIPS in capitals of developing countries.

The first two indicators relate back to the objective of QUNO for the TRIPS Programme, which is defined as follows in the funding proposals: "to strengthen the capacity and understanding of WTO developing country member governments to obtain greater equity and justice in the TRIPS negotiation process." During the interview the goal was rephrased, with two components:

- I. to improve knowledge of developing country governments (both legal and technical; content and process)
- II. to develop a strategy for the WTO (process of the negotiations and development concerns).

These two components of QUNO's goals are similar to the first two indicators of outcome, except that the second component refers to the strategy of developing countries in the negotiations rather than to the participation of developing countries in the TRIPS Council meetings. With respect to the second indicator of outcome, this chapter will therefore assess both the participation of developing countries in the negotiations and the development of strategies. With respect to the first indicator of outcome, this chapter will assess how QUNO's beneficiaries have appreciated QUNO's output and how they have made use of the output in their regular work. The main sources of information for the first two indicators are the interviews that have been held with developing countries delegates, both from developing countries that have frequently participated in QUNO's activities and those that have participated less frequently. In total, thirteen developing countries have been interviewed: Argentina, Bangladesh, Brazil, Egypt, Guatemala, India, Indonesia, Kenya, Pakistan, Panama, the Philippines, South Africa, and Zimbabwe. In addition, interviews have been held with two experts from the consultative panel, one other donor, and the director of the TRIPS Division in the WTO.

The third indicator, the interest of capitals of developing countries in the TRIPS Agreement, could not be assessed in detail. QUNO does not have separate contact lists of officials in capitals and therefore no interviews could be held. The field visits that were made for the overall evaluation of Trade-Related Technical Assistance could not be used for this, because two of the four countries visited (Yemen and Ethiopia) are not yet members of the WTO and therefore not involved in QUNO's activities, while the two other countries (Tanzania and Burkina Faso) have not actively participated in QUNO's activities or in the TRIPS negotiating process. Nevertheless, in interviews with delegations, questions have been asked regarding the link between the delegations and the capitals. This link is discussed at the end of this chapter, in Section 5.3.

To get an impression of the size or magnitude of the outcome, the following section first discusses the outreach of QUNO's activities in terms of the number and kind of beneficiaries.

5.1 Outreach of QUNO's activities

As QUNO is located in Geneva and deals with the negotiating process of TRIPS, its main targetgroup are the developing country delegates in Geneva. Within the group of delegates, QUNO focuses on the delegations of the countries that are most active in the negotiations. A group of around 12 to 20 developing countries is actively involved in most of QUNO activities. Next to the delegates, QUNO tries to involve officials from the capitals, experts and other organisations working on TRIPS. This happens in particular in the residential seminars, the national and regional seminars, and through the distribution of publications. The following gives an overview of QUNO's outreach per type of output.

Publications

The distribution of QUNO's publications is handled in the main by ICTSD. ICTSD has a large database with over 10,000 records. This database is specifically targeted towards the trade and sustainable development community and is regularly updated. The contacts are classified geographically, per type of organisation and by interest/area of work. When QUNO wants to disseminate a publication, they can indicate how many people they want to send this publication to, and which categories. Because the lists are targeted, they are different for each mailing. ICTSD indicated that the number of recipients varies between 300 and 1,500. For the last four publications, the average number of recipients was 750. The number and type of people on the mailing lists depends on the substance of the paper. The focus is on persons and institutions working on intellectual property, but some publications (e.g. the last one on Special and Differential Treatment in TRIPS) are sent to a wider range of developing country NGOs with broader development interests.

For illustration purposes, ICSTD has provided a breakdown of the mailing list for QUNO's issue paper no.1 "Regional and bilateral agreements in a TRIPS-plus world: the FTAA".⁶ This publication was sent to some 1,500 people.

⁶ Note: The subject of this publication (The Free Trade Agreement of the Americas) explains the large share of Latin American people on this mailing list.

Table 5.1 Breakdown of the mailing list for QUNO's issue paper no.1

Category	Share (%)
<i>Geographical Breakdown</i>	
Europe	24
Africa	9
North America	18
Asia	7
Latin America	42
Oceania	1
<i>Audience segmentation</i>	
Policy Makers	14
Influencers*	85
General Public	1
<i>Audience segmentation, other categories</i>	
Governmental	26
Inter Governmental	9
Civil Society	43
Academia	22

*Influencers are defined as: 1) NGOs, 2) trade & labour unions, 3) business & industry community, 4) consumer unions, 5) academia, 6) journalists and 7) disadvantaged policy makers.

Disadvantaged policy makers include certain ministries, the patent office, missions of countries' in the world other than in Brussels, Geneva or Washington, political organisations and a number of intergovernmental organisations working in the field of environment and/or trade.

Source: ICTSD.

In addition to the mailing list covered by ICTSD, QUNO carries out a personalised mailing to delegations in Geneva.

Quaker House meetings

As indicated earlier, the Quaker House meetings are confidential, and there is no complete overview of all meetings that have been held and also the participant lists are not all available. The invitation lists that have been provided to the evaluation team show that on average the number of participants in the Quaker House seminars is around 15 people. When new papers are presented, the group of participants seems to be bigger. Most invitees are delegates of developing countries. While the participants are not a fixed group, the participants lists that have been made available for the evaluation show that there is a core group of some 12 developing country that participate in almost all meetings⁷. This group includes countries from Asia, Africa and Latin America. While the group mainly consists of the larger developing countries, the group also includes a number of smaller countries. A small number of LDCs also regularly attends the meetings, but are not in the core group.

In some cases, donor representatives, delegates from developed country governments or people from organisations like the South Centre, ICTSD and UNCTAD also participate in the meetings, but this depends on the issues that are being discussed and the degree of confidentiality.

⁷ It should be noted that this analysis is based on a selection of participant lists; there is no information available on all meetings.

Residential Seminars

On average, some 30 people participate in the residential seminars. Although these seminars should attract a broader public, and also involve people from the capital, a breakdown of the participants show that the delegates are the largest group of participants, while the other participants mainly come from organisations in the Northern hemisphere. This latter group of participants includes experts, donor representatives, other Geneva-based organisations (notably UNCTAD, ICTSD and the South Centre) and some people from European capitals. The following table gives a breakdown of the participants of the last five regional seminars.

Table 5.2 Number and types of participants of the residential seminars

	Total no. of participants	No. of delegates	No. of participants from developing countries (non-delegates)	No. of participants from developed countries (non delegates)
TRIPS Article 27.3(b): Definitions, CBD compatibility and sui generis systems (II)	29	15	7	7
Development Cooperation, TRIPS, Indigenous Knowledge and Genetic resources (III)	41	23	4	14
A Development agenda for implementing TRIPS: Addressing biodiversity, food and health needs (IV)	27	13	2	12
Promoting participation for negotiating food and biodiversity in the post-Doha TRIPS work programme (V)	36	23	0	13
Strategic options in intellectual property towards the Sixth Ministerial Conference (VI)	29	16	4	9

Source: Analysis based on participant lists of residential seminars provided by QUNO.

National seminars

As indicated in Section 4.4, only one national seminar has taken place. This seminar has been organised by the Netherlands Ministry of Foreign Affairs in cooperation with QUNO. This seminar consisted of two parts: a public debate and a seminar for invited people. Some 300 people attended the public debate while almost 70 people attended the closed seminar. The participants included 14 delegates from Geneva, people from the government of some EU countries, NGOs, some international organisations and business representatives. Overall, the composition of the group of participants was balanced.

Regional seminars

The regional seminars are intended to provide input to the negotiators in Geneva. Participants should represent various stakeholders from the region. The participants in these

conferences have different backgrounds. They come from universities, research institutes, ministries, international or regional organisations and NGOs. Table 5.3 provides information on the number of participants, the number of countries they represent, and the number of delegates that have been involved. The table shows that there is wide participation from the region. Also, the participation of different types of stakeholders is balanced.

Table 5.3 Number of participants, delegates and country representation of regional seminars

Seminar	Total no. of participants*	No. of Geneva Delegates	Participation from region (participants from each country between brackets)
Peru	32	3	Argentina (1), Bolivia (3), Brazil (3), Chile (1) Colombia (3), Ecuador (3), Peru (5), Venezuela (4).
Kenya	36	6	Ethiopia (1), Kenya (6), Namibia (2), Nigeria (1), South Africa (3), Tanzania (2), Uganda (4), Zambia (3), Zimbabwe (6)
Guatemala	35	2	Costa Rica (8), El Salvador (4), Guatemala (6), Honduras (3), Mexico (2), Nicaragua (3), Panama (1)
Bangladesh	49	6	India (6), Indonesia (3), Pakistan (3), Philippines (2) Sri Lanka (2) Thailand (4), Bangladesh (19)
Senegal	64	6	Benin (6), Burkina Faso (4), Cameroon (5), Cote d'Ivoire (3), Guinea (1) Mali (3), Mauritania(4), Nigeria (5), Senegal (20), Togo (2)

* It should be noted that the number of participants includes the organisers.

Source: Analysis based on participant lists available at the ICTSD website.

Website

The website is open to everyone. The use of this website gives an indication of the outreach of QUNO's work, notably its publications. It should be kept in mind that website statistics are aggregates: it is unknown how many *different* users the site has.

Website statistics for QUNO's website are only available from July 2003.⁸ In the period July-November 2003 the total number of hits per month varied between 4,455 and 6,573. It should be noted that these are the hits for the complete QUNO site; not only in the TRIPS area. Compared with some other organisations active in the field of trade, this number of hits is relatively low. For example, organisations like ICTSD have around 152,671 hits per month on their website, and the International Institute for Sustainable Development (IISD) around 416,667.⁹ For some smaller organisations, information on the number of visitors is available. The number of hits differs from the number of visitors in that one visitor can view several pages, i.e. make several "hits".¹⁰ This can make a big difference; for example ICTSD has on

⁸ In the first year of operation of the website, the website statistics for the website are only available at an aggregate level, i.e. together with the statistics of Quäker Hilfe e.V., the Quaker organization in Germany that maintains the website.

⁹ Source: Boyer, D. and J. Krijnen (2003).

¹⁰ The definitions are as follows: *Hit*: A single action on the Web server as it appears in the log file. A visitor downloading a single file is logged as a single hit, while a visitor requesting a Web page including two images registers as three hits on the server; one hit is the request for the .html page, and two additional hits are requests for the downloaded image files. While the volume of hits is an indicator of Web server traffic, it is not an accurate

average 152,671 hits per months, but only 11,610 visitors. In the first four months of 2003, the monthly average number of hits for the Agency for International Trade Information and Cooperation (AITIC) was 5,637. The Trade Knowledge Network has approximately 9,375 visitors a month.

It should be noted that, while it is clear from these figures that the use of QUNO's website is limited, it is very difficult to compare the websites. Organisations like ICTSD and IISD are much larger and have a longer history. Also, the areas that are covered on the other websites are broader and the sites will therefore be able to attract a larger audience. The number of times papers are downloaded from QUNO's website is still significant. Download figures for the year 2003 show that one of QUNO's publications under the TRIPS programme has been downloaded 1,318 times. Many other publications have also been downloaded more than a 100 times.

5.2 Expertise of beneficiaries

The appreciation of the participants for QUNO's activities is very high. All respondents indicated that QUNO has increased their knowledge, especially on TRIPS and health issues, but also on the issues related to article 27.3 (b). A number of participants commented that QUNO really made a difference to the debate. Especially the specific focus of QUNO's work is appreciated, because this allows the organisation to go into more detail. Other organisations address more issues within the WTO, and can therefore be less focused. Also the fact that QUNO is objective and does not want to push for anything as compared to organisations like the Third World Network and Oxfam was important to many participants, although at the same time participants acknowledged that different organisations have different roles to play.

Delegates indicated that the increased knowledge has helped them to analyse the debate, to determine their country's position and, in some cases, to submit communications to the WTO's TRIPS Council (see Chapter 6).

Regarding the type of activities, almost all participants noted that the different activities complement each other. The publications are useful because they address issues that are important for TRIPS discussions or negotiations. They analyse the issues at stake and the implications of various options. In the Quaker House meetings, the input from the experts of the consultative panel is very much appreciated. Because of the timing of these meetings (often right before, during or after TRIPS discussions/negotiations), the experts could answer questions from the delegates. Through QUNO, the experts also had contact with delegations or capitals directly to help them understanding and formulating their country's position. The residential seminars were seen as contributing to increasing knowledge on more long-term issues. Often several speakers deal with one specific issue, so that an overview of the different perspectives is obtained. It was also considered positive that these meetings are held outside Geneva, because this allows the delegates to focus on the issues under discussion, without being distracted by other concerns or meetings.

reflection of how many pages are being looked. *Visit*: Number of times a visitor came to your site. If a visitor is idle longer than the idle-time limit, WebTrends assumes the visit was voluntarily terminated. If the visitor continues to browse your site after they reach the idle-time limit, a new visit is counted. The default idle-time limit is thirty minutes.

Only very few of the delegates who were interviewed had attended the national seminar in The Hague or the regional meetings. The ones who had were positive about it. Because the regional seminars were organised mainly by ICTSD and the regional seminars are only a very small part of QUNO's activities, no further research has been done to have the opinion of other beneficiaries than the Geneva delegates on these regional seminars, also because the participant lists does not contain any contact details. Regarding the national seminar in The Hague, the intention was to hold a small survey among the participants of this conference, focusing on the NGOs that had participated during the conference. The focus on NGOs was chosen because these conferences seek to promote wider public awareness of the issue under debate, and NGOs play an important role in further spreading the information. However, from the NGOs that were selected, people had either not participated in the seminar, or had left the organisation.

5.3 Participation in trade negotiations and developing strategies

Participation in TRIPS Council meetings

An indicator of outcome would be that the beneficiaries of QUNO participate more actively in the discussions and negotiations of the TRIPS Council. Of course, one has to be cautious in interpreting the results, as there are numerous other factors that can affect the level and intensity of participation in the TRIPS Council.

The increased participation is difficult to assess, as the WTO does not make its attendance lists publicly available. From the minutes of the TRIPS Council meetings, it can be seen that many of the participants of QUNO's activities actively participated in the discussions (for more details, see also Section 6.2). It should be noted that this is inherent to QUNO's strategy regarding its target groups. QUNO is aimed at countries that actively take part in the negotiations, or that have a high interest in the negotiations. This is mainly because these countries can make a difference in the negotiations, especially if they work together. Cause and effect of active participation can therefore be difficult to distinguish. What is clear, however, is that in the TRIPS and health debate, a number of proposals and a non-paper (i.e. an unofficial document) came from countries that actively participated in QUNO's activities (see also Section 6.2).¹¹

The director of the WTO's Intellectual Property Rights division indicated that the participation of developing countries has certainly increased since 1995. He noted that although many of the Asian and Latin American countries were also already active when the TRIPS agreement was negotiated, (Sub-Saharan) African countries, but also countries from other regions, seem to participate more effectively nowadays. The African Group showed its increased participation when it put the TRIPS and health debate on the agenda. Next to more active participation, there has also been a more united approach among developing countries. Although he did not feel able to comment on the role of NGOs and other organisations in this process, he did mention that QUNO seems to be influential because it really targets the delegations.

¹¹ This may also have been the case for the debates on the review of article 27.3(b). Because the evaluation team does not have sufficient information on the participants of QUNO's activities in this field, a similar comparison could not be made.

The role of QUNO in developing strategies

Regarding the outcome of QUNO's activities on strategy, all respondents pointed to the importance of providing a forum for the delegations. Although developing countries increasingly hold meetings among themselves in a regional context, there do not seem to be many forums where developing countries from different regions meet. As developing countries often have different stakes in the negotiations, it is important that they talk to each other to understand their positions. Both in the TRIPS and Health debate and the debates around article 27.3(b), developing countries have different interests. Also, the experts from the consultative panel played an important role in narrowing the differences between countries. The experts helped to analyse the differences, and often they turned out to be much smaller than they first seemed. In addition, the experts helped the delegations to identify the strategies available to countries in the negotiations. None of the interviewed delegates felt that the meetings with the experts were prescriptive in any way; they only laid down the options, the countries decided themselves what strategy to take.

The fact that the informal Quaker House meetings were often small (10-15 delegates) was also appreciated. This kept the discussion focused, and the delegates developed a high degree of confidence among each other, so that they could speak more freely.

The extent to which QUNO has had an impact on the strategy of developing countries that participated in its activities seems to differ. Although all respondents indicated that it was important that countries could come up with a common position or at least coordinate their approach, an important difference between the delegations is the role that the capitals play. Some delegates have very strong linkages with their capitals; they report on developments in Geneva, but the capital determines the position and strategy of the country. Other delegates seemed to have less strong linkages with their capitals and, as a result, also more influence on the position and strategy of their country in the negotiations. These countries also indicated that during the negotiations there is not always time to consult the capital. In general, the countries with weaker linkages with the capital thought that QUNO had more influence on their strategy than the countries with stronger linkages with the capital. All delegates forwarded most or all of QUNO's publications to the capital. Officials in the capitals can therefore also use QUNO's input when determining their position.

The strategies and proposals of countries in the negotiations are further discussed in the next chapter.

6 IMPACT

While the previous chapter looked at how beneficiaries followed up the activities of QUNO, this chapter looks at the results of these actions. Again, one should be cautious in interpreting the results. There are many factors that influence the negotiations or the positions that a country takes. Sometimes an article in the newspaper can have more effect than an elaborate paper on this issue. Negotiations also take place on a very high political level, which makes that countries can take a position that is not always best for their interests in terms of content. For example, if powerful developed countries threaten developing countries to take away their trade preferences, this will have an impact on the position of developing countries. The role of technical assistance is not necessarily important at this level.

Because of these factors, QUNO explicitly indicates that it does not want to claim any responsibility for successful results in the negotiations (“You can claim both success and failure”), as it believes that whatever is achieved in the negotiations is done so by the parties involved.

In the design for this evaluation, the following seven indicators of impact were identified:

- I. Declarations and proposals from developing countries on TRIPS and Health and on article 27.3(b);
- II. (Pro) active role of developing countries during preparatory process on TRIPS for the Decision on TRIPS and Health of 30 August 2003;
- III. Legal clarity on flexibilities within TRIPS to apply compulsory licensing and parallel import provisions;
- IV. Strategy outline for a moratorium on legal actions against governments using generic medicines to combat medical urgencies;
- V. Amendments to national laws to incorporate the compulsory licenses to protect public health;
- VI. Mandate for negotiating TRIPS articles 7 and 8 to arrive at a general exception clause for TRIPS obligations in relation to public health;
- VII. Negotiation results for developing countries on TRIPS and Public Health.

This chapter discusses these impact indicators in more detail. The first section gives an overview of the proposals put forward by developing countries and describes the developments in the TRIPS and health debate: what positions did countries take, did they make any statements or submit proposals, etc. The section covers impact indicators 1 and 2; and also discusses impact indicator 4 and 6 to some extent. It should be noted that the impact referred to under 4 and 6 is an integral part of the TRIPS and Public Health discussion. When the TRIPS and Public Health discussion started, they were listed as sub-goals of the overall goal of clarifying the legal flexibilities under the TRIPS agreement regarding public health issues. In the negotiations these sub-goals were not dealt with separately and they are therefore also not discussed separately in this chapter.

The second section looks in more detail at the strategies and alliances of developing countries in the TRIPS and Public Health debate and therefore covers impact indicator 2.

In the third section, the results of the negotiations on TRIPS and Public Health are analysed, i.e. the Doha Declaration on TRIPS and Public Health, and The Decision on TRIPS and

Public Health of 30 August. In addition, it briefly looks to what extent these results have led to changes in national laws. This section therefore covers impact indicators 3, 5 and 7. The final section tries to establish a link between QUNO's activities and the negotiation results.

As becomes clear from the above, this chapter focuses on the developments and results of debate on TRIPS and Public Health. Regarding the debates around article 27.3(b), only an overview of the proposals from developing countries will be presented, as there has been no periods of intense debate on this issue, nor have there been major results of the debate, as the review is still in progress.

6.1 Declarations and proposals from developing countries

Proposals related to article 27.3(b)

Table 6.1¹² presents all communications of developing countries formally submitted under the review of article 27.3(b) and those covering topics discussed under this review.

Table 6.1 Communications submitted by developing countries to the TRIPS Council related to article 27.3(b)

Date	Country	Proposal title
29-01-1999	Egypt	General Council discussion on the Built-In Agenda 23-24 November 1998
17-06-1999	Cuba, Dominican Republic, Egypt and Honduras	Proposals regarding extension of transition period under paragraph 9(a) (i)
02-07-1999	India	Preparations for the 1999 Ministerial Conference. Proposals regarding the TRIPS Agreement in terms of paragraph 9(a)(i) of the Geneva Ministerial Declaration
05-07-1999	Kenya	Preparations for the 1999 Ministerial Conference
13-07-1999	Bangladesh	The challenge of integrating LDCs into the Multilateral Trading System
06-08-1999	Kenya, on behalf of the African Group	Preparations for the 1999 Ministerial Conference
06-08-1999	Venezuela	Proposals regarding the TRIPS Agreement (paragraph 9(a)(ii) of the Geneva Ministerial Declaration)
01-10-1999	Southern African Development Community (SADC)	SADC Ministers' agreed negotiating objectives for the third WTO Ministerial Conference

Proposals and statements on TRIPS and Public Health

The following gives an overview of the developments in the TRIPS and public health debate. It identifies the statements and proposals made by developing countries, indicating briefly – under sixteen-bullet numbers- when these statements or proposals were made and what they were about.

¹² Source for communications until March 2002: Hepburn, J. (2002). Other information taken from the WTO's documents online database.

- The discussion on TRIPS and Public Health started in April 2001 when Zimbabwe, on behalf of the African Group, asked for convening a special session of the TRIPS Council to address the issues relating to TRIPS, patents and access to medicines. Zimbabwe asked for this when it made a statement on behalf of the African Group.
- In the Special Session on 20 June 2001, following the request made in April, Zimbabwe again made a statement on behalf of the African Group. In this statement, they proposed “that Members issue a special declaration on the TRIPS Agreement and access to medicines at the Ministerial Conference in Qatar, affirming that nothing in the TRIPS Agreement should prevent Members from taking measures to protect public health.” Many other developing countries also made statements during this meeting: Brazil, Argentina, Venezuela, Malaysia (on behalf of ASEAN), Chile, India, South Africa, Barbados, Tanzania (on behalf of LDCs), Bolivia, Thailand, Egypt, Cuba, Kenya, Nigeria, Ecuador, Jamaica, Dominican Republic, Ecuador, Peru, Sri Lanka, Honduras, Panama, Indonesia, Colombia, Pakistan, Guinea, Uruguay, Uganda and the Philippines.
- In the second Special Session of the TRIPS Council on 19 September 2001, a large group of developing countries put forward a proposal, which was a proposal for the Ministerial Declaration on TRIPS and public health. The countries that supported this proposal were the African group plus 19 other developing countries: Bangladesh, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela. An important point in this declaration was the following sentence: “Nothing in the TRIPS Agreement shall prevent members from taking measures to protect public health.”

At the Special Session in September the United States, Japan, Switzerland, Australia and Canada circulated an alternate draft. The EU circulated its own draft. The developed countries aimed to limit the flexibilities of TRIPS during crisis and emergency situations, although the EU seemed more flexible.

At the Ministerial Conference in Doha, Qatar, after intense negotiations, a Ministerial Declaration was reached on 14 November 2001. This text was a compromise between the proposal of developing countries, and the proposal from the group of developed countries. The EU did not take a strong position in the negotiations. One issue was left open in the declaration, defined in paragraph 6 of the Declaration: “We recognise that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the General Council to find an expeditious solution to this problem and to report to the General Council before the end of 2002.” (For an explanation of the issues surrounding this article, see Box 6.1).

Box 6.1**An introduction into the issues of the TRIPS and Health debate**

There were two important developments that led to the discussion on TRIPS and health in the WTO. First, in 1998, a group of pharmaceutical companies started a lawsuit against the government of South Africa, claiming that a new law in South Africa that increased the availability of affordable medicines in South Africa was in violation with the TRIPS Agreement and the South African constitution. This case attracted considerable attention from NGOs and the media. As the legal position of the companies was weak, and international public opinion was strongly against the case, the companies decided to drop the case in April 2001. Secondly, in February 2001, the US took action against Brazil at the WTO Dispute Settlement Body over article 68 of the Brazilian intellectual property law, which allows for compulsory licensing, i.e. it allows that a patent can be used without the consent of the patent holder. The US claimed that this law was in violation with the TRIPS Agreement. Again, there was fierce opposition from NGOs. On 25 June 2001, the US announced that it would withdraw the WTO panel against Brazil.¹³ These two cases showed that an interpretation of the flexibilities of the TRIPS Agreement regarding public health was needed to ensure that developing countries could use the provisions without the threat of legal or political challenges.

Existing flexibilities under the TRIPS Agreement

Many developing countries had access to relatively cheap medicines through domestic production or import of generic medicines. Under the TRIPS Agreement, the introduction of product patents also on pharmaceutical products is likely to make medicines more expensive in developing countries. Nevertheless, the TRIPS Agreement does offer a number of safeguards to remedy negative effects of patent protection or patent abuse. Some of the most important are parallel importation and compulsory licensing. Parallel importation occurs when a product covered by intellectual property rights sold by the right holder (or with the right holder's consent) more cheaply in one country is imported into another country without the right holder's authorisation. This reduces the price differences between countries. In addition, countries can issue compulsory licenses, which are authorisations permitting a third party to make, use, or sell a patented invention without the patent's owner's consent. An important condition for the use of compulsory licenses is that a prospective licensee should have been unsuccessful within a reasonable period of time in negotiating to obtain the patent holder's authorisation to use the patented invention "on reasonable commercial terms and conditions". This clause can be waived in the case of national emergency or extreme urgency, or for non-commercial public use.

The Doha Declaration on TRIPS and Public Health: the issue of paragraph 6

Although the Doha Declaration on TRIPS and public health gave countries the unmitigated right to take measures to protect public health (for further analysis of the declaration, see Section 5.3), one important issue regarding compulsory licensing remained unresolved. Article 31.f of the TRIPS Agreement limits compulsory licensing: "any such use shall be authorised predominantly for the supply of the domestic market of the member authorising such use." As a result of this paragraph, countries without production capacity for pharmaceutical products cannot make use of the provisions for compulsory licensing to the same extent as countries with this capacity. The Doha Declaration acknowledges this problem in paragraph 6 of the Declaration: "We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002."

Finding a solution to par 6: some of the issues

The discussion for finding a solution for the paragraph 6 problem focused on a number issues, notably the following:

- Disease coverage: will the solution apply to all health problems, or should the scope of diseases be restricted to a limited number of diseases, like HIV/AIDS, malaria and tuberculosis?
 - Eligible countries: should all countries be allowed to import and export pharmaceutical products under compulsory licensing, or should this be restricted to a smaller group of countries?
 - Procedures for notifications and for remuneration to patent holders, and safeguards to prevent flowback of generic drugs into developed country markets: what will be the procedures if a country want to make use of compulsory licensing, and what will be the requirements for preventing that the cheap drugs will also be diverted to other countries?
- The conditions should not become too burdensome.

¹³ Source: 't Hoen, E. (2003).

- Technology transfer: what will be the measures in the solution for technology transfers in the area of public health for developing countries?

Another important point of discussion considered the legal mechanism for a solution. In the fall of 2002, the TRIPS Council focused on the following three legal mechanisms: 1) an amendment of article 31(f) combined with an interim waiver or moratorium until the amendments could come into force; 2) an agreed interpretation of article 30; or 3) a waiver of the obligation in article 31(f) of long duration. An interpretation can resolve the textual uncertainty of an agreement: if there is room for interpretation in an agreement, the WTO's Ministerial Conference or the General Council can resolve this uncertainty. An advantage of an interpretation is that no further approval of national legislative bodies is required. An Amendment implies a change to the WTO agreement. As there is little room for interpretation of article 31.f, the interpretation option relates to another part of the TRIPS Agreement: article 30. Article 30 establishes the bases for exceptions to exclusive patent rights. An amendment is a more time-consuming process than an interpretation, as it requires either consensus or a two-thirds majority vote, after which member should approve this. Only once a two-thirds majority notifies their acceptance could the amendment take effect. A waiver is a formal dispensation from the fulfilment of a WTO obligation. The drawback of a waiver is that it is a temporary solution and therefore does not provide a secure foundation for putting in place a sustainable approach to access to medicine issues.¹⁴

In the months after Doha, the negotiations on paragraph 6 of the Doha Declaration did not progress fast. At the TRIPS Council meeting from 5 to 7 March 2002, the chairman asked for formal proposals to solve the paragraph 6 issue. During the meeting, the EC and the US each presented a paper containing their thoughts and ideas.

Although developing countries did not put any formal papers on the table, they did actively participate in the discussion. Kenya (who spoke on behalf of the African Group), Brazil, Cuba, the Dominican Republic, Honduras, India, Indonesia, Jamaica, Malaysia, Sri Lanka and Thailand, indicated that they were in the process of elaborating a paper with possible solutions. Other developing countries (other than in this group) that took the floor were Mexico, Venezuela, Pakistan, Argentina, Costa Rica, China and Peru.

Before the next TRIPS Council meeting on 25-27 June 2002, there were three proposals from developing countries.

- Kenya tabled a proposal on behalf of the African Group. This proposal contains three options for the par.6 issue; all relating to article 31 of the agreement (for an explanation see box 6.1). The options involve: 1) amending article 31; 2) deleting paragraph f of article 31; or 3) adding a new text to paragraph f of article 31, that indicates that no laws, measures or administrative regulations to protect public health will be subject to paragraph 31.f.
- Brazil put forward a proposal on behalf of 13 developing countries: Bolivia, Brazil, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand and Venezuela. In this proposal, an authoritative interpretation of article 30 is seen as the best option. The proposal indicates that other solutions could also be contemplated, giving some examples related to article 31. According to the proposal, the article-30 option would be preferable as this would be administratively less burdensome, involving fewer steps for implementation than the solutions based on article 31.

¹⁴ Source: Abbott, F. (2001).

- The United Arab Emirates¹⁵ proposed two options: remove paragraph 31.f; or an interpretation of article 30.

Also the EU and the US submitted their proposals for this meeting. The EU's proposal indicates that the best solution would be to add a new paragraph to Article 31, which would provide an exception to the restriction imposed by Article 31(f) for pharmaceutical products needed to address public health problems in another Member. The US was in favour of either a moratorium for dispute settlement or a waiver of the obligation in TRIPS Article 31(f).

- At the meeting, developing countries that took the floor other than the countries who presented the proposal were: Zimbabwe, Egypt, Mauritania, Peru, Indonesia, Sri Lanka, Pakistan, India, Senegal, Thailand, Malaysia, Colombia, Argentina, the Philippines, China, Cuba, Jamaica, Venezuela, Mauritius, Zambia and Uganda.

The chair of the TRIPS Council, Ambassador Eduardo Perez Motta started informal meetings with delegations to try to reach a consensus. On 17-20 September, the TRIPS Council met again. The subjects discussed in this meeting were the scope and coverage; legal mechanisms; and the conditions of a solution for paragraph 6 of the Doha Declaration. No consensus was reached however.

- The following developing countries took the floor during this meeting: Lesotho, Brazil, Zimbabwe, Argentina, Venezuela, China, Kenya (on behalf of the African Group), Peru, Egypt, Malaysia, Ecuador, Indonesia, India, Bolivia, Thailand, the Philippines, Sri Lanka, Pakistan, Djibouti, Cuba and Nigeria.

On 17 October, the chair of the TRIPS Council released a Note entitled "Possible elements of a paragraph 6 Mechanism." This note presents the three main options for the legal mechanism: 1) an amendment of article 31(f) combined with an interim waiver or moratorium until the amendments can come into force; 2) an agreed interpretation of article 30; or 3) a waiver of the obligation in article 31(f) of long duration.

On 25 October 2002, Assistant US trade representative Rosa Withaker sent a letter to all African governments, in which she urged the government to work with the US and other African countries. The US proposal wanted to limit both the number of diseases and the number of countries for which the solution would apply. Many NGOs and developing countries saw this as an attempt to break up the developing countries' position.

- In response to this letter, South Africa published a non-paper on 5 November 2002. This paper indicates that regarding the scope of diseases, the scope of products, the beneficiary members, and exporting Members there should not be any of these restrictions. The non-paper also addresses some procedural elements and a number of other elements, like technology transfer and capacity building.

On 10 November 2002, the chairman of the TRIPS Council produced another note, again entitled "Possible elements of a paragraph 6 mechanism." This note gives developing countries more room to import generic medicines.

¹⁵ In the OECD classification of developing countries, the United Arab Emirates is classified as a more advanced developing country.

- On 14 November 2002, Kenya submitted a proposal on behalf of the African Group. It argued for a sufficiently broad scope of diseases and also a sufficiently broad scope of products. Other issues that were addressed in this proposal include the criteria for beneficiary importing members, eligible supplying members, the safeguards or conditions that affect the use of new measures, the building of national capacity, options for amending article 31.f, and notification and transparency requirements.

On 14 and 15 November 2002, there was also an informal mini-ministerial meeting in Sydney. Although the meeting addressed several issues of the Doha agenda, the TRIPS and public health debate dominated the discussion. The following 25 countries participated in this mini-ministerial: Australia, Brazil, Canada, China, Colombia, Egypt, the EU, Hong Kong, India, Indonesia, Japan, Kenya, Korea, Lesotho, Malaysia, Mexico, New Zealand, Nigeria, Senegal, Singapore, South Africa, Switzerland, Thailand, Trinidad and Tobago, and the US. No agreement was reached during this meeting.

Towards the end of the year 2002, when the deadline approached for solving the paragraph 6 issues, the negotiations intensified. Following the Sydney mini-ministerial and an informal meeting of the TRIPS Council on 18 November, the chairman released a draft legal text for a decision by the General Council on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. In this draft decision, a waiver (i.e. a temporary solution) was proposed instead of an amendment. Also the scope of diseases was restricted to the diseases referred to in paragraph 1 of the Doha Declaration: HIV/AIDS, malaria and tuberculosis and other epidemics. In response to criticism from developing countries regarding these elements, a new draft text was produced on 20 November, which explicitly stated that public health problems are not limited to the three examples given in paragraph 1. The US strongly opposed to this. Japan objected to the fact that in the new text, vaccines were also explicitly included as pharmaceutical products. In the revised draft text of 24 November, the explicit reference to vaccines was removed. From 25 to 29 November a TRIPS Council meeting was held. Again no agreement was reached. The Council suspended its end of year meeting on 29 November 2002, so as to be able to reconvene at short notice with a view to making a recommendation to the General Council within the deadline set at Doha.

- On 29 November 2002, the African group released a statement. This statement indicated that “the African Group is disappointed and frustrated by the progress made so far”. The group saw the 24 November text as a step back. “There is no merit in coming up with a purported solution that amounts to a step back from Doha or even that creates further restrictions on the current flexibilities in the TRIPS Agreement as highlighted in the Declaration.” Other developing countries that took the floor in the meeting were the Philippines, Cuba, Peru, Botswana, China, Uganda, Malaysia, Senegal, Colombia, Argentina, Brazil, Lesotho, Mauritius, Indonesia and India.

During informal negotiations on 8 December, TRIPs Council chair Ambassador Eduardo Pérez Motta identified six groups of still-contentious issues. These groups included: disease coverage; eligible countries (importers and exporters); procedures for notifications and safeguards to prevent flowback of generic drugs into developed country markets; remuneration to patent holders; regional groupings and technology transfer; and a legal mechanism for a permanent solution once the waiver has come into effect.¹⁶

¹⁶ Source: ICTSD Bridges (2002).

On 16 December, the TRIPS Council convened again. A new text was tabled by the chair, which referred to paragraph one of the Doha declaration but did not limit the scope of any particular diseases. Although reportedly most countries were not happy with the text, most indicated that they were willing to accept it. However, on 20 December, the US announced that it could not join the consensus. The US wanted to restrict the number of diseases to which the solution would apply.

Following the breakdown of the talks, the US announced that it would not challenge any WTO Member "that breaks WTO rules to export drugs produced under compulsory license to a country in need". The interim moratorium, however, only covers HIV/AIDS, malaria, tuberculosis and other infectious epidemics, and will not apply to developed country Members and high-income developing countries (as classified by the World Bank).

- Kenya, on behalf of the African Group, expressed disappointment on the 20 December meeting. Brazil, India, China, Malaysia, Argentina, the Philippines, Botswana, Indonesia, Chile, Thailand, Cuba, Pakistan, and Peru also expressed their disappointment.

In 2003, the first TRIPS Council meeting was held on 18 and 19 February. Before this meeting, the EC and Japan produced documents to come up with a solution, both focusing on how the scope of diseases could be limited. Also, the US produced a document. The chair did not have any new proposal himself to reach consensus, and no agreement could be reached.

- The following countries made statements during the meeting: Lesotho, Chile, Egypt, Nigeria, Thailand, South Africa, Brazil, Morocco (on behalf of the African Group), Paraguay, Pakistan, India, China, Panama, Cuba, Bangladesh (on behalf of the LDCs), Indonesia, Malaysia, Jamaica and the Philippines.

The next TRIPS Council meeting was held on 4-5 June 2003. Before this meeting, two submissions were made. The submission of the EC dealt with implementing the Doha Declaration, and did not specifically focus on paragraph 6.

- The second submission was from Vanuatu, on behalf of the African, Caribbean and Pacific (ACP) Group of countries. It expressed the disappointment with the fact that no consensus could be reached on the 16 December text and urged countries to find a solution to the problem quickly. The submission was against limiting the scope of diseases.
- A number of developing countries made statements during the meeting: Kenya, Cuba, Indonesia, China, Peru, Brazil, Jamaica, Malaysia (on behalf of Thailand), Nigeria, the Philippines, Argentina, and Morocco (on behalf of the African Group). While no agreement was reached during the meeting, informal consultations would continue.

Shortly after this TRIPS Council meeting, on 21-22 June 2003, a mini-ministerial was held again, this time in Sharm el-Sheikh, Egypt. At this meeting, a US official indicated that the US could consider abandoning the idea of a restricted list of drugs to be covered in the agreement.¹⁷ The following countries attended the mini-ministerial: Australia, Bangladesh, Brazil, Canada, Chile, China, Costa Rica, the EC, Egypt, Guyana, Hong Kong, India,

¹⁷ Source: ICTSD Bridges (2003a).

Indonesia, Japan, Kenya, Korea, Lesotho, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Pakistan, Senegal, Singapore, Switzerland, Thailand, and the US.

One week after the mini-ministerial, it was reported that the US was trying to shift its focus: while it was ready to abandon the restrictions on the type of medicines, it now turned its attention to the countries that would be eligible for a solution to paragraph 6 of the Doha declaration, under pressure from the pharmaceuticals industry. Some 22 pharmaceutical firms and 3 trade associations had asked for this in a letter to the US government, suggesting eligibility criteria such as a country's gross national product or whether a certain percentage of the country's population is affected by a disease.¹⁸

This move led to a Draft Chairman's Statement on 21 August 2003. According to this statement, a large number of developed countries would opt out of using the system as importers. Some other countries agreed that they would only use the solution as importers in situations of national emergency or other circumstances of extreme urgency.

On 30 August 2003, the Final Decision was adopted. The chairman announced that a number of other countries had also agreed that they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency: Hong Kong-China, Israel, Korea, Kuwait, Macao China, Mexico, Qatar, Singapore, Chinese Taipei, Turkey, and the United Arab Emirates. An analysis of the decision is made in Section 6.3.

6.2 Strategies and alliances of developing countries: The TRIPS and Health Debate

It is difficult to get an insight into the strategies chosen by developing countries. The delegates that have been interviewed, as well as experts from QUNO's consultative panel, have indicated that discussing strategy does not take the form of "you do x, y and then z." Rather, it is an analysis of the developments in the negotiations, and a discussion of the position of different countries. This may lead to a common or coordinated approach. Alliances that have been formed during the negotiations become apparent in the submission of one proposal jointly by several countries. As described in Section 6.2, this has happened on several occasions in the debate:¹⁹

- The proposal of a group, dated 4 October 2001, communicated to the WTO Secretariat on 19 September, which was submitted by the African Group plus 19 other developing countries: Bangladesh, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela.
- The proposal submitted by Kenya on behalf of the African Group on 24 June 2002.
- The proposal submitted by a group of 13 developing countries (Bolivia, Brazil, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand and Venezuela) on 24 June 2002.
- The communication from Kenya, as coordinator of the African Group on 14 November 2002.

¹⁸ Source: ICTSD Bridges (2003b).

¹⁹ Although this section focuses on the alliances in the debate on public health, it becomes clear from Section 6.2 that also in the debates related to article 27.3(b) several proposals have been submitted by or on behalf of groups of developing countries.

- The communication from Vanuatu, on behalf of the African, Caribbean, and Pacific Group of countries on 28 May 2003.

As can be seen from the list above, the group of developing countries that submitted a proposal in October 2001 did not maintain its unity in the discussion on the paragraph 6 issue, as becomes apparent from the two proposals submitted on 24 June 2002. The African Group proposal was in favour of a solution through an amendment of article 31.f of the TRIPS Agreement, while the proposal of the other group of developing countries preferred a solution through an interpretation of article 30. Although most interviewed delegates indicated that it would have been better if unity could have been maintained, the two groups could not come to a common position. Nevertheless, many delegates as well as the experts indicated that this was merely a difference on which tactics to follow, but that the parties still agreed on the basic underlying objectives.

As well as jointly submitting proposals, developing countries also worked together through other means in the negotiations. Several times, statements were made on behalf of a group of countries (notably the African Group, the LDCs or the ACP countries), or the statements of developing countries complemented or reinforced each other. The non-paper of South Africa is also an example of the unity, as although it was tabled by South Africa, it presented a common developing country position. Finally, the fact that the developing countries maintained their united position that the scope of diseases should not be limited under the solution, despite severe pressure of the US and some other developed countries, can also be seen as proof of the strong alliance between developing countries in the debate.

6.3 The results of the TRIPS and Health Debate: the Doha Declaration and the Decision

While Section 6.2 focused on the developments in the TRIPS and Health Debate, and the role of developing countries in this debate, this section analyses in more detail the results of these negotiations. Up until now, the negotiations have led to two important WTO documents: The Doha Declaration on the TRIPS Agreement and public health of 14 November 2001 and the decision of the General Council on the “Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health” of 30 August 2003. The merits of these two documents for developing countries are analysed below. In addition, the extent to which these results have led to amendments of national laws is examined.

Doha Declaration on the TRIPS agreement and public health

The Doha Declaration was concluded during the Ministerial Conference in Doha, Qatar, in November 2001. The discussion on TRIPS and public health started in June 2001, when it was first discussed in the TRIPS Council following a request from Zimbabwe on behalf of the African Group to put the issue on the agenda. The declaration contained a number of important achievements:²⁰

Before the Doha Declaration, a large group of developing countries proposed that the text should include “Nothing in the TRIPS Agreement shall prevent Members from taking

²⁰ Based on ‘t Hoen, E. (2003)

measures to protect public health". A number of developed countries opposed to this, as they saw this as a new rule, because the current TRIPS rules do not allow for health exceptions that are inconsistent with TRIPS. They wanted to confine the flexibilities in the TRIPS Agreement for public health crises, such as HIV/AIDS and other pandemics. The final outcome of this discussion is given in paragraph 4 of the Declaration: "We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all." The fact that this paragraph refers to the protection of public health and not only in cases of health crises was an important achievement for developing countries.

Secondly, it is recognised in the Declaration that a country has the right to issue a compulsory license and the freedom to determine the grounds upon which such licenses are granted. In addition, the Doha Declaration leaves members free to determine themselves what constitutes a national emergency or urgency. While a national emergency or urgency is not required for the use of a compulsory license, it would make the procedure for using it easier and faster.

A third achievement is that the Declaration authorises parallel trade once and for all by noting that "The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4."

A fourth achievement is that the Declaration grants the Least Developed Country (LDC) member countries an extra ten-year extension –until 2016 instead of 2006- before they must implement the obligation to provide pharmaceutical patent protection.

Finally, the declaration refers to the commitment of developed-country members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to LDCs.

The only issue that was not resolved in the Doha Declaration is stated in paragraph 6 of the Declaration: "We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002." This paragraph led to further negotiations, described in Section 6.2, and resulted in the Decision on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health on 30 August 2003, which is analysed below.

The Decision: Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health

The most important result of the Declaration is that it allows countries lacking adequate pharmaceutical manufacturing capacity to issue a compulsory license and import generic drugs from countries that do have such capacity and have issued a compulsory license themselves. The Decision allows this through the provision of a waiver for exporting countries that have issued a compulsory license for the purposes of production of a

pharmaceutical product(s) and its export to an eligible importing member, under a number of conditions:

- The importer has to make a notification to the TRIPS Council in which it specifies the name and expected quantities of the products needed and confirms that it has established that it has insufficient or no manufacturing capacity in the pharmaceutical products in question. LDCs automatically qualify as a country with no or insufficient manufacturing capacity and therefore do not have to fulfil this second condition. The importing country also has to grant a compulsory license if the pharmaceutical product is patented in the country.
- The compulsory license of the exporting country can only cover the amount necessary to meet the needs of the importing country and the production should be completely exported to the countries that have notified their needs to the TRIPS Council. In addition, the products produced under the compulsory license should be clearly identified through specific labelling and marking, and the exporting country shall publish information on the quantities, destinations and distinguishing features of the products exported under the license. The exporting country has to notify the TRIPS Council of the grant of the license, including the conditions attached to it.

The waivers granted in the decision should be replaced with an amendment to the TRIPS Agreement. Until this amendment has been made, the waivers will apply. The TRIPS Council should, before the end of 2003, initiate work on the preparation of such an amendment, with a view to its adoption within six months. So, whilst the outcome of the discussion is in the form of a waiver, this waiver will be replaced with a permanent solution through an amendment of the TRIPS agreement.

A number of developed countries have indicated that they will not make use of the system as an importing country: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States of America. In addition, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia have agreed that, until their accession to the European Union, they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency. Once they have acceded to the EU, they will opt out of using the system as importers. Finally, a number of countries have agreed that they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency: Hong Kong-China; Israel; Korea; Kuwait; Macao China; Mexico; Qatar; Singapore; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey and the United Arab Emirates.

The reactions to the Decision were mixed. While many countries were happy that a deal had finally been achieved, many actors, notably some NGOs, indicated that the Decision has a series of drawbacks. The most important ones are the following²¹:

- The decision ignores the role of competition. The fact that licenses should specify quantities and that quantities must be for specific markets that have issued compulsory licenses limits the number of potential actors in a particular market, and therefore also competition. The small size of individual markets would make especially the smaller countries unattractive for a pharmaceutical company to enter into production of generic

²¹ Sources: MSF (2003); ActionAid (2003); and Oxfam (2003).

drugs for. Although a concession has been given to countries in that a compulsory licence can be applied to a product from an exporting country for a trading region as a whole than on a country-by-country basis, this is only possible if at least 50 per cent of the members of that region are least developed countries.

- The requirements for using the system will be a deterrent for many countries. The requirements for labelling and packaging to prevent diversion of generic drugs are likely to increase the costs of the drugs. Oxfam also fears that few countries will be prepared to export generic drugs, as this makes them likely to come under political pressure notably from the US, who will defend the commercial interests of its pharmaceutical companies.
- The role of the TRIPS Council. As the use of the new system requires notification to the TRIPS Council both by the importing and exporting country, the TRIPS Council will receive information on the intended use of the license, with details of product type, distinguishing features, quantities, licensees, etc. This will put an administrative burden on the TRIPS Council. In the statement of the chair that accompanied the Decision, it is furthermore noted that “Any Member may bring any matter related to the interpretation or implementation of the Decision, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action.” This gives a new role to the TRIPS Council, while it is yet unclear what kind of action it may take, or what the grounds for such an action will be.

Despite these drawbacks, the evaluator is of the opinion that important achievements were that the use of compulsory licensing is not restricted to emergencies or situations of extreme urgency and there are also no restrictions regarding the scope of diseases or countries (although countries can decide themselves if they want to make use of it). A multilateral agreement is always a compromise, and it is impossible to say whether a better solution would have been possible. There are no indications that opportunities for developing countries have been missed in the negotiating process.

TRIPS and Health debate and national legislation

In the coming period, the waiver will have to be replaced with an amendment. Countries will have to amend their legislation to incorporate this decision. Many of the respondents indicated that this would only be done once the amendment is there. Most respondents indicated that their country is still in a transition period, and the legislation is therefore still under review. The impact of the TRIPS and health debate on national legislation is therefore difficult to assess in this stage.

6.4 The case of TRIPS and public health: a link between QUNO's activities and negotiations results?

As indicated in the beginning of this chapter, it is extremely difficult to establish a direct or causal link between the activities of QUNO and the negotiation results, as negotiators will be influenced by many other factors, and because the negotiations are carried out at a high political level, where other considerations may play an important role. Nevertheless, this section tries to identify some of the occasions where QUNO's activities may have had an impact on the negotiations.

The most important indicator for a possible link is the opinion of the beneficiaries of QUNO's activities, as they are the only ones that participated both in the Quaker house activities and

in the negotiations. As indicated in Chapter 5, many delegations have indicated that QUNO has played an important role in increasing their knowledge, through an analysis of the developments of the negotiations and through an analysis of the options available to developing countries. The delegates used this information to determine their position. A number of respondents indicated that QUNO, especially through its experts, helped also in making proposals, either by reviewing proposals made by developing countries, or even by helping to draft some parts of the proposals. In addition, the experts helped analysing the proposals of developed countries. Specific occasions when QUNO's role has been important, according to some of the respondents, were in getting the text for the Doha Declaration, and also in maintaining the unity between developing countries when there was strong pressure from some developed countries to break this unity. Regarding the maintenance of this unity, it was indicated that QUNO played a central role in bringing about the non-paper of South Africa in November 2002. Also, the two experts of the consultative group that were interviewed pointed to the role of QUNO on these two occasions.

7 ASSESSING PERFORMANCE

This chapter presents the scores on the performance of QUNO's TRIPS Programme. The scores on the efficiency, effectiveness and relevance follow from a uniform scoring methodology developed for all TRTA activities subject to this IOB evaluation. For the ranking, a five-point scale is applied: Poor (P), Weak (W), Fair (F), Good (G), and Excellent (E). An explanation of the rating methodology can be found in Annex 7.

7.1 Efficiency

Output delivered according to plan, budget and schedule (Score: G)

In Chapter three, an overview was given of the budget, costs and time span of QUNO's activities under the TRIPS Programme. Chapter 4 described to what extent and when the output has been realised. Regarding the delivery of output according to schedule, it was noted that QUNO's activity plans have not specified clear dates for the delivery of output. Little can be said therefore about the achievement of the schedule. Looking at the duration of the second and third phase of the TRIPS Programme, it becomes clear that there have been some delays both in the second and in the third phase. The second phase would originally have run from March 2001 to March 2002, but only came to an end in August 2002. Also the first year of the third phase has been extended: this year would originally have run from September 2002 to September 2003, but has been extended to December 2003. These delays seem to have been caused mainly by a larger than expected time span between the requests for new funding and the receipt of the grants.

These delays have had no significant impact on the output of the programme, as it is clear that most of the planned output has been delivered. There has even been more informal Quaker House meetings than were originally planned. Only one output has not been delivered according to plan; this concerns the organisation of national seminars in developed countries. There have been only two national seminars so far (one in the Netherlands and one in Norway), instead of five. Only the seminar in the Netherlands had the character of a national seminar as originally foreseen, i.e. an event to raise wider public awareness of the issues under debate in the WTO. The seminar in Norway was too technical for this and was not targeted at a wider public. It therefore had more the character of a residential seminar. Important reasons for the lower number of national seminars than planned were the increased attention to public health, which was not foreseen when the activity plan was written for the second phase, and the difficulties in finding appropriate partners in developed countries. Although these seem to be valid arguments, and the national seminars are not a core activity of QUNO, it is regrettable that this has reduced the opportunities for spreading information to a broader audience (see also Section 7.2). Because of the delays in the first year of the third phase, some of the output planned for this period has also not been achieved. This concerns the publication of general background documentation on TRIPS for a wider audience and the organisation of a second residential seminar. Preparations for the background material are well underway however, and it is expected that the delays can be made up for in the second year of the third phase.

It has not been possible to make a comparison between the budget and costs for the TRIPS Programme, as details of the total costs are not available. The only information available on budget and costs concerns the grants from DGIS to QUNO. For the second phase, these

figures show that total costs have stayed within the budget. In the first year of the third phase, the costs are somewhat higher than the budget, but this can be explained by the fact that this first “year” has run for 16 months instead of 12 months. Of interest is that some shifts have been made between different cost categories. The expenses for administrative costs have been higher than envisaged in both phases. It is not entirely clear what has caused these shifts. It could be possible that in case of lower costs than expected for organising the activities, more costs are claimed for administration, so that the grant will be fully spent. There is no proof for this however.

Relationship between input and output (Score: E)

Overall, QUNO seems to work very efficiently. QUNO has produced a lot of output with limited input. Only 1.5 FTE is working on the TRIPS programme, with some additional administrative support. The use of consultants as experts enables their input to be very flexible: these experts will only work for QUNO when they are requested to do so. This ensures a very efficient input of human resources. Because QUNO has good relations with several experts, there do not seem to have been problems regarding availability of experts.

QUNO has also been efficient in the sense that it seeks to cooperate with organisations for some activities, notably with ICTSD in Geneva. This organisation has a large contact database with over 10,000 records, which is specifically targeted towards the trade and sustainable development community and regularly updated. Also for the regional seminars, QUNO has cooperated with ICTSD, which already had partner organisations in developing countries. This cooperation has led to a relatively limited input from QUNO staff. For the national seminar in The Hague, most organisational work was done by the Netherlands Ministry of Foreign Affairs, so that QUNO only needed to focus on content and the invitation of delegates.

The TRIPS Programme also requires very little input from donors. The responsible person at DGIS reported that she spends less than half a day per month on the programme. Her activities for the Programme are mainly the assessment of new proposals and of the reports on the grants.

Table 7.1 Efficiency

Indicators	Score
Realisation of output according to plan, budget and schedule	G
Relation input-output	E

Overall score on efficiency: Good / Excellent (G/E)

7.2 Effectiveness

Relationship between output and outcome: effects on expertise and participation (Score: G)

The beneficiaries have all indicated that the output of the TRIPS Programme has been very useful to them. Many of them pointed out that the specific focus of QUNO allows in-depth discussions on issues related to debates and negotiations on TRIPS. In addition, an important feature of QUNO is that it provides a forum for developing country governments. This forum is important because these countries often have different stakes in the

negotiations, and the forum allows them to exchange ideas and discuss strategies. Some delegates commented “QUNO has really made a difference” and “with other organisations it is more difficult to pinpoint in what way they have been helpful to you, but QUNO has delivered something very clear in the health debate”.

The output under the TRIPS Programme has played different roles. The output that has been of most direct use to the delegations are the publications and the Quaker House meetings, although most beneficiaries indicated that the different activities of QUNO complemented each other. In the Quaker House seminars, the input of the experts was essential. Their input has helped delegates to analyse the developments in the negotiations and also to determine their position. The timing of the Quaker House meetings is such that it closely follows the negotiations: meetings are held immediately before or after the negotiations. Although most delegates were happy about the timing of these activities, some delegates felt that at times there were too many of these meetings. They indicated, however, that they were always held at the request of other delegations, and (with one exception) they did not blame QUNO for it. The residential seminars were less focused on the ongoing negotiations, but were considered important for increasing knowledge on more long-term issues.

As well as the fact that QUNO’s output has increased the knowledge of delegates, the question is how this increased knowledge has helped these delegates to negotiate and to actively participate in the TRIPS discussions and negotiations. First of all, the analyses of the TRIPS debates and discussions of the strategies available to developing countries have helped these countries to determine their position. Secondly, by providing a forum for the delegation, QUNO has helped developing countries on a number of occasions to come up with a common position. It has also provided active support in commenting on, or helping to draft proposals. These two factors have certainly increased the capacity of the delegations in the negotiations.

Minutes of the TRIPS Council meetings clearly show that many beneficiaries of QUNO’s TRIPS Programme have been active in the discussions. On the other hand, it should be noted that many of the beneficiaries were also active players in the WTO before the TRIPS Programme started, which makes it difficult to assess the effect of QUNO’s activities on their participation. However, these countries themselves have indicated that QUNO has played an important role for them. QUNO especially targets the active developing countries because these are the ones that can make a difference in the negotiations. QUNO does not provide any negotiating training, but the discussions on available options in the negotiations helps countries to determine their strategies.

Target groups and outreach (Score: F)

The developing country delegations are the main target groups of QUNO’s TRIPS Programme. Although QUNO does not only focus on a certain group of developing countries, the participants of most activities (especially the Quaker House meetings) include delegations that are most active in the negotiations, or that have a high interest in them. Because these delegations are present and active in the negotiations, QUNO’s activities are very focused and can become very technical, e.g. detailed analyses are made of the legal texts of the TRIPS Agreement, declaration, or proposals. A wider audience is reached through a number of activities:

- The discussions and issue papers, which are less technical than the occasional papers and therefore accessible for a larger public;

- The residential seminars attract participants representing developing and developed country delegations to the WTO, experts from academic, governmental and NGO bodies, developed country bilateral aid agencies, relevant international agencies and industry;
- The regional seminars, which attract an audience with a balanced representation of stakeholders, and the national seminars, which increase public awareness of the issues under discussion in the WTO.

While the publications are sent to a large and varied audience, and the regional and national seminars have also had a balanced audience, QUNO does not invite a sufficiently broad audience to the residential seminars. An analysis of the participant lists to these seminars shows that most participants are developing country delegates, and from the other target groups there are often only one or two representatives. The residential seminars seem to provide an opportunity to strengthen the link between the delegations and the capital, and therefore more participation from the capitals would be desirable. Making the link between delegations and capitals is especially important since this will no longer happen in regional seminars, since ICTSD has decided to stop this activity.

The fact that there has only been one real national seminar implies that the outreach of QUNO's activities to other groups than the delegations has been limited. The publications are sent to a wider audience but these publications may be too large and specific to be read by a large audience. The fact that QUNO is now preparing more introductory background material in a condense and user-friendly format seems to be an important step to increasing QUNO's outreach, although this material was not finished at the time of the evaluation.

Cooperation and coordination with other organisations (Score: G)

There are many organisations in Geneva that provide trade-related technical assistance, some of which are dealing with TRIPS. On the initiative of the Rockefeller Foundation, an important donor of many of these organisations, regular meetings are held to coordinate their activities. This does not mean that the organisations will always work on different issues, but they will try as much to find their own focus and activities. This prevents duplication of activities, provides opportunities for cooperation of different organisations and leads to information exchange. This helps QUNO and the other organisations to make their activities more effective.

Table 7.2 Effectiveness

Indicators	Score
Gained knowledge and expertise of beneficiaries	G
Participation of beneficiaries in discussions and negotiations	G
Outreach	F
Cooperation with other organisations	G

In brief, the delegates were very positive about the knowledge acquired through the Quakers. They also actively participated in the TRIPS discussions. Although QUNO sees the delegations as primary target groups, it will have to include more stakeholders in the residential and national seminars to reach the wider audience targeted for these activities. The coordination of activities with other organisations in Geneva working on TRIPS is positive.

Overall score on effectiveness: Good (G)

7.3 Relevance

For the relevance of QUNO, an assessment has been made of the contribution of QUNO's work to the achievement of Dutch policy objectives. In the design for the evaluation, two questions were identified for this assessment (see Annex 3):

- I. To what extent has the outcome of QUNO contributed to the capacity of the developing country to negotiate and implement multilateral trade agreements?
- II. To what extent has the outcome of QUNO contributed to the formulation of a national policy of the developing country at the interface of trade and development?

Table 7.3 indicates whether or not these Dutch policy objectives are within the scope of the TRTA programme (i.e. QUNO).

Contribution to the capacity of the developing country to negotiate and implement multilateral trade agreements (Score: G)

The above clearly shows that QUNO has helped developing countries to negotiate multilateral trade agreements, at least for the TRIPS Agreement. The fact that QUNO's activities seem to have helped the formation of coalitions between developing countries even may have had an effect on multilateral trade negotiations in other areas than TRIPS (for example the G-20 coalition of countries that played an important role in Cancun), although this causal relationship is difficult to confirm.

QUNO does not do any work on the implementation of multilateral trade agreements. Although the capacity of countries to implement trade agreements will not be increased as a result of QUNO's activities, the outcome of the negotiations may help developing countries to implement trade agreements: there is now much more information available regarding the flexibilities the TRIPS Agreement provides regarding health and less uncertainty as a result. In addition, the Doha Declaration gives Least Developed Countries (LDCs) a longer transition period (until 2016 instead of 2006) for introducing pharmaceutical patents.

Contribution to the formulation of a national policy of the developing country at the interface of trade and development (Score: W/F)

Regarding the second question, QUNO has analysed what options developing countries have in the negotiations, and how these options relate to their development. In this sense, QUNO has contributed to the formulation of a national policy at the interface of trade and development. Through its regional seminars and the distribution of publications, QUNO has also been able to provide information to a broader audience in the country, for example to academia and NGOs. In general, however, participation from stakeholders in developing countries has been limited, and it would be good if the interaction between these groups could be expanded through QUNO's activities. In some cases, national governments have been in touch with experts of the consultative panel regarding their national laws, but this only happened on a very limited scale and the effects are therefore negligible.

Table 7.3 Relevance

Indicators	Indicator within the scope of the TRTA Programme	Score
Contribution to the capacity of the developing country to negotiate and implement multilateral trade agreements	Yes	G
Contribution to formulation of a national policy of the developing country at the interface of trade and development	No	W/F

Overall score on relevance: Fair (F)

7.4 Future performance

There will be some important changes at QUNO in the near future. At the start of 2004, the current director will retire and be replaced. His successor has considerable experience (he is currently director of a large Methodist relief and development agency in Vienna, and has also worked in the EC Asian trade division), but a new director will probably bring some changes to QUNO. The successor will enter the Trade and Development Programme with an open mandate, but with a clear emphasis on WTO and trade policy. To ensure continuity of QUNO's TRIPS Programme, the current director and representative of the trade and development programme will have an overlap of 10 months, during which the former representative will stay on as a consultant. The senior Programme consultant will also stay involved, but the current Programme Associate, who works full time on the programme, will leave at the start of 2004.

In addition to internal changes, there is also likely to be a change of focus. Since Doha, QUNO has been very active in the negotiations on TRIPS and Public Health. All respondents were also referring especially to QUNO's work in this area. With the decision on TRIPS and public health of 30 August 2003, the attention given to this subject is likely to reduce, although in the coming period there will be discussions on how the waiver can be replaced by an amendment (for an explanation, see Chapter 6). QUNO's staff indicated that there will be more attention to issues related to the review of article 27.3(b) of the TRIPS Agreement, such as disclosure, traditional knowledge, *sui generis* systems, the Convention on Biological Diversity, and compatibility with other forums like WIPO but also with regional and bilateral trade agreements. Whether QUNO can play the same role on these issues as in the TRIPS and Health debate is not clear. Although most delegates thought that QUNO would in principal be capable of repeating what they did in the TRIPS and health case and that they had already provided important publications and discussions with experts, some also mentioned that QUNO still needs to prove itself on these issues. It was generally recognised that much will depend on how the discussions will develop in the TRIPS Council. One of the experts indicated that the developed countries do not want to discuss these issues in the TRIPS Council, although he also indicated that some issues are now maturing. Developing countries were divided on the prospects for more discussion in this area: some thought that indeed these issues were maturing, while others indicated that countries are still too divided. Given that one of the main strengths of QUNO has been their meetings around the negotiations, it will be difficult to play a similar role as in the TRIPS and Health debate as long as there are no important developments in the TRIPS Council.

7.5 Conclusion

The above shows that QUNO has a fair to good score for the three main elements of the evaluation: efficiency, effectiveness and relevance. On efficiency, QUNO scores especially high because an important part of QUNO's input can be used in a flexible manner, given the use of consultants as experts. The score on effectiveness is good because QUNO has contributed to a more active or strategic participation of developing countries in the negotiations, and also to a higher level of knowledge of its beneficiaries. The only point of criticism is that QUNO could find a broader audience for some of its activities. Regarding relevance, QUNO's score is fair because its activities have contributed to realisation of the Dutch policy objective of increasing developing countries' capacity to negotiate and implement trade agreements, and it has had some impact on the formulation of national trade policy in developing countries.

Looking at QUNO's achievements, the funding of QUNO by the Netherlands and other donors can be considered an example of smart funding. Donors spend relatively small amounts of money and get an efficient delivery of output, a programme that reaches its objectives and that is relevant with respect to donors' objectives.

The beneficiaries are very positive about QUNO's activities. One of the elements of QUNO's activities of QUNO that is appreciated by the beneficiaries is the specific focus of QUNO's work, which allows the discussions to go into detail. Bringing the countries together in an informal setting, and providing them with technical input from the experts of the consultative panel helped countries to analyse the developments in the negotiations and to come up with new proposals. Also the objectivity of QUNO was appreciated; the organisation does not try to push for anything. Many of the beneficiaries could not think of any recommendations for improving QUNO's work. Some indicated that it would be good if the capitals could become more involved in QUNO's activities. Some others indicated that they would like to see QUNO getting involved in other WTO areas. Services and non-agricultural market access were given as suggestions. Many delegates also indicated however that an improvement of QUNO would almost automatically imply that QUNO would need to become bigger and they feared that this would also have implications for QUNO's flexibility and degree of confidentiality, while these are elements that they highly appreciate.

There will be some changes in QUNO's TRIPS Programme in the near future. First of all, there will be a new trade and development representative in 2004, and the current full time programme assistant will leave. Also, the topics of debates in the TRIPS Council will change. It is therefore difficult to guarantee whether QUNO will be able to continue its good performance in the future. Given the continued input from the senior consultant, the continued assistance from the current director and the reputation that QUNO has built among the Geneva delegations, there are, however, no clear indications that QUNO's good performance will decrease in the near future.

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