



منتدى الدوحة رفيع المستوى حول التجارة والاستثمار
DOHA HIGH - LEVEL FORUM ON TRADE & INVESTMENT
DECEMBER 5 - 6 2004 DOHA - QATAR

**STRENGTHENING DEVELOPING COUNTRIES' CAPACITY FOR TRADE
NEGOTIATIONS: MATCHING TECHNICAL ASSISTANCE TO NEGOTIATING
CAPACITY CONSTRAINTS**

Background paper prepared by the South Centre

**OFFICE OF THE CHAIRMAN OF THE GROUP OF 77
NEW YORK**

**STRENGTHENING DEVELOPING COUNTRIES'
CAPACITY FOR TRADE NEGOTIATIONS:
MATCHING TECHNICAL ASSISTANCE TO
NEGOTIATING CAPACITY CONSTRAINTS**



November 2004

Geneva, Switzerland

This paper is written at the request of the Office of the G77 and China in New York for the G-77 and China High-Level Forum on Trade and Investment, Doha, Qatar, 5-6 December 2004.

Table of Contents

Executive Summary	iii
I. Introduction	1
II. Negotiations Capacity Needs and Constraints of Developing Countries.....	2
A. National Policy Incoherence and Lack of Institutional Coordination.....	4
B. Constraints in Preparing for Trade Negotiations.....	5
1. Human Resource Constraints.....	5
2. Budgetary Constraints.....	8
3. Inadequacy or Lack of Technical Preparation	10
III. Major Shortcomings of Available Trade-Related Technical Assistance and Capacity-Building Initiatives	14
A. Insufficiency of TRTA/TRCB Resources.....	14
B. Quality of Technical Assistance Being Provided.....	15
1. Donor-Driven Character and Lack of Beneficiary Ownership	15
2. Lack of TRTA/TRCB Needs Assessments and Impact Evaluations	16
IV. Matching Technical Assistance and Capacity-Building to Negotiations Capacity Needs and Constraints of Developing Countries	17
A. Strategic South-South Cooperation.....	18
1. Strategic Cooperation on the Basis of Defined National Policies	18
2. Possible Mechanisms for Strategic South-South Cooperation	18
B. Providing Resources for Trade Negotiations Capacity-Building.....	19
1. Technical- and Working-Level Coordination among Developing Countries..	20
2. External Technical Assistance and Capacity-Building.....	21
(a) Developing South-Owned TRTA/TRCB Initiatives	21
(b) Effecting Qualitative Changes in Existing TRTA/TRCB	22
V. Conclusion	23
Annex: Developing Trade-Related Negotiations Capacity of the South	25
References.....	26

Executive Summary

1. This paper looks at the negotiating needs and constraints of developing countries vis-à-vis international trade negotiations, and at the deficiencies of existing trade-related technical assistance and capacity-building initiatives in addressing such capacity needs and constraints.
2. The major constraints that developing countries face when it comes to developing negotiating capacity in trade negotiations include incoherence in national policies and in national policymaking coordination, and limitations with respect to the availability and depth of national human, financial, and technical resources that adversely affect their ability to adequately prepare for trade negotiations.
3. For example, in addition to the difficulties in defining national negotiating positions, or in arriving at common negotiating positions, as a result of incoherent national policies, uncoordinated national and South-South mechanisms for trade negotiations often play major roles in weakening the South's (individually or as a collective) to negotiate beneficial trade deals.
4. The lack or insufficiency of human, financial, and technical resources to adequately prepare for trade negotiations also severely weaken the negotiating strength of developing countries. In many instances, there are failures or inadequacies stemming from these resource constraints in relation to: (i) the conduct of strategic development economics research and analyses as the bases for defining the national objectives for trade negotiations as well as developmental priorities; (ii) the conduct of sector- or industry-specific research and analyses to identify the potential impacts of negotiating outcomes on domestic industries; (iii) familiarity with and knowledge of the negotiating context so as to be better able to define negotiating tactics and strategies; and (iv) the provision of timely negotiations input and negotiations support to the country's trade negotiating team.
5. On the other hand, available trade-related technical assistance (TRTA) and trade-related capacity-building (TRCB) initiatives suffer from some major short-comings as far as the ability of these initiatives to effectively respond to developing country needs are concerned. These include issues relating to the sufficiency of the resources being provided and issues relating to the quality of such assistance vis-à-vis their ability to respond to the technical and capacity-building assistance needs of developing countries.
6. Many existing TRTA/TRCB initiatives tend to be "donor-driven" in the sense that their design, implementation, and objectives tend to be dominated by, reflect, and promote the interests of the donors (e.g. developed countries or institutions dominated by developed countries such as the WTO, the World Bank, and the IMF) rather than respond to and address the needs of the beneficiary developing countries. This means that the beneficiaries do not

fully enjoy the “ownership” that they ought to have in relation to the design, implementation, and outcomes of TRTA/TRCB initiatives if such initiatives are to be considered as developmental assistance tools. It also means that, for a variety of reasons, TRTA/TRCB beneficiaries become mere “takers” dependent on externally-designed and implemented initiatives as opposed to being full partners in the design and implementation of such initiatives.

7. These problems are compounded by the failure of many existing TRTA/TRCB initiatives to provide for both pre-design and implementation needs assessments and post-implementation impact assessments and evaluations. The needs assessments are necessary to enable TRTA/TRCB providers tailor their initiatives to respond to the identified development and capacity-building needs and priorities of the beneficiaries and, therefore, also increase the stake and ownership of the latter in the outcomes. The impact assessments and evaluations are necessary to provide a feedback and monitoring mechanism on the extent to which TRTA/TRCB outcomes provide development benefits to the beneficiaries. Such feedback will be important in ensuring that next-step TRTA/TRCB initiatives become more responsive to the needs and demands of the beneficiaries and become more conducive to the attainment of the beneficiaries’ own developmental objectives.
8. The paper stresses that in order for developing countries to be able to strengthen their negotiating capacity and thereby become more influential in affecting the outcomes of trade negotiations, the following needs to be done:
 - (a) Strategic, coordinated, and cooperative political action on the part of developing countries in international trade negotiations on the basis of defined national positions;
 - (b) The establishment of strong technical- and working-level South-South negotiating coordination; and
 - (c) Qualitative changes in the nature, bias, and implementation of TRTA/TRCB initiatives need to be undertaken, especially in terms of developing South-owned TRTA/TRCB initiatives and putting administrative and structure changes in place that would ensure that TRTA/TRCB reflect and respond to the TRTA/TRCB needs and development priorities of developing country beneficiaries rather than to the agenda of the donors.

STRENGTHENING DEVELOPING COUNTRIES' CAPACITY FOR TRADE NEGOTIATIONS: MATCHING TECHNICAL ASSISTANCE TO NEGOTIATING CAPACITY CONSTRAINTS*

I. Introduction

1. Discussions and negotiations at the World Trade Organization (WTO) do not take place on a level playing field in terms of both power and negotiating capacity among WTO Members. While WTO decision-making is theoretically on the basis of equality, with each Member being entitled to one vote (in the event of decision-making by voting) or with the effective right to veto (in the case of consensus decision-making), both power and capacity imbalances may essentially negate this fundamental legal equality to participate in decision-making provided for in WTO law. As former WTO Director-General Michael Moore, the WTO's Director-General from 1999 to 2002, once pointed out:

The WTO is an organization in which all decisions are taken by consensus. Every member government, whether modest or mighty, in essence holds the equivalent of a UN Security Council veto. But there is also no denying that some members are more equal than others when it comes to influence.¹

2. Relative weakness in terms of negotiating capacity and strength on the part of developing countries is reflected in the long-standing proposals from them for a more rule-based and formal process of decision-making in the WTO, as opposed to the flexible and relatively more ad hoc decision-making process extant and favoured by developed countries (i.e. those countries that have both negotiating capacity and economic and political strength).
3. Although the balance of power among WTO Members is always a major factor in WTO decision-making, a more rule-based decision-making process that prioritises the involvement and technical inputs of experienced delegates and bureaucrats can allow developing countries to maximise their existing negotiating capacity and, to some extent, remedy the power imbalance. Ad hoc and politicised decision-making processes, on the other hand, enhances the power imbalance by giving greater bargaining power to developed country ministers who tend to be better resourced to deal with the intricacies and technical details of WTO negotiations than their developing country counterparts. In addition, developed country ministers often have other ways of exerting pressure on their developing country counterparts outside of the parameters of the WTO negotiations, given the reliance by many developing countries on official development assistance from developed countries and the Bretton Woods institutions (which are also controlled by developed countries).

* This paper is prepared by staff of the Trade and Development Programme (TADP) of the South Centre at the request of the Office of the G-77 and China in New York for the G-77 and China High-Level Forum on Trade and Investment, Doha, Qatar, 5-6 December 2004, and the points raised herein are based on the authors' experiences and research in providing negotiating assistance to developing country delegations in the WTO and WIPO negotiations.

¹ Michael Moore, *World Trade Needs Atlantic "Big Boys" to Get Together*, at http://www.europeanaffairs.org/archive/2000_summer/2000_summer_15.php4

4. The lack of negotiating capacity among many developing countries in the WTO negotiations may result in not having their interests and perspectives be adequately reflected in the outcomes of the negotiations. Small, over-stretched, and resource-constrained delegations are not likely to be able to make full use of their right to participate in the WTO negotiations and decision-making processes. This leaves the negotiating field by default to those delegations (mainly those from developed countries) that have sufficient negotiating capacity to be able to effectively participate. Furthermore, under the current consensus-based mode of decision-making in the WTO, countries that have not participated in the initial discussions or who are not fully aware of the issues involved often find it difficult to intervene effectively or to raise objections at the later stages of the decision-making process.
5. However, power imbalances in WTO negotiations may still be remedied through capacity improvements on the part of developing countries and through coalition-building among themselves (as has already been shown in recent years with the rise and strengthening of various informal and formal developing country regional- and issue-based coalitions in the WTO). The existence of sufficient negotiating capacity at the national level of developing countries is the foundation of effective participation in the negotiations and facilitates the ability of developing WTO Members to work together for their common interests, influence agenda-setting and decision-making in their favour, and substantially affect the negotiating outcomes.

II. Negotiations Capacity Needs and Constraints of Developing Countries

6. Negotiating capacity needs can not be viewed in isolation. Negotiations require preparation and are linked to implementation that take place in the broader national context of an institutional knowledge base, national policy design, articulation and implementation, and technical and budgetary constraints.
7. Complex trade negotiations, whether at the bilateral, regional, or multilateral level and given the wide range of issues covered and the possible impacts that their outcomes might have on domestic policymaking, require countries to make significant resource investments in the development and improvement of the human, technical, financial, and physical infrastructure necessary to have robust and sufficient negotiating capacity in the public and private sectors. While the situation is improving to some extent, many developing countries continue to face challenges and resource limitations in developing such negotiating capacity to the extent needed to ensure their effective and substantive participation in trade negotiations.
8. Negotiating capacity has two aspects. The first – its institutional and technical aspect – comes from having: (i) well-defined national policies upon which to base negotiating positions; and (ii) strong institutional mechanisms to achieve the policy objectives through the negotiations. This is the aspect that individual developing countries have the most control over when it comes to influencing the outcomes of trade negotiations. The second – its political aspect – comes from being able to use negotiating capacity to address and influence the balance

of economic and political power among the negotiating partners and so shape the negotiating outcomes. A post-negotiations aspect to having negotiating capacity is its value-added effects on enhancing the country's ability to effectively implement its trade commitments in an optimal manner vis-à-vis its trade and developmental objectives.

9. While a discussion of the second aspect falls mostly outside the scope of this paper, developing countries will need to look at the extent to which the presence, absence, or insufficiency of negotiating capacity on their part supports the maintenance of an unfavourable balance of power, and how they can tilt the balance through cooperative and collaborative negotiating strategies. Although this paper will focus primarily on the first aspect, it will also look at the extent to which the first aspect may influence or impact on the ability of developing countries to work together to influence the political aspect.
10. Effective national-level policy leadership, coherence and coordination (and the institutional mechanisms for developing such coherence and coordination that would involve various relevant sectors and stakeholders – such as domestic industry and civil society – in the country) in the identification of national interests in the negotiations and in the formulation of the appropriate negotiating positions designed to move forward a “pro-active” rather than a “reactive” negotiating agenda provide negotiators with the policy foundation, objectives, and parameters for their negotiating strategy.
11. Well-organised and coordinated institutional mechanisms that can provide negotiating experience, technical expertise (both on the issues and on negotiating tactics), policy research and analytical preparation and support, and the physical and financial infrastructure necessary to ensure that the country's negotiators have sufficient information (about their negotiating counterparts' positions and interests), technical resources, and actual physical negotiating presence, enable negotiators to effectively develop and carry out their negotiating strategy.
12. Most developing countries often fall short in terms of providing for the institutional and technical aspect of negotiating capacity. Given that providing for this aspect will essentially compete with other and perhaps more pressing government budgetary priorities, many developing countries often choose or are constrained to provide only limited resources to developing negotiating capacity so as to provide more resources to other areas of governmental operations. Such budgetary prioritisation choices or constraints often result in a diminished negotiating capacity at the technical and institutional level.
13. This diminished capacity shows itself in:
 - (i) difficulties in defining and promoting a clear national negotiating policy position in trade negotiations due to a lack of coherence in both national policies and national policymaking institutions and to the lack or insufficiency of coordinated involvement of relevant agencies and stakeholders in the policy-making process; and

- (ii) a lower level of technical preparation with respect to trade negotiations due to the limited resources made available to support national trade negotiators.

A. National Policy Incoherence and Lack of Institutional Coordination

14. Various studies² on the development of negotiating capacity among developing countries often stress the importance of coordinated national policymaking institutions and mechanisms and coherent national policies (in the economic and trade fields) as the fundamental basis for developing sufficient capacity and strong positions in trade negotiations. In many cases, developing countries are often lacking or are weak in these areas.
15. National economic and trade policies may be incoherent or not clearly defined and identified. This means that negotiating needs and priorities often cannot be clearly identified prior to the start of, or even during, trade negotiations. The incoherence or ambiguity of national policies may be the result of the failure of the government to effectively coordinate trade and economic policymaking among its various agencies and to obtain the input of all relevant policy stakeholders.
16. Poor inter-agency coordination in policymaking often is the result of unclear, conflicting, or uncoordinated lines of decision-making authority within and among agencies over a given issue. Uncoordinated policymaking also has negative impacts on the ability of the bureaucracy to get needed technical information and input from those agencies or sectors (such as business, farmers, civil society, etc.) that may have them to the officials or negotiators that need them.
17. In addition, unclear or uncoordinated lines of negotiating authority often give greater scope for negotiating approaches and strategies to be determined on the basis of the negotiator's personal views and perceptions of what constitutes national interest rather than on the basis of a policy package and negotiating brief designed and agreed upon by the negotiator's political leadership. Hence, the conclusion by one author that:

In general, it would appear that the possibility of the negotiating approaches being determined on the basis of ... personal views and perceptions is greater in the case of negotiators from developing countries than in the case of their counterparts from developed countries. In influencing the course of the negotiations by their personal perceptions or interests, the latter act under far greater constraints. Such constraints are put by the briefs they have received; the departments, other governmental agencies and the public interest groups that are continuously watching their performance to ensure that the negotiating positions that are taken are conducive for the attainment of the policy objective that has been laid down by the briefs. In addition, they are conscious that the agreements that they may succeed in negotiating would be examined at a political level by the parliaments

² See e.g. Roberto Bouzas, *Mercosur's experiences of preparing trade negotiations with the EU: A memorandum* (ECDPM Discussion Paper No. 50, January 2004); Sheila Page, *Developing Countries in GATT/WTO Negotiations* (Overseas Development Institute Working Paper, February 2002); and San Bilan and Geert Laporte, *How did David prepare to talk to Goliath? South Africa's experience of trade negotiating with the EU* (ECDPM Discussion Paper No. 53, September 2004).

of their countries in order to ascertain whether the government's objectives for participating in the negotiations had been achieved. A large number of the developing country negotiators may be in a different situation.... [I]t is not unusual for the negotiators, at least from some of the developing countries, to declare proudly that the policy of their governments on many of the subjects discussed in the international organisations in which they represent is largely made by them....³

18. There is no single model among developing countries for ensuring effective trade and economic policymaking coordination and to represent the country in trade negotiations. Some may lodge that responsibility for both trade policymaking and representation in negotiations in only one agency – such as the trade or economic planning ministry – while others may assign the responsibility for coordinated policymaking to an inter-agency coordinating body and the task of representing the country in international trade negotiations to the foreign affairs ministry or to the trade ministry.
19. Regardless of the bureaucratic set-up adopted, what is important is the ability of the country's political leadership to establish an effective coordinating mechanism, involving relevant agencies and other domestic stakeholders (such as local industry and civil society), for the identification of the country's trade and economic needs, interests, and priorities, and ensure that these are effectively promoted by the country's trade negotiators.

B. Constraints in Preparing for Trade Negotiations

20. Investing in creating a strong and coordinated domestic policy and institutional foundation for engaging in trade negotiations is necessary but needs to be complemented by investments in the human and financial resources for negotiations and in the technical preparedness and capacity of the country's negotiators. Current international trade negotiations are complex and knowledge-intensive at the domestic human resource and technical level because they require more specific and specialised knowledge, expertise, and infrastructure focused on external trade and economic areas which tend to fall outside the normal scope of domestic governmental functions.

1. Human Resource Constraints

21. The existence of a national pool of experienced and knowledgeable experts – whether in the government, in academia, or in the private sector – is essential to the preparedness and the capacity of a country to engage in international trade negotiations. Having people with technical knowledge is necessary to enable the country to assess the domestic impact of various policy outcomes that may come out from trade negotiations, and to identify what needs to be done to ensure that the outcomes of trade negotiations support the country's development priorities and policies.

³ Vinod Rege, *Developing Country Participation in Negotiations Leading to the Adoption of the WTO Agreements on Customs Valuation and Preshipment Inspection: A Public Choice Analysis*, 22:1 WORLD COMPETITION (1999), pp. 51-52.

22. Unfortunately, most developing countries have a shallow human resource pool when it comes to having nationals who may be considered as technical experts or have extensive practical experience or specialised education or training in the areas of international trade and economic law and policy. It may also be the case that there may be insufficient structures in place that would allow domestic governments to identify and tap their existing human resources, if available.
23. The governmental pool may be limited, in many cases, to only those diplomats and trade ministry officials who are currently engaged in trade negotiations. In many instances, developing country trade negotiators may not even be specialists in trade issues but are essentially diplomats (without prior training in trade issues) in their foreign ministries assigned to cover international trade negotiations. This means that these developing country negotiators would be starting off from a relatively lower knowledge base and with lesser experience than their developed country counterparts.
24. In addition, most developing countries, due to resource constraints, are not able to station or send large numbers of government personnel overseas to staff their negotiating teams. For example, in 2002, the average size of a developing country delegation to the WTO in Geneva was 3.81 delegates. The range, however, is from zero (23 developing country WTO Members – most of them least-developed countries (LDCs) – do not have missions in Geneva) to 10 or more for some bigger developing countries such as Nigeria (10), China (11), Brazil (12), and Korea (18), with a total of 385 delegates for all developing countries in the WTO.⁴ In addition, many developing countries do not have separate missions tasked solely to the WTO. Instead, their delegations in Geneva attend to and cover meetings not only of the WTO but also of the United Nations and other international organisations based in Geneva.
25. Furthermore, only a few of the larger or better-resourced developing countries (such as Singapore) can count on having adequate technical and policy support and guidance from their capitals, or have the resources to be able to frequently bring such capital-based experts to Geneva. This means that in many if not most cases, developing countries tend to rely more on their Geneva-based missions to provide the lead in, and to provide policy and technical input into, their trade negotiating teams rather than on their capital-based officials.
26. The domestic non-governmental sector pool in many developing countries that could potentially be used to supplement the governmental pool may be itself limited to only a few academics (more often than not trained in Northern universities), industry lawyers or economists, or civil society advocates. All too often, the national pool – composed of experts from the government and the private sector – may be composed of individuals with conflicting interests and views, such that the universe of potential domestic experts who may be called

⁴ The figures are based on the April 2002 WTO Directory. There are no commonly accepted definitions of “developing” or “developed” countries in the WTO. Classification is by self-asciption. For example, Hong Kong - China, Korea, Mexico, and Turkey are included in the “developing country” classification even though they are not part of the G-77 and China developing country grouping because they describe themselves as “developing” for purposes of WTO classification. Singapore is also self-asciptioned as a developing country in the WTO and is still a member of the G-77 and China.

upon to form the country's trade negotiating team might in essence be very limited. In addition, the frequent lack of an effective inter-agency coordinating mechanism means that there is no transfer and exchange of expertise and knowledge that may be relevant to a given negotiating area from those agencies that do have such expertise and knowledge to those agencies that do the actual negotiating.

27. On the other hand, developed countries tend to have a deep, sophisticated, and well-developed pool of technical experts from the government, academia, industry groups, the legal profession, and civil society, who may be called upon to provide technical support and advice to the country's trade negotiators. In addition, the trade negotiators themselves often tend to be specialists, or have had special training, in trade and economic law and policy. Developed countries also tend to rely more on their capital-based officials or experts to directly lead their negotiating teams on a day-to-day or meeting-by-meeting basis as compared to developing countries. They also tend to have comparatively larger negotiating teams assigned to handle negotiations in a specific trade forum (such as the WTO) than most developing countries.
28. In the WTO alone, for developed countries and transition economies (with a total of 262 delegates in Geneva), the average delegation size in 2002 was 5.82 delegates per Member, ranging from two delegates for many of the transition economies to more than 15 for the major developed countries (US – 16, EU – 17, Japan – 22). The European Union (EU) also enjoys the benefit of having the missions of the various EC Member States, with a total of 114 Geneva-based delegates, working with the European Commission's Geneva delegation to the WTO. In addition, developed countries enjoy strong technical and policy support and guidance from their capitals and have the resources to be able to bring such support to Geneva.⁵
29. While the large number of meetings among the regular and negotiating WTO bodies place a severe strain on the human, technical, and financial resources of all Members, the burden is proportionately more severe on developing countries, in general, than on developed countries. Effectively, therefore, most developing countries find it extremely difficult to participate in the WTO negotiations unless support is provided from external sources (such as "experts" from the WTO Secretariat, the Bretton Woods institutions, or even (predominantly Northern-based) private trade consultancy law firms) in terms of the provision of research, information, and assistance in preparations for meetings and negotiating sessions. In many cases, however, such external support and advice may not necessarily be compatible with the developing country's own developmental needs and objectives.

⁵ The figures are also based on the April 2002 WTO Directory. For the purposes of this paper, the "developed country" classification includes transition economies such as Albania, Bulgaria, Croatia, Georgia, Kyrgyzstan, and Moldova; all Member States of the European Union; those whose terms of accession to the WTO classified them as "developed" such as Chinese Taipei; and countries that are members of the Organization for Economic Cooperation and Development (OECD) who do not otherwise self-ascribe themselves to be a "developing country".

30. In addition, a shallow human resource pool, when coupled with poor institutional policy-making and negotiation coordination mechanisms, often means that many developing countries' ability to retain an institutional memory of their participation in trade negotiations fall short when compared to those of developed countries. There have been many instances where the ability of many developing country trade negotiating teams or missions to effectively negotiate have been adversely affected by the departure from governmental service of officials who had been involved in trade negotiations and had developed expertise in trade issues and the replacement officials have little or no prior exposure to trade issues. In these cases, developing countries' effective and substantive participation in the negotiations necessarily go down to a lower level while the replacement officials struggle to come up to speed and build up their knowledge of trade issues "on the job".

2. Budgetary Constraints

31. Anecdotal evidence among developing country delegations based in Geneva indicate that many developing countries face budgetary limitations that impact on their ability to effectively support their trade negotiating teams. Such budgetary constraints often mean that they are not able to obtain the requisite number of technically-qualified people to enter the civil service and join the trade negotiations team. It also means that their overseas posts are limited in both geographical coverage and the number of staff assigned thereto.
32. These limitations arising from budgetary constraints automatically limit the ability and capacity of developing country delegations to both develop and rely on in-house technical capacity and resources to effectively participate in trade negotiations, and therefore increases their reliance on external sources of technical assistance to bolster their negotiating capacity.
33. Effectively, many developing countries become "takers" with respect to research and technical assistance when it comes to preparing for trade negotiations. That is, trade-related technical assistance and research for developing countries tend to become supply- rather than demand-driven, with the result that the providers of such technical assistance and research (such as the WTO Secretariat, the World Bank and the International Monetary Fund (IMF)) are the ones that identify and define the technical assistance needs and research parameters rather the technical assistance beneficiaries.
34. For example, informal criticism from developing countries of the WTO Secretariat's technical assistance programmes indicate that, from the perspective of the beneficiaries, these tend to be more focused on explaining to developing countries how to comply with their WTO commitments and providing them with narrow interpretations of the flexibilities and options that developing countries have vis-à-vis such commitments. Others have pointed out as well that the WTO Secretariat's technical assistance programmes also tend to focus on assisting developing countries to participate in discussions of new

WTO issues (such as the Singapore issues⁶) that developed countries have been pushing onto the WTO's agenda but which developing countries have been opposed to. As one author has pointed out:

Most developing countries agree that they are given technical advice on the existing rules and their implementation, but never the sorely needed advice on interest identification and proactive rule formation. Others have pointed out that technical assistance is still sporadic and seldom aimed at capacity-building at the level of capitals. ... Developing countries have expressed doubts with both the timing and content of technical assistance programmes in this context.⁷

35. A more in-depth discussion of the suitability and effectiveness of existing trade-related technical assistance packages will be made in Section III of this paper.
36. Budgetary constraints among developing countries also have negative impacts on their ability to pay their membership fees to the WTO, and hence on their ability to effectively participate in the processes of the organisation. The consequences of being in arrears in the payment of membership dues are specified in GATT Doc. No. PC/7 and WTO Doc. No. L/7578, dated 13 December 1994. These include at the minimum the non-posting of documentation to the Member's delegation in Geneva and disqualification of their representatives from being nominated to preside over WTO bodies. If a Member is in arrears for more than 1 year's worth of dues, it will be disqualified from participating in the WTO Committee on Budget, Finance and Administration. Members that are in arrears for more than 3 years' worth of dues will be designated as "Inactive Members" and be denied access to training or technical assistance other than those necessary to meet their obligations under Art. XIV:2 of the WTO Agreement.⁸
37. As of the end of September 2004, twenty-one (21) WTO Members – all of them developing countries (including 16 from Africa⁹, 3 from the Caribbean¹⁰,

⁶ Singapore issues refer to the proposed negotiations for WTO agreements that would fall within the scope of the WTO's existing dispute settlement mechanism and which would: (i) curb the ability of governments to regulate and direct foreign investments (*trade and investment*); (ii) prevent governments from supporting domestic enterprises to enable them to compete effectively against foreign competitors (*trade and competition*); (iii) require governments to undertake binding obligations for costly changes in government procurement procedures to eliminate any advantages that local firms might have in the bidding process and open up bidding procedures to foreign scrutiny and possible disputes (*transparency in government procurement*); and (iv) require governments to undertake binding obligations to effect costly changes in domestic procedures for the release of traded goods (*trade facilitation*).

⁷ Amrita Narlikar, *WTO Decision-Making and Developing Countries* (South Centre TRADE Working Paper No. 11, November 2001), p. 12.

⁸ However, on 22 October 1997, the WTO General Council exempted Least-Developed Country (LDC) WTO Members that may be designated as Inactive Members from the application of this administrative measure restricting access by Inactive Members to trainings and technical assistance. See WTO, *General Council – Minutes of the Meeting on 22 October 1997*, WT/GC/M/23, 28 November 1997, p. 16, approving the contents of Paragraph 41 (which effectively recommended such exemption) of the WTO Committee on Budget, Finance and Administration's report (WT/BFA/32, 13 October 1997) of its meetings held in September and October 1997.

⁹ These are Burundi (LDC), Central African Republic (LDC), Chad (non-resident LDC), Congo, Democratic Republic of the Congo (LDC), Djibouti (LDC), Gambia (non-resident LDC), Guinea (LDC), Guinea-Bissau (non-resident LDC), Malawi (non-resident LDC), Mauritania (LDC), Niger

1 from South America¹¹, and 1 from the Pacific¹²), 16 of which are LDCs and 11 (of which 8 are LDCs) do not have missions in Geneva – were classified as “Inactive Members” due to their failure to pay their dues for three or more years. These “Inactive Members” that are not LDCs would not, therefore, be able to benefit from the WTO Secretariat’s technical assistance and training programmes to some extent. Twelve (12) other developing countries, including among them 1 LDC Member and 1 non-resident Member,¹³ are in arrears of one to three years’ worth of membership dues.¹⁴ In all, thirty-three (33) developing countries, as a result of domestic budgetary constraints that prevent them from paying their WTO membership fees promptly or in full, face relatively greater difficulties in obtaining information¹⁵ to enable them to participate fully and effectively in WTO processes.

3. Inadequacy or Lack of Technical Preparation

38. Negotiating capacity also requires technical preparedness on the part of the country’s negotiators. Policy rhetoric promoting developmental objectives for trade negotiations need to be backed up by thorough strategic and technical preparations for the negotiations. However, constraints with respect to human resources, physical infrastructure, and financial resources, which in large part do not apply to developed countries, often limit the ability of many developing countries to adequately prepare for trade negotiations.
39. Technical preparedness for trade negotiations can have the following elements:
- (i) Strategic development economics research and analyses – Focusing on the various negotiating issues and areas in light of the country’s own development policies, needs, and priorities, such research and analyses should clearly identify the reasons for undertaking the negotiations and the country’s strategic developmental objectives for such negotiations. They should also identify the potential and actual impacts of such negotiations on the country’s current economic conditions and developmental prospects.

But in many cases, especially for those developing countries that have obtained development assistance packages since the 1980s from the World Bank, the IMF, or the various regional development banks such as the Asian Development Bank (ADB), the African Development Bank

(non-resident LDC), Rwanda (LDC), Sierra Leone (non-resident LDC), Togo (non-resident LDC), and Zambia (LDC).

¹⁰ These are Antigua and Barbuda (non-resident), Dominica (non-resident), and Dominican Republic.

¹¹ Suriname (non-resident).

¹² Solomon Islands (non-resident LDC).

¹³ These are Bolivia, Ivory Coast, FYR Macedonia, Gabon, Haiti (LDC), Nigeria, Papua New Guinea (non-resident), Paraguay, Peru, Philippines, Tanzania, and Uruguay.

¹⁴ See WTO, *Committee on Budget, Finance and Administration – Statement of Outstanding Contributions as at 30 September 2004*, WT/BFA/SPEC/117, 11 October 2004.

¹⁵ However, the posting of WTO documents on the WTO’s website may lessen to some extent the impact on those WTO Members that are in arrears of not receiving any documentation from the WTO Secretariat through the post by enabling these Members to download electronic copies of such documentation from the WTO website.

(AfDB), and the Inter-American Development Bank (IADB), strategic development planning and policy have been influenced by free market-orientated policy recommendations that often require the beneficiaries to undertake rapid economic deregulation and trade and investment liberalisation policies before their economies have stabilised and been prepared to compete effectively on the global market. These policy recommendations seek to promote a uniform model of global economic integration, moving away from recognising the principle of national regulatory sovereignty towards the creation of an international framework of disciplines and rules that promote a lesser degree of regulatory authority over the economy at the national level.

However, the empirical literature that has often been used to support the existence of a positive relationship between trade liberalisation and economic growth has major flaws and problems, and the key policy conclusions are not supported by what the research showed.¹⁶ In fact, as a UNDP report indicates, “the benefits of trade openness have been greatly oversold. Deep trade liberalization cannot be relied on to deliver high economic growth and so does not deserve the high priority it receives in the development strategies pushed by leading multilateral institutions.”¹⁷ This is clearly seen in, for example, the fact that in the 1990s, poverty levels increased unambiguously in LDCs with the most open and the most closed trade regimes.¹⁸

Trade liberalisation and the drive for increased market access should not be seen as ends in themselves but rather as among the tools or policies that countries can choose from to achieve their development objectives. Developmental benefits from trade liberalisation will accrue only when the domestic conditions have been established (through a range of appropriate and autonomously determined domestic policies) that allow the domestic economy to adjust to global competitive pressures.

Differences in economic capacity among countries need to be taken into account through the provision of more policy flexibility in favour of developing countries so that they can adopt and implement development policies more suitable to improving their economic conditions. Developing countries therefore need to be conscious, in designing their strategic economic development plans and policies, of the challenges and opportunities to their development that trade negotiations may provide and therefore tailor their negotiating positions accordingly;

- (ii) Sector- or industry-specific research and analyses – While in many cases, developing country governments would already have detailed information relating to official trade flows, domestic tariff levels and structures, and domestic regulations relevant to trade, such information need to be linked

¹⁶ Kamal Malhotra, *Trade, Growth, Poverty Reduction and Human Development: Some Linkages and Policy Implications* (Study prepared for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development, March 2004), p. 1.

¹⁷ UNDP, *MAKING GLOBAL TRADE WORK FOR PEOPLE* (UNDP, London and Sterling, 2003), p. 32.

¹⁸ *Id.*, p. 34 (Box 1.3 – Trade, Poverty and Growth in Least-Developed Countries).

to industry- or sector-specific information and data so as to provide both policy-makers and trade negotiators with a clearer picture of how trade negotiations could affect specific domestic industries or economic sectors. Such research and analyses should be coordinated with the country's private sector industry and consumer associations, and should provide detailed sector- or industry-level information on the challenges and opportunities that the country's traders and consumers face in relation to exports and imports, transaction costs, competitive effects of trade liberalisation or protection, and other economic effects.

All too often, however, many developing countries' negotiating teams, even in the midst of the negotiations, remain uncertain of the probable effects of the negotiating outcomes (whether in the form of new rules or tariff liberalisation commitments) on the economy and trade of their respective countries. This uncertainty as to potential impacts in many case drives the negotiating strategy of developing countries from one of gain maximization on the basis of clearly identified strategic national economic interests to one of damage prevention or mitigation;

- (iii) Information about and knowledge of the negotiating context – Many developing country negotiators, as a result of their government's resource constraints, often negotiate handicapped by the lack of or having insufficient information about the negotiating context. Developing country trade negotiators need to know who the key players are, how the other negotiating partners are organised, what their key negotiating interests are, and what resources they have access to. Such knowledge plays an important part in any negotiations.

First-hand learning exposure (through technical missions, study tours, or foreign trainings) by a developing country's trade negotiators to the political and economic conditions of the country's negotiating partners can provide the negotiating team with useful insights into their negotiating partners' domestic context and help them adjust their negotiating strategy accordingly. Developing countries could also encourage developed country trade negotiating teams to also gain such first-hand learning exposure in developing countries so that they would have a better appreciation of the difficulties and resource constraints that many developing country governments labour under.¹⁹

In addition, the work of domestic research institutions and think-tanks (whether governmental, academe, or private sector) could be tapped to provide targeted and negotiations-orientated economic research and analyses that may be of direct use to the country's negotiators. A developing country may also try to tap experts based overseas but with

¹⁹ But as has been pointed out: "Negotiators would be more willing to seek such information, if necessary through consultations and visits, from countries that are in strong bargaining positions and without whose full support it would be difficult to reach compromise solutions. They might not make such an effort if the countries ... are those which, because of lack of political and economic clout, have weaker bargaining positions and are on the periphery of the negotiating process." Rege, *supra* note 3, p. 44.

close ties to it (e.g. its overseas nationals) to provide additional knowledge to, or participate in, its trade negotiating team.

In addition, negotiators need to be well-versed in the art of negotiations. For instance, a country's negotiators must plan out and be clear about their negotiating strategy; what the national interests that they seek to promote are; what their course of action should be if no negotiated agreement can be reached (i.e. defining their "walk-away" position); how to build and develop good contacts and negotiating relationships with one's negotiating partners; what negotiating process would be most amenable to achieve constructive outcomes for all partners; what objective standards or criteria could be used to evaluate progress in the negotiations; etc. A good negotiating team, even if lacking in capital-based technical support due to resource constraints, can sometimes be as effective as those that do not have such constraints and can positively affect the negotiating outcome in its country's favour.

In many cases, developing countries tend to lack a well-defined negotiating strategy aimed at influencing the positions of their negotiating partners. For developing countries, having such a strategy can be a vital component towards success in trade negotiations. The negotiating strategy has to identify, target, and seek to influence key decision-makers in the opposite team through building contacts, undertaking extra-negotiations lobbying activities, identifying pressure points in the other country's policymaking apparatus (e.g. through its domestic public opinion, parliament, etc.), and effective use of the media (both domestic and international);

- (iv) Timely negotiation input – One of the major weaknesses of many developing country negotiating teams is the lack of timely negotiations input – i.e. technical and policy research and analyses that are specific to the issue currently being negotiated – from their capitals or from other sources inside or outside of their government in the course of the negotiations to help them assess the value of proposals tabled by their negotiating partners in light of their country's negotiating objectives. This weakness is a reflection in many instances of the human, technical, and financial resource constraints faced by many developing countries vis-à-vis their effective participation in trade negotiations.

Domestic policy research institutions, think-tanks and academia may help take up the slack and try to provide such inputs to the country's negotiators. However, in many cases, while the research output from these institutions may be of high academic quality, they may not, however, necessarily be concretely useful to the day-to-day work of the negotiators because of the failure of such research output to provide concrete and practical policy recommendations which can be quickly and directly adopted and adapted for use in the negotiations as negotiating proposals.

Timely negotiation input needs to be provided from the capital and can be used to provide policy guidance to the negotiating team. That is, “[t]echnical analyses must be fed into the process throughout the negotiations, to provide continuous support to the negotiators and help them promptly assess any proposal tabled by the negotiating partner. Sufficient analytical capacity must be in place to respond in a rigorous and timely manner.”²⁰ For this to happen, resources need to be invested in establishing technical negotiations support personnel and facilities in the capital that can respond quickly to the negotiating team’s requests for information, input, and policy guidance. In addition, resources need to be allocated to allow senior capital-based officials overseeing trade negotiations policy and strategy to input directly into the negotiations through their direct participation in the country’s negotiating team as and when needed.

40. The discussion in this Section clearly brings out two main messages. One, the negotiating capacity needs can not be viewed in isolation. Negotiations require preparation and are linked to implementation that take place in the broader national context of an institutional knowledge base, national policy design, articulation and implementation, and technical and budgetary constraints. The Annex at the end of the paper illustrates this graphically. Two, external assistance for capacity building should be in response to these needs and not *vice versa*. The next Section uses this lens to look at the available trade-related technical assistance and capacity building initiatives.

III. Major Shortcomings of Available Trade-Related Technical Assistance and Capacity-Building Initiatives

41. It is beyond the scope of the present paper to analyse the specific institutional arrangements, design, purpose and experience in implementation of each of those initiatives. Instead, this section will provide an overview of the most commonly cited problems or shortcomings of the available TRTA/TRCB initiatives.
42. There is at present a wide range of bilateral, regional and multilateral initiatives on trade-related technical assistance (TRTA) and trade-related capacity building (TRCB) in place. This includes, for example, those being provided by various intergovernmental organisations such as the UN Conference on Trade and Development (UNCTAD), the Agency for International Trade Information and Cooperation (AITIC), the World Bank, the IMF, the WTO, and the various regional development banks. Some of the most commonly-cited problems vis-à-vis the provision of TRTA/TRCB falls in the following two (2) broad categories: (i) insufficiency of resources; and (ii) the quality of the assistance being provided.

A. Insufficiency of TRTA/TRCB Resources

²⁰ San Bilal and Geert Laporte, *How did David prepare to talk to Goliath? South Africa’s experience of trade negotiating with the EU* (ECDPM Discussion Paper No. 53, September 2004), p. 21.

43. The first issue to consider is whether resources devoted to TRTA/TRCB are adequate for meeting the intended beneficiaries' needs. In this respect, although most analysts would agree that commitments to TRTA/TRCB have significantly increased in recent years, they acknowledge that these fall short of needs. Lack of adequate resources impinge in the quality of the assistance provided in various ways. For instance, problems of staffing in organisations as the WTO has been raised as an important constraint for the delivery of adequate technical assistance for the large number of developing (including LDC) WTO Members. Preference is given to standardised TRTA/TRCB programmes and very little resources are devoted to address country-specific concerns and circumstances.
44. Related to this, it has been noticed that TRTA/TRCB initiatives do not necessarily lead to additional resources being channelled to developing countries. Instead, in many cases, the undertaking of TRTA/TRCB initiatives result in a net diversion of resources to fund trade-related activities (e.g. implementing WTO agreements such as TRIPs) from other development priorities.
45. Furthermore, it can also be the case that the funding of some TRTA/TRCB initiatives are often tied to loan packages extended by, for example, the World Bank or the various regional development banks such as the African, Asian, or Inter-American Development Banks. As such, these initiatives will eventually have to be paid for by the recipient country as it repays the extended loan package to the lender. Effectively, therefore, the funding for such initiatives can not be considered as additional new resources for the recipient country.
46. With an ever-expanding agenda of trade being discussed at the multilateral and regional levels, the needs for TRTA/TRCB will grow systematically and adequate resources should be made available.
47. Many TRTA/TRCB funding are also short-term in nature, and are more focused on or earmarked for "one-off" project-related assistance rather than on more long-term, sustained, and programmatic assistance designed to: (i) channel additional resources to developing countries' developmental budgets; and (ii) reflect and support the beneficiaries' own development programmes and priorities.

B. Quality of Technical Assistance Being Provided

48. In addition to adequacy of resources, the quality of TRTA/TRCB is of utmost importance. In this respect, the shortcomings of the existing initiatives are probably the greatest. There are various aspects to this which are addressed below.

1. Donor-Driven Character and Lack of Beneficiary Ownership

49. A primary issue of concern is the donor-driven character of TRTA/TRCB where the content and nature of assistance provided essentially reflect the economic and negotiating interests of the donors involved but not to the

priorities of the developing countries concerned.²¹ In many instances, TRTA/TRCB initiatives are tailored to meet certain specific objectives of the donors which may not always match the interests or needs of the beneficiaries.

50. In the WTO context for example, the promise of technical assistance has been used by developed countries as the “carrot” in trying to secure acceptance by developing countries of an ever expanding agenda of negotiations. This is how the WTO Secretariat engaged in a number of technical assistance activities on trade and investment and on trade and competition policy even though these subjects were not in the priority list of the large majority of developing countries and whose inclusion in the WTO agenda had, in fact, even been opposed by most of them.
51. Very little TRTA/TRCB funding is provided that would allow the beneficiaries to decide by themselves how best to use the funding and in which areas to channel it to. This effectively denies beneficiaries the ability to claim or feel “ownership” in the development, implementation, and outcomes of the TRTA/TRCB activity.
52. Further compounding this problem is the tendency by donors to give preference to their own experts, consultants, or companies to provide services or goods in relation to the TRTA/TRCB programmes. This undermines the long-term capacity development efforts of the recipient country by limiting domestic skills development and furthermore effectively limits the net resource transfers from the donor to the recipient country by “re-exporting” programme funds back to donor country goods and services providers.
53. The donor-driven nature of TRTA/TRCB initiatives also means there is not enough conscious understanding of the absorptive capacity of the recipient country. Even well-intentioned donors may be driven by the need to disburse assistance funds in areas/sectors already earmarked within their own budgets and in line with their own objectives, irrespective of the capacity of the recipient country to effectively use the assistance in these areas/sectors.
54. Recipients have also pointed out that the modes of delivery generally favoured by donors (e.g. seminars, workshops, advisory missions, complete draft laws prepared by foreign consultants, etc.) often do not really respond to their capacity needs. Such modes of delivery, while costing substantial amounts, may be helpful only in creating awareness and general understanding of issues.

2. Lack of TRTA/TRCB Needs Assessments and Impact Evaluations

55. A related issue is the lack of adequate need assessments to inform the decisions about the nature of assistance required. This contributes to a top-down approach to TRTA/TRCB which reflects donors’ priorities and perceptions about the needs of beneficiary countries more than the latter’s real requirements. In

²¹ Carolyn Deere, *Capacity Building and Policy Coherence: A Role for a Leaders’ Level G20?* (Paper prepared for the Seminar on “Breaking the Deadlock in Agricultural Trade Reform and Development, Oxford, 8-9 June 2004), p.14.

addition, all too often, TRTA/TRCB donors or programme implementing agencies tend to adopt a standardised approach whose parameters or orientation may not necessarily coincide with or reflect the long-term developmental interests of the beneficiary countries.

56. Affecting the effectiveness of TRTA/TRCB is the often misplaced substantive focus of the assistance being provided. In many instances, such assistance is limited to supporting recipient countries to implement commitments made in the context of trade negotiations. The case of the Uruguay Round Agreements constitutes a good example of this. Developing countries were provided assistance for introducing legislation in compliance with the new agreements as well as for meeting transparency requirements. It is clear now, however, as the discussions on implementation-related issues and concerns in the WTO have demonstrated that the assistance developing countries required needed to go beyond compliance issues to address the more fundamental question of how to benefit from their participation in the multilateral trading system. Addressing this question through TRTA/TRCB has been difficult as it may clash with the interests of the donor community and evidence the contradiction in donor countries' own policies.
57. Moreover, most of the regional and multilateral agencies involved in trade-related technical assistance have a mandate of neutrality in their advice to countries. However, neutral assistance may not be what developing countries need the most but support that would allow them to gauge and assess various options in accordance with their own circumstances. This is particularly important in the context of a critical and unsettled debate on the orientation and underpinnings of appropriate economic policies for development and what role trade liberalisation should play in it.
58. Little attention is also being provided in most TRTA/TRCB initiatives to post-implementation impact assessments or evaluations that are done with a programmatic rather than project-based scope. This makes it difficult to monitor the developmental impact of TRTA/TRCB and identify shortfalls in the ability of such initiatives to positive affect both the trade and developmental prospects of the beneficiary countries. The lack of post-implementation impact evaluation or assessment tools or mechanisms also limits the ability of developing countries to gauge whether, with the assistance of TRTA/TRCB, they are moving towards effectively achieving their own stated developmental goals and priorities in a policy coherent manner.

IV. Matching Technical Assistance and Capacity-Building to Negotiations Capacity Needs and Constraints of Developing Countries

59. Strengthening the negotiating capacity of developing countries in trade negotiations, especially in the WTO context, requires both a collective and united political will to work together on the part of developing countries and the provision of technical assistance and capacity-building support that responds to and addresses the identified needs and constraints of developing countries vis-à-vis their trade negotiating capacity.

A. Strategic South-South Cooperation

60. The need for strategic and united collective action on the part of developing countries in the international arena has long been recognised. The words of the South Commission in its 1990 report entitled “The Challenge to the South” on “the need to agree on a global strategy for South-South co-operation” that could “serve as a basis for elaborating more specific regional, sub-regional, and national programmes of co-operation” continue to be relevant in this context.²² The establishment of South-South political and economic cooperation mechanisms such as the G-77, the Non-Aligned Movement (NAM), the various Southern regional cooperation and economic integration organisations, are all reflections of this recognition of the need for South-South unity and cooperation.

1. Strategic Cooperation on the Basis of Defined National Policies

61. However, collective South-South action presupposes that individually, developing countries have already identified their own strategic national developmental policies, priorities, and negotiating interests which could then serve as the basis for their individual engagement in South-South coalitions and groupings for the WTO negotiations. To this end, significant resources and political will may, therefore, need to be invested in establishing such coordinating mechanism for trade policymaking and negotiations at the national level.
62. Having an effective and coordinated trade policymaking and negotiations mechanism at the national level that has the support of the country’s political leadership can also ensure that the country obtains the benefits of policy continuity and the steady development of institutional memory through an experienced cadre of national trade experts and negotiators. It will also provide for a clearer match between the country’s strategic objectives in trade, the negotiating strategies and tactics used by its negotiators, and their engagement in and use of South-South coalitions or groups in the WTO negotiations.

2. Possible Mechanisms for Strategic South-South Cooperation

63. Developing countries need to strengthen their regional groupings and build issue-based alliances and coalitions with one another when engaging developed countries (which have their own regional groupings and coalitions) in international trade negotiations. As the Centre has pointed out in the past:

The only effective means of countering the negotiating strength of the developed countries in the WTO is through the elaboration and articulation of common positions by the countries of the South. This can be done in several ways. At the minimum, there should be much more exchange of information and appreciation of each other’s positions among as many countries of the South as possible. Simultaneously, the existing regional and other sub-groupings of developing countries should develop mechanisms for negotiating with a single voice in the WTO. Finally procedures and processes should be envisaged for collaboration

²² South Commission, THE CHALLENGE TO THE SOUTH (1990), p. 157.

among various sub-groupings of the South on issues of common interest in the WTO.²³

64. In addition, the work of the South Centre itself, which was created in response to the South Commission's recommendation for the establishment of an institution of the South "that would provide continuing institutional support for analysis, interaction, negotiations, and follow-up action – the technical foundation for their [the South's] collective action",²⁴ seeks to support the development of collective South-South action.
65. High-level gatherings of political leaders from the South such as those held under the auspices of the G-77 and China could also encourage the use by developing countries of Southern technical assistance and policy research institutions such as the South Centre as important mechanisms for coordinating developing country positions in international trade negotiations. Top-level political support and commitment to increasing strategic South-South cooperation and coordination of actions in various areas will have significant downstream effects on developing countries' negotiating strength. For example, the high-level commitment of the political leadership of the countries participating in the various developing country groupings or coalitions in the WTO – such as the G-20,²⁵ the G-33,²⁶ the G-90 or the "Tripartite Alliance" of the ACP, LDCs, and the African Union – was an important factor in ensuring that these coalitions or groupings become key players in the current WTO negotiations.

B. Providing Resources for Trade Negotiations Capacity-Building

66. National-level technical preparedness and the provision of sufficient human and other resources with which to undertake such preparations remains the best guarantee for ensuring that developing countries, individually or as a group, are able to participate fully and effectively in international trade negotiations.
67. Resources, therefore, need to be provided in developing countries to support the development of such a national pool of experts through institutional linkages and training programmes between relevant government agencies, the domestic academe, and the domestic private sector and civil society. Educational or training programmes designed to increase the level of technical knowledge relating to trade and economic law and policy in the country should engage as

²³ Luisa E. Bernal, Rashid S. Kaukab, Sisule F. Musungu, and Vicente Paolo B. Yu III, *South-South Cooperation in the Multilateral Trading System: Cancun and Beyond* (South Centre TRADE Working Paper No. 21, May 2004), pp. 28-29.

²⁴ South Commission, *supra* note 22, p. 202.

²⁵ The G-20 is an informal group of developing countries that coordinate positions in the context of WTO negotiations on agriculture. This group has articulated an ambitious and comprehensive agenda for reform in agriculture including concrete suggestions with respect to special and differential treatment for developing countries.

²⁶ The G-33 is another informal group of developing countries that coordinate positions in the context of WTO negotiations on agriculture. This group has emphasised the need for developing countries being able to protect food and livelihood security and rural development needs through specific provisions of special and differential treatment to be incorporated in a revised agreement on agriculture.

broad a range of participants from various sectors (including government, academe, and the private sector and civil society) as possible. The financial resources required for such preparations can be sourced internally or externally.

68. The allocation of sufficient internal budgetary resources to provide for both human resources and adequate technical preparations for trade negotiations requires the exercise of political will on the part of the country's government leadership. It will entail a policy determination that effective engagement in international trade negotiations is important in terms of achieving the country's development objectives.
69. External sources of support for the development or strengthening of negotiating capacity among developing countries can come from:
 - complementary synergies in negotiating capacity that may arise as a result of closer South-South technical- and working-level coordination in terms of both the preparations for and the actual conduct of trade negotiations by developing countries; and
 - the provision of technical assistance and capacity-building funding support from external donors.

1. Technical- and Working-Level Coordination among Developing Countries

70. Weaknesses in national-level technical preparedness of trade negotiators among developing countries can to some extent be mitigated, but cannot be substituted by, closer coordination at the technical and working levels among developing country delegations (at the regional as well as multilateral level).
71. In one of its working papers, the South Centre has suggested the following:

Coordinating and consultative mechanisms that are inclusive, participatory and transparent need to be agreed upon and established to ensure the smooth flow of information and ideas within and among the groupings and coalitions and to enable these to react quickly to shifts in negotiating positions. On the other hand, developing countries, given their diversity, should not try to create too many formal mechanisms that could eventually prove too unwieldy and incapable of effectively advancing their interests. Several informal means that retain the present flexibility while allowing for more regular information exchange can be identified for consideration. For example, there can be a regular monthly meeting in Geneva of the informal group of developing countries for information exchange. Another flexible mechanism can be created in Geneva that brings together once every month (possibly at lunch time) all the coordinators of various developing country groups and alliances to exchange information and to brainstorm on key issues confronting developing countries at the time. The coordinators would then report back to their respective groups. Establishing and improving such practices in Geneva can be quite helpful and make it easier to use them at the time of WTO Ministerial Conferences. Hence, the third element in this strategy may be to hold meetings of the informal group of developing countries and/or the group of coordinators on a daily basis during the Ministerial Conferences.

No matter what means are finally adopted, the issue at hand is the realization of the importance of regular interaction among various groups and alliances of

developing countries in the WTO This is crucial to avoid and resolve major differences among them and would facilitate the attainment of their negotiating objectives by adding the strength of numbers to their substantive arguments.²⁷

72. Timely, previously-agreed, Southern-defined, and technically-sound negotiating positions might need to be adopted and put forward by developing countries through their coalitions and groupings. Developing countries need to discuss, agree upon, and be aware of their individual as well as group “walk-away” negotiating positions. These positions need to be calibrated according to the importance of the issue being considered to their development interests and to the responses of their other negotiating partners.

2. External Technical Assistance and Capacity-Building

(a) Developing South-Owned TRTA/TRCB Initiatives

73. From the perspective of the recipient countries it would be more beneficial, efficient and effective in meeting their TRTA/TRCB needs to be able to pool available resources and freely allocate them across priority issue areas that have been identified pursuant to their respective internal decision-making processes.
74. In addition, developing countries could support and source TRTA/TRCB initiatives from existing Southern institutions such as the South Centre,²⁸ or develop their own South-South mechanisms for providing TRTA/TRCB, rather than continue to rely on mostly Northern-based or Northern-orientated institutions for such TRTA/TRCB.
75. For example, based on the identified needs of developing countries for technical assistance in the trade-related issues above, the Centre tries to provide timely analysis and inputs related to these issues to developing countries and their delegations in Geneva. It also provides them with a venue to meet together, exchange information and perspectives, and forge alliances and coalitions on issues of common interest. The process aims at building both the technical capacity of developing countries and their political strength through the elaboration and development of common positions in, *inter alia*, the WTO context. The Centre, however, seeks to ensure that the TRTA/TRCB that it provides reflect developing countries interests, needs and concerns, and consciously promotes a clear developing country agenda in multilateral trade negotiations. Other international organisations also try to provide trade negotiations-related policy research, technical assistance, and capacity-building support, but without consciously trying to promote a clear developing country agenda.

²⁷ Bernal et al., *supra* note 23, pp. 29-30.

²⁸ Through its Trade and Development Programme (TADP), the South Centre has been engaged since 1998 in providing policy research, technical support and capacity-building assistance, negotiating issue-related advice, and even assistance in drafting negotiating proposals in some cases, to developing country negotiators on selected issues on the WTO agenda. These issues currently include: agriculture, services, non-agricultural goods, commodities, intellectual property, trade and investment, trade and competition policy, trade facilitation, special and differential treatment, implementation-related issues, trade and environment, trade and transfer of technology, trade, debt, and finance, global economic governance, and WTO institutional governance.

76. Developing countries should also, through their own national processes, take the initiative in identifying their own TRTA/TRCB needs and priorities which could then be supported by external donors, rather than waiting for donors to suggest TRTA/TRCB projects or programmes to be funded in developing countries.
77. Internally, developing countries should develop strong and coordinated TRTA/TRCB oversight mechanisms in their governments to ensure that externally-supported TRTA/TRCB initiatives are consistent with and promotes their own self-identified national developmental priorities and policies. It should include the development of domestic mechanisms within developing countries that allows for the greater engagement of domestic stakeholders – e.g. the domestic private sector, academia, civil society, other governmental agencies – in the identification of TRTA/TRCB priorities and in the design of TRTA/TRCB projects and programmes for funding.
78. Externally, this should include, for example, both donors and beneficiaries working together to design new approaches to TRTA/TRCB that would respond to the economic and capacity needs of developing countries – e.g. addressing supply-side capacity constraints that hamper their export performance, institution-building needs to address administrative capacity constraints, economic adjustment costs related to the implementation of existing trade obligations or commitments, etc.

(b) Effecting Qualitative Changes in Existing TRTA/TRCB

79. Enhancing the developmental impacts of TRTA/TRCB requires qualitative changes in existing TRTA/TRCB initiatives and in the way that developing countries accept and use TRTA/TRCB.
80. For instance, developing countries have to work together in a coordinated manner and use the weight of their collective membership in various TRTA/TRCB-providing multilateral organisations to push for qualitative changes in the nature and bias of existing TRTA/TRCB initiatives. This could include requiring such organisations to “structure multilateral funding programs such that developing countries are able to specify particular needs and then competitively select the providers that offer the best proposal for meeting those needs.”²⁹
81. In pushing for a restructuring of TRTA/TRCB initiatives, developing countries could also require that TRTA/TRCB donors ensure that the administrative procedures accessing, disbursing, and reporting on the use of TRTA/TRCB funding are simplified and harmonised so as not to overload the administrative capacities of resource-constrained developing country bureaucracies. The absorptive capacity of many developing countries vis-à-vis the use of official development assistance (ODA), for example, has been identified by some agencies as among the main obstacles towards the effective and efficient use of

²⁹ Carolyn Deere, supra note 21, p. 16.

ODA. This problem also affects TRTA/TRCB funding and, hence, should also be addressed.

82. In addition, developing countries could press for the development of “a set of guidelines and a professional certification scheme for providers of technical/legal assistance and policy advice to developing countries.”³⁰ More emphasis may need to be laid on requiring the use of available and qualified developing country nationals (especially of the beneficiary country) – e.g. local and regional research institutions, NGOs, private sector consultants, think-tanks – as goods and services providers for the implementation of TRTA/TRCB initiatives. Developing countries need to stress that they should be able to refuse the donor’s choice of technical assistance providers – e.g. consultants – if the use of such consultants would, in the beneficiary’s opinion, result in conflicts of interest situations where the consultants’ assistance or advice may promote the consultants’ home country’s own commercial interests (if any) over those of the beneficiary country’s own development priorities.³¹
83. Both pre-design needs assessment and post-implementation impacts assessment and evaluation mechanisms need to be integrated as obligatory parts of existing and future TRTA/TRCB initiatives. The needs assessment will ensure that the TRTA/TRCB project or programme design reflect the beneficiaries’ development and trade needs and priorities. The impacts assessment and evaluation should be focused on looking at the extent to which TRTA/TRCB has effectively addressed and responded to the expressed development needs and priorities of the beneficiary country in the pre-design needs assessment phase.
84. Furthermore, the costs of compliance and implementation of any new trade obligations need to be taken into account as discrete elements in both the needs assessment and the impact assessment of TRTA/TRCB. Assessments of the budgetary implications of new international commitments on governments are standard practice in the United Nations and there is no reason why TRTA/TRCB programmes cannot include such assessments with respect to new trade commitments or obligations as an integral part of their project or programme design.

V. Conclusion

85. Developing countries must undertake a sustained and meaningful dialogue with their development partners in developed countries to provide feedback on the available TRTA/TRCB initiatives so that these are tailored according to the needs of the developing countries. Developed countries, on their part, have to realise that their TRTA/TRCB initiatives should be designed as tools to achieve fair and balanced outcomes of trade negotiations. By contributing to shared prosperity and peace for all, such outcomes are in their own long term interests.

³⁰ Id.

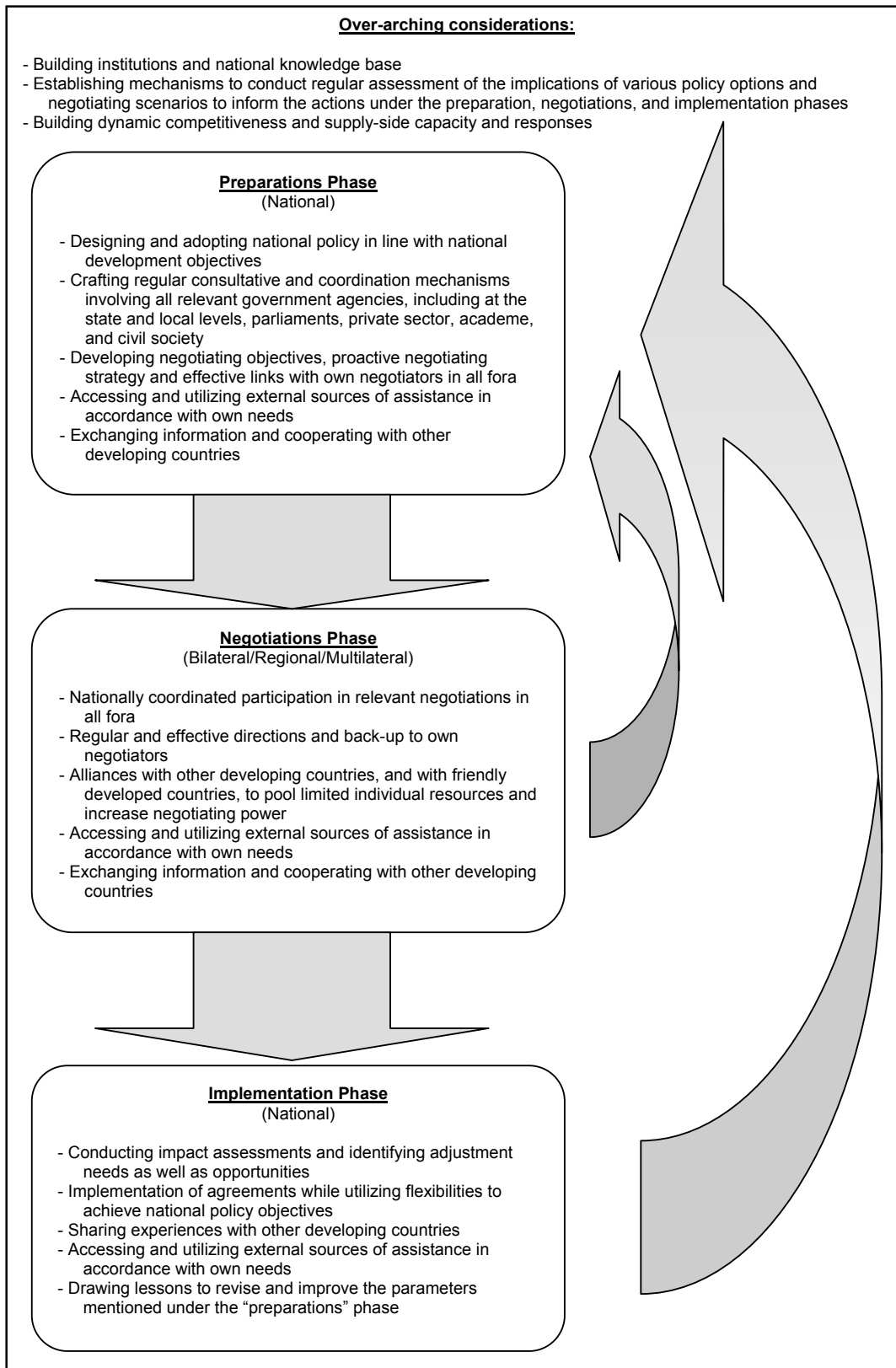
³¹ For other discussions of this concept of beneficiary country rights over the choice of technical assistance provider, see also, e.g., Sisule Musungu, *Designing Development-Oriented Intellectual Property Assistance Programmes* (Paper prepared for the ICTSD-UNCTAD Dialogue, 2nd Bellagio Series on Development and Intellectual Property, Bellagio, 18-21 September 2003).

86. Now more than ever, developing countries must ensure that individually and collectively, they have the negotiating capacity to be able to effectively assert their developmental interests and priorities in international trade negotiations. Building up such negotiating capacity requires both political will and the devotion of strategic and targeted domestic and external resources. Although negotiations have already commenced vis-à-vis the current round of WTO trade negotiations, there is still some time and space left for developing countries to be able to organise, both individually and collectively, and build up their negotiating capacity.
87. In concluding one of its papers on South-South cooperation in the multilateral trading system in the aftermath of the 2003 WTO Cancun Ministerial Conference, the South Centre pointed out, in an observation that continues to be relevant today, that:

The experience of developing countries in Cancun is instructive in terms of looking at how South-South cooperation can be furthered in international negotiations for purposes of achieving a common development agenda. In the context of the MTS, the fact that the Cancun Ministerial Conference did not result in any clear or concrete programme of action for WTO Members to undertake with respect to the Doha-mandated trade negotiations should be seen by developing countries as a welcome, though brief, breathing space in which to re-group, re-strategize, and re-energize themselves. This period should be seen as an opportunity in which developing countries can proactively prepare even more strongly to assert themselves and their peoples' development interests as major factors in forthcoming trade negotiations.³²

³² Bernal et al., supra note 23, p. 28.

Annex: Developing Trade-Related Negotiations Capacity of the South



References

- Adam Dunlop, Stefan Szepesi, and Kathleen Van Hove, *Organising trade negotiating capacity at regional level: A Caribbean case study* (European Centre for Development Policy Management (ECDPM) Discussion Paper No. 54, September 2004).
- Amrita Narlikar, *WTO Decision-Making and Developing Countries* (South Centre TRADE Working Paper No. 11, November 2001)
- Carolyn Deere, *Capacity Building and Policy Coherence: A Role for a Leaders' Level G20?* (Paper prepared for the Seminar on "Breaking the Deadlock in Agricultural Trade Reform and Development, Oxford, 8-9 June 2004)
- Constantine Michalopoulos, *The Participation of the Developing Countries in the WTO*, 22:1 WORLD ECONOMY 117-143 (January 1999)
- Kamal Malhotra, *Trade, Growth, Poverty Reduction and Human Development: Some Linkages and Policy Implications* (Study prepared for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development, March 2004)
- Luisa E. Bernal, Rashid S. Kaukab, Sisule F. Musungu, and Vicente Paolo B. Yu III, *South-South Cooperation in the Multilateral Trading System: Cancun and Beyond* (South Centre TRADE Working Paper No. 21, May 2004)
- Roberto Bouzas, *Mercosur's experiences of preparing trade negotiations with the EU: A memorandum* (ECDPM Discussion Paper No. 50, January 2004)
- San Bilal and Geert Laporte, *How did David prepare to talk to Goliath? South Africa's experience of trade negotiating with the EU* (ECDPM Discussion Paper No. 53, September 2004)
- Sheila Page, *Developing Countries in GATT/WTO Negotiations* (Overseas Development Institute Working Paper, February 2002)
- Sisule Musungu, *Designing Development-Oriented Intellectual Property Assistance Programmes* (Paper prepared for the ICTSD-UNCTAD Dialogue, 2nd Bellagio Series on Development and Intellectual Property, Bellagio, 18-21 September 2003)
- South Centre, *Institutional Governance and Decision-Making Processes in the WTO*, SC/TADP/AN/IG/7, December 2003
- South Commission, *THE CHALLENGE TO THE SOUTH* (1990)
- United Nations Development Programme, *MAKING GLOBAL TRADE WORK FOR PEOPLE* (2003)
- Vinod Rege, *Developing Country Participation in Negotiations Leading to the Adoption of the WTO Agreements on Customs Valuation and Preshipment Inspection: A Public Choice Analysis*, 22:1 WORLD COMPETITION 37-117 (1999)