Can WTO Technical Assistance and Capacity Building Serve Developing Countries?

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“Should capacity-building aim to widen the scope of actual economic policy choices for developing countries? Or should it be limited to helping them cope with the burden of commitments they have taken on—sometimes lightly, it has turned out—for the benefit of their more developed partners?”

Introduction

Technical assistance and capacity building are large and complex issues. A sprawling literature has developed about them since World War II, picking up in the 1960s, and passing through various paradigm shifts through today. These issues, however, are rather new to the World Trade Organization (WTO). They gained particular salience following the expiration of the transition periods for developing country implementation of obligations under the 1995 Uruguay Round agreements and the launch of the Doha negotiating round in November 2001. As the transition periods elapsed, many developing countries balked at implementing WTO requirements on account of the costs of doing so and the perception that they had not benefited from market access as promised. They received intellectual support from a number of international economists and development specialists. As Michael Finger and Philip Schuler of the World Bank wrote,

“Our analysis indicates that WTO regulations reflect little awareness of development problems and little appreciation of the capacities of the least..."
developed countries to carry out the functions that [sanitary and phytosanitary standards], customs valuation, intellectual property, etc. regulations address. For most of the developing and transition economies—some 100 countries—money spent to implement the WTO rules in these areas would be money unproductively invested.”

Leading trade economists noted that the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS” Agreement) “is almost certain to redistribute welfare away from developing countries” to the developed world. In these circumstances, some WTO “capacity building” programs, if they are simply designed to assist developing countries in the implementation of WTO contractual obligations, could work against some developing country interests. On the other hand, as one secretariat official notes, “even if WTO capacity building restricts itself to explaining the existing obligations to developing country officials, it is already preparing them to take a critical view of these obligations.”

When developing countries agreed to enter into new trade negotiations at Doha, Qatar, they obtained a commitment that the round, dubbed the “Doha development round,” would address issues important to their development, and that they would receive capacity building assistance to facilitate their participation in the negotiations and the eventual integration of their economies into the international trading system. The Doha Ministerial Declaration dedicated more text to capacity building than to any other issue, including four paragraphs on technical

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assistance, one paragraph on trade and technology transfer, two paragraphs on least-developed countries, and other references sprinkled throughout the document. The 2003 World Trade Report declared, “The Doha Declaration marked a new departure in the GATT/WTO approach to technical assistance and capacity building.” One member of the secretariat characterized the WTO’s capacity-building program as a “sea change” for the organization, one that “we [at the WTO] are still digesting.”

Whether these capacity building commitments are appropriately tailored toward serving developing country interests, however, remains under challenge, as noted below. For example, many of the promises for technical assistance were in exchange for developing country agreement to negotiate over the four “Singapore issues” advanced by the European Union (“EU”), concerning trade and investment, competition policy, government procurement, and trade facilitation. Indeed, when WTO Director-General Mike Moore cautioned that the provision of technical assistance and capacity building was a “condition of further progress on the development dimension,” he was referring expressly to the Singapore issues. Now that a group of developing countries has refused to negotiate over three of these issues—trade and investment, competition policy, and government procurement—one wonders whether donor

5 Email correspondence from WTO secretariat member, January 2005.
6 Paragraphs 38-41 of the Doha Ministerial Declaration address overall technical assistance and capacity building. Paragraph 38 explicitly calls for the secretariat “to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction.” Paragraph 39 calls for coordination between the relevant international agencies, bilateral donors, and beneficiaries so as to rationalize the “IF” and “JITAP” programs (see below). Paragraph 40 calls for a plan to ensure long-term funding for WTO technical assistance, which eventually led to the establishment of the Doha Development Agenda Global Trust Fund in December 2001. Paragraphs 42-43 focus on assistance to least-developed countries, and paragraphs 2, 20-21, 23-24, 26, 27, and 33 respectively address assistance in respect of trade and investment, trade and competition policy, transparency in government procurement, trade facilitation, and trade and environment. Specific technical assistance provisions were also contained in paragraphs 2.2, 3.5, 3.6, 5.1, 5.4, and 14 of the Decision on implementation-related issues and concerns. See WT/MIN (01)/W/17.
7 See WTO, World Trade Report 2003, at xix. The 2003 World Trade Report also highlighted “that technology transfer had never been included explicitly on the GATT/WTO agenda before,” but now was part of the work program. Id. at 164. GATT refers to the General Agreement on Tariffs and Trade.
9 At the WTO ministerial meeting in Singapore in 1997, WTO members agreed to establish working groups to examine these four issues and their potential integration into the WTO system.
funding of developing country trade-related capacity building requests will eventually be cut back, even though it has not been so far.

A central conundrum for effective WTO technical assistance lies in how the secretariat views its capacity building role in relation to its conventional sense of its “mandate.” WTO members and the WTO secretariat often refer to the WTO as a “contract organization.” By contract organization, they refer to a “member-driven” institution that facilitates the negotiation of trade agreements (the “contracts”), helps oversee implementation of the resulting contractual commitments, and, where requested, issues judicial decisions over these commitments. WTO secretariat officials thus view their role as one of servicing negotiations (occurring in various negotiating groups), servicing member oversight of obligations (through various “committees and councils”), and assisting with dispute resolution (before the dispute settlement panels and the Appellate Body). Capacity building, however, is a quite different endeavor.

One’s view of WTO substantive rules will shape one’s appreciation of WTO capacity building projects. Should WTO rules be viewed as contingent in time, and subject to debate and modification in relation to changing development challenges, as in domestic political and contractual contexts? Or should they be viewed as fundamental, “constitutional,” “rule of law”-type commitments that domestic administrations must internalize? As Finger, Schuler, and others maintain, many WTO rules represent political choices reflective of contractual bargaining rather than constitutive rules for a global “constitutional” order. Yet unlike in domestic political and contractual settings, WTO rules are much more difficult to modify over time. WTO secretariat officials therefore face a dilemma. If they travel to developing countries simply to “promote” existing WTO rules, they elide the political and development choices implicated by the rules. They cut off what could be valuable discussion, in meetings with those most up-to-date about WTO developments, as to how developing countries can shape the rules though implementation and renegotiation in order to advance trade-related development objectives. If the secretariat views WTO rules as fundamental commitments, then WTO technical assistance will tend to operate as a form of “soft” power to shape understandings of WTO obligations and thereby alleviate the need for “harder” enforcement measures through formal WTO dispute settlement.
If, on the other hand, the secretariat provides a forum for raising awareness about the current rules and different positions regarding them, then it can help developing country officials critically engage with the rules in light of their perceptions of their national interests.

WTO secretariat officials stress that the WTO is not a development agency mandated to provide development consulting or to finance the provision of roads, port facilities, sanitary testing equipment, information technology, and other trade infrastructure needs. These development tasks lie within the competence of other international organizations, such as the World Bank and the United Nations Development Programme ("UNDP"). However, now that the WTO has received significant funding for trade-related capacity building, the WTO secretariat also receives requests for programmatic funding from some developing country members. As a result, there is again tension between the secretariat’s internal understanding of its “mandate” and the call for enhanced WTO trade-related “capacity building” initiatives. All the WTO secretariat can do in these situations is to refer the matter to relevant development agencies in a more coordinated manner.

This article is in four parts. Part I sets forth the competing (and sometimes conflicting) rationales for WTO trade-related capacity building and technical assistance efforts. These competing rationales have led to contention over how the funding is used. Part II addresses the political and operational constraints on the secretariat’s implementation of a meaningful WTO capacity building program. Part III provides historical background to, and a summary of, the WTO’s technical assistance and capacity building initiatives and some of the criticisms that they have generated. Part IV concludes by suggesting how developing countries, donors, and the WTO secretariat could build from current initiatives, while noting the challenges posed.

I give my sincere and warm thanks to the twenty-six individuals whom I interviewed for purposes of this project and who took time out of their demanding schedules to meet with me, and, in some cases, to read earlier versions of this article. These hard-working and committed individuals respectively work for the WTO, international development agencies, member

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1. These remarks reflect a long discussion that the author had with an official who led a developing country mission to the WTO.
3. See e.g. discussion of coherence of development assistance programs, infra notes… and accompanying text.
delegations to the WTO, and development-oriented NGOs. As any empirically-grounded work, this one is bound to reflect a subjective element as to where it casts its lens, as to what it emphasizes and does not. Its aim, however, is to provide a critical, but ultimately constructive, assessment of WTO capacity-building initiatives, highlighting responses to WTO technical assistance programs so that these programs can be made more effective over time.

I. Competing Rationales for Trade-related Capacity Building and Technical Assistance

At first glance, enhancing trade-related capacity in poor countries seems uncontroversial. All developing countries suffer from capacity constraints that impede their ability to promote their interests through the WTO, although these constraints vary widely. The least-developed members are in the most strained situation. A number of WTO members do not have a single representative in Geneva to even consider choosing among over seventy different WTO councils, committees, working parties and other groupings, involving over 2,800 meetings each year. Because of capacity constraints, many developing countries are less able to advance their interests in WTO negotiations, before WTO committees, and in dispute settlement as effectively. Not surprisingly, they face considerable trade barriers for the product markets of greatest importance to their economies, which developed countries label as “sensitive.” A 2001 World Bank report maintained, “The prevailing pattern of protection in the world today is biased against the poor in that barriers are highest on goods produced by poor people—agriculture and

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14 Of course, there are leading developing countries with extremely professional representatives who promote their interests effectively. The issue of capacity is, in practice, a relative one that varies among all countries, including those falling under the label of developing countries.

15 See Gary Sampson, Trade, Environment and the WTO: The Post-Seattle Agenda 24 (2000). As Sampson, the former Director of the WTO’s Trade and Environment Division, notes, the Egyptian delegation to the WTO has estimated that there were 2,847 meetings in the WTO in 1997, or an average of 10 meetings per working day. (citing Communication from Egypt, High Level Symposium on Trade and Development, mimeo WTO 17 March 1997). Id. at 30. In consequence, many countries’ representatives simply do not attend or keep up with developments in most WTO committees. Developing countries may lack the capacity to attend meetings in Geneva scheduled for their express benefit. As reported by a WTO official interviewed by Braithwaite and Drahos, “We set up a Subcommittee with a Chair and a Secretary who turned up for the first meeting on trade needs of LDCs [least developed countries]. No LDCs came. No developed countries came. No one came. Not one country showed up. If it had been telecoms, the chamber would have been packed [with special interests and states pushed by telecom interests].” John Braithwaite and Peter Drahos, Global Business Regulation 196 (2000). As of November 1999, twenty-eight WTO
unskilled labor-intensive manufacturers and services.” Similarly, many developing countries are less able to shape their internal implementation of WTO rules in a manner that protects their interests.

In practice, however, capacity building programs can be controversial. Who defines the purpose of technical assistance and capacity building, and who oversees how funding is used, can shape programs toward different ends. Technical assistance programs can be relatively donor-driven to serve donor-defined interests, or they can be relatively demand-driven to serve interests defined within the recipient countries. Constituency interests in developing countries can differ, fragmenting, and spurring conflict over, capacity building projects. Donors can work through allies in developing country bureaucracies to act as brokers to serve both personal and donor interests. What looks like a “demand-driven” request can actually be donor-driven. In the words of Thandika Mkandawire, director of the UN Research Institute for Social Development, developing country “nationals” may simply serve to champion “externally driven policy agendas,” so that the resulting “dialogue” between donor and recipient can take on “the character of the conversation between a ventriloquist and a puppet.” As one African representative to the WTO contends, “The problem [with the WTO secretariat’s capacity building program] is that it is ideological. They come to tell us what to think, what our positions should be.” As he states, WTO technical assistance is often about “the use of ideas to transform developing country negotiating positions.” Even if donor-driven technical assistance does not directly conflict with a developing country’s interests, in a world of limited resources, technical assistance in one area can divert human and material resources from others that may be of greater priority.

There are at least four competing rationales for WTO trade-related technical assistance efforts:

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18 Interview July 2004.
19 Id.
(i) to facilitate trade liberalization;
(ii) to support specific trade-related aspects of a country’s development strategy;
(iii) to assist with the costs of the implementation of WTO agreements; and
(iv) to enhance the capacity of developing countries to participate in the shaping of international trade rules, their interpretation and understanding, and their monitoring and enforcement.

These four rationales can overlap and conflict. Trade is widely recognized as important for development, especially for countries with small internal markets. Because of their small markets, these countries do not benefit from specialization, economies of scale, and competition. There is considerable evidence that a larger market made possible through trade facilitates specialization so that productivity improves and costs decrease.20 The import substitution model for development is now widely viewed as unsuccessful. In contrast, the great development stories since World War II were those from East Asia that benefited from competitive export sectors.21 Developing countries can benefit, in particular, from opening their markets to each other’s products, as some Asian countries now demonstrate.22

Development, however, is a much broader objective than trade liberalization. From a development perspective, trade is a tool. As the OECD technical assistance guidelines state, “Trade and trade liberalisation are not ends in themselves... [although] they can enhance a country’s access to a wider range of goods, services, technologies and knowledge.”23 Development analysts may agree on the importance of trade, but they also disagree over the scope and timing of internal trade liberalization.24 Some high-growth Asian countries were more

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20 See WTO 2003 World Trade Report, supra note 6 at 85.
free-trade oriented, such as Hong Kong and Singapore, while others were more mercantilist, such as Japan, Korea, China, and Chinese Taipei. While all of these WTO members have moved toward freer trade, the rapid jump in their development was not because of uniformly liberal trade policies.

The East Asian countries’ experience demonstrates the importance of internal trade-related capacity both in government and in the private sector. Exports may have been central to the growth models of East Asian countries, but so was a strong state having a competent bureaucracy and a private sector subject to internal competition. These countries understood the importance of investing in education and skills development, and of transferring skills through the private sector, so that they had broader-based internal capacity to absorb and deploy technical assistance. Although all development contexts differ, countries can learn from each other’s successes and failures. In a globalizing world, they can “scan globally, reinvent locally.” The East Asian experience suggests that technical assistance will be of less value without a competent state bureaucracy, engaged private sector, and civil society with a developing skill base to absorb it. That being said, there is little that the WTO can do in this


25 See e.g., Robert Wade, Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization (1990); and Meredith Woo-Cumings, ed., The Developmental State (1999). Interestingly, a study by Schiavo-Campo has “measured the share of the number of civil servants for 100 people, and found that “the average ratio for sub-Saharan Africa (1.5) is less than that of Asia (2.6) or of Latin America (3.0), although “Mauritius and Botswana– the best-performing countries in terms of growth, and with bureaucracies touted as efficient– have more than three times the African average: 5.5 and 5.8 respectively.” See Mkandawire “Incentives, Governance and Capacity Development in Africa,” supra note 13 at 151.


respect except improve the way in which it coordinates with other development institutions, as noted below.

Technical assistance for the implementation of WTO obligations is a conceptually different goal than those of trade liberalization and development promotion. No longer is the WTO and GATT system just about trade liberalization, if it ever was. The WTO’s mandate has expanded to include intellectual property and other regulatory issues. Implementing obligations under these new agreements entails significant costs, potentially distracting resource-strapped developing country officials from other priorities. If trade-related capacity building programs are simply created to help developing countries implement their WTO obligations, these programs will serve more limited (and possibly donor-driven) goals.28

Finally, the primary aim of a WTO capacity building program can be to empower developing countries to better define their trade objectives, to integrate these objectives in development plans, and to advance them in international trade negotiations, monitoring, and enforcement, as well as in the shaping and sequencing of internal regulatory policies. These aims could be advanced through close coordination with other development institutions. As Henri Bernard Solignac Lecomte of the OECD writes, “There can only be one ultimate objective: to empower developing countries in the multilateral trade system, and help their products to penetrate OECD and other world markets.”29 Although this latter empowerment objective may overlap with the others, it is much broader, adopting more of a process-based approach. Its aim is to enhance developing countries’ capacity to define their own objectives and policies, as opposed to enhance “ownership” of substantive policies that others may have defined for them.

28 Implementation of WTO obligations is a complex issue. Implementation of core WTO obligations generally makes economic sense. Countries, nonetheless, need to analyze the tradeoffs in choices over how they implement WTO requirements in order to facilitate their development strategies, especially as regards substantive requirements such as those of the TRIPS Agreement. See e.g. Carlos Correa, Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options (2000); and Keith Maskus & Jerome Reichman, “The Globalization of Private Knowledge Goods and The Privatization of Public Goods,” 7:2 Journal of International Economic Law (2004).

II. Political and Operational Challenges to Implementing a WTO Capacity Building Program

WTO technical assistance and capacity building programs face at least four major interrelated challenges. They are: (i) the difficulty of ensuring that WTO technical assistance is coherently integrated into larger development strategies, and consists of more than a fragmented hodgepodge of “one-off” events; (ii) the incentives of donors to frame capacity building projects to advance donor constituency interests; (iii) the risk of dependency, which can undermine local capacity, unless technical assistance is absorbed institutionally; and (iv) the threat of discontinuation of significant WTO and other trade-related technical assistance after the completion (or termination) of the Doha round, so that trade-related capacity building does not remain a significant WTO function.

1. The Challenge of Coherence with Broader Development Strategies. Technical assistance projects can appear to be random and uncoordinated. Because donors like to take “credit” for assistance projects, they prefer not to provide substantial funding through an international organization or a common fund.30 As Susan Prowse of the UK’s Department for International Development writes, different agencies thus often support “a vertical multiplicity of trade-related assistance initiatives with little to no horizontal coordination.”31 The resulting challenge is to ensure greater coherence of trade-related technical assistance programs in relation to a recipient’s overall development strategy.

The WTO has struggled with its attempts to provide a coherent capacity building program. As the former Director of the Trade and Development Division, Chiedhu Osakwe, stated, “we have to realize that we have a monumental problem with coordination... There are coordination challenges at every level, there are coordination challenges within the Secretariat,... among the beneficiary countries,... and amongst the donors. Frequently we are in the middle of

30 Interview with a developed country representative to the WTO, June 2004.
friendly fire with regard to the same Missions and their capitals.” 32 The WTO’s Technical Cooperation Audit Report for 2002 found,

“The activities of the TA Plan in 2002 were not planned, designed or implemented as part of a systematically and coherently developed multi-year technical cooperation project or programme for a technical sector, a country or a region or sub-region. The plan lives and dies from one year to the next. Therefore, the cumulative benefits of the current TAs for the beneficiaries are more the result of coincidence than systematically thought out efforts.” 33

Most activities were of short duration and involved the “dissemination of information.... rather than real skill development and capacity building.” 34 Early WTO technical assistance reports merely described activities in such terms as: “present detailed information,” “inform the government,” or “explain the structure of GATS.” 35 The WTO’s 2003 technical assistance plan admitted “coordination challenges remain acute... at the national level, amongst agencies, and amongst bilateral donors.” The report found too many “ad hoc demands and fitful Secretariat responses.” 36 The secretariat nonetheless maintains that, having learned from these experiences, it has built a more effective plan for 2004 and the future, involving a more coherent set of products, each with a clear capacity building objective.

Conceptualizing capacity building goals is much easier than implementing them. Part of the conundrum is that a country needs capacity to coordinate, rationalize, and absorb the technical assistance provided. As development analyst Devendra Panday writes, “integrating and transforming [donor assistance] into a coherent national strategy and then implementing the

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34 Id. at 5.
35 “Only six per cent of the back-to-office reports” included reference to “pre-set indicators” of capacity objectives. Audit report for 2002, supra note 29 at 8.
strategy is a very difficult proposition for a poor country whose coordinating capacity is swamped from all directions.”

Thus, some countries have told the secretariat that “they need technical assistance to identify their domestic technical assistance needs.” They also need resources just to manage the assistance provided. They admit that “seminars and workshops... will be of little value as we are finding out,... if the objective is to develop capacity in the broad sense.” Yet ad hoc demands are much easier to formulate, especially when a country lacks internal capacity.

Implementing a trade-related technical assistance strategy, moreover, must respond to the dynamic of WTO negotiations and dispute settlement. The WTO Director-General has consistently emphasized “the urgency underpinning the on-going Doha trade negotiations and work programme.... Time frames and deadlines need to be adhered to.” Developing countries must also respond to regional and bilateral trade negotiations. They thus need “flexibility” in the formulation of technical assistance requests in order for them to participate effectively in multiple, complex negotiations. They do not wish to finalize technical assistance requests six months or a year in advance when the dynamics of negotiations and disputes can raise new needs. This understandable desire for “flexibility” can conflict with the aim of integrating WTO technical assistance into long-term strategies unless the requests fit into a coherent umbrella framework.

39 Remarks of Bangladesh, High Level Briefing/Meeting, supra note 28 at 21.
40 See e.g., High Level Briefing/Meeting on Technical Cooperation, supra note 28 at 24. The representative of Chile remarked “it is very difficult to anticipate what specific needs a developing country will have next year, because we don't know exactly what it is that is going to be required, and the challenges that will have to be faced in the course of the negotiations.” Id. at 25. The negotiating dynamic reflects the “bicycle theory” of trade policy which claims that, "unless there is forward movement, the bicycle will fall over.” See John H. Jackson, The World Trade Organization: Constitution and Jurisprudence (1998), at 24.
42 For example, Colombia asked for technical cooperation for home officials to be conducted back-to-back with meetings of negotiating groups. See High Level Briefing/Meeting, supra note 28 at 30. Similarly, Kenya spoke of the need to “focus on upgrading technical skills and capacity.... to negotiate on various subjects under discussion in the WTO.” Id. at 10. Mauritania expressed a similar need. See Note on the Meeting of 27 and 28 November 2003, WT/COMTD/M/47 at 12 (Jan. 14, 2004).
2. The Political Context. A major challenge for the creation of a meaningful WTO capacity building program is that development objectives can conflict with the interests of powerful constituents within donor countries. Government officials in every country respond to their constituents, whether they be protectionist or export-oriented. Not surprisingly, donors respond to the demands of constituents that wish to impede access to “sensitive sectors” and to press for immediate implementation of intellectual property and other requirements, regardless of another country’s development priorities. Donors may “tie” aid to profit national companies and consultants.43 Technical assistance is not necessarily “free.”

Although overall technical assistance is critically needed, one may thus question if developing countries are beneficiaries of all WTO “technical assistance” initiatives. For example, for most development analysts, implementation of intellectual property protection, especially in the manner desired by some richer countries, is not a priority for the poor.44 Yet the first organization with which the WTO signed a “Cooperation Agreement” for the provision of technical assistance was the World Intellectual Property Organization (“WIPO”).45 In July 1998, the WTO and WIPO announced a new joint initiative “to help developing countries which are members of the WTO meet the 1 January 2000 deadline–less than a year and a half away–for conforming with the [TRIPS Agreement].”46 Similarly, other early WTO capacity building plans consistently referred to “technical missions... aimed at helping individual countries to adapt their existing legislation and regulations to the WTO Agreements in areas such as customs valuation, trade remedies and TRIPS, and transposition of tariff schedules.”47 A special initiative for

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43 See, for example, efforts within the OECD to eliminate “tied aid,” where development assistance is subject to conditions, such as a requirement that the recipient use companies from the granting state. See Report on Export Credits in the OECD (2002), available at http://www.oecd.org/publications&documents/guidelines/2002.htm.

44 See Finger and Schuler, supra note 4. (Estimating that the implementation of the TRIPS, Customs Valuation, and SPS Agreements would cost developing countries around US $150 million dollars, which equals a year’s development budget for most LDCs); and the sources cited in supra note 4.


47 See e.g., Note by the Secretariat, Report on Technical Assistance 2000, WT/COMTD/W/83, at 31(May 2, 2001). The report maintained, for example, that a “systematic” purpose in the “cooperation” was to assist developing countries with their notification obligations. In the words of the WTO report, “In order to raise Members’ awareness
African countries likewise proclaimed that it is “assisting beneficiary countries implement their obligations under the WTO.”\(^{48}\) In the build-up to the Cancun ministerial meeting in 2003, “of the 1048 TA/CB priorities communicated by Members to the WTO Secretariat, the largest number were to be ‘Singapore issues’ (investment, competition policy, transparency in government procurement and trade facilitation),” which were the primary demands of the EU.\(^{49}\) Of course, one may validly counter that without such technical assistance, developing countries would have been less effective in engaging with the Singapore issues, and many developing countries did not oppose their inclusion. The point remains, however, that the primary demander of the incorporation of these negotiating issues was the EU. When it appeared that implementation issues were being given less attention in the 2004 capacity building plan, the EU complained that “no TA was foreseen for the actual implementation and application of existing WTO Agreements.”\(^{50}\) Even if one takes a favorable view of a significant amount of WTO-spurred regulatory change, in a world of limited resources, there are opportunity costs when development assistance is provided in one area—say for intellectual property protection—and not in another.\(^{51}\)

Many developing countries view the WTO secretariat’s provision of technical assistance with circumspection because the secretariat could be advancing the interests of those who oversee the WTO budget—the major donors.\(^{52}\) An official at an international development agency complains that WTO secretariat members, when they travel to a developing country to provide technical assistance, “do not engage in exchange with stakeholders where it is an open question as to whether a WTO rule is good or bad for development, and what are the of their notification obligations, the Secretariat almost systematically includes a module on notification requirements in national as well as in regional seminars.” Id. at 13. Interestingly, Santa Lucia (a non-resident member of the WTO) expressed the need for flexibility to respond to developing country needs, but the example that it cited was its need “to do notifications” to the subsidies committee concerning “subsidy programs.” See High Level Briefing/Meeting on Technical Cooperation, \textit{supra} note 28 at 29.\(^{48}\) See High Level Briefing/Meeting on Technical Cooperation, \textit{supra} note 28 at 20 (referring to the JITAP, see below).\(^{49}\)

\(^{48}\)“Technical Assistance and Capacity-building,” \textit{ICTSD Doha Round Briefing Series} (Feb 2003), at 3.

\(^{49}\)See “Note on the Meeting of 16 and 23 October 2003”, WT/COMTED/M/46 at 15.

\(^{50}\)Unlike for the United States and Europe, implementation of WTO obligations often requires developing countries to create entirely new regulatory institutions and regimes.

\(^{51}\)See e.g. Braithwaite and Drahos, \textit{Global Business Regulation}, \textit{supra} note 11, at 196 (maintaining that the WTO=s upper management faces an incentive structure “which is symbiotically linked to the power of the US and EC”)}
implementation options and their tradeoffs for a country.” He maintains that WTO secretariat officials are discouraged from offering counsel as to how a WTO obligation could be interpreted by a country to facilitate a development objective. In at least one case, a WTO secretariat official complained that officials from other development agencies that might be critical of a WTO rule were “not being helpful for the WTO agenda.” As one representative from Africa remarked, “you have to be wary of them [members of the WTO secretariat],” and “need to fight constantly” for your interests to be respected. Developing country experiences of course will vary as a function of the country, the country official, and the secretariat member providing the assistance. Developing countries generally appear to be grateful for the assistance that they receive. The point remains that capacity building is likely to be more effective if the secretariat member conducts the mission not to “promote” a rule, but rather to clarify it and engage about it in an open-ended manner.

In the 2004 capacity building plan, the secretariat spoke of the need for secretariat “management of the demand” for technical assistance because of the secretariat’s limited resources and the potentially unlimited requests. The EU supported the idea that “the WTO secretariat assumes a more proactive and strategic role in assisting those members that have difficulties in identifying their technical assistance needs.” Although there is a strong rationale for bureaucratic coordination to ensure greater coherence, many developing countries distrust secretariat discretion. They demand that the secretariat serve their requests in a “transparent” manner. India, for example, stressed that technical assistance must remain “demand-driven rather than having any aspects that might suggest a prescriptive approach from the part of the Secretariat.” Morocco expressed concern that the secretariat’s approach for 2004 will give the secretariat too much “discretionary power.” Costa Rica likewise supported the need to “provide

54 Id.
55 Id., at 12.
more flexibility to individual members in deciding national activities.”60 So did Kenya.61 At the following meeting of the Committee on Trade and Development, Mauritania expressed similar views on behalf of the Africa Group, a perspective that Thailand, Colombia and Morocco also supported.62

3. The Need to Avoid Dependency. For most development specialists, the measurement of a development project’s success lies not in the quantity of assistance, but in the extent to which the project empowers a country to devise and implement effective strategies on its own over time. As David Ellerman writes, the “fundamental conundrum” will remain the paradox of “supplying help to self-help.”63 The OECD guidelines similarly speak of the need for approaches that “strengthen the ability of partner countries to continue helping themselves after the donors have left.”64 The challenge is to avoid what Ellerman dubs “Say’s Law of Development Aid—the supply of aid seems to create and perpetuate the demand for it.”65 The temptation to become dependent on aid is high. Developing countries that are strapped for funds may conform to donor demands simply to get the funds. “In 1989, for example, for the countries of sub-Saharan Africa, excluding Nigeria, technical cooperation was equivalent to 14 percent of government revenues. For ten countries, it was equivalent to at least 30 percent.”66 Not surprisingly, beneficiaries of a current WTO assistance program for Africa do not wish to “graduate” from it, although they may have to do so if the program is to be extended to other African countries. When developing countries become dependent on external funding, whether for WTO matters or otherwise, technical assistance programs could actually undermine the development of local capacity. WTO

60 Id., at 23.
61 Id., at 26.
62 See Note on the Meeting of 27 and 28 November 2003, WT/COMTD/M/47 at 12.
65 Supra note 59 at 50. See also Peter Morgan, “Technical Assistance: Correcting the Precedents,” Development Policy Journal, Dec. 2002, 1, 5 (“TA in many instances led to the erosion of ownership, commitment and independent action of national actors. Put in place to help generate independence, TA led in too many cases to a sense of dependence”).
66 Fukuda-Parr et al, Institutional Innovations for Capacity Building, supra note 23 at 12.
resources are likely too limited and missions too sporadic to create such dependency, at least in the short term. Yet the conundrum of “supplying help to self-help” to countries that lack underlying capacity remains.

4. The Challenge of Ensuring Sustainability in light of Short-term Negotiating Goals. Donors wish to see payoffs from the funds that they provide. If trade-related technical assistance does not generate desirable results, then it may be discontinued. Donor governments have thus demanded improvements in the evaluation and reporting of how WTO capacity building efforts work.\(^6^7\) The WTO secretariat now organizes meetings about every six weeks between it, donors, and beneficiaries regarding the use of WTO capacity building products.\(^6^8\)

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

There exists some pressure to link WTO capacity building initiatives to the conclusion of the Doha negotiating round. The technical assistance now provided was granted “explicitly and implicitly” in response to developing countries’ agreement to launch the round, which included the Singapore issues.\(^6^9\) When three of the Singapore issues dropped out of the negotiations in July 2004, the future of donor funding was put in question. As the EU representative warned following the Cancun ministerial when many developing countries rebelled against inclusion of these issues in the work program: “The Cancun outcome required a re-assessment of TA priorities.... Members needed to reconsider the scope of future TA since it was not clear what the scope of the DDA would be in the future.”\(^7^0\) Canada suggested that the secretariat reduce trade-related technical assistance over time, and become coordinator, rather than a deliverer, of such

\(^{6^7}\) See Meeting of 22 May and 12 June 2003, WT/COMTD/M/45, at 14 (US remarks).
\(^{6^8}\) Interview with secretariat member, June 23, 2004.
\(^{6^9}\) Interview with a developed country representative to the WTO, June 2004, Geneva.
\(^{7^0}\) WT/COMTD/M/46 at 14 (the DDA refers to the Doha development agenda).
assistance.  

Developing countries, in contrast, generally insist that “technical cooperation and capacity building should be considered as a fundamental aspect of the activities of the WTO.” Some secretariat observers maintain that it may be politically difficult for donors to significantly curtail technical assistance now that it has been institutionalized within the WTO. At a high-level WTO meeting, a U.S. representative agreed that capacity building should be “an enduring component of the work of the WTO.” Nonetheless, donors’ perceptions of WTO capacity building projects’ effectiveness in achieving the program’s goals, however those goals might be defined, will shape future funding decisions.

III. Historical Overview: The WTO’s Capacity Building Programs in Context

Countries have obtained technical expertise from foreign experts throughout history in furtherance of development goals, but technical assistance efforts have become more central aspects of policy since World War II. As Peter Morgan remarks, “the approach to TA [technical assistance] that began in the late 1940s departed radically from much of what had gone before... TA became, for the first time, an issue of public policy... TA was now to be managed as a public sector activity... [as] part of projects and programmes for which staff in new international development organizations were accountable.” In the first decades following World War II, “thousands of experts and consultants fanned around the world, taking up residence in ministries and project offices, partly to supervise aid projects, but also to plant the skills and expertise... The underlying assumption was that developing countries lacked important skills and abilities—and that outsiders could fill these gaps with quick injections of know-how.” The term “technical assistance” referred to skill transfers to foster modernization.

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See High Level Briefing/Meeting on Technical Cooperation and Capacity Building for Capital-Based Senior Officials, WT/COMTD/43 at 22.  
See High Level Briefing/Meeting on Technical Cooperation, supra note 28 at 26.  
After a couple of decades, development analysts switched their focus to that of “technical cooperation” to emphasize that development programs should work through a collaborative process. This term was later complemented by that of “capacity building” to highlight the importance of local “ownership” and “absorption” of technical assistance to bolster recipients’ ability to pursue their development goals. The OECD’s development guidelines, for example, now call for “local ownership and participation in all trade-related development cooperation activities.” The lack of local ownership in previous development assistance efforts is shown by the fact that of 113 public expenditure review exercises completed up to 1993, “only three included local members on the review team, not one in Africa where most were done and where the ownership problem was most acute.” Capacity building efforts have also shifted toward the development of broader-based “social capital,” defined as “the norms and networks facilitating collective action for mutual benefit.” Initiatives that focus on the development of social capital target private and civil groups, as well as public officials.

The provision of technical assistance and capacity building has changed over time within the GATT and WTO, although the type of assistance that the WTO secretariat can deliver remains limited by the secretariat’s human resources and its perception of its mandate. Although secretariat officials refer to a “member-driven” mandate, some members play more predominant roles than others. Donor governments play a central role on the WTO’s budget committee, which is a primary means through which they oversee and constrain what the secretariat does.

77 See OECD Guidelines, supra note 19.
80 The total size of the WTO secretariat remains under six hundred persons, over two hundred of which are translators or providers of secretarial and cataloguing services. Compare these figures to that of a World Bank staff of around 9,300 and of an IMF staff of around 2,700.
Until the creation of the WTO, GATT technical assistance largely took the form of “trade policy courses” taught in Geneva. The secretariat organized around seventy-seven of these courses during the GATT’s forty-seven year history. As WTO membership grew, and as WTO rules proliferated and their scope expanded, more developing countries complained about the demands of WTO developments. The WTO launched a fund for technical assistance for least-developed countries in September 1995. In 1996, the WTO published guidelines for WTO Technical Cooperation “to improve knowledge of multilateral trade rules,” and “to assist in the implementation of commitments and full use of its provisions.” The first “modes of delivery” were, once again, “training courses” and the “development of information and training material,” complemented by “specialized technical seminars.”

At the Singapore ministerial meeting of December 1996, the WTO announced a broader Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries (the “IF”). The IF, coordinated out of the WTO, brings together six international agencies (UNCTAD, ITC, UNDP, WTO, IMF, and the World Bank) to collaborate with bilateral donors to ensure greater coherence in the provision of trade-related technical assistance in least developed countries. The WTO, UNCTAD, and ITC concurrently launched a Joint Integrated

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82 “Norway provides $2.5 Million to launch a WTO fund for Least-Developed Countries,” WTO Press Release/23 (Sept. 29, 1995).
84 The IF has taken a “process”-oriented approach of awareness-building combined with diagnosis of trade-related challenges, with the aim of integrating trade strategies in national development plans. As part of a revised IMF/World Bank strategy, between 1999 and 2001, around fifty countries prepared “Poverty Reduction Strategy Papers” (PRSPs) in which they define priorities. However, trade initially did not figure prominently in most PRSPs. See discussion in Khalid Malik and Swarnim Wagle, “Civic Engagement and Development: Introducing the Issues,” in Capacity for Development: New Solutions to Old Problems, eds. Sakiko Fukuda-Parr, Carlos Lopes, Khalid Malik, 85, 96 (2002). According to Prowse, one of the objectives of the IF was that trade-related capacity building be granted greater attention “in relation to other development assistance needs.” See Prowse, The Role of International and National Agencies, supra note 27 at 1242. See also Terms of reference for IF pilot program, WT/LDC/SWG/IF/13. In most developing countries, trade ministries play an extremely weak role compared to finance and other ministries. Interviews with members of WTO, UNCTAD, and ITC secretariats. June 2004, Geneva. These interviewees also noted the problem of rapid turnover in the trade bureaucracies in developing countries, and, in particular, in the least developed countries. The IF was endorsed at a WTO high level meeting in Oct 27, 1997. See “Inter-agency trade assistance programme launched for least-developed countries,” WTO Press Release 83 (Oct. 30, 1997). The IF received US$ 19 million in pledges through 2003, of which around US$ 10 million were disbursed through 2003. UNCTAD is the United Nations Conference on Trade and Development.
Technical Assistance Programme to selected Least Developed and other African countries ("JITAP"). The WTO’s portion of JITAP’s work has focused on strengthening WTO “reference centres” located in these countries, which include computer terminals and internet access, and on providing updates to officials on WTO developments.

Analysts criticized the early WTO technical assistance programs, including the IF and JITAP efforts. Overall funding was limited. The WTO secretariat was unschooled in the provision of technical assistance, which lay outside its traditional competence. Requests for assistance largely came from Geneva-based representatives so that capacity building efforts were not well-coordinated with national capitals, with a resulting lack of local ownership. Although there were some successes, the system allegedly operated in a “rigid” manner, with requests for assistance required to be fixed at least six months prior to the start of the annual plan’s implementation. Many of the activities were considered to be “one-off” events that would have little sustainable impact, so that there was an overall focus on quantity rather than quality. A representative of one development organization characterized WTO technical assistance as “a joke.”

With the launch of the Doha round in 2001 and the creation of the Doha Development

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International Trade Centre (ITC) is a joint venture of the WTO and UNCTAD. The IMF is the International Monetary Fund.

85 The JITAP is a “results-oriented” program involving specific activities and products. JITAP was first announced at UNCTAD IX in Midrand, South Africa in 1996. By September 2003, the JITAP had received US $12.6 million in its Common Trust Fund, of which US $11 million had been pledged by donors. In JITAP, UNCTAD’s work focuses on providing support for the beneficiaries’ development of trade policies through “inter-institutional committees.” The ITC focuses on trade capacity issues that are more commercially oriented. Interview, WTO secretariat member, June 23, 2004, Geneva, and with ITC officials, June 28, 2004.


87 The JITAP received a positive evaluation in 2002. Document on file with author. The JITAP helped establish WTO “resource centres” in its beneficiary countries, a program that was then expanded to cover developing country members generally. JITAP also allegedly facilitated the coordination of trade policy within beneficiaries through “inter-institutional committees.” Interview with a member of the WTO secretariat, June 23, 2004, Geneva.

88 Interview with member of the WTO secretariat, June 23, 2004, Geneva.

89 Audit Report for 2002, supra note 29 at 11. To give an example, the WTO’s 2000 report on technical assistance largely consisted of ad hoc examples broken down by WTO agreement, mode of delivery, numbers of activities, and percentage of geographical distribution.

90 Discussion, July 2004.
Agenda Global Trust Fund, trade-related technical assistance and capacity building programs increased. Members pledged over 21.5 million Swiss francs (about US $15.7 million dollars) in 2002. In 2003, funds for WTO capacity building projects from the annual budget and the new trust fund slightly exceeded 30 million Swiss Francs. The same amount was also budgeted for 2004. These figures do not include overhead costs, including the salaries of around thirty-eight officials in the WTO Institute for Training and Technical Cooperation, nineteen “L” officials hired on fixed-term contracts to provide assistance, and other “operational staff” asked to help. Moreover, these funds complement the considerably greater amounts of trade-related capacity building that donors provide directly or through other international organizations.

Problems with WTO technical assistance efforts spurred the WTO to announce a “new strategy” in 2001 whose stated aims were to make technical assistance more demand-driven, to create financial stability through the Doha trust fund, and to enhance the capability of the WTO secretariat to deliver products within its mandate in a manner that was both coherent and flexible to meet developing country needs. The WTO’s “new strategy” nonetheless initially continued to focus on the more limited objectives of trade liberalization and rule implementation. The opening paragraph of the new strategy stated: “The core mandate of the WTO is trade liberalization... WTO technical assistance... provides enabling assistance for Members to undertake trade liberalization.... [The role of the secretariat is] to assist them in understanding WTO rules and

91 “Technical Assistance and Capacity-building,” ICTSD Doha Round Briefing Series (Feb 2003). Governments pledged Sw Fr 30 million to the Doha Development Agenda Global Trust Fund (DDAGTF) at a pledging conference held on March 11, 2002 at the WTO. See WTO Press Release 279 (March 11, 2002). As Larson notes, the DDAGTF “grew to three times the size of [the IF’s funding] overnight.” See Larson, Meaningful Technical Assistance, supra note 82 at 1195. The 2004 technical assistance plan was estimated to cost around Sw Fr 36.2 million, with around Sw Fr 30 million coming from WTO sources. About Sw Fr 6 million was to come out of the WTO’s general budget and about Sw Fr 24 million out of the DDAGTF.

92 WTO members contributed Sw Fr 24.6 million to the Doha trust fund in 2003, of which only Sw Fr 14.4 million was expended. See WTO 2004 World Trade Report, at 131.


94 “The second joint WTO/OECD report on trade-related technical assistance and capacity building of 2003 divided trade-related capacity building programs into three categories which had generated the following amounts of funding: (i) trade policy and regulations, US$ 719 million; (ii) trade/business development, US$ 1.4 billion; and (iii) infrastructure, US$ 8.1 billion. The total of these three items constituted about 4.8% of total aid, more than went to basic education or basic health. “The Second Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building” (TRTA/CB) 2003, available at http://www.oecd.org/dataoecd/27/4/11422694.htm.
WTO trade-related capacity building plans were, however, modified and became somewhat more sophisticated over time. The plans have taken account of audits of the previous year’s activities. An audit of the Technical Assistance Plan for 2003, for example, criticized the plan’s implementation for a lack of coherence, maintaining that the secretariat was largely servicing ad hoc requests. In response, the secretariat prepared a plan for 2004 that was to be more “quality-oriented, aiming at building long-term—i.e. sustainable, human and institutional capacity,” setting forth clearer “objectives” for each type of capacity building “product.” The 2004 Plan set forth a long list of “products” that included Geneva-based, region-based, nation-based, and distance-learning activities, as summarized in Table I:

NOTE TO EDITOR: PLACE THIS TABLE WHERE IT MAKES SENSE FOR THE READER IN TERMS OF PAGE BREAKS, WHETHER AT THE END OR AROUND HERE

<table>
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<th>Table I</th>
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<tr>
<td><strong>Summary of 2004 Technical Assistance and Training Plan Products</strong></td>
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<td>The WTO secretariat offered the following “products” in its 2004 plan:</td>
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<td>* Four three-month trade policy courses at the WTO in Geneva, two in English, and one each in French and Spanish, for which participants first undergo a selection process;</td>
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97 The 2003 Technical Assistance Plan focused on the need to build capacity to understand the rules and implement WTO agreements, on the one hand, and to develop negotiating capacity, on the other, although it called for “capacity building based on Members’ explicitly determined priorities.” See Note by the Secretariat, “Coordinated WTO Secretariat Annual Technical Assistance Plan 2003,” WT/COMTD/W/104/Rev.2, adopted on Nov. 22, 2002, par 15.
* Four three-month regional trade policy courses, scheduled in Nairobi, Kenya for Anglophone Africa; in Rabat, Morocco for Francophone Africa; in Hong Kong for Asia/Pacific members; and at the University of West Indies, Jamaica for the Caribbean. The secretariat hopes to hold regional courses in other regions in the future for “Arab and Middle East Countries, Latin America, Central and Eastern Europe, Central Asia and the Caucuses.”

Through these regional courses, the secretariat hopes to build regional institutional partnerships and academic networks;

* Two-to-five day regional seminars on specific WTO issues, from agriculture to textiles, dispute settlement to the TRIPS Agreement. These seminars, which aim to provide “more advanced levels of training” that may build on previous programs, are to be conducted in partnership with other international and regional agencies;

* Shorter Doha Development Agenda courses for senior government officials that focus on the state and process of the Doha negotiations, which are “held in each region;”

* National seminars which are provided flexibly in response to developing country requests, with up to two seminars allocated for each developing country, and three for least-developed countries (in addition to the assistance that the latter may receive under the JITAP and IF programs);

* Five specialized courses held in Geneva on dispute settlement and trade negotiation theory and practice;

* Two introductory courses in Geneva for least developed countries;

* Other Geneva-based support, including an induction day for new diplomats, two “Geneva weeks” for those WTO members without permanent representation in Geneva, video conferencing, advisory assistance on dispute settlement issues, and ad hoc assistance;

* Distance learning courses through computer-based training modules, interactive guides, and on-line forum;

* Establishment and upgrading of “WTO Reference Centres,” of which around 130 operated in ninety countries as of June 2004. For poorer countries, the WTO has provided

99 See 2004 TA Plan, supra note 93, at 7.
101 Email from a member of the WTO secretariat, June 2004.
information technology equipment and helped with internet access outside of the local power grid. (One of the aims is to facilitate trainees’ ability to maintain contact with members of the WTO secretariat and with each other);

* WTO internship and trainee programs to build hands-on practical learning;
* Through collaboration with the OECD, creation of a data base of trade-related technical assistance activities to facilitate greater coordination.\(^{102}\)

According to the secretariat, beneficiaries and donors have supported the way that the 2004 plan has operated.\(^{103}\) The secretariat hopes that courses held in developing countries, in particular, can foster the creation of “academic networks with institutions of higher learning” in developing countries.\(^{104}\) Over time, the secretariat would like the regional partners to assume “a growing share of the responsibility of the courses,” with the secretariat overseeing quality control.\(^{105}\) The secretariat also plans to begin a PhD mentor program in Geneva, where PhD candidates from developing countries can have space in the WTO library and be assigned a mentor from within the secretariat.\(^{106}\)

The IF and JITAP programs were revamped in 2003 and 2004 in order to better “aim at mainstreaming trade within national development strategies by promoting trade policies supportive of the poverty reduction objectives of those countries.”\(^{107}\) The JITAP program was expanded in 2003 to include sixteen countries, and its modules were reduced to five core programs, from fifteen. The IF’s coverage was expanded from three to fourteen countries in 2003, and to thirty-two by October 2004.\(^{108}\) The IF opened a second “window” to include “bridging”

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\(^{103}\) Interview with secretariat official, June 22, 2004, Geneva.


\(^{105}\) See 2004 Plan, supra note 94.

\(^{106}\) See October Meeting, supra note 100 at 29.


\(^{108}\) E-mail from WTO secretariat member, Oct. 12, 2004. One interviewee in the WTO secretariat characterized this as a “mini-crisis of success” for the IF. Interview, June 2004, Geneva.
funding of up to US$ 1 million per country for priority needs, in addition to diagnostic studies (its “first window”).

Skeptics outside of the WTO nonetheless question whether WTO trade-related capacity building will be reoriented in practice. They suspect that WTO capacity building programs will continue to focus on power point presentations of “rules” and on developing countries’ implementation obligations because of a restrictive “interpretation” of the WTO’s rule-oriented mandate which is pressed by donor countries monitoring the WTO’s budget. As one developing country representative remarked, “the donors were careful that the Doha trust fund went into the WTO where they could control it, and not into another organization.” As he concluded:

“the delivery modes [of the secretariat’s new plan] may be better, but the orientation is likely to be the same. Ultimately, the donors will control how the money is used. For example, when technical assistance is provided on WTO agricultural issues, the US Department of Agriculture will send an expert who will tell you what your position should be in the Doha round agricultural negotiations. They and the WTO guys go to countries to tell them what to do, not how to analyze and review options and their implications. WTO capacity building and technical

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109 The “first window” consisted of diagnostic studies prepared on a pilot basis for three least-developed countries (LDCs). It was then extended to fourteen LDCs in 2003. See 2004 TA Plan, supra note 94 at 21. Confirmed in interview with WTO secretariat member, June 22, 2004, Geneva. Following the diagnostic studies, IF beneficiaries were to obtain funding from donor organizations, but it allegedly turned out that there was little follow-up. A World Bank official blamed the donors for not coming through with funding. Discussion, July 2004. A donor representative, in contrast, blamed the World Bank for, among other matters, hiring consultants from Washington D.C. to prepare “huge fat” diagnostic studies instead of using the Bank’s local people. Discussion with a donor representative, July 2004. Because it has taken so long to move beyond the diagnostic and pilot stages, some development analysts have labeled the IF “if and when.” Interview with an official at a development organization, Geneva, June 29, 2004.

110 Many developing countries would like to have the WTO mandate explicitly include “development” issues, but developed countries prefer to keep it narrow, focusing on the “rules” of a “contract” organization. Interviews with officials in other Geneva-based international organizations and developing country non-governmental organizations, Geneva, June 2004 (noting who is “interpreting” and “defining” the “mandate”). One interviewee from another international organization characterized changes in the WTO regarding development issues as ones of “rhetoric,” since the WTO will remain a “rule-based system.” June 29, 2004, Geneva. One response, however, is that there are different roles to be played by different organizations, and the aim should be to build greater coherence between the work of these organizations.

111 Discussion, July 2004.
assistance are important, but we need to fight all the time over how they are applied.”

IV. Conclusion: Some Potential Adaptations within Developing Countries, the WTO and Donors

The role of capacity building programs should be to empower developing countries to take advantage of trade-related opportunities, whether through shaping WTO law and tariff concessions to facilitate development goals, through deploying WTO rights in dispute settlement, through implementing WTO law more effectively, or otherwise. It is, of course, always easier to examine challenges and failures than to implement strategies to capitalize on new opportunities. This concluding section aims to highlight positive developments in WTO capacity building efforts and some potential adaptations to be considered.

First, we should recognize that donors came through with a significantly greater amount of funding for trade-related technical assistance and that the WTO secretariat improved in delivering its part. The secretariat now provides a broader spectrum of products that include regional courses hosted by local universities, specialized regional courses, workshops on negotiation techniques, partnerships with academic and other institutions, and WTO reference centers set up around the world. The provision of this assistance has been somewhat more demand-driven, resulting in a better understanding of WTO rules and negotiating dynamics among a broader network of developing country government officials. WTO observers note that developing countries have been much more engaged in the Doha round of trade negotiations than they were in the past, indicating much greater “ownership” of the technical assistance provided. Such engagement could, however, result from assistance from organizations and networks that are independent of

\[^{112}\] Id.


\[^{114}\] As Faizel Ismail, the head of the South African delegation to the WTO, said following the Cancun meeting, “The only silver lining to the disappointment felt by G-20 members at the abrupt end of the WTO Cancun Ministerial Conference was that developing country negotiators had come of age. They had galvanized a formidable group of developing countries and skillfully built a common negotiation position that provided a sound platform to continue negotiations for a fair and freer global market for developing countries’ agricultural products.” Faizel Ismail,
the WTO, rather than through the WTO itself.

How can developing countries, donors, and the WTO secretariat build on past developments? First, developing countries need to increase their institutional coordination at multiple levels in a broader-based manner to include government departments, the private sector, and civil society representatives. Technical assistance and capacity building endeavors will be most sustainable if they permeate broadly throughout institutions and societies. Donor capture is less likely if a broad array of stakeholders is included. The WTO’s 2002 audit, however, showed that the “representation of other economic sectors remains insignificant [with representatives being limited to officials from certain ministries],... despite general recognition that the involvement of the private sector and civil society representatives is desirable.” If the focus of technical assistance were to remain on individual capacity instead of larger societal and institutional capacity, then the WTO could simply be training individuals whose objectives and career paths are unpredictable. Trade-related capacity building will be more effective if it also responds, directly or indirectly, to local constituent demands, including those of the private sector, academics, and other civil groups, as part of a bottom-up process.

If developing countries are to shape the international trading system to facilitate their economic development and if they are to take advantage of WTO rules, they will need to work with the private sector to enhance the resources at their disposal. They will also need strong civil society networks to provide government representatives with greater negotiating leverage. The United States and Europe have learned how to harness private resources—informational and material—to advance their agendas. Developing countries will need to develop strategies of their own that involve broader-based constituencies. To give a few examples, civil society

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“Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun,” *Bridges*, at 4 (January 2004).

115 The OECD guidelines refer to “effective mechanisms for consultation among three key sets of stakeholders: government, the enterprise sector, and civil society.” *Supra* note 19.


117 Some WTO trainees will leave government service or be assigned to agencies that do not work on trade matters. One interviewee noted that the trade policy course was extremely valuable for him and others, but that some students appeared to treat the course as an opportunity for “tourism.” Interview with developing country representative, June 30, 2004, Geneva. Similarly, a WTO official questioned the extent to which some beneficiaries are “serious” about capacity building in light of the minimal efforts of some students in the courses. Interview, June 23, 2004, Geneva.

organizations have been instrumental in reframing debates over the TRIPS Agreement and agricultural subsidies, and Brazil’s private sector has helped finance WTO legal challenges against US cotton and EU sugar subsidies.

There are some signs that WTO capacity building efforts are becoming broader-based. The secretariat’s 2004 plan explores ways to increase the absorptive capacity of technical assistance projects through coordination with broader networks of actors. Developing country representatives have welcomed the secretariat’s initiative to work with developing country academic institutions and think tanks, to provide WTO internships, and to organize a program for their doctoral students to use the WTO library. Developing country hosts of WTO regional courses, in particular, hope that the courses stimulate greater awareness of WTO trade issues in government ministries and universities, as well as in the general public as a result of media coverage.\textsuperscript{119} Nonetheless, some developing country representatives have been reticent about civil society and parliamentarian-oriented capacity building projects, at least where the funding comes out of the WTO’s technical assistance budget. India and Egypt have stated, for example, that they do not view “outreach programmes for parliaments and civil society as TA activities but rather as national activities.”\textsuperscript{120} Thailand agreed.\textsuperscript{121}

Developing countries could also benefit from mechanisms to network and pool their resources at the regional and international levels. Most developing countries are small. These countries will never have the capacity to follow and advance their interests effectively in the WTO system by acting alone. Just as European countries, they could benefit from networking and pooling resources through regional and other institutions. The WTO’s “regional” technical assistance programs could, at least in theory, facilitate this coordination. Although strategies for pooling resources have their limits, they need to be compared with the alternative of each developing country working on its own, in which case the trading powers can more easily play

\textsuperscript{119} Interview with a representative from an African country.
\textsuperscript{120} See October 2003 Meeting, supra note 100 at 22. Curiously, Pakistan’s representative supported the inclusion of outreach programs for parliamentarians and civil society. Id. at 23. So did the representative from Venezuela. See “Note on the Meeting of 27 and 28 November 2003,” WT/COMTD/M/47 (Jan. 14, 2004), at 20.
\textsuperscript{121} Id. at 18.
As for the WTO secretariat, although the WTO may be a member-driven organization, it is not entirely so. Secretariat members are able to exercise authority in numerous contexts, including in the provision of technical assistance. Some of the secretariat’s assistance raises fewer tensions than others. For example, capacity building programs regarding trade negotiating practices and the use of the WTO’s dispute settlement system address how developing countries can better defend and advance their objectives. Technical assistance for implementation, in contrast, can represent a form of “soft” persuasion by the secretariat of what developing countries must do in respect of other members’ demands. To put this in context, were secretariat representatives to travel to Washington D.C. or to European capitals to tell administrative officials (in a potentially doctrinaire manner) what WTO rules require them to do and why these rules are “good” for their countries, sparks could fly. If the WTO secretariat believes that it lacks the independence to engage with developing country representatives and stakeholders in an open way about whether WTO rules serve varying development contexts and about how WTO disciplines might be flexibly interpreted to promote development objectives, then developing countries should be circumspect. In such case, developing countries might wish to be sure that representatives from development agencies and other consultants who have greater independence are included in relevant WTO trade-related “capacity building” projects.

Although the WTO’s organizational culture is not that of a development institution, members could further integrate certain development orientations. The Trade Policy Review Mechanism (“TPRM”) could be given a greater development orientation when applied to developing countries off of each other.122

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122 See e.g. Peter Drahos, “When the Weak Bargain with the Strong: Negotiations in the World Trade Organization,” 8 International Negotiation 79-109 (2003); and Gregory Shaffer, How to Make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies (ICTSD monograph, Geneva) 1-65 (March 2003), available at http://www.ictsd.org/pubs/ictsd_series/resource_papers/DSU_2003.pdf. The proliferation of bilateral trade negotiations and agreements, and the manner of implementation of the general system of preferences, often divide developing countries, making it more difficult for them to coordinate across issues in a sustained manner. See Gregory Shaffer and Yvonne Apea, “Putting the GSP Case in Context: Who Decides the Conditions for Trade Preferences?” in Thomas Cottier and Joost Pauwelyn eds., Trade and Human Rights (forthcoming 2005). Developing countries nonetheless would have to monitor and develop trust that the secretariats of regional associations and the lead representatives in regional networks work effectively on their behalf.
developing countries. If trade strategies are to be integrated into development plans, as called for by the Integrated Framework, the JITAP, and the WTO’s technical assistance programs, then it makes sense to adapt the Trade Policy Review Mechanism accordingly. TPRM implementation reviews could examine the ways in which a developing country has mainstreamed trade policy as part of a development strategy. Implementation of WTO requirements could be viewed through the lens of sequencing based on development thresholds. This adaptation could be applied on a trial basis with least-developed and other low-income countries. As Prowse points out, a development approach is not alien to GATT-WTO traditions that include such issues as infant industry promotion and balance of payment concerns.

Similarly, as the scope of WTO rules continues to expand, a single set of disciplines becomes less appropriate for all WTO members. One can, and should, distinguish between core GATT rules of non-discrimination, which apply to all members, and other substantive rules. Article XXXVI of Part IV of GATT 1994 expressly provides that “developed countries do not expect reciprocity for commitments made to them in trade negotiations [from]… less-developed contracting parties.” It further specifies that “the less-developed countries should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.” In practice, however, developing countries often have only received longer transition periods to implement WTO obligations, periods that by now have largely elapsed. There is a role for greater differentiation of members based on less-developed countries’ capacities and levels of development. That variation can be implemented through conditioning implementation on defined development thresholds and through enhanced special and differential treatment provisions.

See also The DAC Guidelines: Strengthening Trade Capacity for Development (OECD, 2001), at 9 (suggesting that the TPRM be used “to raise awareness of constraints to trade and investment in developing countries” so as “to ensure coherence between trade policies and regulatory regimes on the one hand, and overall development goals on the other”).

See Prowse, The Role of International and National Agencies, supra note 27 at 1242 (referring to GATT articles XVIII:B and XII).

See Bernard Hoekman’s contribution to this volume.

The national treatment obligations under the General Agreement on Trade in Services (“GATS”), for example, only apply to sectors listed in a country’s GATS schedule.
Institutionalizing a capacity building component in the WTO could play a transformative role for the secretariat itself. Such institutionalization could induce the secretariat to become more conscious of the development context of trade. Just as the secretariat admirably has been self-critical regarding its past provision of technical assistance, so it could be self-critical in its understanding of the role of trade in development. It could view trade rules not as ends in themselves, but rather as tools that can be applied to different development contexts. The WTO could, in particular, open permanent WTO regional offices where WTO staff can become more attuned to region and country-specific needs.\textsuperscript{127}

As regards donors, they will continue to be under pressure from domestic constituents to shape technical assistance to advance those constituents’ interests. Constituents that lose from reduced donor government subsidies or increased access to donor markets will oppose technical assistance provided to developing countries that facilitates these objectives. Capacity building initiatives, however, are more likely to be effective if donors view them as longer-term foundational issues to enhance developing country trading options in the global economy, and not as shorter-term concessions as part of a trade negotiation package. One administrative adaptation that donors could make would be to integrate development ministries into their trade policy networks, at least in relation to trade-related capacity building initiatives, such as at the WTO. In addition, capacity-building initiatives will also be more effective if donor development agencies coordinate among, and do not compete between, each other. Perhaps most importantly, donor governments will need to actively support these programs before their own publics.

The unstable security situation that the world now confronts offers opportunities and sets constraints for trade-related development strategies. On the one hand, the threat of terrorism can impede and disrupt trade, which could particularly harm countries with small internal markets. On the other, global concern with terrorism could focus developed countries’ attention toward the development of stable developing states that can serve as critical allies. In this regard, there are analogies between the current situation and the past, in which East Asian countries benefited from the United States’ desire for strong and economically successful allies during the Cold War. Developed and developing countries’ security interests are both ultimately linked with global

\textsuperscript{127} This idea was considered in Technical Cooperation Audit Report for 2002, \textit{supra} note 29, at 11.
development. As one high-level member of the WTO secretariat quipped, “the Doha round was a gift of Osama bin Ladin.”\textsuperscript{128} Similarly, the 2002 U.S. \textit{National Security Strategy} states, “A world where some live in comfort and plenty, while half of the human race lives on less than $2$ a day, is neither just nor stable. Including all of the world’s poor in an expanding circle of development and opportunity is a moral imperative and one of the top priorities of U.S. international policy.”\textsuperscript{129} The test of such a “security policy” will be in the doing. WTO capacity building programs could play a small, but beneficial, part.

\textsuperscript{128} Interview, Geneva, June 2002.
\textsuperscript{129} The policy is set force in a document entitled “\textit{The National Security Strategy of the United States},” Sept. 17\textsuperscript{th}, 2002, \textit{available at}: http://www.whitehouse.gov/nsc/nss.pdf. The strategy is best known for its justification of the need for preemptive strikes, so that its development dimension is often overlooked.