Developing Countries in the WTO: Problems of Participation

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I. Introduction

One of the greatest challenges currently facing developing countries is to overcome obstacles preventing their full participation in the dispute settlement process of the World Trade Organization (WTO).

It has long been observed that the treatment of developing countries in the dispute settlement of the WTO has restricted their ability to trade effectively. Trade liberalization has made it considerably difficult to defend the interests of both developed and developing countries: but provisions in the agreements, assistance of both a technical and legal nature and Special and Differential (S&D) treatment have always been discussed as a way to rectify such inequalities. These provisions are used to counter the WTO's bias towards the interests of rich countries as reflected in its rules.[1]

The criteria for defining a developing country have been acknowledged as a problem but it tends to attract less attention in the WTO. It is an issue that has been put on the back burner since it does not bring any advantages for developed countries nor "rich" developing country Members, the main players in the WTO.

Organizations like the United Nations Conference on Trade and Development (UNCTAD)[2], the World Bank and the International Monetary Fund (IMF)[3] have elaborated criteria for the definition of developing countries which are based only on economical and statistical features.

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1 *Michalopoulos/Winter/Hoekmann*, More Favorable and Differential Treatment of Developing Countries: Toward a New Approach in the World Trade Organization, Policy Research Working Paper No. 3107 (08.2003), p. 2, World Bank Research. Download at: http://econ.worldbank.org/.

2 For more information about UNCTAD, see *Melo*, Curso de Direito Internacional Público, Vol. I, 2001, p. 686 and *Koul*, The Legal Framework of UNCTAD in World Trade, 1997.

3 For more information about World Bank and IMF from the perspective of developing countries, see *Buria*, Challenges to the World Bank and IMF, Developing Countries Perspectives, 2004.

In 1964 the GATT Committee on Institutional, Procedural and Legal matters has raised the question whether the concept of developing countries should be defined. By that time it was determined by some contracting members that the definition of such concept was neither necessary nor reasonable and that if a problem should arise only then it should be taken into consideration. Besides, some Member States declared that it would be possible to finally solve this problem of definition sometime later (not only when the problem arises). It seems however as if this time has not arrived yet.[4]

The criterion for developing countries in the WTO continues to be a "self declaration". Moreover, there is no organ in the WTO to define the countries and to determine when a country has made its transition from one category to the other.[5]

The GATT has never had enough power to define a group of countries and has to live with the categories in its original treaty until now.[6] The problems of classifying the countries result in a distortion of trade and further inequality among Member countries.

This work analyses the participation of developing countries in the WTO and its associated difficulties, such as those involved in accessing the dispute settlement process, the definition of provisions of S&D treatment, but in particular the classification of countries in the WTO with the object of reigniting the discussion on an issue that has been shelved and is in desperate need of development.

II. The participation of developing countries in the Multilateral Trade System

1. The liberalisation of trade and the access of developing countries in the Multilateral Trade System

Globalisation has advanced the international economic order on a major scale. One of the aims of globalisation was to overcome economic restrictions and protec-

4 *Meng*, Völkerrecht als wirtschaftlicher Ordnungsfaktor und entwicklungspolitisches Steuerungsinstrument, in Meng et al (Hrsg.), Das Internationale Recht im Nord-Süd-Verhältnis, Berichte der Deutschen Gesellschaft für Völkerrecht, 2005, p. 1 (66).

5 See chapter III of this work.

6 *Kleen/Page*, Special and Differential Treatment of Developing Countries in the World Trade Organization, Global Development Studies No. 2, Expert Group on Development Issues, 2005, p. 81. According to the authors, GATT has never attempted to formulate a definition for developing countries because some developing countries prevent it and it is not certain that all developed countries want a definition. Therefore it seems as if the problem was rather political than administrative.

tionist policies. In order to establish international peace and stability, it was necessary to achieve economic prosperity. One of the successful achievements was the establishment of the institutions of the IMF and the World Bank in 1944. Furthermore, in 1945 the United Nations were founded. In 1946 the United States proposed to establish a specialized agency of the United Nations, called the "International Trade Organization (ITO)"[7], which would deal with rules governing trade barriers and restrictive business practices.[8]

The idea to create an ITO was proposed by 50 countries. Even before the ITO Charter was fully elaborated, 23 of the 50 members, including 11 developing countries, decided in 1946 to negotiate with the aim to reduce and bind customs tariffs in order to correct the longstanding legacy of protectionist measures. They also agreed that they should accept some of the trade rules of the draft ITO Charter provisionally in order to protect the value of tariff concessions and trade rules. These became known as the General Agreement on Tariffs and Trade which was enacted on 1st January 1948.[9]

The original text of the GATT contained infant industry and balance-of-payments provisions for developing countries, but the text did not include the new trade preferences that the ITO foresaw.[10]

Despite the fact however that only 23 founding members intended the agreement to have interim effect, the multilateral instrument governed international trade until 1995, when the WTO was established. During this period the number of developing countries participating in international trade gradually increased. Their participation in an international economic order that favours economic liberalization had to be balanced with their requirements if it were to ensure equitable socio-economic development.[11]

It is not surprising that the accession of developing countries and countries in transition to the WTO has always been considered a difficult task.[12] Governments seek-

7 For more information about the history of ITO see *Senti*, WTO, System und Funktionsweise der Welthandelsordnung, p. 1 (10) and *Herdegen*, Internationales Wirtschaftsrecht, 4. Aufl., § 2, 11, § 3, 29.

8 *Mukerji*, Developing Countries and the WTO; Issues of Implementation, Journal of World Trade, Vol. 34, Issue 6, 2000, pp. 33-34.

9 Ibid., p. 34.

10 *Low*, Developing Countries in the Multilateral Trading System: The Insights of Robert E. Hudec, Journal of World Trade, Vol. 37, Issue 4, 2003, p. 801 (803).

11 *Mukerji*, (fn. 8), pp. 33-35.

12 For more information about the WTO Accession see *Polouektov*, The Non-Market Economy Issue in International Trade. In the context of WTO accessions, Report United Nations UNCTAD/DITC/TNCD/MISC.20, 2002. It should be noted that one of the cases which demonstrates the difficulty of a developing country's access to the multilateral system is the China case. For more information about China's accession to the WTO and its difficulties and commitments,

ing accession must coordinate the legislative and regulatory changes needed in their foreign trade regimes, adopt liberal policies and identify areas of institutional weakness. This habitually causes delays in implementing WTO provisions and seeking agreement on such delays.[13] Among other problems the technical assistance provided to applicants in fulfilling the requirements for the WTO accession is not effectively coordinated.[14] Despite all these difficulties it seems that many developing countries hold the opinion that WTO membership is an important step for their integration in world trade.

In order to participate in the WTO, developing countries had to make some dramatic changes regarding their economic management policies and development strategies in order to enable extensive trade liberalisation. Changes in their economic management policies have brought an increased stability to many developing country economies and greater opportunities for foreign investors.[15] The developing countries have significantly increased their share of international trade and investment over the past ten years.[16] For example, developing countries accounted for about 30 per cent of the total world trade in merchandise products and services in 2001.[17] On the other hand, by participating actively in the WTO's dispute settlement system, developing countries have experienced not only opportunities but also challenges provided by the emerging international economic order.[18] They have been going through other difficulties and commitments. Therefore, developing countries were offered special treatment, known also as exceptions to the GATT. They also employ other strategies such as forming coalitions with other developing countries as an especially crucial instrument for effective diplomacy in internation-

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see *Cass/Williams/Barker*, China and the World Trading System, 2003; *Drysdale/Song*, China's Entry to the WTO, 2000; *Hartland-Thunberg*, China, Hong-Kong, Taiwan and the World Trading System, 1990; *Xiangchen*, WTO Accessions and Development Policies, Report United Nations New York, Geneva, 2001, UNCTAD/DITC/TNCD/11, in China's accession on the WTO and developing countries' participation in the multilateral trading system, 2001. Download at: http://www.unctad.org/en/docs/ditctncd11_en.pdf, p. 44 (6.6.2006) and *Francis*, Dreaming of Red Mansions: Rights, China and the WTO, in Buckley, The WTO and the Doha Round, The Changing Face of World Trade, 2003, p. 169.

13 *Michalopoulos*, WTO Accession for Countries in Transition, Policy Research Working Paper No. 1934, (06.1998), p. 21, World Bank Research. Download at: http://econ.worldbank.org/.

14 Ibid., p. 22.

15 *Gallagher*, Guide to the WTO and developing countries, 2000, pp. 1-2.

16 *Pain*, in: Rugman/Boyd (ed.), The World Trade Organization in the New Global Economy, 2001, p. 216.

17 Ibid., p. 219. For more information about services trade and investment liberalization, see *Saw*, Developing Countries and the GATS 2000 Round, Journal of World Trade, Vol. 34, Issue 2, 2000, pp. 82, 85-92 and *Krenzler*, Globalization and Multilateral Rules, International Trade Law & Regulation, 4 (4), 1998, pp. 144-150.

18 *Mukerji*, (fn. 8), p. 68.

al negotiations to overcome some of their weaknesses. Nonetheless it has been argued by some writers that effective coalitions are not easy to construct or sustain.[19]

2. The participation of developing countries in the WTO Dispute Settlement

The dispute settlement procedure in the WTO is one of the most important achievements of the international economic order.[20]

The Uruguay Round developed an integrated system for dispute settlement in order to bring all the multiple agreements under the coverage of a single WTO agreement.[21] It established a better system for decision-making and timeframes to be applied in dispute procedures. The aim was to establish precision and security in the multilateral trading system in order to reduce the potential and incentive for unilateral action by powerful WTO members.[22] Therefore it provides developing countries with better tools to protect themselves.[23]

Approximately two-thirds of to the WTO members are developing countries, transitional economies are recognized as least developed country (LDC) members.[24] A number of developing and transitional economy countries have been claimant or respondent and/or appellant or appellee in the Appellate Body or WTO Panel proceedings. However the higher income or the "rich" developing country members, such as Brazil and Argentina, have been the main participants.[25]

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19 *Narliker*, International Trade and Developing Countries, Bargaining Coalitions in the GATT & WTO, 2003, pp. 10-33. For more information about the formation of alliances and bargaining power see *Bjørnskov/Lind*, Where Do Developing Countries Go After Doha? An Analysis of WTO Positions and Potential Alliances, Journal of World Trade, Vol. 36, Issue 3, 2002, p. 543 (561).

20 *Cameron*, Dispute Resolution in the World Trade Organization, International Trade Law & Regulation 2000, 6(3), 101, 2000, p. 101.

21 For more information about the Uruguay Round and developing countries see *Srinivasan*, Developing Countries and the Multilateral Trading System: from the GATT to the Uruguay Round and the future, 1998 and *Stevens*, The Consequences of the Uruguay Round for Developing Countries, in: Sander/Inotai (ed.), World Trade after the Uruguay Round, Prospects and policy options for the twenty-first century, 1996, pp. 71-88.

22 *Mukerji*, (fn. 8), 2000, p. 64.

23 Please compare with *Finger/Schuler*, in: Deutsch/Speyer, Developing Countries and the Millennium Round, 2001, p. 69, who affirm that the Uruguay Round did not bring balance for the developing countries.

24 *Footer*, Developing Country Practice in the Matter of WTO Dispute Settlement, Journal of World Trade, Vol. 35, Issue 1, 2001, pp. 55 (57-58). Please note that the WTO had 148 members on 16 February 2004. See the list of WTO membership at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (8.6.2006).

25 Ibid, p. 58. See also *Pérez Gabilondo*, Developing Countries in the WTO Dispute Settlement Procedures Improving their Participation, Journal of World Trade, Vol. 35, Issue 4, 2001, p. 483.

Table 1 below considers the situation before 2004, illustrating that in the years 1995 and 2000-2003 the combined total number of complaints brought before the WTO by upper middle, lower middle and low income countries (including Brazil, Argentina and Mexico) surpasses those brought by developed country Members such as the United States, the European Communities and Japan.

Table 1 – Complainants per income category – trend 1995-2003[26]

	1995	1996	1997	1998	1999	2000	2001	2002	2003
High Income	15	30	42	32	22	18	5	20	9
Upper Middle Income	8	5	7	6	7	11	10	10	8
Lower Middle Income	4	7	2	0	2	6	6	4	6
Low Income	2	5	0	5	2	3	2	2	2

Nonetheless, two further statistics (outlined in tables 2 and 3 below) show that during this period the developed countries have been the most frequent users of the WTO dispute settlement system, not only as complainants but also as respondents.

Table 2 – Complainants per income category – totals 1995-2003[27]

Income Category	Totals 1995 – 2003
High Income	61 %
Upper Middle Income	22 %
Lower Middle Income	11 %
Low Income	6 %

26 *Van den Bosche*, The Doha Development Round Negotiations on the Dispute Settlement Understanding, Taipei, 28-29 November, 2003, WTO Conference, New Agendas in the 21st century, p. 9. Download at: http://www.worldtradelaw.net/articles/vandenbosschedohadsu.pdf (8.6.2006).

27 In 61 percent of all disputes, high income economies, such as United States or the European Union were the complainant. However, in 39 percent of all disputes, developing country members, and in particular upper middle income countries (22 percent) were complainants. For more information about it, see *Van den Bosche*, ibid., pp. 8-9.

Table 3 – Respondents per income category – totals 1995-2003[28]

Income Category	Totals 1995 – 2003
High Income	62 %
Upper Middle Income	22 %
Lower Middle Income	10 %
Low Income	6 %

Therefore the participation of developing countries in the multilateral trade system seems to be weak compared to developed countries and still a lot must be done in order to strengthen their participation.

For a long time developing countries (except, for example, those of Cairns Group[29]) were not active in the Uruguay Round. Many of them did not have sufficient financial resources to have representatives in Geneva. The developing countries were convinced that if they remained outside the WTO they would be isolated from world trade. Besides that they were promised that special rules would apply to protect developing countries. However the developing countries did not favour the fact that they would need additional human resources to understand and interpret the WTO agreements which would cost a great deal of money. "Now they are paying for this ignorance. Recently it was estimated that implementing WTO commitments can cost the poorest countries more than a year's development budget."[30]

According to some authors it is difficult to assert that the WTO dispute settlement actively seeks to help developing countries to any degree of effectiveness by enabling them to enforce their market access rights.[31]

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28 62 percent of all disputes up to now are related to measures of developed country members; 38 percent are related to measures of developing country members. Cases brought against measures of developing country members have often been brought by other developing country members. Small developing country members have brought and won cases against large developed country members. For more information, see *Van den Bosche*, (fn. 26), 2003, pp. 9-10.

29 Cairns Group is a mixed membership of exporters of agricultural products and includes such countries as Australia, Argentina, Hungary and Thailand. For more information about the Cairns Group see *Michalopoulos*, Developing Countries' Participation in the World Trade Organization, Policy Research Working Paper No. 1906, (03.1998), p. 18, World Bank Research. Download at: http://econ.worldbank.org/.

30 *Carl*, Trade and the Developing World in the 21st Century, 2001, p. 457. See also *Neugärtner/Michaelis*, Rechtsberatung für Entwicklungsländer – das Advisory Centre on WTO Law, ZEuS, 2002, pp. 591-592.

31 *Footer*, (fn. 24), p. 76.

III. The difficulties concerning the participation of developing countries in the WTO Dispute Settlement

There are a lot of difficulties concerning the participation of the developing countries in the WTO dispute settlement. These often arise from the interpretation of the various agreements. This work shall now broadly analyse what has been done and what still needs to be done.

The second paragraph of the Doha Declaration asserts: "[…] we [the WTO members] shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context enhanced market access, balanced rules, and well targeted, sustainable financed technical assistance and capacity-building programmes have important roles to play".[32]

It is very easy to make such an extensive declaration without any agreed standards or targets to measure its success. Accordingly little has been done to achieve these objectives.

The real difficulties can be classified into three principal categories: firstly, the access to the Dispute Settlement Understanding (DSU), in particular problems related to the technical capacity of developing countries; secondly, the definition of provisions of Special and Differential (S&D) treatment and finally the classification of a developing country.[33]

This paper gives an overview of the first two problems mentioned above, but the objective, and perhaps the most difficult problem, is to analyse the final category as it is no longer widely discussed in the WTO. This classification needs further elaboration and this work aims to provide an effective recommendation for improvement.

1. Access to the DSU

One of the reasons for the timid use of the system by developing countries could be the lack of necessary resources to maximise their use of the dispute settlement procedure[34] and "to carry out the job of detecting possible inconstancies with the

32 Doha Ministerial Declaration: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm (6.6.2006).

33 *Sanchez*, Condições Especiais para os Países em Desenvolvimento no Sistema de Solução de Controvérsias da Organização Mundial do Comércio, in Amaral Jr (editor), Direito do Comércio International, 2002, p. 137.

34 *Footer*, (fn. 24), p. 87. See also *Hertel/Hoeckman/Martin*, Developing Countries and a New Round of WTO Negotiations, Working Paper, No. 28203, pp. 28-30. Download at: http://www-wds.worldbank.org/ (13.6.2006).

agreements"[35]. This lack of resources inevitably leads to an early settlement which may reflect a developing country's weaker economic position, but it also means that the developing countries are unable to recognize strong opportunities to raise a complaint and therefore they are frequently in a weaker position to defend themselves during a dispute.[36]

Due to the lack of human resources and administrative structures, many developing countries are already placed in a disadvantageous position because they are not capable of identifying their private sector's interests. Consequently they cannot elaborate a minimum legal requirement to file a claim with the quantification of a commercial interest, and they are not able to manage the dispute agreed solution during consultations to the proceedings or on possible appeal.[37]

Accordingly it should be noted that the poor infrastructure and lack of resources also impede the capacity of developing country members from reaping the benefits of international trade and technical assistance support by developed countries and international institutions.

Many technical assistance activities and programmes are provided by international organisations, such as the WTO, UNCTAD, the International Trade Centre (ITC) and the World Bank together with some bilateral donor assistance.[38] At the same time an Advisory Centre on WTO Law (the ACWL) was established in Geneva by a number of developing country Members supported by some developed country Members, which aims to provide legal assistance to developing country Members and LDCs on a cost-sharing basis.[39]

On the other hand the developed countries, the most frequent users of the dispute settlement system, have extensive financial and human resources to bring and to defend complaints. They tend to have good legal talent in government, can manage export interest groups and they have commercial and diplomatic representation worldwide, which allows them to have extensive contacts within and outside Geneva.[40]

Furthermore it is important to analyse whether the developing countries have representations in Geneva and whether their staff is qualified and compare that with developed countries.

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35 *Pérez Gabilondo*, (fn. 25), pp. 484-485.

36 *Busch/Reinhardt*, Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement, Journal of World Trade, Vol. 37, Issue 4, 2003, pp. 719 (723 and 732).

37 *Pérez Gabilondo*, (fn. 25), p. 485.

38 *Footer*, (fn. 24), p. 87.

39 Ibid., p. 89. See chapter II.1.b) of this work.

40 Ibid., p. 88.

This issue is very important because the WTO, like the GATT before, is an organisation driven by its members. The country members and their representatives have the task of the analytical work, the development of proposals as well as the negotiation of agreements.[41]

All developed country members, and all members with transitional economies have their representation in Geneva, but not all developing countries have one. Some of them may have their representation outside Geneva instead. Two reasons for the continued representation of many developing countries from outside Geneva are: (a) many of the smaller ACP countries[42] consider that their main international trade policy issues involve relations with the EC rather than the WTO and thus locate their representatives in Brussels, from where they are also supposed to follow WTO issues; and (b) a number of the new members are very small island economies that have few representatives abroad and cannot afford to send a separate mission to Geneva.[43]

For many developing countries and especially for the least-developed and some of smaller island economies, this lack of human resources and administrative structures are the major difficulties in participating effectively in the WTO.[44]

The problems of representation may be illustrated by the example of Brazil, which is considered to be a "rich" developing country[45]. Although Brazil has a mission in Geneva, it consists today of twenty diplomats and about four trainee lawyers; twelve of them work in the political department and the other twelve work in the economical department.[46] These statistics, compared to those of the United States, show the vast disproportions. There are about 200 lawyers specialised on WTO matters to support the United States with negotiations and with the preparation of documents concerning all disputes in which they are involved in. Although those

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41 *Michalopoulos*, (fn. 29), p. 3.

42 The ACP States are the countries that are signatories of the Lomé Convention. "ACP" stands for "Africa, Caribbean, and Pacific." For more information about the ACP and Lomé Convention see at http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm (6.6. 2006).

43 *Michalopoulos*, (fn. 28), p. 9.

44 Ibid., p. 25. According to the author it must be recognised that institutional development is a complex process that takes a lot of time. The problem of representation of the developing countries in WTO is not an easy task and is not going to be solved in a short period of time. There are a number of things that can be done, some of which should start now, although it may take quite a lot of time to see the results.

45 For more information about the relations between Brazil and WTO see *Van Dijck/Faber*, Challenges to the New World Trade Organization, 1996, pp. 153-176; and all about Brazil and the Uruguay Round of GATT see *Wahrendorff*, Brazil in the Uruguay Round of the GATT, 1998.

46 According to interview with Mr. *Nilo Dytz*, Second Secretary at the Permanent Mission of Brazil in Geneva on 4.7.2005.

lawyers are not simultaneously and permanently present in Geneva, they go to Geneva at any time when requested. It is clear to see that the "principle of equity" between the parties is not reflected in the WTO. The economical, social, financial, military and geopolitical situation of WTO Members reveals deep inequalities among them. That is why the existing differences between human and financial capital should not be overlooked when considering the relative negotiating powers at the WTO.[47]

a) Technical Assistance: UNCTAD, ITC, IMF and World Bank

In the previous chapter it was stated that a variety of technical assistance activities and programmes are provided by international organisations, such as UNCTAD, ITC, IMF and World Bank, which provide information and training for the staff of developing countries.

The UNCTAD provides technical cooperation for trade and development to assist developing countries to integrate into the global economy. It emphasises the development of human, institutional, productive and export capacities of all beneficiary countries in order to support poverty reduction policies and the implementation of the international development goals, including those contained in the Millennium Declaration.[48]

The International Trade Centre ITC (jointly sponsored by UNCTAD/WTO) is the focal point in the United Nations system for technical cooperation with developing countries in trade promotion.[49]

As an executing agency of the United Nations Development Programme (UNDP), ITC is directly responsible for implementing UNDP-financed projects in developing countries and economics in transition relating to trade promotion.[50] While UNCTAD fosters closer links with the public sector, the ITC concerns itself with the private sector.[51]

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47 *Cretella Neto*, Direito Processual na Organização Mundial do Comércio, casuística de interesse para o Brasil, 2003, pp. 246-247.

48 www.unctad.org/en/docs/tb50l4a1_en.pdf (6.6.2006). For information about the Millennium Development Goals and for the Millennium Declaration see at http://unstats.un.org/unsd/mi/mi_highlights.asp (6.6.2006).

49 ITC was created by the General Agreement on Tariffs and Trade (GATT) in 1964 and has been operated jointly by GATT (now by the World Trade Organization, or WTO) and the UN since 1968, the latter acting through the United Nations Conference on Trade and Development (UNCTAD). For more information about ITC see at http://www.intracen.org/menus/itc.htm (6.6.2006).

50 www.intracen.org/menus/itc.htm (6.6.2006).

51 *Sanchez*, (fn. 32), p. 141.

The IMF also provides technical assistance contributing to the development of productive resources of member countries giving them greater efficiency of economic policy and financial management. Therefore IMF helps countries to develop their human and institutional capacity and to conduct effective macroeconomic and structural policies, trying to strengthen their financial sectors and to avoid crises.[52]

The work of the IMF complements the work of the WTO. The central aim of IMF is based on the international monetary and financial system, and the WTO's objective is based on the international trading system, but both institutions work together to ensure a better system for international trade and making open payments to all countries. Like the IMF and the WTO other international organizations and donors work together to help countries to improve their capacity to trade.[53]

The World Bank also works in collaboration with the WTO on the development of countries in the fight against poverty. These two organizations have a cooperation agreement which provides for example, the exchange and sharing of information such as reports, databases and other documents and carries out joint research and technical cooperation activities.[54] Further more the World Bank works directly with countries providing technical support for the countries' own programme agenda and strategy. In addition to this support, the award of grants is also an integral part of the World Bank's development work which aims to facilitate development projects. Besides the grants provided through the International Development Association[55] (such as grants and interest free credits for low income countries "lending programs" as well as non lending assistance), the World Bank has a dozen grant programmes and some 850 donor trust funds.[56] The World Bank also organ-

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52 www.imf.org/external/np/exr/facts/tech.htm (6.6.2006). The IMF's efforts to strengthen the international financial system are related to technical assistance. For example, countries have asked for help to address financial sector weaknesses identified within the framework of the joint IMF-World Bank Financial Sector Assessment Program; adopt international standards and codes for financial, fiscal and statistical management; implement recommendations from off-shore financial centers' assessments, and strengthen measures to combat money laundering and the financing of terrorism. For more information about the IMF technical assistance see at www.imf.org/external/np/exr/facts/tech.htm (6.6.2006).

53 www.imf.org/external/np/exr/facts/imfwto.htm (6.6.2006).

54 www.wto.org/english/news_e/pres97_e/pr72_e.htm (6.6.2006).

55 The International Development Association (IDA) is the part of the World Bank that helps the earth's poorest countries to reduce poverty by providing interest-free loans and some grants for programs aimed at boosting economic growth and improving living conditions. For more information about the IDA see at http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:20051270~menuPK:83991~pagePK:51236175~piPK:437394~theSitePK:73154,00.html (12.6.2006).

56 http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20103853 ~menuPK:25 09 8 6 ~pagePK:51123644~piPK:329829~theSitePK:29708,00.html.

ises in partnership with the IMF a forum called Development Committee that facilitates integration consensus-building on development issues.[57]

Besides the technical assistance provided by international organisations which helps the developing countries financially and promotes trade, the question remains whether this assistance directly helps developing countries to defend themselves in their dispute settlement process.

b) Legal Assistance: WTO and ACWL

The technical assistance of UNCTAD, ITC, IMF and World Bank focuses on the monetary and financial system of developing countries, which is important for strengthening their economic situation and help facilitate their participation in world trade. However it is the legal assistance which directly helps them in their participation in the dispute settlement mechanism of the WTO.

The WTO Secretariat has special legal advisers that assist developing countries in disputes and also gives them legal counsel. This service is offered by the WTO's training and technical cooperation.[58] The WTO Secretariat however has been confronted with great obstacles in budgeting to provide sufficient and high quality technical assistance to developing country Members and LDCs. The costs of the expanded work programme of the WTO for developing and transition economies are usually high and the Secretariat receives a small budget for this purpose. Such funds are not generally planned in the regular WTO budget.[59]

Some countries such as Pakistan, Turkey and Venezuela, have made suggestions that this may improve the participation of developing country Members in the dispute settlement system and also help them to manage their own legal resources. Some of these suggestions relate to making better use of the S&D treatment provision, Article 27.2 of the DSU, in order to provide technical and legal assistance to developing countries Members, such as: "(a) to increase the Secretariat budget to enable it to hire full time consultants and to upgrade the posts of legal offices so that experienced lawyers can be hired; (b) to set up an independent legal unit within the Secretariat, staffed with legal advisors; (c) to re-consider the application of

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57 The Development Committee known formally as the Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries was established in 1974. The Committee's mandate is to advise the Boards of Governors of the Bank and the Fund on critical development issues and on the financial resources required to promote economic development in developing countries. For more information about the Development Committee see at http://web.worldbank.org/WBSITE/EXTERNAL/DEVCOMMEXT/0,,menuPK:64060743~pagePK:60000303~piPK:64000842~theSitePK:277473,00.html (6.6.2006).

58 www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm (6.6.2006).

59 *Footer*, (fn. 24), pp. 87-88.

the concept of "neutrality" in relation to legal assistance under Article 27.2 of the DSU; and (d) to establish a trust fund to finance strategic alliances with lawyers' offices or private firms in order to expand the scope of consultancy and advisory services available to developing country Members."[60] However, it appears that these proposals have yet to be implemented in reality.

In recognition of the difficulties surrounding WTO legal assistance, a Geneva-based Advisory Centre on WTO Law (ACWL) was established on July 2001, an independent international organisation that operates in a similar manner to a law firm.[61] Its objective is to support the assistance of the WTO but not to replicate its assistance. The ACWL is a unique inter-governmental organisation, independent of the WTO, which aims to provide legal training, support and advice on WTO law and dispute settlement procedures to least developed countries, developing countries, customs territories and countries with economies in transition that are likely to become members of ACWL. The developed countries can also be members of ACWL but they can only participate as donors.[62] Presently ACWL comprises 8 lawyers and 2 administrative staff.[63] In 2002 they had almost the same number of staff: 6 lawyers and 2 administrative staff.[64] It seems as if the demand of ACWL legal services has not substantially increased in 4 years.

The ACWL maintains its financial independence because of its endowment fund. Its members pay a one-off financial contribution to the endowment fund which varies with the share of world trade and income per capita.[65] The least developed countries do not have to contribute to the endowment fund and they receive priority to ACWL's services. Besides that, each of the developed country members – which are today Canada, Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom – also contribute to the endowment fund as donors.[66] The goal is to make the endowment fund capable of supporting the centre so that it can operate from the returns of its investment and also from the fees that are paid by the Members when they use ACWL for dispute settlement proceedings. By doing so, ACWL is not dependent upon annual contributions of developed countries which would make the ACWL vulnerable to politi-

60 Ibid., pp. 88-89.

61 www.acwl.ch (6.6.2006). See also *Van den Bosche*, (fn. 26), p. 5.

62 www.acwl.ch/e/about/about_e.aspx (6.6.2006). For more information about the membership of ACWL and its classification as least developed countries, developing countries, customs territories and countries with economies in transition see chapter 2.3.1 and Annex E and F of this work.

63 According to a Counsel of ACWL that was interviewed on 24.8.2005 but who did not want his statement to be made public.

64 *Neugärtner/Michaelis*, (fn. 40), p. 602.

65 See Annex F.

66 www.acwl.ch/e/about/financial_e.aspx (6.6.2006).

cal pressures of possible withdrawals of funding by developed countries. The endowment fund is not yet substantial enough to secure financial independence for more than the next five years. That is why it is important that more developed countries join the ACWL to increase the size of the endowment fund.

Despite these problems it can be observed that developed country donors have never sought to influence the centre or interfere with its work, which demonstrates that these countries recognise the importance of independence for such a body. Furthermore the organisational structure of the ACWL has been chosen carefully so that developed countries have no formal way to interfere with the everyday business of the ACWL, and especially whether the ACWL takes on a case or not. These day to day decisions are to be made by the Executive Director and the Management Board.[67]

Contrary to the conclusion of some authors[68], the charges for legal services at the ACWL[69] are not significantly cheaper in comparison to what the countries would expect to pay as clients of private law firms. However, the hourly rate and costs at law firms that specialise in WTO Law varies from one law firm to another. Accordingly the amount a typical law firm located in Geneva charges for legal assistance on a WTO case depends on its financial conditions and is usually not paid at an hourly rate but rather a fixed amount. This takes into consideration that a country has also a fixed budget to spend. Additionally law firms are aware of the incentive given to developing countries by the ACWL and they try to offer competitive rates by charging similar rates to those which are charged at the ACWL to entice developing countries.[70] On the other hand however, ACWL considers that their

67 According to interview with a Counsel of ACWL (see fn. 63) on 24.8.2005. For more information about the organizational structure of ACWL see at http://www.acwl.ch/e/about/organisational_e.aspx (8.6.2006).

68 *Neugärtner/Michaelis*, (fn. 40), p. 605. According to these authors they have concluded that the ACWL offers specialized staff and non- competitive low fees. It seems like that is not true if we compare them with the fees charged by law firms.

69 The category C members (as listed in Annex E) pay for legal services in WTO dispute settlement proceedings from CHF 162 (US$ 100) per hour. The category B members pay CHF 243 (US$ 150) per hour. The category A members pay CHF 324 (US$ 200) per hour. The least developed countries pay CHF 40 (US$ 25) per hour. The hourly fees charged by the ACWL are based on a time budget adopted by the Management Body. The developing countries that are not ACWL members pay an hourly rate that varies between CHF 567 (US$ 350) and CHF 405 (US$ 250), depending on their share of world trade and per capita income. For more information about the costs see at www.acwl.ch/e/about/financial_e.aspx (6.6.2006).

70 According to an interview on 30.6.2005 with Mr. *Charles Julien*, the manager of Geneva office and Senior Associate of the legal office Van Bael & Bellis. Governments are charged according to the case, their financial situation and usually a fixed amount and not at an hourly rate basis. Private companies are charged at an hourly rate which varies from EUR 150 (for junior associates) to EUR 500 (for partners). For more information about this law firm see at http://www.vanbael-bellis.com/content/sectionintro.asp?level0=1&level1=2 (6.6.2006). See also *Neugärtner/Michaelis*, (fn. 40), p. 595.

hourly rate fees are considerably less than the fees charged by private firms and they aim to charge a particularly low amount of total hours for each stage of the dispute settlement procedure.[71]

As mentioned above, ACWL was created in order to help developing countries improve their participation in the multilateral trading system but its objective is questionable. Can the ACWL really help all developing countries? This cannot be overlooked when Brazil, often considered a "rich" developing country, makes no use of the centre because of the high costs.[72]

The ACWL's opinion is contradictory. On the one hand it cannot answer categorically whether the participation of developing countries is limited by costs. It proposes that the best indicators to examine whether it genuinely helps developing countries' participation are the number of disputes that the centre has dealt with in the last 3 years. The huge number of disputes therefore stands testament to its apparent success.[73] On the other hand ACWL recognizes that "it would not be affordable for the Centre to treat all developing countries the same. The contributions to the endowment fund and the fee structure are designed to allow developing countries to participate as fully as possible in the dispute settlement system, while at the same time to cover some of the costs of the ACWL, so that it can represent all developing countries."[74]

Therefore, based on the ACWL's point of view, it is not easy to conclude whether the high costs actually restrict the participation of developing countries, but in the view of a developing country it seems to be an issue as illustrated by the example of Brazil.[75]

Besides that, it shall be noted that ACWL can also be supported by an external legal firm in a case they cannot provide support for by its own lawyers because of a conflict of interests. There is a list of law firms and individuals available to provide their services.[76] They are normally requested in a dispute in which one developing coun-

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71 According to interview with a Counsel of ACWL (see fn. 63) on 24.8.2005.

72 According to interview with Mr. *Nilo Dytz*, Second Secretary at the Permanent Mission of Brazil in Geneva on 4.7.2005. They have mentioned that ACWL is very positive but Brazil can not afford it. They hold the opinion that the costs are too high.

73 According to interview with a Counsel of ACWL (see fn. 63) on 24.8.2005.

74 Exact the words a Counsel of ACWL (see fn. 63) on 24.8.2005, according to interview with him on 24.8.2005.

75 According to interview with Mr. *Nilo Dytz*, Second Secretary at the Permanent Mission of Brazil in Geneva on 4.7.2005.

76 www.acwl.ch/e/dispute/counsel_e.aspx (6.6.2006). On 11.1.2005 the law firms available to support their services to ACWL were: Baker & Mackenzie, Clyde & co., King and Spalding, O'Connor & Company, Sidley Austin Brown & Wood, Thomas and Partners, Van Bael & Bellis, Vermult Waer & Verghaeghe, White & Case, and individuals, Mr. *Donald McRae* and Ms. *Debra*

try raises a complaint against another developing country. In this case, one requests the legal assistance for ACWL and the other requests the service of an external legal firm.[77]

In connection with this possibility, it has been said that there are no provisions in the Marrakesh Agreement establishing the WTO, in the DSU or in the Working Procedures that determine who can represent a government in making its representations. Furthermore the representation by counsel of a government's own choice may well be a matter of particular significance especially for developing-country members, which enable them to participate fully in dispute settlement proceedings.[78] The question is whether the developing country can afford the outside representation by an external legal firm or by ACWL.

2. The Special and Differential Treatment in Dispute Settlement

There is a range of WTO principles, rules and obligations for the equal treatment between developed and developing countries.

Steger. For more information about external legal counsel at WTO see *Kann*, Review of the WTO Dispute Settlement System – A sneak preview, International Trade Law & Regulation, 4 (4), 1998, p. 151 (152), and *Cameron, J./Cameron, K.*, Dispute Resolution in the World Trade Organization, 1998, p. 267 and *Cone III*, Legal Services in the Doha Round, Journal of World Trade, Vol. 37, Issue 1, 2003, pp. 29-47. According to interview with a Counsel of ACWL (see fn. 63) on 24.8.2005, this has only been once for Columbia, Ecuador, Peru and Venezuela, in their participation as third parties in *EC – Conditions for the granting of tariff preferences to developing countries*.

77 According to an interview on 30.6.2005 with Mr. *Charles Julien*, the manager of Geneva office and Senior Associate of the legal office Van Bael & Bellis. At the moment they have a lot of WTO cases concerning developing countries. They have already participated in a case for Brazil against the EC for Antidumping measures for example, for the case *EC cast iron* WT/DS219, brought by Brazil (please note that in this case the private sector and not the government paid the costs). When they are requested to represent a country, they receive all the information and documents from such country and they represent the country directly without the participation of diplomats, representations or missions.

78 http://www.wto.org/english/res_e/booksp_e/analytic_index_e/dsu_09_e.htm#309 (8.6.2006). According to *EC Bananas III*, WT/DS27/AB/R, p. 4, A, 5, the Appellate Body held that nothing in the WTO Agreement, the DSU or its Working Procedures prevented a Member State from admitting whomever it deems fit to become part of its delegation to Appellate Body proceedings. Accordingly, the Appellate Body permitted that a Member could include private counsel in its delegation to an Appellate Body hearing: "[W]e can find nothing in the *Marrakesh Agreement Establishing the World Trade Organization* (the '*WTO Agreement*'), the *DSU* or the *Working Procedures*, nor in customary international law or the prevailing practice of international tribunals which prevents a WTO Member from determining the composition of its delegation in Appellate Body proceedings. Having carefully considered the request made by the government of Saint Lucia, and the responses dated 14 July 1997 received from Canada, Jamaica, Ecuador, Guatemala, Honduras, Mexico and the United States, we rule that it is for a WTO Member to decide who should represent it as members of its delegation in an oral hearing of the Appellate Body".

The WTO system provides market access on a reciprocal basis and negotiation of market access with rules on non-discrimination in trade based on two important principles: the Most Favoured Nation principle[79] and the National Treatment.[80] This means that if market liberalisation is agreed on between any two WTO Members, it shall be extended to all members of the WTO.

There are some exceptions however to those principles which try to correct the inequalities between the developed and developing countries in the multilateral trade system.[81]

One of the exceptions to the WTO principles is the Generalized System of Preferences providing developing countries with better access to developed countries' markets. The General System of Preferences is a system of non-reciprocal trade preferences that afford the developing countries substantially improved access to developed country markets than under the bound MFN tariff rates that are available.[82]

The specific provisions found in many WTO agreements, known collectively as Special and Differential Treatment, constitute another exception to WTO principles. Directed at facilitating developing countries' participation in the multilateral trade system, the provisions provide wider thresholds to permit compliance with their obligations under the WTO agreements.[83] These provisions, which were first introduced in 1979 as Article XVII Part IV and the Enabling Clause, have been incorporated into the individual agreements and decisions of the Uruguay Round.[84]

79 The Most Favoured Nations (MFN) clause in Art. I of GATT requires that each country treats imports and exports of other members at least as well as it treats those from any other country. This unconditional MFN mechanism was chosen as the most rapid way to reduce tariffs on a worldwide basis. In fact, since GATT's inception, the average tariff levels in the developed nations have dropped from 40 percent to 5 percent. For more information about MFN see *Carl*, (fn. 30), p. 76 and *Jackson/Davey/Sykes*, Legal Problems of International Economic Relations, Cases, Materials and Text, 4th Edition, 2002, pp. 415-446.

80 Art. III of GATT imposes a National Treatment obligation, which stipulates that internal taxes and regulatory measures must treat goods imported from member states no worse than domestically produced goods. For more information about National Treatment see *Carl*, (fn. 30), p. 76 and *Jackson/Davey/Sykes*, (fn. 79), pp. 479-530.

81 Please compare with *Low*, (fn. 10), p. 809. According to the author "MFN-based regime is the only genuine protection available to developing countries."

82 *Gallagher*, (fn. 15), pp. 1, 2. For more information about General System of Preferences (GSP) see *Jackson/Davey/Sykes*, (fn. 79), pp. 1186-1194; *Harrison*, Conditionality and Non-Discrimination, International Trade Law & Regulation, 9(6), 2003, pp. 159-166; *Ozden/Reinhardt*, The Perversity of Preferences: The Generalized System of Preferences and Developing Country Trade Policies, Working Paper No. 2955, 2003, pp. 1-22, World Bank Research. Download at: http://econ.worldbank.org/.

83 *Gallagher*, (fn. 15), pp. 13-15.

84 *Croame*, Guide to the Uruguay Round Agreements, p. 235. According to the author, Art. XVII, Part IV allows flexibility in the use of trade measures to protect infant industries and in the use

Again, the issue here is whether the S&D treatment helps all developing countries or just the "rich" ones. According to *Rabih Ali Nasser* the less developed a country, the less beneficial the S&D treatment is to that country.[85] In this sense, *John Jackson* affirms that: "The GATT system 'legal rules' concerning developing countries are remarkable vague and "aspirational" in approach, although under the Uruguay Round texts, at least the more advanced developing countries will be subject to the general discipline of the trade rules."[86] However, in practice many of the advantages that were given to the developing countries have not been applicable.[87]

Furthermore the developing countries have some problems making use of S&D treatment. One of them is that the developing countries themselves do not use them appropriately[88] and another one is the lack of interest for the recent change of the situation of this system.[89]

The provisions of S&D treatment have guaranteed an effective possibility to rebalance the relations between developed and developing countries. The observation of the concept of "development" should also be considered in the negotiation and implementation of multilateral and plurilateral trade agreements.[90] Those provisions of S&D treatment are protected by the principles of WTO but some specific rules could also be elaborated in order to ensure the effectiveness of such provissions.[91]

Despite the lack of specialized people to use the rules appropriately and other problems relating to financial resources for legal assistance in dispute settlement, developing countries would also have problems to supply all necessary information for

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of quantitative import restrictions to alleviate balance-of-payments difficulties. The Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, 28 November 1979 – L/4903) is a section covering the principles and objectives of the GATT with regard to developing countries. It permits preferential treatment to be given to, and exchanges among, developing countries, subject to stated conditions. It also authorizes especially favourable treatment for least-developed countries. For more information about the Enabling Clause see *Low*, (fn. 10), pp. 804-805.

85 *Ali Nasser*, A OMC e os países em desenvolvimento, 2003, p. 256.

86 *Jackson*, The World Trading System. Law and Policy of International Economic Relation, 2nd ed., 1999, p. 319. Please compare with *Hart/Dymond*, Special and Differential Treatment and the Doha "Development" Round, Journal of World Trade, Vol. 37, Issue 2, 2003, p. 395 (414). The authors suggested the GATT rules affecting developing countries not as "aspirational" but as "delusional". According to them as a result, industrial countries assumed obligations while developing countries gained rights.

87 *Thorstensen*, Organização Mundial do Comércio. As regras do comércio internacional e a nova rodada de negociacoes multilaterais, p. 258.

88 *Footer*, (fn. 24), 2001, p. 87.

89 *Sanchez*, (fn. 33), p. 145.

90 Ibid.

91 Ibid.

this case.[92] In many developing countries for example, the affected industries are either in a bad financial situation or are small or middle-sized companies, making it difficult for them to present their cases before the government.[93]

An additional problem is the fact that the developing countries have difficulties to connect their problems to provisions of the WTO agreements; including those related to the S&D treatment. It sometimes occurs that developing countries present general consultations which are not enough to convince the WTO that it necessitates dispute settlement.[94]

These problems are not limited to the situation of only developing countries, but the actual rules need also to be reviewed, taking into account that the conditions of S&D treatment for developing countries have not been reviewed or updated since the sixties.[95]

One of the most important S&D treatment provisions in the main WTO agreements (listed in Annex 1 to the Marrakesh Agreement Establishing the World Trade Organization) is the one established by the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO DSU), which is a very important instrument for increasing the participation of developing countries in the multilateral trade system. However, not all of the provisions have been effective.

For example Article 3.12 of DSU has never been invoked[96]. With regard to Article 4.10 of the DSU, notice should be taken of the case law, namely *European Communities – Trade Description of Scallops*. According to the minutes of meeting of the DSB, this request had been disregarded by the Communities thus discriminating against and impairing Chile's interests in deviation from the provisions of Art. 4.10 of the DSU which stated that members "should give special attention to the particular problems and interests of developing country Members".[97]

Another provision in question is that of Art. 27.2 of the DSU which provides legal assistance to developing countries for dispute settlement. According to *Footer* there are two main problems concerning this provision: one is about the limitation of this

92 *Sanchez*, (fn. 33), p. 139.

93 Ibid.

94 Ibid.

95 *Sanchez*, (fn. 33), p. 145.

96 According to the analysis to the 1998 Note by the secretariat to the WTO Committee on Trade and Development because many developing WTO Member perceive to use the 1966 Decision (WT/COMTD/W/35, 09/02/1998). In addition to that please note that there was no application of such article according to http://www.wto.org/english/res_e/booksp_e/analytic_index_e/dsu_e.htm#articleIII (8.6.2006).

97 *European Communities – Trade Description of Scallops*, request by Canada (WT/DS7), Peru (WT/DS12) and Chile (WT/DS14) and Minutes of Meeting of the DSB, 27.09.1995, (WT/DSB/M/7), 27/10/1995.

service especially because they do not have many people to assist them and that it is normally provided after the developing countries have submitted a dispute to the WTO.[98] The other problem is the issue of neutrality in providing expert legal advice. Attention should be drawn to the fact that WTO members already recognize that there is a need to review the application of this article in order to make it more operational and effective.[99] Therefore, according to the same author it is questionable that the S&D treatment brings a better chance for the participation of developing countries in the WTO dispute settlement system.[100]

As it has already been advocated in this work, there is an urgent need for a reform of the rules. Some proposals have already been made by member states. One of the proposals presented by Egypt and India sought the concession of a "double" period of time for developing countries to present their consultations and defences. This concession would result in the change of Art. 12.8 of DSU.[101]

Another suggestion by other member countries would be the creation of a simpler and quicker dispute settlement system, with a court for "small claims" of WTO system that would deal with matters that affect small volumes of world trade. The dispute would be solved by only one person of the panel and the process would last no longer than three months. This proposal benefits the developing countries especially in relation to the costs involved because a simpler proceeding requires less time and less technical formalities.[102]

A further proposal is that once the consultations are initiated by developed countries against developing countries, the developed countries would only ask for an establishment of a panel if it is proved that the measure of a developing country really affects its trade.[103]

Another proposal which should already be a practice in the WTO is the following: in cases where a developed country initiates consultations against a developing country and the developing country wins the case, the developed country should bear the costs of the court and attorneys' fees that the developing country has incurred.[104]

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98 *Footer*, (fn. 24), p. 74.

99 Ibid., p. 75.

100 Ibid., p. 97. See also *Michalopoulos/Winter/Hoeckman*, More Favorable and Differential Treatment of Developing Countries: Toward a New Approach in the World Trade Organization, Working Paper No. 3107, 2003, p. 27, World Bank Research. Download at: http://econ.worldbank.org/. According to the authors the approach to SDT in the GATT/WTO has not been a success in promoting development and the SDT provisions have not been very effective.

101 *Sanchez*, (fn. 33), p. 142.

102 Ibid.

103 Ibid.

104 According to interview with Mr. *Nilo Dytz*, Second Secretary at the Permanent Mission of Brazil in Geneva on 4.7.2005, Brazil has also proposed that. See also *Sanchez*, (fn. 33), p. 142.

One of the proposals relating to the ambiguous concepts of the text of the provisions of S&D treatment would be to introduce a manual with directives about the application of these measures by the Dispute Settlement Body.[105]

Finally, among many other proposals, it is clear that the developing countries should insist more on strengthening the existing clauses or including new clauses not only in the DSU but for all WTO agreements in order to defend their own interests and try to implement more rules favourable for them in the system.[106]

3. The definition of "developing country" in Dispute Settlement

The last and most complex category of difficulties for developing countries in dispute settlement begins with the problem that there is no clear definition of "developing country" in the WTO.

There are no criteria to determine whether a country should be classified as "developing" which are universally accepted. Institutions like the United Nations, the International Monetary Fund and World Bank use different criteria to classify the countries. "This is an important issue that could some day end up before a dispute settlement panel. For instance, one member might challenge the legitimacy of another country's invocation of a special right accorded only to developing countries under the WTO accords." For the countries in accession, this issue can be accorded through previous negotiations. However, for the actual member countries of WTO the qualification of "developing nation" is an open question.[107]

This problem has not been a concern to the WTO lately and this topic has not been analysed very much in the work papers conducted by the WTO and other institutions.

a) The current criteria at WTO, UNCTAD, World Bank, IMF and ACWL

The WTO recognises as least-developed countries those countries which have been designated as such by the United Nations. There are currently 50 least-developed countries on the UN list, 32 of which up to date have become WTO members.[108] However, there are no WTO criteria to define a country as developing or developed. Developing countries in the WTO are designated on the basis of self-election[109] although it is not clear whether this is automatically accepted by all WTO

105 *Sanchez*, (fn. 33), p. 142.

106 *Pérez Gabilondo*, (fn. 25), p. 488.

107 *Carl*, (fn. 30), pp. 31 and 32. See also *Meng*, (fn. 4), p. 66.

108 http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm (6.6.2006).

109 *Gallagher*, (fn. 15), xxiv.

bodies. That is a big problem and a challenge which they should be more concerned about. At present this concern is not felt.

The UNCTAD follows the classification of countries employed by the Statistic Division of the United Nations Department of Economic and Social Affairs (DESA) which has been adopted only for statistical and analytical purposes.[110] Such classification does not imply any assumption related to political or other affiliation of countries or territories by the United Nations. Besides that the terms "developed" and "developing" "are intended for statistical convenience and do not necessarily express a judgement about the stage reached by a particular country or area in the development process."[111]

According to the World Bank classification, developing countries are countries with low or middle levels of GNI per capita[112] as well as five high-income developing economies.[113] These five economies are classified as developing despite their high GNI per capita because of their economic structure or the official opinion of their governments. Several countries with transitional economies[114] are sometimes

110 http://www.unctad.org/Templates/Page.asp?intItemID=2187&lang=1 (6.6.2006). The Statistic Division of the United Nations Department of Economic and Social Affairs divides the countries into groupings of Geographical Region and Composition of each Region, and then classifies them into Developed and Developing Nations, Least Developed Countries, Landlocked Developing Countries, Small Island Developing Countries and Transition Countries. See Annex B. For more information about the Methods and Classification of countries by the Statistics Division of the UN see http://unstats.un.org/unsd/methods/m49/m49.htm (6.6.2006).

111 http://unstats.un.org/unsd/methods/m49/m49.htm (6.6.2006).

112 Gross national income (GNI) was the previous terminology for Gross national product (GNP): The GNP was defined by the World Bank as "The value of all final goods and services produced in a country in one year (gross domestic product) plus income that residents have received from abroad, minus income claimed by non-residents. GNP may be much less than GDP if much of the income from a country's production flows to foreign persons or firms. But if the people or firms of a country hold large amounts of the stocks and bonds of firms or governments of other countries, and receive income from them, the GNP may be bigger than GDP. For most countries, however, these statistical indicators differ insignificantly. "Gross" indicates that the value lost through the "wear and tear" of capital used in production is not deducted from the value of total output. If it were deducted, we would have a measure called net domestic product (NDP), also known as national income. The words "product" and "income" are often used interchangeably, so GNP per capita is also called income per capita." See at http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006). The definition for this indicator remains almost the same as before. For more information about it, see at www.worldbank.org/data/changinterm. htlm (6.6.2006).

113 High-income developing countries are economies that the United Nations classifies as developing even though their per capita incomes would place them with developed countries. This classification may be based on their economic structure or the official opinion of their governments. In 1995 this group included Hong Kong (China), Israel, Kuwait, Singapore and the United Arab Emirates. See at http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006).

114 Countries with transition economies (transition countries, transition economies) are countries moving from centrally planned to market-oriented economies. These countries – which include

grouped with developing countries based on their low and middle levels of per capita income, and sometimes with developed countries based on their high industrialisation. Least Developed countries are low-income countries[115] where, according to the United Nations, economic growth faces structural weaknesses and low human resources development (a category used to guide donors and countries in allocating foreign assistance). Developed countries (also described as industrial countries or industrially advanced countries) are high-income countries[116] in which most people enjoy a high standard of living. Sometimes they are also defined as countries with a large stock of physical capital, in which most people undertake highly specialised activities. According to the World Bank classification, these include all high-income economies except Hong Kong (China), Israel, Kuwait, Singapore, and the United Arab Emirates, which are considered as high income developing countries[117]. Depending on who defines them, developed countries may also include middle-income countries with transitional economies, because these countries are highly industrialized.[118]

The IMF had economical criteria to classify the countries which were divided in three categories:

– advanced economies,

– developing countries and

– countries in transition.

After a review of such criteria, the IMF has two categories nowadays:

– advanced economies and

– other emerging market and developing countries.

This reflects some changes to the world economy. One of the changes was the progress of transitional countries towards becoming market economies which proved to be more similar of those facing emerging market and developing countries. One group now comprises all countries from the former developing countries

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China, Mongolia, Vietnam, former republics of the Soviet Union, and the countries of Central and Eastern Europe – contain about one-third of the world's population. See at http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006).

115 Low-income countries are classified by the World Bank in 1997 as countries whose GNI per capita was US$ 765 or less in 1995. See at http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006).

116 High-income countries are classified by the World Bank in 1997 as countries whose GNI per capita was US$ 9,386 or more in 1995. The group includes both developed countries and high-income developing countries. See at http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006).

117 See supra fn. 108.

118 http://www.worldbank.org/depweb/beyond/global/glossary.html (6.6.2006).

and transition groups. A few countries are not included in these groups, either because they are not monitored by the IMF or because databases have not yet been fully developed. Each of the two main country groups is further divided into a number of subgroups. The advanced economies are divided in subgroups such as a) the major advanced countries[119]; b) the current EU members[120]; and c) the newly industrialized Asian economies[121]. The other emerging markets and developing countries are also classified according to analytical criteria and into other groups. The analytical criteria reflect the countries' composition of export earnings and other income from abroad,[122] a distinction between net creditor and net debtor countries[123], financial criteria based on external financing source and experience with external debt servicing. Included as "other groups" are the heavily indebted poor countries (HIPCs), and Middle East and North Africa (MENA).[124] The IMF has more complete criteria which also divide the countries into different subgroups based on their external financing source.[125]

The ACWL has created criteria to define developing and least-developed countries that consider not only the economical features of each country as the UNCTAD, IMF and the World Bank classifications do. The classification of developing coun-

119 The major advanced economies are the seven largest in terms of GDP: the United States, Japan, Germany, Italy, United Kingdom, France and Canada, often referred to as the Group of seven (G-7) countries. See at Appendix, http://www.imf.org/external/pubs/ft/weo/2004/01/pdf/appendix.pdf,. pp. 181 and 182 of the World Economic Outlook, April 2004, Advancing Structural Reforms, IMF, IMF Graphics Section. Download at http://www.imf.org/external/pubs/ft/weo/2004/01/ (12.6.2006).

120 The EU members considered for the classification of this subgroup were: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, Luxemburg, Netherlands, Portugal, Spain, Sweden, United Kingdom. Ibid., p. 172. Please note that 12 new members should also be considered in new classification: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

121 The Newly Industrialized Asian Economies are considered to be Hong Kong SAR (On July 1, 1997, Hong Kong was returned to the People's Republic of China and became a Special Administrative Region of China), Korea, Singapore, and Taiwan Province of China. Ibid., p. 178.

122 The first analytical criterion, by source of export earnings, distinguishes between categories: fuel (Standard International Trade Classification – SITC 3) and non-fuel and then focuses on non-fuel primary products (SITC 0,1,2,4, and 68), ibid., p. 184.

123 The financial criteria focus on net creditor and net debtor countries, which are differentiated on the basis of two additional financial criteria: by official external financing and by experience with debt servicing. Ibid., p. 184.

124 The other groups of developing countries constitute the HIPCs and MENA countries. The first group comprises the countries considered by the IMF and the World Bank for their debt initiative, known as the HIPC Initiative. Middle East and North Africa also referred to as the MENA countries, is a World Economic Outlook group, whose composition straddles the Africa and Middle East regions. It is defined as the Arab League countries plus the Islamic Republic of Iran. Ibid., p. 184.

125 See Annex D.

tries is divided into three categories. The classification is based on the countries' participation in world trade and also considers their per capita income according to World Bank.[126] The Management Body is responsible for reviewing the classification of members at least once every five years. This body can change the classification when necessary to reflect any modification in the share of world trade and per capita income of a member.[127] The least developed countries in ACWL should be the same countries that were classified by the United Nations. Therefore, if the United Nations designates a country that is not listed at the Annex E below, such country should also be considered listed by ACWL. Besides that, if a country listed in the Annex E ceases to be a least developed country according to the United Nations, such a country is also no longer considered a least developed country by ACWL.[128]

IV. A new definition of countries?

1. The problems of the existing criteria for definition of countries

It is important to establish a WTO definition for the classification of countries considering that it still does not exist. Without a proper definition of countries in the WTO system, it is not possible to treat each country in a fair way.

Some authors agree that the differentiation between countries requires agreement on the criteria used to define eligibility for S&D treatment and, however, this has been a non-starter in the WTO with the result that S&D treatment provisions have not been very effective.[129]

It seems that the definitions of World Bank, IMF and UNCTAD, as stated above, do not reflect the reality because they are based only on economical and financial features of each country such as GDP, GNI, export earnings and for statistical purposes. The definition of the ACWL considers also their participation in world trade. However none of those classifications would be appropriate to apply as the WTO criteria.

The WTO criteria should not only be based on the share of world trade, GNI, GDP, the capability of poverty measures, the vulnerability, and other financial and

126 See Annex E.

127 http://www.acwl.ch/e/tools/doc_e.aspx (9.6.2006). Annex II, Notes, of the Agreement establishing the ACWL.

128 http://www.acwl.ch/e/tools/doc_e.aspx. Annex III, Note, of the Agreement establishing the ACWL.

129 *Michalopoulos/Winter/Hoeckman*, (fn. 100), p. 27.

economical features of each country, but should also consider the participation of each country in the dispute settlement. This means the power of negotiation of each country or group of countries and also the available budget they have for specialised staff and training and their representation in Geneva should also be considered. The lack of specialised staff (which means less expertise to understand their own country problems, less capacity to solve them in disputes, less understanding to propose the change of rules), the lack of budget for training and no representation in Geneva result in less power of negotiation and lobbying and less power to change the rules.[130]

Considering all these factors, a new classification for the WTO, which shall be used in the dispute settlement process, should not divide the countries as developed, developing or least-developed countries. It is proposed that a new classification should divide the countries into more categories, e.g. from 1 to 7, based on the countries' level of inequalities according to their economical and financial power such as GDP, GNI, export earnings, participation in the world trade, as well as with regard to their power of negotiation and participation in the WTO negotiations and dispute settlements, such as based on the number of available staff of each country representing them in the WTO negotiations and disputes (diplomats, lawyers and economists) inside and outside Geneva, the available budget they have for training each year without the WTO assistance, and whether they have a permanent mission in Geneva or not.

The aim would be to determine the following: which countries receive which preferences and how much. For the elaboration of a new classification, a proposal would be that the WTO should seek the assistance of other organizations with expertise in such matters and should also have a special organ inside the WTO.

2. Proposal for a competent organ

There is no competent organ in the WTO to define the criteria for the classification and no suggestions have been made until now. Therefore this work also analyses which organ could be the competent one for this task.

Considering the duties of the WTO Secretariat[131] and its specialised staff, this body would be the right one for the classification of countries at the WTO. The creation

130 Concerning the "power to change the WTO rules" it is interesting to compare the number of the WTO members of staff from each "group of countries". The WTO has about 500 members of staff from Developed Countries and about 130 members of staff from Least-Developed and Developing countries together. See at http://www.wto.org/english/thewto_e/secre_e/intro_e.htm (6.6.2006).

131 WTO has its Secretariat with 630 regular staff which includes mostly economists, lawyers and others with specialization in international trade policy. This Secretariat is headed by a Director-General and has no decision-making powers because its decisions are taken by members only.

of a subdivision which could be called "the Committee for Classification of Countries" or the "CCC" inside the WTO Secretariat with economists and lawyers would also be a possibility. The CCC could be responsible for the classification of countries wishing to become a member of the WTO and also for the reclassification of countries every two years. It would appear that this body could also have the cooperation and assistance of financial institutions.

However, considering that the General Council[132] has the decision-making powers of WTO, the CCC would have to submit reports concerning the classification of countries and send them to the General Council for approval. The approval of such reports could be done at the Ministerial Conference or at a separate meeting that could be called the CCC Conference and which could take place in the WTO headquarters every two years.

3. The new definition and its consequences in the future

A classification of countries in the WTO would be one way to correct the inequalities between the developing and developed countries in the dispute settlement and would increase the power and participation of developing countries, especially the "poor ones", in the negotiations and give more attention to their interests in order to promote development in world trade.

The countries should be treated on their own level of economical difficulties and their problems of participation in the WTO should also be considered in order to develop each country economically and to give each of them a special treatment based on their classification.

In this way, the decision whether S&D treatment provided by the WTO agreements should be given to a developing country could not longer be decided by an arbitrator and neither should it be decided by a Panel or the Appellate Body once we would already have a classification of countries into categories and a special treatment accorded to each category.

They are responsible to supply technical and professional support for the councils and committees, to provide technical assistance for developing countries, to monitor and analyze developments in world trade, to provide information to the public and the media, to organize the ministerial conferences and also to provide legal assistance in the dispute settlement process and to advise governments for the access to WTO. For more information about WTO Secretariat, see at www.wto.org/english/thewto_e/secre_e/intro_e.htm (6.6.2006).

132 The WTO's highest decision-making body is the General Council which meets regularly and it is composed of representatives from all members' governments and has also the authority to act on behalf of the ministerial conference which only meets about every two years. Furthermore the General Council meets as the Dispute Settlement Body and as the Trade Policy Review Body. For more information about the General Council see at http://www.wto.org/english/thewto_e/gcounc_e/gcounc_e.htm (12.6.2006).

According to many authors, it would not be acceptable for the majority of "developed" countries which are not always willing to help out poor countries without some degree of reciprocity. This means, it is unlikely that developed countries will make substantial commitments to developing countries without reciprocity.[133]

In addition to this issue, it should be noted that the differentiation amongst developing countries will also be difficult to accept. Some developing countries find it politically easier to pretend that they should be treated all the same and developed countries pretend to provide significant S&D treatment, "but in practice their commitments are not legally enforceable either on market access or in preferential treatment on technical assistance".[134] However, differentiation already exists on issues regarding finance. For example in the World Bank "some developing countries get no assistance at all, others are eligible for loans on hard terms, others for soft loans, and still others for a mix".[135]

It cannot be denied that there is still a great deal of effort that must be expended on this issue in world trade. It is hard to say that such modification in the WTO system would find a final approval, especially because a new classification would only be beneficial for "poor" developing and least developed countries and not to the main players of WTO.

V. Conclusion

For the survival of the system it is necessary to bridge the differences between the poor and the rich members. All WTO member countries should recognize that its trading system intends to create equal players. To achieve this objective it is necessary to pay special attention to the developing countries and LDCs in order to increase their share in the international trade and allow them to compete.

The Doha Declaration foresees efforts to ensure that developing countries and LDCs secure a share in the growth of world trade but the question is whether it has actually done anything to rebalance the rules and provide financial assistance to developing countries.

133 *Low*, (fn. 10), p. 806. See also *J.H.M.*, Regulatory Special and Differential Treatment in the WTO, Legal Issues of Economic Integration, Vol. 30, 2003, p. 185 (191). Compare with *Bjørnskov/Lind*, Where Do Developing Countries Go After Doha? An Analysis of WTO Positions and Potential Alliances, Journal of World Trade, Vol. 36, Issue 3, 2002, p. 543. In the author's opinion, the developing countries must collaborate with each other and with developed countries to gain the necessary strength.

134 *Michalopoulos*, The Role of Special and Differential Treatment for Developing Countries in GATT and the World Trade Organization, Working Paper No. 2388, 2001, p. 33, World Bank Research. Download at: http://econ.worldbank.org /.

135 Ibid., p. 35.

Access to the DSU is still barred to developing countries due to their poor infrastructure and lack of resources available to them. The technical assistance provided by international organisations supports poverty reduction policies and implement financial programmes but do not help them directly in the participation and negotiation in the WTO. Additionally WTO legal assistance has budgetary and organisational difficulties of its own, considering that such assistance is not planned in the WTO budget. Furthermore, in terms of legal assistance it could be said that the ACWL is not accessible for all developing countries considering its high costs.

Regarding the provisions of Special and Differential treatment for developing countries, the conclusion may be drawn that the provisions are not very effective and deserve a review as soon as possible as advocated in chapter III.2.

The first step would be to develop a "new" classification of countries in the WTO which GATT has never attempted to achieve and therefore it does not fully exist. It would rebalance the trade rules and ensure a greater fairness in the dispute settlement process for all member countries.

As discussed in chapters IV.1 and IV.3, a "new" classification of countries would be based on the level of economical difficulties of each country and their problems related to their participation and power of negotiation. Then a Special and Differential treatment would be given to each category.

It is clear that a new enthusiasm must be injected into rebalancing these inequalities in bargaining power in order to maintain the system of world trade. However it is hard to say that substantial changes, especially in the rules, would have final approval of all member countries. The developed and "rich" developing countries, the main players of WTO, are unlikely to be sympathetic towards the developing countries' problems without major political lobbying.

The establishment of alliances between developing and least developed countries would be a superficial way of strengthening their bargaining and power negotiation. The only way to alter this situation would be to give financial assistance and to improve the availability of human resources but first of all the rules must be rebalanced among the contracting parties. An effective multilateral trade system will only be achieved by implementing a special and differential treatment in all WTO agreements and agreeing on a fair classification of countries.

VI. Annex

Annex A – WTO Least-developed Members

Least-developed countries[136]

Angola	Gambia	Myanmar
Bangladesh	Guinea	Nepal
Benin	Guinea Bissau	Niger
Burkina Faso	Haiti	Rwanda
Burundi	Lesotho	Senegal
Cambodia	Madagascar	Sierra Leone
Central African Republic	Malawi	Solomon Islands
Chad	Maldives	Tanzania
Congo, Democratic Republic of the	Mali	Togo
Djibouti	Mauritania	Uganda
	Mozambique	Zambia

In the process of accession to the WTO: Bhutan, Cape Verde, Ethiopia, Laos, Samoa, Sudan, Vanuatu and Yemen.

WTO Observers: Equatorial Guinea and Sao Tome & Principe.

Annex B – UNCTAD – Selected Economic and other Groupings[137]

Developing Regions

Africa	South America
Americas excluding Northern America	Asia excluding Japan
Caribbean	Oceania excluding Australia and New Zealand
Central America	

136 http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm (6.6.2006).

137 http://unstats.un.org/unsd/methods/m49/m49regin.htm (6.6.2006).

Developed Regions[138]

Northern America	Japan
Europe	Australia and New Zealand

Least developed countries

Afghanistan	Kiribati
Angola	Lao People's Democratic Republic
Bangladesh	Lesotho
Benin	Liberia
Bhutan	Madagascar
Burkina Faso	Malawi
Burundi	Maldives
Cambodia	Mali
Cape Verde	Mauritania
Central African Republic	Mozambique
Chad	Myanmar
Comoros	Nepal
Congo, Democratic Republic of the	Niger
Djibouti	Rwanda
Equatorial Guinea	Samoa
Eritrea	Sao Tome and Principe
Ethiopia	Senegal
Gambia	Sierra Leone
Guinea	Solomon Islands
Guinea Bissau	Somalia
Haiti	

138 There is no established convention for the designation of "developed" and "developing" countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania, and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States (code 172) in Europe are not included under either developed or developing regions. See at http://unstats.un.org/unsd/methods/m49m49regin.htm#ftnc (9.6.2006).

Landlocked developing countries

Afghanistan	Macedonia, FYR
Armenia	Malawi
Azerbaijan	Mali
Bhutan	Mongolia
Bolivia	Nepal
Botswana	Niger
Burkina Faso	Paraguay
Burundi	Rwanda
Central African Republic	Swaziland
Chad	Tajikistan
Ethiopia	Turkmenistan
Kazakhstan	Uganda
Kyrgyzstan	Uzbekistan
Lao People's Democratic Republic	Zambia
Lesotho	Zimbabwe

Small island developing States

Antigua and Barbuda	Guyana
Aruba	Haiti
Bahamas	Jamaica
Bahrain	Kiribati
Barbados	Maldives
Belize	Malta
Cape Verde	Marshall Islands
Comoros	Mauritius
Cook Islands	Micronesia (Federated States of)
Cuba	Nauru
Cyprus	Netherland Antilles
Dominica	Niue
Dominican Republic	Palau
Fiji	Papua New Guinea
Grenada	St. Kitts and Nevis
Guinea-Bissau	St. Lucia

Samoa	Tokelau
Sao Tome and Principe	Tonga
Seychelles	Trinidad and Tobago
Singapore	Tuvalu
Solomon Islands	U.S. Virgin Islands
St. Vincent and the Grenadines	Vanuatu
Suriname	

Transition countries[139]
Commonwealth of Independent States

Armenia	Moldova, Republic of
Azerbaijan	Russian Federation
Belarus	Tajikistan
Georgia	Turkmenistan
Kazakhstan	Ukraine
Kyrgyzstan	Uzbekistan

Transition countries of South-Eastern Europe

Albania	Macedonia, FYR
Bosnia and Herzegovina	Romania
Bulgaria	Serbia and Montenegro

139 "Countries in transition from centrally planned to market economies" is a grouping used for economic analysis. See at http://unstats.un.org/unsd/methods/m49/m49regin.htm (9.6.2006).

Annex C – World Bank – Classification of Countries[140]

Low Income Economies (61)

Afghanistan	Guinea	Niger
Angola	Guinea-Bissau	Nigeria
Bangladesh	Haiti	Pakistan
Benin	India	Papua New Guinea
Bhutan	Kenya	Rwanda
Burkina Faso	Korea, Democratic Republic	Sao Tome and Principe
Burundi	Kyrgyz Republic	Senegal
Cambodia	Lao PDR	Sierra Leone
Cameroon	Lesotho	Solomon Islands
Central African Republic	Liberia	Somalia
Chad	Madagascar	Sudan
Comoros	Malawi	Tajikistan
Congo, Democratic Republic	Mali	Tanzania
Congo, Republic	Mauritania	Timor-Leste
Côte d'Ivoire	Moldova	Togo
Equatorial Guinea	Mongolia	Uganda
Eritrea	Mozambique	Uzbekistan
Ethiopia	Myanmar	Vietnam
Gambia, The	Nepal	Yemen, Republic
Ghana	Nicaragua	Zambia
		Zimbabwe

Lower-middle-income economies (56)

Albania	Brazil	Dominican Republic
Algeria	Bulgaria	Ecuador
Armenia	Cape Verde	Egypt, Arab Republic
Azerbaijan	China	El Salvador
Belarus	Colombia	Fiji
Bolivia	Cuba	Georgia
Bosnia and Herzegovina	Djibouti	Guatemala

140 http://www.worldbank.org/data/countryclass/classgroups.htm (6.6.2006).

Guyana	Micronesia, Fed. Sts.	Suriname
Honduras	Morocco	Swaziland
Indonesia	Namibia	Syrian Arab Republic
Iran, Islamic Republic	Paraguay	Thailand
Iraq	Peru	Tonga
Jamaica	Philippines	Tunisia
Jordan	Romania	Turkey
Kazakhstan	Russian Federation	Turkmenistan
Kiribati	Samoa	Ukraine
Macedonia, FYR	Serbia and Montenegro	Vanuatu
Maldives	South Africa	West Bank and Gaza
Marshall Islands	Sri Lanka	

Upper-middle-income economies (37)

American Samoa	Grenada	Palau
Antigua and Barbuda	Hungary	Panama
Argentina	Latvia	Poland
Barbados	Lebanon	Saudi Arabia
Belize	Libya	Seychelles
Botswana	Lithuania	Slovak Republic
Chile	Malaysia	St. Kitts and Nevis
Costa Rica	Mauritius	St. Lucia
Croatia	Mayotte	St. Vincent and the Grenadines
Czech Republic	Mexico	Trinidad and Tobago
Dominica	Northern Mariana Islands	Uruguay
Estonia	Oman	Venezuela, RB
Gabon		

High-income economies (54)

Andorra	Bahrain	Cayman Islands
Aruba	Belgium	Channel Islands
Australia	Bermuda	Cyprus
Austria	Brunei	Denmark
Bahamas, The	Canada	Faeroe Islands

Finland	Japan	Portugal
France	Korea, Republic	Puerto Rico
French Polynesia	Kuwait	Qatar
Germany	Liechtenstein	San Marino
Greece	Luxembourg	Singapore
Greenland	Macao, China	Slovenia
Guam	Malta	Spain
Hong Kong, China	Monaco	Sweden
Iceland	Netherlands	Switzerland
Ireland	Netherlands Antilles	United Arab Emirates
Isle of Man	New Caledonia	United Kingdom
Israel	New Zealand	United States
Italy	Norway	Virgin Islands (U.S.)

High-income OECD members (24)

Australia	Greece	New Zealand
Austria	Iceland	Norway
Belgium	Ireland	Portugal
Canada	Italy	Spain
Denmark	Japan	Sweden
Finland	Korea, Republic	Switzerland
France	Luxembourg	United Kingdom
Germany	Netherlands	United States

Severely indebted (45)

Angola	Congo, Democratic Republic	Guinea-Bissau
Argentina	Congo, Republic	Guyana
Belize	Côte d'Ivoire	Indonesia
Bhutan	Dominica	Jamaica
Brazil	Ecuador	Jordan
Burundi	Estonia	Kyrgyz Republic
Central African Republic	Ethiopia	Lao PDR
Chad	Gabon	Latvia
Comoros		Lebanon

Liberia	Rwanda	Tajikistan
Myanmar	Sao Tome and Principe	Togo
Nicaragua	Serbia and Montenegro	Turkey
Nigeria	Sierra Leone	Uruguay
Panama	Somalia	Zambia
Papua New Guinea	Sudan	
Peru	Syrian Arab Republic	

Moderately indebted (43)

Benin	Hungary	Russian Federation
Bulgaria	Kazakhstan	Samoa
Burkina Faso	Kenya	Senegal
Cambodia	Lithuania	Slovak Republic
Cameroon	Malawi	Sri Lanka
Chile	Malaysia	St. Kitts and Nevis
Colombia	Mali	St. Lucia
Croatia	Mauritania	St. Vincent and the Grenadines
Eritrea	Moldova	Thailand
Gambia, The	Mongolia	Tunisia
Georgia	Morocco	Turkmenistan
Ghana	Nepal	Uzbekistan
Grenada	Niger	Zimbabwe
Guinea	Pakistan	
Honduras	Philippines	

Less indebted (47)

Albania	Botswana	El Salvador
Algeria	Cape Verde	Equatorial Guinea
Armenia	China	Fiji
Azerbaijan	Costa Rica	Guatemala
Bangladesh	Czech Republic	Haiti
Belarus	Djibouti	India
Bolivia	Dominican Republic	Iran, Islamic Republic
Bosnia and Herzegovina	Egypt, Arab Republic	Lesotho

Macedonia, FYR	Poland	Trinidad and Tobago
Madagascar	Romania	Uganda
Maldives	Seychelles	Ukraine
Mauritius	Solomon Islands	Vanuatu
Mexico	South Africa	Venezuela, RB
Mozambique	Swaziland	Vietnam
Oman	Tanzania	Yemen, Republic
Paraguay	Tonga	

Not classified by indebtedness (73)

Afghanistan	Greenland	Netherlands
American Samoa	Guam	Netherlands Antilles
Andorra	Hong Kong, China	New Caledonia
Antigua and Barbuda	Iceland	New Zealand
Aruba	Ireland	Northern Mariana Islands
Australia	Iraq	Norway
Austria	Isle of Man	Palau
Bahamas, The	Israel	Portugal
Bahrain	Italy	Puerto Rico
Barbados	Japan	Qatar
Belgium	Kiribati	San Marino
Bermuda	Korea, Democratic Republic	Saudi Arabia
Brunei	Korea, Republic	Singapore
Canada	Kuwait	Slovenia
Cayman Islands	Libya	Spain
Channel Islands	Liechtenstein	Suriname
Cuba	Luxembourg	Sweden
Cyprus	Macao, China	Switzerland
Denmark	Malta	Timor-Leste
Faeroe Islands	Marshall Islands	United Arab Emirates
Finland	Mayotte	United Kingdom
France	Micronesia, Fed. Sts.	United States
French Polynesia	Monaco	Virgin Islands (U.S.)
Germany	Namibia	West Bank and Gaza
Greece		

Annex D – IMF Classification of Member Countries

Other Emerging Markets and Developing Countries by Region and Main External Financing Source[141]

Countries	Net Debtor Countries By main external financing source		Countries	Net Debtor Countries By main external financing source	
	Net debtor countries	Of which, official financing		Net debtor countries	Of which, official financing
Africa Sub-Sahara			Lesotho	x	
Angola	x		Madagascar	x	x
Benin	x	x	Malawi	x	x
Botswana			Mali	x	x
Burkina Faso	x	x	Mauritania	x	x
Burundi	x	x	Mauritius	x	
Cameroon	x	x	Mozambique,		
Cape Verde	x		Rep. of	x	x
Central African			Namibia		
Republic	x	x	Niger	x	x
Chad	x	x	Nigeria	x	x
Comoros	x	x	Rwanda	x	x
Congo, Dem.			Sao Tomé and		
Rep. of	x	x	Principe	x	x
Congo, Rep. of	x	x	Senegal	x	
Côte d'Ivoire	x		Seychelles	x	
Dejbouti	x	x	Sierra Leone	x	
Equatorial Guinea	x		South Africa	x	
Eritrea	x	x	Sudan	x	
Ethiopia	x	x	Swaziland	x	
Gabon	x	x	Tanzania	x	
Gambia, The	x		Togo	x	x
Ghana	x	x	Uganda	x	
Guinea	x	x	Zambia	x	
Guinea-Bissau	x	x	Zimbabwe	x	x
Kenya	x				

141 http://www.imf.org/external/pubs/ft/weo/2004/01/pdf/appendix.pdf (6.6.2006).

Countries	Net Debtor Countries By main external financing source		Countries	Net Debtor Countries By main external financing source	
	Net debtor countries	Of which, official financing		Net debtor countries	Of which, official financing
North Africa			Belarus	x	
Algeria			Georgia	x	x
Morocco	x		Kasakhstan	x	
Tunisia	x		Kyrgyz Republic	x	x
			Moldova	x	
Central and Eastern Europe			Mongolia	x	x
			Russia		
Albania	x	x	Tajikistan	x	x
Bosnia and Herzegovina	x	x	Turkmenistan		
Bulgaria			Ukraine	x	
Croatia	x		Uzbekistan	x	
Czech Republic	x				
Estonia	x		*Developing Asia*		
Hungary	x		Bangladesh	x	x
Latvia	x		Bhutan	x	x
Lithuania	x		Brunei		
Macedonia FYR			Cambodia	x	x
Malta	x		China	x	
Poland	x		Fiji	x	x
Romania	x		India	x	x
Serbia and Montenegro	x	x	Indonesia	x	x
Slovak Republic	x		Kiribati		
Slovenia			Lao PDR	x	x
Turkey			Malaysia	x	
			Maldives	x	
Commonwealth of Independent States and Mongolia			Myanmar	x	x
			Nepal	x	x
			Pakistan	x	x
			Papua New Guinea	x	x
			Philippines	x	
			Samoa	x	
Armenia	x		Solomon Islands	x	x
Azerbaijan	x				

Countries	Net Debtor Countries By main external financing source		Countries	Net Debtor Countries By main external financing source	
	Net debtor countries	Of which, official financing		Net debtor countries	Of which, official financing
Sri Lanka	x		Bolivia	x	
Thailand	x		Brazil	x	
Tonga	x	x	Chile	x	
Vanuatu	x	x	Colombia	x	
Vietnam	x	x	Costa Rica	x	
			Dominica	x	
Middle East			Dominican Republic	x	
Bahrain	x		Ecuador	x	x
Egypt	x		El Salvador	x	x
Iran, I.R. of			Grenada	x	x
Iraq	x		Guatemala	x	
Jordan	x	x	Guyana	x	
Kuwait			Haiti	x	x
Lebanon	x		Honduras	x	x
Libya			Jamaica	x	
Oman	x		Mexico	x	
Qatar			Netherlands Antilles	x	
Saudi Arabia			Nicaragua	x	
Syrian Arab Republic	x		Panama	x	
United Arab Emirates			Paraguay	x	
			Peru	x	
Yemen	x	x	St. Kitts and Nevis	x	
			St Lucia	x	x
Western Hemisphere			St. Vincent and the Grenadines	x	
Antigua and Barbuda	x		Suriname	x	
Argentina	x		Trinidad and Tobago	x	
Bahamas, The	x		Uruguay	x	
Barbados	x		Venezuela	x	
Belize	x				

Annex E – ACWL Classification of Members Countries

Least Developed Countries Members in ACWL[142]

Angola	Guinea	Niger
Bangladesh	Guinea Bissau	Rwanda
Benin	Haiti	Samoa
Burkina Faso	Kingdom of Bhutan	Sao Tome and Principe
Burundi	Lao PDR	Senegal
Cambodia	Lesotho	Sierra Leone
Cape Verde, Republic of	Madagascar	Solomon Islands
Central African Republic	Malawi	Sudan, Republic of
Chad	Maldives	Tanzania
Congo, Democratic Republic of	Mali	Togo
Djibouti	Mauritania	Uganda
Ethiopia, Federal Democratic Republic of	Mozambique	Vanuatu
Gambia	Myanmar	Yemen, Republic of
	Nepal	Zambia

Developing Countries Members of ACWL[143]

Category	Countries	Category	Countries
Category A	Hong Kong, China	Category C	Bolivia
	Chinese Taipei		Dominican Republic
			Ecuador
Category B	Colombia		El Salvador
	Egypt		Guatemala
	India		Honduras
	Indonesia		Jordan
	Mauritius		Kenya
	Oman		Nicaragua
	Pakistan		Panama
	Philippines		Paraguay
	Thailand		Peru
	Turkey		Tunisia
	Uruguay		
	Venezuela		

142 http://www.acwl.ch/e/members/leastdev_e.aspx (9.6.2006).

143 http://www.acwl.ch/e/members/developing_e.aspx (9.6.2006).

Developed Countries Members of ACWL[144]

Canada	Italy	United Kingdom
Ireland	Sweden	
Norway	Finland	* Switzerland is in the process of accession.
Denmark	Netherlands	

Annex F – Criteria for Accession of Developing Countries in ACWL[145]

Criteria for Accession	WTO Member	% of WTO Contribution	Contribution to the Endowment Fund
	Category A		
>1.5%	Hong Kong, China	3.54	US$ 300,000
	Korea	2.32	US$ 300,000
	Mexico	1.51	US$ 300,000
	Singapore	2.25	US$ 300,000
	Brunei Darussalam	0.04	US$ 300,000
or High Income	Cyprus	0.07	US$ 300,000
	Israel	0.59	US$ 300,000
	Kuwait	0.24	US$ 300,000
	Macao	0.07	US$ 300,000
	Qatar	0.06	US$ 300,000
	United Arab Emirates	0.52	US$ 300,000

144 http://www.acwl.ch/e/members/developed_e.aspx (9.6.2006).

145 http://www.acwl.ch/e/tools/doc_e.aspx (9.6.2006) – Annex II – Minimum Contributions of Developing Country Members and Members with an economy in transition of the Agreement establishing the ACWL.

Criteria for Accession	WTO Member	% of WTO Contribution	Contribution to the Endowment Fund
	Category B		
> 0.15% < 1.5%	Argentina	0.47	US$ 100,000
	Brazil	0.92	US$ 100,000
	Chile	0.29	US$ 100,000
	Colombia	0.25	US$ 100,000
	Czech Republic	0.51	US$ 100,000
	Egypt	0.26	US$ 100,000
	Hungary	0.32	US$ 100,000
	India	0.57	US$ 100,000
	Indonesia	0.87	US$ 100,000
	Malaysia	1.31	US$ 100,000
	Morocco	0.16	US$ 100,000
	Nigeria	0.20	US$ 100,000
	Pakistan	0.19	US$ 100,000
	Philippines	0.46	US$ 100,000
	Poland	0.48	US$ 100,000
	Romania	0.15	US$ 100,000
	Slovak Rep.	0.17	US$ 100,000
	Slovenia	0.19	US$ 100,000
	South Africa	0.55	US$ 100,000
	Thailand	1.19	US$ 100,000
	Turkey	0.60	US$ 100,000
	Venezuela	0.32	US$ 100,000
or Upper middle income	Antigua and Barbuda	0.03	US$ 100,000
	Bahrain	0.09	US$ 100,000
	Barbados	0.03	US$ 100,000
	Gabon	0.04	US$ 100,000
	Malta	0.05	US$ 100,000
	Mauritius	0.04	US$ 100,000
	St. Kitts and Nevis	0.03	US$ 100,000
	St. Lucia	0.03	US$ 100,000
	Trinidad and Tobago	0.04	US$ 100,000
	Uruguay	0.06	US$ 100,000

Criteria for Accession	WTO Member	% of WTO Contribution	Contribution to the Endowment Fund
	Category C		
< 0.15%	Belize	0.03	US$ 50,000
	Bolivia	0.03	US$ 50,000
	Botswana	0.04	US$ 50,000
	Bulgaria	0.11	US$ 50,000
	Cameroon	0.04	US$ 50,000
	Congo	0.04	US$ 50,000
	Costa Rica	0.07	US$ 50,000
	Côte d'Ivoire	0.07	US$ 50,000
	Cuba	0.04	US$ 50,000
	Dominican Republic	0.10	US$ 50,000
	Dominica	0.03	US$ 50,000
	Ecuador	0.09	US$ 50,000
	El Salvador	0.04	US$ 50,000
	Estonia*	0.03	US$ 50,000
	Fiji	0.03	US$ 50,000
	Ghana	0.03	US$ 50,000
	Georgia*	0.03	US$ 50,000
	Grenada	0.03	US$ 50,000
	Guatemala	0.05	US$ 50,000
	Guyana	0.03	US$ 50,000
	Honduras	0.03	US$ 50,000
	Jamaica	0.06	US$ 50,000
	Kenya	0.05	US$ 50,000
	Kyrgyz Republic	0.03	US$ 50,000
	Latvia	0.03	US$ 50,000
	Mongolia	0.03	US$ 50,000
	Namibia	0.03	US$ 50,000
	Nicaragua	0.03	US$ 50,000
	Panama	0.14	US$ 50,000
	Papua New-Guinea	0.05	US$ 50,000
	Paraguay	0.05	US$ 50,000
	Peru	0.12	US$ 50,000

* Pending deposit of instrument of ratification

Criteria for Accession	WTO Member	% of WTO Contribution	Contribution to the Endowment Fund
	Senegal	0.03	US$ 50,000
	Sri Lanka	0.09	US$ 50,000
	St. Vincent and the Grenadines	0.03	US$ 50,000
	Suriname	0.03	US$ 50,000
	Swaziland	0.03	US$ 50,000
	Tunisia	0.14	US$ 50,000
	Zimbabwe	0.03	US$ 50,000

Least developed countries listed in Annex III that have accepted this Agreement US$ 50,000