INTRODUCTION TO THE ADVISORY CENTRE ON WTO LAW

Virtual Institute UNCTAD Study Tour
ACWL

Geneva, 2016
What is the ACWL?

Origins of the ACWL: background

Members/clients of the ACWL

Types of services provided by the ACWL:
  • Legal advice
  • Assistance in WTO dispute settlement
  • Training

Administration and financing of the ACWL
WHAT IS THE ACWL?

- Intergovernmental organisation created in 2001 with a mandate:
  
  To provide developing countries and LDCs with the legal capacity necessary to enable them to take full advantage of the opportunities of WTO membership

  - Legal advice: More than 200 legal opinions a year
  - WTO dispute settlement support: 45 disputes so far
  - Capacity building: 12 Annual Courses, 9 Secondment Programmes

- The ACWL is not part of the WTO – different treaty, membership, mandate, administration and budget.
ORIGINS OF THE ACWL: BACKGROUND

1995
Creation of WTO legal system

1999
Concerns about the WTO system and materialization of initiative to create ACWL

2001
Formal entry into operation of the ACWL
Countries designated by UN as LDCs that are WTO Members or are in the process of acceding the WTO.

Developing countries that have become Members of the ACWL and have contributed to its Endowment Fund.
WHICH OF THE DEVELOPING COUNTRIES HAVE BECOME MEMBERS OF THE ACWL?

Almost all the developing countries that have participated in WTO dispute settlement proceedings since 2001 have joined the ACWL, except for:

▪ some of the most experienced participants in WTO dispute settlement proceedings (Argentina, Brazil, Chile, China, Korea, and Mexico); and

▪ Antigua and Barbuda, Armenia, Moldova, South Africa, and Ukraine.
LEGAL ADVICE

- Legal opinions provided free of charge.
- Protected as strictly confidential.
- Provided as oral or written opinions.
- Includes assistance in follow-up steps.
- May be provided in English, French or Spanish.
The ACWL has provided almost 2000 legal opinions to date. In 2014, it delivered 204 legal opinions.
Legal Opinions by Category of Member in 2014

- A Members (9%)
- B Members (40%)
- C Members (44%)
- LDCs (7%)
### TYPES OF SERVICES PROVIDED BY THE ACWL

#### Types of Legal Opinion

- Related to WTO decision-making process within a WTO committee.
- Related to measures taken or contemplated by the Member or LDC seeking the advice.
- Related to measures of another Member.

#### Examples

- Legal opinion on the decision-making process within a WTO committee.
- Legal opinion on whether an internal measure intended to address sanitary concerns is consistent with the SPS Agreement.
- Legal opinion on whether an internal tax imposed by another WTO Member is consistent with Article III:2 of the GATT 1994.
The majority of the legal opinions addressed systemic issues.

**Legal Opinions by Category of Opinion (Five-Year Average)**

- WTO decision making and negotiations (43%)
- Measures of countries seeking advice (33%)
- Measures of other countries (23%)
TYPES OF SERVICES PROVIDED BY THE ACWL

ASSISTANCE IN DISPUTE SETTLEMENT PROCEEDINGS

Pre-Initiation
- Identification of the issue(s)
- Legal assessment of the case
- Design of the legal strategy

Consultations
- Drafting of request for consultations
- Preparation of questions
- Attendance at consultations

Adjudication
- Drafting of panel request
- Preparation of submissions
- Advocacy before panels and the Appellate Body

Implementation
- Negotiations on RPT
- Arbitration on RPT
- Review of compliance measures
- Assistance in Article 21.5 panels
- Assistance in Article 22.6 arbitrations
DISPUTE SETTLEMENT SUPPORT

- Support may be provided in English, French or Spanish.
- The ACWL has provided support in 45 disputes and through an external legal counsel in 6 disputes.
- In half of the cases, the other party was a developing country.
- Fees vary with the GNP per capita and trade share of the Member concerned.
- Fees are significantly lower than those charged by law firms.
ACWL Involvement in WTO Dispute Settlement Proceedings (2002-2014)

- Total new WTO disputes initiated by year
- Number of new disputes in which the ACWL was involved
ROSTER OF EXTERNAL LEGAL COUNSEL

- If two countries entitled to the ACWL's services seek advice in the same dispute, the first-come-first-served rule applies.

- The second Member may receive support through the hiring of an external legal counsel selected by that party.

- Roster of External Counsel: 27 experienced law firms and 4 individuals have agreed to represent developing countries and LDCs in cases of conflict.
ANNUAL TRAINING COURSE

The ACWL's training programme on WTO law and procedure is divided into three annual courses, each covering different aspects of WTO law.
SECONDMENT PROGRAMME FOR TRADE LAWYERS

- The Programme was launched in 2005.
- It is designed for lawyers from the governments of LDCs and developing country Members.
- The seconded lawyers join the staff of the ACWL as paid trainees for nine months (mid-September to mid-June).

They benefit from theoretical training and practical experience and are fully engaged in the ACWL's day-to-day activities.

To date, 27 government lawyers from 16 developing countries and 6 LDCs have participated in the Programme.
The ACWL is co-administered by its developed and developing country Members.

- All ACWL Members and LDC representatives
- Oversees the functioning of the ACWL
- Monitors the finances and adopts the annual budget

- Six individuals serving in their personal capacity
- Takes decisions necessary to ensure efficient and effective operation of the ACWL
- Supervision of administration of Endowment Fund

- Niall Meagher
- Management of the ACWL's daily activities
- Represents the ACWL externally

ADMINISTRATION AND FINANCING OF THE ACWL
The ACWL is co-financed by its developed and developing country Members.

- The ACWL's main sources of financing are:
  - revenues from its Endowment Fund (about CHF25 million);
  - fees levied for support in dispute settlement proceedings; and
  - voluntary contributions.

- The Endowment Fund was created from the contributions of both the developed and the developing country Members.

- During the period 2012-2016, the ACWL's annual budgets are being financed by additional contributions from the developed country Members.
The ACWL currently employs nine lawyers, one legal assistant, two office administrators and four secondees (September - June)
For further information on the ACWL, please visit our website:

www.acwl.ch