



REPORT ON OPERATIONS 2010



Advisory Centre on WTO Law
Centre Consultatif sur la Législation de l'OMC
Centro de Asesoría Legal en Asuntos de la OMC

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PREFACE

The ACWL provides legal advice on WTO law, support in WTO dispute settlement proceedings and training on WTO law to 73 developing and least-developed countries. The ACWL thereby contributes to the integration of these countries into the WTO's legal system and to the effectiveness of that system.

Once again, there was an increase in demand for the ACWL's services this year. For the first time, the ACWL provided over 200 legal opinions in a year to its Members and LDCs. The ACWL also provided support in four new WTO dispute settlement proceedings and three ongoing disputes. The ACWL's staff has now been involved in a total of 38 disputes. The ACWL awarded 29 Certificates of Training in its annual training course, bringing the total of certificates awarded in the eight courses completed so far to 220. I am very gratified by the trust and confidence in the ACWL's work reflected in this increased demand for its services.

I am also pleased that Australia has initiated its domestic process to become the ACWL's eleventh developed country

Member and has made a generous contribution to the ACWL. In its analysis of whether to join the ACWL, Australia concluded that the "ACWL comprises highly skilled lawyers who contribute effectively to strengthening the WTO dispute system, as well as prosecuting their developing country clients' interests. The ACWL has made a significant contribution to the development of the WTO dispute settlement system as a cornerstone of the WTO".

I would like to thank all those who have helped the ACWL to make this contribution, in particular the ACWL's staff for its dedication and the Management Board for its support and guidance. Finally, I would like to thank all of the ACWL's Members and the LDCs for the cooperative spirit with which they work together to ensure the continuing success of their unique partnership in the ACWL.



Frieder **ROESSLER**,
Executive Director

THE ACWL IN FIGURES

| | 2010 | 2009 |
|--|------|------|
| OPERATIONS | | |
| Legal opinions | 206 | 194 |
| WTO disputes in which the ACWL provided support | 7 | 6 |
| New requests for support in WTO disputes | 4 | 3 |
| Certificates of Training awarded | 29 | 34 |
| MEMBERSHIP | | |
| Developed country Members | 10 | 10 |
| Developing country ¹ Members | 30 | 30 |
| LDCs entitled to the services of the ACWL | 43 | 44 |
| Countries entitled to the services of the ACWL | 73 | 74 |
| STAFF | | |
| Lawyers, including the Executive Director | 9 | 7 |
| Participants in the Secondment Programme for Trade Lawyers | 3 | 1 |
| Administrative staff | 2 | 2 |

¹ Throughout this report, the terms "country" and "developing country" include separate customs territories and countries with economies in transition.

THE ACWL'S OPERATIONS

LEGAL ADVICE

The ACWL has provided developing countries and least-developed countries (LDCs) with over 900 legal opinions since its establishment in mid-2001. ACWL Members and LDCs that use this service consistently report that the advice provided by the ACWL was timely, comprehensive and helpful in resolving their WTO legal concerns. This legal advice is provided free of charge.

The opinions provided by the ACWL can be divided into three categories. The first comprises opinions on legal issues arising in WTO decision making and negotiations. These legal opinions enhance the capacity of developing countries to pursue their interests within the complex institutional framework of the WTO and to become active participants in WTO bodies. For example, the ACWL has advised developing countries and LDCs on legal issues arising in their trade policy reviews and in WTO committees such as the TBT and SPS Committees. The ACWL also provides advice on legal aspects of proposals submitted in the context of the Doha Development Round negotiations.

The second category of legal opinions concerns measures taken or contemplated by the Member or LDC seeking the advice. These legal opinions help these countries to realise their trade policy objectives in a manner consistent with WTO law and to avoid unnecessary disputes. They are often sought by Members or LDCs faced with internal disagreement as to the consistency of a proposed measure with WTO law. For example, the ACWL has provided advice to Members and LDCs on the WTO-consistency of domestic tax measures, tariffs, subsidies, anti-dumping and other trade remedy investigations, sanitary and phyto-sanitary (SPS) measures, intellectual property protection, services regulations and proposed regional trade agreements. The ACWL is in a unique position to provide a neutral, objective assessment of the WTO legal issues arising in such situations.

The third category of legal opinions concerns measures of another WTO Member that the developing country or LDC seeking the advice is considering challenging under the WTO dispute settlement procedures. For example, the ACWL has provided legal opinions on the WTO-consistency of technical regulations, SPS measures, import licensing requirements, and anti-dumping, countervailing duty and safeguard measures. In these cases, the ACWL's opinions permit the developing country or LDC to assess the chances of prevailing in a dispute settlement proceeding on the basis of a legal analysis prepared by an institution that is neither issue-driven nor profit-making.

"The legal advice given by the ACWL continues to be an invaluable resource for the LDCs' effective participation in the multilateral trading system".
- Zambia.

"The ACWL has done a remarkably good job with its unique expertise and highly qualified professional staff".

- Cambodia.

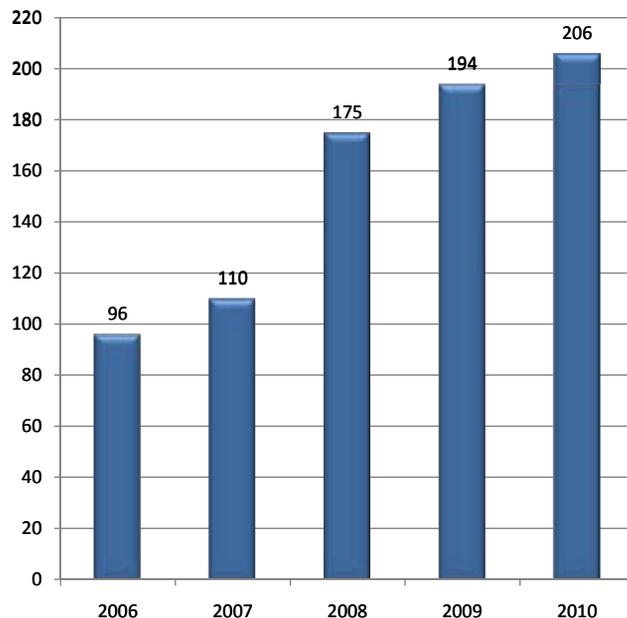
NUMBER OF OPINIONS

In 2010, 23 of the ACWL's 30 developing country Members sought legal advice from the ACWL. In addition, all of the 43 LDCs entitled to its services benefitted from the ACWL's legal advice through 21 requests submitted on behalf of the WTO LDCs' Consultative Group. In addition, six LDCs individually sought legal advice from the ACWL.

The ACWL provided a total of 206 legal opinions, of which 118 were provided in writing and 88 in meetings, conference calls or telephone conversations. This total does not include the numerous instances in which legal advice was provided in discussions lasting less than half an hour.

As illustrated in the chart below, the number of legal opinions provided by the ACWL has more than doubled over a period of five years, increasing from 96 in 2006 to 110 in 2007, 175 in 2008, 194 in 2009 and to 206 in 2010.

ACWL Legal Opinions 2006-2010



TYPES OF OPINIONS

Of the 206 legal opinions provided in 2010, 94 (46 per cent of the total) concerned issues regarding WTO decision making and negotiations in such areas as services, trade facilitation, non-agricultural market access, accessions and the reform of the DSU. The ACWL also responded to 64 requests from countries seeking advice about their own measures (31 per cent). This included advice on proposed legislation on trade remedies, services, export processing zones and intellectual property rights. Finally, the ACWL provided 48 legal opinions regarding measures taken by other WTO Members (23 per cent), in many cases trade remedy measures. This year, 73 per cent of this category of opinions involved measures of other developing countries.

"The ACWL's legal advice has permitted us to suggest changes to [our] legislation to make it WTO-consistent".

- Honduras.

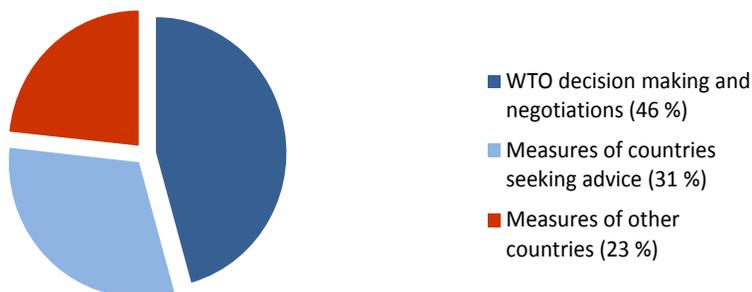
Examples of the legal opinions provided by the ACWL this year include the following:

- Advising an LDC on legal issues arising in its accession to the WTO.
- Assisting a developing country in addressing legal issues arising in its Trade Policy Review.
- Advising a developing country on the law governing the structure and operation of its anti-dumping investigating authority.
- Advising a developing country on the implementation of the WTO Customs Valuation Agreement.

This year, the ACWL advised the LDC Group on several legal issues arising out of the Doha Development Round negotiations, including issues relating to trade facilitation, the GATS, and special safeguard mechanisms. This included advice on the legal aspects of the negotiating process and on the legal implications of draft texts submitted in the negotiations.

The breakdown of the ACWL's legal opinions between the three categories of legal opinions provided in 2010 is illustrated in the chart below.

Legal Opinions in 2010 by Type of Opinion



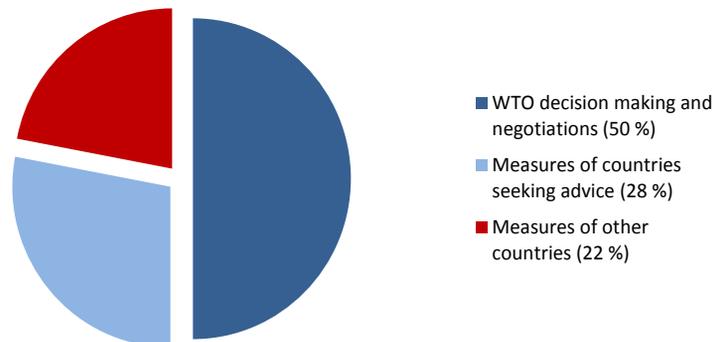
The following table provides a breakdown of the number of legal opinions by category during the past five years.

Legal Opinions by Type of Opinion 2006-2010

| TYPE OF OPINION | 2006 | | 2007 | | 2008 | | 2009 | | 2010 | |
|--------------------------------------|-------|----------------|-------|----------------|-------|----------------|-------|----------------|-------|----------------|
| | TOTAL | SHARE OF TOTAL |
| WTO DECISION MAKING AND NEGOTIATIONS | 66 | 69% | 48 | 44% | 83 | 47% | 81 | 42% | 94 | 46% |
| MEASURES OF COUNTRIES SEEKING ADVICE | 11 | 11% | 39 | 35% | 61 | 35% | 53 | 27% | 64 | 31% |
| MEASURES OF OTHER COUNTRIES | 19 | 20% | 23 | 21% | 31 | 18% | 60 | 31% | 48 | 23% |

The average distribution between the three categories of legal opinions during the past five years is shown in the chart below. As this chart indicates, almost 80 per cent of the legal advice provided by the ACWL during the past five years enabled ACWL Members and LDCs to participate more effectively in WTO decision making and negotiations and to evaluate their own measures against their WTO obligations. The LDCs, in particular, have requested these types of advice. Only 22 per cent of the legal opinions provided during this period related to measures of other countries. As noted above, in 2010, more than 70 per cent of the opinions in this category concerned measures of other developing countries.

Legal Opinions by Type of Opinion (Five-Year Average)



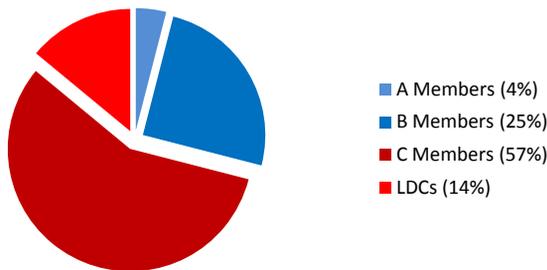
DISTRIBUTION OF OPINIONS AMONG COUNTRIES

The ACWL divides its developing country Members into categories A, B, and C, according to their GNP per capita and share of world trade, with category A Members having the highest GNP per capita and largest share of world trade. As detailed in the chart below, category B Members requested 25 per cent of the opinions, while only four per cent were requested by category A Members. Of the 206 opinions provided in 2010, the majority (71 per cent) were sought by category C Members (57 per cent) and LDCs (14 per cent).

The ACWL provided over 70 per cent of its legal opinions to Category C Members and LDCs.



Legal Opinions in 2010 by Category of Member



SURVEY

The ACWL conducts an annual survey of the users of its legal advice. The responses to the survey this year were uniformly positive. The users praised the ACWL for the timeliness, professionalism and quality of its legal advice. For example, Colombia stated that "the legal advice provided by the ACWL has always been highly professional, timely and very useful". The users also noted that the ACWL's staff was consistently helpful in addressing any follow-up questions arising from a legal opinion.

Several users also noted that the ACWL's legal advice was helpful in preparing for meetings of WTO committees, while several others noted that the advice was helpful in ensuring that they properly implemented their WTO obligations. One LDC commented that the ACWL's advice was "extremely important" in helping it gain confidence in its implementation of its WTO obligations. Honduras explained that "the ACWL's legal advice has permitted us to suggest changes to [our] legislation to make it WTO-consistent", while Mauritius noted that the ACWL provided "very objective and insightful" advice on its domestic measures. Finally, one developing country stated that the ACWL provided "clear guidance" on the merits of initiating WTO dispute settlement proceedings.



DISPUTE SETTLEMENT SUPPORT

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"The ACWL has clearly helped to enhance participation of developing countries in the DSU".

- Shaffer/Meléndez-Ortiz
Study.

In 2010, the ACWL provided support in four new dispute settlement proceedings and in three ongoing proceedings. Since its inception in 2001, the ACWL has provided support to its Members and LDCs in 38 WTO dispute settlement proceedings directly through its staff and in five proceedings through external counsel. A list of these disputes is set out in Appendix 1.

A recent study of developing countries' experience in WTO dispute settlement found that the ACWL has "contributed significantly" to redressing resource imbalances that hinder developing and least-developed countries' ability to use the WTO dispute settlement system effectively. The study concluded that "the ACWL has clearly helped to enhance participation of developing countries in the DSU" and that "[e]nsuring that the ACWL continues to be adequately resourced is clearly a key component in helping developing countries benefit from the DSU".

In a chapter regarding Bangladesh's participation in the DSU, Professor Taslim noted that "the services provided by the ACWL on concessionary terms were absolutely essential in preparing for and conducting the case" against India's anti-dumping duties on batteries from Bangladesh. He concluded that "other LDCs that suffer from similar capacity constraints would certainly need the legal services of the Advisory Centre in seeking redress from the unfair trade impositions of more powerful countries. It is thus essential for them to ensure that the Advisory Centre is sustained".²

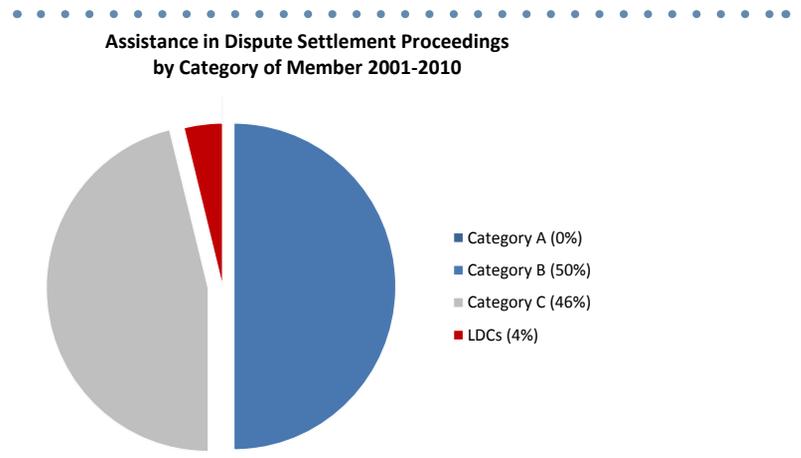
The individual Members and LDCs that turn to the ACWL for support participate only rarely in WTO dispute settlement proceedings. Collectively, however, they participate almost as frequently as major users such as the United

² Gregory C. Shaffer and Ricardo Meléndez-Ortiz, eds., *Dispute Settlement at the WTO: the Developing Country Experience* (2010), page xiii, page 347 and page 246.

States or the EU. By providing support in 38 dispute settlement proceedings, therefore, the ACWL has acquired legal experience comparable to that of the major users of the system. Thus, the ACWL pools the legal experience of developing countries in WTO legal matters and enables each of them to draw on this collective experience to defend its interests in dispute settlement proceedings.

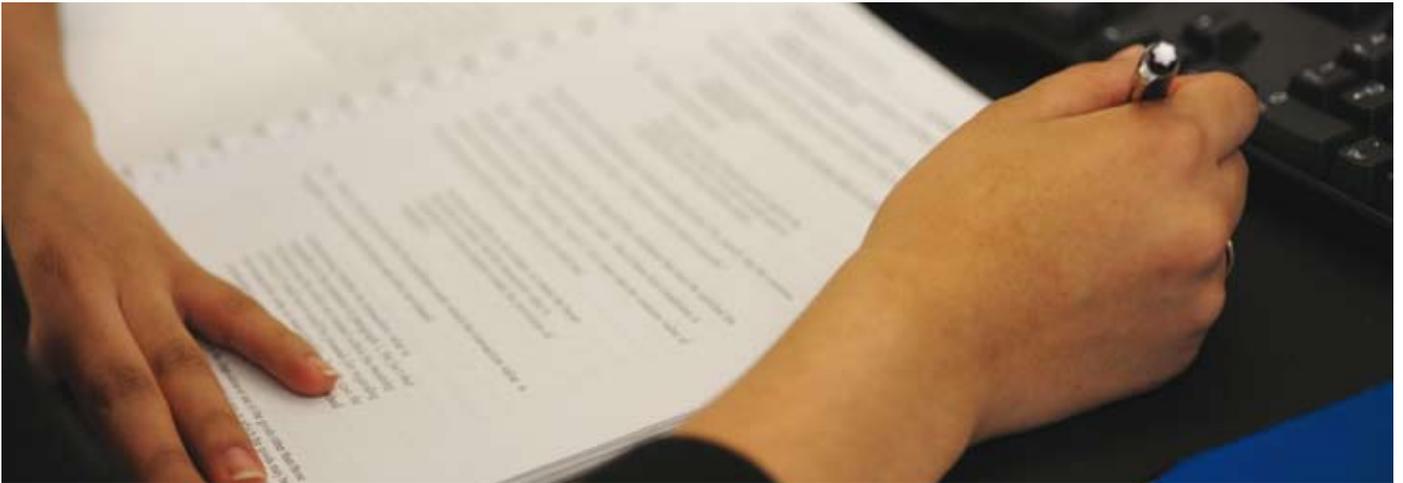
When providing assistance in a dispute settlement proceeding, the ACWL works in partnership with the developing country or LDC concerned. Prior to the initiation of a dispute, the ACWL lawyers prepare a legal opinion on the strengths and weaknesses of the case. The ACWL lawyers work together with delegates and capital-based officials to prepare for the consultations with the other party. During panel, Appellate Body and other proceedings, the ACWL lawyers work together with these officials to draft the written submissions, oral statements and answers to questions. In this manner, the ACWL combines its assistance in dispute settlement with capacity building.

The chart below provides details on the distribution of the ACWL's support in WTO dispute settlement by category among ACWL Members and LDCs.



In addition to assisting its Members and LDCs directly through its staff, the ACWL also provides support through external legal counsel. WTO dispute settlement proceedings between developing countries, including those entitled to the ACWL's services, are increasingly common. The ACWL can provide direct support to two parties involved in the same proceeding that have compatible objectives, for instance as co-complainants. When parties pursuing incompatible objectives request the support of the ACWL on the same matter, however, the ACWL's staff normally assists the party that first requested advice. The ACWL provides support to the other party through external counsel.

"The ACWL has made a significant contribution to the development of the WTO dispute settlement system as a cornerstone of the WTO". - Australia.



In 2010, the ACWL provided support in four new and three ongoing disputes.

The ACWL has established a Roster of External Counsel, which is made up of experienced law firms and individuals that have agreed to represent developing countries and LDCs when the ACWL's staff cannot do so. The party that cannot be assisted by the ACWL's staff selects its own counsel from the roster. The selected counsel provides the same support that the ACWL's staff would have provided had support been provided directly by the ACWL's staff. The ACWL finances the difference between the fees charged by the external counsel and the fees that the ACWL would have charged for the same services. The law firms and lawyers on the Roster of External Counsel are listed in Appendix 2.

SUPPORT PROVIDED BY THE ACWL'S STAFF

The ACWL provided support in four new and three ongoing disputes in 2010.

NEW DISPUTES

The ACWL assisted **Costa Rica, Guatemala, Honduras and El Salvador** as complainants in *Dominican Republic - Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric* (DS 415, DS 416, DS 417, DS 418). In these disputes, the complainants allege that a safeguard measure imposed by the Dominican Republic in October 2010 is inconsistent with, *inter alia*, Article XIX of the GATT 1994 and the WTO Safeguards Agreement. Consultations in these disputes took place in November 2010. The complainants submitted requests for the establishment of a panel in December 2010, which will be considered by the WTO Dispute Settlement Body in early 2011.

The ACWL assisted **Peru** as the complainant in *Argentina - Anti-Dumping Duties on Fasteners and Chains from Peru* (DS 410). Peru claims that anti-dumping measures imposed by Argentina on imports of fasteners and zippers from Peru in September 2009 are inconsistent with various provisions of the

WTO Anti-Dumping Agreement. Peru asserts, *inter alia*, that the initiation of the anti-dumping investigation was inconsistent with Article 5, that the determination of dumping was inconsistent with Articles 2 and 9, and that the determination of injury was inconsistent with Article 3 of the Anti-Dumping Agreement. Peru also claims that Argentina acted inconsistently with the procedural obligations of Articles 6 and 12 of the Anti-Dumping Agreement. The consultations in this dispute began in June 2010 and are continuing.

The ACWL assisted **Ecuador**, as a Member that joined the consultations in *European Union and a Member State – Seizure of Generic Drugs in Transit* (DS 408, DS 409). This dispute concerns seizures of generic drugs originating in India but transiting through ports and airports in the Netherlands to Brazil and other third country destinations, including Ecuador. India and Brazil sought consultations with the European Union and the Netherlands in May 2010 regarding these seizures. The complainants allege that the measures at issue are inconsistent with Articles V and X of the GATT 1994, several provisions of the TRIPs Agreement and Article XVI:4 of the WTO Agreement. Consultations took place in June and September 2010 and are continuing.

The ACWL assisted the **Philippines** as the respondent on certain aspects of the dispute in *Philippines – Taxes on Distilled Spirits* (DS 396, DS 403). The complainants, the European Union and the United States, allege that the Philippines' excise tax on certain distilled spirits is applied in a way that affords protection to domestic distilled spirits and subjects imported distilled spirits to internal taxes in excess of those applied to like domestic products, and is, therefore, inconsistent with Article III:2 of the GATT 1994. The Philippines contends that its measures are consistent with WTO law. The panels requested by the European Union and the United States were established in January and April 2010, respectively, and a single panel was composed to address both complaints in July 2010. The first meeting of the panel with the parties took place in November 2010 and the second meeting is scheduled to take place in February 2011. The panel expects to issue its final report to the parties in June 2011.

ONGOING DISPUTES

The ACWL continued to assist **Thailand** as the respondent in *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (DS 371). In this dispute, the Philippines claimed that Thailand's customs valuation of certain imports of cigarettes was inconsistent with the Customs Valuation Agreement and that aspects of Thailand's VAT, excise tax, health tax and television tax regimes were inconsistent with Articles III:2 and III:4 of the GATT 1994. Finally, the Philippines claimed that Thailand's administration of its customs, excise, and VAT laws and regulations was inconsistent with Articles X:1 and X:3 of the GATT 1994. Thailand contended that its measures were consistent with WTO law. The panel was composed in February 2009 and conducted its meetings with the parties in June and November 2009. The panel's interim report was

The ACWL's staff has now provided support in 38 WTO dispute settlement proceedings.

"The ACWL's advice has proven to be helpful not only with trade disputes, but also to ensure the conformity of domestic regulations with the rules of the WTO".

- Costa Rica.

issued to the parties on 30 June 2010. The Philippines then took the unusual step of exercising its right to a further hearing on aspects of the interim report. This hearing was held in July 2010. The panel issued its final report to the parties in August 2010 and the report was circulated in November 2010. The panel found that Thailand had acted inconsistently with the Customs Valuation Agreement with respect to the valuation of certain imports of cigarettes, but rejected the Philippines' claim that Thailand had a general practice of improperly rejecting the transaction value as the basis for the customs valuation of imports of cigarettes. The panel also found that certain aspects of Thailand's VAT regime were inconsistent with Articles III:2 and III:4 of the GATT 1994. Finally, the panel accepted some aspects of the Philippines's claims regarding the administration of Thailand's customs, excise and VAT laws and regulations under Articles X:1 and X:3 of the GATT 1994, while rejecting others. Any appeal of the panel's report will take place in the first half of 2011, according to a schedule agreed by the parties in consultation with the Appellate Body and approved by the Dispute Settlement Body at its meeting in December 2010.

The ACWL continued to assist **Costa Rica** as a third party in the panel proceedings in *European Communities – Tariff Treatment of Certain Information Technology Products* (DS 375, DS 376, DS 377). The United States, Japan and Chinese Taipei claimed that the European Union (EU) acted inconsistently with its obligations under GATT Articles II:1(a) and II:1(b) as it did not grant duty-free treatment to certain information technology products in accordance with the Information Technology Agreement (ITA). Under the ITA, 66 WTO Members had agreed to modify their schedules to provide for duty-free treatment for certain information technology products. The issue was whether the information technology products at issue were covered by the ITA. The complainants also alleged that the EU had acted inconsistently with Article X:1 of the GATT by failing to publish certain regulations. The EU contended that its measures were consistent with WTO law. The panel report was circulated to Members on 16 August 2010 and was adopted by the Dispute Settlement Body on 21 September 2010. The panel found that:

- The EU's measures on Flat Panel Displays (FPDs) were inconsistent with Article II:1(b) as duties were applied in excess of those listed in the EU Schedule. For those products where a duty suspension was in place, the measures were in violation of Article II:1(a);
- The EU's measures on Set Top Boxes Which Have a Communication Function (STBCs) and Multi-Functional Digital Machines (MFMs) were inconsistent with Article II:1(a) and Article II:1(b); and



- For certain STBCs, the EU acted inconsistently with Article X:1 obligations by failing to publish promptly the relevant regulations in such a manner as to enable governments and traders to become acquainted with them. In addition, the panel found that the EU acted inconsistently with Article X:2 as it had enforced one measure before its official publication.

The ACWL continued to assist **Thailand** in *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand* (DS 383). This dispute concerned the application by the United States of the practice known as "zeroing" of negative dumping margins in the United States' determination of the margins of dumping in its anti-dumping investigation of plastic carrier bags from Thailand. Thailand claimed that the use of this type of zeroing in this investigation was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement. The Appellate Body had previously found this type of zeroing to be inconsistent with WTO law and the United States has abandoned its use. In these circumstances, the parties entered into a procedural agreement under which the United States did not dispute Thailand's claim and the parties requested the panel to expedite the proceeding. The parties and third parties also waived their right to a hearing before the panel. Consequently, the panel proceeding was completed within a much shorter time frame than usual. The panel report was circulated on 22 January 2010 and found that the use of zeroing in this investigation was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement. The ACWL assisted Thailand in negotiating an agreement with the United States on the reasonable period of time for implementation of the panel's finding. The reasonable period of time expired in August 2010.

SUPPORT PROVIDED THROUGH EXTERNAL COUNSEL

To date, the ACWL has provided support through external counsel in five WTO dispute settlement proceedings. These are listed in Appendix 1. In 2010, the Dominican Republic received support through external counsel in the dispute *Dominican Republic – Safeguards Measures on Imports of Polypropylene Bags* (DS 415, DS 416, DS 417, DS 418).

exchange rate management/exchange-rate policy?
undefined terms in Article XV – “foreign exchange
policy”; “exchange restrictions”; “exchange controls”
Articles draw a distinction between exchange policies
(VIII) and exchange rate policies (determining the value
Article IV).
During of GATT, we had fixed exchange rates, so there was no
the GATT provisions concerning the harmful effects of
manipulations;
(1977) – Japanese banks instructed not to open new letters of credit for
years
deposit requirement for purchases of foreign currency



Delegates from nearly all ACWL Members and from two thirds of the LDCs with missions in Geneva have participated in ACWL training courses.

TRAINING

The ACWL provides training on WTO law through annual courses, occasional seminars and training sessions on topical issues of interest, and the Secondment Programme for Trade Lawyers.

The ACWL structures its annual training courses on a three-year cycle. The first course covers the basic principles of WTO law, the second the WTO agreements relating to trade remedies, trade in services and trade-related intellectual property rights, and the third the WTO dispute settlement procedures. The ACWL has completed eight annual training courses so far. Participants that attended two thirds of the sessions in a given year are awarded a Certificate of Training. To date, the ACWL has awarded 220 Certificates of Training. Delegates from nearly all ACWL Members and from two thirds of the LDCs with missions in Geneva have participated in ACWL training courses.

The ACWL also conducts supplementary sessions for delegates who are unable to attend a regularly-scheduled session or have detailed queries on a topic covered in the course. The supplementary sessions are intended primarily for delegates from LDCs and other countries with small missions in Geneva. In addition, the ACWL offers seminars on significant panel and Appellate Body rulings and other subjects of interest and, upon request, training sessions on specific issues of WTO law.

In 2005, the ACWL launched the Secondment Programme for Trade Lawyers, under which government lawyers from developing country Members

and LDCs join the staff of the ACWL as paid trainees for a nine-month term starting in mid-September and ending in mid-June of the following year. The programme gives government lawyers from developing countries and LDCs an opportunity to work with, and learn from, a team of experienced lawyers that are actively involved in WTO legal issues and dispute settlement proceedings. It is funded by voluntary contributions made by developed country Members of the ACWL. To date, 14 government lawyers from nine developing countries and four LDCs have participated in the programme.

ANNUAL TRAINING COURSES

In March 2010, the ACWL completed its eighth annual training course, which addressed the basic principles of WTO law, including the most-favoured nation and national-treatment principles, and the rules governing border measures. At the conclusion of this course, the ACWL awarded Certificates of Training to 29 of the 35 Geneva-based delegates who registered for the course. Among the delegates that received certificates were six from LDCs.

In October 2010, the ACWL commenced its ninth annual training course, which focuses on the WTO agreements regarding trade remedies (anti-dumping and countervailing duties and safeguard measures), trade in services and trade-related intellectual property rights. The course includes a moot court exercise, in which the participants address a legal problem based on the issues taught in the course in a simulated WTO dispute settlement panel proceeding. The course will be completed in March 2011.

SURVEY

At the end of each year's training course, the ACWL asks the participants to complete a questionnaire seeking feedback on the course. This feedback is helpful in maintaining and improving the quality of the training course for subsequent years. In this year's survey, the participants reported satisfaction with the training course: one participant described it as "a comprehensive academic and professional course that afforded a critical and analytical insight into WTO law and jurisprudence". Others described it as an "excellent overview of various WTO agreements" and an "excellent training program" that gives "very thoughtful legal insight". The participants were particularly interested in the moot court exercise and suggested that more time be devoted to the moot court in future training courses. The participants also welcomed the availability of "make-up" classes for participants that miss some of the regularly-scheduled classes. Finally, one participant suggested that the ACWL conduct *ad hoc* seminars on major WTO panel and Appellate Body reports. The ACWL will take these comments into account in structuring its future training activities.

"The ACWL's training course is a comprehensive academic and professional course that afforded a critical and analytical insight into WTO law and jurisprudence".

- Course participant.



In 2010, the ACWL's special seminars included a seminar on "Monetary Policy and WTO Law".

SEMINARS AND TRAINING SESSIONS

In 2010, the ACWL conducted three seminars on issues of WTO law and jurisprudence that were of particular interest to the ACWL's developing country Members and LDCs. These seminars were well attended and gave the participants a better understanding of the issues under discussion.

In January, the ACWL hosted a seminar on the WTO Appellate Body's proposed changes to its Working Procedures for Appellate Review, which had been circulated to WTO Members earlier that month. The proposed changes involved (i) the deadlines for the filing of submissions, (ii) the electronic filing of documents, and (iii) procedures for consolidating appeals of closely-related panel reports. The seminar met with interest because many developing countries were concerned that the proposed changes would increase the burden of Appellate Body proceedings. The Appellate Body announced the final changes to its rules in July 2010.

In March, the ACWL hosted a seminar on the Appellate Body report in *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products* (WT/DS363/AB/R), circulated on 21 December 2009. In the report, the Appellate Body addressed the question of whether China's restrictions on the right to import publications and audiovisual entertainment products were consistent with China's Protocol of Accession and whether those restrictions could be justified under Article XX(a) of GATT 1994. The Appellate Body also addressed the scope of China's services commitments on distribution services.

In November, in light of the increasing concern of WTO Members regarding monetary policies designed to promote exports and restrain imports, the ACWL hosted a seminar entitled "Monetary Policy and WTO Law". The seminar analysed the rules of the GATT and other WTO agreements governing the relationship between the world trade order and the international monetary system, the roles assigned to the IMF and the WTO under those rules and the legal issues that arise when trade measures are taken to correct current account imbalances.



SECONDMENT PROGRAMME FOR TRADE LAWYERS

In 2010, the ACWL completed the fourth cycle of the Secondment Programme for Trade Lawyers and launched the fifth. The only participant in the 2009-2010 cycle completed her secondment in June 2010. Ms. Catherine Muganga returned to her position in the Ministry of Justice and Constitutional Affairs of Uganda.

Members and LDCs nominated a total of 50 candidates for the 2010-2011 cycle of the programme. Eight candidates were invited to come to Geneva for interviews. The three successful candidates are now participating in the 2010-2011 cycle. Their backgrounds are as follows:

Mr. Mesut Aydin is a foreign trade expert in Turkey's Undersecretariat of Foreign Trade. His responsibilities include negotiating and concluding free trade agreements with the countries covered by the European Union's common commercial policy. He has law degrees from Gazi University Law School and the Fletcher School of Law and Diplomacy.

Ms Gaewgarn Fuangtong is a trade officer in the Bureau of Trade Interests and Remedies in Thailand's Ministry of Commerce. Her responsibilities include assisting in anti-dumping proceedings initiated by Thailand, as well as assisting Thai producers to defend trade remedy proceedings initiated by other WTO Members. She has law degrees from Thammasat University in Bangkok, the University of Chicago and New York University.

Mr. Jose Mario Elin Tan is a lawyer in the Office of the Solicitor-General of the Philippines, which represents the government of the Philippines before domestic courts and international tribunals such as WTO panels and the Appellate Body. Mr. Tan holds a law degree from Ateneo de Manila University in the Philippines. He is a member of the California bar and the integrated bar of the Philippines.

Fourteen lawyers from 13 countries have participated in the Secondment Programme for Trade Lawyers.

OUTREACH

The WTO has "benefited from the special collaboration of" the ACWL in its training courses.

- WTO.

The ACWL's outreach activities are an important means of ensuring that developing countries and LDCs are sufficiently familiar with the opportunities offered by the ACWL. The ACWL organises its own outreach activities and participates as frequently as possible in those conducted by the WTO and other organizations.

In 2010, the ACWL's lawyers made presentations – in all three official languages of the WTO – at a total of 11 WTO training courses, including the Geneva Week for non-resident WTO Members, the Introduction Course for LDCs, and advanced courses on the TBT Agreement, the SPS Agreement, and on dispute settlement. These courses provide an excellent opportunity to introduce the ACWL to capital-based officials that cannot participate in the ACWL's own training courses. The WTO has stated that it has "benefited from the special collaboration" of the ACWL in its advanced dispute settlement course.

The ACWL's lawyers also regularly participate in training programmes, moot court exercises, and presentations to students conducted by academic and non-governmental organizations such as the World Trade Institute (WTI) in Bern and the Quaker United Nations Office (QUNO). These activities help the ACWL to explain its services and the role of developing countries and the LDCs in the multilateral trading system to civil society. This is an important means of raising awareness of the ACWL.

Finally, the ACWL's lawyers are frequently invited to speak at seminars and conferences on international trade law issues. In 2010, these included the American Law Institute's annual conference on the jurisprudence of the WTO and the annual trade law conference of the British Institute of International and Comparative Law.

A full list of the outreach activities in which the ACWL's lawyers participated in 2010 is provided in Appendix 3.

INSTITUTIONAL MATTERS

MEMBERSHIP

DEVELOPED COUNTRIES

The ACWL has ten developed country Members, which have provided most of the funding of the ACWL through their contributions to the ACWL's Endowment Fund and Working Capital Fund. These countries are listed in Appendix 4.

In 2010, Australia, which had previously announced a generous contribution of AUS\$3 million (approximately CHF2.8 million) to the ACWL, initiated its domestic legislative process to accede to the Agreement Establishing the ACWL. In its National Interest Analysis of whether to accede to the ACWL, Australia concluded that the

ACWL comprises highly skilled and well-regarded lawyers who contribute effectively to strengthening the WTO dispute system, as well as prosecuting their developing country clients' interests. The ACWL has made a significant contribution to the development of the WTO dispute settlement system as a cornerstone of the WTO. The involvement of developing countries is essential for the ongoing legitimacy of this system, as is developing countries' equal enjoyment of rights within that system. By joining and contributing to the ACWL, Australia will be helping to increase developing countries' access to legal services and the WTO dispute settlement system. In turn, this will foster a sense of confidence and equity in the multilateral trading system, as developing WTO Members become better able to enforce their rights under international trade law.

DEVELOPING COUNTRIES

Twenty-one developing countries originally accepted the Agreement Establishing the ACWL. Latvia withdrew from the ACWL in May 2004 upon its accession to the European Union. In addition, ten developing countries have acceded to the ACWL, bringing the total number of developing country Members to 30. These are listed in Appendix 4.

Georgia initiated the accession process in October 2006 but has yet to take further steps to pursue the process.

"By joining and contributing to the ACWL, Australia will be helping to increase developing countries' access to legal services and the WTO dispute settlement system".

- Australia.

Seventy-four countries are entitled to the services of the ACWL.

LDCs

Any country designated by the United Nations as an LDC is entitled to the services of the ACWL, provided that it is a Member of the WTO or in the process of acceding to the WTO. Unlike developing countries, LDCs need not join the ACWL and contribute to the ACWL's Endowment Fund to acquire the right to use the ACWL's services. There are 43 LDCs currently entitled to the services of the ACWL. These are listed in Appendix 5.

THE ACWL'S GEOGRAPHICAL REACH

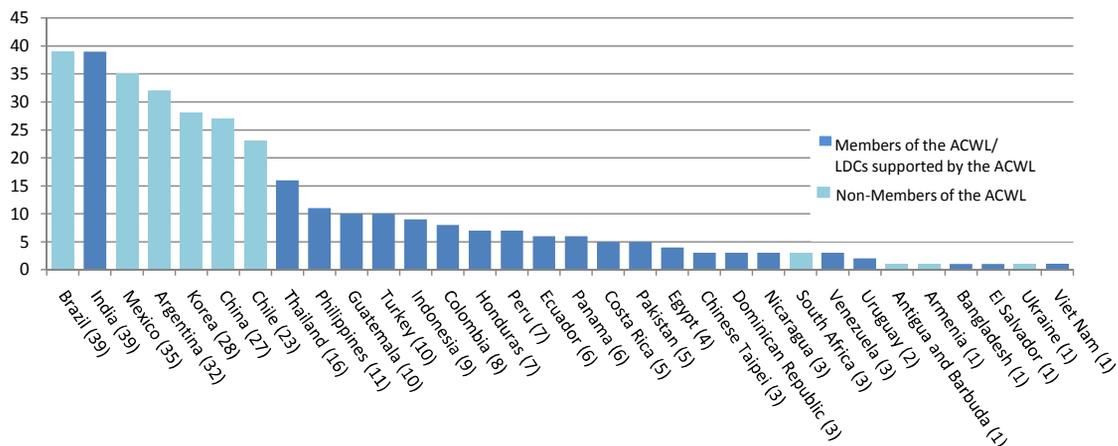
As explained above, the ACWL's services are currently available to a total of 73 countries: 30 developing countries, 31 LDCs that are Members of the WTO and 12 LDCs that are currently in the process of acceding to the WTO. The map below indicates the countries currently entitled to the services of the ACWL. The Members of the ACWL are indicated in dark blue and the LDCs in light blue. This map shows that almost half of the countries (35) are in Africa. The other main geographical areas represented are Central and South America and South East Asia.



The chart below lists the 31 developing countries and one LDC that have been either a complainant or respondent in WTO dispute settlement proceedings since the ACWL was established in 2001 and the total number of disputes in which those countries have participated since 1995. Six of the developing countries with the greatest experience in WTO dispute settlement (Brazil, Mexico, Argentina, Korea, China and Chile) have not considered it necessary to join the ACWL. However, 22 of the remaining 25 developing countries that have participated in dispute settlement proceedings since 2001 have joined the ACWL. Thus, the ACWL has attracted developing countries that are actively involved in WTO legal matters but lack experience in these matters. These are the very countries that the ACWL was intended to benefit.

The ACWL has attracted countries that are actively involved in WTO legal matters but lack experience in these matters.

ACWL Membership and Participation in Dispute Settlement Proceedings



Note: The columns and numbers in parentheses indicate the frequency with which the country has participated as a complainant or respondent in WTO dispute settlement proceedings. Five other developing countries – Hong Kong, China, Malaysia, Singapore, Sri Lanka, and Trinidad & Tobago – participated in dispute settlement proceedings before the ACWL was established, but have not done so since. Hong Kong, China and Sri Lanka have both become Members of the ACWL.



THE GENERAL ASSEMBLY

The General Assembly is the ACWL's highest decision-making body, consisting of the representatives of the Members of the ACWL and of the LDCs entitled to the services of the ACWL. In 2010, Mr. Declan Morrin (Ireland) continued to serve as its Chairperson. On 10 December 2010, Mr. Michael Wei (Chinese Taipei) replaced Dr. Mohammed Saeed (Pakistan) as Vice-Chairperson.

THE MANAGEMENT BOARD

The ACWL's Management Board takes the decisions necessary to ensure the efficient and effective operation of the ACWL and reports to the General Assembly. The Management Board consists of six persons serving in their personal capacities who have been selected on the basis of their professional qualifications in the field of WTO law or international trade relations and development. Three Board members are nominated by the developing country Members, two by the developed country Members and one by the LDCs. In addition, the Executive Director serves *ex officio* on the Board.

In 2010, the Management Board consisted of H.E. Mr. Bozkurt Aran (Turkey), Mr. Martin Glass (Hong Kong, China), H.E. Mr. Darlington Mwape (Zambia), Dr. Stuart Robinson (Switzerland), H.E. Mr. Eduardo Ernesto Sperisen-Yurt (Guatemala) and Mr. John M. Weekes (Canada). Dr. Robinson served as Chairperson of the Management Board and H. E. Mr. Sperisen-Yurt as Vice-Chairperson.



THE STAFF

As of 31 December 2010, the ACWL's staff consisted of nine lawyers (including the Executive Director), three junior lawyers participating in the Secondment Programme for Trade Lawyers and two office administrators.

The operations of the ACWL are managed by the Executive Director, Mr. Frieder Roessler, and the Deputy Director, Mr. Leo Palma. The lawyers are, in alphabetical order: Mr. Niall Meagher and Ms Cherise Valles (Senior Counsel); Mr. Jan Bohanes, Ms Tegan Brink, Mr. Hunter Nottage, Mr. Fernando Piérola and Mr. Alejandro Sanchez (Counsel). Biographies of the lawyers are available on the ACWL website.

The ACWL's office administrators are Ms Pascale Colombo and Ms Carol Lau.

To contact an individual ACWL staff member, please use the standard email format: **name.surname@acwl.ch**. Emails for the Executive Director should be addressed to one of the office administrators.

APPENDIX I

WTO DISPUTES IN WHICH THE ACWL HAS PROVIDED SUPPORT

SUPPORT PROVIDED BY THE ACWL'S STAFF

For [Costa Rica](#), [Guatemala](#), [El Salvador](#) and [Honduras](#) as the complainants in *Dominican Republic - Safeguards on Imports of Polypropylene Bags* (DS 415, DS 416, DS 417, DS 418).

For [Peru](#), as the complainant in *Argentina - Anti-Dumping Duties on Fasteners and Chains from Peru* (DS 410).

For [Ecuador](#), as a Member that joined the consultations in *European Union and a Member State - Seizure of Generic Drugs in Transit* (DS 408, DS 409).

For the [Philippines](#), as the respondent in *Philippines - Taxes on Distilled Spirits* (DS 396, DS 403).

For [Guatemala](#), as the complainant in *China - Grants, Loans and Other Incentives* (DS 390).

For [Costa Rica](#), as a third party in *European Communities - Tariff Treatment of Certain Information Technology Products* (DS 375, DS 376, DS 377).

For [Thailand](#), as the respondent in *Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines* (DS 371).

For [Thailand](#), as the complainant in *United States - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand* (DS 383).

For [Indonesia](#), as the complainant in *South Africa - Anti-Dumping Measures on Uncoated Woodfree Paper* (DS 374).

For [Colombia](#), as the complainant in *European Communities - Regime for the Importation of Bananas* (DS 361).

For [Colombia](#), as a third participant in the Appellate Body proceedings in *European Communities - Regime for the Importation, Sale and Distribution of Bananas (Second Recourse to Article 21.5 of the DSU by Ecuador)* (DS 27).

For [Panama](#), as the complainant in *Colombia - Indicative Prices and Restrictions on Ports of Entry* (DS 366).

For [Thailand](#), as a third party in *United States - Continued Existence and Application of Zeroing Methodology* (DS 350).

For [Panama](#), as the complainant in *Colombia - Customs Measures on Importation of Certain Goods from Panama* (DS 348).

For [Chad](#), as the third party in *United States - Subsidies on Upland Cotton: Recourse to Article 21.5 of the DSU by Brazil* (DS 267).

For [Thailand](#), as the complainant in *United States - Measures Relating to Shrimp from Thailand* (DS 343).

For [Thailand](#), as a third party in *United States - Final Dumping Determination on Softwood Lumber from Canada* (DS 264).

For [Colombia](#), [Costa Rica](#), [Ecuador](#) and [Guatemala](#), as interested parties in *European Communities - The ACP - EC Partnership Agreement (First and Second Recourse to Arbitration pursuant to the Decision of 14 November 2001)* (WT/L/616, WT/L/625).

For [Guatemala](#), as the complainant in *Mexico - Anti-dumping Duties on Steel Pipes and Tubes from Guatemala* (DS 331).

For **Pakistan**, as the complainant in *Egypt - Anti-dumping Duties on Matches from Pakistan* (DS 327).

For **Thailand**, as the complainant in *United States - Provisional Anti-dumping Measures on Shrimp from Thailand* (DS 324).

For **Thailand**, as the third party in *United States - Measures relating to Zeroing and Sunset Reviews* (DS 322).

For **Indonesia**, as the complainant in *Korea - Anti-dumping Duties on Imports of Certain Paper from Indonesia* (DS 312).

For **Bangladesh**, as the complainant in *India - Anti-dumping Measure on Batteries from Bangladesh* (DS 306).

For **Honduras**, as the complainant in *Dominican Republic - Measures Affecting the Importation and Internal Sale of Cigarettes* (DS 302).

For **Guatemala**, as the complainant in *Mexico - Certain Pricing Measures for Customs Valuation and Other Purposes* (DS 298).

For **Thailand**, as the complainant in *European Communities - Customs Classification of Frozen Boneless Chicken Cuts* (DS 286).

For **Nicaragua**, as the complainant in *Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua* (DS 284).

For **Thailand**, as the complainant in *European Communities - Export Subsidies on Sugar* (DS 283).

For **the Philippines**, as the complainant in *Australia - Certain Measures Affecting the Importation of Fresh Pineapple* (DS 271).

For **the Philippines**, as the complainant in *Australia - Certain Measures Affecting the Importation of Fresh Fruit and Vegetables* (DS 270).

For **Paraguay**, as a third party in *European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries* (DS 246).

For **India**, as the complainant in *European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries* (DS 246).

For **India**, as the complainant in *United States - Rules of Origin for Textiles and Apparel Products* (DS 243).

For **Ecuador**, as the complainant in *Turkey - Certain Procedures for the Import of Fresh Fruit* (DS 237).

For **Peru**, as the complainant in *European Communities - Trade Description of Sardines* (DS 231).

For **Pakistan**, as the complainant in *United States - Transitional Safeguard Measures on Combed Cotton Yarn from Pakistan* (DS 192).

For **India**, as the respondent in *India - Measures Affecting the Automobile Industry* (DS 146, DS 175).

SUPPORT PROVIDED THROUGH EXTERNAL LEGAL COUNSEL

For the **Dominican Republic**, as the respondent in *Dominican Republic - Safeguards on Imports of Polypropylene Bags* (DS 415, DS 416, DS 417, DS 418).

For **Colombia**, as the respondent in *Colombia - Indicative Prices and Restrictions on Ports of Entry* (DS 366).

For **Turkey**, as the respondent in *Turkey - Measures Affecting the Importation of Rice* (DS 334).

For **the Dominican Republic**, as the respondent in the arbitration proceedings pursuant to Article 21.3(c) of the DSU in *Dominican Republic - Measures Affecting the Importation and Internal Sale of Cigarettes* (DS 302).

For **Colombia, Ecuador, Peru and Venezuela**, as third parties in *EC - Conditions for the granting of Tariff Preferences to Developing Countries* (DS 246).

APPENDIX 2

ROSTER OF EXTERNAL COUNSEL

| LAW FIRMS | INDIVIDUALS |
|--|---|
| AKIN GUMP STRAUSS HAUER & FELD LLP ARENT FOX LLP BORDEN LADNER GERVAIS LLP ECONOMIC LAWS PRACTICE (ELP) FRATINI VERGANO GIDE LOYRETTE NOUEL JOCHUM SHORE & TROSSEVIN PC KING & SPALDING LLP LAW OFFICES OF AMELIA PORGES PLLC MINTER ELLISON O'CONNOR & COMPANY SIDLEY AUSTIN LLP SHIN & KIM THE LAW OFFICES OF GARY N. HORLICK VAN BAEL & BELLIS VERMULST VERHAEGHE GRAAFSMA & BRONCKERS WHITE & CASE LLP WINSTON & STRAWN LLP | MR. EDMOND MCGOVERN MR. DONALD MCRAE |

APPENDIX 3

ACWL OUTREACH ACTIVITIES 2010

| DATE | WTO TRAINING COURSES |
|--------------|--|
| 19 FEBRUARY | 24TH DISPUTE SETTLEMENT COURSE (IN FRENCH) |
| 14 JUNE | 17TH INTRODUCTION COURSE FOR LDCs (IN FRENCH) |
| 18 JUNE | ADVANCED COURSE ON THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE |
| 27 JULY | 18TH INTRODUCTION COURSE |
| 28 OCTOBER | ADVANCED COURSE ON THE SPS AGREEMENT |
| 6 NOVEMBER | ADVANCED COURSE ON DISPUTE SETTLEMENT |
| 10 NOVEMBER | ADVANCED TRADE POLICY COURSE |
| 15 NOVEMBER | 21ST GENEVA WEEK (FOR LDCs WITHOUT MISSIONS IN GENEVA) |
| 24 NOVEMBER | ADVANCED TRADE POLICY COURSE |
| 6 DECEMBER | ADVANCED TRADE POLICY COURSE |
| 6-9 DECEMBER | ADVANCED COURSE ON DISPUTE SETTLEMENT (IN SPANISH) |
| | PRESENTATIONS |
| 24 FEBRUARY | WORLD TRADE INSTITUTE, UNIVERSITY OF BERN |
| 2 MARCH | UNIVERSITY OF READING, UNITED KINGDOM |
| 19 MARCH | INTERNATIONAL ECONOMIC LAW AND POLICY LL.M. PROGRAMME, UNIVERSITY OF BARCELONA |
| 03 JUNE | INTERNATIONAL AND BUSINESS LAW LL.M. PROGRAMME, UNIVERSITÉ DE LAUSANNE |

| | |
|------------|--|
| 26 APRIL | WORLD TRADE INSTITUTE, UNIVERSITY OF BERN |
| 24 JUNE | WORLD TRADE INSTITUTE MOOT COURT COMPETITION |
| 8 JULY | QUAKER UNITED NATIONS OFFICE SUMMER PROGRAMME |
| 21 OCTOBER | INTERNATIONAL AND BUSINESS LAW LL.M. PROGRAMME, UNIVERSITÉ DE LAUSANNE |
| | OTHER OUTREACH ACTIVITIES |
| 2 MARCH | GRADUATE INSTITUTE GENEVA, SEMINAR UPDATE ON WTO DISPUTE SETTLEMENT |
| 23 APRIL | IDEAS CENTRE PROGRAMME ON WTO DISPUTE SETTLEMENT AND TRADE REMEDIES FOR A DELEGATION OF CAPITAL-BASED VIETNAMESE OFFICIALS |
| 19-20 MAY | 10TH ANNUAL WTO CONFERENCE OF THE BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW |
| 4 JUNE | PRESENTATION AT THE CANADIAN MISSION ON THE ACWL AND DEVELOPING COUNTRIES IN THE WTO DISPUTE SETTLEMENT |
| 7 JUNE | CONFERENCE OF AMERICAN LAW INSTITUTE ON WTO DISPUTE SETTLEMENT |
| 27-30 JULY | MEETING OF TRAPCA'S EXTERNAL ADVISORY BOARD AND ANNUAL TRADE CONFERENCE (IN ARUSHA, TANZANIA) |

APPENDIX 4

MEMBERS OF THE ACWL

| SIGNATORIES TO THE AGREEMENT ESTABLISHING THE ACWL | MEMBERS ENTITLED TO THE SERVICES OF THE ACWL (30) | DEVELOPED COUNTRY MEMBERS (10) |
|--|--|---|
| | BOLIVARIAN REPUBLIC OF VENEZUELA BOLIVIA COLOMBIA DOMINICAN REPUBLIC ECUADOR EGYPT GUATEMALA HONDURAS HONG KONG, CHINA INDIA KENYA NICARAGUA PAKISTAN PANAMA PARAGUAY PERU PHILIPPINES THAILAND TUNISIA URUGUAY | CANADA DENMARK FINLAND IRELAND ITALY NETHERLANDS NORWAY SWEDEN UNITED KINGDOM |
| ACWL MEMBERS BY ACCESSION | JORDAN (20 January 2002) OMAN (25 April 2003) MAURITIUS (11 June 2003) TURKEY (17 August 2003) EL SALVADOR (3 September 2004) INDONESIA (28 April 2004) CHINESE TAIPEI (13 May 2004) SRI LANKA (21 November 2008) COSTA RICA (30 April 2009) VIET NAM (25 September 2009) | SWITZERLAND (5 December 2004) |
| IN THE PROCESS OF ACCESSION | GEORGIA | |

APPENDIX 5

LDCs ENTITLED TO THE SERVICES OF THE ACWL

| MEMBERS OF THE WTO (31) | IN THE PROCESS OF ACCEDING TO THE WTO (12) |
|-------------------------------------|--|
| ANGOLA | AFGHANISTAN |
| BANGLADESH | BHUTAN |
| BENIN | COMOROS |
| BURKINA FASO | EQUATORIAL GUINEA |
| BURUNDI | ETHIOPIA |
| CAMBODIA | LAO PEOPLE'S DEMOCRATIC REPUBLIC |
| CENTRAL AFRICAN REPUBLIC | LIBERIA |
| CHAD | SAMOA |
| DEMOCRATIC REPUBLIC OF THE CONGO | SAO TOMÉ AND PRINCIPE |
| DJIBOUTI | SUDAN |
| GAMBIA | VANUATU |
| GUINEA | YEMEN |
| GUINEA-BISSAU | |
| HAITI | |
| LESOTHO | |
| MADAGASCAR | |
| MALAWI | |
| MALI | |
| MAURITANIA | |
| MOZAMBIQUE | |
| MYANMAR | |
| NEPAL | |
| NIGER | |
| RWANDA | |
| SENEGAL | |
| SIERRA LEONE | |
| SOLOMON ISLANDS | |
| TOGO | |
| UGANDA | |
| UNITED REPUBLIC OF TANZANIA | |
| ZAMBIA | |