



# REPORT ON OPERATIONS 2009



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 74 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.

Demand for the ACWL's services continued to increase in 2009. The ACWL provided 194 legal opinions to its Members and LDCs, more than in any previous year. The ACWL provided support in three new WTO dispute settlement proceedings and three ongoing disputes. The ACWL's staff has now been involved in a total of 34 disputes. The ACWL awarded 34 Certificates of Training in its annual training course, bringing the total of certificates awarded in the seven courses completed to date to 191.

Costa Rica and Viet Nam acceded to the ACWL in 2009. The ACWL now has 30 developing country Members, compared to 20 when the ACWL began its operations. Apart from developing countries with significant litigation experience, almost all developing countries that have been involved in WTO dispute settlement proceedings have now joined the ACWL.

In a recent report to the ACWL's General Assembly, the ACWL's Management Board reviewed the ACWL's performance and concluded that "the ACWL has established itself as an efficient, competent and sought-after provider of legal assistance". I would like to thank all those who have contributed over the years to this success, above all my staff for their hard work, the Management Board for its wise guidance and the Members and least-developed countries for their constructive cooperation.



Frieder **ROESSLER**, *Executive Director*

# THE ACWL IN FIGURES

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	2009	2008
<b>OPERATIONS</b>		
Legal opinions	194	175
WTO disputes in which the ACWL provided support	6	7
New requests for support in WTO disputes	3	2
Certificates of Training awarded	34	32
<b>MEMBERSHIP</b>		
Developed country Members	10	10
Developing country Members	30	28
LDCs entitled to the services of the ACWL	44	45
Countries entitled to the services of the ACWL	74	73
<b>STAFF</b>		
Lawyers, including the Executive Director	7	8
Participants in the Secondment Programme for Trade Lawyers	1	3
Administrative staff	2	2

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# THE ACWL'S OPERATIONS

## LEGAL ADVICE

"The ACWL's legal advice is important, given the institutional weaknesses and lack of trade law skills in our countries, in particular in LDCs." - Rwanda.

The ACWL has provided developing countries and least-developed countries<sup>1</sup> (LDCs) with more than 700 legal opinions since its establishment in mid-2001. In response to the ACWL's annual surveys of the users of its legal advice, Members and LDCs have consistently reported that they found the advice provided by the ACWL to have been timely, comprehensive and helpful in resolving their legal concerns.

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. Given the volume of these opinions in recent years, the ACWL has acquired substantial experience in this area.

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. The ACWL is in a unique position to provide a neutral assessment of the legal issues in these situations.

The third category of legal opinions concerns measures of another WTO Member that the developing country or LDC seeking the advice considers challenging under the WTO dispute settlement procedures. 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.

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

The ACWL provided 194 legal opinions to ACWL Members and LDCs, more than in any previous year.

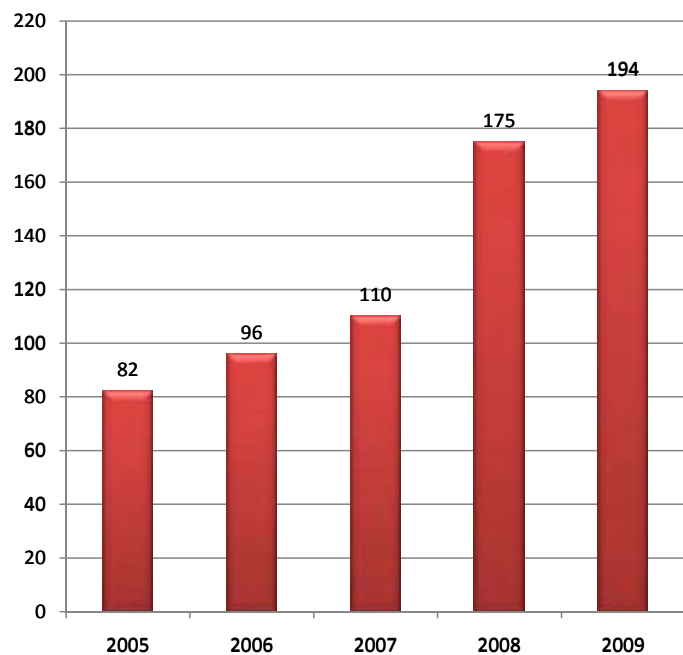
#### NUMBER OF OPINIONS

In 2009, 20 of the ACWL's 30 developing country Members sought legal advice from the ACWL. In addition, all of the 44 LDCs entitled to its services benefited from the ACWL's legal advice through ten requests submitted on behalf of the WTO LDCs' Consultative Group. Further, ten LDCs individually sought legal advice from the ACWL.

The ACWL provided a total of 194 legal opinions, of which 88 were provided in writing and 106 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 or for which no preparation was required.

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 82 in 2005, to 96 in 2006, to 110 in 2007, to 175 in 2008 and to 194 in 2009.

**ACWL Legal Opinions 2005-2009**



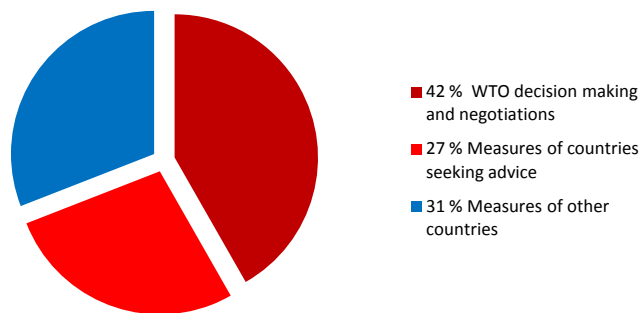
## TYPES OF OPINIONS

Of the 194 legal opinions provided in 2009, 81 (42 per cent) concerned issues regarding WTO decision making and negotiations in such areas as services, trade facilitation, accessions and the reform of the DSU. The ACWL also responded to 53 requests from countries seeking advice about their own measures (27 per cent of the total). This included advice on proposed legislation on trade remedies, technical standards and intellectual property rights. Finally, the ACWL provided 60 legal opinions regarding measures taken by other WTO Members (31 per cent of the total), in most cases trade remedy measures. As in previous years, in about half of these cases, the country whose measure was at issue was another developing country.

The ACWL was frequently requested to provide continuous legal support in drafting negotiating proposals or domestic legislation. For instance, the ACWL gave advice to the WTO LDCs' Consultative Group on legal issues that arose in the Doha Development Agenda and in the drafting of the 6th LDC Ministerial Declaration. When Members and LDCs sought advice on proposed legislation, they frequently requested legal opinions not only on the initial legislative proposal but also on subsequent revisions of that proposal.

The breakdown of the ACWL's legal opinions between the three categories of legal opinions provided in 2009 is illustrated in the chart below.

Legal Opinions 2009 by Type of Opinion



The overwhelming majority of the ACWL's legal opinions concerned issues arising in WTO decision making and negotiations or the Member's or LDC's own measure.

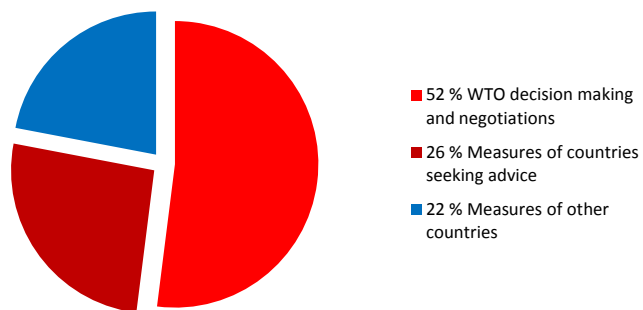
The following table provides a breakdown of the number of legal opinions by category from 2005 to 2009.

**ACWL LEGAL OPINIONS BY TYPE OF OPINION 2005-2009**

TYPE OF OPINION	2005		2006		2007		2008		2009	
	TOTAL	SHARE OF TOTAL	Total	SHARE OF TOTAL	Total	SHARE OF TOTAL	Total	SHARE OF TOTAL	TOTAL	SHARE OF TOTAL
WTO DECISION MAKING AND NEGOTIATIONS	47	57%	66	69%	48	44%	83	47%	81	42%
MEASURES OF COUNTRIES SEEKING ADVICE	17	21%	11	11%	39	35%	61	35%	53	27%
MEASURES OF OTHER COUNTRIES	18	22%	19	20%	23	21%	31	18%	60	31%

The average distribution between the three categories of legal opinions during the past five years is shown in the chart below. As this chart shows, 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 this advice. Only 22 per cent of the legal opinions provided during this period related to measures of other countries. As noted above, approximately half of these opinions concerned measures of other developing countries.

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



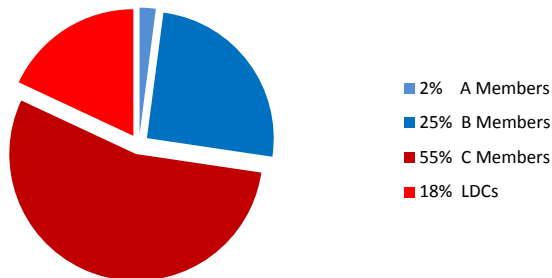
The majority of legal opinions were provided to Category C Members and LDCs.

### 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 the category A Members having the highest GNP per capita and largest share of world trade. As detailed in the table and chart below, the category B Members requested 25 per cent of the opinions, while only two per cent were requested by category A Members. Of the 194 opinions provided in 2009, the majority (73 per cent) were sought by category C Members (55 per cent) and LDCs (18 per cent).

MEMBERSHIP CATEGORY	NUMBER OF OPINIONS	PERCENTAGE OF TOTAL
A	4	2
B	49	25
C	106	55
LDC	35	18
<b>TOTAL</b>	<b>194</b>	<b>100</b>

Legal Opinions in 2009 by Category of Member



"If the ACWL were not an intergovernmental organization but instead were itself a WTO member country, it would be considered as the third most frequently active complainant litigant." - Professor Chad Bown

## DISPUTE SETTLEMENT SUPPORT

Over the past eight and a half years, the ACWL provided support to 17 Members and two LDCs directly through its staff in 34 disputes and through external legal counsel in four disputes. A full list of these disputes is set out in Appendix 1.

In his recent book on the participation of developing countries in the WTO dispute settlement system, Professor Chad Bown describes the role of the ACWL in WTO dispute settlement as follows:

. . . between 2001 and 2008, the ACWL (nineteen times) has worked legally on behalf of the complainant members in more disputes than any WTO member acted as a complainant in its own disputes except for the United States (also nineteen times) and the EC (twenty-one times). Put differently, if the ACWL were not an intergovernmental organization but instead were itself a WTO member country, it would be considered as the third most frequently active complainant litigant...<sup>2</sup>

Although an individual developing country Member or LDC that seeks the ACWL's support may not have participated frequently in WTO dispute settlement proceedings, it can nevertheless benefit from the experience gained by ACWL lawyers in previous cases. Thus, the ACWL pools the experience of each of its developing country Members and LDCs in WTO legal matters and makes the accumulated experience available to all of them. The availability of this experience ensures that developing countries and LDCs have an equal opportunity to defend their interests in WTO dispute settlement proceedings.

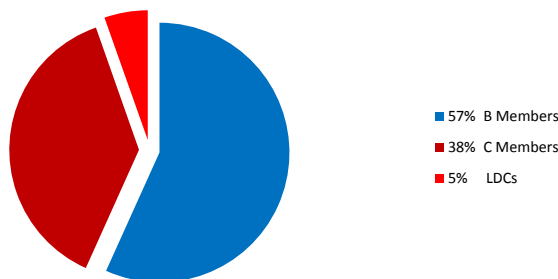
<sup>2</sup> Chad P. Bown, *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement*, Brookings Institution Press – Washington D.C., page 138.

## The ACWL combines its assistance in dispute settlement with capacity building.

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 the 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 among ACWL Members and LDCs.

**Assistance in Dispute Settlement Proceedings  
by Category of Member 2001-2009**



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 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, the ACWL's staff normally assists the party that first requested advice on the matter. The ACWL provides support to the other party through external counsel.

## The ACWL provided support in three new and three ongoing disputes in 2009.

The ACWL has established a Roster of External Counsel, made up of experienced law firms and individuals that have agreed to represent developing countries and LDCs at reduced rates 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. 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

#### NEW DISPUTES

The ACWL assisted its Members in three new dispute settlement proceedings in 2009.

The ACWL assisted **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 from the Philippines was inconsistent with the Customs Valuation Agreement. The Philippines also claimed that Thailand's VAT regime and aspects of its excise tax, health tax and television tax regimes are inconsistent with Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994 (GATT). The Philippines also claimed that Thailand's administration of its customs, excise, and VAT laws and regulations is inconsistent with Articles X:1 and X:3 of the GATT. Thailand contends that its measures are WTO-consistent. The Panel was composed in February 2009 and conducted its meetings with the parties in June and November 2009. The Panel's report is expected to be circulated in mid-2010.

The ACWL assisted **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 does not accord duty-free treatment to certain information technology products as provided for in the European Union's Schedule of Concessions pursuant to the Information Technology Agreement (ITA). Under the ITA, 66 WTO Members agreed to modify their schedule of concessions to provide for duty-free treatment for certain information technology products. The complainants submitted that



the European Union's customs classification measures are inconsistent with Articles II:1(a) and II:1(b) of the GATT. The Dispute Settlement Body (DSB) established a panel in this dispute on 23 September 2008. Twelve WTO Members, including Costa Rica, reserved their third party rights. This was the first dispute on the interpretation of tariff concessions made by WTO Members pursuant to the ITA. The Panel's report is expected to be issued in 2010.


The ACWL assisted **Guatemala** in the consultations phase and the negotiations towards a mutually agreed solution in *China – Grants, Loans and Other Incentives* (DS 383). Guatemala challenged more than 90 central and sub-central governmental measures relating to the Chinese Famous Export Brand Programme, the China World Top Brand Programme and the China Name Brand Programme and maintained that they were inconsistent with Article 3 of the SCM Agreement, to the extent that they provided subsidies that are contingent upon export performance. Guatemala also challenged these measures under Articles 3, 8, 9 and 10 of the Agreement on Agriculture, to the extent that they provided subsidies for agricultural products; under Article III:4 of the GATT, to the extent that they benefitted products of Chinese origin but not imported products; and under China's Protocol of Accession. Mexico and the United States also challenged the measures in separate complaints. Following consultations in Geneva in February 2009, the ACWL assisted Guatemala in negotiations between the three complaining countries and China. On 18 December 2009, Guatemala, Mexico and the United States signed an agreement under which China undertook to eliminate or modify the contested measures.

The ACWL provided support in the dispute on the EU's banana import regime, which was described by the WTO Director-General as "one of the most technically complex, politically sensitive and commercially meaningful legal disputes ever brought to the WTO."

#### ONGOING DISPUTES

The ACWL assisted **Colombia** in *European Communities – Regime for the Importation of Bananas* (DS 361). Pursuant to Article 3.12 of the DSU, Colombia exercised its right as a developing country Member to seek recourse to the good offices of the WTO's Director-General under the Decision of 5 April 1966 (BISD 14S/18). This is the first time since the establishment of the WTO that these procedures have been invoked. Consequently, the Director-General facilitated negotiations between the European Union and the Latin American MFN banana suppliers. The ACWL assisted Colombia by formulating the arguments establishing the legal basis for the further reduction of the European Union's MFN tariffs on bananas and by providing advice in the course of the negotiations. The negotiations resulted in the Geneva Agreement on Trade in Bananas, an accord setting out the terms and conditions for the settlement of this dispute as well as other pending disputes initiated by Latin American MFN banana suppliers. The Agreement was initialled by the parties on 15 December 2009, paving the way for the resolution of what the Director-General described in a press release dated 15 December 2009 as "one of the most technically complex, politically sensitive and commercially meaningful legal disputes ever brought to the WTO".

The ACWL assisted **Panama** in an arbitration to determine the reasonable period of time for implementation of the rulings and recommendations of the DSB in *Colombia – Indicative Prices and Restrictions on Ports of Entry* (DS 366). Following Colombia's report to the DSB that it would require a reasonable period of time for implementation, Colombia and Panama entered into consultations to determine that period. However, the parties were unable to arrive at an agreement. On 7 July 2009, Panama requested the determination of the reasonable period of time through binding arbitration pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). On 30 July 2009, the WTO Director-General appointed Mr. Giorgio Sacerdoti as the arbitrator. In an award circulated on 2 October 2009, the arbitrator granted Colombia an implementation period of eight months and 15 days from the date of adoption of the panel report. This period ends on 4 February 2010.



The ACWL assisted **Thailand** in *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand* (DS 383). This dispute concerns 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 WTO inconsistent 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. Consequently, the panel proceeding will be completed within a shorter time frame than usual. The Panel's report will be circulated in early 2010.

#### **SUPPORT PROVIDED THROUGH EXTERNAL COUNSEL**

In 2009, **Colombia** continued to use the law firm White & Case as its external counsel in the implementation phase of the dispute *Colombia – Indicative Prices and Restrictions on Ports of Entry* (DS 366), in which the ACWL's lawyers assisted Panama as a complainant. To date, the ACWL has provided support through external counsel in four disputes. These are listed in Appendix 1.



## TRAINING

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

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

The ACWL offers three different annual courses. 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 seven annual training courses so far. Participants attending two thirds of the sessions in a given year are awarded a Certificate of Training. To date, the ACWL has awarded 191 Certificates of Training.

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 topical interest and, upon request, special training sessions on specific issues of WTO law.

In 2005, the ACWL launched the Secondment Programme for Trade Lawyers, under which lawyers from the governments of LDCs and developing country Members 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, 11 government lawyers from eight developing countries and three different LDCs have participated in the programme.

Of the 38 participants in the training course that ended in March 2009, 34 received Certificates of Training.

### ANNUAL TRAINING COURSES


In March 2009, the ACWL completed its seventh annual training course. At the conclusion of this course, the ACWL awarded Certificates of Training to 34 of the 38 Geneva-based delegates who attended at least 16 of the 20 sessions. Among them were ten participants from LDCs.

In October 2009, the ACWL commenced its eighth course, which focuses on the basic principles of WTO law, particularly those governing border measures such as tariffs, fees and customs formalities, the principle of non-discrimination and its exceptions, the national treatment principle and the rules on special and differential treatment of developing countries. The course also examines the rules applicable to the use of subsidies, including agricultural subsidies, and the application of technical standards and sanitary and phytosanitary measures, as well as the relationship between WTO legal obligations and public policy and foreign policy objectives. It will be completed in March 2010.

### SEMINARS AND TRAINING SESSIONS

In 2009, the ACWL conducted two seminars on panel and Appellate Body reports with systemically-important rulings. These well-attended seminars familiarised delegates with the complex issues raised in these cases.

The first seminar, in February, focused on the rulings of the Appellate Body in *United States – Continued Existence and Application of Zeroing Methodology* (DS 350). The dispute concerned the continued use of zeroing in administrative reviews of anti-dumping orders in the United States. The report addressed this issue, as well as the question of whether "ongoing conduct" can be challenged in WTO dispute settlement proceedings and the issue of "permissible" interpretations under the standard of review of Article 17.6(ii) of the Anti-Dumping Agreement. In June, the ACWL hosted a seminar on the panel report in *Colombia – Indicative Prices and Restrictions on Ports of Entry* (DS 366). This report marked the first time that a panel interpreted the Agreement on Customs Valuation and Article V of the GATT on freedom



Eleven lawyers from  
eight countries  
have participated  
in the Secondment  
Programme for Trade  
Lawyers.

of transit. It was also the first time that a panel found restrictions on the entry of certain goods through certain ports to constitute restrictions within the meaning of Article XI:1 of the GATT.

In 2009, the ACWL participated in two training sessions in response to requests from Members or LDCs. On 13 November 2009, the ACWL participated in a training session on dispute settlement for government officials participating in the WTO's Regional Course on Dispute Settlement in Buenos Aires. This training was provided together with the Appellate Body Secretariat. On 15 December 2009, at the request of El Salvador, the ACWL participated in a training course on dispute settlement procedures. The course was provided to 25 officials selected by El Salvador from various government ministries.

#### **SECONDMENT PROGRAMME FOR TRADE LAWYERS**

In 2009, the ACWL completed the third cycle of the Secondment Programme for Trade Lawyers and launched the fourth. The three participants in the 2008-2009 cycle completed their secondment in June 2009. Ms Liang-Rong Lin returned to Chinese Taipei to her position in the Office of Trade Negotiations, where she has assumed more responsibilities on disputes in which Chinese Taipei is involved. Ms Gheidy Gallo-Santos took up a permanent position as a legal counsel on WTO issues in the International Legal Affairs Office of Colombia's Ministry of Commerce. Ms Shandana Gulzar Khan returned to the Permanent Mission of Pakistan to the WTO, where she is responsible for negotiations on rules, trade and environment, intellectual property and the reform of the DSU.



In 2009, Members and LDCs nominated a total of 48 candidates for the 2009-2010 cycle of the programme. More than half were nominated by LDCs. Six candidates were invited to come to Geneva for interviews. Two of the successful candidates were unable to participate, one because he left government services a month prior to the start of the programme, and the other because of a family emergency that arose within days of the start of the programme.

Consequently, the ACWL has one participant in the 2009-2010 cycle, **Ms Catherine Muganga** from Uganda. Ms Muganga holds an LL.B. (Hons) degree from Makerere University, Uganda, and an LL.M. degree from Dalhousie University, Canada. Prior to joining the ACWL, Ms Muganga was a state attorney in the Ministry of Justice and Constitutional Affairs of Uganda. She was involved in the negotiations on "Economic Partnership Agreements" between the European Union and East African Community countries.

# OUTREACH

The ACWL's outreach activities familiarise developing countries and LDCs with the ACWL's role in enabling developing countries and LDCs to participate more effectively in the WTO.

The ACWL's outreach activities are an important means of ensuring that developing countries and LDCs are sufficiently familiar with the ACWL's work to enable them to benefit fully from the ACWL's services. The ACWL organises its own outreach activities and participates as frequently as possible in those conducted by the WTO and other organisations.

In 2009, the ACWL was invited to make a presentation on its mandate and activities to an informal session of the negotiating group on DSU reform. During the year, the ACWL also met with visiting government officials from developing countries and LDCs, including Burkina Faso, Bhutan, Haiti and Viet Nam, to explain the ACWL's work. As in 2008, the ACWL was requested by the WTO LDCs' Consultative Group to attend the LDC Ministerial Conference, held in 2009 in Dar es Salaam.

The ACWL's lawyers regularly participate in the WTO's training and other activities. This year, the ACWL's lawyers made presentations – in all three WTO official languages – at WTO courses such as the Advanced Training Course on WTO Dispute Settlement, the Specialised Course on the SPS Agreement, the Introduction Course on the WTO for LDCs, the Geneva Week for non-resident Members, and the trade policy courses.

The ACWL also took part in the activities organised by the International Centre for Trade and Sustainable Development (ICTSD), the Quaker United Nations Office (QUNO) and the World Trade Institute (WTI) regarding the participation of developing countries in the WTO dispute settlement system and other issues of concern to them.

The ACWL's lawyers are frequently invited to speak at conferences and seminars on trade law issues. In 2009, these included the annual trade law conference of the British Institute of International and Comparative Law, Harvard Law School's annual symposium on international law and the American Law Institute's annual conference on WTO jurisprudence.

Finally, the ACWL regularly makes presentations to students of international trade law and policy that visit Geneva. In 2009, these included a presentation to students from the University of the West Indies on the dispute in *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services* (DS 285).



# INSTITUTIONAL MATTERS

## MEMBERSHIP

### DEVELOPED COUNTRIES

Nine developed countries originally accepted the Agreement Establishing the ACWL. Only one developed country, Switzerland, subsequently acceded to the ACWL. The developed countries have provided the majority 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 3.

At the 7th WTO Ministerial Conference in December 2009, Australia, which at present is not an ACWL Member, announced that it will make a contribution of AUS\$3 million (approximately CHF2.8 million) to the ACWL.

### 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. Ten developing countries have acceded to the ACWL, bringing the total number of developing country Members to 30.

On 31 March 2009, Costa Rica deposited the instrument of ratification of its Protocol of Accession, which entered into force on 30 April 2009. On 19 May 2009, Viet Nam signed its Protocol of Accession, which entered into force on 29 September 2009. The 30 developing country Members of the ACWL are listed in Appendix 3.

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

With the accession of Costa Rica and Viet Nam, the ACWL now has 30 developing country Members.

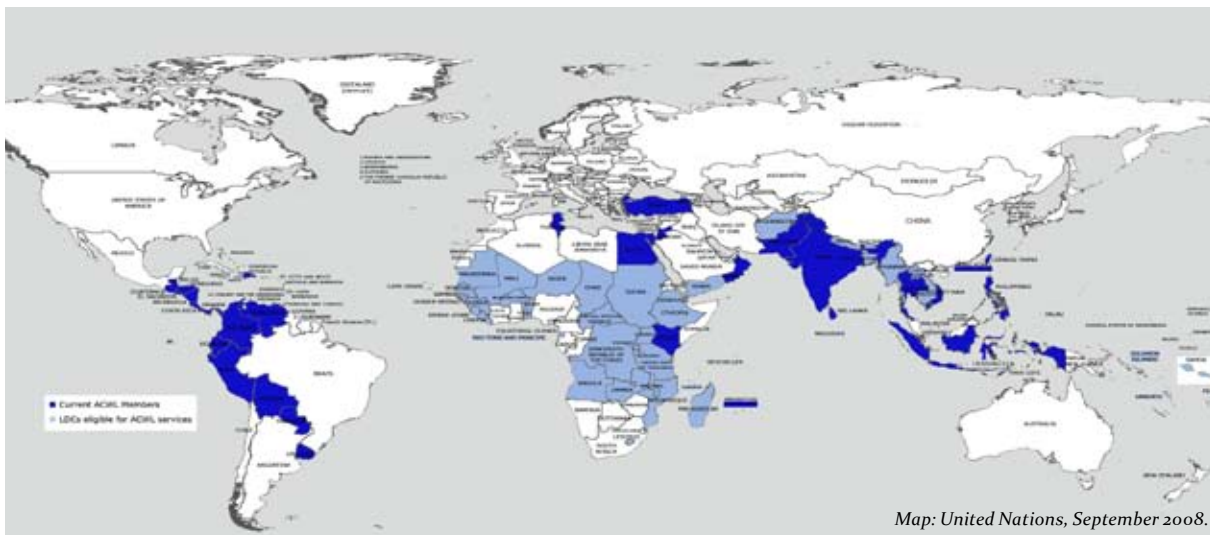
## Seventy four countries are entitled to the services of the ACWL.

### 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 44 LDCs currently entitled to the services of the ACWL. These are listed in Appendix 4.

### THE ACWL'S GEOGRAPHICAL REACH

As explained above, the ACWL's services are currently available to a total of 74 countries: 30 developing countries, 32 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.

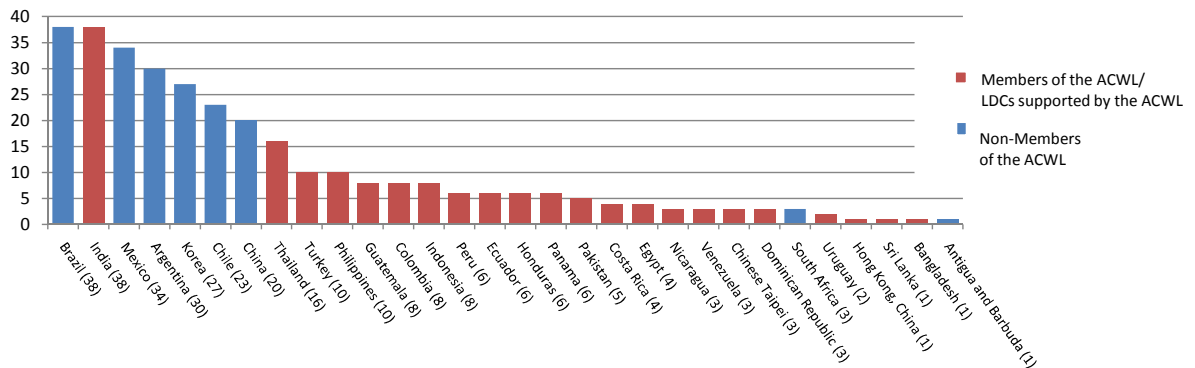


Map: United Nations, September 2008.

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

The chart below lists the 30 developing countries and LDCs that have been either a complainant or respondent in WTO dispute settlement proceedings since the ACWL was established and the total number of WTO disputes in which each of the countries has participated since the WTO was established. While 22 of these 30 WTO Members have become Members of the ACWL, six of the most experienced countries (Brazil, Mexico, Argentina, Korea, Chile and China) have not considered it necessary to join the ACWL. Thus, the ACWL has attracted the very countries it was intended to benefit, namely, countries that are actively involved in WTO legal matters but lack experience in these matters.

**Developing Country and LDC Participation in WTO Dispute Settlement Proceedings and in the ACWL**



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. Three other developing countries – Malaysia, Singapore, and Trinidad & Tobago – participated in dispute settlement proceedings before the ACWL was established, but have not done so since.

# 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. At its meeting in June 2009, the General Assembly re-elected Mr. Declan Morrin of Ireland as its Chairperson and Dr. Mohammed Saeed of Pakistan as its 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 capacity 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 2009, the Management Board consisted of H.E. Mr. Bozkurt Aran of Turkey, Mr. Martin Glass of Hong Kong, China, H.E. Mr. Darlington Mwape of Zambia, H.E. Mr. Eduardo Ernesto Sperisen-Yurt of Guatemala, Dr. Stuart Robinson of Switzerland and Mr. John M. Weekes of Canada. Dr. Robinson served as Chairperson of the Management Board and Mr. Sperisen-Yurt as Vice-Chairperson.



## THE STAFF

As of 31 December 2009, the ACWL's staff consisted of seven lawyers (including the Executive Director), one junior lawyer 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: Mr. Niall Meagher and Ms Cherise Valles (Senior Counsel); Ms Petina Gappah, Mr. Fernando Piérola and Mr. Hunter Nottage (Counsel).

Biographies of the lawyers are available on the ACWL website. The ACWL has initiated a process to recruit another lawyer to replace Mr. Thomas Sebastian, who took a leave of absence from the ACWL at the end of 2009.

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

# APPENDIX 1

## WTO DISPUTES IN WHICH THE ACWL HAS PROVIDED SUPPORT

### SUPPORT PROVIDED BY THE ACWL'S STAFF

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

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

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

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

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

For **Thailand**, as a 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 a complainant in *Mexico - Anti-dumping Duties on Steel Pipes and Tubes from Guatemala* (DS 331).

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

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

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

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

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

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

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

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

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

For [Thailand](#), as a complainant in *European Communities - Export Subsidies on Sugar* (DS 283).

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

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

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

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

For [Peru](#), as a complainant in *European Communities - Trade Description of Sardines* (DS 231).

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

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

## SUPPORT PROVIDED THROUGH EXTERNAL LEGAL COUNSEL

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

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

For [the Dominican Republic](#), as 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 BORDEN LADNER GERVAIS LLP ECONOMIC LAWS PRACTICE (ELP) FRATINIVERGANO GIDE LOYRETTE NOUEL KING & SPALDING LLP MINTER ELLISON O'CONNOR & COMPANY SIDLEY AUSTIN LLP VAN BAEI & BELLIS VERMULST, VERHAEGHE GRAAFSMA & BRONCKERS WHITE & CASE LLP WINSTON & STRAWN LLP	MR. EDMOND MCGOVERN MR. DONALD MCRAE

# APPENDIX 3

## MEMBERS OF THE ACWL

SIGNATORIES TO THE AGREEMENT ESTABLISHING THE ACWL	MEMBERS ENTITLED TO THE SERVICES OF THE ACWL (30)	DEVELOPED COUNTRY MEMBERS (10)
	BOLIVIA COLOMBIA DOMINICAN REPUBLIC ECUADOR EGYPT GUATEMALA HONDURAS HONG KONG, CHINA INDIA KENYA NICARAGUA PAKISTAN PANAMA PARAGUAY PERU PHILIPPINES THAILAND TUNISIA URUGUAY VENEZUELA	CANADA DENMARK FINLAND IRELAND ITALY NETHERLANDS NORWAY SWEDEN UNITED KINGDOM
ACWL MEMBERS BY ACCESSION	JORDAN (20 January 2002) OMAN (26 March 2003) MAURITIUS (11 June 2003) TURKEY (17 August 2003) EL SALVADOR (4 March 2004) INDONESIA (28 April 2004) CHINESE TAIPEI (13 May 2004) SRI LANKA (21 November 2008) COSTA RICA (30 April 2009) VIET NAM (29 September 2009)	SWITZERLAND (5 December 2004)
IN THE PROCESS OF ACCESSION	GEORGIA	

# APPENDIX 4

## LDCs ENTITLED TO THE SERVICES OF THE ACWL

MEMBERS OF THE WTO (32)	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 CONGO	SAO TOME AND PRINCIPE
DJIBOUTI	SUDAN
GAMBIA	VANUATU
GUINEA	YEMEN
GUINEA-BISSAU	
HAITI	
LESOTHO	
MADAGASCAR	
MALAWI	
MALDIVES	
MALI	
MAURITANIA	
MOZAMBIQUE	
MYANMAR	
NEPAL	
NIGER	
RWANDA	
SENEGAL	
SIERRA LEONE	
SOLOMON ISLANDS	
TANZANIA	
TOGO	
UGANDA	
ZAMBIA	

