



Programme:	<i>Technical Assistance to the Integration to the Multilateral Trading System and Support to the Integrated Framework</i>
Country:	All non-Anglophone ACP Countries
Project title:	Design and delivery of a training course on the WTO Dispute Settlement Understanding
Source of Financing:	Third Programme Estimate - Activity n° 087-13

Annex II: Terms of Reference

1. BACKGROUND INFORMATION

1.1. Beneficiary country

Francophone ACP countries and regional organizations.

1.2. Contracting Authority

The Contracting Authority for this project is the PMU, ACP MTS PROGRAMME, on behalf of the Regional Authorising Officer for the European Development Project N° 9.ACP.RPR.140.

1.3. Relevant background

The Dispute Settlement Understanding (DSU) prescribes rules and procedures governing the settlement of disputes under the WTO agreements. That is, situations in which a Member considers that any benefits accruing to it under the covered agreements are being impaired by another Member's measures. The Dispute Settlement Body (DSB), which comprises all WTO Members, is charged with the administration of these rules and procedures. It is therefore not surprising that the dispute settlement mechanism remains a major WTO contribution to the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules would be rendered unenforceable.

The DSU identifies the WTO dispute settlement mechanism as a central element in providing security and predictability to the multilateral trading system. This mechanism seeks to preserve the rights and obligations of WTO Members under the covered agreements. All solutions to disputes must be consistent with the WTO Agreements and must not nullify or impair benefits to any Member under those agreements, or impede the attainment of the objectives of those agreements.

The DSU specifies that the aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A mutually agreed solution which is WTO-consistent is preferred. In the absence of a mutually agreed solution, the withdrawal of inconsistent measures is usually the first objective. Compensation is a temporary measure that should only be resorted to if the immediate withdrawal of the measure is impracticable. The last resort is suspension of concessions vis-à-vis the offending Member.

The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are permissible.

The main priority of the DSU is to settle disputes, possibly through consultations. Only one-third of all cases advance to the full panel process. A trade dispute could arise when a WTO Member maintains that its right under any of the WTO Agreements has been impaired or nullified by the action of another Member. The DSU provides for an orderly process of sustaining and monitoring the balance of contractual rights and obligations and resolving any differences that may arise in the conduct of trade relations with each other.

The dispute settlement system of the WTO is a central element in guaranteeing the security and predictability of the multilateral trading system. During the GATT years, developing countries



hardly made use of DSU to enforce their rights and legitimate expectations in the multilateral trading system. Currently, developing countries as a group account for nearly half of the cases initiated under the revamped WTO dispute settlement system. However, it is mostly the advanced developing countries from Asia and Latin America that are actively making use of the DSU. To date, Antigua and Barbuda and the Dominican Republic remain the only two ACP Members to have initiated a dispute under the DSU. However, a slate of additional ACP States have participated in DSU cases, including bananas and sugar. However, such participation has been as third parties with the experience gained suggesting that the DSU should be reformed to afford greater privileges to countries with major trade interests.

ACP countries constitute the largest bloc of WTO Members, yet their participation in the DSU is limited. However, their lack of effective participation in the DSU threatens to erode the long-term predictability function of the WTO. In addition, these poor and vulnerable countries' system inability to use the DSU could undermine the credibility of the rules-based multilateral trading system and reinforce the belief that the system is designed for the developed and advanced developing countries. It is well-established that ACP exports are increasingly subjected to a non-tariff barriers. The increased use of NTBs is likely to rise as tariffs are reduced either autonomously or through FTA negotiations. Also, the failure to advance the DDA is likely to lead to increased trade disputes, mainly between advanced developing countries and their industrialised counterparts. In this context, it becomes an even greater imperative that ACP countries are empowered to use the DSU to protect their core trade interests. The lack of participation in the dispute settlement system means that the ACP States are unable to effectively contribute to the emergence of jurisprudence and norms which increasingly are an important source of Members' rights and obligations in the multilateral trading system.

1.4. Current state of affairs

On 18 July 2012, the Dominican Republic notified the WTO Secretariat of a request for consultations with Australia "on certain measures concerning trademarks, geographical indications and other plain packaging requirements applicable to tobacco products and packaging". The Dominican Republic is one of the most active ACP Members using the DSU. In addition to filing a complaint against Australia, the Dominican Republic has also 7 cases in which it acts as a respondent and 6 with third party rights. Antigua and Barbuda is the only ACP country to have launched a DSU case after filing a complaint against the United States on internet gaming. Most other ACP countries have participated in the DSU as third party observers with Kenya having six such cases.

The importance of the DSU assumes even greater importance in light of two recent developments. First, the failure to advance the DDA will serve to trigger an increased spate of trade disputes. This has traditionally been the case in previous rounds of multilateral trade negotiations. With the establishment of the WTO leading to a strengthened dispute settlement system, it is highly anticipated that the number of trade disputes will starkly increase. Second, most regional trade agreements, including the EPAs, do not suspend Members' WTO rights – including use of the DSU. To the contrary, Members tend to use the DSU to address possible infringements within an FTA as is currently the case in the India –Singapore Comprehensive Economic Cooperation Agreement. In this context, there is an even greater need for ACP countries to be more empowered to effectively use the DSU in defending their respective trade interests.

The ACP has not been active in the development of jurisprudence in the WTO. Due to their limited capacity to identify injuries or impairment to their rights and obligations, the participation of ACP States has been generally reduced to third parties. The fact that these countries lack a critical mass of trade lawyers further exacerbate ACP States' limited level of DSU participation. One consequence of this has been that in instances of third party participation, legal services tend to be contracted at considerable expense. The purpose of the project would be to strengthen the capacity of ACP States to defend their economic interests by enhancing the legal cum trade of officials in relevant ACP Ministries or Departments such as the Ministry responsible for foreign trade, legal affairs or Attorney-General Departments.



2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1. Overall objective

The overall objective of the intervention is to contribute to ACP countries more effective defence of their trade interests through enhanced capacity to participate in the DSU.

2.2. Purpose

The purpose of this contract is as follows:

- To enhance the capacity government officials to effectively participate in the DSU.

2.3. Results to be achieved by the consultants

- Enhanced capacity of ACP officials to identify, initiate and defend the rights and obligations of their respective countries should a trade dispute arise in the future.

3. SCOPE OF THE WORK

3.1. General

3.1.1. Project description

The purpose of this intervention is to enhance the capacity of government officials to understand and utilize the WTO Dispute Settlement System. This will be done through conducting of a two-week intensive, tailor-made training course on the WTO Dispute Settlement Understanding.

3.1.2. Geographical area to be covered

All non-Anglophone ACP Countries

3.1.3. Target groups

35 officials with deep understanding of WTO Agreements and jurisprudence. 5 leading local graduate students will also be invited to participate in the training course.

3.2. Specific activities

The Course is intended to deepen the understanding of the participants about the Dispute Settlement Understanding (DSU). They will be exposed thoroughly to the four main phases of the DSS, namely the consultations phase, the panel phase, the Appellate Body phase and the implementation and surveillance phase. They will become conversant with how the system works in practice through hands-on practical and simulation exercises. At the end of the training course, they should deepen their understanding of WTO Agreements, particularly the GATT 1994, the GATS and the TRIPS Agreement and be able to effectively advise their governments on all issues related to the DSU and represent their governments in panel and Appellate Body proceedings. The course will also consider the challenges facing ACP States in using the dispute settlement system and examine whether the proposals by developing countries in the context of the DDA negotiations that would enable them to participate more actively in the DSU.

The specific objectives of this course are the following:

- a) Deepen understanding of WTO basic principles and the legal aspects of WTO Agreements (GATT 1994, GATS and the TRIPS) and review the relevant jurisprudence of DSU panels and the Appellate Body;
- b) Discuss the history of the GATT/WTO DSU;
- c) Discuss the DSU organs and the working procedures of panels and the Appellate Body;
- d) Analyze the legal basis for complaints in the WTO DSU;
- e) Examine the various DSU stages (i.e. consultations, panel, appeal and implementation phases) and typical outcomes of the processes;
- f) Discuss alternative modes of dispute resolution (conciliation, mediation and arbitration and the 1966 special procedures for developing countries);



- g) Discuss the implementation of the recommendations and rulings of the DSB;
- h) Examine the levels of participation by ACP Members, especially the LDCs, in the DSU and explore ways in which this participation may be enhanced;
- i) Simulate case studies and moot exercises appropriate to ACP States relating to their participation and litigation in the DSU; and
- j) Conduct brainstorming and other exercises aimed at developing and/or enhancing the capacity of trainees to understand, apply and utilize the DSU including initiating and defending disputes in appropriate cases, and participating as third parties.

4. LOGISTICS AND TIMING

4.1. Location

The activity will take place in Ouagadougou, Burkina Faso. The activity will be undertaken in close collaboration with the Centre Africain pour le Commerce International et le Développement (CACID), based in Ouagadougou, Burkina Faso. No financial compensations will be awarded to CACID in the course of this collaboration.

4.2. Commencement date & period of implementation

The training course will be held on January 6-18, 2014 and will be preceded by a four-week preparatory period.

5. REQUIREMENTS

5.1. Personnel

5.1.1. Key experts

Two experts with extensive knowledge on WTO Agreements with a specialised competence on dispute settlement rules and procedures.

5.1.2. Other experts

A Logistics Assistant will be recruited to help in travel arrangements for the participants including the disbursement of daily subsistence allowance.

5.1.3. Key Personnel Professional Experience and Education

Qualifications and skill:

- (a) graduate studies in Law, International Law, Economics, International Relations; or equivalent (PhD or Masters);
- (b) fluency in spoken and written French with excellent drafting and speaking skills;
- (c) demonstrated ability to teach students already possessing university degrees;
- (d) excellent skills in organizing and conducting training seminars and workshops on international trade issues; and
- (e) considerable experience to deliver oral and public presentations on deeply technical issues.

General Professional Experience

- (a) at least 7 years' relevant professional experience to review, analyze and write on WTO Agreements;
- (b) strong analytical skills on international trade policy issues; and
- (c) significant understanding of ACP trade interests and legal regimes.

Specific Professional Experience

- (a) Deep knowledge of the WTO Dispute Settlement Understanding;
- (b) strong experience in teaching legal cum trade issues to graduate students; and
- (c) knowledgeable of major ACP trade issues, DSU cases/other cases of interest to the Group.



6. BUDGET

The ACP MTS Programme will operate under direct agreements for this activity, with the main experts offered fee-based contracts. The total budget for this activity is of **EUR 170,840.00**.

7. REPORTS

7.1. Reporting requirement

The two experts will prepare and submit a report to the PMU on the training including feedback from the participants. The PMU will provide the questionnaires on the feedback to be filled by the applicants. Both the report and the filled questionnaires shall be submitted to the PMU.

7.2. Submission & approval of report

The PMU is responsible for approving the report.

7.3. Deadline for submission of reports

The two experts will deliver papers related to course outline, case studies and background material for the participants four weeks after the signature of the contracts. The final report on the project shall be submitted by January 31, 2014.