

EVALUATION SERIES No. 82

**EVALUATION OF
COMMONWEALTH SECRETARIAT
ASSISTANCE TO MEMBER STATES IN TRADE LAW**

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LIST OF ABBREVIATIONS

ACP	Africa, Caribbean and Pacific States
AusAID	Australian Development Agency
CFTC	Commonwealth Fund for Technical Cooperation
COMESA	Common Market for Eastern and Southern Africa
COMSEC	Commonwealth Secretariat
DFID	Department for International Development (UK)
EAD	Economic Affairs Division of the Commonwealth Secretariat
EC	European Community
ECA	United Nations Economic Commission for Africa
EIF	Enhanced Integrated Framework
EPA	European Partnership Agreements
EPZ	Export Processing Zone
EU	European Union
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on tariffs and Trade, as resulting from the WTO Agreement
GATT 1947	General Agreement on tariffs and Trade, until the entry into force of the WTO Agreement
GSP	Generalised System of Preferences
ICTSD	International Centre for Trade and Sustainable Development
IF	Integrated Framework
ITRC	International Trade and Regional Cooperation Section (ITRC) within the ComSec's Economic Affairs Division
IPRs	Intellectual Property Rights
ITC	International Trade Centre
GIDD	The Governance and Institutional Development Division of the Commonwealth Secretariat
LCAD	The Legal and Constitutional Affairs Division of the Commonwealth Secretariat
LDC	Least Developed Country
MFN	Most Favoured Nation
MSME	Micro, Small and Medium Enterprises
NAMA	Non-Agricultural Market Access
NEPAD	New Partnership for Africa's Development
NZAID	New Zealand's International Aid and Development Agency
OECS	Organisation of Eastern Caribbean States
PMRU	Project Management and Referrals Unit of the ComSec
RTA	Regional Trade Agreement
RTPA	Regional Trade Policy Advisor (Hubs & Spokes Programme)
SAARC	South Asian Association for Regional Cooperation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SASD	Special Advisory Services Division of the Commonwealth Secretariat
SEZ	Special Economic Zone
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SPS Agreement	Agreement on Sanitary and Phytosanitary Measures
STPD	The Social Transformation Programmes Division of the Commonwealth Secretariat
TBT Agreement	Agreement on Technical Barriers to Trade

TPA	Trade Policy Analyst (Hubs & Spokes Programme)
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TPR	Trade Policy Review
US	United States of America
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
WB	World Bank
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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CHAPTER 1: EXECUTIVE SUMMARY

The objective of the Evaluation mission is to evaluate the trade law sub-programme implemented by the Economic and Legal Section of the Commonwealth Secretariat Special Advisory Services Division (SASD) and to make recommendations on the future delivery of trade law assistance.

1. Effectiveness of the programme and the lessons learned

Overall, the trade law sub-programme fulfilled its mandate. All its projects were relevant to the Secretariat's international trade programme and, except one, they were delivered with a sufficiently qualitative method of intervention, thereby producing tangible outcomes.

Several lessons could be drawn from an investigation of the relevance and overall performance of the sub-programme's projects. Firstly, the assistance given should be based on adequate project design and ensure a logical link between the activities proposed and the objectives of Secretariat's International Trade Programme. Project design also requires developing a solid and high-level partnership with the beneficiary, in order to ensure the latter's ownership and absorption of the aid provided. Projects must also be well coordinated with other donors in order to avoid duplication and to further ensure their connection with longer-term strategic development plans. Furthermore, it was observed that when the projects' objectives are clear and straightforward, there is less risk for dispersion and inefficiency.

Secondly, best practices must be followed in project management and conduct of key activities. Certain projects may be more sophisticated than others. They provide for the establishment of complex legal mechanisms or accompany legislative change affecting important sectors of the economy. An appropriate mix of relevant activities is necessary to achieve their particular purpose. Continuum in the assistance provided, full dedication of trusted key advisors and a clear role assigned to a project manager are essential in this context. Cooperation with other ComSec's Divisions and Sections may also create positive synergies. Other activities are simpler, such as the realisation of a study or the drafting of a regulation. They nonetheless also require careful planning and the adoption of best practices in their conduct. Finally, good project communication and dissemination of the work must be ensured, as these may be important sources of inspiration for other beneficiaries and contribute to strengthen the multiplier effect of the assistance provided.

2. Efficiency of the programme and the lessons learned

Overall, the project can be considered as having been adequately cost-effective. Much was achieved in the ten projects, for the total amount spent of UK £ 1,109,080 and with only one in-house legal officer. Furthermore, the expenditure rate was satisfactory, since 95% of the overall budget appropriation was spent.

There were however some inefficiencies observed, which may have to be avoided in the future. Firstly, in several projects, the project's maximum potential has not been achieved. In certain cases, a more profound outcome could have been obtained by making an additional investment into the project and with more presence in the ground to complete the work. In other cases, larger multiplier effects could have been obtained with more project publicity and communication of studies' recommendations.

Secondly, unfortunately three of the ten projects were not satisfactory from an efficiency point of view. This was mainly due either to poor project design and inadequate activities, or to the lack of sufficient absorption of the project's outcome by the beneficiary. In one case, inefficiency was also observed by comparing the overall project's external expense and its output with other projects.

Thirdly, when in-house input is used, it tends to be cheaper and one could wonder whether in certain cases, it would not be more appropriate to appoint additional in-house experts, given the potential institutional memory this entails and the possible economies of scale in subsequent projects. In that case, however, it would be important to assess the cost of the in-house expertise and compare it with the market value of its output. That is the only way to obtain a final reliable efficiency assessment. In other words, it would be important to know whether or not using in-house expertise is less expensive than outsourcing the work to specialists in a particular issue and whether the positive externalities of such use would outweigh its cost and its negative externalities, the latter including, for instance, the loss of time available for the management of other projects.

Considering this last point, one should therefore qualify the findings of the Evaluation. Indeed, they may be biased due to the absence of proper accounting for the time and cost of the in-house expertise used in each project.

Other lessons learned from the efficiency evaluation are that in every project, good project design and adequate activities increase a project's efficiency in addition to its effectiveness. Furthermore, a sound project requires sufficient human resources for project management, project administration and, where relevant, for the provision of hands-on expertise.

In summary, optimal trade-law assistance requires a long-term approach, a good level of partnership with the beneficiary, effective donor coordination and integration into larger development strategies. It also requires an adequate internal management structure, continuum in the assistance provided, sufficient financial investment, good communication, and, last but not least, sufficient human resources.

3. *Ongoing relevance of trade law assistance in relation to the Secretariat's mandate*

Trade law assistance is entirely relevant to the objectives of the Secretariat's International Trade Programme. It fills a clear capacity gap in trade law in all Commonwealth Developing Member States. Furthermore, the future demand for trade law assistance is likely to be very wide and cover all relevant areas of trade policy, including border measures, trade facilitation, technical barriers to trade, agriculture, SPS, etc. It is even likely to increase with respect to the "beyond-the-border" issues, regional integration and legal harmonization of economic laws at regional level. Legal skills in the context of multilateral trade diplomacy, such as negotiations, notifications, consultations within WTO Councils and Committees, dispute settlement and Trade Policy Reviews will also likely be in strong demand. Needs are also obvious in relation to capacity building in trade law through training, supporting research and high-level academic education.

There is therefore no doubt that the Commonwealth Secretariat should continue trade law assistance. If any, it should be increased considering its too short supply in the international donor Community and the too many subjects to be covered.

4. *The strategic orientation of the assistance to be provided by the Secretariat on trade law matters*

There appears to be a clear delimitation of the range of services a trade law programme can provide and several options regarding the priorities areas it may wish to focus on, including their delivery methods.

Trade law assistance in general covers all areas that are related to trade law and that are intertwined with the negotiation and application of international trade rules. This includes by definition the work directly related to the multilateral trade rules and institutions (WTO), the one related to bilateral treaties, the strengthening of regional integration, the streamlining of domestic trade law in strict sense (customs law, trade remedies, import licensing, etc) and the work related to other domestic regulations having an impact on trade (investment law, competition law, consumer protection, sanitary and phytosanitary rules, technical regulations and standards, intellectual property, etc).

The Commonwealth Secretariat could first consider the option of incorporating trade law assistance into a larger “economic law” programme, which would also encompass monetary cooperation, debt control, maritime law and the use of natural resources. These areas all contribute to the definition of domestic economic policy. Several of these subjects are handled by the ComSec’s SASD and even within the ELS itself. Since it is SASD’s intention to make use of the complementary skills that are available within the Division and to develop synergies across sections and between Divisions as and where possible, this option may have the merit to complement the range of services already provided by the ELS and the other sections of SASD by professional legal services. It may foster the creation of a culture of synergy and cooperation within SASD in line with its strategic orientation. From a practical point of view, however, it may not be optimal, since trade law and the other subjects are technically very different, i.e. they entail the use of different sources of law and, in practice, they constitute separate areas of specialisation. Notwithstanding the policies related to them must be coordinated, these subjects are very seldom addressed together from a legal perspective in the same project. It would be difficult therefore, and not very efficient, to create a seamless team of officials proficient in all these areas. There would be too few economies of scale within such a law programme. The creation of a larger unit would furthermore require some additional investment in human resources, which may be made at the expense of the deepening of the trade law assistance.

A second option would be to establish a generalist trade law programme, by not circumscribing further the scope of the assistance to be provided and let the demand make the selection of the projects that would be carried out. The benefits would be that the trade law programme would be more flexible and closer to demand. This may also facilitate a wider allocation of the assistance, while giving some informal priority to small and least developed States. This would require, however, that general publicity is made of the programme. The possible cost would be the loss of performance and economies of scale if projects that are too different are implemented across the Commonwealth. This might indeed impair the use of lessons learned across projects as well as the positive “recycling” of the work carried out.

Should the option above not be retained, there are certain areas in which the Commonwealth Secretariat could create a niche for itself and make the necessary investments to improve the services offered. Possibilities include any one or several of the following:

- Assistance in the context of WTO trade policy reviews and WTO notifications;
- Assistance in relation to FTA negotiations, bilateral treaties, regional integration and harmonisation of laws and regulations relevant to the creation of a single regional market;
- Assistance for the improvement of domestic trade laws in strict sense (trade remedies, import licensing, customs law, etc)
- Ad hoc support in trade laws in the context of larger projects defined by other Divisions or Sections or other donors
- Assistance in the “beyond the border” issues, particularly in relation to the setting-up of complex development-oriented legal mechanisms, such as Special Economic Zones, the identification of subsidisation schemes, the setting of sectoral rules (especially on services), and the regulation of competition policy.

It is difficult at this stage to further define within these areas those that should be prioritised even more. They are all equally important and not sufficiently addressed by other donors. The final selection will depend on a more formal expression of demand from the potential beneficiaries, as well as a deeper analysis of the trade law assistance provided by other donors in every Commonwealth Developing country. The profile of the trade law officers recruited will also play a certain role in this regard. Should the option to create a specialised law programme in selected niche areas be retained, a recommendation would be to carry out a deeper study of these issues in the context of the Programme's future inception phase.

Another question that arises is whether trade law assistance should be focused on some regions and / or member countries as opposed to others. It would appear from the Commonwealth Strategic Plan that small and least developed States ought to be favoured. The first series of interviews in London seemed to indicate that, from an institutional point of view, such differential treatment among the institutional beneficiaries of the Secretariat's programmes is possible and desirable. This being said a suggestion would be not to orient trade law assistance on the basis of hypothetical preferences of one geographical group of preferred States as opposed to the other.

In terms of intervention methodology, legal advice and legal opinions are always adequate methods to deliver trade law assistance. Advocacy to promote pro-development and pro-gender legal frameworks within the developing member countries and to defend their positions internationally are also adequate and can be encouraged to the extent they avoid conflicts of interests. However, engaging into litigation for Commonwealth developing countries is not advisable, unless this is on the fringes to support professional litigating lawyers. Furthermore, one should encourage support to academic research and long-term education by providing universities and research centres with good scholars, organising and stimulating research and defining adequate educational curricula. Consideration should be given to proactively seek synergies in this regard with the STDP's Education Section.

Finally, while the Commonwealth Secretariat should refrain from organising training seminars and workshops itself, trade law officers and experts should, however, always try to engage into capacity-building actions through on-the-job assistance and help the beneficiaries to deliver legal advice and advocacy themselves rather than doing them at their place.

5. Advice on the optimal operational structure to deliver the assistance requested

Two options eventually seem to be available to the Secretariat to deliver trade law assistance. The first would be the maintenance of a rather generalist trade law programme, while the second would be the constitution of a specialised unit handling high-profile projects in selected areas of trade law.

In the first case, the recommendation would be to integrate a generalist trade law programme within the Trade Section of the SASD, while adopting its working methods. This programme should recruit at least two legal officers which would be fully integrated in the Trade Section Team and participate in the design of projects in areas where legal input would be relevant. They would also supervise the legal projects, or the legal activities within larger multidisciplinary projects that the Trade Section could possibly design and implement. The legal officers would outsource most of the specialised work in the context of the project's implementation, while ensuring the supervision of the output's quality. This option represents a very classic method of delivery of technical assistance. Its advantage, among the many that have already been highlighted, would be to facilitate the integration of legal assistance into larger multidisciplinary projects, while not complicating administration more than necessary. The inconvenience would be precisely its too classical approach, which would depend on outsourced short-term expertise to actually deliver the assistance and which would therefore undermine the consolidation of in-house skills. In any event, this option would require that at least one of the trade law officers is a high-level expert, capable of ensuring qualitative supervision of the outsourced experts' work.

In the second case, the recommendation would be to establish a specialised trade law programme as a separate Section within the SASD or to maintain it within the ELS. In both situations, the programme would function as a real in-house consultancy unit, the experts of which would be in charge of almost all aspects of the project's cycle, from design to implementation, and supervision where relevant. The programme should rely on a constant team of high-level lawyers, some of them being junior, to ensure consistency throughout its implementation, cross fertilization among projects and institutional memory. The programme would seek synergies with other Sections and Divisions of the Secretariat by drawing on their expertise and knowledge as and when required. In particular, some ad hoc advice in the context of project design might be requested to specialised Sections in order for instance, to ensure a positive impact of a project on gender, health or youth. This option is certainly more ambitious than the previous one and it might be more complicated to implement. It would also require some changes in the Secretariat's habits, particularly with respect to the methods used to recruit and retain high calibre international experts. Should they be recruited in-house as part of the Secretariat's staff, the regular conditions applicable to the non-managerial staff may need to be revised. Otherwise a proposal could be to recruit a pool of trusted advisors on a retainer basis. Whatever solution would eventually be adopted, establishing a specialised programme may be very efficient and could produce a very strong impact on the clients' development possibilities. It might also entail high visibility for the Secretariat, which would be able to distinguish itself from other donors through the in-house provision of personalised, tailor-made, high-quality, and high-profile legal projects of a type seldom carried out by other technical assistance programmes.

This second option, which might be the preferred one, would require the recruitment of two to three senior legal officers. Adding an equivalent number of junior experts might also be useful to ensure the continuation of the programme while maintaining institutional memory. Finally, recruiting a Trade Economist to support the Trade Law programme would also be an excellent move since most, if not all, trade law projects entail an economic aspect, especially at the phase of project design.

Finally, irrespective of the options that will eventually be retained, certain recommendations can be made in order to increase the overall efficiency of a trade law programme's operations:

- Establish within the Secretariat a specialised multidisciplinary Section exclusively dedicated to project design in all trade-related issues;
- use the trade policy analysts and advisors deployed in the ground by the Hubs & Spokes programme as additional support in the context of project's design and implementation;
- use the expertise available in the other Sections and Divisions of the Secretariat in the context of project's implementation (one should avoid covering all aspects of an issue under a single activity in areas which are normally not in the Programme's area of competence);
- encourage cross-divisional cooperation through joint divisions' performance evaluations, positive assessments for intra-Secretariat referrals, joint divisions' budgets and facilitated lines of approval and release of expenditures in collective projects;
- clarify the interface between the Trade Section and the work carried out by the SASD'S Enterprise and Agriculture Section (EAS);
- revive the Inter-divisional Committee on Trade in order to foster cooperation in the context of project's design and implementation;

- free the legal officer(s)' time as much as possible to enable him/her to provide high-level advice as opposed to carrying out too many administrative tasks for every single intervention;
- in other words, dedicate sufficient resources to project's administration, thus alleviating the administrative tasks of the legal officers;
- establish a mechanism to assess the value of the in-house staff's time and to make a precise account of travelling time and expenses in relation to the cost of desk work;
- consider the elaboration of larger framework projects, based on country partnerships, and in the context of which specialised activities would be take place;
- limit administrative oversight and reporting to the phases of project design and closure;
- Increase the publicity of the services that the trade law sub-programme can provide;
- Encourage dissemination of the work produced by the programme.

CHAPTER 2 : INTRODUCTION AND METHODOLOGY

I. Introduction

This study contains an evaluation of the Commonwealth Secretariat assistance to Member States in Trade Law and recommendations to re-orient and optimize the assistance provided on the basis of the lessons learnt and the Member States' needs.

Overall, the conclusions are that the trade law sub-programme of the Commonwealth Secretariat fulfilled its mandate. All projects were relevant to the Secretariat's international trade programme and, except one, they were delivered with a sufficiently qualitative method of intervention, thereby producing tangible outcomes. The assistance provided was useful to the developing Member States and that it was well appreciated by the beneficiaries. However, it was delivered in a somehow artisanal manner, in the absence of a clear mandate and formal criteria for the acceptance of projects and delivery methods. Possible synergies with other sections and divisions within the Commonwealth Secretariat can also be improved and the beneficiaries that had access to the assistance were informed of the programme mainly through the word of the mouth. Structured as it is now, due to its limited staff, restricted budget and current working methods, the programme cannot meet all developing Member States' existing needs in trade law and allocate its assistance on the basis of objective criteria.

Therefore, this study recommends a clearer definition of the scope of the trade law programme and of its position within the Commonwealth Secretariat. It provides options in terms of staff composition, and delivery methods. It also recommends the adoption of improved methods of cooperation among the Secretariat's sections and divisions, so as to maximise synergies and exploit long term partnership with beneficiary States.

This study is not about making a judgment on the sub-programme's staff. If any, this judgment is that the work was carried out with dedication, seriousness and often empathy for the clients. The Evaluation mission is very much aware of the structural limitations that the staff were confronted with. Therefore, this study is more a management paper which aims at maximizing the potentials of the trade law programme and re-orient and professionalize its operations.

II. Objectives

According to the terms of reference, the objective of the Evaluation mission is to evaluate the trade law sub-programme implemented by the Economic and Legal Section of the Commonwealth Secretariat Special Advisory Services Division (SASD) and to make recommendations on the future delivery of trade law assistance. The trade law sub-programme (the "Sub-Programme") was established to provide technical assistance to the Commonwealth developing members States in trade law matters. In particular it aims at providing them with advice and capacity building activities on the implementation of international trade rules.

The SASD requested an assessment of the effectiveness and efficiency of the Sub-Programme's activities, as well as recommendations on the way forward on the basis of the lessons learned. The ultimate goal is to enable the Secretariat to plan for future relevant technical assistance and to ensure that its objectives and intended results are met. Final recommendations must address the optimal future strategic orientation of the assistance provided as well as potential operational changes that may be required by the Secretariat to better deliver its mandate.

III. Results to be achieved

The end-result of the Evaluation must be the production of a comprehensive Evaluation Report, the present study, that must contain both (a) a sound assessment of the current performance of the trade law sub-programme and (b) relevant practical recommendations on the way forward:

a) Assessment of quality and performance

- Analysis of the **effectiveness** of the legal assistance provided in relation to the SASD's mandates to deliver the Secretariat's intended results.
 - The study must assess the effectiveness of the projects carried out under the sub-programme and the degree to which they have delivered on planned outputs and contributed to the objectives of the Secretariat's International Trade Programme.
 - The study must also assess the actual or likely impact of the technical assistance provided on the development of the beneficiary countries. It must take account of the requirements of developing member countries for advice and support in trade law matters.
 - Furthermore the study must assess the relevance of gender issues on the effectiveness of the programme and how well these issues and the other stated objectives of the Secretariat were addressed by the sub-programme.
- Analysis of the **efficiency** of the trade law sub-programme's operations.
 - This analysis entails an examination of the relationship between the output of the programme and the resources allocated to it.
 - An assessment must also be made on the internal allocation of resources within the sub-programme, geographically, per project and per expertise utilised.
 - Furthermore the analysis should also address the external factors, either hindering or supporting the sub-programme's operations.

b) Advice on the ongoing relevance of the Sub-Programme in relation to the Secretariat's mandate and the way forward

- Summary of **lessons learned** and advice on the **relevance of trade law assistance** in relation to the Secretariat's mandate, considering the experience so far.
 - The advice must be based on the lessons learned from the evaluation of the performance of the Sub-Programme, in particular with respect to the development and gender impact of the assistance provided. It must also take into account the demand for trade law assistance over the period being evaluated and the future likely demand for trade law assistance.
- Advice on the **strategic orientation of the assistance** to be provided by the Secretariat on trade law matters.
 - The advice must address the **optimal scope** of trade law assistance, i.e., the areas of law that should be addressed in priority.
 - The advice must also address the **optimal focus and content** of trade law assistance, i.e. whether for instance it should be based on legal opinions or capacity-building activities.

- The advice must also be based on the future likely demand for trade law assistance, and take into account other donors' programmes, the Secretariat's comparative advantage, its intended strategic direction and resourcing requirements.
- Advice on the **optimal operational structure** to deliver the assistance requested,
 - The advice should address primarily the **specific organisation of the Division** within the Secretariat which would provide trade law assistance.
 - The advice must be based on an analysis of **the costs and benefits of various methods of delivery** of trade law assistance, i.e. whether for instance it should be carried out by in house or external expertise, the skills and number of staff to recruit, the optimal methods for the recruitment and supervision of the expertise, the programme's management structure, etc.
 - The advice must **relate to the recommendations on the strategic orientation** of the assistance to be provided. It must also address the institutional context in which the SASD functions, the resource implications and other trade-related programmes within the Secretariat.
 - Final recommendations must address **potential strategic and operational changes** that may be required by the Secretariat to better deliver its mandate.

All advice given must of course take into account **the lessons learned** from the evaluation of the Sub-Programme's **effectiveness** and **efficiency** over the period being evaluated.

IV. Overall Methodology

The Evaluator carried out the task while respecting the following methodological principles:

- Definition of **relevant objective criteria** for the assessment of performance and efficiency;
- Reliance on the methodology proposed in the Work Plan;
- **Interviews** with the trade law assistance's beneficiaries and the stakeholders concerned in the ground, whenever possible;
- Interviews with the Secretariat's staff in almost all Secretariat's relevant divisions and sections;
- Interviews with other donors and stakeholders concerned in Brussels, Geneva and in the ground;
- Interviews were carried out on the basis of a **formal questionnaire and informal conversations**, either through meetings or telephone conversations;
- **Thorough documentary review on the basis of documents provided.** It should be noted, however, that obtaining relevant documentation pertaining to the programme's operations has not been as straightforward as one would have desired, in particular in relation to the financial data and the programme's written output. The Evaluator went through all the physical and electronic files that were pointed out to him in the headquarters in London and he took extensive notes during the time available. Unfortunately, the information he has is not complete. **Both the physical files and the electronic files in the Secretariat's computer network system appear as being neither ordered in a rational way nor complete.** Furthermore, **the ComSec decided to classify several documents produced in the context of specific projects as confidential** and these were thus not made available to the evaluation study. **Annex 5** hereto contains the list of documents received and consulted;

- **Testing** the Evaluator's factual understanding of the programmes' strategic orientation, operations, and institutional context with the Secretariat's staff. A preliminary document containing the draft chapter III of this study (an Overview of the trade law sub-programme) was prepared and submitted for comments to the Secretariat. The comments revealed the incomplete nature of the written documentation obtained, which led to some misrepresentations on the programme's output. The draft chapter was amended according to the comments received and the additional information obtained;
- **Verification and cross-checking** the information received, and declarations and assessments made by interested stakeholders with available evidence;
- Presentation to and discussion of an **Interim Report** with the relevant divisions and sections of the Secretariat in London on 27 November 2008. Comments on the Interim report were made and taken into account in the final Report.
- In case of missing evidence, **assumption that all persons interviewed and comments received on the draft chapter III are genuine and state the truth** about the sub-programme's activities and results;
- Use of a **mix between quantitative and qualitative assessment** of performance and efficiency on the basis of the objective criteria identified; use of the tables in **Annexes 1 to 3** as an analytical tool;
- Review, where possible, the quality of the written output of the project, such as the reports and the legal opinions produced. However, due to the ComSec decision to classify these documents as confidential, too many of them were not made available to the evaluation study;
- **Assessments of the current and future needs** of trade law assistance on the basis of interviews, the Evaluator's personal judgment and the responses received to a questionnaire on needs, sent by the Secretariat to the potential eligible beneficiaries of the trade law assistance. The questionnaire on needs is attached in Annex 6 hereto;
- Generally speaking, **carrying out an empirical analysis** of the assistance provided and ensuring a work that is not only based on the theory of technical assistance but also on actual and perceived realities in the ground.

CHAPTER 3: OVERVIEW OF THE TRADE LAW SUB-PROGRAMME

I. The Trade Law Sub-programme's objective and strategic orientation

The trade law sub-programme (the "Sub-Programme") was established to provide technical assistance to the Commonwealth developing members States in trade law matters. In particular it aims at providing them with advice and capacity building activities on the implementation of international trade rules. As such it implements strategy 5 of the Commonwealth Secretariat's International Trade Programme:

"Provide advice on international trade law and strengthen institutional frameworks addressing the legal aspects of international trade."

The International trade programme itself formed Programme 5 of the 16 Programmes provided by the Commonwealth Strategic Plan for 2003-2008. It is now covered by Programme 6 (Economic Development) of the new Commonwealth Strategic Plan for 2008-2012. The objectives of these programmes are essentially to assist developing member countries, especially small and least developed States, to take advantage of the international trade system, to improve their understanding of it and to foster their participation in the international trade fora. They are also to develop competitiveness of their economy through capacity building in the elaboration of export and sectoral strategies, market development and trade promotion.

According to the trade law officer, the strategic orientation of the Sub-programme has been more to promote the rule of law within beneficiary countries and internationally than to look at competitiveness and export promotion. The advice given however had to be close to the particular interests of the beneficiary States. It would appear that the assistance was provided with a clear advocacy mind in favour of beneficiary States, i.e. small States, LDCs and other vulnerable Commonwealth Developing countries¹.

There also exists a specific mission statement for the Sub-Programme contained in a schematic presentation sheet provided by the trade law officer. According to this document, the sub-programme's objective would be:

"to provide technical assistance to small States, LDCs and other vulnerable Commonwealth Developing countries in sequencing trade and trade-related policy reforms of a nature and at a pace consistent with their trade, development and financial needs, compatible with the WTO and other trade agreements".

This document could be read to include policy advice within the scope of the trade law sub-programme (*"assistance ... in sequencing trade and trade-related policy reforms"*). In practice, however, the sub-programme has not engaged in such advice and it was not driven by a particular agenda to promote or define the pace of reforms. In general, it limited itself to ensure that governments' planned reforms, in line with their stated strategic development plans, would be carried out in a manner compatible with WTO rules and other relevant international trade agreements.

The mission statement above also seems to imply that the programme's focus is more on domestic trade-related policy issues (the so-called "beyond the border" issues) than on trade negotiations and WTO activity as such. In practice, this has generally been the case, with the major exception of the programme's participation in the banana WTO dispute and in the OECS countries' WTO's trade

¹ In practice, the assistance provided was mainly for the benefit of ACP States, composing 40 of the 53 Members of the Commonwealth Secretariat. The assistance on WTO law and Public Health however also concerned Bangladesh and India as individual countries and the SAARC as a region.

policy review. The idea behind almost all projects was to exploit the policy space left by WTO rules and to ensure that the domestic legislation embodying the government's policies was compatible with them.

The sub-programme has specialised in certain specific areas, linked to the objective to foster foreign direct investment in the beneficiary States. These topics appear in almost all the projects it administered and are centred on investment regulations, fiscal incentives, licensing mechanisms and export processing zones / special economic zones. Among the programme's highlights was also a major project on TRIPs and public health. The assistance provided addressed all facets of the issues examined, i.e. not only the relevant laws and regulations, but also the policy choices, as well as the economic impact of possible changes. It accompanied WTO-compatible transformation processes by suggesting legal amendments and often facilitating stakeholders' awareness and approval of the changes.

In addition to the above main orientation of its activities, the sub-programme assisted certain beneficiary States in their Trade Policy Review at the WTO. The outcome of such reviews has actually led to the above-mentioned activities. Furthermore, as indicated in the next session, the sub-programme has also provided assistance in services, with a project devoted to tourism in the Gambia; and in the review and revision of customs legislation, border tax adjustments and intellectual property laws, in particular with regard to the protection of plant varieties.

Generally speaking, where possible, the intervention style was "hands on", i.e. working in close relationship with the beneficiary, liaising with stakeholders concerned and adapting to the beneficiary's own rhythms and demands.

II. The Trade Law Sub-programme's activities

During the period of investigation, the trade law sub-programme planned and implemented ten registered technical assistance projects within Commonwealth developing States. In addition, the trade law officer provided unregistered legal advice on an ad hoc basis to various government representatives and other stakeholders within beneficiary countries.

The table below summarizes the ten registered projects, by stating their objective, registered output and expense. This table was produced on the basis of the documents collected, on interviews, and on the basis of an on-site investigation of the physical file and of the electronic folders available in the ComSec's system network.

Project	Objective	Output	External Expenditure (UK £)
XCW6070: Pan-Commonwealth Assistance on TRIPs and Public Health	The project's overall objective is to assist Commonwealth countries with insufficient or no manufacturing capacity in the pharmaceutical sector to implement an appropriate regulatory framework to access affordable medicines, taking advantage of TRIPs flexibilities. The expected output includes the preparation of a comprehensive guide,	<ol style="list-style-type: none"> 1. Nine country reports (Bangladesh, Barbados, India, Kenya, Mauritius, Nigeria, South Africa, Tanzania and Uganda). 2. Six regional case studies (SAARC, Caribbean, EAC/COMESA, ECOWAS, SADC/SACU, and Pacific). 3. Six Conferences / Workshops: presentation of 	345,063

Project	Objective	Output	External Expenditure (UK £)
	including model provisions for the implementation of TRIPs flexibilities and one national workshop per country. It also provides for concrete policy recommendations and indication of necessary legislative changes to the Kenya and Botswana Governments.	<p>the studies in Geneva (11-14 November 2004), Nadi, Fiji (17-23 June 2006), Port of Spain (20-28 October 2006), Gaborone (15-17 November 2007) and Nairobi.</p> <p>4. A Report: “The WTO Decision on Access to Medicines at Affordable Prices for Countries with No or Insufficient Manufacturing Capacities: Implementation and Challenges”.</p> <p>5. A training the trainers workshop, Addis Ababa (17-23 March 2007).</p> <p>6. Recommendations for reform including amendments to the relevant laws on IP and medicines regulations.</p>	
XBEL018: Belize Investment/WTO Compatibility	Review of legislation in the context of the implementation of WTO commitments, in light of Belize’s WTO Trade Policy Review. The project’s overall purpose is the establishment of a WTO-compatible trade and investment regime. This project complements prior assistance of the Commonwealth Secretariat in Belize and addresses key areas of trade policy, such as tariffs and other duties and charges, the licensing regime, State trading enterprises, services, etc...	<p>1. Report: An assessment of Belize’s Services sectors.</p> <p>2. Inception report on the Review and Revision of Belize’s Investment Regime.</p> <p>3. Study on domestic border taxes, fiscal incentives and the licensing regime.</p> <p>4. Assistance in the establishment of a Fiscal Incentive Information System Database.</p> <p>5. Review of investment legislation.</p> <p>6. Study on the licensing regime.</p> <p>7. Review of legislation on bananas, citrus, sugar and livestock. Draft of new legislation.</p> <p>8. Work on optimal tariff structure.</p>	254,658

Project	Objective	Output	External Expenditure (UK £)
		9. Several small workshops and meetings to present the above-mentioned reports.	
XSTL022: St Lucia Fiscal Incentives Regime	Review of the structure and performance of the existing fiscal incentives regime and its compatibility with the WTO and other international agreements. The project's overall objective is to establish a modern fiscal incentives regime that is WTO-compatible, with the view to facilitate investment in St Lucia.	<p>1. Study containing a review of St Lucia's fiscal incentive regime.</p> <p>2. The organisation of a conference on best practices bringing together officials and experts from Commonwealth countries in the Caribbean.</p> <p>3. The report of the conference with understandings and recommendations for the region.</p>	139,681
XTON026: Tonga Legislative Compliance to WTO Agreements	Review the trade-related legislation of Tonga vis-à-vis the WTO Agreement, with the aim of effecting necessary amendments to meet WTO requirements in specific trade-related areas identified by the Ministry of Foreign Trade. The legislative review must focus on 4 key areas: SPS, TBT, IPRs and customs valuation.	<p>1. Study on the repeal of the Tonga's Industrial Development Incentives Act.</p> <p>2. Study on "Tonga's Industrial Incentives post WTO Accession: WTO Compliance and Policy Implications".</p> <p>3. Study on "Sui Generis Protection of Plant Varieties: Options for Tonga".</p> <p>4. Draft Bill for the Protection of Plant Varieties.</p> <p>5. Draft revised Excise Act.</p> <p>6. Several small workshops and meetings to present the above-mentioned reports and drafts.</p>	88,799
XGAM029: Assistance in the Development and Drafting of Tourism Regulation for The Gambia	Development of the appropriate legislative framework for the tourism sector, in particular the review of the Gambia Tourism Authority (GTA) Act 2001 and all other laws applicable to the tourism sector. These include provisions for the promotion of	<p>1. Report: "The Gambian Tourist Value Chain and Prospects for Pro-Poor Tourism".</p> <p>2. Validation workshop in June 2007 to present the findings contained in the</p>	67,630

Project	Objective	Output	External Expenditure (UK £)
	tourism activities and private sector investment through fiscal incentives and other trade-related investment measures. The project should also lead to proposals of amendments and or new regulatory measures, as necessary, in line with the Government's medium and long term development policy for the tourism sector.	report. 3. Draft revised Gambia Tourism Act and regulations.	
XMAA028: Malawi - Review of Trade-Related Legislation and Implementation of WTO and other Trade Agreements	Realisation of a complete needs assessment, including an overview of Malawi's trade-related legislative framework, outlining specific implementation concerns and identifying policy instruments required to facilitate Malawi's successful integration into the multilateral trade system. The project must also produce a work plan for implementing the necessary reforms in Malawi's trade regime as well as related draft bills and regulations.	1. Report: "A review of Trade-related Investment Legislation in Malawi", 29 June 2007. 2. Report: "A Review of Tax Incentives in SADC", 30 June 2007. 3. Report: Review of the Intellectual Property Laws of Malawi in the Light of Malawi's Adherence to Various International Conventions. 4. Draft legislation on patents and copyright. 5. Report: SPS measures affecting Plant Health, June 2008. 6. Workshop on SPS Measures, 10-13 June 2008. The workshop report includes an assessment tool on compliance with WTO rules.	93,581
XBOT026: Botswana - Implementation of an SEZ regime consistent with WTO and regional agreements	Establishing a modern Free Zones (FZ) regime as a mechanism for implementing key aspects of the Government's national policy framework and strategy for Foreign Direct Investment (FDI) consistent with its multilateral (WTO) and regional trading obligations, in particular commitments	1. Project Inception Report, containing a description of the project's policy background. Key milestones and a proposed timeframe for establishing an appropriate regulatory framework, submitted to the Ministry of Trade and Industry. 2. Report: "Establishing Free Trade zones in Botswana in	25,497

Project	Objective	Output	External Expenditure (UK £)
	imposed by the agreements establishing the Southern African Customs Union (SACU) and Southern African Development Community (SADC).	accordance with international trade rules”.	
XOEC02: Technical Support to the OECS WTO Trade Policy Review	Assistance in the preparation for the OECS’ second WTO Trade Policy Review in November 2007 and preparation of legal and economic analysis on the trade regimes implemented in OECS-WTO Member States. The project also provides for a review of the WTO compatibility of the trade-related regulatory framework in OECS-WTO Member States.	1. Ongoing support in the context of the OECS’s second WTO Trade Policy Review. Response provided to some of the issues contained in the WTO Report.(joint EAD-SASD project). 2. Papers produced on import licensing, border taxes and fiscal incentives vis-à-vis WTO rules.	8,762
XCWG095: Pan-Commonwealth Legal Advice to ACP Banana Exporting Countries	Assistance to the CARICOM Secretariat in the review of the WTO compatibility to the EU Banana regime and legal opinion on the legality of maintaining the status quo as against the move towards an EU flat tariff regime. Assistance to the ACP Banana Working Group in the first and second arbitration over the proposed level of rebinding of the EC flat tariff for bananas.	1. Legal opinion on the EU Banana Regime. 2. Participation in the preparation of the pleadings, and pleadings in Geneva in the context of the Arbitration procedures. 3. Participation in meetings of the ACP Banana Group, ad hoc review of position papers and attendance to WTO ‘s DG Conciliation procedure .(joint EAD-SASD project).	10,045
XWES015: Review of Trade-Related Legislation of Samoa in Preparation for Accession to WTO	Review the trade-related legislation of Samoa as part of its accession to the WTO. Drafting of any new legislation or amendments to existing legislation to facilitate accession.	1. Report on the Review of the trademark and patent legislation of Samoa, the quarantine legislation and customs valuation. 2. Draft instructions for proposed amendments to Samoa’s trade-related legislation. 3. Submission of five pieces of legislative drafts for consideration by the WTO	75,363

Project	Objective	Output	External Expenditure (UK £)
		<p>Committee of Samoa.</p> <p>4. Stakeholders' consultations on the five pieces of legislative drafts.</p> <p>5. Two papers on antidumping, countervailing duty measures. Drafting instructions for legislation on this, draft legislation and procedural manual on the application of trade remedies.</p>	

The trade law officer also provided un-registered advice and legal opinions, none of which are available in the files or in the ComSec's system network. These services were provided through informal e-mails, telephone conversations and meetings. The advice was given on an ad hoc basis at the beneficiary's request. There are several occurrences of this type of assistance, all of which are un-accounted for. The trade law officer welcomed this type of requests, which gave her the opportunity to be immediately helpful in real life situations.

III. The Trade Law Sub-programme's staff

After having had two members of staff, the Trade law sub-programme is now entirely administered by one senior trade lawyer, specialised in this field through her extensive experience as negotiator of trade agreements for the CARICOM and as a member of a WTO Panel.

In the implementation of the projects, the trade law officer had mixed roles, variable according to the projects, shifting between the exercise of her own legal expertise and the management of external experts. In several cases, she drafted herself project inception documents and legislative drafting guidelines, while in others, she outsourced analysis and the legal drafting as such. Outsourced research was mainly on economic and policy issues. In all projects, the trade law officer engaged herself, with variable intensity depending on the project, with the beneficiaries and stakeholders to identify the work to be done, and to facilitate its proper absorption in the country concerned. When available, she also responded to the ad hoc questions that arose and enjoyed the dynamism of the process. She travelled extensively to the countries concerned and participated in many validation meetings conveying the conclusions of the reports produced. Some projects, however, such as the Tourism project in the Gambia and the projects in Samoa and Tonga seem to have less benefited from her direct input. Some beneficiaries also complained of the fact that she was not always available on demand, due to her numerous commitments and extremely busy schedule.

While the trade law officer accepted invitations from other ComSec divisions to participate in workshops or conferences organised by them, she did not engage much herself in business development, i.e. in the proactive advertisement of the sub-programme to all potential beneficiaries. She was also less attentive to the administrative side of project management.

As a general style of work, she tends to develop empathy for her existing clients; she is very reactive to their immediate concerns and desires; and she does not spare her time and efforts when she visits them. Generally speaking beneficiaries appreciate her a lot for these reasons.

IV. The budget, level of expenditure, and administrative infrastructure of the trade law Sub-programme

The Trade Law sub-programme has had on average a budget of overall 292,170 UK £ per year, now revised to 169,000 UK £. This budget does not include the salary of the trade law officer.

Therefore, since the beginning of the programme, in January 2004, and until the end of June 2008, the sub-programme had a budget appropriation of 1,168,684 UK £. According to the records, it spent 1,109,080 UK £, i.e 95% of the budget available.

The sub-programme benefits from the support of the clerical staff and the Project Support Team within the Secretariat's Special and Advisory Services Division (SASD) and from the overall infrastructure of the Commonwealth Secretariat. It is also fully subject to the procedures and internal rules of the latter.

The sub-programme does not have a specialised legal library. However, the trade law officer indicated that she has several books at home, and that she subscribed to academic journals that she regularly consults. It has not been possible of course to assess the extent and breadth of the specialised books at her disposal. Internet resources, however, are plentiful on trade law. The ComSec Library also facilitates requests for specific legal texts. The Library may also facilitate access to law libraries attached to the University of London.

V. The Trade Law Sub-programme's institutional context

The Trade Law programme is part of the Economic and Legal Section (ELS), within the Special Advisory Services Division (SASD) of the Secretariat.

a. The Special Advisory Services Division (SASD)

The SASD is an in-house high level consultancy unit. It is responsible for the implementation of part of the Secretariat's International Trade Programme, with the clear objective to contribute to the development of pro-poor policies. It is divided into five specialised sections.

- 1) Debt Management Section (DMS)
- 2) Economic and Legal Section (ELS)
- 3) Trade Section (TS)
- 4) Enterprise and Agricultural Section (EAS)
- 5) Project Support Team (PST)

It is a demand-driven division, whose mandate is to deliver timely technical assistance in response to special requests of beneficiaries in any of the areas covered by the specialised sections. Most of SASD's projects contain a strong component of policy advice, benchmarking and capacity-building for beneficiaries through training and on-the-job transfer of skills. However, SASD focuses on short to medium term actions, as the posting of long-term experts usually falls under the responsibility of the Governance and Institutional Development Division (GIDD).

The SASD has a staff of 40 persons and it administers around 110 projects for a total budgeted amount of 4 M. UK £, excluding salaries. Funding comes from the Commonwealth Fund for Technical Cooperation (CFTC).

The SASD has an internal system for the receipt and allocation of requests for assistance: when it receives a request, the SASD Director asks the competent official to prepare a Project Concept Note,

which is then submitted to the SASD's Coordination Group, composed of the Director and the heads of sections. This group meets every Monday. Should a project be internally accepted, it must then follow the Secretariat's standard procedure, i.e. if its budget is less than 15,000 UK £, it can be accepted directly by the Division's Director. If it is for a higher amount, it must be approved by the Deputy Secretary-General. To obtain such approval, the Project Management and Referral Unit must have reviewed it. This unit oversees the technical quality and organisation of the proposed project, in accordance with Secretariat's Guidelines. When approved, the project is then handled by the competent section within SASD.

SASD's vision for the future is to further develop its ability to provide high level advisory services in a timely manner and to develop synergies across sections and between Divisions as and where possible. SASD is also undergoing a major review of its management functions and it has already initiated reforms in this regard along similar lines as those recommended in this report.

b. The Economic and Legal Section (ELS)

The ELS is part of the SASD and it therefore also functions as a consultancy unit. It covers three areas of specialisations, all in the economic and legal domains:

- 1) Natural resources
- 2) Maritime boundaries
- 3) Trade Law

Until recently, the ELS provided assistance in capital markets, but it was decided to phase this out due to the retirement of the official in charge. Competition policy was also within the range of ELS' competences, but this also is no longer addressed.

ELS' objective and vision is to function as a single multidisciplinary consultancy entity in all the above-mentioned fields. It wishes to organise itself as a one-stop-shop for beneficiaries in these areas and it claims to contain the highest concentration of senior technical experts in the Secretariat. Its deliberate style of working is to be hands on and closely tuned to the beneficiaries' needs and realities on the ground. As such the ELS rejects standardisation of projects and promotes customer-made activities.

For these reasons, ELS wishes to work as a trusted advisor at a high political level. Its challenge is to develop a brand name and a uniform style of intervention in the areas it covers, beyond the individual experts that are currently composing it.

VI. Other trade-related programmes within the Commonwealth Secretariat

a. The SASD's Trade Section

The Trade section, like the other sections of SASD, is a demand-driven consultancy unit which specialises in the development of pro-poor industrial policies, export development and enterprises' competitiveness. In this context, it also covers the areas of business environment, trade facilitation and compliance with international standards.

In addition, the Trade Section handles projects that support public-private dialogue with a view to promote the private sector's interests. It also works with private sector representative organisations and develops projects aimed at strengthening their capacity.

The Trade Section therefore works more on the domestic operational side of trade than on trade policy as such and international trade negotiations and agreements. The border line between this field of activities and the one of the trade law programme is very thin and not always conceptually clear. Even

though the latter would aim at promoting the rule of law and the former seeks export competitiveness, overlaps are possible and allocation of projects within SASD is not necessarily straightforward. Indeed, trade policy supports in principle industrial growth strategies and it cannot be dissociated with an overall industrial policy and market access strategies. Furthermore, international trade agreements inform the ways in which sectoral competitiveness and export promotion must be achieved. International trade law also governs trade facilitation and the adoption of standards and technical regulations. Finally, in the processes of trade policy formulation and the negotiation of international trade agreements, it is essential to benefit from the private sector's input and thus of an effective public-private dialogue on these issues.

What seems to distinguish the Trade Section from the ELS and the trade law sub-programme is the fact that it contains less hands-on experts in their own field of specialisation than project managers. Its staff members tend not to provide advice themselves but to administer contracts with a large array of external consultants and to monitor project delivery.

Among others, the Trade Section recruited a **Trade Adviser** based in **Geneva**, to provide advice to the Commonwealth Developing States' Delegations in Geneva. In that capacity, he is using his own contacts in Geneva and participates in the WTO negotiations. According to a recent review of the Secretariat's WTO-related technical assistance, his output, consisting in background analytical papers and notes, as well as briefings notes to the countries' Geneva based missions, has proven to be useful and is appreciated².

Generally speaking, the Trade Section, including the trade adviser in Geneva, has limited working relationship with the ELS and with the trade law sub-programme. Few instances of cooperation have been reported. One is when the Trade Section organised a workshop on competitiveness and asked the trade law sub-programme to provide input on intellectual property and TRIPs issues, which the trade law officer did. Another one is when the Trade Section undertook an assessment on Mauritius' services sector and requested the trade law sub-programme to provide input. There are also reported occasions when the trade law sub-programme drew to the Trade Section's attention WTO GATS commitments of member countries where this was relevant to the Trade Section's programmes. Furthermore, there is some complementarity between the work carried out by the Trade Section and the one carried out by the trade law sub-programme on the tourism sector in the Gambia. Finally, on a separate consultancy basis, the Trade Adviser in Geneva participated in the sub-programme's project on TRIPS and Public Health (XCW6070).

b. The International Trade and Regional Cooperation Section (ITRC) within the Economic Affairs Division (EAD)

The EAD is an in-house policy institute, making research and disseminating it on areas of interest to Commonwealth developing States. Together with the SASD, it is responsible for the implementation of the Secretariat's International Trade Programme, with the same pro-poor development objective. In particular, its objective is to assist beneficiary States to improve their economic policy making and governance so as to achieve economic growth.

By contrast with the SASD, the EAD is not expected to be demand driven and it can take distance from the immediate assistance needs of the beneficiary countries. Its function is to alert them on issues they must consider in order to adjust to the new international trade and economic environment. The EAD can take its own initiatives to carry out a particular research it believes is of relevance to the

² See ComSec, Evaluation Study, "Strategic Positioning and Strengthening of Assistance by the Commonwealth Secretariat to Commonwealth Developing Countries on WTO-Related Issues", May 2008, pp. 13-15.

beneficiary States. The EAD should not however be considered as an academic think tank as it aims to be closely connected with the beneficiaries' realities and interests.

EAD's modes of delivery include the production of analytical and research papers, diagnostic studies, workshops, advocacy with beneficiary States to adopt efficient economic policies and advocacy in the context of international meetings. EAD, however, wishes to remain neutral in its advice and to advocate principles, not particular trade interests.

The International Trade and Regional Cooperation Section (ITRC) within EAD carries out EAD's activities in the areas of trade policy, international trade agreements and trade negotiations. It is particularly active in the preparation and negotiations of the Economic Partnership Agreements (EPA) between the EU and several ACP States and sub-regions.

The ITRC is mainly composed of high-level economists, one junior lawyer and a few legal interns. It is therefore not self-sufficient in trade law analysis, despite many of its activities entailing a legal aspect. Therefore, the ITRC regularly needs the assistance of a specialised trade lawyer and it occasionally calls on the SASD's trade-law sub programme for this purpose. Interaction between the two programmes has been successful in several instances³ and it was facilitated by the positive personal communication between ITRC's head and the trade law officer. Synergies between the two programmes, however, are reportedly still insufficient and not systematic, due to an administrative setting within the Secretariat which does not seem to encourage cross-divisional cooperation and due also to the over commitment of the trade law officer. Furthermore, the legal input required by EAD is more analytical in nature, which tends to be time-consuming and not what the trade law officer can provide on a continuous basis. Therefore most of the trade law work for EAD is commissioned to external consultants and occasionally to the Legal and Constitutional Affairs Division (LCAD), yet maintaining the need for permanent trade law input within EAD's activities.

c. The Hubs & Spokes project within the Office of the Deputy Secretary- General (ODSG)

The project "*Building the Capacity of ACP Countries in Trade Policy Formulation, Negotiations and Implementation*", commonly referred to as the Hubs & Spokes project, consists of deploying trade policy analysts (TPAs) to host government institutions of ACP countries (the spokes) and Regional trade policy advisers (RTPAs) to Regional Integration Organisations (the hubs). Currently, there are 25 trade policy analysts and 6 regional trade policy advisers posted within various ministries and organisations. The hubs and spokes are expected to provide long term assistance to their host institutions according to a work programme agreed with them in light of their needs. The project's objective is to promote the effective participation of ACP Countries in international trade negotiations and to strengthen their capacity to formulate and implement development-oriented trade policies.

The Hubs & Spokes project is partially funded by the Commonwealth Secretariat and the ninth European Development Fund, through the EU/ACP TradeCom Facility. For this reason, in order not to create confusion with the other Secretariat's programmes, it was located in the office of the Deputy Secretary-General. The project is expected to be extended in its current form until 30 June 2010.

The Hubs & Spokes project underwent its mid-term review in 2007, which provided positive feedback on its impact and usefulness⁴. Demand for the assistance provided by the project is expected to grow. However, the EU and ACP supervisors of the project are unlikely to take proactive action to extend it

³ This was the case for instance in the context of the OECS' fiscal incentives study, in bananas and in the context of EPA negotiations.

⁴ ComSec, Hub and Spoke Project, Mid Term Review Summer 2007.

and to provide additional funding beyond the agreed term. Such extension may however be decided politically in the context of the tenth European Development Fund or financed by other sources.

Some of the TPAs and RTPAs are themselves trade lawyers and have the capacity to interpret trade agreements and domestic legislations. However, because of the immensity of the work, and the type of questions that arise, requiring senior legal skills, they have limited capacity to satisfy all demand for trade law assistance. They may therefore call on the services of the Trade Law sub-programme. This has been occurring for instance in the Malawi project (*XMAA028: Malawi - Review of Trade-Related Legislation and Implementation of WTO and other Trade Agreements*), where the TPA prepared terms of reference for the drafting and implementation of trade remedies legislation. This was handed over to the trade law sub-programme for further treatment and the request is now handled by the trade law officer. Generally speaking, however, besides this particular example, it would appear that the hubs & spokes are insufficiently informed of the opportunities offered by the other technical assistance programmes of the Commonwealth Secretariat. Conversely, the other Divisions within the Secretariat do not make use of the hubs & spokes network in the ground.

The Hubs & Spokes programme is currently facing the difficulty of not knowing what its future will be. Furthermore, there remains the challenge to identify sufficiently skilled and experienced analysts and advisors to participate in the programme and to retain them, given their rather low level of remuneration, as highlighted in the mid-term review. This being said, the programme has developed its own brand and positive reputation. It controls an interesting network of qualified TPAs and RTPAs, of which more use could be made. An obvious challenge would be to optimise this potentially useful infrastructure for the benefit of the Commonwealth Developing States.

d. Technical Advisor at the ACP Geneva Office (technical ACP Adviser)

The Commonwealth Secretariat is providing a long-term technical advisor to the Geneva office of the ACP Secretariat to assist it in its daily activities. These include, among others, the provision of small-scale technical assistance, networking and building coalitions and alliances with other groups of countries and other organisations, and the provision of technical input on selected issues⁵. More particularly, the technical ACP Adviser is requested to coordinate the input of external consultants advising on the Doha Development Round.

This project does not interact on a daily basis with the others. It nevertheless reports to the ITRC within EAD and interacts with the sub-programme in the context of the WTO banana dispute.

e. Technical Advisor at the Pacific Islands Forum Mission (technical PIF Adviser)

The Commonwealth Secretariat is also providing a senior technical advisor to the Geneva Mission of the Pacific Islands Forum to strengthen the capacity of that mission to provide adequate representation of the South Pacific Islands' interests before the WTO. The assistance provided seems to be focusing on the issues of fisheries subsidies and NAMA.

Few reported interactions between the technical PIF Adviser and the trade law sub-programme include some advice sought on the implications of certain subsidy proposals. Besides that, the two programmes do not really interact.

⁵ See ComSec, Evaluation Study, "Strategic Positioning and Strengthening of Assistance by the Commonwealth Secretariat to Commonwealth Developing Countries on WTO-Related Issues", May 2008, p. 16.

f. Inter-divisional Committee on Trade

Considering the multiplication of trade-related assistance programmes and activities, the Commonwealth Secretariat decided to create an inter-divisional Committee on Trade, with the objective to increase coherence and coordination in the Secretariat's offer of trade-related technical assistance. The inter-divisional Committee's mission is to

- *“promote an integrated approach and ensure complementarity of activities with all trade and trade-related work of the Secretariat,*
- *facilitate consultation, coordination and information sharing on ongoing and proposed trade activities in each of the division ...*
- *and develop a coherent approach to building and mainstreaming external flow of information within the Secretariat, as well as coordination and coherence of the Secretariat's activities in this area”.*⁶

Reportedly, the Committee met only once and is not actually delivering the expected level of coordination within the Secretariat. Much of this situation tends to be attributed to the fact that the Secretariat is itself resource constrained, i.e. everyone is very busy, and that there is a lack of institutional incentive to engage into cooperation. Therefore when the latter occurs, it is on an ad hoc basis, more because officials see the practical benefit of it for their clients and are personally informed of each other's activities and skills through individual contacts.

VII. Other programmes of the Commonwealth Secretariat with trade implications

a. The SASD Enterprise and Agriculture Section (EAS)

The Enterprise and Agriculture Section (EAS) within SASD provides the same type of assistance as that provided by the SASD Trade Section but for the agricultural sector. Like the Trade Section, it concentrates on the operational side of trade through SME development, competitiveness programmes, investment promotion and compliance with international standards. The EAS also handles compliance issues in relation to sanitary and phytosanitary rules and it provides assistance in the formulation of pro-poor agricultural policies.

The EAS seems to have developed substantial in-house capacity on agricultural issues and the expertise of its staff has already been used by the trade law sub-programme.

b. The EAD's Small States Section

The Small States Section within EAD is providing analytical support to understand the special needs and challenges of small States in the conduct and management of development-oriented policies. It also promotes the mainstreaming of small States' interests in international trade cooperation. It is instrumental in enabling exchanges of experiences among small States through publications and the organisation of workshops and seminars. The Small States Section for instance published a report on *“Meeting challenges in the Global Economy”*⁷, which was updated in August 2006⁸. It also organises an Annual Small States Forum, during which economic analysis is exchanged and statistics are discussed.

⁶ ComSec, Revised Draft Terms of Reference, Inter-Divisional Meetings on Trade.

⁷ ComSec, Small States: Meeting the Challenges in the Global Economy”, Report of the Commonwealth Secretariat / World Bank Joint Task Force on Small States, March 2000.

⁸ ComSec, Towards an Outward-Oriented Development Strategy for Small States: Issues, Opportunities and Resilience Building. A Review of the Small States Agenda proposed in the Commonwealth / World Bank Task Force Report of April 2000, by Lino Briguglio, Bishnodat Persaud and Richard Stern, 8 August 2006.

According to the small States Section, one of the major constraints faced by small States in the context of trade law and policy is the lack of qualified expertise. Therefore, the provision of long term expertise and efforts to educate a new generation of professionals is essential to cover those needs. The Small States Section would welcome the contribution of the SASD and the GIDD in this regard. It also promotes the idea that technical assistance should provide advocacy services in favour of Small States

This being said, besides an invitation made to the trade law officer to participate in a conference, there are no reported interactions between the Small States Section and the trade law sub-programme.

c. The Gender Section within the Social Transformation Programmes Division (STDP)

The Gender Section within the STDP provides analytical support and organises advocacy campaigns to mainstream gender in trade and development policies. It has produced a “*Gender and Trade Action Guide*”,⁹ providing indications on the possible impact of trade policies on men and women as well as practical tools to take advantage of trade opportunities. It also produces training modules to be delivered on the ground and carries out dissemination of information on gender during international conferences, such as UNCTAD XII or the WTO Public Forum. It has also produced analysis of the gender impact of the Economic partnership agreements between the EU and the ACP sub-regions.

The Gender Section hosts a rather elaborate website where most of its publications and activities are reported¹⁰.

Generally speaking the Gender Section cooperates, within the Secretariat, with EAD’s ITRC Section. There are no reported interactions with ELS or the trade law sub-programme. The Gender Section believes that more gender training should take place within the Secretariat in order to increase gender awareness and to further streamline gender issues into the technical assistance provided by the Secretariat. For instance, the Gender Section believes that the entire issue of TRIPs and public health, including the promotion of traditional medicines, has a profound impact on gender. It would therefore welcome being involved in any project dealing with it.

d. The STDP’s Education Section

The Education Section within the STDP provides assistance to Commonwealth Developing Countries in educating and retaining skilled teachers for their schools. Its main interests lie in developing primary and secondary education within beneficiary countries, in accordance with the Commonwealth Protocol for the Recruitment of Commonwealth Teachers of 1st September 2004. Occasionally, tertiary education, i.e. at university level, is supported, but this does not seem to be in the mainstream of the assistance provided by the Education Section¹¹.

Unsurprisingly, given the above, the Education Section has not had contacts with the trade law sub-programme, and the other ComSec’s divisions dealing with trade issues. The section would nevertheless welcome specialised inputs on matters pertaining to trade in education services, particularly on the mode 4 of services delivery, i.e. provision of services through the movement of individual service providers, in this case, teachers. Furthermore, the Section would not be hermetic to the idea to develop specialised programmes of tertiary education in trade law.

⁹ ComSec, STDP, the “Gender and Trade Action Guide”, 2007.

¹⁰ http://www.thecommonwealth.org/gthomepage/164044/gender_and_trade/

¹¹ See ComSec, Report on Future Actions requested by the Ministers of Education in the Commonwealth Teacher Recruitment Protocol, October 2006.

e. The STDP's Health Section

The Health Section within the STDP provides assistance to Commonwealth Developing States to strengthen their health system and build their capacity to address HIV/AIDS, maternal and infant mortality and scarce human resources in health. In particular, its assistance encompasses preparation and review of strategic plans and programmes in these areas, awareness raising campaigns and activities to strengthen cross-sectoral and gender-sensitive participation in health policies.

The STDP's Health Section and the sub-programme worked together in the implementation of the TRIPs and Public Health project (XCW6070: Pan-Commonwealth Assistance on TRIPs and Public Health).

f. The Governance and Institutional Development Division (GIDD)

The GIDD is a Capacity-building Division that is the custodian of long-term assistance programmes. It does not provide in house expertise per se. It mainly administers structural long term projects, as well as certain scholarship programmes. Its projects mainly focus on institutional strengthening and public management. Its activities span across many subjects and may include capacity-building for line ministries in charge of trade.

The GIDD is the Division which typically finances and supervises long-term experts posted on the ground (with the exception of the hubs and spokes, administered by the office of the Deputy Secretary General). Long term experts are those recruited for missions comprised between 6 months and two years.

Notwithstanding the above, while the GIDD had been cooperating with the EAD on trade issues, there is no record of interaction between the GIDD and the trade law sub-programme.

g. The Legal and Constitutional Affairs Division (LCAD)

The LCAD is in charge of capacity-building activities on domestic legal and institutional issues. Its objective is to promote good governance, the rule of law and democratic values. It does not typically handle economic law issues, which are devolved to the ELS within SASD.

There are few reported interactions between the LCAD and the trade law sub-programme. The latter has reportedly provided information papers for Law Ministers and made a presentation at a meeting of Law Ministers from small jurisdictions. It would also seem that the LCAD has provided some support to EAD, complementing with legal analysis its study on the implications of ACP-EU negotiating outcomes for the Commonwealth developing States. The trade law sub-programme was also somehow involved in this project.

VIII. Processes within the Commonwealth Secretariat pertaining to trade law assistance

a. Mechanisms used for the receiving of requests, the routing of requests, the commitment of funds and the release of expenditures

Beneficiary countries must submit requests for trade law assistance to the Commonwealth Secretariat through the Official Commonwealth Points of Contacts on the ground. Requests tend to be received by a particular Division within the Secretariat or by the services of either the Secretary -General or the Deputy Secretary- General. Each Division has its own system for the assessment of requests received and the communication to other relevant Divisions of requests that do not match their portfolio. There are varying degrees of effectiveness in this process from one Division to the other. The SASD

complains that certain requests that had to be handed to it were actually forwarded several months after their original receipt, when the relevance of technical assistance could be lost.

As indicated above, when a Division accepts a request, the latter must follow the Secretariat's standard procedure, i.e. projects with a budget of less than 15,000 UK £ can be approved directly by the Division's Director, while the other projects, for a higher amount, must be approved by the Deputy Secretary-General (DSG). The Project Management and Referral Unit must be consulted beforehand, even though its advice is non-binding for the DSG. When a project is approved, the funds are committed. The competent service within the Secretariat administers it and monitors progress according to the milestones provided in the project's documentation. Release of any expenditure requires the signatures of the Head of the competent Section and of the Division Director.

b. The Project Management and Referrals Unit of the Secretariat (PMRU)

The PMRU is responsible for the Quality Assurance Analysis (QAA) of projects (new and extensions) with a budget value greater than UK£15,000 that are submitted for DSGs' approval. It performs this QAA function according to a list of pre-defined quality criteria and standards which are based largely on those used by other development agencies, notably the Australian development agency (AusAID) and CIDA. It first checks the rationale of projects in light of the Secretariat's mandates, their relevance, lack of duplication and contribution to the Millennium Development Goals. It then looks at the adequacy of the design of the projects, including assessment of their sustainability. Finally it checks the standard of the final design, including the quality of the logical framework.

The PMRU also reviews projects submitted by the SASD, including projects related to the trade law sub-programme. PMRU has found that too often these projects are urgent and concern activities that must be implemented immediately after their submission. While the PMRU tries to be proactive and aims to assess every project submitted to it within one week of receipt, it is concerned that such urgency may impair the quality of its analysis and therefore of the project as a whole. The PMRU indicated that notwithstanding the late project approval submissions, the ELS project manager is receptive to its QAA comments.

Generally speaking the PMRU reviews projects for quality control at entry and it also tries to foster inter-divisional cooperation when it sees there are possible synergies. The PMRU is of the view that it is the responsibility of Divisions to ensure that their projects are properly reviewed for quality control before they are submitted for approval by the DSG.

c. Synergies with the other programmes of the Commonwealth Secretariat during the Evaluation Period

As indicated above, there have not been many real synergies between the trade law sub-programme and the other divisions and sections within the Secretariat dealing with trade-related technical assistance. Interactions have occurred with the EAD's International Trade and Regional Cooperation Section (ITRC), in few situations with the SASD's Trade section and, in the TRIPs and Public Health project, with STDP's Health Section.

There were here and there other occurrences of interactions with other units. For instance, when the trade law officer heard of any particular need falling outside of the sub-programme's mandate during one of her missions, she forwarded a request to the competent section or division within the Secretariat. This has happened for instance after an inception mission in Malawi narrowing down the very large scope of a request that was filed with the sub-programme. It was considered then that certain aspects of the request would be better handled by other sections of the Secretariat. Furthermore, the trade law officer has occasionally used the expertise available in other sections or

divisions to carry out a particular assignment in the context of a trade law project. The TRIPs and Public Health project provides a good example in this regard.

d. Feedback and lessons learned with respect to intra-Secretariat's processes and interactions

Generally speaking, **the trade related technical assistance provided by the Secretariat is well perceived**. It tends to be in line with the needs of the beneficiaries and closely follows a scheme characterised by dialogue, trust, and personalised interaction. In this context, the trade law sub-programme finds its full place.

While the assessment of the performance of the sub-programme and its continuous relevance in the Secretariat's portfolio of trade-related technical assistance will be made in the following chapter, one may already note **there is less than optimal coordination of activities and synergies within the Commonwealth Secretariat**. It appears that while a lot of effort is put to ensure qualitative delivery of technical assistance through professional scrutiny of project documentation, the full potential of the Secretariat's resources is not exploited. Programme managers are not encouraged to cooperate with each other, as this may cause additional administrative difficulties for them in terms of project accounts and codes, lines of authorisation for expenditures, outsourcing of expertise, travelling, etc. Furthermore, the project managers are only supervised by their direct hierarchical supervisor and their performance is assessed within their own Division. There are no particular benefits for them to create synergies and cross-referrals within the Secretariat. When the latter occur, they tend to be on an ad hoc basis, to satisfy a particular client's needs and depend on the programme manager's personal inclinations and the time he/she has available to undertake a proactive search of relevant expertise within the Secretariat.

There would be numerous opportunities for cross-fertilization though, as the Secretariat's supply of knowledge and experience is very large and covers all facets of international trade issues. **By definition, most, if not all capacity-building projects are multidisciplinary and should entail intervention by more than one division or section**. Since this is not spontaneously taking place, it is tempting for a project manager to try to cover all aspects of an issue under a single activity by using external expertise, even in areas which are normally not of his/her competence. This may undermine the quality of the supervision. This less than efficient attitude is facilitated by the sometimes blurred lines of the programmes' mandates and the numerous possible overlaps across sections and divisions. The trade law sub-programme is not an exception. In several instances, the assistance provided under it could have been carried out by the Trade Section of SASD as it was not strictly legal. This was particularly noticeable with certain studies and reports non-legal experts produced under the trade law sub-programme.

Considering the above preliminary observations, **a first series of recommendations would be to streamline programme definition and encourage cross-divisional cooperation through joint divisions' performance evaluations, positive assessments for intra-Secretariat referrals, joint divisions' budgets and facilitated lines of approval and release of expenditures in collective projects**. The Inter-divisional Committee on Trade should also be revived. These suggestions would be in line with the SASD's own vision for the future, and seem to match the wishes of virtually all other relevant divisions and sections within the Secretariat.

As to the **Secretariat's internal procedures for the approval and management of projects**, they **seem straightforward and well defined**. They are also necessary to ensure the overall quality and sustainability of the technical assistance. **However, they may also appear burdensome**, as they require the submission of complete project documentation to the PMRU, including a logical framework and lengthy explanations of the relevance of the action in relation to the Secretariat's mandate and the development objectives of the beneficiary States. The files tend to be quickly

overloaded with pages containing communications of this type. One may wonder in this respect if for short type of interventions, such a complex filing is necessary. In the trade area, especially trade law, assistance may be needed urgently to be fully in line with the natural pace of negotiations or to support domestic legal change. **Flexibility and speed in obtaining authorisations and accessing funds are very important** in this respect and they should probably extend beyond the current threshold of 15,000 UK £. The number of urgent requests submitted to PMRU is a clear indication of this. In addition, it would be useful to **free the time of the trade law officer to provide high-level advice as opposed to filling out forms** and electronic boxes for every single intervention. **One could imagine in this regard the elaboration of larger framework projects, based on country partnerships, for which complete project documentation would be produced - thus enabling a quality check of the project design -, and in the context of which specialised activities would be carried out. Objective criteria would indicate when an activity can be considered eligible under a framework project and would still enable an ex-post review of the expenditure made.** Transparency rules would be imposed as well as information flows across Secretariat's Divisions. A recommendation would therefore be to start thinking at a mechanism for the simplification of the internal procedures within the Secretariat, while fostering cross divisional cooperation and maintaining the high-quality technical assistance that already characterises the Secretariat's output.

The final part of the study will come back to some of these issues and provide more specific recommendations, where relevant, in light of those expected pertaining to the strategic orientation of the trade law programme and the optimal operational structure to deliver the trade law assistance.

CHAPTER 4: ASSESSMENT OF QUALITY AND PERFORMANCE OF THE TRADE LAW SUB-PROGRAMME

I. Analysis of the effectiveness of the legal assistance provided in relation to the SASD's mandates to deliver the Secretariat's intended results

a. Methodology and indicators

*The study must assess the effectiveness of the projects carried out under the sub-programme and the degree to which they have **delivered on planned outputs** and **contributed to the objectives of the Secretariat's International Trade Programme**.*

The objectives of the Secretariat's International Trade Programme are essentially to assist developing member countries, especially small and least developed States, to take advantage of the international trade system, to improve their understanding of it and to foster their participation in the international trade fora. It is also to develop competitiveness of their economy through capacity building in the elaboration of export and sectoral strategies, market development and trade promotion.

The strategy guiding the trade law sub-programme is assessed in light of these objectives, particularly the first one pertaining to the capacity of developing member countries to optimally integrate in the international trade community. The second one, pertaining to the improvement of the competitiveness of the economy, essentially falls within the mandate of the Trade Section of the SASD. The trade law sub-programme, however, may contribute to it by improving the investment regulatory framework within developing member countries. Particular attention must be given in this regard to point 5 in the Annex 2 to International Trade Programme, mandating the Commonwealth Secretariat to "[p]rovide advice on international trade law and strengthen institutional frameworks addressing the legal aspects of international trade".

Furthermore, the work of the trade law sub-programme is assessed taking into account the Secretariat's strategic focus on high-level negotiations, policy development and national trade promotion and facilitation. This was decided on the basis of the Secretariat's established comparative advantage which essentially consists in its recognised capacity to act as a trusted and reliable advisor.

*The study must also assess the actual or likely **impact** of the technical assistance provided **on the development of the beneficiary countries**. It must take account of the requirements of developing member countries for advice and support in trade law matters.*

In accordance with the objectives stated in the Commonwealth Strategic Plans, technical assistance must clearly contribute to sustainable development within developing member countries. The Secretariat's International Trade Programme is an integral part of this objective and it must be assumed that meeting its goals has a positive impact on development. The idea is to build developing States' capacity to formulate and manage trade policies that are conducive to growth. This also entails building their capacity to devise supporting domestic policies and to negotiate relevant trade agreements and implement them in the domestic context. The capacity to seek and sustain enforcement of international trade agreements is also an important aspect. A sound legal system is necessary in this regard. Trade law support must contribute to its establishment as well as to the elaboration and implementation of relevant trade-related laws at international, regional and domestic levels.

Trade law support may also have immediate measurable effects on the development of a sector of economic activity and this must be highlighted as well.

*Furthermore the study must assess the relevance of **gender issues** on the effectiveness of the programme and how well these issues and the other stated objectives of the Secretariat were addressed by the sub-programme.*

Trade liberalisation must also secure benefits for women. All positive contributions to gender equity are highlighted. Use is made in this regard to the “*Gender and Trade Action Guide*” produced by the Secretariat’s Social Transformation Programme Division (STPD).

In order to assess the effectiveness of the projects carried out by the trade law sub-programme in light of all these objectives, objective and verifiable criteria were defined, pertaining to the relevance of each project to the Secretariat’s objectives as well as to the quality of the assistance provided.

The following indicators were used:

<i>Indicators 1 : Relevance of the technical assistance (TA) to the objectives of the Secretariat’s International Trade Programme</i>
1.1 The TA overall contributes to sustainable growth in developing member countries, particularly small and least developed States.
1.2 The TA contributes to the enhancement of the analytical and institutional capacity of the developing member countries for sound domestic trade policy formulation.
1.3 The TA contributes to the strengthening of the institutional capacity of the developing member countries to implement trade policies and trade agreements.
1.4 The TA contributes to the ongoing process of bilateral and /or multilateral negotiations and to the strengthening of regional integration within developing member countries.
1.5 The TA addresses particular identified trade-related needs and provides relevant and accessible outputs to the developing member countries, in line with their interests ¹² .
1.6 The TA strengthens trade and investment-related regulatory frameworks. It contributes in this regard to develop competitiveness of the developing member countries’ economy through, among others, capacity building in the elaboration of export and sectoral strategies, market development and trade promotion.
1.7 The TA is in line with the Secretariat’s strategic focus on high-level negotiations, policy development and national trade promotion and facilitation.
1.8 The TA avoids duplication with other donors.
1.9 The TA contributes to a sound and effective public – private dialogue and integrates other dimensions of domestic governance related to democracy, human rights, health and education.
1.10 The TA contributes to promote gender awareness and equal treatment.

¹² See preliminary guidance in this regard in p. 17 of the ComSec Strategic Plan for the years 2004-2008.

<i>Indicators 2 : Quality, and sustainability of the technical assistance</i>
2.1 The TA builds on previous experience and current best practices.
2.2 The activities and means used ¹³ are appropriate, practical, clear, feasible and consistent with the objectives and expected results.
2.3 The TA is result – oriented and structured according to a logical framework for intervention.
2.4 The beneficiary's level of involvement and participation in the TA is satisfactory.
2.5 The absorption capacity of the target group(s) and beneficiaries is satisfactory and the latter feel ownership of the TA's outcome.
2.6 The TA focuses on providing concrete output and recommendations for policymakers and other relevant stakeholders. Such output is satisfactory from a technical point of view.
2.7 The TA is likely to have multiplier effects.
2.8 The TA adequately complements the work of the other sections within the Secretariat.
2.9 The TA is carried out in partnership with other donors / organisations.
2.10 The TA's supervision and quality control are adequate.

As indicated in the Work Plan, the table attached in **Annex 1** hereto was used as a user-friendly tool to convey the result of the evaluation for each indicator.

The boxes in the table are completed by a grade ranging from one to five:

Score	1	2	3	4	5
Meaning	very poor	poor	adequate	good	very good

A narrative is provided below for each project. Although the table also contains a column for the assessment of the ad hoc assistance, this has not been filled and no narrative is provided below in this respect. Because the ComSec considers it confidential, the Evaluation study did not have access to any documentation pertaining to the unregistered input and it must be assumed that most of it was made in the context of ongoing projects.

b. Review of each project in light of the indicators

1) XCW6070: Pan-Commonwealth Assistance on TRIPS and Public Health

i) Relevance indicators

This project is essentially oriented towards the poor. It is intended to enable Commonwealth countries with insufficient or no manufacturing capacity in the pharmaceutical sector to increase their capacities to benefit from affordable imported generic medicines and to exploit the policy space left by the WTO

¹³ This also concerns the qualifications and background of the experts used.

TRIPs agreements to this effect. The project must also assist the beneficiary countries to implement the relevant appropriate domestic regulatory framework.

The project may not appear to be directly related to the shaping of a pro-growth trade policy. Furthermore, it is somehow aloof from the current Doha and EPA negotiations. It is nonetheless relevant. It strengthens the beneficiary States' capacity to implement trade agreements, notably the WTO TRIPs agreement. It has already contributed to improving the domestic regulatory framework in at least Botswana, in line with the project's objective. It also addresses a clearly identified trade-related need of the applicant States, as it deals with imports of generic medicines. Furthermore, trade diplomats in Geneva confirmed that it has contributed to improving their capacity to negotiate at the WTO a better treatment for developing countries in the pharmaceutical sector. This has played a positive role in obtaining the Amendment to the TRIPs agreement granting additional flexibilities to developing countries to access affordable drugs. In addition, the project produced several regional studies with recommendations for improved regional regulation and as such, it may contribute to the strengthening of the beneficiary States' regional integration.

Furthermore, through the conferences and workshops it has organised, the project contributed to policy dialogue among stakeholders concerned for improved domestic policies in trade and access to medicines. By essence, the project integrates other dimensions of domestic governance. While it may not integrate gender issues such, it is intended to improve access to health for the poor and improve the overall well-being of families.

Finally, notwithstanding the project's object is widely popular in development cooperation, reportedly there are no duplications with the work carried out by other donors, rather complementarity. Other organisations dealing with the project's object are the UNCTAD, the DFID, the World Bank, the World Health Organisation, the Rockefeller Foundation, the Soros Fund, the Third World Network, those participating in the Integrated Framework and other possible ones. The ICTSD and the South Centre have also worked on the issue of TRIPs and Public Health. As a matter of information, the TradeCom Facility has implemented a similar project in Ghana in the years 2007-2008. However this country has not benefited from a national activity under the ComSec's project and no duplication is observed. The same is to be assumed with respect to all other donors.

In conclusion, assuming the lack of duplication is correct, the project is fully relevant to the objectives of the Secretariat's International Trade Programme. It indeed enables beneficiary States to take advantage of the international trade system, to improve their understanding of it and to foster their participation in the international trade fora. It is also a law-related project in the sense that it promotes better international and domestic rules pertaining to the international trade of generic medicines.

ii) Quality indicators

The expected output of the project included the preparation of a comprehensive guide, including model provisions for the implementation of TRIPs flexibilities and one national workshop per country. The project's design also provided for concrete policy recommendations and indications of necessary legislative changes to Kenya and Botswana.

While the project maintained its objectives, its final outputs are slightly different from those that were originally anticipated. Model provisions for the implementation of TRIPs flexibilities were not produced and a national workshop per country did not take place. This is not a major problem though, since the project's outputs are fully in line with the beneficiary's needs and the recommendations made during the various phases of the project. They also produced concrete outcomes in light of the project's expected results. Furthermore, the project is still ongoing and has not deployed all its effects yet.

The project started with the production of country reports describing how the countries concerned secure access to necessary medicines as well as their challenges and difficulties in this regard. The Evaluator reviewed the Uganda report and noted its comprehensiveness and the presence of concrete recommendations for improvements to the domestic regulatory and institutional frameworks.

The national Reports were then presented to a major conference in Geneva that the project organised in cooperation with the ACP Secretariat in Geneva and the Agency for International Trade Information and Cooperation (AITIC) in Geneva. The conference was intended to draw the relevant lessons from the reports and from the Doha Decision on TRIPs and Public Health, preceding the above-mentioned amendment to the TRIPs agreement. Quality standards for medicines and the means to ensure them were also examined. The Conference led to intensive debate and discussion on the issues addressed. It was then followed by the production of a large and comprehensive report that not only contains a guide on the application of the TRIPs agreements and its new flexibilities, but also a summary of the discussions and recommendations for future actions, in particular exploring the regional implications of the issues. This is a very interesting document undoubtedly useful to any policy-maker which would read it.

Generally speaking this first phase of the project was considered a success. A trade diplomat in Geneva referred to it as a “*good entry point in the debate on TRIPs and public health*”. This first phase seems also to have facilitated the discussion on the above-mentioned amendment to the TRIPs agreement.

A second phase of the project, building on the conclusions of the first phase, entailed the preparation of regional reports, which were to provide an overview of the domestic legislation of the constituent States, the main features of patent law at regional level, the procedures required for granting marketing approval and the utilisation of the Decision providing for the TRIPs amendment in the region concerned. The Consultants’ reports are comprehensive and well researched. Except the one for the Pacific, which is of a poorer quality, they all contain concrete recommendations for improved policies and legislations for the development of regional trade and production. This is useful.

The regional reports were then presented to regional conferences, where stakeholders and policy-makers were invited. The project also organised a broader “train-the-trainers” workshop in Addis Ababa. The Evaluator reviewed two conference reports (Gaborone and Nairobi). Both contain concrete recommendations as to the way forward. The report for Botswana is perhaps more comprehensive than the one for Kenya. The conferences and workshop were apparently useful. Key stakeholders of Botswana which were present both in Addis Ababa and in Gaborone confirmed that they drew substantial benefits and inspiration from these events, which helped them to clarify their ideas and to promote key legislative changes in their country. On that basis for instance, their task to prepare a revised Drug Act was substantially facilitated. The conference in Trinidad and Tobago also seems to have been a success in the Caribbean. Unfortunately this does not seem to be the case in the Pacific where a rather disordered conference took place in Fiji. The latter was organised by the WHO and the Third World Network and was disrupted by NGO activists.

Looking at the quality indicators, the balance is overall positive. The activities and means used in the project were appropriate, in particular, the adequate mix between research papers, dissemination of their results and discussion in a conference or workshop. They were practical and consistent with the project’s expected objectives and results. The technical assistance given was also result-oriented and it produced concrete outcomes. Beneficiaries were also adequately involved in the project and some of them could absorb it to the extent they could carry out legislative reforms by themselves. It is to be hoped that the recommendations at regional level will also produce concrete outcomes, even if the Evaluator was not informed of a particular follow-up at that level at this stage.

A possible shortcoming is perhaps the strong separation between the two phases of the project. They seem to target different beneficiaries which themselves do not appear to communicate with each other. As such, the two phases seem to be different steps of a research aimed at producing the outcomes of phase 2. That is fine, but less useful to the Geneva trade diplomats. Indeed the latter, while they indicated they were very satisfied with the first phase, complained of the lack of follow-up. They were obviously not aware of the developments of the second phase. Equally, it seems that the national and regional stakeholders of the second phase did not participate in the first one or read the documents produced in this context. This shortcoming reveals that there is not enough project publicity and publication of the reports produced. The ComSec's website does not contain them and a Google search does not lead to them. Yet, they are a relevant source of information which, should it be opened to a larger audience, could generate greater multiplier effects.

The project seems to be well coordinated with other donors active in the subject. There are correspondence and meeting reports with UNCTAD, UNDP, DFID, WHO, the World Bank, AITIC, the Third World Network, BMZ/GTZ etc, which indicate that some form of partnership was achieved, particularly with respect to the organisation of the regional conferences. There was also an attempt to bring the CIDA on board. The project also appears to be well coordinated within the Commonwealth Secretariat, involving the STDP's Health Section, and SASD's Trade Section's consultant based in Geneva in the first phase of the project. The latter, however, was not involved in the second phase of the project, probably rightly so, considering that the second phase was more tuned to national and regional realities in the ground.

Clearly, because of its large geographical scope, potential multiplier effects, concrete outcomes and impact on the poor, this project is to be considered as a highlight of the trade law sub-programme. The trade law officer dedicated herself much time and energy in all phases of the project. She apparently continues to do so. She ensures the project's overall supervision and communication with beneficiaries as well as coordination and follow-up actions with other donors.

However, **because of her time constraints, and maybe also budgetary constraints, the trade law officer cannot lead the project to its maximum potential.** She doesn't seem to systematically follow-up on all the studies' conclusions. Thus, the project's concrete outcome seems to rely on the sole capacity of the beneficiaries to absorb and utilise its output, as was the case in Botswana. Therefore, in order to ensure the project's full sustainability and the deployment of all its possible multiplier effects, more sustained coordination with other donors, communication of studies' recommendations and project's publicity would be required at this stage.

2) XBEL018: Belize Investment/WTO Compatibility

i) Relevance indicators

This project consists in a useful series of activities assisting Belize in reviewing its domestic regulations, particularly those pertaining to domestic border taxes, fiscal incentives, export processing zones and the Belize's investment regime in the context of the implementation of WTO commitments. The project's overall purpose is the establishment of a WTO-compatible trade and investment regime, which is conducive to investment. This project was identified following Belize's WTO Trade Policy Review, which highlighted certain problematic areas in the Belize's regulatory frameworks. It has eventually led to concrete proposals for the streamlining of the domestic legislation directly relevant to bananas, citrus, sugar and livestock and to the reorganisation of these sectors.

The project also addressed tariffs and other duties and charges and provided useful information in this area facilitating Belize's negotiations at the WTO. Analytical work was also carried out on services, which was considered useful by the beneficiary in the context of the Doha negotiations. The private sector in particular was brought into the negotiating picture and participated through the project in

wide consultations on the definition of the services sector for which liberalisation commitments could be taken. While the reports produced on both tariffs and services are undoubtedly interesting and useful, one may wonder, however, whether they should be considered as real trade law assistance fitting within the sub-programme's mandate. For instance, notwithstanding the paper on services contains one chapter reviewing the Belize's relevant regulatory framework, it does not really contain any legal analysis, but mainly policy recommendations for negotiations. The same is true for the work on tariffs, which does not provide legal analysis of the compatibility of certain "other duties and charges" with the rules of either the WTO or the CARICOM.

This being said, notwithstanding the above, overall, the project can be considered eligible under the trade law sub-programme. Except the two papers above, it is legal in nature. It provided substantial legal analysis to the beneficiary and increased its capacity to reach a better regulatory framework. It is also relevant to the objectives of the Secretariat's International Trade Programme. It is directly related to the improvement of pro-growth policies and it facilitates the implementation of the WTO agreement. It also clearly meets Belize's identified trade interests. The project may be weaker in terms of facilitating regional integration, as it is very national in scope. Furthermore, it does not address gender issues or other dimensions of domestic governance, such as health, human rights, etc. It does, however, strengthen the trade and regulatory framework of Belize on investment-related issues, in line with its development strategy. It already provided accessible and concrete outputs in certain Belize's sector of the economy. For instance, the project's outcome led to a rather fundamental policy change for some key agricultural products which were previously benefiting from a WTO-incompatible licensing regime. The project assisted the government of Belize to amend the relevant law and to engage into a dialogue with the stakeholders concerned with the purpose to facilitate their adjustments to the expected changes. The stakeholders interviewed confirmed that these sectors, in particular the citrus sector, had to find different ways to maintain their competitiveness and, through the assistance provided, identified the measures to actually improve their export performance.

There is no indication of duplication of this project with the assistance provided by other donors. The project's Inception note adequately describes the work that had been carried out by other donors. Lack of duplication was confirmed during interviews carried out in Belize.

Finally, while as indicated above the project can be considered legal in nature, with the exception of its services and tariffs components, it also provided institutional capacity building and assistance in public-private dialogue, with the view to facilitate the non-governmental stakeholders' approval and absorption of the changes proposed. In this sense, one may wonder whether this project could not also have been implemented in cooperation with SASD's trade section.

ii) Quality indicators

The project was expected to review legislation in the context of the implementation of WTO commitments and to establish a WTO-compatible trade and investment regime. Its output was delivered successfully.

The project was carried out in various phases. A first phase quickly followed the request of the Government of Belize to provide assistance in the review of investment-related legislation. A first project inception note was produced, followed by the recruitment of consultants. The inception note's purpose was to "*assess the exact requirements of the Government, to determine the scope of technical assistance to be provided and develop a work plan for its execution*". This important document identifies the right steps for the project, on the basis of the original request (some other aspects were added to the project at a later stage). Furthermore the inception note describes existing technical assistance in the areas covered, so as to avoid duplication and to build on the work done. It also identifies the existing legislation and the relevant stakeholders which would have to be involved in the project. The project's initial engineering is thus fine. It is also based on the outcome of the

concomitant Belize's WTO trade policy review, for which the trade law sub-programme also provided on-the-spot assistance, including in Geneva. A letter from the Attorney's General office and the Ministry of Foreign affairs confirms the Government's full satisfaction with this overall first phase of the project.

Several consultants were then recruited to assist in the required analysis and the subsequent drafting of legislative amendments. The project's physical files contain a paper track record of the selection process for two of the consultants. This appears to be straightforward, competitive and characterized by the search for the most suitable experts to carry out the task. The fee rates however are low and one may wonder whether the best consultants available would be attracted by the package.

Several studies were then produced. A study on services was intended to assess services sectors in Belize and to suggest possible measures to improve their performance. The study explained how enhanced commitments in the GATS might help to improve growth and export potential in areas of services. The report made concrete proposals for requests and offers in international trade negotiations and it proposed a model services request in the current WTO services negotiations. This report is comprehensive. It was presented in a workshop involving all stakeholders concerned, in particular those of the private sector. It was also subject to several comments and responses between the Consultant and the beneficiary. This report is certainly useful, despite, as indicated above, it does not really fit within the sub-programme's mandate. Furthermore it is a stand-alone activity in the project in relation to services. The beneficiary however indicated that the report has been useful for a follow-up activity carried out by the WTO. That is fine.

Other reports contained an overview of the legislation pertaining to domestic border taxes, fiscal incentives within export processing zones and the licensing regime. A review of investment legislation as well as the structure and performance of investment schemes in Belize was also carried out. Although the Evaluator did not review these reports, they all appear to be containing concrete recommendations for legislative changes and, except the one on taxes, they were followed by the preparation of draft amendments to existing legislation. Concerning the tax report, the beneficiary somehow complained that the expert should have stayed longer in the ground to facilitate the report's absorption. It acknowledged, however, that the report entailed delicate revenue decisions and the political mood of the time was not ripe to accept its conclusions. As to the other reports and draft legislative texts, these were extensively discussed and debated in Belize. Not all recommendations were taken on board, but eventually the work carried out led to improved policies. According to the beneficiary, this distinguishes the assistance provided by the trade law programme from the work carried out by other donors. For instance, the IDB also realized an ambitious study on the licensing regime of Belize. However, according to the beneficiary, the one of the trade law programme was more connected to the country's realities. It was more informed of the stakeholders' views and perspectives and it focused more on providing specific measurable outputs, namely addressing legislative change in six selected key sectors. The reports on investment regulations and fiscal incentives were also appreciated by the stakeholders, among which the Belize Investment Agency (BelTrade), and the Ministry of Economic Development. Stakeholders, including the private sector, generally appreciated the ComSec's flexibility as well as the quality of the experts involved.

The work carried out in relation to fiscal incentives also led to assistance in the establishment of a database to monitor the fiscal incentives provided and assess their potential impact in the economy. Another database was also to be established on import licenses under the auspices of the Bureau of Standards within the Ministry of Economic Development, Commerce and Industry, and Consumer Protection. The latter assistance however was not so successful. The Bureau of Standards complained that the contracted experts did not imagine a sufficiently fast and practicable mechanism. It eventually decided to use the services of the Taiwanese cooperation agency, which certainly has greater experience on the subject than a trade law programme.

Towards the end of the project, the Belize government requested the assistance of a consultant to provide an overview analysis of the tariff negotiations ongoing at the WTO with a view to facilitate Belize's participation in these negotiations. The work carried out was intended to assist the government in calculating and understanding the implications for Belize of proposed tariff cutting formulae in the agriculture and NAMA negotiations. This work was considered useful, albeit not really legal in nature, as indicated above, and a stand-alone activity.

Looking at quality indicators, the project is generally doing fine in almost all indicators. The project is to be considered a success story overall by the level of the results and their direct absorption by the beneficiaries, both the Government of Belize and the stakeholders concerned. The project facilitated change through high-level consultations, in line with the ComSec's comparative advantage of being used as a trusted advisor. The assistance provided built on previous work by other donors and was closely connected to the country's realities, political developments and coordination efforts at regional level. The activities and means employed, consisting of a mix between analytical studies, hands-on legislative drafting, stakeholders' consultations and continuum in the expertise provided were appropriate given the objectives to be reached.

The trade law officer did not spare her efforts and energy to facilitate the absorption of the assistance provided. Not only the back-to-office reports of the many missions in Belize confirm this fact, but also the beneficiaries themselves expressed great satisfaction at her extensive personal involvement. The trade law officer obviously developed profound interest for this project, which was producing concrete outcomes in furthering the rule of law and promoting its acceptance by difficult stakeholders. Other experts were also actively involved in the project's implementation and it is precisely all these experts' intensive involvement during the entire duration of the project that was one of the key factors for its overall success and sustainability. If any, comparison must be made with the relative failure of the tax study, which has been less discussed with the expert involved and "brewed" with the stakeholders. Instead, deeper assistance and well absorbed legislative changes on the import licensing regime generated tangible outcomes in the citrus industry of Belize. This industry now provides an interesting business alternative to some of the other less competitive sectors such as bananas.

In terms of sustainability and multiplier effects of the assistance provided, the project is doing fine also, albeit it is too much focused on national outcomes. While the latter seem to be sustainable in Belize, the lessons from this project should be better disseminated so as to be a source of inspiration for other countries, particularly those of the region. It seems already that there is some connexion between the St Lucia Fiscal Incentives project and this one. Furthermore, as already indicated, the ComSec seems to be specializing in this type of work. However, it would seem that the full extent of the experience acquired in this Belize project should be better shared. A project like this could also contribute to the strengthening of regional integration through harmonisation of some of the legislation concerned. Maybe a follow-up activity should address this issue as well.

As indicated above, the project was closely followed and monitored by the trade law officer who contributed to achieving its objectives through her hands-on expertise. This was useful and appreciated by the beneficiary. However, the trade law officer must have dedicated a lot of time and energy to do this. The question could then be asked whether this was not at the detriment of other projects or other countries' needs. The administrative management of the project also seems to have been less than optimal¹⁴. Furthermore, whether because of empathy or because of the project's momentum, the trade law officer also occasionally accepted work that she probably should not have taken for the trade law sub-programme, such as the work on the databases, or on services or on tariffs. As indicated earlier, the trade-law officer should probably have involved other Secretariat's technical assistance programmes, such as the SASD's trade section in this regard. While liaison was made with the trade

¹⁴ The physical file contains a complaint e-mail from an expert about lack of payment and lost track of the file in the absence of the trade law officer.

policy analyst of the Hubs & Spokes programme, unfortunately the latter departed. Therefore, no real synergies seem to have taken place with other Secretariat's programmes.

Generally speaking, based on the success of this project, one would recommend maintaining a similar implementation methodology for other projects of this nature. **It is important to enter into a country's "intimacy" and to be closely connected to its political realities.** Therefore, in particular, **the extensive involvement of trusted trade experts in project formulation and implementation is indispensable.** However, **the management functions should be more separated (even if not entirely) from the "hands-on expertise" given.** A project like this one would require a project officer of its own, whether outsourced or in-house, which would provide intensive and dedicated presence with the beneficiary. This would enable the trade law programme's manager to take some distance and dedicate more time to control the overall strategic orientation of the project, avoid activities that are not in line with the programme's mandate, leverage on other expertise, and reinforce partnerships within the Secretariat, and with other donors and beneficiaries.

3) XSTL022: St Lucia Fiscal Incentives Regime

i) Relevance indicators

The St Lucia project is less ambitious than the previous two, although it has some familiarity with the Belize project. Its objective is to establish a modern fiscal incentives regime that is WTO-compatible, with the view to facilitate investment in St Lucia. Like for the Belize project, the assistance entailed a review of the structure and performance of the existing fiscal incentives regime and its compatibility with the WTO and other international agreements. A draft legislation was also prepared.

By design and output, the project is certainly in line with the mandate of the trade law sub-programme. It indeed aims at streamlining domestic trade-related legislation, so as to make it compatible with international agreements, while meeting the Government's own policies. It is also overall relevant to the objectives of the Secretariat's International Trade Programme. Indeed, notwithstanding it does not incorporate gender or other non-trade policy issues in the assistance provided, its overall objective is to increase St Lucia's capacity to integrate into the international trade community, while streamlining domestic regulation, boosting investments and the competitiveness of its economy. Furthermore, the project sought to facilitate regional integration by disseminating in the Caribbean best practices on the use of fiscal incentives, through a regional conference. It was concomitant with the Belize project and had the potential to develop regional synergies. While stakeholders' meetings have taken place with the private sector, regrettably there was more limited high level hands-on advice leading to legislative changes or to improved negotiating positions. Never mind, the project's focus was relevant; it addressed a particular trade-related need of the beneficiary and it delivered a clearly identified outcome (new draft regulation). Furthermore no duplication seems to have taken place with the assistance provided by other donors. The project's Inception Note clearly identified the assistance that was already provided in this area. Therefore, the project was eligible for the trade law sub-programme.

ii) Quality indicators

In its implementation, it seems the project was not as successful as the Belize one. It did not lead to the expected results. The study and the draft legislation on fiscal incentives have not produced any legislative change yet. The project however started like the Belize one, with a similar project Inception Note identifying the scope of work and the requested output. It also proposed the same project design based on three phases: 1) a review of the existing investment regime, 2) consultation with key stakeholders to build a consensus in Government for reforms and 3) drafting of relevant legislative bills.

Only outputs 1 and 3 were satisfactorily completed. It should be noted that the study on fiscal incentives was realised by the same team of consultants as in Belize. As to output 2, the project organised a major conference on “*Best Practices in the Use of Fiscal Incentives in Accordance with WTO Rules*”. The conference report provides an interesting review of fiscal incentives in the CARICOM region as well as recommendations on the issues to be tackled at national and regional level. This report however is rather schematic and it is uncertain whether it led to substantial capacity-building in the region.

The project did not entail, by contrast with the Belize project, the same level of intensive presence and advice that enabled in Belize the absorption of the assistance provided by the relevant stakeholders. Even though the study and the draft bill were discussed with government officials and appreciated by the Ministry of Trade, the latter also complained that the ComSec’s recruited consultant’s responsiveness was limited after the completion of the first draft of the bill. In particular it complained that no new draft was presented after a first series of comments were made. The trade law adviser and the ITRC’s representative, however, went to St Lucia after the completion of the work and the conference to hold additional consultations with key stakeholders. Unfortunately, this has not led to concrete results. The beneficiary nonetheless indicated that it was satisfied with the level of interaction between the ComSec Team and the governmental departments. It also admitted that the lack of follow-up to the work was mainly due to political problems within St Lucia and to its own negligence in requesting additional help. This may also explain why eventually the trade law sub programme seems to have invested less in the project.

Coming to the quality indicators, the project’s performance is therefore lower than the previous two. The beneficiary’s absorption in particular appears to be problematic. In terms of sustainability, the written output provided is fine. Furthermore, notwithstanding the draft legislation is temporarily shelved, the beneficiary indicated that some of the study’s recommendations have already been accepted and will be incorporated in the final legislation.

The project’s design in three phases was certainly adequate, like in the Belize project. However, the conference has not been an optimal contribution to the objective of this project. In general, large conferences do not produce the same level of result as more intimate, on-the-spot and hands-on advice. They should not be encouraged in the future for actions related to legislative and policy change. In addition, they tend to be too expensive for the limited outcome obtained (see next chapter).

A conference of that type can be useful only to present a comprehensive publication to all potential beneficiaries of technical assistance in the region, which could be used as a source of inspiration for future activities and in order not to “reinvent the wheel”. This was the case in the TRIPs & Public Health project. However this is a different objective than the one of this particular project. The idea to make proposals for a regional policy on fiscal incentives was certainly a positive one. In addition, other sections of the Secretariat were involved, such as EAD’s ITRC and the regional policy advisors of the Hubs & Spokes project. However, had the conference been organised differently, or followed by sustained technical assistance at regional level, this could have been a more successful event, in the context of a specifically designed project. A regional project would have been more adequate. It should be noted in this regard that some of the work carried out in the context the OECS Secretariat project (XOEC02) also covered, albeit to a less extent, fiscal incentives. It would have been useful to integrate all assistance provided on this subject into one single project with a comprehensive and coherent implementation methodology.

Another lesson to be learnt from this project is that the level of absorption of the assistance provided is strongly linked to the political priorities of the moment and the beneficiary’s desire to ensure follow-up. There is not much that consultants’ good-will can achieve in the absence of such interest. This is why, **in the implementation of a technical assistance programme, it is important to ensure a good**

degree of predictability and high-level partnership with the beneficiary and try to stick to the objectives sought while avoiding dispersion of efforts.

4) XTON026: Tonga Legislative Compliance to WTO Agreements

i) Relevance indicators

The project's objective is to enable Tonga, a newly acceded WTO Member, to implement WTO Agreements, in light of the conclusions of the WTO Working Party Report for the accession of the Kingdom of Tonga to the WTO.

Its initial purpose was to carry out a review the trade-related legislation of Tonga vis-à-vis the WTO Agreement, in order to make it WTO-compatible. The Ministry of Foreign Trade had identified specific trade-related areas of concentration, namely SPS, TBT, IPRs and customs valuation. To the beneficiary's admission, the government had no clear idea as to what were the real priority areas in light of a development perspective. The Inception mission did not clarify this issue either, but modified the scope of the legal assistance to be carried out in order to ensure relevance in a Tongan legislative context and avoid duplication with other donors. For instance, it was decided to drop the work on TBT, because this would not be relevant, considering Tonga had no standards and the TBT agreement does not mandate WTO Members to adopt them. Also, the work on customs valuation was dropped because of the existence of an AusAID and NZAID's technical assistance project. It was eventually replaced with a review of the Excise tax, together with an amendment proposal, and with work on Industrial development incentives, one of the specialities of the trade law sub-programme. The work on IPRs, particularly as regards the protection of Plant varieties, was confirmed, as well as an analysis of the Plant Quarantine Act and the Animal Diseases Act under the WTO SPS Agreement. The latter work, however, was eventually dropped as well.

In summary, this project was construed according to the opportunities of the moment and the areas that seemed relevant at the time of the inception mission. One could regret it was not further logically connected with a clearly identified development plan. For instance, during the Evaluator's mission in Tonga, senior trade officials announced that establishing good standards would be very important now for the country considering the increased imports from China. They would like at this point the TBT-related issues to be addressed. Certainly, priorities may change with time and may not always be predictable at the moment of an inception mission. However, it would have been nice if the project had made reference to a longer term-development policy for Tonga. Admittedly, however, its primary object was actually simpler: comply with the WTO and some of the outstanding issues in Tonga's Protocol of Accession to the WTO, with no other strategy. Such compliance would then be assumed to lead to longer term benefits.

In any event, the project conforms to an immediate international obligation of Tonga and it is appropriate given Tonga's situation as a new WTO Member. In fact, it is the clear and straightforward nature of the project's objective that may excuse the fact that it does not proactively create a logical link between the activities and the establishment of pro-growth legislative frameworks. It should be noted nevertheless that the review of the legislation pertaining to industrial development incentives bears some relationship with economic growth and the possible increase of the economy's competitiveness.

Overall, therefore, the project was rightly considered eligible under the trade law sub-programme. It is legal in nature and it requires the utilisation of legal skills. Furthermore, it is relevant to the objectives of the Secretariat's international trade programme. It is intended to facilitate Tonga's participation to the WTO and to draw the expected benefits that its compliance and use of the system are expected to bring. In addition, the project entailed high level consultations and public-private dialogue on the draft bills prepared. It also avoids duplication with other donors and it addresses a clearly identified trade-

related need. A possible shortcoming is that the project may be less relevant for the purposes of regional integration and, like in the other projects, it ignores gender issues.

In general the project produced some concrete outcomes which improved the capacity of Tonga to implement trade agreements and to formulate sound domestic policies. At this stage of Tonga's integration process into the international trade Community, that is enough to make it relevant.

ii) Quality indicators

As indicated above, the project produced relevant outputs. It started well. The beneficiary was pleased with the speed of the response to its request and with the first inception mission. The latter, as indicated, enabled to circumscribe the project's scope and to start concrete work. While one could regret, as indicated above, that the inception mission did not make a deeper analysis of Tonga's long-term development goals, this was probably not necessary given the project's immediate goal.

The project then produced several studies. Due to the ComSec decision to classify these documents as confidential they were not made available to the evaluation study. The Evaluator was therefore not able to assess their relevance and quality. The comments below are based on the project's outcomes and the beneficiary's feedback on the assistance provided. As indicated below, the beneficiary made some complaints. These however must be substantially mitigated by its overall very positive appreciation of the assistance provided and its thankfulness to the Commonwealth Secretariat.

A first study concerned the Tonga's Industrial Development Incentives Act. It recommended its repeal given the discriminatory elements it contained. It also contained recommendations for new type of industrial incentives in a post-WTO phase. The beneficiary liked the study and the consultant's availability to discuss it. Actually, intensive and high-level consultations enabled the Government and private sector stakeholders to absorb the study's content and conclusions, as well as to define a new course of action. The Act was repealed, but no real new initiative was taken. The beneficiary commented in this regard that when the Consultant finished his particular assignment, he did not come back and did not respond to e-mails. The assistance seems then to have stopped there. The beneficiary would now like to benefit from a phase 2 in the project, leading to the other legislative developments that were recommended in the study, in replacement to the repealed act.

A second study proposed several options for Tonga for the sui generis protection of plant varieties. The study was discussed with the beneficiary and led to the drafting of a Bill for the Protection of Plant Varieties. This draft must still be discussed with the stakeholders. The beneficiary appreciated the work done, especially the fact that it presented options, but complained of the lack of continuum in the Consultant's availability. It objected that the trade law officer exercised the consultant's role in the discussion of the draft bill, which was supposed to make it more relevant to Tonga's needs. According to the beneficiary, it should have been the same consultant which should have dealt with the entire process. It should be noted, however, that the Consultant's absence during stakeholders' consultations was due to the fact he did not have the appropriate visas. Furthermore, the beneficiary commented that the trade law officer has not always been available and that the work is still unfinished, even if the passing away of Tonga's former King has also played a role in this regard. The beneficiary however also indicated that when the trade law officer was in the country, it was able to draw a lot on her knowledge and experience.

Finally, the project produced a draft revised Excise Act, with the same beneficiary's comments and remarks. In particular, the drafting of some additional implementing regulations would still be required.

Overall, the project ranks reasonably well on quality indicators. The work done was certainly result-oriented and it has produced some measurable concrete outcome, in line with the objective defined.

The beneficiary's level of involvement and its ownership of the results obtained were also fine. The project, however, leaves a sense of unfinished work and less dedication by the trade law sub-programme than in other projects, such as in Belize for instance. The beneficiary's remark pertaining to the disappearance of the experts after they leave the country is problematic. As indicated above, projects entailing legislative change require intensive stakeholders' consultations, a continuum in the assistance provided and a capacity to be integrated in the country's policy dialogue. Furthermore, a sustainability factor should also be tailored in. The beneficiary expressed its frustration with the situation that it must rely on external help to draft laws at its place due to the absence of qualified staff. Some hands-on training of local drafters would therefore also be useful. **A project like this one obviously requires a high level of commitment.** This does not imply permanent presence, of course, but some more dedication, which seems to have been missing in this project, as felt by the beneficiary. The means and activities were thus partially adequate, giving that part of the work that had to be done is still pending. The project's capacity to produce multiplier effects would depend on this. Finally the project's implementation has somehow been lacking coordination with other donors and with other Secretariat's sections.

This being said, the project has certainly been a useful contribution to the beneficiary's objective and without it the beneficiary would have been worse off. It also displayed of good flexibility to accommodate the evolution of the beneficiary's thinking on its needs and with regard to the content of the law. **The fact to present options in the reports for legislative amendments is also a good practice.** This project finally can be used as a stepping stone for other technical assistance. For instance, the ADB is implementing a project on investment-related issues and it could build on the work done on industrial incentives in the context of this project.

5) XGAM029: Assistance in the Development and Drafting of Tourism Regulation for The Gambia

i) Relevance indicators

The overall objective of this project is to streamline domestic regulation for tourism in the Gambia so that the sector is best positioned to gain competitive advantage and benefit the poor. In particular it led to a revision of the Gambia Tourism Act which is now pending before the Government for approval.

This project is borderline between a trade law project and a sectoral promotion project looking at the competitiveness of tourism and the enhancement of pro-poor benefits. This may be fine, but the narrow scope of the project appears to be favouring a particular sector of economic activity rather than promoting the rule of law at large. Furthermore, while there is a trade promotion aspect to the project, it does not really appear to be related to trade policy, trade negotiations and the implementation of the international legal framework pertaining to trade. While the Gambia took commitments on tourism under the GATS and is subject to several regulatory disciplines affecting the sector under the ECOWAS, these issues were less at the core of concerns than eventually the strengthening of the institutional regulator of tourism.

One may wonder in this respect why the project was not entirely handled by the SASD's trade section, which was already carrying out other work in relation to tourism in the Gambia. The answer probably lies in the fact that some of the skills required to implement the project had to be legal. Additionally, by design, the project was supposed to analyse not only the main Tourism Act, but also all other laws applicable to the tourism sector, including fiscal incentives and other trade-related investment measures. These are the trade law sub-programme's specialities, which are being dealt with in other eligible projects, such as in Belize and St Lucia. The same draft person was also recruited in these projects. One could regret nevertheless that these issues were eventually not handled in the draft legislation produced. They were nonetheless relevant in the design of the project. Furthermore, issues

pertaining to the GATS commitments of the Gambia and its obligations under the ECOWAS had eventually to be addressed. Therefore, despite this project does not obviously fit within the trade law sub-programme's mandate, there was some merit in having it to deal with it.

Furthermore, overall, the project is relevant to the objectives of the Secretariat's international trade programme. It is obviously related to the sustainable development of the Gambia and it increases the capacity of its government to formulate sound domestic policy. Increasing the competitiveness of a sector of economy, by streamlining the domestic legislation that applies to it, is actually one of the best ways to take advantage of globalisation and to foster economic development. Furthermore, attention was also brought to other aspects of governance such as environmental or consumer protection. Unfortunately, the project missed the opportunity to integrate gender aspects in the analysis provided. In particular, too few women are employed in the tourism sector in the Gambia, and proposals could have been made to improve the situation. Nevertheless, the project contributed to reinforce the capacity of the government to regulate tourism in the Gambia with the stated end goal to improve the living conditions of the poor.

Finally, some attention was given during the project's inception mission to avoid duplication with other donor programmes, notwithstanding the multitude of agencies and technical assistance projects dealing with the development of the tourism sector throughout the world, including in the Gambia.

The project could therefore be considered eligible under the sub-programme. It could not, however, be considered as well fitting in its "core business". This means that it could not have been carried out at the expense of other more relevant requests. It was not possible of course for the Evaluator to make a concrete assessment of this.

ii) Quality indicators

The project was carried out to the satisfaction of the beneficiary. It led to proposals for legislative amendments in the Tourism Act which are now before the Government in the final stage before approval.

The project rightly started with an inception mission which liaised with all stakeholders involved. Then a special study was ordered which analysed the current state of tourism in The Gambia and proposed a "*series of practical measures to enhance the flow of benefits to the poor*". This study, however, does not propose a legal analysis of the relevance and coherence of its proposals with the international legal system. Some measures proposed to increase Gambian inputs in the supply chain might even be against the WTO and ECOWAS commitments taken by the Gambia. This legal issue eventually re-emerged in follow-up discussions through the concomitant presence in the Gambia of a WTO mission. The study, therefore, cannot be considered as a legal paper as such, but rather an interesting background document which could facilitate the legal engineering of relevant draft legislation. Probably other donors or other sections of the Secretariat could have produced a similar document, thus freeing the project's resources for other more relevant legal input. In particular, one should note the absence of a major piece of expected analysis of all the scattered legislation pertaining to tourism in the Gambia. One would also have liked to see proposals for the streamlining of the Gambia's general investment law and fiscal incentive measures as they apply to tourism. It seems however, that major difficulties were encountered to have access to the relevant documents in order to move forward on such analysis.

Furthermore, unfortunately the draft revised Tourism Act is not really in line with the study's conclusions. It essentially deals with the powers of the Gambia Tourism Authority (GTA). It increases its institutional competence by regrouping under it powers which were previously scattered among different governmental entities. In particular, it deals with the capacity of the GTA to have control on the "Tourism Development Areas", which are land to be dedicated to tourism development. While the

GTA expressed its content with the project and its outcome, this is somehow disappointing as it does not address any of the above-mentioned legal issues that appeared in the design of the project, justifying the trade law sub-programme's involvement. A positive aspect however is that the amendments seem to have put some order in the otherwise too complex institutional framework pertaining to tourism in the Gambia. They were also extensively discussed with various stakeholders and led to the filing of a final draft before the Government.

Technically speaking, the work carried out was considered positively by the beneficiary. It met several of the quality indicators. The assistance provided was result-oriented and the beneficiary could fully absorb it. The project led to a concrete output as well as clear recommendations for the development of a pro-poor tourism policy. Furthermore the project complemented the work carried out by other donors and other Secretariat's sections. Finally, the beneficiary confirmed that the project was adequately supervised with sufficient presence of the trade law officer and discussion with interested stakeholders.

Unfortunately, however, several other quality indicators are negative. First, there is no obvious link between the two project's outputs, the pro-poor study and the revised tourism act. Furthermore, there is no clear indication that the study's recommendations will lead to better policies. One should just hope that it will not simply be shelved, thus questioning the sustainability of at least part of the project's output. Finally, the overall output is rather far from the initial project design and its expected results.

Therefore, overall, the assessment is mixed. While on the one hand concrete outputs were obtained – and it is to be hoped that they will directly contribute to the country's development – on the other hand, **the project did not follow a logical course consistent with its initial objective.** Admittedly, steering a project like this one is not an easy task. **A balance must be found between reaching the beneficiary's satisfaction and therefore being in line with demand, and maintaining the project's coherence in accordance with the strategic orientation of the trade law sub-programme.**

6) XMAA028: Malawi - Review of Trade-Related Legislation and Implementation of WTO and other Trade Agreements

i) Relevance indicators

This is a project with a wide and ambitious scope. Its initial purpose was to realise a general overview of Malawi's trade-related legislative framework, identify specific implementation concerns and propose policy instruments required to facilitate Malawi's successful integration into the multilateral trade system. The project was then supposed to produce a work plan for implementing the necessary reforms in Malawi's trade regime and for drafting related, albeit unspecified, draft bills and regulations.

The request was obviously too imprecise and the project had to carry out an identification mission to narrow down the scope and identify the priority trade-related subjects that would be the subject of the technical assistance. The project was eventually circumscribed into seven areas of intervention, namely,

- Review of the rules on customs valuation and proposals for relevant amendments to bring them into compliance with the WTO;
- Review of Malawi's intellectual property laws in light of Malawi's participation to international IP Conventions and the applicable provisions of the WTO TRIPs agreement;
- Review of the Plant Protection Act in light of the relevant WTO rules applicable to sanitary and phytosanitary (SPS) domestic legislation;

- Review of the implementation of standards and quality assurance measures in order to highlight deficiencies in the existing framework;
- Assistance in making service trade commitments in multilateral negotiations;
- Review of business licensing laws and regulations applicable to services in light of GATS commitments and rules;
- Review of Malawi's trade-related investment legislation, including the use of fiscal incentives, in light of WTO rules.

It should be noted that originally no assistance was programmed in relation to the establishment of trade defence mechanisms, but that eventually such assistance was requested and accepted. The project also eventually produced an unplanned analysis of fiscal incentive policies in the SADC region in order to enable Malawi to benchmark its own strategy on this issue.

The project as it was eventually defined remained nevertheless very large and too ambitious. It has some obvious shortcomings in its design. It is unclear how the patchwork of activities would fit well into an overall development strategy of Malawi other than bringing domestic legislation in line with international agreements. While this objective is fine per se, the selection of the legislation to be reviewed does not seem to be based on a clear logical connexion with identified development priorities. The same criticism was made for the Tonga project. The difference however lies in the fact that the latter had a very clear and straightforward objective which was the simple compliance with WTO rules just after Tonga's accession to the WTO. But Malawi has been a WTO member for a while and some additional degree of sophistication would have been appropriate.

Another shortcoming of the project is that, except the assistance that was supposed to be provided in the determination of Malawi's service offer to the WTO, and which was not provided eventually, the project has a limited relevance to international negotiations or regional integration. Furthermore the project does not mainstream gender issues and incorporate other dimensions of economic governance, even though with respect to the SPS component, environmental protection and health are addressed.

It looks like this project is simply proposing to do a legal assessment of legislation at the Government's place. While this can also be acceptable, the project, given its stated objective, should have been linked to a longer term development plan and contained some capacity building aspect by accompanying, for instance, legislative reform and providing high level advice in this relation. This would also have been in line with the Secretariat's strategic focus. Otherwise the project is just supplementing limited human resources capacities. This was actually the beneficiary's original intent, who wanted the ComSec to source a full-time senior lawyer in addition to the trade analyst provided by the Hubs & Spokes programme. While this may be all right for a country like Tonga given its specific situation as a new WTO Member, it may not be acceptable for a country which is supposed to be more advanced in the system, at least not without a logical intervention programme. As indicated, the project had rightly to be redefined. However, in the process it seems to have missed a coherence goal in relation to pro-growth legislative reforms.

This being said, formally, the project is at least partially relevant to the objectives of the Secretariat's International Trade Programme. It addresses obvious trade-related capacity gaps of the beneficiary and it is aimed at facilitating implementation of the WTO and regional trade agreements. By assessing important areas of domestic legislation and making proposals to make them compatible with the existing multilateral and regional legal framework, it is supposed to help Malawi to integrate the international trade system, while maintaining its development agenda. Furthermore, the project falls under the scope of the trade law sub-programme as being obviously legal in nature.

Another negative note, however, is that it seems that no proactive coordination with other donors has taken place, particularly in the context of the Enhanced Integrated Framework (EIF) for trade-related

technical assistance. The EIP is being implemented in Malawi under the leadership of the UNDP. Interviews with the latter confirmed that it was not aware of the ComSec's assistance other than through the Hubs & Spokes programme. The same can be said of other EIF's partners, such as the World Bank and the European Commission. The World Bank, for instance, is preparing a country economic memorandum with DFID on the theme of seizing opportunities in trade and regional integration. Trade law assistance may build on the recommendations of a study like this one or at least on the advice of its drafters pending the study's finalisation¹⁵. Admittedly, however, the absence of formal coordination with the EIF can be somehow mitigated by the fact that one of the counterparts of the project within the Ministry of trade is a UNDP consultant and he may have made the necessary linkages. However, there is no indication that this was done.

On a more positive side, it should be noted that during the inception mission, the trade law officer identified aspects of Malawi's legislation that would better fit within the mandate of other Comsec's divisions and sections and suggested that they be handled by them, thus seeking constructive synergies within the Secretariat.

Overall, while the project was eligible under the trade law sub-programme, its **design was far from being optimal and consistent with a clearly identified development strategy. Had the project been better coordinated in the context of the Enhanced Integrated Framework, this major shortcoming could have been avoided.** All donors interviewed in Malawi also confirmed that the optimal approach in Malawi for technical assistance is through the EIF, notwithstanding the latter is also not exempt from criticism. In that occurrence, a case-by-case legal input is then acceptable.

ii) Quality indicators

The project eventually concentrated on four major areas: trade-related investment legislation, tax incentives, intellectual property and sanitary and phytosanitary (SPS) measures.

Concerning the first area, the project produced a study reviewing the trade-related investment regime of Malawi. The study proposed concrete recommendations such as strengthening public-private dialogue, improvement of the institutional framework for investment, a monitoring mechanism on fiscal incentives and an enhancement of the fiscal incentives regime including export processing zones. It also recommended that some discriminatory aspects of the licensing regime for services operators, disadvantaging Asian businesses, be eliminated. This study thus dealt with some of the recurrent themes of the trade law sub-programme and has some possible connexions with the Botswana project dealing with special economic zones. It was discussed with the beneficiary during a follow-up mission of the experts. While it appeared that some of the proposed reforms were taken on board, particularly those related to the discriminatory aspects of the licensing regime on services, the government was not convinced by some of its other recommendations, particularly those related to fiscal incentives. It wanted to know more about the situation in other neighbouring countries so as to better benchmark Malawi's system. As to the other recommendations, i.e. those not related to fiscal incentives, it was agreed that they would be handled by the World Bank, in the context of a major grant of 15 million USD for technical assistance. Unfortunately, the World Bank's senior economist dealing with trade and investment issues was not aware of the report's existence and indicated that he would very much appreciate receiving a copy.

¹⁵ The WB's senior economist in Malawi for instance has very clear ideas of problematic laws that still hamper investment. During the interview, he also mentioned the existence of a World Bank's programme, the "Business Environment Strengthening Technical Assistance Project ("Bestap"), which has one component that is dedicated to the review of economic laws. It would be interesting to find out what has already been achieved under that programme.

The second area of work, which was not foreseen in the original design of the project, was dealing with the Government's request to be informed of other neighbouring countries' fiscal incentives' regimes. A study on fiscal incentives in the SADC region was therefore produced, one author of which was the same who drafted the first study. This report is comprehensive, builds on existing research and is actually very interesting. Although it does not propose best practices or assess the WTO-compatibility of the regimes examined, it represents a nice follow-up attempt to develop capacity within Malawi to streamline a pro-development investment-related fiscal incentive regime. A major question remains however what use has been made of it. The senior officials at Ministry of Trade interviewed were not particularly aware of the report's existence.

Concerning the third area of intervention, a report was produced containing a "*Review of the Intellectual Property Laws of Malawi in the Light of Malawi's Adherence to Various International Conventions*". This was followed by draft legislation on patents and copyright. Due to the ComSec decision to classify these documents as confidential they were not made available to the evaluation study. The Evaluator cannot therefore assess their overall quality and relevance. Hopefully the draft legislation will lead to an improved IP's legislative framework. However, interviews in Malawi confirmed the very limited absorption capacity of relevant line-ministries with regard to draft new legislation. The latter must pass through the Ministry of Justice and tends to be blocked there due delays and fundamental capacity gaps within that ministry. Therefore, any legal assistance proposing new draft legislation must also include the Ministry of Justice and facilitate its own process of legal review.

Finally, in relation to the fourth area, SPS, a report was also produced pertaining to Plant Health, followed by a workshop on SPS measures in June 2008, shortly before the Evaluator's arrival in Malawi. According to the trade law officer, the conference report also includes an assessment tool on compliance with WTO rules. The Evaluation study, however, did not have access to the written output, due to its classification as confidential, and he cannot therefore assess its relevance and quality. The only observation that can be made at this stage is that none of the stakeholders interviewed, including the Ministry of Trade and the ComSec's contact person, were aware of this activity. This seems to have been coordinated with the Ministry of agriculture only, with whom consultations on the report have also taken place. This is problematic as obviously SPS measures are relevant to trade policy as well. Furthermore, other donors, especially in an EIF beneficiary country, should have been informed.

Generally speaking, the project has not had an optimal result. It has produced several reports, one workshop and one draft piece of unadopted legislation. While those who were aware of the existence of the reports indicated they were useful, there is no clear indication that the work carried out led to substantial policy developments in Malawi or an improvement of its institutional capacity to implement WTO Law. This statement may have to be mitigated by further developments in the SPS area, which the Evaluator was uninformed of. Nonetheless, overall, this project is characterised by substantial lack of absorption by the beneficiary. It seems that this is an "endemic" problem in Malawi, as confirmed by all donors. Therefore, it appears clear that in order to achieve sustainable results of technical assistance in a context like this one, a piecemeal approach is not suitable. Activities must be inserted in a larger framework of higher level partnership, such as the one proposed by the EIF.

Turning to the specific quality indicators, the overall assessment is therefore not as positive as one would like. The project, as indicated, is not structured according to a logical framework for intervention. That is its original flaw. The activities were not in line with the real needs originally expressed by the beneficiary, i.e., filling the gap of its limited human resources. The beneficiary's absorption capacity was therefore insufficient. Furthermore not all stakeholders concerned were involved in the project. For instance, liaison with the EIF partners and the Ministry of Justice would have been useful. Keeping the Ministry of trade and the ComSec's contact person abreast of the

activities pursued would also have been advisable. Maybe this would have facilitated the absorption of the assistance provided. Generally speaking, considering the inherent flows of the project, the work carried out seems to have generated limited multiplier effects, even if this conclusion may still be uncertain in the SPS area. Finally, one of the contact persons within the beneficiary complained that the consultants, while they produced fine reports and discussed them with stakeholders, left the country afterwards with no real follow-up. This does not apply to the local consultants which have been used. Generally speaking, the trade law sub-programme has invested less in this project than in others, where probably absorption and sense of ownership were higher. A question may arise though: considering the large number of issues to be handled, would it have been possible to intensively accompany legislative reforms proposed, as was the case in Belize for instance, without eventually deploying a permanent senior legal adviser as originally requested or at least assigning to the project a project officer of its own?

On a more positive note, the project made a genuine attempt to provide concrete outputs and clear recommendations to policy makers. The overall quality of the studies reviewed by the Evaluator is good. There may also still be some potential results in the SPS area. Furthermore, the project coordinated with the ComSec's trade policy analyst of the Hubs & Spokes programmes and deferred some requests to other ComSec's divisions. It also tried to keep focus by not immediately accepting a project pertaining to tourism that was forwarded to it by SASD's trade section. It commented that this project is not obviously in line with the Government's development priorities. It seems however, that unplanned work on trade remedies was accepted.

The main lesson to be learned from this project is that **when a country is a beneficiary of a coordinated action by donors, such as the EIF, recourse must be made to it.** This then enables a technical assistance programme to provide case by case assistance in the context of a deeper partnership achieved with the government. Inserting technical assistance in a larger development programme with clear milestones and a high level commitment to absorption seems the only workable solution. It might indeed require too many efforts for a single programme, such as the trade law sub-programme, to achieve this on its own. In a country where staff moves and is unprepared, this may even be impossible. Furthermore, **when a project entails legislative amendments and policy evolutions, the lessons drawn from the Belize project are also relevant. One must enter into a country's "intimacy" and be closely connected to its political realities. This requires the intensive involvement of trusted high-level advisors and a mixture of activities, such as analytical studies, hands-on legislative drafting and extensive stakeholders' consultations, including the private sector and the civil society, where relevant.**

7) ***XBOT026: Botswana - Implementation of an SEZ regime consistent with WTO and regional agreements***

i) Relevance indicators

This is a very interesting project. Its purpose is to assist the Government of Botswana in establishing a modern free zones regime that is both WTO compatible and conducive to investment in Botswana. This project was initiated at the government's request out of the realisation that while its growth rate already enabled substantial income redistribution for the purposes of poverty reduction, its level of foreign direct investment was still too low outside the mining sector. Yet, boosting foreign direct investment may accelerate growth and further contribute to the sustainable development of the country.

As adequately reiterated in the Inception Study of this project, establishing Special Economic Zones (SEZs) may be an appropriate fast-track answer to remove many of the impediments to investment, while not substantially modifying the social and economic outlook that is otherwise applicable in the country. Furthermore, SEZs have the potential to provide incentives that are WTO compatible and not

tied to exportation conditionality, as the Export Processing Zones. Therefore SEZs become an interesting and sophisticated model for economic development that Botswana wants to try and to establish. It is the purpose of this project to assist it in doing so.

This is entirely relevant to the objectives of the Secretariat's International Trade Programme. Many of the relevance quality indicators are met: the link with sustainable development, the enhancement of the institutional capacity of the beneficiary to implement WTO consistent domestic regulation that is contributing to economic growth, the search for a clear and measurable output that addresses an identified trade need, the contribution to the competitiveness of the economy, the contribution to an export strategy etc. The project furthermore, despite it does not directly deal with international trade negotiations, has a regional component since the SEZ that is to be established must be compatible not only with WTO law but also with the regional integration agreements to which Botswana is a party (SACU and SADC). If successful, the project can also serve as a source of inspiration in other countries in the region.

The project may be poorer, as usual, on gender issues and it does not seem to be dealing directly with other policies than trade and investment. However, the spill-over effects of a successful SEZ may be positive for the overall progress of society.

Finally, this project is rightly handled by the trade law sub-programme, at least as far as its legal part is concerned. It requires substantial legal analysis of the compatibility of the incentives to be implemented under the SEZ with the WTO and with the relevant regional integration agreements. It is precisely the capacity to adopt legal incentives that makes SEZs interesting and thus the legal input is instrumental to the success of the project. Obviously, should specific legislation have to be prepared and implemented, - this is not done yet -, then substantial dialogue and education will have to take place as well as the establishment of the relevant administrative structure overseeing the SEZs. This latter component in particular may be beyond the trade law sub-programme's mandate and synergies with other Secretariat's sections, such as SASD's trade section, and donors would be advisable.

The Evaluator has no information pertaining to the level of consultations with other stakeholders than the government at this stage and about the lack of duplication with other donors. In particular in Botswana, many regional programmes of the EU and other donors are present due to the vicinity with SADC. This being said, assuming lack of duplication, the project, which is still ongoing and must still fully deploy itself, is relevant and rightly considered eligible under the trade law sub-programme.

ii) Quality indicators

The project's expected outcome is the establishment of a special economic zone for Botswana. This outcome has not been reached yet. However the project is still ongoing and has not shown its full potential yet. It is therefore difficult at this stage to make a complete assessment of the quality of its implementation. Furthermore, the Evaluator could not get hold of the beneficiary's representative in Botswana, even if several telephone appointments were made. This preliminary assessment is therefore based on the written output of the project.

On the basis of the written output, the assessment is positive and it confirms the big potential of this project. A first inception report was produced containing a description of the project's policy background and a very clear review of the relevant applicable legislation. The inception report explains the case for reform of the Botswana's investment regime and then presents SEZs, their benefits and the challenges they entail. The analysis is comprehensive, based on substantial research, drawing on other organisations' work and including third countries' experiences, such as those of Singapore and Mauritius. It is overall convincing. The report supports the idea of the implementation of SEZs and proposes key milestones and a timeframe for the establishment of the appropriate

regulatory framework. The report was submitted and discussed with the Ministry of Trade and Industry.

On the basis of these consultations, a second report was then produced reviewing the WTO and the regional legal framework under which a SEZ can operate. The report explores the policy space left by the relevant international trade agreements to enable the SEZ to develop the right type of incentives that will be conducive to development. The legal analysis is comprehensive, sound and clearly presented. Undoubtedly, this is a very useful document which should provide some comfort and guidance on the type of measures that can be taken in the context of a SEZ.

The SEZ must now be established and the relevant draft bills must be prepared. It is unclear at this stage what will be the trade law sub-programme's involvement.

Turning to the quality indicators, as indicated, a final assessment of the project is uneasy at this stage. Nevertheless, the written output produced so far is very good and rigorous. This already bodes well for the subsequent steps and for the overall sustainability of the SEZ, should it be established. **The implementation method, consisting in starting with a comprehensive analysis of the policy and legal context of the mechanism to be established, is totally appropriate.** Furthermore, the project is well structured and the milestones proposed in the Inception Report follow best practices. They may be inspired by the experience of successful previous projects such as the one in Belize. Finally the project is aimed at being result-oriented and has already produced concrete outputs.

The expected interview with the beneficiary could have better assessed its level of absorption and ownership of the project. However, one can already note that a full page in the website of the Botswana's Ministry of Foreign Affairs and International Cooperation is dedicated to the project. There is also local press coverage of it.

The next steps in the project's implementation will be key for its overall success. This will require the dedicated and intensive presence of a trusted adviser with the beneficiary. Partnerships with other Secretariat's divisions, particularly the SASD's trade section, and donors may create interesting synergies and could be explored. **It will also be important to keep focus on the final purpose of the project and avoid dispersion of efforts.** Overall, the lessons drawn from the Belize project appear particularly relevant in this case.

8) XOEC02: Technical Support to the OECS WTO Trade Policy Review

i) Relevance indicators

This project is straightforward. It is now completed. Its object was to provide assistance to the OECS Secretariat in the preparation for the OECS' second WTO Trade Policy Review (TPR) in November 2007. It helped to review the draft trade policy report that was prepared by the WTO Secretariat, pointing at legal deficiencies of national legislations. It also provided assistance in the preparation of responses to the questions posed by the WTO members concerning the WTO compatibility of certain national regimes. According to the trade law officer, the project also produced some papers on the WTO aspects of import licensing, border taxes and fiscal incentives.

The project's purposes and deliverables were certainly in line with the trade law sub-programme's mandate and relevant to the objectives of the Secretariat's International Trade Programme. The project was intended to strengthen the capacity of an important regional organisation to exercise its members' rights at the WTO. As such it contributed to the integration of the OECS's Members States into the international trade community as well as to regional integration. It was relevant to international negotiations, and it may lead to the strengthening of the trade and investment regulatory framework in the countries concerned. Indeed, trade policy reviews generally have the consequence that the WTO

Members concerned realize the lack of WTO-compatibility of certain domestic regulations, thus promoting domestic legal changes and improved policies to take advantage of the international trade system, with possible positive development effects.

The OECS Secretariat confirmed the lack of duplication with other donors' activities. Consequently, in light of the above, the project, which addressed a well identified trade law need of the OECS Secretariat, was obviously eligible to benefit from the trade law sub-programme's assistance.

ii) Quality indicators

The assistance provided to the OECS Secretariat was very much appreciated by the beneficiary. While the Evaluation study was not provided with any of the written output of this project, the beneficiary confirmed that the sub-programme's involvement in the Trade Policy Review has been instrumental for the entire success of the exercise. The OECS Secretariat had serious capacity gaps in relation to legal analysis and knowledge of the WTO system. The assistance provided filled this gap for the Trade Policy Review. In particular, the beneficiary appreciated the flexibility of the assistance given as well as the fast responses provided in the process. A WTO Trade Policy Review is indeed a dynamic process characterized by questions and answers with other WTO Members and with the WTO Secretariat. It is therefore very important that the assistance provided sustains the rhythm of the procedure. In this case this was achieved with success.

Quality indicators are therefore overall positive for this project, on the basis of the beneficiary's feedback. In particular, the intervention style, characterized by speed and flexibility, was appropriate to achieve the objective sought. The beneficiary's ownership and absorption of the assistance provided were also fine. Furthermore, the project delivered concrete outputs and it led to a measurable outcome that is a successful WTO trade policy review.

In terms of sustainability and multiplier effects, the project enabled the OECS Secretariat to exercise OECS Members' WTO responsibilities. This is an interesting precedent which may lead to an increased involvement of the OECS as a region in the WTO. Furthermore the project may lead to improved domestic regulations in OECS countries on the basis of the trade policy review's outcomes. As indicated by the trade law officer, some papers on import licensing, border taxes and fiscal incentives have already been produced.

Finally one should note that this project was carried out in partnership with the EAD's ITRC Division. This is of course positive and it shows that achieving synergies within the Secretariat may produce positive outcome for the clients.

In conclusion, this project shows that when the objective is clear and straightforward and the expected outcome is concrete and measurable, there is less risk for dispersion and inefficiency. Furthermore, when the assistance is provided in the context of international procedures entailing interaction with other WTO Members, flexibility and speed of response are essential factors of success.

9) XCWG095: Pan-Commonwealth Legal Advice to ACP Banana Exporting Countries

i) Relevance indicators

This "Banana Litigation" project is rather unique in the trade law sub-programme's portfolio. Its initial objective was to assist the Commonwealth Caribbean States in the review of the WTO compatibility of the EU Banana regime and to provide a legal opinion on the means to maintain positive treatment in the EU for Caribbean banana producers. Later on, assistance was also provided in the context of the

work of the ACP Banana Working Group in relation to the multilateral negotiations and to two WTO arbitration procedures over the proposed level of rebinding of the EC flat tariff for bananas.

The project obviously falls within the remit of the trade law sub-programme. It relates to the application of WTO Law in a very important sector in the economy of the Caribbean States. Its implementation obviously requires legal skills in the application of substantive law as well as knowledge of the WTO procedures. Furthermore, the assistance provided must be exercised at strategic levels, in line with the Commonwealth Secretariat's role as trusted advisor. Initially, it was intended to assist the Commonwealth Caribbean States to understand the multilateral rules as well as to orient themselves in the complex intricacies of the international negotiations pertaining to Bananas. In addition, since the assistance was supposed to be coordinated with the CARICOM Secretariat, it had the potential to increase this organisation's capacity to exercise its regional competences in trade policy at multilateral level and thus to strengthen regional integration in trade.

The project, as it unfolded, was very much oriented to provide additional advocacy for ACP banana producing countries to maintain preferences in banana trade. It is unclear whether the advice given also enabled the beneficiaries to define improved domestic policies in bananas, in light of the multilateral trade rules. The loss of preferences in the WTO was predictable and ACP countries had to think at some alternative strategies for the sector. This being said, the assistance provided encompassed defence of sustainable flat duty rates in the EU for ACP bananas producers. Thus, as such, it can be considered as having also contributed to increase the beneficiary's capacity to formulate a better strategy in the sector.

Another positive aspect is that the assistance was provided in association with the Secretariat's EAD's TRTC Section and, as far as the WTO procedures are concerned, in cooperation with a professional law firm appointed by the EU-ACP TradeCom Facility. To a large extent, duplications were avoided.

One could only regret that, as usual, gender issues were not incorporated in project design and that the assistance provided did not really encompass public-private dialogue. Gender, however, is not really the project's object. The project however has an obvious pro-poor component, considering the role played by the banana sector in the rural areas of the States concerned. As to private sector participation, some banana growers' representatives attended the meetings of the ACP Banana Group.

In conclusion, notwithstanding some very limited shortcomings, this project is obviously fully relevant to the Secretariat's International Trade Programme. It is clearly development-oriented, strategic and fostering developing countries' participation in the multilateral trade system. As indicated, it is also obviously eligible under the trade law sub-programme as legal in nature.

ii) Quality indicators

It is very difficult for the Evaluator to assess the quality of the assistance provided, since the evaluation study had no access to any written document produced by the project due to the ComSec decision to classify these documents as confidential. In particular the Evaluator could not assess the validity and relevance of the legal opinions produced.

Generally speaking, the beneficiaries interviewed are happy with the assistance provided. In the mind of many, the beneficiary was the ACP Banana Group only, which is the one that represents collective bananas' interests before the WTO. However, the project eventually seemed to many to dedicate attention to the Caribbean Commonwealth developing States. This nuance is not irrelevant considering the potential conflicts of interest among ACP banana producers. This situation seems to have caused some trouble within the ACP Group in the context of the first WTO arbitration. **The management of conflicts of interest is very important in the context of litigation and international negotiations and advisers must be very transparent about their exact role.**

This being said, from a technical point of view, the project's contribution is overall well appreciated. It has provided an interesting complement to the law firm's input before, during and after the WTO arbitration procedure. The trade law officer has a long experience of banana trade and of EU-ACP relations. By definition, she knows better the politics and the dynamics of the issue than the appointed law firm. The latter was only appointed to handle the WTO arbitration procedure before the WTO for the ACP Group. **While professional lawyers must always be the first advisers in litigation, other advisers' input is of course welcome, to the extent it does neither interfere with their work nor seek to supplement it.** This, however, does not seem to have taken place substantially and cooperation was overall smooth. In general, beneficiaries interviewed also appreciated very much the trade law officer's input and position papers during the more political phases following the Banana arbitration procedures, in particular in the context of the July 2008 negotiations and the WTO Director-general's mediation efforts.

Turning to quality indicators, the assistance provided was clearly result-oriented and it was well absorbed by the beneficiary States, which have expressed their satisfaction. The activities and means employed were overall adequate, notwithstanding some difficulties to identify the ComSec's right role in the context of the ACP collective action. The assistance focused on providing concrete recommendations and strategic advice to relevant stakeholders. It was characterized by a substantial personal involvement of the trade law officer and a close relationship with the main players. However, certain of them complained that the trade law officer could not participate to all ACP Working Group meetings due to other missions and this seems to have affected, during certain periods, continuum in the assistance provided. Nevertheless, the trade law sub-programme's contribution was characterised by its important flexibility and keen commitment to success. Finally, it was also provided in positive synergy with the EAD's trade section.

In general, this project must be considered as a success. By its active involvement, notwithstanding some conflict of interest issues, the sub-programme managed to bring a key contribution in the furthering of the interests of Caribbean banana growers at international level. If there is a lesson to be learned, it is on the optimal role the Commonwealth Secretariat can exercise in collective ACP action in the context of complex negotiations and litigation procedures and the overall need for transparency in this regard.

10) XWES015: Review of Trade-Related Legislation of Samoa in Preparation for Accession to WTO

i) Relevance indicators

The purpose of this project was to facilitate Samoa's accession to the WTO by rendering its legislation compatible with WTO rules. The project was to carry out a review the trade-related legislation of Samoa, define inconsistencies, and then draft any new legislation or amendment to existing legislation to facilitate accession.

This project is similar to the Tonga one, except that Samoa is not yet a WTO Member. It is more ambitious however. While the Tonga project requested that the analysis of the legislation and the amendments thereof be on areas specifically identified by the Ministry of trade, even if these were modified later on, this project aimed to analyse all relevant trade-related legislation that may be concerned by the WTO. Therefore, while a criticism could be made in the Tonga project that the selection of the areas of scrutiny was not prioritized in connexion with a long term strategy for sustainable development, in this case, the selection of the legislation to be amended was clear: it had to be all legislation found to be WTO-inconsistent with a view to accede to the WTO. That is acceptable, given the Samoa context.

By its very nature, the project obviously fell within the trade law sub-programme's mandate. It was also relevant to the objectives of the Secretariat's International Trade Programme. It was intended to facilitate Samoa's accession negotiations and its integration into the international trade system. It also facilitated Samoa's implementation of multilateral agreements while potentially streamlining domestic regulation in important areas for the development of the country. As usual, one may regret the project did not really address gender issues, except that the association of Women in Commerce was represented during the stakeholders' consultations on draft pieces of legislation. The project furthermore handled some other dimensions of domestic governance such as health and consumer protection through some of the work carried out in the SPS area. While the Evaluator does not have information on whether or not the project proactively avoided duplication with other donors, he noted that some contacts had been established with the WIPO. Liaison was also made with an AusAID consultant in relation to intellectual property.

Overall, this project tackled an identified trade need and, consistently with the Commonwealth Secretariat's comparative advantage, it facilitated high level discussions and stakeholders consultations. Therefore almost all relevance indicators are met and this project was obviously rightly considered eligible under the trade law sub-programme.

ii) Quality indicators

The beneficiary was overall satisfied with the assistance provided. The project, however, leaves a sense of unfinished work, considering its initial ambition, i.e. a review of all trade-related WTO-inconsistent domestic legislation.

The project started with an inception mission, which identified its areas of intervention: the mission found problematic areas to be only four: 1) the trademark and patents legislation, 2) quarantine legislation, to be replaced by a new biosecurity legislation, 3) customs valuation and 4) antidumping legislation. The Evaluator, however, has not seen any legal study reviewing all Samoa's trade-related legislation, in accordance with the project's objective. Like some of the stakeholders interviewed in Samoa, he is somehow puzzled that only four areas of legislation were found to be WTO-inconsistent, even if overall, Samoa is considered to be a rather open and liberal country.

This being said, on the basis of the first mission, the project proceeded with the production of legal analysis and the drafting of the amendments to the legislation concerned. It produced several legal opinions reviewing Samoa's laws pertaining to trademark and patent, quarantine, and customs and excise. Due to the ComSec decision to classify them as confidential, the evaluation study did not have access to the reports produced and therefore their quality and relevance cannot be assessed. The beneficiary, however, appreciated them, particularly the fact that they were proposing options for legislative amendments rather than try to push some of them.

Following the reports, and consultations with various government ministries and the private sector, it was agreed that the project would then prepare drafting instructions for proposed amendments to the legislation concerned and submit five pieces of legislative drafts to the WTO Committee of Samoa. Drafting instructions were submitted on customs valuation, excise, anti-dumping, intellectual property and on the Pharmacy Act. They appear to be precise and adapted to Samoa's existing legal framework. They were followed by the draft pieces of legislation themselves.

The project finally produced two papers on antidumping and countervailing duty measures. It also produced a procedural manual on the best practices in trade remedies and drafting instructions for legislation on this, together with the draft legislation. The simplest model of legislation was eventually adopted. The Evaluator reviewed the Manual on best practices. This is a very good and useful document which should actually be disseminated to other potential beneficiaries. Drafting instructions are rather schematic though. They simply suggest the repeal of the Samoa existing antidumping

legislation. However, after intense stakeholders' deliberation, a draft of a new legislation was eventually prepared.

The various draft legislative texts submitted sparked several comments, which were voiced during a round table discussion the Evaluator had with interested stakeholders. The private sector is very critical. It considers the drafts do not provide added value and are not tailor-made to Samoa. For instance, the draft provisions on geographical indications seem to be cut and paste from models found in the internet, namely the WIPO model legislation, lacking adaptation to the Samoa's special needs and circumstances. Apparently they still contain references to French products (!). One should note, however, that the draft WIPO model legislation was discussed with a WIPO mission and that it was eventually agreed that an AusAID Consultant would take the matter over. The private sector then commented that the draft antidumping legislation was also based on a model that was taken straight from the internet. In its analysis, it contained some WTO inconsistencies. The private sector representative apparently circulated a memorandum in this respect, but the Evaluator did not have a chance to read it. He has not reviewed the draft legislation either and therefore he cannot make his own opinion in this regard. This being said, there were other sources of concern with the drafts. The Attorney's General (AG) office, for instance, seems to have been unhappy with the draft legislation on Excises. It confirmed that in future, any drafting legal assistance will have to comply with the new guidelines for legislative drafting that the AG office prepared. Finally, the representative from the Ministry of Revenue indicated, with respect to the draft rules pertaining to customs, that while the first text produced and presented was fine, no administrative guidelines were prepared, thus leaving customs authorities at unease with implementation. The beneficiary suggested that in future, when complex legislation is prepared, it should be accompanied by a user friendly guide for the law enforcers. Generally speaking, the private sector representative commented that if model laws already exist and are used, then all drafts bills should be produced in Samoa and no technical assistance appears to be necessary in this regard.

Notwithstanding the criticisms on the draft of legislation, the beneficiary was overall happy with the work done. It indicated that it has acquired confidence in the ComSec's involvement's conformity with the country's interests. It complained however that the experts have not been sufficiently in the country. When they came, they tended to stay two or three days and then leave. According to the beneficiary, subsequent e-mail exchanges are not sufficient to fill the gap.

Generally speaking, the project ranks satisfactorily on quality indicators. The beneficiary's level of participation and absorption was fine. The beneficiary confirmed it was involved in every stage of the project. It also indicated that every time the trade law sub-programme would organise a mission in Samoa, it convened a meeting of the Samoa WTO Committee to discuss the reports and the draft pieces of legislation. According to the beneficiary, most advantage could be taken then of the experts' presence. The private sector and civil society were present in these meetings and were generally consulted on the drafts. Finally, when they were in Samoa, the experts did not spare their time and effort to assist the country.

There are certain shortcomings, however. The first is the rather limited scope of the project's output in light of its more ambitious objective. Then there is the insatisfaction perceived with respect to the draft legislation proposed, even if the Evaluator did not have access to it and he cannot make his own judgment in this regard. Another less positive point seems to be the rather limited presence in Samoa of the consultants. This may have hold back a more comprehensive work in the country. Finally, there do not appear to have been synergies with other ComSec's Divisions and Sections.

This being said, however, overall, the project did provide concrete output and recommendations for policymakers of Samoa and it did contribute to the process of Samoa's accession to the WTO. Should the legislation be passed and the Samoa's legislative framework be improved in light of the recommendations made, it may also have an interesting multiplier effect. One can only regret at this

stage the lack of continuum in the assistance provided and hope that other donors or the ComSec itself will be able to pick it up for further projects.

This project overall confirms the lessons drawn from the other projects, i.e. the **need for continued experts' involvement in the process of legislative change and an optimal mix of reports, workshops, legislative drafting and stakeholders' consultation**. One must also **develop a deep relationship of trust with the government to facilitate integration of change in the country**. Other lessons include the fact that **studies are preferred when they propose options; good studies should be widely disseminated**; and finally, **technical assistance projects involving legal drafting should integrate capacity-building actions in relation to drafting, searching for model laws and their adaptation**.

c. General Assessment

1) *The degree to which the sub-programme has delivered on planned outputs and contributed to the objectives of the Secretariat's International Trade Programme*

Overall, the trade law sub-programme fulfilled its mandate. All its projects were relevant to the Secretariat's international trade programme and, except one, they were delivered with a sufficiently qualitative method of intervention, thereby producing tangible outcomes. The attached table is insightful in this regard. It shows the objectives that can be considered to have been the most successfully achieved, those that have been well achieved, those that have been achieved, but either partially or for which improvements can be made, and finally those where the sub-programme can be considered to have obtained less than adequate results.

(i) *Excellent achievements*

The sub-programme has very well addressed its beneficiaries' identified trade-related needs and provided to them relevant and accessible outputs, in line with their interests.

Generally speaking, the activities focused on providing concrete outputs and recommendations for policymakers and other relevant stakeholders. Such output was overall very satisfactory from a technical point of view.

These achievements are remarkable and perfectly in line with SASD's demand-driven mandate.

(ii) *Good achievements*

The sub-programme can be considered to have overall contributed well to sustainable growth in developing member countries, particularly small and least developed States. It has also contributed well to enhance the analytical and institutional capacity of its beneficiaries to formulate sound domestic policies and it has strengthened well their capacity to implement trade policies and trade agreements. Furthermore, except in Malawi, the assistance provided was generally well in line with the Secretariat's strategic focus on high-level negotiations, policy development and national trade promotion and facilitation. Duplication with other donors was also generally well avoided.

In addition, overall, the assistance was provided according to best practices, particularly with respect to the Belize and OECS projects. In general, the activities and means used were very appropriate, practical, clear, and consistent with the objectives and expected results. The assistance provided was also result – oriented and structured according to a logical framework for intervention. The main disappointments, however, concerning these latter two aspects, were the Malawi and the Gambia

projects which either were not linked to a clearly defined purpose or deviated from their initial objectives.

Generally speaking, the beneficiaries' level of involvement and participation in the projects was very satisfactory. Their capacity to absorb the assistance provided and their sense of ownership of its outcome were also well secured. One should note however that absorption in St Lucia and Malawi were not so satisfactory. Finally, overall, except in Malawi, the activities carried out are likely to generate multiplier effects and the assistance provided can therefore be considered sustainable in general.

(iii) Adequate or partial achievements

In five of the ten projects, the sub-programme has provided adequate assistance in the ongoing process of bilateral and /or multilateral negotiations. In four of them it has contributed to the strengthening of regional integration. In almost all them, it included an aspect aiming at strengthening trade and investment-related regulatory frameworks, even if this has not always materialised. Furthermore, the sub-programme has adequately contributed to the competitiveness of the economy in several of the beneficiary States through general and sectoral activities. The most successful example is in Belize. The Botswana project also has a great potential in this respect. Furthermore, in five projects, the sub-programme has adequately contributed to a sound and effective public – private dialogue. Belize is again the most insightful example. The Samoa project is also interesting in this regard. Furthermore, in several instances, the sub-programme sufficiently integrated other dimensions of domestic governance, particularly in relation to health and consumer protection. Examples include the TRIPs and Public Health project and the Tonga and Samoa projects.

In addition, five of the ten projects adequately either complemented the work of the other sections within the Secretariat or were carried out in partnership with them. This is particularly the case of the projects on TRIPs & Public Health, bananas and the OECS Trade Policy Review. Interesting synergies were also found in the Gambian and Malawi projects.

Finally, the project's supervision and quality control were on average all right, due essentially to the trade law officer's personal involvement and dedication. However, one could regret that several studies were not of a legal nature, and thus beyond the professional supervisory capacity of the trade law officer. Furthermore, for some projects, the latter was perhaps too busy to be sufficiently on the ground and to adequately steer projects either because she often acted as a consulting expert herself or decided not to invest so much of her time in a particular project.

(iv) Less than adequate achievements

The sub-programme has in general not mainstreamed gender issues in the assistance provided.

Furthermore, even though this does not appear in the table, it has contributed to the strengthening of regional integration within developing member countries in only four projects. While these are noteworthy, they may not be of a sufficient number.

2) *The actual or likely impact of the technical assistance provided on the development of the beneficiary countries*

As indicated above, the programme should be considered to have delivered well overall on the objectives of the Secretariat's International Trade Programme. The latter, as indicated in the introductory part of this assessment chapter, fully participates to the objective of sustainable development. Therefore, it must be assumed that by meeting its objectives, the sub-programme has had positive impact on the development of the beneficiary States. In some cases, such impact was

more immediate than in others, such as in Belize. However, this is not really relevant, because contribution to longer term objectives is also fine.

3) *How well gender issues and the other stated objectives of the Secretariat were addressed by the sub-programme*

As indicated above, gender issues were not adequately addressed by the sub-programme and this constitutes one of its major shortcomings.

d. Summary and lessons learned

In summary, the assessment on the relevance and quality of the trade law sub-programme is positive. It is not perfect though due to some shortcomings in certain projects' design or management. To the Evaluator's opinion, **three of the ten projects were very good. Four were good, two were adequate and one was less than adequate.** All the projects have inspired several lessons. The list below does not intend to provide an exhaustive account of best practices in project management. It is only the summary of the lessons learned from the projects investigated. **It should be noted that SASD' management is fully aware of most of the best practices and that it has already initiated a review of its working methods in this connexion.**

1) *Projects recommending legislative change and policy developments*

- Trusted high-level advisors must be intensively involved throughout the project, until the end-result.
- Continuum of the assistance and full dedication to the project by the same key advisor(s) are essential factors determining the project's success.
- Permanent presence of the experts is not indispensable; however for large projects, when many complex issues must be handled, deploying a permanent senior legal adviser can be a valid option.
- It is important to try to enter into a country's "intimacy" and to be closely connected to its realities, political developments and coordination efforts at regional level.
- The projects must entail an adequate mix of activities, such as analytical studies, hands-on legislative drafting and extensive stakeholders' consultations, including the private sector and the civil society, where relevant.
- Try to avoid large conferences and prefer more intimate, on-the-spot and hands-on advice.

2) *Establishing a complex legal mechanism*

This set of "lessons learned" applies to complex projects, entailing a substantial level of sophistication in the legislative development envisaged, such as the establishment of a Special Economic Zone, the creation of a subsidisation scheme, the setting of sectoral rules (especially on services), the regulation of competition policy, etc. This comes in addition to the "lessons learned" under i) above.

- It is highly advisable to produce a comprehensive analysis of the policy and legal context of the mechanism to be established at the very beginning of the project.
- Use the resources of other Secretariat's divisions and sections for this purpose.
- Try to re-cycle, when they exist, the relevant reports produced in previous similar projects (e.g. the report on SEZs produced in the Botswana project, the report on fiscal incentives in the SADC region produced in the Malawi project, the report on TRIPs & Public Health, the report on trade remedies produced in the Samoa project, etc).

3) *Drafting WTO-compatible legislation*

- Indicate to beneficiaries where WTO-compatible model laws in various subjects can be found and check what added value must be brought to them.
- Prepare adequate draft instructions, adapted to the country's existing legislative framework.
- Engage the beneficiary and the stakeholders into a technical discussion on the draft instructions.
- Try to avoid consultants preparing the draft bill and seek a local person to do so.
- Should the beneficiary have capacity gaps in legal drafting, provide for possible capacity-building activities through hands-on training of local drafters.
- Draw the country's official authority that is competent for legislative drafting (Ministry of Justice or Attorney General) into the discussion of the draft, and address any of its capacity constraints.
- Comply with official drafting guidelines when they exist.
- When complex legislation is submitted, also prepare the necessary implementing regulations.
- Consider also preparing a user friendly guide for the law enforcers, so as to facilitate implementation.
- Use the same consultant throughout the process and ensure his/her responsiveness after the completion of the first draft.

4) *Studies*

- Try to present options in the reports for legislative amendments.

5) *WTO Procedures and litigation*

- When the assistance is provided in the context of international procedures entailing interaction with other WTO Members, flexibility and speed of response are essential factors of success.
- When a professional law firm is appointed to handle litigation, it must be considered as the first adviser in litigation.
- In collective actions, advisers must clearly state their role, their affiliation and their final "client" to avoid conflict of interest issues.
- Conflict of interest must be ruled out.

6) *Project Design*

- Providing for a case-by-case legal input on specific issues can be acceptable, but one should seek to integrate it into a defined longer term development strategy.
- High-level partnership with the beneficiary is important to ensure a good degree of predictability and ownership. Piecemeal approaches should be avoided.
- It is important to ensure sustained coordination with other donors.
- When a country is a beneficiary of a coordinated action by donors, such as the EIF, recourse must be made to it.
- When the objective is clear and straightforward and the expected outcome is concrete and measurable, there is less risk for dispersion and inefficiency.
- It is preferable to prepare a written inception report, addressing the project's background, its general and specific objectives, and how the planned activities are expected to meet the desired objectives. The report should include an indication of the relevant work carried out by other donors and the possible synergies with other ComSec's Divisions and Sections. Back to office reports alone do not meet this requirement.

7) *Project management*

- The management functions should be somehow separated (even if not entirely) from the “hands-on expertise” given.
- Large projects, with several components and different legal areas addressed, would require a project officer of their own, whether outsourced or in-house.
- A programme manager must spend the bulk of his/her time to control the overall strategic orientation of the projects, avoid activities that are not in line with the programme’s mandate, leverage on other expertise, and reinforce partnerships within the Secretariat, and with other donors and beneficiaries.
- In managing projects, it is important to try to stick to the objectives sought while avoiding dispersion of efforts.
- It is also important to remain flexible to accommodate the evolution of the beneficiary’s thinking on its needs and with regard to the content of the law, while keeping focus on the project’s objective.

8) *Publicity of the projects and of their output: multiplier effect and regional integration*

- It is important to ensure project publicity and the publication of the reports produced which could be used as a source of inspiration for other potential beneficiaries.
- It would be important as well to proactively disseminate draft pieces of legislation produced so that they can be a source of inspiration for other countries, particularly those in the region, and contribute to the process of regional integration.
- A suggestion would be to bring the work produced in a particular project to the relevant regional authority for possible follow-up at regional level, where relevant.

II. **Analysis of the efficiency of the trade law sub-programme’s operations**

a. **Methodology and indicators**

This efficiency assessment considers the number of projects, their cost and their likely benefits. A qualitative assessment is then proposed on the ratio between the costs and the benefits for each project. It is informed by the findings obtained in relation to the effectiveness of the projects.

The terms of reference provide that an assessment must also be made on the internal allocation of resources within the sub-programme, geographically, per project and per expertise utilised. This assessment normally requires a complete overview of the budget and the accounts of the project, as well as the calculation of several ratios, as proposed in the Workplan. However, **the Evaluation study did not have access to the sub-programme’s accounts and an overall assessment was made on the basis of the figures provided for the projects’ external costs. Unfortunately, no account is made for the trade law officer’s time. This constitutes a major shortcoming in the evaluation proposed.**

As indicated in the Work Plan, the table attached in **Annex 2** hereto was used as a user-friendly tool to convey the results of the efficiency assessment. It has been substantially simplified considering the above. The boxes in the table are completed according to the same grade range as in the table in Annex 1.

b. Cost-benefit analysis of each project in light of the indicators and of the findings obtained in relation to the effectiveness of the projects

1) *XCW6070: Pan-Commonwealth Assistance on TRIPS and Public Health*

The external expense for this project is UK £ 345,063, which is roughly three times the sub-programme's average per project. To this, the important time the project officer spent on the project must be added. This is a lot for one single project. However, this figure seems adequate given the project's geographical scope and its output consisting in nine country reports, one major workshop in Geneva followed by a comprehensive report, five regional workshops and their reports and a training the trainers workshop in Addis Ababa. Overall, this project ranked well in performance and it led to some concrete outcomes. One could regret however that the project's maximum potential has not been achieved. As indicated earlier, the investment could entail larger multiplier effects should additional follow-up at national and regional level be ensured and additional project publicity and communication of studies' recommendations be made.

2) *XBEL018: Belize Investment/WTO Compatibility*

The external expense for this project is UK £ 254,658, which is roughly twice the sub-programme's average per project. Furthermore, the project officer invested a lot of time in it. Therefore, this project was overall expensive. However, the investment was probably worthwhile, given the project's success, its output and its outcome. The output consisted in a project's inception Report, five studies, assistance in the establishment of a database and many small workshops and stakeholders' meetings facilitating the absorption of the study's recommendations and of the Government's desired legislative changes. Its outcome provides a measurable improvement of some domestic legislation and a re-orientation of an important sector of economic activity (citrus). This being said, however, as indicated earlier, this project could have entailed larger multiplier effects, should it had inserted a regional dimension and if the lessons learned were better disseminated so as to inspire other countries.

Generally speaking, as noted above, obtaining results in a project like this one requires dedication and presence. The cost of this project is essentially due to the recruitment of external consultants to carry out the studies and to participate, together with the legal officer, to stakeholders' meetings in the ground. It was adequate given the intervention method used and the market conditions for the outsourcing of experts. One could note, however, that most of the expense being on "human" capital, the total cost represents more than the average yearly salary of two full-time Secretariat's officials. One could thus wonder whether activities of this nature would not be better carried out in-house as opposed to using external consultants.

3) *XSTL022: St Lucia Fiscal Incentives Regime*

The external expense for this project is UK £ 139,681. The major cost item seems to be the organisation of a major regional conference on best practices in the use of fiscal incentives. The project's output also includes an outsourced report on fiscal incentives and a draft bill on the same. Overall, the price paid for this project seems very high, not even considering the in-house cost due to the trade law officer's personal involvement and the time and expenses incurred by the EAD's ITRC Section. Furthermore, it was noted that the conference did not produce major results and that overall the project's outcome was disappointing, given the beneficiary's low rate of absorption and the fact that the conference was not entirely adequate in light of the project's expected results. Therefore, considering the above, the investment, albeit made at market-oriented prices, cannot be deemed optimal.

4) XTON026: Tonga Legislative Compliance to WTO Agreements

The external expense for this project is UK £ 88,799. The project has produced two studies and two draft bills, as well as it carried out several small workshops and meetings to present the above-mentioned reports and drafts. The Evaluator did not see the studies and he cannot assess with confidence whether the project's overall cost is at market rate. Assuming the studies are comprehensive and qualitative, the project does not appear to be too expensive for the output produced, even if it compares less well with the rather equivalent Samoa project. This project was overall considered useful and effective, but it left a sense of unfinished work. While a more complete project would have cost more, maybe that would have been a worthwhile investment.

5) XGAM029: Assistance in the Development and Drafting of Tourism Regulation for The Gambia

The external expense for this project is UK £ 67,630. Its output was a study and a draft revised Tourism Act. Overall, this project was too expensive for what it produced and for the outcome obtained. Its output was, in volume, half of the Tonga project and yet, costing three quarters of it. The comparison is even worse with the Samoa project (see below). Furthermore, it was noted that the study, even if it contained interesting recommendations for the pursuit of a pro-poor tourism policy, was not of a "legal" nature. In addition, the draft bill, although it was greeted by the beneficiary, was not in line with the original objective sought. The project's overall sustainability was also uncertain given the limited scope of the output produced. Therefore, the investment in this project was not optimal and perhaps it might have been more useful to free the project's resources for other more relevant legal work.

6) XMAA028: Malawi - Review of Trade-Related Legislation and Implementation of WTO and other Trade Agreements

The external expense for this project is UK £ 93,581. Four reports, one workshop and one draft piece of legislation were produced. The Evaluator did not see all the studies produced and he cannot assess whether their cost is acceptable in light of their content. However, assuming this is all right, the project's expense appears reasonable in relation to its material output. However, overall, the performance assessment for this project was not positive, given its less than fine design and the beneficiary's low level of absorption. For this reason, the conclusion is unfortunately that the investment was not worthwhile.

7) XBOT026: Botswana - Implementation of an SEZ regime consistent with WTO and regional agreements

The external expense for this project is UK £ 25,497. This mainly corresponds to the production of two partially outsourced studies, and one mission in the ground. This cost appears normal in relation to the output produced, which was found to be of good quality. Furthermore, this project is innovative and has a high potential multiplier effect. Therefore, although the trade law officer's time is not accounted for, the money spent so far seems to constitute a very good investment.

8) XOEC02: Technical Support to the OECS WTO Trade Policy Review

The external expense for this project is UK £ 8,762. This project essentially consisted in hands-on in-house technical assistance and travelling costs. No work was outsourced, which explains the limited expense. Like in the other projects, the trade law officer's time spent on this project has unfortunately not been accounted for. However, on the basis of the data available, and given the success and

relevance of the project, one can confidently conclude that it is probably one of the most efficient projects of the entire sub-programme.

9) *XCWG095: Pan-Commonwealth Legal Advice to ACP Banana Exporting Countries*

The external expense for this project is UK £ 10,045. Like the previous one, this project was conducted mainly with in-house input, which again explains its limited external cost. One could again regret the lack of a mechanism to account for the trade law officer's time. In particular, for this project, it appears that the investment was important in this regard, at the possible expense of other projects. This being said, overall, for the same reasons as in the OECS project, this project also must be considered cost-effective.

10) *XWES015: Review of Trade-Related Legislation of Samoa in Preparation for Accession to WTO*

The external expense for this project is UK £ 75,363. This is lower than the similar Tonga project, which had a somehow smaller output and which was already considered as sufficiently cost-effective. This project produced several legal opinions, drafting instructions on five pieces of legislation, the draft pieces of legislation themselves and two papers on antidumping and countervailing duty measures. It also produced a procedural manual on the best practices in trade remedies and it organised small workshops and meetings to present the above-mentioned documents. While the drafting instructions seem to have been produced in-house, and thus their cost is not accounted for, the overall expense of the project seems reasonable for the output produced. Furthermore, this project led to concrete outcomes and it was considered to have been successful, notwithstanding, like in Tonga, it left a sense of unfinished work. Perhaps here as well, some additional investment would have been worthwhile.

c. **Assessment of the sub-programme as a whole**

1) *The relationship between the output of the sub-programme and the resources allocated to it (cost-benefit analysis)*

Overall, the project can be considered as having been adequately cost-effective. **Much was achieved in the ten projects, for the total amount spent of UK £ 1,109,080 and with only one in-house legal officer.** Furthermore, the expenditure rate was satisfactory, since 95% of the overall budget appropriation was spent.

There were however **some inefficiencies observed**, which may have to be avoided in the future. Firstly, **in several projects, the project's maximum potential has not been achieved.** In certain cases, a more profound outcome could have been obtained by making an additional investment into the project and with more presence in the ground to complete the work. The Tonga and Samoa projects are good examples in this regard, when compared to the Belize project. In other cases – actually almost all of them - **larger multiplier effects could have been obtained with more project publicity and communication of studies' recommendations.**

Secondly, **unfortunately three of the ten projects are not satisfactory from an efficiency point of view. This was mainly due either to poor project design and inadequate activities**, like in St Lucia, Malawi and the Gambia, **or to the lack of sufficient absorption of the project's outcome by the beneficiary**, like in Malawi and St Lucia. In the case of Malawi, inefficiency was also observed by comparing the overall project's external expense and its output with other projects.

Thirdly, when in-house input is used, it tends to be cheaper and one could wonder whether in certain cases, it would not be more appropriate to appoint additional in-house experts, given the potential institutional memory this entails and the possible economies of scale in subsequent projects. The Belize example is a good example of where more economical choices could have been made. The banana and OECS projects further illustrate this point. They used in-house expertise and generated an external cost ten times lower on average than the average external cost per project for the entire sub-programme. In that case, however, **it would be important to assess the cost of the in-house expertise and compare it with the market value of its output.** That is the only way to obtain a final reliable efficiency assessment. In other words, **it would be important to know whether or not using in-house expertise is less expensive than outsourcing the work to specialists in a particular issue and whether the positive externalities of such use would outweigh its cost and its negative externalities, the latter including, for instance, the loss of time available for the management of other projects.**

Considering this last point, one should therefore qualify the findings in this section. Indeed, they may be biased due to the absence of proper accounting for the time and cost of the in-house expertise used in each project.

2) *Geographical allocation of projects and costs*

The geographical allocation of the project's external expenses was as follows:

- Africa: UK £ 364,262
- Caribbean: UK £ 477,136
- Pacific: UK £ 233,175
- South Asia: UK £ 34,506
- South-East Asia: UK £ 0.

In order to reach these figures, the total external expenditure per project was aggregated for each continent and sub-region. Regarding the Pan-Commonwealth projects, Africa was allocated ½ of the external expense of the “TRIPs and Public Health” project. This indeed seems to have been the proportion of attention and benefits this continent enjoyed from it. The Caribbean and the Pacific were then allocated 1/5 each and India and Bangladesh, which also seem to have benefited from the project, 1/10th. Finally, Africa and the Caribbean were allocated ½ each of the external expense of the “Banana” project, being the two that benefited from it. There is obviously an important level of arbitrariness in this allocation, which is essentially due to the lack of more precise data.

There are no particular lessons to draw from this geographical allocation other than to note the project's obvious bias in favour of the ACP and to observe that Africa received a disproportionately low amount, given its size and population, and the Pacific a relatively higher amount. The project, however, dedicated almost 100% of its resources to Small Island States and least developed countries. That seems to be in line with the Secretariat's strategic orientation.

3) *The external context of the sub-programme, either hindering or supporting its operations*

Overall, considering the limited budget and the availability of only one full time project manager, the sub-programme should be considered to have performed remarkably well. However, it has suffered from some fundamental constraints which have impeded the deployment of its full potential.

The first major problem lies in the fact that it has been managed by one person only. This was certainly not enough, especially since, by necessity, **the legal officer also engaged herself into consultancy work, by providing her hands-on expertise during projects' implementation.** While

her contribution was certainly appreciated by the beneficiaries and actually provided more continuum to the assistance than what would have been achieved by external experts, it took her a lot of time and energy to do so. **This limited her availability for project management and has led to certain of the shortcomings observed in the evaluation of the sub-programme's performance.**

Firstly, **concerning project inception, the sub-programme seems to have invested less in some projects than in others. In certain projects, inception was rather profound, with a nice inception report produced, while in others, a single scoping mission followed by a back-to-office report was considered sufficient.** There is no clear indication of the reasons why this lack of consistency can be observed, but certainly, the limited time available to the trade law officer is a contributing factor. Project inception is a very important step, however, as it determines the entire follow-up of the project and its connexion with the objectives of the Secretariat's International Trade Programme. It also enables to allocate the trade law programme's assistance on the basis of objective criteria. Furthermore, it contributes to establish a sound basis for partnership with the beneficiary. It also enables any other expert to pick-up the project in case of the trade law officer's departure for whatever reason. Streamlining budget during inception is also important. **A good technical assistance project inception report is actually a policy document, which must be extensively discussed and approved with the beneficiary. This takes a lot of time.**

Secondly, **with respect to project implementation, the trade law officer seems also to have had different levels of intensity in her involvement.** While in certain cases, such as in Belize, she was obviously committed and delivered positive results, in other cases, **the beneficiaries had to complain about the lack of sufficient presence,** while understanding of course the inherent limitations of the officer's busy schedule. Furthermore, by having to carry out both the functions of project manager and hands-on, client-oriented expert, **the officer sometimes lost track of the overall strategic orientation of the project and accepted unrelated activities that other donors or Secretariat's Division or Sections could have handled.** While the necessity to react fast at times to certain of the beneficiaries' pressing needs satisfies the client, it may also lead to a loss of resources and dispersion of efforts, thus hampering the possible achievement of the original goal of the project. It also deviates attention from other potential beneficiaries.

Another difficulty related to the limited human resources is the insufficient project's administration, i.e. its filing, its accounts and its publicity. Administering a project (which is different than managing it) does not require proficiency in the area covered, but rigour and precision in the handling of its administrative steps. This does not have to be done by the trade law officer. Of course bureaucracy must be reduced to the minimum, but certain aspects are essential. **Physical files and/ or electronic files must be complete and structured in a rational way; tender documents for the recruitment of consultancy must be impeccable; reports and project outputs must be available to any reader, except when they are really confidential. Finally, proactive dissemination of the project's reports and results must be carried out to inspire other potential beneficiaries. The Evaluator noted substantial deficiencies in all these aspects, which overall hamper the sub-programme's efficiency and possible continuum should the trade law officer depart.**

Another shortcoming includes the overall lack of proactivity in publicizing the services that the trade law sub-programme can provide. Several potential beneficiaries are unaware of its existence. Those that are and that eventually used it were essentially informed by the word-of-the-mouth in restricted networks. This may of course hamper the overall programme's impact within the Commonwealth countries in general, and in particular its capacity to meet all developing Member States' existing needs in trade law. Therefore, while it remains important to define a mechanism to allocate sub-programme's funds on the basis of objective criteria, starting by publicizing it is a first step. Again, it is uncertain whether it is the trade law officer's task to carry out this task.

In addition, as already indicated, **the Commonwealth Secretariat's internal procedures do not seem to be encouraging cooperation among its Divisions and sections.** This may of course hamper potential positive synergies. In particular, **one of the areas to be explored, and which will be presented in the following chapter, would be to assign project inception to a specialised section, while project implementation would be carried out as usual by the various specialised programmes within the ComSec, in synergy one with each other.** This however would require a change in the Secretariat's current administrative setting and the way in which staff evaluations are carried out.

Furthermore, while **the ComSec's procedures for the mobilisation of funds, authorisations of missions and recruitment of experts** appear to be much less burdensome than those of many other donors, not least the United Nations or the European Union, they **may nevertheless interfere in a project in an inefficient way.** If a project is well designed, the activities within it should be straightforward and all authorisations to carry them out should not pose any particular problem. It may not have to be necessary to go through the PMRU every time. Furthermore, the Evaluator noted that back-to-office reports are required at the end of each mission. One can observe that these reports have often been used as a replacement for an inception report or in order to plan for the next phases of the project. While doing so, mixed quality was achieved. The reports often appear confusing and they do not enable the external reader to follow the projects continuum and overall rationale. The reason is that there is a fundamental confusion as to what these reports' objective is. They should be considered as administrative documents only, for monitoring purposes on the use of internal funds. They should thus remain very simple and factual. They should only contain the dates of the mission, its overall purpose, in light with the project's inception document, and the meetings held. It is a loss of precious time to insert analysis in them and this should not be required.

Another shortcoming observed is in terms of budgetary planning and internal allocation of resources. It is very difficult at this stage to make an efficient management of limited available funds. Projects' records within the sub-programme do not seem to make a precise account of the in-house expertise used as opposed to the external one, and between travelling time and expenses in relation to the cost of desk work. **It would be important to conceive a system to assess the use of the in-house staff's time, not in order to control the latter, but to measure the assistance provided to the beneficiaries.** Staff time is indeed very precious and it may also enable substantial economies if it is managed properly. One should also be able to calculate the cost of having an in-house expert to carry out a particular task in relation to having to source an external consultant to do the same work. This should take into account as well the time required developing skills; maintaining up-to-date relevant knowledge; following news in the field of specialisation, etc.

Finally, the success of the sub-programme's activities, like any other technical assistance action, is at times subject to the beneficiary's own limitations and lack of capacity to absorb the assistance provided. **The beneficiary may at times wrongly consider technical assistance as an additional resource that is available to a point that it does not require optimisation. Technical assistance is indeed shielded from normal market mechanisms, the beneficiary of the service not having to pay for it, and it may be wasted due to the lack of perception of it as a scarce resource. The only way to deal with this is to develop strong high-level partnerships, ensure donor coordination and carry out sound project inception.** As already indicated, this requires sufficient human resources.

Generally speaking, structured as it is now, due to its limited staff, restricted budget and current working methods, the trade law sub-programme cannot deliver its mandate in an optimal manner. What has been achieved so far with so limited means is actually very good.

d. Note on the dissemination of the project's reports and results

The SASD tends to classify much of the sub-programme's written output, such as drafting instructions, draft laws and regulations and opinions on the optimal implementation of international agreements as confidential documents. This can be considered an excessive use of the concept of confidentiality, which not in line with the approach of development cooperation promoted by the Secretariat's International Trade Programme. A document is confidential when it entails business or State's secrets or when the legal opinion produced reveals the inconsistency of a domestic policy or regulation with existing international rules, thus facilitating litigation against the country concerned. However, most of the sub-programme's written output is not of such a nature. Many papers indeed contain recommendations for improved policies or legislation in certain areas which could benefit many Commonwealth developing members' countries. **Sharing good advice and disseminating best practices is in the collective interest of the Commonwealth and within the spirit of cooperation and learning promoted by the International Trade Programme. It is furthermore a way to increase the multiplier effect of projects and thus the collective investment made under the Commonwealth Fund for Technical Cooperation (CFTC)**¹⁶. When papers and studies contain both confidential and non-confidential elements, standard practice could be developed to produce a non-confidential version of the documents concerned and disseminate it. Too much value and opportunities are lost because of a culture of secrecy. Learning and sharing should be an integral part of the Trade law sub-programme.

e. Summary and lessons learned

In summary, the assessment on the efficiency of the trade law sub-programme is overall positive, but several shortcomings were noted. In particular, to the Evaluator's opinion, three of the ten projects did not meet sufficient efficiency criteria, while three of them were very good in this regard, three were good and one was adequate. All the projects have inspired the following lessons:

- In every project, it is important to consider the efficiency gains of making additional investments to ensure more presence in the ground and a more complete work done.
- Increased efficiency is obtained by ensuring more project publicity and communication of studies' recommendations.
- Good project design and adequate activities increase a project's efficiency in addition to its effectiveness.
- It is reasonable to take spending decisions also by comparing the overall external expense of a project and its output with those of other similar projects.
- One should be able to assess the internal cost of each project in addition to its external expenses. It would be important in this regard to establish a mechanism to assess the use of the in-house staff's time and to make a precise account of travelling time and expenses in relation to the cost of desk work.
- One should compare the cost of the in-house expertise with the market value of its output. In other words, it would be important to know whether or not using in-house expertise is less expensive than outsourcing the work to specialists in a particular issue and whether the positive externalities of such use would outweigh its cost and its negative externalities.
- A negative externality to use in-house staff as opposed to outsourced expertise may be the loss of time available for the design and management of projects. This can generate a very serious cost in terms of project's performance, thus also affecting project efficiency.

¹⁶ See ComSec, "Evaluation of the Commonwealth Fund for Technical Cooperation (CFTC)".

- A sound project requires sufficient human resources for project management, project administration and, when this improves efficiency, for the provision of hands-on expertise.
- It would be important to better publicize the services that the trade law sub-programme can provide. This may increase the programme's impact within the Commonwealth countries in general, and in particular its capacity to meet all developing Member States' existing needs in trade law.
- It would also be important to define a mechanism to allocate sub-programme's funds on the basis of objective criteria.
- Cooperation among the Secretariat's Divisions and Sections may improve efficiency.
- Back to office reports should be considered as administrative documents only, for monitoring purposes on the use of internal funds. They should thus remain very simple and factual. They should only contain the dates of the mission, its overall purpose, in light of the project's inception document, and the meetings held. There should be no requirement to insert analysis in them.

CHAPTER 5: THE ONGOING RELEVANCE OF THE SUB-PROGRAMME IN RELATION TO THE SECRETARIAT'S MANDATE AND THE WAY FORWARD

I. Summary of lessons learned and the relevance of trade law assistance in relation to the Secretariat's mandate

a. Summary of lessons learned

It is difficult to summarize with few formulas the many lessons learned so far without repeating oneself. Reference is therefore hereby made, for the essential, to the sections above summarizing the lessons learned with respect to performance and efficiency. One should only highlight at this stage that the assistance was appreciated by the beneficiaries which felt better off with it than without it. Furthermore, it was found that the trade law assistance provided was relevant to the mandate of the Secretariat's International Trade Programme and therefore it fully participated to its objectives. It was also provided at a reasonable cost, even if certain improvements are possible. We observed as well that the scope and the needs for such assistance can be very large, all the assistance provided under the trade law sub-programme having been based on requests by the beneficiaries.

However, it was also pointed out that the assistance given should follow best practices in project design, project management and conduct of key activities. Overall, optimal trade-law assistance requires a long-term approach, a good level of partnership with the beneficiary, effective donor coordination and integration into larger development strategies. It also requires an adequate internal management structure, continuum in the assistance provided, sufficient financial investment, good communication, and, last but not least, sufficient human resources.

b. Demand for trade law assistance

1. Methodology

This section describes the demand for trade law assistance over the period being evaluated and it assesses the future likely demand for trade law assistance. It is based on existing needs assessments carried out by other international agencies, such as those participating in the Integrated Framework and the joint WTO/OECD database and / or the EU/ACP facilities. It also relies on other Secretariat's work. For instance, a brief overview of needs in WTO-related matters is available in a recent study commissioned by the International Trade and Regional Cooperation Section of the Secretariat's Economic Affairs Division (EAD)¹⁷. Furthermore, the Evaluator has prepared a questionnaire on trade law needs which was sent by the Secretariat to the potential eligible beneficiaries of the trade law assistance¹⁸. Few responses were received, but they provided very insightful perspectives. Finally, the Evaluator also applied his own professional judgment as to the beneficiary States' needs, drawn from his interviews with the stakeholders concerned in the ground and his experience of other technical assistance programmes, as well as of multilateral and bilateral trade negotiations and other trade-related capacity building efforts in developing countries.

2. Demand over the period being evaluated

It would appear that **the demand over the period being evaluated is not adequately represented by the projects that were carried out**. Certainly these were requested by the beneficiaries, but it has been observed that due to the programme's lack of sufficient publicity, requests tend to be made out of the word of the mouth, or through the professional contacts of the current beneficiaries, the trade law

¹⁷ "Strategic Positioning and Strengthening of Assistance by the Commonwealth Secretariat to Commonwealth Developing Countries on WTO-Related Issues", May 2008.

¹⁸ The questionnaire on needs is attached in **Annex 6** hereto.

officer or other ComSec's staff. Therefore, there has been a tendency to repeat the same subjects and the same type of activities that were successfully implemented in previous projects. It was noted for instance that the programme specialised itself in certain investment-related areas, such as fiscal incentives, licensing requirements, export processing zones and special economic zones. In general, except two major cases, the sub-programme focused on the beyond-the-border issues, by streamlining domestic legislation according to the rules of the multilateral trade system and, occasionally, those of regional integration areas. This is not the entire range of trade law assistance though. Legal issues regularly arise in the context of WTO activity, such as the work within specialised Committees, litigation, trade policy reviews, multilateral negotiations and trade diplomacy in general. While the sub-programme has addressed some of them, this has not been its actual area of focus. Other trade law issues are also relevant in the context of regional trade integration, whether in the context of regional negotiations, the definition of a regional trade policy or legal harmonisation of domestic regulation at regional level. Again, the trade law programme has addressed very few of these.

It is therefore important to portray two types of demand for trade-law assistance during the period being evaluated: the one that was addressed by the trade-law sub-programme and the one that was not.

i) Demand addressed by the trade-law sub-programme

As indicated, the trade law sub-programme focused mostly on the beyond-the-border issues. It addressed demand on these issues in several ways:

- exploring the policy space left by international trade agreements to deploy development-oriented policies and associated domestic legislation;
- establish complex legal mechanisms that would foster investments and general economic activity so as to achieve growth (fiscal incentives, EPZ/SEZ, investment-related legislation);
- review the compatibility of existing domestic legislation with the WTO rules and propose amendments to make it compliant, while keeping its original objectives (licensing and qualification requirements, trade remedies, IPRs, customs valuation, SPS regulations, technical standards, etc);
- draft legislative texts according to request;
- accompany and facilitate domestic legislative change by taking part in stakeholders' meetings and dissemination activities.

The trade law sub-programme also addressed demand pertaining to multilateral activity, albeit in a rather limited way:

- WTO litigation (Bananas);
- WTO Trade policy review (OECS, Belize);
- multilateral trade negotiations (NAMA and services).

Finally, demand, although embryonic, existed in relation to regional integration. The sub-programme addressed it in a very limited way as well:

- Propose means to harmonize domestic regulation at regional level (IPRs and medicines; fiscal incentives);
- review the compatibility of existing domestic legislation with the applicable regional rules and propose amendments to make it compliant.

ii) Demand not addressed by the trade law sub-programme

As indicated above, the fact that certain issues were not handled by the trade law sub-programme does not necessarily mean there was no demand for it. Demand actually existed for the following:

In relation to domestic legislation:

- Address trade facilitation as a general policy tool and streamline customs legislation overall;
- improve the administrative and judicial review of customs decisions on complex legal issues (valuation, rules of origin, special customs regimes, etc);
- develop domestic WTO compatible prudential rules on selected key services sectors (finance, insurance, telecommunications, etc);
- develop a domestic competition policy and understand the linkages between competition law and sectoral regulation;
- adjustment to loss of revenue due to the lowering of tariffs through fiscal reform;
- increase transparency in key sectors (SPS, TBT, customs, etc);
- assist in the process of standardisation and participation in international standardisation bodies;
- streamline government procurement;
- elaborate legislative and institutional tools for a proactive market access strategy;
- establish an institutional public-private dialogue on trade policy issues;
- develop e-commerce strategies; study e-licensing, e-banking regulatory framework to promote e-commerce.

Multilateral

- Assistance in WTO accessions;
- legal review of draft negotiated agreements;
- provide on-the-spot advice and legal arguments in the context of negotiations;
- assistance in notifications;
- assistance in the negotiation of equivalence and mutual recognition agreements;
- assistance in addressing the legality of barriers to trade in third country markets;
- assistance in the work on IP and traditional knowledge.

Regional

- Legal setting for the strengthening of regional institutions for trade policy;
- assistance in the definition of regional customs rules, in particular rules of origin (including cumulation on a regional basis, on a region-to-third country basis and at the level of RTAs);
- general consolidation of domestic regulation within RTAs in a WTO-compatible manner and, in order to avoid duplication, conduct a full review of RTA activities in this respect;
- provide on-the-spot advice and legal arguments in the context of EPA and RTA negotiations.

Horizontal

- Assistance in trade diplomacy in general;
- academic education on trade law; develop relevant curricula;
- upgrading research capacity in theoretical and practical aspects pertaining to trade law;
- training for governmental legal experts in trade law and in WTO dispute settlement;
- training for enterprise lawyers and other lawyers and other business experts in WTO law, with special emphasis on antidumping procedures, SPS and TBT;
- training for judges in WTO law.

3. *The likely future demand for trade law assistance*

The demand for trade law assistance is not likely to change in the near future. It might however shift even more to second generation issues: domestic and regional regulation of the market economy, regional integration, and capacity building through assistance to universities,

strengthening local capacity to research and professional education of the young generations. Legal drafting should be in demand in small LDC States which still lack legal drafters. Compliance with regional integration rules in new areas such as competition policy, services regulation and consumer protection regulation will also be among the pressing issues of the future.

Another major area, in which demand will certainly grow, due to the realisation of the importance of legal issues in international agreements, will be the **ex-ante review of the draft negotiated texts**. Furthermore, likely, there will be an increased realisation of the potential strength of the rule of law in furthering commercial interests, while constituting a friendly and peaceful tool. Therefore, demand for **assistance in dispute settlement before the WTO and regional courts** will likely increase as well. In addition, given the current economic crisis, which boosts protectionist pressures, one could also expect a heightened demand for assistance in **the establishment and administration of trade remedy mechanisms**.

The responses received to the questionnaires overall confirm the relevance of this analysis. In particular the themes of competition policy, trade and investment and training and capacity building are recurrent. They also show that all other areas of trade law assistance remain relevant, with varying degrees of intensity. Tariff and non-tariff barriers to trade (SPS and TBT) remain popular; agriculture is always an area of concern; and regulation of services trade is considered by several as a priority. However, as it will be noted in the next chapter, only a very limited portion of the needs for trade law assistance is actually covered by other donors and institutions, thus leaving most Commonwealth Developing States in dire need for more of it.

c. Ongoing relevance of trade law assistance in relation to the Secretariat's mandate

On the basis of the above, there is no doubt that the Commonwealth Secretariat should continue its assistance in trade law. Not only this fully participates to the objectives of its International Trade Programme, but it also fills a clear capacity gap in all Commonwealth Developing Member States. **If any, trade law assistance should be increased considering its too short supply in the international donor Community** and the too many subjects to be covered.

III. The strategic orientation of the assistance to be provided by the Secretariat on trade law matters

a. Methodology and indicators

On the basis of the lessons learned above pertaining to the relevance of the trade law assistance and its effectiveness and efficiency to deliver the Secretariat's international trade programme, this section looks at the future and provides some recommendations as to what could be the optimal strategic orientation of such assistance.

The recommendations provided in this chapter are based on the following elements:

- The mandate of the international trade programme;
- Likely future demand for trade law assistance;
- The Secretariat's division of tasks;
- Secretariat's comparative advantage;
- Secretariat's intended strategic direction and resourcing requirements;
- Other donors' programmes.

The first four elements were analysed in previous chapters and will not be repeated here. Reference is therefore made to Chapter IV, I, a (the mandate of the International Trade Programme), Chapter IV, I, d (effectiveness criteria and the lessons learned), Chapter V, I, b (Likely future demand for trade law assistance) and Chapter 3. V, 3.VI and 3.VII (The Secretariat's division of tasks). This section will thus address the last three elements.

1. Secretariat's comparative advantage

The Secretariat's comparative advantage consists in its recognised capacity to act as a trusted and reliable advisor. The Secretariat also prides itself to have the capacity to grasp the common cultural and institutional characteristics of the Commonwealth countries, while understanding and adjusting to their differences.

2. Secretariat's intended strategic direction and resourcing requirements

In a move to rationalize its activities, considering the "*significant changes in the global environment as well as within [itself]*"¹⁹, the Commonwealth Secretariat decided to consolidate its programme areas from 16 to 8 for the period 2008/09 – 2011/12. Trade-related technical assistance now falls under Programme 6: Economic Development.

Three of the Programme's 6 expected results are relevant for the trade law sub-programme:

- Result 3: Member states improved capacity to negotiate on trade and to formulate, manage and implement gender sensitive trade policies;
- Result 4: Commonwealth assistance supports member states in negotiating support, and advancing international trade and economic agenda in international settings;
- Result 5: Member states participate effectively in the international trading System.

The SASD is the Division mainly responsible to implement Programme 6. It has prepared its ADW for 2008-2009 and allocated tasks among its Sections. Result 3, dealing both with capacity-building for trade negotiations and the formulation of an adequate trade policy, has been assigned to the Trade Adviser based in Geneva, whose term, however, will expire in the course of this year and may not be extended. **Result "4", i.e. support in the international negotiations themselves and in the exercise of the Developing Member States' trade diplomacy is assigned to the trade law sub-programme.** Finally, although this is not explicitly stated, Result 5 seems to be assigned to the Trade Section, since the description of its content in the ADW 2008-2009 corresponds to the areas that are currently handled by that section²⁰.

Such division of tasks, while it appears as a positive rationalisation and organisation of activities within the SASD, is nevertheless surprising given the fact that the current trade law sub-programme has played a limited role in trade negotiations and in trade diplomacy, but a much greater one on beyond-the-border issues and domestic trade policy, both areas covered, respectively, by the above-mentioned "Result 5" and "Result 3" of Programme 6. It is uncertain, however, whether SASD's real intention in its AWD was to strictly circumscribe the mandate of the various Sections according to the

¹⁹ SASD, ADW for 2008-2009, p.1.

²⁰ "Result 5: Member states participate effectively in the international trading System: During the year 2008/09, we will undertake activities in line with the four objectives of (i) Improving the enabling environment including; (ii) Building capacity for market development including; (iii) Strengthening trade and transport facilitation including; and (iv) Building institutional capacity. The areas of focus will continue to be in tourism, services exports, competitiveness strategies and trade facilitation. It is expected that there will be more demand for private sector development strategies, follow up on the implementation of national export strategies, productivity issues linked to tourism sector competitiveness (including HRD), business process re-engineering, benchmarking studies and trade facilitation within regional groupings" (SASD AWD for 2008-2009, p. 9).

exact language expressed in the "Results". At least the logframe it proposes for the particular programme results to be delivered during 2008/09 does not match such an approach, as it includes most of current trade law projects and overall WTO implementation issues within Result "5". Furthermore, in the more descriptive part pertaining to the trade law sub-programme, no particular orientation was given to it, pending the results of this Evaluation. Therefore, based on the above, **the following recommendations should not be limited by the wording of the "Results" and by the allocation of responsibilities assigned to the various Sections for Results 3 to 5.**

In the context of its mandate, **SASD wants to remain responsive to client needs. It has already recognised some of the shortcomings in project delivery identified above and initiated reform.** It acknowledges the need for the re-enforcement of the entire project cycle and for "*improved administrative and project management support*". It also realises that sound project design is an important factor to achieve project quality and it admits that sending questionnaires and/or organizing scoping missions may be necessary to better understand the clients' needs. Furthermore, it admits the need to "*increase transparency in the selection of consultants as well as improve on the drafting of terms of reference and the methodology to select consultants*"²¹.

The SASD wishes to **develop a team-based approach** in the delivery of the technical assistance and to make use of the complementary skills that are available within the Division. It also wants to **develop synergies across sections and between Divisions as and where possible.** Finally, it wants to widen its existing client base. It realises in this respect the importance of achieving a good promotion of its activities, and it proposes to produce a quarterly Newsletter and to publish a brochure on its work.

On financial terms, for the year 2008-2009, £4,143,444 are granted to SASD, of which £85,000 are allocated to overhead costs ("*programme support activities*"), covering "*scoping missions, expert insurance, attendance at official meetings, publications, enhancement of professional skills of staff through participation in training programmes and seminars and other ad hoc activities*". **The trade law sub-programme only receives £ 160,000 for 2008-2009 for the implementation of its ongoing activities.** This small amount reflects spending records for the previous year. Some increase is possible, but the final amount is not specified. In any event, the restricted budget available will have to be taken into account in the next chapter, dealing with the optimal operational structure to deliver the assistance requested.

3. Other donors' programmes

Several other donors provide trade law assistance. Only those who regularly provide such assistance are listed here. One should of course always check within countries themselves what are the technical assistance programmes entailing a trade law aspect.

i) The World Trade Organisation (WTO)

The WTO has a large portfolio of technical assistance to facilitate the implementation of the WTO agreements. The WTO Institute for Training and Technical Cooperation (ITTC) in particular provides regular training to public officials of WTO Developing Members in Geneva and, when requested, in the countries themselves. WTO courses tend to be very practical, with case studies and exercises. Furthermore, the WTO has an extensive on-line Library and it may, on request, establish a WTO Centre in a Member State to have access to it. It may also send hard-copies of books and other publications. In addition, WTO officials informally provide advice on the compatibility of draft domestic legislation with the WTO agreements. This type of assistance, however, is not organised and it is of the same type as the ad-hoc advice currently provided by the ComSec's trade law sub-

²¹ SASD, ADW for 2008-2009, p. 19.

programme. Generally speaking, the WTO assistance must be neutral and limited to a description of the existing rules. It does not involve advice that is close to a country's realities or on the type of WTO-compatible pro-growth legislative framework that may be suitable for a particular WTO Member.

ii) *The United Nations Conference on Trade and Development (UNCTAD)*

The UNCTAD also carries out extensive technical assistance for Developing States. By contrast with the WTO, it may proactively advocate their interests in international trade fora. Not all of UNCTAD's trade-related technical assistance is legal in nature, far from this. Most of its assistance tends to be provided in the form of studies, analytical papers and workshop sessions, a bit like the COMSEC's EAD. UNCTAD has produced several publications explaining the WTO covered agreements as they apply to developing countries. It has also developed rather comprehensive courses on relevant trade-related topics, both in written and on-line formats. Furthermore, UNCTAD regularly provides technical assistance in certain preferred areas, such as WTO Accessions, Commodities, SPS and TBT issues, and now increasingly services trade. Finally UNCTAD has the mandate to be gender-sensitive in the assistance it provides.

iii) *The International Trade Centre (ITC)*

The ITC is a joint-venture between the WTO and the UNCTAD, whose mandate is to raise the private sector's capacity to take advantage of the international trading system. It organises workshops and conferences to sensitize the private sector on the challenges related to the current trading environment and to foster a trade-related effective public-private dialogue. The ITC, furthermore, engages itself in capacity building activities for SMEs and small farmers to increase their competitiveness and export potential. Seldom has the ITC provided legal advice on the covered WTO agreements. It has, however, produced several relevant publications, showing the practical impact of the WTO rules on business and the means to take advantage of them. Furthermore, through its programme "Juris International", the ITC had developed a database containing many relevant treaties, model laws and model contracts for SMEs. Through its "Legacarta" Programme, it also provides on-demand advice to developing countries on existing international treaties and priorities for ratification with a view to "*improve their national legal framework in the field of trade*" or to facilitate "*incorporation into national law of selected model-laws*". Finally, the ITC has a sub-programme which looks at improving the business environment for the private sector and for foreign direct investors in developing countries. In this context the sub-programme analyses the local laws and regulations which may constitute useless impediments to business. In general, the ITC has a mixed approach between broad work, such as conferences and publications, and more hands-on assistance that is close to a country's needs and realities.

iv) *The Advisory Centre on WTO Law (ACWL)*

The Geneva-based ACWL is an intergovernmental organisation composed of industrialised and developing States that was established to provide legal services relating WTO law to its developing member countries. While the ACWL specialises in providing assistance in the context of WTO dispute settlement cases, it also organises regular training programmes on WTO Law and advice on the compatibility of national legislations with WTO rules. It is a service-oriented organisation, entirely composed of in-house, full time advisers. External lawyers are outsourced only in case of conflict of interest. A peculiarity of this organisation is that it requires from its non-LDC members the payment of a fee for its services, which is however at below usual market rates. In its advisory services, the ACWL operates as a law firm, which is by definition close to its clients' interests, but which does not necessarily imply a policy aspect or a capacity-building component other than advising on the applicable laws and learning by working together.

v) *The United Nations Commission on International Trade Law (UNCITRAL)*

The UNCITRAL has the special mandate to seek the progressive harmonization and unification of “the law of international trade”. The latter must however be understood in the sense of business law, whose object is mainly international business transactions and commercial law. UNCITRAL has developed many model laws on key subjects it identified, such as insolvency laws, international commercial arbitration, liabilities, transport law, electronic commerce, securities, etc. Generally speaking, UNCITRAL mainly looks at the rules governing commercial operations. It does not really handle those regulating trade policies in light of the existing multilateral and regional trade agreements.

vi) *The United Nations Development Programme (UNDP)*

UNDP is in charge of designing and carrying out all types of development-oriented projects within developing countries. UNDP has a large portfolio of projects dealing with international economic cooperation and the pursuit of the Millennium Development Goals, including trade law. Its projects may cover the entire range of assistance provided by the WTO, the UNCTAD and the ITC. It is therefore not a specialised agency and there may be many substantial differences in the supply of UNDP’s technical assistance in different developing States. UNDP often engages in providing assistance on the “beyond-the-borders” issues, including on the relevant legislative frameworks, but this is not in the context of a particular centralised programme. UNDP also implements large capacity-building programmes. Its assistance is often multidisciplinary, close to the beneficiaries’ realities and gender sensitive. Projects tend to be designed and coordinated with the other UN agencies locally. Therefore, it is always important to check in the ground the type of projects UNDP carries out.

vii) *The World Bank Group (WB)*

The WB also provides extensive technical assistance in developing States on trade-related issues of interest to them. The WB has specialised operations on “Trade and Competitiveness” and it regularly produces papers and studies of major interest for developing countries. While, besides its credit-related work, the WB operates mostly as a policy institute, it has several offices in the ground which may implement relevant technical assistance projects on any subject that is linked to the Millennium Development Goals. Generally speaking, however, the WB is better known for its skills in economic analysis and advice on growth-oriented policies. Legal assistance is not of the core of any of its specialised programmes and, when it is provided, it tends to be through outsourced experts, as a complement to other ongoing projects.

viii) *The United Nations Economic Commission for Africa (UNECA)*

The UNECA, based in Addis Ababa, focuses on the interests of African States. One of its main thematic areas is “Regional Integration, Trade and Infrastructure”. It produces, by its own initiative or on request, analytical studies on these subjects, promoting the adoption of development-oriented policies, fostering regional integration, assessing the impact of multilateral, regional and bilateral trade agreements, suggesting appropriate domestic policies, etc. UNECA’s assistance also includes on-demand regional advisory services. One of its important technical assistance programmes is the African Trade Policy Centre, which is now entering its second phase. Through the Centre, UNECA now aims at providing “*fully integrated capacity building for Regional Economic Communities as institutions*” and for “*trade constituencies*”, and “*mainstreaming cross-cutting items in trade policy analysis and implementation*”. This being said, notwithstanding legal issues play a very important role in regional integration processes and regional institution-building, UNECA does not have a specialised legal programme, but is better known for its macro-economic analysis.

ix) *The European Union (EU)*

The EU's offer for technical assistance is as wide in scope as the UNDP's one. Likewise, it is not specialised and projects encompass all ranges of issues. The EU's trade-related technical assistance may thus substantially vary from one country to the other. In the ACP States, the big portion of it is managed through the EU's local Delegations who are in charge of administering National Indicative Programmes. Assistance is also provided at regional level to foster regional interaction, through Regional Indicative Programmes. Furthermore, there are several "All-ACP" Programmes. The TradeCom Facility, for instance, is a generalist programme that offers trade-related assistance in the formulation of development-oriented trade policies, in the implementation of existing international trade agreements and to facilitate trade negotiations. Several of its projects imply the provision of legal assistance. Another relevant project is the Business Climate Enabling Facility, which focuses on the objective of making domestic laws and policies conducive to business expansion and to foreign direct investment. There are also the CDE and ProInvest programmes, which are dedicated to the private sector and deal with supply-side issues, with the aim to promote sectoral competitiveness, increase exports and achieve sound public-private dialogue. There are other specialised programmes, such as one on agriculture, another one on SPS, etc. Several of these programmes implement projects which may entail legal issues. Therefore, generally speaking, like for the UNDP, it is always important to check with the local EU Delegation the projects that are implemented in the particular country of its competence.

x) *Other national technical assistance programmes*

There are several other technical assistance activities funded by many different governments: the UK, Denmark, Sweden, Germany, France, Italy, Switzerland, Canada, the United States, Australia, New Zealand, Japan and South Korea are among the best known in the trade area. Several projects implemented by the development agencies of these countries contain legal aspects. However, none seem to have developed a particular niche in the trade law area. This being said, again, due diligence must be exercised in each country to find out which projects are implemented there.

xi) *The South Centre*

The South Centre is an intergovernmental organisation of developing countries, based in Geneva. It is well known for its pro-South positions and publications and for providing on-the-spot advice to developing countries in the context of trade negotiations, particularly those of the Doha Development Round. The South Centre does not, however, specialise in trade law and it seems to marginally provide legal services, when obvious legal issues arise in the negotiating context.

xii) *Non-Governmental Organisations (NGOs)*

There are several NGOs which may also provide advice and legal assistance at non-market conditions, on a case-by-case basis or as contractors for international donors. Just to nominate those amongst the best known are 1) the CUTS Centre for Competition, Investment and Economic regulation, whose ambition is to be a "centre of excellence on regulatory issues", 2) the International Centre for Trade and Sustainable Development (ICTSD), whose purpose is to facilitate dialogue on trade, environment and development issues, 3) IQsensato, who is active in the areas of intellectual property and international trade policy and regulation, and 4) ECDPM, a European NGO focusing on EU-ACP relations and providing analysis, position papers and advocacy on trade issues of interest to these partners. None of these organisations, however, specialise in trade law. While, they may deal with several types of regulations and international trade agreements, and provide some associated legal advice, none has either created a professional trade law capacity or has the funds to mobilise such capacity to respond to their constituencies' trade law needs.

xiii) Summary

It follows from the above that **trade law assistance is mostly available in Geneva**, through the WTO, UNCTAD, the ITC, the ACWL, and marginally the South Centre. It focuses in general on the rules of the WTO and on assistance in the context of multilateral trade negotiations. **There is very limited supply of legal assistance in the area of regional trade and regional integration.** While UNECA and the EU are strongly interested in these areas, they have not developed a specialised legal programme to deal with them. The ECDPM, also, which is very active on regional ACP issues, has not developed consistent legal capability. **As to domestic regulation and beyond the border issues, legal assistance is available, sometimes through organised programmes** such as ITC's "Juris International", or the EU's Business Climate Enabling Facility. **Generally speaking, however, the assistance tends to be haphazard and extremely variable, both in terms of content and quality, in developing countries.** It tends to be provided in the context of larger, multidisciplinary projects by the UNDP, the World Bank, the EU or other agencies, but usually not under professionally structured legal programmes, which would involve economies of scale, project cross-fertilization and adequate supervision. While certain success stories can be observed, there is no consistency in the nature and impact of the assistance offered. **Therefore, there is still an obvious substantial need for trade law assistance**, which, except perhaps on Geneva-related issues, largely remains unfulfilled.

b. Recommendations

1. The scope of trade law technical assistance

On the basis of the elements above, it is first important to consider what could be the optimal scope of the trade law assistance provided by the Commonwealth Secretariat, i.e., the areas of law that should be addressed in priority. We will then examine the focus and content of trade law assistance, i.e. whether for instance it should be based on legal opinions or capacity-building activities.

i) The general scope of trade law assistance

International trade law, understood in its traditional sense, concerns the public international law that regulates the international sale of goods and services. It is both a tool of trade policy and an instrument of international cooperation. It finds its sources in the following legal instruments:

- The multilateral and plurilateral trade agreements concluded under the auspices of the WTO and related secondary law and case-law;
- The bilateral and regional trade agreements, such as the EU/ACP Agreements and South-South trade integration areas;
- Domestic trade law, i.e. the law directly regulating the import and export of goods and services, such as customs law, trade remedies, licensing procedures, etc.

Technically speaking, international trade law is to be distinguished from other subjects, even if in practice they are closely related to the international sale of goods and services:

- Investment law;
- Competition law;
- Other domestic regulations having an impact on trade (consumer protection, sanitary and phytosanitary rules, technical regulations and standards, intellectual property, etc);
- Commercial law and international business transactions (including banking and insurance);
- Other public international economic law, such as international monetary cooperation, debt control, development aid, maritime law, use of natural resources, etc.;

- Private international law.

The trade law sub-programme has not limited its assistance to trade law in its strict technical sense, but it has extended the scope of its action to other trade-related economic law, such as investment law, competition law and intellectual property. This was probably right given the deep linkages between all these subjects and the pursuit of a consistent pro-growth development and industrial policy. It is indeed difficult to separate these subjects in the domestic economic governance of a country. They must form the different intertwined components of one single pro-growth, pro-development policy.

The Trade Law sub-programme, however, has not covered some of the other branches of economic law, such as international business transactions, private international law, debt control, monetary cooperation, development aid, maritime law and the use of natural resources. This was again right for the following reasons:

- Commercial Law and International Business Transactions (including banking and insurance): this discipline deals with the contractual provisions accompanying domestic and international commercial operations. It mainly addresses the relationships between private economic operators. It is domestic contract law, even if there are international law instruments providing for standard provisions, such as Incoterms. While of course this area also entails important policy choices, it is more relevant to the daily management of enterprises and is somehow less related to long-term strategic plans for growth. Technical assistance in this area is rather abundant and provided by several agencies, such as ITC, the UNCITRAL, the Business Climate Enabling Facility, and several other donors;
- Private International Law: This discipline is the branch of domestic law that determines the applicable law to a particular situation involving a foreign element, or the competent jurisdiction in a litigation involving nationals of different countries. As such, this discipline is closely connected with the one of international business transactions and is outside the scope of a trade law programme, as not directly related to the conduct of a pro-development policy. Technical assistance in this area is very limited, even though the Secretariat's LCAD would seem to be able to provide it.
- Debt control: this area is already subject to a specialised programme within the ComSec's SASD. Furthermore, it is less connected with the engineering of a pro-growth "industrial" policy than to the need to streamline budgetary policy. Its impact on the structure of domestic regulation is rather limited, and, even though it is part of economic governance, it is not really connected with developing States' capacity to formulate and manage trade policies that are conducive to growth.
- Likewise, monetary cooperation pertains to the conduct of monetary policy and action at the level of Central Banks and the International Monetary Fund. While this policy is of course closely related to trade and development policy, as the WTO acknowledges, and even recent events show, it is however a specialised discipline on its own, which is relatively technically distinct from the formulation and management of trade policies that are conducive to growth.
- Development aid: this subject is now fully integrated in economic diplomacy. While it requires government's capacity to attract, absorb and manage the aid received, such capacity is ancillary to the conduct of an economic policy. It does not really constitute a subject of its own for which legal technical assistance would have to be provided, even though the definition and drafting of legal documents, such as Memoranda of Understanding or Financing

Agreements, are required. However, assistance here can be provided in the context of project design.

- Maritime law and the use of natural resources: these subjects, although they are an integral part of the pursuit of a consistent pro-growth development policy, they are very technical and they are already covered by specific sub-programmes within ELS. They require specialised expertise, which is somehow distinct from the one required for the formulation and implementation of trade agreements. They belong more to the category of subjects dealing with sectoral competitiveness and export promotion, which is normally an area handled by the SASD's Trade Section. They also require specialised skills in international business transactions and private international law in the context of the negotiation of resources sharing agreements with multinational corporations.

None of the subjects above, therefore, should be included in trade law assistance per se. **However, one should observe some relationship between trade law, monetary cooperation, debt control, maritime law and the use of natural resources since they all contribute to the definition of domestic economic policy.** Several of these subjects are handled by the ComSec's SASD and even within the ELS itself. Since it is SASD's intention to make use of the complementary skills that are available within the Division and to develop synergies across sections and between Divisions as and where possible, **an option would be to provide general legal support to all these areas through one single specialised programme on "economic law". That would no longer be, however, a "trade law" programme.** This option may have the merit to complement the range of services already provided by the ELS and the other sections of SASD by professional legal services. It may foster the creation of a culture of synergy and cooperation within SASD in line with its strategic orientation. **From a practical point of view, however, it may not be optimal, since trade law and the other subjects are technically very different, i.e. they entail the use of different sources of law and, in practice, they constitute separate areas of specialisation.** Notwithstanding the policies related to them must be coordinated, these subjects are very seldom addressed together from a legal perspective in the same project. **It would be difficult therefore, and not very efficient, to create a seamless team of officials proficient in all these areas.** There would be too few economies of scale within such a law programme. The creation of a larger unit would furthermore require some additional investment in human resources, which may be made at the expense of the deepening of the trade law assistance. All these aspects must be obviously balanced with the benefits of strengthening the ties across SASD.

ii) Priorities within the trade law assistance

The boundaries of trade law assistance having been identified, the second question is what the priorities that such assistance should pursue are. The response is rather straightforward: all the needs identified in chapter 5, I, b) are relevant. The Commonwealth Secretariat may not have the resources to address all of them. Therefore **two options are possible:**

- **either let the demand make the selection, as and when it arises, or**
- **One should identify areas of specialisation for the trade law programme.**

While the first has the merit of being closer to demand and may facilitate a fair allocation of the assistance, at the condition that sufficient publicity is made of it, the second would enable increase of performance, through lessons learned across projects, as well as efficiency, through economies of scale. It would also enable the Secretariat to define a niche for itself for which targeted investments would be possible.

Assuming the second option is to be retained, one must analyse each area of trade law:

- Multilateral trade law (WTO):

This area is certainly relevant. It includes assistance in dispute settlement, trade policy reviews, negotiations, work within WTO Councils and Committees, notifications, etc. There are, however, many external sources of technical assistance, such as the WTO, ITC, UNCTAD, ACWL, South Centre, etc. They tend to cover all aspects, except perhaps assistance in the context of trade policy reviews and in the context of notifications, particularly the strategic handling of the latter. As to the area of dispute settlement, this is covered in particular by the ACWL or by other donors' specific projects (such as TradeCom in bananas). A possible view is that this area is better left with professional lawyers, who have the responsibility to be fully proficient and up-to-date on the latest case law. This requires a substantial investment that may go beyond the capacity of a trade law technical assistance programme, unless the latter specialises on this as well. Support in a dispute to provide the relevant factual background to a case may of course always be useful, but this does not necessarily have to be done by a legal programme.

- Bilateral treaties and regional integration agreements

This is another very relevant area for which there is scarce availability of legal technical assistance. It encompasses FTA negotiations, bilateral treaties, regional integration and harmonisation of laws and regulations relevant to the creation of a single regional market. This area requires substantial knowledge and expertise of regional integration dynamics as well as harmonisation techniques. One must also substantially invest in up-to-date information, and remain closely tuned with political regional developments. Regional integration requires high level policy decision-making. Therefore the Secretariat, as a trusted advisor, would be well positioned to provide assistance in this area. Furthermore, as indicated earlier, demand in this area is likely to increase in the near future and supply of legal technical assistance is almost non-existent.

- Domestic trade law in strict sense (customs law, trade remedies, import licensing, etc)

This area of trade law normally constitutes the core business of a trade law programme. There are no reasons why legal assistance should not cover it. Demand for it is still very strong. This area, however, particularly the one pertaining to customs, also entails institutional building and could come in support of larger multidisciplinary technical assistance programmes, requiring strong project design. A particular effort must be made in this regard to avoid duplication with other donors, since the rather straightforward and visible nature of this type of projects renders them highly popular among donors.

- Other domestic regulations having an impact on trade (investment law, competition law, consumer protection, sanitary and phytosanitary rules, technical regulations and standards, intellectual property, etc);

This group of subjects constitutes the so-called "beyond the border" issues. It is also highly relevant, as several of the projects implemented by the trade law sub-programme have already demonstrated. These subjects also entail a substantial level of specialisation and thus investment in knowledge. At the same time, they enable interesting cross-fertilization among projects. Particular interesting areas are those that entail the setting-up of complex development-oriented legal mechanisms, such as Special Economic Zones, the identification of subsidisation schemes, the setting of sectoral rules (especially on services), the regulation of competition policy, standardisation, etc. These types of projects are highly in demand.

Furthermore, they require entering more deeply into a country's realities as well as high level policy decision-making. They thus match the Commonwealth Secretariat's comparative advantage. It should be noted, however, that some of them, such as sanitary and phytosanitary rules, technical regulations and standards, are also handled by other sections of the SASD, like the Trade Section and the Enterprise and Agriculture Section. Furthermore, one should avoid duplication with other donors, since these projects also tend to be popular among them, and ensure adequate insertion into multidisciplinary assistance. Excellent project design, donor coordination, and project management are thus extremely important in this context.

In summary, **should a special area of orientation have to be identified for the ComSec's trade law programme, possibilities include any one or several of the following:**

- Assistance in the context of WTO trade policy reviews and WTO notifications;
- Assistance in relation to FTA negotiations, bilateral treaties, regional integration and harmonisation of laws and regulations relevant to the creation of a single regional market;
- Assistance for the improvement of domestic trade laws in strict sense (trade remedies, import licensing, customs law, etc)
- Ad hoc support in trade laws in the context of larger projects defined by other Divisions or Sections or other donors
- Assistance in the "beyond the border" issues, particularly in relation to the setting-up of complex development-oriented legal mechanisms, such as Special Economic Zones, the identification of subsidisation schemes, the setting of sectoral rules (especially on services), and the regulation of competition policy.

It is difficult at this stage to further define within these areas those that should be prioritised even more. **They are all equally important and not sufficiently covered by other donors. The final selection will depend on a more formal expression of demand from the potential beneficiaries, as well as a deeper analysis of the trade law assistance provided by other donors in every Commonwealth Developing country.** The profile of the trade law officers recruited will also play a certain role in this regard. Should the option to create a specialised law programme in selected niche areas be retained, a recommendation would be to carry out a deeper study of the issue in the context of the Programme's future inception phase.

iii) Geographical perspective

The question that arises next is whether trade law assistance should be focused on some regions and / or member countries as opposed to others. It would appear from the Commonwealth Strategic Plan that small and least developed States ought to be favoured. The first series of interviews in London seemed to indicate that, from an institutional point of view, such differential treatment among the institutional beneficiaries of the Secretariat's programmes is possible and desirable. This being said a suggestion would be **not to orient trade law assistance on the basis of hypothetical preferences of one geographical group of preferred States as opposed to the other.** Generally speaking, it is important to keep close to demand, and to ensure the beneficiary's ownership of the assistance provided. Depending on the beneficiary, some projects tend to be preferred to others. Small and least developed States, for instance, may prefer assistance for the improvement of domestic trade laws in strict sense more than, for instance, the setting-up of complex legal mechanisms. But this is not necessarily the case. Furthermore, assistance in bilateral treaties and regional integration agreements is equally needed by all developing countries.

2. The focus and content of trade law assistance

Trade law assistance may cover legal advice, legal advocacy, litigation and capacity-building activities. Therefore a question to be addressed is which of the above modalities a trade law programme should adopt in the areas identified above.

Legal advice confronts policies and negotiating stances with existing international instruments. Lawyers also advise on the consequences of the violation of the relevant legal instruments. Legal advice thus provides the necessary degree of comfort accompanying complex political and economic activities. It requires rigour and precision. Mistakes are not authorized. Considering the degree of complexity of international trade law, the challenge to provide trustworthy assistance is immense. Generally speaking, legal advice is indispensable across the board in all areas of trade law assistance. Therefore, **any trade law programme has to be able to provide it**, and to be professionally structured to ensure quality. This means in particular having excellent experts and adequate supervision.

Advocacy consists in conveying ideas and defending positions in a solid and effective manner. The adequate use of law strengthens advocacy campaigns and actually, in complex international trade matters or negotiations, it can make the difference. Capacity to handle advocacy, however, also depends on experience and multidisciplinary skills. As a principle, assistance in advocacy would be perfectly suitable for the action of the Commonwealth Secretariat. It is in line with the objectives of its international trade programme, since development objectives must be promoted, and it also matches its capacity to act as a trusted adviser. **A ComSec's trade law programme should therefore never hesitate to domestically and internationally help promoting the adoption of pro-development policies and their associated legal frameworks.** This entails engaging into several meetings and consultations with the different stakeholders as well as drafting position papers and advising the client on the means to achieve reform objectives. Advocacy seems to be appropriate in all areas of trade law assistance. However, it may have to be carried out in association with other specialised ComSec's Divisions or Sections, such as the gender section or the Small States sections, or others. Of course, advocacy should never go to a point where it involves a conflict of interest for the trade law programme's officer(s).

Litigation implies defending a legal case before a judge or an arbitrator. This is a tough exercise and it requires teams of lawyers that are extremely well prepared and experienced. Profound knowledge of the law and latest case law is a must. Prudence always requires assuming the counterpart to be stronger. The responsibility of the litigator is actually very important. All law firms have strong insurance policies in this regard. Furthermore, conflicts of interests among Commonwealth countries may arise. Therefore, as a good practice, **it is always better to let professional law firms or a specialised institution like the ACWL to carry out litigation for their clients.** As indicated earlier, advice can be provided in the fringes of a litigation case, especially with regards to its relevant factual context. Generally speaking, unless the Secretariat decides to invest into a fully-fledged in-house legal service, it would be better that it avoids engaging into projects where litigation would be the main object. There is a strong demand for assistance in litigation, however. An option, discussed in the next chapter, would be to systematically outsource litigation work, while carrying out the overall supervision and guidance of the lawyers' work.

Capacity-building implies the training and education, in the beneficiary States, of a solid and reliable group of professionals in their field, i.e. in this case lawyers capable of providing legal advice, conducting advocacy campaigns, and sustaining litigation up to international standards. It also implies investing in research and educational centres which would be able to replicate the education provided in the long run. This assistance modality is in principle the most sustainable. Furthermore, it is strongly demanded by the beneficiaries. This being said, it is a lot in supply as well. In this regard, a

distinction should nevertheless be made between short-term training and longer-term academic education. While assistance is plentiful in training, it remains insufficient in high level education. Training seminars and workshops are regularly carried out by almost all donor agencies. In particular, the WTO, the UNCTAD, ITC, UNDP, the EU, etc, all engage into this type of assistance, even if with an overall very limited success, which is, in the Evaluator's opinion, essentially due to the insufficient academic background of the trained persons. The biggest problem in most developing States actually lies in the scarce supply of high level and qualitative academic education. There is a need of both professors and more and better research. The trade law area, in particular, is under-represented in developing countries' universities. It would therefore be important to support academic institutions by providing them with good professors, organising and stimulating research programmes and defining adequate educational curricula. All trade law areas are equally concerned by this need. A recommendation would therefore be for any trade law programme to **systematically accept assistance to universities**. In the case of the ComSec, this could be done in synergy with the STDP's Education Section.

Generally speaking, the trade law programme should **refrain from engaging itself into short-term training** through formal workshops and seminars, the latter being supplied elsewhere and less requiring the services of a "trusted" advisor, which is Comsec's competitive advantage. Capacity-building can nevertheless be achieved as well through on-the-job training. **All activities entailing legal advice and advocacy should contain some capacity-building element, i.e. encouraging, where possible, the beneficiary to do the work itself and helping it in this respect rather than doing it at its place.** The right mix of "doing" as opposed to "teaching how to do" has to be defined on a case-by-case basis according to the specific circumstances and the beneficiaries' needs. There is no optimal theory in this respect other than relying on the supervisory skills of the programme's officer and the experts assigned to deliver the assistance requested.

3. Summary and recommendations

On the basis of the above, there appears to be a clear delimitation of the range of services a trade law programme can provide and several options regarding the priorities areas it may wish to focus on, including their delivery methods. Recommendations are the following:

- The Commonwealth Secretariat could consider the option of creating a wider "economic law" programme, which would encompass trade law, monetary cooperation, debt control, maritime law and the use of natural resources. The benefits would include the strengthening of ties and possible synergies across programmes within SASD, in line with SASD's strategic orientation, as well as the possible improvement of SASD's services in the areas concerned with specialised legal services. The costs would be the additional investment in human resources, at the possible expense of the deepening of the trade law assistance, notwithstanding the great need for it, and the likely lack of success of creating a seamless team work within the law programme itself.
- Trade law assistance in its stricter sense may cover all areas that are related to trade law and that are intertwined with the negotiation and application of international trade rules. This includes by definition the work directly related to the multilateral trade rules and institutions (WTO), the one related to bilateral treaties, the strengthening of regional integration, the streamlining of domestic trade law in strict sense (customs law, trade remedies, import licensing, etc) and the work related to other domestic regulations having an impact on trade (investment law, competition law, consumer protection, sanitary and phytosanitary rules, technical regulations and standards, intellectual property, etc).

- The Commonwealth Secretariat could consider the option of not circumscribing further the scope of its assistance and let the demand make the selection of the projects that will be carried out. The benefits would be that the trade law programme would be more flexible and closer to demand. This may also facilitate a wider allocation of the assistance, while giving priority to small and least developed States. This would require, however, that general publicity is made of the programme. The possible cost would be the loss of performance and economies of scale if projects that are too different are implemented across the Commonwealth. This might indeed impair the use of lessons learned across projects as well as the positive “recycling” of the work carried out.
- Should the option above not be retained, there are certain areas in which the Commonwealth Secretariat could create a niche for itself and make the necessary investments to improve the services offered. These include, in all or in part, assistance in relation to trade policy reviews and WTO notifications, regional integration and harmonisation of laws and regulations, assistance for the improvement of domestic trade laws in strict sense, ad hoc legal support in the context of larger trade-related technical assistance projects and assistance in the “beyond the border” issues, particularly in relation to the setting-up of complex development-oriented legal mechanisms, such as Special Economic Zones, the identification of subsidisation schemes, the setting of sectoral rules (especially on services) and the regulation of competition policy, etc.
- Legal advice and legal opinions are always adequate methods to deliver trade law assistance.
- Advocacy to promote pro-development and pro-gender legal frameworks within the developing member countries and to defend their positions internationally are adequate and can be encouraged to the extent they avoid conflicts of interests. However, engaging into litigation for Commonwealth developing countries is not advisable, unless this is on the fringes to support outsourced professional litigating lawyers.
- Support to academic research and long-term education by providing universities and research centres with good scholars, organising and stimulating research and defining adequate educational curricula is to be encouraged. Consideration should be given to proactively seek synergies in this regard with the STDP’s Education Section.
- While the Commonwealth Secretariat should refrain from organising training seminars itself, trade law officers and experts should, however, always try to engage into capacity-building actions through on-the-job assistance and help the beneficiaries to deliver legal advice and advocacy themselves rather than doing them at their place.

III. Advice on the optimal operational structure to deliver the assistance requested

This section will address primarily the specific organisation of the programme which would provide trade law assistance. The analysis will focus mainly on the operations of the SASD, even if they will of course be placed in the larger context of trade-related assistance provided by the Secretariat.

a. Methodology and indicators

1. Projection of the maximum resources available

For the year 2008-2009, the trade law programme’s budget has been set at only 160,000 UK £ for the implementation of its ongoing activities. This small amount reflects spending records for the previous year. Some increase is possible, but apparently not much above the previously allocated budget of

292,170 UK £ per year. This is **not a large amount. Finding synergies with other Secretariat's Sections and Divisions might thus have to constitute an important part of the programme's action.**

Within SASD, **there might be some margin of manoeuvre**, since the overall budget for this Division is 4,143,444 UK£. SASD, in particular, has allocated 85,000 UK £ to overhead costs ("*programme support activities*"), which are widely defined as covering "*scoping missions, expert insurance, attendance at official meetings, publications, enhancement of professional skills of staff through participation in training programmes and seminars and other ad hoc activities*". This corresponds to roughly 2% of the available envelope. While this amount is also very low, even if it excludes the staff's salaries, the law programme could benefit from part of it.

Generally speaking, one must take into consideration the fact that the law programme will have to function under a very restricted budget next year. There is no clear indication as to staff available and the possibilities to increase its current number. It will therefore be assumed that there is some margin of manoeuvre in this respect.

Finally, while current budgetary projections appear to be limited for next year, the recommendations below will nonetheless address options entailing a budget increase, so as to facilitating planning and thinking for the following years.

2. *Preliminary conclusions pertaining to the strategic orientation of the trade law assistance*

As indicated below, there are several options regarding the strategic orientation of the trade law assistance. In a nutshell, the first option consists in setting-up a larger economic law programme encompassing all legal aspects pertaining to monetary cooperation and debt control as well as the areas that are currently handled by the ELS. Another option would be to maintain a rather generalist trade law programme covering all areas of trade law assistance and letting demand making the selection of the projects and the areas of work. A final option would be to sub-specialise the programme in one or more areas and types of projects.

3. *Optimal efficiency ratios*

i) *Optimal ratio between back-office costs and the resources directly allocated to technical assistance*

It is of course a somehow speculative exercise to define an optimal ratio between back-office costs and the resources directly allocated to technical assistance in the absence of detailed accounts showing actual fixed costs. As a rule of thumb, one can be inspired by the cost structure of private services consulting companies, including law firms. Overhead costs of these companies tend to range between 20% and 35 % of their overall turnover. Overhead costs include the expenses related to the administrative staff (secretaries, accountant and communication officer), rent, the operational material (computers, printers, copy machine, etc) and training for the staff. Another 30-35 % tends to be dedicated to client-related expenses, such as the salaries of the project officers (or the lawyers in law firms), transportation, per diems, and other costs directly attributed to client work. Finally, around 30 % are left for profit.

In order to translate these ratios into the operations of a public international organisation such as the ComSec, one would require first that this organisation's accounts allocate the costs of rent and the staff to specific programmes. For the purposes of this exercise, considering the special status of the ComSec, one should assume that the rental costs are not accounted for. Usually, in the private sector,

these tend to be around 40% of the overall overhead costs. Furthermore, profit is not to be considered. After making some adjustments, optimal ratios could be around the following:

- Overheads: administrative staff (secretaries, accountant and communication officer), the operational material (computers, printers, copy machine, etc) and training for the staff:

As indicated above, in the management of technical assistance, effective programme's administration is very important for the overall programme's performance. It entails the organisation of complete and structured physical files and/ or electronic files, the rigorous management of tender procedures and documents for the recruitment of external consultancy, a detailed keeping of updated accounts, the delivery of effective secretarial services for the project officer(s) (including typing, travel and hotel bookings, filling administrative documents, etc) and proactive dissemination of the project's reports and results. These tasks should not be handled by the legal officers of course, since this would be an inefficient use of their time and expertise.

Furthermore, modern technology is required to enable the programme to function as an effective and efficient consulting entity. Computers and telecommunications devices are essential, as well as latest technology suitable to frequent travellers. Finally, permanent training and morale building activities for the staff must also be organised.

While it is of course difficult to make an estimate of the optimal ratio between general overhead costs and technical assistance activities, one could however expect this to be substantial. Furthermore, it is reasonable to express the ratio as a percentage of the overall cost of the programme (rent excluded). Indeed, generally speaking, the larger a programme is, the higher the administrative costs would be. This should not be considered as a waste of money, however, but rather as a way to improve performance and optimize the use of in-house experts' time.

On the basis of the above, costs of premises excluded, **it appears reasonable to dedicate around 20% of the overall cost to overheads.**

- Costs for client-related work (project officers, their transportation expenses, per diems, external consultants and other costs directly related to client work)

Based on the above, it appears reasonable to consider that **around 80 % of the overall cost is to be dedicated to the delivery of technical assistance per se.**

There should not be major variation to this estimated ratio according to the programme's strategic orientation that will eventually be decided. This general cost structure would appear to be fairly standard, irrespective of the content of technical assistance.

ii) *Optimal ratio between the expenditures (travel, equipment, conference premises, etc) and the expertise mobilised*

Within the 80% of the overall costs dedicated to the delivery of technical assistance, one should be able to define the optimal ratio between the brain cost (i.e. remuneration of experts) and the non-brain one (i.e. the other expenses). This is of course difficult to identify and it would depend on each project. While of course priority should be given to the brain input, as this is of the essence of technical assistance, we have noted above that several factors are important for the overall performance of such assistance:

- excellent project inception, entailing strong liaison with the beneficiary to ensure project ownership and absorption, and with other donors to avoid duplication;

- intensive involvement of trusted high-level advisors throughout the project, until the end-result
- continuum in the assistance provided and full dedication to the project by the same key advisor;
- capacity to enter into a country's intimacy and to be closely connected to its realities, political developments and coordination efforts at regional level;
- this also entails excellent research capacities, including the availability of all required documentation;
- an adequate mix of activities, such as analytical studies, hands-on legislative drafting and extensive stakeholders' consultations, including the private sector and the civil society, where relevant;
- importance to help universities and research centres

These elements tend to require extensive presence of different experts in the ground and frequent travelling. In order to reach a realistic estimate of a reasonable ratio between brain input and other expenses, a distinction must be made between the costs pertaining to project management and those related to the actual transfer of knowledge and capacity-building. Both activities require solid experts in their fields. As indicated above, project's performance would require a certain separation between the management functions and the "hands-on expertise" given.

- Costs pertaining to project management

Project management entails project design first, then supervision of the project's implementation. Project design includes the development of a strong partnership with the beneficiary, the engineering of a project according to a logical structure and quality criteria, liaison with other donors to avoid duplication and the overall safeguard of the programme's strategic orientation (which might lead to the rejection of activities that are not in line with the programme's mandate). Project supervision entails the monitoring of the project's activities, while ensuring the pursuit of its objectives, including its sustainability, multiplier effects and good absorption of the assistance provided by the beneficiary and the stakeholders. It also entails the use of adequate expertise, the reinforcement of the partnerships with the beneficiary, the constant liaison with the other donors and the other Secretariat's Divisions and Sections, and the supervision of the quality of the output produced.

Effective project management is essential for the overall performance of a technical assistance programme. A well designed and supervised project may actually substantially contribute to achieve the objectives of the Secretariat's International Trade Programme. Sufficient time and efforts must be dedicated to it. These should be considered as part of the technical assistance. Presence of a project manager in the ground must be ensured at inception phase, and at least once or twice a year. A project manager may also have to attend major events facilitating stakeholders' absorption of the assistance provided.

Therefore it may not be an exaggeration to estimate that **project management could correspond to around 20% of the effort spent on a particular project. This percentage may vary** according to the type of project and activity the trade law sub-programme would be engaged in. Should the programme have to define and manage entire projects itself, this would be the correct proportion. It might be less for more straightforward projects, such as those simply entailing legal advice. It might even be less should the legal assistance be a component of a larger project designed and managed in other Sections or Divisions of the Secretariat.

Within these 20 %, the non-brain cost (travel expenses and per diem) can actually be substantial. While a lot of the supervisory work can be carried out in the Secretariat's headquarters, strong presence in the ground would still be required. However, the optimal proportion may vary of course according to the size of the project. The smaller the project, the higher the proportion would be. While

an estimate is never easy, a quick calculation shows that depending on the size of the project, travel and per diem expenses could range between 30% and 50% of the management costs, i.e. between 6 and 8 % of the overall costs dedicated to technical assistance projects.

- Costs pertaining to actual transfer of knowledge and capacity-building

As a consequence to the above, non-management costs, i.e. those that can be dedicated to the actual delivery of technical assistance activities, could be, in an optimal situation, 80% or more of the overall costs dedicated to technical assistance.

The proportion of the non-brain expenses would vary of course per type of project. It would depend on the right mix that would be decided during the inception phase between advice delivery, legal analysis, workshops, seminars, books and support to universities and research institutes. **It should be kept in mind, however, that a technical assistance programme is mainly about transfer of knowledge, entailing a strong potential multiplier effect, and not a substitute to gaps in the beneficiary's public budget.** Furthermore, one of the recommendations made above was to avoid, as much as possible, having the trade law programme organising itself training seminars and workshops, given the abundant offer in this respect. **In an ideal situation, brain input should at least correspond to 50% or more of the overall cost of a single project.**

iii) Optimal ratio between the in house expertise and the external expertise used

Two questions must be addressed here. Firstly, what can be outsourced in project management? Secondly, within the 80 % of the overall costs dedicated to transfer of knowledge and capacity-building, and considering the proportion left for brain input, what would be the optimal ratio between in-house expertise and external expertise?

Concerning the first question, project design can technically be outsourced. This is a clearly defined activity which can be separated from the actual supervision of a project. However it may not be an optimal option, since project design requires experience, knowledge of the ground, positive relationships with other donors, and the progressive establishment of a relationship of trust with the beneficiary. This is precisely where the Secretariat's comparative advantage lies. Furthermore, there are economies of scale to be made in project design and assigning this type of activity to different outsourced experts may impair their achievement. Finally, while project design and project supervision can be technically separated, there are of course positive synergies that can be created between the two functions and it would be a pity not to exploit them. As to project supervision, it would be very difficult and ineffective to outsource it. Project supervision indeed requires continuum and constant availability of a project officer, as well as a certain authority with the beneficiary and towards the experts. Outsourced experts would not always be available and could be placed in delicate situations towards the stakeholders, without the institutional strength required to handle them. **One clear recommendation would thus be not to assign any of the project management functions to outsourced experts. While project supervision would require, in a trade law programme, the presence and availability of a legal officer assigned to the programme, project design could actually be carried out in synergy with other Divisions and Sections of the Secretariat.**

Concerning the second question, there is no ideal response in this regard. In project implementation, the optimal ratio between in-house expertise and outsourced one would depend on each project. Some margin of manoeuvre must be left to the project designer. It would in particular depend on the overall orientation given to the trade law programme.

- Should the latter entail the setting up of a **rather generalist operation**, such as a larger economic law programme or one which would cover all areas of trade law assistance, then there would be a **strong merit to outsource most of the work to specialists in their**

area. Indeed it would be very difficult for an in-house trade law expert to invest the time and energy required to become or to remain a specialist in all areas covered by the programme, even if the expert in question has no management responsibility. When outsourcing, one should however always keep in mind the importance to ensure continuum of the assistance provided and full dedication to the project by the same key advisors. In this situation, some work may still nevertheless be carried out in-house depending on the number of staff available and its expertise.

- Should instead the programme's orientation be to **sub-specialise** in one or more areas and types of projects, then there would be a **strong merit to ensure that the same group of experts deeply invests into the chosen area(s) of specialisation**. This would indeed ensure economies of scale and cross-fertilization among projects. The latter can also entail a more sophisticated approach and more ambitious objectives, thus requiring even more the continuous involvement of senior advisers. **The group of experts that would be retained could either be recruited as part of the Secretariat's staff or be contracted on a retainer basis** for a number of days per year. In any event, it would be important to create a strong team spirit among the retained experts. One could argue that it would be cheaper to recruit in-house staff, but this must be confronted to the actual figures pertaining to staff costs and to the likely availability of senior lawyers to work under the conditions applicable to the Secretariat's staff.

iv) *Summary of optimal efficiency ratios for the sub-programme*

The table below provides a summary of the efficiency ratios described above:

Cost item	Percentage of costs
General overheads	20%
Technical assistance	80%
<i>a) project management (design and supervision)</i>	<i>16% (=20% * 80)</i>
- experts	- 8-10 % (=50-70% *16)
. In-house	. 8-10%
. Outsourced	. 0%
- expenses (travel and per diem)	- 6-8 % (=30-50% *18)
<i>b) Transfer of knowledge and capacity-building</i>	<i>64% (=80% * 80%)</i>
- experts	- 32 % or more (=50% or more of 64)
. In-house	. Depends on the project
. Outsourced	. Depends on the project
- expenses	- less than 32 %

It can be seen from this table that a stand-alone programme would overall dedicate, in an optimal situation, between 32 % and 64 % of its budget to the actual delivery of technical assistance. This is not much. This figure, however, could be increased if certain synergies were found with the other Divisions or Sections within the Secretariat. Options in this regard will be addressed in the next section.

b. Recommendations

1. *Final conclusions on the sub-programme's Strategic orientation*

The question addressed here is whether on the basis of the indicators above, the options highlighted in the previous chapter regarding the strategic orientation of the trade law assistance can be maintained or if some of them should be eliminated right away. Each of them is considered in turn:

- **Setting-up a larger economic law programme** encompassing all legal aspects pertaining to monetary cooperation and debt control as well as the areas that are currently handled by the ELS

As indicated above, **this option should not be a preferred one**. Indeed, while it may foster synergy and cooperation within SASD, it would not necessarily achieve optimal trade law assistance per se, given the likely dispersion of efforts in areas that are very different from a technical point of view. It would also impair the achievement of a proper team spirit between legal officers, since none could be proficient in all these fields and the programme would naturally be divided according to areas of specialisation. This option could be valid should resources for legal assistance be plentiful and a legal programme granted with a large budget and much personnel. In that case, the legal programme could indeed sub-divide itself in several sub-sections, while pooling together overhead costs and project design. This, however, does not seem to be a realistic option, given the way SASD is structured and the very limited budget assigned to trade law assistance per se. Furthermore, it is difficult indeed to see how this option could provide any added value to the current organisation of the SASD and more particularly the ELS. In addition, the existing non-trade law programmes have the benefit of being multidisciplinary. A recommendation would therefore be not to retain this option.

- **Maintaining a rather generalist trade law programme** covering all areas of trade law assistance and letting demand making the selection of the projects

This option is realistic and could be maintained. It has the advantage of flexibility and of possibly being closer to demand. It will be confronted, however, with the limited budget available for the trade law programme. With the budget assigned for next year, it will be virtually impossible to satisfy all possible demand in all areas. Sound allocation of projects will be necessary. Likely, this would be on a first-come, first-served basis or by giving priority to small and least developed States. Should this option be retained, **the legal input will have to be maximalised and synergies for project design and supervision will have to be found with other Sections and Divisions**. The natural evolution could be that **the trade law programme will be diluted into a larger programme within the Secretariat** and that **most of its contributions would be on an ad hoc basis** in the context of wider projects designed by other Sections and Divisions.

- **Sub-specialising the programme** in one or more areas and types of projects

This option is also a valid one. Like the previous one, limited budget available can be a serious constraint. However, there would be much scope for in-house input and maximisation of the staff's experience across various projects. This option would enable the **maintenance of the trade law assistance as a stand-alone sub-programme, but it would require some additional staff**. Given the current budgetary context within SASD and the Secretariat's comparative advantage to act as a trusted advisor, **it might be a preferred option**. The areas of specialisation then would have to be fine-tuned according to a formal expression of demand from the potential beneficiaries, as well as a deeper analysis of the trade law assistance provided by other donors in every Commonwealth Developing country. The experience and specialisation of the recruited staff would also be relevant in this context. As already indicated, preferred areas of intervention could be regional integration and the setting-up of

complex development-oriented legal mechanisms, such as Special Economic Zones, the identification of subsidisation schemes, the setting of sectoral rules (especially on services) and the regulation of competition policy.

2. The sub-programme's internal organisation

Given the above, developments below will address the two options eventually retained regarding the strategic orientation of the trade law assistance, i.e. either a generalist trade law programme or a specialised one in certain well-defined trade law areas.

- i) *The number and the profile of the staff to be mobilised and the possible orientation of the tasks to be carried out by in house staff*

As a rule, **for both options, having a single trade law officer is not enough. It would indeed be important to have at least two**, so as to ensure project continuity during possible absences of one of the two, equal intensity of involvement across projects, better decision-making and cross fertilization of skills. Furthermore, one should keep in mind the lessons learned with respect to performance and efficiency. Strong project design and a general separation of the management functions from the “hands-on expertise” given are important elements to take into consideration.

- **Generalist trade law programme**

A generalist trade law programme may have to deal with a larger number of projects than a specialised one and it would require generalist in-house expertise. As indicated above, such a programme would have to find synergies in project management with other Secretariat's Sections and/or Divisions. It would not be sustainable as a stand-alone programme. A valid option would be to **insert it into a larger Section within the SASD**. It should benefit from the administrative personnel of that section and could be **contributing to larger multidisciplinary projects defined in the context of that section. The trade law personnel would then be largely confined to project supervision**, while ensuring client's satisfaction and continuum in the assistance provided. Considering the likely high number of requests and projects, the in-house staff might not have the time to directly engage into consultancy work itself other than providing ad hoc advice on straightforward issues. In any event, consultancy work should not pre-empt the staff's supervisory function. Given the current budget available, **two generalist legal officers with experience in development cooperation and project cycle management could be sufficient to the job. One of the legal officers, however, should be a senior expert** with a substantial degree of specialisation in trade, so as to be able to supervise the work produced by the specialised outsourced experts.

- **Specialised trade law programme**

A specialised law programme would have a **smaller number of projects**. Considering the likely higher complexity of projects, the importance to ensure continuum in the assistance provided, as well as full and constant dedication of trusted experts, such programme **would require a permanent team of in-house personnel or a group of advisers contracted on a retainer basis** for a number of days per year. Whatever solution is adopted, the experts will have to work on a team basis and would be responsible for the various phases of a project, from inception to supervision and implementation. Some ad hoc outsourcing might also be arranged, as and when needed, but to a more limited extent, given the budgetary constraints. Synergies would also have to be found with the other Secretariat's Divisions and Sections in the context of project design and implementation to deal with the non-legal input, even if the programme may also hire a trade economist. This option would overall give more responsibility to the trade law programme in project definition and in developing a partnership with the beneficiaries and the other donors than the previous one. It would also be a much more challenging and interesting option for the staff recruited or retained. **It could finally be an option of excellence**

and of high positive visibility for the Secretariat. Realistically, each legal officer would not be able to handle more than three projects at the same time on a full-time basis. It would be possible also to assign one expert per project should the experts be retained on a part-time basis. Assuming the budget available might increase in line with the likely success of the programme, **two or three senior legal officers could eventually be recruited** to constitute an interesting high-level specialised and sustainable team. **Adding an equivalent number of junior experts might also be useful** to obtain the right generational mix that is present in all consultancy units. This could ensure the continuation of the programme while maintaining institutional memory. Finally, **recruiting a Trade Economist to support the Trade Law programme would also be an excellent move** since most, if not all, trade law projects, entail an economic aspect, especially at the phase of project design. Having a Trade Economist as part of a specialised legal team would substantially consolidate it. Such a team would of course substitute to a large extent the external expertise that a generalist trade law programme would have to contract out on a case-by-case basis.

ii) *Extent to which recourse to external expertise is to be made*

- **Generalist trade law programme**

A generalist trade law programme would have to **outsource most of the expertise** in the context of project implementation. It would indeed be difficult for generalist legal officers to provide it themselves while ensuring supervision of a rather higher number of projects.

- **Specialised trade law programme**

A specialised trade law programme would **use much less outsourced expertise**, as it would mainly rely on a constant team of high-level experts. While the conditions for the experts' recruitment and retention may have to be upgraded, such option can actually prove to be very efficient. Not only economies of scale may be reached across projects, but also the use of the same pool of experts on a flat-fee basis to take responsibility for an entire project may prove to be less expensive than recruiting ad-hoc external specialists to deliver part of a project.

3. *The sub-programme's position within the Secretariat*

i) *Synergies with the other trade-related programmes within the Secretariat*

As indicated above, the proportion of technical assistance provided in trade law projects as compared to overheads and management costs can be increased if certain synergies can be produced with the other Divisions or Sections within the Secretariat. There are several possibilities in this regard:

A first possible way to reduce management costs could be to **use the trade policy analysts and advisors deployed in the ground by the Hubs & Spokes programme**. This project is due to end in June 2010. A possibility could be to maintain the programme, while modifying its mandate, to enable the trade policy analysts and the regional trade policy advisors to remain in the ground and participate in project inception and project management for those projects that are carried out in the country in which they are posted. The advantage would be to maintain the H & S programme, which is highly popular and to benefit from the experts' know-how acquired in the ground. Furthermore, advantage can be taken from the Secretariat's current capacity and experience in the management of expatriate experts. This would overall increase the trade law programme's output. The risk would nevertheless be the possible lack of demand for legal assistance in the countries concerned. This would require that the H & S are used not only by the trade law programme, but by the entire Secretariat. Should the trade law programme be a generalist one, this possibility would actually be available to the Section in which the trade law programme would be integrated and it could improve its overall efficiency. Should the trade law programme be a specialised one, while some training of the H & S in the chosen areas of

specialisation would be required, overall making use of them would substantially help the in-house staff and free some of its time to accept other projects, while reducing its travelling costs.

Another possibility would be to **establish within the Secretariat a specialised multidisciplinary Section exclusively dedicated to project design in all trade-related issues**. The benefit would be a substantial reduction in the management costs, while enabling economies of scale in gathering intelligence on the countries' realities, developing partnerships with the beneficiaries and the other donors and ensuring synergies across the Secretariat's trade-related programmes. This would also enable the design of multidisciplinary and rather sophisticated projects. The inconvenience could be an insufficient liaison between project designers and project supervisors within each of the Divisions and Sections concerned. The risk is also that for projects implemented by different Secretariat's Divisions and Sections, there might be a lack of coherence in the overall project supervision. Mitigating this risk would require appointing one of the competent Sections as overall coordinator for each project, on a case by case basis, and to establish within the Secretariat mechanisms destined to promote inter-divisional cooperation. This mechanism might be beneficial to both options pertaining to the strategic orientation of the trade law programme.

Finally, a possibility to increase the proportion of technical assistance available could be for the trade law programme to **make use of the expertise available in the other Sections and Divisions of the Secretariat in the context of project's implementation**. Unless a Trade Economist is recruited for the Trade Law programme, this would actually be necessary for the non-legal input that may be needed in each project. This possibility, which should benefit the programme whatever orientation it takes, would require of course that the Secretariat's internal procedures encourage inter-divisional cooperation.

ii) *Integration of the other priority objectives, such as gender, youth and social development, in the assistance provided*

Integration of gender issues and other objectives of public policy must first be achieved at the level of project design. The realisation of this objective could be substantially facilitated by assigning project design to a specialised Section dedicated to this function. This would indeed enable special training for the Section's staff, as well as the gradual acquisition of the right reflexes throughout the succession of projects. In the absence of such Section, the staff assigned to project design, whether in the larger Section in which a generalist trade law programme would be integrated, or in an autonomous specialised trade law programme, would also have to receive special training on the relationship between trade policy and the other non-trade public policy objectives. Depending on the number of staff available and the number of projects, there is always a risk to create a bottleneck if the staff has to address too many issues. This might jeopardise the other important functions of project design, such as donor coordination and high-level partnership with the beneficiary. A possibility to overcome this risk would be to systematically require the input of the Secretariat's specialised Sections to participate in project design. This might however not be efficient considering that two teams would eventually have to invest in the understanding and definition of the contours of each particular action. An adequate balance will therefore have to be found between achieving an efficient project design and the mainstreaming of gender and other relevant public policy objectives in the assistance provided.

Gender and other non-trade issues may also be integrated in the context of project implementation. Specialised input might then be required. This is where the involvement of the Secretariat's specialised Sections could produce the best synergies. As indicated above, this would nevertheless require a favourable administrative structure within the Secretariat encouraging inter-divisional cooperation.

iii) *Location of the sub-programme within the Secretariat*

The trade law programme is deemed to remain a demand driven programme, whose task would be to deliver timely technical assistance in response to special requests of beneficiaries in a trade law area of its competence. Its **location is thus naturally within the SASD**. It would not fit so well within the EAD which is more structured as an in-house policy institute, and which can take certain distance from the immediate assistance needs of the beneficiary countries. The EAD is less involved in the design and management of technical assistance projects and therefore few synergies can be achieved in this respect with that Division. This is notwithstanding the fact, of course, that the International Trade and Regional Cooperation Section (ITRC) within EAD carries out important trade-related work and might actually either need the trade-law input or contribute to the trade law programme's operations by offering its analytical capacities on non-legal issues. Synergies can therefore be obtained through cooperation between the two programmes. However, their different mandates, intervention style, and orientation gives less room for administrative and management integration. Furthermore, the trade law programme would not be so well integrated in LCAD which has very little to do with international economic cooperation issues and tends to work more closely with the Ministries of Justice and the Judiciary of the beneficiary States. The stakeholders are thus too different to produce the type of synergies that could justify the removal of the trade law programme from the SASD.

The question then arises as to what would be its optimal position within the SASD: should it be a separate Section? Or should it be integrated into an existing Section? In that case, should it be the Trade Section or the Economic and Legal Section in which it is currently incorporated?

The two options retained regarding the strategic orientation of the programme must be addressed in turn:

- **Generalist trade law programme**

In the case of a generalist programme, **there would be a strong case to integrate the programme within the Trade Section**. The first reason is the strong complementarity of the subjects covered, ranging from sectoral competitiveness to export strategies and industrial policy. Trade law informs most of the subjects handled by the Trade section. We noted above (Ch.3, IV, a)) that *“the border line between the field of activities of the trade section and the one of the trade law programme is very thin and not always conceptually clear”*. We also noted that even though the trade law programme would aim at promoting the rule of law and the Trade Section seeks export competitiveness, *“overlaps are possible and allocation of projects within SASD is not necessarily straightforward”*. By contrast, the other subjects covered by the ELS, despite they all concern economic policy, are technically very different from those handled by the trade law programme. As indicated above, they require the handling of different sources of law and actually they constitute different legal specialisations. In practice, they are very seldom addressed together from a legal perspective in the same project.

A second reason is the rather similar implementation strategy that would be adopted by a generalist trade law programme to the one the Trade Section. As indicated above, in both cases, there would be naturally less hands-on, in-house input than the use of generalist project managers dealing with project design and supervision. Both programmes would eventually need to extensively outsource specialised expertise. **Administrative synergies in terms of handling recruitment, tender procedure and experts' contracts can also be achieved in this respect**. By contrast, the ELS prides itself to host senior technical experts in their fields of expertise, carrying out themselves hands-on and tailor-made work. Furthermore, the ELS wishes to organise itself as a one-stop-shop for beneficiaries in all the areas it covers. Trade law, however, as indicated above, is technically very different from the other ELS areas (natural resources and maritime boundaries), and therefore the scope for a one stop-shop action including trade law appears to be rather limited.

Finally, through the common features of a generalist trade law programme and the Trade Section, as well as the complementarity of their areas of work, there would be several possibilities to design larger multidisciplinary projects, entailing both legislative change and sectoral policies, thus strengthening the potential development impact of their common and coordinated operations.

One should note as well the existence of the SASD'S Enterprise and Agriculture Section (EAS), with which synergies are also possible. Integration of a generalist trade law programme within the EAS is not particularly recommended in relation to its integration in the Trade Section. Indeed, while there are obvious complementarities in the subjects covered, the EAS appears rather specialised in the agricultural sector and not sharing a similar implementation strategy. In any event, the interface between the Trade Section and the work carried out by the EAS should be further clarified.

- **Specialised trade law programme**

In the case of a specialised programme, it could either be established as a stand-alone Section or remain within the ELS. It could be in any event a **self-sufficient programme**, which would seek its synergies with the other Sections or Divisions mainly in the context of the implementation of its projects, notwithstanding it may also benefit from the input of a specialised design Division should the latter be established. **Maintaining a specialised trade law programme within the ELS, as opposed to creating a new Section, could actually make sense for two reasons:** firstly the two programmes would share similar features: both of them would have a **similar professional culture and intervention style**. They would be implemented mainly by in-house specialised staff which would praise its close contacts and trust relationship with the beneficiary. Cross-fertilization of professional advisers' know-how in client management could be beneficial to both programmes. Secondly, considering the likely similarity in intervention style, notwithstanding the areas of law would be different, **administrative synergies can be achieved**, at the level of support staff and general administration of the programme (filing, accounts, etc).

4. Optimal internal procedures

i) Optimal procedures to commit funds and release of expenditures

While the re-definition of the Secretariat's administrative procedures is not covered by this report, it was noted above that certain rather burdensome procedures and passage through the PMRU had to be obtained before implementing specific activities in the ground. Often, this generates paper work and might delay activities that may have to be urgently implemented in the ground in order to remain meaningful. As indicated above, **an option would be to elaborate larger framework projects, based on country partnerships, clearly defined objectives and exercise of a strict quality control at the level of the project design. Activities could then be accepted and implemented without further formalities**, whether they would be explicitly planned or, should that not be the case, they would meet, in the opinion of the Section responsible to manage the project, the objective criteria identified during the inception phase. **An ex-post review of the activities and expenditure made would then be made only. In other words, administrative paper work would only be required at the beginning of a project and towards its end to facilitate final supervision.**

ii) Methods for the recruitment, retention and supervision of external experts

A trade law programme, whatever its strategic orientation would be, would have to make use of external expertise at some point. Currently, the latter tends to be recruited on a case-by-case basis, at tariff levels which may be uncompetitive. Different experts are contracted, according to their availability, to deliver terms of reference that have been specifically designed for the activity. However, once the ToRs are deemed fulfilled, the experts are seldom available to pursue the action

unless they are contracted for additional days. This type of setting may be too rigid. It may affect continuity in project implementation and adequate response to clients' needs. It may also jeopardise institutional memory and transfer of know-how from one project to another. A suggestion to avoid these inconveniences would be to **appoint a pool of trusted experts, on the basis of either a written or an oral examination or interviews. Each expert in the pool would then be given a determined minimum number of days of work per year. They would then work for the trade law programme as and when needed, without having to undergo complex recruitment procedures.** This solution may be particularly advantageous for a specialised trade law programme, which would have to function with a stable team of high-level specialists which may not be attracted and retained with the standard conditions applicable to the non-managerial Secretariat's staff.

This being said, the work of the external experts must be supervised as well. This is normally the task of a project manager. However, a generalist lawyer may not know enough to judge the performance of high-level reputed international experts. It would therefore be important to try to recruit within the staff at least one senior lawyer with proven high-level expertise and experience in the supervision of other lawyers' work.

iii) Methods for the dispatch and management of requests for assistance within the Secretariat

Currently, requests for assistance are filed with the Secretariat without a clear procedure. Different Sections or Divisions, or the services of the Secretary -General or the Deputy Secretary-General may receive requests, sometimes in the form of a single letter or an e-mail. The recipients then handle the requests according to their own procedures. Some of them may be less effective (or slower) than others. There is no standard quality in this regard and this may be problematic. **A uniform procedure for the receipt of applications throughout the Secretariat should therefore be identified. Should a specialised Division be created for the design of all trade-related projects, this could actually be the ideal recipient of all requests.** It would then assess them and, should they be considered eligible, transform them into projects, in partnership with the applicants and using clearly identified quality criteria. Upon completion of the project design, this Section would then dispatch the projects to the relevant Section(s) for implementation, while discussing the project with them, in the context of a coordinating mechanism, such as the existing inter-divisional Committee on Trade. Further informal coordination and cooperation would then be required between the various Sections concerned during the implementation phase.

5. *The publicity to be made on the Secretariat's offer of trade law assistance*

As indicated earlier, it would be **very important to sufficiently publicize the Secretariat's offer of trade law assistance** in order to ensure a fair geographical coverage of such assistance and an undiscriminated allocation of the funds available among the beneficiary Commonwealth Developing countries. Publicity can be achieved by the publication of a website or a brochure and proactive dissemination of the information to all potential beneficiaries. **Publicity would also be required to disseminate the work carried out by the programme, so as to inspire other projects and increase the programme's multiplier effects. The unwarranted classification of projects' outputs as confidential may be extremely counter-productive in this respect.** Ensuring adequate communication about the programme and formalizing its information material would be naturally the task of the administrative unit backing the programme's operations, under the guidance of its manager.

CHAPTER 6: FINAL CONCLUSIONS

This Evaluation has examined the performance and efficiency of the trade law sub-programme implemented within the Economic and Legal Section of the Special Advisory Services Division of the Commonwealth Secretariat. While it considered that overall the programme was successfully implemented, it drew several lessons regarding possible better methods for the design and management of trade law assistance. It then provided the Evaluator's views on the several options available for the sub-programme's future strategic orientation. This analysis took into consideration the likely future demand of trade law assistance and the other donors' offer in this regard. Finally, on the basis of the options identified, the lessons learned and the existing constraints within the Secretariat, the Evaluation proposed possible means to improve the sub-programme's performance and efficiency, while maximizing synergies with other Sections and Divisions within the Secretariat.

The final conclusion is that two options seem to be available to the Secretariat to deliver trade law assistance. The first would be the establishment of a rather generalist trade law programme, while the second would be the constitution of a specialised unit handling high-profile projects in selected areas of trade law.

In the first case, the recommendation would be to **integrate a generalist trade law programme within the Trade Section of the SASD**, while adopting its working methods. This programme should **recruit at least two legal officers** which would be fully integrated in the Trade Section Team and participate in the design of projects in areas where legal input would be relevant. They would also supervise the legal projects, or the legal activities within larger multidisciplinary projects that the Trade Section could possibly design and implement. **The legal officers would outsource most of the specialised work** in the context of the project's implementation, while ensuring the supervision of the output's quality. This option represents a very classic method of delivery of technical assistance. Its advantage, among those that have already been highlighted, would be to facilitate the integration of legal assistance into larger multidisciplinary projects, while not complicating administration more than necessary. The inconvenience would be precisely its too classical approach, which would depend on outsourced short-term expertise to actually deliver the assistance and which would therefore undermine the consolidation of in-house skills. In any event, this option would require that **at least one of the trade law officers is a high-level expert**, capable of ensuring qualitative supervision of the outsourced experts' work.

In the second case, the recommendation would be to **establish a specialised trade law programme as a separate Section within the SASD or to maintain it within the ELS**. In both situations, the programme would function as a real in-house consultancy unit, the experts of which would be in charge of almost all aspects of the project's cycle, from design to implementation, and supervision where relevant. The programme should **rely on a constant team of high-level lawyers**, some of them being junior, to ensure consistency throughout its implementation, cross fertilization among projects and institutional memory. The programme would seek synergies with other Sections and Divisions of the Secretariat by drawing on their expertise and knowledge as and when required. In particular, some ad hoc advice in the context of project design might be requested to specialised Sections in order for instance, to ensure a positive impact of a project on gender, health or youth. This option is certainly more ambitious than the previous one and it might be more complicated to implement. It would also **require some changes in the Secretariat's habits, particularly with respect to the methods used to recruit and retain high calibre international experts**. Should they be recruited in-house as part of the Secretariat's staff, the regular conditions applicable to the non-managerial staff may need to be revised. Otherwise a proposal could be to recruit a pool of trusted advisors on a retainer basis. Whatever solution would eventually be adopted, **establishing a specialised programme may be very efficient and could produce a very strong impact on the clients' development possibilities**. It might also entail high visibility for the Secretariat, which would be able to distinguish itself from other donors through the in-house provision of personalised, tailor-made, high-quality, and high-profile

legal projects of a type seldom carried out by other technical assistance programmes. **This option might be a preferred one.**

The table below provides a summary of the two options, including their benefits, inconveniences and requirements:

Options	Advantages	Inconveniences	Requirements
Option 1: <i>A generalist trade law programme</i>	<ul style="list-style-type: none"> • The trade law programme would be more flexible and closer to demand. • A wider allocation of the assistance may be facilitated, while giving some priority to small and least developed States. • The integration of legal assistance into larger multidisciplinary projects may be facilitated, while not complicating administration more than necessary. 	<ul style="list-style-type: none"> • With the limited budget available for the trade law programme, it will be virtually impossible to satisfy all possible demand in all areas. • Possible loss of performance and economies of scale if projects that are too different are implemented across the Commonwealth. • The use of lessons learned impaired across projects as well as the positive “recycling” of the work carried out. • High dependence on outsourced short-term expertise to actually deliver the assistance. • Consolidation of in-house skills may therefore be undermined. • Most of the trade law programme’s contributions would likely be on an ad hoc basis in the context of wider projects designed by other Sections and Divisions. 	<ul style="list-style-type: none"> • General publicity must be made of the programme. • Synergies must be found for project design and supervision with other Secretariat’s Sections and Divisions. • A proposal is to integrate the trade law programme within the SASD’s Trade Section. • At least two generalist legal officers should be recruited, to be integrated in the Trade Section Team. • One of the legal officers should be a high-level expert, capable of ensuring qualitative supervision of the outsourced experts’ work.
Option 2: <i>A specialised stand-alone trade law programme</i>	<ul style="list-style-type: none"> • The Secretariat could create one or several niches for itself and make the necessary investments to improve the services offered. • This option is ambitious 	<ul style="list-style-type: none"> • The trade law programme would leave out an important part of the demand for trade law assistance. • Possible lack of flexibility in the 	<ul style="list-style-type: none"> • Some changes would be required in the Secretariat’s habits, particularly with respect to the methods used to recruit and retain

Options	Advantages	Inconveniences	Requirements
	<p>and it entails the implementation of sophisticated legal projects, in close partnership with the beneficiary.</p> <ul style="list-style-type: none"> • This can be an option of excellence, in line with the Secretariat's comparative advantage as "trusted advisor". • The assistance provided can be very efficient. Economies of scale can be reached across projects. Furthermore, the use of the same pool of experts on a flat-fee basis may prove to be less expensive than recruiting ad-hoc external specialists to deliver parts of a project. • The assistance provided can produce a very strong impact on the clients' development possibilities. • This option entails high visibility for the Secretariat, which would be able to distinguish itself from other donors through the in-house provision of personalised, tailor-made, high-quality, and high-profile legal projects of a type seldom carried out by other technical assistance programmes. • Much more challenging and interesting option for the staff recruited or retained 	<p>programme.</p> <ul style="list-style-type: none"> • Fewer interventions can be made, even if they would be deeper and wider. • Projects may be too stand-alone, therefore likely to be less multidisciplinary. 	<p>high calibre international experts.</p> <ul style="list-style-type: none"> • The regular conditions applicable to the non-managerial staff may need to be revised. • A permanent team of in-house personnel or a group of advisers contracted on a retainer basis would be required. • Two to three senior legal officers could eventually be recruited • Adding an equivalent number of junior experts might also be useful to ensure the continuation of the programme while maintaining institutional memory. • Recruiting a Trade Economist to support the Trade Law programme would also be an excellent move. • The experts must work as an integrated team.

Finally, certain recommendations were made, irrespective of the options that will eventually be retained, in order to increase the overall efficiency of a trade law programme's operations:

- Establish within the Secretariat a specialised multidisciplinary Section exclusively dedicated to project design in all trade-related issues;
- use the trade policy analysts and advisors deployed in the ground by the Hubs & Spokes programme as additional support in the context of project's design and implementation;
- use the expertise available in the other Sections and Divisions of the Secretariat in the context of project's implementation (one should avoid covering all aspects of an issue under a single activity in areas which are normally not in the Programme's area of competence);
- encourage cross-divisional cooperation through joint divisions' performance evaluations, positive assessments for intra-Secretariat referrals, joint divisions' budgets and facilitated lines of approval and release of expenditures in collective projects;
- clarify the interface between the Trade Section and the work carried out by the SASD'S Enterprise and Agriculture Section (EAS);
- revive the Inter-divisional Committee on Trade in order to foster cooperation in the context of project's design and implementation;
- free the legal officers' time as much as possible to enable them to provide high-level advice as opposed to carrying out too many administrative tasks for every single intervention;
- in other words, dedicate sufficient resources to project's administration, thus alleviating the administrative tasks of the legal officers;
- establish a mechanism to assess the value of the time of the in-house staff and to make a precise account of travelling time and expenses in relation to the cost of desk work;
- consider the elaboration of larger framework projects, based on country partnerships, and in the context of which specialised activities would be take place;
- limit administrative oversight and reporting to the phases of project design and closure;
- increase the publicity of the services that the trade law sub-programme can provide;
- encourage dissemination of the work produced by the programme.

LIST OF ANNEXES

- Annex 1: Table Conveying the Result of the Evaluation of the Effectiveness of the Legal Assistance Provided in Relation to the SASD's Mandates to Deliver the Secretariat's Intended Results
- Annex 2: Table Conveying the Result of the Evaluation of the Efficiency of the Legal Assistance Provided
- Annex 3: Table Conveying the Recommendations on the Strategic Orientation of the Assistance to be provided
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Annex 1: Table to Convey the Result of the Evaluation of the Effectiveness of the Legal Assistance Provided in Relation to the SASD's Mandates to Deliver the Secretariat's intended Results

Score	1	2	3 ²²	4	5
Meaning	very poor	poor	adequate	good	very good

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub-programme ²³
1. Relevance of the technical assistance (TA) to the objectives of the Secretariat's International Trade Programme.												
1.1. The TA overall contributes to sustainable growth in developing member countries, particularly small and least developed States.	2	5	4	3	3	3	5	5	5	3		4 (3.8)

²² From 3 above, it should be considered as positive.

²³ The figure between brackets corresponds to the mathematic average of the notes given to the projects, while the other figure represents the overall qualitative assessment of the Evaluator before the average was calculated.

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- progra mme
1.2 The TA contributes to the enhancement of the analytical and institutional capacity of the developing member countries for sound domestic policy formulation.	5	5	4	5	3	2	5	5	4	5		4 (4.4)
1.3 The TA contributes to the strengthening of the institutional capacity of the developing member countries to implement trade policies and trade agreements.	5	5	5	5	2	3	5	5	5	5		4 (4.5)
1.4 The TA contributes to the ongoing process of bilateral and /or multilateral negotiations and to the strengthening of regional integration within developing member countries.	4	3	2	2	1	1	3	5	5	4		3 (3.0)
1.5 The TA addresses particular identified trade-related needs and provides relevant and accessible outputs to the	5	5	5	5	3	4	5	5	5	5		5 (4.7)

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- progra mme
developing member countries, in line with their interests.												
1.6 The TA strengthens trade and investment-related regulatory frameworks. It contributes in this regard to develop competitiveness of the developing member countries' economy through, among others, capacity building in the elaboration of export and sectoral strategies, market development and trade promotion.	2	5	3	3	3	3	5	3	3	3		3 (3.3)
1.7 The TA is in line with the Secretariat's strategic focus on high-level negotiations, policy development and national trade promotion and facilitation.	4	5	4	5	4	2	5	5	5	5		4 (4.4)
1.8 The TA avoids duplication with other donors.	4	5	5	5	5	2		5	5			4 (4.5)

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- progra mme
1.9 The TA contributes to a sound and effective public – private dialogue and integrates other dimensions of domestic governance related to democracy, human rights, health and education.	5	5	2	3	3	2	2	2	2	4		3 (2.8)
1.10 The TA contributes to promote gender awareness and equal treatment.	3	2	1	1	1	1	1	1	1	3		2- (1.5)
2. Quality, and sustainability of the Action												
2.1 The TA builds on previous experience and current best practices.	3	5	3	3	2	2	5	5	4	3		4 (3.5)
2.2 The activities and means used are appropriate, practical, clear, and consistent with the objectives and expected results.	5	4	3	3	1	2	5	5	3	3		4 (4.4)
2.3 The TA is result – oriented and structured according to a logical framework for	5	5	3	3	2	2	5	5	5	4		4 (3.9)

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- progra mme
intervention.												
2.4 The beneficiary's level of involvement and participation in the TA is satisfactory.	3	5	2	5	3	2		5	5	5		4 (3.9)
2.5 The absorption capacity of the target group(s) and beneficiaries is satisfactory and the latter feel ownership of the Action's outcome.	4	5	2	5	5	1		5	5	4		4 (4.0)
2.6 The TA focuses on providing concrete output and recommendations for policymakers and other relevant stakeholders. Such output is satisfactory from a technical point of view.	5	5	5	5	3	4	5	5	5	4		5 (4.6)
2.7 The TA is likely to have multiplier effects.	4	4	3	3	3	2	5	5	5	3		4 (3.7)
2.8 The TA adequately complements the work of the other sections within the Secretariat.	4	2	2	2	4	4	1	5	5	2		3 (3.1)
2.9 The TA is carried out in partnership with other donors / organisations.	4	2	1	1	5	1		2	5	2		3 (2.5)

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 02	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- progra mme
2.10 The TA's supervision and quality control are adequate.	4	4	3	3	3	3	4	5	4	3		3+ (3.6)
Overall assessment ²⁴	4 (4.0)	5 (4.3)	3 (3.0)	4 (3.5)	3 (2.9)	2 (2.3)	4 (4.0)	5 (4.4)	5 (4.3)	4 (3.7)		4 (3.7) / (3.9)

²⁴ The figure between brackets corresponds to the mathematic average of the notes given to each criteria, while the other figure represents the overall qualitative assessment of the Evaluator before the average was calculated.



Annex 2: Table to Convey the Result of the Evaluation of the Efficiency of the Legal Trade Law Assistance Provided

Score	1	2	3 ²⁵	4	5
Meaning	very poor	poor	adequate	good	very good

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 020	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub-programme ²⁶
1. Cost / Benefit Analysis												
1.1 Costs of the project up to end of FY 2007/08 (£)	345,063	254,658	139,681	88,799	67,630	93,581	25,497	8,762	10,045	75,363		1,109,080
1.2 Overall assessment of the effectiveness of the project as per Table I (1 to 5)	4	5	3	4	3	2	4	5	5	4		4
1.3 Assessment of the cost / benefit of the project (1 to 5).	3	4	2	4	2	2	5	5	5	4		3 (3.6)
2. Expenditure per Region targeted (£)												
2.1 Africa	* 1/2				*1	*1	*1		*1/2			364,262
2.2 Caribbean	*1/5	*1	*1					*1	*1/2			477,136
2.3 Pacific	*1/5			*1						*1		233,175

²⁵ From 3 above, it should be considered as positive.

²⁶ The figure between brackets corresponds to the mathematic average of the notes given to the projects, while the other figure represents the overall qualitative assessment of the Evaluator before the average was calculated.

Indicator / Project	Project 1 XCWG 070	Project 2 XBEL 018	Project 3 XSTL 022	Project 4 XTON 026	Project 5 XGAM 029	Project 6 XMAA 028	Project 7 XBOT 026	Project 8 XOEC 020	Project 9 XCWG 095	Project 10 XWES 015	Ad Hoc assistance	Overall sub- programme ²⁶
2.4 South Asia	*1/10											34,506
2.5 South-East Asia												0
2.6 Small and LDCs												Almost 100%

Annex 3: Table to Convey the Recommendations on the Strategic Orientation of the Assistance to be Provided

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
1. Relevance of the technical assistance (TA) to the objectives of the Secretariat's International Trade Programme (scores 1 to 5)												
1.1 The TA contributes to sustainable growth in developing member countries	5	5	5	5	5	5	5	4	5	5	5	5
1.2 The TA contributes to the enhancement of the	5	3	5	5	5	5	5	4	5	5	5	5

²⁷ Other international economic law has not been considered. It would be applicable only if the option to create a larger “economic law” programme was retained.

²⁸ Litigation is not included as it is overall not recommended, unless the assistance is on the fringes to support professional litigating lawyers. Funds could also be put aside to recruit such lawyers, and assistance provided to monitor their work. In both cases, this is considered in this table as “advocacy”.

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
analytical and institutional capacity of the developing member countries for sound domestic policy formulation												
1.3 The TA contributes to the strengthening of the institutional capacity of the developing member countries to implement trade policies and trade agreements	5	3	5	5	5	5	5	4	5	5	5	5
1.4 The TA contributes to the ongoing process of bilateral and /or multilateral negotiations and to the strengthening of	5	4	5	5	5	5	4	3	4	5	4	5

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
regional integration within developing member countries												
1.5 The TA addresses particular identified trade-related needs and provides relevant and accessible outputs to the developing member countries, in line with their interests	5	3	5	5	4	5	5	3	5	5	5	5
1.6 The TA contributes to develop competitiveness of the developing member countries' economy through, among others, capacity building in the elaboration of export and sectoral	4	3	4	5	4	5	4	4	4	5	5	5

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
strategies, market development and trade promotion												
1.7 The TA strengthens trade and investment-related regulatory frameworks	5	3	5	5	5	5	5	4	5	5	5	5
1.8 The TA contributes to promote gender equality	3	3	4	3	4	5	2	2	3	3	5	5
1.9 Overall assessment	5 (4.6) ²⁹	3.5 (3.4)	5 (4.75)	5 (4.75)	5 (4.6)	5 (5)	4 (4.4)	3 (3.3)	5 (4.5)	5 (4.75)	5 (4.7)	5 (5)
2. Future likely demand (strong, average, weak)	Strong	Average	Strong	Strong	Average	Strong	Strong	Average	Strong	Strong	Average	Strong
3. Other donors active												

²⁹ The figure between brackets corresponds to the mathematic average of the notes given, while the other figure represents the overall assessment of the Evaluator before the average was calculated.

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
in the area (very much, much, somehow, not much, not at all)	Much	Very much	Very Much	Not much	Not at all	Somehow	Much	Some- how	Much	Some- how	Not much	Much
4. Secretariat's comparative advantage (yes, average, no)	Average	Yes	Average	Yes	Yes	Yes	Average	Yes	Average	Average	Yes	Yes
5. Existence of other Secretariat's programmes in the sector and cross- fertilization possibilities (yes / no)	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6. Conformity with the Secretariat's strategic orientation (yes/no/neutral)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Final recommendation (strongly recommended /	Recom- mended	Recom- mended	Recom- mended	Strongly recom- mended	Strongly recom- mended	Strongly recom- mended	Recomm ended	Recom- mended	Recom- mended	Strongly recom- mended	Strongly recom- mended	Strongly recom- mended

Scope ²⁷	Multilateral Trade law (WTO) (trade policy reviews, negotiations, work within WTO Councils and Committees, notifications)			Bilateral treaties and regional integration agreements			Domestic trade law in strict sense (customs law, trade remedies, etc)			Trade-related domestic legislation (investment, competition, technical regulations, standards, SPS, IP, consumer protection, etc)		
Indicator / Content ²⁸	Legal advice	Legal advocacy	Training / Capacity -building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building	Legal advice	Legal advocacy	Training / Capacity- building
recommended / not recommended / neutral) ³⁰												

³⁰ Recommendations pertaining to training and capacity-building should be nuanced, since long-term academic education and research are to be preferred to training sessions and workshops, which the Secretariat should avoid. On-the-job training must be encouraged.

Annex 4: Terms of Reference for an Evaluation of Secretariat Support to Member States in Trade Law

Introduction

In August 2007 the Commonwealth Secretariat Special Advisory Services Division (SASD) requested the Strategic Planning and Evaluation Division (SPED) to commission an evaluation of the trade law sub-programme implemented by SASD's Economic and Legal Section (ELS). These Terms of Reference (TOR) relate to the proposed evaluation.

SASD has now provided assistance in the trade law area for about four years. The evaluation has been requested to review the efficiency and effectiveness of the sub-programme and to better differentiate the work being delivered under the trade law heading. SASD wishes to take stock of the trade law assistance delivered thus far so as to assess its performance and to define its strategic direction within the Secretariat's overall mandate and comparative advantages. An important element of the evaluation will be to demonstrate how well the trade law work fits within SASD's mandates to deliver the Secretariat's intended results. The evaluation will also report on current trends and likely future requirements for trade law-related assistance from member countries and consider and advise on how the Secretariat should respond, taking into account strategic and resourcing requirements.

A Background Brief on the Trade Law Portfolio accompanies these TOR to assist prospective consultants in the preparation of their bids. The Brief documents the rationale and nature of the support provided by the Secretariat during the period from the inception of the trade law work within SASD in FY 2003/04 until late 2007. It also sets out a summary of the Secretariat's wider work in its International Trade (INT) Programme.

A more detailed Issues Paper has been prepared by SPED following review of the project documents and preliminary consultations with relevant Secretariat staff. The Issues Paper will be made available to the successful consultants upon selection.

1. Portfolio Description

The Commonwealth Secretariat's work in trade law is a specialist area of assistance developed and delivered by the Economic and Legal Section (ELS) of SASD. ELS have traditionally functioned as an in-house high level consultancy unit, specialising in the provision of economic and legal advice and capacity building. Its areas of focus have evolved through time and are currently Trade Law, Natural Resources, Maritime Boundaries and Capital Markets.

The trade law sub-programme is currently managed by one Legal Adviser. Some of the assistance is performed in-house, while other work is outsourced to consultants. The trade law sub-programme currently consists of ten projects in addition to a number of requests which are dealt with in-house on an ad hoc basis. All of the projects are considered as ongoing and the project documentation is up-to-date. The main focus of the work is on assisting Commonwealth developing member states, particularly small states and LDCs, with the legal aspects of implementing their international trade obligations.

The trade law sub-programme is one part of the much broader range of work that the Secretariat carries out under its international trade (INT) Programme (Programme 5 of the Secretariat Strategic Plan).³¹ SASD and the Economic Affairs Division (EAD) are the lead divisions on international trade. Other trade work is conducted by the Office of the Deputy Secretary General (ODSG), the Social

³¹ The Commonwealth Secretariat Strategic Plan 2003/4-2007/8 is available on the Secretariat's website at <http://www.thecommonwealth.org/documents/>

Transformation Programmes Division (STPD) and the Governance and Institutional Development Division (GIDD). The work of these divisions is summarized in the Background Brief.

2. Objective of the Evaluation

The objective of the evaluation is to assess the efficiency and effectiveness of the trade law sub-programme, to define the focus and form such assistance should take and to recommend potential strategic or operational changes that may be required by the Secretariat to better deliver its mandate.

SASD has requested an evaluation centred primarily on ELS to assist the division with its forward planning. Some examination of the institutional context within which ELS and, more broadly, SASD operates will nevertheless be necessary in order to set the scene and to address issues such as the placement of the trade law sub-programme within the Secretariat's organizational structure or issues of inter-divisional cooperation.

The evaluation should examine issues relating to:

1) Quality and performance:

- An assessment of the efficiency of delivery of the activities under the trade law sub-programme, particularly in relation to the allocation of resources to the sub-programme;
- An assessment of the effectiveness of the assistance provided to member governments in meeting their requirements for advice and support in trade law matters;
- An analysis of the development outcomes, and any impacts that can be gauged at this time;
- Consideration of the issues that may support or hinder the Secretariat to continue to deliver an effective trade law sub-programme;
- Examination of the relevance of gender issues to the effectiveness of the sub-programme and assessment of how well gender equality and the Secretariat's other stated priority issues were addressed.

2) The ongoing relevance of the sub-programme to the Secretariat:

- A review of the demand for trade law assistance over the period being evaluated and an assessment of the likely demand in this area over the coming years should inform recommendations on the forward direction of the work;
- In the light of projected future demand for trade law assistance, the evaluation should provide recommendations on whether the current trade law sub-programme needs to be re-focused in any way to support more effective delivery and outcomes. This may include recommendations for the methods of delivery or a shift in the balance of expertise between in-house specialists and external consultants. There may also need to be a review of resources and management responsibility for trade law assistance as well as its positioning within the Secretariat's organizational structure.
- There will be resource implications for the Secretariat whatever course is adopted, including maintaining the sub-programme within SASD unchanged, so the evaluation will need to examine the costs and benefits of any recommended strategic and operational approaches in terms of resources and management responsibility for the work.

As part of the evaluation analysis the study will examine the efficiency and effectiveness of the projects within the trade law sub-programme and comment on the degree to which they have delivered on planned outputs and contributed to the objectives of the International Trade (INT) programme.

3. Evaluation Process

The evaluation study will involve the following stages for information collection, analysis and feedback. The evaluation team is to keep the Secretariat fully informed of ongoing progress at every stage of the evaluation.

1. Preliminary Meetings and File Review:

- This stage will be conducted at the Secretariat headquarters in London. Meetings will be scheduled with ELS officers and other officers working on the Secretariat's wider international trade programme. Many of the project documents and background papers have been scanned and can be made available to the evaluation team electronically prior to this visit, along with the Issues Paper.

2. Field Visits:

- The evaluation is likely to require at least five country visits in addition to consultations with the EC on a Pan-Commonwealth project. The most relevant locations, based on expenditure and duration of activities, are likely to be Tonga, Samoa, Belize, St Lucia, Malawi and Geneva and Brussels.
- During fieldwork the evaluators must consult with the Secretariat primary contact points (PCPs). They will also consult with officials in government ministries and other organisations relevant to the trade law activities. The fieldwork is expected to require consultations in capital cities but no visits to more inaccessible areas are envisaged. The consultants can expect the assistance of the Secretariat in setting up official meetings.

3. Interim Report and Seminar:

- Within two weeks of completing the fieldwork the draft final Evaluation Report should be submitted to SPED and a seminar to present and discuss its contents will be arranged at the Secretariat.
- The report should set out clear findings, lessons learned and recommendations in response to the questions set out in Section 2 of these TOR and in the Issues Paper to be provided on appointment. Recommendations are to be relevant, targeted to intended users and actionable within the responsibilities of the users. Lessons learned are to be generalisations of conclusions for wider use.

4. Final Evaluation Report:

Within two weeks of receiving feedback from the Secretariat the evaluation team is to submit the final Evaluation Report to SPED. The report should have taken on board all feedback and other comments and incorporated any necessary alterations or clarifications received on the draft report.

4. Methodology and Workplan

The first task of the evaluation team will be to prepare a workplan setting out the approach and methodology for the conduct of the study. It will describe how the evaluation will be carried out bringing specificity to the investigation and analysis of the issues outlined above and should include details of how the team will approach the evaluation process, particularly the conduct of any field evaluation and data analysis. The workplan is to contain a schedule for fieldwork and an outline of the final Evaluation Report for discussion with SPED.

The workplan will include the following elements:

- Overview of the trade law sub-programme and priority issues to be examined as addressed in the Issues Paper which will be provided;
- The roles and responsibilities of the evaluator/evaluation team;
- The review methodology and the framework that will be used to structure and guide the investigations;
- Approaches to data research, collection and analysis;
- The reporting schedule and the timing and content of reports to be prepared.

5. Deliverables, Timing and Resources

The evaluation study will provide the following deliverables to the Secretariat:

1. Evaluation Workplan and methodology;
2. Revised Workplan incorporating country field missions and related data collection;
3. First draft of the Evaluation Report;
4. A seminar/presentation of the findings and recommendations;
5. Final Evaluation Report, incorporating feedback comments.

The deliverables must be submitted to SPED electronically as a Microsoft document. A draft Evaluation Report is to be submitted within two weeks of completion of the fieldwork stage. Following the presentation of the evaluation findings at a seminar at the Secretariat and receipt of feedback comments from the Secretariat and other stakeholders on the draft report, the evaluator is expected to submit a revised final Evaluation Report. The draft (and final) Evaluation Reports must be no more than 50 pages, excluding all annexes. It should address the TOR questions, specifically those relating to relevance, effectiveness, impact and sustainability.

6. Schedule and Level of Effort

The study is planned to commence in May 2008. It is estimated that up to 56 consultant days will be appropriate to complete the study, including agreed fieldwork visits, which should be planned for the June/July 2008 period. This schedule will enable a final report to be prepared by November 2008.

The evaluation study will be conducted by a consultant or consultancy team with expertise across a range of areas, but with specific expertise in the evaluation of international development assistance projects, trade law and trade negotiations. Experience in the geographical regions in which the portfolio has been implemented and familiarity with and experience of the work of international trade organisations is highly desirable.

Annex 5: List of Documents

A. General

- ComSec, Evaluation of Secretariat Support to Member States in Trade Law. Background and Issues Paper, May 2008;
- ComSec, Strategic Plan for the years 2004-2008, Meeting of the Executive Committee of the Board of Governors, Marlborough House, 25-26 March 2004, EC3(03/04);
- ComSec, Strategic Plan for the years 2008-2012, Meeting of the Executive Committee of the Board of Governors, Marlborough House, 13-15 May 2008, EC3-BG3 (07/08)2;
- ComSec, SASD, Annual Work Plans 2004-2005; 2005-2006, 2006-2007 and 2007-2008;
- ComSec, SASD, Newsletter, Issue 4, Spring 2008;
- ComSec, SASD, Presentation of Trade Law Programme;
- ComSec, The PIMs summary for all projects of the Trade Law sub-programme;
- ComSec, BTORs for projects XBEL018, XCWG070, XGAM029, XMAA028, XSTL022, XTON026, XWES015;
- ComSec, Trade Section, Action Plan 2007/2009;
- ComSec, Portfolio Summary for Programme INT concerning EAD, GIDD and OSG;
- ComSec, Revised Draft Terms of Reference, Inter-Divisional Meetings on Trade;
- ComSec, “The Performance Information and Management Framework” in “Annual Performance Report 2004-2005”;
- ComSec, “The Activity Cycle – Project Identification, Design & Approval”, in “Guidelines”, Version 2: Chapter 7
- ComSec, “The Performance Management Improvement Project (PMIP)”;
- ComSec, “CFTC: A Rethink”, Meeting of CFTC, Committee of Management and Board Representatives, London, 23 and 25 June 1999;
- ComSec, Excerpt on Programme 5 “International Trade” in “Annual Performance Reports” 2003-2004, 2004-2005, 2005-2006;
- ComSec, Annual Performance Reports, 2002-2003, 2003-2004, 2005-2006;
- ComSec, Study on the Commonwealth Secretariat’s Follow-up and Utilization of Evaluation Findings, October 2003;
- ComSec, Evaluation Study, ”Strategic Positioning and Strengthening of Assistance by the Commonwealth Secretariat to Commonwealth Developing Countries on WTO-Related Issues”, May 2008
- ComSec, Hub and Spoke Project, Mid Term Review Summer 2007;
- ComSec, “Evaluation of the Trade and Investment Access Facility”, 17 May 2001;
- ComSec, “Evaluation of Commonwealth Secretariat Assistance to Member Countries with ‘Negotiations’”, 14 December 2000;

- ComSec, “Evaluation of the Commonwealth Fund for Technical Cooperation (CFTC)”;
- ComSec, STDP, the “Gender and Trade Action Guide”, 2007;
- ComSec, Report on Future Actions requested by the Ministers of Education in the Commonwealth Teacher Recruitment Protocol, October 2006;
- ComSec, Towards an Outward-Oriented Development Strategy for Small States: Issues, Opportunities and Resilience Building. A Review of the Small States Agenda proposed in the Commonwealth / World Bank Task Force Report of April 2000, by Lino Briguglio, Bishnodat Persaud and Richard Stern, 8 August 2006;
- ComSec, A Summary of ‘Teaching at Risk’ – Teacher Mobility and Loss in Commonwealth States, September 2003;
- ComSec, Small States: Meeting the Challenges in the Global Economy”, Report of the Commonwealth Secretariat / World Bank Joint Task Force on Small States, March 2000;
- Commonwealth Heads of Government Meeting, Final Communiqué, Malta, 25-27 November 2005;
- Commonwealth Heads of Government Meeting, the Abuja Communiqué, Abuja, Nigeria, 5-8 December 2003;
- Commonwealth Heads of Government Meeting, Coolum Communiqué, Coolum, 2-5 March 2002;
- Commonwealth, The Recognition of Teacher Qualifications and Professional Registration Status Across Commonwealth Member States, September 2006;
- Commonwealth, Protocol for the Recruitment of Commonwealth Teachers, 1st September 2004.
- World Bank, Project Appraisal Document on a Proposed Grant in the Amount of SDR 10 Million (US\$ 15 Million Equivalent) to the Republic of Malawi for a Business Environment Strengthening Technical Assistance Project (BESTAP), 27 April 2007 (For official use only);
- Government of Malawi, “Malawi Development Assistance Strategy, 2006-2011, Making Development Assistance More Effective, 30 November 2007”.

B. Project-specific

Project	Documents received
XCW6070: Pan-Commonwealth Assistance on TRIPS and Public Health	<ol style="list-style-type: none"> 1. Country reports for Uganda 2. Regional case studies for the Caribbean, EAC/COMESA, ECOWAS, SADC/SACU, and Pacific. 3. A Report: “The WTO Decision on Access to Medicines at Affordable Prices for Countries with No or Insufficient Manufacturing Capacities: Implementation and Challenges”. 4. Recommendations & Observations from the National Workshop on Access to Medicines in Gaborone, Botswana. 5. Report of Group 2 on the IP Framework: Recommendations on the way forward. Workshop in Kenya

Project	Documents received
XBEL018: Belize Investment/WTO Compatibility	<ol style="list-style-type: none"> 1. Report: An assessment of Belize's Services sectors 2. Inception report on the Review and Revision of Belize's Investment Regime 3. Report of mission concerning optimal tariff structure
XSTL022: St Lucia Fiscal Incentives Regime	<ol style="list-style-type: none"> 1. Inception report on the review of St Lucia's fiscal incentive regime. 2. Report of the conference on best practices in the use of fiscal incentives in accordance with WTO rules
XGAM029: Assistance in the Development and Drafting of Tourism Regulation for The Gambia	<ol style="list-style-type: none"> 1. Report: "The Gambian Tourist Value Chain and Prospects for Pro-Poor Tourism" 2. Draft revised Gambia Tourism Act
XMAA028: Malawi - Review of Trade-Related Legislation and Implementation of WTO and other Trade Agreements	<ol style="list-style-type: none"> 1. Report: "A Review of Tax Incentives in SADC", 30 June 2007
XBOT026: Botswana - Implementation of an SEZ regime consistent with WTO and regional agreements	<ol style="list-style-type: none"> 1. Project Inception Report, containing a description of the project's policy background. Key milestones and a proposed timeframe for establishing an appropriate regulatory framework, submitted to the Ministry of Trade and Industry 2. Report: "Establishing Free Trade zones in Botswana in accordance with international trade rules".
XWES015: Review of Trade-Related Legislation of Samoa in Preparation for Accession to WTO	<ol style="list-style-type: none"> 1. Draft instructions for proposed amendments to Samoa's trade-related legislation. 2. Papers on best practices in antidumping measures.

ANNEX 6: Questionnaire on Needs for Trade Law Assistance

1. Please assess your country's and region's needs with respect to the areas below and the type of legal assistance provided.
2. Please complete the boxes in the table as follows, as you feel appropriate, by a grade ranging from one to five:

Score	1	2	3	4	5
Meaning	Irrelevant or need is being fully met	Assistance welcome but either the need is partially met or this is not a priority area	Assistance welcome. Need is partially met	Assistance needed. Need not being met.	Highly relevant and priority area

	Multilateral level			Regional level			National level		
	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law
Tariff Negotiations and Tariff Reforms									
Agriculture policy									
Trade Facilitation and Customs Valuation									
Technical Barriers to Trade									
Sanitary and Phytosanitary									

	Multilateral level			Regional level			National level		
	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity- building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity- building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity- building on trade law
measures									
Trade remedies									
Services negotiations									
Domestic regulation in services									
Trade-related Aspects of Intellectual Property Rights									
Trade and Environment									
Trade and Investment									
Competition policy									
Transparency and Government Procurement									
WTO Accessions									
Dispute Settlement									

	Multilateral level			Regional level			National level		
	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law	Legal advice on demand	Legal advocacy / Legal defence	Training / Capacity-building on trade law
Other international Economic Law									

3. Should your organization already benefit from trade law assistance, please indicate which type of assistance and the current main sources.
4. Have you heard of the Commonwealth Secretariat' trade law programme? Yes / No
5. In what ways can the Commonwealth Secretariat improve its assistance to your country / region, keeping in mind the assistance provided by other organisations?

Annex 7: List of Persons Consulted

A. Commonwealth Secretariat Staff

Division/Section	Person met / interviewed
Strategic Planning & Evaluation Division (SPED)	Dr Elizabeth Brouwer, Adviser & Head and Mr. Tyson Mason, Evaluation Officer, Evaluation Section
Special Advisory Services Division (SASD)	Mr. Jose Maurel, Director Mr. Daniel Dumas, Head of Section Economic and Legal Section (ELS) Dr Kathy-Anne Brown, Legal Adviser, ELS Mr. Nikhil Treebhohun, Head of Trade Section
Economic Affairs Division (EAD)	Dr Indrajit Coomaraswamy, Director Mr. Edwin Laurent, Head International Trade and Regional Cooperation Section(ITRC) Mr. Vasantt Jogoo, Head & Mrs. Janet Strachan, Adviser, Small States Section
Office of the Deputy Secretary-General	H.E. Ransford Smith, Deputy Secretary-General Mr. Roy Rodriguez, Head of Office
Hub & Spokes Project	Mr. Nimrod Waniala, Project manager
Social Transformation Programmes Division (STDP)	Dr. Roli Degazon-Johnson , Adviser, Education Section Ms Fatimah Kelleher, Senior Programme Officer, Gender Section
Project Management and Referrals Unit of the Secretariat (PMRU)	Dr. Teua Toatu, Head and Mrs. Shobhna Rattansi, Adviser
Governance and Institutional Development Division (GIDD)	Mrs. Jacqueline Wilson, Director

B. Non Commonwealth Secretariat Staff

Organization	Person met / interviewed
SASD Trade Law Adviser in Geneva (Trade Section)	Mr. Vinod Rege
Technical Advisor at the ACP Geneva Office (technical ACP Adviser)	Mrs. Paula Hippolyte
ACP Secretariat in Geneva	Ambassador Marwa Kisiri, Head H.E. Mr. Shree Baboo Chekitan Servansing
Hospital in Gaborone	Mr. Emmanuel Molosiwa, Chief Pharmacist
WTO Secretariat Institute for Training and Technical Cooperation	Dr. Hakim Ben Hammouda, Director Mr. Maarten Smeets, Head of Section Mr. Serafino Marchese
Ministry of Foreign Affairs and Foreign	Ambassador Alexis Rosado, CEO

Organization	Person met / interviewed
Trade, Belize	Ms Nancy Namis, Director, Foreign Trade Ms Erlene Kantun Coleman, Trade Officer
Belize Bureau of Standards, Ministry of Economic Development, Commerce and Industry and Consumer Protection	Mr. Jose Trejo, Director
Belize Trade and Investment Development Service (Beltraide)	Mr. Roberto Harrison, General Manager and Windell Middleton, Special Projects Officer
Ministry of Commerce, Tourism, Investment and Consumer Affairs, St Lucia	Mr. Titus Preville, Permanent Secretary Mr. Donald Dixon, Trade Advisor Mrs. Lisa Louis Philip, Commerce and Industry Officer
Ministry of Labour and Commerce, Tonga	Ms. Vika Fusimalohi and Ms. Vaimoana Taukolo
The Gambia Tourism Authority	Mr. Amadou Ceesay, Director for Tourism
Ministry of Trade, Malawi	Mr. Richard S. Chiputula, Assistant Director of Trade Mrs. Chatima, trade officer Mrs. Kokutulage Kazaura, Commonwealth spoke in Malawi Mr. Harrison J.K. Mandini
World Bank	Dr. Agnes Mary Chimbiri, Assistant Resident Representative, Malawi Dr. Khima Nthara, Senior Economist
UNDP	Dr. A Chimbri
European Commission	Mr. Alan Munday, First Secretary, Economic and Public Affairs
OECS Secretariat, Trade Division	Dr. Randolph Cato, Director
Ministry of Foreign Affairs and Trade, Samoa	Mr. Auelua T. Samuelu Enari, Assistant Chief Executive Officer Mar Petaia Leavai, Senior Trade Officer
Office of the Attorney- General, Samoa	Mrs Sarona Rimoni, Principal State Solicitor
Ministry of Revenue, Samoa	Mr. John Alama
Samoa Association of Manufacturers and Exporters (SAME)	Papali'I Grant Percival, President
The Advisory Centre on WTO Law (ACWL)	Dr. Frieder Roessler, Executive Director