

# The Trade Negotiation Capacity Gap in Free Trade Agreement Negotiations: The Role of Government, Corporate and Private Counsel in Assisting LDCs and DCs

Developing Countries ('DCs') and particularly, Least Developed Countries ('LDCs'), historically have not been capable of fully informed participation in multilateral, regional or bi-lateral free trade agreement ('FTA') negotiations.<sup>1</sup> The reason is due to what the United Nations ('UN'), among other international organisations, and many NGOs have called a 'trade negotiation capacity gap.'<sup>2</sup> This gap has traditionally been caused by a number of factors, including among others: (1) the complexity of FTAs, which have an increasingly broad scope and ever-deeper technical nature;<sup>3</sup> (2) disputes among negotiating partners, largely driven by their parochial national concerns and domestic political dynamics that cause them to put short-term gains above long-term economic and strategic interests;<sup>4</sup> and (3) perhaps most importantly, the lack of substantively meaningful training opportunities available to trade negotiators from the LDCs and DCs. If not remedied, these challenges will be exacerbated as a result of the proliferation of regional and bilateral FTAs due to the failure to conclude the most recent multilateral FTA, the Doha Round FTA. The Doha Round, after 15 years of negotiations, was finally declared dead in December 2015. Our purpose in this article is to articulate a practical solution and to help define the role of counsel in this effort.

## Historical Perspective

Perhaps the *de facto* origin of multilateral FTAs can be traced to the late Nineteenth Century when trade was the engine of economic growth. During this period, countries dropped their restrictions on trade, while the Gold Standard was used worldwide to measure the value of goods and currencies, providing a universal currency.<sup>5</sup> After the 1929 Wall Street crash, the world reverted to protectionism, which in part led to a worldwide depression.<sup>6</sup> Trade fell even faster, causing more unemployment and prolonging the downturn.<sup>7</sup> After two world wars, most of Europe and Japan were struggling economically and nations became dependent on the revival of world trade for vital income. The United States, which had used World War II as a means of economic revival,<sup>8</sup> was economically dominant and was under pressure to open up its markets to other countries.

Following the end of World War II, finance ministers from the Allied nations gathered at the Bretton Woods Conference to discuss the failings of World War I's Versailles Treaty and to create a new international monetary system that would support postwar reconstruction, economic stability, and peace.<sup>9</sup> The Bretton Woods Conference produced two of the most important international economic institutions of the postwar period: the International Monetary Fund ('IMF') and the International Bank for Reconstruction and Development (now called the World Bank, its successor organisation).<sup>10</sup> Recognising that the restrictive tariff policies of the early 1930s had contributed to the environment that led to World War II, in the late 1940s representatives of the Allied nations convened with representatives of other major nations to design a postwar international trading system that would parallel the international monetary system.<sup>11</sup> The objectives of these meetings were to draft a charter to create the International Trade Organization ('ITO'), and to negotiate the rules governing international trade and reductions in tariffs under the ITO. Although a charter was drafted, the ITO never came into being due to lack of support by the US Congress.<sup>12</sup>

While the US Congress failed to support the ITO, it gave the US president the authority to negotiate a treaty governing international trade by extending the 1934 Reciprocal Trade Agreements Act ('RTAA').<sup>13</sup> This led to the establishment of the General Agreement on Tariffs and Trade ('GATT') in 1947.<sup>14</sup> The GATT was perhaps the first truly multilateral FTA, a treaty whereby 23 member



countries agreed to a set of rules to govern trade with one another and maintained reduced import tariffs among its contracting parties.<sup>15</sup> The GATT treaty did not provide for a formal institution and lacked enforcement authority. However, a Secretariat with limited institutional apparatus was eventually created to administer various problems and complaints that might arise among members.<sup>16</sup>

Over the following 40 years, GATT grew in membership and in its success at reducing trade barriers.<sup>17</sup> GATT members regularly met in what came to be known as negotiating rounds. Although these rounds initially focused on negotiating further the reductions in the maximum tariffs that countries could impose on imports from GATT members, later negotiation rounds began focusing on non-tariff issues such as antidumping, intellectual property, government subsidies, etc.<sup>18</sup>

With the increase in participation and the fact that the negotiating topics are getting more complex, negotiating multilateral trade agreements and policies has become more complicated. Increasingly, this has placed most DCs and LDCs at a disadvantage because most lack the trade negotiating capacity to fully participate in such negotiations on an informed basis.<sup>19</sup> The first of these later rounds focusing on non-tariff issues, the Kennedy Round, was plagued with delays and slow progress. Disputes arose over agricultural policy and tariff disparities.<sup>20</sup> Furthermore, it was the first round to introduce linear-style negotiations, in contrast to the nonlinear, item-by-item

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negotiations of previous GATT rounds.<sup>21</sup> This led to tensions during the negotiations of major issues, as Developed Countries preferred the linear, across-the-board tariff cuts rather than the nonlinear, item-by-item negotiation favoured by LDCs and DCs.<sup>22</sup>

By the late 1980s, several problems emerged that previous rounds of GATT did not address. Specifically, the dispute resolution mechanism of GATT was not functioning as effectively as had been hoped and countries with longstanding disagreements were unable to reach any sort of resolution on a number of issues, ranging from government subsidies for exports to regulations regarding foreign direct investment.<sup>23</sup> Similarly, a number of commodities, such as agricultural products and textiles, were exempted from GATT.<sup>24</sup> Further, GATT had no rules regarding trade in services; intellectual property; unfair trade practices such as antidumping duties, voluntary export restraints and countervailing duties; and rules regarding trade-related investment measures such as domestic purchase requirements for plants built from foreign direct investments.<sup>25</sup>

To address these problems, a new round of trade negotiations, the Uruguay Round, was launched and it sought to introduce major reforms into how the world trading system would function.<sup>26</sup> It also promised to generate significant welfare benefits for all countries through the strengthening of the Multilateral Trade System ('MTS')<sup>27</sup> and expanded GATT's authority to new areas such as agreements regarding trade in textiles,

agriculture, services, and intellectual property; and rules regarding administered protection.<sup>28</sup> Despite its successes, the Uruguay Round failed to address some of the major issues of concern to DCs and LDCs. These issues include: issues related to the elimination of tariff and non-tariff barriers for products of interest to LDCs; the phasing-out of subsidies and trade-distorting domestic farm supports in the developed countries; and the implications of the Agreement on Trade-related Intellectual Property Rights ('TRIPS') on public health.<sup>29</sup> In a speech at the World Bank after the conclusion of the Uruguay Round, renowned Indian Economist Jagdish Baghwati criticised the Uruguay Round as having been dominated by the Developed Countries with only the scheduled phase out of the Multi-Fibre Agreement on apparel and textile quotas being for the benefit of the LDCs.<sup>30</sup> Even here, the most significant changes are being back-loaded toward the end of a 10-year schedule.<sup>31</sup>

The most recent of the multilateral negotiation rounds, the Doha Development Agenda, sought to address these concerns in addition to continuing the tradition of lowering trade barriers.<sup>32</sup> However, the Doha Round failed again to effectively address these concerns, despite DCs and LDCs actively participating by identifying and pursuing their interests.<sup>33</sup> In the 2008 ministerial meetings, progress in negotiations stalled after the breakdown of negotiations over disagreements concerning agriculture, industrial tariffs and non-tariff barriers, services, and trade remedies.<sup>34</sup> The most significant of these differences involved agricultural subsidies provided by the major developed nations to their domestic market.<sup>35</sup> These subsidies were seen to operate effectively as trade barriers.<sup>36</sup>

Since the breakdown of negotiations in 2008, there were repeated attempts to revive the Doha Rounds talks without success.<sup>37</sup> Intense negotiations, mostly between the United States, China, and India were held to address the inability to conclude this round of trade negotiations. These ministerial meetings were not successful because neither developed economies like the United States and the European Union nor developing countries like China and India were willing or able to make fundamental concessions.<sup>38</sup> After 14 years of talks, and at the most recent WTO ministerial meeting held in Nairobi, Kenya in December 2015, trade ministers from more than 160 countries failed to agree to keep the negotiations going,<sup>39</sup> effectively ending the Doha Round of negotiations.<sup>40</sup>

### Trade Negotiation Capacity Gap

Predictably, the failures to conclude a multilateral FTA since the Uruguay Round has led to a proliferation of regional and bilateral FTA negotiations and agreements. While bilateral and regional FTAs focusing on specific issues are easier to negotiate, they cannot cover the broader issues that a multilateral FTA addresses (see Chart 1 below). Further, the sheer number of bilateral and regional FTAs negotiations is a burden in itself and the knowledge of technical and legal issues, which such FTAs negotiations now require, presents a formidable challenge to trade negotiators<sup>41</sup> (see Chart 2 right). The procedures involved in the negotiation process, for example, have become quite complex and negotiators are now expected to consult with many stakeholders, both before and during the negotiations.<sup>42</sup> This is an added burden given that the subject matter covered varies from one FTA to another and many recent FTAs have included provisions on a wide range of issues.<sup>43</sup>

#### Chart 1: 10+ Parties: 300+ Issue Positions

30 chapters – 26 Annexes & Schedules

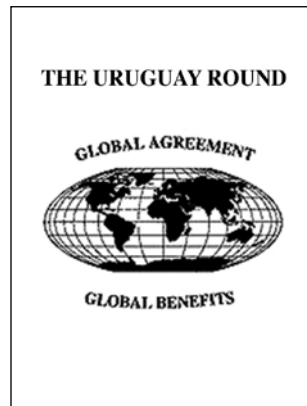
- Trade in Goods
- Textiles
- Services
- Investment
- Labor
- Environment
- E-Commerce and Telecommunications
- Competition Policy and State-Owned Enterprises
- Small- and Medium-Sized Enterprises
- Technical Barriers to Trade and Sanitary and Phytosanitary Measures
- Transparency and Anticorruption
- Customs, Trade Facilitation, and Rules of Origin
- Government Procurement
- Development and Trade Capacity Building
- Dispute Settlement
- US-Japan Bilateral Negotiations on Motor Vehicle Trade and Non-Tariff Measures

#### Chart 2: 100+ Parties: 6000+ Issue Positions

The GATT 1994, and a list of about 60 agreements, annexes, decisions, and understandings.

Simple structure with six main parts.

- An umbrella agreement (the Agreement Establishing the WTO);
- Goods and investment (the Multilateral Agreements on Trade in Goods including the GATT 1994 and the Trade Related Investment Measures (TRIMS));
- Services (General Agreement on Trade in Services (GATS));
- Intellectual property (Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS));
- Dispute settlement (DSU);
- Reviews of governments' trade policies (TPRM)



The results of a lack of capacity building have harmed DCs and LDCs. With respect to DCs and LDCs in Africa, for example, a 2010 report by the UN Conference on Trade and Development ('UNCTAD') stated, 'The capacity building needs of governments and other stakeholders involved in the formation of trade policies and negotiating positions for the African LDCs are far from fully being met.'<sup>44</sup> Similarly, in a paper published by the African Capacity Building Foundation, Professor Plummer argued:

Opening markets and building capacity to profit from them are essential to the economic future of Africa.

But doing this is much easier said than done: As markets are liberalised and trade-distorting subsidies are reformed, well-trained policy negotiators supported by efficient technical staff and thoughtful policy stances that articulate the needs of the country and think through strategies to advance national objectives are necessary to maximize the benefits of economic reform <sup>45</sup> (see Chart 3 below).

Not only does the lack of capacity building harm DCs and LDCs in Africa, but also this inability to fully participate in multilateral FTAs has negatively affected DCs and LDCs in other regions of the world. In a working paper developed by the Centre for Policy Dialogue ('CPD') on Trade Related Research and Policy Development ('TRRPD'), Debapriya Bhattacharya, the Centre's director, identified the information and knowledge needed by Asian LDCs to effectively participate in multilateral FTAs.<sup>46</sup> Debapriya Bhattacharya argued:

The growing number of bilateral and regional trade initiatives, combined with the increasing number of issues being addressed in multilateral trade negotiations ... requires that LDCs in Asia and the Pacific build additional negotiating capacity ... in order to more effectively underscore their concerns and interests in a body dominated by both economically and politically powerful trading nations. Their recent experience has shown in part that they

have a long ways to go, particularly in the area of trade negotiations.<sup>47</sup>

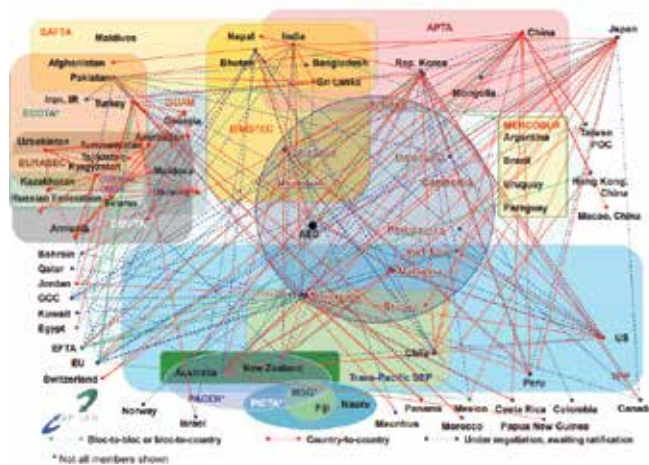
The dilemma facing DCs and LDCs is obvious. Namely, countries that cannot afford to develop a cadre of trade negotiators, such as those within the Office of the US Trade Representative or the European Commission, must rely on outside companies to help them retain counsel for assistance and advice. But DCs and particularly the LDCs are unlikely to have such resources available to them. So it came as no surprise that a 2004 Doha Round Background Paper explained what is needed as follows:

Resources ... need to be provided in developing countries to support the development of such a national pool of experts through institutional linkages and training programmes between relevant government agencies, the domestic academe and the domestic private sector and civil society ... . The financial resources required for such preparations can be sourced internally or externally.<sup>48</sup>

While some assistance is available for WTO members in Geneva and for Organization of American States ('OAS') members in Washington, DC, it is an expensive proposition to send government officials to partake in such training. Similarly, the international development agencies such as the UNIDO and the World Bank do provide some funds to hire consultants. For example, the State Planning &

**Chart 3: Post-Uruguay Round Regional and Bilateral FTAs: 39 and over 12,000 Issue Positions**

- NAFTA
- MERCUSOR
- ASEAN
- FTAAP
- ASEAN+6
- EU-MEFTA
- PACER and PACER Plus





International development agencies such as the UNIDO and the World Bank do provide some funds to hire consultants.

Development Committee of China retained 53 lawyers and consultants (including Bruce Aitken, co-author of this article) to assist them in the late 1990s with WTO accession. However, these contracts and scope of work are limited.<sup>49</sup> In the last decade, some efforts have been made to address the trade negotiation capacity gap by national governments, international organisations and at the university level. The Australian government and Asian Development Bank hosted trade negotiation workshops in 2004 and 2008 respectively. Similarly in 2004, at the request of Dean Claudio Grossman, American University's Washington College of Law launched the first ever law school training programme for trade negotiators in their Masters of Law Programme. It included six courses written by Mr Aitken. Today, this kind of initiative also has been taken up in other venues, such as the University of Kansas School of Law.<sup>50</sup> While such initiatives have been helpful, they are clearly not enough in solving the serious problem of trade negotiation capacity gap. Furthermore, the expense of participation in these training is significant.

### The Challenge of the Shifting Politics of Trade and FTA Negotiation

In the 2016 US Presidential election, both candidates disavowed the Trans Pacific Partnership Regional FTA.

President-elect Trump's full intentions in this regard remain to be seen. Meanwhile, the shift towards China of such long-time US allies as Malaysia and the Philippines, illustrate the complexity of the FTA situation. As competing bilateral and regional FTAs further proliferate, the challenges facing LDCs and DCs will only become greater. This, in turn, increases the importance of such entities as the TNTC.

### The Trade Negotiation Capacity Building Center

There remains a serious trade negotiation capacity gap between the LDCs and DCs on one hand, and the developed countries on the other hand, due to the lack of substantively meaningful training opportunities available to the trade negotiators from the LDCs and DCs. If not remedied, these challenges will be exacerbated as a result of the proliferation of regional and bilateral FTAs due to the failure to conclude the most recent multilateral FTA, the Doha Round FTA. Accordingly, at the April 2016 IPBA Annual Meeting and Conference, The Trade Negotiations Training Center ('TNTC') was launched. It was organised by Mr Aitken with the help of Ambassador Kim, Mr Fonkem (also a co-author) and others. The TNTC currently is actively sourcing

funds for multiple annual in-depth training sessions and the establishment of a Think Tank to track and make simplified explanations available to DCs and LDCs on current and further FTAs. Among other such sources, we are seeking assistance from international development agencies for the TNTC. This can and should be done in concert with local law or business schools and interested partners,<sup>51</sup> as suggested by the UNCTAD. We also anticipate involving leading international law firms to provide sector expertise in subject matter areas to be covered in TNTC training, such as foreign investment, intellectual property, taxation, etc.

The proposed (TNTC) would focus on training legal professionals; trade policy officials; members of the international business, IGO, and NGO communities; academics; and others within the DCs and LDCs. In the first instance, it would focus on training government officials. It would offer an intensive professional and practical development programme on WTO law and policy, with particular focus on utilising customised training workshops that effectively model the processes of trade negotiations within the ministerial rounds of trade negotiations. The goal here would be to immerse the participants in an ideal-type setting of trade negotiations. In addition to these customised training workshops, the proposed TNTC would also monitor and report on the various ongoing developments of all the FTAs being negotiated. As such, it would serve as a go-to resource knowledge centre, and it could evolve into a centre that also focuses on, and explains, WTO developments with an impact on LDCs and DCs.

#### Notes:

- 1 Aitken, Bruce and Fonkem, Ngosong, 'The Trans-Pacific Partnership: Progress, Challenges & a Proposal for ASEAN', *Inter-Pacific Bar Association Journal*, December 2014, available at [https://ipba.org/media/normal/1694\\_IPBAJournalDec2014.pdf](https://ipba.org/media/normal/1694_IPBAJournalDec2014.pdf).
- 2 WTO, 'Building Trade Capacity', available at [https://www.wto.org/english/tratop\\_e/devel\\_e/build\\_tr\\_capa\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/build_tr_capa_e.htm); APEC's Capacity Building Activities, available at [http://www.apec.org/~media/Files/Press/NewsRelease/2003/03\\_cti\\_wto\\_capbldg.pdf](http://www.apec.org/~media/Files/Press/NewsRelease/2003/03_cti_wto_capbldg.pdf).
- 3 Progress in negotiations stalled after the breakdown of the July 2008 negotiations over disagreements concerning agriculture, industrial tariffs and non-tariff barriers, services and trade remedies. There was also considerable contention against and between the EU and the USA over their maintenance of agricultural subsidies—seen to operate effectively as trade barriers. See Hanrahan, Charles and Randy Schnepf (22 January 2007), 'WTO Doha Round: The Agricultural Negotiations', Congressional Research Services (Retrieved 15 March 2016).
- 4 For example, the recently concluded Regional FTA called the Trans Pacific Partnership ('TPP') took a decade and more than 33 sets of negotiations, including nearly half as many Ministerial Sessions. Among the obstacles they faced were the seeming intransigence by the Governments of Japan and the United States over, respectively, protection of rice farmers and light truck manufacturers. Further, other participating TPP negotiating countries raised their own concerns, including, among others, Australia and New Zealand seeking greater market access for their dairy product exports and Vietnam's desire for greater market access for its exports of footwear and textiles. Also complicating the process of negotiating FTAs is the realisation by trade negotiators that FTAs must be implemented in their own countries. In the United States, e.g., this process is complicated by the 2016 Presidential election and related politics. The historic bipartisan consensus in favour of trade liberalisation, manifest in the Administrations of Presidents Roosevelt, Eisenhower, Kennedy, Johnson, Nixon, Carter, Reagan and Bush, is dead. It has been dead since roughly the 1990s, following the passage of implementing legislation for the Uruguay Round and NAFTA. See Aitken, Bruce and Fonkem, Ngosong, n 1 above.
- 5 Drummond, Ian M, *The Gold Standard and the International Monetary System 1900–1939* (1987, Macmillan Education, LTD).
- 6 Irwin, Douglas A, *From Smoot-Hawley to Reciprocal Trade Agreements: Changing the Course of U.S. Trade Policy in the 1930s* (1998, University of Chicago Press), available at <http://www.nber.org/chapters/c6899>; Milder, Mark, 'Parade of Protection: A Survey of the European Reaction to the Passage of the Smoot-Hawley Tariff Act of 1930', available at <http://business.uni.edu/economics/themes/milder.pdf>. The Smoot-Hawley Tariff Act of 1930 was the highest US tariff of the century and sparked massive foreign protest and trade retaliatory measures from major European nations and Canada. Smoot-Hawley did not cause the Great Depression, but it worsened it by initiating a wave of trade barriers that severely reduced world trade. For example, Canada retaliated by imposing new tariffs on 16 products that accounted altogether for around 30% of US exports to Canada. Canada later also forged closer economic links with Great Britain. France and Britain protested and developed new trade partners.
- 7 *Ibid.*
- 8 Aitken, Bruce and Fonkem, Ngosong, n 1 above. During World War II, the US shipped military equipment and a host of other supplies to both Asia and Europe.
- 9 Brookings Institute, 'The WTO and GATT: A Principled History', available at [http://www.brookings.edu/~media/press/books/2009/selfenforcingtrade/selfenforcingtrade\\_chapter.pdf](http://www.brookings.edu/~media/press/books/2009/selfenforcingtrade/selfenforcingtrade_chapter.pdf); Crowley, Meredith, 'An introduction to the WTO and GATT', Federal Reserve Bank of Chicago. See also the WTO webpage at [www.wto.org](http://www.wto.org).
- 10 *Ibid.*
- 11 *Ibid.*
- 12 See the WTO webpage at [www.wto.org](http://www.wto.org); Miller, James N, 'Origins of the GATT—British Resistance to American Multilateralism', available at <http://www.levyinstitute.org/pubs/wp/318.pdf>.
- 13 Hoekman, BM and Kostecki, MM, *The Political Economy of the World Trading System: from GATT to the WTO* (1995, Oxford: Oxford University Press) p 301, available at <http://www.eolss.net/sample-chapters/c14/e1-44-03-05.pdf>. They provide a good history of the post-WWII world trading system.
- 14 *Ibid.*
- 15 [www.wto.com](http://www.wto.com); [https://www.wto.org/english/tratop\\_e/gatt\\_e/gatt\\_e.htm](https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm); and as to US Trade Policy since 1934, see [https://www.usitc.gov/publications/332/us\\_trade\\_policy\\_since1934\\_ir6\\_pub4094.pdf](https://www.usitc.gov/publications/332/us_trade_policy_since1934_ir6_pub4094.pdf).
- 16 [www.wto.com](http://www.wto.com).
- 17 Love, Patrick and Lattimore, Ralph, 'Protectionism? Tariffs and Other Barriers to Trade', in *International Trade: Free, Fair and Open?* (2009, OECD Publishing), available at <http://dx.doi.org/10.1787/9789264060265-5-en>; [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).
- 18 [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm).

- 19 Aitken, Bruce and Fonkem, Ngosong, n 1 above.
- 20 The Kennedy Round, available at [https://en.wikipedia.org/wiki/Kennedy\\_Round](https://en.wikipedia.org/wiki/Kennedy_Round).
- 21 Ibid.
- 22 Norwood, Bernard, 'The Kennedy Round: A Try at Linear Trade Negotiation', *Journal of Law and Economics*, Vol 12, No 2 (October 1969), pp 297–319.
- 23 Crowley, Meredith, n 9 above.
- 24 Roshani M, Gunewardene, 'GA and the Developing World: is a New Principle of Trade Liberalization Needed?', 15 *Md. J. Int'l L.* 45 (1991), available at <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1333&context=mjil>.
- 25 Crowley, Meredith, n 9 above.
- 26 The Uruguay Rounds), available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm); [https://en.wikipedia.org/wiki/Uruguay\\_Round](https://en.wikipedia.org/wiki/Uruguay_Round).
- 27 Ibid; 'The Uruguay Round of Trade Negotiation: An overview', available at <https://www.bostonfed.org/economic/neer/neer1995/neer395a.pdf>.
- 28 Ibid.
- 29 Ibid.
- 30 Arvind Panagariya, 'On the "Extravagant" Predictions of Benefits from the Uruguay Round', *Economic Times*, 25 August 1999, available at <http://www.columbia.edu/~ap2231/ET/et-03-aug99.htm>.
- 31 Ibid.
- 32 The Doha Round, available at [https://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](https://www.wto.org/english/tratop_e/dda_e/dda_e.htm).
- 33 Debapriya, Bhattacharya, 'Least Developed Countries in Trade Negotiations: Planning Process and Information Needs', *Centre for Policy Dialogue*, September 2005, Paper 52, available at [http://www.cpd.org.bd/pub\\_attach/op52.pdf](http://www.cpd.org.bd/pub_attach/op52.pdf).
- 34 <http://www.meti.go.jp/english/report/downloadfiles/2008/WhitePaper/4-2.pdf>.
- 35 Doha Round: what are they negotiating? , available at [https://www.wto.org/english/tratop\\_e/dda\\_e/update\\_e.htm](https://www.wto.org/english/tratop_e/dda_e/update_e.htm).
- 36 Ibid.
- 37 'The Cancun Challenge'm *The Economist*, 4 September 2003. Retrieved 3 August 2008. In 2008, e.g., several countries called for negotiations to start again. Luiz Inacio Da Silver, former president of Brazil, called several countries leaders to urge them to renew negotiations. The director-general and chair of the Trade Negotiations Committee Pascal Lley My visited India to discuss possible solutions to the impasse.
- 38 Srinivasan, TN, 'The Future of the Global Trading System Doha Round, Cancún Ministerial and Beyond.' , available at <http://www.econ.yale.edu/~srinivas/Future%20of%20the%20Global%20Trading%20System.pdf>.
- 39 Donnan, Shawn, 'Trade talks lead to 'death of Doha and birth of new WTO''. *Financial Times*, 20 December 2011, available at. <http://www.ft.com/intl/cms/s/0/97e8525e-a740-11e5-9700-2b669a5aeb83.html#axzz424VtwH9j>.
- 40 Ibid.
- 41 According to the WTO, as of 1 February this year, there are 419 FTAs in force in the world, three FTAs signed and another 35 FTAs under negotiation: see <https://www.wto.org>.
- 42 During the most recent regional FTA, the TPP, the trade negotiators had to consult, among others, with agricultural producers and farming associations, chambers of commerce and industry, consumer bodies, importer and exporter associations, industry associations, intellectual property associations, various interest groups, professional associations, and standards setting bodies, to name a few. See [https://en.wikipedia.org/wiki/Trans-Pacific\\_Partnership](https://en.wikipedia.org/wiki/Trans-Pacific_Partnership).
- 43 The TPP agreement, e.g., contains 30 chapters: see <https://ustr.gov/tpp/>.
- 44 UNCTAD, *Trade Negotiations and Africa Series: No 2 Trade Capacity Development For Africa: Compendium of Papers, 2010*, available at [http://unctad.org/en/Docs/ditctncd20051\\_en.pdf](http://unctad.org/en/Docs/ditctncd20051_en.pdf).
- 45 Plummer, Michael, 'Areas of Focus of Capacity Building Interventions in Trade Policy Development and Trade Negotiations in Africa over the Medium Term, 2007–2011'. *African Capacity Building Foundation*,



The TNC currently is actively sourcing funds for multiple annual in-depth training sessions.



September 2007, available at <http://elibrary.acbfpact.org/acbf/collect/acbf/index/assoc/HASH014f.dir/doc.pdf>.

46 Debapriya, Bhattacharya. n 33 above.

47 Ibid.

48 Doha Round. Strengthening Developing Countries Capacity For Trade Negotiation: Matching Technical Assistance to Negotiation Capacity Constraints, December 2004, available at [http://www.g77.org/doha/Doha-BP04%20-Strengthening\\_Southern\\_trade-related\\_negotiating\\_capacity.pdf](http://www.g77.org/doha/Doha-BP04%20-Strengthening_Southern_trade-related_negotiating_capacity.pdf).

49 WTO, 'The Accession Process—the Procedures and How They Have Been Applied', available at [https://www.wto.org/english/thewto\\_e/acc\\_e/cbt\\_course\\_e/c4s6p1\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c4s6p1_e.htm).

50 <http://law.ku.edu/international-comparative-law>.

51 Ambassador Kim's International Trade Institute ('ITI') and the Global Development Law and Consulting Group ('GDLCG') have been taking a leadership role in this endeavour. The GDLCG, based in Washington, DC, and the ITI, based in Seoul, have created a structure that includes 'Anchor Schools' to provide assistance by way of training venues and student interns for basic research. We also plan to outreach to key international law firms for assistance with technical issues and also to multinational corporations for help in assessing the potential economic impact, sector by sector, of various elements of FTAs. As to the Anchor Schools, we have contacted Korean Universities to assist ITI in its anticipated role as Asian Secretariat for the TNTC. Similarly, we have contacted the University of Kansas Law School to assist the GDLCG in its role as North American Secretariat for the TNTC. And we have received a pledge of training facilities for possible seminars in Washington, DC from American University's Washington College of Law. Finally, we have contacted the Asian Development Bank and ASEAN for financial assistance and plan to also outreach to other international development agencies. For further information, contact us via [beatken@aikenberlin.com](mailto:beatken@aikenberlin.com) or [cskim@leeinternational.com](mailto:cskim@leeinternational.com).



**Bruce Aitken**  
**Founding Partner, Aitken Berlin LLP**  
**Law Firm**

Bruce Aitken, JD., MBA., BA is founding partner of the New York/Washington, D.C. Aitken Berlin LLP law firm and its consulting firm, Global Development Law & Consulting Group. He is President of the Trade Negotiations Training Center (TNTC), which he founded and launched at the April 2014 IPBA Annual Meeting in Kuala Lumpur. He specialises primarily in arbitration, customs/international trade and government procurement/homeland security. He is the only American to have been named to these major international dispute resolution panels: the US-Canada Free Trade Agreement, the NAFTA, the WTO and the WIPO. In May 2013, Mr Aitken was named an International Super Lawyer in the Washington Post, a top 5% designation. He also was so named in 2014, 2015, 2016 and 2017. In 2001, he was a White House appointee as the only civilian on the Office of Homeland Security's Task Force on State and Local Guidelines. He also served as Co-Author of the homeland security shows on World Business Review/21st Century Business from 2004-2009. His Co-Anchors were Generals Alexander Haig and then Norman Schwarzkopf. He also is an award-winning film producer.



**Dr Chulsu Kim**  
**Senior Advisor, Lee International IP**  
**& Law Group**

Dr Chulsu Kim, Hon. LLD, .PhD, .MA, .BA, is Senior Advisor at Lee International IP & Law Group, in Seoul, Korea (2005-Present). He is a former president of Sejong University (2001-2005). His career in the Korean Government centered on trade policy making and international trade negotiations. He was appointed South Korean Minister of Trade, Industry and Energy for the Government of Korea in February 1993. In December 1994 he was appointed as Ambassador for International Trade. In his capacity as Assistant Minister, from 1984 to 1990, Dr Kim served as the chief international trade negotiator for Korea. From 1987 to 1990, he chaired the Uruguay Round's Negotiating Group on MTN Agreements. In 1991, he was appointed president of the Korea Trade Promotion Corporation. He took on the charter post of WTO Deputy Director-General on 3 July 1995. Dr Kim also served as Assistant Professor at St. Lawrence University (1969-1970). He also serves as President of the Institute for Trade & Investment, which he founded in 1995 in coordination with his law firm. Dr Kim also is responsible for the Asian Chapter of the TNTC.



**Ngosong Fonkem**  
**Compliance Counsel,**  
**Alta Resources Corporation**

Ngosong Fonkem, JD, MBA, LL.M, BA is the Compliance Counsel for Alta Resources Corporation, in Green Bay, Wisconsin. His professional legal and business experience is diverse, working cross-culturally in the United States and internationally on a variety of issues involving commercial transactions and government procurements, compliance and risk management. He served as a fulltime member of the Faculty of Law at Multimedia University in Malaysia. Also, he is a consultant with the Global Development Law & Consulting Group and with the Trade Negotiations Training Center. He is a board member of the Brown County Harbor Commission in Green Bay.