

PROCESS MATTERS

Sustainable Development and Domestic Trade Transparency

Edited by Mark Halle and Robert Wolfe

The background of the cover features a blue-tinted photograph of two individuals in business attire shaking hands over a table. On the table are several documents and a pen. The scene is reflected in the glossy surface of the table, creating a symmetrical effect. The overall mood is professional and collaborative.

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Process Matters: Sustainable Development and Domestic Trade
Transparency

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Preface

The double-entendre contained in this book's title is deliberate. We examine matters of process in developing trade policy, and especially how transparency is handled in that process, based on a look at six very diverse country experiences.

But we also want to convey the message that process does indeed matter—it makes a difference to what can be achieved in trade negotiations. We believe that trade policy developed through a process that is transparent, offers opportunity for different stakeholders to contribute and is openly linked to established public policy goals leads to better negotiated outcomes.

This book originated with a workshop convened in Geneva in December 2004, with funding from the Swiss Agency for Development and Cooperation (SDC). The International Institute for Sustainable Development (IISD), a close observer of the World Trade Organization, was increasingly convinced that much of the roadblock in Geneva was due to the fact that, by the time positions are aired at the WTO, it is often too late to affect them. If they are to be influenced at all, it may have to be further upstream, at the national level.

We set about to look at best practices in trade policy development in both developed and developing countries, and in particular at the way in which different interests are balanced in the process of arriving at a final trade negotiation position. And we wanted to see how much of that experience is transferable to other countries and contexts.

This book is largely based on the papers prepared for that workshop. The opening and closing chapters are drawn up on the basis of our experience with the papers and workshop.

We would like to express our appreciation to SDC who funded the workshop and much of the work in pulling the book together. We hope they will draw from it some inspiration in reviewing the Swiss trade policy process.

We would also like to thank Jesse Helmer from the School of Policy Studies at Queens' University in Canada for research and writing assistance. Thanks go also to David Boyer of IISD for managing the project, and to Stu Slayen and Michelle French, also of IISD, for managing the editing and production process.

Trade policy begins at home: Information and consultation in the trade policy process

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Experienced trade negotiators know that their work begins at home in learning what matters for their constituents, and it ends at home in ensuring that any new obligations can be implemented in legislation. Consultations with citizens and economic actors are therefore a fundamental part of making good trade policy. The term “consultations” covers efforts to build support for policies and practices that help the government develop effective policies. Public education; dissemination of information to interested groups; broad public involvement in the policy process; and narrow solicitation of information from economic actors are all essential for making democratic trade policy that will be both legitimate and effective.

Despite all the attention to making the World Trade Organization (WTO) more open, trade policy democracy begins at home, not in Geneva. Talking to governments at the WTO is too late. This does not let the WTO off the hook—transparency in Geneva matters, too—but trade negotiations and the trading system reflect the trade policy process at the national level and inherit its strengths and weaknesses. In the decade or so since the General Agreement on Tariffs and Trade (GATT) morphed into the WTO, trade policy has collided and overlapped with many previously-domestic policy spheres, stretching the domain of trade policy. In many countries, the trade policy process has not adapted well to this evolution.

During the 47 years from the adoption of the GATT in 1948 to the establishment of the WTO in 1995, barriers to trade in manufactured goods were progressively lowered or removed, and world economic growth expanded many times over. The pressures of open competition were also, in many cases, pressures for more transparent and robust domestic institutions, for improved governance, for better education and for the breakdown of social barriers—in short, these pressures contributed to the development of the countries involved in trade. While trade did not prevent the emergence of economic elites, and democracy often took a back seat to economic devel-

opment, by and large the countries that were open to trade grew faster and are now better off than those who kept their borders closed and limited the competition faced by their protected domestic industries. If development requires much more than just trade, at least trade appears to be making its contribution.

The gains from trade openness are not automatic. Whether a country benefits depends to an important extent on the conditions in that country. Countries that have the human capacity and range of institutions necessary to manage trade and competition, and that are governed by broadly-accepted standards of transparency, participation and democratic accountability, are in a good position to benefit from trade opening. Countries that lack this capacity or these institutions will almost surely lose out from liberalization. In short, the national trade policy process matters.

This book contributes to a growing literature on the national trade policy process. We undertook to explore several related questions. How has the trade policy process of key WTO Members changed? Has it become more or less democratic? Does an open and transparent process lead to a different or more legitimate trade policy? Does it alter the way a government balances interests, or perceives the public interest? Or is policy still dominated by whoever has the ear of government? Do money, or concentrated votes, talk? Does any of this make a difference for sustainable development?

Table 1: Characteristics of selected WTO Members

Country	Population (thousands, 2004)	Regional Trade Agreements	2005 HDI Rank	2004 Trade Rank*	
				Exports	Imports
Canada	31,902	NAFTA	5	9	10
Netherlands	16,250	EU	12	6	8
Norway	4,582	EFTA	1	28	37
Brazil	178,718	MERCOSUR	63	25	29
India	1,079,721	SAFTA	127	30	23
South Africa	45,584	SACU	120	37	32

* Ranking includes intra-EU trade; Netherlands' total reflects its trans-shipment role.

Sources: UN Human Development Report, 2005; WTO, 2005, International Trade Statistics, Table I.5.

We decided to explore these issues in case studies of the national trade policy process in six WTO Members from five continents (Table 1). The developed countries are all relatively small members of the OECD: Canada, a fed-

eral state with a dominant trading partner in NAFTA; **Norway**, a member of the European Free Trade Association; and the **Netherlands**, a member of the European Union. The three developing countries—**Brazil**, **India** and **South Africa**—are all significant players in the Doha Round of WTO negotiations and middle-income countries that dominate trade in their own regions. All six countries are robust democracies that participate in significant regional agreements that constrain their trade policy in some way. We expected to find similarities as well as differences in their approaches to the trade policy process.

While each chapter contains case studies, the aim was to look at the trade policy process as a whole, and not merely at how it contributes to the integration of a particular sector into the trading system. We did not ask the authors to orient their remarks to a particular view of either the optimal trade policy for a country or the optimal policy process. The analysis is therefore procedural. In each of the country papers, the authors describe the national trade policy process and assess it in terms of *transparency* and opportunities for meaningful *participation* by stakeholders ranging from major export-oriented commercial organizations to rejectionist NGOs. Each paper also sets forth recommendations on how the process might be improved.

In order to provide a common point of reference, this book also attempts to illuminate the relationship between national trade policy processes and sustainable development. By sustainable development we mean “the achievement of freedoms that allow individuals to pursue that which they have cause to value, but achieved in such a way that future generations’ ability to achieve these freedoms is not compromised” (see Cosbey, next page). This objective includes poverty alleviation, responsible stewardship of the environment and the capacity of citizens to lead self-directed lives. Our premise is that transparency and participation are part of seeing “development as freedom” and that participation can contribute to sustainable development by ensuring that the needs of growth, the environment and social cohesion are all considered by policy-makers. If trade policy is made in the light of day, then there is a chance that it will not merely serve the interests of a narrow elite.

How trade transparency contributes to sustainable development as understood by Amartya Sen

Aaron Cosbey

The Doha Declaration and the Marrakech Agreement establishing the WTO both affirm sustainable development as one of the objectives of the multilateral trading system. But actually defining sustainable development is a challenge that both texts wisely avoid. A working definition would be useful, however, to help assess the extent to which the trading system is succeeding on its own terms.

The first major promoter of sustainable development was the report of the World Commission on Environment and Development—the *Brundtland Report*—which defined it as development that meets the needs of the present generation, without compromising the ability of future generations to meet *their* needs. As a guide to defining *development*, this definition is not helpful. In fact this passage makes no attempt to do so; it merely qualifies how development can be made to be sustainable.

An explicit and novel definition of development can be found in the writings of Nobel Laureate Amartya Sen, who argues that development occurs when individuals achieve the freedom to pursue that which they have cause to value.

What types of freedom does Sen have in mind? The ability to be well nourished, for example, is a key freedom without which pursuit of most life paths is much more difficult. The same can be said of the ability to read and write; the ability to participate in public discourse and have one's voice heard; freedom from discrimination, from crime, from ecological disasters, and so on. These are all freedoms to be valued in and of themselves—what Sen calls *constitutive* freedoms—but they can also be valued for their role in achieving other freedoms, serving as what Sen calls *instrumental* freedoms.

Sen's illustrative, non-exhaustive list of freedoms is as follows:

Political and participative freedoms/civil rights (e.g., free speech, elections. Instrumental in forcing governments to attend to the needs of their people).

Economic facilities (e.g., opportunities for participating in trade and production, for selling one's labour or products on fair competitive terms, and access to credit. Instrumental in creating income, which in turn is instrumental in achieving a number of other constitutive freedoms).

Social opportunities (e.g., access to adequate education and health facilities. Health facilities can be instrumental in avoiding preventable disease; education can be instrumental in empowering women to end discrimination and in participating in social discourse and democratic processes).

Transparency guarantees (e.g., openness in government and business; social trust. Instrumental in helping ensure that political freedoms are exercised; that economic freedoms can be pursued in the context of fair competition).

Protective security (e.g., law and order, social safety net like unemployment insurance or the extended family support system. Instrumental in protecting the individual from harm, caused either through civil disorder or economic misfortune).

Note that Sen's concept of development speaks of enabling individuals as the agents of social and personal change. It is not a top-down process of bestowal upon passive recipients. As well, development is a much broader concept than increased income, though income can be a powerful instrument in achieving various freedoms.

Armed with this definition of development, we can in turn define sustainable development as the achievement of freedoms that allow individuals to pursue that which they have cause to value, but achieved in such a way that future generations' abilities to achieve these freedoms are not compromised.

What does this allow us to say about trade, transparency and the pursuit of sustainable development? First and foremost, allowing public input into domestic negotiating positions is an important element of political and participative freedom. Sen argues that this type of freedom is particularly valuable because it makes political leaders accountable to their citizenry. He notes, for example, that there has never been a famine in an elected democracy, arguing that this is because the leaders cannot afford to ignore the concerns of their electorate. In a similar way, allowing the public to see and comment on national negotiating positions helps to ensure that the final negotiated results will better serve their expressed interests.

As an aside, it might be argued that citizens do not understand what is in their best interests—that it is up to enlightened public officials to decide for them, under the cover of necessary secrecy. As a matter of principle, this argument starts down a dangerous slippery slope; it belongs to an era of governance whose time has long passed.

Another positive connection between trade rules and sustainable development as we have defined it comes from the need for transparency in trade-related government actions. Agreements on Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS), government procurement, services and others demand that governments meet a high standard, publishing the

rules by which they will operate in these areas, and abiding by fair guidelines in propounding any measures. The TBT Agreement, for example, asks that any new regulation not based on international standards must be published in advance in draft form, notified to the WTO Secretariat and sent to WTO Members on request. Further, governments must take Member comments into account when formulating the final version of any notified measure.

Granted, these sorts of transparency obligations are due only to foreign, not domestic, actors. But they will necessarily also benefit locals, who will also have access to the legislation in question. Perhaps more importantly, the transparency requirements in WTO rules begin to create a culture of openness in governments' regulatory operations that may have salutary effects in areas of strictly domestic interest as well.

Does adherence to trade agreements such as the WTO laws automatically lead to sustainable development as defined by Sen? This question can't be answered in the abstract. First, the freedoms important to a given citizenry have to be defined by that citizenry, not assumed. Second, the interactions between trade rules and development as defined by Sen are many and complex. Trade may or may not increase income equitably, depending on the nature of domestic institutions for income distribution and social safety nets, and depending on the capacity of domestic exporters to actually compete in world markets. Trade rules may improve or threaten social opportunities through their impact on the quality and accessibility of education and health services, again depending on domestic institutions, and on the details of the negotiated outcomes. The final picture refuses to be resolved in black and white, and outside the specific context of a given country and given trade rules. Indeed, even while it is clear that transparency in trade policy is an unquestioned element of development, Sen's framework is most useful because of its ability to deliver nuanced and complex results at the local level, rather than because of any ability to judge the trade regime in the abstract.

1. Transparency in the trade policy process

Consistent with Cosbey's analysis of trade and sustainable development, our focus in this book is on transparency, one of the fundamental norms of the trading system. In the parlance of the WTO, transparency equates to prompt and readily available information on the conditions that apply to trade in a particular country. For example, WTO Members are obliged to notify the other Members in a timely manner about changes to market entry requirements, or about regulations affecting traded products. While this requirement remains an important goal, implementation is challenging.

The WTO's transparency norm is based on the principled belief that democratic governance and efficient markets are both enhanced when participants know what is going on, and can influence the outcome. The tricky part is finding a way for participants to make use of information, especially when the decision in view concerns not a specific administrative action, but the future of the general regulatory framework.

Officials need information, too, if they are to do their jobs well. New legal texts change little when they are incongruent with the informal practices and mutual expectations of actors in the trading system. Trade policy officials cannot make up their "interests"—they need to hear from their citizens and their firms who are engaged in trade as importers and exporters, or producers and consumers. What problems do economic actors encounter? What new opportunities do they wish to pursue? Only with this information can officials begin to think about how to participate in the Request and Offer process in the General Agreement on Trade in Services (GATS), or analyze tariff proposals on the table in Geneva. The importance that WTO Members ascribe to transparency is, or should be, more than rhetorical.

The general importance of transparency in governance to development is well known, as is the importance of engagement with the thousands of grassroots organizations whose activities are the green shoots of development. A transparent process, one which is necessarily democratic, may also serve trade liberalization; some scholars suggest that countries becoming more democratic are more likely to move towards trade liberalization. A possible explanation for this phenomenon is that in a democracy, leaders are chosen by a wider group of people than in an autocracy. As leaders come to depend for their support on popular elections rather than small interest groups, they are able to consider policies that benefit a wider group of people.

Trade policy is a residual—it is the part of commercial policy that is transnational and the part of foreign policy that is commercial. It is where diplomats meet t-shirts and potatoes. The residual nature of trade policy renders trade politics residual as well. Trade rules matter to multinational corporations, dairy farmers, anti-globalization activists, human development workers, think tanks and scores of other actors, but for few of them is trade policy a central concern. Trade policy remains foreign policy, but as it encounters previously-domestic policy domains, it also encounters the domestic policy-making process. In democratic states, this encounter invariably complicates the trade policy process by involving multiple departments of the executive beyond the trade ministry, as well as the legislature and sometimes the judiciary. In federal states, it often engages sub-national governments. In all states it requires trade-offs between producers and consumers, and between concentrated and dispersed interests.

As in other policy domains, it can be easier for officials to hear the voices of concentrated producers than dispersed consumers. The right consultation process helps, but so too does the very fact of engagement in trade negotiations with other countries, as involvement with outsiders can upset protected internal bargains. It can also upset agreed internal political processes, because participatory processes in one country cannot determine the outcome of a multilateral negotiation. Domestic issues lose “input legitimacy” as they move to the multilateral level, even where they had this legitimacy at the domestic level. As decisions move further away, new measures are needed to ensure an accountable process.

2. Information and consultation

The spectrum of approaches to public participation in the policy process begins with accurate, objective and timely *information*, which promotes transparency and accountability and enables citizens to participate in the public policy process; and *consultation and citizen engagement* processes that engage individuals or groups in the development of policies that affect them directly, or in which they have a significant interest. We think that the important questions for analysis, therefore, concern the *amount and quality of information that governments make available* and the *opportunities created to use it*. The chapters in this volume provide rich institutional detail on the consultative processes in their respective countries. This chapter provides an overview of the country chapters and identifies common themes.

Public information includes statistics on trade flows; discussion papers, briefings and newsletters; publication of legislation and regulations; and updates on the status of negotiations and disputes. Canada leads the way in terms of public information: fundamental information on trade flows is published online by its statistics agency, its trade department publishes analysis and research on trade policy issues, and extensive information on current negotiations is also published on the trade department’s Web site. Interestingly, Norway’s EEA Consultative Body, which consults on European trade policy, is more transparent than its Foreign Affairs Committee, which consults on WTO matters, partly because it publishes the agenda and minutes of its meetings online (although publication of the minutes is delayed for one year). The three developed countries share a great deal of information with the public.

The experience in developing countries is not as positive. South Africa’s trade department Web site is practically barren when compared to Canada’s. Basic information on trade agreements is hard to find or not available. While the Brazilian Business Coalition publishes information on its Web site for its

members, the (meager) efforts of the Brazilian government to provide public information leads da Motta Veiga (this volume) to recommend government white papers on trade negotiations. This recommendation is echoed by Melchior *vis-à-vis* Norway, in order to “[improve] the foundation for public debate.” Providing facts and evidence to inform policy debates allows both governmental and non-governmental actors to develop better policy. In consulting non-governmental actors, governments of developed and especially developing countries should not underestimate the value of publishing this kind of information.

Access to information is the litmus test of transparency, but mere access does not necessarily lead to transparent governance. What information is available, when and to whom? Moreover, how is that information made available? A government that keeps its negotiating position secret from its own citizens is not necessarily less transparent than a government that publishes its position yet couches it in ambiguous or incomprehensible language. And even when dealing with groups who equally-well understand the argot of trade policy, officials may provide more or different information to the group that embraces the government’s principles than it provides to the group that rejects those principles. Modern trade policy is complicated, with two implications for policy-makers: 1) citizens who do not fully understand may resist participation in the global trading system that would otherwise benefit them; and, 2) others who do fully understand may take advantage of the imperfect understanding of others in order to capture the trade policy process to their own benefit.

In the history of trade policy and trade negotiations, formal consultation is a relatively new phenomenon. In the nineteenth century, Canada’s first Prime Minister, Sir John A. Macdonald, did not need to have formal mechanisms to consult the relevant stakeholders on a tariff change. As he walked down the main street in his electoral district of Kingston, he could chat with the people who paid tariffs, and with officials whom he had appointed, such as the customs collector. But times have changed, in Kingston and in the world. In most areas of public policy, government is more complicated, and citizens and decision-makers are increasingly separated in space and time.

Who then should participate in both the information and the consultation phases, and how? Despite the pressure coming from NGOs, the main policy objective is not merely accommodation of such pressure. Who has a legitimate interest? In a “rights and responsibilities” framework, the World Commission on Dams suggested that who has a legitimate stake depends on the extent to which a person’s rights and legitimate interests are affected by the decision to be taken, and the extent to which the decision would lead to that person taking on more responsibilities, voluntarily or involuntarily.

The country chapters identify a host of consultation mechanisms. Formal consultation mechanisms exist in all six states featured in this volume, but the formal structures tell at most only half of the story. Indeed, informality is a striking hallmark of the consultation processes of most countries, developed and developing. Da Motta Veiga critiques informal methods of consultation in the Brazilian trade policy process on the grounds that they give rise to abuses of administrative discretion. The administrative law regime of each state is beyond the scope of this book, but administrative discretion in the trade policy process is not. In the case of Brazil, he observes that the state exposes the FTAA negotiations more fully than it does other negotiations, leaving negotiations on tariff concessions, for example, relatively informal and opaque. Da Motta Veiga also questions the motivation of bureaucrats who exercise discretion in inviting private sector participation: “Technical representatives from various ministries and other government organs used to take part in these [inter-ministerial thematic] groups, while private sector participation was informally admitted in some, but not in others. There were no express reasons for such exclusions.” The risk of informal mechanisms of consultation is that without formal rules and transparency, discretion will lead officials to invite either the wrong participants or not enough participants, resulting in ineffective consultation and, ultimately, poorer trade policy.

Informal consultation mechanisms are useful because they are often the best way to obtain sensitive information from specific actors. But informal consultations need not be the only or primary means of obtaining such information. Witness Canada, where the state sees formal and informal mechanisms as complementary rather than competitive ways of consulting stakeholders. In any case, the criteria for informal consultations can, and ought to be, formally specified.

The chapters assess the variety of mechanisms in use by answering the following questions: Do consultations take place? Do they improve policy transparency? Are they formal or informal? And, do they allow participation by all interested groups? Who has a legitimate voice? When and how are interests balanced (e.g., farmer vs. consumer)? Who’s in and who’s out? The following section introduces the common kinds of consultation mechanisms: *inter-departmental*, *business-focused*, *multistakeholder* and *room-next-door*. We then discuss the way entering into new negotiations motivates change in consultation mechanisms, and the reality that sometimes consultations must be explicitly political.

2.1. *Inter-departmental consultation*

In developed as well as developing countries, the trade policy process has expanded to involve multiple departments of the executive branch. The lead

department may be foreign affairs (as in Norway and Brazil); trade (as in Canada and South Africa); economic affairs (as in the Netherlands); or commerce (as in India), but typically departments such as agriculture, the treasury or the environment are also involved. India has a National Trade Advisory Committee (NTAC) that includes several government departments. Its Board of Trade, while not exclusively a governmental forum, includes the secretaries of key ministries. The experience in another federal state is similar, but more extensive. In addition to 20 working groups drawn from 17 departments of the federal government, Canada has a C-Trade committee that brings together federal and provincial government officials and a similar committee that includes representatives of municipal governments. Inter-departmental consultation seems a necessary reaction of democratic governments, whether developed or developing, to the increasingly broad domain of trade policy.

The inter-departmental trade policy process in the Netherlands is complicated by Dutch membership in the European Union. Not only does membership in the EU mean that “Dutch trade policy is thus in almost every aspect synonymous with EU-trade policy,” (van de Wiel, this volume) but it also affects the inter-departmental consultation process. The Dutch Interdepartmental Council for Trade Policy (IRHP), coordinated by Economic Affairs, is the principal organ for this consultation process. The body meets regularly on Thursdays, in advance of the Friday meetings of the Article 133 Committee, to prepare advice and instructions for the Dutch representative on the committee. In South Africa it is not yet clear how the supranational institutions of the Southern African Customs Union (SACU) will affect South Africa’s trade policy and trade policy process.

2.2. *Business-focused consultation*

Business-focused consultations are common to all countries, but the consultation mechanisms differ from country to country, perhaps unsurprisingly, developed as well as developing countries organize, or have organized, their business consultations along sectoral lines. Canada has 12 Sectoral Advisory Groups on International Trade (SAGITs) that deal with sectors such as textiles, information technology and agriculture. The SAGITs, which consist of senior business executives and representatives of labour, environmental groups and academia, provide confidential advice to the Minister of International Trade. This mechanism dates to the 1980s and remains a continuing aspect of Canada’s business consultations. Brazil’s early mechanism for consulting business was similarly aligned according to sectors, following the sectoral structure of the foreign trade department of the Bank of Brazil (CACEX). Although the CACEX model was abandoned in the early 1990s, sectoral organization persists in the Inter-ministerial Groups, which focus on

technical aspects of trade policy and were established to mirror the negotiating groups in the Free Trade Area of the Americas (FTAA) negotiations.

In some states, umbrella business organizations have emerged as intermediaries between the state and individual enterprises. The Confederation of Norwegian Business and Industry (NHO) provides the State with information on export interests and devotes resources to trade policy research and advocacy. The Brazilian Business Coalition (CEB) fulfills a similar function, although the CEB, through its Web site, provides feedback on its consultations with the State to its members. A challenge for these umbrella organizations is how to communicate both offensive and defensive interests.

2.3. *Multistakeholder consultation*

South Africa's National Economic Development and Labour Council (Nedlac) is an interesting *multistakeholder consultation* mechanism in this regard. Peter Draper (this volume) questions whether Nedlac, which includes representatives of business, labour, government and the community, is an appropriate forum for gathering *commercial intelligence*—the often confidential business information that helps the State determine its offensive interests in a trade negotiation. We see a similar concern in the Canadian context, where “by inviting more players to the table, the government has, to some extent, changed the game” (Wolfe, this volume). Different mechanisms are best suited for particular purposes. Mechanisms that combine the gathering of commercial intelligence with other purposes are likely to produce unsatisfactory outcomes for the parties consulted.

Over time, states have instituted new mechanisms for consulting different sectors of civil society and have revised existing mechanisms to include new voices. Brazil is an excellent example of this kind of transformation. In almost total opposition to the limited sectoral approach to consulting business in the years of the CACEX model, the Brazilian Network for the Integration of Peoples (REBRIP) includes a wide range of NGOs and trade unions. Merged with the WTO Network in 2000, REBRIP is to the NGO sector what the CEB is to the business sector. In recent years REBRIP has been invited to participate in the thematic groups that track WTO negotiations.

2.4. *“Room-next-door” consultation*

Involving business and other civil society groups with official WTO delegations is a practice common to both developed and developing countries. At recent WTO ministerials, Canadian farmers, Indian industry association representatives and South African trade unionists are as close as any stakeholder can get to the negotiations. Da Motta Veiga calls this consultation mechanism “*room next door*” *consultation*. It is an open question whether

this sort of consultation hinders or helps on balance, but it is very transparent for the representatives invited to participate. As with other mechanisms, the state retains the power of invitation.

3. International negotiations and trade agreements

Change in national trade policy processes is driven by domestic politics, of course, but the six country papers are rife with examples of how entering into and participating in trade negotiations, as represented by either a major WTO meeting or a major Regional Trade Agreement (RTA), generally leads to new consultation mechanisms and an increase in the types of stakeholders consulted. We see this phenomenon in the case of Canada, for whom the Canada-U.S. FTA of the 1980s represented a significant liberalization of Canada-U.S. trade in virtually all goods and sectors. Indeed, most of the mechanisms of consultation currently employed by Canada date from this period. Similarly, the trade policy process in Brazil changed dramatically in response to the FTAA negotiations, spawning both the Brazilian Business Coalition and the Brazilian Network for the Integration of Peoples. For India, the 1996 Singapore Ministerial conference of the WTO, its first, was the catalyst for subsequently involving a wide range of actors in the NTAC. The Seattle Ministerial was the first in which Indian business organizations participated.

The catalyst role of major meetings or negotiations is not surprising for several reasons. Trade negotiations by their very nature disturb the domestic balance between regulators and the regulated, the state and its citizens, by introducing the offensive agenda of export-oriented foreign businesses. Especially in the case of negotiations conducted since the creation of the WTO, the nature of the agenda also fosters change by encouraging Members to discover their interests in a wider range of fields. Such discovery requires consultation with previously-disengaged actors.

The crucial point is that salience matters. If businesses believe that their offensive or defensive interests are affected by a particular negotiation or meeting, then they will seek to influence it by vigorously participating in the national trade policy process. Conversely, if business organizations see nothing or little at stake, then they will not engage. As van de Wiel (this volume) observes, quoting a spokesman for a medium and small-scale business: "It is a matter of manpower. We are very pragmatic. Our markets are European markets. We don't follow the trade debate in the WTO. In the end, if there is an agreement, we look at what it means for our members." These same rules can be applied to NGOs and other participants in consultations.

For democratic developing countries with embryonic consultation mechanisms or relatively opaque national trade policy processes, it follows that as

the stakes increase, so too will the desire of other levels of government, citizens, business and NGOs to participate in the development of trade policy. Governments that wish to make better trade policy ought to anticipate this waxing of interest and plan the development of consultation mechanisms accordingly.

For states with fairly liberal trade, for instance Canada and the Netherlands, this phenomenon is somewhat problematic. Once NAFTA was agreed and the Netherlands joined the EU, many of the priorities of Canadian and Dutch businesses were addressed. But for other sectors—take services as an example in the Canadian context—there remain significant issues to negotiate. It is unclear whether consultation mechanisms created during the waxing of business interest have evolved such that they can be equally useful during a period of waning business interest. In the case of the Netherlands, national consultation processes have withered because businesses with export interests focus on Brussels. As in other EU countries, however, businesses that seek protection from foreigners still lobby in the national capital.

Moreover, the waning of *egocentric* interests is often accompanied by the waxing of *cosmopolitan* interests. The former are the interest of producers and consumers; the latter are the interests of citizens concerned with society as a whole and with the needs of people far away. The Norwegian experience testifies to how much things have changed since the GATT: some NGO representatives in its official WTO delegation see themselves as representatives of developing countries and *not* as a Norwegian lobby group. Indeed sometimes this tension must be resolved not in “trade policy consultations” but in a more political forum.

4. Political consultation

All citizens have a right to receive information, but not everyone who wishes to express views has information that will be useful to negotiators. The risk of talking only to the converted is as great as wasting time on the critics who reject the premises of the trading system. While being open to as many voices as possible, there are at least three sets of critics to whom negotiators rarely talk, despite their protests at not being consulted. The first are groups who reject the premises of trade policy, who believe in local production and local choice. Especially in such fields as agriculture and services, they believe that production should be as close to the consumer and to the market as is reasonably possible. This group favours the notion of self-sufficiency and believes that local authorities should enjoy the maximum possible range of policy choices. The second group believes that the trading system is irremediably dominated by powerful commercial forces that dictate government

trade policy and control government trade negotiators. These critics believe that nothing short of a crisis will bring about the necessary reforms. The final group believes that the liberal economic model has proved to be a sham. Any attempt to advance the liberalization agenda—at the global, regional or bilateral level—amounts to providing support and legitimacy to a failed system.

These questions are appropriate, but trade policy consultations with officials are usually concerned with the detail rather than with the political premises of policy. The role of parliamentarians is often circumscribed, however, because the legislative stage is far down the road in the policy process. The U.S. is different, since Congress holds hearings to consider both technical matters and such essentially political topics as whether being in WTO at all is a good thing (see Sections 124–125 of the Uruguay Round Agreements Act (URAA) (P.L. 103–465)). The relative autonomy of Congress forces negotiators to provide information and to consult elected politicians directly throughout the negotiating process in order to ensure that the eventual deal is accepted.¹ Other countries might well emulate this aspect of the U.S. trade policy process.

The papers report that the role of parliaments is mostly similar. In all six states, the executive branch of government takes the lead in developing trade policy, leaving the legislative and judicial branches with relatively minor roles. Political consultation mechanisms are common to developed as well as developing countries. Parliamentarians are often included in official WTO delegations and parliaments occasionally debate trade policy issues. Brazil's Congress is the most activist of the six legislatures, initiating a law (that remains in draft) that seeks to control Brazilian negotiators. Canada's House of Commons has no such power, or responsibility, which allowed it after one full day of debate on agricultural trade policy to give unanimous approval to a motion instructing negotiators at Hong Kong to seek increased market access abroad while offering none at home. The role of Nedlac in developing political consensus on trade policy issues in South Africa is also noteworthy, although the requirement for legislation to first be considered by Nedlac appears to be "patchily observed."

1 The engagement with Congress was part of the transformation of U.S. trade policy associated with the reciprocal Trade Agreements Act of 1934, which gave negotiating authority to the President but required extensive information and consultations with various parts of the government and industry (Barton, *et al.*, 2006: 31). For more on the U.S. process, see (GAO, 2002). The Australian experience leads to some skepticism that parliament in a Westminster system can be effective in this role (Capling and Nossal, 2003).

The proper role of parliamentarians and parliaments in the trade policy process has garnered some attention from academics and parliamentarians themselves. As Berg and Schmitz (2006: 7) note in their review of parliamentary oversight of trade policy and negotiations, since the Seattle Ministerial inter-parliamentary groups such as the Inter-Parliamentary Union and Commonwealth Parliamentary Association have held several WTO-related meetings that involve hundreds of parliamentarians. At the most recent of these meetings, which coincided with the Hong Kong Ministerial, the final declaration “not only reiterated its call for an explicit WTO parliamentary dimension, but also addressed the need to build stronger parliamentary roles within countries” (*ibid*: 8).

5. Conclusion

The variety of consultation mechanisms employed by developed and developing countries suggest a spectrum of approaches that correspond to multiple, competing goals. The kind of question asked in consultations seems in large part to determine the kind of mechanism used to ask it, as well as the audience. In all countries, formal and informal mechanisms exist, with formal mechanisms being generally more transparent than informal ones. In general, the typical progression is informal mechanisms followed by the addition of formal mechanisms (but not necessarily fewer informal mechanisms).

All WTO Members would do well to look to the examples set by the six countries examined in this book. The six case studies describe national trade policy processes that are imperfect but improving. Setting aside the various differences between these policy processes, several common themes remain. First, it is clear that the effective provision of public information is a precursor to meaningful consultation. Second, governments should anticipate that major negotiations of international agreements will spur intense interest amongst business, citizens and NGOs, and adapt their consultation mechanisms accordingly. Third, parliaments and most parliamentarians play a relatively minor role, and, given the increasing engagement of ministers in WTO negotiations, perhaps ought to play a greater role. Fourth, the gathering of commercial intelligence is fundamental to sound liberal and illiberal trade policy, and so ought to be segregated from consultations intended to serve other purposes.

The changing balance between egocentric and cosmopolitan interests in developed countries, coupled with the signing of major RTAs, has prompted changes and contemplation of changes to national trade policy processes. The rise of values-based NGOs who see themselves as advocates for citizens

of other WTO Members has introduced a new force on trade policy, though this too in the end is one more particular interest that does not necessarily contribute to the general interest. Along with negotiating in relatively new areas of trade policy, the biggest challenge facing developed and developing countries alike is finding ways for the public interest in sustainable development to be represented in a system that too often seems designed to serve only private interests. Even relatively open consultative mechanisms can be dominated by private actors, with few voices able to articulate a public interest. Mark Halle returns to this theme in the final chapter of this volume.

For developing countries, especially small ones, improving the trade policy process by introducing more and better consultation is a daunting task, because the trade policy process does not stand alone. As Cosbey argues, the trade regime cannot be judged in the abstract: it depends on the many other political choices a society makes. But countries can learn from each other. One of the ways countries can learn from each other is through their participation in international organizations. The disparate experiences reported in the chapters that follow preclude any simple recommendations except one, first made by Sylvia Ostry: the quality of the national trade policy process should be the one aspect considered in the WTO Trade Policy Review of each Member. Transparency about the trade policy process can be as valuable as transparency in the process.

The Trade Policy Review Mechanism (TPRM) aims at “achieving greater transparency in, and understanding of, the trade policies and practices of Members.” The TPRM aims at surveillance of the broad policy framework, not “compliance” with legal obligations. It is not meant to be part of the dispute settlement system. In the Annex to the WTO Agreement that establishes the TPRM, Members “recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both Members’ economies and the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of each Member’s legal and political systems.” The trade policy process matters in helping countries and their citizens identify and capture the gains from trade. Using the TPRM to strengthen that process is not a grand scheme for improving the world, and it will not get the WTO or trade policy generally off the hook for demands to be more open and responsive to civil society concerns, but it is a small step the WTO can take, one consistent with its principles and practices that would contribute to the achievement of sustainable development.

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Transparency and public participation in the Canadian trade policy process¹

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While emphasizing the intergovernmental character of the organization, we are committed to making the WTO's operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public. We shall therefore at the national and multilateral levels continue to promote a better public understanding of the WTO and to communicate the benefits of a liberal, rules-based multilateral trading system.

- Doha Development Agenda, November 14, 2001

The Doha Development Agenda (WTO, 2001) confirmed the rhetorical importance Members of the World Trade Organization (WTO) now attach to the essential democratic values of transparency and participation. That commitment, however, is merely to making information available in Geneva while working at home to convince citizens that the WTO is good for them. The national trade policy process should have higher ambitions. If trade policy is made in the light of day, there is a better chance that it will serve all citizens. This study is an attempt to assess how well the Canadian trade policy process meets that objective.

In the early days of GATT, trade policy appeared to be a technical matter of no interest to non-experts, a confined issue that seemingly did not affect other domains. The usual assumption was that trade policy was about commercial interests; the policy process was designed, therefore, to accommodate such interests without being especially open to others. That world is gone. The changing nature of trade policy means that complex new agreements touch many domains, increasing the range of people who can contribute useful information to the negotiation process, and whose support will be

1 An earlier version of this paper was prepared for the International Institute for Sustainable Development workshop on "Getting Trade Policy Off The Hook," Geneva, December 13–14, 2004. This version was substantially completed in July 2005, with updating of some sections in December 2006. I am grateful for the comments of participants in the workshop; for the suggestions of Rachel Laforest, Denis Stairs and Anthony VanDuzer; for the research assistance of Leila Wright and Jesse Helmer; and for confidential discussions with Canadian officials, notably with respect to consultations on services and agriculture.

needed for successful implementation of any agreement. It is now generally accepted that consultations with citizens and economic actors are a fundamental part of making good trade policy (OECD, 2001b), not least because officials need information too, if they are to be effective, and not just on the narrow “interests” of economic actors. New legal texts change little when they are incongruent with the informal practices and mutual expectations of actors in the trading system. Trade policy officials cannot make up their country’s “interests”—they need to hear from their citizens and their firms who are engaged in trade as importers and exporters, or producers and consumers. What problems do economic actors encounter? What new opportunities do they wish to pursue? Where are the rules as codified in the WTO discordant with their daily practices in the trading system? How are market practices interfering with the aspirations of citizens? The importance attached to transparency is, or should be, more than rhetorical: it goes to the heart of the policy process. This paper examines these issues in the context of one WTO Member, Canada.

Canada is often seen as an exemplar of an open and transparent policy process (OECD, 2002: 33). Trade policy consultations have engaged numerous government departments, the provinces and municipalities; broad-based industry associations; sectoral industry associations and civil society organizations; and individual firms, academics, and citizens. They have been used to provide information in an educational role, to demonstrate the importance of trade to Canada’s economy, and for building consensus, for example on Canada saying explicitly as part of its services position that it would not enter negotiations on certain sectors. And they have been used to obtain information, for example on offensive interests and defensive concerns in the services negotiations. Yet with notable exceptions (Stairs, 2000; Dymond and Dawson, 2002; Ciuriak, 2004; Hocking, 2004), little analysis has been published on either the process or the results. Some articles have looked at the role of consultations for foreign policy development (Lortie and Bedard, 2002; Lee, 1998; Whitworth, 1995; Gattinger, 2003; Chapin, 2001; Van Rooy, 2001; Riddell-Dixon, 2004), but the few attempts to evaluate consultations (Cooper, 2002; Hocking, 2004; Bulte, 1999) tend to focus on participant satisfaction, or on procedural issues (Canada, 1999c; Canada, 2000a), with little analytic work on which interests or groups engage on which issues, and whether the consultations meet the objectives of either officials or politicians for either better or more legitimate policy. This paper begins to address this gap.²

2 This paper was largely completed before the release of a major evaluation commissioned by the then Department of International Trade through the Office of the Inspector General (Canada, 2004b). That study had more limited scope.

The first part of this paper provides background on consultations in Canada in general, and then on the institutional structure for and history of trade policy consultations. The various mechanisms are described in Appendix B. After a description of what we know from survey research about public attitudes, the final part of the paper begins the process of asking whether the consultations make a difference to the legitimacy or effectiveness of policy. Appendix A presents a set of case studies of consultation in practice: agriculture, where there is a long tradition of active engagement by farm organizations in the policy process of most countries; services, the domain that has aroused considerable civil society anxiety; the environment, where the changing trade agenda has pulled established activist groups into the trade orbit; and enforcement action, where efforts have been made to engage consumers as opposed to producers.

1. Consultations in context

Trade policy consultations do not stand alone in any country—they are but one facet of a government’s general practice of consultations in the context of the country’s constitutional and political realities (Hocking, 2004: 11; see also INTAL-ITD-STA, 2002). Conventional policy analysis assumes a world where we can know the government agent that “acts,” we can assume the nature of the action, and we can assume that there is only one action. But assumptions about the centralized bureaucratic state is usually misleading, especially in the newer areas of trade policy where the unit for policy analysis is not the bureaucratic agency in a hierarchical relationship to other actors but the “tools of government,” seen as horizontal, collaborative relationships (Salamon, 2002a). The role of regulators is no longer “command and control” but rather “negotiate and persuade.” In this new world, sometimes economic actors will seem like agents of government in implementing a particular policy while at other times, economic actors will appear as principals instructing the government to pursue particular policy goals.

Public agencies therefore do nothing on their own. The implication of this claim is that no trade ministry is hermetically sealed from its domestic environment. The trade minister is inevitably an intermediary between domestic and international actors. S/he can never have enough information to act without talking to others, and can take few actions except through others—even the implementation of a tariff is the responsibility of another minister. We see this reality in the evolution of trade policy consultations in Canada described below, where trade negotiations involve many federal government departments, provincial governments, and even municipal officials. These officials are needed for providing ideas, for supporting the adoption of a proposed deal, and for implementing new agreements. Negotiators need to

engage economic actors for the same reasons. Trade officials must understand the views and needs of all the participants in the trading system because new rules incongruent with the expectations and practices of the relevant actors will fail to be implemented or respected. The bright line between government and the private sector erodes as the two blend together: collaboration replaces competition between public and private (Salamon, 2002b).

In this confusing new world, many Canadians worry about the legitimacy of all political institutions, and governments at all levels are experimenting with new forms of civic engagement. Draft federal guidelines on consultation (Canada, 2001c: 5) state that “consulting citizens on issues that affect their lives is a fundamental principle of responsible government in a parliamentary democracy. Citizens must have meaningful opportunities to participate in the development of government policies, programs, services and initiatives, and in reviewing outcomes.” The periodic right to vote in elections seems no longer sufficient. The political importance of consultation is illustrated by the efforts of the Prime Minister’s department, the Privy Council Office (PCO), to instill and support a government-wide culture of consultation and to ensure the effective integration of consultation into policy and decision-making (Canada, 2004a). Evidence that appropriate consultations have taken place is an essential component of policy proposals to Cabinet and of the “Regulatory Impact Assessment” that must accompany draft regulations submitted for approval.

Consultations, in short, are an aspect of transparent governance. Governments consult the public for many reasons, including providing information on the intended direction of policy change, assessing the acceptability of a proposed policy, and seeking ideas from the public. The process is sometimes manipulative (an elite attempt to persuade) and sometimes argumentative (a social process aimed at changing the understanding of cause-and-effect in a domain) (Checkel, 2001: 562). Scholars have observed a paradox for decades: regulatory agencies are subject to “capture” by the industry they regulate, and yet regulators depend on the regulated both for information and compliance (Smith and Ingram, 2002: 577). Open consultations allow transparency to ameliorate one and facilitate the other. In addition to consultation, transparency includes: processes for making and changing regulations; plain language in drafting, publication, codification and other ways of making rules easy to find and understand; and predictable, consistent implementation and appeals processes (OECD, 2002: 33). Amongst Organisation for Economic Co-operation and Development (OECD) members, Canada’s regulatory system is one of the most transparent, as is its trade policy regime (WTO, 2003: 12).

In the draft Canadian guidelines on public participation, officials identify a “spectrum” of approaches (Canada, 2001c: 3). It begins with accurate, objective and timely *information*, which promotes transparency and accountability and enables citizens to participate in the public policy process. *Consultation and citizen engagement processes* invite greater citizen involvement in policy development, while shared decision-making through *partnerships* provide the greatest degree of involvement. Consultation, the guidelines go on (Canada, 2001c: 4–5), involves processes that seek the views of individuals or groups on policies that affect them directly or in which they have a significant interest. It can be used to help frame an issue, to identify or assess options and to evaluate ongoing activities. Advisory committees, program or policy conferences, public meetings, 1-800 lines, Web sites, polling and focus groups are among the many forms through which consultations are conducted. *Citizen engagement* involves in-depth deliberation, usually in the formative stages of policy or program design, focused on the goals and underlying values and principles of a policy, program, service or initiative. The processes include study circles, deliberative polling, citizen juries, public conventions, correspondence, debate and dialogue.³

In 1999, the PCO estimated that there were more than 300 public consultation exercises under way on such diverse initiatives as Canada’s national climate change process and a dialogue with rural Canadians about their priorities and challenges (Canada, 1999c). In an effort to provide a single window to these diverse consultations, the PCO created a Web site called Consulting Canadians. This Web site lists current and past consultations by title, subject and responsible department or agency and provides links to information available on other government Web sites. The provinces are also active—in the summer of 2004, the government of the province of Ontario alone consulted its citizens on teacher workloads, mandatory retirement, rent control, urban sprawl, rural communities, drinking water and new securities legislation (Campbell, 2004).

3 The draft guidelines remain in draft. The Treasury Board Secretariat consulted the “stakeholders” (other federal departments!) on the guidelines in 2001. In the report of those consultations (on file with the author: it has not been published, to my knowledge), departments signaled the degree of resistance citizen engagement meets from traditional bureaucrats. Some worried about the resource implications of the policy, others about the difference between consultations undertaken by elected officials and by public servants—perhaps a distinction could be made between policy consultations with elected officials and consultations with managers responsible for administering programs. In a classic effort to protect turf, some officials thought consultations could be kept distinct from the “communication” functions of a department, and that public opinion research should not be seen as a tool of consultation because it should be managed centrally in government.

In one sense consultation is not news in Canada. Parliamentary committees have always heard from witnesses, and Royal Commissions have been holding public hearings for decades—indeed the hearings of the Macdonald Commission two decades ago played a central role in re-framing national debates on trade policy (Canada, 1985b)—but consultation has not always been a defining feature of the federal public service. It is notably absent from both Hodgetts’ (1973) account of the development of the public service from 1867 to 1970 and Granatstein’s (1982) history of the mandarins who greatly influenced the public service from 1935 to 1957. The public service did not regularly consult foreign policy experts outside of government until Pierre Elliott Trudeau was elected Prime Minister in 1968 (Stairs, 2000: 13) and standard, government-wide requirements for consultation were only introduced in 1986 (OECD, 2002: 33). Consultation has thus gradually become “a fundamental principle of parliamentary democracy” in Canada and part of the culture of the federal public service.

2. Responsibilities for trade policy

Trade is vital to Canadians—exports of goods and services were equal to 37.7 per cent of GDP in 2003, while the corresponding share for imports was 33.7 per cent, shares considerably higher than any other country in the G-7 (Canada, 2004g). Canada is also one of the world’s largest homes and hosts for foreign investment. The country was a founding Contracting Party of the General Agreement on Tariff and Trade (GATT), a founder of the OECD, the initiator of bilateral free trade in North America and an active participant in the Asia Pacific Economic Cooperation (APEC). The government stresses both close bilateral trade relations with its dominant trading partner, the U.S., and efforts to strengthen the multilateral system. Canadian multilateralism in trade is both part of a general foreign policy stance and a means for managing its relations with the U.S. by embedding them in a larger framework—not least because a sizeable percentage of apparent Canadian exports to the U.S. is either trans-shipments or intermediate products that will be incorporated into U.S. exports.

The Canadian system of government is an adaptation of the Westminster model of constitutional monarchy to the particular geographic and social circumstances of a vast country. Canada has a Prime Minister, a Cabinet, a bicameral Parliament (the House of Commons and Senate), a permanent, non-partisan public service and a monarch, represented in Canada by the Governor General. Canada’s Constitution assigns authority for the regulation of trade and commerce to the federal (national) government, but assigns authority for property and matters of a local or private nature to the governments of the ten provinces. The federal government can sign interna-

tional trade agreements, but often needs the cooperation of provincial governments to implement the obligations set out in those agreements. The need for provincial cooperation is especially important in areas of shared federal-provincial responsibility, such as agriculture and the environment.

The federal Parliament's role in trade policy is complex. Parliament may seem to have a minor role, since trade agreements are only tabled for information in the House of Commons, but Parliament must approve the legislation needed to implement trade agreements. More broadly, the government is dependent on the support of the House of Commons to stay in office, an especially delicate matter when, as is the case after the 2004 general election, the governing party does not have a majority of the seats in the House. The government does not need a mandate from Parliament to enter into negotiations on new agreements, but the House of Commons is a forum for opposition parties to question the government, including the Minister of International Trade, on its policies. Standing committees in both houses hold public hearings on international trade: the House of Commons has a Standing Committee on Foreign Affairs and International Trade (SCFAIT), which hears testimony from invited witnesses and produces reports that are tabled in the House of Commons; and the Senate has a Standing Committee on Foreign Affairs (SCFA) that considers international trade issues.

Along with the institution of Cabinet, Canada has retained the principles of collective and ministerial responsibility. Collective responsibility relates to Cabinet as a whole: ministers are free to disagree during Cabinet meetings, but they are expected to support the eventual Cabinet decision, regardless of their personal views. Ministerial responsibility means that individual ministers are politically accountable for their departments, but they need a mandate from Cabinet for new negotiations. When issues cut across multiple departments, as is often the case with trade policy, ministers must consult with their colleagues. In these cases, inter-departmental consultation among public servants precedes Cabinet-level discussions. The Cabinet discussion and the advice given to ministers by officials are secret in order to preserve collective responsibility for the outcome, but the inability to share such analysis complicates the process of consultations not only with the public but with other levels of government.

Trade policy touches many departments, including Agriculture and Agri-Food Canada (AAFC), Environment, Industry, and Finance, but the central role is played by the Department of Foreign Affairs and International Trade (DFAIT). The domain of trade policy is defined in part by the mandate of the *Department of Foreign Affairs and International Trade Act*, RSC 1985, c. E-22. It includes the responsibility to conduct all official communication between the Government of Canada and the government of any other coun-

try and between the Government of Canada and any international organization; to conduct and manage international negotiations as they relate to Canada; to coordinate Canada's economic relations; and to foster the expansion of Canada's international trade. The first objective of Canadian foreign policy, and the central objective of trade policy, is the "the promotion of prosperity and employment by advancing Canada's international trade and economic interests abroad, by maintaining market access for Canadian goods and services, by attracting foreign investment, and by promoting tourism to Canada." DFAIT is responsible for the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), the Asia Pacific Economic Cooperation (APEC) forum, Export and Import Controls, the promotion of investment in Canada, and the legislation authorizing the imposition of trade and economic sanctions.⁴

3. Evolution of trade policy consultations

Trade policy was slower to embrace the new era of open public consultations than other sectors of Canadian policy, perhaps because many practitioners see the trading system as a solution to the collective action problem of liberalization in the presence of lobbying by interest groups, or helping the state resist domestic protectionism. It may seem perverse to practitioners to engage with the very groups from whom policy-makers are trying to maintain some autonomy. Nevertheless, trends in trade policy and in the broad policy environment made such splendid isolation impossible. In the U.S., the Trade Act of 1974 began the "fast track" process of requiring Congress to accept trade as a package, which may well have motivated the creation during the Tokyo Round in the GATT (1974–79) of elaborate mechanisms for consulting business to ensure that they would support whatever package emerged.⁵ In Canada there was no need for a "fast track" process, since Parliament does not vote on trade agreements. But the subject matter of the Tokyo Round and the negotiating proposals, especially the Swiss formula approach to tariff reductions, led to increased consultation with both provincial legislatures and business groups (Winham, 1986: 334–7, 342). Budget secrecy with respect to changes in border measures made sense in the Kennedy Round of the 1960s, but the isolation of negotiators began to erode during the Tokyo Round when decisions could no longer be made by small

4 DFAIT consults relevant stakeholders on its trade promotion and investment activities, but I consider only trade policy in this paper.

5 The history of U.S. mechanisms is noted in (Hocking, 2004), who cites (Winham, 1986). The current system is also briefly described in (Canada, 2004b).

groups of trade or finance ministry officials. The government created three inter-departmental bodies to manage participation in the Tokyo Round: the Canadian Trade and Tariffs Committee (CTTC), which was designed to be a mechanism for communicating with both industrial groups and provincial governments; the Trade Negotiations Coordinating Committee (TNCC), which was established at the level of deputy minister to improve the coordination of the federal public service on trade policy; and the Continuing Committee on Trade Negotiations (CCTN), which served as a secretariat for the Cabinet committee that had political control over the negotiation (Winham, 1979; Winham, 1990).

Officials responsible for trade promotion have always maintained extensive contacts with the Canadian business community, who are their clients and best source of information on commercial conditions, but trade policy consultations with economic actors became more elaborate at the time of the negotiation of the Canada-U.S. Free Trade Agreement (FTA) in the 1980s. Even then, the focus was clearly on the business community. Stairs (2000) reports that the Trade Negotiations Office (TNO), headed by Simon

Reisman, a former Deputy Minister of Finance, made it clear from the beginning of the FTA negotiations that it did not wish to have its activities unduly complicated by excessive requirements for consultation with economic enterprises, provincial governments, other government agencies, or even other units within the then Department of External Affairs and International Trade, let alone with groups that were opposed to the free trade initiative in principle. Stairs infers, plausibly, that Reisman assumed that the government had decided to proceed despite the worries expressed in public debate, so opponents were no concern of his. Laura Ritchie Dawson adds that Reisman was used to bureaucratic autonomy bracketed by strong accountability to political masters in Cabinet, but *ad hoc* consultation was routine—he would pick up the phone when necessary to quiz a leading Canadian manufacturer about their interests on a pending agreement. He would have preferred not to consult too closely with the provinces, but the requirement for close contact was part of a negotiated arrangement (brokered by then the foreign minister, Joe Clark) that saw provinces forego the “seat at the table” that Prime Minister Brian Mulroney had promised them in exchange for regular consultation and review sessions with Reisman and his staff.⁶

Nevertheless, the trade policy process of the 1980s used both information and consultations. The government published two background documents, or “green papers” before entering into the FTA and Uruguay Round negotiations (Canada, 1985a; Canada, 1983), and more information came out as

6 Laura Ritchie Dawson (private communication based on PhD dissertation, May 4, 2006).

negotiations progressed. Later, an enormous effort was put into publishing the results of the negotiations with the U.S., and releasing background analysis. There were no “multistakeholder” consultations, but Parliament held hearings, the Sectoral Advisory Groups on International Trade (SAGITs) were created and Ministers and officials met with interest groups, spoke at public meetings, appeared at town halls and participated in televised debates. (In today’s jargon, the Department of External Affairs and International Trade engaged in both outreach and consultations). The great free trade debates that peaked with the 1988 general election marked a new politicization of trade in Canada—new agreements were no longer a technical matter to be left to experts alone.

The Chrétien government, elected in 1993, was committed to the “democratization” of foreign policy (Cameron and Molot, 1995) and to an “open process for foreign policy-making,” manifested in elaborate consultations through specially created joint Senate-House of Commons parliamentary committees, as well as more directly with officials and others through a National Forum on Canada’s International Relations (Stairs, 2000: 15). One result was extensive citizen engagement in preparations for two large UN conferences in the 1990s (Riddell-Dixon, 2004). The next economic event after the FTA of the 1980s to provoke public controversy in Canada was the negotiations for the proposed OECD Multilateral Agreement on Investment (MAI), which failed in 1998. Among the prominent civil society critiques of the MAI was the lack of transparency in the negotiations, which led politicians to promise more openness in future. As Stairs (2000) shows, the first and not entirely successful result of the new process was the extensive public participation in preparations for and then attendance at the 1999 WTO ministerial meeting in Seattle.

After the Seattle shock, the trade department was even more committed to an intensive program of information and consultations not only with officials of other departments and other levels of government, but with economic actors and citizens. DFAIT employed a number of complementary consultation mechanisms, some formal and some informal. Formal mechanisms of consultation included federal-provincial-territorial (C-Trade) meetings, the diverse set of SAGITs, and an Academic Advisory Council (AAC). In addition to these formal mechanisms, DFAIT employed a wide range of informal consultation mechanisms, ranging from multistakeholder meetings across the country to electronic feedback forms on the DFAIT Web site. As part of its public outreach program, public servants participate in a range of informal meetings on specific trade-related issues, organized by private or third sector organizations.

Such intense activity did not go unquestioned. In 2004 DFAIT commissioned a major review of all its consultation mechanisms (Canada, 2004b).

The review was completed during a period of bureaucratic upheaval and political uncertainty so consequential change was slow. In 2006, DFAIT began implementing a more flexible system that differentiates between its strategic, tactical and technical needs. These three objectives correspond to three levels of engagement: ministers and corporate CEOs; senior officials and corporate vice-presidents; and working-level officials. Horizontal business associations are involved at all levels, but academics and NGOs are not involved at the strategic level. The two main differences from the old mechanisms are that multistakeholder meetings will be replaced by more focused roundtables and the old semi-permanent groups—the SGAITs and the Academic Advisory Council—have been replaced by *ad hoc* expert groups convened as needed. Extensive training resources are now available to support the officials who must give life to these mechanisms. Appendix B groups all of these mechanisms first by “Information” and then by “Consultations.”

4. The waxing and waning of trade policy consultations

Consultations are now part of the culture of government in Canada, but trade policy consultations have seemed more politically intense than others in recent years, in part because the public profile of civil society organizations interested in trade was raised by the massive anti-globalization demonstrations throughout the mid to late-90s and into the early 21st century. The apparent lessons the government drew from the MAI process, and the Battle in Seattle, were certainly motivating factors favouring increased consultations, but there are at least three others.

First, consultations contribute to policy analysis in an era when government restructuring, and subsequent downsizing of departments, has reduced the availability of expertise (Pierre, 1998). When the reach of trade policy extends “behind the border,” and jurisdiction and authority are more widely dispersed at the national and sub-national level, negotiators need more information about the domestic economy than ever before. As others have noted, traditional tariff negotiations were subject to budget secrecy in a way that does not apply to much of current trade policy.⁷ Moreover, trade officials are now operating in domestic domains where, as discussed above, consultation has been part of good regulatory practice since guidelines were promulgated in 1986. This reach behind the border and the concomitant development of consultation mechanisms began in the Tokyo Round.

7 In Canada, tax measures in a budget are secret until tabled in the House of Commons.

Second, the nature of producer interests has changed. Mass demonstrations against the trading system began not with civil society organizations in the late 1990s but years earlier when thousands of small farmers marched on Parliament Hill to protest the draft Final Act of the Uruguay Round. Canadian governments tried to balance the conflicting interests of export-oriented grain farmers and import-threatened dairy farmers by meeting with the leaders of farm organizations, but that strategy faced difficulties in such a diffuse sector. The government's agriculture negotiators discovered, painfully, at the end of the Uruguay Round that those most affected did not understand the deal. A massive national agriculture consultation launched in 1997, described below, was an effort to ensure that the industry would never again be so ill-informed about a major trade issue. The General Agreement on Trade in Services (GATS) similarly involves diffuse interests not easily consulted in traditional private talks with a relatively small number of large associations.

The third change, associated with the move behind the border, was the growing interest of citizens and civil society organizations in the trade agenda. Officials always talked privately to producers affected by tariffs; what is new are public consultations with citizens on trade rules. This change is part of a growing engagement with civil society organizations in general. In an older elite model of governance, the provision of policy advice was a closed process in which information came from the public service and outsiders were involved in decisions only through occasional negotiated rule-making. In a newer mass model, policy advice is more open, information comes from consultation exercises, legitimation comes through public hearings, and, at the limit, some decisions are made by referenda. In the international domain, representatives of NGOs were part of Canadian delegations to multilateral conferences as far back as the UN environmental conference in Stockholm in 1972 (Stairs, 2000: 14), and elaborate efforts were made to include them in the preparations for the two big UN conferences of the 1990s (Riddell-Dixon, 2004). Events around the failure of the MAI negotiations may have been new to the trade policy community, but not to Canadian foreign policy more generally, let alone Canadian domestic policy. Still, trade policy consultations can have a different dynamic. In many domains, civil society organizations want government action; in trade they often want government inaction. The interests of business can be the inverse. Government must consult both egocentric (interest-based) and idealistic (values-based) groups. As Hocking observes, trade policy consultations have therefore to adapt: "no longer can trade issues be dealt with as a brand of technocratic politics, insulated from the mainstream of political dialogue, a game for an elite operating behind closed doors, removed from prying eyes and the glare of publicity" (Hocking, 2004: 3).

Maybe so, but the intensity of interest in trade policy consultations appears to be waning, despite the increased activity. Large “multistakeholder” consultations are out of fashion in official Ottawa, but the public demand may also be diminished. If parliamentary hearings on the WTO were held today, they might attract less interest than did the hearings in 1999 (Canada, 1999a). This possibility of waning intensity of interest may be due to five factors.

First, routinization of consultations may mean that there is no longer a principle of participation to fight for, while some groups may be exhausted by the number of consultations on a variety of bilateral and multilateral trade and investment agreements.

Second, the substantive agenda is changing. In the late 1990s, the public focus was on the possibility of a new WTO round in the midst of anti-globalization protests. In early 2001, the FTAA aroused public concern. Since 9/11, however, keeping the Canada-U.S. border open has preoccupied business and think tanks more than the slow-moving WTO talks. As Ciuriak (2004) notes, business has already obtained most of the items on its trade liberalization wish list. Moreover at this stage of a WTO round, the positions are well-established and officials are engaged in the difficult work of detailed negotiations, which does not excite much public interest, except from farmers, who know what is at stake. Farm organizations are the majority of participants in WTO-related public events, such as WTO ministerials and the annual symposium for civil society (Wolfe, 2006). In standard political economy terms, it may not be surprising that the groups with the most at stake—concentrated producer interests—are more engaged in the process than consumers and/or citizens, whose diffuse interests are harder to estimate).

A third factor that might be limiting interest is the changing nature of the consultation process. Stairs shows how civil society organization can be frustrated by talking to officials who can discuss the detail but not the principles of policy, while business wants its own forum in order to avoid having to listen to civil society organizations. Hocking (2004: 23) quotes a senior businessman’s complaint that:

the SAGIT process is undergoing what could prove to be fundamental change. Hitherto, it has always been an intense process with good interaction between business and government. But Ottawa has now broadened the contact list to include labour and NGOs. Business now has to engage in ‘group gropes’ in order to play the game.

By inviting more players to the table, the government has, to some extent, changed the game. Business leaders, who were quite interested in trade policy in the late 1980s and 1990s, may retreat from formal consultation because of

the influx of third sector or civil society organizations, some of whom disagree with the fundamental principles of trade liberalization.

The fourth factor that may be limiting attention to consultations is the cost of participation. It is easy to attend a public meeting to express worries about the possible negative consequences of trade agreements (and easier still to join a public protest), but making concrete proposals is costly. Oxfam plays this game brilliantly (see for example Oxfam, 2002), but other groups, even business associations, are challenged. In its review of the Canadian GATS consultations, the Public Policy Forum (2003: 14) reported that:

several of the interviewees revealed that over the past few years their organizations, and to their best knowledge the organizations of their competitors, have 'slimmed down' on the number of personnel who are actually trade specialists. The consequence has been that many businesses simply don't have the expertise to deal with GATS issues on an ongoing basis. In order to engage in GATS negotiations, many businesses would have to spend money to hire a consultant, and in many cases this investment would require evidence of a direct and short-term impact. The long-term nature of trade negotiations where payoff for business involvement takes 8 to 10 years (i.e. the average time allotted for negotiation, ratification, and implementation) makes investment by business unlikely. As a result, requests made by [DFAIT] to provide specific examples of barriers in countries have not been responded to by business with any great success. One interviewee suggested that if [DFAIT] wanted more specific information, the best possible route would be to focus on and increase their sector-by-sector meetings.⁸

This latter possible explanation for waning interest may actually suggest that if government needs public advice, it may have to provide even more background analytic information to enable effective participation. For example, more effective environmental consultations may require the government to provide more timely interim assessments of the Doha negotiations. More generally, if civil society organizations and the public were provided with a sense of what the government thought the costs and benefits of an agreement or an offer were, rather than having to engage in an analysis of the impact starting from scratch, then consultations might provide more informed comments.

Finally, the supposed public demand for more engagement can be over-stated by analysts. The intensity of opposition in the streets to "globalization" may not necessarily translate into the hard work of going to technical meetings with officials. Moreover, the apparent hostility to trade shown by protestors may not have been representative of the broader public. The next section, therefore, considers what we know about the views of Canadians.

8 Similar views are reported in DFAIT's own evaluation (Canada, 2004b).

5. Canadian attitudes to trade liberalization and public consultations

The WTO is not something most Canadians think about on a daily basis. Despite Canada's enormous dependency on commercial exchanges with other countries, notably the U.S., people do not think much about trade either. "Trade" is a constructed category, as is "globalization." The ontological status of such terms is ambiguous and their epistemological status is opaque. Traded services, for example, are famously things that you can buy and sell but cannot drop on your foot, which means these expert abstractions can best be seen in measurements of transaction flows. Gauging public attitudes to such things is not easy, but with a colleague I began to try after a series of large demonstrations, especially the 1999 "Battle in Seattle," led politicians and officials to worry that Canadians were hostile to trade. We found that after the divisive debates over free trade with the Americans in the 1980s, Canadian mass opinion became broadly supportive of trade agreements during the 1990s (Mendelsohn and Wolfe, 2001). In early 2001, when we designed a survey to contrast attitudes to "trade" with attitudes to "globalization," it was therefore not surprising that about two-thirds of respondents said they supported the negotiation of new trade agreements, while only about one in 10 said they were opposed. Yet fewer than half supported "globalization," and over a third were uncertain. Our analysis of the difference in responses to these questions contrasts values with interests in trying to understand the trade-off that citizens face between the efficiency of open markets and the security of the welfare state (Wolfe and Mendelsohn, 2005). Letting the market run things, which is what complete liberalization implies, or allowing global governance to displace community governance, as implied by the increased linkages associated with globalization, would be inconsistent with what Canadians believe to be the legitimate social purposes of their governing institutions.

Trade agreements are broadly legitimate in Canada because they are associated by the public with prosperity that does not undermine the welfare state (Mendelsohn, Wolfe and Parkin, 2002). Since most people think that trade deals have worked reasonably well, they are content to leave the details to the government. This "permissive consensus" on trade policy is a form of what Scharpf (2000) calls democratic legitimation on the basis of outputs. Inputs are legitimation by the process of decision; outputs are legitimation by showing that policy serves a community's common interests. International cooperation, as it is practiced, limits the possibility for procedural (input) legitimation because domestic processes cannot be determinative of the outcome of multilateral negotiations. Happily, Canadians do not think that new forms of participation should replace the established constitutional mechanisms for making policy. In

the end, Parliament must decide. But they do want to be more engaged in the process by which Parliament learns what to decide. Citizens must still be convinced that trade agreements are indeed within the permissive consensus. Moreover, the nature of the ongoing interaction between civil society and the State is itself a valued political objective. Trade agreements may enjoy “output legitimacy,” but we found that “input legitimacy” matters to Canadians.

Scholte describes three broad types of civil society organizations, only two of which bother with trade policy consultations. The first he terms “conformists,” groups that:

follow mainstream discourses of trade theory and broadly endorse the existing aims and activities of the WTO. A second group, who might be called ‘reformers,’ accept the need for a global trade regime, but seek to change reigning rules and operating procedures. A third category of civil society organizations, who might be called ‘rejectionists,’ seek to reduce the WTO’s competences and powers or even to abolish the institution altogether (Scholte, 2004: 150).

Producer organizations are usually found in the first category, as are consumer organizations, although both may make common cause with citizen organizations in the second category. In his careful description of the 1999 consultation exercise, Stairs (2000: 28) similarly distinguishes between groups who support the principle of trade negotiations but wish to influence the negotiating objectives, and those who wish to challenge the principle. The former were happy talking to officials—and were not happy when the latter noisily took up airtime—while the latter found their give and take with politicians in parliamentary committee hearings to be more satisfactory. Officials found it easier to talk to the groups who saw themselves as trying to support the government’s objectives. They found it hard to respond, as officials, to groups that did not accept those objectives.

In our 2001 survey, Mendelsohn and I asked how much role the public should have in decision-making in international organizations. When we presented respondents with three different levels of democratization, a strong majority opted for the middle position. Canadians do not want to leave things to government (or international organizations) alone, and about one-third would like the public to be actively involved, but about three in five simply opt for more transparency and publicity.⁹ A slim majority of Canadians reject the argument advanced by many government officials that international organizations are already sufficiently democratic because democratically elected governments send delegates, yet only half of Canadians

9 The data on these questions are found in (Wolfe and Mendelsohn, 2004).

say that “international institutions are not sufficiently democratic.” This finding and the previous one put each other in context: although Canadians do not judge the status quo to be sufficiently democratic, they do not support radical participatory processes. Canadians do not expect to be actively involved in decision-making at an international level, but they do expect the kind of transparency that allows them to hold their government accountable. They want information, and they want occasions other than periodic elections on which they or their surrogates can use that information.

6. Does consultation make a difference?

The elaborate Canadian system of trade policy consultations is intimately connected with evolving ideas about the nature of global governance, and with perceptions of the importance of trade policy. These diverse drivers of the process make evaluation difficult. The OECD review of Canadian regulatory practice reported a difference of views between stakeholders who thought regulatory proposals changed after consultations, and those who thought their involvement had little impact on policy. The report concluded that:

the challenge for Canada, as with all open societies, is on the one hand to provide avenues for all interested parties to participate in the policy design and on the other not to overburden the system with duplication and irrelevancy, or permit well organised interest groups to capture the debate and finally the outcome. Another challenge is to communicate the central objective of a public consultation, that is, while all views will be heard, the final decision must remain with elected representatives (OECD, 2002: 36–7).

Consultations may foster both democracy and good policy, in principle, but they do not replace regular decision processes.

Knowing if consultations make a difference is not easy even if we think that the purpose of consultations is “manipulative” (an elite attempt to persuade). The changes in self-perception, or of cause-and-effect in a domain, associated with an “argumentative” approach to consultations are harder still to observe. We have no time series indicators of trade policy, nor do we have time series indicators of the intensity of consultations, so even correlation of consultations with trends in trade policy since the Kennedy Round would be hard, the more so because Canadian trade policy shows continuity rather than change in recent years. In the early 1980s, government reports (Canada, 1983) and Royal Commissions (Canada, 1985b) were used to launch a public debate on free trade negotiations with the U.S. By 2000, the national consensus was broadly supportive of trade liberalization, and of the government’s stance in negotiations. Subsequent consultations have not affected the

paradigm. Whether consultations affect the detail of policy is another matter. DFAIT's own evaluation concluded that at best "some of the contributions made in technical and sector specific areas have influenced the development of the trade agenda..." (Canada, 2004b)

To illustrate the difficulties, consider a particularly well-documented consultation process that allows a comparison of an initial proposal with a final policy: the 2002 consultation on trade with Least Developed Countries (LDCs). From March 30 until May 2, 2002, the government consulted Canadians on proposals to help LDCs by removing tariffs and quotas on most of the products they sell to Canada. The government was seeking the views of parties, such as key industry sectors, NGOs, and interested citizens, on the proposals, including any economic or social impact the proposed action might have. It released a background paper and extensive supporting information on the Web, and subsequently posted "Report on Submissions Received" with the results of the public consultations (see http://www.dfait-maeci.gc.ca/tna-nac/submission_received-en.asp). The final decision was consistent with the detail of the proposals in the initial document, but the government was able to say that the action was supported by the majority of 38 submissions received during public consultations, by the consensus recommendation of the Standing Committee on Foreign Affairs and International Trade, as well as by assessments of the likely employment effect of this initiative in Canada. The outcome was hardly surprising given the broad social consensus in Canada, especially in light of actions by other countries, but the consultations may have made a difference. The process allowed the small number of opponents to air their concerns, and it allowed officials to discover whether the initiative would have any unanticipated consequences.

Now consider an example where a cross-national comparison on a similar issue is possible: genetic modification (GM) of food crops. It is possible that sophisticated interest-based analysis of the politics of GM regulation in Europe and the U.S. can satisfactorily account for the policy divergences between them (Anderson, Damania and Jackson, 2004), but consultation processes may also account for some part of the divergence, and not just because of lobbying by the narrow beneficiaries of policy. European producers are not heavy users of GM products, making them likely to support regulation such as mandatory labelling that limit GM access to the EU market. Canadian producers (notably those who grow canola) do make extensive use of GM seeds, making them likely to support voluntary labelling schemes. It turns out that after significant public consultation exercises on both sides of the Atlantic, labelling policies are consistent with these expectations, and there is little evidence that either Canadian or EU policies were in the end a response to the views expressed by the public (Agha, 2005).

Similar conclusions can be drawn from Riddell-Dixon's (2004) careful description and assessment of the engagement of NGOs in preparation for two big UN conferences in the 1990s. She found important differences between the process used in each case, but little difference in the outcome. Targeted consultations facilitated a flow of information from the government to grassroots organizations across the country while providing officials with useful information on what a subset of citizens thought on the issues under discussion. The consultations helped officials to manage potential opposition to the government's position, but that position was not affected in its broad outlines by the consultation processes.

A consultation that confirms the initial direction does not necessarily indicate that the outcome was pre-determined. Rather than looking at outcomes, therefore, it may be more appropriate to look at the process. Canadians expect that consultations will take place, that they will improve policy transparency, and that they will allow participation by interested groups. These objectives can be assessed mechanically, though the draft PCO guidelines are little help. The procedural indicators suggested (Canada, 2001c: 55–6) measure the frequency of departmental consultations, the numbers of citizens involved, participant satisfaction with the outcome of their involvement, and the resources allocated to the process by DFAIT. When it comes to assessing the impact, the guidelines suggest counting references to consultations in memoranda submitted to Cabinet (which are secret) and in the announcement of new policies. Nobody outside government could economically assemble the necessary data to use these indicators in an assessment. I therefore use more impressionistic methods to consider the availability of **information** and the extent of **participation** in Canadian trade policy consultations.

Information

The Canadian government provides an enormous range of trade-related information to the public, beginning with the voluminous data on international economic transactions disseminated by Statistics Canada, one of the world's best statistical agencies. Such information provides an essential factual basis for policy debate. Similarly, a vast array of information on micro-economic policy is available on the Industry Canada Web site, and on the Web sites of sectoral departments. And as indicated above, the whole regulatory process is remarkably open. With respect to trade, the DFAIT Web site contains an enormous amount of information on the WTO, relevant bilateral and multilateral trade agreements, the state of Canada's trade, and other aspects of DFAIT activities. The site includes detailed information on trade disputes to which Canada is a party, and on the state of bilateral and multilateral trade negotiations. Other government Web sites implement Canadian commitments for regulatory transparency under WTO agreements (Wolfe,

2003). DFAIT maintains an e-mail list for people interested in receiving notifications of trade policy developments. The section of the Web site called “It’s Your Turn” provides details on all consultation activities, including new requests for public views and reports on past efforts. DFAIT knows its trade pages get roughly 40,000 hits per month, although most of the e-mail generated by the site is from students asking questions. Consistent with the *Official Languages Act*, DFAIT devotes substantial resources to translation into French, which sometimes slows the appearance of material. A larger problem is the nature of trade discourse.

It is not clear whether the government has any systematic analysis available on how comprehensible its information is for intended audiences. In a review of services consultations, some respondents observed that:

the technical trade talk or ‘jargon’ used by...officials in discussions make it much harder for them to participate. Most businesses are not ready to discuss the intricate details of GATS procedures or goals. In fact, as one provincial official indicated, businesses often lack basic knowledge of international relations, let alone the issues concerning GATS (Public Policy Forum, 2003: 14).

Another aspect of information is feedback. People want to know that they have been heard, whether or not their points have been accepted. For many, this is the key to legitimacy, although it is a matter of perception as much as reality. The draft guidelines say that officials should give feedback on consultations in at least three areas: what was heard (for example, providing meeting notes); what was done with what was heard (for example, sharing recommendations); and what decisions were made and why (Canada, 2001c: 24). DFAIT’s evaluation (Canada, 2004b) repeatedly mentions how participants wanted more feedback. Participation can be costly in terms of preparing for and attending meetings. Participants, including from business, want to know that their efforts are useful.

It is hard for analysts to see how consultations influenced the recommendations. The “decision” in most cases is the Canadian negotiating position. It is now standard practice to make the formal Canadian position public whenever possible, but the information provided is necessarily broad, especially if it might compromise a negotiating position. Significant detail is available about the position on agriculture, for example, but not specific negotiating mandates. Canada’s *Access to Information Act* allows the government to protect any information that would compromise the conduct of international relations. In the case of the GATS negotiations, the web document “Canada’s Negotiating Approach” stated what Canada was prepared to do in the round. Canada’s subsequent Offer is public, since it relates to the legislative framework. Canada’s Request, however, was described only in general terms on the Web; as the details in the document concern the policies of other govern-

ments, or the commercial interests of Canadian firms, publication of the actual Request would be awkward. And the process is bilateral, not multilateral—no WTO Member knows what Requests other Members are making.¹⁰

The government logic is sound, but this sort of practice may be a barrier to participation. In the review of services consultations, participants complained that they were not given real information, unlike U.S. practice where accredited organizations and individuals can supposedly see actual GATS Requests. The report (Public Policy Forum, 2003: 16) observes that:

while provinces are satisfied with their access to secret negotiating documents, businesses, NGOs and SAGIT members believe that they are being shut out of a crucial element in the consultation process. Many of the respondents believe that [DFAIT] is guarding control over requests and offers too closely, and they would like them to be more open.

More broadly, if negotiating positions are public, it is harder for private influences to be hidden.

The formal position a country takes, however, may not be its real position, and may not signal the issues on which it is prepared to compromise, although consultations may be most useful precisely on this point, by helping negotiators determine what matters most for their producers or citizens. Such detailed negotiating information is usually communicated only in informal, off-the-record meetings with other countries, in part so that negotiators will not have to defend their negotiating tactics in public.

Participation

It is clear that consultations are expensive in time and resources (as the draft PCO guidelines recognize). Is the effort worth it? Do we really know which groups or interests are engaged, and does government really hear from anybody it would not hear from anyway? Does all this effort make policy better, or more legitimate, from the standpoints of officials, politicians, citizens and economic actors? Does the trade policy process balance all interests?

The lists of participants in services consultations (Canada, 2004c: Annex), and in general trade consultations (Ciuriak, 2004) show the huge range of people heard. It is not easy to assess their influence, however. Clearly, all agricultural producers, large and small, are heard. The official review of the agriculture portion of the pre-Seattle consultations described by Stairs criticized

¹⁰ For example, in an undated document on its Web site (India, n.d.), the India Ministry of Commerce provided summary information on the Requests it had made, and the Requests made of India, but it has not identified the recipient of its Requests or the countries from which Requests have been received.

Agriculture and Agri-Food Canada (AAFC) with respect to who was not consulted—citizens and groups from outside the sector (Canada, 2000b). Some small and medium-sized enterprises (SMEs) participate in services consultations, though their concerns tend to be trade development more than trade policy. In the various multistakeholder consultations, participation is open, but these processes make a difference only on questions of broad principle. As the subject becomes more specific, organized groups are more easily heard.

Listening to a vocal minority of opponents or supporters in structured consultations may amplify the voices of people who are already being heard without either providing additional information on mass opinion or allowing genuine engagement. Government officials have the power, both of position and expertise, to define the “problem” on which views are sought, which then determines the “public” who are thought sufficiently “representative” to be consulted, (the difficulty is inherent in the consultative exercise rather than being specific to trade policy—see Barnes *et al.*, 2003). Groups that understand the problem in the same way then occupy a privileged position in the subsequent consultations, while groups who do not accept the initial premises can be marginalized. The definition of the policy problem and of the stakeholders is therefore circular, and the consultations may contribute little to making policy either more effective or more legitimate. One of the main purposes of public consultations, however, is to obtain alternative views on policy issues, including those of sectors of society that are not usually consulted (Fischer, 1993). Consulting with only the lead academics and business people in trade policy may limit policy development to particular presupposition, and decrease the real value of consultations.

Some critics make just this point, claiming that the consultation structure privileged one sector of civil society—business—at the expense of all others. This elite accommodation model then stimulated the creation of a new “popular-sector” coalition hostile to free trade (Macdonald, 2002). I am dubious both of the claim that the emergence of “rejectionist” groups had anything to do with the consultation structure, and of the idea that these groups have any more “popular” support than groups in Scholte’s “conformist” or “reformist” categories, since we see no evidence of declining legitimacy for trade in opinion surveys. The real risk is that all engagement with groups sufficiently organized and informed to support or oppose consultations will be forms of elite accommodation. The practical problems with existing mechanisms are elsewhere.

As noted above, after a comprehensive review in 2004, in 2006 DFAIT began implementing a more streamlined set of mechanisms. The new system is designed to serve the needs of ministers and negotiators but is less attuned to the deliberative needs of the public, which may limit DFAIT’s ability to

mobilize public and even industry support for the results of negotiations. The differentiation among strategic, tactical and technical needs makes sense but at the first level, CEOs are not necessarily well-informed on complex international issues, and some of those who are well-informed head foreign-owned firms, which may limit a confidential exchange of views. The technical mechanisms are aimed at ensuring that the people drafting changes to the regulatory framework are hearing from the actors to be regulated. Officials have always maintained their own networks of contacts with industry, but the process is now more sophisticated and systematic.

7. Conclusion

I began this paper by evoking the 2001 mandate for the current round of negotiations in the WTO where transparency and participation receive only rhetorical support. The issue was also addressed in Chapter V of the Sutherland report on the future of the WTO (WTO, 2004), but there the focus was on “external transparency” in Geneva rather than the responsibilities of national governments. The fact that paragraph 10 of the Doha Agenda is not a subject for negotiations signals the sensitivities of these issues for many WTO Members. Transparency is not a domain where governments wish to make binding commitments, in part because nobody can yet be sure of the best way to do it.

After reviewing the difficulties associated with public engagement in a review of security policy in Canada, Stairs concluded that:

in consultations, as in so much else, those who do the consulting should be appropriate to what the consulting is about. In particular, consultations with mainly political implications should be done mainly by politicians, while consultations with mainly technical (or instrumental) implications should be done mainly by public servants. The line between the two may not always be clear, but it should always be noted, and attended to (Stairs, 2001: 11).

Stairs might have added that on some questions, government should consult experts, not the general public. As the PCO guidelines note, different purposes are served by providing information, and by consulting. Detailed technical information can be sought by officials from experts or economic actors, or other government departments. Exploring the possibility of a compromise on a difficult issue can be done with opposed industry associations or in more broadly based multistakeholder settings where the point is for all sides to be able to listen to contending points of view. Trying to build a consensus involving groups with both egotistical and cosmopolitan objectives might best be done in parliamentary hearings. In short, good policy and

legitimate policy may require different mechanisms at different moments in the policy process. The consultation process may be different for exporters and importers; producers and consumers; economic actors and citizens. On some occasions providing information will be more useful than holding a consultation; but in others, either ministers or officials will be the more appropriate interlocutor.

An attempt to specify criteria for all of these possibilities is beyond the scope of this paper, though I note that DFAIT's evaluation observed that the system suffered from inadequate clarity about its objectives. It is important to take a broad view of the purpose of these forms of engagement—the aim should be both making better trade policy and supporting the democratic values of enhanced information and participation for citizens. Calling any of this “outreach” is an old, unidirectional idea, at least in this country. Canadians accept the importance of trade and of multilateral agreements, but they want to understand the policy implications of new agreements, and how to live with existing rules. The point is not merely to have a good process. Negotiators must build support for new agreements while facilitating the operation of existing agreements and obtaining the information they need themselves.

Here then is the dilemma, both for analyzing the effect of consultations and considering their value. On well-defined issues, like new tariffs, where officials know who the producers and consumers are, and everyone knows their “interests,” existing mechanisms work well, if sometimes at greater expense and effort than necessary. On issues that are less understood, which can include issues new to the negotiating agenda, or issues where Canadians differ on what is at stake (as in a trade-off between the environment in a developing country and Canadian commercial interests), or on issues that engage large numbers of Canadians, then it is not clear that consultation mechanisms are or can be a substitute for the political process. The concern is not new (Stairs, 2001; Canada, 2001a), nor is the problem of the institutional design for social learning unique to trade policy (Risse, 2005), but it is unresolved.

Appendix A: Case studies of consultation in practice

A1. Agriculture

Mass demonstrations against the trading system did not begin with civil society organizations in the late 1990s. On February 21, 1992, after the publication in December 1991 of the draft Final Act of the Uruguay Round (the so-called Dunkel text), 30,000 farmers protested on Parliament Hill in Ottawa, believing that the potential outcome of the Round would destroy the institution of the family farm. Managing the end of the negotiations at home continued to prove difficult for the rest of the round. Canadian governments tried to balance conflicting interests by meeting with the leaders of farm organizations, but that strategy faced difficulties in such a diffuse sector. Agriculture negotiators discovered, painfully, that farmers did not have a great amount of knowledge at the end of the Uruguay Round, and that in consequence those most affected did not understand the deal. Veteran Canadian agriculture negotiators vowed that next time, negotiators would keep the farm community informed throughout the process so that they would not be caught by surprise at the end.

With new negotiations scheduled for 2000 as part of the WTO's "built-in agenda," the government signaled as early as January 1997 that it would engage in extensive consultations.¹¹ The first step was a discussion paper distributed by Agriculture and Agri-Food Canada (AAFC) that provided general background, and identified issues for negotiations. Department officials subsequently met with umbrella organizations like the Canadian Federation of Agriculture and more specialized groups like the Dairy Farmers of Canada and the Canadian Horticultural Council, at the regional and provincial, as well as national level. Officials met with provincial governments, supply management organizations and individual companies. Ahead of the 1999 Seattle Ministerial of the WTO, DFAIT organized a broader conference in Ottawa to allow the stakeholders to learn from and react to the representations of other players in the industry.

The public was not invited to most of these meetings, but the process was supplemented by hearings in the parliamentary committees responsible for agriculture and trade. Senior officials and ministers were engaged throughout. Everybody involved understood that the purpose of the exercise was to ensure that the government's eventual negotiating position reflected the

11 This history draws heavily on (Stairs, 2000: 21–2).

interests of all sectors of the industry, and that the purpose was not to challenge the underlying commitment to multilateral trade liberalization. This massive exercise involved thousands of people all across the country, yet while negotiators heard from everybody in the industry, including labour, they heard from few people outside the industry. The people who came to the meetings were the people with the most direct interest. For this reason, too, the consultation process did not challenge the established WTO paradigm. Since DFAIT is driven by the concerns of producers—who see environmental and food safety issues as losers—the department tends to be resistant to these types of concerns.¹²

DFAIT subsequently prepared a report on the consultations, which was posted to its Web site in the form of a public statement on Canada's initial negotiating position in the proposed new WTO round (Canada, 1999b). The conclusions that officials drew from these consultations were hardly surprising, and were even predictable. The uncomfortable reality of Canadian agricultural trade policy, in stylized terms, is that negotiators must balance the liberalizing interests of western grain producers who compete on world markets against subsidized producers in Europe and the U.S., with the protectionist interests of eastern dairy and chicken farmers who require government support to withstand competition from imports. Both broad concerns were addressed in the 1999 policy statement. The first theme is about market access abroad. The statement notes that:

the major message from stakeholders is the need to “level the playing field.” This reflects the fact that there are major differences between countries and between commodities in the provision of market access opportunities, the level and type of domestic support and the use and magnitude of export assistance. Global trade distortions have had, and continue to have, a major impact on Canadian farm incomes and the profitability of the food processing sector.

The second conclusion in the report on the consultations relates to the role of the state in Canadian farming. The statement observes that:

another theme raised by many stakeholders is the need to maintain Canada's ability to continue orderly marketing systems, such as, supply management and the Canadian Wheat Board. The Federal Government is committed to preserving the ability of Canadians to operate the orderly marketing systems necessary for stability and profitability. Decisions regarding marketing system choices will continue to be made in Canada. If

12 Canadian consultations on the genetic modification of food crops also reflected a producer bias (Agha, 2005).

other countries have concerns regarding alleged trade effects of orderly marketing systems, Canada is prepared to discuss any factual concerns. But, Canada will not engage in sterile debates over alternative marketing philosophies.

The government was sufficiently pleased with the results of the exercise that before providing the details of its negotiating position, the statement promised that:

during the course of the actual negotiations, the government will keep Canadian industry fully informed about the positions being advanced by others, and about developments in the negotiations. As negotiations proceed it may be necessary to fine-tune Canada's approach to deal with issues raised by other participants and to pursue Canada's interests. The government will continue to consult closely with industry and the provinces in making any such adjustments.

DFAIT kept its promise to consult with key stakeholders. As the round progressed, large open consultations were not repeated, and the AAFC Web site is not terribly informative about the evolution of the Canadian negotiating position, but a large range of associations have been encouraged to participate in WTO-related activities, including the observation of ministerial meetings as well as participating in roundtable discussions with industry representatives at the annual public fora in Geneva to discuss trade policy. In March 2006, for example, the agriculture and trade ministers jointly convened a roundtable discussion with industry stakeholders on Canada's approach to the WTO negotiations. Approximately 50 elected heads of national agri-food associations were invited to attend. Similar roundtable events were held in the summer and early fall of 2003, just prior to the Cancun Ministerial, and again in October 2004 and May 2005.

These sorts of events are not sufficient for providing detailed information for both negotiators and economic actors, so Canada's Chief Agriculture Negotiator holds regular teleconference calls with industry stakeholders through the Agriculture Trade Negotiations Consultations Group (ATNCG).¹³ They represent the full range of agri-food stakeholders, including supply management, export-oriented, and agriculture and agri-food processing interests. Approximately 20 producer organizations, 15 processor/transportation organizations, four producer/processor organizations, three individual firms, seven government organizations, three NGOs and three food service/retail organizations have representation in this Group. Consultations with the ATNCG provide for confidential dialogue between industry stakeholders and the government. The frequency of those calls is

13 This descriptive information was provided by AAFC officials in October 2006.

determined by developments in the negotiations. The ATNCG includes stakeholders who have an interest, knowledge and technical expertise on agricultural trade policy and negotiations; have the ability to provide timely advice; and can serve as a contact point for their respective organizations. The conference calls should ensure that the industry understands what is going on, if association leaders keep their members informed.

After the massive exercise of the late 1990s was completed, DFAIT commissioned a review by its internal audit unit. The assessment was procedural, not substantive. Two comments are noteworthy, first from those who were heard:

participants indicated that the process for obtaining their views was a considerable improvement over the previous round of WTO consultations. The approach was viewed as having been effective in building as much consensus as could have been expected given the divergent interests going into the negotiations. The 'listening and learning' approach adopted by AAFC—whereby the views and positions of various stakeholders were gathered—enhanced the Department's ability to inform stakeholders of one another's views and to develop Canada's negotiating position. However the 'education' component was not achieved to as great an extent as might have been possible if the Department had adopted an approach whereby different options, scenarios, and impact analyses were undertaken, shared and debated with participants (Canada, 2000a).

In short, the consultations did not facilitate deliberation or learning as much as might be hoped. Subsequent events may or may not be better in that sense for those involved, but are certainly less engaging for the farm community as a whole.

Second, the auditors were critical of:

...the breadth of stakeholders with whom the Department consults. One of the implications resulting from the Seattle conference unrest was that it underlined growing public expectations that governments establish and nurture relationships with groups who represent non-traditional interests. In seeking to articulate government positions that are in the interests of Canada as a whole, the Department needs to consider how it can develop relationships with these groups, and, perhaps more importantly, encourage alliances between them and the sector (Canada, 2000a: 2–3).

While some such groups are included in the current process, the critique would presumably be stronger today: both the confidential briefings provided by DFAIT and the public hearings conducted by parliamentary committees tend to be dominated by private actors, with few voices attempting to articulate a general interest. An even stronger critique, but one that is hard for me to assess, would be that all of these mechanisms lack a deliberative compo-

ment, which impedes social learning on both sides. The conference calls, for example, are excellent for providing information to stakeholders, but they are less useful as a channel for discussion, or for economic actors to pass information to negotiators. The stakeholders have views, of course, but they may need to find other less transparent or deliberative ways to pass them on.

A2. Trade in services

Consultations on services are more important than consultations on any other aspect of modern trade negotiations. The measures that affect services are not traditional border measures but domestic policies. The political foundation of the trading system is the compromise between free trade abroad and the administrative state at home (Ruggie, 1983). Negotiations on services touch the heart of the compromise, which raises powerful political sensitivities. The first task of consultation, therefore, is to provide information about what the GATS entails and to build a social consensus on acceptable limits for negotiations. One result of this process in Canada was a decision not to negotiate in certain social domains, notably health, public education, social services, and culture, a reflection of the interest of civil society organizations in these issues where trade rules now affect matters of major concern to citizens.

Negotiations on services also touch the work of many other government departments and, in a federal state, on other levels of government. All of these governmental actors had to be informed about the GATS, and they too had to be part of a consensus on the possibility of further liberalization. Finally, the nature of services industries is as complex and hard to observe as anything in a modern economy. Negotiators cannot know what their “interests” are without talking to firms who face barriers abroad and competition at home. Firms too need to learn what the GATS means for them, and they need to provide detailed information on their needs. With respect to some enabling technologies, such as telecommunications, the government will have a broad policy purpose independent of any specific interests, but consultations still help officials to verify in-house economic analysis, and to identify gaps.

Consultations on services have been multi-faceted, as shown in Table 1. Canadian officials have used the full range of consultation devices. At the outset, federal government officials provided information to as many officials, firms, civil society organizations and individuals as possible, and listened to their concerns. During the summer and fall of 2000, together with its provincial/territorial counterparts, the federal government organized a series of consultations with interested stakeholders on Canada’s GATS nego-

tiating position. The objectives of the multistakeholder consultation meetings were twofold: first, to provide a report on the state of the GATS negotiations to stakeholders and members of the public with an interest in the GATS; and second, to collect initial viewpoints on the GATS negotiations from the participants, who represented a broad cross-section of interested Canadians.

Table 1: Consultations on trade in services.

Consultative events	GATS outcomes affected by the process
<ul style="list-style-type: none"> • 1999 <i>Canada Gazette</i> notice on WTO • 2000 Tour and Gazette notice for GATS • Multistakeholder meeting in 2001 • Electronic surveys of service exporters 	<ul style="list-style-type: none"> • Established Canada's initial position (released March 2001) • Determined that Canada would not negotiate on health, public education, social services and culture • Education of civil society, organizations, provinces
<ul style="list-style-type: none"> • 2002 Tour • Web site request for input • SCFAIT public hearings 	<ul style="list-style-type: none"> • Canada's official approach (2002) identified priority markets and barriers • Initial requests and offer (2002 and 2003)
<ul style="list-style-type: none"> • 2003 Public Policy Forum Survey • July 2003 Multistakeholder Information Exchange (Montreal) • 2004 consultations with service providers 	<ul style="list-style-type: none"> • 2004 time to refine strategy for bilateral negotiations; need to further prioritize markets and barriers on which to concentrate efforts (Note: information sought increases in specificity at each stage)

Source: (Canada, 2004c)

The consultations are one of several mechanisms being used by the government to solicit the views of Canadians. Other consultative activities included:¹⁴

- a series of electronic questionnaires to over 10,000 Canadian businesses actively engaged in exporting;
- ongoing consultations with the SAGITs;
- public hearings by the House of Commons Standing Committee on Foreign Affairs and International Trade;

¹⁴ Sources: Industry Canada <http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/vwGeneratedInterE/home>; <http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/en/sk00251e.html>; Department of International Trade <http://www.dfait-maeci.gc.ca/tna-nac/service-en.asp#GATS>.

- a public call for submissions by notice in the *Canada Gazette*;
- extensive public information on the departmental Web site and on an inter-departmental site focusing specifically on the GATS;
- meetings with individual stakeholders, associations and special interest groups;
- creation (in 2001) of a joint working group on international trade of the Federation of Canadian Municipalities (FCM); and
- approximately 20 working groups on sectoral and horizontal issues drawn from about 17 federal government departments.

The next step was a report to Canadians on the comments and concerns that were raised. In summary, DFAIT reported that:

two basic groupings of issues, opinions and concerns emerged in the consultations. First, representatives of business, professional and consumers' associations tended to be favourable to the GATS and focused their comments on issues such as impediments to cross-border movement; recognition of credentials and maintenance of regulatory standards; and the question of autonomy for self-governing bodies. Second, non-governmental and public interest organizations tended to be less favourable to the GATS and to trade liberalization. Their comments focused on the challenges of globalization: the danger of weakening Canada's sovereignty by restricting its right to regulate in the public interest; the need to better integrate our social values into trade agreements; and the need for greater transparency in the negotiation and management of trade agreements (Canada, 2004c).

The government then released its initial position on services negotiations in March 2001 at the same time that it was tabled in Geneva. A second round of consultations aimed at more detailed information culminated on July 8, 2002, when the government released a description of the requests for market access it was asking other WTO countries to make. These requests were based on the expressed interests of exporters.

After this period of intense effort, the government commissioned an assessment of its services consultations (Public Policy Forum, 2003). That review, on which I draw at various points in this paper, was largely procedural, assessing participant satisfaction more than the policy impact of the process. Nevertheless, as shown in Table 1, DFAIT believes that the stages in the consultations can be related to milestones in the negotiations. Officials believe that consultations make a difference; and they note that at different stages of negotiations, they need a different kind of information.

Early in the process, they were looking for broad orientations to the negotiations, and trying to build understanding. The decision that health and edu-

cation would not be on the table was a response to NGO and sub-federal concerns. The decision was hardly surprising in the Canadian context, but officials claim that the consultation results did influence the frequency with which ministers told negotiators about their bottom line, which helped negotiators make clear to trading partners that requests in these areas would not be helpful. Officials also claim that NGO positions on education and health have evolved as a result of the consultations, citing as evidence papers on the GATS that some produce for their own membership. The thinking and questions of the larger NGOs has evolved, and in turn they acknowledge that their views have been reflected in government positions. Consultations also helped negotiators understand the complexity of the regulatory framework in Canada, the intricate web of federal, provincial, and municipal regulations. They also learned about market access interests—they even went to small and remote communities to get some sense of the offensive interests of service providers. The early tour was aimed more at NGOs and unions than at business. More recently consultations have focused on specific sectors to make sure that negotiators are hearing from exporters.

Officials face frustrations, however, in learning enough from the later stages of the process. Small services firms do not often think about Geneva in their day-to-day operations. They tend to be more articulate on “trade development” than on “trade policy.” They do not always think in the multi-year time frames of a WTO round, and they may find the language of negotiators to be overly technical and specialized. Negotiators also observe that Canadian services firms are not especially well organized in relation to the services coalitions in other countries. Canada has umbrella associations of exporters that have participated in various services consultations over the years, but they do not have a strong services focus. The Canadian Manufacturers and Exporters’ Association has a Services Exporters Committee, although it is not as active as the associations of services exporters, for example in the U.S. negotiators in this domain are at a disadvantage without an organized interlocutor, unlike in agriculture where the key interests are well organized. Even civil society organizations are sometimes better organized than services firms. While talking to individual firms can provide useful information, talking to organizations can be more efficient in the use of officials’ time, and in the learning on the part of the organization—there is no need to start over at the beginning each time. These difficulties were less serious at the start of the negotiations when the focus was on the big picture and broad goals, but now negotiators need more depth regarding market access interests.

In March of 2004, the federal government, in partnership with provincial and territorial governments, conducted a new series of 13 consultation workshops across Canada on the subject of the services trade negotiations in

the GATS and in a number of regional forums (see Canada, 2004c). The government needed more detailed information from Canadian service providers to help prioritize their goals for greater market access. The report on these 13 consultations (see Canada, 2004c) reflects the views of participants while respecting the confidential nature both of some of the information received and of the Canadian negotiating strategy. Participants at the workshops represented a wide variety of perspectives, including a cross-section of the Canadian services industry: lawyers, accountants, engineers, management consultants, information technology businesses, telecommunications services providers, oil and gas, mining, research and development, environmental and construction services providers. Other participants included representatives from cultural industries, labour unions, provincial economic development departments, municipal governments, public interest advocates and consumer advocates.

Most non-industry participants underlined concerns they had previously communicated to the government. Some municipal governments and a few provincial ministries not directly involved with services trade policy expressed concern about the possible impact of the negotiations on the right to regulate of all levels of government, a concern others attributed to a lack of information or even negative information generated by NGOs. Other participants were concerned that Canada would be forced by other WTO Members to negotiate in the areas of health, public education and culture in order to be able to achieve its liberalization goals in other non-sensitive sectors. These “right to regulate concerns” notwithstanding, there is little evidence of protectionist attitudes, or even of significant defensive concerns, although representatives from the financial services industry argued that Canada’s regulations in their area are sound—especially from the point of view of public protection and security—and would not benefit from liberalization pressures. The only specific NGO concern was ensuring that environmental services negotiations did not undermine the Canadian International Development Agency’s (CIDA) ability to work through non-profit organizations in developing countries.

In the terms of Hocking’s typology, the government’s objectives in this most recent set of consultations fit the “adaptive club model,” but the workshops also served a “multistakeholder model” objective by helping officials maintain their links with all the stakeholders in the domain. Officials hope that their commitments to transparency and ongoing consultation have helped diminish some of civil society’s concerns about trade in services negotiations. And officials have noticed in their meetings with NGOs and other representatives of civil society that their questions and interventions have become more informed and sophisticated. The negotiators underlined the message that they would maintain and preserve the ability of all levels of gov-

ernment to regulate and set policy in areas of importance to Canadians. They would not negotiate on health, public education or social services and would maintain the flexibility to pursue cultural policy objectives.

A3. Sustainable development and environmental assessment of trade negotiations

Environmental civil society organizations have been leaders in calling for more transparency in trade negotiations, and in stressing the centrality of consultations to sustainable development (Cosbey, 2004). It is ironic, therefore, that Canadian consultations in this domain seem limited. Take sustainable development first.

All Canadian government departments must have a sustainable development strategy. Consultations were conducted by 28 federal government departments and agencies when preparing their first such strategies in the late 1990s. Across Canada, more than 1,600 organizations and Aboriginal communities were consulted on departmental sustainable development issues, objectives and priorities and on the action plans and strategies to achieve them (Canada, 1999c). DFAIT produced its first formal sustainable development strategy, *Agenda 2000*, in 1997. *Agenda 2006*, developed in 2003, is the most recent of these strategies. In the course of developing this strategy, DFAIT consulted both internally and externally (Canada, 2004f). Table 2 outlines the consultative events involved in the development of *Agenda 2006*.

In April 2003, DFAIT held a three-quarter day workshop with 18 external stakeholders. In its summary of this consultation, DFAIT notes that these organizations had been consulted on the previous sustainable development strategy and that the recommendations made at the workshop were similar to those made during internal consultations. A second round of external consultation consisted of posting the draft strategy on DFAIT's Web site and sending invitations to selected individuals. Although 661 invitations were sent, only 21 replies were received.¹⁵

15 Invitations were sent to 40 members of the Environmental and Energy Sectoral Advisory Groups on International Trade (SAGITs); 14 members of C-trade (provincial trade counterparts); 13 representatives of the provinces and territories; 98 Senators; 300 Members of Parliament; 153 Retired Heads of Missions (retired senior executives of DFAIT); 81 representatives of other government departments. See (Canada, 2004f).

Table 2: Consultative events for Agenda 2006.

Consultative events	Outcomes
<ul style="list-style-type: none"> • Jan. 2003 DFAIT Executive Committee meeting • Feb. 2003 1st round of internal consultation 	<ul style="list-style-type: none"> • Approval of consultation plan • Review of Agenda 2003 • Identification of issues of interest to Department
<ul style="list-style-type: none"> • April 2003 1st round of external consultation 	<ul style="list-style-type: none"> • Ascertained external perspective
<ul style="list-style-type: none"> • May-July 2003 internal consultation • July 2003 DFAIT exec. comm. 	<ul style="list-style-type: none"> • Development of draft strategy • Approval of 1st draft
<ul style="list-style-type: none"> • August 2003 Draft posted on Web site and invitations sent to 661 individuals 	<ul style="list-style-type: none"> • 21 replies

Source: (Canada, 2004f)

Environmental groups have participated in a number of trade-related consultations, including a “Trade and Environment Roundtable” at McGill University in Montreal on June 12, 2002 (see <http://www.dfait-maeci.gc.ca/tna-nac/mcgill-en.asp#12>), and there has been public participation in a number of environmental assessments of trade negotiations (Cooper, 2002). Environmental assessments are conducted under the *Framework of Environmental Assessments of Trade Negotiations* (Canada, 2001b). This framework was developed in response to a 1999 Cabinet directive on the environmental assessment of policy, plan and program proposals. According to DFAIT, this framework “provides an analytical process for identifying and addressing **likely** and **significant** environmental impacts of trade negotiations, thus helping to integrate environmental considerations in the course of trade negotiations” (Canada, 2002: 9). The framework is thus not concerned with unlikely or insignificant environmental impacts. On public participation in environmental assessments, the framework states:

environmental protection is a core Canadian value and priority. Canadians have a say in the development of Canada’s environmental policy and trade agenda. Public input will continue to be sought by the Government when undertaking environmental assessments of trade negotiations (Canada, 2001b).

The public is consulted at each stage of the environmental assessment (EA) process: 1) notice of intent to conduct an EA; 2) preparation of an Initial EA; 3) preparation of a Draft EA; and 4) preparation of a Final EA report

(for a graphical depiction of the process, see Canada, 2001b: 8). The EA has four elements: 1) identification of the scope of negotiations and overall economic relevance; 2) identification of the **likely** environmental impacts of “trade-induced economic and regulatory changes;” 3) assessment of the **significance** of these **likely** changes; and 4) identification of mitigation or enhancement measures to address negative or positive impacts. The Doha Round of WTO negotiations provides a test case of Canadian environmental assessment of trade negotiations. DFAIT’s initial environmental assessment stated that the likely environmental impacts, in Canada, of the Doha Round of negotiations were minimal (Canada, 2002: 45–6). A further Draft EA analysis of the various areas of negotiation under Doha was promised, but has not been produced. A Final EA is expected once the negotiations are completed.

A4. Are consumers consulted?

Trade liberalization is supposedly beneficial for consumers, yet a detailed legal analysis of the WTO agreements found few references to them or their interests (McGivern, 2004). The most direct references to consumers are in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement). Under both agreements, national investigating authorities must grant opportunities for “representative consumer organizations” to provide information on dumping or subsidization, injury to the domestic industry, and the so-called “causal link” between the dumped or subsidized goods and the injury to the industry. McGivern (2004) shows that such processes do exist in EU and U.S. law, but it would be hard for consumers to use them. The Canadian situation is similar.

The Canadian International Trade Tribunal (CITT) includes solicitation of the views of representative consumer organizations in anti-dumping and subsidy/countervail cases in its procedures. Under the Special Import Measures Act, the CITT may consider the views of “other” interested parties in all of the various hearings it conducts. Whenever an inquiry is launched, a notice is published in the *Canada Gazette* and forwarded “to all known interested parties.” A detailed examination of the records might show many cases where an association representing a **specific** consumer interest was heard—for example, firms that use a particular imported good as an input no doubt make representations before a hearing to counter producers seeking trade restrictions. But we could find only three cases in the decade since the creation of the WTO where

a **general** consumer interest was represented.¹⁶ It seems that the implementation of these trade measures, which are inherently inimical to the interests of consumers (their effect is to raise domestic prices), may be transparent, but the process discourages participation.

WTO and NAFTA do not have “direct effect” in Canadian law, but government initiation of cases in the dispute settlement system can be responsive to informal business complaints, Brazil aircraft being the classic case in Canada. I am not aware of any cases responsive to citizen or consumer concerns in Canada. Note: in addition to informal lobbying, formal channels for the initiation of cases exist in the EU and the U.S.

16 The Canadian Consumers' Association has been involved in these cases before the tribunal: 1995, duties on sugar: http://www.citt.gc.ca/dumping/interest/consider/pb95002_e.asp; 2002, duties on refrigerators: http://www.citt.gc.ca/dumping/Interest/consider/pb2a002_e.asp; 1998, baby food: http://www.citt.gc.ca/dumping/interest/consider/pb98001_e.asp. The *Fédération nationale des associations de consommateurs du Québec* was also involved in the last case.

Appendix B: Trade policy mechanisms for information and consultations

Techniques

1. INFORMATION

Description:

Accurate, objective and timely information promotes transparency and accountability and enables citizens to participate in the public policy process (Canada, 2001c:3).

Trade policy examples:

Note: Even “passive” access to information requires tools to enable citizens to find what they are looking for (e.g., catalogues and indexes). When governments engage in the “active” provision of information, they may use a range of different products (e.g., annual reports, brochures, leaflets) and delivery mechanisms, which may be either direct (e.g., information centres, toll-free phone numbers) or indirect (e.g., media coverage, advertising, civil society organizations as intermediaries).

Governments use different tools to seek feedback on policy issues (e.g., opinion polls and surveys) or on draft policies and laws (e.g., comment and notice periods) from a broad range of citizens. They may also use tools for consultation providing greater levels of interaction (e.g., public hearings, focus groups, citizen panels, workshops) with smaller groups of citizens. Engaging citizens in policy deliberation and active participation requires specific tools to facilitate learning, debate and the drafting of concrete proposals (e.g., citizens’ fora, consensus conferences, citizens’ juries). (OECD, 2001a: 13)

1.1 Public information

Description:

- a) Statistical data is needed to provide a common baseline for everyone involved in trade policy.
- b) Discussion papers, briefings, newsletters; publication of legislation and regulations.

Trade policy examples:

- a) Statistics Canada provides extensive data on Canadian international transactions. This resource is summarized in such DFAIT publications as the annual *State of Trade*.
- b) DFAIT maintains extensive trade policy resources on its Web site including negotiating texts and Canada’s submissions to the WTO on disputes in which Canada is involved, (Ciuriak, 2004). Publications from the research and analysis staff include the annual *State of Trade* and *Trade Policy Research* series. Examples of occasional publications which also provide information to

enhance public understanding of the issues include (Canada, 2003c; Canada, 2003b; Canada, 2003a).

Canada employs a variety of tools to ensure that laws are effectively communicated to affected parties, with sufficient notice to allow time for comment, consistent with WTO obligations, including publication in the official Canada Gazette. The text (and current status in the process) of most legislation and subordinate regulations is available via the Internet. In addition, regulating departments are required to develop a comprehensive plan to communicate regulatory changes to those affected. The Standards Council of Canada is under contract to act as Canada's official enquiry point, (for details, see OECD, 2002: 44).

1.2 Outreach

Description:

Government can create opportunities for ministers and officials to speak directly to an interested public, for example by making speeches.

Trade policy examples:

Multistakeholder meetings were used to disseminate information to interested groups. Other formal mechanisms described below are also used for this purpose.

1.3 Public Broadcasting

Description:

Broadcast consultations on the Internet or on television demonstrate democratic values and commitment to openness and transparency—decreases apprehensions and skepticism of public. Also gives public a better understanding of what goes on “behind closed doors.” Increases ability to participate in policy advocacy (Lortie and Bedard, 2002).

Trade policy examples:

The Canadian government Web cast the briefings that were held every evening in Cancun during the WTO ministerial conference, and has offered to Web cast certain proceedings in Geneva, such as the Trade Policy Review Body's discussion of the report on Canada.

1.4 Feedback on consultations

Description:

The draft guidelines say that officials should give feedback in at least three areas: what was heard (for example, providing meeting notes); what was done with what was heard (for example, sharing recommendations); and what decisions were made and why (Canada, 2001c: 24).

One technique is making the minutes of government meetings as well as meetings between government officials and civil society available on the Internet (Lortie and Bedard, 2002).

Trade policy examples:

The trade policy record is spotty. Excellent in services (Canada, 2004c). Reports of 2002 Trade and Development Roundtables posted to DFAIT Web site. DFAIT's evaluation suggests participants are dissatisfied, and the general public can find little information (Canada, 2004b).

AAFC publishes updates on the WTO agriculture negotiations (Canada, 2004d).

2. CONSULTATIONS

Description:

Consultation involves processes that seek the views of individuals or groups on policies that affect them directly or in which they have a significant interest. It can be used to help frame an issue, to identify or assess options and to evaluate ongoing activities. Advisory committees, program or policy conferences, public meetings, toll-free lines, Web sites, polling and focus groups are among the many forums through which consultations are conducted (Canada, 2001c: 4–5).

Trade policy examples:

NB: This Table concentrates on formal mechanisms for information and consultation. It does not look at informal consultation—the unobserved occasions when ministers and officials talk to lobbyists, experts and citizens. Both sides may learn from such encounters, but it is hard to fit into the categories of the Table.

2.1 Internal bureaucratic consultation

Description:

Participants come from foreign/trade ministries, sectoral ministries and provinces, depending on issue. The purpose is policy coordination in the face of an increasingly complex trade agenda.

Hocking calls this the Club Model (Hocking, 2004: Table 1).

- Federal-provincial-territorial (C-Trade) meetings are held quarterly in Ottawa and provincial capitals so ministers and deputy ministers from federal, provincial and territorial departments can discuss relevant trade issues. Written information is provided frequently, and officials participate in weekly conference calls.
- The joint working group on international trade with the Federation of Canadian Municipalities (FCM) was created in 2001 to discuss issues of interest and relevance to municipalities regarding trade agreements such as the GATS.
- Within the federal government, there are approximately 20 working groups on sectoral and horizontal issues drawn from about 17 federal government departments, a list reflective of the increasing reach and complexity of trade policy.

2.2 Business-focused consultation

Description:

Adds business representation to the Club Model. Advice focused; adds private sector resources, particularly knowledge on trade policy processes. Hocking calls this the Adaptive Club Model (Hocking, 2004: Table 1).

Consultation with actors outside government is often based on independent bodies that take on the task of policy research and advice. **Advisory bodies** are not part of the decision process (Patten, 2001). Use of such bodies may heighten mistrust and public cynicism if the role of the advisory body is not clarified or real decision-making power devolved to it (Baetz and Tanguay, 1998).

Standing bodies oversee sector-specific planning and may advise on an issue for several years. Obtain information from and to provide information to the community; ensure fair, transparent and legitimate decision-making processes; and gain support for their outcomes (Abelson, *et al.*, 2002). They are seen as providing a broader, more integrated analysis of ongoing and emerging trade and related social and economic issues (Ciuriak, 2004).

Trade policy examples:

For mechanisms, see below:

Each of the 12 active Sectoral Advisory Groups on International Trade (SAGITs) formerly provided confidential advice to minister in such areas as agriculture, information technology, or textiles.

Each SAGIT was comprised of senior business executives with some representation from industry associations, labour/environment and academia. Members served in their individual capacities and not as representatives of specific entities or interest groups.

SAGITs work via restricted Web sites, conference calls, and face-to-face meetings to consult with the business community and provide confidential advice on trade policy issues to trade officials and to the minister (Ciuriak, 2004).

The 2004 evaluation found that the SAGITs had out-lived their usefulness: they were insufficiently flexible, and did not engage the right people.

2.3 Multistakeholder consultations

Description:

Established and managed by departmental bureaucrats as a means of bringing different segments of society together as much for building consensus among a variety of stakeholders as for providing information to economic actors.

Adds civil society representatives to the Adaptive Club Model (Hocking, 2004: Table 1).

Helps policy-makers in coming to terms with policy problems by gathering information, evaluating policy options and their potential consequences for different societal interests, and encourage discussion and trade-offs between conflicting parties (Patten, 2001).

Trade policy examples:

Information sessions, informal meetings, seminars, roundtable discussions, etc. with stakeholder groups to address trade and investment-related issues of interest to Canadians. Developed as a public outreach program to provide opportunities for in-depth and issue-specific discussion/debate on policy concerns (Ciuriak, 2004).

Business and industry, citizen-based and public interest groups and academics participate as advisors to Canadian delegations to WTO ministerials (Ciuriak, 2004; Stairs, 2000).

See (Ciuriak, 2004) for a list of recent participants.

Such events are now out of favour: they frustrate participants and provide little benefit for officials.

2.4 WTO-related events

Description:

Private actors can be invited to attend WTO ministerials as observers, and to attend the annual WTO public symposium in order to increase public understanding and to facilitate an exchange of views.

Trade policy examples:

Agriculture groups have taken far more advantage of these general opportunities than have other Canadians interested in trade policy (see Wolfe, 2006).

2.5 Political consultations

Description:

The government does not need a mandate from Parliament to enter into negotiations on new agreements, but the House of Commons is a forum for opposition parties to question the government on its policies. Committee hearings can be valuable for allowing all sides of a contentious political issue to air their views as part of an effort to build a consensus for a policy change.

Trade policy examples:

The Commons Standing Committee on Foreign Affairs and International Trade and its sub-Committee on International Trade, Trade Disputes and Investment hold public hearings on Canada's trade policy, as does the Standing Committee on Agriculture.

Committees may consider department expenditures and operations as well as draft legislation and new agreements.

2.6 Academics

Description:

Academics can be a valuable source of expert advice.

Trade policy examples:

In 1998, the Deputy Minister for International Trade established an Academic Advisory Council to obtain on a regular basis the views of leading experts in economics, law, political science, and other disciplines on trade and other international issues. The views obtained from this source are seen as complementary to the input from interest groups and as providing a broader, more integrated analysis of ongoing and emerging trade and related social and economic issues (Ciuriak, 2004). The 15 members of the AAC—experts in law, politics, economics and other trade-related disciplines—met yearly to provide disinterested, academic advice to the deputy minister. The group was eliminated in the restructuring of consultation mechanisms because senior officials saw little merit in it, but academics are included in the new tactical and technical mechanisms, consistent with their former participation in the SAGITs.

Academics played a central role in the Trade and Development Roundtables in 2002 (<http://www.dfait-maeci.gc.ca/tna-nac/IYT/consult-wto-en.asp>), in hearings for four parliamentary committee reports between 1999 and 2003. And they were participants in the seven multistakeholder consultations between 1999 and 2003.

Departmental officials also have more informal engagement with academics through participation in conferences and in one-on-one conversations.

Note also the annual publication of trade policy research (Curtis and Ciuriak, 2002; Curtis and Ciuriak, 2003; Curtis, 2001), which usually includes many papers by academics, notably (Wolfe, 2004). Whether this research, or other academic analysis, the extensive in-house research (Ciuriak, 2004) is actually read by trade policy officials is hard to know.

2.7 Other formal consultations

2.7 a) Public Opinion Surveys

Description:

A large sample representative of the population segments of interest are asked a variety of questions through written questionnaires or telephone surveys (Rowe and Frewer, 2000).

Polls are not referenda. On the difficulties interpreting polls (see Mendelsohn and Brent, 2001). On the problems in designing and interpreting trade policy polls (see Mendelsohn and Wolfe, 2001; Wolfe and Mendelsohn, 2005). Similar care must be taken in interpreting focus group results.

Trade policy examples:

Polling is extensively used, though it is not used in an analytically rigorous way. There is anecdotal evidence that officials have used polls in internal debates. For example, when Agriculture officials are able to demonstrate to Cabinet that certain rural concerns resonate with urban voters. (For general summaries of public opinion research in the Canadian government, see Canada, 2004e). DFAIT, AAFC and Environment were among the eight largest users of polls in 2003–4. The government performs annual surveys of Canadian Attitudes toward International Trade (Ciuriak, 2004). Much of the data are available on the department's Web site (for example, see EKOS, 2003).

2.7 b) Solicitation of views

Description:

Publication of draft laws or regulations for comment by citizens (and trading partners).

Requests for written submissions on general or specific issues .

Trade policy examples:

DFAIT has created a Web-based process which invites written submissions from the general public on a Web page entitled "It's Your Turn." It also uses Canada Gazette Notices (the official record of government activities).

Consultations can be highly targeted. In October 2004, for example, the Canadian Food Inspection Agency sought the views of the importing industry and their draft Good Importing Practice for Food (GIP) document. It was not clear from the request on the Web site if views from consumers or citizens would even be welcome. The agency was not seeking general views on import policy; it wanted to be sure that new regulations would not have unintended consequences, something only the industry would know.

2.7 c) Focus Groups

Description:

Discussions of a particular topic involving between half-a-dozen and a dozen individuals selected to meet specific criteria and thus categorized as being broadly representative of people from that segment of society.

Can be used to explore the views of citizens who are normally excluded from political discussions (Pratchett, 1999).

Trade policy examples:

No evidence of whether this technique has been used for trade policy in Canada.

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Trade policy and action in the Netherlands: Liberalization, consultation, and recommendations

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1. Introduction¹

This paper was commissioned by the International Institute for Sustainable Development (IISD) in order to provide a clearer picture of how trade policy works in the Netherlands—how stakeholders participate in this process and whether it leads to a trade policy that contributes to sustainable development. The paper was researched and written between September 2004 and March 2005. It includes interviews with 12 prominent stakeholders in trade policy from government, NGOs, and business and labour organizations. As this paper is time-specific, people identified within may have left their posts since the time of writing. Where certain highly relevant figures are no longer in office this has been denoted with (former).

The paper focuses on the stakeholders in the trade policy process; it describes the mechanisms in place; assesses how well these mechanisms serve the interests of the broad range of stakeholders; and explores what improvements might be introduced that would not, at the same time, undermine the negotiating position of the Netherlands government.

The paper is based on interviews with stakeholders ranging from civil servants and trade unions to NGOs (see Appendix for a complete list).

For a better understanding of this subject, some knowledge of European law is necessary. This information is included in boxes throughout this paper for the convenience of readers.

2. The trade policy of the Netherlands

The Netherlands is one of the 27 Member States of the European Union. Like many policy areas, trade forms part of so-called, European communal policy

¹ The investigation for this paper was carried out by Hans van de Veen and Hans van de Wiel. Bureau M&O, Amsterdam, Amersfoort, the Netherlands, October–November 2004.

(see Box 1). This means that Member States have delegated this aspect of policy-making to the European Union (EU). In real terms it is the European Commission—the executive body of the EU—that carries out a mandate of the European Council. Dutch trade policy is thus in almost every aspect synonymous with EU trade policy. This applies to all communal policy for which the EU has formulated rules and procedures.

Conversely, in the absence of communal policy, a Member State is free to follow its own policies, but this is restricted to the export trade of weapons and weapon systems. This area does not fall under the objectives of this paper.

In the words of one official, EU trade policy is a “fluid and broad policy area.” Basically it contains all the multilateral negotiations and agreements within the WTO framework and all bilateral (i.e., between the EU and outside countries) and regional negotiations and agreements, such as MERCOSUR, Cotonou (between the EU and 77 so-called African, Caribbean and Pacific (ACP) countries, former colonies in Africa, the Caribbean and the Pacific) and some Mediterranean countries. These “association agreements” are WTO-compatible. The focus of EU trade policy is on the WTO.

In sum then, although Dutch trade policy is synonymous with European trade policy, the Netherlands can still influence EU policy; and the Netherlands has a say in formulating the mandate of the European Commission via its vote in the European Council, and a lesser role through the European Parliament via the co-decision procedure.

Box 1: European Union: Institutions and decision-making

The European Union (EU) is not a federation like the United States, nor is it an organization for cooperation between governments, like the United Nations. The countries that make up the EU (its Member States) pool their sovereignty in order to gain strength and world influence none of them could have on their own. Pooling sovereignty means, in practice, that Member States delegate some of their decision-making powers to shared institutions they have created so that decisions on specific matters of joint interest can be made democratically at the European level.

For a better understanding of the responsibilities and decision-making process within the EU, three institutions deserve further explanation: the European Parliament, the Council of the European Union and the European Commission. This will be followed by a brief explanation of the legislative process.

The *European Parliament* is directly elected by citizens of the Member States of the EU and count 785 members as of January 2007. Every Member State has a number of seats in proportion to its population. The Parliament is organized around political blocks. For example: the Netherlands has 27 seats of which five represent green parties as of May 2007 (three represent the Group of the Greens/European Free Alliance; and two represent the Confederal Group of the European United Left – Nordic Green Left).

Parliament has different roles and rights in different policy fields. With respect to trade policy it has an advisory right and no right of co-decision.

The *Council of the European Union* is the EU's main decision-making body. It represents the Member States, and its meetings are attended by one minister from each of the EU's national governments. Which minister actually attends depends on the subjects on the agenda of European Council meetings.

Each minister is empowered to commit his or her government. In other words, the minister's signature is the signature of the whole government. Moreover, each minister in the Council is answerable to his or her national parliament and to the citizens that parliament represents. This ensures the democratic legitimacy of the Council's decisions.

Decisions in the Council are taken by vote. The bigger the country's population, the more votes it has. But the number is not strictly proportional: it is adjusted in favour of the less populous countries. The most common voting procedure in the Council is "qualified majority voting" (QMV). This means that for a proposal to be adopted, it needs the support of a specified minimum number of votes.

The *European Commission* is the politically independent institution that represents and upholds the interests of the EU as a whole. In fact, it is the executive body of the EU and the driving force within the EU's institutional system: it proposes legislation (it has the exclusive "right of initiative" to do so), policies and programs of action and it is responsible for implementing the decisions of Parliament and the Council.

The members of the Commission (27, in accordance with the number of Member States) are known as "commissioners." They are committed to acting in the interests of the Union as a whole and not taking instructions from national governments.

The European Commission is an important mouthpiece for the European Union on the international stage. It enables EU Member States to speak "with one voice" in international forums such as the World Trade Organization. The Commission is also responsible for negotiating international agreements on behalf of the EU. One well-known example is the Cotonou Agreement.

The current commissioner for External Trade is Peter Mandelson (U.K., 2004–9). Formerly, the commissioner was Frenchman Pascal Lamy.

The *legislative process* starts with a draft piece of legislation—a regulation, directive or a decision—and is normally prepared after internal consultation with all services concerned in the Commission and external consultation with national authorities, interested parties and stakeholders. There are four legislative decision-making procedures—assent, co-decision, cooperation and consultation, depending on what the Treaty provides for in the relevant area of activity. In most of the cases the co-decision procedure is applied, which means that the formal proposal is examined by the European Parliament and the Council as adopted by the College of the Commissioners. In other words, the European Parliament and Council jointly have the responsibility of EU legislator. In some cases, the European Economic and Social Committee and the Committee of the Regions are consulted within the legislative process. In the co-decision procedure, the Commission plays the role of mediator and controlling respect for the European interest until the piece of legislation is adopted. The EU legislator examines the proposal in one, two or three readings. Once legislation is adopted by the EU legislator, it is transposed into national law and applied by the Commission and by Member States.

The consultation procedure is characterized by a division of tasks between the Commission and the Council that can be summed up as follows: the Commission proposes, the Council disposes. However, before Council makes a decision, consultation is sometimes required (the European Parliament, the European Economic and Social Committee and the Committee of the Regions).

(For more information on the co-decision, consultation and other two procedures, visit: http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm).

Box 2: Single market

One of the most important aims of the EU is the building of a single market. Article 2 of the Treaty of Rome (1957), which set up the European Economic Community (EEC, one of the pillars of the later EU), set the following aim for the EEC:

to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

This was achieved by two complementary means. One was to open up the borders, allowing people, goods and services to move around freely within the EEC. The other was to organize solidarity among the Member States by setting up common policies and financial instruments.

In 1993 the single market was completed. The import restrictions that EU countries had been allowed to maintain were steadily abolished, as was the internal distribution of "sensitive" imports such as textiles, steel, cars and electronic goods.

Since then, the EU is a single trading bloc and operates with one voice (but 27 votes) in multilateral negotiations and ministerial conferences.

3. Attitudes towards trade liberalization in the Netherlands

The general opinion in the Netherlands in respect to liberalization and the WTO etc., is that open markets without trade or non-trade barriers has done the open Dutch economy far more good than harm.

As the Ministry of Foreign Affairs of the Netherlands puts it on its Web site:

the Netherlands has, as one of the biggest exporters in the world, an enormous interest in further liberalization of world trade. Our country benefits from international rules for a better free market and the reduction of unfair competition.

The government sees the EU and the WTO as valuable vehicles for the promotion of free trade worldwide. But free trade is not an aim in itself, the Ministry of Economic Affairs writes in a letter to the Dutch Parliament. "Trade is a means to generate prosperity which is necessary to alleviate poverty. (...) The WTO is the appropriate framework." What is more: the WTO is an important instrument to reinforce the international (and economic) rule of law.

One of the most notable trends is the rapidly diminishing support for export subsidies which allow European agricultural products to be dumped on the world market. This trend is recognized by the Dutch Organisation for Agriculture and Horticulture. At the same time, there is a growing consensus that developing countries must have instruments to protect their own markets. However, the Dutch Organisation for Agriculture and Horticulture claims this right for the Dutch market as well, which is resisted especially from the development NGO community.

Within the government of the Netherlands, the Ministry of Economic Affairs is the most ardent proponent of liberalization. Other ministries, like the Ministry

of Environment and the Ministry for Development Cooperation share the general view of Economic Affairs but sometimes place emphasis elsewhere.

The business community is very much in favour of free trade; although it is notable that the organization Association for Medium and Small-Scale Business (MKB) representing medium and small-scale enterprises has no strong opinion about the subject.

The Dutch Organisation for Agriculture and Horticulture has mixed views. Depending on the sector and/or the crop/product, it is either for or against the liberalization of the particular sector in question. Generally speaking, it wants the EU to slow down the liberalization process. “We want protection constructions for our farmers,” the spokesman said.

The Dutch NGO community is also divided. Development NGOs see free trade as one of the means to alleviate poverty, but not automatically: developing countries must have free access to western markets but must have the right to protect their own markets; they are calling on ministers from rich countries to agree to stop export-dumping that destroys markets for poor farmers and leads to poverty; the World Bank and International Monetary Fund should stop making loans to developing countries conditional upon the incorporation of trade liberalization measures.

Environmental NGOs believe that the central aim of European trade policy must be to contribute to the overarching goal of sustainable development. In order to achieve this, it is necessary to make Sustainability Impact Assessments more comprehensive and policy-oriented and to integrate findings into the decision-making process at the government level. They want the EU to take the lead for Member States, ensuring that trade negotiations are conducted from a sustainable development perspective ensuring that no negative environmental and developmental impacts can be anticipated.

4. Responsibilities for trade policy

The European Commission holds the initiative on formulating trade policy. But what are the formal and informal responsibilities?

a. European Commission

The European Commission is the most important institution in regards to trade policy. Policy proposals concerning trade are to the Commission, as trade is to communal policy. In other words, policy proposals are the prerogative of the Commission.

The Commission draws up a proposal (known as a “right of initiative”). A proposal is prepared by a member of the European Commission by the

Commission department dealing with the particular field. Frequently the department will also consult national experts at this stage. This sometimes takes the form of deliberations in specially convened committees. Alternatively, experts may have questions put to them by relevant departments of the Commission.

In practice, this consultation is important in that it enables the Commission, while it is still in the process of drawing up the proposal, to assess its chances of being approved by the Council and, if necessary, seek compromise at this early stage. However, the Commission is not obliged to accept the advice of national experts when drawing up proposals.

The draft drawn up by the Commission, setting out the content and form of the measure to the last detail, goes before the Commission as a whole, where a simple majority is enough to have it adopted. It is now a “Commission proposal,” and is sent to the Council with detailed explanatory remarks.

The WTO is a focal point of EU trade policy. In trade policy, the Commission, mandated by the Council and in consultation with a Council committee of high-level trade officials called the “Article 133 Committee”—named after Article 133 of the EC Treaty of Rome (1957)—has the responsibility of negotiating and managing trade agreements involving tariff amendments, customs and trade provisions and protective measures. Within the WTO, the Commission negotiates on behalf of the Community and represents Member States in the settlement of disputes.

The current mandate dates from before the WTO ministerial conference in Seattle (1999). It is a deliberately “vague” mandate, according to an official of the Ministry of the Dutch Development Cooperation, and it has not subsequently been altered, “although things have changed.” For example, the EU has abandoned the so-called Singapore issues (investment, competition policy, transparency in government procurement and trade facilitation), as they were too controversial for developing countries, but they are still part of the mandate.

According to the same official, there are good reasons to keep the mandate as it is. “If the mandate has to be negotiated again, it would open a Pandora’s box and give the protectionists among the Member States the opportunity to throw a spanner in the works.”

Not only the vagueness of the mandate but also the complexity of the issues and the strong-willed character of the commissioner in question contribute to the growing power of the Commission in trade issues. For example, in order to prime the deadlocked WTO negotiations, (former) Trade commissioner Pascal Lamy and (former) Agriculture commissioner Franz Fischler offered to abolish European export subsidies, without consulting the Council. The French minister Gaymard severely criticized the offer (known

as the “agriculture framework agreement”). The Commission, he said, had “crossed its mandate.” But the French were unable to organize a blocking minority in the Council against the proposal, so it was accepted in 2004.

The same official of the Development Cooperation Ministry said the growing power of the Commission is also due to the diminishing power of the Member States. “They can choose to follow a dossier closely or leave it to the insight of the Commission. More and more Member States choose the latter position.”

The Commission reports to and is guided by the consultative “Article 133 Committee.” It consists of Brussels based officials and meets every Friday, usually at the level of deputy members, and once a month at the level of full members. The Commission’s key representatives at these meetings are the Head of the WTO unit and the Director-General for Trade, respectively.

In the meetings of the “Article 133 Committee,” all current issues are reviewed, varying from technical matters to the general trade policy of the European Commission. These latter debates take place during the monthly meetings with the Director-Generals.

In these meetings the European Commission takes the lead, Member States react and intervene, and the President of the Council (bi-annual position which rotates between Member States) seeks compromises and draws conclusions. If the meeting doesn’t come to conclusions, the European Commission has to find its own line.

On Thursdays, the Dutch Interdepartmental Council for Trade Policy (IRHP) gathers to coordinate and prepare instructions for all agenda items for the Dutch representative on the “Article 133 Committee.” The Ministry of Economic Affairs has a coordinating role. Other departments are welcome, but generally the ministries of Foreign Affairs, Agriculture and Development Cooperation are represented.

Draft instructions are produced by Economic Affairs. They are then discussed by all the ministries involved and commentaries on the drafts are sent back to economic affairs via electronic mail.

b. The European Council

Ministers of Member States meet within the Council of the European Union. Depending on the issue on the agenda, each country will be represented by the minister responsible for that subject. The General Affairs and External Relations Council (GAERC; further referred to as the Council) brings together the foreign affairs ministers of Member States. Ministers responsible for European affairs, defence, development or trade also participate depending on the items on agenda.

The Council has to check whether it must consult other Community bodies before deciding on the proposal of the European Commission. The European Parliament has the right to be consulted on all politically important measures (compulsory consultation).

After Parliament has been consulted, the Commission proposal is once more put before the Council, perhaps amended by the Commission in the light of opinions in Parliament, where it is discussed by the Permanent Representatives Committee (Coreper).

In Coreper, all technical details of decisions to be taken by the Council are worked out in advance by specialized working groups. Adoption of the proposal by the Council is the final stage in the legislative process.

c. European Parliament

External trade-related proposals of the European Commission are subject to the “consultation procedure” as discussed above. This means that the work involved in moving from proposal to legislation is shared between the Commission and the Council: the Commission submits proposals and the Council makes the decisions. Before a decision is made by the Council, however, various stages must be completed which, depending on the field concerned, can also involve the European Parliament.

By way of consultation, the Council officially forwards a Commission proposal to the President of the European Parliament and formally requests that the European Parliament set out its position. The President passes the proposal on to a parliamentary coordination committee for further consideration. The outcome of the committee’s deliberations is then discussed at a plenary session of Parliament, and is set out in a report which accepts or rejects or proposes amendments to the proposal.

The Council is not legally obliged to take account of the opinions or amendments emanating from Parliament. Although called a Parliament, the 785 MEPs have an unequal relationship with the Council. For example, they do not have full co-decision procedure in many areas and neither body can initiate legislation. Parliament has had control over the EU budget since the 1970s. It also has control over the appointment of the European Commission. Nevertheless, the opinions of Parliament are of political importance in that they enable Parliament to point out any legal shortcomings or call for further Community measures, thereby giving new impetus to the policy of European integration.

While the European Parliament has no right of co-decision with the Council regarding trade policy, it has gained more *de facto* the Parliament has gained more influence over time, but this is entirely attributed to (former) commis-

sioner Lamy. During his time in office until 2004, he was very willing to consult the European Parliament (the Trade Committee, Committee on Industry, Research and Energy (ITRE), and others) on matters of trade policy. A member of the European Parliament said: “Lamy shares all the information with us, even confidential information. So *de facto* the EP has a co-decision right on trade policy.” But he added that the commissioner is not obliged to accept views of Parliament.

d. The National Parliament

Formally the National Parliament has the right to amend the instructions of the minister.

e. Other stakeholders

NGOs (in the broad sense of the word) have no formal rights concerning the making of trade policy.

5. The consultation process

a. Parliament

National parliamentarians have the right to comment and ask (via motions) the Dutch government to adapt the instructions of the Minister of Economic Affairs before a meeting of the European Council and the ministerial WTO conferences.

For a number of reasons this right should not be overestimated:

1. The Netherlands is only one of 27 Member States in the Union: in the European Council it always has to find support for its opinions to build a majority.
2. The position of the minister in the Council will remain largely unclear, as only the outcome (conclusions) of the debate are made public, not the efforts in the debate.

The Minister informs the Parliament regularly via letters in which he/she describes the ongoing process in the multilateral and bilateral negotiations, especially on the eve of ministerial conferences. The letters contain the position of the Dutch government.

According to one Dutch parliamentarian, these letters are very procedural and have “neither head nor tail, which makes it extremely difficult to have a political debate.” This means that the minister is in an “awkward position: he has free hands.”

Usually the Parliament is given little time to prepare itself for discussions with the Minister. And on at least one recent occasion the Parliament discussed the content of the letter after the European Council had already taken place.

In practice, the Parliament seldom votes on motions. The parliamentarians interviewed for this paper can remember only one vote during the last years—which didn't gain a majority. One parliamentarian compared the trade debate in the Parliament with “pouring water on a dark suit: it gets warm but you don't see anything.”

The debate in the Dutch Parliament on trade-related issues is of dubious quality, the spokesman of a trade union confirms. He witnessed the debate in question in the build-up to Seattle (1999). “The discussion with the Minister took exactly 20 minutes. The parties sent their experts in consumer interests! They had no idea what was at stake in Seattle. I must admit things have improved since. But compared with the social impact of the WTO, the political interest is quite feeble. In my opinion it is a shame that the Parliament has never asked for an independent investigation into the impact on Dutch agriculture of the Commission's mandate. The Parliament is supposed to represent public interests, not the interests of some international corporations that benefit from free trade.”

b. NGOs

Since the “Battle of Seattle,” as the WTO ministerial held in the City of Seattle in 1999 is often called, Dutch NGOs are being consulted by the government on the eve of important conferences—in fact two times a year. The aim of the consultations is to broaden public support for trade policies. A civil servant of the Ministry of Economic Affairs said: “The hostile attitude towards Seattle took us by surprise. We decided to change course radically.”

The selection of NGOs is made by the Ministry of Economic Affairs, in close cooperation with a NGO network, the South-North Federation (ZNF). The NGOs come together before the consultation, divide the subjects and decide who will be the spokespeople.

Consultations take the form of a mutual information exchange. The civil servants inform the representatives of the NGOs about the position and considerations of the government, the NGOs put forward their positions.

Consultations do not take the form of a debate but of a question and answer session. “For us,” a ministry official said, “it is useful to know how something comes across. And there is always the possibility that we have overlooked a serious problem—NGOs have more time to sort something out thoroughly.”

Consultations have no formal status. The record is published on the Web site of the Ministry of Economic Affairs.

NGOs have mixed feelings about consultations. Some emphasize that consultation is not the appropriate place to exert influence on trade policy. They see the consultation process as a way to show that the NGO community has a shared view about various issues.

One representative of a development NGO said: “we do not represent a specific interest but ‘the voice of the South.’ We try to explain how EU policy can turn out for developing countries.”

Others are more bitter and say consultation is “absolutely meaningless;” “it doesn’t commit the government to any action.” They point out that the minutes of NGO consultations are made public, in contrast to consultations with business: “This is at odds with transparency.”

The same NGOs state that the business community has a privileged position in the European Union. One spokesperson illustrates this with an example: the GATS negotiations.

On the Web page <http://www.gatswatch.org/ESF-EC.html>, the same spokesperson claims that he has evidence that the European Commission has “systematically solicited the European Services Forum (ESF), a network of representatives from the European services sector, to provide input for the EU GATS requests. It has also on several occasions given detailed information to the ESF on the state of the GATS negotiations and the EU’s internal preparations of the EU GATS requests, which are now being kept secret from civil society at large. Instead of open and broad consultations, the doors of the European Commission and the EU Member States have been standing wide ‘open’ for the European Services Forum. But the existence of such a privileged consultation process with the services industry, taking place in parallel to the public ‘civil society dialogues,’ has been downplayed and denied by EC and government officials, and even parliaments have not been properly informed.”

The ESF admits its special relation with the European Commission in a press release. It writes:

the European service industries have actively participated in the open consultation undertaken by the Commission and the Member States and will continue to follow closely the services negotiations. Mr. Buxton (the ESF chairman) said that he welcomed the open process by which the Commission gave an opportunity to all stakeholders to express their views.

c. Trade Unions

The Dutch Trade Union Federation (FNV) is occupied with so-called horizontal union issues, (i.e., the environment, human rights, gender, etc.), in contrast to concrete (vertical) issues (i.e., legislative and policy-related matters) in which the associated unions lead.

One of the objectives of the FNV—together with its European colleague organization and the International Confederation of Free Trade Unions—is the incorporation of a social clause (the International Labour Organization (ILO) labour standards) in WTO agreements. Despite decades of effort, the international trade unions have not won this battle. The FNV spokesman said:

the Ministry of Economic Affairs knows our view. The European Commission says the same: 'we know your opinion and the Council as well. We share it. But we meet serious opposition from some developing countries, so for the time being we renounce it.'

The FNV is a typical example of the corporatist model (also known as the “polder model”) which has operated within the Netherlands for decades. In short, it is a consensus-based model in which the government, the employers and the trade unions try to sort out social conflicts before they come to the surface. The three parties meet on a regular base in an institutionalized structure, the Social and Economic Council of the Netherlands (SER).

The SER’s primary function is to advise the Dutch government on social and economic issues. At the request of the government or on its own initiative, SER advises the government on the main outlines of policy. The government is not obliged to follow SER’s advice, but informs SER in detail whether or not the advice will be followed and why.

d. Business

The Ministry of Economic Affairs used to have consultation rounds with one of the two Dutch employers’ organizations (VNO-NCW, which represents the globally oriented and operating enterprises), but this consultation has “come to a dead end.” A government official said that these enterprises have “found their way in Brussels” (the capital of the European Union). “They only come to our department when they fear their voice is not being heard in Brussels, to make sure we share their view.”

According to the same official, medium-sized enterprises in particular make contact with the Ministry mostly on an *ad hoc* base—when they have or foresee specific problems, such as the retaliation measures of the U.S. against the European steel industry.

The Ministry of Economic Affairs has no contact with the employers’ organization of the medium-sized and small-scale enterprises, MKB-Nederland. The same official said he “regrets we can’t mobilize them. On the other hand, they rarely do business in markets outside the European Union.”

The employers’ organization MKB-Netherlands confirms this view. Their spokesman said:

it is a matter of manpower. We are very pragmatic. Our markets are European markets. We don't follow the trade debate in the WTO. In the end, if there is an agreement, we look at what it means for our members.

In some cases, an associated sector itself is following the debate more closely. The GATS negotiations for example were followed by the temporary employment branch and notaries representatives.

e. Agriculture

Since the establishment of the European Economic Community (the predecessor of the European Union) the orientation of the Dutch agricultural sector has been both national and European. For obvious reasons, as old Dutch agriculture is from communal policy and half the European budget is reserved for agriculture through the Common Agricultural Policy.

The most important organized pressure group of Dutch farmers, LTO-Nederland, has a Brussels office. It deliberates a lot with DG Agriculture and DG Trade, but almost always on an *ad hoc* basis and at a detailed level.

“The farmers purse leads the way,” a LTO spokesman said. If, for example the European market is flooded with non-European agricultural products, LTO together with its like-minded partners in other Member States dives deep into the agreement concerned and “tries to ‘shift a comma’ to stop the gap.” The spokesperson admits that this wheeling and dealing is not at all transparent.

LTO-Nederland operates as a real lobby group and uses the opportunities the WTO offers.

The WTO distinguishes between sensitive and non-sensitive products. A Member State can protect sensitive products. So if we foresee problems we lose no time in getting products on the list of sensitive products. It is very complicated stuff and you must be there as soon as possible after DG Trade publishes the lists.

The LTO is not very fond of the numerous stakeholder meetings organized by DG Trade. “They can be useful to get informed, but the commissioner shows no interest in the outcome of those meetings.”

6. Government communication

The government position concerning trade policy is made clear in letters from the government (in this case: the Minister of Economic Affairs) to the European Parliament. These letters can be found on the Web site of the Ministry. But the Web design and the query structure are muddled: you have to be an insider to find what you are looking for.

The negotiating position of the Netherlands remains to a large extent unclear: the government keeps its cards close to its chest. What is more, the Netherlands is only one of 27 Member States. Every Member State has to fight (negotiate) for its issues in the “Article 133 Committee,” which is a “diffuse field of force,” as a representative of an NGO said. So it doesn’t make sense (and would really weaken the position of the Netherlands) if the government disclosed its negotiating position.

The discussions in the “Article 133 Committee” are not made public, although some NGOs claim they have access to the records. This access is not institutionalised but personal.

The fact that most trade documents are in English is no barrier.

7. Waning interest?

It is hard to say whether interest in trade policy in the Netherlands is fading away or not. The perception and interpretation of waning or growing interest differs widely.

The NGOs say that interest keeps pace with the cycle of WTO conferences. Around a summit, NGOs pay a lot of attention to the WTO, and media are quick to pick it up. Afterwards, the attention subsides.

A respondent from the Ministry of Economic Affairs has a completely different explanation. “In comparison with a couple of years ago, we have no fundamental difference of opinions. In many ways we do what NGOs want. This is especially true for our efforts to give market access to developing countries.”

According to the parliamentarians interviewed, the interest in the Dutch Parliament is growing—which is not surprising, as it was at a low level.

8. Gap

There is no consensus of opinion concerning a possible gap between optimal and current trade policy. We distinguish “fundamentalists,” “analysts” and “realists” (knowing that thereby we do them wrong).

In the perception of the fundamentalists, the EU itself (referred to as “a liberalization project”) is a fundamentally misguided institution “as it always acts in favour of big multinational corporations.” So the perceived gap is huge (and unbridgeable). All the EU’s “sweet talk” on sustainable development is, in their view, “totally unbelievable.”

The analysts—in this case national parliamentarians—see more nuances (and several gaps). In the social sphere they want ILO labour standards to become

an integrated part of the WTO agreements. This would enable dispute settlements and the enforcement of labour rights. In the ecological sphere, they perceive that environmental agreements are subordinate to trade agreements, as they are seen as “green protectionism.” The third gap they mention is the lack of countervailing power in some regions, especially in Africa. The fourth gap is the difficulty of developing countries in getting market access to their products and protecting their own markets at the same time.

In the opinion of the realists (government officials and business) the EU is on the right track for narrowing the supposed gaps. The realists state that the broadness of the gap is a matter of perception. Government officials stress that there is little space for sustainable development in the EU, as the southern Member States (especially France, Spain, Greece and Italy) have less sympathy for the concept. One official said:

always keep in mind the direction we are going. We are still making progress and a WTO agreement is not for eternity. Moreover, the WTO is consensus based. That is not easy, so we have to make trade-offs.

9. Policy shifts

None of the interviewees see evidence of any policy shift as a result of the consultation process. Which doesn't mean that it doesn't occur; as a trade unionist said: “it is impossible to measure the effectiveness of our efforts as the records and conclusions of the 133 Committee and the Council are kept secret.” He adds: “but it must be clear we don't work for nothing. On the other hand, the social clause has been a priority for many years and we have still not achieved our purpose.”²

Sometimes, however, this secret is unveiled, as when records of the meetings are leaked to pressure groups. In this way one NGO discovered to its “surprise” that the Dutch representative on the Article 133 Committee followed the instruction of a parliamentary amendment.

In the scope of the GATS negotiations, the EU had targeted the water sectors of 72 other WTO Member countries—including developed, developing and least developed countries alike. The Dutch Parliament, tipped off by NGOs, feared too much power was being given to a few big water companies. European service providers dominate the global water market. The world's top two private sector water companies, *Vivendi* and *Suez* (both French), control 70 per cent of all private water services between them. The third largest is *Thames Water*, now part of German utilities conglomerate RWE AG.

2 The social clause is designed to prevent the worst forms of worker exploitation and protect fundamental labour rights.

For these companies and their smaller competitors (most of them also European), the General Agreement on Trade in Services promises access to new markets and enhanced rights. Yet the liberalization of water has caused grave problems in many countries where the involvement of foreign multinationals has typically raised water tariffs far beyond the reach of poor households. There has been massive opposition from across the world to the EU's GATS water requests. Several EU Member States have criticized the requests. To the surprise of the NGOs, the Netherlands was among the criticized, even in the secure environment of the "Article 133 Committee" and the Council.

At present the European Commission is still negotiating GATS. It has the mandate of Member States and has no obligation to disclose the state of negotiations. Even the proposals of the EU are kept secret from the public.

Other stakeholders have more difficulty citing examples of success and talk only in general terms. A member of the European Parliament said there is a substantial amount of evidence that (former) trade commissioner Lamy acts on the advice of Parliament. He cites "Cotonou, MERCOSUR, the trade agreement with Chile, the steel conflict with the U.S."

The representative of a development NGO said:

we don't represent specific interests: we give a voice to the South. But within the WTO, ambassadors refer to our reports. A former Dutch minister for Development Cooperation once said during an official WTO symposium, that our reports on export subsidies have changed the terms of the debate: the WTO has changed course to give its support for abolishing export subsidies. This is the result of all the work we and others do. Together we were able to generate enough critical mass.

10. Weaknesses of the current process

There are two main weak spots in the current trade policy-making process: the Dutch and the European Parliament.

The Dutch Parliament is by far the weakest institution in this interplay of forces. This is admitted by the interviewees and can be concluded on the basis of the available data on discussions and decisions.

Theoretically speaking, the Dutch Parliament has the power to exert its controlling task, or political power. That is not easy: for decades trade policy has been uncontroversial. The Minister of Economic Affairs always had more information, than the Parliament and could hide behind "Europe." This gave him/her natural authority and the Dutch Parliament never seriously interrogated his position. In the words of an official of the Dutch Ministry of

Economic Affairs: a parliamentary debate on trade policy is only “for show,” as decisions are made in Brussels.

The other weak institution is the European Parliament. But here the contrast with the Dutch Parliament is large: the National Parliament has the (fragile) means to control the minister, the European Parliament has no instrument to control DG Trade. This is both a democratic and a political defect: a real debate in the European Parliament would make clear what political choices are made.

A few interviewees say they do not see the advantage of a powerful European Parliament, although they admit it would be desirable from a democratic point of view. They prefer the wheeling and dealing behind closed doors. Doors to which only a fortunate few have a key.

As a side note, the least developed countries are probably the weakest party in the trade policy process, as they lack the capacity and means to follow the debate and negotiations. Some officials and NGOs mentioned this. However, the impact of those statements goes beyond the scope of this paper.

Some interviewees have heavily criticized the secrecy of the discussions in the “Article 133 Committee” and in the European Council. It would provide them with democratic satisfaction if these discussions were made public. But publication would weaken the negotiating positions of the Member States and the European Commission and hinder their mutual ability to make trade-offs. It is more realistic to discuss, comment and adapt in advance (and in the appropriate political bodies) to the instructions from the ministers; and thereafter to call him/her to account.

The “old mandate” of Lamy is a problem in so far as only the Council can change it. For balance of power it is necessary that the European Parliament gets countervailing power in the form of a right of co-decision.

No serious, systematizing impact assessment of any WTO agreement has ever been made to ensure that both the benefits and costs of implementation are clear, although the impact of the agreements is tremendous. This means that any debate remains highly ideological—between believers and non-believers.

11. Recommendations

- a. Grant the European Parliament co-decision rights on trade-related issues as soon as possible: this is the big democratic and political defect. This gap is even more serious now that the influence of the Commission on trade policy issues is growing and the Council’s diminishing.

- b. Consider how the Dutch National Parliament could take its role more seriously. It must exert its role of controller of the government and politicize the trade debate (and get it out of the purely technical and ideological domain). A self-confident Parliament could channel the ideas and frustrations of NGOs. It would temper the general sentiment that “Brussels” or “Europe” makes decisions and that the only thing remaining for Member States is to implement these decisions into national laws and rules.
- c. Reinforce the institutional capacity of developing countries. They must be able to play their game at the WTO. Abolish the so-called mini-ministerials to which only the major developed countries, a few developing countries, and senior WTO Secretariat officials are invited. There is an increasing tendency for business (discussion on key issues) to be carried out through these mini-ministerials, thus perpetuating a “super green room” system throughout the year.
- d. Assessments on the social, economic and environmental impacts of trade agreements should be made a fixed part of the trade policy process. The European Union (EU) began to carry out Sustainability Impact Assessments (SIAs) during the negotiations for its major multilateral and bilateral trade agreements in 1999. These assessments, which are generally conducted during the negotiations, aim at identifying the economic, social and environmental impacts of trade agreements. The Center for International Environmental Law (CIEL) is of the view that SIAs were being carried out too late. The results could either not possibly feed into the well-advanced or closed negotiations or, where the timing of the SIA was more adequate, the SIAs were simply not translated into policy choices, making the SIA irrelevant for the negotiations.

Case study 1: Sugar

The EU is the world’s second biggest sugar exporter. As the European climate is unsuitable for growing cane sugar, European countries grow sugar beet instead.

However, EU sugar production is inefficient: the cost of producing a pound of sugar in the EU is more than six-times higher than in Brazil. To be able to compete on the world sugar market, sugar beet farmers get EU subsidies. According to the EU, this subsidy is 1.3 billion euros per year (US\$1.5 billion). The development organization Oxfam states that to this, should be added a further 833 million euro of hidden subsidies.

Subsidizing sugar is not just economically stupid, it is also morally indefensible. Europe’s subsidies are not merely a quaint way to keep a few farmers in

business. They cause so much sugar to be produced that the stuff is exported to poor countries, hurting farmers who might otherwise earn a living by growing it themselves—and perhaps even exporting it to Europe. A clear case of dumping.

At most, only 1.5 tonnes of sugar a year is bought in Europe from preferred trading relationships with 17 African, Caribbean and Pacific countries and India—all former colonies of EU Member States. Sugar trade between ACP countries and the EU has been regulated by two trade agreements: the ACP/EU Sugar Protocol (part of the Cotonou agreement), and the Agreement on Special Preferential Sugar. The Sugar Protocol is an agreement between governments in which EU Member States undertake to buy agreed quantities of sugar at guaranteed prices from 17 ACP states. Because of the Sugar Protocol, these favoured countries earn circa 500 million euros a year extra (the difference between EU prices and world market prices). But the EU has been under pressure to revise its agri-policy regarding sugar quotas. Thailand and Brazil, which are excluded from the Sugar Protocol, recently lodged a petition with the WTO over the agreement, and the WTO panel ruled in their favour.

Brazil and Thailand are the hardest hit by the EU's sugar policy, calculates Oxfam. On its analysis, Brazil loses around US\$500 million a year and Thailand about US\$151 million, even though these two countries are the most efficient sugar producers in the world.

The European Commission has decided to lodge an appeal against the WTO ruling. The Commission claims the ruling goes against poor countries' interests by threatening their preferential imports.

As part of an ongoing reform, the EU has proposed reducing the guaranteed price of sugar in its domestic market by a third. Sugar is currently sold in EU countries at three times the international price, so the proposed reduction will lead to a sugar price which is twice the international price. The reduction will affect the price at which Europe buys sugar from ACP countries. According to a proposal by the European Commission, ACP countries will continue to enjoy duty-free access to the EU but the sugar purchase price will be reduced by one-third between 2005 and 2008.

Arancha Gonzalez, a spokeswoman for (former) EU Trade Commissioner Pascal Lamy said:

Our reforms have not been influenced by the tribunal decision of the WTO. Our regime had become unsustainable and we have been in the process of reforming it. We remain committed to providing support to the ACP countries, hence the Commission has proposed a fund—the (European Development Fund) EDF to help the sugar industry in these countries.

Unilever, the international food processing company, said the reduction proposal is a step in the right direction. “It is a compromise for which we have understanding. But it is not ideal.”

The Dutch government is in favour of sugar policy reform. It stresses the importance of liberalizing the EU’s sugar market. The Ministry for Development Cooperation argues that Least Developed Countries (LDC) might benefit from liberalization. “But it is a complex case,” a spokesman of the Ministry for Development Cooperation said.

Its complexity lies in the monstrous alliance of the Dutch Organisation for Agriculture and Horticulture (LTO-Nederland), the Dutch sugar refining industry and the 17 ACP countries: they accuse the government of ignoring the needs of the LDCs. These organizations and countries want to maintain market regulation. In their opinion, a liberalized sugar market will only benefit big sugar producers like Brazil and Thailand. But is this the real argument?

The position of the ACP countries is logical: they want to maintain the high prices because they are the ones that profit most from the current system.

LTO-Nederland wants to keep EU prices high not only to protect the Dutch sugar beet farmers—according to the LTO—but also because beets are essential for crop rotation and because farmers say they are important in maintaining the characteristics of the agricultural landscape. It seems a selective argument: in other products—where Dutch farmers have a strong position on the world market (pork, milk)—the LTO is very much in favour of liberalization. Probably the real argument is that sugar beet is the bread and butter for thousands of Dutch farmers.

The sugar refining industry, united in the Platform *Toekomst Suikermarkt* (Platform Future Sugar market), is also sharply critical of the EU’s sugar reform proposals. The platform, that organizes the only two Dutch refinery companies—*Suikerunie* and CSM, claims that the reform would cause farmers to stop producing sugar. The industry will suffer the consequences, as it is no longer sure of a “reliable supply of sugar beets to the refinery plants.” Sugar is an unstable chemical substance which has to be processed shortly after harvesting.

The NGO world supports the liberalization of the sugar market. It claims there is nothing to stop the EU from continuing to import developing country sugar.

Said Oxfam in a press release:

the onus is on the EU to act now to reform the regime in a way that benefits the poorest countries. The WTO panel ruling, following on as it does from the WTO verdict against U.S. cotton subsidies, is part of a domino

effect. Unfair rich-country agricultural subsidies are toppling as a result of justified protest from developing countries.

Oxfam said the European Commission's sugar reform will not reduce poverty or achieve higher environmental standards. Oxfam, together with the WWF, warns that the proposed reforms would allow continued export dumping on developing countries, thereby undermining poor farmers' livelihoods.

According to Jo Leadbeater, Head of Oxfam International's Brussels Office:

the EU has shut its ears to the needs of developing countries and placed the interests of big farmers and processing companies ahead of everything else. This plan will not end export dumping and will not solve the problem as we see it.

The LDCs fear that price reduction will hit them. "The Everything but Arms" (EBA) initiative gives their sugar more access to the EU market, but reduced prices harm investments in sugar producing facilities.³

Mozambique

Even less efficient and poorer African countries loose out. Mozambique—one of the LDCs—will lose US\$38 million in 2004; as much as it spends on agriculture and rural development.

After years of civil war, the economy in Mozambique is just picking itself up. Part of the reconstruction of the economy is the recovery of sugar cane production. Investors from South Africa and Mauritius have recently taken over a few neglected sugar cane plantations. An old refinery has been brought back into use. The sugar industry is now the biggest employer in the country, with 20,000 people employed, a production volume of 250,000 tonnes and an enormous potential.

But where are the markets for Mozambique? The internal consumption of sugar is 100,000 tonnes a year. Mozambique exports a small sugar quota to the U.S. and some neighbouring countries. The country is excluded from the Sugar Protocol. The EU's EBA initiative could offer relief—in the long term; access for sugar will be free from 2009 (from 2006 the EU's tariffs will be gradually lowered). Until that year, Mozambique has a small EU quota which rose to 20,000 tonnes in 2006. Export to the EU on top of this quota is impossible, thanks to a high EU import tariff.

3 In February 2001, the Council adopted the so-called "EBA (Everything But Arms) Regulation" (Regulation (EC) 416/2001), granting duty-free access to imports of all products from least developed countries without quantitative restrictions, except arms and munitions.

Case study 2: Cotton

In the summer of 2002, the *Wall Street Journal* published an article about two cotton farmers. Mody Sangare from Mali, 22 years old, stands dispirited behind his oxen in a cotton field. That year the cotton price had dropped another 10 per cent. After Sangare deducts all his costs, he has 2,000 euros left to support 20 people. Sangare cannot afford secondary schooling for his younger brother. He is afraid his family will not have enough money to replenish their livestock. “The prices are ruining us,” he complains.

The other farmer is Kenneth Hood, 61-years old. Together with his brothers he is the owner of an enormous cotton plantation in the Mississippi Delta. Business is doing well. “There is good reason for optimism,” Hood said beaming.

The despair of the Malinese farmer and the optimism of the American have the same cause, the *Wall Street Journal* writes: subsidies. Millions of farmers in developing countries are seeing their means of living evaporate because of a US\$4 billion subsidy to 30,000 American farmers. The same is happening in Europe, where subsidies go to circa 100,000 cotton farmers in Greece and Spain. It is true that the total EU subsidy to cotton farmers is only a quarter of the American support, but per kilo of cotton the support is much higher than in the U.S.

Both subsidies led to a disastrous reduction of cotton prices on the world market. Developing countries pay the price: they lose billions of dollars of income. The biggest problems occur in Mali, Burkina Faso, Benin and Tanzania, four of the Netherlands’ so-called “preferential countries.” In the first three of these countries, cotton accounts for more than half their yearly export income. A few million peasant families produce cotton for cash income, together with corn and other food crops.

The problems facing these peasants are also affecting Dutch development policy. The value of the 100 million euros that the Netherlands invests in development policy is depreciated if local governments have to use the treasury to support the destitute farmers.

The EU and American subsidies for cotton are a flagrant example of incoherent policy. On one hand, western countries give development money. On the other, they take it away. Development aid is used to pay the bill of a distorting agricultural policy. In 2003, the World Bank gave a loan of US\$10 million to Benin so it could pay a higher price to cotton farmers.

In a joint memorandum, the Dutch ministers for Agriculture and Development Cooperation write: “Dutch development aid (...) and the attempt to realize the Millennium Development Goals are being directly

undermined by the incoherent policy of the industrialised countries.” This memorandum, of November 2002, was given the green light by the Dutch cabinet. It shows how the Netherlands wants to improve the market chances of crops like cotton, rice and sugar cane through adapting the EU’s common agricultural policy and making appointments to the WTO to reduce unfair subsidies.

The attempts to make the aim of poverty alleviation more coherent with other policies has a central position in the Dutch development policy and Minister Van Ardenne has created a special coherence unit.

This unit has done two things to try and remedy the distressing situation of the African cotton producers. Firstly, it has given support to help cotton producing countries get their cause on the international trade agenda. Meanwhile, the Dutch Ministry has tried to mobilize as much international support as possible. An official of the Ministry for Development Cooperation said:

we helped the cotton countries to raise their case at the WTO in Geneva. Our aid varied from training their negotiators to paying the price of their travel and accommodation expenses. And we supported them in the build-up to the WTO summit in Cancun.

With success in Cancun, the subsidies on cotton turned out to be the touchstone of the WTO development negotiations. The four West African countries formulated a proposal in which they demanded a reduction in cotton subsidies. The support for this proposal was immense but the summit was a failure. The official: “it shows that we need a long-lasting effort. But cotton has become one of the crucial points in the negotiations.”

The Dutch government wants a reform of the EU’s agricultural policy. It supports the proposed decoupling of production and income: it would mean that the 100,000 cotton farmers in Greece and Spain will no longer have to produce cotton for their income.

Appendix: List of interviewees

- Jan Huner, Ministry of Economic Affairs
- Otto Genee, Ministry for Development Cooperation, coherence unit
- Jan Klugkist, Ministry for Development Cooperation, coherence unit
- Ullrich Schröder, MKB-Nederland, employers' organization of medium-sized and small-scale enterprises
- Kees Vendrik, Member of Dutch Parliament, GroenLinks (Green-Social Party)
- Kris Douma, Member of Dutch Parliament, PvdA (Social-Democrats)
- Max van de Berg, European parliamentarian, PvdA (Social-Democrats)
- Martin van Driel, LTO-Nederland, Dutch Organisation for Agriculture and Horticulture
- Tom ETTY, FNV, Dutch Trade Union Federation
- Anne van Schaik, *Milieudefensie* (Friends of the Earth)
- Erik Wesselius, Corporate Europe Observatory (CEO)
- Marita Hutjes, Novib/Oxfam Netherlands

Trade policy democracy: The Norwegian experience

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1. Introduction¹

1.1. What shapes trade policy?

The last two decades have transformed global trade policy from a mainly bureaucratic exercise to a controversial political issue. Globalization has “politicized” the field—there is more public debate and protesters sometimes take to the streets to express their anger. How has the decision-making system adapted to these changes? Are decisions made in ministerial back-rooms, or have institutions been transformed to improve democracy? In this chapter, we review the experience in Norway.

National systems for decision-making vary considerably across countries. Domestic institutions are historically shaped. In some countries, national ministries of finance handle trade policy, coloured by “economist-think.” In South Korea, detailed impact assessments are made for every trade deal. In Norway, the Ministry of Foreign Affairs maintains core responsibility for trade policy; so concerns for diplomacy rank higher. Goals and objectives related to trade policy are important too, particularly how trade policy executives see their role: Do they fight for the country, for the poor, for economic efficiency, or do they see themselves as mediators?

The character of institutions shape practice within it. Achieving political balance is also a factor. If there is universal consensus, detailed consultations are less necessary. But if there are sharp contradictions, legitimacy requires an extended political process. In Norway, for example, as of 2004, there is a strong consensus on global trade issues, but on the hottest regional issue—EU membership—the population, as well as several political parties, are deeply divided.

Trade policy is influenced by ideological change over time. In the early 1990s, when the European internal market was launched, there was more universal

1 The author thanks the participants at the IISD workshop on “Getting Trade Policy off the Hook” in Geneva, December 12–13, 2004, for valuable comments on an earlier draft.

acceptance of the need for promoting economic efficiency through international integration. Today, worries about the “evils of globalization” have crept into even mainstream political parties. Twenty years ago, national welfare gains and losses were a core issue; today concern for developing countries is frequently on top of the agenda. When the liberalization of Norwegian agriculture is debated, the core argument in favour is now that it will help poor countries, not that domestic prices will decline and efficiency will be promoted.

Further developments in the international economy and in international institutions have broadened the field of trade policy massively. In the 1960s, manufacturing tariffs were the main issue; today, trade policy covers a longer list of topics. For the World Trade Organization (WTO), the biggest leap was the Uruguay Round. In regional trade policy, the European Economic Area (EEA) implies deeper integration with even broader coverage. This extension of trade policy affects the contents of agreements as well as the institutions; more ministries and sectors and people are involved, and trade policy intervenes to a larger extent in fields that were traditionally domestic matters. Globalization also implies more trade beyond continents; hence trade relations with remote countries increase in importance.

Trade policy is also affected by a country’s industrial structure. If you do not make t-shirts, you do not have to worry about imports of such goods from China. This also changes over time. According to Milner (1988), increasing international integration has made industries more focused on market access and freer trade. Norway’s economy is open, and its industrial structure is characterized by a large reliance on raw materials and semi-finished goods such as oil and gas, metals, paper and pulp, some chemical goods and seafood. The oil and gas adventure started in the 1970s, and Norway is currently one of the world’s largest exporters. The other mentioned sectors have collectively maintained their role in traditional exports, with some fluctuation in share. With limited production of differentiated manufactured goods, Norway’s industry is currently less affected by competition from Asia in electronics, cars, clothing and the like. Chinese growth boosts world demand for raw materials, and Norway benefits from this even if fluctuating export prices are sometimes a challenge.

Finally, a small country such as Norway cannot “do it alone” in global trade policy, and the larger players have more room for setting the agenda. For this reason, trade policy in small countries is, to a considerable extent, “reactive;” responding to the questions asked by others. For democracy, it is important to ask whether Norway exploits its possibilities to influence the international agenda through alliances and by being proactive rather than reactive. This is however beyond the scope of this chapter, which focuses on issues related to Norwegian trade policy.

When analyzing these issues, our main focus will be on global trade policy, particularly the WTO. Regional trade agreements, including the EEA as well as several bilateral trade agreements through the European Free Trade Association (EFTA), also constitute an important part of Norwegian trade policy. The EEA differs from other trade agreements due to its broad coverage and formalized system of legislation, but the complexities of this will not be analyzed here.

1.4. Background: From corporatism to “deliberative democracy?”

In the earlier “technocrat” stage of trade policy, it was common in many countries to involve business groups actively in the preparation of negotiations. According to Winham (1986), such consultations played a major role in the General Agreement on Tariffs and Trade (GATT) Tokyo Round in the 1970s. Also in Norway, it had once been a tradition to develop trade policy in close cooperation with business interests (Tenold and Nordvik, 1998). Katzenstein (1985a: 227) maintains that “the small open European states have compensated for economic openness and dependence on world markets through political efforts at home, and by most indicators they have done so effectively. They have developed a variety of corporatist arrangements that combine support for international openness with domestic compensation and with flexible, reactive policies of industrial adjustment.” Hence, according to Katzenstein, corporatism has been a virtue of countries such as Norway.

In political science literature, there is currently a debate on whether the extent of corporatism has been reduced in Norway in recent years up to and including 2004. With corporatism, we mean that governance is undertaken in a close interplay between private interest groups and the state, through cooperative bodies and networks. According to the recently completed large-scale “Power and Democracy” project (see e.g., Østerud *et al.*, 2003), corporatism in Norway has been reduced over time. One reason has been the so-called “new public management,” with an increased focus on efficiency and reform in governance, including privatization and outsourcing of some public activities (Christensen and Lægneid, 2001). The number of committees in Norway with interest group participation has been reduced since the early 1980s. While the agricultural sector was earlier used as the archetypical illustration of the corporatist “segmented state,” it has become “de-segmented.”²

A core issue related to democracy is the division of labour between the government and Parliament. According to the “Power and Democracy” project

2 For a critical discussion of the “Power and Democracy” project, see also Eriksen and Rønning (2002).

(Østerud *et al.*, 2003),³ the presence of minority governments have increased the influence of the Storting (Parliament). On the other hand, the legislative power of the Storting has been reduced, partly due to binding international agreements such as the EEA and the WTO. In trade policy, a core issue is, therefore, how domestic decisions are made in a context where the final outcome depends on inter-state negotiations.

The “Power and Democracy” project (*ibid.*) also concludes that the political parties have moved from mass movements towards network organizations with more limited membership. This raises the issue of whether the parliamentary system is still truly representative, and whether democracy should be shaped to let civil society play an enhanced role. In the field of international cooperation, a Norwegian trauma is the issue of EU membership. Twice, a clear majority in the Storting has been overruled by national referenda, with a small majority against it. Is a similar gap between the Storting and the people present in multilateral trade policy? While we do not have data to confirm this for trade policy, such evidence exists for other policy areas (*ibid.*). Our (unsubstantiated) impression is that there is some, but not a large problem of legitimacy for current trade policy in Norway.

According to some ideas of “deliberative democracy” (see e.g., Eriksen, 2001), policy decisions and the legitimacy of these should be based on reason, and made through free and open deliberation between equal participants. Such ideas are implicit in some of the recent attempts to obtain wider participation by civil society in policy-making. In practice, however, it is not easy to agree on who should be the free and equal decision-makers. In Norwegian trade policy, values-based NGOs beyond interest groups have been included in consultation processes, and we shall review the experience. In general, we distinguish between “interest groups” (such as trade unions or business lobbies); “political organizations” (with a broad political program and an ambition for political power, mostly related to the parliamentary system); and “values-based NGOs” that have a more selective focus on particular values or beliefs. Politics, interests and values are of course inter-linked and, to some extent, overlapping, but we nevertheless find this distinction useful for our purposes. As shorthand notation, we may sometimes refer to the values-based NGOs as simply NGOs.

Our analysis suggests that there is no easy fix to the potential “democratic deficit” in trade policy-making: Although NGO participation may be good, formal consultations with NGOs are no panacea. It is likely that NGOs have had more influence through public opinion in general than through formal consultative bodies. Hence our approach has to consider the entire system of

3 See <http://www.sv.uio.no/mutr/english/index.html>.

policy-making, including ministries, Parliament, NGOs and public debate. For this reason, the purpose of this article is to provide a broad overview of the trade policy decision-making process in Norway. The methodological approach is therefore eclectic. Available written information has been supplemented with interviews with representatives for political parties, ministry staff and NGOs. In Appendix A, a list with interviewed persons is provided.⁴

Section 2 presents a brief overview of Norwegian trade policy and trade strategy. In Section 3, main actors in the trade policy process are described. In Section 4, the current decision-making process is examined. Section 5 concludes and discusses possible improvements in the current Norwegian system.

2. Norway's trade policy: A brief overview

Starting from Norway's original membership in the General Agreement on Tariffs and Trade (GATT) in 1947, the country's trade policy has evolved in several steps:

- post-war exchange restrictions and licensing procedures were gradually dismantled in the 1950s;
- membership in EFTA from 1960, as one of the "outer seven;"
- EFTA-EEC free trade agreement from 1973;
- member of the EEA from 1994; and
- expanding the number of bilateral trade agreements through EFTA from the early 1990s, reaching a maximum of 20 agreements in 2004 before eight of these were terminated due to EU enlargement.

Throughout this period, Norway has participated in the gradual expansion of GATT/WTO policies. Norway has also applied for EU membership three times; once rejected by a French veto against enlargement (1963) and twice by national referenda (1972, 1994). As of 2004, there has been a deep divide on the EU membership issue; a broad majority on GATT/WTO and regional economic integration in Europe; and modest political attention on free trade agreements beyond Western Europe. In the 1950s and 1960s, there were initiatives for closer integration among Nordic countries, but this option failed and was overtaken by EFTA. While EFTA had 10 members at its peak before 1973, six members have over time joined the EU⁵ thereby

4 I thank the persons who were interviewed for their contribution. The analysis and views expressed in this article are nevertheless those of the author only.

5 Denmark and the U.K. in 1973; Portugal in 1986; and Austria, Finland and Sweden in 1995.

shrinking the EFTA. For trade policy, it matters that Switzerland does not participate in the EEA, which therefore means that as of 2004, the EFTA only involves Norway and the smaller states Iceland and Liechtenstein. EFTA's bargaining power against the large EU is therefore limited.

As witnessed by the recent WTO Trade Policy Review,⁶ Norway may comparatively be characterized as a "free trader" as its tariffs for manufactured goods are low and markets are relatively open. Even if liberalization in Western Europe is deeper than in the WTO, some of the latter's market access has also been granted to non-European countries. Norway has a comparatively generous system of tariff preferences for developing countries. For developing countries, tariffs are zero for most manufactured items but remain for some clothing products, so the tariff average for manufactured goods in 2003 was below one per cent. The least-developed countries (LDCs) face zero tariffs for all goods, including agriculture—which is highly protected for others.

The liberal trade policy of Norway is, however, not universal. Two main exceptions to its otherwise liberal composition have been textile quotas and agricultural protection; with the former an expired measure from the past, and the latter still in place. The Norwegian textile and clothing industry declined steadily during the 1950s and 1960s, with rising imports from the rest of Europe. In the 1970s, the industry faced tougher competition from Asia, particularly Hong Kong. A clever lobbyist, the textile and clothing manufacturers' associations obtained political support for a restrictive approach. Import protection under the MFA (Multifibre Agreement) system of bilateral agreements was deemed insufficient, and Norway broke out of the MFA and maintained a very restrictive "global quota regime" under the GATT's safeguard clause (Art. XIX) in the early 1980s. In the mid-1980s, Norway re-joined the MFA and, from that point, import protection was gradually lifted. It took more than 15 years, however, until the last textile quota was lifted in 2002. Nevertheless, Norway is currently among the "best in the class" with respect to textile protectionism; while in the early 1980s, it was one of the worst.⁷

The second major case of Norwegian protectionism is agriculture. As a hilly country in the north, Norway lacks the usual preconditions for a successful agricultural sector. Following a decline in agricultural employment in the 1960s, a new agricultural policy was decided in the aftermath of the 1972 referendum on EEC membership, with strong populist sentiments in favour of rural areas. This policy, with budgetary support as well as trade protection as

6 See http://www.wto.org/english/tratop_e/tpr_e/tp237_e.htm.

7 An analysis of the impact of quotas is found in Melchior (1993).

main pillars, is still in place. Some liberalization has occurred in regional trade agreements, mainly with the EU, and as a result of minimum import requirements in the WTO and trade preferences for LDCs. Agricultural trade protection does not apply to all goods; for tropical fruit and some other items not produced in Norway, tariffs are zero. On the whole, however, Norway maintains a system with high support and high trade protection for agriculture. In the so-called “Commitment to Development Index,” Norway drops several places down on the ranking due to its agricultural protection (Birdsall and Roodman, 2003). The trade liberalization in agriculture envisaged as part of the Doha Development Agenda is currently the most controversial WTO-related trade policy issue in Norway.

A main feature in the more recent development of trade policy in Norway has been an enhanced focus on global development issues. This was illustrated in two recent reports to Parliament, and the following parliamentary debates. In a report on globalization,⁸ concerns for global development were expressed in almost all policy fields covered. In a recent report on aid,⁹ trade policy was underlined as a main pillar in development policy, and the need for policy coherence was expressed. Policy coherence should be obtained by means of:

- improved market access for developing countries, with signals also for agriculture;
- increased trade-related aid, e.g., aid for capacity-building in negotiations and for improving veterinary and sanitary inspection facilities related to food exports; and
- aid for industrial development, e.g., a recently launched plan for focusing on agricultural development in aid.¹⁰

There is a broad political majority about the need for global development and poverty reduction,¹¹ and trade policy is, to an ever-increasing extent, framed in this perspective. One may ask to what extent the concern for developing countries is a matter of rhetoric or reality, given that Norway still maintains agricultural protection that harms some developing countries. However, the developing country focus has already resulted in improvements in market access. As for the policy process, it matters in its own right that developing country interests are emphasized. This “globalization of

8 St.meld. nr. 19, 2002–2003: En verden av muligheter (A world of opportunity).

9 St.meld. nr. 35 (2003–2004: Felles kamp mot fattigdom (Common fight against poverty)).

10 See http://odin.dep.no/ud/norsk/dok/andre_dok/handlingsplaner/032171-220008/dok-bn.html.

11 On aid issues, the Progress Party stands out as a sceptic; see e.g., Innst.S. nr. 93 (2004–2005), December 15, 2004.

preferences” implies that trade policy has to be legitimized beyond its impact on national welfare. It follows that new knowledge is needed; one has to argue not only about domestic prices and employment, but also about the global impact.

An issue is whether this concern for the South is a common development in rich countries, or unique to a few countries. Norway is, together with the Netherlands, Denmark and Sweden, in a special group of “do-gooders” that compete to be the best in terms of development aid. It is likely that also in the trade policy field, there is considerable variation between rich countries regarding concerns for North-South issues, and at least Norway, Sweden and the Netherlands rank high on the list of pro-poor countries.

Given that critics against globalization affect recent policy developments, a hypothesis is that the increased focus on the South is an expression of “accommodating politics” or “consensus politics.” Katzenstein (1985a, b) as well as other authors have observed that the “search for consensus is a national passion” in some smaller European states (Katzenstein 1985b: 10). Contrary to “adversarial politics” in the U.S., these states focus on decision-making by consensus, leading to “low-voltage politics” (*ibid.*: 32).

An issue is, therefore, whether policies current as of 2004 towards globalization, including trade policy, also reflect an attempt to accommodate the critics. When the critics say “globalization is bad!” the answer is not “you are wrong!” but “we need globalization with a human face.”

The accommodating approach also manifests itself in Norway’s WTO strategy, current as of 2004, in which the Cabinet fights for continued protection in agriculture at the same time as it is proactive and liberal in general, and in other fields where Norway has strong export interests. It is not unusual or abnormal that countries have such mixed positions; what is more surprising is the lack of “adversarial” debates on what should be the target. At the end of the day, some hard decisions may have to be made, but in Norway, much of the debate will take place the day after. There are surely internal fights and contradictions when policy is made, but most of this is not known to the general public.

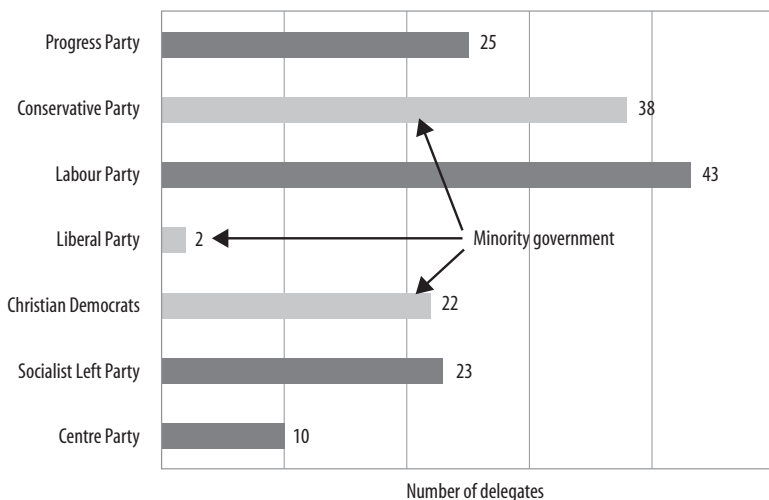
3. The political actors

3.1. *The politicians*

In the figure, the parties are ranked according to their trade-friendliness (following Langhelle, 2001: 98), with pro-trade parties on top. With the exception of the Socialist Left Party and the Centre Party, the parties are generally supportive of the WTO. The Conservative Party and the Progress Party are

market-friendly supporters of free trade; with the former dominated by “value conservatism” and the latter by liberalism. For the other WTO supporters, market efficiency is not enough as an argument; they need more supportive reasons. In addition to a gradually stronger concern for development and poor countries, they have particular agendas that differ: the Labour Party emphasizes distribution, social issues and global governance, the Christian Democrats focus on values and human rights, and the small Liberal Party on the environment.¹² These parties want “globalization with a human face,” but their members’ views differ, at least to some extent, as to whether achieving a human face is even possible. Hence on issues such as agricultural liberalization, it is likely that there will be strong internal contradictions within these parties. In spite of this, the main trade policy attitude of these parties is unambiguous. As noted, concerns for developing countries in trade policy are broadly shared, so this is not unique for the parties in the middle.

Figure 1: The main political parties in the Norwegian *Storting* (Parliament).



The government, current as of 2004, is a minority coalition of the Conservative Party, the Christian Democrats and the Liberal Party. In their common platform, signed October 2001, it is stated that market access for developing countries in Norway should be improved (e.g., by zero tariffs for

¹² See e.g., speech by Prime Minister Bondevik 25 January 2004: Values in international politics, on <http://www.krf.no/krfweb/politikk/nyheter/auto/20040125113154.asp>.

LDCs). The government has also expressed the intention of eliminating all manufacturing tariffs, and major steps in this direction have been undertaken. On the other hand, the government platform also concludes that “import protection should continue to safeguard Norway’s agricultural production in important areas.” As noted, policy coherence between aid and trade has also been a priority.

According to the Action Programme for the Socialist Left Party, the WTO is an undemocratic organization that is mainly for the rich, contributes to global inequality, and is bad for the environment, health, labour rights and policy autonomy.¹³ According to the Centre Party, “liberalist economic thinking based on the free float of capital, goods, services and labour and the largest possible economic gains, lead to ruthless exploitation of resources, increased inequality and instability.”¹⁴ According to the Centre Party, the WTO should be transformed into an organization for fair trade, and the party has also been a strong defender of Norwegian agriculture. While the Socialist Left Party is more urban, the Centre Party has more of its roots in rural areas. In spite of the sometimes-strong wording used by these parties, they have several times voted along with the majority in the Storting. In the Socialist Left Party, a substantial minority is friendlier towards free trade than the party program would suggest.

The two trade policy opposition parties have complained about a lack of democracy in trade policy. Increased transparency is a stated objective for the Socialist Left Party. The Centre Party leader Åslaug Haga has presented several proposals in the Storting during the Conservative/Christian government minority government, asking for:

- democratic reform of the WTO;
- an advisory trade policy body linked to the Prime Minister’s Office, with representation also from trade unions and business organizations;
- debates in the Storting prior to important WTO meetings; and
- broader participation in delegations to WTO meetings.

The proposals were addressed by the Standing Committee on Foreign Affairs (Innst.S. nr. 91, 2004–2005). While the first three proposals were not explicitly addressed, the last one obtained some backing: The majority of the committee stated that the Parliament should be represented “at important cross-roads” in the negotiations; i.e., not only Ministerial meetings.

13 See paragraph 9.4.2 in the Work Programme for 2001–2005, available at <http://www.sv.no>.

14 See <http://www.senterpartiet.no>.

The more WTO-friendly political parties failed to share a strong discontent about the WTO and current trade policy. On the other hand, there has been a broadly-shared positive attitude to reforms to promote democracy and involve the Storting up to 2004, even more in trade policy decisions (to be examined later).

In spite of more controversy about trade policy, it nevertheless remains true that it is a *secondary* field in party politics. As an illustration, there is currently a discussion in the media about a possible future government based on the Labour Party, the Centre Party and the Socialist Left Party.¹⁵ In spite of the strong contradictions about trade policy issues between these parties, this coalition is considered as a real possibility. Hence agreement on domestic policy issues (e.g., on issues of distribution and generally the role of the state) is more important than disagreement on international issues.¹⁶

3.2. *The interest groups*

Major trade unions and business organizations have, for a long time, been involved in trade policy consultation processes. Historically, employers' associations have been more proactive than trade unions. For example, the textile and clothing manufacturers were more active lobbyists for textile quotas than the textile workers' association. The latter, nevertheless, had an important political role through its links to the Labour Party, which contributed to the political support for trade protection. Over time, the links between trade unions and the Labour Party have become weaker.

Due to its industrial structure, Norway does not have crowds of dismissed car workers protesting against trade liberalization. After the "textile incident," there have not been major anti-trade campaigns from the trade union movement in manufacturing. Currently, workers in the food processing industries are potentially affected by agricultural liberalization in the Doha Round. Although the Norwegian Union of Food, Beverage and Allied Workers (NNN) acknowledges the threat to jobs in the food processing industry, its leader has strongly advocated reform in Norwegian agriculture.¹⁷ NNN has not pursued an actively protectionist profile related to the current WTO negotiations.

15 Note at the time of publication: The article was written in 2004. The "future" government discussed here was actually formed in 2005!

16 Nevertheless, as of 2004, Labour Party leader Jens Stoltenberg has announced that he will not exclude the possibility of an application for EU membership, if the issue is put back on the agenda. The Centre Party and The Socialist Left Party are against membership, so this causes some friction.

17 See "WTO-avtalen: Dommedag eller nye muligheter," interview with NNN leader Torbjørn Dahl on NNN's Web pages, <http://www.nnn.no/index.php?mod=plink&id=2820>.

On trade policy, the largest trade union organization, the Norwegian Confederation of Trade Unions (LO), has particularly focused on labour rights, and has supported the introduction of a “social clause” in the WTO. On the whole, the trade union movement is a supporter of international trade rules and has focused on using the WTO rather than opposing it. It has not been very proactive in trade policy, however, and domestic labour issues as well as general economic policy issues have been given higher priority. To some extent, trade policy lobbying has been “delegated” to international coordinating organizations such as the International Confederation of Free Trade Unions (ICFTU). For example, LO is an important financial contributor to an international campaign by ICFTU to promote international labour rights.

LO sub-federations have considerable freedom to pursue their particular interests and have different views. Some radical trade unions participate in anti-WTO campaigns. There are also some labour-related trade issues that cause more widespread concerns in the trade union movement, such as labour migration in the EEA. Trade unions protest when Norwegian workers are outperformed by Polish ones having a small fraction of their wage. To the extent that migration is liberalized under the General Agreement on Trade in Services (GATS) (“Mode 4”), similar concerns may arise and lead to greater activism related to the WTO. Trade unions in the public sector have also expressed concerns about how GATS may affect public services. In public opinion, there may be a growing anti-GATS sentiment, and also the LO has expressed concerns for liberalization related to health, education and care for the elderly.¹⁸

On the employers’ side, the Confederation of Norwegian Business and Industry (NHO) is the largest actor, with a staff including experienced trade policy experts. Given its expertise and knowledge about industrial issues, the NHO actively supports the government with information about particular export interests that are relevant for trade policy. Some business organizations have resources to maintain an active external profile, e.g., the NHO publishes leaflets and information material about trade policy issues and their views. The NHO secretariat itself spends approximately the equivalent of one full-time person per year on multilateral trade issues, and similar expenditure on the EEA and regional trade issues. In addition, sub-federations spend resources on trade policy.

18 Letter from LO to the Ministry of Foreign Affairs dated 3 April 2001, quoted in LO, *Tjenester i WTO – en snarvei til privatisering?*, Samfunnspolitisk avdeling, Samfunnsnotat 9/02.

In recent years, NHO has generally supported free trade. NHO comprises more than 20 sub-federations, and some of these actively pursue their particular interests. In most cases, this is along the lines of the NHO's general views. With respect to the WTO, for example, Norwegian salmon producers have actively promoted their interests related to international trade negotiations. In some cases, however, there are frictions due to protectionist interests in sub-federations; although this is rarer in Norway due to the structure of industry. With respect to the earlier textile protectionism, the NHO's predecessor (*Industriforbundet*, the Manufacturing Association) was partly a mediator and partly supportive of textile industry interests. Currently, the NHO comprises two sub-federations in the food processing industry that have expressed worries about agricultural liberalization—especially the Federation of Norwegian Meat Industry (KIFF). This may possibly have moderated NHO's profile on agricultural issues, although the organization has supported the aim of liberalization.

The NHO considers international cooperation in the Confederation of European Business (UNICE), including EFTA and some EU applicants; the Business and Industry Advisory Committee to the OECD (BIAC); and the International Chamber of Commerce (ICC), to be of increasing importance in fomenting trade policy. By coordinating their interests, industrial federations may increase their influence. For its policy mission, the NHO also benefits from the exchange of information in international networks. To some extent, however, the interests of national federations differ due to varying industrial structures. For example, business federations in the Nordic countries have promoted the complete elimination of manufacturing tariffs in the WTO, but the EU industry has not been prepared to go that far.

The NHO also includes a number of services industries. In addition, the Federation of Norwegian Commercial and Service Enterprises (HSH) represents several organizations with the majority from wholesale and retail trade. On trade policy, the HSH therefore focuses on aspects related to imports, such as trade restrictions and rules of origin. The HSH currently also runs a project for promoting imports from developing countries, partly replacing earlier government bodies for this purpose.

In agriculture, there are two farmers' organizations that are very active lobbyists and, given the current importance of the WTO in their field, trade policy is a major focus. The largest organization (*Bondelaget*) has a secretariat with around 60 employees in Oslo, with considerable expertise and the capacity to make the organization heard. These organizations, along with the Centre Party and selected NGOs, are supporters of continued high trade protection for agriculture in Norway.

3.3. Values-based NGOs

In the following, we consider NGOs that are not interest groups such as trade unions and business lobbies, but based on some “idealistic” values-based or political perspective. Such NGOs constitute a heterogeneous group of organizations, in terms of:

- *size*: the smallest comprise a few people, while others are large organizations;
- *political views*: although exceptions exist (e.g., the “Counter-Attac” organization), the NGO movement is generally critical of the WTO, but ranges from strongly anti-capitalist to modestly reformist.
- *origin*: some NGOs emanate from the political left wing, other from Christian groups, others are aid organizations, some have an environmental focus, others focus on human rights, and the list goes on.

There is a multitude of organizations and it is beyond our scope to provide a detailed overview. As an illustration, we may consider the Forum for Development and the Environment (ForUM), which is a coordinating umbrella of currently 58 NGOs, created after the 1992 Rio meeting of the United Nations Conference on Environment and Development. ForUM has also been extensively involved as a representative for NGOs in government consultation bodies. The government has preferred to have ForUM as a representative of NGOs, instead of having to approach each individually. ForUM members accept this arrangement, and work to make ForUM a broad-based organization with a democratic structure.

ForUM distinguishes between “participating organizations” that have to be “idealistic” or values-based, and “affiliated organizations” that may also include interest groups and political party organizations. Only full participants may propose and vote when decisions are made. ForUM’s members include¹⁹ environmental organizations, a number of aid organizations (five out of 14 have a Christian affiliation), peace organizations, some regional solidarity organizations, political campaigns or study groups (including Attac), ethically-oriented organizations (e.g., Amnesty International, Max Havelaar), and others. Among affiliated organizations, we also find some interest groups and left-wing political organizations.

ForUM emphasizes a democratic decision-making process, given its purpose of being an organization that represents a broad spectrum of NGOs. Given

19 See <http://www.forumfor.no/medlemmer/>. It is difficult to provide a stringent classification since some organizations do different things, e.g., combine aid and political campaigns, so the classification in the text is only a rough illustration.

this broad participation, the political platform is diplomatic in its wording about international trade; although several members are more critical of the WTO and their Web pages suggest that this is the dominant perspective. ForUM has a staff of four.

Hence the trade policy views of NGOs differ, and some NGOs have platforms that allow participation from people with varying degrees of anti-WTO attitudes. While a few participants might prefer to abolish the WTO, the mainstream NGO approach is more “reformist.” Attac’s platform, for example, states that it should work for “an open, democratic and fair international trade and investment regime with scope for political governance of market forces in order to secure the citizens’ social needs, food security and sustainable use of resources.” Norwegian Church Aid has demanded that WTO rules be re-written in order to promote development and fair trade, and they have requested greater transparency in trade policy decision-making.²⁰

In the NGO movement, there seems to be fairly broad support for the views that:

- international trade and the WTO promote international inequality;
- WTO as well as the national system for decision-making in trade policy is undemocratic and lacks transparency; and
- the GATS is a threat to public services.

For many of the values-based NGOs, an important issue is also that trade policy should take into account non-economic interests, and they criticize current policy for being too focused on economic issues. On other issues, views may be more conflicting. For example, should Norwegian trade protection for agriculture be sacrificed for the good of developing countries? In Trade Campaign (*Handelskampanjen*), organizations such as Attac and the Centre for Partnership in Development are accompanied by main organizations from agriculture and some important trade unions. On agriculture, their view is that export subsidies should be abandoned while production for the domestic market should be protected.

Most of these NGOs are not directly affiliated with political parties, but some have indirect links due to overlapping memberships. These links, combined with the public influence of NGOs, imply that they do have an influence, although its extent is hard to quantify. The strong participation of Christian organizations among NGOs implies that there are likely links to the Christian Democrats. Left-wing members of the Labour Party are also involved in the NGO movement. It is likely that the current strong focus on

20 See <http://www.kirkensnodhjelp.no/>, newsletter Agenda No. 3/2004.

North-South issues in Norwegian trade policy debates has been stimulated by the NGOs via direct links and through public opinion in general. As noted, “accommodating politics” is a hypothesis for how this influence occurs.

Many NGOs have strong global links and participate in international networks and campaigns. As an example, the small organization IGNIS (a non-membership organization with a staff of four) reports to have frequent (i.e., weekly) e-mail contact with similar organizations in approximately 100 countries. This organization sees itself as a representative for developing countries, and not as a national lobby group. When members of such organizations participate in Norwegian delegations to WTO meetings, it may be a challenge that their identity is not as a national representative, but as a representative of developing countries. Following this logic, NGO representatives may consider some Norwegian negotiation demands illegitimate and harmful to developing countries. This attitude, combined with a strong international network of NGOs, is potentially a challenge within the traditional approach to inter-state negotiations, where national participants quarrel internally but act united externally.

A characteristic feature of non-representative NGOs is that their power and influence come from political persuasion. Their ability to persuade partly depends on their views, but also on their competence and resources. The NGOs, therefore, use resources on improving their knowledge about trade policy beyond the slogans. Compared to 15 years ago, the NGO movement now on the whole constitutes an important part of the national “knowledge base” on trade policy, with greater influence, resources and staff. This resource base is partly founded on the members’ idealism and voluntary efforts, but on the other hand, the strength of the NGO movement would hardly have been the same without public funding that allows a permanent staff. Organizations such as ForUM and the numerous participating aid organizations rely heavily on public funding. Given that these organizations frequently disagree with government positions, the Norwegian government has, to some extent, paid for its critics.

4. The trade policy democracy

4.1. The Ministries

The Ministry of Foreign Affairs has the main responsibility for multilateral trade policy negotiations in Norway. Given this formal responsibility, the task of the Foreign Minister is to present memos to the Cabinet at varying intervals in order to decide on guidelines for WTO negotiations. The frequency of such Cabinet decisions may vary, according to the pace of negoti-

ations. Such memos are normally discussed with the most affected ministries before they are presented, and normally, conflicts are resolved before the matter is brought to the Cabinet. An important aspect of the Cabinet decision-making process in negotiations such as the Doha Round is that it is not one-off. The negotiation mandate is adapted in light of negotiations. Although we do not have information about the Cabinet's internal decisions, it is likely that the Cabinet proceeds stepwise instead of deciding at the outset what will be the rock-bottom negotiating position at the end. This gradual adaptation of the negotiators' terms of reference is important for considering how the Storting should be involved in the process.

Due to the broad field covered by current trade policy, a number of other ministries are also involved and participate directly in trade policy formulation and the international negotiation process. Other core ministries include the Ministry of Agriculture and Food, the Ministry of Trade and Industry, the Ministry of Fisheries and Coastal Affairs, the Ministry of Finance and the Ministry of the Environment. On some issues, the negotiating responsibility is delegated to other ministries. For example, the Ministry of Trade and Industry is in charge of bilateral trade agreements via EFTA (but not the EEA).

The dispersion of tasks across ministries is not only due to the broader agenda which include more issues for negotiation than in the past, but also historical accident. In Norway, a new Cabinet has wide authority to change the ministerial structure, and this has affected trade policy twice over the last two decades as of 2004. In 1988, the earlier Ministry of Trade was merged into the Ministry of Foreign Affairs, but with a separate Trade Minister until October 1996. At that time, the Trade Minister Grete Knudsen became Minister of Trade and Industry, and the new Cabinet decided that bilateral commercial diplomacy should follow her into her newly formed ministry.²¹

Given that several ministries are involved in trade policy, there has been an increasing need for coordination. In order to coordinate decision-making across ministries, there are 10 inter-ministerial bodies (listed in Appendix B). There is: (i) a Deputy Minister/State Secretary Group where all ministries participate; (ii) a senior official group where all ministries but one participate, covering general WTO issues; and (iii) eight working groups with varying participation, covering specific aspects of WTO policies. The number of ministries participating in these specific groups is largest for services (16) and the Agreement on Trade-related Aspects of Intellectual Property Rights

21 Formally, Ms. Knudsen became Minister of Industry in October 1996 and Minister of Trade and Industry from January 1997. After late-night discussions before the change, it was decided that the responsibility for the EEA as well as multilateral trade policy should remain with the Ministry of Foreign Affairs.

(TRIPS) (9). Relevant directorates etc. participate directly in five of the working groups.

The inter-ministerial bodies meet with varying frequency, generally from once to several times a year. The Deputy Minister Group, e.g., had two meetings in 2003, and one meeting in 2004.²² Working groups may, at times during active negotiations, meet much more frequently, and these are important policy-making bodies. The “dispersion” of trade policy across ministries nevertheless implies a more demanding coordination task.

The Ministry of Foreign Affairs has a staff of 14 working mainly on WTO issues, and additionally seven in the Norwegian Delegation in Geneva. Other core ministries also have staff members working mainly on WTO issues. On trade policy, more broadly defined, we would also have to include a number of officials working on EEA and bilateral trade issues; in the Ministry of Foreign Affairs; as well as other ministries. It is hard to give a precise assessment of the total number of personnel-years spent on multilateral trade policy in the ministries and embassies/delegations—a guess would be around 35.

There are various potential sources of friction between ministries:

- competition for influence in general;
- conflicts on sector issues such as agriculture, where ministries may have different approaches; and
- “clashes of culture” when, for example, GATS policies suddenly appear on the desks of culture bureaucrats who have no previous experience with international trade policy.

On multilateral trade policy, the division of labour between ministries is currently clear enough, so frictions about roles seem to be limited. On politically difficult issues such as agriculture, political frictions exist. On bilateral free trade agreements, the Ministry of Trade and Industry has the formal negotiating responsibility but here the Ministry of Foreign Affairs is in charge of diplomats who play an important role. In this case, there is scope for some friction about roles.

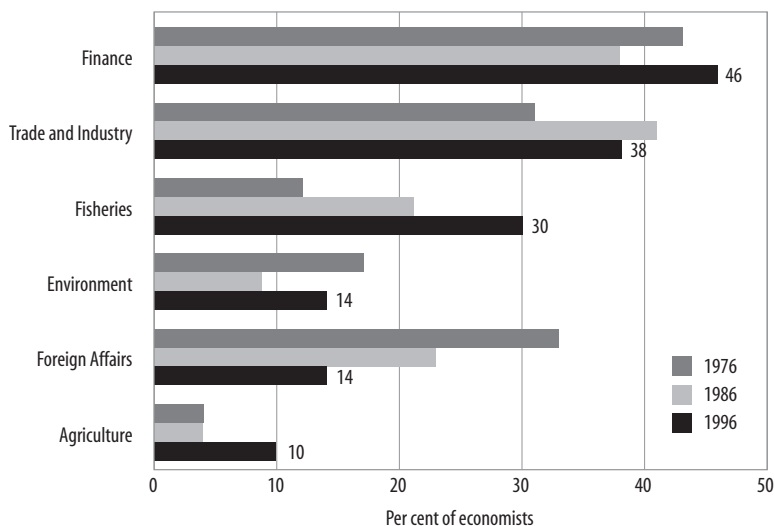
As of 2004, a current issue in WTO negotiations is to what extent the Ministry of Agriculture identifies itself with the defensive interests of farmers. Langhelle (2001) shows that in recent years, decision-making on agriculture has changed considerably, with more focus on international issues and weaker affiliation to business interests in the ministry, and more decision-making lifted to the Cabinet and parliamentary level. The focus on

22 According to information available in November 2004.

consumer issues has also increased (Veggeland, 2000). Hence the issue has been “politicized” and the Ministry of Agriculture is currently not a “farmers’ subsidiary.” Nevertheless, this ministry is rooted in agriculture and probably feels the burden of adjustment more directly; almost half of its staff in 1996 had an agricultural education (*ibid.*).

As an illustration of possible differences in culture across ministries, their education profile is therefore of some interest. Figure 2 shows the percentage of economists in the staff of the core trade policy ministries in 1976, 1986 and 1996.²³ Although people might not agree whether it is a good or a bad thing to have many economists, they are needed in the development of trade policy.

Figure 2: The share of economists in ministry staff.



Data source: Christensen *et al.*, 2001

The Ministry of Agriculture, followed by the Ministry of Foreign Affairs, are at the bottom of the ranking. In the latter, social science education, especially political science, is currently more important. As shown by Christensen *et al.* (2001), staff members in this group see themselves as negotiators and mediators to a larger extent than economists; they emphasize more public participation and transparency; and they put less emphasis on “profession-based” arguments. This is partly for the good. It is nevertheless a paradox

²³ Based on data from Christensen *et al.*, 2001. Figures for the Ministry of Foreign Affairs include the earlier ministries of Trade and Shipping and Development Cooperation, and figures for the Ministry of Trade and Industry includes the Ministry of Petroleum and Energy, and the earlier Ministry of Industry and Energy.

that the Ministry of Foreign Affairs has a shrinking economic staff at a time when their responsibility for global economic issues has increased in scope and importance. In the context of the trade policy democracy, economic expertise is needed for various reasons:

- Facing strong interest groups, the ministry in charge should not only or mainly be a mediator, but it should have the analytical capacity to assess whether long-term economic interests differ from short-term interests expressed by particular sectors.
- Facing an ever-increasing international agenda, analytical capacity is important in order to prevent trade policy from becoming too “reactive”—just responding to the issues raised by others. In order to influence agendas and particularly policy-making in new areas, analytical capacity is crucial.
- Facing the new critique against orthodox trade policy, the ministerial staff needs the capacity to respond to such critique and participate in the public dialogue on trade policy.

Analytical capacity is not only a question of economics, but given the core economic content of many WTO issues, capacity in economics is an important component of the expertise needed.

An issue is also how the capacity of the Ministry of Foreign Affairs is affected by its rotation system, by which diplomats circulate between positions at home and abroad. While diplomats cherish the virtues of the “allrounder,” the WTO involves a number of complex issues for which it takes time to build the necessary competence. Sometimes, when this has happened, staff members are sent to sunny places where they cannot fully exploit their in-depth knowledge about intricate trade regulations.

The overall impression is that for multilateral trade policy, the government has managed to construct an efficient system for the currently more complex inter-ministerial policy process. When the Uruguay Round was concluded in 1993, the consultation process on new issues was more limited and *ad hoc*, and some important decisions were made after limited consultations. The current system is considerably improved. Nevertheless, our examination suggests that the division of labour between ministries also creates a self-inflicted need for coordination, and splits the core trade policy staff in a way that may not be optimal. By merging some of the core trade policy tasks, it is likely that synergies could be created, and the analytical capacity of the government might also be improved. This may also be good for democracy, by enabling the trade policy officials to be more active in public debates and trade policy analysis and more proactive in international trade policy formulation.

An issue is also whether a separate trade minister, as in the period before 1996, would improve the capacity for policy-making, representation as well as participation in public debate. The seniority of the Foreign Minister is an advantage for trade policy, but on the other hand, the minister has several tasks and at times, other policy fields may dominate the agenda. If trade policy is to be promoted from a “secondary” to a “primary” policy issue, a separate minister is an option to be considered. In fact, among interest groups as well as Members of Parliament, some people favour this solution.

4.2. *The Storting (Parliament)*

While the government has the authority to conduct international trade negotiations, it has to secure that it has political support in the Storting for its policy. On most trade policy issues, it has not been common practice for the Cabinet to present propositions or reports to the Storting *before* international trade negotiations are started. However, all international treaties have to be presented to the Storting *after* they have been negotiated. For all important trade agreements, this is done in the form of propositions to the Storting.²⁴ For example, when the Uruguay Round was concluded, the results were presented to the Storting in this form (St.prp. 65, 1993–94). Bilateral free trade agreements through EFTA have regularly been presented to the Storting in the form of propositions. It varies from case to case how intensely these propositions are debated.

While WTO negotiations are prepared and carried out, consultations between the Cabinet and Storting normally take place through confidential consultations between the Minister of Foreign Affairs and the Enlarged Foreign Affairs Committee of the Storting, and regular briefings by the Minister in open Storting. A third possibility is that trade policy issues are raised by MPs in the Storting’s regular questioning sessions, or following “interpellations” by MPs. In 2003–2004, the Foreign Minister had two briefings for the Storting. Regarding consultations with the committee, some MPs may sometimes prefer to have the information in open meetings rather than in a confidential form. To what extent this affects the choice of procedure, is unclear. Due to the busy agendas of the Storting as well as the Minister, it may sometimes take time before the Storting is informed: The briefing on the July 2004 meeting of the WTO took place in late October 2004.

An issue is to what extent the consultations in the Enlarged Foreign Affairs Committee are sufficiently specific, or so general that the involvement of the committee in policy-making is actually limited. Some MPs feel that they

24 Minor agreements may be presented to the Storting in an annual communication on international treaties.

should obtain more detailed information than they do according to current practice. One possibility is to form a sub-group of MPs that has a special responsibility of following trade policy development in more detail. In this way, the politicians could obtain better information, without necessarily having extended committee discussions on all details. On the other hand, some MPs are not in favour of creating such limited “sub-committees,” and prefer extended information in the committee as such.

In 2003–4, multilateral trade policy issues were presented to the Storting in white papers not directly addressing specific negotiations. A report on globalization (2003, see footnote 7) caused an extensive WTO debate in the Storting. In its recommendation (Innst.S. nr. 118, 2003–2004), the Foreign Affairs Committee of the Storting stated that “all forms of export subsidies and dumping of food from rich countries to developing countries contributes to the destruction of home markets for farmers in the South and access to the world market for developing countries. Such forms of support should therefore be terminated. In addition, the majority of the Committee, except the representative of the Centre Party, has the view that rich countries should undertake reductions in trade-distorting internal support.” Hence also the Socialist Left Party agreed to this conclusion. Recently, the Foreign Affairs Committee presented its recommendation on the report on aid and development (Innst.S. nr. 93, 2004–2005). Here the Labour party, the Conservative Party, the Christian Democrats and the Progress Party clearly expressed positive views on international trade and integration, while the WTO-critical parties expressed their reservations and disagreement on trade issues (*ibid.*: 5–6). The committee also emphasized the need for openness and information about the WTO process (*ibid.*: 9).

These two propositions to the Storting also illustrate the recently-developed practice of *open hearings* held by the standing committees of the Storting. For both these propositions to the Storting, the Foreign Affairs Committee arranged public hearings. A number of researchers, interest groups and NGOs were invited to present their views. The committee itself debates and decides on the agenda and who should be invited. In the hearings, the participants are asked to present written material or have presentations to express their views. The committee thereafter questions the participants. For example, in the hearing on aid, five researchers and 27 interest groups and NGOs were invited to present their views in the form of two-page written statements, and the committee thereafter questioned all these. These hearings imply that NGOs as well as researchers are brought into policy-making more directly. The hearings also imply that politicians have to prepare even better, and that they become very well informed about the views held by different groups. The practice of parliamentary hearings is, therefore, a useful addition to the policy process. The practice of asking for written statements

from the invited researchers and organizations is a deliberate step in order to improve the quality of the dialogue and ensure that one obtains hearings rather than seminar-like consultations.

At the WTO's Cancun meeting in 2003, representatives from the Storting were for the first time included in the official Norwegian delegation to the meeting. Four political parties participated. It is planned to continue this practice at later WTO ministerial meetings. According to the division of labour between the Cabinet and the Storting, the former is in charge of international negotiations. MPs seem well aware of this division of labour and do not question it, so there is no conflict about roles. The main impact of MP participation in delegations to WTO meetings is to improve their information about trade policy; not to change the division of labour *vis-à-vis* the Cabinet.

The July 2004 meeting of the WTO General Council was not a ministerial meeting even if some Ministers "were around." This has raised criticism from the Centre Party that the meeting was like a *de facto* ministerial meeting, and representatives from the Storting should have been included in the delegation. It is beyond doubt true that the Geneva meeting was important and in fact did what the earlier ministerial meeting in Cancun tried. In the current discussion about democratic reforms in the trade policy area, some MPs share the view of Ms. Haga that the Storting should participate in delegations to important WTO meetings, and not only ministerial meetings. As noted, this proposal obtained some support in the Storting, although the practical implications are not fully clear.

Regarding the EEA agreement, the Storting has a special EEA Consultation Body that meets once a month to review developments in the EEA. This committee includes the Foreign Affairs Committee and six other MPs that are members of the EFTA/EEA parliamentary committees, and the Foreign Minister participates. Other specific standing committees of the Storting may be invited if the body discusses matters particularly relevant to them, and other relevant ministers may be invited. The meetings are normally closed, but from 1996 onwards, minutes from each meeting are made public one year after the meeting. The Ministry of Foreign Affairs publishes a list of matters to be discussed on the Web, and the minutes from meetings more than one year back on time are available on the Storting's Web pages.²⁵

The EEA Consultation Body was established because the EEA implies a continuous process of decisions on new legislation. The WTO is different because it is developed through international negotiations over long time

25 http://www.stortinget.no/saker/referater/eos_utvalget.html.

periods. A body similar to the EEA Consultation Body has therefore not been proposed in the WTO area. Compared to WTO discussions in the Foreign Affairs Committee, the EEA Consultative Body adds another layer of transparency, by making public the agenda as well as minutes from meetings.

On multilateral trade policy, the principal issues are, to a limited extent, subject to open policy debate in the Storting prior to negotiations. Democracy and transparency could, therefore, be improved by involving the Storting more actively prior to important negotiations. Could open discussions in the Storting “undermine” national negotiating positions? This is not necessarily so; in international negotiations, governments frequently use domestic political pressure as an argument to build credibility. Open political discussion could, nevertheless, change trade policy in important ways, by linking domestic and international policy spheres. In some cases, the government has two faces: one at home; and one abroad. Especially in the case of defensive positions such as textile protection or agriculture, the government may be protectionist abroad and liberalist at home. If the government has to choose between these two faces at an early stage of negotiations or before them, it would change the process. To some extent, this would be an advantage for democracy, by making choices more open. A case in point is agriculture, where politicians in favour of domestic reform should argue openly for it, instead of leaving the decision to WTO negotiations. In recent WTO debates in the Storting, concerns for developing countries have been a major argument, while concerns for domestic prices and efficiency have been less emphasized. Negotiating agriculture in the Storting should not imply that bottom-line negotiating positions are revealed, but concern major guidelines for reform. Facing WTO liberalization, should low-productive peripheral farming be sacrificed or, on the contrary, be given priority relative to the more productive areas? Should agricultural inputs (cereals, etc.) be protected or imported? In what areas is agricultural protection particularly harmful for developing country interests? To know the direction of domestic reform is also important for trade policy decisions, and a better domestic debate could help negotiators as well as improve democracy.

The current system is adapted to gradually evolving negotiations at home and abroad; and gradual adaptation of the terms of reference for negotiations. This flexibility is of value, and more extensive involvement by the Storting should be shaped in a way that is not too rigid. For this reason, the decisions made in open Parliament should focus on matters of principle rather than detailed terms of reference for negotiations.

4.3. Interest groups and NGOs

As noted in the introduction, one issue is whether corporatism in policy-making has been reduced. In textile negotiations during the 1980s, the tex-

tile lobby was regularly included as advisors in Norwegian delegations to negotiations. Today, this happens only to a limited extent. Still, however, interactions with business interests play an important role in policy formulation. Since trade negotiations are partly a matter of serving Norwegian business interests, interaction with business interests is still an important part of the policy-making process. When Norway is to define its position in services negotiations in GATS, for example, a part of the regular preparation process is to map Norwegian export interests and the obstacles they face in foreign markets. Given that business interests provide this form of “technical support,” they play a more central role than trade unions. Some interest groups feel, however, that they are less heard than they were 10–15 years ago. For example, when the EEA agreement was formed in the early 1990s, there was an extensive process of research and consultation, with discussion on specific sub-issues. Some interest groups also feel that the consultative process related to the Uruguay Round was better than for the current WTO Round. In the current WTO process, such a process has also taken place, but more limited. This scattered information supports the hypothesis about declining corporatism in trade policy, but more evidence is needed to draw a firm conclusion.

For interest groups, the fragmentation of trade policy across ministries also complicates the task of influencing policy. If an NGO has to approach five ministries instead of one in order to reach decision-makers, communicating their message is a more extensive task. This may also add to the perception of declining influence held by some interest groups.

On the other hand, it is also possible that fragmentation may increase the scope for influence, even if it takes more effort to obtain it. For example, if there is disagreement within the government, fragmentation implies that interest groups and NGOs may focus on contacts that may promote their cause. In a more “monolithic” system, this may not be possible. Hence it is ambiguous whether fragmentation is good or bad for potential external influencers; a hypothesis is that if you disagree with the “system,” fragmentation makes influence easier.

In order to organize the process of consultation with interest groups and NGOs on multilateral trade policy, the Ministry of Foreign Affairs has since 1979 set up various consultative bodies. Currently, there are five bodies where interest groups and NGOs are represented. These bodies and their participation are listed in Appendix C. In Table 1, we provide an overview of their composition:

Table 1: Advisory Councils for multilateral trade policy in Norway.

Type of organization:	Advisory Councils for:				
	WTO general	Services	Agriculture	WTO accession	Market access
Ministries	8	1	6	9	5
Other public	3	3			1
Semi-public	2	2	1	2	1
Business interest groups	5	20	8	4	7
Other businesses	2	4	2	1	2
Trade unions	3	9	2	1	2
Other interest groups		3			
Other NGOs	1	2	3		2
Total	24	44	22	17	20

Business interest groups are clearly the largest type of non-government participant. But also trade unions are represented in all bodies, and other NGOs in four out of the five bodies. ForUM participates among other NGOs in all four cases, and frequently meets with representatives from more than one of its participating organizations.

The advisory councils serve different purposes:

- they provide information from the ministry to the participants;
- they allow the participants to state their views and interests; and
- the specialized advisory councils may also sometimes act as “working groups” in the sense that participants contribute with information, and interests are coordinated.

It is probably in the last case that advisory bodies have the most direct impact on policy formulation. Otherwise, the advisory councils mainly serve as information and “hearing” bodies. The advisory council on multilateral trade policy in general mainly has such functions.

Written records are made of the meetings. Bodies meet at varying intervals; once or twice a year is normal at the time of writing. Earlier there was a similar body for government procurement, and a group on investment was considered until it was clear that the issue was dropped from the Doha Development Agenda. At the time of writing, it is being considered whether

a group should be established on trade facilitation, i.e., the only “Singapore issue” included in the negotiations.

While consultation bodies have useful functions, they also have weaknesses. In particular, the inclusion of values-based NGOs have led to a mixture of two types of trade policy discussion: some of the NGOs want to debate more fundamental trade policy choices, while others are interested in more specific technical consultations on negotiation issues. There is a need for both types of discussion, but it is uncertain whether the consultation bodies have found the right way of organizing the debate. As a result, there may be a clash of expectations across participants, with some interest groups waiting for the general debates to finish, and NGOs feeling that they are not understood. Sometimes, interest groups are allowed to present statements or material after the meetings. According to some interest groups, the development of these consultation bodies has led to an increased focus on *ad hoc* consultations with the government and politicians outside these bodies. Hence the entry of idealist NGOs into trade consultation bodies has not yet led to the perfect form of democracy, and it should be considered how arenas should be shaped in order to take care of technical consultations as well as debates on principal policy choices. “Technical” issues may also have political content; but the distinction is nevertheless relevant for how the process should be organized.

To what extent do organizations have direct contact with ministries and politicians beyond these formalized consultation bodies? According to the “Power and Democracy” project, there has been a transition from corporatism to lobbying. Instead of using formal consultation bodies, organizations present petitions, send letters and ask for meetings, with more emphasis on the political parties. Specialized ministries also occasionally have more or less formal meetings with involved interest groups.²⁶ Ministries also approach business interest groups in order to assemble information needed for negotiations. For example, when the current WTO negotiations were planned in 1998–1999, business organizations were consulted when positions and interests were mapped (Deputy Minister Group on WTO, 1999).

Members of the Storting indicate that interest groups as well as values-based NGOs approach them regularly with respect to trade policy issues. Confirmed by several MPs, the current typical practice at the time of writing is that before important WTO meetings, almost a dozen NGOs and interest groups approach MPs with a majority of “values-based” NGOs. This applies to the whole political spectrum; hence the WTO-critical NGOs do not only approach their “favourite” parties. The NGOs report that they cannot ask for

26 Langhelle (2001) provides documentation for the agricultural and fisheries sectors.

a meeting with the political parties in the Storting any time they want; there has to be an occasion when such an approach is considered appropriate. Business organizations approached politicians directly in order to influence the decision on whether Norway should request negotiations on investment in the Doha Development Round (see also Langhelle, 2001). As noted above, the values-based NGOs also use this channel of influence. According to the other research on the Storting (for an overview, see Rasch and Rommetvedt, 1999), interest groups and other non-governmental organizations generally have more contact with the government than with the Storting, but the gap has been shrinking over time. One NGO stated: “the politicians understand our language, but the ministries do not.”

It is noteworthy that the values-based NGOs are more active lobbyists in the Storting than interest groups. On the other hand, major interest groups such as the NHO, LO and the Farmers’ Association may have more “intakes:” they also meet politicians in other contexts; they can invite them to seminars with a meal; and some of them participate in EFTA bodies where MPs also participate. Hence even if values-based NGOs knock on the doors of the Storting more frequently than interest groups, it does not prove that they have more influence. On the other hand, this evidence shows that (WTO-critical) NGOs are a well-organized lobby that exert political influence. As one MP stated: “what we need now, is not counter-expertise to the government, but counter-expertise to the NGOs.”

According to staff members of the Ministry of Foreign Affairs at the time of writing, *ad hoc* lobbying by interest groups is of limited importance in their current activities. On the other hand, such cases exist. Ministers, deputy ministers and officials also meet NGOs and interest groups in various contexts such as conferences and meetings, and it would be expected that interest groups and NGOs use such opportunities to present their views.

Norway was among the first to include NGOs and interest groups in delegations to WTO ministerial meetings. This occurred for the first time in the 1996 Singapore meeting when ForUM, LO and the NHO were included. Many developing countries in the WTO are however skeptical about allowing non-governmental organizations into all meetings, and the practice has therefore been restricted. Until the Cancun meeting in 2003, non-governmental organizations could only participate as observers. In Cancun, they became full delegation members, and representatives from the Storting were also included. In some meetings, there were restrictions on the number of participants from each country (e.g., the minister plus one, in some cases), and this was a limitation. Otherwise, the delegation had free access. The Norwegian press was also there, but only as observers with more limited access.

4.4. *Openness and transparency*

Compared to 10 years ago, transparency in trade policy is greater. On the WTO Web site, thousands of documents may be searched. On current negotiations, not all details are public, but important proposals and minutes from meetings are generally accessible. In the Doha Round services negotiations, several countries, including Norway have de-restricted their initial offers, which are available on the WTO Web site. The requests, however, are not yet generally available.

At the domestic level, the government relays information about negotiations through several channels, as already outlined (in the Storting, consultative bodies and by direct participation of NGOs in negotiations). In addition, some information is available on the Ministry of Foreign Affairs Web site. As an illustration, we may use GATS/services. The Web site contains information about: (i) the general Norwegian perspective in negotiations; (ii) specific text proposals made by Norway; (iii) Norway's initial offer; and (iv) information about requests made by Norway and towards Norway, according to topics and countries. Hence the only missing part is the matrix where countries and topics are matched in requests.²⁷

To what extent is it legitimate to maintain confidentiality about negotiations? This is a complex issue with no short answer. It partly depends on whether negotiations are competitive zero-sum games, or positive-sum games where both can win. According to the WTO ideal, the latter is true, but most negotiations include a distributive aspect. Such distributive bargaining includes tactics and persuasion, and the participants have their "reservation prices" and tactical considerations that they normally do not reveal. Although revealing secret information can help negotiations in some situations, this is not generally the case (see e.g., Raiffa, 1982, for a discussion). Since "trading concessions" in the WTO has such a distributive aspect, governments should not reveal their reservation prices or their tactical considerations. Hence some secrecy is a necessary ingredient in distributive bargaining, and legitimate also in trade negotiations. According to Lewicki and Litterer (1985), a

27 When South Africa's Education Minister Kader Asmal in 2003 revealed that Norway had presented demands on liberalization in its education sector (see, for example, <http://www.wes.org/ewenr/03Nov/Africa.htm>), it aroused sharp critics from NGOs, stating that Norway had presented undue requests. According to the Ministry's Web site, these demands do not cover public education. It has also been said that requests relating to developing countries are presented in a milder form, as calls or invitations rather than requests. Mr. Asmal may therefore turn down the Norwegian request, which he in fact seems to have done already in the media at the time of writing. From the Ministry of Foreign Affairs, it has been informed that the request against South Africa will not be actively pursued.

gradual revelation of the parties' true interest is the standard case. It is, therefore, legitimate that the government make a tactical assessment about secrecy throughout the negotiation process.

Whether GATS requests should be revealed or not, is a border case. According to Ministry of Foreign Affairs staff, the main argument for secrecy is the "free-rider problem:" If country X reveals its demand A towards country Y, country Z may consider that "country X will take care of our needs on issue A, so we focus on B instead." This may weaken the chance that A is accepted. This argument is relevant. Others, including the EU, have also not published their requests.

5. How can trade policy democracy be improved?

5.1. Strengths and weaknesses of the current system

Our examination of Norwegian trade policy institutions highlights several positive features:

- transparency has increased considerably over time;
- government coordination has adapted to a fast-increasing trade policy agenda involving more ministries;
- values-based non-governmental organizations have been included in trade-policy consultations, along with politicians and interest groups;
- concerns for developing country interests and policy coherence have become core aspects of the domestic trade policy debate; and
- the Storting has taken a more active role in consultations with civil society.

In spite of these improvements, the government still faces criticism from some NGOs and partly the political opposition to current trade policy, maintaining that there is a lack of democracy and transparency. It is hardly a coincidence that the critique comes from those who disagree with current policies. On the other hand, some members of the former "club" feel that they are less heard, and that the consultation process with civil society is in fact less democratic than before.

The analysis has also revealed some potential weaknesses of the current system:

- There is too limited political deliberation on principal trade policy issues; especially topics in the "new trade policy agenda" such as services. But even on a "traditional" issue such as agriculture, hard choices

about domestic reform are to a considerable extent left for the WTO to decide.

- The widening of the trade policy agenda as well as the fragmentation of trade policy staff across ministries has led to a considerable intra-governmental need for coordination. While this need has been addressed, some civil society participants see this fragmentation as a problem.
- It is uncertain whether the government has sufficient capacity to face the new public debate on trade policy, or to be sufficiently proactive in the international setting.
- The consultation process between government and civil society mixes technical consultations and debate on more fundamental trade policy issues. Using the words of Hocking (2004), there is to some extent “institutional tension” or a “crisis of expectations.”

It is beyond the scope of this paper to make a detailed assessment of possible reforms in the Norwegian consultation system on trade policy. In light of our analysis, the following possibilities could be examined:

- Principal trade policy issues could, to a greater extent, be presented to the Storting before important trade negotiations are started; in a way that does not eliminate the flexibility needed for international negotiations that evolve over an extended time period.
- The division of labour between ministries could be re-examined in order to check whether synergies could be obtained by merging some functions. Increasing the government’s capacity in the field could also benefit the consultation process with civil society, by reducing fragmentation and enhancing the government’s analytical ability to face the new public debate. Changing the ministerial structure is also an option, although specific proposals cannot be made without a more in-depth examination.
- Consultations with civil society could be better organized in order to separate general policy debate from technical consultations that are more of a cooperative, “problem-solving” nature.

5.2. Knowledge, perceptions and politics

A crucial part of democracy is the public debate, beyond specific consultation bodies. Attitudes to the WTO are not shaped by details on tariff formulas or anti-dumping rules, but by general perceptions about issues such as: Is trade or globalization good or bad? Is trade only for the rich, or does it also benefit the poor? In a world of globalization, policy is, to an increasing

extent, guided by perceptions concerning such complex questions. According to the literature on “information cascades,” public perceptions are less stable, the more complex the issues are. Hence on complex global issues, policy may be influenced by “herd behaviour” (see e.g., Morissey and Nelson, 2001) and people may seek simple answers to difficult questions.

This battle between perceptions is at the core of international trade policy. Free-traders maintain that free trade is good for development; WTO critics almost unanimously maintain that trade is mainly good for the rich and leads to a wider gap between rich and poor. Both cannot be right.

This conflict cannot be settled in formal consultation bodies, but it is addressed in public debate, seminars, media and research. There is no judge that can draw the final conclusion. There will always be uncertainty, and room for conflicting and legitimate political views. What can be done, however, is make the debate more qualified, by means of education, dialogue and research that increases the level of knowledge. The new NGOs have taken up the challenge, by focusing on their own education, seminars and discussions.

The implication for policy is that the government also has a responsibility for addressing this need for knowledge production and public debate. Our examination has revealed that, on trade policy issues, the efforts made by the government have varied over time; according to some there has been much less activity on trade policy by government recently. The trade policy debate with NGOs should partly take place outside consultation bodies through an open public debate. The government could contribute to democracy by:

- improving its own analytical capacity to face open public debate;
- undertake research that sheds light on trade policy issues and improves the foundation for public debate; and
- arrange conferences, seminars and the like, to create arenas for open public discussions.

Such activity should not only address narrow trade issues, but also broader issues. Sometimes, trade officials are short-sighted. They see the need for guidance on very specific trade issues, but underestimate the importance of the “grand issues” that shape perceptions about globalization and trade.²⁸

Better and more knowledge production is also in itself good for trade policy formulation and the ability to be more proactive in the international setting. With better resources and knowledge, the ability to influence outcomes is larger. In current trade policy, relevant knowledge is not only about national gains and losses, but, to an increasing extent, about what is good for the world.

28 As an example of research on such issues, see Melchior *et al.* (2000).

Based on our analysis, it is not possible to conclude that there is a general “legitimacy crises” for trade policy. In some areas, however, there is an emerging conflict. On GATS and public services, there is widespread skepticism and possibly a trend towards polarization. This should be addressed by means of better knowledge and better policy debate in the field. Again, NGOs seem to be more active than the government. This cannot be addressed in the consultation body for services, but the government has to properly face the public debate. Currently it partly lacks the capacity to do so, and this may be a core challenge if trade policy democracy is to be improved. For efficient decision-making, it is also important to face critical issues and take some “high-voltage” discussions when needed. Accommodation should not imply that we pretend that we all agree.

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Appendix A: List of interviews undertaken

Organization	Representative
Ministry of Foreign Affairs	Dagfinn Sørli, Director of WTO/OECD Section
Labour Party	Håkon Blankenborg
Christian Democrats	Lars Rise
Conservative Party	Finn Martin Vallersnes
Centre Party	Åslaug Haga (Party Leader)
Socialist Left Party	Bjørn Jacobsen
Progress Party	Morten Høglund
<p>Note: All the representatives of the political parties are members of the Foreign Affairs Committee of the Storting. For more information, see http://epos.stortinget.no/database/epos/persliste.stm?aktuelle=&vismeny=.</p>	
NHO (Confederation of Norwegian Business and Industry)	Knut Sørli, Director, International Department
HSH (Federation of Norwegian Commercial and Service Enterprises)	Thomas Angell, Director, Department for Trade
LO (Norwegian Confederation of Trade Unions)	Stein Reegård, Chief Economist, Economics Department Diis Irene Bøhn, International Department Tor Jørgen M. Lindahl, Labour Department
ForUM for Development and the Environment	Morten Eriksen, Administrative Leader
Attac	Steinar Alsos (Leader)
IGNIS (Institute for Global Networking Information and Studies)	Helene Bank (Senior Advisor)

Appendix B: Inter-ministerial coordination bodies

(Note: As of September 2004)

Ministry/body: X = one member	State secretary group	WTO general	Inter-ministerial working groups for:							TRIPS	TBT	
			Trade/ environment	Trade/ competition	Services	Agri- culture	Rule- making	Market access/ accession				
Ede Minister's Office	X	X										
Foreign Affairs	XX	XX	XXX	XX	XX	XXX	XXXXX	XX	XX	X	X	X
Trade and Industry	X	X	X	X	X	XX	XXXXXX	X	X	X	X	X
Finance	X	X	X	X	X	XXX	XXX	XX	XX	X	X	X
Fisheries	X	X	X		X	XXX	XXX	X	X	X	X	X
Environment	X	X	XX		X	XX	XX	X	X	XX	X	X
Agriculture and Food	X	X	X		X	XXX	X	XX	XX	X	X	X
Labour/ Administration	X	X		X	X	XX	X					
Justice and Police Matters	X	X			X					XX		
Children and Family	X	X			X	X						
Local Gov/Regions	X	X			X		X		X			
Transport/ Communications	X	X	X		X							
Health	X	X			X					X		
Culture and Church	X	X	X		X					X		
Social Affairs	X	X			X							
Petroleum and Energy	X	X	X		X					X		

Ministry/ body: X = one member	State secretary group	WTO general	Inter-ministerial working groups for:								
			Trade/ environ- ment	Trade/ compe- tition	Services	Agri- culture	Rule- making	Market access/ accession	TRIPS	TBT	
Education and Research	X	X			X					X	
Defence	X										
Other participants:											
Competition Authority				X							
Statistics Norway					X						
Norw. Customs and Excise									X		
Patent Board										X	
Food Control Authority											X

Appendix C1: Advisory council for multilateral trade issues – the WTO council

Ministries (PMO + 8)	PMO, Foreign Affairs, Finance, Environment, Fisheries, Trade and Industry, Children/Family, Agriculture, Transport/Communications
Other public (3)	Competition Authority Norwegian Customs and Excise National Bank of Norway
Semi-public (2)	Norwegian Consumer Council Innovation Norway
Business interest groups (5)	Norwegian Farmers' Association Norwegian Farmers and Smallholders Union NHO (Confederation of Norwegian Business and Industry) HSH (Federation of Norwegian Commercial and Service Enterprises) Norwegian Ship Owners' Association
Other business (2)	COOP Norway International Chamber of Commerce Norway
Trade union organizations (3)	LO (Norwegian Confederation of Trade Unions) Norwegian Fishermen's Association YS (Confederation of Vocational Unions)
Other NGOs (1)	ForUM for Development and the Environment

Appendix C2: Advisory council for WTO services negotiations

Ministries (1)	Foreign Affairs
Other public (3)	<i>Kredittilsynet</i> (financial supervision authority) Competition Authority Norwegian Post and Telecommunication Authority
Semi-public (2)	Innovation Norway Norwegian Research Council
Business interest groups (20)	HSH (Federation of Norwegian Commercial and Service Enterprises) NHO (Confederation of Norwegian Business and Industry) 18 organizations representing publishers, property brokers, lawyers, tourism, financial services, equity brokers, energy industry, airlines, architects, ship owners, engineers, auditors, film and TV producers, maritime insurance, distance education, composers, film bureaus, tourism
Other business (4)	INTSOK (Norwegian Oil and Gas Partners) The Norwegian Computer Society <i>Norwaco</i> <i>Telenor ASA</i>
Trade union organizations (9)	<i>Akademikerne</i> (Federation of Norwegian Professional Associations) <i>Fellesforbundet</i> (mechanical industry and some other) LO (Norwegian Confederation of Trade Unions) Norwegian Association of Research Workers <i>Fagforbundet</i> (health, social workers, municipalities) Norwegian Sailors' Association The Confederation of Higher Education Unions UHO) Norwegian Actors' Equity Association YS (Confederation of Vocational Unions)

Ministries (1)	Foreign Affairs
Other interest groups (3)	Norwegian Council for Higher Education National Student Union Students' National Association
Other NGOs (2)	ForUM for Development and the Environment For the Welfare State

Appendix C3: Advisory council for agriculture

Ministries (6)	Foreign Affairs, Labour/Administration, Finance, Agriculture, Children/Family, Fisheries
Semi-public (1)	Norwegian Consumer Council
Business interest groups (8)	Norwegian Farmers' Association Norwegian Farmers and Smallholders Union HSH (Federation of Norwegian Commercial and Service Enterprises) NHO (Confederation of Norwegian Business and Industry) Organizations representing: Meat industry, cooperative organization, gardeners, processed food.
Other business (2)	COOP Norway <i>Norsk Felleskjøp</i>
Trade union organizations (2)	LO (Norwegian Confederation of Trade Unions) <i>Norsk nærings – og nytelsesarbeiderforbund</i> (workers in food processing industry)
Other NGOs (3)	Nature and Youth Forum for trade with developing countries ForUM for Development and the Environment

Appendix C4: Advisory council regarding applications for membership in the WTO

Ministries (9)	Foreign Affairs, Local Government/Regional Development, Trade and Industry, Finance, Agriculture, Petroleum and Energy, Fisheries, Environment, Transport/Communications
Semi-public (2)	Seafood Export Council Innovation Norway
Business interest groups (4)	HSH (Federation of Norwegian Commercial and Service Enterprises) NHO (Confederation of Norwegian Business and Industry) Norwegian Financial Services Association Norwegian Ship owners' Association
Other business (1)	INTSOK (Norwegian Oil and Gas Partners)
Trade union organizations (1)	LO (Norwegian Confederation of Trade Unions)

Appendix C5: Advisory council for market access negotiations

Ministries (5)	Foreign Affairs, Finance, Environment, Fisheries, Trade and Industry
Other public (1)	Norwegian Customs and Excise
Semi-public (1)	Innovation Norway
Business interest groups (7)	HSH (Federation of Norwegian Commercial and Service Enterprises) NHO (Confederation of Norwegian Business and Industry) Norwegian Financial Services Association Norwegian Ship Owners' Association Federation of Norwegian Manufacturing Industries (TBL) FHL (fisheries and aquaculture) PIL (The Federation of Norwegian Process Industries)
Other business (2)	NorStella – Foundation for e-Business and Trade Procedures INTSOK (Norwegian Oil and Gas Partners)
Trade union organizations (2)	LO (Norwegian Confederation of Trade Unions) <i>Fellesforbundet</i> (mechanical industry and some other)
Other NGOs (2)	ForUM for Development and the Environment

Note: From October 2004, a Ministry of Modernization was formed, and the Ministries of Labour/Administration and Social Affairs were merged. Appendixes B and C are based on the ministerial structure before this.

Trade policy-making in Brazil: Changing patterns in State-civil society relationship

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1. Introduction¹

The unilateral trade liberalization undertaken in the first years of the 1990s was a moment of rupture in the history of industrial and trade policies in Brazil. This rupture was less related to the intensity of the exposure to external competition made possible through liberalization—which has been actually limited—or the speed of the opening, than to the change of paradigm it represented for economic agents within Brazil.

Competition with imports became an instrument of trade and industrial policies after a large period of protectionism. From the beginning of the 1990s on then, improving the competitiveness of domestic producers was targeted as a central objective of many public policies.

Export and investment policies were re-introduced during the decade, while import policies set in the early years of the 1990s were kept almost unchanged. Gradually, the debates on market access for exports and competition with imports moved away from unilateral trade policies to the field of bilateral, regional and multilateral trade negotiations.

In fact, two trade negotiation developments signaled the growing importance of trade negotiations in Brazil's trade policy agenda and foreign economic policy: the signing of the Treaty of Asunción in 1991, which set up MERCOSUR—a regional trade agreement (RTA) designed to promote a southern common market through the free trade of goods, peoples, and currency; and GATT's Uruguay Round.² The place accorded to trade negotiations in trade policy expanded significantly when Brazil engaged in preferential talks with the U.S. (within the Free Trade Area of the Americas—FTAA) and the European Union (EU), both with processes aiming to set free trade areas between the major players in world trade.

1 This paper was compiled in October 2004.

2 The Uruguay Round started in 1986 and lasted until the signing of the Marrakesh Agreement in 1994. The Round transformed the General Agreement on Tariffs and Trade (GATT) and created the World Trade Organization (WTO). About 125 countries took part.

Hence, Brazil's trade policy currently involves not only unilateral export and import policies and instruments (export promotion, public financing of exports, management of protection through tariffs and anti-dumping duties) but also the trade negotiation processes at the multilateral, regional and bilateral levels.

While unilateral export/import policies tend to exclusively involve the public agencies that manage the policy instruments and the business sectors directly affected by those policies, the trade negotiations issue acquired, in Brazil, a never before heard of political dimension. In the wake of FTAA and MERCOSUR—EU negotiations, new forms of organization emerged within the State and the civil society. As well, new mechanisms and channels of dialogue and consultation came to light between the Brazilian State and civil society.

This paper discusses the evolution of policy-making on trade policy in Brazil from 1990 onward, focusing essentially on the trade negotiation issue as it emerged as major policy and political challenge in the last years of the 1990s. This specific issue has been, for many groups from the civil society, the “entry door” in the trade policy debate. Beyond that, the issue gradually came to occupy a central position in the domestic debate on trade policy, thus generating polarizations and coalitions among economic and political players.

The second section of the paper presents the main features of the positions adopted by Brazil in trade negotiations during the 1990s and sheds light on the shift introduced in these positions by the strategy of the Lula Government. The third section concentrates on trade policy-making, stressing the evolution of this field within the State and the main organized forces from civil society. This section concludes with an assessment of the relationship between the State and civil society in trade policy-making. A synthesizing fourth section closes the paper with some recommendations geared at upgrading the quality of the dialogue on trade policy both between the State and civil society and between different groups of civil society.

2. Brazil and trade negotiations: Negotiating positions and conditioning factors

Trade negotiations always have two dimensions: one domestic, the other external. This consideration led Putnam (1988) to describe them as “a two-level game.” Countries draw up their trade-negotiating strategies bearing in mind not only external conditioning factors—that is, the strategies of other countries, the evolution of the system of trade rules, the international economy, and so on—but domestic conditioning factors as well. This holds particularly true in the case of countries such as Brazil whose exposure to world trade is limited (*vis-à-vis* Gross Domestic

Product—GDP) and whose policy-makers and business and trade-union elites have deep-rooted traditions in protectionism.

2.1. The 1990s: Defensive stances on multiple fronts

Throughout the 1990s, Brazil opened a wide array of fronts for trade negotiations in the sub-regional (MERCOSUR), regional (FTAA) and bi-regional (EU) spheres. Brazil adopted a generally defensive stance in these negotiations. In MERCOSUR it opposed proposals typical of deep integration, which would have implied relinquishing still limited degrees of sovereignty in the economic area. In the WTO, Brazil's protectionist stance on agriculture was practically the only component in its offensive agenda. This stance is similar to the FTAA and EU negotiations, where defensive postures predominated.

This situation should come as no surprise, translating as it does the fact that the 1990s presented far more continuity than rupture compared with the preceding protectionist decades. Two factors seem especially important in explaining the predominance of defensive stances in Brazil's trade negotiations in the 1990s:

- the first involves the political economy of liberalizing reforms in Brazil. In particular, the primacy that import-competing sectors managed to maintain in the area of trade policy over the export sector, despite the unilateral liberalization launched at the beginning of the decade. After trade liberalization, manufacturing sectors benefited by an import-substitution regime, which maintained high levels of nominal and effective protection, and some of them received new incentives to invest; and
- the second concerns the hegemonic paradigm of foreign policy, driven by the objective of “neutralizing” external factors that might compromise national economic development and the consolidation of industrial capacity, which was perceived as an indispensable condition for the country to act autonomously in the international system. In this area, continuity prevailed quite unambiguously: the “globalist paradigm”—hegemonic in Brazil's foreign policy since the 1960s—remained firmly in this position and framed the political logic of Brazil's participation in MERCOSUR and other liberalization initiatives.³

3 But what is the “globalist paradigm” that has lain at the base of Brazil's foreign policy for four decades? It is a view of the Brazilian position in international relations that results “from the articulation (...) of various intellectual influences: nationalist criticism of the pro-American paradigm of foreign policy (...); the CEPAL view of center-periphery relations; and the tradition of realistic thinking in international relations, in particular the concept of the international system as an anarchistic sphere” (Soares de Lima, 1994). According to this author, “in the early 60s, foreign policy found in the North-South axis the proper space for Brazil to exercise a protagonist role. The North-

The weight of the foreign-policy paradigm in defining trade policy objectives and instruments could not be minimized in the case of Brazil. As Soares de Lima (2004) notes, Brazil's historical formation explains why "the definition of foreign threats and the perceptions of risk are basically the result of economic vulnerabilities rather than of security," which in the mind of elites led to the perception that the main function of foreign policy is to reduce that type of vulnerability and "open up space" for national development policies. In the trade field, this perception has been expressed as a demand for differentiated and more favourable treatment at the multilateral level. In the Uruguay Round, this perception has been expressed as resistance to expanding the trade agenda beyond "border issues."

The paradox of this situation, where Brazil diversified the fronts of trade negotiations but systematically adopted defensive stances throughout, underscores the weight of these two domestic conditioning factors in framing the strategy of trade policy.

Then, it remains to be explained why Brazil became involved in ambitious processes of preferential negotiations in the 1990s instead of concentrating its efforts in the multilateral sphere, which is less demanding in terms of effective liberalization and rules-setting, especially in new areas such as investments, government procurement, etc.

With regard to MERCOSUR, the investment made in a sub-regional integration project is related on the trade policy level to the objective of consolidating the trade opening launched in the early 1990s. In the field of foreign policy it is related to the objective of boosting the country's political capital in the post-Cold War world. Nevertheless, Brazil's adherence to the sub-regional project was strictly conditioned by domestic conditioning factors mentioned above, even when this option produced conflicts with partners in the bloc or with the objectives (made explicit in the case of MERCOSUR) of deep integration.

As regards negotiations with the U.S. (within the FTAA) and the EU, the "risks of exclusion" or additional loss of preference *vis-à-vis* other competitors in these large markets help to explain the decision to join in the negotiating processes. Moreover, preferential agreements were growingly perceived, among policy-makers, as appropriate instruments for obtaining access to markets faster and deeper than could be expected from multilateral negotiations.

South axis allowed the Ministry of Foreign Affairs (...) to find in multilateral economic diplomacy a specific organizational mission: to complement the government policies on industrial development."

On the other hand, the liberal revision of public policies underway in the country in the 1990s made policy-makers and part of public opinion less refractory not only to the idea implicit in these negotiations, namely, that Brazil would experience a new cycle of trade liberalization, but also that trade negotiations should be included in non-border issues such as services, investments and government services and procurement.⁴

Even so, Brazil adopted clearly defensive positions in the negotiations relating to these issues, especially in the FTAA, where it defended GATS-like agreements in the area of services and resisted ambitious disciplines in the areas of investments and government procurement.

Likewise, in multilateral negotiations Brazil adopted predominantly defensive stances, concentrating its offensive interests in the agricultural area. The Marrakesh Agreement and its annexes were incorporated integrally into Brazilian legislation. As of 1995, the national authorities worked on elaborating complementary domestic regulations in the areas of trade defense and intellectual property rights, a task brought to an end in the following years with the edition of new national legislation in these areas.

In the post-Uruguay phase of sectoral negotiations in services, Brazil took an active part in the negotiations concerning maritime transport, telecommunications and financial services. In all of these negotiations, the country made additional offers of liberalization, which were made possible by the liberalizing regulatory reform applied to the provision of services from 1995 on. Nonetheless, neither of the two Annexes to GATS was later ratified by the Brazilian Congress. Brazil was not among the signatories of the Information Technology Agreement.

Starting in 2000, Brazil became an important user of the multilateral dispute-settlement mechanism. Several countries have also challenged measures adopted by Brazil, using the same mechanism. The Embraer–Bombardier settlement involving subsidy rules and the sugar and cotton panels against the EU and the U.S., respectively, are the best known cases of Brazil resorting to the dispute-settlement mechanism in the post-Uruguay Round phase.

Furthermore, the country defended the launching of a new set of multilateral trade talks and took an active part in the negotiations leading up to the start of the Doha Round in 2001. Concerning the work agenda drawn up for the Round, the main components of the Brazilian position were as follows:

4 It bears remembering that at the beginning of the Uruguay Round, Brazil was strongly opposed to the so-called new issues of negotiation in the multilateral agenda: trade in services, investments and TRIPs. Moreover, in the 1990s, although the country signed several bilateral agreements on protection of investments, none of them was ratified by Congress.

- deepening agricultural negotiations into market access, export and domestic subsidies;
- negotiating tariffs for non-agricultural goods, based on a formula which grants developing countries reductions proportionally lower than those of developed countries. Besides this, extending the tariff consolidation of developing countries (Brazil consolidated all its tariffs at the Uruguay Round);
- defending re-opening the dossiers of TRIMs—the agreement that disciplines measures of investment policies with trade impacts—and subsidies, in an attempt to make room for the industrial policies of developing countries. As a corollary, opposing exercises to expand the spectrum of rules that might generate additional restrictions to the setting of trade and industrial policies by developing countries; and
- refining the agreement on anti-dumping in order to reduce the potential protectionist uses of this instrument of trade defense.

2.2. The trade policy of the Lula government: Continuity and change in the strategy for trade negotiations

In the area of trade negotiations, the strategy of the Lula Government—gradually made explicit from its inception on January 2003—presents both lines of continuity and change in respect to the two Cardoso governments. In fact, during the Cardoso administration, the negotiations strategy respected the limits set by the predominant paradigm of foreign policy and by a political economy-oriented trade policy. However, it also made room for initiatives (preferential ambitious negotiations with the EU and U.S.) that could be seen as “testing” the limits of these domestic conditioning factors and that, if successful, would challenge, at least to a certain point, these conditionalities.

While in a critical view, such a policy could be assessed as ambiguous, a more benign interpretation sees in this strategy an effort to mitigate risks of exclusion and maximize opportunities, mainly in the market access dimension, in a world where multilateralism and MERCOSUR both faced growing difficulties and “preferentialism” was spreading quickly.

With regard to this scenario, the Lula government adopted guidelines that reduced the “ambiguity” inherited from the previous governments, especially concerning preferential negotiations with the developed countries. In these cases, the weight of the conditionality related to the foreign policy paradigm was strongly felt in the country’s new negotiating stances, and it is not by chance that this weight was felt with greatest intensity in the negotiations with the U.S. on the FTAA.

As a matter of fact, within the dominant foreign policy's framework, the FTAA is perceived as the less desirable strategic option, particularly as it is viewed as a project pushed by the U.S. and which potentially threatens the unity of the sub-regional political initiative backed by Brazil: MERCOSUR. Seen from Brasília, this risk is perceived as political more than economic: as a former Brazilian ambassador puts it, "it will expand and legitimize the U.S. preeminence in the Americas, favoring the emergence of a uni-polar world. And even if other factors lead to the emergence of a multi-polar world, (the FTAA) will place Latin America within the zone under the direct hegemony of the U.S., thus leaving (to Latin American countries) scarce space for political maneuver" (Souto Maior, 2001). Such a perception was widespread in Brasília during the Cardoso administrations and became clearly hegemonic among policy-makers under the new government.

These negotiations came to a standstill as of the first quarter of 2004. The Brazilian posture of resistance to a project perceived domestically not only as an economic but also a political and regulatory threat was certainly one of the factors that contributed to the impasse in the hemispheric negotiations.

Even in the negotiations with the EU—which took on a greater political functionality for the government following the paralysis of the FTAA—the Brazilian position expressed a greater resistance than was witnessed in previous years in respect to the treatment of issues held to be sensitive, such as services, investments and government procurement. In fact, in the case of government procurement, Brazil distanced itself from negotiating commitments undertaken previously, in particular, refusing as of 2003 to negotiate questions concerning market access-related issues.

So preferential negotiations with northern countries lost weight in the strategy of the new government. Brazilian demands directed towards the developed countries—essentially in the area of agriculture—now tended to concentrate on the multilateral sphere. Preferential negotiations continued being perceived as relevant means for negotiating market access (not rules). However, it is becoming clear to Brazil as a *demandeur* in the agricultural area that improving the conditions for access in this area depend too, at least in part, on negotiating rules applicable to agricultural subsidies, which will only occur within the WTO.

In the Doha Round, Brazil led the formation of G-20—a coalition of developing countries focused on agricultural negotiations—and contributed actively to obtaining the consensus that set the path for the agreement reached on August 1, 2004 on negotiation frameworks. It is worth noticing that the positive outputs obtained by Brazil in two important dispute-settlements against the EU and U.S. involving agricultural products internally legitimizes this strategy and confirms in the eyes of Brazilian policy-makers

that priority should be given to the WTO as far as relationships with developed countries are concerned.

More recently, Brazil proposed adopting an offensive stance in the negotiations of mode four in services, also within the WTO. In fact, liberalization in mode four is perceived as the principal common denominator of developing countries interests in services negotiations, from which an “offensive platform” can be created for these countries to negotiate. It should be remembered that some developing countries, such as India—an essential partner of Brazil in the G-20—have been among the most active *demandeurs* of liberalizing mode four at the WTO.

The importance of foreign-policy considerations typical of the “globalist” paradigm in the negotiating strategy of the Lula Government can be seen not only in the rebalancing of priorities between the WTO and preferential negotiations with developed countries—favouring the multilateral forum—but also in the new priority accorded to the strategy of south-south cooperation.

As a matter of fact, beginning in 2003, negotiations with other developing countries became increasingly relevant to Brazil’s strategy. Two elements are present in the revival of the south-south dimension of the Brazilian negotiating policy. Firstly, setting a wide agenda of economic cooperation is sought with other large developing countries located outside South America. The IBSA (India–Brazil–South Africa) initiative is an illustration of this kind of proposal, in which the trade component of bilateral relations may not even play the central part, although the initiative itself is expected to produce positive externalities for the country in multilateral (trade) fora.⁵ Secondly, there is the priority explicitly given to deepening and enhancing the sub-regional project (MERCOSUR) while, at the same time, intensifying economic relations with South America. This second component of the south-south strategy intends to put the region at the center of the Brazilian strategy,⁶ with two qualifications:

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- 5 In broad terms, the G-20 can be understood as a positive externality—in the trade area—associated to not necessarily trade initiatives of approximation between developing countries, especially Brazil and India.
 - 6 During the 1990s, Brazil has been behind some initiatives adopted to foster trade and economic cooperation between South American countries: negotiations to reach a free trade area between Mercosur and the Andean Community, the “mapping” of infrastructure priority projects in the region, etc. The outputs of such initiatives have been limited and their relevance has been mainly to make explicit that, in the Brazilian foreign policy paradigm, Latin America was being replaced by South America as the priority regional space for Brazil.

- firstly, the trade component is seen by policy-makers as only one of the elements in the strategy to strengthen Brazil's regional links. In the case of MERCOSUR, for example, the need includes adding issues related to industrial policy and financing investments. In the case of relations with the rest of South America, infrastructure has become a priority matter for Brazil. Besides this, preoccupations with political and security issues—narco-trafficking, guerrillas, etc.—reinforce the priority given in trade policy to South America; and
- secondly, specific to the trade area, Brazil has admitted considering concessions based on the concept of asymmetric reciprocity: smaller and/or less developed countries receive more favourable treatment than Brazil, especially in negotiations with the Andean community. For policy-makers this is the price Brazil has to pay for exercising a benevolent leadership in the region.

There is no concrete indication that the disposition to pay a price for regional leadership is sufficient to produce a substantial change in Brazil's negotiating position *vis-à-vis* MERCOSUR, especially when objectives of national policy actually or potentially clash with requisites for implementing sub-regional rules and disciplines. For the time being, this price to pay has only translated into a unilateral position of tolerance concerning protectionist measures of Argentina and into asymmetrical concessions negotiated with Andean Community of Nations (CAN) countries.

In short, the Lula Government's negotiating strategy can be read as a simultaneous investment in (i) a multilateralism compatible with development objectives—via the WTO and approximation to other developing countries—and (ii) the country's regional participation in regional trade agreement negotiations (such as the FTAA),⁷ to the detriment of consolidating preferential ties with developed countries, which absorbed a great deal of the negotiating efforts of previous governments. According to Soares de Lima (2004), the “backcloth,” or backdrop of this strategy is an “understanding of the international order” in which “multi-polar vectors” are relevant and must be strengthened in order to prevent the consolidation of a uni-polar order molded by the interests of hegemonic power.

This strategy includes the following elements:

- intensification of demands in the agricultural area, both in preferential negotiations, for market access, and in the WTO, for market access and rules.

7 Brazil's defensive negotiating position in regional trade talks—standing in opposition to regional integration—has resulted in a number of developments. For one, the country never ratified the FTAA. Secondly, the country does not have preferential trade relationships with the U.S. or EU.

- a defensive position in the area of industrial tariffs, both in preferential negotiations with developed countries and in the WTO. This position differs little from that adopted in previous governments. This posture is mainly expressed in preferential negotiations with developed countries by defending: long transition periods for tariff exemptions for sensitive products; some rules of more favourable treatment for MERCOSUR countries; and the exclusion of some products or sectors from zero tariff commitments. However, the idea of making concessions in industrial goods in exchange for market access improvements benefiting exporting sectors (agribusiness) seems to be increasingly accepted—at least implicitly—among Brazilian negotiators;
- an offensive posture in mode four in the negotiations on services in the WTO, and the maintenance of the defensive position in other modes of service-provision, especially mode one;
- “radicalization” of the defensive stance in non-border themes held to be sensitive because of their potential implications in regards to the country’s margin of freedom to formulate industrial policies (services, investments, government procurement, IPRs, etc.). In a certain sense, Brazil’s negotiating stance is nowadays more defensive (or protectionist) in non-border issues—services, investment, government procurement—than in strictly commercial issues;
- “zero tolerance” to the idea of including “trade and environment” and “trade and labour” issues in multilateral or preferential negotiations. Brazil has traditionally rejected this idea as a protectionist device and this position has not changed so far and does not seem likely to change in the near future;
- priority given to the “South-American” strategy through “deepening and enhancing MERCOSUR” and “intensifying ties with the Andean countries,” both of which include non-trade elements and asymmetric schemes for exchanging concessions in the specified trade area; and
- valorization of alliances with other large developing countries outside the region, based on bilateral as well as “systemic” economic and political interests and considerations.

3. Trade policy-making: Institutions and actors

Since the beginning of the 1990s, trade policy-making (TPM) has gone through deep changes in Brazil involving the internal organization of the State (in particular the Executive), the participation of different groups of civil society and the forms and channels of dialogue and negotiation

between the State and civil society. However, changes affecting “direct negotiations” between the leading players in civil society via Congress or through other channels and forums outside the State were not so profound.

These changes should be seen in the light of two broader processes with economic, political and social implications: on the one hand, democratization and the creation of channels of consultation and participation typical of a democratic regime, and on the other hand, the country’s conditioned adhesion in the 1990s to a trajectory of liberalizing its relations with the rest of the world.

3.1. *State organizations and the policy process*

During the period of protectionist industrialization, the management of protection extended to local industries against competition from imported goods (especially non-tariff protection), was one of the major mechanisms of industrial policy, together with the use of a wide array of investment incentives. From the 1970s on, active export-promotion activities were added to this set of instruments, supported by tax and credit incentives.

Hence, trade policy was dominated by the management of unilateral policy mechanisms and the institutional structure of the State was strongly concentrated on one organization—*Carteira de Comércio Exterior do Banco do Brasil*, Cacex—which acted as a public agency performing regulation and operational functions, providing financial resources to the private sector, managing tax and credit incentives, promoting exports, directly trading export products and controlling imports through a wide array of non-tariff barriers.

A remarkable characteristic of this model is that both the design and management of these instruments were essentially sectoral: Cacex was itself structured alongside sectoral divisions. Hence, the dialogue and consultation between the public sector and private agents—in this case, only the companies and sectoral associations directly concerned—were almost entirely restricted to this axis of articulation. Other important characteristics of this period include the lack of transparency of the mechanisms used to manage trade and industry policy and the “informality” of relations between public and private agents. Both these characteristics relate to the existence of an authoritarian state, with the economic policy instruments under the control of a strong techno-bureaucracy.

In the early 1990s, the State implemented a program of unilateral reduction of import tariffs, eliminated a whole series of non-tariff barriers, extinguished Cacex and engaged Brazil in a sub-regional liberalization process in the Southern Cone, breaking away from the sectoral tradition of the ALADI (LAIA—Latin America Integration Association) negotiations.

Throughout the decade and following the dismantling of the “Cacex model” of management, the institutional organization of the State in the trade policy field has been gradually reshaped. Since then, trade policy is dealt with through many ministries—Finance for tariffs and incentives; Development and Industry for public credits, anti-dumping and export promotion; and Foreign Affairs for coordinating trade negotiations, etc.

In 1995, *CAMEX—Câmara de Comércio Exterior*—an inter-ministerial forum for discussion and position-building in trade policy was set up to try to remedy what was perceived by many analysts as the main deficiency of trade policy: the lack of coordination and shared vision among public actors dealing with trade policy. *CAMEX*, or the Chamber, did not fulfill these expectations and the problem of institutional coordination remained mostly unsolved.

In the field of trade negotiations, the growing relevance of trade policy during the second half of the 1990s offered the opportunity for institutional reshaping, involving not only the State but its relationship with civil society. As Brazil came to be involved in different negotiation processes whose scope included border and domestic issues, trade negotiation issues attracted the attention not only of different public agencies that were absent from the arena until then, but also of a wide array of domestic private interests.

On the public sector side, the main change relates to the setting of mechanisms geared at bringing to the trade negotiation arena and, more specifically, to the process of position-building, many public actors that have some responsibility over issues that were targeted by the agenda of negotiations. The process of institution-building was triggered by the FTAA negotiations.

On the one hand, the *Secretaria Nacional da ALCA—SENALCA* (National FTAA Secretariat) was created under the Ministry of Foreign Affairs. This entity was—and still formally is—the forum for debating issues related to the hemispheric negotiations, and is in charge of coordinating the definition of a national position regarding issues under discussion. There were monthly *SENALCA* meetings in which representatives from various ministries, the Foreign Trade Chamber of the Office of the President of the Republic, the Central Bank and other organs of the federal government participated. The decree that created *SENALCA* allows for the possible participation—as guests—of entities representing civil society. Some of the national business entities and one labour union association have gradually joined the *SENALCA* meetings as observers invited by the government. It should be noted that the scope of the discussions, the agenda of the debates and their limits are clearly defined by government coordinators of the forum, i.e., representatives of the Ministry of Foreign Affairs.

On the other hand, as the FTAA negotiations evolved, inter-ministerial (thematic) groups were organized. These groups were responsible for monitoring the discussions in each of the hemispheric agreement Negotiation Groups. Technical representatives from various ministries and other government organs used to take part in these groups, while private sector participation was informally admitted in some, but not in others. There were no express reasons for such exclusions. Apparently, it could be attributed to a set of factors including personal idiosyncrasies and intra-bureaucratic disputes developed in a context where the government was endeavoring to modify the pattern of its relationship with private agents in trade negotiation processes, although the objectives and methods of this revision are not very clear.

Inter-ministerial groups, which were originally created to deal with the FTAA negotiations, have increasingly incorporated discussions on other negotiation processes within their respective theme fields. Hence, a typical agenda of the Services Inter-ministerial Group would comprised, for instance, the FTAA negotiations, developments in WTO negotiations, internal Mercosul negotiations and discussions with the EU on this specific subject. Therefore, there has been a clear process to generate, from FTAA-driven mechanisms, institutional spill-overs affecting position-building related to other negotiation processes.

At the end of the 1990s, the model of organization comprised a mechanism whose functions became increasingly political and “legitimacy-gathering” (SENALCA) and another one technically-focused (the inter-ministerial thematic groups). This model has been formally adopted to support Brazilian negotiations with the EU (through Mercosul), through the setting of SENEUROPA. This mechanism included, in addition to government representatives, a member of the Brazilian Section of the Mercosul Joint Parliamentary Commission and another from the Brazilian Section of the Economic and Social Consulting Forum, both representing civil society.

As the trade agenda gained space in Brazil’s foreign policy, and did so by incorporating into the negotiations issues up to then held to be strictly domestic, the Ministry of Foreign Affairs’ monopoly on foreign policy started to erode, especially as technical and operational aspects of the issues being negotiated were concerned. Other governmental agencies demanded participation in the negotiating process—which already occurred quite clearly in MERCOSUR—and the pressures of the private sectors (business and trade union) also became more intense.

Two simultaneous developments take place at this point: on the one hand, new mechanisms were created for government consultations; and on the other hand, business and trade union representatives were “imported” into the new forums, preference being given by the government to multi-sectoral or horizontal representative entities.

In mid-2000, a new Ministry of Foreign Affairs organizational structure was set up to take into account the new requirements as far as the preparation and management of trade negotiations was concerned. Coordinating committees for each negotiation (FTAA, EU) and new thematic divisions were created: access to markets, trade defense and safeguards, intellectual property, services and investments, etc. The diplomats responsible for a given theme were to take part in all trade negotiations relating to that issue.

The change introduced in 2003 in the trade negotiations strategy by the new government led to some important changes in this scenario. The redefinition of the strategy was conceived and implemented by a “power nucleus” in which the Ministry of Foreign Affairs once again played a leading part, legitimized by the President of the Republic. There was a process of concentrating decision-making power around this nucleus and other ministries lost power while strategies were being re-framed. The divergences between the Ministries of Agriculture and Industry, on the one hand, and the Ministry of Foreign Affairs on the other concerning the “hardening” of Brazil’s position in the FTAA and the outcome of that conflict in favour of the Ministry of Foreign Affairs position, was emblematic of this new set-up.

Despite this concentration of power, the technical participation of economic ministries in the setting of specific positions—once the strategy was defined by the “hard power nucleus”—continued to be required. Coordinating meetings and groups involving many ministries representatives were held in Brasília. Moreover, other ministries, such as Land Reform and Culture, unfamiliar to the trade negotiations agenda, approached this policy arena by expressing their concerns about the possible impacts of these negotiations on small farmers, in the case of economic ministries, and on the national audiovisual production, in the case of Land Reform and Culture, generally strengthening the defensive positioning already adopted by the Ministry of Foreign Affairs in the preferential fora.⁸

Finally, as the trade negotiations agenda gained weight in the domestic policy debate, it began to draw the attention of the legislature. It should be noted that in Brazil the signing of agreements is a constitutional attribution of the President of the Republic, the role of Congress being limited to putting possible agreements to a congressional referendum; in other words, they can not approve or disapprove an agreement.

8 It is important to remember that President Lula’s Workers’ Party has always been against the FTAA and has traditionally adopted a very critical attitude towards the WTO, which links it to “anti-globalization NGOs.” Many such positions are still defended by leaders of the PT who are now at the head of ministries or occupying important positions in the government.

In the 1990s, Congress made its presence felt in this area by opting not to ratify the almost 20 bilateral agreements on investment protection signed by Brazil during the period. Notwithstanding, the fact that the issue continued to receive very little attention from the legislature, agreements signed within the scope of MERCOSUR, such as the Protocol of Trade in Services, spent years in Congress waiting to be ratified.

With the development of the FTAA negotiations, the issue began to draw the attention of Congressionals, especially those close to the left, who were against the very idea of the agreement. In 2003, a draft law “defining the Brazilian Government’s objectives, methods and modalities of participation in multilateral, regional or bilateral trade negotiations,” drawn up by a Senator affiliated with the Workers’ Party (PT), began to be discussed in Congress. The draft law conditions the referendum of the Congress provided for in the Constitution for trade agreements signed by the President of the Republic to “strict compliance” to the conditions set forth in the law, and defines the general and immediate objectives of the negotiations.⁹ Aside from listing 19 immediate objectives to be pursued in the negotiations, the draft law provides for setting up a mechanism for Congress to follow up on trade talks.

3.2. Civil society and trade policy-making

As in the public sector, FTAA negotiations have been the driving force of a broad mobilization and organization of different social groups around trade negotiations issues, although intra-MERCOSUR negotiations (mainly between 1994 and 1997) and WTO-related activities in the last few years also provided an opportunity for different social groups to approach the trade negotiations agenda and policy arena.

3.2.1. The business sector

Up to the mid-1980s, the main (and almost sole) negotiating activity of Brazil’s business sector was its participation in the ALADI agreements, which were very limited in their scope. In the case of the agreements negotiated with Argentina as of 1986, the level of governmental consultation with the private sector was practically zero. The same isolationist attitude on the part of the government was seen in the negotiation of the Acta de Buenos Aires in 1990 and the Treaty of Asunción in 1991, the founding treaties of MERCOSUR. In the view of the government then in charge, unilateral and sub-regional liberalization were the only industrial policies to be adopted and as

9 Among other objectives, the project aims at restricting the scope of non-multilateral negotiations to market access for goods, reserving for the negotiations at the WTO Brazil’s treatment of issues such as services, investments, intellectual property rights and government procurement. In addition, the project refuses to include “any and all cross-conditionalties involving other areas, such as labour and the environment.”

they were not favoured by domestic constituencies and interests, they were to be implemented against the interests of these constituencies.

Following the movement to recompose domestic channels of dialogue between the government and the business (and trade-union) sectors concretized by the setting of Sectoral Chambers, MERCOSUR issues were included in the agenda of industry. Interaction between the business sector and the government on integration issues became deeper in the Technical Sub-Groups as well as during the process of negotiations of the Common External Tariff when consultations between the government and sectoral business entities intensified.

The negative experience of non-participation during the early Mercosul years and the gradual involvement in negotiations from 1994 onwards, provided the incentive for a strong and growing participation in the FTAA. Articulated around the *Confederação Nacional da Indústria*—CNI (National Confederation of Industries), the *Coalizão Empresarial Brasileira* (Brazilian Business Coalition) was founded in 1996, bringing together industry, agriculture and service sectors.¹⁰ CEB is an institutional novelty not only because it puts together on a voluntary basis different sectors and acts as a forum for direct negotiations and consensus-building between these sectors—breaking up with the sectoral tradition in the representation and interest-building process that is a major feature of the business sector in Brazil—but also because it is a business organization focused on one issue: trade negotiations.

The interest of the business sector concentrates on issues involving access to markets (agricultural and non-agricultural products), such as tariff issues, rules of origin, instruments of trade defense (anti-dumping and countervailing duties) and, to a lesser extent, government procurement. Issues such as trade in services, investments and subsidies have specific interest for some sectors or companies but do not attract the attention of the business sector as a whole.

The participation of the business sector in the trade negotiations focuses mainly on issues relating to protecting the domestic market and giving priority to the need to moderate any new initiatives to liberalize trade—whether regional or multilateral. Projects such as the FTAA or MERCOSUR–EU, which forecasted the complete elimination of tariffs on the great

10 In 1996 the CNI took part in setting up the Mercosur Industrial Council (CIM), gathering together national industrial entities of the four member-countries of the bloc. The CIM lost relevance as intra-bloc tensions and conflicts grew intense after 1999 and the preferential negotiations with developed countries showed the divergences of sectoral positioning among the countries.

majority of products and involve partners much bigger than Brazil, constituted the terrain par excellence to express the concerns of business sectors competing with imports.¹¹

Since 1997, the CEB has drafted positioning documents on all the negotiation processes in which Brazil has been involved, but a great deal of the efforts towards articulating and forming positions and dialoguing with the government has gone on in the sphere of the FTAA. When this negotiation was interrupted, MERCOSUR–EU talks took over that role. Issues relating to market access for goods are the key foci of these documents, but the CEB has produced proposals on all the issues under negotiation in these processes.

In these preferential negotiation processes, the position adopted by the CEB has traditionally been close to that adopted by the Brazilian government up to 2002: defense of asymmetric reciprocity in the trade-liberalization schemes negotiated with northern countries to contemplate differences between levels of development, adoption of the GATS model or agreements in services and investments, etc.

The CEB also follows WTO negotiations and its documents emphasize the key relevance of the multilateral sphere for Brazil, especially as regards the negotiations on trade rules and on new issues—a position that is also very close to the one adopted by the State. Together with business entities from other developed and developing countries, it signed documents favourable to the launching of a new multilateral round, first on the occasion of the Seattle Ministerial, then on the eve of the Doha meeting.

The CEB articulates various sectoral interests of the business sector by coordinating interlocution, or lobbying with organs of the federal government. There are frequent meetings with the negotiators and negotiating positions in the areas of tariffs, rules of origin and services are the main topics of the government's consultations with the CEB. Through its Web page, the CEB makes consultations available to its associates—155 business (sectoral and other) associations—and collects and systematizes the positions received from them before forwarding them to the government. In addition, the CEB follows rounds of preferential negotiation by means of the “room next door,” where interlocution with government agents is processed before and after the negotiations.

A large portion of entities associated with the CEB are based in sectors from the manufacturing industry. But the CEB also gathers together entities from the agribusiness and services sectors. In the case of the latter, the process of

11 The principal manufacturing sectors involved with the sub-regional integration and the agenda of the bloc's preferential negotiations with other countries are import-competing and basically concerned with maintaining their domestic market share.

organizing for negotiations is still somewhat incipient and mainly affects some large construction and engineering companies. The main concern of these sectors is defensive: to prevent new movements towards the liberalization of the domestic market of engineering services, which in fact is already quite open in mode three.

In the case of agribusiness, which concentrates the sectors that demand trade liberalization, they are not concerned with the opening of the domestic market several sectoral entities take part in the CEB and have intensified their activities in this instance, especially as the processes of preferential negotiations seem to be either advancing towards their conclusion (MERCOSUR–EU) or sinking into a situation of impasse (FTAA). But agro-industrial sectors also have specific channels of interlocution and influence—that is, not shared with other industrial sectors—that are chiefly mobilized to exert influence on the “sectoral” Ministry of Agriculture.

As negotiations advanced toward conclusion—or, at least, the expectations of conclusions—conflicts within the CEB among industrial sectors that compete with imports, which are predominant within the Brazilian industrial universe and the agro-industrial sectors, (which are heavily export-minded),¹² became more explicit and tough to handle. Up to the FTAA negotiations, import-competing sectors were only interested in the ALADI and MERCOSUR talks, seeing that their export interests concentrated on regional markets. As for export sectors, here the focus was on multilateral negotiations after the Uruguay Round. In other words, the FTAA was the first negotiations process that simultaneously drew the attention of both types of sectors—the importers competing for defensive reasons, and the exporters for reasons of an offensive nature.

12 The adoption by Brazil, during the 1990s, of more and more offensive and autonomous positions in agricultural trade negotiations has been backed, in structural terms, by the impressive modernization undergone by Brazilian agribusiness during the 1990s. In the late 1980s, agricultural exports concentrated in primary goods—coffee, cocoa and cotton, among others—and were strongly regulated by state-owned sectoral bodies. As a consequence, until the beginning of the 1990s, the private sector showed scarce interest in trade negotiations and the participation of agribusiness representatives in the Uruguay Round was very timid. At that time, during the negotiations for launching the sub-regional integration process, the sector adopted an essentially defensive stance, focusing on the alleged risks of competition in the domestic market arising from the elimination of tariffs among Mercosur’s member countries.

Especially from 1995 on, a strong expansion of agribusiness productivity took place in Brazil, pushed by large investments. This process was speeded up at the end of the decade and the sectoral representatives began to push the government towards more aggressive negotiation positions in agriculture, in the FTAA as well as in EU-Mercosur trade talks. In the WTO, this new stance by the private sector was crucial for the government’s decision to ask for agricultural products-related dispute-settlement panels to be set up against the U.S. and the EU.

The same happened in the MERCOSUR–EU negotiations as they approached the final stages and the tension between competitive and non-competitive sectors rose substantially. Different sectors intensified their direct interlocution with sectoral ministries (Agriculture in the case of the agro-industrial sectors, and Industry for export-competing sectors), to the detriment of seeking solutions internally within the CEB.¹³

Following the Lula government’s revision of Brazil’s negotiating strategy, the almost perfect convergence of positions between government and the CEB began to disintegrate. The CEB advocated continuing the FTAA, even if less ambitious in the area of rules or market access. It criticized the “limited economic-commercial content” of south-south agreements such as that signed between CAN and MERCOSUR, and—more generically—the “rather unclear (...) objectives and strategies” of Brazil’s initiatives in the negotiations area.

A CEB document delivered to the Ministry of Foreign Affairs in July 2004 synthesizes the concerns of the business sector, which concentrated on (i) the perception that “the economic objectives have not received the due priority of the Brazilian government in the negotiations,” which were allegedly guided by essentially political objectives and guidelines; and on (ii) the “limited participation in the discussion on negotiating strategies.”

Privileged as civil society’s main interlocutor during the Cardoso governments, the business sector certainly lost, at least to a certain point, this relatively favoured position to new actors who gained more access to the arena of trade policy under the new government, for example small farmers. Since, beyond that, there was also a review (not very transparent and carried out amidst inter-bureaucratic conflicts) of the procedures for governmental interlocution with the private sector, and, more deeply, of the strategy of negotiation itself, criticism coming from the CEB became more and more intense.

In part, criticism of the CEB as to a lack of transparency of the current policy has to do with the government’s introduction of non-economic guidelines and criteria in formulating the negotiations strategy: since political (and geo-political) considerations are not usually part of the business vision. Introducing this type of criterion means making the strategy more “opaque.”

13 The agro-industrial sectors used their own financing to set up an institute geared to carrying out technical work to support the trade negotiations in the agricultural area. This institute played a relevant role in interlocuting with the public sector to draw up the negotiating positions of the G-20 at the ministerial meeting of the WTO in Cancun.

However, at the root of this criticism there is also the low degree of institutionalization of the mechanisms of interlocution between government and civil society, which, in a period of changes in policy orientation and internal re-structuring to deal with these matters, leaves these mechanisms at the mercy of all sorts of inter-bureaucratic friction and even idiosyncrasies of a personal or ideological nature.

3.2.2. *Workers' trade unions*

Central Única dos Trabalhadores (CUT) is the biggest trade union confederation in Brazil, and has been closely associated with the Workers' Party from its very beginnings. Among trade unions confederations, CUT is the entity that has had the most success in including international issues, and especially trade negotiations ones, into its agenda.

In fact, trade and international integration issues were introduced into the agenda of the CUT leaders in the mid-1990s through discussions on the organization's stance towards MERCOSUR and on the inclusion of a "social clause" in international trade agreements—a debate promoted by some labour unions from developed countries in trade-union fora.

As far as MERCOSUR is concerned, the first steps towards sub-regional integration are characterized by a considerable distancing of trade unions from integration-related issues. On the one hand, as noted earlier, the federal government practically monopolized participation in the negotiations by excluding the intervention of various social and economic actors. On the other hand, "the practice of worrying basically about immediate questions and the great dependence on the State were crucial limitations to the participation of the trade union movement in regional integration" (Vigevani, 1998).

In the phase that goes from 1986 to the Treaty of Asunción, there was practically no trade union debate on the theme. In Brazil, trade unions "acted ideologically and opposed integration." The political will demonstrated by the national governments lent continuity to the process of integration, forcing the trade union movement "to pass from one ideologically critical attitude to another (...) of a more pragmatic nature" (Vigevani, 1998).

Gradually the Brazilian trade union federations tried to influence the course of the process of integration by strengthening their interaction with the State bureaucracy and identifying possible convergences with the Brazilian industrial and agricultural sectors geared to the internal market, and with small and medium companies. The negotiations on the Common External Tariff and the frequent trade conflicts among MERCOSUR countries widened the divergences between the trade union federations of the various countries and affected the weight of the sub-regional (class) coalitions *vis-à-vis* the

national multi-class coalitions based on protectionist and “developmentist” policies (Vigevani, 1998).

On the sub-regional level, the trade unions managed to adopt in the FCES the MERCOSUR Declaration on Social and Labour Matters and met some success on participating in the negotiations to establish a Common Automobile Regime in the sub-region. Still in the '90s, Brazilian and Argentinean trade unions signed with a company from the automobile sector operating in both countries the first collective labour convention in the sphere of MERCOSUR.

With the crisis of the sub-regional project, after 1999 the sub-regional project lost relevance in the trade union agenda, repeating here a process that also took place in the business sector. Not even the priority given by the Lula Government to the re-launching of MERCOSUR seems able to motivate CUT to engage in the process that goes further beyond its representatives participating in the FCES.

The social clause issue was raised by the International Relations Secretariat of CUT within the Brazilian labour union movement, following the Marrakech Agreement and pressures from the United States and France to include the issue in the WTO. The Executive Office of the CUT passed a decision favouring the adoption of the social clause with certain reservations because of its fears about developed countries' protectionist use of the mechanism.

Moreover, the issue prompted some other initiatives from CUT, such as the decision to create the *Observatório Social*—a technical institute geared at producing research on the labour and environmental standards adopted by transnational companies in Brazil—in 1997, but it gradually lost weight in the confederation's agenda.

According to a CUT former high official, at the Preparatory Sessions for the Doha Ministerial, some developed countries' unions proposed to include the social clause issue in the WTO agenda, but the North-South polarization on the whole agenda led many developing countries' unions to refuse it and eventually reject the launching of a new round, breaking the prospects of a north-south labour coalition.

More recently, during the FTAA negotiations, and especially in the Miami Ministerial (November 2003), high officials from CUT have defended the inclusion of a social clause in the agreement. More broadly, CUT seems today less refractory than two or three years ago to the idea of including such a clause in agreements signed by Brazil, despite the opposition of the workers' party—or *Partido dos Trabalhadores* (PT)—government to that kind of proposal.

The negotiations in the WTO in general played a secondary role in sensitizing CUT to the theme of trade negotiations. Besides the “echoes” of the discussions on the social clause in Singapore (1996), the CONTAG Congress (a confederation of small farmers affiliated to CUT) decided in 1998 to prioritize in its program the revision of the 1984 multilateral Agreement on Agriculture, and also indicated the intention to expand its presence in the area of international relations. In 1999 CONTAG participated in the civil-society forum in Seattle representing the associations of small farmers from MERCOSUR and Chile.

However, just as the State and other segments of civil society, the FTAA was the main factor behind mobilization around the themes related to trade negotiations, although the main “entry door” to the trade negotiations agenda had been the debates on the sub-regional integration project (MERCOSUR). The Belo Horizonte’s FTAA Ministerial meeting, in 1997, played a major role in the mobilization of CUT and NGOs. As to the hemispheric negotiations, CUT adopted a position contrary to the setting of the FTAA, in contrast with a less incisive stance regarding a possible MERCOSUR-EU agreement, seen as politically positive.

Anyway, trade negotiations still constitute a theme of rather secondary importance in CUT’s policy agenda, and this is also true of the other Brazilian trade union confederations. In CUT, these themes—and more broadly international integration issues—remain practically restricted to the scope of the Secretariat of International Relations and to some sectoral trade unions that are more sensitive to international questions because of the strong presence of transnational companies in these sectors. Moreover there are no formal or regular mechanisms for consulting the “bases” on this type of question.

Nowadays CUT accompanies the trade negotiations, and especially the FTAA negotiations, through REBRIP (Brazilian Network for the Integration of Peoples, see below), although it manifests its specific positions publicly at critical moments of the negotiations.¹⁴

3.2.3. *Non-governmental organizations*¹⁵

Over the last few years, international themes, and especially trade questions, have won space in the agenda of a set of Brazilian non-governmental organizations. Until recently, international issues appeared only indirectly in the

14 The involvement of CUT with the FTAA theme also owes something to its relations with international entities of the trade union world, such as ORIT/CIOSL, and with trade union federations of other countries, such as AFL-CIO in the U.S.

15 This section has largely benefited from the interviews with Ana Toni (The Ford Foundation – Rio), Adriano Campolina (ActionAid), Fátima Mello (FASE) and Adhemar Mineiro (DIEESE). I am grateful to them, but I am solely responsible for the elements of analysis and assessment derived from these interviews.

agenda of non-governmental organizations: some of them used to follow up and assess infrastructure projects financed by multilateral institutions that were supposed to have significant environmental and social impacts, while others arrived at trade matters on account of work done with specific socio-economic groups like small-farmer sectors, etc.

In general, trade issues still occupy a secondary place in these agendas, but the interest in these questions gave rise to the initiative of setting up a network of about 35 NGOs, trade-union entities—among them CUT—and social movements specifically designed to deal with issues related to trade negotiations: REBRIP. This network aims at finding “alternatives to hemispheric integration in opposition to the logic of trade and financial liberalization that is predominant in the economic agreements now underway.”

REBRIP is associated with the Continental Social Alliance and its creation was fostered by the FTAA negotiations,¹⁶ as well as by the prospect of the WTO ministerial meeting in Seattle. In the months preceding Seattle, some NGOs and CUT created the *Rede OMC* (WTO Network), an initiative that merged with REBRIP in 2000.

Following the setback of Seattle, REBRIP concentrated on following up the FTAA negotiations, a process that is totally rejected by the organizations working together in the Network. With the paralysis of the FTAA negotiations, the launching of the Doha Round and the advance of the negotiations with the EU, the focus of the entities gathered in the Network—and the Network itself—became diversified, opening space for these processes. Today the multilateral negotiations are an important focus of REBRIP’s attention, especially those dealing with “intellectual property rights and public health” issues or with agricultural talks.

At the very beginning of the setting of REBRIP, there was an association between CUT—essentially through its Secretariat of International Relations—and some NGOs. Afterwards, other entities joined the Network, in general concerned with specific issues of the trade agenda: NGOs working on questions of public health and AIDS have their focus on questions of intellectual property, while those that work mainly on themes of public services center their attention on the negotiations on services and investments, etc.

The setting up of REBRIP constitutes an institutional novelty, as has been, in the business side, the creation of the CEB. REBRIP is a network of entities

16 The ministerial meeting of the FTAA in November 1997 was held in Brazil, a fact that contributed to the mobilization of different sectors of civil society, including NGOs, on the issue of the hemispheric project. The Brazilian Business Coalition was also given an important impulse on this occasion.

with different origins and objectives focused essentially on trade negotiations—which does not constitute the core business of any of the entities affiliated with it—and whose multi-sectoral nature reflects the structure of today’s trade negotiations agendas. According to a member of REBRIP, this ensures a more appropriate following up of the negotiating processes by allowing a complete view of the interests at stake and preventing a one theme focus, which would jeopardize the understanding of the processes as a whole, the trade-offs involved, etc. REBRIP is structured in thematic Working Groups¹⁷ and this kind of structure is perceived as an important asset of the Network as it has opened the way for deepening the debate among NGOs on the different issues under negotiation and for consolidating a “critical mass” of knowledge and reflection on these issues, allowing REBRIP to move away from exclusively “negative” or ideological proposals and to gain credibility in its dialogue with the government.¹⁸

The main topics of interest for REBRIP reflect its composition: agriculture, services and investments, intellectual property rights and the environment are main foci for the NGOs that make up REBRIP. In spite of CUT’s participation in founding and coordinating the Network, market access issues in the industrial area—tariffs, etc.—seem to be of no relevance in the REBRIP agenda. In other words, the Network, at least until now, has never expressed concerns or criticism in respect to the opening of the domestic market of industrial products implied by trade negotiations and especially by the preferential ones. This seems to reflect the fact that labour unions in Brazil have not adopted clearly protectionist positions in market access to trade negotiations be it in the WTO or in preferential talks. The protectionist stance adopted by the business sector competing with imports in these negotiations has not been followed by CUT or by other labour unions confederations, an evolution quite diverse from the one observed mainly in the U.S. where protectionist coalitions putting together business and labour interests from threatened sectors are widespread.

In contrast, concerns as to the opening of the domestic market of agricultural goods produced by small farmers are explicitly stated, as are criticisms of Brazil’s offensive stance in agricultural negotiations, this being seen as a

17 A parliamentary working group is being set up within REBRIP to deal with articulating the activities of the Network with Congress.

18 The contribution of international linkages of Brazilian NGOs to the setting of REBRIP has been limited, according to some interviewees. The international dimension of the network was developed during the WTO ministerial meetings in Seattle and Cancun and these contacts seem to have played a role in making clear for Brazilian NGOs the importance of formulating positions technically sound for gaining credibility.

position that lessens the chances of adopting a defensive posture with regard to the products of small-scale agriculture.¹⁹

The attitudes adopted by REBRIP translate at the same time economic interests and societal views, the latter usually expressing preoccupations about the “mercantilization” of public services, including the social ones (health and education), and the environment.

In fact, there is a great variety of political positions and views within the Network. According to an official responsible for the area of international relations of an important Brazilian NGO, a cleavage places “sovereignists”—who advocate that the country should preserve spaces for public policies—in opposition to those who accept some erosion of sovereignty to benefit from integration projects, especially in South America. Another cleavage places “institutionalists”—favourable to multilateralism and to improving the WTO—against “movementists,” who are against globalization and the WTO.

The positions assumed publicly by REBRIP are the result of internal negotiations between these tendencies and the various entities that make up the network and constitute a “common denominator” among them. Despite the internal divergences, members of the Network appear to have a tacit agreement as to the inadequacy of exclusively ideological positions and the need to formulate proposals with technical content to allow the Network to “dispute the Brazilian position” with other social groups.

Up to the end of the second Cardoso government, REBRIP’s participation in the instances of dialogue with the State concentrated on political fora such as SENALCA, although REBRIP has been invited by the government to debate on proposals for the treatment of small-scale agriculture in preferential negotiations with developed countries.²⁰

Only after the start of the Lula government did the Network begin to receive invitations to attend the fora geared at formulating negotiation positions, as the thematic groups coordinated by the Ministry of Foreign Affairs that accompany the WTO negotiations. In Miami (November 2003), NGOs and trade union representatives were formally integrated into Brazil’s official delegation—as were members of the business sector, parliamentarians, etc.

19 In addition, Brazil’s offensive position in agricultural negotiations is perceived as something that, if successful, will lead to substantial expansion of the model of agricultural development based on agribusiness, to the detriment of small-scale (family-based) production.

20 REBRIP has presented to the government a list of goods produced by small-scale agriculture to be excluded from the tariff elimination schemes in the FTAA negotiations on agriculture.

In the view of some of its representatives, this participation posed a fresh challenge for the Network: to exert influence, through concrete proposals, on the process of framing Brazil's position, and even more, on the negotiating process itself.

In the FTAA negotiations, the new government invited representatives of civil society to participate in negotiations meeting in the different groups, in the trade negotiating committee meetings and in the ministerial meeting held in Miami, in November 2003. At the same time there was ample disclosure of negotiation documents to different segments of civil society. REBRIP benefited from these processes, which nevertheless were restricted to the FTAA negotiations.

Just as happened with the business sector, REBRIP's participation in the different negotiating processes seems to be conditioned both by its thematic priorities and the degree of opening authorized by the State for this participation through various channels: disclosure of information and documents, participation in the forums to form a position and/or in the locations for negotiations, etc. In the case of the FTAA, further opening by the government converged with REBRIP's special interest in this negotiating process to ensure a high level of participation and influence on the part of the Network.

But REBRIP's channels of influence on State policies, in the area of trade negotiations, are not limited to the forums coordinated by the Ministry of Foreign Affairs. Access by certain social groups and organizations that are members of the Network to sectoral ministries such as Land Reform—which is responsible for positions with regard to small farmers—is also used to influence the positioning of these state entities *vis-à-vis* negotiations, a process that mirrors the one put in place in the business sector side involving representatives from agribusiness, on the one side, and the Ministry of Agriculture, on the other. According to a REBRIP representative, The Ministry of Land Reform has been introduced into the world of trade negotiations by the NGOs network and has subsequently structured a working group within the Ministry to discuss the small-scale agriculture issues present in the trade negotiation agenda.

In August 2003, an international seminar sponsored by the Ministries of Foreign Affairs and of Land Reform, REBRIP and other international NGOs (like Oxfam), was held in Brasília, focusing on the “negotiations—small-scale agriculture” link. At the end of the event, a declaration signed by the participants stressed the relevance of small-scale agriculture for rural development and for food security, issues that should—in the view of the signatories, be taken into account in trade negotiations.

According to a representative of the Network, in the present government there is a clear orientation by the President of the Republic and the highest

hierarchical levels of the Ministry of Foreign Affairs that a permanent dialogue should be maintained with REBRIP and its affiliated organizations. For REBRIP, the policy has become more transparent, which reflects not only more access to formal and informal channels of information and influence, but also convergence between the broad political views and negotiating guidelines currently expressed through the State's negotiating strategy and those sponsored by the entities that comprise the Network.

3.3. Trade policy in the making: The agricultural issue and the domestic dimension of the G-20 setting

Brazil, as a major exporter of agricultural and agro-industrial goods, has adopted an offensive stance in negotiations on the liberalization of trade in agriculture taking place in the WTO as well as in other negotiating processes. Coherently, Brazil has participated actively in the Cairns Group—a coalition of developed and developing countries exporting agricultural products. As the launching of a new multilateral round of trade negotiations was being discussed, Brazil pushed for including in the agenda ambitious goals related to market access and reduction or elimination of export and domestic support schemes. Moreover, in the FTAA and EU-Mercour negotiations, Brazil has presented proposals consistent with those developed in the multilateral arena.

However, in the months preceding the WTO ministerial in Cancun (September 2003), without breaking with the Cairns Group and without giving up its pro-trade liberalization stance in agricultural negotiations, Brazil led the setting of an issue-based developing countries' coalition aimed at bargaining together during the Ministerial and beyond. This new coalition (called the G-20) brought together developing countries which traditionally adopted different—even opposite—positions in the agricultural negotiations in the WTO: the simultaneous presence of Argentina and India in the Group is the best example of this novelty.

The decision-making process leading to the setting of the G-20 presents as one of its more interesting features the fact that it has involved an intensive interplay between public and private domestic actors and between these actors and external players. Even more interestingly, the domestic and external dynamics became more and more interconnected as the G-20 was set up and became a relevant player in agricultural negotiations at the WTO.

The “domestic” interplay involved a continuous coordination among public agencies and between public and private sector representatives, leading to the setting of new structures and institutions, among them, an NGO focused on technical research related to agricultural negotiations and financed by the main private associations of the Brazilian agribusiness.

In the domestic front, the adoption by Brazil of positions more and more offensive and autonomous in agricultural trade negotiations has been backed, in structural terms, by the impressive modernization that Brazilian agribusiness underwent during the 1990s.

By the late 1980s, agricultural exports concentrated in primary goods—coffee, cocoa and cotton, among others—were strongly regulated by State-owned sectoral bodies. As a consequence, until the beginning of the 1990s, the private sector showed scarce interest in trade negotiations and the participation of agribusiness representatives in the Uruguay Round has been very timid. At that time, during the negotiations for launching the sub-regional integration process, the sector adopted an essentially defensive stance, focusing on the alleged risks of competition in the domestic market arising from the elimination of tariffs among MERCOSUR member countries.

Especially from 1995 on, a strong expansion of agribusiness productivity took place in Brazil, pushed by large investments. This process was sped up at the end of the decade and sector representatives began to push the government towards more aggressive negotiating positions in agriculture, in the FTAA, as well as in EU-MERCOSUR trade talks. In the WTO, this new stance from the private sector was crucial for the government decision to ask to set agricultural products-related dispute-settlement panels against the U.S. and the EU.

In early 2003, summing up these evolutions, the Brazilian Minister of Agriculture called for the adoption of an “autonomous position” in the agricultural negotiations, a position which also reflected—as shown below—some disappointment towards the recent performance of the Cairns Group. At that time, the main sectoral associations from Brazilian agribusiness created a research institute geared at providing technical support to the ongoing agricultural negotiations at the WTO as well as at preferential fora.

As the so-called “Harbinson paper” was made public in the WTO talks, during the first half of 2003, a working group, created as a joint initiative from the Ministries of Agriculture and Foreign Affairs, undertook a cautious and detailed analysis of the paper, criticizing it and formulating proposals technically sound on each point dealt with by the paper. Later on, the working group expanded to integrate other ministries, governmental agencies and private representatives related to the agriculture and agribusiness sectors.²¹

21 A similar conduct was adopted once the joint EU-U.S. document on agriculture was made public in the weeks preceding the Cancun Ministerial: “the day after the document being issued, the working technical group began to work on this new proposal, analyzing and assessing each paragraph, de-constructing it,” according to a participant of the group, coming from the private sector.

It is worth noting that, within the Brazilian government, divergent positions did exist as far as the agricultural negotiations are concerned: the ministry in charge of agrarian reform and issues relating to small-scale (familiar) agriculture supported defensive positions in these negotiations, while the Ministry of Agriculture had a strongly pro-liberal stance, supported by the modern agribusiness sectors.

For those defending small-scale farmers, the offensive stance adopted by Brazil in trade negotiations in the late 1990s left no room for accommodating some demands for protection emanating from specific productions based on small-scale units. The polarization between offensive large-scale interests and defensive small-scale producers was broken through negotiations involving public and private domestic players and through the setting of an inter-governmental coalition (the G-20), putting together developing countries which traditionally adopted divergent positions in multilateral negotiations. While domestic negotiations played an important role in shaping the option of building a coalition with other developing countries, the G-20 platform, less ambitious in the market access issue and more attentive to developing countries' concerns relating to food security and small-scale agriculture, helped generate a broad domestic consensus around the official position, which since then has enjoyed a high degree of political legitimacy.

3.4. Relationships between the State and civil society: Growingly intense, unevenly institutionalized

Trade negotiations played a marginal role in trade policy until the 1990s and, as happened in Cacex's management of "unilateral" trade policy, followed a "sectoral" pattern: agreements negotiated in the context of ALADI were based on intra-sectoral bilateral concessions. Only the companies and segments directly concerned participated actively in the negotiations, defending their particular interests. *Ad hoc* consultations between the public and business sectors also took place during the negotiation of bilateral or multilateral issues concerning specific sectors (multi-fiber negotiations/textile sector, VER negotiations with the U.S./steel sector). At that time, other social groups and interests were absent from the trade policy arena.

The macro-economic crisis, which intensified from the second half of the 1980s on, beyond halting ALADI's negotiations, led to a gradual deterioration of the sectoral mechanisms of consultation and negotiation between State and business actors typical of industry and trade-focused policy-making during the import-substitution (IS) period.

Not by chance, unilateral trade liberalization undertaken in the beginning of the 1990s and early years of MERCOSUR are usually quoted as a model case of non-participation by the private sector and of government resistance to attempted private sector interference.

Nevertheless, at that time, the first Sectoral Chambers—composed of representatives from government, the business sector and trade unions—were set up to negotiate (sectoral) prices and wages pacts. In a few cases, this mechanism evolved into becoming a forum for the discussion and negotiation of sectoral development and competitiveness issues. For the purpose of this paper, the main new features introduced by the Sectoral Chambers—as they compare to consultation mechanisms in place during the 1980s in which only the business sector had seats—were the participation of the labour unions and the setting of a mechanism for dialogue seen as permanent.

The results of such public/private articulation initiatives might have been extremely limited in terms of industrial policy, but the idea of a three-party (government, business and unions) participation/negotiation permanent forum “migrated” from the industrial policy to the trade negotiations consultation mechanisms. The model was first adopted in the MERCOSUR negotiations and was formally incorporated into the institutional framework of the quadripartite agreement through the constitution of the Social-Economic Consultative Forum (*Fóro Consultivo Econômico-Social*).

“Horizontal” business associations, such as the *Confederação Nacional da Indústria* (CNI), and sectoral entities also joined meetings of the MERCOSUR technical sub-groups, especially those dealing with issues in which they were particularly interested: industrial policy, technical standards, etc. However, this participation was not institutionalized: business (and labour organizations) attended the meetings as “guests,” or “observers.” The articulation between private sector and government in these sub-groups was essentially informal, and seldom promoted the development of routines for coordinating and monitoring negotiations.

The FTAA negotiations prompted an important change in the pattern of relationship between the State and civil society in Brazil in the field of trade policy. For the first time, Brazil had to deal with an ambitious multi-issue agenda of trade negotiation—one typical of the “new generation” FTAs—pushed by a stronger partner, the U.S.

On one side, the days when the Foreign Affairs Ministry held a monopoly in the formulation of Brazilian negotiation positions and of the country’s “national interest” were left behind and new mechanisms of intra-State coordination and position-building were put in place, putting together different players from many ministries and public agencies.

On the other, the mobilization of civil society—including those groups which had so far not been interested in trade policy issues—reached new heights and imposed a set of new mechanisms of consultation and dialogue between State and civil society, a process pioneered by the business sector, followed by NGOs, and then—followed to a lesser degree—by labour unions.

At the end of the 1990s, the degree of institutionalization of the State-civil society dialogue seemed to vary according to the scope of the agenda and to the specificity of each negotiating process. Complex agendas comprising non-border trade issues generated frequent and relatively institutionalized domestic consultation and negotiating mechanisms, with a clearly defined hierarchy, formal convening and result-assessment mechanisms, together with a reasonable amount of transparency *vis-à-vis* the groups that had access to them (government agencies, business associations, labour union confederations and the Congress). In multi-thematic negotiations following an intense routine of technical meetings, as in the case of the FTAA, these mechanisms tended to consolidate, and reached some degree of institutionalization, mainly in regards to intra-State coordination.

As for negotiations with other LAIA (ALADI) countries, where the scope of the agenda was limited to tariff concession exchanges, informal consultation mechanism still prevailed, subject to a negotiating dynamics which was far less regular and systematic than the FTAA. These negotiations continued to be strongly influenced by sectoral interests. The degree of institutionalized dialogue with civil society and the business sector has been quite low.

At the beginning of the new century, there was an undeniable and consistent trend towards the diversification and “intensiveness” of the channels of consultation and position-building between the State and different groups of civil society in the area of trade negotiations. In spite of this trend, the dialogue was far from being fully institutionalized: it took place in fora that were originally created as in-government coordination mechanisms, to which business and labour representative entities were later admitted as guests. Strictly speaking, there are no formal mechanisms for public/private consultation in international trade negotiations, except for MERCOSUR (through the block’s Economic and Social Consultation Forum, the *Fóro Consultivo Econômico e Social*).

In general, the dialogue between the public sector and private agents in the area of trade negotiations relied increasingly on civil society entities that had characteristics of “horizontal” representation (i.e., trans-sectoral). This relates directly to the typically complex, multiple-issue (not restricted to market-access issues) agendas of preferential negotiations with developed countries.

Typically, at the end of the second Cardoso period (2002), the representation of civil society groups in the existing consultation mechanisms was restricted to two large (“productive”) interest groups, defining a “neo-corporatist” institutional model. The business sector was at the centre of the stage as far as civil society representation was concerned—not only because of the widespread perception from public agents on the prominent role of the business sector in the negotiations, but also due to the relatively higher level of organization and mobilization in the business sector, as compared to other civil society groups.

NGOs, Congress and academic institutions might take part in the discussions, seminars and meetings on issues of trade negotiations and policies, but they did not participate in the routine of position-building and negotiation assessment.

This means that process transparency was limited to the agents that were taking part in formulating negotiating positions. Except for news carried in the press, other civil society interests did not get involved in the issues.

Changes to trade policy-making in the Lula Government have had quite an effect on State organization in this area,²² and have also affected State relations with civil society. On the one hand the government encouraged non-business sectors to approach the trade negotiation agenda. This was done in many ways: by opening to the participation of civil society groups—notably REBRIP—in fora where Brazil’s negotiating positions are forged; by giving SENALCA and SENEUROPA a clear political role—in a strategy of socially legitimizing the positions defended by government—and, in the case of the FTAA, by inviting NGOs, trade-union federations and representatives of Congress beyond business sector representatives, directly into negotiation meetings.

Furthermore, more relevance was gained by informal, non-institutionalized channels of interlocution, networking sectoral ministries and their “cliente” (generally also sectoral). The agribusiness sectors took increasing advantage of their channels of interlocution with the Ministry of Agriculture, while the NGOs associated with small-scale agricultural production sought support from the Ministry of Land Reform. Import-competing sectors of the industry increasingly sought support in the intermediate echelons of the Ministry of Industry.

22 The internal structure of the Ministry of Foreign Affairs was altered once again, with the recently implemented organization being abandoned in favour of a model according to which multilateral and preferential negotiations are now subordinated to different sub-secretariats.

In this process, and especially in the case of the FTAA, position-framing fora that appeared in the preceding period lost some of their relevance, such as inter-ministerial groups of a chiefly technical nature that also included representatives of the business sector and trade unions. These inter-ministerial groups, which were never fully institutionalized, were no longer called up after early 2003, but met again, exclusively focused on WTO negotiations, from August 2004 and after.

To a certain extent the new government moved away not only from the model of internal State organization for negotiations that had been consolidating in the previous government, but also from certain routines of consultation and dialogue with civil society—and especially with the business sector—based on rules and procedures reasonably established between parties. This holds true for the mechanisms set for fine-tuning technical negotiating positions in thematic groups but also for routines aimed at granting the participation of civil society organizations in the framing of the strategy itself.

However, since there is an important convergence between the government's trade negotiations strategy and the positions adopted by NGOs and trade unions, and since the government undoubtedly attracted these entities more and more into the arena of trade policy, questions concerning the transparency and accountability of the policies and the way they are formulated are perceived by the actors which favour these moves as having been, or are currently in the process of being, resolved.

This view might be leaving aside themes that are very relevant in terms of policy-making and refer: (i) to the actual influence borne by civil society organizations (business, trade unions and NGOs) on strategic decisions related to the negotiating processes underway; and (ii) to likely “instrumentalization,” by the State of the political participation of certain segments of civil society. Since there is acknowledged convergence of viewpoints between the State and many of these sectors in the area of trade negotiations, the net result for the State of democratizing access to the policy arena—without giving access to the instances where the strategy is actually framed—is assured *ex-ante*: options and strategies will be referended by these sectors and gain legitimacy.

To sum up, Brazil's trade policy-making underwent huge changes over the last ten years. These changes point to a policy environment more and more complex, where trade policy issues increasingly interact with domestic (national and sub-national) policy issues according to a two- (or three-) level game logic: new actors and interests are brought into the trade policy arena and their entry generates new institutions and mechanisms for their participation in the policy process, etc. At the end of the day, the trade policy arena underwent a process of enlargement in terms of actors involved, positions in presence, channels and mechanisms of dialogue and participation, etc.

Some stylized facts should be selected to summarize the main trends that shape this new and evolving policy environment:

- Firstly, there has been a gradual but impressive growth in the number of actors involved in the policy process, both in State and civil society. Today the theme of trade negotiations is dealt with on the one hand by different ministries and public agencies—under the coordination of the Ministry of Foreign Affairs—and on the other by business associations, trade-union federations and NGOs who have included this theme into their agendas, albeit with varying degrees of priority.
- Secondly, there has been a strong diversification of positions in respect to the issues treated in trade negotiations, largely as a result of new actors appearing in the political arena. A scenario almost entirely dominated by a traditional type of protectionist coalition putting together the State and import-competing business sectors—typical of an import-substitution model compatible with an authoritarian political regime—has been replaced by a situation which includes several other positions. On the business side, weight has been gained by the offensive positions of agribusiness—an evolution structurally backed by an impressive growth of productivity and exports in the sector over the last few years. The presence of the exporting sectors was only felt in the arena of trade policy from the beginning of the preferential negotiations with developed countries on, reflecting the perspective that these negotiations allow the competitive sectors of industry market-access gains that go beyond those theoretically obtainable in the WTO. Positions on the NGO side combine elements of classic protectionism—but geared to benefiting small-farmer sectors—with an important “societal” component that is evident in the work of the NGOs focusing on public health/TRIPs and the environment; or in the way that NGOs and REBRIP deal with themes involving liberalizing public services. On the State side, as the trade agenda was enlarged by incorporating issues that until now were considered strictly domestic and occupied a more prominent position in Brazilian foreign policy, the Ministry of Foreign Affairs monopoly in trade negotiations was eroded and other government agencies required participation in the negotiation processes. Furthermore, the principal banner of protectionism—protecting the manufacturing sectors—lost its priority position in the government agenda because of preoccupations of a “sovereignist” or “developmentist” nature (“preserving spaces for policy”) that had had huge recent impacts on the setting of official positions in areas such as investment, government procurement, etc. Besides this, different (and at times divergent) positions of civil society are adopted within the State by different ministries: this is the case of the opposi-

tion between the Ministry of Foreign Affairs and the ministries of Finance, Industry and Agriculture with regard to the FTAA, or between the Ministries of Agriculture and Land Reform concerning negotiations at the WTO.

- Thirdly, the diversification of players and positions in the trade policy arena was at the origin of a debate on the definition of the “national interests” to be promoted/defended in the negotiations. In Brazil, the Ministry of Foreign Affairs historically played a major role in defining the set of “national interests” to be defended in the trade negotiations: in the government’s view, Brazil’s national interests in trade negotiations were identified to the promotion of autonomous industrialization and could not be reduced to specific sectoral interests. During the 1990s, the economic interests of the business sectors gained weight in Brazil’s trade strategy and the government showed some flexibility when dealing with such traditionally sensitive issues as investment, IPRs and services. The trade strategy followed by Lula’s government put again at the center of the definition of “national interests” the goal of preserving space for industrial policies, thus emphasizing the defensive position in these sensitive areas of negotiation. At the same time, the entry of NGOs into the policy arena brought to the debate “societal” considerations and concerns mainly related to trade liberalization and regulatory constraints arising potentially from trade agreements’ commitments. This shift in the debate led many business representatives to criticize the government strategy, seen as led by political—not trade or economic—motivations. However, it is worth noticing that the broader concept of national interests that emerged from this expanded policy arena did not make room for taking into account “trade and environment” and “trade and labour” issues. The historical veto of Brazil to the treatment of these issues in trade negotiations is widely shared by the government and business sector. The pressures coming from labour unions and NGOs in favor of integrating these issues into the trade debate are weak and do not seriously challenge the traditional stance of Brazil.
- Fourthly, there was significant diversification of channels of dialogue and consultation between the State and civil society. The pattern of their relationship took its distance from an exclusively sector-based model of public-private dialogue, although channels of sectoral interlocution have kept their functionality for both public and private actors. Political instances of dialogue set up (SENALCA and SENEUROPA), growingly gained functionality for the State as “legitimizing fora.” The same was true with thematic groups—mirroring the structure of the negotiation agendas—where the positions to be adopted were negotiated on the

level of the domestic actors. However, these thematic groups continue to suffer from instability. As well, the participation of civil society organizations in these instances is barely institutionalized, depending heavily on the discretionary decisions of public actors. At the same time, Congress has remained relatively distant from themes. Some parliamentarians did make their presence felt, especially at critical moments of the negotiations, but the legislature is still far from being an instance of powerful influence in Brazil's trade policy-making.

- Fifthly, despite the diversification of the channels of dialogue and participation, the great majority of these are still not institutionalized: civil society is invited by the State, which defines the actors to be invited, the occasions for these invitations, the convenience of circulating information pertinent to the meetings, and so on. There is a recurrent effort, for example, on the part of the CEB to define together with the government the procedures for business sector participation in the process of position-framing and the negotiations themselves, but these efforts have never led to any formal government commitment to the proposed procedures. The main problem of the mechanisms of interlocution not being institutionalized is that this makes the civil society groups subject to discretionary treatment by public actors, thereby creating incentives for the latter to adopt “instrumentalist” practices in their relations with civil society. The heterogeneous access of civil society to different negotiation processes—the FTAA being the preferred negotiation to be fully exposed to civil society scrutiny—reflects this type of behavior on the part of public actors to some extent.
- Sixthly, civil society has created new instruments for the representation of interests and influences that are also quite distanced from the purely sectoral model: CEB in the business sector and REBRIP in the intersection between NGOs and the trade-union movement. The novelties of these instruments are their thematic focus on trade negotiations and the multi-sectoral model that they adopt, mirroring the structure of multi-thematic trade negotiations.

Even for those actors involved in the policy process, it is very difficult to assess the actual influence exerted by civil society organizations in the setting of the trade strategy. It seems realistic that, as the trade policy arena expanded and many social actors got involved in the policy process, the implementation of the agenda—more than its setting—has been influenced by organized groups of civil society. There are many examples of this kind of influence at the micro-level of the negotiations: in the negotiations with the EU; and MERCOSUR's agenda for rules applying to the trade in goods owes a lot to the positions from the CEB. In the FTAA negotiations, the pressure exerted

by NGOs and labour unions may not have led the government to put distance between itself and to the process, but it surely helped the government to feel politically comfortable with this decision.

But civil society influence on trade policies and strategies is not only a matter of pressure and politics. A great deal of the increasing influence of agribusiness in the trade strategy has to do with structural changes in the Brazilian economy, namely the huge expansion of this sector's productivity and exports since the 1990s. The mobilization of small-scale farmers' organizations and NGOs working with them in the trade arena are counterparts to the growing political space occupied by the agribusiness sector in the trade agenda of Brazil.

Facing this multiplication of actors and interests in an expanded trade arena, the State exercises its function as an arbitrator, balancing divergent interests. The G-20 platform, for instance, less ambitious in the market access issue than the Cairns Group positions and more attentive to developing countries concerns related to food security and small-scale agriculture, enjoyed the support of the agribusiness sector, but also of the peasant organizations; thus helping to generate a broad domestic consensus around the official position which since then has enjoyed a high degree of political legitimacy.²³

4. Conclusions and recommendations

The recent history of trade policy-making in Brazil reveals the growing participation of civil society in this area of policy. This is also the history of social actors organizing themselves outside the sphere and control of the State. In this sense, the evolution of relations between State and civil society in this area of policy has been impressive. Up to the late 1980s, a single public entity was responsible for trade policy and acted supposedly on behalf of private interests. At the beginning of the 21st century, several groups organized themselves and by autonomous decision set up institutions within civil society to deal with the theme of trade negotiations. From this point of view, the process described here should not be understood without referring to political re-democratization and the gradual emergence of a new balance between the State and civil society in Brazil.

23 It seems obvious that including in the G-20 platform issues that interest the small farmer is not solely related to bargaining between domestic agricultural groups. As a matter of fact, it also—and perhaps even principally—meets the objectives of allowing Brazil to form alliances with developing countries who have similar interests, like India, as a means of forming a negotiating block that stands in opposition to the negotiating interests of some developed countries. But this affirmation does not invalidate the consideration about the domestic component of the strategy to constitute the G-20.

As trade policy was introduced to the agenda of a growing number of social actors in the late 1990s, the policy arena became noticeably more complex than at the beginning of the decade. The participation of civil society organizations in the debates on trade negotiations expanded considerably under the pressure of organized groups of society, but on several occasions this participation was also spurred by public actors. The degree of influence exerted by these groups on trade policy is certainly greater at the implementation and operational levels than at the strategy-setting level, but this latter level is not impermeable to the influence of organized groups.

Nevertheless, the degree of institutionalization of the mechanisms and channels of dialogue between State and civil society is still low, which compromises the transparency and democratic control of the decisions made by public agents. Furthermore, as commented earlier, the main problem of the mechanisms of dialogue and consultation not being institutionalized is that this submits the civil society groups to discretionary treatment from public actors in regards to who, when and how to consult society, thus creating incentives for public actors to adopt practices shaped by an “instrumentalist” view of their relations with civil society and for civil society actors to act opportunistically in their relations with the State.

The relations between the State and civil society organizations are only marginally driven by rules, be them mutually negotiated and agreed upon and be them unilaterally and explicitly set by the State. State discretionality still plays a major role in determining the level, kinds and timing of participation from civil society organizations. Recent Brazilian experience shows that participation has varied widely according to negotiating processes and... to State interests.

Hence, in spite of huge changes that took place in the relationship between the State and civil society in the field of trade negotiations, some elements of the hegemonic pattern of relationship still conform to what Hocking (2004) referred to as the “club model,” where “the purpose of consultation is not to question the overall goals of trade policy, but to engender support for the goals set by the policy-makers and to enhance support where that policy may be moving in new directions.” Dialogue has often been reduced to “briefing sessions” and only eventually represented “genuine attempts to seek a broader input into the formulation of policy.” In this sense, the broadening of participation to include new groups in the debate on trade policy has not automatically translated into an equivalent increase: (i) in the degree of transparency especially as far as the setting of the strategy is concerned; and (ii) the actual influence of these groups in the setting and implementation of policy.

However, the currently dominant relationship between the State and civil society in the trade negotiations arena should not be reduced to the “club” model. It also includes elements that fit into the two alternative models ana-

lyzed by Hocking (2004): the number of participants is compatible with the “multistakeholder” model; while the fact that the dialogue is not designed to question the legitimacy and objectives of the policy owes more to the “adaptive club” model.

Therefore the first recommendation to emerge from the analysis refers to the need to improve the institutionalization of the relations between the State and civil society in the area of trade negotiations. One way of fostering this process could be the commissioning by the State of white papers on the ongoing negotiations; their impacts and implications for different sectors; interests; and for industrial policy. These papers would be made public and debated in the legislature, the media and through seminars putting together business sectors, trade union confederations and NGOs.

The second recommendation is directed towards civil society. Indeed, despite the development of Civil Society Organizations (CSOs) focused on trade negotiation issues, there is a clear gap of capacity and knowledge that has only marginally been filled by existing institutions so far. Additional means of education and research should be made available by CSOs, the government and institutions funding NGOs to narrowing this gap. Of course, the battle of perceptions and political views won't be settled, but the debate will become more qualified and maybe less polarized around “maximalist” and unrealistic positions.

A clear signal of how immature the debate on trade negotiation implications is in Brazil is given by the fact that the current discussion on industrial policy, taking place mainly in Brazil, seems to have ignored the “trade negotiation issue,” despite the fact that the country is likely to sign, in the near future, broad agreements with the EU and U.S., both implying for Brazil a new cycle of liberalization that could produce important impacts in industrial structure.

By the same token, the debate on the impacts of trade negotiations for sustainable development does not get much attention in Brazil even from NGOs. As stressed earlier, Brazil's historical position towards “trade and environment” and “trade and labour” issues remain unchanged and still gathers large support from different public agencies and CSOs.

As a counter-example (and exception?), the process of building the Brazilian position in agriculture before and during WTO's Cancun Ministerial deserves quotation. Technical preparation and permanent coordination among public agencies and with the private sector contributed to the domestic consensus that backed the official position in the negotiations. These mechanisms were kept active before, during and after the Cancun Ministerial and it seems correct to assert that they have become more and more dense

and complex. Capacity-building initiatives in the private and public sector made their contribution in this way: the Ministry of Agriculture has created a specific institutional structure to deal systematically with trade negotiations; and agribusiness sectoral associations support a research institution geared towards setting technical proposals for agricultural negotiations and participating in the Brazilian Business Coalition—the forum that represents industrial, agribusiness and services sectors in trade negotiations.

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Trade policy off the hook: The making of Indian trade policy since the Uruguay Round

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1. Introduction

An increase in external-sector orientation relative to the economies of the developing world has brought multifarious challenges to these countries at two broad levels. Perhaps the most significant of these emerges from the compelling need to preserve the existing diversity in national policies—against a world driven by the yearning for a harmonization of rules and regulations. This challenge appears more formidable given the fact that in many countries, sub-national governments are increasingly being accorded greater autonomy to pursue development policies, in furtherance to a process of decentralization which has gathered momentum over the last two decades. Simultaneously, non-governmental organizations and citizens' groups are also emerging as powerful forces in policy discussions and also as service providers. National/central governments are also routinely confronted with conflicting pressures arising from growing inter-linkages between domestic and international issues. The outcome of these trends often gets expressed in conflicting positions on trade policy, which has a direct bearing on domestic economic realities. As a direct outcome of these changes, governments across the world are fine-tuning the policy-making process to adapt to these new changes.

As events of the past decade have increasingly shown, the quality of institutions that support government policy-making is as important as that of the policies themselves. So, at another broad level, it is important to facilitate continued confidence in public institutions. However, these institutions would acquire a new meaning and approach when national governments are required to adopt the role of “facilitator and mediator” between the sub-federal governments and multilateral bodies.

How effectively these two roles are being performed gets reflected in the functioning of multilateral and other regional processes that are being initiated as development “alternatives.” Quite clearly, evidence on the process suggests mixed results. With two Ministerial Conferences¹ convened by the World Trade Organization (WTO) having failed to deliver results, questions are being raised about the errors in judgment that caused them. In addition to economic, geo-political and historical factors that guide multilateral processes, another factor contributing to the build-up of development-related concerns includes structural limitations in the formulation of national trade policies. As a result, national governments are facing a growing but silent crisis, one which might alter the roles they play traditionally.

In this paper, we analyze the process of trade policy formulation in India to understand the structural changes that have been incorporated into the Indian government to accommodate the “new role” of national governments. We also address some of the concerns in the understanding of this so-called new role (also referred to as “good governance”) introduced initially by the World Bank² in contrast to critiques (or interpretations) by Third World social scientists on these issues. The two views provide different understandings of “good governance,” and how each perspective constructs the concept relative to changes in government, society, and the economy. While analyzing the formulation of trade policy over a decade, we attempt to provide some understanding on these concerns.

2. Understanding the structure of policy-making in India

Of the four characteristics of so-called good governance: accountability, participation, predictability and transparency—along with inter-linkages between the elements of governance—in this paper we focus on participation and transparency and inter-linkages between the elements of governance. Therefore, the substantive portion of this paper looks at the structure and degree of stakeholder consultation to evaluate the process of trade policy formulation under a multilateral process—the WTO.

A critical contemporary event has been the expanded mandate of the General Agreement on Tariffs and Trade (GATT) under the WTO. The

1 The WTO’s Seattle (1999) and Cancun (2003) ministerial conferences ended with no substantive results on issues relating to the Marrakesh Agreements and implementation-related issues. The proceeding of both conferences reflected rigidities in negotiations adopted by trade partners from developed and developing member countries for reasons which they felt were important in the context of domestic economic realities.

2 The World Bank, 1992, Governance and Development. World Bank.

mandate expanded the scope of the Agreement and initiated homogenization efforts across all sectors engaged in trade activities as well as subsidies, intellectual property rights and investments. From an era of limited trade policy influence which covered only those sectors and firms indulging in exporting and importing activities, today's policies influence nearly all economic activity—including those aimed at meeting subsistence requirements and which involve no trading activity.

Therefore, the link between trade policy and governance is critical for all economies with either high external integration or large domestic markets. The effect of trade policy in terms of economic realities for stakeholders is substantially different in both these cases. However, the nature of causality and the direction of such effects may vary depending on domestic capabilities and international obligations. Under both circumstances, the intensity of changing conditions in market access, influenced by changes in policy by way of trade policy, would be different for different segments (stakeholders).

The consultation process across a number of countries suggests the existence of three broad models: the “club model” (internal bureaucratic consultation), the “adaptive club model” (business-focused consultation) and “multi-stakeholder model,” (in which the main protagonists in the first two models join hands with civil society organizations).³ In recent years, a large number of countries have adopted what may broadly be termed the “multi-stakeholder model,” although appreciable *inter se* differences exist.

One of the major factors contributing to the differences that can be seen in the form of consultations in the course of policy formulation in general and that in the realm of trade in particular is the changing structure of the governance of countries across the development spectrum through the strengthening of the “local state.” While in most cases, change has taken the form of re-distribution of the responsibilities between existing levels of government; in others, change has taken the form of re-assertion by a “local state” of its rights.

The re-distribution of rights and responsibilities between a central government and the lower rungs of a state's administration has long been a feature of governance in Organisation for Economic Co-operation and Development (OECD) member countries.⁴ In an overwhelming majority of

3 Hocking, Brain, 2004, “Changing the Terms of Trade Policy-making: from the ‘Club’ to the ‘Multistakeholder’ Model,” *World Trade Review*. Vol. 3(1):3–26.

4 OECD, 1997, “Managing Across Levels of Government,” in Alan Digaetona and John S. Klemanski, “The Changing Nature of U.K. and U.S. Local Government,” Paper for the Political Studies Association—U.K. 50th Annual Conference, 10–13 April 2000, London.

these countries, most social sector responsibilities have been delegated to sub-federal and local bodies. However, in some countries the decentralization of authority has also included sectors like agriculture, tourism and transport. Local governments have asserted their rights in diverse areas that include environmental management on the one hand and restrictions on overseas outsourcing or off-shoring on the other.⁵ Faced with such developments, the issue of governance has assumed dimensions that are far more complex than has ever been perceived.

In India, the federal structure of the polity in place has three layers of democratic institutions, going down to the level of village administration. Powers of decision-making have been devolved through this structure of administration. Recorded history has it that the decentralization of the governance structure has long been in place in the country. Villages functioned as self-contained units with a well-defined system of governance that was provided by a group of five (*Panchayat*). The constitution that India adopted after it became a sovereign republic nearly five-and-a-half decades ago recognized village *Panchayats* as units of self-government.⁶ As such federalism has been the cornerstone of the Indian Constitution, wherein the rights and responsibilities of the central government and states were laid out with considerable detail. Most importantly, the areas over which the Central government and states had their respective jurisdictions were spelled out.

Article 246 of the Constitution delineated the areas over which the Central government and states would have their jurisdictions. Besides areas which were in the exclusive domain of either the Central government or states, a third list of areas was also included in which both levels of government would have joint responsibilities. Thus, while Parliament was given the right to make laws on areas under its jurisdiction, state legislatures were to make laws in areas belonging to their domain. In respect to the Concurrent List of the Indian Constitution, both Parliament and state legislatures can enact laws.

Although Parliament does not have the power to enact laws in respect to areas in the “state list,” it can do so under two circumstances. Firstly, when the Council of States (the Upper House of Parliament) decides by a two-thirds majority that “it is necessary and expedient in national interest” to “make laws” with respect to any area belonging to the State list. The second circumstance when Parliament has been allowed to make laws in areas that are in the exclusive domain of states is more relevant in the context of the present discussion. Article 253 of the Constitution allows Parliament to enact

5 Anderson, Stuart, 2003, *Creeping Protectionism: An Analysis of State and Federal Global Sourcing Legislation*. The National Foundation for American Policy.

6 Article 40 of the Constitution of India.

such laws for giving effect to an international treaty, agreement or convention that it enters into with any country. In this context it may be pointed out that the WTO Agreements cover a number of areas, which are either in the exclusive domain of states or are jointly managed by the Central government and states, i.e., belonging to the so-called Concurrent List. An illustrative list of areas that are the joint responsibility of the Central and state governments is provided in Appendix A. Appendix B contains a list of areas that are in the exclusive domain of the State governments. Agriculture is the most prominent among the areas listed in the latter list.

Further dimensions to the existing complexities in the governance structure in India described above emerge from the devolution of powers to the local bodies in both rural and urban areas. The *Panchayats*⁷ provide a basis for the structure of governance in rural areas and urban local bodies. The process of decentralization was given a significant boost in the beginning of the 1990s through the strengthening of the governance structure in rural areas that was brought about by the 73rd Amendment of the Indian Constitution. This amendment was aimed at putting into effect Article 40 of the Constitution which directed the state governments to organize village *Panchayats* and to endow them with such powers as to enable them to function as units of self-government.

The 73rd Amendment of the Constitution directed every state of the country to constitute *Panchayats* at three levels: village, intermediate and district levels. The *Panchayats* were given the power to prepare plans for economic development and social justice and to implement them in respect of a number of key areas. Among the more important areas, ones that are critical keeping in view the WTO-perspective include agriculture, dairy, fisheries and the public distribution system. Appendix C contains an illustrative list of areas that would be impacted given India's commitment to the WTO.

The fact that India's accession to the WTO has major implications for the governance structure of the country became apparent after four state governments challenged the decision of the Central government to ratify the Marrakesh Treaty in the Supreme Court of India.⁸

Although it has not yet played a role in the making of trade policy in the country, the judiciary remains as one of the key elements in the determination of policies in India. In recent years, the judiciary has intervened quite

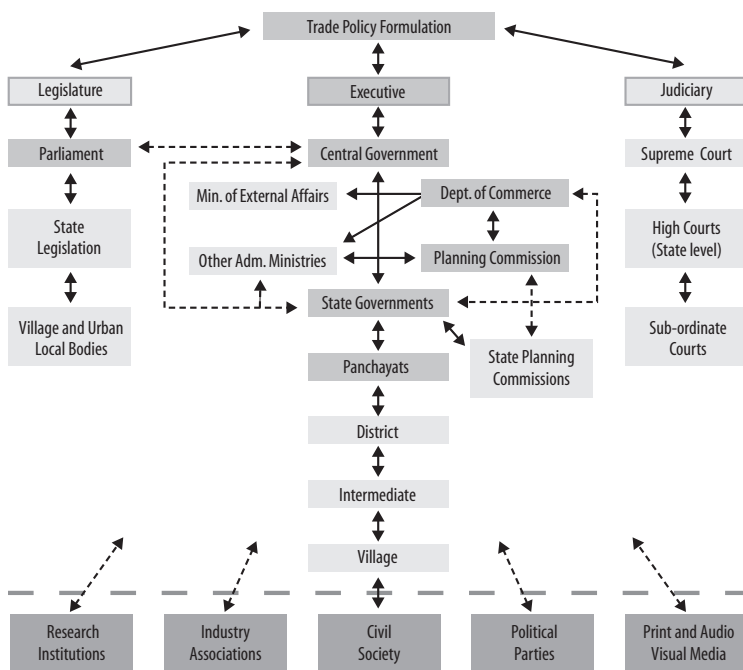
7 The term "Panchayat" literally means a congregation of five people which was vested with the powers to adjudicate on contentious issues, including disputes, in a traditional Indian village.

8 The states included Rajasthan, Tamil Nadu, Punjab and West Bengal. The last three have pressed on with their litigation. See, Jenkins, Rob, 2003, "How Federalism Influences India's Domestic Politics of WTO Engagement," *Asian Survey*. Vol. 43(4):598-621.

decisively in the area of environment by not only ensuring effective implementation of legislation, but by also setting the stage for the development of appropriate policy frameworks to address environmental concerns.

The institutions described in the foregoing paper provide a basis for trade policy formulation in India by interacting with several non-state actors in a complex web of relationships. These include civil society organizations (CSOs), trade unions, farmers’ representatives, media, think tanks, trade and industry associations and political parties. Chart 1 tries to give a flavour of the dynamics. These interest groups represent varying groups that participate within the scope of the existing consultation process.

Chart 1: Agencies involved in the formulation of trade policy in India



As will be clear from a discussion in the subsequent sections, the lower tier of administrative units and corresponding civil society and industry associations have only indirect access to this policy formulation taking place at the Central government level. The channels through which some of these inputs are being carried upwards are through regional offices of respective ministries, consultative processes of the central Planning Commission and through other democratic institutions. Therefore, organizations and interest groups active and geographically closer to these central departments and

institutions might get greater attention in comparison to interest groups participating in consultative processes at the village, district and state levels.

The consultative process for trade policy formulation should ideally involve all the stakeholders mentioned above. This would require the involvement of a larger set of players beyond the more obvious stakeholders like commercial interest groups (industry associations), civil society organizations (CSOs) and consumer groups. The federal structure of the polity, with three layers of democratic institutions that India has adopted, makes it imperative that lower tiers of administration, in particular the state governments, are involved in the making of trade policy. The discussion below tries to capture the essentials of the consultative process on trade policy issues that has evolved over time.

3. Involvement of the State in trade policy-making

Trade policy-making during the past decade-and-a-half witnessed the involvement of both the executive and legislature through the institutions described in the preceding section. The consultations have largely been confined to the level of the Central government and Parliament. Sub-federal agencies and state legislatures have traditionally been outside the core policy-making sphere in so far as trade policy is concerned. And although several of the issues that are being discussed in the context of the WTO concern them intimately, the state governments and their agencies have not been involved quite as much as may be desirable. Their role has remained confined largely to responding to the initiatives of the Central government and its agencies for the formulation of trade policies. However, during the past few years, several state governments have taken initiatives to establish institutional mechanisms for addressing WTO-related issues.

The latter agencies' role has remained confined largely to responding to the initiatives of the Central government and its agencies for the formulation of trade policies. The judiciary has not been involved in an active manner thus far. One of the possible reasons for this could be the fact that the agreements covering some of the more contentious areas from the standpoint of India, as for example the Agreement on Agriculture (AoA) and the Agreement on Trade-related Aspects on Intellectual Property Rights (TRIPS) have not yet impacted the country's economy fully. In case of agriculture, India made modest commitments to liberalize the sector at the end of Uruguay Round negotiations. Further liberalization of the agricultural sector is a sensitive issue, and this is primarily driving the country's participation in the ongoing Doha Round negotiations on agriculture.

In regards to the TRIPS agreement, India's Uruguay Round commitments were fully implemented with the introduction of the product patent regime

in 2005. This has been the most controversial aspect of the TRIPS agreement and the introduction of the product patent regime could bring in the involvement of the judiciary in much the same way as has been seen in South Africa over the issue of access to medicines.

The discussion in the following sections will bring out the dynamics of policy-making at various levels. At the outset, the consultations initiated by the Central government, in particular the Department of Commerce (DoC) will be discussed. In subsequent sections, the role of Parliament in shaping trade policies will be discussed.

3.1. Ministries and their participatory role

Since 1986, India has been actively engaged with the multilateral trading system, which brought about a radical shift in the consultative process on trade policy issues. From what was traditionally the domain of the DoC, trade policy-making in India is now a process that has seen increasing participation by most of the major administrative ministries. The discussion below tries to capture this dimension.

DoC in the Ministry of Commerce and Industry is at the top of the “chain of control” of trade policy creation in India.⁹ Two sub-offices, the Director-General of Foreign Trade (DGFT) and Trade Policy Division (TPD) are important wings which have a central role in trade policy formulation and negotiation. These departments conduct consultations at the inter-ministerial level to address sector-specific issues. Consultations with stakeholders are also performed by TPD and DGFT. The DoC also assigns studies on specific issues to autonomous research institutions and industry associations.

In the Indian context, the other important administrative institution responsible for trade policies in the context of regional trade agreements (RTAs) is the Ministry of External Affairs (MEA) (see Chart 1). The MEA and the DoC accommodate views of various stakeholders (experts, research institutions, political parties, civil society and industry associations) in the formulation of a single aggregate trade policy, as seen in the form of Exim policy and the Foreign Trade Policy of 2004 (hereafter FTP 2004). However, this process in itself does not take any pre-defined structural approach. While in some cases consultation might be extensive, involving all major stakeholders, the same might not be true in other cases. Since the focus of this paper is limited to multilateral processes, we will not attempt to address those related to the RTAs.

9 The Central government may, from time to time, formulate and announce by notification in the Official Gazette, export and import policy, and may also, in the like manner, amend that policy. See Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No. 22 of 1992).

Commitments made under WTO agreements bring into play a third dimension in regards to the policy-making process of the government; this concerns the role of administrative ministries in the areas that have been covered by the agreements. Thus, for instance, the commitments under the AoA bring various wings of the Ministry of Agriculture into focus, while TRIPS requires the involvement of several administrative ministries, including the Department of Industrial Policy and Promotion and the Ministry of Health. Besides these two agreements, confabulations on GATS involve almost all major ministries of the government.

The decisions made by the Indian government are the “collective responsibility” of the Union Cabinet. Thus, in the economic sphere it is the Cabinet Committee on Economic Affairs (CCEA), comprised of ministers from all the ministries dealing with economic issues, that endorses decisions. More recently, a cabinet committee on WTO matters has been constituted, which has as its members ministers belonging to all the ministries that will be impacted by WTO agreements in a major way. However, on issues that are of critical concern and which demand closer examination, a Group of Ministers (GoM) is constituted, ostensibly “to expedite the country’s decision-making process on WTO issues.”

The Government of India makes decisions in the context of specific negotiations, which are preceded by an extensive network of consultations. While it might not be possible to bring out all the facets of these consultations, some key features are described below.

3.1.1. Consultative process of the Ministry of Commerce

In India, trade policy formulation is carried out by the Ministry of Commerce and Industry¹⁰ through its export-import policies, and other commercial and trade agreements. Since the 1961 ruling on the “Work Allocated to Department of Commerce,” there has been a substantial addition to its perceived work.¹¹ This arose from the need to incorporate the views of stakeholders stretching beyond commercial participants like industry associations.

The latest report on Indian trade policy guidelines was specified by the Foreign Trade Policy (FTP 2004).¹² The document stressed the need for India to become a major player in world trade. To achieve this goal, it suggested taking an all-encompassing, comprehensive view of issues related to

10 See Appendix D for details of the work assigned.

11 See Appendix D for details of the work allocation of the Department of Commerce.

12 The Foreign Trade (Development and Regulation Act), 1992 (No. 22 of 1992). This 1992 Act replaces the Import and Export (Control) Act of 1947.

the overall development of trade (see Box 1). While export increases are considered vital, the FTP also suggests the need to facilitate imports which are required to stimulate the economy. The need for a coherent and consistent policy on trade and other economic issues is therefore viewed as important for maximizing the contribution of trade to economic development.

Box 1: Strategy suggested in the FTP for 2004–2009

- loosening controls and creating an atmosphere of trust and transparency to unleash the innate entrepreneurship of our businessmen, industrialists and traders.
- simplifying procedures and bringing down transaction costs.
- neutralizing the incidence of all levies and duties on inputs used in export products, based on the fundamental principle that duties and levies should not be exported.
- facilitating development of India as a global hub for manufacturing, trading and services.
- identifying and nurturing special focus areas which would generate additional employment opportunities, particularly in semi-urban and rural areas, and developing a series of “initiatives” for each of these.
- facilitating technological and infrastructural upgrades in all sectors of the Indian economy, especially through the import of capital goods and equipment, thereby increasing value-addition and productivity, while attaining internationally accepted standards of quality.
- avoiding inverted duty structures and ensuring that our domestic sectors are not disadvantaged in Free Trade Agreements/Regional Trade Agreements/Preferential Trade Agreements that we enter into in the first place in order to enhance our exports.
- upgrading our infrastructural network, both physical and virtual, related to the entire foreign trade chain, to international standards.
- revitalizing the Board of Trade by redefining its role, giving it due recognition and inducting experts on trade policy.
- activating our embassies as key players in our export strategy and linking our commercial wings abroad through an electronic platform for real-time trade intelligence and enquiry dissemination.

Source: Foreign Trade Policy 2000–2009, DoC, GOI.

The FTP 2004 took a step further from the “Mid-Term Export Strategy: 2002 to 2007” by adopting an integrated approach to the developmental requirements of India and trade concerns. In this context, the new Foreign Trade Policy differs from the approach to trade policies adopted in the past, in principle. This policy envisages merchants, exporters and manufacturers as partners of government in the achievement of its stated objectives and goals. Special focus has been provided for the economic realities emerging from trade liberalization in the case of farmers and weavers and other handicraft sectors.

To obviate the need for litigation and further nurture a constructive and conducive atmosphere, a suitable “**Grievance Redressal Mechanism**” was also proposed in FTP 2004. Further, the policy suggests that effective measures be taken to address the various concerns of the domestic industry under the liberalized trading system, including those related to dumping.

This approach, envisaged after a decade of participation in the WTO negotiations, clearly reflects lessons learned from past consultative processes, which were adopted in the past for policy formulation and for developing negotiation strategies. However, combined with the process stakeholder consultation, a new challenge is also emerging out of the decentralization and devolution processes in India: accommodating the grievances and views of all these segments, which requires a well-defined consultative process and institutional structures.

Although existing institutional structures and practices of trade policy formulation in India do provide a scope for the participation for some stakeholders, these have to be strengthened to further accommodate the realities faced by economic agents at various tiers of the governance structure so as to accommodate a greater role for domestic sensitivities in overall policies. Democratic institutions and the administrative chain of command do address some concerns through existing structures in India. In the next section we analyze some of the existing channels in detail.

Besides the functional divisions of the DoC, there are three other critical channels through which contributions to the task of trade policy formulation is sought by the Ministry of Commerce and Industry, which include advisory bodies; autonomous bodies and; other subordinate offices. The “adaptive club” model approach is practised through advisory bodies at the central level. Since the late 1980s, three such advisory bodies have been set up in India to address concerns like the participation of private stakeholders, the addition of private sector knowledge, and raising public awareness. The internal consultation process is carried out by the DoC with institutions under its control and also with independent experts, research institutions and other stakeholders. There are direct and indirect channels through

which such consultations have been undertaken over the past decade. Direct consultation is carried out by the DoC through sponsored research outputs, seminars and conferences on issues which come up for negotiation at the WTO and other parallel forums.

On trade policy issues, a “National Trade Advisory Committee” (NTAC) was also setup, which included the ministries of Environment, Agriculture, External Affairs and Commerce as well as some governmental institutions such as the Council for Scientific and Industrial Research (CSIR) and the Bureau of Indian Standards (BIS). Immediately after the Singapore Ministerial conference, its scope was increased by involving representatives from the industry and its associations, non-governmental organizations (NGOs), research institutions, and past negotiators and diplomats.¹³ In the year 1999, for the first time, the government included business representatives in official Indian delegations for the Seattle Ministerial conference. In the WTO ministerial meeting after Seattle, the Government of India included personalities from industry associations and the media in their official delegation.

In 1989, the Ministry of Commerce and Industry¹⁴ set up an advisory body called “**Board of Trade**”¹⁵ (BoT) to provide a forum for ensuring continuous dialogue with trade and industry in respect of major developments in the field of international trade. The terms and reference of the board are:

1. To advise government on policy measures for the preparation and implementation of both short- and long-term plans for increasing exports in light of emerging national and international economic scenarios;
2. To review the export performance of various sectors, identify constraints and suggest measure to be taken both by government and industry/trade consistent with the need to maximize export earnings and restrict imports;
3. To examine the existing institutional framework for exports and suggest practical measures for reorganization/streamlining it with a view to ensuring coordinated and timely decision-making; and

13 In the Singapore Ministerial Meeting a large number (108) of NGOs participated, as they were officially invited by the WTO Secretariat. Both in the Seattle and Cancun Ministerials the list of NGO participants crossed the 700 mark. In Seattle, nearly 738 NGOs participated, while 965 NGOs participated in the Cancun Ministerial.

14 Then know as the Ministry of Commerce, as Industry was a separate ministry.

15 See Box 1 for details.

4. To review policy instruments, package incentives and procedures for exports and suggest steps to rationalize and channel incentives to areas where they are most needed.¹⁶

Under the Chairperson of the Commerce Minister, the membership of this advisory board was represented by the following official members: Governor, Reserve Bank of India; Secretaries of the ministries of Commerce, Finance, Industry, External Affairs and Textiles; Special Secretary, Prime Minister's Office;¹⁷ Chairpersons and Managing Directors of the Export Credit Guarantee Corporation of India (ECGC) and Exim Bank and; presidents of top industry associations and other representatives of various trade and industry sectors, media and eminent personalities working on trade.¹⁸ The Board of Trade was subsequently expanded to accommodate a wider list of participants from organized sectors. Hence, what it provides is a space for highly organized industry associations to have a say on matters related to trade policy. The exemption to this is the inclusion of presidents of associations like FASSI (representing the small-scale sector) and All India Handloom Fabrics Marketing Co-operative Society. Hence, the channels of direct consultation by the DoC may only address concerns of organized sectors, while a large section of the unorganized and remotely placed stakeholders can only make interventions through other channels of consultation.

There is an "Export Promotion Board" under the Chairpersonship of the Cabinet Secretary to provide policy and infrastructural support to the administrative ministries through greater coordination between these ministries in terms of boosting the growth of exports. All ministries directly connected with facilitating foreign trade¹⁹ are represented by their secretaries.

In 1999, the Department of Commerce established the Advisory Committee on International Trade comprising trade experts, representatives from think-tanks and trade and industry associations and civil society organizations.

16 Department of Commerce, *Annual Report 2000–01*; Ministry of Commerce, Department of Commerce, Government of India, New Delhi.

17 The Board of Trade was reconstituted on May, 1999. The Special Secretary, Prime Minister's Office was no longer a part of the BoT.

18 There are periodical changes in the number of industry associations which participate in the Board of Trade. Considering the need to accommodate more and more views, the number has increased as there are more than 150 such associations in India. In more than a decade from 1989–90 to 2003–04, the BoT composition has thus shown an increase in the number of stakeholders, see Appendix E.

19 The departments/ministries included are: Department of Commerce; Ministry of Finance; Department of Revenue; Department of Industrial Policy and Promotion; Ministry of Textiles; Department of Agriculture and Cooperation; Ministry of Civil Aviation and; Ministry of Surface Transport.

The establishment of the Advisory Committee was the first attempt made by the Department of Commerce to initiate a consultative process that formally brings into the decision-making process inputs from a diverse group of stakeholders. The range of issues on which the Department desired the engagement of stakeholders in the Advisory Committee was spelt out in the form of the following terms of reference: (i) to discuss periodically ongoing negotiations in multilateral trade bodies as well as other bodies in respect to trade-related issues, with special emphasis on discussions and negotiations in the WTO; (ii) to review the status of legislation/administrative action on international obligations in the sphere of trade; (iii) to examine from time to time non-tariff barriers against Indian goods and the action being pursued for dismantling such barriers; (iv) to recommend strategies for increasing market access for Indian goods; and (v) to analyze the implications of various changes in the global commercial scenario with the intention of recommending suitable policy changes. Although the Advisory Committee marks an important step forward in the WTO decision-making process, the absence of continuity in the engagement with the members of this Committee, particularly since the collapse of the Cancun Ministerial Conference, might be regarded as its singular weakness.

Besides these formal structures for seeking inputs, the DoC has put in place a number of other consultative groups which play a part in the formulation of India's negotiating position in the WTO. These groups include experts drawn from industry, CSOs and academics, besides administrative ministries and state governments. Appendix G. lists the consultations that the DoC was involved in between 1999 and 2001.

The process of consultations on WTO issues remains largely DoC-led, with the solitary exception of agriculture. In the latter case, the Ministry of Agriculture has evolved a mechanism through which views of state governments and their agencies are sought.²⁰ This constitutes a particularly important element of the consultative process given that in India it is the state governments which are primarily responsible for the decisions that are taken in respect to agriculture.

3.1.1. The consultative process involving the state governments

In recent years, there have been increasing signs that the state governments are getting involved in the process of consultations on WTO-related issues. This has taken two forms. In the first instance, the state governments have

20 At least two major interactions with the state governments were held since negotiations in the post-Doha phase were initiated. The more recent of these consultations, held in October 2002, provided the Government of India with the inputs for developing the negotiating strategy on agriculture that it currently follows.

been consulted by the Central government, which was mentioned above. More significantly, the state governments have taken the initiative to address WTO-related issues concerning them through a process of consultation with stakeholders.

Nearly half of the state governments have set up so-called “WTO Cells,” which are expected to serve as the institutional basis for the engagement of the state governments on issues that are being considered in the WTO. In 2002, the Southern State of Kerala established a commission²¹ to carry out an in-depth study on “the implications of the provisions in the WTO Agreement on Agriculture on Kerala’s Agriculture” with a view to build a “Sustainable Agricultural Trade Security System.” The Commission was expected to explore the possibilities and constraints for the export of the agricultural and allied products and to recommend necessary steps to the government for improving substantially the export of Kerala’s agricultural and allied products. This initiative taken by the Kerala government is significant particularly because of its focus on manners of intervention that state governments would like to seek on WTO-related issues.

Quite clearly, an institutional framework for building closer interaction with stakeholders is being developed by the government. However, at the present juncture, the process is limited on two counts. First, it largely addresses the interests of organized stakeholders, most prominently those of the industry, and secondly, inputs on the economic impact of trade policies from the sub-federal point of view are quite inadequate. The response of the states and their agencies to the emerging challenges from the WTO agreements has been to establish institutions to help understand the implications of the agreements from a state perspective. Most of these institutions are, however, only in their nascent stages.

To some extent, the elected members belonging to the different corners of India fulfill the second limitation seen in the DoC process of consultation through the Parliament, an issue which is discussed in the following section.

3.2. The role of Parliament

It was briefly stated earlier that in the structure of governance that India has adopted, Parliament plays a significant role. Not only are the laws of the land enacted by Parliament, this Central legislative body of the country has evolved an elaborate mechanism that serves as a watchdog over the government

21 Government of Kerala, January 2003, “Report of the Commission on WTO Concerns in Agriculture: Building a Sustainable Agricultural Trade Security System for Kerala.”

of the day. Through its two houses, the *Lok Sabha*²² and the *Rajya Sabha*,²³ Parliament has intervened quite decisively in the policy-making processes.

Three major forms of intervention by Parliament have been in evidence in the context of India's engagement with the WTO. The first of these has come from standing committees set up to monitor the activities of the DoC. The second form of intervention was witnessed in the course of the implementation of the TRIPS Agreement, which required India to amend its existing laws (as in the case of patents) and enact new laws (for instance, the law for providing protection to plant varieties). In the process of enacting two of these TRIPS-consistent laws, parliamentary intervention was aimed at balancing the interests of various stakeholders.

Besides the above-mentioned interventions, which are of an occasional nature, Parliament has been engaged in the constant process of reviewing policies, which takes place through two mechanisms. The first is through the Departmental Standing Committees (DSCs) and the second is through the debates that are an integral part of its functioning. The following discussion provides an elaboration of the interventions made by Parliament.

3.2.1. *Parliamentary standing committees and issues in the WTO negotiations*

DSCs of Parliament provide a window for the expression of opinion on various critical matters relating to policy-making. The importance of DSCs stem from the fact that besides inviting views from elected representatives of the people, the Committees solicit the views of various other interested stakeholders. For the latter, therefore, the DSCs are an effective intervention in the policy making process. To understand the role of the DSCs in trade policy, in this section we take a detailed look at the functioning of the Committee that monitors the functioning of the Department of Commerce.

The Departmental Standing Committee on Commerce has produced two reports on the various issues which influenced trade policy in India in the context of the overall multilateral process under the WTO. The first report was presented to Parliament in December 1993²⁴ and the second was presented in December 1998.²⁵

22 *Lok Sabha* is the lower house consisting of directly elected members.

23 *Rajya Sabha* is the upper house consisting of nominated members.

24 Parliament of India, 1993, "Draft Dunkel Proposals," Department-Related Parliamentary Standing Committee on Commerce (1993–94), Third Report, Rajya Sabha Secretariat, New Delhi.

25 Parliament of India, 1998, *India and the WTO*. Department-Related Parliamentary Standing Committee on Commerce, Thirty Fifth Report, Rajya Sabha Secretariat, New Delhi.

3.2.1.1. *Departmental Standing Committee on “Draft Dunkel Proposals”*

It is interesting to note that the first of these Departmental Standing Committees was established to critically evaluate India’s negotiating stance in the Uruguay Round negotiations. This Committee was particularly focused on the Draft Final Act of the Uruguay Round negotiations that then Director-General of the GATT, Arthur Dunkel had presented in December 1991 (Dunkel Draft) to break the deadlock in the negotiations.²⁶ Apart from the elected representatives, a significant number of experts from various industry associations and departmental representatives were consulted on the “Dunkel Proposals.” In course of the 39 meetings that were held by the Departmental Standing Committee on the “Draft Dunkel Proposals” (DDP), some critical concerns emerged. Of particular significance was the range of interventions that were made by several civil society groups, besides industry associations and administrative ministries. The interventions made by the various stakeholders provide a clear picture of their involvement on issues that were under negotiations during the Uruguay Round. Although the discussions that were triggered by this Departmental Standing Committee were quite significant, the Government of India was not able to benefit directly from its recommendations. This was owing to the fact that while the Committee submitted its final report on 14th December, 1993, the formal negotiations concluded in Geneva the following day. It may, however, be argued that the involvement of such a large number of stakeholders in the Uruguay Round process and the range of options they had expressed did give India a unique position among the developing countries. The level of awareness on some of the key issues was quite substantial and this considering the fact that like many developing countries, India had agreed to engage in comprehensive negotiations under the GATT negotiations for the first time since it assumed membership in 1947. This becomes clear from the discussion that was seen in a number of key areas, which include agriculture, intellectual property rights, textiles, investment and trade in services. The following discussion brings out the details.

3.2.1.2. *Agriculture-related issues*

The emergence of AoA in the multilateral system to regulate issues like extreme protection and distortion of agricultural trade and production in the industrial countries was raised as important, as this could have some

26 The Uruguay Round negotiations were scheduled to be completed in December 1990, for which the Brussels Ministerial Conference was convened. However, the wide differences in perception of the GATT Contracting Parties led to a collapse of the negotiations.

unintended effects on developing countries. The different role of subsidies²⁷ across two sets of countries was another issue which was highlighted by the report. The fear of changing forms of subsidies given by the industrial countries was an issue which was raised by civil society participants. Many stakeholders required the government to be clear on the definition and scope of subsidies given to farmers.

Under AoA, major issues of concerns included: the reduction of domestic support and tariffs; the possibility of government providing domestic food aid and the continuance of the public distribution system; and the impact of extending intellectual property (IP) protection to agriculture (protecting seed).²⁸ While on the one hand, the report also highlighted an apprehension that most of the industrial countries (the EU and the U.S.) were trying to minimize their subsidies reduction commitments,²⁹ on the other hand, it suggested that by any measure the subsidies given by India to farmers and the agricultural sector are well within the stipulations provided by GATT. The case of India gaining a competitive edge over its competitors was limited to a few horticultural goods and here too it was feared that non-tariff measures (NTMs) like Sanitary and Phytosanitary (SPS) measures would be a serious challenge to overcome.

On the issue of minimum import commitments, there were serious reservations both on account of its long-term negotiation implications and also of its impact on Indian agriculture. Some civil society organizations questioned the watered-down provision of the use of quantitative restrictions (QRs) based on balance of payment (BOP) reasons. It suggested that based on the draft, only the International Monetary Fund (IMF) would have the right to declare such a provision.³⁰

The government was of the view that some modification and assurance on the language of the text regarding stocking goods for domestic food security and domestic food aid was necessary to address the concerns regarding the public distribution system (PDS) in India. Civil society suggested the draft if agreed upon would compel the government to buy and sell food grains at market prices and, therefore, make PDS meaningless for providing food security for the poor in India.

27 While subsidies were used as a tool for surplus production at high cost and then dumped in international markets by industrial countries, in the case of developing countries the subsidies were used chiefly for increasing rural employment and raising standards of living.

28 *Ibid.*, Parliament of India, 1993, para. 45, p. 11.

29 *Ibid.*, Parliament of India, 1993, para. 51, p. 12.

30 *Ibid.*, Parliament of India, 1993, para. 73, p. 15.

3.2.1.3. *Textiles and clothing*

As regards textiles and clothing, the DoC visualized some clear problem areas as early as 1993. It felt that the transition period of 10 years was too long. It also felt the proposed Agreement on Textiles and Clothing (ATC) was back-loaded and that importing countries could enjoy an unfair advantage from the implementation of the ATC. Moreover, the DoC felt that since in both the U.S. and the European Community (EC) a fourth of India's textiles and clothing exports were already integrated with the GATT, the benefits arising from the implementation of the ATC would accrue to India only during the second and third phases of the Multifibre Arrangement (MFA) phase-out. Hence, it was felt that textile and clothing products should be categorized into two parts: Part A composed of MFA items; and Part B consisting of non-MFA products. Only Part A would be relevant for integration. Issues of: increased market access in the Indian market; sticky approaches by exporting countries; and a lack of interest of industrial countries in expanding existing market access, have been some of the critical issues in textile and clothing (T&C) integration with the WTO. The DoC felt that most countries do not favour an expanded market access possibility in T&C. On the whole, India stands alone on the issue of T&C.

Similar views on the issue of expanding market access in the developed country markets were expressed by experts from various ministries. Besides the above-mentioned fears, the Indian Cotton Mills Federation (ICMF) expressed concerns over the possibility of the use of a "transitional safeguard mechanism" by the major importing countries in the developed world, thus resulting in a fall in exports from India.

3.2.1.4. *TRIPS and other related areas of concern*

The inclusion of intellectual property rights in the Uruguay Round negotiations was an issue that was viewed with much consternation in India. This reaction was based on the argument that the strengthening of the regime of intellectual property protection that was proposed would result in problems in access to medicines and seeds. Access to medicines at prices that a majority of its population could afford was an issue in India given that a very large segment of the country's population was still bereft of medicines. The proposed extending of intellectual property rights to agriculture, it was argued, would leave farmers in the country in a disadvantageous position since they would have to accept the terms set by the seed companies for getting access to improved varieties of plants.

As regards the possible impact of the proposed regime of intellectual property protection on the farming communities, the government argued that any *sui generis* system for the protection of plant varieties was acceptable so

long as adequate flexibilities were provided to protect the interests of the farmers³¹ On the other hand, civil society representatives believed that such an agreement in whatever form would have serious impacts on farmers and the seed industry in India. In support of its position, the Commerce Ministry provided evidence from the recommendations made by a sub-committee constituted by the Indian Council of Agricultural Research³² (ICAR) wherein participants from the private and public sector seed industry asked for granting plant breeders rights in the case of hybrids. Similar views were also expressed by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), which is an industry association³³ in India. It felt that the fear that the price of seed would rise with TRIPS was a fallacy and factually incorrect. It also felt that farmer rights would not be challenged by the new agreement and further, the five-year transition period was a long enough time to take any necessary remedial measures.

However, the Department of Biotechnology of the Government of India (GOI) representative expressed concerns on the flexibilities available for in-house research and development and the manufacture of seeds, and the need for strong “farmers rights” content so as to avoid unnecessary negative consequences in the future. Stronger sovereign rights over the genetic wealth of nations was another issue which was highlighted by the Departmental Standing Committee. The patenting of any form of gene or gene sequence was considered a weak position by many representatives who participated in the Dunkel Standing Committee.³⁴ The representative of Punjab Agricultural University expressed his concern on the proposed replacement of the existing R&D system based on free exchange of materials (public) at the international and national levels by strong patent system (corporate sector). The power of large corporate seed companies was seen by many as the most important threat emerging from a strong patent system proposed under the Dunkel Draft. Another aspect which emerged in the discussions was the nature of the agreement itself, which put the burden of proof on the party which was blamed; it was felt that such an approach would provide excessive powers to multinational seed companies.

31 The Dunkel Draft does not spell out the elements of nature of *sui generis* system or for that matter the gene patenting conditions.

32 The ICAR, is headed by the Minister of Agriculture, Government of India. Its members include the Ministers of Agriculture, Animal Husbandry and Fisheries, senior officers of various state governments, representatives of Parliament, agro-industries, scientific organizations and farmers.

33 See Appendix B for a detailed list of all trade and business associations in India. However, some of the active organizations in the WTO and trade policy include the Confederation of Indian Industries (CII); the Federation of Indian Chamber of Commerce and Industry (FICCI) and the Fertilizers Association of India (FAI).

34 *Ibid.*, Parliament of India, 1993, para. 80–89, pp.17–19.

On the issue of pharmaceutical patents, sharply opposing views were presented by the representatives of the pharmaceutical majors³⁵ and the Indian generic manufacturers.³⁶ The latter's viewpoint was endorsed by several representatives of civil society organizations. While the pharmaceutical majors argued in favour of a stronger patent regime, which, according to them was necessary for providing encouragement to innovative firms, the civil society groups, in particular opined that the strong patent regime would result in an increase in prices of medicines.

In general, the DoC also suggested that although India felt that issues related to TRIPS were not to be discussed in the WTO; international compulsions forced it to accept the inevitable. However, its position to provide constructive criticism would continue. In this regard, the Committee recommended that there was a need to intervene on issues like the introduction of product patents; the extension of the patent period to 20 years from the existing five to seven years and its impact on R&D; proposed conditions on the application of compulsory licensing conditions; and "reversal of the burden of proof."

3.2.1.5. Other areas of concern

The evidence provided with the DDP Committee in 1993 on issues like investment (TRIMs), services trade (GATS) and cross retaliation through the dispute settlement mechanism (DSU) were not as exhaustive as in the issues discussed above. On issues related to investment, both the DoC and NWGPL felt that a multilateral discipline on investment would adversely affect domestic industries as the application of local content requirements and export obligations would no longer be possible. On the issue of service-sector liberalization under GATS, two broad areas of concern were highlighted. First, the likely adverse implications to the Indian economy arising from the liberalization of the financial sector in particular; and second, the possible road-blocks on the movement of labour from countries like India that could be imposed by the developed world.

The DoC clarified its understanding on the issues of cross-retaliation between areas like services, intellectual property rights (TRIPS) and goods, and the universalization of U.S. trade administration instruments like Section 301 of the Omnibus Trade and Competitiveness Act of 1988, by providing clarification that such retaliation can only happen when direct sectoral retaliation fails to materialize. Further, another safeguard is that such

35 The pharmaceutical majors were represented by their industry association, viz. the Organisation of Pharmaceutical Producers of India.

36 The point of view of the generic producers in India was presented most prominently by the Indian Drug Manufacturers Association (IDMA).

action is permissible only through compulsory arbitration. Clarifying further, the DoC did not agree to the universalization of U.S. trade policy instruments, it suggested that the multilateral authorization of retaliation only be adopted after multilateral findings that there has been a breach of rights and obligations. However, experts from NWGPL suggested that since developing countries might not be significant players when disputes arise at sectoral levels, all possibilities suggest that such action would take shape across sectors. Thus, the existing GATT safeguards might not be sufficient. Hence, the Committee suggested that integrated dispute settlement mechanism with such far reaching implications should not be accepted and that the provision regarding compulsory arbitration and the arbitrator's award needs to be defined in unambiguous terms.³⁷

Quite clearly, some strong cases of differences in the opinions of the Central government and various levels of stakeholders can be seen in the discussion process under the Standing Committee on DDP submitted in 1993. Differences in views were more evident on issues like food security and agriculture and intellectual property rights. On issues like investment, textiles and clothing, services and dispute settlement issues, differences were minimal.

3.2.1.6. *Departmental Standing Committee: India and the WTO*

The second Departmental Standing Committee on issues concerning multilateral trade negotiations was established in 1998. The Committee gave itself the task of “studying the spectrum of issues involved” in the “evolving relationship of our country and its government” with the WTO. The timing of this Committee also assumed significance in that it coincided with the initiative taken by the developing countries, more prominent among which was India, to raise implementation-related issues in the WTO.³⁸

Based on the consultation and evidence-gathering process,³⁹ the Committee highlighted four areas of concern in the context of international trade and trade negotiations. These were: lack of proper implementation of the Uruguay Round Agreement by the developed countries; the growing problem of the increased concentration of world production and distribution effectively encouraged

37 *Ibid.*, Parliament of India, 1993, para. 233–241, pp. 57–59.

38 The Geneva Ministerial Conference held in May 1998 had implementation-related issues as one of its key foci.

39 The consultations was carried out with a number of eminent individuals, including leading economists, senior agronomists, plant biologists, civil servants, former diplomats and ambassadors associated with Uruguay Round discussions. Civil society, industrial associations and farmers' organizations were not involved in these consultations.

by the WTO; protection of biodiversity and the right of indigenous peoples; and controls on labour mobility which continue to be enforced.⁴⁰

The “India and the WTO” Committee in 1998 highlighted the need to build better awareness on the implications of various agreements signed by India at Marrakesh. Suggestions for achieving awareness included better transparency on WTO negotiations and inter-ministerial coordination with Industry and Finance. The Committee further suggested that the situation was much worse when it came to the participation of the general public and state governments. It also asked the DoC to make institutional arrangement whereby problems pertaining to the WTO be discussed as a matter of routine between the Central and state governments and between the ministerial offices and parliamentary bodies as well as key public institutions, including academic and technological bodies. It also suggested the need for a technically strong team at the command of DoC, both in India and Geneva.⁴¹ The Committee was of the view that trade policy issues at the multilateral level had to be carried out through the participation of all stakeholders and based on inputs which would also involve experts in their respective areas.⁴²

3.2.2. *The role of the Parliament in the making of WTO-consistent laws*

One of the best received practises of Parliament while it performs its law-making functions is to seek evidence from various stakeholders before making a final decision. This form of intervention by Parliament in the law-making process is carried out by a Joint Committee of both Houses. The enactment of WTO-consistent laws saw two Joint Committees being set up by Parliament, both of which concerned the area of intellectual property rights.

As part of its commitments under the TRIPS Agreement, India was required to amend its Patents Act (enacted in 1970) and introduce a system of protection for plant varieties. Both were to be enacted by January 1, 2000, the date on which the TRIPS Agreement became effective for India. The government introduced the two bills in December 1999, after a prolonged discussion with stakeholders. As was mentioned briefly earlier, these two areas were constantly in the public gaze since the Draft Final Act was presented by then Director-General of GATT, Arthur Dunkel in December of 1991. Discussions for the enactment of the legislation for the protection of

40 Parliament of India, 1998, *India and the WTO*. Department-Related Parliamentary Standing Committee on Commerce, Thirty Fifth Report, Rajya Sabha Secretariat, New Delhi.

41 *Ibid.*, Parliament of India, 1998, para 4–14, pp. 1–4.

42 Setup of a permanent quasi-official body consisting of wise judicial minds, state government delegates, economists, agronomists, environmentalists, representatives of social active non governmental organizations, fiscal experts, trade specialists, retired diplomats, etc. The absence of a “memory cell” was highlighted in this context to guide future negotiations.

plant varieties were in fact initiated in 1994, when the draft legislation was first introduced by the government. A revised version of the legislation was placed in Parliament in December 1999. The bill amending the Patents Act of 1970, and to make it TRIPS-consistent, was introduced in Parliament almost simultaneously.

The significance of these legislative-actions was taken note of by Members of Parliament and a decision was made to refer the two bills to Joint Committees consisting of 30 members.⁴³ The two Joint Committees accepted extensive evidence from various stakeholders before they submitted their reports.

The Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999, which submitted its report in August 2000, invited suggestions/comments on the provisions of the Bill by issuing notices, even using the mass media. The Committee adopted this approach since it was felt that the "bill dealt with a sensitive issue and required deep study."⁴⁴ The Joint Committee received memoranda from 132 individuals/associations/organizations besides state governments and their agencies. Seventeen witnesses tendered oral evidence before the Joint Committee. A wide cross-section of stakeholders, ranging from farmers' groups, seed companies, agricultural research centres, civil society organizations and academics, figured in this list.

The Joint Committee on the Patents (Second Amendment) Bill, 1999 sought suggestions and comments on the provisions of the Bill from a pre-determined set of respondents. The respondents included pharmaceutical companies, health activists and academics. Forty-two memoranda containing views, comments and suggestions on the provisions and various aspects of the Bill were received by the Committee from individuals/organizations/institutions.⁴⁵ Fifty-one witnesses tendered oral evidence before the Joint Committee.⁴⁶

The consultations that Parliament engaged itself in while putting in place TRIPS-consistent intellectual property laws were significant on two counts. One, they helped in introducing a degree of transparency to the process of policy formulation in India. And, two, the consultations brought in sharp focus the range of issues that the policy-making process must take into consideration while India deepened its involvement with the multilateral trading system.

43 Twenty members were from *Lok Sabha* (the Lower House), while the remaining were from *Rajya Sabha* (the Upper House).

44 *Lok Sabha*, Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999: Report of the Joint Committee, 2000, p. (v).

45 *Rajya Sabha*, The Patents (Second Amendment) Bill, 1999: Report of the Joint Committee, 2001.

46 *Rajya Sabha*, The Patents (Second Amendment) Bill, 1999: Report of the Joint Committee, 2001.

Yet another level of intervention made by Parliament in the policy-making process is through debates on issues pertaining to the functioning of various administrative ministries. Although the precise impact of these debates on policy-making cannot be ascertained, the growing importance of the issues relating to WTO matters in the debates makes this aspect of the functioning of Parliament an important factor in the formalization of India's WTO strategy.

3.2.3. Debates in the Indian Parliament on trade negotiations

In the context of policy-making in the country, the debates⁴⁷ that take place in the two Houses of Parliament are significant on two counts. One, they provide an important window into the level of engagement on issues that are of critical importance to India. And, two, they provide a mechanism through which the decisions made by administrative ministries are reviewed. To understand the role played by Parliament in this regard, debates on some of the major areas are analyzed since the formation of the WTO.⁴⁸

The level of interventions made by Members of Parliament on trade policy issues has seen considerable increases over the past decade. This increase is a clear reflection of their growing awareness on these issues. While the upward trend in the interventions is more perceptible in the *Lok Sabha* (the Lower House), the trends in *Rajya Sabha* (the Upper House of the Council of States) is also not less impressive. While 192 Members raised 511 questions⁴⁹ in the *Rajya Sabha* during the period between 1995 and 2004, on trade policy and multilateral negotiations related issues,⁵⁰ the *Lok Sabha* saw a much higher level of activity with 330 members being involved in as many as 2900⁵¹ interventions.⁵²

47 The elected and selected representatives of *Rajya Sabha* and *Lok Sabha* require explanation on issues which they feel are important and such interventions are then answered by the concerned minister.

48 Due to limitations by way of the space and scope of this paper, we will only address the broad evidence which emerged out of this indirect channel of consultation. We have nearly covered the relevant question raised during the 1995 to 2004 period on issues related to multilateral negotiations raised in the *Rajya Sabha*.

49 For the period 1995 to 2004.

50 Substantial filtering was done to avoid non-specific interventions from the total of 5,493 questions. After filtering specific questions under the areas selected, this accounts for 10 per cent of *Rajya Sabha* interventions on trade policy issues.

51 For the period 1999 to 2004.

52 Substantial filtering was done to avoid non-specific interventions from the total of 12,737 questions. After filtering specific questions under the areas selected, this accounts for 22 per cent of *Lok Sabha* interventions on trade policy issues.

In terms of the areas covered, intellectual property rights (i.e., the TRIPS Agreement) and agriculture sectors were in focus. This is consistent with the level of debate that these two issues have seen in the country since the Uruguay Round negotiations were in progress. Other than these two areas, the implications of India's commitments under the covered WTO agreements also figured prominently in the interventions. But while the multilateral process was being scrutinized by Parliament, issues related to preferential trading agreements did not attract much attention. Thus, issues related to multilateralism were raised more prominently compared to preferential agreements, even though in the past few years, India has been increasingly pitching bilateral free trade agreements (FTAs).

A substantial portion of discussions on agriculture included matters of commitments and market access related to AoA and its implication for farmers and Indian agriculture. Issues like food security and the removal of restrictions on the movement of agricultural commodities found prominence among various other matters related to agriculture-sector reforms. Quite clearly, matters related to agriculture, interventions addressing domestic reforms found a significant position. Labour laws and matters associated with labour reforms also found a place in interventions over the last decade.

In the case of intellectual property rights, concerns on the new regime of intellectual property protection were raised, and these varied from increasing drug prices; R&D impact of product patents; impact of genetically modified (GM) crops and food products; and, promotion of indigenous medicinal systems. TRIPS-compatible amendments to the Patents Acts of 1970 were also major issues of concern.

The major focus areas in the debates in Parliament brought the functioning of several administrative ministries under the scanner. For instance, the interventions on intellectual property rights required five critical ministries to provide clarifications; namely, Health and Family Welfare, Commerce and Industry, Chemicals and Fertilizers, Agriculture and Science and Technology.

On matters related to the implications of various WTO agreements, a majority of interventions were in respect to issues and policies that were under the direct control of the ministries of Commerce and Industry. The ministries of Agriculture and "Small-Scale Industries and Rural and Agro-Industries" also were required to provide explanations on a substantial number of WTO-related concerns. Different concerns that were raised regarding processes of multilateralism were related to the internal process of consultation; co-ordination with other WTO Members on negotiations; and, matters related to agreements under the WTO.

As was mentioned earlier, Parliamentary debates have an important role in that they lend a degree of transparency to the policy-making process. This role of Parliament, together with the more definitive role that it has played in the enactment of a WTO-consistent legal regime in the area of intellectual property rights, makes the legislature a very potent element in the process, though India has sought to meet the challenges posed by the WTO regime. Not only has Parliament brought a degree of accountability to the administrative ministries involved in making policy decisions in the context of India's engagement with the WTO, it has also provided an avenue for stakeholders to intervene in the policy-making process. This avenue for making interventions that Parliament provides to stakeholders has particular significance for civil society organizations, which have not been able to influence government in a consistent manner. Thus, while some other non-state actors have been able to intervene quite effectively concerning a range of issues where their interests are inextricably linked, civil society organizations have not been able to play a similar role barring a few exceptional cases. The following section tries to capture the role of non-state actors in the making of trade policies.

4. Role of the non-state actors

Several non-state actors assume importance in the context of policy-making in India. The first of these, and undoubtedly the most influential, includes the trade and industry associations. The second set of non-state actors are the trade unions representing in the main, the labour force employed mostly in the organized segment of Indian industry. The third set includes civil society organizations, whose sphere of activities can be very diverse indeed. While some of these organizations are actively engaged with the government, there are others at the other end of the spectrum who identify themselves completely with grass-roots groups, on the other. The mass media appears as a powerful non-state actor in India, which has had a long history of free press. And, finally, the policy think-tanks are the other set of non-state actors who have had a degree of influence on the making of trade policy in India.

There are two significant missing links in the non-state actors mentioned above, both of which are related to the informal sector. The first of these relates to agriculture where the absence of farmers' organizations represents a lack of representation of those engaged in agriculture. The second is the lack of any organization that can speak on behalf of the unorganized workforce in India's manufacturing sectors and the ever-increasing service sectors.

4.1. Trade and industry associations

Trade and industry associations in India are extremely diverse in their interests besides being numerous in number. In addition to the trade and industry associations involved in commercial enterprises, there exists in India associations of professionals of various hues who have marked their presence in the discussions that centre on the service sector. The growing importance of the service sector in the Indian economy has brought an added dimension of interest among the various stakeholders in this sector.

Appendix E provides a list of trade and industry associations, including professional associations. It needs to be mentioned here that while care has been taken to include most of the associations, the list does not claim to be an exhaustive one. Three hundred thirty-eight associations listed in Annex 5 have been divided into four categories based on their key characteristics. These are: (i) three apex trade and industry associations;⁵³ (ii) associations with regional foci; and (iii) associations representing sectoral interests. The three sets of associations are not mutually exclusive: the apex associations, as their members' associations, belong to the two other categories.

A noteworthy feature of the consultative process involving the trade and industry associations has been the prominence that the apex associations have received. Their ability to focus on issues that are of key concern to their members has allowed these associations to find their place in the consultative bodies set up by the DoC in particular. A notable development in respect to the prominence accorded to the industry associations includes the fact that since the Seattle Ministerial Conference in 1999, representatives of major trade and industry associations have been included in India's official delegation. In fact, these associations have been the only ones among the non-state actors who have found their place in the official delegation to the WTO ministerial conferences.

The involvement of the trade and industry associations in the policy-making process around the multilateral trade negotiations is, however, of recent origin. There was hardly any involvement of these associations during the Uruguay Round negotiations and even when the first two Ministerial Conferences were convened, the involvement of the industry associations was at best minimal. From around 1998, some of the trade and industry associations began the process of active engagement with the government on the WTO processes by organizing "WTO Awareness Programs." These programs were largely aimed at building the capacities of the membership of the associations. In other words, the process of consultations with the associations had not yet begun.

53 These are the Confederation of Indian Industry, the Federation of Indian Chambers of Commerce and Industry and the Associated Chambers of Commerce and Industry.

It was only during the run-up to the Seattle Ministerial Conference that the trade and industry associations began to get actively engaged in the consultative process. There have been two facets to the process of engagement. On the one hand, the associations made some attempts to assess the importance of various issues covered by the WTO agreements from the point of view of their constituencies. The other, and possibly the more dominant facet of their engagement, was that their response was conditioned upon the assessment made by the government on the issues related to the WTO. What is more important is that over time, the latter dimension has assumed more importance.

Although a number of factors have fashioned the changing nature of engagement by the three apex trade and industry associations, two among them are more prominent. The first of these is that the members of these associations, including those that represent the regional or sectoral interests have not adequately addressed issues relating to trade with a view to contribute to the process of negotiations in the WTO. This situation in turn has occurred because of two shortcomings suffered by these associations. One, the associations and their members have lacked the necessary expertise with regard to trade-related issues, in general. The apex trade and industry associations have ascribed this limitation to the lack of training programs for the corporate sector caused largely because of funding paucity. It was indicated that trade and industry viewed WTO capacity-building efforts as “non-revenue generating,” which is why this deficit was created.

A second shortcoming, which arises from the first, can be seen most prominently in the context of the market access negotiations. What has generally been seen here is that the sectoral and regional associations have resisted any move to push for trade liberalization. Thus, while unilateral attempts at lowering tariff protection by the government have not been opposed, there has been a considerable degree of resistance to bind tariffs, even if the bound tariffs are considerably higher than applied tariffs. Trade and industry associations have defended their apparent contradictory stance in respect to trade liberalization by arguing that while unilateral reductions in tariffs are reversible, WTO binding agreements are not, and that Indian trade and industry must have the flexibility to increase tariffs if cheap imports threaten their domestic turf. Given this situation, it is no wonder, therefore, that apex trade and industry associations have also been compelled to take a defensive posture in WTO-related processes.

It is this inability of the trade and industry associations to take a proactive stance in the negotiations that has led to the changing nature of their engagement with the government on trade-related issues in general and WTO-related issues in particular. The impact that this has had on apex trade and

industry associations is that they have merely responded to the agenda that the government has set in the context of the negotiations. Trade and industry associations have commented that this has happened because the government expects the associations to support the position that it has taken without engaging meaningfully in a consultative process. The associations feel that for the industry to engage in a meaningful process of consultation on WTO-related issues, the government would have to contribute in two respects. First, it needs to encourage the emergence of independent viewpoints on some of the more contentious issues, which would help in making decisions based on a holistic view. And, secondly, consultations should take place based on an understanding of the issues involved. This in turn would require the establishment of a forum which would help in the proper assessment of the concerned issues.

4.2. Civil society groups

In India, civil society groups must be given credit for the awareness that has been seen on issues pertaining to the multilateral trading system. Besides raising the level of awareness on WTO-related issues—which in turn has been extensively debated in the country—these groups have influenced the policies of the government by working as pressure groups. Most civil society groups have preferred not to be engaged in consultations with the government, and have charted out parallel processes that have been critical of the initiatives that have been made in the context of multilateral trade negotiations.

The engagement of civil society groups began just as the mid-term review of the Uruguay Round of multilateral trade negotiations was taking place in 1988, when the National Working Group on Patent Laws, representing a group of individuals, started looking at the implications of including intellectual property rights in the multilateral trading system. The initial focus of the group was the impact that the proposed regime of intellectual property protection would have on the prices of pharmaceutical products, and hence on access to medicines. The debate that was initiated by this group was aimed primarily at justifying the continuation of the Patents Act that India had enacted in 1970, and which in view of the group had several redeeming features that helped in keeping the prices of pharmaceutical products the lowest in the world. It was argued that two of these features were particularly important. These were the following: (i) protection to pharmaceutical processes but not to pharmaceutical products, and (ii) a strong system of compulsory licences, which tried to ensure that patents granted in India were working in the country. Subsequently, the question of extending the regime of intellectual property protection to agriculture was also raised. The debate in this case centred on the implications that the new regime would have on

the prices at which the multitude of poor farmers buy seeds and other planting material.

It was the tabling of the Draft Final Act by then GATT Director-General, Arthur Dunkel, that drew the attention of several civil society groups in India towards the Uruguay Round negotiations. The “Dunkel Proposals” were viewed with a greater degree of alacrity by the civil society groups,⁵⁴ coming as they did on the heels of the economic reforms that the government of India had embarked upon since the middle of 1991. A coalition of civil society groups and farmers’ organizations developed during the ensuing period which resulted in the launching of a series of protests. For the first time in recent history, a large number of farmers groups’ jointly articulated their concerns in the face of the developments which they said would “invade the economic sovereignty of the country and further damage the human rights and dignity of the individual.” The immediate impact of these actions by the farmers’ organizations included the fact that it became quite clear to all concerned that Indian farmers had raised their voices against the opening of the farm sector.

In recent years, coordinated groups of farmers’ organizations have pressed for maintaining import restrictions on agricultural commodities to safeguard the interests of the Indian peasantry. In 2001, the Indian National Coordination of Farmers Movement asked the government to take agriculture out of the “unfair market” of the WTO. The Movement claimed that the five years of liberalization had dealt a big blow to Indian agriculture and farmers. More recently, the National Kisan Panchayat (or Farmers’ Coalition) protesting against the July Framework stated that “*India should ... rise to the occasion and demonstrate to the world that it will not succumb to any political pressure, and will protect and stand by its farming community.*” What these actions of these farmers’ groups have done is to define the bottom-line for the negotiators in the current round of negotiations.

India’s critical concern in the farm sector was reflected in the discussions that were held in the country over the adoption of a law protecting the rights of plant breeders. The process to introduce this legislation was made in 1994. On hindsight, this move by the government was beneficial for it set in motion an extensive process of discussions culminating in the adoption of the Protection of Plant Varieties and Farmers Rights Act in 2001.

54 “*The Dunkel Proposals were so dangerous that I remember, out of sheer agitation, I travelled 250 kilometres on a bicycle with some 200 friends of mine from the BJP to which I belong. We stopped at every village, every market place and every town on the way and told the people about the danger of the proposals formulated by Mr. Dunkel,*” (statement given in the Parliament on 22 September 2000 by then Finance Minister, Yashwant Sinha).

Civil society groups played an important role in the formalization of this legislation. While they influenced policy-makers when the legislation was considered by Parliament, they provided significant input even as the Ministry of Agriculture was engaged in consultations with stakeholders. The dominant view of civil society groups was that the legislation which India needed to adopt should not be based on the model proposed by the UPOV Convention (International Convention for the Protection of New Varieties of Plants), but should recognize the rights of the traditional farmers who are involved in plant breeding activities.⁵⁵

A third area where civil society action contributed to the debate in India was in respect to the patent law. As was mentioned earlier, it was the likely impact of a TRIPS-consistent patent law on access to medicines that was one of the issues that civil society groups had raised when their engagement with the multilateral trade negotiations began in the late 1980s. The essential point that these groups, in particular, the National Working Group on Patent Laws, made was that the patent laws adopted by countries should address their development concerns. In other words, the “one-size-fits-all” strategy, which the TRIPS negotiations were pushing for, was detrimental to the interests of developing countries. The government also concurred with this view. In its first submission to the negotiating group on TRIPS (NG11), India made a strong statement which concurred with the viewpoint of the civil society groups.⁵⁶ These arguments provided a defence for the Indian Patents Act, which was enacted in 1970 to address some of India’s key concerns, particularly in the area of pharmaceuticals.⁵⁷

The acceptance of the framework proposed by the TRIPS Agreement by the government, a decision that was influenced, among other things by the threat of unilateral action by the then USTR Carla Hills,⁵⁸ brought with it

55 The Gene Campaign, for instance, proposed a Convention of Farmers and Breeders (CoFAB), which sought to strike a balance between the interests of farmers and breeders.

56 While elaborating on the basis approach of the patent system India stated the following: “the evolution of the patent system, both in industrialized and developing countries, would clearly establish the fact that there is a close correlation between the level of economic, industrial and technological development of a country on the one hand, and the nature and extent of patent protection granted by it on the other” (see GATT, 1989).

57 There were two sets provisions in the Patents Act, 1970, which addressed these concerns: (i) in the area of pharmaceuticals, only process patents could be taken and that too for a shorter period of time; and (ii) use of compulsory licences to ensure that patents granted in India could be locally “worked.”

58 USTR Carla Hills, had stated while issuing the 1989 list of countries on the “priority watch list” that India’s actions in the Uruguay Round negotiations would be watched closely before any decision of trade retaliation was taken.

commitments to introduce significant changes to patent legislation in India, which had direct implications for access and the affordability of pharmaceuticals. India was given a 10-year implementation period for fulfilling its TRIPS commitments, over the course of which three sets of amendments had to be incorporated into the country's Patents Act. In each of the three amendments, civil society groups intervened to ensure that the TRIPS provisions were adapted in a manner that would have the least impact on the access and affordability of medicines in India. Another set of issues were addressed that were equally important from India's point of view, including biopiracy and the misappropriation of traditional knowledge, both of which were taking place through the so-called "bad patents."

These issues were brought into focus by civil society groups using several interesting mechanisms. Among these were the "Peoples' Commissions" that the National Working Group on Patent Laws had established for reviewing government-based proposals for amendments to the Patents Act. These commissions were intended to provide a forum for carrying out extensive consultations with stakeholders and the results of these consultations were presented to the government.⁵⁹

Civil society groups have played an important part in the shaping of the post-TRIPS patent law in India. The interventions made by these groups brought the public interest perspective into the TRIPS implementation process in India and it thus provided a significant countervailing force to the strong interests of the pharmaceutical majors. It is a well-documented fact that the TRIPS Agreement represents the interests of the large pharmaceutical companies, who have pushed for implementing the provisions in a manner that best suits their commercial interests.

While civil society groups in India have played a significant part in the shaping of trade policies in India, in terms of their participation in the process of consultations, their role has been rather limited. The only meaningful participation of civil society organizations in the trade policy-making process has been two representatives on the Advisory Committee on International Trade.

Civil society groups, including those that were part of the Advisory Committee, have been critical of the nature of consultations that the government has been engaged in, citing two sets of reasons. Firstly, they have been critical of the lack of any initiative taken by the government to engage in consultations during the post-Cancun phase. Even the Advisory

59 The Fourth "Peoples' Commission," which reviewed the proposed third amendment of India's Patents Act, submitted its report in October 2004 and was chaired by the former Prime Minister, I. K. Gujral.

Committee on International Trade, they contend, has not been convened. Secondly, these groups point to the discrimination that they have suffered on account of the fact that the government has engaged more constructively with industry associations on trade policy issues. Thus, while the latter have been part of the official delegation to ministerial conferences, civil society groups have not been included even after they have made repeated requests to do so.

It is this issue of lack of transparency on the part of the government relating to trade negotiations that has been raised as a real issue of concern by civil society groups. This lack of transparency, these groups point out, is so pervasive that even those who are responsible for governance at the sub-federal level are mostly unaware of their rights. The consultation process with stakeholders has a role in the making of trade policy in India.

But while they have been critical of the nature of their involvement with the government, civil society groups have been actively participating in the making of WTO-consistent laws in Parliament. As was indicated above, in terms of the process of enacting laws relating to intellectual property rights, Parliament engaged in a process of consultation, which in the view of some civil society groups, “yielded good results.” This was possible largely because Parliamentary Committees allowed groups to make “substantial contributions” to the processes they had initiated.

Although civil society organizations have made some headway in raising awareness about WTO-related issues in India, they have suffered from several limitations. The most significant of these is the inability of civil society groups to define their role in the policy-making process in India. While they have looked to the government to involve them in the making of policies, their own initiatives have been found wanting mainly because there has been a lack of coordinated activity on the part of these organizations. This has resulted in a situation where efforts made by civil society organizations have remained at sub-optimal levels.⁶⁰ As a consequence, civil society organizations have been unable to develop a proactive framework with which they can engage the government and its agencies, or the mass media to bring the issues that are of core concern to India to the fore.

The lack of effective interventions on the part of non-state actors like civil society organizations, who are capable of raising awareness and debate on some of the more contentious issues in the context of either the implementation of WTO commitments or ongoing multilateral trade negotiations,

60 The sole exception is the area of intellectual property rights, where lawyers, HIV/AIDS positive people and *Medicins Sans Frontiers* (MSF) have started coordinating their activities in the past couple of years.

have often set limits on the ability of the country to make well-considered decisions on these issues. On issues concerning the WTO Agreement on Agriculture and Trade Related Aspects of Intellectual Property Rights, major stakeholders in India continue to have considerable differences on the approach that the country needs to adopt in the ongoing negotiations. It is of crucial importance to get the appropriate institutional structure to address these differences in perceptions, so that a beginning can be made towards arriving at a broad-based consensus on policies that need to be followed in the realm of trade in general and those in the context of the WTO in particular.

5. By way of conclusion

The significance of trade policy-making in India increased significantly after the country embarked on the high road to economic reforms in the beginning of the 1990s. This period also coincided with the Uruguay Round negotiations, in which India was one of the major voices from the developing world.

India's involvement in multilateral trade negotiations has witnessed intense discussions among domestic stakeholders. While the government has taken some steps to engage stakeholders, in particular various state governments that are part of India's federal polity, Parliament has also been alive to these developments which could have far reaching implications for large sections of the populace. Non-state actors, especially civil society organizations, have played their part in influencing the decision-making process. These organizations have been more active in raising the level of debate in areas like agriculture and intellectual property rights, areas where critical issues of rights to food and livelihoods, and health, have been flagged as areas of concern.

An assessment of the efforts made by civil society groups in influencing the policy-making process shows that these organizations have not been able to make serious contributions with the sole exception of the area of intellectual property rights. In the latter case, several civil society groups have jointly worked towards raising awareness of the impact of the TRIPS-consistent intellectual property laws covering patents and plant varieties protection. The single most important contribution of this group has been that they have not merely put forth their critique of the initiatives taken by the government; they have also provided options to policy-makers for developing more balanced laws, options in which the rights of the owners of intellectual property can be tempered with their obligations to society at large.

Developments in the area of intellectual property rights need to be considered carefully by all concerned for this could provide the framework for the future of policy-making in the realm of trade. What makes the policy-making process in this area significantly different from the rest is that both the

government and Parliament were actively involved in amending the legislation, in keeping with the commitments the country made while assuming membership to the WTO. In the debates that thus ensued, major contributions were made by civil society groups. This process provided much-needed transparency to the making of policies in what has been recognized as an extremely sensitive issue.

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Appendix A: Illustrative list of areas for which both the Central and state governments and their agencies are responsible for decision-making

1. Education, including technical education, medical education and universities, vocational and technical training of labour.
2. Legal, medical and other professions.
3. Ports other than those declared by or under law made by Parliament or existing law to the major ports.
4. Shipping and navigation on inland waterways in regards to mechanically propelled vessels, the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
5. Trade and commerce in, and the production, supply and distribution of:
 - a) the products of any inquiry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
 - b) food stuffs, including edible oilseeds and oils;
 - c) cattle fodder, including oilcakes and other concentrates;
 - d) raw cotton, whether ginned or unginned, and cotton seed; and
 - e) raw jute.
6. Newspapers, books and printing presses.

Appendix B: Illustrative list of areas for which state governments and their agencies are responsible for decision-making

1. Public health and sanitation; hospitals and dispensaries.
2. Intoxicating liquors, that is to say, the production, manufacture, transport, purchase and sale of intoxicating liquors.
3. Communications, that is to say, roads, bridges, ferries, and other means of communication; municipal tramways, ropeways inland water ways and traffic thereon.
4. Agriculture, including agricultural education and research; protection against pests and prevention of plant diseases.
5. Preservation protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
6. Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power.
7. Fisheries.
8. Inns and inn-keepers.
9. Theatres and dramatic performance.

Appendix C: Illustrative list of areas for which the Panchayats are responsible for decision-making

1. Agriculture, including agricultural extension.
2. Animal husbandry, dairy and poultry.
3. Fisheries.
4. Drinking water.
5. Roads, culverts, bridges, ferries, waterways and other means of communication.
6. Education, including primary and secondary schools.
7. Health and sanitation.
8. Public distribution system.

Appendix D: Work allocated to Department of Commerce in accordance with the Allocation of Business Rules, 1961

I. General international trade policy

1. International Commercial Policy.
2. International Agencies connected with commercial policy (e.g., UNCTAD, ESCAP, ECA, ECLA, EEC, EFTA, GATT/WTO).
3. International Commodity Agreements other than agreements relating to wheat.
4. All matters relating to international trade policy including tariff and non-tariff measures.

II. Foreign trade

5. All matters relating to foreign trade including trade negotiations and agreements (GATT and Commonwealth tariff preferences), trade mission and delegations, trade cooperation and promotion and protection of interests of Indian traders abroad.
6. Import and Export Trade Policy and Control excluding the matters relation to: import of feature films; export to Indian films—both feature length and short; and, import and distribution of cine-film (unexposed) and other goods required by the film industry.
7. Directorate-General of Foreign Trade.

III. State trading

8. Policies of state trading and performance of organizations established for the purpose, which include: State Trading Corporation and Minerals and Metal Trading Corporation.

IV. Trading with the enemy or enemy property

9. Trading with the enemy; enemy firms and enemy property reparations (other than German industrial equipment); Controller of Enemy Trading; controller of Enemy Firms; Custodian of Enemy Property for India.
10. International Customs Tariff Bureau including residuary work relating to tariff commission.
11. Development and expansion of export production in relation to all commodities, products, manufacturers and semi-manufacturers including the following: agriculture produce within the meaning of the Agricultural Produce (Grading and Marking) Act 1937 (1 of 1937); marine products; industrial products (engineering goods, chemicals, plastics, leather products, etc.); fuels, mineral, and mineral products; specific export-oriented products (including plantation crops etc., but excluding jute products and handicrafts) which are directly the charge of this Department.
12. All organizations and institutions connected with the provision of services relating to the export effect including: Export Credit and Guarantee Corporation; Export Inspection Council; Directorate-General of Commercial Intelligence and Statistics; India Trade Promotion Organisation; and Free Trade zone.
13. Project and programs for stimulation and assisting export efforts.
14. Production, distribution (for domestic consumption and exports) and development of plantation crops tea, coffee, rubber and cardamom.
15. Processing and distribution for domestic consumption and export of instant tea and instant coffee.
16. Tea Trading Corporation of India; Tea Board; Coffee Board; Rubber Board; Spices Board; and Tobacco Board.

Appendix E: List of trade organizations and industry associations in India

I. Apex trade and industry associations

Confederation of Indian Industry

Federation of Indian Chambers of Commerce and Industry

The Associated Chambers of Commerce and Industry of India

II. Industry/trade associations having sectoral interests

1 Abrasive Manufacturers' Association of India

2 Adhesive Tape Manufacturers' Association

3 Advertising Association of India

4 Agarwoods Exporters' Association

5 Ahmedabad Electrical Merchants & Contractors' Association

6 Ahmedabad Tiles Manufacturers' Association

7 Ajmer Electric Association

8 Alkali Manufacturers' Association of India

9 All India Air Conditioning & Refrigerator Association

10 All India Alcohol-based Industries Development Association.

11 All India Association of Industries

12 All India Biotech Association

13 All India Brewers' Association

14 All India Brick and Tile Manufacturers' Federation

15 All India Chain Association

16 All India Coated Steel Manufacturers' Association

17 All India Distillers' Association

18 All India Electric Motor Manufacturers' Association

19 All India Federation of Master Printers

- 20 All India Flat Glass Manufacturers' Association
- 21 All India Food Preservers' Association
- 22 All India Food Processors' Association
- 23 All India Garments Manufacturers & Wholesalers' Association (R)
- 24 All India Glass Manufacturers' Federation
- 25 All India Granite & Stone Association
- 26 All India Importers Association
- 27 All India Induction Furnace Association
- 28 All India Industrial Gases Manufacturers' Association
- 29 All India Instrument Manufacturers & Dealers' Association
- 30 All India Iron & Steel Exporters' Association
- 31 All India Manufacturers' Association
- 32 All India Manufacturers' Organization
- 33 All India Metal Forging Association
- 34 All India Mini Cement Manufacturers' Association
- 35 All India Motor Transport Congress
- 36 All India Pottery Manufacturers' Association
- 37 All India Radio & Electronics Association (NZ)
- 38 All India Resort Development Association
- 39 All India Rice Exporters' Association
- 40 All India Rubber Industries Association
- 41 All India Skin & Hide Tanners & Merchants' Association
- 42 All India Small Paper Mills Association
- 43 All India Small Scale Pharmaceutical Manufacturers' Association
- 44 All India Yarn Processors' Association
- 45 All-India Tire Dealers' Federation
- 46 Apparel Export Promotion Council
- 47 Association of Basic Telecom Operators
- 48 Association of Indian Dry Cell Manufacturers
- 49 Association of Indian Forging Industry

- 50 Association of Indian Mini-Blast-Furnaces
- 51 Association of Leasing & Financial Services Companies
- 52 Association of Mutual Funds in India
- 53 Association of Resource Companies for the Hospitality Industry
- 54 Association of Sanitary & Domestic Eng (I) Ltd.
- 55 Association of Seed Industry
- 56 Association Of Synthetic Fiber Industry
- 57 Automotive Components Manufacturers' Association of India
- 58 Automotive Tire Manufacturers' Association
- 59 Ayurvedic Drug Manufacturers' Association
- 60 B.P.T. Contractors Association
- 61 Ball & Roller Bearing Manufacturers' Association of India
- 62 Baroda Electrical Contractors & Merchants' Association
- 63 Bengal Brickfield Owners' Association
- 64 Bengal Glass Manufacturers' Association
- 65 Bharat Chamber of Commerce
- 66 Bhavanagar Electric Merchants' Association
- 67 Bihar Industries Association
- 68 Bombay Bolts & Nuts Merchants' Association
- 69 Bombay Canvets & Tarpaulin Merchants' Association
- 70 Bombay Cutley, Toys, Glass, Beads & Sundry Merchants' Association
- 71 Bombay Ferrous & Nonferrous Manufacturers' Association
- 72 Bombay Firewood & Timber Commission Agents' Association
- 73 Bombay Hardware Merchants' Association
- 74 Bombay Housing & Area Development Board Contractors' Association
- 75 Bombay Marble & Tile Merchants' Association
- 76 Bombay Pipes & Fittings Merchants' Association
- 77 Bombay Sanitaryware Association
- 78 Bombay Society of Model Engineers
- 79 Bombay Tarpaulin Merchants' Association

- 80 Bombay Timber Merchants' Association
- 81 Brass Artware Manufacturers (Exporters') Association
- 82 Bucket Manufacturers Association of India
- 83 Builders' Association of India
- 84 Bukdhana Dist Contractors' Association
- 85 Bulk Drug Manufacturers' Association
- 86 Bulk Material Handlers' Association of India
- 87 C.P. & Berar Electrical Contractors' Association
- 88 Cables & Conductors Manufacturers' Association of India
- 89 Calcutta Cabinet & Furniture Makers' Association
- 90 Calcutta Electric Traders' Association
- 91 Calcutta Goods Transport Association
- 92 Calcutta River Transport Association
- 93 Cast Iron Spun Pipe Manufacturers' Association
- 94 Cellular Operators Association of India
- 95 Cement Manufacturers' Association
- 96 Cement Tiles Manufacturers' Association
- 97 Chandigarh Dealers & Contractors' Association
- 98 Chemicals & Petrochemicals Manufacturers' Association
- 99 Chrysotile Asbestos Cement Products Manufacturers' Association
- 100 Cochin Coir Merchants' Association
- 101 Cold Rolled Steel Manufacturers' Association of India
- 102 Concrete Association of India
- 103 Confederation of Indian Alcoholic Beverage Companies
- 104 Confederation of Indian Food Trade and Industry
- 105 Confederation of Real Estate Developers' Association of India
- 106 Construction Federation of India (Cfi)
- 107 Consulting Engineers' Association of India
- 108 Consumer Electronics & TV Manufacturers' Association
- 109 Cotton Textile Export Promotion Board

- 110 Council for Leather Exports
- 111 Cutting Tool Manufacturers' Association
- 112 Deccan Manufacturers' Association
- 113 Delhi Electric Merchants' Association
- 114 Delhi Electric Traders' Association
- 115 Earthmoving Equipment Parts Association of Eastern India.
- 116 East Indian Bolt & Nut Dealers' Association
- 117 Eastern India Air Conditioning & Refrigerator Association
- 118 Eastern Regional Electrical Contractors' Association (India) Ltd.
- 119 Eastern U.P. Exporters' Association
- 120 Electric Dealers' Association
- 121 Electric Traders' Association
- 122 Electrical Cable Development Association
- 123 Electrical Contractors & Merchants' Association
- 124 Electrical Contractors' Association
- 125 Electrical Contractors' Association of Eastern India
- 126 Electrical Contractors' Association of Maharashtra
- 127 Electrical Contractors, Merchant & Manufacturers' Association
- 128 Electrical Dealers & Contractors' Association
- 129 Electrical Lamp and Component Manufacturers' Association of India.
- 130 Electrical Merchants' Association
- 131 Electrical Research & Development Association
- 132 Electronic Components Industries Association
- 133 Equipment Leasing Association (India)
- 134 Estate Agents Association of India
- 135 Express Industry Council of India
- 136 Federation of Automobile Dealers' Association
- 137 Federation of Biscuit Manufacturers' of India
- 138 Federation of Hotel & Restaurant Association of India
- 139 Federation of Indian Export Organisations

- 140 Federation of Indian Micro and Small and Medium Enterprises
- 141 Federation of Indian Mineral Industries
- 142 Federation of Indian Plywood & Panel Industry
- 143 Film Federation of India
- 144 Fragrance & Flavour Association of India
- 145 Franchising Association of India
- 146 Gujarat Dyestuffs Manufacturers' Association
- 147 Hologram Manufacturers' Association
- 148 Hotel & Restaurant Equipment Manufacturers' Association of India
- 149 Hotel Association of India
- 150 Indian Association of Amusement Parks and Industries
- 151 Indian Association of Tour Operators
- 152 Indian Chamber of Commerce
- 153 Indian Chemical Manufacturers' Association
- 154 Indian Confectionery Manufacturers' Association
- 155 Indian Cotton Mills Federation
- 156 Indian Council of Ceramic Tiles & Sanitaryware
- 157 Indian Dairy Association (IDA)
- 158 Indian Diesel Engine Manufacturers' Association
- 159 Indian Drug Manufacturers' Association
- 160 Indian Electrical & Electronics Manufacturers' Association
- 161 Indian Fan Manufacturers' Association
- 162 Indian Ferro Alloy Producer
- 163 Indian Hot Dip Galvanizers' Association
- 164 Indian Institute of Landscape Architects
- 165 Indian Institute of Material Management
- 166 Indian Institute of Road Transport
- 167 Indian Jute Industries Research Association
- 168 Indian Lamp Factories Association
- 169 Indian Lpg Industry Association

- 170 Indian Machine Tool Manufacturers' Association
- 171 Indian Maize Development Association
- 172 Indian Merchants' Chamber
- 173 Indian Motion Pictures Producers' Association
- 174 Indian Music Industry
- 175 Indian National Group of the Institutional Association for Bridge & Structural Engineers
- 176 Indian National Shipowners' Association
- 177 Indian Newsprint Manufacturers' Association
- 178 Indian Non Ferrous Metals Manufacturers' Association
- 179 Indian Oilseeds and Produce Exporters' Association
- 180 Indian Paging Services' Association
- 181 Indian Paint Association
- 182 Indian Paper Manufacturers' Association
- 183 Indian Pest Control Association
- 184 Indian Pharmaceutical Alliance
- 185 Indian Plywood Industries
- 186 Indian Printed Circuit Association
- 187 Indian Printing Packaging and Allied Machinery Manufacturers' Association
- 188 Indian Pump Manufacturers' Association
- 189 Indian Refractory Makers' Association
- 190 Indian Roads & Transport Dev Association (Northern Region)
- 191 Indian Rope Manufacturers' Association
- 192 Indian Small Scale Paint Association
- 193 Indian Soap & Toiletries Manufacturers' Association
- 194 Indian Society of Lighting Engineers
- 195 Indian Soft Drinks Manufacturers' Association
- 196 Indian Stainless Steel Development Association
- 197 Indian Sugar Mills Association
- 198 Indian Tea Association
- 199 Indian Tobacco Association

- 200 Indian Tourist Transporters' Association
- 201 Indian Transformer Manufacturers' Association
- 202 Indian Water Works Association
- 203 Indian Wind Power-Indian Wind Turbine Manufacturers' Association
- 204 Indian Wire Industrial Association
- 205 Indian Wire Ropes Manufacturers' Association
- 206 Indo-American Chamber of Commerce
- 207 Indo-Italian Chamber of Commerce & Industry
- 208 Indore Electric Merchants & Contractors' Association
- 209 Indo-Thai Chamber of Commerce & Industry
- 210 Industrial Diamond Association of India
- 211 Institute of Export Information
- 212 Institution of Milftery Engs
- 213 Institution of Public Health Engineers, India
- 214 Internet Service Providers Association of India
- 215 Jaipur Electric Association
- 216 Jamshedpur Electrical Contractors' Association
- 217 Jodhpur Electric Association
- 218 Junagarh Electrical Merchants' Association
- 219 Jute Manufactures Development Council
- 220 Kanpur Constructors Association
- 221 Karnataka Metal Merchants & Manufacturers' Association
- 222 Laminated Packaging Manufacturers' Association
- 223 Licensed Electrical Contractors of Mysore
- 224 Loss Prevention Association of India
- 225 M. P. Paints & Chemical Industries Association
- 226 Madras Electric Traders Association
- 227 Madurai Electrical & Machinery Dealers' Association
- 228 Magnet Wires & Cables Manufacturers' Association
- 229 Manufacturers Association for Information Technology

- 230 Merchants' Chamber of Commerce
- 231 Morbi Roofing Tiles Manufacturers' Association
- 232 Mysore Engineers Association
- 233 National Association of Software and Service Companies
- 234 National Council for Cement & Building Materials
- 235 Office Automation Association of India
- 236 Organisation of Pharmaceutical Producers of India
- 237 Organization of Plastic Processors of India
- 238 Orissa Glass Manufacturers' Association
- 239 Overseas Construction Council of india
- 240 Pesticides Manufacturers & Formulators' Association of India
- 241 Pharmaceutical Manufacturers' Association of Tamilnadu
- 242 Plywood Manufacturers' Association of India
- 243 Plywood Manufacturers' Association of West Bengal
- 244 Polyurethane Association of India
- 245 Powerloom Development & Export Promotion Council
- 246 Precision Screw Manufacturers' Association
- 247 Process Plant and Machinery Association of India
- 248 Promoters & Builders Association of Poona
- 249 Refrigeration and Airconditioning Manufacturers' Association
- 250 Roller Flour Millers' Federation
- 251 Seed Association of India
- 252 Silk Association Of India
- 253 Society of Indian Automobile Manufacturers
- 254 South Indian Plywood Manufacturers' Association
- 255 Soyabean Processors Association of India
- 256 Sponge Iron Manufacturers' Association
- 257 Steel Furnace Association of India
- 258 Steel Re-Rolling Mills Association
- 259 Steel Wire Manufacturers' Association Of India

- 260 Tamilnadu Small & Tiny Industries' Association
- 261 Telecom Cables Development Association
- 262 Telecom Equipment Manufacturers' Association of India
- 263 Telephone Cables Manufacturers' Association
- 264 Textile Machinery Manufacturers' Association
- 265 The All India Plastics Manufacturers' Association
- 266 The All India Toy Manufacturers' Association
- 267 The Alloy Steel Producers Association of India
- 268 The Builders Association of India
- 269 The Central Organisation For Oil Industry & Trade
- 270 The Compound Livestock Feed Manufacturers' Association of India
- 271 The Federation of Freight Forwarders in India
- 272 The Fertilizer Association of India
- 273 The Gem and Jewellery Export Promotion Council
- 274 The Indian Ferro Alloy Producers' Association
- 275 The Institute of Indian Foundrymen
- 276 The Seafood Exporters' Association of India
- 277 The Solvent Extractors' Association of India
- 278 The Sports Goods Manufacturers & Exporters' Association
- 279 The Tobacco Institute of India
- 280 The Toy Association of India
- 281 The United Planters' Association of Southern India
- 282 The Vanaspati Manufacturers' Association of India
- 283 Tinsplate Fabricators' Association
- 284 Tirupur Exporters' Association
- 285 Indian Tool & Gauge Manufacturers' Association
- 286 Tools & Gauge Manufacturers' Association Of India
- 287 Tractor Manufacturers' Association
- 288 Travel Agents' Association of India
- 289 U. P. Barbed Wire Manufacturers' Association

290 U. P. Concrete Pipe Manufacturers' Association

291 U. P. Electrical Contractors & Merchants' Association

292 U. P. Glass Manufacturers' Syndicate

293 Vanaspati Manufacturers' Association Of India

294 Vidarbha Electric Contractors' Association

295 Vidarbha Industries Association

296 Vijaywada Electric Dealers' Association

297 VSAT Service Providers' Association of India

298 Wind Power Producers' Association

299 Wiring Contractors' Association

300 Wood Furniture Makers' Association

III. Industry/trade associations having a regional focus

1 Bengal National Chamber of Commerce & Industry

2 Federation of Madras Merchants & Manufacturers' Association

3 Gandhidham Chamber of Commerce & Industry

4 Goa Chamber of Commerce and Industry

5 Gurgaon Chamber of Commerce and Industry

6 Kanara Chamber of Commerce and Industry

7 Madras Chamber of Commerce

8 Maharashtra Chamber of Commerce & Industries

9 Mumbai (Bombay) Chamber of Commerce & Industry

10 PHD Chamber of Commerce

11 Salem Chamber of Commerce

12 Southern Gujarat Chamber of Commerce and Industry (SGCCI)

13 Tamil Nadu Chamber of Commerce and Industry India

14 The Bengal Chamber of Commerce and Industry

15 The Calcutta Chamber of Commerce

16 The Cochin Chamber of Commerce & Industry

- 17 The Federation of Andhra Pradesh Chambers of Commerce and Industry
- 18 Udaipur Chamber of Commerce and Industry
- 19 The Southern India Mills Association

IV. Associations of professionals

- 1 All India Bank Employees' Association
- 2 All-India Insurance Employees' Association
- 3 Council of Architecture
- 4 Indian Association of Tour Operators
- 5 Indian Council of Architects
- 6 Indian Medical Association
- 7 Indian Nursing Council
- 8 Indian Society of Engineers
- 9 Institute of Chartered Accountants of India
- 10 Institute of Town Planners India
- 11 Medical Council of India
- 12 Pharmacy Council of India
- 13 The Institution of Engineers (India)
- 14 Veterinary Council of India
- 15 Institution of Chartered Engineers
- 16 Engineers Association of Northern India

Appendix F: Participation of industry associations in the “Board of Trade,” 1989–2004

Year	FICCI	ASSOC HAM	CII	FIEO ⁶¹	FASSI ⁶²	AIHF MCS ⁶³	Rep. T&I	Total
1989–90	✓	✓	✓	✓	✓		✓	6
1990–91	✓	✓	✓	✓	✓		✓	6
1991–92	✓	✓	✓	✓	✓		✓	6
1992–93	✓	✓	✓	✓	✓		✓	6
1993–94	✓	✓	✓	✓			✓	5
1994–95	✓	✓	✓	✓			✓	6
1995–96	✓	✓	✓	✓	✓		✓	6
1996–97	✓	✓	✓	✓	✓		✓	6
1997–98	✓	✓	✓	✓	✓		✓	6
1998–99	✓	✓	✓	✓	✓		✓	6
1999–00	✓	✓	✓	✓		✓	✓	6
2000–01	✓	✓	✓	✓		✓	✓	6
2001–02	✓	✓	✓	✓		✓	✓	6
2002–03	✓	✓	✓	✓		✓	✓	6
2003–04	✓	✓	✓	✓		✓	✓	6

Source: Compiled by the authors.

61 Federation of Indian Export Organisation, New Delhi.

62 Federation of Association of Small Industries of India.

63 All India Handloom Fabrics, Marketing Co-operative Society.

Appendix G: Autonomous bodies and subordinate offices of the Department of Commerce

Sl.no	Autonomous Bodies	Sl.no	Attached and Subordinate Offices
1	Commodity boards, (tea, coffee, rubber, spices, and tobacco)	1	Directorate-General of Foreign Trade (DGFT) (has 31 subordinate offices across the country)
5	Export Inspection Councils, New Delhi, 1963	2	Director-General of Commercial Intelligence and Statistics (DGCI&S)
3	Indian Institute of Foreign Trade, New Delhi	3	Directorate-General of Supplies & Disposals(DGS&D)
4	Indian Institute of Packaging (Mumbai)	4	Department of Industrial Policy & Promotion (DIPP)
6	Federation of Indian Export Organisation, New Delhi	5	Office of the Economic Adviser
7	Indian Council of Arbitration, New Delhi	6	Department of Explosives
8	Indian Trade Promotion Organisation (New Delhi)	7	Tariff Commission
9	Marine Product Export Development Council (Cochin)	8	Office of Development Commissioners, Export Processing Zones
10	Agriculture and Processed Food Products Export Development Authority, New Delhi	9	Office of Custodian of Enemy Property, Calcutta
11	Public Sector Undertaking (6 in numbers engaged in trading activities)	10	Export Process Zones or Special Export Zones (7 such EPZs across the country)
12	Directorate-General of Anti-Dumping & Allied Duties (set up in 1998)		
13	Indian Diamond Institute, 1978		
14	Export Promotion Board ⁶⁴		

Source: Annual Report of Department of Commerce, various years.

⁶⁴ It has a status of a advisory body and is under the Chairmanship of Cabinet Secretary to provide policy and infrastructural support through greater coordination among concerned ministries for boosting the growth of exports. It includes a large number of ministries and functions with a degree of inter-ministerial coordination and gives required impetus to the export sector as truly national priority activity.

Appendix H: Major efforts made to consult state governments and other stakeholders on WTO

Sl.	Date	Subject
1.	29th January, 30th March, 2nd June, 17th November and 24th November, 1999	Meetings of the Advisory Committee on International Trade consisting of Industrialists, NGOs, journalists of repute and experts on trade matters were held to discuss various WTO issues prior to the Seattle conference.
2.	24th June, 1999	The Commerce Minister wrote to the Chief Minister and political parties regarding inputs for mandated negotiations in agriculture & services and inputs for other WTO matters coming up at Seattle.
3.	15th November, 1999	Commerce & Industry Minister had discussions with all national-level trade union leaders on WTO issues.
4.	16, 17 & 24th November, 1999	Commerce & Industry Minister had consultations with all national-level political parties on WTO issues.
5.	January, March, April, June, 2000	Regional consultations with state governments, farmers' representatives, NGOs' etc. on agriculture and other WTO issues conducted jointly by Agriculture & Commerce Ministries.
6.	3rd February, 2000	A meeting of the Advisory Committee on International Trade was held after the Seattle Conference to discuss various WTO issues in the post-Seattle scenario.
7.	5th July, 8th August & 27th March, 2000	Meetings under the chairmanship of Special Secretary, Department of Commerce were organized with various Industry Associations namely CII, FICCI, Assocham & FIEO to discuss WTO-related issues.
8.	11th July, 2000	Special Secretary wrote to all Chief Secretaries regarding agriculture negotiations. He also wrote to Vice Chancellors of all agricultural universities for their inputs on the negotiations.

Sl.	Date	Subject
9.	30th August, 2000	National Conference on Small-scale Industries discussed impact of WTO where Commerce Ministry, jointly with Ministry of SSI, addressed state-level officials on WTO matters. This was a culmination of about 28 workshops all over the country on impact of WTO on SSIs where Commerce Ministry officials had also participated.
10.	13–14th September, 2000	The Minister of Agriculture held national-level consultations with the representatives of all political parties, farmers' organizations and NGOs on September 13, 2000. Further national level consultations were held by the Agriculture Minister with the State Food and Agriculture Ministers on September 14, 2000. Commerce Ministry officials actively participated in the consultations.
11.	17th October, 2000	Letter by Commerce & Industry Minister to chief ministers and political parties seeking inputs for agriculture negotiations.
12.	18th October, 2000	The Commerce & Industry Minister addressed WTO issues at Economic Editors' Conference.
13.	16th November, 2000	A meeting of the Sub-Group of the Advisory Committee on International Trade comprising of experts on agriculture was held.
14.	17th November, 2000	Presentations and oral evidences were made by the Department of Commerce before the Core Group on WTO of the Department-related Parliamentary Standing Committee.
15.	25th January, 2001	Letter by Commerce & Industry Minister to chief ministers and political parties enclosing India's proposals on agriculture submitted in the WTO.
16.	10th February, 2001	Seminar by Maharashtra Chambers of Commerce, Industries and Agriculture, Pune on impact of WTO on Indian industry addressed by Special Secretary, in which state government officials also participated.

Sl.	Date	Subject
17.	19th March 2001	“Workshop on WTO issues” with state/UT chief secretaries.
18.	27th March, 2001	The Special Secretary, Department of Commerce had a meeting with the industry associations (CII, FICCI, FIEO and ASSOCHAM) to discuss various WTO issues.
19.	11th May, 2001	Joint Secretary of the Department of Commerce made a presentation at Hyderabad on “WTO related issues” in which CM, AP and various officials of Government of Andhra Pradesh had participated.
20.	18th May, 2001	Joint Secretary of Department of Commerce made a presentation on WTO-related issues and Agreements on Agriculture to the Chief Minister and officials and various stakeholders at Jammu. May 21, 2001, Conference of the Chief Ministers on “WTO Agreement on Agriculture and Food Management”
21.	15th February, 2001	2001 WTO issues were discussed among other issues in the meeting of Parliamentary Consultative Committee of the Department of Commerce.
22.	12th June, 2001	Meeting of Advisory Committee on International Trade held to discuss issues related to the 4th Ministerial Conference at Doha.
23.	9th July, 2001	A meeting of industry associations (FICCI/CII/Assocham/FIEW) was held under the Chairmanship of Commerce Secretary to discuss issues relating to trade facilitation and industrial tariffs in the context of 4th Ministerial Conference.
24.	4th July, 2001	The Department of Commerce officials along with Ministry of Agriculture officials attended a sensitization workshop on WTO issues including on the Agreement on Agriculture organized by the Government of Punjab at Chandigarh.
25.	26th July, 2001	“Workshop on WTO issues” with state/UT chief secretaries.

Source: Ministry of Commerce and Industry, “India & the WTO: A Monthly Newsletter,” June-July 2001.

Consultation dilemmas: Transparency versus effectiveness in South Africa's trade policy

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1. Introduction¹

Traditionally, trade negotiations have been of particular, but not exclusive, concern to companies operating in international markets. Agreements were restricted to “border measures” impacting on trade flows, notably tariffs and non-tariff barriers. Beyond trade agreements, trade policy also included trade remedies: anti-dumping, safeguard and countervailing duty measures.

Over time, particularly in the Uruguay Round of multilateral trade negotiations, the net widened to include “behind-the-border” issues, increasingly of a regulatory nature. Thus trade agreements now include, *inter alia*, intellectual property rights, investment, services, government procurement, standards and customs administration. Consequently the trade agenda is firmly connected to domestic regulation, raising challenges for companies operating in domestic markets but also political sensitivities around perceived loss of sovereignty. The latter consideration brought trade policy and negotiations to the attention of a range of other interested groups, mostly in the form of non-government organizations (NGOs) concerned with the impact such regulatory intrusion has on domestic “policy space” (see Ostry, 2002).

In South Africa, trade policy is synonymous with trade negotiations. There is little discussion of trade policy outside of this context, and little thinking in official circles about the broader benefits of delinking trade policy from negotiated agreements. Rather, the dominant approach is to use trade negotiations for opening market access abroad for South African companies, while using reciprocity to discipline them in the domestic market. Therefore,

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the focus of this chapter is on the negotiations framework, although the recommendations consider the possible benefits of approaching trade policy outside of it and about how this could be conducted institutionally.

The paper is structured as follows:

First I place South Africa's trade policy in historical context. This is done because South Africa is in essence a country in transition with institutions in considerable flux. This section addresses key trends in trade policy. Next I outline the formal, or official, trade policy process. This relates to the central institutions governing trade policy in South Africa and their respective roles. Then I address the issue of transparency in the trade policy-making process from the standpoint of there being an unavoidable trade-off between transparency and effectiveness in trade negotiations. This section is framed within the broader imperative of promoting effectiveness in trade negotiations as the over-riding objective, while harnessing transparency to that cause. I conclude with some tentative recommendations sourced from the discussion concerning how South Africa's trade policy-making process can be improved in a manner that simultaneously enhances transparency.

2. Key trends in South Africa's trade policy

Despite having been a founding member of the General Agreement on Tariffs and Trade (GATT), South Africa is a new actor on the global stage. Much of the Apartheid government's participation in the GATT was framed within the Import Substitution Industrialization (ISI) development strategy widely pursued at the time. Viewed from the Apartheid government's perspective, it faced substantial security threats in the form of mounting economic isolation and regional insurgencies. Within this "siege mentality," these threats were compounded by decolonization in the region and associated with the emergence of "hostile" states on the frontier.² Therefore, the ISI model extended to the establishment of strategic industries with military and security considerations paramount. Accordingly, openness to trade was not really on the agenda, even though the ruling party realized—in the face of mounting domestic economic problems in the late 1970s and 1980s—that export orientation and associated openness were becoming imperative (see Bell, 1997). Consequently, South Africa's conduct in the GATT could best be characterized as defensive.

This framework altered in crucial respects in the late 1980s as moves towards a political settlement gathered pace. A new consensus-seeking bargaining structure was established in the form of the National Economic Forum

2 In truth the Apartheid state was much more of a threat to its neighbours than vice versa.

(NEF). This grouped key players in business, the unions and the liberation movement for discussions on economic policy issues. These developments took place as the Uruguay Round unfolded. Unfortunately, the history of this period has not been written, so little is known about the bargains that were struck. However, this period was marked by deep thinking on trade and industrial policy matters, particularly on the part of the liberation movement (Macro-economic Research Group, 1993; Joffe *et al.*, 1993). It is clear that South Africa committed to a major overhaul (simplification and liberalization) of its complex tariff regime, and signed on to the Single Undertaking. Special and differential treatment (SDT) did not play a role during this period owing to the fact that the Apartheid government considered South Africa a developed country in the GATT context and more generally. Undergirding South Africa's commitments and participation in the Uruguay Round was the strong need to overcome the isolation of the 1980s and the need to promote economic competitiveness in a context of economic stagnation.

International competitiveness and reintegration into the global economy became crucial pillars of the African National Congress (ANC) government's policy as it turned its back on more statist forms of economic policy in the wake of the first rand crisis in 1996.³ This culminated in more rapid liberalization of tariffs than required in terms of South Africa's GATT bindings.⁴ Bell (1997: 84) speculates that this may have been made possible through an implicit bargain struck between the powerful trade union federation, the Congress of South African Trade Unions (COSATU), which played such a critical role in the political transition, and the ANC. This envisaged COSATU's acquiescence in the tariff liberalization strategy in return for which they were rewarded through the institutionalization of the structured bargaining model pioneered by the NEF in the form of the National Economic Development & Labour Council (Nedlac). Nedlac continues to play an important role in the formulation of negotiating positions for trade negotiations (discussed below).

Given that the Uruguay Round was complete when the ANC came to power in 1994, the trade liberalization trajectory turned to bilateral and regional

3 For a useful summary of South Africa's trade strategy in this period see Cassim, Rashad and Harry Zarenda, 2004, "South Africa's Trade Policy Paradigm" in Elizabeth Sidiropoulos (ed.) *Apartheid Past, Renaissance Future – South Africa's Foreign Policy: 1994–2004*. Johannesburg: South African Institute of International Affairs.

4 However, it was accompanied by a dramatic increase in the use of anti-dumping as an instrument of protection, although countervailing duties and safeguards have hardly been employed.

tracks.⁵ Unilateral trade liberalization has not been seriously on the agenda since. Rather, adjustments to the Most Favoured Nation (MFN) tariff regime have been left to the Doha Round of multilateral trade negotiations. The most important objective in the Doha Round is to solve the agricultural subsidies puzzle first, before moving onto other areas. Therefore, the G20 alliance was a natural one. South Africa is also a member of the Cairns Group, with its market access focus. That is important, but hardly critical, to South Africa's export trajectory, accounting for a small proportion (approximately 10 per cent) of the overall export basket, while agriculture constitutes a small proportion of GDP. Of far greater importance is securing access to markets for South Africa's intermediate manufacturing exports, and liberalization of services sectors in African markets in particular. These interests are opposed to those of the G90⁶ which favours continued preferential access to developed country markets.⁷ SDT and the implementation agenda—priorities for the G90—have received differing levels of support, with the emphasis being on the former rather than the latter.

After the first democratic elections in 1994, relations with the EU were high on the agenda, given the preponderance of EU markets in South Africa's export basket. When the new government realized that the EU was not going to grant it full access to Lomé preferences, it opted instead to negotiate a comprehensive agreement covering trade, aid and political cooperation.⁸ After six years of difficult negotiations, the final agreement covered "substantially all trade" and was asymmetrical in two respects: EU markets were opened first, and to approximately 95 per cent of South African exports, versus 86 per cent in return (Bertelsman-Scott, Mills and Sidiropoulos, 2000). This experience, and the new government's policy trajectory in support of developing countries, constituted a substantive shift from the previous government's general approach to trade negotiations.

The process of negotiations⁹ turned out to be divisive, notably the EU's decision not to include South Africa's customs union partners in its negotiating

5 Although it should be noted that, in common with many developing countries in this period, South Africa implemented faster and deeper tariff cuts in this period owing to its Uruguay Round commitments.

6 In which the Africa group is a critical constituency.

7 See former Trade Minister Alec Erwin's speech to Parliament on the outcomes of the 5th Ministerial Meeting of the WTO on September 26th, 2003.

8 Signed in October 1999, this was known as the Trade, Development and Cooperation Agreement.

9 For a detailed analysis of the structures and institutions associated with the negotiations process see Bilal, San and Geert Laporte, 2004, "How Did David Prepare to Talk to Goliath? South Africa's Experience of Trade Negotiations with the EU," ECDPM. Available at: <http://www.ecdpm.org>.

mandate. Furthermore, many members of the African, Caribbean and Pacific (ACP) group of states were concerned about the precedent this agreement set for the future of their relations with the EU—correctly, as it turns out, given the unfolding Economic Partnership Agreements (EPAs) negotiations taking place under the Cotonou Convention.

The second pillar of the regional/bilateral strategy included negotiations with the countries of the Southern African Development Community (SADC) to form a free trade agreement (FTA). Approximately one-third of South Africa's manufacturing exports go to SADC countries, hence locking in market access was a key motivation. Once again, these negotiations proved divisive, given the presence in the region of the Common Market for Southern and Eastern African States (COMESA) and associated overlap in memberships. South Africa's decision to opt for SADC over COMESA was widely resented by many countries in the region, which came to the view that the South African government simply wanted to work with a grouping it could dominate.¹⁰ This experience, coupled with the South African government's subsequent support for launching the new round of multilateral negotiations at Doha—notwithstanding generalized resistance in the Africa Group—and the estrangement of South Africa's customs union partners in the EU negotiations has bequeathed a legacy of mistrust of the South African government's intentions in the region.¹¹

Nonetheless, the FTA was concluded in 2000, and was also asymmetrical along the lines of the negotiations with the EU, with the exception that South Africa opened first and more comprehensively with many countries in the region, back loading their liberalization schedules. This has led to a substantial tariff phase-down. There have also been attempts to commence negotiations on trade in services, although these have yet to get off the ground.

However, there is a view that liberalization through the FTA has been offset by strict rules of origin in particular sectors in South Africa (Flatters, 2002). Furthermore, much work remains to be done in the area of trade facilitation, and institutional capacity in the region is very weak.

10 The Department of Trade and Industry (dti) points out that there is more to this choice than meets the eye, notably the plethora of regional integration arrangements in Eastern and Southern Africa and the need to promote regional coherence. Critics retort that South Africa's choice to join SADC and not COMESA compounded this problem.

11 In research we have conducted into regional preparations for Economic Partnership Agreement negotiations with the EU these sentiments were clearly in evidence. See Bertelsman-Scott, Talitha, 2004, "The Impact of Economic Partnership Agreement Negotiations on Southern Africa," *SAIIA Trade Policy Working Paper*. No. 2. Available at: <http://saiaa.org.za/images/upload/EPA%20Working%20Paper%20final.pdf>.

There is also considerable confusion amongst SADC member states arising from the possible formation of a COMESA customs union, in which several SADC states are members. If this plan goes ahead¹² it could cause regional realignments and create confusion over implementation of the SADC FTA in the new customs union.¹³ Therefore, it remains to be seen whether SADC member states will be able to take full advantage of the tariff concessions obtained to date.

Further afield, the Department of Trade and Industry (dti) is considering its trade diplomacy towards Sub-Saharan Africa (SSA). A number of inter-linked strategic options have been on the table for some time (see Carim, 2003):

- a. unilateral extension of bilateral preferences, possibly linked to import promotion schemes supported by tailored financial assistance packages;
- b. based on an understanding that recipients would reciprocate after a given transitional period, thus creating a network of bilateral FTAs;
- c. individual country accessions to existing regional arrangements, notably an expansion of the Southern African Customs Union (SACU, discussed below);
- d. reciprocal exchanges of preferences on a trade bloc-to-bloc basis; and
- e. an all-Africa free trade area, as envisaged in the Abuja treaty¹⁴ and carried over into the African Union.

There has been little public debate about the merits of this framework. So it remains to be seen how far it will be taken.

This regional agenda is complicated by the role external partners' play in the region, especially the EU¹⁵ and the U.S. Given that SSA exports are destined predominantly for these markets, EU and U.S. trade strategy towards the region is particularly important. Both the EU (through EPAs) and the U.S. intend to extend these FTAs to other partners in the region. But which partners should they choose? Given the confusing overlap of regional integration

12 Apparently it has been "indefinitely postponed," but we shall see.

13 Assuming a common external tariff is to be developed for COMESA, this could require re-negotiating the SADC agreement.

14 Signed in 1991 at the OAU meeting in Abuja, it envisaged the creation of an African Economic Community by 2025.

15 With regards to the EU, the outcomes of EPA negotiations with ACP countries in terms of the Cotonou Agreement seem poised to fundamentally change the pace and nature of regional integration processes in Africa.

schemes, this is not an easy choice to make. Furthermore, as these processes unfold, they could pose strategic threats to South African exporters in the region. Consequently, the South African government is carefully considering its regional options, notably with respect to SACU (discussed in Section 3).

In recent years, this has coincided to some extent with South Africa's trade strategy, resulting in South Africa negotiating bilateral FTAs. At the dawn of the new millennium, a third pillar of the bilateral/regional strategy opened up: that of FTA negotiations with key partners. This is broadly guided by the dti's "Global Economic Strategy," (Ismail, Draper and Carim, 2000) and is divided into two tracks: first the U.S., the European Free Trade Association (EFTA) and MERCOSUR; second India, China and Nigeria.

Track one is currently underway. The MERCOSUR negotiations were completed in December 2004, while the EFTA negotiations are close to completion. However, negotiations with the U.S. have run into serious difficulties (Draper and Soko, 2004; Draper, 2004b). This reflects serious differences between South Africa and the U.S. concerning trade liberalization in general and the U.S.'s "WTO-plus" approach to trade negotiations. To some extent, it also reflects the South African government's desire, in common with Brazil, to pursue strong alliances with key developing countries in order to balance U.S. power. At the time of writing, track two is expected to commence sometime in 2005.

In closing, it is important to note that trade negotiations in South Africa have become increasingly intertwined with foreign policy. In the multilateral system, for example, the foreign policy imperative revolves around how to mesh South Africa's economic interests with the conflicting economic interests of the Africa group given that resolving Africa's problems is the central foreign policy terrain. These dynamics inevitably narrow the space for discussion on trade policy on its own merits, as distinct from trade negotiations.

3. The trade policy process

In Section 3, I focus on the official structures responsible for the trade policy process in South Africa. In the next section, I widen the scope to non-official actors, within the context of an analysis of the requirements for conducting effective trade negotiations.

In South Africa, the executive branch is solely responsible for trade policy formulation and negotiating international trade agreements. Other branches of government, notably Parliament and the provinces (represented in Parliament's second Chamber—the Council of Provinces), play a role in approving international trade agreements, depending on the agreement's

nature.¹⁶ This is an important component of the negotiation process, as failure to ratify could completely undermine carefully constructed international trade treaties.¹⁷ Presumably Parliament could refuse to ratify a trade agreement, but in practice this has not been tested. Yet from the standpoint of promoting effectiveness and transparency in the trade policy process, Parliament could be doing much more (see below). Nedlac, on the other hand, plays a key role in preparing specific negotiating positions (also discussed below), although the nature of that role is open to question.

In the executive, the dti is the lead department in the formulation and implementation of trade policy.¹⁸ It has a range of institutions at its disposal, notably the International Trade and Economic Development Division (ITED), which handles negotiations; the recently-established International Trade Administration Commission (ITAC, formerly the Board of Tariffs and Trade), which administers trade policy; and Trade and Investment South Africa, which promotes exports and investment. In practice ITED plays the central role in trade policy formulation. However, it has severe capacity constraints at two levels: insufficient staff numbers; and insufficient institutional experience of trade negotiations compared to most of its negotiating partners.

Historically, the Department of Foreign Affairs (DFA) has played a marginal role in trade policy formulation owing to lack of capacity. This has been a source of considerable tension between the dti and DFA. Its formal role is restricted to advising the dti negotiators on the content of specific negotiations, particularly from the foreign policy perspective; and reviewing agreements for their consistency with South Africa's international obligations.

16 I am busy clarifying this matter. The Constitution, specifically Section 231, is ambiguous on it. For example, Section 231(3) identifies four kinds of agreement not requiring Parliament's approval, leaving a fifth category requiring it. But precisely what fits into the fifth category is not stated. Furthermore, in the new SACU Agreement (see below), Article 41 provides for the parties to negotiate annexes which will cover many legal issues. However, in South Africa's case the executive will probably not be required to submit the annexes to Parliament as they will be considered "subordinate legislation" (Section 239 of the Constitution)—which does not require Parliament's approval. Altogether the legal issues at play here are complex and have not been tested in the courts, hence the lack of clarity.

17 For an interesting analysis of this issue see Odel, J. S., 2000, *Negotiating the World Economy*. New York: Cornell University Press, Ch 8. In the U.S. this problem led to the establishment of modern institutions charged with building negotiating positions and forging consensus over them.

18 For more details on the institutional management of South Africa's trade strategy and an analysis of the strategy itself see Draper, Peter, 2003, "To Liberalize or Not to Liberalize: A Review of the South African Government's Trade Strategy," *SALIA Trade Policy Report*. No. 1. Available at: www.saiia.org.za.

That said, it is clear that DFA sees itself at the centre of trade negotiations, and is increasingly active on this front. This seems to be supported by the Minister of Foreign Affairs—a powerful player in the ruling ANC government—and is therefore unlikely to be a transitory phenomenon. At the time of writing, DFA has appointed a number of former dti officials to key positions, and is generally building capacity in trade policy and negotiations. Consequently, tensions are on the rise in this traditionally contentious relationship, with unpredictable consequences.

The Justice Department reviews trade agreements for their consistency with the Constitution. This is a relatively perfunctory role, with no real power associated with it.

The Department of Agriculture (NDA) is an important actor in trade policy formulation. This particularly applies in the regional context, where agriculture is a central concern to most Southern African Development Community (SADC) states. NDA is in fact the best-organized department. It has a well-established consultative mechanism in the form of the Agricultural Trade Forum, which essentially brings department officials and industry players together on a regular basis to discuss trade negotiations. The forum plays a critical role in formulating positions on agricultural trade—the bedrock of any trade agreement. The department also has long-established linkages with university-based research organizations, particularly agricultural economists at the Universities of Pretoria, the Free State and Stellenbosch.

The National Treasury theoretically plays an important role in maintaining pressure on the dti and other specialized departments for ongoing liberalization. In practice it hasn't really played this role, rather deferring to the dti's active trade negotiations agenda.¹⁹ However, it has a broader interest in trade matters—especially within the African context—given the linkages between trade and debt. This is a persistent theme in the Treasury's international economic diplomacy and may promote more active intervention on their part down the line.²⁰ Another area of potential interest is international currency

19 Apparently the dti has argued that it should not give away bargaining chips through unilateral trade reform, saving these rather for its extensive negotiations agenda.

20 See Brock, Karen and Rosemary McGee, 2004, "Mapping Trade Policy: Understanding the Challenges of Civil Society Participation," IDS Working Paper no. 225, for a compelling analysis underpinning my contention that the Treasury will increasingly have to involve itself in trade matters. Note especially their observation that actors within the development policy arena—with their focus on poverty reduction—are increasingly "intruding" into trade policy issues. The most evident form this takes is "mainstreaming" trade into poverty reduction strategy papers that countries negotiate with the multilateral financial institutions. In Southern Africa—a key terrain for the South African government—many countries are involved in such processes.

alignments and their implications for trade policy and negotiations. Yet until the Treasury builds sufficient capacity to seriously take these issues on it is not likely to be a serious player on the trade agenda.²¹

The Presidency is increasingly active in trying to coordinate activities between various departments through the “cluster” system.²² This groups key ministries together in a high-level effort to coordinate policy initiatives among them. Two clusters are relevant to international trade negotiations: the economics and investment cluster, focusing on domestic economic policy coordination; and the International Relations, Peace and Security (IRPS) Cluster covering all external engagements including trade negotiations. The former has a bearing on industrial strategy (discussed below) while the latter theoretically coordinates negotiating positions.²³ According to a number of non-dti government officials, the dti in practice primarily uses the latter to report to other government departments on its negotiating activities rather than to consult them. This view is not supported by the dti itself.

In Section 2 I outlined the broad strategic framework guiding South Africa’s trade negotiations agenda. Now I consider the thinking driving its approach towards the content of ensuing negotiations. This is to be found in various strands of thinking and debate concerning industrial strategy.

During the transition to democratic rule and beyond, the liberation movement engaged in robust debate about the direction industrial strategy should take. In the end a multi-faceted approach was adopted, incorporating supply-side measures and resource-based projects as the two central features. These policy thrusts culminated in a raft of tailored supply-side incentive

21 In this respect the South African Treasury’s relatively minor role in the trade-policy process seems to contrast sharply with the scenario that Brock and McGee (2004) sketch out with respect to other Sub-Saharan African countries. They argue—and anecdotal evidence is supportive of this—that finance ministries in the region drive trade policy decisions through their engagements with donors in Poverty Reduction Strategy Paper (PRSP) processes. As South Africa is not party to a PRSP process, this is perhaps not surprising.

22 It lacks capacity to formulate its own trade agenda, but arguably has sufficient high level political authority to play a coordinating role or, if nothing else, to mediate tensions between the dti and DFA.

23 Last year the dti sought and obtained Cabinet sanction to establish an intra-governmental trade negotiations forum. Anecdotal evidence suggests that this forum has yet to really establish itself as the fulcrum for coordinating government positions in trade negotiations. Therefore the IRPS cluster is still the basis for intra-government discussions over trade negotiations.

packages,²⁴ and a separately designed program around “spatial development initiatives.”²⁵

Both approaches have since been superseded, although not discarded altogether, by the Integrated Manufacturing Strategy (IMS) (Department of Trade and Industry, 2002). This strategy is a distillation of work previously conducted by the dti, and the deliberations of the cabinet economic and investment “cluster” culminating in the micro-economic reform strategy. The latter identified a number of sectors for targeted policy formulation, as well as key enablers of growth such as transport and telecommunications infrastructure. The IMS expanded on the number of sectors, identifying the value-chain methodology as the preferred approach to formulating detailed sector strategies for each.²⁶ The “cross-cutting enablers” were also targeted with a view to building policies for each, mostly in partnership with other government departments and agencies.²⁷ So those in charge of formulating policy for each targeted sector must take account of a range of objectives and generic drivers of growth.

Policy-makers in the dti have tried for several years to develop focused sector strategies and policies.²⁸ This has proven to be a complex undertaking, with mixed results. The automotive industry is frequently cited as a success story, forming a key reference point for other sectors. Here the motor industry development plan (MIDP) has been a key factor in the industry’s export success in recent years. Understandably, therefore, there is a desire to replicate this success in the other targeted sectors. However, this is very difficult to do as sectors have their own dynamics. In the case of the automotive industry, multinational corporations (MNCs) are completely dominant, and

24 At the risk of over-simplification, these generally focused on innovation enhancement and skills development. At the core of this approach is knowledge-upgrading as the basis for competitiveness.

25 These are geographically-defined development programs driven by projects designed by the central government in cooperation with provincial and local governments. “Anchor projects” were central to this approach, and were generally based on minerals or agricultural resources. These were generally export-orientated. Supportive infrastructure development was another key feature. This program was also extended into the region, most famously in the case of the Maputo development corridor.

26 The dti identifies 10 sectors: clothing and textiles; mining, metals and minerals; automobiles and transport; chemicals; tourism; agriculture; information and communications technology; cultural industries; services; and aerospace. See “the dti Medium-Term Strategy Framework, 2003–2006,” March 2003.

27 The key problem for the dti here is that it does not directly control the policy levers in many areas, such as telecommunications and biotechnology.

28 Several approaches have been used, inter alia, the cluster approach, Porter’s competitiveness “diamond,” value-chains, and at one stage “value-chain matrices.”

are central participants in the MIDP's design. Furthermore, there are doubts about the MIDP's WTO-compatibility. More broadly, the rapid turnover of personnel in the dti has militated against sustained strategy formulation and implementation for other sectors. In addition, the demands on sector units in terms of the scope of the objectives they must pursue are increasing all the time.

This raises complex questions about the interaction between trade and industrial policy. Effective trade negotiations should be an extension of coherent, focused, industrial strategy. In turn, sector strategies must be based on the sectors' integration into the global economy in light of the strong probability that this will increase over time. So opening up access to key markets abroad, and increasing the competitiveness of domestic markets, should be the premise of industrial strategy. And the process of doing so has complex feedback effects into industrial strategy. Yet owing to the limitations of the actual experience of the sector approach noted above, these issues have not really been embedded in dti practice to date. Perhaps one solution to this conundrum is to focus on overall liberalization of the tariff regime while appropriate capacity is built in the sector units, assuming this can be done.²⁹ The former would, in any event, yield considerable economic benefits while avoiding well-known problems associated with trade diversion and the administration of a multiplicity of complex institutional arrangements associated with different agreements.

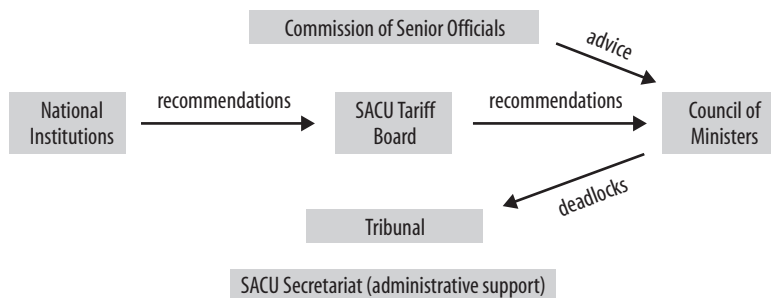
Furthermore, South Africa's trade strategy now has to pay close attention to the country's partners in the Southern African Customs Union (SACU), as the new SACU agreement came into force in July 2004. This agreement is of historic significance in that it commits South Africa to effectively ceding sovereignty over trade policy formulation and implementation to new supranational institutions, which have yet to be established (see Figure 1). In essence, all decisions over tariffs and trade remedies will be taken at the SACU level by a Council of Ministers,³⁰ advised in turn by a new SACU tariff body and a commission of senior officials. National institutions (ITAC, in South Africa's case) will merely provide recommendations to the supranational structures on the basis of investigations the former conduct. So SACU will

29 The parallels with Brazil are striking. See da Motta Veiga, Pedro, 2002, "Trade Policy-Making in Brazil: Transition Paths," in Inter-American Development Bank. As he notes, there has been an ongoing battle in the Brazilian government between a new variant of ISI represented by the sector approach and liberalizers interested in overall trade liberalization.

30 Historically finance ministers constituted the council, given the dominance of revenue issues in SACU. Now both trade and finance ministers participate in the council, while trade ministers schedule additional focused meetings on broader economic and trade issues.

potentially be fully involved in all current and future negotiations. This is a clear break from historical practice whereby South Africa made decisions on all tariff matters unilaterally.

Figure 1: The new SACU.



This raises interesting questions about decision-making and relative power regarding the determination of South Africa's trade policy. If faithfully implemented, SACU decision-making will be democratized, with uncertain consequences regarding the future course of South Africa's trade strategy. However, it is worth recalling an anecdote sourced from MERCOSUR. There they have a saying: "MERCOSUR operates on the basis of consensus. But there cannot be consensus without Brazil!" Given South Africa's centrality to the new revenue-sharing formula through which the BLNS countries (Botswana, Lesotho, Namibia and Swaziland) will continue to be subsidized, and South Africa's economic dominance in SACU, it is unlikely that anything substantially different will occur here. Therefore, unless there is some reorganization of institutional capacity within South Africa, for example a much talked about merger between the DFA and the trade divisions of the dti, it is difficult to see the dti's role in trade policy formulation diminishing.

The new SACU agreement does not represent a substantial step forward regarding further liberalization of trade and deeper economic integration within SACU (Kirk and Stern, 2003). Notably, it only covers trade in goods, excluding trade in services. Furthermore, the BLNS have an interest in retaining high tariffs given their dependence on customs revenues. This could potentially provide a convenient smokescreen behind which South African negotiators could hide should the South African government wish to prevent further liberalization. That may have negative implications for SSA countries seeking greater access to the South African market. Nonetheless, in the unlikely event of the South African government opting for substantial liberalization, this is unlikely to be an insurmountable obstacle given the power disparities noted above.

Partly owing to the increasing involvement of external powers in the region (see Section 2) the South African government is interested in expanding SACU. Currently Mozambique is considering its options in this respect. An expanded SACU could absorb SADC, or even parts of COMESA, if it works well. However political differences within the region are likely to delay this agenda. Nonetheless it is an arena deserving closer attention.

4. Transparency versus effectiveness in trade negotiations

There is undoubtedly a trade-off between transparency and effectiveness in trade negotiations owing to the commercial sensitivity of the latter. For small developing countries such as South Africa, given the scope and complexity of the trade negotiations agenda and its potentially far-reaching implications, the first prize should be effectiveness. Ideally this should be achieved through a transparent and inclusive process. However, as I spell out below there are substantial shortcomings in the effectiveness of “SA Inc.’s” negotiating effort which condition the possibility for transparency.³¹

Effectiveness in trade negotiations is derived from at least four interrelated sources (see Drahos, 2003)³²

- a. market power;
- b. enrolment power;
- c. commercial intelligence networks; and
- d. domestic institutions.

Market power

Market power refers to a country’s economic preponderance, both overall and in particular industries. Clearly, South Africa is not a major economic power, although significant in its region. While the government does wield substantial diplomatic power given its dominant economic position in the

31 This problem is not unique to South Africa. In the WTO, Member States must confront the “free rider” problem pertaining to transparency. For example, in services negotiations there is an incentive for Members not to publish their requests of other Members as the rest of the membership can “piggy-back” on those requests without doing any work themselves. This limits the overall efficiency of the negotiating process whilst at the same time undermining transparency.

32 See Drahos, P., 2003. “When the Weak Bargain with the Strong: Trade Negotiations in the WTO.”

region, this does not translate into market power abroad. Therefore, in multilateral negotiations, South Africa is forced to seek alliances like all WTO Members. Yet capacity constraints in key government departments, coupled with coordination failures, inhibit the country's ability to drive such alliances. And in bilateral negotiations South Africa is at a significant disadvantage relative to larger partners, including big developing countries.

Enrolment power

“Enrolment power” refers to the ability of the state to enlist other actors, both domestically and internationally, to its “team” for the purpose of prosecuting a trade negotiation.³³ This does take place to some extent, notably through relations with a few domestic and international civil society organizations, but arguably not to the same extent as countries in the North. Within this framework, transparency could be critical for the dti, given its resource constraints and the need to source analysis and information from outside its ranks. Such partnerships could be enhanced through transparent consultative mechanisms in which external institutions would likely contribute their knowledge if they felt it was being seriously considered.

Most prominent amongst civil society organizations active in the South African trade policy arena is Trade and Industrial Policy Strategies (TIPS). Specifically established to lend research support to the dti, TIPS conducts essentially quantitative studies of trade flows and associated tariff structures to support various negotiations. It is increasingly active on the sector strategy front, although much of its work now is conducted with the presidency, not the dti. Furthermore, through its network of university-based researchers it is well-placed to harness high-level knowledge to drive the broader trade-policy debate.

Two other civil society institutions are active in the South African context: the Trade Law Centre for Southern Africa (tralac) and the South African Institute of International Affairs (SAIIA), with which the author is affiliated. The former is essentially a regional institute, with an extensive network. It works quite closely with various regional governments and institutions. It also conducts courses on various aspects of trade law, and consequently plays an active role in capacity building. It has conducted some work for the dti, and regularly produces briefings and reports, and conducts public seminars

33 Given the increasing presence of NGOs in debates concerning global economic governance there is a clear trend towards expansion of traditional economic diplomacy to the creation and management of “coalitions of public and private sector actors.” See Hocking, Brian, 2004, “Changing the Terms of Trade Policy-making: From the “Club” to the “Multi-stakeholder’ Model,” *World Trade Review*. Vol. 3(1):3–26.

on various trade topics. SAIIA plays a similar role, although its media profile in South Africa is substantially higher than *tralac*'s. SAIIA's approach, in addition to producing publications, is to actively disseminate information in the form of opinion pieces, interviews, roundtables and the like.

Other issue-based civil society organizations, notably the Treatment Action Campaign (TAC), are now emerging to make their contribution to the trade debate. The TAC is particularly concerned with intellectual property rights provisions in bilateral negotiations with developed countries, especially the U.S. They have an adversarial relationship with government, notably the Health Department, owing to their vigorous (and ultimately successful) challenges to governments' AIDS treatment strategy. This history of activism is evident in their approach to the trade debate. Other NGOs, such as the anti-globalization group the Alternative Information and Development Centre (AIDC), are vocal but their message is generally not well-received by government. They are particularly critical of the dti whose efforts to consult are labelled perfunctory.³⁴ Furthermore, international, especially U.K.-based, NGOs are in the process of establishing a presence in Southern Africa in the trade policy debate.³⁵

Yet the problem all civil society organizations face is the lack of absorptive capacity in the dti. A glaring deficiency is the absence of a strong, well-resourced research capability in the dti. Such state capacity as exists in, notably, the Industrial Development Corporation and the International Trade Administration Commission, is not at the ready disposal of trade negotiators. Given the dti's capacity constraints, it is not surprising that it is difficult for them to actively engage with outside institutions. This can be very frustrating for all outsiders. Consequently, the extent to which civil society policy suggestions or strategic advice are taken on board is not clear. This is compounded by, in some quarters of the dti, an evident sensitivity to external criticism. Perhaps understandably, for the purposes of this chapter, interactions that do take place with civil society organizations are approached instrumentally, more from the enrolment perspective than out of interest for transparency.³⁶ Most likely these problems are not unique to South Africa.

34 Before WTO ministerial meetings the dti organizes a consultative forum, allowing many different groups to put their views across over a two-day period. Clearly two days are not enough to change policy—that needs to be an ongoing process. The AIDC asserts that because the dti doesn't like its message it does not engage with them consistently and therefore its policy recommendations are ignored.

35 Oxfam and Christian Aid in particular.

36 To be clear: I am not suggesting that the dti is deliberately obfuscatory, but rather that its lack of capacity relative to its huge negotiations agenda constrains the scope for "transparency engagements."

Commercial intelligence networks

Organs of the state traditionally possess some of this capability, notably via networks of foreign economic offices and political missions. Organisation for Economic Co-operation and Development (OECD) countries pay great attention to this aspect of their overseas diplomatic functions (Calof and Skinner, 2001; Ikeya and Ishikawa, 2001). An example is the U.S. diplomatic operation in South Africa, in which approximately 20 U.S. government agencies are represented.³⁷ Similarly, the Japanese have an extensive commercial intelligence gathering apparatus, notably the Japan External Trade Organization.³⁸

Of more importance are corporate intelligence networks and associated market analysis. Given that trade negotiations alter the playing field, generating winners and losers, it is to be expected that companies actively track them not least as part of a normal intelligence effort. In large multinational companies intelligence work is increasingly being conducted by dedicated intelligence units, underpinned by the rapidly growing discipline of competitive intelligence.³⁹

The extent to which government and business structures cooperate to share intelligence to develop positions for trade negotiations is critical. Organized business has an important role to play here (International Trade Centre, 2002); while government must be both receptive and able to absorb inputs emanating from the business community. While such interactions have potential to be closed to outsiders, i.e., “rent-seeking” in nature, they are nonetheless an indispensable component of the trade negotiators’ armament.

The unification of organized business in South Africa was recently completed but remnants of the fragmentation of the past still have to be overcome if business is to play a central role in this process. Crucially, in organized business there is no obvious centre of trade policy analysis, reflecting the fact that trade negotiations are low down the priority list. Compounding this, government-business collaboration in preparing negotiating positions is haphazard at best. Currently, such coordination that does take place is infrequent, narrowly sector-based, and focused on mission-limited forums, (see “Domestic institutions” below).

37 And arguably supported by the American Chamber of Commerce based in Johannesburg.

38 Which collaborates closely with the Japanese Chamber of Commerce and Industry in South Africa.

39 This field is particularly active in the U.S., but is growing rapidly in other OECD countries. For more details see <http://www.scip.org>. A useful primer is Bernhardt, D.C., 2002, “Strategic Intelligence: The ‘Sword and the Shield’ of the Enterprise,” *Competitive Intelligence Magazine*. Vol. 5(5): September-October.

Furthermore, the constant state of flux in the dti's sector programs inhibits the development of clinically targeted negotiating positions. An apparent lack of coordination between Export Councils and trade negotiators reflects these problems, although it seems that steps are being taken to address this. Furthermore, it is widely recognized that the South African government's overseas offices are not operating optimally to fulfill their commercial intelligence function, let alone provide basic services to South African business. In some measure, this arises from differences between the dti and the DFA over authority and responsibilities abroad.

Domestic institutions

“Domestic institutions” refers to the support structures or frameworks within which mobilization for trade negotiations takes place. In South Africa, Nedlac and Parliament are the key institutions concerned with trade negotiations outside the executive. It is my contention that these are not operating optimally from the viewpoint of promoting effective participation in trade negotiations.

In Section 3, it was noted that Parliament does not play a critical role in the formulation of negotiating positions. This is largely a function of South Africa's political economy, in which the executive plays a dominant role.⁴⁰ Yet Parliament is increasingly interested in interrogating legislation emanating from the executive, and there have been instances of wholesale change to such legislation.

Furthermore, Parliament could make a substantial contribution to encouraging public debate on trade policy and negotiations.⁴¹ Indeed it has a mandate to do so, laid out in Sections 59 and 72 of the Constitution. Section 59 is worth quoting (*italics added for emphasis*):

40 This arises owing to the confluence of two political factors: the ruling party's electoral dominance (70 per cent of the national vote at the last elections) and the party-list system. The former speaks for itself, whilst the latter ensures party bosses control party members in Parliament.

41 Unfortunately, despite repeated requests, I have yet to secure a meeting with the Chairperson of Parliament's Trade and Industry Committee. Committee members from the Democratic Alliance—the official opposition—have been very keen to express their views though. In essence they argue that Parliamentary processes are not respected by the ruling party, for example in the time allocated to different parties to present their positions on legislation. Rather than allow for open debate, they allege that the ruling party allots time proportionate to each parties' share of the national vote at the last elections. Given that the ANC won nearly 70 per cent, it is clear that such an approach would not be tolerant of dissenting views.

(1) The National Assembly *must*:

- (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken:
 - i) to regulate public access...
 - ii) to provide for... where appropriate... the refusal of entry or the removal of any person.

(2) *The National Assembly may not exclude the public, including the media from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.*

Encouragingly, Parliament publishes minutes of its committee meetings, which are frequently addressed by senior dti negotiators. Interestingly, those minutes are the only official documentation pertaining to South Africa's trade negotiations publicly available (online in this case). While the dti does hold regular press briefings on trade negotiations, and sometimes issues calls for interested parties to make submissions to trade negotiations via the government gazette, the dti Web site contains no official documentation—including previously concluded agreements. Furthermore, requests for information from the dti often go unacknowledged;⁴² and this in a country that boasts a modern “Promotion of Access to Information” Act (2000).⁴³

Nedlac's mandated role is to build consensus on key policy issues and, in pursuit of this, to review legislation emanating from the executive. It represents four constituencies: government; labour; business; and “community.”⁴⁴ The Nedlac Act requires that legislation be referred to it for consideration prior to being submitted to Parliament. However, government patchily observes this, and the institution's future is in some doubt.

42 Thus nearly six months after requesting a copy of the “framework agreement” concluded between South Africa and India I am still waiting to get a copy of this document. My requests have not been formally acknowledged.

43 Recently an international NGO—the Open Society Institute—surveyed South African government departments as part of an international comparative study to establish the extent to which they complied with this act. The results were shocking, to say the least. South Africa performed worse than Armenia and Macedonia. See Calland, Richard, 2004, “SA Fails the Right to Know,” *Mail and Guardian*. September 24 to 30, 2004.

44 Nobody is quite clear as to exactly what this label means, nor whom it purports to represent.

In theory, Nedlac performs an important political function; and to the extent that it can build consensus between business, government and labour on the broad trade negotiations agenda and its potential impact on the economy, it could play a valuable role. The dti is certainly making an effort to strengthen Nedlac's role in formulating positions for trade negotiations. Partly this would be based on aligning the dti's sector programs with Nedlac's sector structures, assuming this could be accomplished.

Yet it is questionable whether Nedlac is an appropriate forum to source the kind of commercial intelligence required to support an offensive trade negotiations agenda. Trade unions, which are very active in Nedlac, by their very nature seek to protect their members and hence would most likely view market openings via trade negotiations in a dim light. Undoubtedly they have a valuable role to play in the consensus-seeking process on the broad trade negotiations agenda. However, they are not in a position to develop offensive interests for trade negotiations given that they are not in control of corporate strategy. So when it comes to the competitive intelligence detail crucial to formulating offensive negotiating positions, business must be in the driver's seat, while emphasizing areas of common interest with other constituencies. Yet a substantial proportion of the business interests represented in Nedlac are also concerned with shielding their sectors from competition. Consequently Nedlac's consensus-seeking mechanism, which is intended to converge towards the lowest common denominator, culminates in a disproportionately defensive agenda.⁴⁵

Furthermore, this forum groups organized business and labour together with government, in this case to formulate negotiating positions. The risk of the former two colluding to protect their markets is high, particularly where government, specifically the dti, has insufficient capacity to interrogate outcomes generated through Nedlac. And Nedlac's deliberations are conducted behind closed doors, with each member signing a confidentiality agreement. This is arguably necessary to protect commercially-sensitive information in

45 Clearly defensive positions are critical to a trade negotiations process. The argument here is not that we shouldn't have a defensive agenda, but rather that the dti should be putting far more effort into building up an offensive agenda. This is a classic dilemma in trade negotiations—defensive interests tend to be far better organized than opportunity-minded ones. Therefore the balance of government support should surely be to the latter. None of this excuses the South African business community, which has failed to organize itself to prosecute an offensive agenda. For more details on the last point see Draper, P., 2004, "South African Business and Trade Negotiations: Findings from a Survey of South Africa Foundation Members," *South Africa Foundation*. Occasional Paper no. 1, May. Available at: <http://www.safoundation.org.za>.

the context of trade negotiations, but it has the effect of minimizing consultative processes.⁴⁶

Based on this analysis it seems that, in terms of Hocking's (2004: 13) classification of modes of trade consultation, South Africa conforms most closely to the "Adaptive Club Model" while exhibiting features of the "multistakeholder model." This reflects "... *the recognition that trade diplomacy demands greater outreach to the constituencies most affected by it, whilst still operating by rules ensuring that modes of consultation remain relatively closed.*" The difference in the South African case is that, whereas in his formalization of the model, private sector interests are specifically incorporated; in South Africa's case the dominant trade union is particularly active.

5. Recommendations

Some tentative recommendations are discernible from the preceding discussion.

Of most importance is the need to properly resource the trade negotiating machinery within government. Institutionally this probably revolves around diverting more resources to this function within the dti. However, given the contestation within government on this matter, it also merits careful consideration of where best to house such capacity: in the dti; the DFA; or perhaps the presidency (via the Office of the United States Trade Representative). Whatever emerges from such a process should encourage active engagement with civil society organizations to promote effectiveness in trade negotiations while maximizing their legitimacy.

Once this question has been resolved—even though in the nature of governments any solution is unlikely to be permanent—concerted effort must be made to build offensive strategies around the business community in particular. This would lift the lid on the closed defensive process currently centred on Nedlac. In this regard, the business community itself has to get its house in order, establishing clear lines of communication directly with government on trade policy matters. Organized business has its own political differences to resolve, so this will not be an easy task. But government, too, has a critical role to play in this process given that the trade negotiations agenda is government-conceived and driven.

46 Members of umbrella business groups, for example, complain that they cannot consult their constituents as they are bound by confidentiality requirements. This potentially gives them great discretion in representing their members and would seem to be self-defeating—a case of secrecy trumping effectiveness.

Furthermore, the respective roles of Nedlac and Parliament in the trade negotiations cycle should be carefully debated, not just within their own confines. Nedlac has held discussions over the trade policy process, but these are internal and the document under development is not available to outsiders. In this sense the closed nature of Nedlac processes should be carefully scrutinized to discern those aspects of it conducive to greater transparency. Parliament, on the other hand, could be playing a much more active outreach role than it does at present. It could, for example, facilitate public hearings on matters of national importance.

Finally, government should revisit unilateral trade liberalization as a key policy tool. Such an approach would enforce concerted focus on trade policy as distinct from trade negotiations on the one hand and foreign policy on the other, thereby redirecting debate to the utility of trade policy in solving the country's pressing social and economic problems.

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Fixing the domestic trade policy process: Making room for sustainable development

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When my co-editor and I conceived the idea of this book, and when we prepared the introduction and the country chapters, the Doha negotiations were actively underway and occupied the bulk of the trade delegates' attention in Geneva. If a few disputes momentarily distracted attention from the horse-trading at the negotiation table, the distractions were always short-lived. The assumption that trade delegates, broadly speaking, were focused on defending their countries' national interests was never seriously challenged. Most trade policy observers likely assumed that the trade policy which underlay their negotiating mandates had emerged from a balancing of national commercial interests with wider public—and especially foreign—policy objectives, with due deference to important alliances.

And then Doha went into the ditch. Negotiations were suspended and nobody seriously believes that they can be revived for some time to come—perhaps for years. Some blame rigidity: negotiating mandates are inflexible, already the result of a fragile compromise at the national or regional level; or they are subject to political profit-taking in an election year; or they are solidified by ideologies or deep-seated resentment at the unfairness of the system. Others are more cynical: the powerful traders cannot deliver real development benefits without undermining their dominant market share. In the end, it is more acceptable politically for them to balk than to concede.

No one—or only a select few—blames an inadequate policy process. And yet in looking for reasons for the present impasse that is precisely where a good part of the blame should be placed.

Nobody will seriously dispute the fact that negotiators must look out for, and be guided by, the interests of the country they represent. What Doha has taught us, however, is that everything hinges on how those interests are understood, defined and taken into account.

Let us take an example: Switzerland's commercial interests revolve around a few key industries, among which the pharmaceutical industry stands out. On the domestic level, Switzerland is deeply concerned about competition in its high-cost agricultural sector. It believes that, without protection, its dairy, meat, grain and sugar industries would be vulnerable to competition, with

serious consequences for rural livelihoods and landscapes. As a result, Switzerland has been a strong advocate for greater intellectual property rights protection in the WTO, and has joined the G-10 group of countries calling for agriculture to be treated differently from other sectors in trade. They have insisted on the “multifunctional” nature of agriculture, and the invidiousness of negotiating on agriculture as if it was just another purveyor of internationally-traded commodities.

In reviewing these aspects of Swiss trade policy, one can see clearly how it aligns with some of the key national economic interests relating to trade. In that sense, its legitimacy need not necessarily be challenged, especially since it has the broad support of Parliament, and key economic interest groups are consulted at various stages in the development of Swiss positions. Further, there are several forums—in Parliament, in the administration and others more public—in which the concerned citizen or organized interest may express an opinion or voice a preoccupation. So far, so good.

What is less clear is how other considerations are brought into the picture. For example, the farm lobby ensures the continued protection of Swiss agriculture, hiding it behind tariff and quota barriers and bolstering it with public subsidies. The result is that Switzerland continues to produce goods that respond not only to consumer demand but—effectively—to government direction. Switzerland continues to produce sugar, a heritage from the Napoleonic wars and a factor of the Swiss experience with the Second World War and the resulting focus on self-sufficiency. But Swiss sugar is only viable if produced behind high tariff walls (some 700 per cent!) and with the generous fertilizer of State subsidies.

The result is that the Swiss consumer pays vastly more for any product containing sugar than she would if the market functioned openly. And what applies to sugar applies to milk, cream and butter. It applies to bread, pastries and flour. It applies to meat, fowl and fish. Indeed, the already heavy Swiss market basket is weighed down considerably by the obligation of the Swiss consumer to carry a staggering load of subsidies over which she had little say and which she is little able to affect.

How well are Swiss consumer interests reflected in Swiss trade policy and negotiating positions? Are not the interests of 7.3 million consumers important, compared to the number of stakeholders in the pharmaceutical industry, or the fewer than one million engaged in agricultural production and transformation of agricultural goods? Why is the voice of the consumer not given more weight in setting Swiss trade policy?

In part it is because the voice of the consumer is diffuse. Consumer organizations are weak and scattered. There is no strong, nation-wide consumer

movement, so the consumer is never given the choice either to continue giving subsidies to the sugar producer or to pay less for a basket of goods.

The farm lobby, on the other hand, is well organized, experienced and speaks with a united voice. Unlike the average consumer who has to pay a few cents extra for a given good, farmers are fighting for entitlements that represent a considerable part of their income.

The dilemma in terms of the pharmaceutical industry is more subtle. The industry clearly benefits from stronger protection of its intellectual property, and the high prices of pharmaceuticals in Switzerland are only indirectly related to the industry's happy position in this respect. Since the vast bulk of the medicines produced are sold abroad, the success of the industry is a guarantor of Swiss jobs and of greater wealth in the community, at a relatively small price to the Swiss consumer and citizen.

And yet the intellectual property regime defended by the Swiss is questioned by many. It may be that over-protection of intellectual property can limit public access to inventions. It may be that it stifles innovation. Many argue that the WTO Agreement on Trade-related Aspects of Intellectual Property Rights has upset the fine balance always maintained in IP legislation between the need to provide continuing incentives for research and invention, and the need to ensure public access to the resulting products or technologies. If this is so the Swiss policy (mirroring the U.S. policy in this regard), to extend IP protection further and to enforce it more vigorously could result in a negative outcome in terms of the public good.

How is this dilemma reflected in trade policy? Essentially it is not. If there has been a public debate on the issue of IP and access to basic medicines, and if there is some concern about our inability to agree on a regime for the protection of traditional or communally-held knowledge, there is little public debate on how nuanced the Swiss position on IP should be at the WTO. Swiss policy is still largely dictated by the Swiss Institute for Intellectual Property, itself strongly linked to the pharmaceutical industry and other powerful economic players.

There is yet another level that reflects the dilemma of trade policy. Switzerland is a rich country, situated in a rich region. While official policy insists on Switzerland's dedication to a fairer world, to poverty alleviation, to greater equity and social justice, and to the respect of human rights and a healthy environment, it remains locked into a trade policy system that is not doing all it can to reach these stated objectives. In this respect, the policy contradictions are no worse in Switzerland than they are elsewhere. Nor are they better.

One of the central political debates in Switzerland revolves around immigration policy. Switzerland hosts over one million foreign residents, many of

them refugees or families that have relocated as a result of political instability or an absence of economic opportunity in their home countries, and the pressure continues to grow. While Switzerland has traditionally been sympathetic towards the misery of others, there are signs that this attitude is fraying.

When the issue is debated, there is rarely any look behind the symptoms leading to refugee movements towards the causes. If poor countries cannot offer their citizens economic opportunities, these citizens will seek them elsewhere. As a Zambian minister put it not long ago: “If we are not allowed to export our goods, we will be obliged to export ourselves.”

Where does the centre of gravity of Swiss interest lie in all of this? Does Switzerland not have an interest in a fairer world, one in which the poorer countries have a real chance of growing and offering their citizens the livelihood opportunities that they now lack? Indeed, given that poverty, inequality and the resulting frustration are such central motives for conflict and for terrorist activity, is it not an overwhelming national interest for Switzerland to contribute to these causes being positively addressed?

If so, it is idle to seek reflection of this interest in Swiss trade policy. Swiss dedication to the development objectives of the Doha mandate are no more than lip service. For Switzerland, like for its neighbours in the EU or its allies across the Atlantic, development is simply not at the centre of its trade concerns, and therefore of its trade policy. If development benefits can be secured without affecting Switzerland’s narrowly-defined commercial interests, so much the better. But in any face-off, it is the latter that will prevail.

This thumbnail sketch of Switzerland is not intended to single it out for reprobation on the grounds of hypocrisy or selfishness. In every respect I have mentioned and in the essentials, the name of Switzerland could be removed and the name of any rich country—and several poorer ones—put in its place. The sectors and the trade-offs would vary, but the nature of trade policy would not.

It is my contention that this is not a casual observation. On the contrary, I believe it to be at the heart of the failure of the Doha negotiations to date, and suggest that it illustrates the challenge we need to face if trade liberalization is to progress.

It has repeatedly been written that the WTO is substantially different from the GATT that it replaced principally because, while GATT was concerned principally with the treatment of manufactured goods at international borders, the WTO is principally concerned with the impact of domestic policy on trade. This focus on domestic policy has led, in turn, to a new public image for trade and an emerging public expectation for the multilateral trading system. No longer is there a simple formula linking trade volume to eco-

conomic growth. Instead, *how* trade is conducted, the rules that govern it, and the patterns through which trade is opened are seen to have a deep impact on prospects for *development*—not simply prospects for growth. Success in GATT led to higher growth. WTO is expected to do more than that; it must lead to success in development. Where that has not happened, it is the WTO—or more broadly the rules governing trade—and not the value of trade itself that has been questioned. And, because of doubts on how well it is delivering for development, it has been found wanting. How much of that perceived failure can be placed at the doorstep of a flawed national trade policy process?

Picking up the thread from earlier, then, the suspension of the Doha Round can be attributed not simply to the inflexibility or greed of certain key WTO Members but in large measure also to the perceived failure of the Doha Round to head in a direction likely to offer tangible and widespread development benefits to most developing countries. This in turn, I contend, reflects a failure of the trade policy process at the national level and in particular its failure to recognize the widening of the interests genuinely at play and to accommodate this new and broadened constituency. It stems from a failure to rank interests not only on the grounds of their economic clout, but instead on their relevance for the broader development goals that the WTO had (some would say foolishly) set for itself.

So in enumerating factors that contributed to the current impasse in the Doha Round, we cannot restrict our interest only to arcane processes within the WTO or the rigidity of particular negotiators. We must include consideration of the extent to which even the most experienced, ablest or most flexible of negotiators is constrained by the flawed policy process back home. Indeed, the case studies in this book suggest there is considerable room for improving the process through which trade policy is crafted, and that the need for such improvements is at least as great in developing countries as in developed ones. Whereas in general the developed countries run more transparent and participatory processes than do the developing countries (with exceptions), their policies are also often more vulnerable to pressure from special interests—pressure that would be easier to resist were the policy process more transparent, more participatory and more accountable.

Some argue that the problem stems in part from the weakness of the WTO's institutional arrangements, and specifically its incapacity to handle 150 Member States in a structure designed for far fewer and a negotiating format not suitable for including every Member in every discussion. I suggest that this is indeed a challenge, but that it does not fully or adequately explain the tripping up of the Doha negotiations. Instead, I believe that the negotiating culture, the negotiating mandates and the overbearing weight of special

interests in the negotiations stifled them and contributed to the failure. In short, to move out of the impasse, it is imperative that we re-examine the process through which trade policy is developed, and specifically how well the process balances the different legitimate interests at play in trade. As I have written above, once delegates come to Geneva, it is largely too late to effect any significant change in their mandates, especially at a time when every statement made by a trade delegate is scrutinized, dissected and analyzed for what it might reveal about negotiation strategy, gambits, lines in the sand and other features of the arcane brotherhood of trade negotiations. And much of that scrutiny is domestic.

From the experience of the Doha Round, from the national processes described in the chapters of this book, and from the argument set out above, I venture to make some suggestions on how to rethink trade policy—and in particular the trade policy process—in such a way as to pull the Doha Round out of the ditch and set it solidly back on track.

First, it is important that we re-examine the trade policy process at the national level to ensure that the different legitimate interests have an opportunity to genuinely participate. It is no longer credible to take the position that trade policy is the business of commercial and farming interests only—or even principally. It has been demonstrated, in the 10 years since WTO was established, that trade policy now penetrates and affects a wide range of public interests. These public interests should have a voice in trade policy formulation commensurate with the degree to which their interests are affected. The real challenge, however, lies in how to give voice and standing to other legitimate interests who have no obvious spokesperson. I will return to this below.

This “level of interest” approach offers a means of determining who should have a voice in the process, and how prominently that voice should figure in the chorus that provides texture to the trade policy concert. On the one hand, all of us are affected, positively or negatively, by trade liberalization or the operations of the multilateral trading system. That makes us all stakeholders. But some have a major stake in what is decided (e.g., the Swiss pharmaceutical industry in negotiations on the extension of intellectual property rights) while others have a lesser stake. Some are directly affected (e.g., Swiss sugar beet farmers in any discussion of lowering the sugar tariff) and others less directly. The trade policy process must be appropriately opened to those who can demonstrate a major and direct interest, while other forms must be found to receive and weigh the voice of other stakeholders. Hiding behind the role of elected parliamentarians and their duty to represent these constituent interests in a balanced way has, in one country after another, been demonstrated to be grossly insufficient.

Who, then, should participate in both the information and consultation phases of the trade policy process, and how should they participate? Despite the pressure coming from NGOs, the main policy objective is not merely accommodation of such pressure. Who has a legitimate interest? In positing a “rights and responsibilities” framework, the World Commission on Dams suggested that who had a legitimate stake in a decision depended on the extent to which a person’s (or a group’s) rights and legitimate interests were affected by the decision to be taken, and the extent to which the decision would lead to that person taking on more responsibilities, voluntarily or involuntarily.

In discussing interests, a place must be found in the debate to reflect interests that go beyond those that affect the economic situation of key stakeholders. A good example is found in the foreign policy implications of trade openness—for example its impact on stability, security and positive relations between States. One of the clear consequences of pursuing a policy based on narrow and immediate commercial interests is that these are often at variance with the longer-term interests of the country that defends them. Thus, for example, stemming illegal immigration to the United States would benefit from stronger economic growth in Mexico, Central America and the Caribbean. Yet in negotiating the Central American Free Trade Agreement (CAFTA), the U.S. pushed aggressively for provisions that will benefit its own exporters of goods and services while limiting the ability of Central American countries and the Dominican Republic to pursue a strategy of export-led growth. There are no prizes to be won for guessing which interests in the U.S. policy debate leading up to CAFTA had the loudest voices.

Correcting this will not be easy because the policy failures evident in this area have their roots in the breakdown of some features of modern democracy. To remain with the United States for the moment, it is no secret that election to Congress requires access to a significant war chest. Without access to considerable air time on television no candidate can be expected to prevail. A high proportion of political contributions come from private interests and the successful candidate is thereafter beholden to these interests, thus undermining two fundamental aspects of the legislative function: the Burkean need to do what is right rather than that for which the constituents or lobbyists may in the moment be clamouring; and the “checks and balances” function aimed at limiting the influence that these same constituents and lobbyists exert on the executive.

The result is a prevalence of short-term considerations—many of them of a commercial nature—that can overwhelm due attention to other immediate and legitimate interests but also, and especially, the longer-term interest of striving for a better world. The current protectionist wave in the United

States—possibly to be exacerbated in a Congress controlled by the Democratic Party—will do nothing to reverse this trend.

This leads to the **second** consideration. What do we want from the trade openness and the trading system that our trade policy is designed to advance? Put another way, what is the end that trade policy is intended to serve? Most respondents to that question would answer in terms of economic growth, expanding economic opportunity, creating employment or raising the overall standard of living. Yet all four of those worthy objectives are—like trade openness—means to an end and not genuine ends in and of themselves. If we want trade openness, it must serve a higher goal, and the value of the trade policy process may then be judged on its potential to advance that goal, or its success in actually advancing us towards it. Most trade policy today is focused on means, not ends.

The texts that introduce our major multilateral trade agreements tend to be disturbingly silent on these goals. And yet it is not possible to make sense of trade policy unless these goals are articulated. The Marrakech Agreement that establishes the WTO and introduces the “single undertaking” of over 25 agreements that make up the package goes furthest towards articulating the end that trade liberalization is intended to serve. It states in the preamble that WTO Members recognize:

...that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

This part of the preamble suggests three factors that should make up the package of interrelated goals that trade liberalization must serve. It must improve the economy by stimulating economic growth, striving towards full employment and raising standards of living, all of it through expanded trade. It must, however, do so while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, not only looking after the environment but building capacity to do so in the future. Finally it recognizes that the world is not an equal place, and that the pursuit of these goals must take into account both the needs and concerns of countries at different levels of development. Subsequent sections of the preamble are more specific on the need for trade to underpin the process of development.

The preambular paragraph cited above suggests how these three pillars come together in its recognition of the “objective of sustainable development.” Indeed, the preamble can be taken as the clearest articulation to date of the goal that the multilateral trading system is intended to serve. Far from shying away from it, the WTO Members in fact strengthened the statement of the necessary compatibility of trade openness and sustainable development in the opening paragraphs of the Doha negotiating mandate.

So, I would argue, the purpose of an open trading system is to advance sustainable development—development built on economic efficiency, wise use of the world’s resource base, and respect for social justice and equity. If this is accepted, the imperative to progress towards sustainable development provides both a template against which to judge the trading system, and a means to consider the effectiveness of the domestic trade policy process.

This offers a fresh perspective on how the domestic trade policy process should be organized. If we are not looking merely for trade advantage, but for a trading system that will prove optimal in taking us towards our shared goal of sustainable development, what voices do we need at the table? Who speaks for such aspects of the public good as sustainable development? What criteria should be used to balance the differing and often contradictory interests at play? And how can we judge the value of the negotiating proposals where trade matters are being discussed?

For the moment, at the WTO, the stated aims of trade liberalization and of the Doha Round are confused and contradictory. We are committed to an outcome that will correct some of the burden placed on developing countries as a result of the Uruguay Round, preserve essential policy space allowing them to choose their path to development, and leave them with genuine benefits in terms of greater market access and, more generally, a more favourable position in the trade game—a broader slice of the global economic pie. On the other hand, a close examination of national or group positions in the Doha negotiations suggests that the above objectives were not, by and large, those that animated the crafting of these positions. The rhetoric suggests a real commitment to development and improving the lot of the poorest countries, but the negotiating texts suggest that these considerations have not penetrated far into the nuts and bolts of the negotiations. There is still far too great a gap between what trade negotiators are ostensibly doing and what they are really doing. And the fingerprint of sustainable development is very hard to find among the hard, mercantile positions that are the actual bread and butter of the negotiations and that have emerged from whatever process is in operation at the national level to craft trade policy.

Unless we are able to correct the trade policy process, to realign it in support of the overriding need to advance towards the goal of sustainable development, we shall never repair this gaping contradiction.

It is ironic—and not a little confusing—that trade theory extols openness, condemns the nefarious impact of trade barriers, and the dangers of short-term protectionist measures, while in fact the process of trade negotiation is one of compelling the maximum openness on the part of trading partners while preserving the maximum maintenance of protective benefits at home. Indeed, if trade negotiators believed half their rhetoric and acted on it, many countries would liberalize unilaterally!

This leads to the **third** suggestion: that we need clear accountability mechanisms that link the trade policy as formulated and the trade positions as delivered. The introduction suggests that transparency and participation are two fundamental pillars of good governance, and improving the trade policy process requires due attention to both. Trade policy that is developed behind closed doors—as is still too often the case—and without the participation of all centrally-concerned stakeholders is likely, very simply, to be bad trade policy. A trade policy that operates in an environment of openness and appropriate participation is likely to yield policy more attuned to a balanced appreciation of the interests at play, and is likely to have far broader support among the stakeholders and the public.

Yet there is the formulation and there is the delivery, and many of the failings in trade negotiation occur at this latter, critical, stage in the trade policy process. It is in the nature of trade—or indeed any—negotiation that the starting position differs from the end position. If this were not so, it would mean either that there was full harmonious consensus—in which case no negotiation need take place—or that the views of one party were imposed without compromise on the other—an unsustainable outcome. So departing from a negotiating brief is normal, though presumably such departures must remain within the bounds of the policy itself.

Nor is it healthy to envisage all negotiations taking place under the spotlight of public scrutiny. After all the trade negotiation process involves sacrificing specific national interests in favour of a broader advantage in other, more important, interest areas or for the overall benefit of the economy and society.

As trade policy seeks to align with broader goals such as sustainable development, accountability in trade policy delivery becomes more important, and appropriate mechanisms must be found to ensure it.

We cannot go on as we have done before. The suspension of the Doha talks is evidence that the traditional approach to trade negotiations has suffered

far too long from the law of diminishing returns, and it is unlikely suddenly to rise from the ashes to offer us spectacular results in future. Having, gradually but inexorably, set goals for the trading system that go beyond strict trade concerns, it is now impossible for the trade policy community to force the lid of this Pandora's box shut again. We will have to work out what, precisely, the trading system can deliver in development and environment terms and mould our approach so that delivery of these public goods happens in practice and not simply in theory.

I have suggested that sustainable development is effectively—and should be recognized as—the overriding goal of the trading system. We must now work out what that means in practical terms, and what tests we must apply to ensure that the trade rules and trade negotiations are advancing us towards that goal. And we must ensure that the national trade policy process is structured—in its openness and in its mechanisms for participation and accountability—to delivering trade policy supportive not only of the country's narrow trade interests, but also of its overriding interest in advancing sustainable development.

In working through this transition in the trade policy process, however, we will come face-to-face with the inconvenient truth that, for many public policy goals such as sustainable development, there is no obvious spokesperson (though several would no doubt step up to the plate). So fixing the trade policy process can never be limited simply to ensuring the right information is available, that the right stakeholders are consulted and that an adequate mechanism is found to balance the interests expressed. The process must, instead, be made accountable for advancing some clearly-stated public goals, and these must form a tight framework within which all trade policy must fit. That, in turn, requires a significant change in attitude and approach.

There is a real risk that, should the trade policy community persist in defending the narrow, power-based and mercantilist approach that has tended to characterize the WTO and other trade negotiations at the regional and bilateral level, it will generate increasing push-back and will fail to deliver even the limited advances for which they aim. They will certainly fail to deliver anything resembling sustainable development.

PROCESS MATTERS

Sustainable Development and Domestic Trade Transparency

Experienced trade negotiators know that their work begins at home in learning what matters for their constituents, and it ends at home in ensuring that any new obligations can be implemented in legislation. Broad public education and focused solicitation of information from economic actors contribute to a trade policy that will be both legitimate and effective. Trade policy democracy begins at home.

This book contributes to a growing literature on the national trade policy process. Does an open and transparent process alter the way a government perceives the public interest? Or is trade policy still dominated by whoever has the ear of government? These questions are addressed in case studies of Canada, Norway, the Netherlands, Brazil, India and South Africa. The authors assess the policy process in terms both of transparency and of opportunities for meaningful participation by stakeholders ranging from export-oriented commercial organizations to rejectionist NGOs.

This book also illuminates how the policy process can contribute to sustainable development by ensuring that the needs of growth, the environment and social cohesion are all considered. If trade policy is made in the light of day, then there is a chance that it will not merely serve the interests of a narrow elite.