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 (OECD, 2001). 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 and 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 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 development, 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 the range of institutions necessary to manage trade and competition, and that are governed to 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 (Thoyer and Martimort-Asso, forthcoming; Gallagher, Low and Stoler, 2005; Lengyel and Ventura-Dias, 2004; Ddamilura and Abdi, 2003; for an early suggestion that it would be
worthwhile to study internal processes, notably relations within actors, see Winham, 1979). 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? Does money, or concentrated votes, talk? Does any of this make a difference for sustainable development?

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 federal 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.

Table 1: Characteristics of selected WTO members

<table>
<thead>
<tr>
<th>Country</th>
<th>Population (thousands, 2004)</th>
<th>Regional Trade Agreements</th>
<th>2005 HDI Rank</th>
<th>2004 Trade Rank*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>31 902</td>
<td>NAFTA</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Netherlands</td>
<td>16 250</td>
<td>EU</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Norway</td>
<td>4 582</td>
<td>EFTA</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>Brazil</td>
<td>178 718</td>
<td>Mercosur</td>
<td>63</td>
<td>25</td>
</tr>
<tr>
<td>India</td>
<td>1 079 721</td>
<td>SAFTA</td>
<td>127</td>
<td>30</td>
</tr>
<tr>
<td>South Africa</td>
<td>45 584</td>
<td>SACU</td>
<td>120</td>
<td>37</td>
</tr>
</tbody>
</table>

* Ranking includes intra-EU trade; Netherlands’ total reflects its transshipment role.

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 integration into the trading system in a particular sector. 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, this volume). 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” (Sen, 1999) 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 (Cosbey, 2004; and Cosbey, this volume). 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 often gave an illustrative, non-exhaustive list of freedoms as follows:

**Political and participative freedoms/civil rights** (e.g., free speech, elections. Instrumental in forcing governments to attend to the needs of the people.)
Economic facilities (e.g., opportunities for participating in trade and production, for selling one’s labour or products on fair competitive terms, 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, 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’ ability to achieve these freedoms is 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 electors. 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 Phyto-Sanitary...
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, 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 important, 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.

**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 (Wolfe, 2003).

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 (Bellver and Kaufmann, 2005), 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 (Milner and Kubota, 2005).

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 (Scharpf, 2000). 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.
**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 (Canada, 2001: 3). 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 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 depended on the extent to which a person’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.

The country chapters identify a host of consultation mechanisms, some formal and some informal. The chapters assess these mechanisms by answering the following questions: Do consultations take place? Do they improve policy transparency? 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, multi-stakeholder, room-next-door and political. It also highlights the catalyst role of negotiating international agreements and the challenges of consulting actors with egocentric or cosmopolitan interests.

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.

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 an intermediary 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.

South Africa’s National Economic Development & Labour Council (Nedlac) is an interesting multistakeholder consultation mechanism in this regard. Peter Draper 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.

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 consultations 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.

“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.

Formal vs. informal consultation

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 (this volume) 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.

Political consultations

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. Other countries might well emulate this aspect of the U.S. trade policy process. (On the importance of a fully-informed legislature, see Milner and Kubota, 2005.)

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 (Canada, 2005, 9960, 10017). 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.”

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).

**Conclusion**

The variety of consultation mechanisms employed by developed and developing countries suggests 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

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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).
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 [concluding piece].

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 (Ostry, 2004). 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. Having a transparent and participatory process matters because there is no other way for the general interest to be heard. 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.

References


