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The Trade Policy-Making Process Level One of the Two Level Game: Country Studies in the Western Hemisphere



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This publication reports the results of a project on trade policy-making in eight Western Hemisphere nations jointly conducted by the IDB's INTAL and ITD, the University of Toronto's Munk Centre for International Studies, and the Inter-American Dialogue. The project focuses on the question of how best to accommodate the participation of non-state actors in the formulation of national trade policies and negotiating agendas.

In early 2001, analysts from Argentina, Brazil, Canada, Chile, Colombia, Mexico, Uruguay, and the United States were invited to prepare short essays describing the trade policy-making process in their countries -with special focus on the nature and structure of consultation mechanisms with private groups. The papers were presented at a June 15 workshop at the IDB with the authors and a small group of outside commentators- and subsequently revised to reflect the discussion. The main conclusions of the entire exercise are set out in the preface prepared by project director Sylvia Ostry of the Munk Center.

The research will continue in 2002, while a major effort is made to communicate the findings and recommendations to policy communities across the hemisphere. Forums are being organized in several Latin American countries for that purpose. The objective is to increase the quality and transparency of trade policy formation and expand participation in the policy process.

We are particularly indebted to the authors for their outstanding contribution to this project. We are also indebted to Robert Devlin for his generous support and steadfast guidance. We are also grateful to Rachel Menezes of the Inter-American Dialogue for her skillful management of this effort.

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PREFACE

Sylvia Ostry *

I. Introduction

The Uruguay Round was the eighth negotiation under the auspices of the General Agreement on Tariffs and Trade (GATT) created in 1948 as part of the international economic architecture. The primary mission of GATT was to reduce or eliminate the border barriers to trade flows that had been erected in the 1930's. Since trade was largely confined to manufactured goods and, primary products (except agriculture) the domestic policy process involved negotiating trade-offs among industrial lobbies with import-competing sectors seeking protection and export sectors pushing for the opening of foreign markets. These lobbies were termed "distributional coalitions" and at the international level the negotiations were based on the concept of broad reciprocity -an anathema to those economists who favoured unilateral liberalization or Manchester liberalism. Nonetheless, reciprocity was politically effective and the GATT thrived. Tariffs and non-tariff barriers were significantly reduced and trade grew faster than output as each fed the other. Since the 1960's, rounds were essentially managed by the European Community and the US and developing countries were largely ignored as players. Agriculture, the most contentious issue dividing Europe and the US, was virtually excluded from negotiations so the transatlantic alliance, helped by the Cold War's constraint on trade friction, was the effective manager of the system.

The Uruguay Round was a watershed in the evolution of that system. For the first time agriculture was at the centre of the negotiations and the European effort to block the launch of the negotiations under American leadership severely strained transatlantic relations (and helped trigger a new US multi-track policy that included bilateralism, first with Canada in the Free Trade Agreement, and then North American Free Trade Agreement -NAFTA- which included Mexico, as well as unilateralism in the form of "301" measures against a number of countries). Southern countries and middle powers played an active role, whether in the Australian-led Cairns group dedicated to the liberalization of agriculture or in the so-called G10 hardliners, led by Brazil and India, formed to oppose the inclusion of the "new issues" -trade in services, intellectual property and investment- central to the American negotiating agenda.

The new issues were fundamentally different from GATT-type trade. They involve domestic regulatory and legal systems embedded in the institutional infrastructure of the economy. The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the GATT. And that, among other factors, including the rising prominence in the round of the transnational corporations (TNC) led by American corporations, played a major role in catalyzing and emboldening the transnational non governmental organizations (NGO's).

In 1991, after a GATT panel ruling that the United States had violated its GATT obligations by banning Mexican tuna caught by a process that killed dolphins, American environmental groups mounted a major attack on GATT-zilla. The campaign in Washington raged against a cabal of faceless bureaucrats in Geneva who were undermining American sovereignty and subverting democracy. It was a signal for the future and the continuing environmentalist critique of the World Trade Organization (WTO). The greens are not the

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only critics but they have probably been the most effective in mobilizing support among a wide range of other advocacy groups, most prominently human rights, gender, and labor. The largest and best endowed transnational NGO's are mainly headquartered in North America and Europe. Unlike the traditional "distributional coalitions", they are less interested in the *division* of the pie than the *recipe* for making it. I have called them transformational coalitions. Northern governments cannot -and do not- ignore them in the policy process.

Thus the Uruguay Round not only transformed the trading system but catalyzed a change in the nature of the *trade-policy-making process* in most OECD countries. Indeed this is clearly evident in the papers on Canada and the US. But the story does not end there. Many NGO's have insisted that the *WTO process* must be changed as well -a highly contentious issue for many governments and outside the scope of our present project. But one way of approaching this complex issue is to view the trade policy-making process as a two level "game" and begin with the first level, the *national* policy-making process, to which we now turn.

II. The National Policy-Making Process

The project is based on Robert Putnam's concept that trade policy is the result of a two level game: the structure and dynamics of the process at the *national* level and the interaction among the national players at the *supranational* level. While the international policy process has been extensively documented and analyzed, remarkably little is known about the nature of the process at the first level. Yet the process at the national level is an essential component of the final outcome, i.e. the international agreement at the conclusion of the negotiations. Indeed, in the case of the two largest trading powers, the US and the EU, the domestic process has arguably been the major determinant of both the agenda and the dynamics of the international process and thus the final outcome.

Since the Uruguay Round trade policy has become far more complex in recent years, both in terms of the range of issues involved and the participation of new actors, it is thus extremely important to enhance our understanding of the actors and institutions that shape and constrain trade policy formulation at the national level. To this end policy memoranda were commissioned for a group of eight countries in the Western Hemisphere: Argentina, Brazil, Canada, Chile, Colombia, Mexico, United States and Uruguay. A number of questions were posed concerning the nature of the process and the resulting memos are published here.

Rather than trying to summarize the analyses, it is probably more useful to highlight some of the main features of the differing policy templates and to raise a few questions about the possible evolution in the structure and content of the process. This project is just a first step in what, we hope, will be further research in this important but unexplored subject.

As readers will note after perusing the eight papers, there is considerable diversity in the policy process among these countries in terms of procedures for consultation; groups included; scheduling; institutional arrangements; and so on. Yet there is a clear dividing line between the two North American industrialized countries -Canada and the United States- and the six other Latin American countries. The former, unlike the latter, have established institutional arrangements involving both legislative bodies and a wide range of interested parties or stakeholders, including business, farmers, labor, NGO's and academics. There are very marked differences in the consultative process as between Canada and the United States, however, that are based on the differences in basic governance i.e. a parliamentary versus a presidential system. This is worth noting and suggests that governance -including constitutions- should also be regarded as one of the determinants of the policy-process. In a domain as broad and complex as trade policy today it may

well be that constitutional arrangements in, for example, a Federal state, that hardly affected policy concerns under GATT, raise serious problems of coordination and coherence today.

Canada and US differences aside, the stark North-South dichotomy in the nature of the policy process evident in the papers is probably due to multiple factors and deserves further research. In part, of course, it is an historical legacy stemming from the import-substitution industrialization (ISI) model of development that characterized most of the Latin American countries in the post-war period and was only abandoned in the late 1980's largely as a consequence of the debt crisis and the role of the Bretton Woods institutions. Policy legacy is significant since Chile, the exception to the ISI model, proves the rule. It's heritage of unilateral liberalization which began under Pinochet and spawned widespread public endorsement of free trade has given the Executive far more "freedom" to manoeuvre in this domain.

In the ISI model only business was involved and only on a sectoral basis so cross-cutting or horizontal issues were handled by the bureaucrats. Thus today -with some important exceptions- only business is actively engaged in policy consultation. The most striking example of the role of business is in Mexico -the "room next door" model, i.e. the virtual union of government and business in formulating and negotiating trade policy. But the Mexican study also illustrates another important aspect of the policy paradigm in the Southern countries -the impact of *policy* on the *process* (rather than the reverse, the basic hypothesis of this project). The analysis of the impact of NAFTA in galvanizing Mexican industry and government is very revealing of the two-way feedback: policy influences process and process influences policy. (Parenthetically, it should be noted that Canada also changed its consultative arrangements when the FTA with the US was launched and that Colombian industry is adopting the Mexican model to emulate the "room next door"). One interesting and important insight from this case study is the key importance of the two strategic resources: money and analytical knowledge. The preeminent role of business in part reflects its superior financial and hence technical capabilities and this stimulates the need for government catch-up in the technical area because knowledge is the key strategic asset in formulating and influencing complex policies.

The idea of policy as an exogenous catalyst for process change is also illustrated by MERCOSUR. But the impact apparently has differed significantly among the participating countries. Thus the impact appears to have stimulated significant expansion in the consultative arrangements in Uruguay; very little in Argentina (where both government and business fragmentation remain significant); and seems still nascent in Brazil. In Brazil, it's worth noting, Brazilian industry was not -like its counterpart in Mexico- subject to a "big bang" in the move from the sectoral ISI model to the American-led "free trade" model. And the slower response to change appears characteristic of the entire process, in Brazil. In the Uruguay Round, for example, the policy was determined largely by the technocrats of Itamaraty but, as noted in Pedro da Motta Veiga's paper, that "monopoly" has eroded since the late 1990's and a new process is now evolving. In particular, Congress is becoming more active -a mixed blessing for the government since it is playing a blocking role in the trade policy domain.

Several intriguing questions -deserving of further research- arise from the MERCOSUR case. Why did MERCOSUR establish the Economic and Social Consultative Forum which included not only industry but also other players such as unions, NGO's and academics when such broad consultative arrangements were hardly typical of the member countries? The answer provided by Jose Quijano, author of the Uruguay paper, is that it was a response to pressure from civil society (in which countries?). Granted, as does his paper, that lack of resources ensures that the Economic and Social Consultative Forum (ESCF) is thus far hardly a significant forum for change (an "incipient institution") but could it be a significant signal for future change? And what about MERCOSUR's Joint Parliamentary Committee? Yet any changes would have to feed back to the country level to launch the two-way process noted earlier. And so far that seems to have happened in only one member, Uruguay. Another, perhaps more intriguing question, concerns the Free Trade Area of the Americas (FTAA). Will MERCOSUR provide a model or is the prospective membership too large

and diverse for the Economic and Social Consultative Forum to play an effective role? Clearly we must stay tuned.

Finally, the issue of technical and monetary resources -or capabilities as they are termed in institutional analysis- recurs in all the Southern papers and is no doubt, a key determinant of the policy process. Thus, as noted above, only industry has -or is intent on acquiring- the capabilities essential to effective participation. Moreover, MERCOSUR has generated other regional institutions, but mainly for business, which should further enhance overall industry capabilities. Legislatures, unions, NGO's, academics, farmers and even governments exhibit a serious *capability deficit*. This lopsided situation is clearly undesirable if only because it is bound to produce a growing backlash from the anti-globalization networks (or anti-corporate globalization as they prefer to be titled). Governments and endogenous philanthropic institutions and regional development banks would do well to consider capacity-building in the trade policy domain an important priority.

Governments must recognize, of course, that a broader consultative process makes policy-making more complex and difficult as both the US and Canadian papers demonstrate. In particular, with the changed terrain of trade policy and the uneasy mix of traditional "economic" and "social" issues the demands on governments have been seriously increased. But that's the name of the game today and it's wise to face up to it and make the best feasible adaptation. The attack on "legitimacy" of trade policy institutions, agendas and processes is hardly confined to Geneva or Quebec City or wherever. Broader participation should be regarded as a necessary, though not sufficient, condition for sustaining liberalization. Government officials (and Ministers) by providing a continuing account of the negotiations enhance the understanding by the stakeholders and legislatures of the dynamics and constraints of the negotiations. In Isiah Berlin's terminology most interest groups are hedgehogs who know one thing in depth and governments are foxes who know a little about a lot of things. In the end the government is responsible and accountable for balancing a range of interests and demands so there are always winners and losers. But if the stakeholders can have a voice in the outcome it may, over time, engender a sense of "ownership" in the process and the policy itself.

Thus a stronger domestic capability in policy formulation will help *legitimate* the process but it is also important in the current environment of increasingly powerful anti-globalization networks heavily weighted by Northern NGO's. The Mexican national network RMALC (Red Mexicana de Acción Frente al Libre Comercio) was created in 1991 in the context of NAFTA and brings together a wide and diverse range of interest groups. It is part of the Hemispheric Social Alliance that was active in planning the anti-FTAA demonstrations at Quebec City's Summit of the Americas. Given the enormous asymmetry in resources between Northern and Southern NGO's, however, one must question how much the "participatory process" in the Alliance reflected Southern priorities in the stance on the FTAA and other policy issues. While the events of September 11, 2001 and the "new war" may have seriously tarnished the anti-globalization movement it would be premature -and unwise- to assume that they will no longer play a role in the trade policy process. Thus the necessity to build up the capabilities of the endogenous stakeholders and engage them in the process -which, as Gustavo Vega's paper demonstrates is not the case in Mexico- may well result in an imbalanced outcome because of an imbalance in capabilities.

This brief "*tour d' horizon*" of the eight memoranda is intended to highlight a few of the findings that raise questions for discussion -and certainly for further research at the country level highlighted by comparative analysis. So far as this project is concerned, one possible next phase would involve meetings in the selected countries to discuss these initial papers. Discussions could be arranged among all the key players -government officials, legislatures, business, NGO's, unions, farmers- to review these findings and begin a debate on how processes might be adapted both to enhance policy coordination among different domains and to extend the participatory scope. The project should be regarded as an *experimental pilot*, and if the results are promising, might merit replication in other regions. Indeed, it is worth noting that in discussions in the WTO on "external transparency" some member countries have suggested exchanging information on national experiences -but there have been no takers. Perhaps a regional approach could act as a spur?

**TRADE POLICY-MAKING AND THE PRIVATE SECTOR:
A MEMORANDUM ON ARGENTINA**

Roberto Bouzas *
Enrique Avogadro **

I. Introduction

In Argentina, the process of formulating and implementing trade policy is dispersed among several public sector agencies whose responsibilities overlap and between which coordination is deficient. In a context of scarce human, technical and financial resources this pattern of policy-making affects the quality and consistency of the end-product and impinges on Argentina's international bargaining capabilities. Business associations are practically the only private sector organizations with some kind of input into the policy-making process. However, the private sector is also fragmented, poorly organized and badly equipped to deal with technical issues. Specialized study units are almost non-existent.

Argentina lacks effective formal mechanisms to channel private sector participation in the trade policy-making process. Consultation with the private sector might or might not take place depending on the nature of the issues at stake, its urgency and the inclination of the official in charge. This circumstance gives pre-eminence to informal channels as vehicles to transmit ideas and to influence policy outcomes. Because public sector institutions are weak and the policy process is diffuse, lobbying and targeted or *ad hoc* interventions tend to be the preferred means of influencing policy. Although economic (and trade) reform has rendered the old methods of private sector participation obsolete, they have not been replaced by new and structured procedures.

This memorandum is organized in three sections. The first presents an overview of the trade policy-making and implementation process, describing the role of different government agencies and the coordination between them. The second section briefly reviews private sector participation, analyzing the role of business, labor and other civil society organizations. The third and final section draws some conclusions from the preceding analysis.

II. The Public Sector and the Trade Policy-Making Process: An Overview

The Argentine Constitution clearly establishes the duties and responsibilities of Congress and the Executive in trade policy-making and international trade negotiations. In practice, however, trade policy formulation and implementation have not been subject to such a clear-cut division of labor. A relatively short experience with democratic institutions and a vast, "top-down" economic reform process since the late 1980s have relegated Congress to a secondary role in policy-making. This predominant pattern, however, has not precluded episodes of targeted Congressional activism. As the trade agenda broadens to include new issues

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The authors are grateful to all those who kindly accepted to be interviewed, as well as for the valuable comments of the participants in the workshop. They also thank Ramiro Bertoni, Gabriel Cassaburi and Ricardo Rozemberg for their comments and suggestions. The usual caveats apply.

and as democratic institutions consolidate and gain experience, Congress is set to act with greater relevance and frequency.

Within the Executive branch, the responsibilities for trade policy-making and implementation are distributed among several public sector agencies. In order to function properly this policy-making process requires effective formal or informal coordination procedures. Traditionally, however, coordination in the public sector has been deficient. Agencies frequently compete with each other, squandering scarce human, technical and financial resources. This type of policy-making affects the quality and consistency of the end-product, as well as Argentina's international bargaining capabilities.

The Role of the Legislature

Article 75 (paragraphs 1, 22 and 24) of the Argentine Constitution gives Congress the authority to set import and export duties, legislate on customs affairs and approve or reject international treaties (including integration agreements that may confer competence and jurisdiction on supranational entities). According to the Constitution and prevailing jurisprudence, ratified international treaties and norms derived from integration agreements have primacy over domestic law. Hence ordinary legislation cannot nullify the commitments undertaken through international agreements.

Despite this neat division of responsibilities between the Executive and the Legislature, in practice trade policy-making has been more blurred. Although Congress holds the primary authority over foreign trade issues, powers have been frequently accorded to or assumed by the Executive (for example, through the issuing of "executive decrees"). During the first half of the 1990s the Executive frequently issued "decrees of necessity and emergency" on a variety of issues as a means of overcoming congressional opposition to structural reform initiatives. The 1994 constitutional reform explicitly curbed Executive branch powers in this area, defining more precisely in which areas and under which conditions such emergency powers could be used. It further specified the circumstances in which Congress could confer temporary and partial authority on the Executive. This authority was used to implement many of the foreign trade initiatives announced in the first half of 2001.¹

In the area of trade policy issues and international trade negotiations, Congress has usually been reactive and has followed the Executive. Although the most significant trade negotiations in which Argentina took part in the last fifteen years (the Uruguay Round and MERCOSUR) were undertaken with very limited congressional input or consultation, MERCOSUR's founding Treaty of Asunción and its additional protocols, as well as most of the legislation implementing the Uruguay Round commitments, were passed smoothly. This general trend did not preclude episodes of targeted congressional activism. The two outstanding examples were the debate on the passage of legislation to implement the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the sugar trade dispute in MERCOSUR. In both cases, private sector pressures on the Legislature proved decisive to the outcome. In the case of legislation to implement the TRIPs agreement, Congress introduced regulations (after strong and effective lobbying by domestic pharmaceutical firms) that became the subject of a long dispute with US trade authorities and eventually led to the application of sanctions (consisting in the partial withdrawal of GSP preferences). As to sugar, in April 1997 Congress passed a law making tariff reductions on intra-MERCOSUR sugar trade conditional on the elimination of distortions allegedly caused by the Brazilian sugar-alcohol program; this too followed strong mobilization and lobbying from sugar-cane producers and refineries in north-western Argentina.

¹ In April 2001 the Executive raised and lowered tariffs on consumer and capital goods, respectively, further breaking with MERCOSUR's common external tariff. The administration also introduced a dual exchange rate system for foreign trade transactions that will operate until the new convertibility law is fully in force.

Three committees in both the Chamber and the Senate have responsibility for foreign trade and related issues: the Foreign Relations and Worship Committees, which report on international treaties); the Trade Committees, which report on foreign trade promotion and administration; and the MERCOSUR Committees, which report, among other things, on MERCOSUR norms that have to be "transposed" into domestic legislation. Representatives of both chambers of Congress also participate in the Joint Parliamentary Committee, a MERCOSUR advisory body created in 1994.

The Executive Branch

Article 99 of the Argentine Constitution gives the Executive branch the authority to negotiate and sign international treaties, including trade agreements. The Executive is also responsible for implementing trade laws and statutes. Apart from these statutory responsibilities, in practice the Executive has been the leading actor in trade policy-making and negotiations. This practice was reinforced by the far-reaching process of economic (and trade) reform implemented from the late 1980s onward, since enforcement was essentially "top-down".

The two federal departments most involved in trade policy-making and international trade negotiations are the Economy Ministry (*Ministerio de Economía* - ME) and the Ministry of Foreign Relations, International Trade and Worship (*Ministerio de Relaciones Exteriores, Comercio Internacional y Culto* - MRECIC). The ME is responsible for trade policy design and implementation, while the MRECIC undertakes and coordinates international trade negotiations and export promotion activities.²

The ME is the most powerful department of the Executive branch. It is responsible for administering a wide range of economic policy instruments, including the design and implementation of trade (and trade-related) policies such as import duties, quantitative restrictions, special import regimes, trade-relief measures, export surcharges and export tax rebates. The internal structure of the ME -like that of most of the Argentine public sector- has been subject to frequent reforms. The most recent, in March 2001, created a Trade Secretariat whose chief responsibility is to design and manage trade policy instruments.³ This initiative raised the status of the ME's trade policy-making agency and placed it on the same footing as the equivalent department in the MRECIC.

The Trade Secretariat oversees two under-secretariats. The Trade Policy Under-secretariat is responsible for coordinating the design of policies, projects and programs in the realm of international trade negotiations, either multilateral or preferential. For its part, the External Trade Administration Under-secretariat is responsible for administering import, export and trade-relief regimes; rules of origin; and special programs such as export processing zones. It is also entrusted with assisting the private sector to interpret foreign trade rules properly, and for ensuring that the business community has the information required to engage successfully in international transactions. Other ME secretariats contribute actively to the policy-making process and take part in international trade negotiations, but the scope of their authority is narrower than that of the Trade Secretariat.⁴ Such is the case of the Secretariat for Agriculture, Livestock, Fisheries and

² This division of responsibilities was established at the beginning of the 1990s, when the Ministry of Foreign Relations was given the responsibility for trade promotion, previously vested in the Economy Ministry.

³ Prior to this the deputy-ministerial agency responsible for trade policy design and implementation was the Secretariat for Industry, Trade and Investment (SICI). Except for a short period when all SICI under-secretariats were subsumed into one, specific responsibilities for trade policy implementation were given to a third-level agency (the Under-secretariat for Foreign Trade).

⁴ Prior to the creation of the Trade Secretariat, the administration of industrial promotion programs (such as the automobile trade regime, with significant foreign trade implications) was the responsibility of the Industry Under-secretariat. To the extent that there was some coordination, it was provided by the deputy-ministerial agency (SICI) that had authority over the Trade and Industry Under-secretariats.

Food Products, which traditionally has been very active (and independent) in the realm of international agricultural negotiations.⁵

In the MRECIC, the Secretariat for Trade, International Economic Relations and Consular Affairs is responsible for undertaking international trade negotiations (multilateral, regional and bilateral), and for designing and implementing trade promotion policies. Two under-secretariats operate under the aegis of this deputy-ministerial agency. The Under-secretariat for International Trade and Consular Affairs is responsible for implementing international trade policy and export promotion activities, and for coordinating trade representations abroad. The Under-secretariat for Latin American Economic Integration and MERCOSUR is responsible for undertaking preferential trade negotiations and administering existing arrangements.

Other Executive agencies that take part in the trade policy implementation process include the National Commission on Foreign Trade (*Comisión Nacional de Comercio Exterior* - CNCE), the Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos* - AFIP), the Foreign Trade and Investment Bank (*Banco de Inversión y Comercio Exterior* - BICE) and the Fundación Export-Ar. The CNCE, created in 1994, formally depends on the Trade Secretariat, although it has budgetary and operational autonomy. Its main responsibility is to undertake investigations to determine injury to domestic producers as required by trade remedy legislation (countervailing, antidumping and safeguard procedures). The CNCE also compiles information and prepares reports on market access barriers to Argentine exports, conducts analysis and research on broader international trade and trade-related issues, and provides technical advice to trade negotiators. The chair and the members of the CNCE's board are appointed by the ME, which makes the agency highly susceptible to political pressure.

The AFIP (1997) is a decentralized agency of the ME with responsibility for tax collection and administration. AFIP enforces customs regulations, oversees the international traffic of goods and applies import duties, tax surcharges and tax rebates through its customs service (*Administración Nacional de Aduanas* - ANA). The AFIP also has authority over the internal revenue service (*Dirección General Impositiva* - DGI). The BICE is a public sector financial institution whose shareholders are the ME and the state-owned Banco de la Nación Argentina. It was created as a second-tier bank responsible for making available foreign trade and investment credit lines to commercial banks. More recently the BICE was authorized to co-finance foreign trade operations in conjunction with commercial banks. According to its statute the BICE is prohibited from granting "subsidized" loans; all its operations have to be run on commercial terms. Its activities have been modest because of the limited availability of loan resources.

Finally, the Fundación Export-Ar is a mixed (public-private) non-profit institution responsible for assisting Argentine exporters. Although the Fundación Export-Ar is formally a division of the Under-secretariat for International Trade and Consular Affairs (within the MRECIC), its authorities are appointed by the MRECIC (Secretary), the private sector (President and Vice-president), and the ME (Pro-Secretary). Fundación Export-Ar organizes seminars for exporters, provides advice on foreign markets and export opportunities, and gives support to trade missions and participation in fairs. To carry out its activities, Fundación Export-Ar relies on the MRECIC's world-wide network of commercial representations, including export promotion centers in a number of key locations. The activities of the Fundación Export-Ar have been very modest because of a lack of funds.⁶

⁵ The Agriculture and the Small and Medium-Sized Business Secretariats also administered their own export promotion programs.

⁶ The budget of Fundación Export-Ar in 2001 will total \$3 million. When "in kind" contributions from the MRECIC are included (hardware and salaries of MRECIC officials) the total budget rises to \$7 million. This compares very unfavourably with PRO-Chiles estimated \$50 million budget and Austrades \$180 million budget.

Sub-National Administrations

The proliferation of agencies and the diffusion of responsibilities is not solely a feature of the central government. Some provincial administrations have also created agencies for international economic and trade relations with responsibility for international cooperation and for providing support services to local exporters. Some regions also have local export promotion agencies, such as the Programa Buenos Aires Exporta or Fundación Pro-Mendoza. These programs provide information, stimulate the creation of networks and consortia, and supply other public goods aimed at helping local firms in their international operations.

Coordination in the Trade Policy-Making Process

To work effectively, this multi-layered structure of public sector foreign trade institutions needs strong, formal or informal mechanisms for coordination and information-sharing. In practice, however, there is nothing like a formal and deliberative policy-making process. The effectiveness of informal channels, for their part, depends on personalities and the nature of the issues at stake.

Congressional participation in the policy-making process has been sporadic and mainly reactive. The "top-down" nature of the trade policy reform process during the 1990s, and the still brief experience with democratic institutions and procedures, have given the Executive branch great leverage in policy-making. The limited and sporadic involvement of Congress in trade policy-making is set to change as the commercial agenda broadens to cover new issues and as democratic institutions gain experience. This will demand more coordination and information-sharing between the Executive and the legislature.

Coordination within the Executive branch has also varied substantially over time. Since there is no formal and deliberative process, trade policy-making is often marred by functional overlaps, inter-agency competition and the withholding of information. Routines and procedures thus depend heavily on particular circumstances, leadership and personalities. For example, during the early years of the Argentine-Brazilian bilateral cooperation program (1986-1991), the MRECIC led the policy-making process and moved the negotiations forward, while the ME lagged behind. During the last and critical phase of the Uruguay Round negotiations, by contrast, the ME held the upper hand while the MRECIC's role was largely formal.

The negotiations undertaken within MERCOSUR in the early 1990s posed the need for more systematic coordination within the Executive branch. The Common Market Group (created in 1991) and the Trade Commission (created in 1995) both comprise four national officials drawn from different Executive departments of each member state. In MERCOSUR's "golden age" (when commitments were credible and effective) the "national section" had strong incentives to coordinate and often did so effectively. Technical negotiations in sub-groups and technical committees also fostered coordination within the Executive. As MERCOSUR's credibility began to fade, pressures for effective coordination subsided. Participation in the Free Trade Area of the Americas (FTAA) process also stimulated more regular exchanges within the Executive, but a formal process of coordination has yet to emerge. Sometimes, different officials who share little information with each other are responsible for the same issue area under negotiation in different fora (such as MERCOSUR and the FTAA).

To address the deficiencies of coordination evident in trade policy-making, in 2000 the incoming administration created an Inter-Ministerial Foreign Trade Commission (*Comisión Inter-Ministerial de Comercio Internacional* - CICI). The President was to chair the commission in order to give it pre-eminence and visibility in the policy process. The CICI was expected to become a clearing house and coordinating unit for all Executive branch agencies involved in foreign trade policy-making and negotiations, but its performance was disappointing and it is now dormant.

Finally, and despite a formal mechanism of several years standing, coordination between the federal and local governments has also been modest. The Federal Foreign Trade Council (*Consejo Federal de Comercio Exterior* - CFCE) is responsible for coordinating and promoting information-sharing on trade-related matters between the federal and provincial governments and other agencies, but its activities have been unsystematic.

III. Trade Policy-Making and Trade Negotiations: The Role of the Private Sector

Of all private sector organizations, business associations have traditionally been the most actively involved in trade policy-making and international trade negotiations. Except for sporadic interventions by the trade unions, the participation of other private sector organizations has been negligible. As the trade agenda broadens and transnational coalitions develop, the scope and demand for more active private sector involvement will increase.

The current trade policy-making process includes no formal mechanism for private sector participation, which is mainly effected through informal channels and *ad hoc* procedures. Consultations with the private sector might or might not take place depending on the nature of the issue, its urgency and the inclinations of the government (or even of the official in charge). The role of the private sector in international trade negotiations has been equally modest. Preferential negotiations have recently created scope and demand for private sector involvement, but in practice such participation has been sporadic and informal.

The Role of Business

In the last fifteen years, three factors have influenced the role of business in trade policy-making and trade negotiations : (a) the changing nature of business representation; (b) the sweeping transformation of the trade policy regime; and (c) the nature of the policy-making process.

The nature of business representation has changed substantially as a result of structural reform, internationalization and economic concentration. Productive restructuring dramatically shrank the representation of small and medium-sized businesses, and reduced the influence of traditional federations such as the Unión Industrial Argentina. In addition, internationalization and economic concentration enhanced the influence of big domestic and foreign firms, which traditionally have made little use of established mechanisms for business representation. These changes, added to voluntary membership, created severe budgetary constraints that limited the ability of business associations to deal with knowledge-intensive technical issues. As a rule, and with few exceptions such as the Sociedad Rural Argentina or the Cámara de Exportadores de la República Argentina, local business associations are poorly equipped to deal with technical issues. Study and expert units are very rare.

The increasing importance of regional integration fostered the creation of specialized departments or committees (such as in the Unión Industrial Argentina, the Cámara Argentina de Comercio or the Sociedad Rural), but their impact was curtailed by the lack of resources and technical infrastructure. The process of regional integration also stimulated the creation of transnational networks such as the Consejo Industrial del MERCOSUR (CIM), which brings together the industrial associations of the four member states. MERCOSUR's Foro Consultivo Económico y Social (FCES) was founded in 1995 with a permanent business representation.

The sweeping transformation of the trade policy regime in the last fifteen years has also influenced business participation in the policy-making process. Traditionally, business associations were effective in

protecting the interests of their constituency. During the period of inward-oriented development, business organizations participated actively in setting tariff rates and enforcing quantitative restrictions, working closely with the agencies (such as the Industry Secretariat) in charge of enforcing trade regulations.⁷ The role of business in international trade negotiations was more mixed: very limited participation in the multilateral arena (where Argentina was essentially a free rider until the Uruguay Round), but very active engagement when negotiations could alter domestic market access conditions (such as in the case of preferential arrangements).⁸

In the last fifteen years this pattern of intervention was radically altered by a fundamental change in the trade regime. On the one hand, the reform process was implemented from "top-down", with limited scope for business participation.⁹ On the other, and partly facilitated by the broader trade policy environment, preferential negotiations began to take effect. MERCOSUR is a clear example of a preferential agreement that made a difference to market access conditions. Even in MERCOSUR, however, trade liberalization followed a procedure (an automatic calendar of linear and across-the-board tariff cuts), combined with limited flexibility to accommodate pressures from sensitive sectors.¹⁰

Finally, the nature of the policy process has not stimulated structured and formal interventions. The relatively high level of fragmentation of public sector agencies and poor inter-agency coordination combine to give pre-eminence to informal channels for transmitting ideas, exerting pressure and influencing policy outcomes. Until very recently, the Foreign Trade Under-secretariat chaired a private-sector Foreign Trade Advisory Council (*Consejo Asesor de Comercio Exterior - CACE*), the single institutional locus for formal and regular interaction on trade policy issues between the public and private (business) sectors. The CACE had a broad private sector membership and served mainly as a vehicle to exchange information, but its effectiveness was limited: meetings were irregular and dependent on the initiative and inclinations of the particular official in charge. Poor preparation and an excessively broad membership also conspired against its effectiveness. In 2000 the CACE was disbanded.

In summary, the abandonment of import-substitution industrialization sharply altered the established procedures for business participation in trade-policy making and implementation. However, old methods were not replaced by structured new procedures, in part because of the changing structure of business representation, the "top-down" nature of structural reform, and the characteristics of the policy process in the public sector. The result is that private sector participation in foreign trade policy and negotiations tends to be episodic, *ad hoc* and informal. Engagement has varied in line with the importance of the issue at stake and the influence of the affected private party.

MERCOSUR stimulated a slightly more structured participation of the business sector, particularly after the creation of the FCES in 1995, but its impact has been modest. The Argentine business sector continued to

⁷ Business participated on a regular basis through sector chambers. Prohibitive tariff rates with special import permits for goods not produced locally ensured business associations an advisory role to the competent authority.

⁸ During the import-substitution phase, trade liberalization progressed in those areas where foreign multinationals had a stake in market integration. In other areas, domestic business was effective in limiting the opening of the markets.

⁹ One new area that stimulated business involvement was the administration of trade relief. Since Argentina adopted antidumping and countervailing duty (AD and CVD) procedures, it has become one of the world's most active users.

¹⁰ Motor vehicles and sugar were treated as a special case because of their sensitivity (and because of the private sector's ability to influence policy). Business associations participated actively in determining the list of sensitive products (exceptions and products included in what is known as the final adaptation regime) and temporary exceptions to the common external tariff (CET). Automatic and across-the-board tariff cuts limited the scope for business pressures, but some sectors lobbied effectively to take advantage of the remaining scope for discretion. The Treaty of Asunción contemplated the possibility of private sector agreements to accelerate the process of economic integration, but most business associations made no use of it.

find more productive means to intervene domestically through informal channels. The private sector also gave its input to technical negotiations through informal exchanges with national officials involved in the activities of groups, subgroups or technical committees, as well as through *ad hoc* consultations.¹¹ The FTAA process also encouraged regular business meetings (the Foro Empresarial de las Américas) in parallel to each trade ministerial. The Forum issues recommendations to the ministers and promotes cooperation between businesses.

The Role of Labor

Traditionally, non-business private sector organizations have found trade policy issues alien to their concerns. This was also the case with the trade unions, which have focused their energies either on specific labor issues or on broader economic policy debates. Like business organizations, workers' associations were severely weakened by structural reform. Exceptionally, the trade unions became involved in trade policy issues when foreign competition directly threatened to affect employment in particular sectors. An example is the footwear industry in 1997-2000, when labor and business rallied together to demand the implementation of trade relief measures. As labor issues become part of the international agenda and the latter widens to include "domestic regulations", the trade unions are likely to find new incentives to engage more actively in the trade policy process.

Regional integration has stimulated transnational networks in the labor movement. The Coordinadora de Centrales Sindicales del Cono Sur (CCSCS) provides a forum for exchange and cooperation between MERCOSUR member states' labor federations. In the early 1990s the CCSCS established a MERCOSUR Labor Commission (*Comisión Sindical del MERCOSUR*), which has promoted the development of MERCOSUR's social chapter. The CCSCS was very active in Subgroup N° 10 and sponsored the creation of the FCES. Currently, the CCSCS maintains a permanent presence in the FCES and in Subgroup N° 10. Most labor initiatives put forward by the FCES have stemmed from the activities of labor union organizations and the CCSCS.

Other Civil Society Organizations

Apart from business and labor, Argentina has a long-standing tradition of private sector associations, but mostly in the realm of human rights promotion. Only recently have other private interest groups (such as those concerned with environmental or gender issues) begun to organize, but these such groups have not engaged in trade policy issues and international trade negotiations. As the trade agenda widens and transnational networks develop, they are likely to become more concerned and active.

A number of seats in MERCOSUR's FCES are reserved for representatives of the "social sector" (apart from business and the trade unions). Consumers' associations have been active in the "national section" of the FCES, but the latter's real influence has been modest. Lack of resources (participation is funded by each member organization) and the purely consultative character of the FCES have severely curtailed its effectiveness.

¹¹ Private sector participation in sub-groups was very active in areas such as technical standards, transportation, health and agriculture.

IV. Conclusions

The deficiencies of Argentina's public sector trade policy-making process have lessened the country's international bargaining capacity. Although Congress has the primary responsibility for trade policy-making, an intense period of ambitious trade policy reforms and a relatively brief experience with democratic institutions have given the Executive branch the upper hand. Congressional participation has remained essentially reactive and sporadic, but it will increase as the trade agenda broadens and a learning process develops.

Within the Executive branch, policy design and implementation is fragmented. Inter-agency coordination is poor and there is no accepted coordinating tier. Responsibilities frequently overlap, stimulating inter-agency competition. Since human and material resources are scarce, fragmentation and duplication undermine efficiency and effectiveness. Bureaucratic structures are unstable, there is a high turnover of officials and a low level of institutional learning (with a few partial exceptions, such as the foreign service). A relatively high proportion of trained personnel consists of temporary staff hired under special contracts (and frequently paid from multilateral assistance funding). This hampers the accumulation of institutional knowledge and the upgrading of human resources, precisely in an area where knowledge is the strategic asset. Since the policy process is marked by a relatively low level of formalization, the agenda and the process itself are heavily influenced by personalities. When power is diffuse this is a recipe for stagnation in the policy process, or for inter-agency competition over leadership and outcomes.

In this context, MERCOSUR (especially in its initial stages) and the FTAA process have helped to center attention and human resources on certain issues, replacing or offsetting the absence of a clear domestically-driven focus. Regional integration has thus helped to "create an agenda", but there is no *a priori* reason why such "created agenda" should coincide with domestic priorities.

Trade policy design and implementation are also marked by the private sector's low level of formal participation. This is largely the result of an opaque policy-making process and poor private sector organization. The private sector (particularly business) intervenes in the policy process mainly through informal channels, *ad hoc* procedures and personal activism, which tends to make participation markedly asymmetric. Trade policy reform in the 1990s rendered obsolete many of the existing channels for private sector participation, but did not replace them by new procedures. Consequently, whether the private sector is consulted depends on the nature of the issue, its urgency and the inclinations of the government (and even the public official in charge). When consultations are held, they are usually *ex-post* and are undertaken with selected influential individuals to provide a (false) sense of transparency. This pattern creates incentives for the private (business) sector to invest in personal links and lobbying efforts rather than in technical expertise and structured interactions.

From an organizational point of view, the Argentine private (business) sector is as fragmented as the public sector. This circumstance negatively affects its ability to make constructive contributions to trade policy formulation, compounds public sector inefficiencies, and creates opportunities for clientelistic practices and lobbying. Since public sector institutions are weak, the returns from lobbying and *ad hoc* interventions tend to be greater than systematic, long-term involvement in a diffuse policy planning process.

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TRADE POLICY-MAKING IN BRAZIL: TRANSITION PATHS

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I. Introduction

Throughout the last decade, Brazil's trade policy-making processes have undergone profound changes. Such changes cannot be understood without reference to the nature of the liberal revision of the country's development model in the 1990s. Compared to the changes that occurred in other large Latin American countries such as Mexico or even Argentina, the distinguishing trait of this particular process in Brazil is the balanced combination of elements of both rupture and continuity.

The resistance of business, union and bureaucratic actors, who had consolidated their positions during the long and relatively successful period of protectionist industrialization, acted as a "moderating" force on the implementation of market-oriented reforms. It is well known that import-competing sectors played a key role in both trade and industrial policy-making. In general these are the same sectors that had benefited from the microeconomic policies of previous decades: the automobile, chemicals, electro-electronic and capital goods sectors, among others.

The major consequence of the "negotiated" nature of the Brazilian transition was the post-reform persistence of protectionist structures and highly discriminatory inter-sectoral incentives, despite the increasing use of "horizontal" instruments in business-supporting policies over the decade.

The changes in trade policy-making and policy implementation that occurred during the 1990s can also be understood in terms of a line of reasoning that combines both continuity and discontinuity. The unilateral trade liberalization undertaken in the early years of the decade, combined with Brazil's role in various trade negotiation processes and its efforts to improve the export performance of its manufacturing sectors, helped shape this process of policy change.

The domestic mechanisms of consultation and negotiations in the area of trade and industrial policies were diversified over the 1990s and have produced communication routines characterized by a certain regularity and frequency. In general, these mechanisms became more formal and institutionalized, although the degree of institutionalization varies according to each mechanism. In addition, informal lobbying and practices of direct pressure on public agents continued to be significant in public-private sector relations, especially as regards lobbying for protection in specific sectors.

In general, the dialogue between public and private sector agents in the area of trade and industrial policies is still highly sector-oriented, preserving the characteristic traditions of the protectionist development model. Increasingly, however, in the area of trade negotiations, this dialogue is being conducted out with civil society entities whose representativeness is "horizontal" (i.e., trans-sectoral). This is the result of the typically complex, multiple-issue agendas of such negotiations, which are no longer restricted to market-access issues.

This paper has three sections, in addition to the introduction. Section II examines the typical mechanisms of domestic consultation and negotiation during the final phase of the import substitution model and during

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the period in which that model was discontinued. The latest trends in the evolution of these mechanisms are analyzed in Section III, while Section IV presents some final comments on the issue.

II. From the Crisis of Protectionism to Liberal Disruption: Continuity and Change in the Public-Private Relationship

During the period of protectionist industrialization, industrial policy consisted mainly of managing the protection of local industries against competition from imported goods (especially non-tariff protection), and the use of investment incentives. From the 1970s onward, active export promotion activities, supported by tax and credit incentives, were added to this set of instruments.

A remarkable characteristic of this policy was that the design and management of these instruments were essentially sectoral. Hence public-private sector consultations -in this case involving only the companies and sectoral associations directly concerned- were almost entirely restricted to this relationship. Other important characteristics of this period were the lack of transparency in mechanisms used to manage trade and industrial policy, and the "informality" of relations between public and private agents. Both characteristics were connected to the presence of an authoritarian State in which economic policy instruments were under the control of a strong techno-bureaucracy.

Trade negotiations also followed the "sectoral" model: the bilateral agreements negotiated in the context of the Latin American Integration Association (LAIA) were based on intra-sectoral concessions. Furthermore, the companies and segments concerned participated actively in the negotiations to protect their particular interests. Public-private sector consultations also took place during the negotiation of bilateral or multilateral issues in specific sectors (multi-fiber negotiations in the textile sector; VER negotiations with the United States in the steel sector). The agro-industrial sectors closely monitored the progress of the Uruguay Round, although they rarely participated in the definition of Brazilian positions during the negotiations.

The macroeconomic crisis, which intensified from the mid-1980s onward, led to a halt in foreign trade negotiations within LAIA. Additionally, it drastically reduced the State's financial and regulatory capacity to formulate industrial and trade policies. Thus the institutional mechanisms of communication and linkage between the public and private sectors, which were typical of the import substitution period, deteriorated gradually.

In the second half of the 1980s, several attempts were made to implement industrial policies with a sectoral bias. None was successful because of internal disagreements within the federal government over the importance of such initiatives. The disaggregating effects of the economic crisis on any attempt at coordinated public-private actions also contributed to this failure. One of the few legacies from these experiences was the gradual shift of industrial policies from a sectoral to productive-chain approach. This shift continued throughout the 1990s, and the "productive chain" consolidated its position as one of the significant units for industrial and trade policy formulation, as well as for public-private sector dialogue.

At the same time, several attempts were made to reduce inflation, usually in the form of heterodox shocks. Successive governments prioritized the design and implementation of stabilization plans. In this context, interaction with the private sector was shunned, especially since the major business groups in the various sectors and class organizations were increasingly seen as an "inflationary coalition". As direct beneficiaries of accelerating inflation rates, they resisted efforts at stabilization.

This notion inspired the Collor administration's policy of breaking with past approaches. The new government embarked on a program of unilateral import tariff cuts, eliminated a series of non-tariff barriers, and engaged

Brazil in a sub-regional liberalization process in the Southern Cone. This was a break with the sectoral tradition of the LAIA negotiations.

All these measures were part of a strategy of confrontation with the organized business sectors. Trade liberalization and the early years of MERCOSUL are usually quoted as model cases of non-participation by the private sector and of government resistance to private sector involvement. Nevertheless, Sector Policy Executive Groups (*Grupos Executivos de Política Setorial* - GEPS) were created during the Collor administration. Although the GEPS never managed to consolidate their position, they inspired the creation of the Sectoral Chambers, which were founded in 1991 for the negotiation of wages and prices, and which evolved into a forum to discuss and negotiate issues of sectoral development and competitiveness.

A novelty of the Sectoral Chambers was the participation of labor unions in the mechanisms for dialogue between the government and the private sector, in which only the business sector had participated to that point. The major -and perhaps only- practical results of the creation of Sectoral Chambers were the various automobile agreements negotiated between the State, the companies and the unions. The 1995 automobile agreement produced a highly discriminatory sectoral trade and investment regime.

The results of such public-private initiatives may have been extremely limited in terms of industrial policy, but the idea of a tripartite participation (government, business and workers) "infected" the negotiations within MERCOSUL through its technical sub-groups and was included in the institutional framework of the Quadripartite Agreement with the creation of the Economic and Social Consultative Forum (*Fórum Consultivo Econômico-Social*).

The 1994 negotiations for MERCOSUL's common external tariff offered an opportunity to reinstate routines of consultation and negotiation between government negotiators and the private sector. As for the labor unions, foreign trade and global integration issues were placed on their agenda through the MERCOSUL discussions. It was after the creation of the MERCOSUL technical sub-groups in 1992-1993 that the Central Única dos Trabalhadores (CUT) became involved in discussions on labor issues, industrial policy (especially sectoral policies) and foreign trade matters.

"Horizontal" business associations, like the National Confederation of Industries (*Confederação Nacional da Indústria* - CNI), and sectoral entities also joined meetings of the MERCOSUL technical sub-groups, especially those dealing with issues in which they were particularly interested, such as industrial policy and technical standards. However, this participation is not institutionalized: business and labor organizations attend the meetings as "guests" or "observers". Public-private sector consultations in these subgroups are essentially informal and seldom foster routines for coordinating and monitoring the negotiations.

III. Recent Developments: Trade Negotiations and the Sectoral Competitiveness Programs

From 1998 onward the management of Brazilian trade policy was substantially modified by the government's focus on expanding exports, the intensification of negotiations for the Free Trade Area of the Americas (FTAA), and the prospect -eventually blocked in Seattle- of launching a new round of multilateral negotiations.

The issue of "negotiations" has acquired greater importance on the trade policy agenda in view of Brazil's participation in processes that involve a wide array of issues, including border and "domestic" issues. This expansion of the agenda has spurred a gradual redefinition of the way private sector groups organize themselves, and of their dialogue with the government. At the same time, the macroeconomic focus on

export growth has led not only to horizontal export incentive policies but also to various efforts to promote competitiveness, be they geared to sectors or productive chains.

The Trade Negotiations

The FTAA negotiations have prompted a broad reorganization of domestic processes for negotiation and consultation. On the business side, the negative experience of the early MERCOSUL years and the gradual involvement in negotiations from 1994 onward provided the incentive for a strong and growing participation in the FTAA talks. The Brazilian Business Coalition (*Coalizão Empresarial Brasileira*) was founded within the CNI to bring together industry, agriculture and the service sector.

On the public sector side, the National FTAA Secretariat (*Secretaria Nacional da ALCA* - SENALCA) was created under the Foreign Ministry. The new body is the forum for debating issues related to the hemispheric negotiations, and is in charge of coordinating activities to devise a national position on the issues under discussion. SENALCA meetings are monthly and are attended by representatives of various ministries, the Foreign Trade Chamber of the Office of the Presidency of the Republic, the Central Bank and other institutions of the federal government. The decree that created SENALCA allows for the possible participation, as guests, of organizations representing civil society. Some of the national business entities and one labor union association have gradually joined SENALCA meetings (notably, as government-invited observers) but the scope of the discussions, as well as the agenda and limits of the debates, are clearly defined by the forum's government coordinators - that is, representatives of the Foreign Ministry.

As the FTAA negotiations progressed, issue-specific inter-ministerial groups were organized. These are responsible for monitoring the discussions in each of the FTAA Negotiating Groups. Technical representatives from various ministries and other government institutions participate in these groups, while private sector participation is informally admitted in some but not all of them. There are no express reasons for such exclusion. It might be attributable to a series of factors, including personal idiosyncrasies and the emergence of intra-bureaucratic disputes in a context where the government is trying to modify the nature of its relations with private agents in trade negotiating processes, although the objectives and methods of this revision are unclear.

The working agendas of both SENALCA and the inter-ministerial groups are defined by the pace of the FTAA negotiations and by participation in the meetings of the Negotiating Groups and the Trade Negotiations Committee (TNC). As a rule, each round of FTAA meetings is followed by a domestic round to present the results, discuss the issues on the agenda of upcoming meetings, and prepare negotiating proposals.

It is interesting to note that the inter-ministerial groups, which were originally created to deal with the FTAA negotiations, are increasingly extending their discussions to other negotiations within their respective subject fields. Hence, for example, a typical agenda of the Services Inter-ministerial Group would comprise the FTAA negotiations, recent developments in World Trade Organization (WTO) debates on the built-in agenda of the Uruguay Round, internal MERCOSUL negotiations, and discussions with the European Union (EU) on this subject. Thus there is a clear process underway to generate institutional spillovers from the FTAA process. The likely effects of those externalities on domestic mechanisms for trade policy negotiation and consultation are hard to assess.

More recently, the SENALCA model has been adopted to support Brazilian negotiations with the EU (through MERCOSUL). In this case, in addition to government representatives, the agency (SENEUROPA) includes a member of the Brazilian Section of MERCOSUL's Joint Parliamentary Commission and another from the

Brazilian Section of the Economic and Social Consultative Forum, both representing civil society.¹ This first case of fully institutionalized participation of civil society representatives is being challenged, since other entities active in the field of trade negotiations argue that the Forum is not a legitimate representative of the business sector.

The institutional model adopted for domestic consultation on trade negotiations seems to be undergoing a transition. Clearly, the days are gone when the Foreign Ministry held a monopoly on the formulation of Brazilian negotiating positions and the country's "national interest". Furthermore, both formal and informal mechanisms for dialogue between the government and the companies and sectors interested in bilateral market-access agreements within LAIA have suffered a relative decline in importance - without, however, disappearing completely.

At present, institutional consultation mechanisms seem to vary according to the items on the negotiating agenda and the progress made in the negotiations. Complex agendas comprising non-border trade issues often generate fairly institutionalized mechanisms for domestic consultation and negotiation with a clearly defined hierarchy, the formal convening of meetings and methods for assessing results. These mechanisms are also reasonably transparent for the groups that have access to them (the government, business associations, labor unions and Congress). When negotiations intensify, as in the FTAA process, such mechanisms tend to solidify positions and make them more sophisticated.

In negotiations with other LAIA countries, where the agenda is still limited to the exchange of tariff concessions, the consultation mechanism is somewhat informal and fundamentally driven by the dynamics of the negotiations, which are far less regular and systematic than those of the FTAA. In general, the government asks cross-sectoral business organizations to coordinate consultations with the various sectors, so as to prepare lists of liberalization proposals and demands. Subsequently, a series of meetings between the government and private entities are held to establish strategies, criteria, and so forth. The process is not regular: the government organizes meetings with business representatives; the private sector may propose meetings with the government; and the government can halt consultations without explanation.

Typically, in the LAIA bilateral negotiations there are no pre-defined targets such as the establishment of a free trade zone. Since the government seldom defines guidelines and rules on minimum levels of liberalization or the overall objectives of the negotiations, the talks remain strongly influenced by sectoral interests, particularly those of import-competing sectors.

A telling example is the negotiation between Brazil and Mexico in recent years. On the one hand, the objective of a broad bilateral trade liberalization agreement was frustrated by pressure from the sectors threatened by import competition, such as the electro-electronic sector. The latter expressed its opposition to the agreement in the proper government consultation forums but, at the same time, unilaterally deployed a strategy of lobbying and pressure to influence various government agencies in Brasilia. On the other hand, and in a contrary sense, the two countries' automobile sectors separately negotiated an increase in bilateral exchange quotas aimed at maximizing their regional production and marketing strategies, which gave Brazil and Mexico leading positions as car-making centers in Latin America.

¹ It is worth noting that the Inter-ministerial Working Group on the International Trade of Goods and Services was created in June 1999 under the Foreign Ministry. This group is in charge of formulating and coordinating the Brazilian position in preparation for the WTO negotiations. The group had no practical impact as a result of the failure to launch the Millennium Round in December of that year.

Sectors and Productive Chains: Trial and Error in Industrial Policy

As noted above, since the period of protectionist industrialization the sectoral approach has been the prime determinant of trade and industrial policy-making, and has shaped public and private interests in those areas. In the 1990s this sectoral orientation lost importance as greater value was placed on horizontal policies. The sectoral approach never completely abandoned, however, not even during the Collor administration, when market liberalization was the core of the official economic policy.

After 1995 in particular, the sectoral dimension of trade and industrial policies recovered some of its former significance, partly as a result of the government's decision to favor investment in certain sectors, including automobiles, textiles, footwear, and computer and telecommunications hardware. There has also been an increase in protectionist demands from sectors threatened by growing imports at a time of currency appreciation and strong expansion in domestic demand. Some sectoral business associations demanded protection for their members (in the textiles, clothing and toy sector), usually with positive results.

Furthermore, following the short-lived tradition of Sectoral Chambers and other similar initiatives, the sectoral dimension and (more recently) the productive chains have gained importance as "spaces" for mobilizing private and public sector agencies, and for building a consensus among these players around public objectives in the area of competitiveness promotion.

Mention should be made of at least two recent initiatives based on the sectoral/productive chain approach to consultation, negotiation and consensus-building: the Special Export Program (*Programa Especial de Exportações* - PEE), launched in 1998 under the coordination of the Foreign Trade Chamber of the Office of the Presidency (*Câmara de Comércio Exterior da Presidência*), and the Competitiveness Forums - Dialogue for Development Initiative (*Foros de Competitividade - Diálogo para o Desenvolvimento*), launched by the Ministry of Development, Industry and Foreign Trade in 2000.

The PEE was based on a complex, matrix-type organizational model: government representatives were responsible for managing each issue of the Program (financing, tax, logistics, etc.) according to their professional assignments, while representatives from the sectoral associations were responsible for managing their respective sectors. The aim was to identify the obstacles to the expansion of foreign sales by having each sector prepare a diagnosis of their strengths and weaknesses in terms of export capacity, and then promoting dialogue between sector managers and the various issue managers of the Program to tackle existing restrictions. The failure of this initiative can be ascribed to excessive ambitions and to a lack of institutional resources to manage a complex program comprising 11 government agencies and 58 sectors. The government priority program gradually declined until it was practically discontinued.

The Competitiveness Forums started from a similar diagnosis/selection of priorities/implementation sequence to define specific targets. Unlike the PEE, however, the Forums included business and labor representatives in addition to government. The program also selected a group of nine priority chains for treatment in a first round. This selection was based on criteria such as the potential for competitiveness gains, improvement of employment and income levels, and regional development. It is still too soon to assess the results of this program, because the methodology adopted requires some time to mature, as well as a period of confidence-building among the actors involved in the process.

Whatever the results might be, it is beyond question that this type of institutionalized government-private sector dialogue, based on sectoral or chain criteria in their varied forms, has almost invariably led to frustration and has failed to meet the proposed goals. This can be ascribed to conceptual flaws in policy design, institutional deficiencies in the public sector, or disagreements within the business sectors involved. In the latter case, the unity of purpose evident within specific sectors in their defense of the domestic market

is not replicated when it comes to building consensus around specific measures to increase competitiveness, nor to implementing such measures. The shift in government policies from sectoral to chain-specific approaches poses additional difficulties to implementation of the measures, irrespective of the value of this new policy orientation.

IV. Final Comments

In Brazil, the mechanisms for public-private sector consultation and negotiation on trade have undergone significant changes. The major distinctive features of these changes are the diverse "paths" followed and the mixed results, in institutional terms, of the various initiatives.

There is an undeniable and consistent trend towards the diversification and formalization of the more frequently used channels for public-private sector consultation and negotiation. These channels have a "horizontal" pattern in the FTAA and MERCOSUL negotiations and a sectoral/chain bias in policy initiatives aimed at export promotion and enhanced competitiveness. As regards the latter initiatives, participation by productive sectors has been formally established and institutionalized from the outset. Indeed, such participation is an important element of project methodology. In trade negotiations, by contrast, the public-private sector dialogue takes place in forums that were originally created as inter-governmental coordination mechanisms, to which business and labor representatives were later admitted as guests. To this day, civil society organizations still participate only as observers, which gives some impression of such mechanisms' limited degree of institutionalization. Strictly speaking, there are no formal mechanisms for public-private consultation in international trade negotiations, except in the case of MERCOSUL and, more recently, negotiations between the EU and MERCOSUL (through the Economic and Social Consultative Forum).

Less formal and more traditional mechanisms for public-private sector consultations persist, but they are unlikely to be absorbed by institutionalized schemes. Among such practices are the sectoral demands for protection and the LAIA negotiations, which are strongly marked exchanges of sector-specific concessions with no prior definition of overall objectives on the part of the governments involved.²

As for the more formal initiatives, both in the area of trade negotiations (FTAA and MERCOSUL, particularly) and in schemes geared to promoting competitiveness, there has been a trend toward a tripartite model of consultation and negotiation involving government, business and labor representatives. The horizontal institutions of these productive sectors -particularly the National Confederations of both Industry and Agriculture and the CUT, the leading union association- play important roles in coordinating the dialogue with the public sector and in developing the negotiating positions of the private sector, where intra-sectoral disagreements always arise.

Typically, the representation of productive sectors in the existing consultation mechanisms is restricted to two large interest groups, giving rise to a "neo-corporatist" institutional model. NGOs, Congress and academic institutions may take part in discussions, seminars and meetings on trade policy and negotiation issues, but they do not participate in the preparation and review of negotiations.

² When a free trade agreement is negotiated, the overall liberalization parameters are defined in accordance with the WTO's generic rules. Hence the overall guidelines for an agreement of this kind act as a constraint on sectoral demands for protection and exclusions from the scope of the agreement. When exchanges of bilateral concessions are negotiated with no defined overall objective, the negotiations are much more vulnerable to sectoral pressures and demands. This is what occurs in negotiations in the LAIA context.

As a result, the process is transparent only to the agents that take part in formulating the negotiating positions and, in the case of other trade policies, to the existing consultation mechanisms. Even among the civil society groups that do take part in these consultation mechanisms, there are frequent complaints about the poor transparency of the process and the (as yet) low degree of institutionalization of the consultation mechanisms.

Apart from receiving press reports, other civil society interests are uninvolved in the issues. This reflects the limited transparency of the process and the low priority accorded to commercial affairs trade issues on Brazil's domestic political agenda.

The varied nature of public-private trade consultation mechanisms in Brazil today illustrate certain features of the Brazilian transition, which could be characterized as a process of "conditional liberalization":

- First, the "protectionist block" that used to dominate the expression of private sector interests in trade policy-making has lost its leading role, but it remains a power that cannot be ignored in either sphere. In the 1990s there was a reasonable balance of forces between liberals and interventionists (the developmentalists) in the State, each group initiating policies that were not always convergent.³ Except in the area of trade negotiations, institutionalized structures for dialogue between more liberal groups within the state and the private sector are scant, and their agenda consists of horizontal policies. A consequence is greater attention to multi-sectoral (or horizontal) business organizations and the virtual exclusion of bodies representing labor. The developmentalists' strategies have adopted institutionalized, tripartite arrangements between government, business associations and labor unions. These meet regularly and focus on projects to promote competitiveness;
- Second, in the area of trade negotiations, the trade agenda now occupies a more prominent position in Brazilian foreign policy and has expanded to include issues that previously were considered strictly domestic. As a result, the Foreign Ministry's monopoly on the management of foreign trade issues (particularly trade negotiations) has been eroded. Other government agencies are asking to participate in the negotiating processes (and are already doing so in MERCOSUL), while private sector pressures from business and the unions are also intensifying. Two simultaneous developments thus occur: new intra-government consultation mechanisms are created; and business and labor representatives, preferably entities representing multi-sectoral or horizontal interests, are then invited to join these mechanisms.
- Third, the range of actors capable of influencing trade policy and negotiations has expanded, albeit little. Traditional players, such as sectoral business associations, are still important government interlocutors, but new civil society entities are emerging to assume significant roles, especially in the consultation mechanisms for trade negotiations. These new players are multi-sectoral entities, from both the business and labor sectors, and their role as interlocutors with the government is growing as trade negotiations become more complex. They are relatively independent of government positions and the government consults business associations more often and more systematically than it does labor union associations. Finally, other social actors that are supposedly important in public policy-making have only minor roles in trade policy; this is the case of the Legislature, non-governmental organizations (NGOs) and academia.

A final comment should be made about the effects of the FTAA negotiations on the framework inherited from the 1990s. As mentioned earlier, the FTAA process has had a significant effect on the mobilization

³ This raises serious obstacles to the effectiveness of government initiatives in key areas such as export policy. Hence several attempts were made in the 1990s to reorganize the state sector in charge of export policy.

of civil society sectors -particularly business and labor organizations- around trade issues. At the same time, it has fostered the creation of intra-governmental consultation structures organized around the various negotiating issues, which have gradually absorbed permanent business and labor participants. These structures are evolving and assuming consultative functions geared to devising negotiating positions in the various forums (the WTO, MERCOSUL, EU), as well as in the FTAA.

More recently, the issue of hemispheric negotiations seems to have acquired greater relevance on the domestic political agenda, which -if this proves to be the case- would mark a break with the tradition of segregating domestic and foreign policy issues. As trade and foreign policy issues overlap in the debate on the FTAA negotiations, those issues become part of the domestic agenda. The forthcoming presidential elections of 2002 and the start, in the same year, of FTAA market access negotiations should strengthen this new trend and bring about important changes in the structures described above, particularly as regards the participation of organized civil society groups and the mechanisms for consultation on trade issues between government and society.

THE CONSULTATIVE PROCESS IN THE FORMULATION OF CANADIAN TRADE POLICY

William A. Dymond *
Laura Ritchie Dawson **

I. Introduction

The purpose of this document is to provide background information on the consultative process in Canadian trade policy and, in doing so, respond to a number of inquiries posed by the research consortium. In the discussions of the instruments of consultation which follow in this paper, we will attempt to provide a comprehensive overview of the process. In this section, however, we will address the questions more specifically. The questions posed are as follows:

1. *Is there an established procedure for consultation on trade policy issues in your country? Is this procedure transparent, i.e., is the information on the procedure available to the public and the press? What issues are covered (agenda, strategy, etc.)?*

For more than 15 years, Canada has been engaged in implementing formal procedures and institutions for consulting on trade policy issues. As a federal state, extensive consultation is not only desirable, it is also a political necessity. At the level of business, the original mechanisms (International Trade Advisory Committee - ITAC, and Special Advisory Committees on International Trade - SAGITs) developed for consultation regarding the 1989 Canada-US Free Trade Agreement dealt with a fairly narrow range of issues, i.e. sectors slated to be included in the agreement. Since then, the system has expanded to cover a broader range of trade issues (and social issues related to trade). The number of stakeholders included in the process has increased greatly. However, not all stakeholders feel that their advice is given appropriate weight. This is exacerbated in cases where participants reject the government's policy of negotiating regional and multilateral trade liberalization agreements.

After enduring considerable public criticism over the MAI process, the federal trade ministry made a strong commitment to what has been called external transparency, that is, making documents and information broadly available. However, internal transparency, which would include greater public input into the agenda-setting and decision-making phases of policy development, lags behind. It remains for consideration, however, whether in a parliamentary democracy, there is any need to go beyond the current level of consultation.

2. *What groups are included in the consultative process (e.g., business, trade unions, farmers, non-governmental organizations, academics, etc.)?*

All of the above. Although not all are engaged at the same level or during the same phase of policy development. For example, a broad range of stakeholders would have valid input on the merits of a particular

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trade agreement but, once the government has agreed to a course of action, useful technical input on the details of that policy might be better sought from representatives from the affected industry and other more limited groups with specific expertise.

3. *What is the nature of the consultation's scheduling? Is it prior to negotiation? During the negotiations? Prior to the final outcome? Review of the final outcome?*

All of the above. Experience has demonstrated that properly constituted consultations which engage appropriate participation can make useful contributions throughout the negotiating process. At the end of negotiations, public support for implementation is likely to be higher because various interests have developed both the necessary knowledge and a stake in the outcome to be able to speak positively about both the process and the outcome.

4. *What is the structure of the consultation? Are business sectors consulted separately? Are different groups combined in one overall committee? How are the groups selected? Is this structure flexible, i.e. how can it be changed or challenged?*

As this document will describe in more detail, a number of outlets exist for consultation, some fairly narrow and structured, others very broad and less structured. Broadly based consultations focused on general issues attract participation from a wide range of interests. More technical consultations focused on specific issues are more likely to attract specialized participation. At the broad level, participants tend to be self-selecting, while those with specific expertise may be sought by the government to consult on various issues.

Consultative systems are amenable to change under a parliamentary democracy. Recent experience shows a high level of government responsiveness to public demands for broadened consultation. These mechanisms can be expanded, contracted or re-configured according to government preferences, as a reflection of public will. Of course, the pace of organizational change lags behind the speed of decision making so structural changes are not immediately implemented in actual practice.

II. Background to the Consultative Process in Canada

The content and outcomes of the Canadian trade policy-making process are derived from the parliamentary system of government and the federal-provincial distribution of power.

The Canadian parliamentary system of government provides for a top-down exercise of political authority, which is generally closed to outside influences except to the extent permitted by formal and informal consultative mechanisms. Executive authority for the conduct of international trade policy is vested in the Cabinet. When the Cabinet holds a majority in Parliament, it holds, for all practical purposes, legislative power as well. Hence, the Cabinet is empowered to conduct trade policy and to ensure passage of any new legislation to implement trade agreements. When implementation of such agreements does not require new legislation, reference to Parliament is not required, although agreements are tabled in Parliament. If new legislation is required, the government majority in Parliament virtually ensures that such legislation will be enacted.

Within the Cabinet, the Minister of Foreign Affairs is responsible for the conduct of all foreign policy, while international trade policy is the responsibility of the Minister of International Trade.¹ To ensure an integrated

¹ An exception is the Export Import Permits Act which authorizes the Minister of Foreign Affairs to apply import or export controls under certain circumstances, for example, to protect national security.

approach to Canadian trade and foreign policy, the two ministers are served by a single department. To obtain Cabinet support for international trade policy, the Minister of International Trade must necessarily work closely with other ministers, such as the Minister of Agriculture, the Minister of Industry, the Minister of Finance, and other ministers who have important international trade issues within their portfolios. Over the years, as trade negotiations have reached further into domestic policy, the number of ministers -and their officials- with a direct interest in trade negotiations has grown commensurately.² Under this system, Canadian ministers and officials conduct trade relations and trade negotiations under explicit or implicit grants of political authority from the Cabinet and may conclude *ad referendum* agreements consistent with that political authority.

While the Canadian Constitution assigns exclusive responsibility for international trade to the federal government, the Canadian provinces play an increasingly important role in the formulation and implementation of trade policy. In light of the importance of international trade to Canadian economic performance and the political accountability of provincial governments to their electorates, provincial governments have, over the years, acquired an enhanced role in the formulation of trade policy. Further, modern trade policy issues are beginning to reach into public policy areas under shared federal-provincial jurisdiction or exclusive provincial jurisdiction. Hence, while the federal government may conclude and sign international trade agreements on any subject, it relies on the provinces to ensure implementation in any area of provincial jurisdiction.

Similar to the exercise of federal power, political power within the provinces consists of a top-down exercise of authority under the control of the provincial Cabinet. The assignment of trade responsibilities varies across the provinces from explicit ministers of trade to ministers of economic development. However, as in the federal arrangement, ministers holding other portfolios such as agriculture, industry, and energy necessarily become involved in the formulation of provincial government positions.

Prior to 1985, a permanent mechanism for trade policy consultations did not exist in Canada. The General Agreement on Tariffs and Trade (GATT) negotiations in the early years focused on cutting tariffs and, as proposed tariff changes were budgetary secrets, they were not subject to public scrutiny. Trade officials routinely held informal discussions with business representatives but they were not included in the policy process in any formalized way. By the time of the Kennedy Round of GATT negotiations (1964-1967), however, the federal government found it useful to establish a more formal mechanism, the Canadian Trade and Tariffs Committee, to receive briefs and hold hearings in preparation for negotiations.

By the time of the Tokyo Round, once most significant tariff barriers had been stripped away and the trade agenda had begun to shift to non-tariff barriers and trade issues with a broader social dimension, the need for regular consultations had also become more pressing. A variety of mechanisms were used, including a Canadian Trade and Tariffs Committee, in the early stages to receive briefs and hold hearings, regular consultations with provincial officials, and periodic consultations with business leaders through such vehicles as the C.D. Howe Institute, a think tank, and its various committees, the Canadian Exporters Association, the Canadian Manufacturers Association, and the Chamber of Commerce. As well, the government set up an office of the Canadian Coordinator for Trade Negotiations to facilitate opportunities for business and other interests to inform the government of their views.

By the 1980s, the list of subjects covered by trade agreements was becoming increasingly complex and the range of interested parties more varied. Trade negotiators required technical input on energy, telecommunications, transportation, food safety and other issues for which the in-house capacity of the government was not sufficient. A more interested business community as well as provincial officials

² For example, some 24 federal government departments and agencies were members of the inter-ministerial group which provided advice to ministers on Canadian interests at the Seattle meeting of the World Trade Organization (WTO).

sought more frequent opportunities to advise the government. To that end, senior officials met periodically with a newly constituted Canadian Business and Industry Advisory Committee (a Canadian offshoot of the OECD Business and Industry Advisory Committee) and with provincial officials. Efforts to include labor leaders in such consultations proved less successful.

The decision to negotiate the Canada-US Free Trade Agreement (CUFTA) marked a watershed in the development of formal consultative mechanisms to further the Canadian trade agenda. Public consultation for this agreement was essential, both because of the broad range of subjects under discussion and because broadly-based consultations would enhance support from the various regional and sectoral constituencies required to hold the deal together. The CUFTA and subsequent North American Free Trade Agreement (NAFTA) helped to institutionalize mechanisms for consultation with the provinces, business, and other stakeholders. Following the events at the WTO ministerial in Seattle, the Canadian government put its full weight behind its commitment to consultation and transparency, making Canada a world leader in consultative trade policy, both in form and substance.

III. Formal Consultative Mechanisms

The trade policy-making consultative process in Canada is a mix of formal and informal mechanisms. The formal mechanism consists of (1) a Continuing Committee on Trade Negotiations, providing for regular consultations between federal and provincial officials; and (2) a consultative framework of business, labor, non-governmental organizations, and academics set up to provide advice to the Minister of International Trade and senior government officials on the conduct of trade negotiations and the management of trade relations. The informal mechanisms include *ad hoc* consultations between interest groups, companies, and organizations and ministers and their officials from a broad range of government departments. Additionally, parliamentary committees regularly hold hearings and report to the government on trade policy, trade negotiations, and trade relations.

The ITAC and the SAGITs were originally formed in order to assist the government to prepare for the bilateral CUFTA negotiations. The Trade Minister appointed all members of the ITAC and SAGITs. Some overlap existed between SAGIT and ITAC membership as the SAGIT chairs usually sat on the ITAC. The original ITAC had about 40 members, including business executives, trade union leaders, consumer representatives, and academics. Its mandate was to focus on the larger trade-related economic issues of the nation and its members were expected to serve the broader national interest rather than act strictly as representatives from specific industries and interest groups. The ITAC served as an important vehicle for developing consensus and support for Canada's general approach to the negotiations.

Differing in scope and approach, the SAGITs were established to provide more broadly-based input. At the time of the CUFTA, 15 SAGITs were formed to cover a range of industrial sectors and interest areas. They provided valuable technical advice to the federal negotiating team on how quickly tariff levels should be reduced to zero in each sector, as well as advice on other issues under negotiation. In effect, the SAGITs provided the government with an important vehicle for two-way information flows.

The SAGIT consultative mechanism is now made up of 12 advisory groups and continues to provide an important source of advice for the government, as well as a means to keep industry and other interests informed of trade policy and trade negotiation developments. Each SAGIT is comprised of senior business executives with some representation from industry associations, labor unions, environmental groups, and academia. Members are selected on the basis of their personal capacity and not as formal representatives of specific entities or interest groups. Members are appointed, for a two-year, renewable term and report to the Minister of Trade. Advisors from the Trade Consultations and Liaison Planning Division of the Department

of Foreign Affairs and International Trade support the SAGIT structure. Efforts are made to ensure regional balance and gender participation. Each SAGIT meets three to four times annually and members serve without remuneration.³

CANADIAN SPECIAL ADVISORY GROUPS ON INTERNATIONAL TRADE

- Agriculture, Food and Beverage
- Apparel and Footwear
- Cultural Industries
- Energy, Chemicals and Plastics
- Environmental
- Fish and Sea Products
- Forest Products SAGIT
- Information Technologies
- Medical and Health Care Products and Services
- Mining, Metals and Minerals
- Services
- Textiles, Fur and Leather

The ITAC has now been replaced by the Team Canada Inc Advisory Board which provides counsel on trade policy and market access questions as well as issues related to trade and investment promotion. Its role and scope has remained largely unchanged over the past fifteen years, but the organization may be overhauled to deal with the changing dynamics of WTO negotiations.

In addition, other ministers on occasion participate in meetings of SAGITs and the Team Canada Advisory Board and have also set up advisory bodies of their own. Both the Minister of Agriculture and Agri-Food and the Minister of Industry have developed their own advisory structures. Given the importance of international trade to these portfolios, trade policy and trade negotiations form important parts of the agendas of these consultative bodies.

Finally, in 1998 the Deputy Minister of International Trade established an Academic Advisory Committee to the Deputy Minister, made up of 15 senior academics drawn from a variety of disciplines (e.g., law, economics, political science, commerce, and environmental science) to provide senior officials with a twice yearly opportunity to discuss the full range of trade policy issues with a group of knowledgeable individuals without a direct stake in any of the issues.

³ SAGIT members are reimbursed for economy class travel and meal expenses incurred when travelling to meetings.

IV. Informal Consultative Mechanisms

A number of factors have set the stage for the consultative turn in Canadian trade policy. The CUFTA helped to establish an institutional framework for communicating with stakeholders, mostly from the business community, although organized labor was also invited to participate. At the political level, as part of its 1997 election campaign, the government promised greater transparency and the further democratization of foreign policy based on an even more open process for policy making. In the area of trade policy, this commitment was reinforced by the desire to avoid the public relations difficulties that the government had encountered with the failure of the negotiations at the OECD for a MAI. Although the claim made by civil society groups that public opposition was responsible for the demise of the negotiations is both misleading and self-serving, the Trade Minister at that time, Sergio Marchi, responded to the unexpectedly vigorous opposition to the agreement by renewing the government's commitment to consultation in order to avoid being similarly blindsided in the future.

The informal consultative process covers a broad range of Canadian stakeholders and is held together by an eclectic, multifaceted structure that allows for a number of points of contact. Institutional mechanisms such as the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT), the Parliamentary Centre, and the Centre for Foreign Policy Development facilitate the discussion and evaluation of relevant trade policy issues within the broader context of Canadian foreign and domestic policy (Appendix 1). Much broader outreach is achieved through the government's commitment to Internet communications, which has significantly opened up the process of information dissemination and dialogue with Canadians. A regularly updated website entitled *Consulting with Canadians* solicits the views of any Canadian on a range of trade policy issues and provides access to most unclassified documents, briefings, and discussion papers (Appendix 2).

In settings that require more structure, such as hearings before the SCFAIT, input from individuals with particular expertise may be solicited from representatives from various industries and industry associations, universities and research organizations, and interest groups representing environment, labor, and a broad range of other social concerns. At the other end of the spectrum, participants in the broader-based consultations, e.g. those making direct submissions to the trade ministry, are more likely to be self-selecting.

V. Functional Development of the Consultative Process - the CFIA Example

From the government's perspective, consultative policy development is more than just a way to avoid protestors and unflattering press coverage. It also provides for the development of stronger, more responsive policies and for greater levels of cooperation among those who implement the policy after they have had a say about how the policy was put together. In recent years, Canada has seen strong examples of public-private sector dialogue in the agri-food industry, a sector with a considerable interest in trade policy. The Canadian Food Inspection Agency (CFIA) is responsible for all food, plant, and animal health and safety in Canada. The CFIA has entered into more than 1500 arrangements with a variety of agencies in other jurisdictions aimed at sharing information, test results, and conformity assessment objectives which provide the regulatory infrastructure for thousands of bilateral and multilateral food marketing arrangements. The regulatory burdens that accompany this regime are necessarily quite significant. However, every effort is made to offset the costs of compliance with concerted export promotion and market access activities. In other words, those who must live within the regulatory regime have tangible incentives to support it. However, this equation would not be nearly as effective without the well-developed system of consultation and information sharing through commodity groups and producer and processor organizations that now exists.

The agri-food sector provides a worthwhile lesson in policy development: input is solicited from a broad range of stakeholders; it is listened to and acted upon; it produces output in the form of programs and policies that reflect stakeholder interests; and clear attempts are made to strike a balance between the costs and benefits imposed by the policy.

VI. Consultation - Mixed Results

Canada has entered a new, intensive phase of consultation in trade and foreign policy making. Results have been mixed. Those with existing ties to the government or those considered as part of the trade establishment (private sector, business, and technical specialists) claim to have experienced positive results in helping governments fine tune negotiating positions. Those groups who reject the fundamental economic growth premises of trade liberalization find the process of dealing with bureaucrats frustrating because the officials are, of necessity, constrained from entering into debate about the merits of government policy or the need for a fundamental change in direction.⁴

At the political level, Parliament has met the need for broader debate through hearings and reports of the SCFAIT. The process is strengthened by the requirement that parliamentary rules obligate the government to provide a formal response to committee findings, which are then made available to the public. The Committee conducted public hearings on the MAI in 1997. In 1998, the trade minister invited it to "undertake public consultations on the full range of issues relating to the agendas of both the WTO and the proposed Free Trade Agreement of the Americas".⁵ The SCFAIT report on the WTO released in June 1999 drew from 287 written submissions and the testimony of more than 400 witnesses taken at 30 public sessions. The predominant message from the report was that there was strong support for regular consultation with the broadest possible range of Canadian stakeholders in collaboration with all relevant federal departments. Such consultation should include timely provision of information and feedback to Parliament and citizens during all pre-negotiation, negotiation, implementation, and review phases of international trade and investment agreements. At the same time, the report reflected a strong commitment to the principles of liberalized trade, the recognition of the importance of trade to the Canadian economy and the value of the multilateral approach to market opening and the settlement of disputes. In March 2001, the SCFAIT began consultations on the proposed Free Trade Area of the Americas (FTAA).

At the level of economic policy, the message being sent to the federal government is that Canadians agree with a policy course that seeks enhanced, secure access for Canadian goods and services in world markets but that the implementation of the specifics of the various policies required to achieve these ends must be accompanied by a thorough and extensive consultative process. For the most part, this public sector/private sector compact seems to be working fairly well during the early stages. Where difficulties have emerged is in the realm of social or non-economic interests that are affected by the trade policy agenda.

Global economic exchange of goods, services, information, and capital has fuelled the need for multilateral economic regulation. This phenomenon is challenging the ability of governments to regulate in non-economic areas that were formerly and adequately dealt with at the state level such as environmental integrity, core labor standards, and cultural protection. While trade policy for such traditional trade matters as tariff rates could be informed by purely economic calculations of value, trade issues with significant social

⁴ For a cogent analysis of the challenges of modern consultations, see Stairs [2000].

⁵ Quoted in the preface to SCFAIT [1999].

content must take into account non-economic values as well. The question that emerges is: who is qualified to represent these non-economic values in a public policy forum? Within the old trade policy paradigm, it was much easier to identify key stakeholders (one need not look much beyond the roster of principal business interests). Within the ambit of new trade issues, a much broader constituency is affected. Issues of environmental safety affect all those who live on the planet but who can claim to act as a legitimate representative of environmental integrity? Criteria such as technical expertise, scientific credibility or the appearance of public support have been offered as starting points but much work remains to be done to situate the legitimacy of non-governmental actors within the broader functions of democracies, even democracies such as Canada which place a premium on consultative policy making.

Appendix 1

Organizations Facilitating Trade Policy Consultation in Canada

Standing Committee on Foreign Affairs and International Trade

- Parliamentary committee includes members from all parties.
- Includes a Sub-Committee on Agenda; Sub-Committee on Human Rights and International Development; and Sub-Committee on International Trade, Trade Disputes and Investment.
- Contact: Clerk of the Committee: Marie Danielle Vachon, House of Commons, Room 637, Wellington Building, Ottawa, Ontario, K1A 0A6, Canada.
Tel: 613-996-154; E-mail: *fait@parl.gc.ca*

Parliamentary Centre

- The Parliamentary Centre is a not-for-profit corporation founded in 1968 and associated closely with the Parliament of Canada.
- Operates a variety of activities designed to assist governments to redefine their roles, to improve performance and to develop new relations with civil society and the economic marketplace.
- Contact: Parliamentary Centre, 255 Albert St., Suite 802, Ottawa, Ontario, K1P 6A9 Canada.
Tel: 613-237-0143; E-mail: *parlcent@parl.gc.ca*

Canadian Centre for Foreign Policy Development (CCFPD)

- Formed in the spring of 1996 as a mechanism to engage Canadians outside of government in foreign policy process.
- A descendant of the Canadian Institute for International Peace and Security but with a more explicit role in policy making.
- Web site at *<http://www.cfp-pec.gc.ca/WhatsNew/news-e.htm>*

Appendix 2

Consulting with Canadians

As of April 23, 2001, Canada's Department of Foreign Affairs and International Trade was seeking input on the following issues:

- Canada's Trade Policy Agenda
- Canada/Brazil WTO Panels - Aircraft
- Specific Barriers to Trade and Investment Barrier
- Regulation of Genetically Modified Food
- OECD Agreement on the Environmental Review of Officially Supported Export Credits
- Canada - Central America Four Free Trade Agreement Negotiations
- Consultations on Trade in Services Negotiations
- WTO Services Negotiations - Virtual Consultations with Services Exporters
- Possible Trade Negotiations with Singapore
- Canada/Brazil WTO Panels- Aircraft - Possible Retaliatory Action
- Market Access Priorities Report - 2001 (CIMAP)
- WTO - Transparency
- Framework for the Environmental Assessment of Trade Negotiations
- Report of the Second Triennial Review of the WTO Technical Barriers to Trade Agreement
- Canada-Costa Rica Free Trade Agreement
- FTAA and WTO Negotiations

...Through the following mechanisms:

- Direct submissions by e-mail, fax or post
- Sectoral Consultations
- Standing Committee on Foreign Affairs and International Trade (SCFAIT)
- Multistakeholder Consultations
- Federal-Provincial-Territorial Trade Meetings
- Sectoral Advisory Groups on International Trade (SAGITS)

Source: DFAIT website, *Consulting with Canadians*, <http://www.dfait-maeci.gc.ca/tna-nac/consult-e.asp>

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MAKING TRADE POLICY IN CHILE: AN ASSESSMENT

Sebastián Sáez *

I. Introduction

Chile's trade policy-making procedure is in transition. More than ten years after the return of democracy, both society and the state are searching for mechanisms that will improve and ensure the participation of different actors (including citizens interested in public affairs) as well as the transparency of public policy-making in general and trade policy in particular.

Trade policies, especially those that lead to legally binding international economic agreements, need significant involvement from social actors. Because of the complex nature of the policy-making process, however, the participation of these groups is limited relative to the success they enjoy in domestic public policy-making. This is partly because the discussions are international and hence states continue to be the main actors, since ultimately they are responsible for enforcing the negotiated rules. For this reason, non-governmental organizations (NGOs) have a growing interest in influencing decision-making at the international level, which is an increasingly important dimension of the domestic agenda in Latin American countries.

II. Preliminary Considerations in the Case of Chile

Two considerations should underlie the analysis of how Chilean trade policy is formulated and implemented.

The first of these concerns Chile's constitutional provisions on international treaties. The second is the relationship between the way Chile conducted trade policy during the military dictatorship (1973-1989) and how it did so after the return of democracy in 1990.

In line with Chile's constitutional tradition, the provisions of the 1980 Constitution assign the following responsibilities to the president:

"Conducting political relations with foreign powers and international organizations, as well as negotiating, concluding, signing and ratifying agreements that are in the national interest. These shall be approved by Congress as stipulated in Article 50 N 1. Discussions and deliberations on these matters will be secret if the president so demands (Article 32 N 17)".

As regards the enactment of laws, Article 62 states:

Laws can originate in the Chamber of Deputies or in the Senate, either at the initiative of the president of the republic or through a motion by any of their members ... The president has the sole right to present bills that relate to the political or administrative division of the country; the

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management of the state's financial or budgetary administration, including modifications to the budget law, and the issues noted on the numbers 10 and 13 of Article 60.

The president also has exclusive initiative to:

Impose, abolish, reduce or cancel taxes of any kind; establish or modify exemptions and determine their form, proportionality or progression.

Hence tariffs can only be altered by law and only the president can initiate a law for this purpose.

Congress (comprising the Chamber of Deputies and the Senate) has the power to:

Reject or accept international treaties presented by the president prior to their ratification. The approval of a treaty should be submitted prior to ratification. An agreement shall be approved by legislative process.

Measures adopted by the president or concluded under an existing treaty do not require re-approval by Congress, unless they concern specific matters of law. In an agreement that approves a treaty, Congress can authorize the president of the republic, during the period in which that agreement prevails, to introduce provisions with force of law that he deems necessary to comply fully with the treaty. In such a case, subsections 2 onwards of article 61 are applicable (article 50 N 1).

Consequently, Congress lacks the faculties to modify treaties concluded by the president once they have been submitted for consideration. From the perspective of Chilean political tradition and of basic legal norms, therefore, the president is responsible for the country's trade policy as it relates to international treaties.

The second consideration concerns the way that the military government formulated its economic policies in general and its trade policies in particular. Since there was no democratic decision-making system, the mechanisms for participation were *ad-hoc* and informal.¹ Representatives of the business associations would normally express their views in direct meetings with those responsible for economic policy. It should also be recalled that in the mid-1970s the economic authorities embarked on a wide-ranging and unilateral process of economic opening (interrupted at the start of the 1980s because of the severe economic crisis). However, this policy was applied with disregard for what was happening at the time in international forums, and its philosophy was independent of the thinking in those bodies.

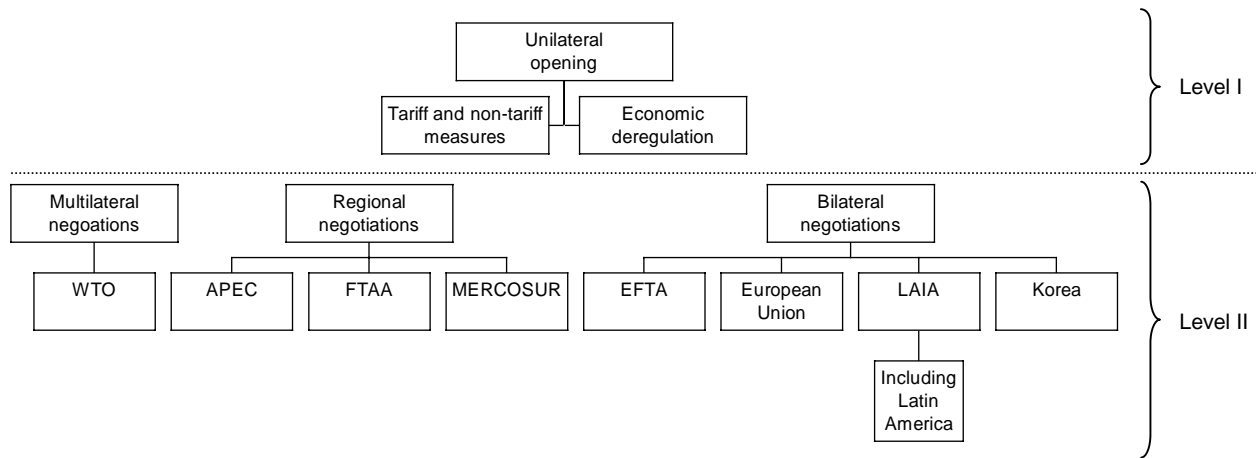
With the return to democracy in 1990 and Chile's reintegration in the international community, those who assumed political and economic authority acknowledged the need for formal mechanisms of consultation and participation that did not previously exist. For both the public and private sector, this entailed two challenges: (a) internal organization; and (b) the acquisition of technical know-how and the formulation of proposals to facilitate decision-making.

III. Trade Policy-Making

As noted earlier, the Executive branch manages trade policy. Since 1990 this has resulted in the combination of two levels for trade policy-making.

¹ There was an Economic and Social Council comprising a wide range of institutions but it had little influence on economic policy-making.

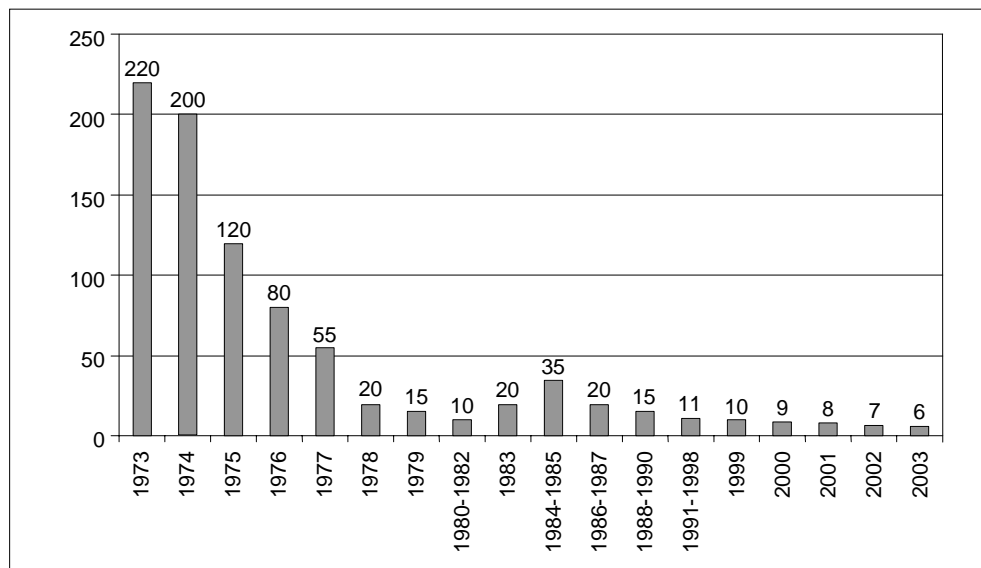
FIGURE 1



As Figure 1 shows, *unilateral opening is the cornerstone of Chilean trade policy*. This reflects the philosophical "legacy" of those economists who were responsible for the country's commercial strategy during the military regime, in the sense that trade opening and economic deregulation in general would bring welfare benefits for the whole of society irrespective of what happened in the rest of the world. Chile is thus viewed as an "early reformer" that inspired other reform processes. These in turn benefited from the long and costly learning process that the Chilean economy underwent before it became a "model".

That model is based on the principle of the "neutrality" of economic policy, which means that tariff protection is based on a single tariff for all imports and that economic policies and incentives are available to all sectors. Traditional agricultural activities (wheat, sugar and oils) constitute a significant exception to this approach. To some extent, this concept has been undermined by international economic agreements that have differentiated tariffs and established rules of origin that make protection less transparent, as well as by sectoral pressures to "offset the effects of opening".

TARIFF REDUCTION IN CHILE 1973-2003



Source: A. Rebolledo, Direcon.

IV. Consultation Process

As is evident in the above illustration of Chile's institutional structure, responsibility for *unilateral opening* lies primarily with the Executive. The latter, after a period of general consultation, presents a bill to Congress. There it is negotiated and debated, and the various interests affected by it inform Congress of their views on the matter and their approaches. Habitually, there is a parallel process of negotiation with the relevant actors outside of Congress.

Two episodes of unilateral tariff reduction are worth noting. The first, in 1991, sought to correct the excessive exchange rate appreciation sparked by capital inflows in the first half of the 1990s and to stimulate greater competitiveness in the domestic economy. Tariffs were cut from 15% to a uniform 11% for all imports. Congress approved the executive bill in a week.

The second episode (which will be examined below) occurred in 1998. It was a response to the Chile-MERCOSUR Association Agreement and it sought to correct trade diversion that might be induced by the accord. The proposal was a uniform cut in tariffs from 11% to 6%. On this occasion the process proved to be politically more difficult.

To ensure approval, the government had to supplement the reduction with legislation on safeguard measures to counteract any unforeseen increase in imports that might harm (or threaten to harm) domestic production. The political sectors also cushioned the impact of the reduction by implementing it over a six-year period, beginning in 1998, as opposed to the shorter period favored by the government. The agricultural sector asked for differentiated tariffs, with tariff-free access for imports of agricultural inputs and capital goods and a 6% tariff on finished products. The government rejected this latter proposal on the grounds that it would distort resource-allocation and would lead to inefficient trade policies, since other sectors would demand distinct treatment. An agreement was finally reached after the government pledged significant resources for restructuring the traditional agricultural sector.

The political economy of unilateral opening was therefore modified in a seven-year period; two identical episodes occurred in different contexts. In the first case the Executive proposed an initiative that was approved in a week and that had broad support.

In the second case the initiative came from the Executive but it owed its intellectual origins to certain business and academic circles. It had to include the demands of productive sectors affected by the bill, and of political circles that had to vote for it. It was approved, but the vote was much closer and the enactment of the law took several weeks. It is important to note that an unfavorable international climate and fluctuation of the exchange rate marked the second episode. Chile's exports to Asia were severely affected by the crisis; there was a sharp fall in the terms of trade; and there were fears that imports from Asia might increase significantly.

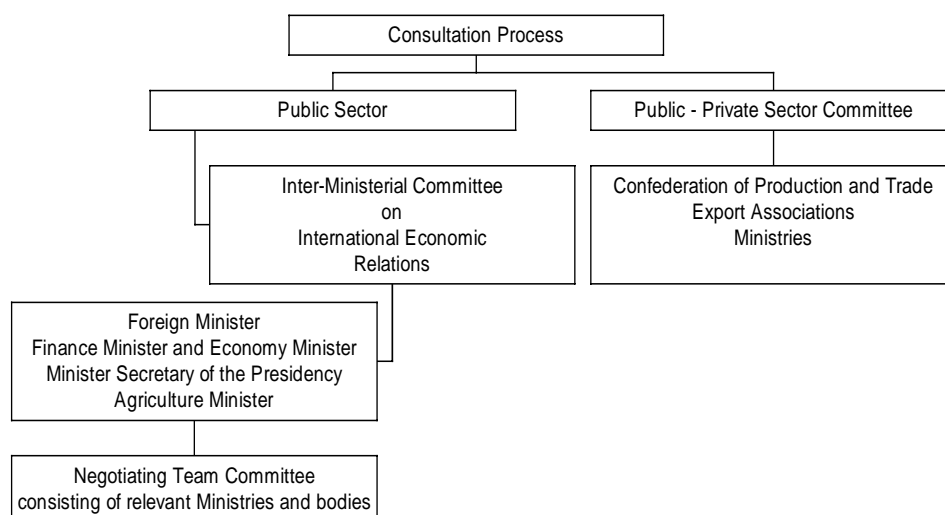
The second level of trade policy was developed vigorously from 1990 onwards, when the government acknowledged that unilateral opening would not automatically ensure market access in the rest of the world and when there was keen interest in the country's international reinsertion. Hence Chile participated actively in the various initiatives outlined in Figure 1.

To address this broad and ambitious trade agenda, the government set up three types of working committees with a view to noting the views of the various actors affected by or interested in these initiatives (Figure 2).

It is important to note that the consultation process is an initiative of the Executive branch. There is no legal requirement for it, but it responds to the political and technical need to deal with the negotiations in an appropriate manner and to ensure social support for them.

The Inter-Ministerial Committee on International Economic Relations was set up by decree. It is chaired by the Foreign Minister and comprises the Finance, Economy² and Agriculture Ministers, as well as the Secretary General of the Presidency.³ The committee fixes the general outlines of policy for international economic negotiations and takes decisions on related issues. Its secretary is the Director General of International Economic Relations, who is responsible for the negotiations. The Foreign Ministry is responsible for the negotiations.

FIGURE 2



Before such coordination was established within the Executive branch, various agencies were responsible for international economic negotiations, particularly the Foreign, Economy and Finance Ministries. The Foreign Ministry won overall responsibility for the negotiations in 1994 through the General Directorate for International Economic Relations, under the aegis of the Inter-Ministerial Committee. However, this committee is not in charge of all key decisions. The recent decision to begin negotiations with the United States, for example, was taken directly by the president without regard to the committee.⁴

The instructions and decisions that arise from the committee's deliberations are implemented by the Committee of Negotiators, comprising representatives of the ministries and various public bodies that should participate in the negotiations. Depending on how negotiations are specifically organized, these members should maintain smooth relations with the private sector so as to ensure that the negotiations proceed. The organization of the Committee in this manner is responsive to the usual thematic structure of international economic negotiations.

At the public and private sector level, the Committee of Public-Private Participation for international economic relations is responsible for informing the private sector of various issues of interest in the

² As of December 2001, the Economy Minister also had the mining and energy portfolios. He is also responsible for the Foreign Investment Committee and for a number of state companies. If another ministry is responsible for an issue related to the negotiations, the relevant minister is invited to participate in the corresponding meeting.

³ In charge of political-legislative relations between the Executive and Congress, and of coordinating work among the different ministries.

⁴ At least this is what can be inferred from press information. Given Chile's interest in these negotiations over the last 10 years, it is not important that the Committee did not start the talks.

negotiations and for discussing those issues with business. The committee is chaired by the Economy Minister and consists of the Ministers of Finance, Foreign Relations and Agriculture, as well as representatives of other government agencies. Private sector representatives include the leaders of the Confederation of Production and Trade, which represents all the country's economic sectors, and various business associations representing the export sectors.

This too is not necessarily a rigid mechanism, since the negotiations with the United States involve parallel bodies to link with the private sector and civil society.

The influence of different sectors has been evolving in recent years. Earlier negotiations for market access agreements tended to assume neutral definitions. The negotiations with MERCOSUR and Canada were followed by a growing number of tariff reduction programs as well as stricter rules of origin and tariff quotas.

V. Transparency, Access to Information and Participation

Public sector discussions are communicated to the private sector by the joint committee, and through the various micro-level coordination mechanisms that stem from the Committee of Negotiators. Relations with the private sector are generally quite flexible and informal, although the sector has sometimes complained of a lack of technical information about negotiations underway.

The public has no advance information on the agenda, the issues discussed, or the decisions taken. The press has access to information through its usual channels, normally press conferences that provide a general outline of the main issues but not all of the matters discussed.

However, criteria for access to public sector information by any citizen have been established recently, based on the principle that access to such information should not be denied. A failure to provide this information can be dealt with by the courts. There are a few exceptions, including issues related to foreign policy.

In the internal process, civil society participation is limited to the economic sectors directly involved. Academia participates indirectly through sectoral studies commissioned by the government or by business circles that want an impact assessment of the negotiations. However, academia is not engaged in a broad discussion of these issues, nor does it have extensive knowledge of them. This is partly because of a lack of access and partly because academics view such negotiations as a sub-optimal means of reaping the benefits of trade liberalization.⁵ There is, however, an active group of academics -of different political persuasions- that seek to influence the process through press statements.

Initiatives have been undertaken to include labor in the analysis and discussion of trade policy. However, usually such initiatives have been difficult to bring to fruition since labor bodies are relatively unacquainted with the substance and purpose of international economic negotiations. Typically, the domestic agenda heads the list of trade union concerns, particularly as regards traditional labor demands that are not directly linked to the negotiations. The negotiations with the United States feature a new process of consultation with labor leaders, and there have been contacts between Chilean and US labor leaders to discuss the matter.

Other groups, such as environmentalists, have not been systematically addressed or involved in the discussions. They too are largely unacquainted with the nature of international economic negotiations, which affects

⁵ For example, some academics have criticized the signing of free trade agreements on the grounds that unilateral liberalization should be the authorities' main instrument, since such accords create inefficiencies in the economy through trade diversion.

their ability to expand their participation. It is also true, although not explicitly acknowledged, that their general opposition to free trade does not favor their inclusion in a trade strategy whose main aim, quite rightly, is to strengthen Chile's commercial and economic insertion in the world.

In the context of negotiations for the Free Trade Area of the Americas (FTAA) and free trade between Chile and the United States, the press has broadly publicized a consultation process that recently began. A large number of comments on the negotiations have been received as a result, although it is not clear how these will be addressed in practice during the negotiations.⁶ In any case, this is a recent initiative that has been well received by government officials.

VI. The Role of Congress

More striking is the particular way in which Congress has participated in trade policy-making. This is partly explained by recognition of a presidential prerogative in the historical tradition of Chile's institutional order, and by the stipulations of the prevailing Constitution. However, this has begun to change in recent years. There is greater concern about the substance of the negotiations, their impact, and how the affected sectors can be compensated, especially since the Final Act of the Uruguay Round was approved. This concern has been manifest, for example, in the delays and even resistance to approving changes to domestic legislation in order to make it compatible with WTO obligations. Such concern is also explained by the greater criticism from some WTO members of certain domestic policies, such as the legislation on alcoholic beverages, some conservation aspects of Chile's fisheries policy and, more recently, the price stabilization mechanisms for some agricultural products.

Since 1996, however, the most severe problems have risen at the bilateral level, especially in relations with neighboring countries. An early sign that things were changing was opposition to transposing the Association Agreement with MERCOSUR into national law by administrative means -as was traditional for all trade agreements signed in the framework of the Latin American Integration Association (LAIA).

In the Chilean legal system "framework agreements" are treaties that include various international instruments and that, once approved by Congress, allow the Executive to embark on successive negotiations through Foreign Ministry decrees. This measure was specifically included in the 1980 Constitution. LAIA is viewed as a framework agreement, allowing the government to negotiate various trade instruments that have been transposed into national law by decree. This situation has changed, since the aforementioned articles of the Constitution state that "measures adopted by the President of the Republic or agreements signed to comply with a treaty in force *do not require new approval by Congress, unless it is a specific matter of law*". This provision is somewhat ambiguous and has triggered a debate on its scope. As regards agreements within the LAIA framework, the Constitutional Court issued a ruling in favor of the Executive's view but its scope is not clear with respect to other treaties.

For the negotiations with MERCOSUR, the government agreed to present to Congress those aspects of the bilateral agreement that did not form part of the LAIA accords.⁷ It took the opportunity to submit to Congress all the trade agreements signed with the trade bloc on the grounds that they did not fall within LAIA's remit. This approach sought to break a political *impasse* but it did not resolve the underlying problem. Some members of Congress later criticized the way that the bilateral agreement with Peru in the LAIA framework was being transposed, and there were even calls for a ruling by the Constitutional Court. The

⁶ This process is inspired by the mechanisms created in the FTAA negotiations. However, it is difficult to show whether they led to any concrete outcomes since the official government information available on these negotiations is very general.

⁷ Democratic Clause and Physical Integration Protocol.

Executive eventually went to the Chamber of Deputies to explain the provisions negotiated with Peru, but insisted that the agreement should not be submitted to the normal procedures of legislative approval since it was concluded in the LAIA framework.

Congress undoubtedly plays a more active role in approving those agreements that are more internationally sensitive.⁸

In our opinion, the way in which treaties negotiated as part of a broader trade agreement are transposed into national law should be improved by making the process as precise as possible. A balance should be sought whereby Congress is fully informed of the issues under negotiation, while the government can conduct trade negotiations effectively and flexibly without the outcome being subordinated to the domestic political agenda.⁹ This is a fitting means of addressing this issue, with a view to ensuring that agreements subsequently approved by Congress contain specific provisions on the management and implementation of the main issues covered by those provisions.

It is worth noting that, notwithstanding the presence of a formal consultation structure, the degree, depth and quality of participation is not the same in all the initiatives underway. For example, although Chile's negotiations with the European Union (EU) or the European Free Trade Association (EFTA) have a similar public structure for coordination, that structure differs from the one used in negotiations with the United States. The level of consultation with the private sector is much more intense and informal in the case of MERCOSUR than in any other agreement because of the constant difficulties that the integration process faces.

Unlike other countries, Chile has no organized opposition to free trade agreements. In fact within Chilean society there is a broad consensus in favor of deregulation and trade opening.

Sometimes, however, there is opposition to trade opening, especially from producers of sensitive agricultural (or traditional) goods, on the grounds that there are "distortions" in the international market caused by "the policies of most countries, especially industrialized countries". Such opposition has led members of Congress from these agricultural areas to seek support mechanisms that would help farmers switch from sensitive agricultural production to internationally competitive activities. This was particularly important in the case of the Chile-MERCOSUR agreement and in the tariff cuts subsequently approved.

Critics of economic opening and deregulation, however, face no great problems in using the media and the political system to express their views. Hence the sectors that feel threatened by the possible implications of an agreement (unlike those mentioned above) have little maneuvering room and little prospect of influencing the process.

VII. Conclusions

Trade policy-making in Chile has a formal consultation process. In the case of unilateral liberalization initiatives (tariff cuts, economic deregulation), the debate takes place mainly in Congress where the various interests involved seek to influence the decisions of the government and the Legislature.

⁸ This was also the case in the process of approving the Argentina-Chile Mining Agreement.

⁹ For example, some experts believe that if a trade agreement involving a tariff reduction schedule is modified by common consent of the parties, the government must submit the modification to Congress. This could prove to be a lengthy process, since it might not be a legislative priority. If this interpretation is to be correct, the treaty must include provisions on the Executive's authority to modify *certain aspects* by more expeditious means without having to go through normal legislative procedures.

With regard to international economic agreements, there is a formal structure for discussion within the public sector and between the public sector and the rest of the country. This system is not uniformly successful, however, since there are significant differences between the various cases and in their effectiveness.

The degree of participation among the social sectors varies and often depends on their level of organization and influence, as well as on the political significance of the agreement in question.

For both historical and institutional reasons the Legislature's role is fundamental for approving Executive initiatives, but not in developing those initiatives. This situation has changed over time, and sometimes there have been significant disputes over these issues between the Executive and Congress. However, this has not given rise to a more effective means of working together; such joint effort is still needed.

The consultation process devised by the Executive *does not stem from a legal requirement* but responds to the political and technical need to deal with the negotiations in an appropriate manner and to ensure subsequent social support for them. This framework has been devised over time and has undergone many changes before coalescing into the current system. From the viewpoint of participation, transparency and access to adequate information, there is room for substantial improvement, although significant progress has been made in this regard on the part of the government. The highly complex question to resolve is: **what progress can be made on this issue without affecting the Executive's negotiating capacity and its effective participation in international forums, as occurs in other places?**

THE ROLE OF THE COLOMBIAN PRIVATE SECTOR IN MAKING EXTERNAL TRADE POLICY

Andrés Langebaek *

I. Introduction

This paper seeks to explain the importance of the private sector in formulating Colombia's trade policy, with a specific focus on the 1990s. It stresses the process currently underway and examines some of the changes being made by the actors involved -the private sector and the authorities- with a view to the negotiations for the Free Trade Area of the Americas (FTAA).

The document is divided into four sections. The first analyzes the formal mechanisms contemplated by law for trade policy coordination. The second answers a specific question: Who has been responsible for setting the Colombian trade agenda during the last decade?

The third part identifies groups that have been invited to the bargaining table, while the final section focuses on concrete issues, such as how the consultation process works. The paper ends with a brief section of conclusions, which stresses the absence of private sector groups in the trade policy-making process, with the exception of entrepreneurs and business organizations. For that reason, throughout this report, the expression "private sector" always appears in quotation marks in order to indicate that it refers to a particular segment of the business community.

Annexed to the study is a document that describes the mechanisms for the participation of labor and business in policy-making within the Andean Community.

II. Institutional Framework

This section presents those formal aspects of trade policy-making that have been incorporated into the body of law. As shown below, informal mechanisms have had much greater repercussions than the formal mechanisms, which tend to be obsolete.

Law number seven of 1991 and regulatory decree 2350 of the same year define the institutional framework governing the formulation of trade policy of Colombia. These laws establish that the foreign trade sector consists of public bodies that participate in the design and execution of trade policy, and by private institutions that are related to the sector. Hence there are official, joint and business sub-components to the sector.

The official sector is represented by public enterprises that exercise their functions in the trade sector: the Higher Council of Foreign Trade and the Ministry of Foreign Trade.¹ The joint sector consists of a Joint

* Economic Vice-president of the Colombian Banking Association.

While it is impossible to mention all the individuals who helped in the writing of this paper, the author is particularly grateful for the cooperation of former External Trade Ministers Magdalena Pardo and Mauricio Reina.

¹ In addition to offices of the executive branch, ministry departments and other administrative departments concerned with trade policy implementation.

Commission of Foreign Trade and of regional advisory committees. Fiscal officers and private citizens who undertake trade transactions or offer related services comprise the business sub-sector.

It is worth mentioning that in the process of instituting trade policy, the business sector enjoys greater benefits and recognition from the official branch than any other sector.

There follows a brief description of the bodies comprising the two first sub-sectors:

Official Sub-Sector

The Higher Council of Foreign Trade is the government's advisory body in all trade-related matters. The Council consists of senior government officials and two councilors dedicated exclusively to drafting proposals for Congress.

The Higher Council is responsible for making trade policy recommendations to the government and serves as an advisor for policy decisions adopted in the context of international organizations.

The Ministry of Foreign Trade is responsible for drafting and implementing policies, plans and programs that the government and the Higher Council of Foreign Trade have adopted. To support this process, the Ministry relies on technical, sectoral and advisory committees, the most prominent of which are the Foreign Trade and Commercial Practices Committees. These latter two committees consist of government officials.

The Joint Sector

The Joint Commission on Foreign Trade consists of the Higher Council of Foreign Trade and representatives of the private sector that the Council designates. The Commission seeks to act as a forum to facilitate communication between the private sector and government agencies, allowing them to exchange information for the purpose of designing trade strategies. The Commission is also responsible for monitoring the implementation of trade policy in the country.

The Commission meets intermittently and has become purely a matter of protocol. This is because the business organizations routinely participate in discussion forums, and hence representatives of the business sector generally arrive at Commission meetings with a very detailed knowledge of the progress of the negotiations. It is viewed as a body for securing the backing of the "private sector" and for legitimating government decisions.

Aside from the Joint Commission, the law stipulates the creation of regional advisory committees to handle issues related with the development of exports, transportation and expediting transactions. Since these committees do not take part in international negotiations, however, they will not be subject to further study in this report.

III. Who Sets the Agenda?

Almost invariably, economic opening processes, trade integration agreements, governments (at the highest level) and technical bodies have initiated economic complementary accords. Active and committed participation on the part of the Colombian private sector is at a very early stage.

Among former officials of the Foreign Trade Ministry, opinion is virtually unanimous on the attitude of the "private sector" during the 1990s; the elements of the sector involved in the negotiations tended to overstate the dangers and negative effects of trade liberalization policies. Hence the agreements proceeded despite dogmatic opposition from the "private sector". If these groups had taken part in the discussion of the agenda and in drawing up the general policies related to tariffs or integration, there would not have been a particularly positive outcome in terms of the negotiating schedule and the scope of the talks.

Although the broad outlines of trade liberalization processes have always emerged from the highest levels of government, the way in which policy was to be conducted was highly dependent on the Foreign Trade Minister and his attendant technocracy. The scope of the negotiations with the G-3 and MERCOSUR, for example, was determined by significant strategic decisions taken by officials of the Ministry.

Colombia had its first taste of trade integration in the early 1990s, with the signing of a free trade agreement in the Andean Pact. This was an initiative of Presidents Carlos Andrés Pérez of Venezuela and César Gaviria of Colombia. Few external trade policies in the country's history have been adopted so independently by the government that the "private sector" could barely react to a variety of *faits accomplis*.

The Group of Three was born in 1990 in a meeting between Presidents Carlos Andrés Pérez, César Gaviria and Carlos Salinas de Gortari, who initially conceived it as a regional coordination mechanism. To that end, working groups were set up to address issues as diverse as trade, transport, culture and energy. Members of the Colombian government viewed the presidents' decision as a diffuse political initiative. The trade group worked slowly and erratically for almost two years and its achievements were minimal. Everything changed radically when, with the North American Free Trade Agreement (NAFTA) negotiations finished, Mexico revamped its negotiating team and proposed a change in the agenda. The proposal was to move beyond a mere trade liberalization accord and to conclude a complementary economic agreement that would include the liberalization of services, intellectual property norms, government procurement, and so forth. This proposal was accepted by the Minister of the time and, naturally, it had a significant impact on the agreed agenda.

Throughout this period, one of the most consistent features of the Colombian government's foreign trade policies has been an effort to deepen and improve the existing agreements and, second, to open up new trade areas. Hence the pursuit of fresh markets led the Colombian negotiators to seek new forms of integration with MERCOSUR, once the Andean Pact's common external tariff had been completed and once the G-3 accord and the free trade agreement with Chile had been signed.

The new round of FTAA negotiations has revealed some incipient changes in the private sector's participation. Some business organizations have begun to call for strategic approaches to the negotiations. The National Association of Manufacturers (ANDI), for example, suggested that the country should strive to secure a balance between the blocks in the negotiations, one comprising the NAFTA countries and the other consisting of the MERCOSUR countries, with some preference for the proposals made by the countries of the north.

The "private sector's" change in attitude stems from the maturing of public opinion induced by positive experiences of integration processes in the 1990s, as well as from the traditional business associations' more professional approach to external trade issues.

IV. Groups Involved in the Consultation Process

Business Sectors

As was mentioned in the introduction, the "private sector's" role in foreign trade policy-making is effectively limited to the business sector. The business associations invited to the negotiations have two main features:

(i) they are the biggest in the national debate, and (ii) they represent the tradable sectors that might be affected by the negotiations. Apart from business groups, invitations were also extended to companies that are important by virtue of their size, their pace of development or the scale of their involvement in external trade. The list of those convened normally includes about 200 business associations and companies.

The economic associations, especially those connected to industry, have a long history of participation in decisions on the country's foreign trade. Their involvement began through the Colombian Institute of External Trade (Incomex); a technical body set up in the late-1960s and attached for many years to the Development Ministry. For a long time Incomex was responsible for managing purchases from overseas under the import substitution model. It was accustomed to close contact with the productive sector, since it received the applications for imports and managed the general foreign currency budgets fixed by the monetary and exchange authorities. Incomex had great discretionary authority to accept or reject applications for imports.

Another factor that affected the participation of the business groups concerns negotiating traditions in the Andean Group during the 1970s and 1980s. During this period, business organizations and government officials participated jointly in the negotiations.

One former official interviewed mentioned that, among Latin American countries and in general terms, Colombia's industrial and agricultural associations are comparatively strong. This is evident in the fact that their chairmanships are full-time positions and in the relative sophistication of their bureaucratic structures. Although the economic crisis of the late-1990s weakened the role of some business associations, the direct participation of individual entrepreneurs has grown.

Naturally, the vulnerability of the business sectors to external trade policies varies, as does their role in the negotiations. Exporters hope for an improvement, while those producing for the domestic market expect the opposite.

One of the circumstances conducive to the emergence of an overall vision, at least at the level of the business sector, is the space afforded to this segment of civil society in the FTAA negotiations. The business forums that precede the meetings of Foreign Trade Ministers have obliged the producers' associations to strengthen their positions. In 2000, therefore, in an effort to correct the weaknesses of those associations that have no capacity to acquire detailed knowledge of all the issues being negotiated, the Inter-Association Committee on External Trade (Cicex) was instituted. This is a technical body to which any economic association interested in taking part in the negotiations may belong.

Involvement in Cicex entails no cost. The current membership includes about forty business guilds, the country's traditional associations except ANDI, plus some new bodies such as Confecámaras, the Bogotá Chamber of Commerce, the Colombo-American Chamber and some twenty organizations in the services sector representing the interests of hospitals, hotels, travel agencies, universities, the transport sector, and so forth. The Committee has worked hard to involve in its working panels those groups and sectors that to date have been at the fringe of the negotiations.

Cicex is organized by panels according to the issues addressed. Each of these is led by a coordinator, who is generally the representative of a business group. The pace of work in each panel depends on the state of the FTAA negotiations, but the chairpersons of the panels meet once a week to discuss how each of their issues stand. Technical support for Cicex is provided by groups of university students in the fields of economics, law and international relations. These groups collect legislation and monitor the state of negotiations in other regions of the world. Cicex has hired specialized consultants to advise on complex and unfamiliar issues.

In the Ministry's experience, the participation of entrepreneurs normally makes the negotiations more dynamic and flexible, while the proposals of the business organizations tend to be more conservative. Although work with the entrepreneurs could give rise to appreciable results in the shorter term, in calling the meetings the Ministry has sought a balance between business associations and entrepreneurs. This stems from a fear that the opinion of those entrepreneurs active in the negotiations might prejudice the interests of smaller producers or actors. By channeling the information through the business groups, the proposals secured are those on which, in principle, there is already consensus. This naturally supposes minimum harm or risk for the more vulnerable members, even at the expense of substantial benefits for some members.

Whatever the case, it is clear that the most prominent entrepreneurs can skip over the positions of the business associations or the technical negotiating bodies. In these cases, their requests are transmitted directly to the minister or the vice-minister.

To conclude this section, it is important to note that practically all the government's meetings for discussion and analysis with the private sector are held in Bogotá. For small and medium entrepreneurs, therefore, participation in the talks might entail some costs. In cases when it is important to have regional participation in the discussions and traveling to the capital is complicated; representation through the business organization (if there is one) is the only remaining option.

Non-Business Sectors and Recent Initiatives

With regard to the absence of sectors other than the business community (trade unions, consumer groups, NGOs) from the policy-making process, it should be noted that being attentive to the negotiation process requires constant participation. This implies the possession of specialized knowledge to which not all sectors of the population have access.

There is some evidence of labor union participation in the Andean Community context. As shown in the Annex, Decision 441 in 1988 created a Labor Advisory Council with its own voice and place in the highest Community institutions. The Council has been financed by Spain's Economic and Social Council. Although analysis of the issues discussed within these bodies is widening in scope, they are still limited to addressing general aspects of the integration process.

One of the initiatives that could have a decisive effect on the mechanisms for the participation of society in the FTAA negotiations concerns the Foreign Trade Ministry's recent call to the country's main universities. The aim is to form tripartite negotiating teams that involve academia, in addition to the traditional sectors of business and government. The idea is to underpin the technical grounding of research by the public and private sectors for the purposes of decision-making. There is a dual advantage to including the universities: as well as helping to define the strategic issues of the negotiations, they can serve to mediate between the government and private actors when there are inconsistencies in the available information or differences of approach.²

In concluding this section, note should be taken of the complete absence of two groups of actors in any negotiations on external trade policy: Congress and the NGOs. Although Congress has to ratify the free trade agreements that Colombia signs with other regions and countries, its duties have been limited to this

² The universities are to participate under certain conditions: they should choose a particular issue, devote a full-time researcher to analyze it, and commit themselves to monitor it for a certain period. It is hoped that workshops can be organized involving negotiators and academics to compare the negotiations in which the country is involved with those in other parts of the world.

occasional role. Some of those interviewed for this paper mentioned the huge political capital that discussions of foreign trade could represent for members of Congress. As regards the NGOs, neither those working at the national level or those with an international projection have taken an active part in the negotiations. At the same time, neither have they made public statements denouncing the negotiations, demanding participation or calling for them to be steered in one direction or another.

V. Consultation Procedures and Mechanisms

Although other actors are not explicitly invited, any individual or institution that approaches or writes to the Ministry by any means, announcing an intention to participate in the negotiating meetings, is included in a database and receives information about and invitations to the meetings. This happens because when the sector has not been taken into account in decision-making on very important issues it has responded with significant pressure -through press statements.

Apart from the decisions taken at the start of the 1990s (and the creation of a free trade area within the Andean Community was an exception in that regard), the Ministry tends to engage in an intense round of negotiations with the business sector.

Once negotiations begin, the business associations and companies are called to general meetings so that the purpose and strategic issues of the negotiations can be explained to them. As mentioned earlier, this is not a formally regulated mechanism but it has been used throughout the last ten years of negotiations.

Once the first invitation has been issued to business groups and companies, the Ministry holds an intensive round of meetings with the business sector. Using the "room next door" consultation mechanism, selected representatives of business groups accompany the official delegations and await the public official's request for consultation. At the end of each day, the government's technical team meets with the representatives of the business sector to update them on the negotiations. Upon their return they present the results to members of the private sector.

The Foreign Trade Ministry is studying the possibility of playing a more decisive role in inviting and promoting the participation of "private sector" actors in the FTAA negotiations. It has contemplated issuing public invitations and publishing announcements in the press.

The negotiators customarily use the working material distributed in the discussions with the "private sector". These official documents are not widely distributed but are usually provided if a request is made. The reasons for this reserve have to do with the concern that the other party to the negotiations might gain access to the documents, thereby weakening the country's bargaining position. Another reason is that the documents are not definitive and hence their indiscriminate distribution could spur false public expectations. Finally, it is assumed that the average person would find it difficult to understand the texts.

As regards the role of the officials, it is worth noting that the business organizations consulted believe that they are well prepared, and that they are aloof from the preferences of certain associations.

VI. Conclusions

The almost exclusive participation of the business sector in discussions of external trade policy in Colombia is striking. What is the explanation? This paper posits at least four reasons.

- (i) During the period of import substitution, the business associations and entrepreneurs designed sufficiently sophisticated mechanisms to intervene in external trade decision-making.
- (ii) The issues under discussion in foreign trade policies have been closely linked to the questions of tariff reduction. This has not favored private sector initiatives in new issues or matters of greater scope (hence the actors in the sector are usually those that are directly affected by the policies adopted).
- (iii) Monitoring foreign trade negotiations requires experience and time. Private companies and business associations have an advantage in this regard relative to other sections of society.
- (iv) The invitations issued by the Ministry for widespread discussion of the issues spring from a recent policy and goal.

At least during the first half of the 1990s, the public sector became independent of the "private sector" in policy-making. This was because of the strong resistance to any negotiations that entailed a lessening of the economy's degree of protection. With time, as the benefits of these policies have become apparent, greater participation by the private sector has been possible. Even today, however, it is deemed essential that the state pursue a strategy and that to that end it should calibrate and filter private sector demands; otherwise integration policy runs the risk of stagnating.

In general, the procedures and mechanisms for rapprochement between the authorities and the "private sector" have been adapted to the involvement that the latter has had in the process to date. A broader call for involvement, however, requires the improvement of mechanisms to publicize information and to adjust the structure of the decision-making bodies so as to include those actors. The challenge is how to finance the participation of economically weak sectors (trade unions, consumer groups, non-profit organizations, and so forth) based on a full appreciation and understanding of external trade issues that are becoming more complex by the day.

Annex
**Participation of Entrepreneurs and Workers in the
Decisions of the Andean Community**

Beyond domestic affairs, entrepreneurs and workers are able to participate in the integration process through instruments created within the Andean Community. Hence the Andean Business Advisory Council (*Consejo Consultivo Empresarial Andino*) and the Andean Labor Advisory Council (*Consejo Consultivo Laboral Andino*) were created in 1998 through Decisions 441 and 442. Both Councils are advisory institutions of the Andean Integration System.

Delegates directly elected by organizations representing the labor sector of each member country constitute the Labor Council. Four delegates elected from among the heads of business organizations representing each of the countries, on the other hand, comprise the Business Council. The Advisory Councils can submit statements -participate with the right to speak- to the Andean Council of Foreign Ministers, the Commission or the General Secretariat of the Andean Community on the programs or activities of the subregional integration process.

It is important to mention that decision 464 of May 1999 granted the Advisory Councils the right to attend *-on their own initiative-* meetings of the Andean Council of Foreign Ministers and of the Andean Community Commission as well as meetings of government experts or working groups connected with the Andean integration process. Formerly, the Councils could only attend these meetings by invitation. However, the participation of the Labor and Business Councils in decision-making is still very poor.

Spain's Economic and Social Council (*Consejo Económico y Social* - CES) has been cooperating for several years with the General Secretariat of the Andean Community by sponsoring and fostering social dialogue between entrepreneurs and workers. In 1997 and 1998, with the cooperation of the European Commission, AECI and the Community's General Secretariat, two meetings were organized on "Social Dialogue in the European Union and the Andean Countries" and "Social Dialogue in the Andean Community". In June 1998, the CES and the Community signed a cooperation agreement which financed the attendance (joint or separate) of entrepreneurs and workers at meetings of the Andean Councils.

These Councils have been leading the dialogue on economic, business and social issues brought about by the Andean regional integration process. Conclusions reached at these meetings assert the commitment to deepen and perfect the Andean integration process, the free circulation of people in the region and the freedom of citizens to settle and work within the subregional community, among other issues. Fernando Martínez Rodríguez, an officer of the CES, says: "the most important issues concerning Andean Society and its integration process have been discussed each time in greater detail and depth".

The Labor Council has met three times and the Business Council four. Additionally, the two Councils have held three joint sessions.

TRADE ADVISORY MECHANISMS IN MEXICO

Carlos Alba V. *
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I. Introduction

Mexico's trade policy has changed dramatically in the last 15 years. For more than 40 years, Mexico followed a development model centered on import-substituting industrialization (ISI). In the early 1980s, however, weakness in the oil market, scarcity of external financing and the debt crisis forced the Mexican government to change course and promote export-led growth. The impact of this change has been dramatic. In less than 15 years, Mexico has become one of the most open economies in the developing world and trade policy has become one of its main engines of economic growth. Export activity currently accounts for half the growth in Mexico's gross domestic product (GDP) and almost one third of its overall GDP. In 1998, Mexico's GDP surpassed US\$ 400 billion, while its total exports reached US\$ 118 billion. Mexico has become the world's eighth largest trading nation, and ranks first in trade volume in Latin America. By the end of 2000, its exports exceeded US\$ 140 billion and its total trade reached US\$ 270 billion, over half the value of its GDP.¹ Manufactured products make up the bulk of these exports, representing more than 85% of Mexico's total exports.

A variety of internal and external factors need to be taken into account in order to explain the drastic shift in Mexico's trade policy, which has led to a rapid and deep process of liberalization and a commitment to open markets in only a few years. One factor, highlighted here, is the recognition among government elites that if the new trade policy, and trade negotiations in particular, were to be successful, Mexico would require a system for soliciting and receiving advice during the policy-making process from certain segments of society - especially private sector groups.

This paper examines the process established by the Mexican government for consulting strategic groups on trade policy issues. This process was initiated in 1988, when the government took the decision to commit to economic opening. The paper addresses the questions by the sponsors of this project, namely: what is the origin and nature of Mexico's consultation process on trade policy; and what are its characteristics, structure, and degree of transparency. The paper also discuss the evolution of the process since its inception, and offer examples of the role played by the consultation mechanism in one of the most important trade negotiations that Mexico has undertaken thus far: the negotiations for the North American Free Trade Agreement (NAFTA).

II. The Origin and Structure of the Mexican Trade Advisory Mechanisms

The creation of the trade advisory mechanisms is related to the Mexican government's decision in 1988 to openly search for a new development model based on export promotion, and specifically to the June

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¹ In 1998, Latin America's exports reached US\$ 274 billion; Mexican exports accounted for 32% of these (WTO [1999]).

1990 announcement of its decision to seek the negotiation of a free trade area with the United States. The Mexican government understood that, in order for the NAFTA negotiations to be successful, it would be necessary to rally the support -or at least seek the consensus- of strategic social groups. The willing participation and support of the Mexican private sector and foreign investors located in Mexico were seen as particularly important.

Achieving the latter was not an easy task, since the government and the private sector had had a distant and difficult relationship since the 1970s. This relationship developed as a result of the statist and populist policies pursued by the Mexican government at that time. It further deteriorated when, in early 1982, the government decided to freeze dollar bank accounts and nationalize the banking industry in order to prevent capital flight. As a result of a changing development model, the Mexican government sought to recover the confidence of the private sector to stabilize the economy and resume growth in the 1980s. It began granting the private sector a stronger voice and participation in government decision-making. Nonetheless, important private sector organizations defied the government and supported the opposition parties, seeking a change of the political regime.

The decision to pursue economic liberalization led the newly elected government of President Carlos Salinas to convene, through the Ministry of Trade and Industrial Production (SECOFI), a series of meetings with most private sector umbrella organizations, chambers and organizations of importers and exporters. These meetings were designed to discuss and evaluate the prevailing situation of the Mexican industrial sector, its needs, and its potential to develop and promote exports.

The initial reaction of the private sector organizations to this invitation was to organize internal meetings under the auspices of the Business Coordinating Council (*Consejo Coordinador Empresarial - CCE*).² Subsequently, they decided to create the Coordinating Body of Foreign Trade Business Associations (*Coordinadora de Organismos Empresariales de Comercio Exterior - COECE*), whose main function at the time was analyze the problems confronting a heterogeneous and complex private sector, and to establish a common private sector position on trade policy.³ In the new environment that Mexico was experiencing at both the government and private sector levels, it was considered important for the private sector to establish a mechanism that involved the various dispersed groups and organizations, and that could legitimately represent the whole sector with a unified voice.⁴ COECE soon began to represent the private sector in the Mixed Commission for the Promotion of Exports (*Comisión Mixta para la Promoción de las Exportaciones - COMPEX*).

The Mexican government's decision to seek a free trade agreement with the United States, and its realization of the historic significance of this decision, led the government to take three important steps. First, it proposed to the Mexican Senate the organization of a major national consultation process on "Mexico's trade relations with the world", which was organized in April-May 1990. Second, it formally announced its intention to

² In 1975, the CCE had appeared as an umbrella organization to unify the interests of the private sector and present a united front towards the statist and populist policies of the federal government at the time. By the 1980s its influence had increased, and it was a prominent interlocutor of the government in the process of designing public economic policies.

³ It is important to note that COECE was composed of a small staff drawn from private sector organizations linked to the foreign trade sector, including the Asociación Nacional de Importadores y Exportadores de la República Mexicana (ANIERM); the Committee of Mexican Entrepreneurs for International Matters (*Consejo Empresarial Mexicano para Asuntos Internacionales - CEMAI*) the Consejo Nacional para las Exportaciones (CONACEX); and the international sections of major business chambers.

⁴ In the 1980s, besides the CCE, several organizations sought to represent the specific interests of particular private sector groups and/or sectors. In areas related to foreign trade, for example, there were organizations like ANIERM, CEMAI and CONACEX, as well as the international sections of business chambers like the Confederación de Cámaras Industriales de los Estados Unidos Mexicanos (CONCAMIN); the Cámara Nacional de la Industria de la Transformación (CANACINTRA); the Confederación de Cámaras de Comercio de los Estados Unidos Mexicanos (CONCANACO); and the Cámara Nacional de Comercio (CANACO) of Mexico city. In addition, there were numerous bilateral chambers of commerce representing different countries like the United States, Germany, France, etc.

negotiate the agreement, and invited the private sector to participate in the negotiations "with the aim of taking the necessary steps to achieve the best deal possible".

In response to this invitation, and after prolonged discussions, the private sector decided to participate. In order to do so effectively it strengthened and widened COECE and used it as the main private sector coordinating body in the NAFTA negotiations.⁵ After this restructuring, COECE became an organization comprising all business organizations involved in foreign trade and international matters.

In September 1990, on the basis of a recommendation by the Mexican Senate, the government decided to form an Advisory Council on the Free Trade Agreement, composed of representatives of the government, the private sector, academia, labor and the agricultural sector (Bustamante [1991] pp. 301-308). The government representatives to the Advisory Council were the Secretary of Trade, Jaime Serra, and the head of SECOFI's Negotiating Unit for the free trade treaty, Herminio Blanco. Private sector representation in the Council, which was the most numerous, included the leaders of the main business organizations, such as the CCE, COCAMIN, CONCANACO and COECE. The Council also included CEOs of some of the most important firms in several key sectors, industrial cities or regions, such as Guadalajara and Monterrey, and legal experts from well-known law firms.

The academic sector was represented by the rectors or presidents of some of the most important public and private Mexican universities, including the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México* - UNAM), the National Polytechnic Institute (*Instituto Politécnico Nacional* - IPN), El Colegio de México (COLMEX), El Colegio de la Frontera Norte (COLEF), the Monterrey Technological Institute (TEC de Monterrey), and the Autonomous Technological Institute of Mexico (*Instituto Tecnológico Autónomo de México* - ITAM), as well as the National Association of Universities and Higher Education Institutions (*Asociación Nacional de Universidades e Instituciones de Educación Superior* - ANUIES).

Labor was represented by the leaders or representatives of the National Confederation of Workers (*Confederación de Trabajadores Mexicanos* - CTM) or the National Confederation of Peasants (*Confederación Nacional Campesina* - CNC), organizations of the then-governing party, the Institutional Revolutionary Party (*Partido Revolucionario Institucional* - PRI), and the Labor Congress, an umbrella organization of national labor organizations. Finally, the agricultural sector was represented by the leaders of the National Confederation of Small Landowners (*Confederación Nacional de Pequeños Propietarios* - CNPP), another organization of the PRI; and the National Agricultural Council (*Consejo Nacional de Agricultura* - CNA), a member organization of the CCE representing most agricultural producers in Mexico. The Advisory Council was to serve as a forum in which the government would discuss the broad outline and trends of trade policy and trade negotiations, inform strategic groups of the progress of the negotiations, and solicit their advice in these matters.

In summary, the Mexican government's decision to liberalize the economy and negotiate free trade with the United States led it to foster and support the creation of a consultative mechanism in trade policy that includes two parallel tracks. The first is business-based and includes business associations, confederations,

⁵ Before the NAFTA negotiations were announced, COECE had a small staff assigned to it by the private sector organizations linked to the foreign trade sector - ANIERM, CEMAI and CONACEX, among others- and the international sections of major business chambers. After the restructuring, COECE was comprised of all major member organizations of the CEE like CONCAMIN; CONCANACO; the Confederación Patronal de la República Mexicana (COPARMEX); the Asociación Mexicana de Instituciones de Seguros (AMIS); the Consejo Mexicano de Hombres de Negocios (CMHN); the Consejo Nacional Agropecuario (CNA); the Asociación Mexicana de Casas de Bolsa (AMCB); CANACO of Mexico city; CANACINTRA; CEMAI; ANIERM; CONACEX; the Cámara de Comercio México-Estados Unidos; and the Capítulo Mexicano de la CCI.

and chambers of trade and industry around the country.⁶ The second is composed of a broader cross-section of labor, peasant organizations, academics and business.

The following section discusses how these consultative mechanisms have worked, the specific functions they have played in trade policy-making, their level of transparency, the structure of the consultations, the issues covered in the consultation process, and the timing of consultations. In examining these issues, reference is made to the experience of the NAFTA negotiations, on which the authors have conducted extensive research.

III. The Scheduling of Consultations

One of the most striking characteristics of the scheduling of consultations in the Mexican system is that consultations take place prior to and during negotiations, prior to the final outcome of negotiations, for the review of the final outcome, and, in special cases like NAFTA, even during the process of ratification and implementation of trade agreements. This is clearly evident in every major trade negotiation Mexico has entered, starting with NAFTA.

In the NAFTA case, for example, there was active participation by the private sector in the preparatory phase of negotiations, starting in June 1990, and during the formal initiation of the NAFTA negotiations a year later.⁷

The participation of the private sector took several forms. It began with the above-mentioned revamping of COECE, the appointment of a group of very prominent business leaders to take charge of it, and the preparation of a study of trade advisory mechanisms in Canada and the United States to help structure the internal organization of COECE.⁸ Next, COECE undertook studies of all economic sectors in Mexico, in order to identify their strengths and weaknesses and prepare their positions in the negotiations. This decision was taken once it was discovered that neither the government, nor the different business organizations, nor the CCE had the detailed sectoral information necessary to serve as the basis for decision-making during the negotiations. In order to prepare the sectoral studies, 140 working groups were established within COECE.⁹ It is important to discuss the basic principles that guided the composition of these working groups, since they reveal important characteristics about the consultation process that took place in the period prior to the negotiations - how open the process was, which groups participated, who they represented, and so forth. These issues are discussed below.

⁶ Before organizing the team that would support the NAFTA negotiators, COECE undertook a study of the existing trade advisory mechanisms in the United States and Canada: the Advisory Committee on Trade Negotiations (ACTN) created by the United States through the 1974 Trade Act and which was structured in three layers; the International Trade Advisory Committee (ITAC) and the 15 Sector Advisory Groups on International Trade (SAGITs) that the Canadian government had created in 1986. COECE's organizational structure mostly resembles the Canadian Trade Advisory Committee. However, a major difference between COECE and the ACTN, ITAC or SAGITs is that in Canada and the United States the members of these bodies are government appointees, whereas in Mexico members are appointed by the private sector organizations.

⁷ Such involvement is evident in other major trade negotiations undertaken by Mexico since then, including the negotiations with the European Union (EU).

⁸ COECE business leaders appointed the then President of the Mexican-US Commission of the CEMAI, Juan Gallardo Thurlow, as Executive Director of COECE. This appointment was a sign of recognition among business leaders of the long experience of the Mexican-US Commission of CEMAI in handling Mexican-US commercial relations and the power and influence of CEMAI as an organization created by some of the most prominent Mexican entrepreneurs. Together with the appointment of Mr. Gallardo, six general coordinators, also prominent businessmen, were appointed in the areas of Industry, Commerce, Services, Agriculture and Fishing, Insurance and Finance, in accordance with the structure of the CCE.

⁹ In addition, CEMAI's Washington office became an office for COECE and a permanent staff was appointed to identify law and lobbyist firms and international trade experts who could be hired to help design a strategy for the negotiations.

Three basic principles guided the composition of these working groups: openness, unity, and representation. To achieve openness, COECE, through business federations, associations or national and regional chambers, invited all interested entrepreneurs to become members of these working groups. This had several purposes: (a) to persuade business organizations, independently of the sector they belonged to or their size, regional location or even nationality, of the advantages of negotiating a free trade area with the United States (and later with Canada); (b) to gather sector-specific information which, up to that time, existed only in fragmentary form; and (c) to gain legitimacy as an organization that purported to represent the interests of all entrepreneurs.

The second principle was unity - the notion that there should be one working group per sector and, if possible, a group should cover an entire production chain. In the group dealing with the automotive sector, for example, both the representatives of the big foreign vehicle assemblers and those of the national auto-parts industry were invited, so that the whole sector was represented in one working group. In the case of the textiles and clothing working group, the representatives of the entire production chain had a seat, from the petrochemical industry that produces artificial and man-made fibers to the yarn and cloth producers and, finally, the garments industry.

To achieve an effective degree of representation, COECE insisted that working groups should be composed of entrepreneurs who worked in the sector. To ensure that this was the case, the composition of the groups was determined as follows: each chamber or association of producers of a specific industrial branch (such as electrical manufacturers, chemicals, textiles, food producers) appointed a representative to a working group in which they had an interest; these representatives then appointed their own coordinator. The group coordinators were responsible for convening the meetings of their respective working groups, distributing pertinent information, and drafting the minutes of the meetings. Additionally, they served as liaison officers with COECE's general coordinators and government negotiators.

Each working group was then entrusted with preparing sectoral studies. Around 170 studies were prepared, describing the situation of individual sectors and industries, and their negotiating objectives and initial positions. According to COECE, these studies provided the most complete picture of the economy ever produced in Mexico and a very useful input for trade negotiators.

With these studies, COECE then proceeded to present the initial working group positions to the Mexican government (SECOFI), discuss them, and subsequently report back to COECE associates. After receiving their associates' views and inputs, COECE then went back to SECOFI, and via several of these exchanges contributed to the formulation of the Mexican position to be presented at the NAFTA negotiating table. To illustrate the degree of collaboration that developed between the private sector groups and SECOFI, COECE has declared that there were more than 400 meetings between both parties before the start of the NAFTA negotiations. COECE also claims to have organized more than 355 seminars and workshops on a nation-wide basis, intended to explain the objectives, potential benefits and challenges of the agreement to business representatives, and to ask them to participate during this period.

In summary, very intensive consultations took place between the private sector and the government during the period prior to the NAFTA negotiations. This was crucial for the development of a unified front, and participation and consultation further intensified during the period of actual negotiations.

The NAFTA Negotiating Phase

Even more intensive participation of the private sector, through COECE, took place from June 1991 up to the signing of NAFTA in December 1992. The decision taken by the governments of Mexico, Canada and the United States to negotiate on the basis of general issues or topics rather than specific sectors (except in

a few particular cases such as the automotive, textile, agricultural and energy sectors) was an important event that has to be taken into account to understand the principles guiding the relationship between the private sector and SECOFI during this period.

This decision to negotiate by general issues and topics¹⁰ created some confusion and dissatisfaction among Mexican private sector groups. In particular, they believed that the decision disregarded their efforts and investment in sectoral studies. The groups did not understand how the private sector could advise the government on the basis of general issues, since most studies had been prepared from a sectoral perspective and important aspects of particular sectors would be dispersed in different negotiating teams.

In order to solve this problem, it was decided to create a private sector advisory team for each negotiating group. Each advisory team would be composed of one or two COECE general coordinators, and two or three of the group coordinators of the 170 working groups that had been established within COECE. Every advisory team would have to consult each of the sectoral groups within COECE and express its position on the matters to be negotiated in each negotiating group.

Three basic principles guided the consultations between the private sector and the government during the period of negotiations. First, because of the private sector's disappointment with the change in negotiating strategy, COECE demanded a commitment from the Mexican government (which was given) that no radical changes would be made to the Mexican position without prior consultation with the private sector.

The second principle was that the official negotiators would brief and consult with COECE on a day-to-day basis throughout the trilateral negotiating sessions. To facilitate this, COECE's Executive Director, the sectoral coordinators, and the members of the advisory teams would travel to the location where the negotiations were to be held. There they would be allowed a room close to the negotiations, if not on site, to allow immediate contact with the Mexican negotiators as required. This led to the creation of what came to be known as the "operation of the room next door".¹¹

Finally, a third principle was that both parties would honor the confidential nature of the negotiations and prevent information leaks. This decision by SECOFI and COECE was severely criticized by numerous observers and interest groups, who argued that the negotiating process needed to be transparent and Mexican society had to be thoroughly informed. The attitude of SECOFI and COECE was the opposite. COECE, for example, adopted the position that most of the information used for the negotiations constituted privileged business information, and its disclosure would benefit the competitors of those who owned and provided the information. From the government perspective, information had to be transmitted sparingly and cautiously because of the loss of leverage and possible confusion that would result from making bargaining positions public. The government also argued that sufficient information was already made readily available to crucial

¹⁰ 19 negotiating groups were created, covering issues such as market access, rules of origin, trade in services, dispute settlement, etc.

¹¹ The "room next door" worked as follows: before each session of talks, SECOFI's negotiators for each negotiating group met with COECE's representatives to discuss the agenda of the meeting and review the Mexican position. At the end of each negotiating session, SECOFI's officials briefed COECE's representatives on the results of the talks and received their immediate reaction. COECE's representatives, when necessary, would contact their associates in Mexico to brief them and receive feedback from them. These views were conveyed back to SECOFI's negotiators, so that they could take them into account for the next negotiating session. According to COECE more than 3001 meetings took place from the beginning of the negotiations to the signing of NAFTA. It is important to note that meetings in the "room next door" also covered the ministerial meetings and the sessions to revise and consolidate the text of the agreement.

segments of Mexican society through the trade advisory mechanisms. Mexican society would be thoroughly informed at the conclusion of negotiations.¹²

In short, during the thirteen months of negotiations, COECE's participation was intense, and it played a valuable role as a source of technical and strategic advice for the Mexican government's negotiating team.

During this time, the Advisory Council also performed its key function, which was to inform civil society about the dynamics of the trade negotiations, and to provide information to the government about the interests and concerns of the different sectors represented in the Council. The academic sector played three additional roles: it conducted analytical studies of trade and production patterns in the countries involved in the negotiations, with the purpose of identifying the impact of the trade agreement on the economies and societies; it provided any information required during the process of negotiations; and it organized discussion and reflection meetings on the importance and impact of the treaty.¹³

IV. Evaluation of the Performance of the Trade Advisory Mechanisms and their Likely Future

The trade advisory mechanisms have been very effective in channeling advice from the private sector and some strategic social groups in Mexico to those within the Mexican government who formulate the country's specific negotiating objectives and policy approach towards its partners in trade negotiations. In particular, through COECE, the Mexican private sector has become an active participant and advisor to the Mexican government in all of the important phases of trade negotiations, from the pre-negotiation stage to the negotiations themselves.¹⁴ Although the Advisory Council for Trade Negotiations has not been as active a participant as the private sector in trade negotiations, it has played an important political role by serving as a forum for acquiring and disseminating information, and rallying support and consensus for trade negotiations and policy. The Council has performed this role mainly during the actual period of negotiations.

The effectiveness of these mechanisms has been such that, although they were initially meant to advise the government in the NAFTA negotiations, they have become permanent. They have continued to serve the Mexican government in the many trade negotiations that it has pursued and completed since the early-1990s.

It is important to recognize that, despite the usefulness of these mechanisms for the purposes mentioned above, the mechanisms have not been able to fully address, much less contain, demands and pressures

¹² After NAFTA was signed, COECE participated with SECOFI in a national information campaign to raise public awareness of the contents of the agreement, its challenges and implications, as well as the opportunities it offered Mexico, especially the business community.

¹³ The consultation process within the Advisory Council (AC) during the negotiations was as follows: There was a meeting every month. Before that meeting, the negotiating unit of SECOFI would distribute among the members of the AC a file that included a variety of documents on the status of the negotiations, the government's strategy, the proposals from the other parties, the problems that would arise during the negotiations, academic studies of the impact of a possible NAFTA, results of the ministerial meetings, etc. During the monthly meetings, the members of the Council would respond to the information and present the concerns of their constituencies about the negotiations. The negotiating team would then respond to or take note of these concerns, and include them in the Mexican government position to be presented at the NAFTA negotiating table. One or two AC representatives would accompany the negotiating team to the ministerial meetings.

¹⁴ During the negotiations of the Mexico-EU free trade agreement, COECE also participated intensively in the pre-negotiation phase (preparing 71 sectoral studies) and during the negotiations, when more than 400 meetings took place between the government and the COECE working committees. See Chacón [2000] p. 124.

from important organized groups and segments of Mexican society. These groups have either complained about unequal or a lack of representation during the consultation process or have opposed the underlying rationale of the process - the promotion of trade liberalization.

Various analysts claim that, because of its structure and the composition of its membership, COECE has tended to over-represent the interests of the large Mexican economic groups, companies, banks and security firms while under-representing the interests of small and medium-sized enterprises (SMEs), which have been most negatively affected by the new economic model.¹⁵ In response to this criticism, COECE has argued that, through the participation of institutional representatives (chambers and associations) as opposed to single-enterprise representation during the negotiation process, a balance has been struck between the interests of the SMEs and big business, as well as between national industry and the subsidiaries of foreign companies established in Mexico.¹⁶

The claim that SME interests have been under-represented by COECE has some basis, especially in the light of some important factors. First, large economic groups, companies, banks and security firms undeniably have a greater weight in decision-making within COECE, since the big groups and firms are members of several of the constituent units of COECE simultaneously. Second, because most small enterprises do not even participate in their sectoral chambers or associations, it has been particularly difficult for them to participate in the consultation process. It is impossible to expect that small enterprises could spare either the time or the necessary resources to prepare a specific study of the environment of their enterprises face, or pay for the trips to be present in the "*cuarto de junto*" (room next door) during negotiations.

Third, despite the extensive and comprehensive nature of the consultation process undertaken by COECE at the national and regional levels, the physical dispersion, economic vulnerability and political marginalization of micro- and small enterprises poses a significant obstacle to the organized representation of their interests. Finally, and most importantly, most of the concerns and interests of micro- and small firms could not be addressed and articulated in an organization whose most important goal was to promote the interests of business in trade negotiations. Whereas most large and some medium-sized companies were in favor of trade liberalization, the micro- and small enterprises, which are concentrated in sectors most negatively affected by economic opening, have demanded a new industrial policy that protects their interests.¹⁷

Nonetheless, it cannot be denied that many of the common problems of each economic sector have been taken into account in designing the private sector position through COECE in trade negotiations. Trade negotiations have offered a privileged forum for defining a new relationship and new forms of collaboration between the Mexican government and the private sector, and the latter has played an important role in the design of negotiating strategies. The negotiating process itself has exerted pressure to include the interests of many

¹⁵ See Del Castillo [1995] pp. 21-49 and Puga [1993]. It should be noted that during the NAFTA negotiations and at their conclusion, several public statements complaining that the interests of the SMEs had not been taken into account during the negotiations were made by representatives of CANACINTRA (the most important chamber aggregating the SMEs), and other organizations such as the National Association of Manufacturers (ANIT), which represents micro-enterprises and small firms. In particular, there was strong criticism of NAFTA's financial provisions and the protection of banks. See, *El Norte*, May 13 and October 8, 1992.

¹⁶ Representatives of COECE argue that within this scheme the SMEs were able to represent and effectively promote their interests in the NAFTA negotiating process. They cite the active role played by the leather footwear industry, traditionally formed by small enterprises and grouped in regional chambers, which appointed their own representative to protect the interests of the small shoe manufacturers in COECE's corresponding working group.

¹⁷ During the NAFTA and Mexico-EU negotiations, the micro- and small enterprises in particular called for access to competitive credits and for training in marketing and management so that they could face new competition. Those claims continue to this day. This is why many of the small companies strongly opposed the financial terms of NAFTA and the protection to banks involved in these terms.

small entrepreneurs (Puga [1994]). COECE has enhanced and strengthened the system of representation of the private sector through its efforts to cover all sectors and sub-sectors of economic activity and most of the national territory.

In conclusion, despite the criticisms directed at COECE over representation, it is fair to agree with an academic analyst of the NAFTA negotiations and member of the Advisory Council, who observed that "never before in the history of Mexico [had] the private sector ... communicated and organized itself so effectively and comprehensively for the purpose of achieving a common goal" (Bustamante [1991]).

It is unlikely, however, that the constituency advisory system has had a similar impact to that of COECE on Mexican trade negotiations. The Advisory Council has served to channel and contain constituency pressures, and has helped the government respond to specific demands from constituents in a more organized manner, but it has not been able to channel or contain the demands of groups opposing free trade.

As mentioned earlier, the aim of the Advisory Council has been to discuss the broad outline and trends of trade policy, to inform constituency groups of the progress in trade negotiations, and to receive their advice. However, because the Mexican government created the Advisory Council and appointed its members, the organization cannot be said to represent the whole of Mexican society, but only those sectors and segments with which the government believes it can work efficiently to implement its overall plans. One main implication of this is that the groups and organizations opposing free trade were not, and have not been, included in the Council.

The Mexican officials who created the Council argue that in deciding whom to include the main variable was, and is, representativeness. Numerous NGOs, particularly certain labor and environmental organizations, were not invited to participate when the Council was created because many of their concerns appeared after the start of the NAFTA negotiations. They were excluded later because it was difficult to know either their level of transparency or the degree to which they were representative. Government officials argue that if these organizations had been unquestionably representative, the government would have been obliged to include them in the Advisory Council.

Government officials also recognize that some organizations were not included because they were linked to the "losers" in the process of economic opening, and were therefore opposed to free trade. Hence their inclusion in the Council would have thwarted the progress of trade negotiations. The government officials recognize that some organizations work as part of a greater network, and have linkages with diverse groups and organizations at both the domestic and international levels. The most important of the anti-free trade organizations during the NAFTA negotiations was the Mexican Network of Action Against Free Trade (*Red Mexicana de Acción Frente al Libre Comercio* - RMALC). The Network's core group was the Frente Auténtico del Trabajo (FAT), an independent labor union organization, but the Network also included human rights, gender and environmentalist NGOs. The RMALC mobilized many of Mexico's anti-free trade groups from both urban and rural areas.¹⁸ During the NAFTA negotiations, for example, the Network maintained extensive communication with numerous US environmentalist, labor and church-related groups, as well as organizations of small entrepreneurs. They vainly tried to block the extension of fast track authority to the US president, and continued opposing the agreement until the passage of the implementing legislation in

¹⁸ The RMALC established an alliance and took advantage of the experience of Canadian labor organizations such as the Canada Action Network.

November 1993.¹⁹ Throughout the NAFTA negotiations, the RMALC also organized campaigns to raise public awareness about the potential negative effects of free trade with the United States and Canada.²⁰

The Advisory Council has had the same composition and structure since its creation in September 1990. Since the election of the new Mexican administration, however, it has not convened on a monthly basis, as had been customary. Officials at the Secretariat of the Economy, formerly SECOFI, report that changes in its composition are being contemplated, but it is still uncertain what form they will take. What is clear is that new organizations and groups will be invited to join, most likely those representing micro- and small enterprises, environmental groups and labor organizations, whose views may help to improve the Council's operations.

¹⁹ When the RMALC and its allies realized that they could not stop the negotiation and or the extension of fast track, they shifted their opposition to the model of the agreement and advocated common market with a social charter and environmental provisions. In the end, they promoted and supported the negotiation of parallel side agreements on labor and environmental cooperation, but opposed the creation of supranational commissions and/or trade sanctions. See Torres [2001]).

²⁰ The RMALC has continued to oppose free trade agreements and has increased its membership. At the time of the negotiation of the Mexico-EU free trade agreement, RMALC decided to create what was called The Network of Mexican Citizens *vis-à-vis* the EU (La Red de Ciudadanos de México ante la Unión Europea) which, apart from the RMALC, was composed of the Asociación Nacional de Industriales de la Transformación, Asociación Nacional de Empresas Comercializadoras del Campo, Central Independiente de Obreros y Campesinos, Centro de Derechos Humanos Miguel Agustín Pro, Comisión Mexicana para la Promoción y Defensa de los Derechos Humanos en México, Equipo Pueblo, Foro de Apoyo Mutuo, Movimiento Ciudadano por la Democracia, and Sistema Sur Paz. This network carried out a series of activities in opposition to a free trade agreement and proposed an accord that included a social charter, the protection of human rights and the environment, and safeguards. These activities took place in Mexico as well as in Europe at the European Commission and European Parliament. See *ibid*.

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ON THE TRADE POLICY-MAKING PROCESS IN THE UNITED STATES

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I. Introduction

The constitution of the United States (US) proscribes both the authority and the responsibility to develop and carry out trade policy and negotiate agreements to just two entities -the Congress and the President. But, the process of trade policymaking in the US is more complex. In fact, the policymaking process on a variety of levels is a reflection of the diffusion of power that is inherent to the institutions, both within government and outside government, that bring great depth to the US democracy. While some are of the view that trade policymaking is the domain of a very narrow set of interests, the process of making trade policy provides for a broad range of interests to participate.

What follows is a description of the trade policymaking process in the US It is structured according to the questions that were posed to those writing these papers by the institutions supporting this project.

II. The Procedures for Consultation on US Trade Policy Issues

There are three broad spheres, or institutional elements, that make up the formal trade policymaking process. They are the Executive Branch consultative process, the congressional consultative process and the official advisory committee system. All three spheres interact to varying degrees within the official system of making policy. Furthermore, the informal process of information sharing that surrounds the formalities of the system can be as important as the official process, if not more important depending upon the circumstances.

The Executive Branch process is reflected in US law. But without citing the numerous statutes that play a part in determining the structure, the practical implementation of the policymaking process involves a vast expanse of federal entities (i.e., over 18 federal agencies). The Office of the US Trade Representative (USTR) within the Executive Office of the President of the US is the statutorily proscribed coordinator of US trade and foreign direct investment policymaking as well as the chief US trade and investment negotiator. However, the development of trade and investment policy is carried out through an interagency deliberative process which also includes the following entities: the Departments of State, Defense, Treasury, Agriculture, Commerce, Labor, Interior, Energy, Health and Human Services, Justice, Transportation, the Environmental Protection Agency, the Central Intelligence Agency, the Small Business Administration, the National Security Council and National Economic Council staffs, the Vice President's office, the Office of Management and Budget, the Council of Economic Advisors and the Council on Environmental Quality. In addition, increasingly agencies that are independent of the Administration, such as the Federal Communications Commission, are also consulted whereas other independent agencies, such as the International Trade Commission, have long played a role in providing independent advice.

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The role and importance of each one of these entities varies on a day to day basis depending upon the specifics of the issues at hand, but they are all involved. It is fair to say that the most heavily involved, in addition to USTR, on a day to day basis are: State, Treasury, Commerce, Agriculture, Labor, the Environmental Protection Agency, the National Security Council and the National Economic Council. This list has expanded over the last ten years, and appears to be continuing to expand.

The formal deliberative process in the US goes on at four levels within the entities involved. At the top of the process (other than the President and Vice President) are the relevant Cabinet officials, which includes the USTR and numerous others. The structure that is proscribed by US statute has the USTR leading what is called the Trade Policy Committee (TPC) of the Cabinet. However, every President has developed his own Cabinet committee structure in practice, and the TPC has not been a functioning deliberative body for well over a decade. Rather, trade policy matters in the last decade have been discussed within broader committee mandates focused on economic and national security matters. Usually, the President's Assistant for Economic Affairs or National Security Affairs have been given the responsibility by the President to convene relevant meetings, with the President presiding as deemed necessary. There have been occasions in the not too distant past when the Secretary of the Treasury, for example, has played the role of coordinator of economic affairs at the Cabinet level, but that has not been the case in the most recent Administrations.

The next level down, where the preponderance of politically sensitive important decisions are made, is through either the so-called Deputies Committee or the Trade Policy Review Group (TPRG). The Deputies Committee during the Clinton Administration, which was convened by the Deputy Assistant to the President for International Economic Affairs or their designee, took on a larger role than the traditional and statutory TPRG (which has traditionally been chaired by a Deputy USTR), although the entities involved and the level of the officials involved was essentially the same. Typically, the officials who participate in these discussions are at or near the Vice Minister level (i.e., Deputy USTR, Assistant USTR, Deputy Secretary, Undersecretary or Assistant Secretary, Deputy Administrator, Assistant Administrator, etc.).

The senior working-level decision making process has traditionally been the domain of the Trade Policy Staff Committee (TPSC). The TPSC is made up of senior staff, is convened by an Assistant USTR or Deputy Assistant USTR, and is to include Deputy Assistant Secretaries and Office Directors.

The working level decision making process is handled by the TPSC Subcommittees, and includes dozens of committees focused by region, country, sectors and functions. These are typically led by a Director at USTR and include Directors of offices in other agencies and their staff. This is where the bulk of the analysis and policy groundwork gets done, and the participation by agencies is often the most active.

As is typical of vast majority of internal meetings of the Executive Branch, the deliberative process within these Executive Branch and independent agency entities is typically not open to the public. Furthermore, the agendas for these internal meetings are often not made public in advance, or afterwards. On the other hand, the process leading up to these internal meetings is often one that results in either solicited, or unsolicited, information from interested stakeholders outside of government. In fact, it is quite common for there to be informal discussion with stakeholders, and also with those in the press both before and after meetings, in spite what are often proscribed prohibitions on such discussions with stakeholders and the press by official regulations. Furthermore, these are meetings often held to deliberate and determine a course of action once the views of those outside of the Executive Branch have been both formally and informally solicited.

Specifically, the Executive Branch, usually through the interagency TPSC or a specific agency, actively solicits the views of the interested public through Federal Register notices and/or public hearings (in Washington, and sometimes around the US). These requests for information, or opinion, are common and usually occur numerous times a month on a variety of topics. The information that is received through

these efforts is usually an important consideration in the internal deliberative process. It is quite common, in fact, for the information that is received through these efforts to be the main topic of discussion in decision-making meetings.

In addition, the Executive Branch, through the Office of the USTR, does solicit the views of independent federal agencies before decisions are taken. For example, in advance of concluding free trade or major multilateral trade agreements, the USTR usually requests the advice of the US International Trade Commission (USITC). The USITC provides advice specific to the economic implications of such agreements for US industry and the economy. The USITC, in its research and analysis, holds public hearings and solicits written comments from interested parties (which often includes foreign governments and companies) in the context of preparing its report to the USTR. The USITC report, because it often includes confidential business information, is usually prepared in a public, and non-public, version. The USITC report is then circulated by the USTR to other agencies involved in the policymaking process. In addition, the views of other independent agencies are sought, such as the Federal Communications Commission (FCC) in certain telecommunications matters.

Putting these internal Executive Branch meetings in the proper context, they are not an attempt to preclude input from the interested public. Rather, they are a logical component of the Executive Branch decision making process having heard from the interested parties both within and outside the Executive Branch on the topic under consideration.

The Congressional process is a function of the activity of a number of congressional committees in both the House of Representatives and the Senate. The primary traditional committees of jurisdiction over trade policymaking and agreements in the Congress are the Ways and Means Committee in the House and the Finance Committee in the Senate. In addition, both the Chair and the Ranking Member of both committees and a few additional selected members are official advisors to the Executive Branch on trade policy and negotiations. These members are typically consulted more often than other members of the respective Committees by the USTR or his designee, for example.

In addition, a broad range of additional committees have jurisdiction over a number of issues that are addressed within the trade policymaking process. These include the respective congressional committees with responsibilities for international relations and foreign affairs, banking and financial services, commerce, agriculture, the judiciary, rules, the environment among others. Therefore, it is not uncommon for these committees to participate in the review of trade agreement implementing legislation that impacts their arenas of jurisdiction.

Over the last decade, the Ways and Means and Finance Committees have played the role of congressional coordinators of the deliberative process between committees when it comes to trade agreement implementing legislation. However, Congress, as part of its debate over trade promotion authority, is in a position to review and revamp its own structure for how trade agreement implementing legislation will be procedurally addressed in Congress. Committees beyond Ways and Means and Finance have an active interest in trade issues, not to mention the review of trade agreement implementing legislation before it goes to the House and Senate floor for a vote. Furthermore, the role of the Congressional leadership in both Houses of Congress has been instrumental in determining the ultimate process for how Congress deliberates on trade matters and which committees are given formal jurisdiction when it comes to both trade issues and trade agreement implementing legislation.

One of the most visible ways in which Congress considers and deliberates on trade policy and agreements is through public hearings (which are held in Washington, and on occasion around the US) where witnesses are invited to testify before various committees. In this way, various constituencies are given the opportunity to inform their elected representatives of their views on trade policy and agreements in a public setting.

Congress, usually through the Ways and Means and Finance Committees, also solicits written views from the interested public and interested stakeholders through public procedures. In addition, the public is encouraged to write their respective congressional representative or Senator to inform them of their views on trade policy and agreements.

Beyond the public dialogue and solicitations by Congress, the Congress also deliberates privately in closed committee and so-called executive sessions. These sessions may include, upon invitation by the Chair of the Committee, senior Executive Branch officials, including the USTR and other Cabinet officials or their designees. These sessions are instrumental to the decision making process. In addition, the Congressional leadership in both Houses of Congress does meet privately with committee representatives, or on its own, to make decisions about trade policy matters in the context of the broader legislative agenda.

Other than the public hearings and public solicitations of written views, as well as through meetings with individual Congressman and Senators, the internal deliberative discussions that take place to determine the course of trade related legislation are not open to the public. Closed-door committee and executive sessions do not always publicize their agendas, although it is quite common for the agenda items to become publicly known, as is often the case with internal Executive Branch meetings. However, as is also the case with respect to internal deliberative Executive Branch meetings on trade, the process of solicited and unsolicited input from those outside the official halls of Congress is quite common. Furthermore, the press is often informed (informally or formally) of the agenda and expectations before the meetings as well as of the outcome after the meeting.

The official advisory committee system was established by the Congress in 1974 to ensure that US trade policy and trade negotiation objectives adequately reflect US commercial and economic interests. Congress expanded and enhanced the role of this system in three subsequent trade acts. Accordingly, the basis of the official advisory committee system is a reflection of what has been the official mantra of US trade policy over the last 50 years that open markets abroad and at home are in the interests of the US. Specifically, the system is designed in many ways to address the technical needs of US negotiators who operate under the general instructions of the President and the Congress. The advisory committees provide information and advice with respect to US negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters that arise in connection with the development, implementation, and administration of trade policy.

The advisory committee system consists of 33 advisory committees, with a total membership of up to 1,000 advisors. The list of committees, their charters and their membership are available on the websites of the relevant agencies (i.e., USTR, etc.). Recommendations for candidates for committee membership are collected from a number of sources, including Members of Congress, associations and organizations, publications, and other individuals who have an interest or expertise in US trade policy. Membership selection is based on qualifications, geography, and the needs of the specific committee. Members pay their own travel and other related expenses.

The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); six policy advisory committees; and 26 technical, sectoral and functional advisory committees. The President appoints 45 ACTPN members for two-year terms. The 1974 Act requires that membership broadly represent key economic sectors affected by trade. The committee also considers trade policy issues in the context of the overall national interest.

The six policy advisory committees are appointed by the USTR alone or in conjunction with other Cabinet officers. Those managed solely by USTR are the Intergovernmental Policy Advisory Committee (IGPAC), and the Trade Advisory Committee on Africa (TACA). Those policy advisory committees managed jointly with the Departments of Agriculture, Labor, Defense and the Environmental Protection Agency are, respectively, the

Agricultural Policy Advisory Committee (APAC), the Labor Advisory Committee (LAC), the Defense Policy Advisory Committee (DPACT) and the Trade and Environment Policy Advisory Committee (TEPAC). Each committee provides advice specific to its area of focus.

The 26 sectoral, functional and technical advisory committees are organized in two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the Secretaries of Commerce and Agriculture, respectively. Each sectoral or technical committee represents a specific sector or commodity group and provides technical advice concerning the effect that trade policy decisions may have on its sector. The four functional advisory committees provide cross-sectoral advice on customs, standards, intellectual property rights issues and electronic commerce.

The advisory committee membership are required to avoid the dissemination of certain information that is considered sensitive in accordance with US law, or that would damage the national interests of the US as it negotiates with foreign governments. At the same time, various components of the advisory committee system routinely solicit information from the general public and interested stakeholders, publish their agenda in the Federal Register and hold open portions (for the interested public) of their meetings in accordance with US law.

The official advisors are also solicited as part of the process in preparing information for congressional consideration. This has traditionally occurred in advance of the legislative process pertaining to the implementation of comprehensive free trade or multilateral agreements within the gambit of the World Trade Organization (WTO). Specifically, the views, including dissenting views, of all the advisory committees are included in a package of information for congressional review and consideration.

In addition, with the passage of the NAFTA implementing legislation and the Uruguay Round Agreements Act of 1994, the US created expanded consultative procedures with state and local governments. The purpose is to ensure that the states and localities are informed and consulted on an ongoing basis regarding trade-related matters that directly relate to or that may have a direct effect on them. This is accomplished through a number of mechanisms, including a state point of contact system, the IGPAC, meetings with state and local associations and other mechanisms.

Therefore, with respect to the procedures for consultation on trade policy issues, there are numerous formal procedures utilized by both the Executive and Congressional branches. Furthermore, the system of soliciting and receiving input has become increasingly transparent within the practical limits of any such federal policymaking process, and additional steps could be taken and are under consideration. Virtually every significant trade issue under consideration by the Congress or the Executive Branch is something for which both branches solicit and receive input from a broad range of interests. In short, the formal and informal consultation process undertaken by the US government in the making of trade policy ensures it is rare that the range of perspectives of the interested public are not known.

III. The Groups Included in the Consultative Process

The formal Executive Branch advisory system includes business from every sector where trade is a significant factor, organized labor, environmental organizations, consumer organizations, state and local government and all other aspects of the US society that are interested in providing advice (i.e., academics, associations, civic groups, individual citizens, etc.). The formal congressional advisory system provides an opportunity for any citizen, organization, company or industry to provide advice to the relevant committees and/or their respective congressional member.

The system in place to receive and solicit opinion from those outside the US government is far-reaching. To the degree that interests feel disenfranchised is a function of a number of factors. One is the practical limit that any interest group has, particularly if it is new to the trade policymaking process and is trying to influence its outcomes. It is a system with numerous entry points (an almost overwhelming number) and can be vexing. It is also a function of expectations about how responsive the "system" will be to the particular perspective. Given the large number of interests, some of them politically powerful, new perspectives are often not immediately embraced as in any federal public policymaking process. Even if a viewpoint is credible, honest and well researched, it can take months, or years, of effort to significantly alter the "traditional approach" to issues. Or, the system will simply not be responsive to an interest, no matter how organized or aggressive, because those with ultimate responsibility for the making of trade policy under the US constitution (i.e., the President and the Congress) are not inclined to be responsive.

IV. The Nature of Consultation Scheduling

The formal system for soliciting advice in both the Executive Branch and the Congress on trade policy matters is well developed. For example, the Executive Branch typically formally solicits the views of the public and its official advisors in advance of every major comprehensive trade agreement, whether they are bilateral, regional, sectoral or multilateral. Furthermore, the Executive Branch formally solicits the views of its advisors and the public quite commonly during the negotiation of such an agreement, particularly when the negotiators are in need of additional information or advice on particular topics. Furthermore, should the agreement require implementing legislation, the Executive Branch will solicit the views of its official advisors on the agreement itself and then forward that information to the Congress for its consideration and review as it addresses the implementing legislation.

Similarly, the Congressional trade committees hold hearings and solicit written comments on major trade issues and agreements before, during and after the conclusion of the negotiation, in addition to when implementing legislation is being developed. Furthermore, the US public provides input to its respective congressional representative on trade matters of interest.

In addition to the formal process for gathering the views of those interested, both the Executive Branch and the Congress are constantly provided information through meetings and telephone conversations with interested companies, unions, environmental organizations, individual citizens, etc.

V. The Structure of the Consultations

As noted earlier, the formal advisory committee structure as it relates to the Executive Branch is a product of nearly 30 years of development. The advisory committee structure is a function of US law and regulation. Furthermore, appointments to the committees are time limited (typically two years and often renewed) and are made either by the President, in the instance of the ACTPN, or the USTR alone or jointly with another Cabinet member.

As would be expected, business and agricultural producer interests are thoroughly represented in the sectoral and functional advisory committees as they are in the policy committees and the ACTPN. Labor unions are represented in their policy advisory committee (mandated to include 125 members) and in the ACTPN. Environmental organizations and consumer organizations are strongly represented on the TEPAC (mandated to include 35 members) and are also represented on the ACTPN. A representative of the environmental community is in the process of being appointed to the chemicals industry sectoral advisory committee. State and local government officials dominate the IGPAC (mandated to include 35 members).

The formal congressional process for consultation is structured around the trade Committee's hearing and formal solicitation of written comments process. The Committee chair, sometimes in consultation with the ranking Member, will solicit views on which interests, or citizens, should be invited to testify in hearings, for example. This process has significant implications for which views are heard as a matter of the Committee's public record. It is not uncommon for the same set of interests, for example, to be repeatedly invited to testify on trade matters, although the circumstances and witnesses also quite often change.

Some criticize the official advisory committee process, both as it relates to the Executive Branch and the Congress, as strongly biased towards the interests of the business community. It is fair to say that majority of the advisors in the totality of roughly 1000 official advisors that sit on Executive Branch committees represent business interests. Furthermore, the structure of the advisory committees do not typically integrate business interests with non-business interests in the deliberative process of each committee, with important exceptions (ACTPN and TEPAC, for example).

The decision on whether it is appropriate to integrate business interests and non-business interests is complex. If handled in a careless manner, it will dilute, or eliminate, the value of the official advisory process. The value of the sectoral and functional advisory committees is in their ability to share, in candor, sensitive information that is directly germane to their industry and to the specifics of a trade negotiating situation faced by the Executive Branch. Should the broadening of the committee to include non-business interests lead to a drop in candor, the committee itself will become an "empty vessel." Specifically, the candid information that is a prerequisite for US negotiators to understand technical business interests will dry up and only come through informal conversations, if at all.

On the other hand, there can be an important role for the advisory committee process to wade through the conflicting views of differing interests in candor as well. This argues that in addition to the ACTPN and the TEPAC (which are policy committees), there may be a role for additional, or newly created, more focused work efforts at the functional or sectoral level to try to work through important differences in a private setting. These would supplement the current structure and not replace it. To the degree these discussions lead to constructive compromises that can be applicable to US negotiators all the better. At the same time, what essentially are political decisions should be taken by the politicians that are ultimately responsible for the trade policies of the US. To try to force technical committees to address political decisions will only serve to bog the system down into endless debates, thus undermining its value for the negotiators.

It is generally not that US Executive Branch and Congressional trade officials are unaware of the views of the full cross section of the interested public. A prepared US negotiating official is typically well aware of the views and how they diverge. However, a decision has to be made on what position the US will take in such a setting with other governments. Ultimately, this is a function of the President and the Congress. It is to these people that the chief trade negotiator of the US -the USTR- has a sworn obligation to take guidance from, since they are the elected representatives of the people. The simple truth is that the position taken by the US cannot always reflect the views of all the divergent interests. Therefore, in the end the issue is not transparency. That said, the process of making policy should be one that ensures to the maximum extent possible that all views are known before making trade policy decisions and entering into, concluding and implementing the results of international negotiations.

**INTEGRATION AND CIVIL SOCIETY:
SOME EXPERIENCES OF THE URUGUAYAN CASE**

José Manuel Quijano *

I. Introduction

This paper seeks to explore the degree and quality of civil society participation in the integration processes in which Uruguay has taken part. To that end it is helpful to clarify some methodological issues concerned with civil society, the integration processes discussed, and information sources.

Civil society comprises the various associations that are outside the state. But such a broad criterion lacks precision and should be clarified. In this paper, civil society will be represented by some clearly identifiable actors whose opinions can be sought. The main actors taken into account are: the trade unions, business associations and certain non-governmental organizations (NGOs). A broad approach could also include parliaments but the analysis is limited to the actors mentioned. Some reference will nevertheless be made of parliamentary participation, especially at the MERCOSUR level.

Second, it is useful to specify the integration processes to which this paper refers. Uruguay has been involved in various processes, several of them bilateral. Attention will be paid mainly to the experiences of the Latin American Integration Association (LAIA), MERCOSUR and, more recently, the Free Trade Area of the Americas (FTAA) and the World Trade Organization (WTO) negotiations. The emphasis, therefore, will be placed on the multilateral processes that have had or are expected to have a significant impact on the country. The negotiations between the European Union (EU) and MERCOSUR have been excluded, although there is some reference to participation in the EU.

Third, two main sources of information were consulted. On the one hand, a rapid bibliographical review confirmed what could be assumed from the outset: integration has been addressed from a variety of angles but one of the least adopted perspectives, despite its importance, is that of social participation. Additionally, a brief questionnaire was drawn up and sent to qualified sources representing entrepreneurs, workers, NGOs and official negotiators, with a view to gathering their opinions.

II. The Actors and Participation

This paper refers to the participation of civil society. It is therefore useful to remark on what is meant by participation.

State Authorities

It is known that the central actors in integration agreements are the heads of state and senior officials, mainly from the Ministries of Foreign Affairs and the Economy, who make up what is often termed the techno-bureaucracy. In Latin America, as at the start of the European experience, the Executive branch is the leading

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actor. A first matter of interest, though it is not central to this study, concerns the relationship in integration processes between the state authorities -that is, the degree and quality of parliamentary participation.

Non-State Associations

A second consideration concerns non-state associations. On the one hand, it is interesting to examine if the three addressed in this paper -business associations, trade unions and NGOs- have the same influence on integration processes. On the other hand, it is important to explore the levels of civil society participation.

- The Defining Components -

Participation is addressed herein according to the following classification concerning its defining components:

As regards the regularity of participation, this can be

- Institutional, permanent and in constant bodies
- Sporadic and in inconstant bodies

As regards time, participation can happen

- nationally, BEFORE the negotiations
- regionally, DURING the negotiations
- nationally and/or regionally AFTER the negotiations, as a review exercise

As regards scope, participation can be in

- the integration strategy
- the negotiating agenda
- in specific aspects of the negotiations

- Levels of Participation -

In this regard three levels of participation have been identified. These relate to degrees of commitment and involvement by the actors. They are: substantive participation, adjectival participation and sporadic participation.

- *Substantive participation* is that which has been institutionalized, and which is permanent and predictable; it covers the spectrum completely (strategy, agenda, negotiations); it begins in the national sphere and the agreements move to the regional level; and the opinion of the actors consulted helps shape the position of the official negotiator.
- *Adjectival participation* can be permanent and predictable but it does not fully cover the whole spectrum and the participants' opinion does not necessarily help shape the position of the official negotiator.
- *Sporadic participation* occasionally occurs when the official negotiator deems it helpful or when the private actor makes some suggestion.

In practice these three kinds of participation do not arise in pure form. At the same time, one or another type of participation might be more suitable depending on the specific case and hence, *a priori*, there is no option for deeper participation at all times and in all circumstances. Nevertheless, it is to be expected that as the integration process advances the components of substantive participation will emerge.

- The Reasons for Participation -

It is also helpful to remark on the reasons for participation. Why do the business organizations, trade unions or NGOs participate? There are three possible answers.

The first is that the state, and especially the Executive, needs to legitimate what it does in trade agreements. Such involvement will be termed *legitimation participation*.

The second is that the actors are affected (or worry about being affected in the future) by the integration process and they demand a forum in which they can be informed of the process and can influence it. Such involvement will be termed *demand participation*.

The third, which can be viewed as complementary to the second, is that the official negotiators need the opinions of social actors because the latter make significant contributions - that is, they bring "value added" to the process. Such involvement will be termed the *participation of need*.

Cross-referencing the levels of participation with the reasons underlying it, it can be argued that substantive participation is correlated with the participation of need. By contrast, sporadic participation is correlated with legitimation participation. In between, however, it is possible to identify a broad range of combinations.

III. The Quality of Participation

There is something curious about the participation of society in integration processes: nobody is against it but, at the official level, there seem to be few who want it to happen.

Those who are reticent about the participation of civil society deploy a range of arguments that are generally expounded in closed circles and rarely in open debate. These will not be discussed in detail.¹

There is, however, an argument against participation that should to be examined at greater length. It is said that negotiations are usually complex and require highly trained personnel. Those actors wishing to participate often lack qualified individuals; their representatives do not contribute to the negotiations but rather are limited

¹ These arguments refer to: the timing of certain matters (for example, environmental issues can easily become non-tariff barriers and hence environmentalist groups in developing countries can face obstacles to participation, since they stir up a topic that their governments would prefer to ignore); the fact that civil society actors express sectoral interests and protect corporate positions (consequently, it is helpful to consult the actor and to learn its viewpoint, but at the same time the government -as an expression of the general interest- should retain its independence); the fact that negotiations are usually extensive and should necessarily be confidential since they consist of bargaining. Hence the negotiating team should be small, consistent and coherent (a large and diverse team comprising representatives of groups that pursue sundry aims would be counterproductive).

These arguments against participation can be countered by recalling that participation is the essence of a democratic society; that the environmental issue is acquiring such importance that is impossible to ignore it for long (it must be dealt with in such a manner as to avoid its becoming a trade barrier); that the official negotiators -counter to what is desirable- are not always independent beings who constantly seek the general good (the presence of actors with conflicting interests can obviate the danger that the particular interests of such a sector might dominate those of another); and that mature and participative teams do not affect the efficiency and effectiveness of negotiations.

to "making sure" that sectoral interests are considered or remain unaffected. Consequently, participation can be more of a nuisance than a contribution. In this view, there is no "participation of need".

At question here is the quality of participation. Why do the government and its negotiators need civil society participation? From the government's viewpoint, civil society actors can be necessary interlocutors for several reasons: because they have information about or knowledge of a specific area with which the official of the techno-bureaucracy is unacquainted; because they represent a part of society and rapidly convey that sector's opinion on an issue; because they can put forward innovative and original ideas; and for other similar reasons.

From the viewpoint of civil society actors, quality is closely related to the importance that they ascribe to participation, to the number of specialized personnel they assign to it, to the time devoted to studying issues and suggesting solutions, to regular attendance at forums for participation, and to their capacity (in as much as they can they master the issues) to make proposals. The quality of participation is built on, and largely depends on, the participants themselves. For that reason:

- It might be argued that participation will be more active and of higher quality when the actor that wants to participate exerts pressure to gain ground ("demand" participation). It might also be assumed that participation will be more apathetic and of lower quality when an actor who has not sought participation has been summoned to do so ("legitimation participation").
- It might further be assumed that participation will be more active and of higher quality in formally created forums when the actor uses that single channel to express an opinion and secure an outcome. By contrast, participation in such forums will be less active and inferior when the actor has various channels to access the government and the negotiators, especially if some of those channels lack transparency and are exclusive.
- It might also be imagined that an actor's participation will be more active and of higher quality in collective formal forums when the actor believes that there are possible points of convergence with other participants. However, if the actor perceives only a divergence of interests and/or is distrustful of the other participants, the actor might adopt an aloof attitude and the participation will therefore be of low quality.
- It can be assumed that the quality of participation is related to the actors' professionalization. Participation that is simply "one more activity" on the part of the representative of civil society very probably will be "sporadic" and "of legitimation"; it will rarely be participation "of need".

IV. Experiences in Various Negotiating Processes

This paper will now address participation at three different stages: (a) before MERCOSUR, (b) in MERCOSUR; (c) in other processes after MERCOSUR.

Before MERCOSUR

As is known, LAIA negotiations were conducted "product-by-product". Hence progress on integration in the LAIA period was modest, and was marked mainly by a process wherein each party made concessions on "what it did not produce".

Throughout its life, LAIA fostered contacts with academia (commissioning reports and other studies on integration), with workers and business people (through meetings, seminars, conferences, etc.) and, more

recently, with NGOs. It also promoted the creation of technical teams with sectoral or sub-sectoral expertise to support the negotiations. In general, such activities were geared toward opinion-building on certain issues, but they did not affect the actual negotiations.

The main actors in the LAIA negotiations were government officials and entrepreneurs. The latter, at least in Uruguay, seem to have had a more active and effective role at this stage than in later phases.² The business sector's greater role "at the table" in the LAIA stage might be explained by the markedly defensive nature of the negotiations, and by a posture among the governments of this period that was somewhat more favorable toward industrial development.

In MERCOSUR

Among integration processes, the Southern Common Market is the one that has made the greatest efforts to increase participation through institutions created for that purpose. As will be seen below, participation has been broad in terms of the range of sectors convened. It can be said, however, that the most active participants, at least in the early stage, were entrepreneurs and workers.³

- Entrepreneurs and Workers in MERCOSUR -

- Entrepreneurs

The label "entrepreneur" covers an extremely diverse range of individuals. In terms of capital ownership, and often company size, a distinction can be made between transnational and national entrepreneurs. Within those groups, large, medium and small entrepreneurs can be differentiated.

They can also be categorized by sector: industrial, commercial and agricultural entrepreneurs, those in the services sector, etc. These business groups have reacted differently to the integration processes, and their commitment to participation has therefore varied.

It should be noted that many transnational companies (such as in automotive sector or pharmaceuticals sectors) exploited the integration agreement to rationalize their activities at the subregional level. However, these actors were not the main participants in MERCOSUR's institutional structures. Grandi and Bizzozero have rightly pointed out that various business groups were involved in the process from the outset but "the sector that actively participated in defining schedules and sensitive sectors was the national business sector". Within that sector, moreover, it was industrial companies that showed the most interest in MERCOSUR.⁴

² As a representative of the business sector has said (Bardier): "In the case of LAIA the private sector participated in the negotiations. That is to say, the government negotiator and the private sector negotiator sat down at the table, although the government had the last word. I think that private sector participation declined later. The private sector ceased participating directly and the "side room" approach was adopted".

³ A trade union representative has pointed out (Padrón): "representation had the classical capital-labor composition; however, it is striking that in the whole MERCOSUR those were the most active sectors in terms of participation and of interest in such participation".

⁴ The Uruguayan Chamber of Industry (*Cámara de la Industria de Uruguay* - CIU) has said repeatedly that Uruguay should not remain outside the subregional integration process that Argentina and Brazil initiated with the protocols of 1986 and the bilateral agreement of 1988. The position of the CIU is evident, for example, in a declaration of 6 August 1990, which notes that it is not useful to be at the margin of that process "not only because of geographical proximity but also because Uruguay's economic growth is based on an export strategy in which its neighbors have a dominant role".

Rural producers were cautious toward MERCOSUR. In that light it is interesting to recall the words of Carlos Gasparri, then-President of the Rural Association, who in 1991 predicted little business participation and attributed such an attitude to "the dominant business mentality".⁵

Those exporting beyond the region displayed absolutely no enthusiasm for MERCOSUR. Neither did commercial entrepreneurs, whose associations have a solid membership of importers that wanted to exploit the opening up to imports from all markets, not solely regional markets.

As was to be expected, therefore, it was the industrial entrepreneurs who adopted a more positive attitude to integration and who insistently demanded forums for participation. The special deadlines that Uruguay secured for reducing tariffs to zero, as well as the long adaptation lists presented by Uruguayan negotiators, were directly instigated by the industrial sector.

- Workers

Workers have been represented solely by the single union (PIT-CNT), an organization of long standing in Uruguay. In recent years, and as a result of the deindustrialization process (the industrial sector's share of gross domestic product -GDP- fell from 25% to 17% in the 1990s), the union has lost some of its traditional strength and its membership has declined.

Although workers retain significant influence in the union, the officials' influence is growing. This is because, while the number of industrial workers fell (from about 170,000 in 1990 to less than 100,000 in 2000, although the latter figure should be revised upward somewhat to take account of tertiarization), the number of public sector officials (central government, municipalities and public companies) concentrated in the strongest unions was practically unchanged. Something similar happened with officials in the financial system, who are also concentrated in one of the most powerful unions.

Attitudes toward integration within the union have not been unanimous. Some sectors that are more to the left of the political spectrum, and that have some influence in the union, have expressed clear opposition to integration. This posture has been reflected among workers in the industrial sector whose jobs became less secure, in part because of competition from other MERCOSUR countries.⁶

Generally, however, although it has questioned various aspects of official policy, the union has not opposed integration. Among other things it has asked the government to assume a more aggressive posture towards the other member states in order to protect national production (this has been apparent, for example, in the case of non-tariff measures adopted by Argentina and Brazil that have affected Uruguayan exports and have had a negative impact on employment and wages).

⁵ In November 1991 Gasparri said that "the main problem with integration is not the absence of mechanisms for business participation, but the prevailing business mentality". Predicting that entrepreneurs would resist participation, Gasparri added: "the business sector has a fundamentally individualistic way of thinking: they all pursue their own success and therefore they are reluctant to collaborate, even among themselves".

⁶ In a 1997 interview, the communications expert Mario Kaplun said that "some factors make the population fearful of MERCOSUR's progress; our country is suffering a very high rate of unemployment and one of the issues that the business sector invokes is that the industrial reconversion demanded by MERCOSUR either displaces them or demands a type of organization that forces them to dismiss workers; in as much as we are suffering ... industrial closures it is understandable that the population views the progress of MERCOSUR with apprehension.

- Participation in MERCOSUR Institutions -

Since MERCOSUR was founded there has been a Sectoral Commission (COMISEC) in Uruguay. But it was the Ouro Preto Protocol (1994) that created the Economic and Social Consultative Forum; the Common Market Group's working subgroups were consolidated and new ones were established; and the Joint Parliamentary Commission was made operational.

- COMISEC

The Sectoral Commission for MERCOSUR was created in October 1991, shortly after the Treaty of Asunción was signed, as a government advisory body. It is a national institution comprising representatives of the country's presidency through the Office of Planning and Budget (*Oficina de Planeamiento y Presupuesto* - OPP). Cooperatives, trade unions and business associations are also represented. According to one of its officials, COMISEC is a means of "transmitting private sector concerns and proposals to the government".

COMISEC apparently had an active role in MERCOSUR's early years. Now, however, it has lost much of its initial dynamism. COMISEC sources have said that the Commission meets "at least once a month and often two or three times a month, and many people attend". Private sector sources, however, have a more critical view. According to Daniel Bentancourt, a representative of the cooperatives, "COMISEC has had few meetings in the past year and those have been purely informative". Eduardo Gudynas, representing the environmental NGOs, has said that "the main problem is the tendency to be trapped in an information mechanism".

This suggests that COMISEC, although created to foster participation, seems to have failed to meet its goal or, at best, has done so only partially.

- The Economic and Social Consultative Forum (ESCF)

The ESCF is a regional organization comprising delegations from the four full members of MERCOSUR. Uruguay's representation in the ESCF (nine of thirty-six members) consists of delegates of the workers, entrepreneurs and the "diverse sector". Ouro Preto refers not to civil society but to "economic and social sectors".

Entrepreneurs and workers are represented by chambers of commerce and trade unions and, according to the regulation, there should be parity between them. The "diverse sector" includes Cudecoop (cooperatives), ANONG (the National Association of Non-governmental Organizations), and AUDU (the Uruguayan University Association). Uruguay is normally deemed to have appropriate sectoral representation in the ESCF. The representation, moreover, is open to new members.

The ESCF should meet in plenary at least once every six months. It adopts resolutions by consensus and has no resources of its own, receiving support neither from MERCOSUR nor from its member countries. This circumstance is believed to impose a substantial constraint on the Forum's activities.⁷

⁷ As one of its members (Fraschini) has pointed out: "The Forum is financed by the organizations represented within it and the national section responsible for the *pro tempore* coordination bears the cost of financing the meetings held in its country".

It is interesting to note that the Forum has parallel organizations, such as the Coordinator of MERCOSUR Central Unions, the MERCOSUR Industrial Council and the Council of Chambers of Commerce. At the sectoral level these hold regular meetings to exchange information, analyze common issues and, at least in the case of the industrial bodies, to make proposals. In parallel to the work of the national sections, therefore, the sectors are also working with a regional outlook.

How practical, really, is the ESCF? Does it influence decisions? What do those who participate in the Forum say? The answers are very varied. Some, like Jorge Bardier, president of the Chamber of Industry's Committee on External Trade, believe that the Forum has been of little use and that it has failed to make a meaningful contribution. On the other hand, representatives of business (Fraschini) and the workers (Padrón) in the ESCF have a more positive view. Both believe, for example, that the governments have taken their recommendations into account and that they have therefore had an effect.⁸

Nevertheless, the divergent opinions on the institution that is to become a sounding board for civil society have one point in common: the ESCF's impact on the integration process has been negligible (Bardier) or insufficient (Padrón). None believe that the influence exerted has been that desired. There might be several explanations for this weakness of the Forum.

- First, with regard to the emergence of the ESCF, it has been pointed out (Padrón) that the Forum arose because "there was strong pressure from sectors of civil society and the governments said 'right, we have to do something', and the Forum emerged ... But some sectors were uneasy that forums for participation existed; those leading these processes were particularly troubled...". From this perspective it can be assumed that relations between the members of the Forum (or the representatives of some actors in the Forum) and the official negotiators have been less fluid than might be hoped for.
- Second, and as was pointed out earlier, the Forum has no resources of its own, neither supranational nor national. This is a significant constraint, especially for representatives from the smaller economies whose resources, except perhaps for the business delegates, are very limited. Support for the representatives of the unions, the cooperatives or the NGOs is normally very modest or non-existent, giving rise to a somewhat restricted participation. In this regard, senior Foreign Ministry officials have said that this weakness even extends to representatives of the business sector.

⁸ Jorge Bardier, Chairman of the External Trade Committee of the Chamber of Industry, has a negative view of the ESCF. "MERCOSUR's ESCF is more participative; various groups meet there. But my impression is that it is not very productive. Since its founding it has not made any real contribution. My impression is that the ESCF is a huge freezer where issues ice over".

This view seems to be shared to some degree by Daniel Bentancourt, the delegate of the cooperatives. For Bentancourt the Forum has "acted sporadically as an advisory body and it has been solely an information link". Asked if he thinks that its opinions have had any influence or been taken into account, he thought not.

More optimistic was Frasinchi, the representative in the ESCF of the Higher Business Council (Cosupem). In his view "governments have understood that the channel for all private sector concerns and proposals should be the ESCF ... As representatives of the private sector we face a special challenge in trying to make civil society (and, somehow, our own organizations too) see our representation -that the ESCF is the official channel for addressing the issues". Frasinchi also believes that since its founding the Forum has made several recommendations and "we are certain that the governments have taken account of part of those recommendations".

Alvaro Padrón, a trade union representative in the ESCF, also has a positive view. In his judgment the ESCF has been effective in influencing the regional integration process, although he adds that "its influence has been insufficient". He believes that the institution has been useful but "we are forced to stress how to improve". Padrón also said that "if you ask us if we have managed to exert influence, we would say yes; but if you ask us if we had sufficient influence, I would say no. We are far from the level of influence that the organizations believe we should have in this process".

- Third, and linked to the previous point, the Forum clearly has deficient technical capacity. Frascini has said that there is an absolute need for "the national sections to have financing that allows them to maintain a technical support team that helps organize the national meetings and address the various issues".⁹
- Fourth, the ESCF must adopt resolutions by consensus. As might be imagined, consensus is not always easy to secure in a body with 36 full members. For the representatives of the workers and the entrepreneurs, however, consensus is neither a reason for criticism nor a synonym for paralysis.¹⁰
- Fifth, as its name suggests, the Forum is consultative and, moreover, the decision-making bodies are not obliged to consult it. It has been pointed out that this is a significant difference with the European Union's Economic and Social Committee, because in some cases the Commission is obliged to seek the Committee's opinion. But the difference might be more formal than real. As Edward Best has pointed out, the influence of the ESC has been limited because its contributions do not seem to have been relevant. Furthermore, in those cases when its opinion is sought, the Treaty of Rome stipulates that if no such judgment is received by a certain deadline, "the absence of an opinion shall not prevent further action".
- Sixth, at the start of 2000 the ESCF received strong backing from the Common Market Group's resolution N° 15. This specifies that the Forum is the only valid interlocutor for channeling private sector concerns and proposals. This resolution, normally seen as a significant step in favor of transparency, should encourage more active participation by all private sector groups.

In short, the ESCF is an incipient institution. It broadly represents Uruguayan civil society and is trying out means of participation. These will be more solid to the extent that the institution secures its own economic resources, that it acquires support personnel for the national delegations, that it has technical support teams to improve the quality of its proposals, and that relations between the members of the ESCF and the official negotiators are made more fluid.

- The Working Subgroups

The Common Market Group has twelve working subgroups on communications (1), mining (2), technical regulations (3), financial affairs (4), transport and infrastructure (5), the environment (6), industry (7), agriculture (8), energy (9), labor issues, employment and social security (10), health (11), and investment (12).

The full members of the working subgroups are government officials. But the subgroups are seen as privileged spaces for participation in MERCOSUR, especially in the committees arranged around them. The unions are involved, and undertake excellent monitoring of negotiations on labor agreements and social security; ecologists' organizations are active in the area of the environment. Entrepreneurs are present in several subgroups, especially industry, agriculture, labor issues and others.

⁹ Similarly, Gudynas has said that "the groups consulted are not always able to respond to the questions. We are witnessing an interesting process: for example, the Rural Federation (an agricultural business association) or the Pit CNT (trade unions) are often unable to respond to consultations because they lack personnel to devote time to the issues". Foreign Ministry sources said that usually the private sector delegations (unions and business) are technically weak and therefore "they produce little information and few proposals".

¹⁰ Padrón has said that "I support consensus because with a situation like the one in MERCOSUR, where we want to gain ground to influence the process, if as sectors of civil society we seem to be divided in our proposals it will be a lot more difficult to exert influence. In terms of influencing the official sectors, consensus gives us a solid weapon: this proposal is supported by the business people of the four countries, the workers of the four countries, and various sectors of civil society in the four countries". Frascini has also pointed out that "to date we have tried to make the maximum effort in securing that consensus, and in avoiding the danger that consensus might affect the depth of the recommendations".

This is undoubtedly an important forum for participation. But the subgroups have not performed equally: some have been dynamic and have generated proposals; others have been more lethargic.¹¹

The experience of subgroup 6 on the environment is worth noting. In this case, participation at the national level thereafter fostered helpful activity in the MERCOSUR subgroup. Indeed, within the Ministry of Housing, Territorial Classification and the Environment (*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente - MVOTyMA*), Uruguay has set up an Environmental Technical Advisory Committee (*Comisión Técnica Asesora de Protección del Medio Ambiente - COTAMA*) comprising representatives of several ministries, the unions, business associations and NGOs.

One member of COTAMA (Gudynas) says that although "the consultation process has many ups and downs, at the national level it is one of the best mechanisms we have and at the MERCOSUR level it is possibly the best in environmental matters: Argentina and Paraguay have nothing like it; there is a committee in Brazil but it is enormous and works quite poorly".

It should be noted that Uruguay's positions in the subgroup on the environment, as expressed through the delegates of the corresponding ministry, are usually discussed with the members of COTAMA. Members of the latter have said that "as far as we know, no other ministry active in other subgroups has such a consultation mechanism to support its own actions".

The experience of COTAMA and of the Common Market Group's working subgroup 6 suggests that participation is more substantial when joint activity, involving actors from different backgrounds, starts in bodies set up at the national level that receive information and conduct discussions before the concerns and proposals are transmitted to the regional sphere.

- The Joint Parliamentary Commission (JPC)

MERCOSUR has attracted the attention of the Uruguayan parliament on many occasions. Often, the ministers working directly on subregional integration (the Foreign and Economy Ministers) have been called to the chamber to report on the progress of the negotiations or on differences with the other trade partners. MERCOSUR is a matter of keen parliamentary interest.

However, the Joint Parliamentary Commission has had a low profile thus far. It should meet in a plenary session at least twice a year. Its executive board has met more frequently but, according to a parliamentary source, "the meetings simply approve the minutes of the previous meeting and make some declaration". In practice the integration process is largely in the hands of the Executive branch in each state and the JPC lacks real influence.

Some analysts believe that the JPC is an embryonic MERCOSUR Parliament (similar, for example, to the European Parliament, which has become more important over time). Currently, however, in terms of its powers and the relevance that the JPC seems to have for national parliamentarians, it is far from being a real parliament and from acting as a relevant forum for participation.¹²

¹¹ In the view of one of the participants in the MERCOSUR subgroups "the situation varies a lot depending on the period and the subgroup". He adds that "the subgroups on Industry and Agriculture have been quite open to private sector participation, both from the unions and business. From the outset the subgroup on Labor Relations, Employment and Social Security has used a tripartite structure in line with ILO norms".

¹² This circumstance prompted one parliamentarian, who prefers to remain anonymous, to say "MERCOSUR has made progress as a technical area but has advanced much less as a regional political area. The result is that when parliamentarians go to a JPC meeting we do so as national representatives to address national issues, and not as parliamentarians in an integrating area".

- Consultations and Proposals -

In such a lengthy and complex process as MERCOSUR, relations between the government and the private sector can take different forms, ranging from sporadic consultations to regular contacts in a permanent institution.

- Consultations

Since MERCOSUR was founded the government has consulted the civil society associations. What form do these consultations take?

- they are usually sporadic and deal with specific issues;¹³
- the frequency, type and depth of the consultation varies according to the government agency that undertakes it;¹⁴
- personal relations between the public official and the representative of civil society influence the consultation.¹⁵

In practice, consultation is usually the instrument of "sporadic participation" although, depending on the circumstances, it can respond to the "participation of need" when the public negotiator is in a situation that demands information or private viewpoints in order to establish a position.

- The Permanent Institutions

Participation in permanent institutions mainly advanced after the Protocol of Ouro Preto. The main features of participation in these spheres of MERCOSUR are:

- it allows more continuous and accumulative work, thereby leading to professionalization;
- these are areas for both information and proposals, and prompt influence on the official negotiations;¹⁶
- the participation is broader because it covers issues of strategy, the agenda and the negotiations.

¹³ In the opinion of Bardier of the Chamber of Industry, "there is no formal procedure for consultation or participation; rather, there are occasional consultations on specific aspects of the negotiations -such as tariff positions. The bigger issues, such as negotiating strategy or the agenda, spur fewer consultations".

¹⁴ According to Bardier "the issue and the moment are not the same for all the ministries and, as is known, four are involved: Foreign, Economy, Livestock and Industry". Bardier says that "there are normally very good relations with the Industry and Foreign Ministries, but relations are less strong with Livestock and even weaker with the Economy Ministry".

¹⁵ Another issue to be underscored, according to Bardier, is that, "personal contacts are very important: much depends on who the minister is and on the official with whom the contact is made". Gudynas has a similar view: "the consultations are always different; much depends on the officials in charge".

¹⁶ Alvaro Padrón, the workers' representative, says that the most useful participation "is participation that starts at the outset of the negotiating process". He adds that "institutional forums that work systematically and permanently offer better results, especially when they decide how the issues will be dealt with BEFORE the negotiations begin or before they end, because such forums become not simply information points for the private sector but also an instrument with real influence on the official negotiating process".

In the case of the Consultative Forum, the recommendations submitted to the Common Market Group have covered a wide range of topics, many of them concerning strategy and the negotiating agenda.¹⁷ This suggests that participation is more substantive in permanent institutions.

After the Treaty of Asunción

- Negotiations in the WTO -

In September 1999, with a view to the WTO meeting in Seattle, the Uruguayan government created an Inter-ministerial Committee to "formulate and coordinate the national position with regard to the multilateral negotiations" in the WTO. According to the decree setting up the Committee, the latter requires the assistance of public or private bodies and it should establish "communication and cooperation with social organizations that have a direct interest in the issues addressed by the WTO".

All the sources consulted averred that the Uruguayan experience in preparing for Seattle was one of the most fruitful as regards private sector participation. Alvaro Padrón of the trade union movement said that the Uruguayans acted as a team in Seattle and "there was a representative of the PIT-CNT in the official delegation".

According to Jorge Bardier of the Chamber of Industry, the WTO meeting in Seattle "was a new and very positive experience in which the ministers, official negotiators and representatives of the private sector acted as a real team; it was very productive".

The Seattle experience endured beyond the ministerial conference. Subsequently, there were meetings in the Foreign Ministry every twenty days between representatives of Cosupem (entrepreneurs) and the Ministry. Regrettably this experience, which had promised to be very fruitful, did not last. The meetings to discuss strategy, the agenda and the negotiations, which were a means of advancing in depth, became increasingly intermittent and eventually ceased.

Senior Foreign Ministry officials agreed that a team was formed in Seattle, with official negotiators and representatives of the business sector and the unions. The team acted flexibly with good technical know-how, and the Ministry judged the experience as very positive. Asked about the later meetings between the Ministry and Cosupem they said that the experience had been very productive but, unfortunately, it did not last because "the minister and the undersecretary travel a lot and it is increasingly difficult for them to convene the meetings with the business people and to attend them".

Asked why the meetings were solely with entrepreneurs when, at Seattle, other private sector representatives had also been in the team, they said that "the Foreign Ministry usually works with entrepreneurs to prepare missions that are sent overseas".

The Seattle experience -the conference itself and the subsequent meetings- seems to suggest that there is a very strong potential for private sector participation in multilateral negotiations. However, various obstacles (a weak organizational capacity and lack of interest, especially on the part of senior Foreign Ministry officials) seemed to be insurmountable and they brought to an end a team effort that had begun promisingly.

¹⁷ For example, one recommendation concerns relations between MERCOSUR and the FTAA, undoubtedly a matter of great strategic significance; another concerns relations between MERCOSUR and other LAIA countries; another relates to obstacles to intra-regional trade, a recurrent issue on the MERCOSUR agenda; another concerns unilateral measures adopted by some partners that negatively affect the rest. These recommendations, according to the official sources consulted, "have offered significant help in prioritizing some issues and in putting the right emphasis during the negotiations".

- The FTAA Negotiations -

As is generally known, the FTAA process has some elements of uncertainty. It remains unclear whether President Bush will secure "fast track" authority from Congress or its scope. Neither is it plain whether an agreement among 34 very diverse countries will be viable. In the history of Latin American integration the eleven LAIA countries, which differ among themselves (although less so than those that would be members of the FTAA) faced constant problems in concluding far-reaching agreements. It was against the background of that experience (among other things) that MERCOSUR was created as the response of two countries -and then four- to construct a flexible and viable means of integration.

There is also some uncertainty about the institutionalization of the FTAA and private sector participation. In 1998 the Special Committee of Civil Society Representatives was set up. This issued a public invitation that the associations of the continent send it their opinions. In five months (November 1998 to March 1999) it received 72 such opinions that it later publicized in summary form. To date the Committee does not seem to be the proper channel for civil society participation".¹⁸

As regards regional bodies, the FTAA Business Forum has been created but it has proved impossible to set up an FTAA Trade Union Forum because three countries (Peru and two Central American republics) voted against the initiative. The model of separate forums -one for entrepreneurs and another for workers- prevails in the Andean Community and differs from that developed in MERCOSUR because, as mentioned earlier, entrepreneurs, workers and other private sector groups act jointly in the Consultative Forum.

It should be noted, moreover, that the initiative to create the FTAA Economic and Social Consultative Forum, inspired by the MERCOSUR model, lacked support in several Latin American countries. According to the unionist Alvaro Padrón, who has a positive view of MERCOSUR's ESCF, "participation is more intensive and productive when various private sector actors work together in the same sphere; hence it could be argued that it would be helpful to create an ESCF in the FTAA along the lines of MERCOSUR". But Padrón also avers that "MERCOSUR and the FTAA are two very distinct processes, with varying levels of heterogeneity among members that have different goals. For these reasons, it would not be helpful to create an ESCF in the FTAA".

At the national level a recent presidential decree created the National Commission of the FTAA. However, unlike COMISEC (the MERCOSUR Sectoral Commission), whose decree contemplated private sector participation, in this case no mention is made of such participation. The omission spurred some complaints and a certain degree of concern, especially among the unions and some NGOs.

Perhaps for that reason the Uruguayan Foreign Minister, in statements made after the April 2001 FTAA meeting in Buenos Aires, proposed that the private sector representatives in MERCOSUR's ESCF should be the interlocutors for the official FTAA negotiators in the recently-created national section of the FTAA.

The FTAA seems to be proceeding quickly, but at the same time the current signals on participation are unclear. In some sectors the view that the FTAA is "a government matter", from which society is excluded, has gained ground.¹⁹

¹⁸ See for example the comments of Pages [2000].

¹⁹ Daniel Bentancourt, the cooperatives' representative, has said that "on the FTAA we sometimes receive partial information from the Foreign Ministry. The process is driven exclusively by the governments. The business sectors exert influence through extra-official channels. We cooperatives are excluded".

This view, that the process excludes rather than involves society, is underpinned by certain Uruguayan government positions that seem to suggest unconditional support for the FTAA. Such positions were not discussed with other political forces or with representatives of civil society. This absence of consultation is a break with a foreign policy tradition that had endured since at least 1985, when Uruguay returned to democracy. Previous governments viewed foreign policy as a matter of state.²⁰

The FTAA process is at a very early stage and it remains to be seen –(if the project really thrives) whether forums for participation will arise in the near future.

V. The Most Prominent Features of the Uruguayan Experience of Participation

Uruguay has a long tradition of trade agreements with neighboring countries and, more recently, with extra-subregional countries.²¹

This process began 40 years ago and gathered momentum in the last decade. What role has civil society played? In this long period, characterized by an initial democratic phase (1960-1973), an authoritarian stage (1973-1985) and another period of democracy (1985 to date), the main features of participation have been as follows:

- In terms of state authorities, the executive branch has been the leading actor in the strategy, agenda and negotiations. The legislature's role has been low-profile. The role of MERCOSUR's Parliamentary Commission has been almost nil.
- In those four decades the only actor always consulted by the government, irrespective of the nature of the regime (although with varying intensity according to the period) was the business sector. In as much as the agreements have centered on economic (especially commercial) matters, and social considerations have been very weak or absent, the presence of business appears to respond to a *de facto* circumstance: it is precisely the entrepreneurs who in the final analysis should realize a trade agreement and turn it into an productive exchange of goods. Historically, business people have been the civil society actors most called upon to participate in integration.
- In the last decade, and especially since the signing of the Treaty of Asunción, the number of actors participating in the process has clearly grown. The reason for this, in principle, is the government's need to broaden the basic consensus on foreign policy ("legitimation participation") and pressure from certain sectors (especially the unions) that want to participate in the integration process ("demand participation").
- The predominant form of participation has been "sporadic" or "adjectival". As regards "substantive participation", however, it can be said that in the past four decades the actors' influence seems to have

²⁰ In this regard one of Uruguay's political forces (*Encuentro Progresista*) issued a declaration just before the FTAA meeting in Buenos Aires. This expresses its concern about the situation that has arisen in international policy "and it views with concern the fact that new positions are adopted or commitments are made in the international field without, as has been traditional, discussions with the political sectors".

²¹ With regard to the background to the current situation it is worth mentioning the Treaty of Montevideo, which created the Latin American Free Trade Association (LAFTA). Later, in 1980, this became LAIA, which has prevailed to date. As the background to MERCOSUR, mention should be made of the bilateral agreements with Argentina (*Convenio Argentino-Uruguayo de Complementación Económica - CAUCE*) and Brazil (*Protocolo de Expansión Comercial - PEC*), initially signed in 1975 and expanded in 1985. In 1991 Uruguay joined MERCOSUR and subsequently participated in the efforts to build a hemispheric free trade area (FTAA). It is also involved in the negotiations between the European Union and MERCOSUR.

increased. This is particularly true since Ouro Preto's institutionalization of MERCOSUR (1994), when permanent and predictable institutions for participation were established. As yet there are no clear signs of participation "of need".

- The Consultative Forum and the Common Market Group's working subgroups have been the permanent institutions for participation. It is here that the most continuous and accumulative work has been done by those representing civil society. There is evidence that this work has influenced the negotiations conducted by the members of the official techno-bureaucracy, and the work covers a broad array of issues -from strategy to the actual negotiations.
- The WTO negotiations have revealed a very strong potential for private sector participation in multilateral negotiations. However, various obstacles (weak *post-facto* organizational capacity, indifference on the part of senior Foreign Ministry officials) were apparently insurmountable and they put an end to a team effort that seemed promising.
- There is practically no civil society participation in the FTAA. Indeed, there has been a break with the tradition of seeing foreign policymaking as a matter of state, with participation and consensus in the political system and in society. This has prompted the view that the FTAA is "a government matter" and that society is excluded.
- Uruguay has not developed a means for civil society participation. The government bears responsibility for this because the establishment of forums for participation falls to the authorities. To some degree, however, perhaps some responsibility is borne by the actors that want to participate. Invited to express their views, they have not always done so at the right moment or with the necessary vigor. The state seems to be vacillating in opening up forums, and civil society does not seem to have made enough progress towards the "necessary participation". In short, the state must establish the forums for participation, but it is up to civil society to make itself an indispensable instrument.

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ALVARO PADRÓN Representative of the PIT-CNT (central union) in MERCOSUR's Economic and Social Consultative Forum.

JORGE BARDIER Chairman of the External Trade Committee of the Uruguayan Chamber of Industry (business association).

EDUARDO GUDYNAS of the environmental NGOs and director of the Latin American Center of Social Ecology, an independent institution that has produced several studies of civil society participation and some that specifically cover civic participation in trade agreements.

DANIEL BENTANCOURT Representative of Cudecoop (cooperative movement) in MERCOSUR's Economic and Social Consultative Forum.

SENIOR OFFICIALS OF THE FOREIGN MINISTRY who prefer to remain anonymous.

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