

## Do officials learn from the public? Transparency and public participation in the Canadian trade policy process

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

- Doha Development Agenda, November 14, 2001

The Doha Development Agenda (WTO, 2001) confirmed the rhetorical importance Members of the World Trade Organization (WTO) now attach to the essential democratic values of transparency and participation. That commitment, however, is merely to making information available in Geneva while working at home to convince citizens that the WTO is good for them. This commitment is a pale reflection of the WTO's general transparency norm, which is based on the principled belief that democratic governance and efficient markets are both enhanced when actors know what is going on, and when administrative agencies have a degree of autonomy, or independence from political interference. The one is effectively a constraint on the other: administrators must be free to get on with the job, but openness is a constraint on abuse of discretion. The premise of the International Institute of Sustainable Development in commissioning this study is that transparency and participation are part of seeing "development as freedom" (Sen, 1999) and that participation can contribute to sustainable development by ensuring that the needs of growth, the environment, and social cohesion are all considered by policymakers (Cosbey, 2004). If trade policy is made in the light of day, there is a better chance that it will serve all citizens.

In the early days of GATT, trade policy appeared to be a technical matter of no interest to non-experts, a confined issue that seemingly did not affect other domains. The usual assumption was that trade policy was about commercial interests; the policy process was designed, therefore, to accommodate such interests without being especially open to others. That world is gone. The changing nature of trade policy means that complex new agreements touch many domains, increasing the range of people who can contribute useful information to the negotiation process, and whose support will be needed for successful implementation of any agreement. It is now generally accepted that consultations with citizens and economic actors are a fundamental part of making good trade policy (OECD, 2001b).

The vague reference to "dialogue" in the Doha text obscures the tricky part—finding a way for actors to make use of information in influencing outcomes, especially when the decision in view concerns not a specific administrative action but the future of the general regulatory framework. It also elides another familiar idea: officials need information too, if they are to be effective, and not just on the narrow "interests" of economic actors. New legal texts change little when they are incongruent with the informal practices and mutual expectations of actors in the trading system. Trade policy officials cannot make up their country's "interests"—they need to hear from their citizens and their firms who are engaged in trade as importers and exporters, or producers and consumers. What problems do economic actors encounter? What new opportunities do they wish to pursue? Where are the rules as codified in the WTO discordant with their daily practices in the

trading system? How are market practices interfering with the aspirations of citizens? The importance attached to transparency is, or should be, more than rhetorical: it goes to the heart of the policy process. Are domestic public consultation exercises elite attempts to manipulate mass opinion or occasions for social learning by governments and citizens? This paper examines these issues in the context of one WTO member, Canada.

Canada is often seen as an exemplar of an open and transparent policy process (OECD, 2002: 33). Trade policy consultations have engaged numerous government departments, the provinces and municipalities; broad-based industry associations and civil society organizations; sectoral industry associations and civil society organizations; and individual firms, academics, and citizens. They have been used to provide information in an educational role, to demonstrate the importance of trade to Canada's economy, and for building consensus, for example on Canada saying explicitly as part of its services position that it would not enter negotiations on certain sectors. And they have been used to obtain information, for example on offensive interests and defensive concerns in the services negotiations. Yet with notable exceptions (Stairs, 2000; Dymond and Dawson, 2002; Ciuriak, 2004; Hocking, 2004), little analysis has been published on either the process or the results. Some articles have looked at the role of consultations for foreign policy development (Lortie and Bedard, 2002; Lee, 1998; Whitworth, 1995; Gattinger, 2003; Chapin, 2001; Van Rooy, 2001; Riddell-Dixon, 2004), but the few attempts to evaluate consultations (Cooper, 2002; Hocking, 2004; Bulte, 1999) tend to focus on participant satisfaction, or on procedural issues (Canada, 1999c; Canada, 2000a), with little analytic work on which interests or groups engage on which issues, and whether the consultations meet the objectives of either officials or politicians for either better or more legitimate policy. This paper begins to address this gap.<sup>1</sup>

The first part of this paper provides background on consultations in Canada, in general, and then on the institutional structure for and history of trade policy consultations. After a description of what we know from survey research about public attitudes, the final part of the paper begins the process of asking whether the consultations make a difference to the legitimacy or effectiveness of policy. Two appendices present first a series of case studies of consultations on agriculture, services, the environment, and the role of consumers and second descriptive material on mechanisms for information and consultation.

## **1. Consultations in context**

Trade policy consultations do not stand alone in any country—they are but one facet of a government's general practice of consultations in the context of the country's constitutional and political realities (Hocking, 2004: 11; see also INTAL-ITD-STA, 2002). Conventional policy analysis assumes a world where we can know the government agent that "acts", we can assume the nature of the action, and we can assume that there is only one action. But the assumption of the centralized bureaucratic state is usually misleading, especially in the newer areas of trade

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<sup>1</sup> This paper was completed before the release of a major review commissioned by the new Department of International Trade through the Office of the Inspector General. I understand that themes familiar in the citizen engagement literature emerged in the review. The department is now holding informal consultations on a new set of mechanisms.

policy where the unit for policy analysis is not the bureaucratic agency in a hierarchical relationship to other actors but the “tools of government” seen as horizontal collaborative relationships (Salamon, 2002a). The role of regulators is no longer “command and control” but rather “negotiate and persuade”. In this new world, sometimes economic actors will seem like agents of government in implementing a particular policy while at other times economic actors will appear as principals instructing the government to pursue particular policy goals.

Public agencies therefore do nothing on their own. The implication of this claim is that no trade ministry is hermetically sealed from its domestic environment. The trade minister is inevitably an intermediary between domestic and international actors. S/he can never have enough information to act without talking to others, and can take few actions except through others—even the implementation of a tariff is the responsibility of another minister. We see this reality in the evolution of trade policy consultations in Canada described below, where trade negotiations involve many federal government departments, provincial governments, and even municipal officials. These officials are needed for providing ideas, for supporting the adoption of a proposed deal, and for implementing new agreements. Negotiators need to engage economic actors for the same reasons. Trade officials must understand the views and needs of all the participants in the trading system because new rules incongruent with the expectations and practices of the relevant actors will fail to be implemented or respected. The bright line between government and the private sector erodes as the two blend together: collaboration replaces competition between public and private (Salamon, 2002b).

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

Consultations, in short, are an aspect of transparent governance. Governments consult the public for many reasons, including providing information on the intended direction of policy change, assessing the acceptability of a proposed policy, and seeking ideas from the public. The process is sometimes manipulative (an elite attempt to persuade) and sometimes argumentative (a social process aimed at changing the understanding of cause and effect in a domain) (Checkel, 2001: 562). Scholars have observed a paradox for decades: regulatory agencies are subject to “capture” by the industry they regulate, and yet regulators depend on the regulated both for information and compliance (Smith and Ingram, 2002: 577). Open consultations allow transparency to ameliorate one and facilitate the other. In addition to consultation, transparency includes: processes for making and changing regulations; plain language in drafting, publication,

codification and other ways of making rules easy to find and understand; and predictable, consistent implementation and appeals processes (OECD, 2002: 33). Amongst OECD members, Canada's regulatory system is one of the most transparent, as is its trade policy regime (WTO, 2003: 12).

In the draft Canadian guidelines on public participation, officials identify a “spectrum” of approaches (Canada, 2001c: 3). It begins with accurate, objective and timely *information*, which promotes transparency and accountability and enables citizens to participate in the public policy process. *Consultation and citizen engagement* processes invite greater citizen involvement in policy development, while shared decision-making through *partnerships* provides the greatest degree of involvement. Consultation, the guidelines go on (Canada, 2001c: 4-5), involves processes that seek the views of individuals or groups on policies that affect them directly or in which they have a significant interest. It can be used to help frame an issue, to identify or assess options, and to evaluate ongoing activities. Advisory committees, program or policy conferences, public meetings, 1-800 lines, Web sites, polling and focus groups are among the many forums through which consultations are conducted. *Citizen engagement* involves in-depth deliberation, usually in the formative stages of policy or program design, focused on the goals and underlying values and principles of a policy, program, service or initiative. The processes include study circles, deliberative polling, citizen juries, public conventions, correspondence, debate and dialogue.<sup>2</sup>

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

In one sense consultation is not news in Canada. Parliamentary committees have always heard from witnesses, and Royal Commissions have been holding public hearings for decades—indeed the hearings of the Macdonald commission two decades ago played a central role in re-framing

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<sup>2</sup> The draft guidelines remain in draft. The Treasury Board Secretariat consulted the “stakeholders” (other federal departments!) on the guidelines in 2001. In the report of those consultations (on file with the author: it has not been published, to my knowledge), departments signaled the degree of resistance citizen engagement meets from traditional bureaucrats. Some worried about the resource implications of the policy, others about the difference between consultations undertaken by elected officials and by public servants—perhaps a distinction could be made between policy consultations with elected officials and consultations with managers responsible for administering programs. In a classic effort to protect turf, some officials thought consultations could be kept distinct from the “communication” functions of a department, and that public opinion research should not be seen as a tool of consultation because it should be managed centrally in government.

national debates on trade policy (Canada, 1985b)—but consultation has not always been a defining feature of the federal public service. It is notably absent from both Hodgetts' (1973) account of the development of the public service from 1867 to 1970 and Granatstein's (1982) history of the mandarins who greatly influenced the public service from 1935 to 1957. The public service did not regularly consult foreign policy experts outside of government until Pierre Trudeau was elected Prime Minister in 1968 (Stairs, 2000: 13) and standard, government-wide requirements for consultation were only introduced in 1986 (OECD, 2002: 33). Consultation has thus gradually become “a fundamental principle of parliamentary democracy” in Canada and part of the culture of the federal public service.

## **2. Responsibilities for Trade Policy**

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

The Canadian system of government is an adaptation of the Westminster model of constitutional monarchy to the particular geographic and social circumstances of a vast country. Canada has a Prime Minister, a Cabinet, a bicameral Parliament, a permanent, non-partisan public service, and a monarch, represented in Canada by the Governor General. Canada's constitution assigns authority for the regulation of trade and commerce to the federal (national) government, but assigns authority for property and matters of a local or private nature to the governments of the ten provinces. The federal government can sign international trade agreements, but often needs the co-operation of provincial governments to implement the obligations set out in those agreements. The need for provincial co-operation is especially important in areas of shared federal-provincial responsibility, such as agriculture and the environment.

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

Trade (SCFAIT), which hears testimony from invited witnesses and produces reports that are tabled in the House of Commons; and the Senate has a Standing Committee on Foreign Affairs (SCFA) that considers international trade issues.

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

Trade policy touches many departments, including Agriculture and Agri-Food Canada (AAFC), Environment, Industry, and Finance, but the central role is played by International Trade Canada (ITCan).<sup>3</sup> The domain of trade policy is defined in part by the mandate of the *Department of Foreign Affairs and International Trade Act*, RSC 1985, c. E-22. It includes the responsibility, shared by the new departments of Foreign Affairs (FAC) and International Trade (ITCan), to conduct all official communication between the Government of Canada and the government of any other country and between the Government of Canada and any international organization; to conduct and manage international negotiations as they relate to Canada; to coordinate Canada's economic relations; and to foster the expansion of Canada's international trade. The first objective of Canadian foreign policy, and the central objective of trade policy, is the “the promotion of prosperity and employment by advancing Canada's international trade and economic interests abroad, by maintaining market access for Canadian goods and services, by attracting foreign investment, and by promoting tourism to Canada.” ITCan is responsible for the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), the Asia Pacific Economic Cooperation (APEC) forum, Export and Import Controls, the promotion of investment in Canada, and the legislation authorizing the imposition of trade and economic sanctions.<sup>4</sup>

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<sup>3</sup> International Trade Canada was created on December 12, 2003 when Paul Martin took office as Prime Minister. Legislation confirming the split of the former Department of Foreign Affairs and International Trade was introduced into the minority parliament on December 7, 2004. The legislation was defeated on February 15, 2005, leaving the legal status of ITCan uncertain. DFAIT had been created in 1982 when the trade functions of the Department of Industry Trade and Commerce were merged with the Department of External Affairs to create a department able have an overview of international economic policy as part of foreign policy (Osbaldeston, 1982). One reason the divorce legislation may have failed is that the government has yet to offer an explanation of the changes in the external environment or domestic policy process that motivated the split.

<sup>4</sup> The department consults relevant stakeholders on its trade promotion and investment activities, but I consider only trade policy in this paper.



### 3. Evolution of Trade Policy Consultations

Trade policy was slower to embrace the new era of open public consultations than other sectors of Canadian policy, perhaps because many practitioners see the trading system as a solution to the collective action problem of liberalization in the presence of lobbying by interest groups, or helping the state resist domestic protectionism. It may seem perverse to practitioners to engage with the very groups from whom policymakers are trying to maintain some autonomy. Nevertheless trends in trade policy and in the broad policy environment made such splendid isolation impossible. In the USA, the Trade Act of 1974 began the “fast track” process of requiring Congress to accept trade as a package, which may well have motivated the creation during the Tokyo Round in the GATT (1974-79) of elaborate mechanisms for consulting business to ensure that they would support whatever package emerged.<sup>5</sup> In Canada there was no need for a “fast track” process, since Parliament does not vote on trade agreements. But the subject matter of the Tokyo Round and the negotiating proposals, especially the Swiss formula approach to tariff reductions, led to increased consultation with both provincial legislatures and business groups (Winham, 1986: 334-7, 342). Budget secrecy with respect to changes in border measures made sense in the Kennedy Round of the 1960s, but the isolation of negotiators began to erode during the Tokyo Round when decisions could no longer be made by small groups of trade or finance ministry officials. The government created three interdepartmental bodies to manage participation in the Tokyo Round: the Canadian Trade and Tariffs Committee (CTTC), which was designed to be a mechanism for communicating with both industrial groups and provincial governments; the Trade Negotiations Coordinating Committee (TNCC), which was established at the level of deputy minister to improve the coordination of the federal public service on trade policy; and the Continuing Committee on Trade Negotiations (CCTN), which served as a secretariat for the Cabinet committee that had political control over the negotiation.

Officials responsible for trade promotion have always maintained extensive contacts with the Canadian business community, who are their clients and best source of information on commercial conditions, but trade policy consultations with economic actors became more elaborate at the time of the negotiation of the Canada-U.S. Free Trade Agreement (FTA) in the 1980s. Even then, the focus was clearly on the business community. Stairs (2000) reports that the Trade Negotiations Office (TNO), headed by Simon Reisman, a former Deputy Minister of Finance, made it clear from the beginning of the FTA negotiations that it did not wish to have its activities unduly complicated by excessive requirements for consultation with economic enterprises, provincial governments, other government agencies, or even other units within the then Department of External Affairs and International Trade, let alone with groups that were opposed to the free trade initiative in principle. Stairs infers, plausibly, that Reisman assumed that the government had decided to proceed despite the worries expressed in public debate, so opponents were no concern of his.

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

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<sup>5</sup> The history of American mechanisms is noted in (Hocking, 2004), who cites (Winham, 1986).

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

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

In the years since Seattle, the trade department has been committed to an intensive program of information and consultations not only with officials of other departments and other levels of government, but with economic actors and citizens. The department employed a number of complementary consultation mechanisms, some formal and some informal. Formal mechanisms of consultation include federal-provincial-territorial (C-Trade) meetings, the diverse set of SAGITs, and an Academic Advisory Council (AAC). In addition to these formal mechanisms, ITCan employs a wide range of informal consultation mechanisms, ranging from multistakeholder meetings across the country to electronic feedback forms on the ITCan web site. As part of its public outreach program, public servants participate in a range of informal meetings on specific trade-related issues, organized by private or third sector organizations. Appendix B groups these forms first by Information and then by Consultations.

#### **4. The waxing and waning of trade policy consultations**

Consultations are now part of the culture of government in Canada, but trade policy consultations have seemed more politically intense than others in recent years, in part because of the public profile of civil society organizations interested in trade was raised by the massive anti-globalization demonstrations earlier this decade. The apparent lesson the government drew from the MAI process, and the Battles in Seattle, was certainly a motivating factor favouring increased consultations, but there are at least three others.

First, consultations contribute to policy analysis in an era when government restructuring has reduced the availability of expertise (Pierre, 1998). When the reach of trade policy extends

“behind the border”, negotiators need more information about the domestic economy than ever before, while jurisdiction and authority are more widely dispersed at the national and subnational levels. As others have noted, traditional tariff negotiations were subject to budget secrecy in a way that does not apply to much of current trade policy.<sup>6</sup> Moreover, trade officials are now operating in domestic domains where, as discussed above, consultation has been part of good regulatory practice since guidelines were promulgated in 1986. This reach behind the border and the concomitant development of consultation mechanisms began in the Tokyo Round.

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

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

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<sup>6</sup> In Canada, tax measures in a budget are secret until tabled in the House of Commons.

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

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

Second, the substantive agenda is changing. In the late 1990s, the public focus was on the possibility of a new WTO round in the midst of anti-globalization protests. In early 2001 the FTAA aroused public concern. Since 9/11, however, keeping the Canada-US border open has preoccupied business and think tanks more than the slow-moving WTO talks. As Ciuriak (2004) notes, business has already obtained most of the items on its trade liberalization wish list. Moreover at this stage of a WTO round, the positions are well-established and officials are engaged in the difficult work of detailed negotiations that does not excite much public interest, except from farmers, who know what is at stake. (Dozens of Canadian farm representatives were in Geneva in late July 2004 to keep an eye on negotiators when a new framework for agriculture negotiations emerged. Such groups are major components of Canadian civil society representation at WTO ministerials and the annual symposium for civil society. In standard political economy terms, it may not be surprising that the groups with the most at stake—concentrated producer interests—are more engaged in the process than individuals whose diffuse interests as consumers and/or citizens are harder to estimate.)

A third factor that might be limiting interest is the changing nature of the consultation process. Stairs shows how civil society organization can be frustrated by talking to officials who can discuss the detail but not the principles of policy, while business wants its own forum in order to avoid having to listen to civil society organizations. Hocking (2004: 23) quotes a senior businessman’s complaint that “The SAGIT process is undergoing what could prove to be fundamental change. Hitherto, it has always been an intense process with good interaction between business and government. But Ottawa has now broadened the contact list to include labour and NGOs. Business now has to engage in ‘group gropes’ in order to play the game.” By inviting more players to the table, the government has, to some extent, changed the game. Business leaders, who were quite interested in trade policy in the late 1980s and 1990s, may retreat from formal consultation because of the influx of third sector or civil society organizations, some of whom disagree with the fundamental principles of trade liberalization.

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

Several of the interviewees revealed that over the past few years their organizations, and

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

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

Finally, the supposed public demand for more engagement can be over-stated by analysts. The intensity of opposition in the streets to “globalization” may not necessarily translate into the hard work of going to technical meetings with officials. Moreover, the apparent hostility to trade shown by protestors may not have been representative of the broader public. Before considering a number of case studies of consultations, therefore, I want to pause to consider what we know about the views of Canadians.

## **5. Canadian attitudes to trade liberalization and public consultations**

The WTO is not something most Canadians think about on a daily basis. Despite Canada’s enormous dependency on commercial exchanges with other countries, notably the USA, people do not think much about trade either. “Trade” is a constructed category, as is “globalization.” The ontological status of such terms is ambiguous and their epistemological status is opaque. Traded services, for example, are famously things that you can buy and sell but cannot drop on your foot, which means these expert abstractions can best be seen in measurements of transaction flows. Gauging public attitudes to such things is not easy, but with a colleague I began to try after a series of large demonstrations, especially the 1999 “Battle in Seattle”, led politicians and officials to worry that Canadians were hostile to trade. We found that after the divisive debates over free trade with the Americans in the 1980s, Canadian mass opinion became broadly supportive of trade agreements during the 1990s (Mendelsohn and Wolfe, 2001). In early 2001, when we designed a survey to contrast attitudes to “trade” with attitudes to “globalization”, it was therefore not surprising that about two-thirds of respondents said they supported the negotiation of new trade agreements, while only about one in ten said they were opposed. Yet fewer than half supported “globalization,” and over a third were uncertain. Our analysis of the

difference in responses to these questions contrasts values with interests in trying to understand the trade-off that citizens face between the efficiency of open markets and the security of the welfare state (Wolfe and Mendelsohn, 2005). Letting the market run things, which is what complete liberalization implies, or allowing global governance to displace community governance, as implied by the increased linkages associated with globalization, would be inconsistent with what Canadians believe to be the legitimate social purposes of their governing institutions.

Trade agreements are broadly legitimate in Canada because they are associated by the public with prosperity that does not undermine the welfare state (Mendelsohn, Wolfe and Parkin, 2002). Since most people think that trade deals have worked reasonably well, they are content to leave the details to the government. This “permissive consensus” on trade policy is a form of what Scharpf (2000) calls democratic legitimation on the basis of outputs. Inputs are legitimation by the process of decision; outputs are legitimation by showing that policy serves a community’s common interests. International cooperation, as it is practiced, limits the possibility for procedural (input) legitimation because domestic processes cannot be determinative of the outcome of multilateral negotiations. Happily, Canadians do not think that new forms of participation should replace the established constitutional mechanisms for making policy. In the end, parliament must decide. But they do want to be more engaged in the process by which parliament learns what to decide. Citizens must still be convinced that trade agreements are indeed within the permissive consensus. Moreover, the nature of the on-going interaction between civil society and the state is itself a valued political objective. Trade agreements may enjoy “output legitimacy,” but we found that “input legitimacy” matters to Canadians, especially those who join certain kinds of organization.

Scholte describes three broad types of civil society organizations, only two of which bother with trade policy consultations. The first he terms “conformists”, groups that “follow mainstream discourses of trade theory and broadly endorse the existing aims and activities of the WTO. A second group, who might be called ‘reformers’, accept the need for a global trade regime, but seek to change reigning rules and operating procedures. A third category of civil society organizations, who might be called ‘rejectionists’, seek to reduce the WTO’s competences and powers or even to abolish the institution altogether (Scholte, 2004: 150).” Producer organizations are usually found in the first category, as are consumer organizations, although both may make common cause with citizen organizations in the second category. In his careful description of the 1999 consultation exercise, Stairs (2000: 28ff) similarly distinguishes between groups who support the principle of trade negotiations but wish to influence the negotiating objectives, and those who wish to challenge the principle. The former were happy talking to officials—and were not happy when the latter noisily took up airtime—while the latter found their give and take with politicians in Parliamentary committee hearings to be more satisfactory. Officials found it easier to talk to the groups who saw themselves as trying to support the government’s objectives. They found it hard to respond, as officials, to groups that do not accept those objectives.

These tensions around the role of civil society organizations are reflected in our survey data. In our 2001 survey, Mendelsohn and I asked how much role the public should have in decision-making in international organizations. When we presented respondents with three different levels of democratization, a strong majority opted for the middle position. Canadians do not want to

leave things to government (or international organizations) alone, and about one-third would like the public to be actively involved, but about three in five simply opt for more transparency and publicity.<sup>7</sup> A slim majority of Canadians reject the argument advanced by many government officials that international organizations are already sufficiently democratic because democratically elected governments send delegates, yet only half of Canadians say that “international institutions are not sufficiently democratic.” This finding and the previous one put each other in context: although Canadians do not judge the status quo to be sufficiently democratic, they do not support radical participatory processes. We next told respondents that the governments of industrial countries had a lot of power when it came to making decisions about globalization. We asked half of them which was a bigger priority: giving governments of the South or the general public in industrialized countries like Canada more power. To the other half, we altered the second choice, replacing “general public” with “civil society organizations”. The results reveal the hierarchical ordering that Canadians apply to broadening access: the general public in the North is the priority, governments of the South follow, and civil society organizations are least important. We have no tracking polls on these questions, so we do not know if Canadians held similar views in the 1980s.

In short, Canadians do not expect to be actively involved in decision-making at an international level, but they do expect the kind of transparency that allows them to hold their government accountable. They want information, and they want occasions other than periodic elections on which they or their surrogates can use that information. In the next section, I ask how well Canadian consultations meet these objectives, based in part on the appendices, notably the four case studies of consultation in practice: agriculture, where there is a long tradition of active engagement by farm organizations in the policy process of most countries; services, the domain that has aroused considerable civil society anxiety; the environment, where the changing trade agenda has pulled established activist groups into the trade orbit; and efforts to engage consumers as opposed to producers in enforcement actions.

## **6. Does consultation make a difference?**

The conclusion of the first part of this paper was that the mechanisms for trade policy consultation as they have evolved are an instance of the general practices of the Canadian policy process. Canadians want the transparency that allows them to hold their government accountable, and they want occasions when they can make use of the information. In light of my cases studies, do the mechanisms meet these objectives? Such questions are not easy to answer. The OECD review of Canadian regulatory practice reported a difference of views between stakeholders who thought regulatory proposals changed after consultations, and those who thought that their involvement had had little impact on policy. The report concluded that “the challenge for Canada, as with all open societies, is on the one hand to provide avenues for all interested parties to participate in the policy design and on the other not to overburden the system with duplication and irrelevancy, or permit well organised interest groups to capture the debate and finally the outcome. Another challenge is to communicate the central objective of a public consultation, that is, while all views will be heard, the final decision must remain with elected representatives

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<sup>7</sup> The data on these questions are found in (Wolfe and Mendelsohn, 2004).

(OECD, 2002: 36-7).” Consultations may foster both democracy and good policy, in principle, but they do not replace regular decision processes.

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

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

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



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

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

### *Information*

The Canadian government provides an enormous range of trade-related information to the public, beginning with the voluminous data on international economic transactions disseminated by Statistics Canada, one of the world's best statistical agencies. Such information provides an essential factual basis for policy debate. Similarly, a vast array of information on microeconomic policy is available on the Industry Canada website, and on the websites of sectoral departments. And as indicated above, the whole regulatory process is remarkably open. With respect to trade, the ITCan web site contains an enormous amount of information on the World Trade Organization, relevant bilateral and multilateral trade agreements, the state of Canada's trade, and other aspects of the department's activities. The site includes detailed information on trade disputes to which Canada is a party, and on the state of bilateral and multilateral trade negotiations. Other government websites implement Canadian commitments for regulatory transparency under WTO agreements (Wolfe, 2003). The department maintains an e-mail list for people interested in receiving notifications of trade policy developments. The section of the website called "It's Your Turn" provides details on all consultation activities, including new requests for public views and reports on past efforts. The department knows that its trade pages get roughly 40,000 hits per month, although most of the email generated by the site is from students asking questions. Consistent with the *Official Languages Act*, the department devotes substantial resources to translation into French, which sometimes slows the appearance of material. A larger problem is the nature of trade discourse.

It is not clear whether the government has any systematic analysis available on how comprehensible its information is for the intended audiences. In a review of services consultations, some respondents observed that “the technical trade talk or ‘jargon’ used by ... officials in discussions make it much harder for them to participate. Most businesses are not ready to discuss the intricate details of GATS procedures or goals. In fact, as one provincial official indicated, businesses often lack basic knowledge of international relations, let alone the issues concerning GATS (Public Policy Forum, 2003: 14).”

Another aspect of information is feedback. People want to know that they have been heard, whether or not their points have been accepted. For many, this is the key to legitimacy, although it is a matter of perception as much as reality. The draft guidelines say that officials should give feedback on consultations in at least three areas: what was heard (for example, providing meeting notes); what was done with what was heard (for example, sharing recommendations); and what decisions were made and why (Canada, 2001c: 24). Here too, evaluation by outsiders is difficult. My impression is that ITCan does a reasonable job of providing notes on meetings, and reports on consultations (Canada, 2004b), as does AAFC, but putting a report of who said what on the website does not provide the same quality of feedback as on-going dialogue.

It is harder to see how consultations influenced the recommendations. The “decision” in most cases is the Canadian negotiating position. It is now the practice to make the formal Canadian position public whenever possible, but the information provided is necessarily broad, especially if it might compromise a negotiating position. Significant detail is available on the agriculture position, for example, but not specific negotiating mandates. Canada’s *Access to Information Act* allows the government to protect any information that would compromise the conduct of international relations. In the case of the GATS negotiations, the web document “Canada’s Negotiating Approach” stated what Canada was prepared to do in the round. Canada’s subsequent Offer is public, since it relates to the legislative framework. Canada’s Request, however, was described only in general terms on the web: as the detail concerns the policies of other governments, or the commercial interests of Canadian firms, posting the actual Request itself would be awkward. And the process is bilateral, not multilateral—no WTO Member knows what Requests other Members are making.<sup>8</sup>

The government logic is sound, but this sort of practice may be a barrier to participation. In the review of services consultations, participants complained that they were not given real information, unlike U.S. practice where accredited organizations and individuals can supposedly see actual GATS Requests. The report (Public Policy Forum, 2003: 16) observes that “While provinces are satisfied with their access to secret negotiating documents, businesses, NGOs and SAGIT members believe that they are being shut out of a crucial element in the consultation process. Many of the respondents believe that [the department] is guarding control over requests and offers too closely, and they would like them to be more open.” More broadly, if negotiating positions are public, it is harder for private influence to be hidden.

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<sup>8</sup> For example, in an undated document on its website (India, n.d.), the India Ministry of Commerce provided summary information on the Requests it had made, and the Requests made of India, but it has not identified the recipient of its Requests or the countries from which Requests have been received.

The formal position a country takes, however, may not be its real position, and may not signal the issues on which it is prepared to compromise, although consultations may be most useful precisely on this point, by helping negotiators determine what matters most for their producers or citizens. That detailed negotiating information is usually communicated only in informal, off-the-record meetings with other countries, in part so that negotiators will not have to defend their negotiating tactics in public (on informality in the WTO, see Wolfe, 2004). The best informed groups know this, of course, which may be why all those representatives of Canadian farm groups were in Geneva in the last week of July 2004—as principals they may have been trying to maintain close monitoring of their agents.

### *Participation*

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

The lists of participants in services consultations (Canada, 2004b: Annex), and in general trade consultations (see Appendix C) show the huge range of people heard. It is not easy to assess their influence, however. Clearly, all agricultural producers, large and small, are heard. The official review of the agriculture part of the pre-Seattle consultations described by Stairs criticized Agriculture and Agri-Food Canada (AAFC) with respect to who was not consulted—citizens and groups from outside the sector (Canada, 2000b). Some SMEs participate in services consultations, though their concerns tend to be trade development more than trade policy. In the various multistakeholder consultations, participation is open, but these processes make a difference only on questions of broad principle. As the subject becomes more specific, organized groups are more easily heard.

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

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

## 7. Conclusion

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

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

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

Stairs might have added that on some questions, government should consult experts, not the general public. As the PCO guidelines note, different purposes are served by providing information, and by consulting. Detailed technical information can be sought by officials from experts or economic actors, or other government departments. Exploring the possibility of a compromise on a difficult issue can be done with opposed industry associations or in more broadly based multistakeholder settings where the point is for all sides to be able to listen to contending points of view. Trying to build a consensus involving groups with both egotistical and cosmopolitan objectives might best be done in Parliamentary hearings. In short, good policy and legitimate policy may require different mechanisms at different moments in the policy process. The consultation process may be different for exporters and importers; producers and consumers; economic actors and citizens; there are occasions when providing information will be more useful than holding a consultation; and there are situations in which either ministers or officials will be the more appropriate interlocutor.

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

Here then is the dilemma, both for analyzing the effect of consultations and considering their value. On well-defined issues, like new tariffs, where officials know who the producers and consumers are, and everyone knows their “interest”, existing mechanisms work well, if sometimes at greater expense and effort than necessary. On issues that are less well understood, which can include issues new to the negotiating agenda, or issues where Canadians differ on what is at stake (as in a trade-off between the environment in a developing country and Canadian commercial interests), or on issues that engage large numbers of Canadians, then it is not clear that existing mechanisms are or can be a substitute for the normal political process. The concern is not new (Stairs, 2001; Canada, 2001a), but it is unresolved.

## Appendix A: Case studies of consultation in practice

### A1. Agriculture

On February 21, 1992 after the publication in December 1991 of the draft Final Act of the Uruguay Round (the so-called Dunkel text), 30,000 farmers protested on Parliament Hill in Ottawa, believing that the potential outcome of the Round would destroy the institution of the family farm. Managing the end of the negotiations at home continued to prove difficult for the rest of the round. Veteran Canadian agriculture negotiators vowed never again. Next time, negotiators would keep the farm community informed throughout the process so that they would not be caught by surprise at the end. With new negotiations scheduled for 2000 as part of the WTO's "built-in agenda", the government signaled as early as January 1997 that it would engage in extensive consultations.<sup>9</sup> The first step was a discussion paper distributed by AAFC that provided general background, and identified issues for negotiations. Department officials subsequently met with umbrella organizations like the Canadian Federation of Agriculture and more specialized groups like the Dairy Farmers of Canada and the Canadian Horticultural Council, at the regional and provincial, as well as the national, level. Officials met with provincial governments, supply management organizations and individual companies. The WTO process began in late 1997. Ahead of the 1999 Seattle ministerial of the WTO, the Department organized a broader conference in Ottawa to allow the stakeholders to learn from and react to the representations of other players in the industry.

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

This massive exercise involved thousands of people all across the country, although while negotiators heard from everybody in the *industry*, including labour, they heard from few people outside the industry. The people who came to the meetings were the people with the most direct interest. For this reason, too, the consultation process did not challenge the established WTO paradigm. Since the Department is driven by producers, who see environmental and food safety issues as losers, it tends to be resistant to these types of concerns.<sup>10</sup>

The Department subsequently prepared a report on the consultations that was posted to its website in the form of a public statement on Canada's initial negotiating position in the proposed new WTO round (Canada, 1999b). The conclusions that officials drew from these consultations were hardly surprising, even predictable. The uncomfortable reality of Canadian agricultural

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<sup>9</sup> This account draws heavily on (Stairs, 2000: 21-2).

<sup>10</sup> Canadian consultations on genetic modification of food crops also reflected a producer bias (Agha, 2005).

trade policy, in stylized terms, is that negotiators must balance the liberalizing interests of western grain producers who compete on world markets against subsidized producers in Europe and the USA, with the protectionist interests of eastern dairy and chicken farmers who require government support to withstand competition from imports. Both broad concerns were addressed in the 1999 policy statement. The first theme is about market access abroad. The statement notes that

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

*Table 1 Consultations on agriculture*

<b>Consultative Events</b>	<b>Outcomes</b>
<ul style="list-style-type: none"> <li>• 1997 intergovernmental meeting</li> <li>• 1997-1999 Various meetings of officials and industry groups</li> <li>• 1998-9 parliamentary hearings</li> <li>• 1999 Conference in advance of Seattle ministerial</li> </ul>	<ul style="list-style-type: none"> <li>➤ Indicated to provinces, territories and industry organizations that the federal government wanted to consult</li> <li>➤ Identification of issues and understanding of Canada's interest</li> <li>➤ Public statement of Canada's basic negotiating position on agriculture</li> </ul>
<ul style="list-style-type: none"> <li>• 2000 Internal audit of consultations</li> </ul>	<ul style="list-style-type: none"> <li>➤ Identified ways to strengthen consultations</li> </ul>
<ul style="list-style-type: none"> <li>• October 2001 Federal-provincial-territorial meeting</li> </ul>	<ul style="list-style-type: none"> <li>➤ Launched Agricultural Policy Framework (APF) consultations</li> </ul>
<ul style="list-style-type: none"> <li>• November 2001, farm organizations attend Doha ministerial as observers</li> </ul>	<ul style="list-style-type: none"> <li>➤ Increases industry understanding of the process</li> </ul>
<ul style="list-style-type: none"> <li>• March-June 2002 Two waves of consultation on APF</li> </ul>	<ul style="list-style-type: none"> <li>➤ Report on Phase 1 of APF</li> </ul>
<ul style="list-style-type: none"> <li>• September 2003, over 30 farm organizations attend Cancún ministerial as observers</li> </ul>	<ul style="list-style-type: none"> <li>➤ Increases industry understanding of the process</li> </ul>
<ul style="list-style-type: none"> <li>• July 2004, 37 representatives of farm organizations are in Geneva during negotiations on the "July framework" for re-starting the Doha negotiations</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ensured domestic transparency, but may have limited negotiator's flexibility</li> </ul>

Sources: (Stairs, 2000; Canada, 1999b; Canada, 2000a).

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

Another theme raised by many stakeholders is the need to maintain Canada's ability to continue orderly marketing systems, such as, supply management and the Canadian Wheat Board. The Federal Government is committed to preserving the ability of Canadians to operate the orderly marketing systems necessary for stability and profitability. Decisions regarding marketing system choices will continue to be made in Canada. If other countries have concerns regarding alleged trade effects of orderly marketing systems, Canada is prepared to discuss any factual concerns. But, Canada will not engage in sterile debates over alternative marketing philosophies.

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

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

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

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

Second, the auditors were critical of

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



Agriculture officials argue that one can see the impact of the process in the negotiating position announced on August 19, 1999 and in the evolution of the position statements of national associations like the Canadian Federation of Agriculture (CFA), the Canadian Agri-Food Trade Alliance (CAFTA) and dairy groups. The department remains committed to ensuring that producers are not surprised by the eventual outcome, and that negotiators understand all producer concerns. The consultation process continues, including meetings with industry associations, and provincial and industry advisory groups, and information on developments in the negotiations is posted to the AAFC web site. The engagement deepens at key points in the negotiations. Representatives of farm organizations, both import-competitive and export-oriented, attended both the Doha and Cancún ministerials as observers, although lists are hard to find. There seemed to be many more organizations represented at Cancún, where the department reported that ministers held briefings with more than 70 representatives of farm organizations.

Consumers are still not being heard in the agriculture consultations, while some farm interests may be over-represented. In July 2004, some Member country Ministers and many senior officials joined WTO ambassadors in a regular General Council meeting to hammer out the new framework for the Doha Round that had eluded them in Cancún in September 2003. Agriculture was the most contentious issue, and thirty-seven Canadian agriculture stakeholders were in Geneva while the framework was negotiated. Canadian Ministers and officials provided these stakeholders with daily updates, and met with them individually as requested. Regular call-backs to provincial and industry advisory groups were also undertaken to ensure that stakeholders in Canada were kept as up-to-date as possible during the negotiations.

## **A2. Trade in services**

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

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

broad policy purpose independent of any specific interests, but consultations still help officials to verify in-house economic analysis, and to identify gaps.

Consultations on services have been multi-faceted, as shown in Table 2. Canadian officials have used the full range of consultation devices. At the outset, federal government officials provided information to as many officials, firms, civil society organizations and individuals as possible, and listened to their concerns. During the summer and fall of 2000, together with its provincial/territorial counterparts, the federal government organized a series of consultations with interested stakeholders on Canada's GATS negotiating position. The objectives of the multistakeholder consultation meetings were twofold: first, to provide a report on the state of the GATS negotiations to stakeholders and members of the public with an interest in the GATS; and second, to collect initial viewpoints on the GATS negotiations from the participants, who represented a broad cross-section of interested Canadians.

*Table 2 Consultations on trade in services*

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

Source: (Canada, 2004b)

The consultations are one of several mechanisms being used by the government to solicit the views of Canadians. Other consultative activities included:<sup>11</sup>

- a series of electronic questionnaires to over 10,000 Canadian businesses actively engaged in exporting;
- ongoing consultations with the SAGITs;

<sup>11</sup> Sources: Industry Canada <http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/vwGeneratedInterE/home>; <http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/en/sk00251e.html>; Department of International Trade <http://www.dfait-maeci.gc.ca/tna-nac/service-en.asp#GATS>

- public hearings by the House of Commons Standing Committee on Foreign Affairs and International Trade;
- a public call for submissions by notice in the *Canada Gazette*;
- extensive public information on the departmental Web site and on an interdepartmental site focussing specifically on the GATS; and
- meetings with individual stakeholders, associations and special interest groups.
- Creation (in 2001) of a joint working group on international trade of the Federation of Canadian Municipalities (FCM)
- approximately 20 working groups on sectoral and horizontal issues drawn from about 17 federal government departments.

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

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

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

After this period of intense effort, the government commissioned an assessment of its services consultations (Public Policy Forum, 2003). That review, on which I draw at various points in this paper, was largely procedural, assessing participant satisfaction more than the policy impact of the process. Nevertheless, as shown in Table 2, the department believes that the stages in the consultations can be related to milestones in the negotiations. Officials believe that consultations make a difference; and they note that at different stages of negotiations, they need a different kind of information.

Early in the process, they were looking for broad orientations to the negotiations, and trying to build understanding. The decision that health and education would not be on the table was a response to NGO and sub-federal concerns. The decision was hardly surprising in the Canadian context, but officials claim that the consultation results did influence the frequency with which ministers told negotiators about their bottom line, which helped negotiators make clear to trading partners that requests in these areas would not be helpful. Officials also claim that NGO

positions on education and health have evolved as a result of the consultations, citing as evidence papers on the GATS that some produce for their own membership. The thinking and questions of the larger NGOs has evolved, and in turn they acknowledge that their views have been reflected in government positions. Consultations also helped negotiators to understand the complexity of the regulatory framework in Canada, the intricate web of federal, provincial, and municipal regulations. They also learned about market access interests—they even went to small and remote communities to get some sense of the offensive interests of service providers. The early tour was aimed more at NGOs and unions than at business. More recently consultations have focused on specific sectors to make sure that negotiators are hearing from exporters.

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

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

Most non-industry participants underlined concerns that they had previously communicated to the government. Some municipal governments and a few provincial ministries not directly involved with services trade policy expressed concern about the possible impact of the negotiations on the right to regulate of all levels of government, a concern others attributed to a

lack of information or even negative information generated by NGOs. Other participants were concerned that Canada would be forced by other WTO members to negotiate in the areas of health, public education and culture in order to be able to achieve its liberalization goals in other non-sensitive sectors. These “right to regulate concerns” notwithstanding, there is little evidence of protectionist attitudes, or even of significant defensive concerns, although representatives from the financial services industry argued that Canada’s regulations in their area are sound — especially from the point of view of public protection and security — and would not benefit from liberalization pressures. The only specific NGO concern was ensuring that environmental services negotiations did not undermine the Canadian International Development Agency’s (CIDA) ability to work through non-profit organizations in developing countries.

In the terms of Hocking’s typology, the government’s objectives in this most recent set of consultations fit the “adaptive club model”, but the workshops also served a “multistakeholder model” objective by helping officials maintain their links with all the stakeholders in the domain. Officials hope that their commitments to transparency and ongoing consultation have helped to diminish some of civil society’s concerns about trade in services negotiations. And officials have noticed in their meetings with NGOs and other representatives of civil society that their questions and interventions have become more informed and sophisticated. The negotiators underlined the message that they would maintain and preserve the ability of all levels of government to regulate and set policy in areas of importance to Canadians. They would not negotiate on health, public education or social services and would maintain the flexibility to pursue cultural policy objectives.

### **A3. Sustainable development and environmental assessment of trade negotiations**

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

All Canadian government departments must have a sustainable development strategy. Consultations were conducted by 28 federal government departments and agencies when preparing their first such strategies in the late 1990s. Across Canada, more than 1,600 organizations and Aboriginal communities were consulted on departmental sustainable development issues, objectives and priorities and on the action plans and strategies to achieve them (Canada, 1999c). DFAIT produced its first formal sustainable development strategy, *Agenda 2000*, in 1997. *Agenda 2006*, developed in 2003, is the most recent of these strategies. In the course of developing this strategy, the department consulted both internally and externally (Canada, 2004e). Table 3 outlines the consultative events involved in the development of *Agenda 2006*.

In April 2003, the department held a three-quarter day workshop with 18 external stakeholders. In its summary of this consultation, the department notes that these organizations had been consulted on the previous sustainable development strategy and that the recommendations made at the workshop were similar to those made during internal consultations. A second round of external consultation consisted of posting the draft strategy on the department’s web site and

sending invitations to selected individuals. Although 661 invitations were sent, only 21 replies were received.<sup>12</sup>

*Table 3 Consultative events for Agenda 2006*

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

Source: (Canada, 2004e)

It remains to be seen how the December 2003 split of DFAIT into two departments, Foreign Affairs Canada (FAC) and International Trade Canada (ITCan) will affect sustainable development strategy for each department. *Agenda 2006* was developed by the old DFAIT. A joint ministerial message claims that the strategy remains valid for the newly separated departments, but sustainable development as a policy field is primarily within the domain of FAC: *Agenda 2006* is found on the FAC web site and the Environmental Policies and Sustainable Development Strategies Division is a part of FAC, not ITCan.

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

<sup>12</sup> Invitations were sent to 40 members of the Environmental and Energy Sectoral Advisory Groups on International Trade (SAGITs); 14 members of C-trade (provincial trade counterparts); 13 representatives of the provinces and territories; 98 Senators; 300 Members of Parliament; 153 Retired Heads of Missions (retired senior executives of the Department); 81 representatives of other government departments. see (Canada, 2004e).

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

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

#### **A4. Are consumers consulted?**

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

The Canadian International Trade Tribunal (CITT) includes solicitation of the views of representative consumer organizations in anti-dumping and subsidy/countervail cases in its procedures. Under the Special Import Measures Act, the CITT may consider the views of "other" interested parties in all of the various hearings it conducts. Whenever an inquiry is launched, a notice is published in the Canada Gazette and forwarded "to all known interested parties." A detailed examination of the records might show many cases where an association representing a *specific* consumer interest was heard—for example, firms that use a particular imported good as an input no doubt make representations before a hearing to counter producers seeking trade restrictions. But we could find only three cases in the decade since the creation of the WTO where a *general* consumer interest was represented.<sup>13</sup> It seems that the implementation of these

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<sup>13</sup> The Canadian Consumers' Association has been involved in these cases before the tribunal: 1995, duties on sugar: [http://www.citt.gc.ca/dumping/interest/consider/pb95002\\_e.asp](http://www.citt.gc.ca/dumping/interest/consider/pb95002_e.asp); 2002, duties on refrigerators: [http://www.citt.gc.ca/dumping/Interest/consider/pb2a002\\_e.asp](http://www.citt.gc.ca/dumping/Interest/consider/pb2a002_e.asp); 1998, baby food :

trade measures, which are inherently inimical to the interests of consumers (their effect is to raise domestic prices), may be transparent, but the process discourages participation.

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



## Appendix B: Trade policy mechanisms for information and consultations

Techniques	Description	Trade policy examples
<b>1. INFORMATION</b>	Accurate, objective and timely <i>information</i> promotes transparency and accountability and enables citizens to participate in the public policy process (Canada, 2001c: 3).	<p>Note: Even “passive” access to information requires tools to enable citizens to find what they are looking for (e.g. catalogues and indexes). When governments engage in the “active” provision of information, they may use a range of different products (e.g. annual reports, brochures, leaflets) and delivery mechanisms, which may be either direct (e.g. information centres, toll-free phone numbers) or indirect (e.g. media coverage, advertising, civil society organisations as intermediaries).</p> <p>Governments use different tools to seek feedback on policy issues (e.g. opinion polls and surveys) or on draft policies and laws (e.g. comment and notice periods) from a broad range of citizens. They may also use tools for consultation providing greater levels of interaction (e.g. public hearings, focus groups, citizen panels, workshops) with smaller groups of citizens. Engaging citizens in policy deliberation and active participation requires specific tools to facilitate learning, debate and the drafting of concrete proposals (e.g. citizens’ fora, consensus conferences, citizens’ juries). (OECD, 2001a, 13)</p>
<b>1.1 Public information</b>	<p>a) statistical data is needed to provide a common baseline for everyone involved in trade policy.</p> <p>b) Discussion papers, briefings, newsletters; publication of legislation and regulations</p>	<p>a) Statistics Canada provides extensive data on Canadian international transactions. This resources is summarized in such ITCan publications as the annual <u>State of Trade</u>.</p> <p>b) ITCan maintains extensive trade policy resources on its Internet website including negotiating texts and Canada’s submissions to the WTO on disputes in which Canada is involved, (Ciuriak, 2004). Publications from the research and analysis staff include the annual <u>State of Trade</u> and <u>Trade Policy Research</u> series. Examples of occasional publications which also provide information to enhance public understanding of the issues include (Canada, 2003c; Canada, 2003b; Canada, 2003a).</p> <p>Canada employs a variety of tools to ensure that laws are</p>

		effectively communicated to affected parties, with sufficient notice to allow time for comment, consistent with WTO obligations, including publication in the official <i>Canada Gazette</i> . The text (and current status in the process) of most legislation and subordinate regulations is available via the internet. In addition, regulating departments are required to develop a comprehensive plan to communicate regulatory changes to those affected. The Standards Council of Canada is under contract to act as Canada's official enquiry point. (For details, see OECD, 2002: 44.)
<b>1.2 Outreach</b>	Government can create opportunities for ministers and officials to speak directly to an interested public, for example by making speeches	Multistakeholder meetings were used to disseminate information to interested groups. Other formal mechanisms described below are also used for this purpose.
<b>1.3 Public Broadcasting</b>	Broadcast consultations on the internet or on television. Demonstrate democratic values and commitment to openness and transparency – decreases apprehensions and scepticism of public. Gives public a better understanding of what goes on 'behind closed doors'. Increases ability to participate in policy advocacy (Lortie and Bedard, 2002).	The Canadian government webcast the briefings that were held every evening in Cancun during the WTO Ministerial Conference, and has offered to webcast certain proceedings in Geneva, such as the Trade Policy Review Body's discussion of the report on Canada.
<b>1.4 Feedback on consultations</b>	The draft guidelines say that officials should give feedback in at least three areas: what was heard (for example, providing meeting notes); what was done with what was heard (for example, sharing recommendations); and what decisions were made and why (Canada, 2001c: 24). One technique is making the minutes of government meetings as well as meetings between government officials and civil society available on the internet (Lortie and Bedard, 2002).	The trade policy record is spotty. Excellent in services (Canada, 2004b). Reports of 2002 Trade and Development Roundtables posted to ITCan website. AAFC publishes updates on the WTO agriculture negotiations (Canada, 2004c).

<p><b>2.</b> <b><i>CONSULTATIONS</i></b></p>	<p><i>Consultation</i> involves processes that seek the views of individuals or groups on policies that affect them directly or in which they have a significant interest. It can be used to help frame an issue, to identify or assess options, and to evaluate ongoing activities. Advisory committees, program or policy conferences, public meetings, 1-800 lines, Web sites, polling and focus groups are among the many forums through which consultations are conducted (Canada, 2001c: 4-5).</p>	<p>NB This Table concentrates on formal mechanisms for information and consultation. It does not look at informal consultation—the unobserved occasions when ministers and officials talk to lobbyists, experts, and citizens. Both sides may learn from such encounters, but it is hard to fit into the categories of the Table.</p>
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<p><b>2.1 Internal bureaucratic consultation</b></p>	<p>Participants come from foreign/trade ministries, sectoral ministries, and provinces, depending on issue. The purpose is policy coordination in the face of an increasingly complex trade agenda.</p> <p>Hocking calls this the <i>Club Model</i> (Hocking, 2004: Table 1)</p>	<ul style="list-style-type: none"> <li>- Federal-provincial-territorial (C-Trade) meetings are held quarterly in Ottawa and provincial capitals, so ministers and deputy ministers from federal, provincial and territorial departments can discuss relevant trade issues. Written information is provided frequently, and officials participate in weekly conference calls.</li> <li>- The joint working group on international trade with the Federation of Canadian Municipalities (FCM) was created in 2001 to discuss issues of interest and relevance to municipalities regarding trade agreements such as the GATS.</li> <li>- Within the federal government, there are approximately 20 working groups on sectoral and horizontal issues drawn from about 17 federal government departments, a list reflective of the increasing reach and complexity of trade policy.</li> </ul>
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<p><b>2.2 Business-focused consultation</b></p>	<p>Adds business representation to the Club Model. Advice focused; adds private sector resources, particularly knowledge to trade policy processes. Hocking calls this the <i>Adaptive Club Model</i> (Hocking, 2004: Table 1)</p> <p>Consultation with actors outside government is often based on independent bodies that take on the task of policy research and advice. <b>Advisory bodies</b> are not part of the decision process (Patten, 2001). Use of such bodies may heighten mistrust and public cynicism if the role of the advisory body is not clarified or real decision-making power devolved to it (Baetz and Tanguay, 1998).</p> <p>Standing bodies oversee sector-specific planning and may advise on an issue for several years. Obtain information from and to provide information to the community; ensure fair, transparent and legitimate decision-making processes; and gain support for their outcomes (Abelson, et al., 2002). They are seen as providing a broader, more integrated analysis of ongoing and emerging trade and related social and economic issues (Ciuriak, 2004).</p>	<p>For mechanisms, see below</p> <p>Each of the twelve active Sectoral Advisory Groups on International Trade (SAGITs) provides confidential advice to the Minister in such areas as Agriculture, Information Technology, or Textiles.</p> <p>Each SAGIT is comprised of senior business executives with some representation from industry associations, labour/environment and academia. Members serve in their individual capacities and not as representatives of specific entities or interest groups.</p> <p>SAGITs work via restricted websites, conference calls, and face-to-face meetings to consult with the business community and provide confidential advice on trade policy issues to trade officials and to the Minister, (Ciuriak, 2004).</p>
<p><b>2.3 Multistakeholder Consultations</b></p>	<p>Established and managed by departmental bureaucrats as a means of bringing different segments of society together as much for building consensus among a variety of stakeholders as for providing information to economic actors.</p> <p>Adds civil society representatives to the Adaptive Club Model (Hocking, 2004: Table 1).</p> <p>Helps policy-makers in coming to terms with policy problems by gathering information, evaluating policy options and their potential consequences for different societal interests, and encourage discussion and trade-offs between conflicting parties (Patten, 2001).</p>	<p>Information sessions, informal meetings, seminars, roundtable discussions, etc. with stakeholder groups to address trade and investment-related issues of interest to Canadians. Developed as a public outreach program to provide opportunities for in-depth and issue-specific discussion/debate on policy concerns (Ciuriak, 2004).</p> <p>Business and industry, citizen-based and public interest groups and academics participate as advisors to Canadian delegations to WTO Ministerials (Ciuriak, 2004; Stairs, 2000).</p> <p>See Appendix C for a list of recent participants</p>
<p><b>2.4 Political</b></p>	<p>The Government does not need a mandate from</p>	<p>The Commons Standing Committee on Foreign Affairs and</p>

<b>Consultations</b>	Parliament to enter into negotiations on new agreements, but the House of Commons is a forum for opposition parties to question the government on its policies. Committee hearings can be valuable for allowing all sides of a contentious political issue to air their views as part of a effort to build a consensus for a policy change.	International Trade and its sub-Committee on International Trade, Trade Disputes and Investment hold public hearings on Canada's trade policy, as does the Standing Committee on Agriculture. Committees may consider department expenditures and operations as well as draft legislation and new agreements.
<b>2.5 Academics</b>	Academics can be a valuable source of expert advice	<p>In 1998, the Deputy Minister for International Trade established an Academic Advisory Council to obtain on a regular basis the views of leading experts in economics, law, political science, and other disciplines on trade and other international issues. The views obtained from this source are seen as complementary to the input from interest groups and as providing a broader, more integrated analysis of ongoing and emerging trade and related social and economic issues (Ciuriak, 2004). The fifteen members of the AAC – experts in law, politics, economics and other trade-related disciplines – meet yearly to provide disinterested, academic advice to the Deputy Minister. In addition to the Academic Advisory Council, Canadian academics are members of the SAGITs.</p> <p>Academics played a central role in the Trade and Development Roundtables in 2002 (<a href="http://www.dfait-maeci.gc.ca/tna-nac/IYT/consult-wto-en.asp">http://www.dfait-maeci.gc.ca/tna-nac/IYT/consult-wto-en.asp</a>), in hearings for 4 parliamentary committee reports between 1999 and 2003. And they were participants in the 7 multistakeholder consultations between 1999 and 2003.</p> <p>Departmental officials also have more informal engagement with academics through participation in conferences and in one on one conversations.</p> <p>Note also the annual publication of trade policy research (Curtis and Ciuriak, 2002; Curtis and Ciuriak, 2003; Curtis, 2001), which usually includes many papers by academics, notably (Wolfe, 2004). Whether this research, or other academic analysis, the extensive in-house research (Ciuriak, 2004) is actually read by</p>

		trade policy officials is hard to know.
<p><b>2.6 Other formal consultations</b></p> <p><b>2.6 a) Public Opinion Surveys</b></p>	<p>A large sample representative of the population segments of interest are asked a variety of questions through written questionnaires or telephone surveys (Rowe and Frewer, 2000).</p> <p>Polls are not referenda. On the difficulties interpreting polls, see (Mendelsohn and Brent, 2001). On the problems in designing and interpreting trade policy polls, see (Mendelsohn and Wolfe, 2001; Wolfe and Mendelsohn, 2005). Similar care must be taken in interpreting focus group results.</p>	<p>Polling is extensively used, though it is not used in an analytically rigorous way. There is anecdotal evidence that officials have used polls in internal debates. For example, when Agriculture officials are able to demonstrate to Cabinet that certain rural concerns resonate with urban voters. For general summaries of public opinion research in the Canadian government, see (Canada, 2004d). DFAIT, AAFC and Environment were among the 8 largest users of polls in 2003-4. The government performs annual surveys of <i>Canadian Attitudes toward International Trade</i>, (Ciuriak, 2004). Much of the data is available on the department's website—for example, see (EKOS, 2003).</p>
<p><b>2.6 b) Solicitation of views</b></p>	<p>Publication of draft laws or regulations for comment by citizens (and trading partners).</p> <p>Requests for written submissions on general or specific issues</p>	<p>ITCan has created a web-based process which invites written submissions from the general public on a web page entitled "It's Your Turn." It also uses Canada Gazette Notices (the official record of government activities). See Appendix D for a list.</p> <p>Consultations can be highly targeted. In October 2004, for example, the Canadian Food Inspection Agency sought the views of the importing industry on their draft <i>Good Importing Practice for Food</i> (GIP) document. It was not clear from the request on the website if views from consumers or citizens would even be welcome. The agency was not seeking general views on import policy; it wanted to be sure that new regulations would not have unintended consequences, something only the industry would know.</p>
<p><b>2.6 c) Focus Groups</b></p>	<p>Discussions of a particular topic involving between half-a-dozen and a dozen individuals selected to meet specific criteria and thus categorised as being broadly representative of people from that segment of society. Can be used to explore the views of citizens who are normally excluded from political discussions (Pratchett, 1999)</p>	<p>No evidence of whether this technique has been used for trade policy in Canada</p> <p>.</p>

## **Appendix C: Recent Participants in Multistakeholders Consultations**

Canadian Association for Community Living  
 Alliance of Manufacturers and Exporters of Canada.  
 Association of Canadian Community Colleges  
 Association of Consulting Engineers of Canada  
 Association of Universities and Colleges of Canada (AUCC)  
 Association québécoise des organismes de coopération internationale  
 Business Council on National Issues  
 Canadian Apparel Manufacturers Institute  
 Canadian Bankers Association  
 Canadian Centre for Policy Alternatives  
 Canadian Chamber of Commerce  
 Canadian Conference of Catholic Bishops  
 Canadian Conference of the Arts  
 Canadian Council for Int'l Business  
 Canadian Council for Int'l Cooperation  
 Canadian Council for the Americas  
 Canadian Environmental Law Association  
 Canadian Federation of Agriculture, The  
 Canadian Federation of Students  
 Canadian Human Rights Commission  
 Canadian Institute for Environmental Law and Policy  
 Canadian Labour Congress (CLC)  
 Canadian Manufacturers & Exporters  
 Canadian Pulp & Paper  
 Canadian Society for International Health  
 Canadian Teachers Federation  
 Canadian Wheat Board  
 Centre for Innovation in Corporate Responsibility  
 Centre for Trade Policy and Law (CTPL), University of Ottawa  
 Coalition for Cultural Diversity  
 Confédération des Syndicats nationaux  
 Conference Board of Canada, the  
 Congress of Aboriginal Peoples  
 Conseil canadien pour les Amériques  
 Conseil du Patronat du Québec  
 Conseil international de l'action sociale  
 Consumers' Association of Canada  
 Council of Canadians  
 Dairy Farmers of Canada  
 Dalhousie University  
 Development and Peace  
 Ekos Research Associates Inc.  
 Fédération des travailleuses et travailleurs du Québec (FTQ)  
 Federation of Canadian Municipalities



Canadian Foundation for the Americas  
Forest Products Association of Canada  
Grey, Clark, Shih and Associates, Limited  
Human Rights Research & Education Centre, University of Ottawa  
International Centre for Human Rights and Democratic Development  
International Council for Social Welfare  
International Development Research Centre (IDRC)  
Int'l Institute for Sustainable Development  
Inuit Tapirisat of Canada (ITC)  
Manufacturiers et exportateurs du Québec  
Metis National Council  
National Council of Women of Canada  
North South Institute  
Option Consommateurs  
Oxfam Canada  
Physicians for a Smoke-Free Canada  
Polaris Institute  
Public Interest Advocacy Centre  
Sierra Club  
Teleglobe Inc.  
The Mining Association of Canada  
Trade Facilitation Office Canada  
Transparency International Canada  
Union des producteurs agricoles  
University McGill, Faculty of Law  
University of Calgary  
University of Ottawa  
UQAM - Université du Québec à Montréal  
World Federalists of Canada (WFC)  
World Vision Canada & Working Group on Children & Armed Conflict  
World Wildlife Fund Canada

source (Ciuriak, 2004)

## Appendix D: On-line Consultations

The Department of International Trade encourages Canadians to send their comments on Canada's trade policy agenda on an ongoing basis through its online consultations program. Examples of the types of issues that are the subject of current and past online consultations on the Department's website include:

- Consultations on FTAA Government Procurement Market Access Negotiations
- Initial Environmental Assessment of the FTAA Negotiations
- Invitation to submit comments on FTAA market access negotiations for agricultural and non-agricultural product
- Canada-European Union - Proposed Trade and Investment Enhancement Agreement
- Market Access Priorities Report - 2003 (CIMAP)
- The Trade and Development Roundtables: June and July 2002
- Initial Environmental Assessment of the new World Trade Organization (WTO) Negotiations
- Canada-Andean Countries - Free Trade Discussions
- Canada-Dominican Republic - Free Trade Discussions
- WTO: "Doha Round" - Invitation to submit comments on market access for non-agricultural products
- Consultation Paper on WTO Subsidies and Trade Remedies Negotiations
- Canadians' Views on Trade with Least Developed Countries
- Canada-Chile Free Trade Agreement (CCFTA) - Proposal for Rules of Origin Changes
- Canada-Israel Free Trade Agreement (CIFTA) - Proposal for CIFTA Rules of Origin Changes
- Canada - CARICOM Free Trade Agreement Negotiations
- Canada-Israel Free Trade Agreement - Proposal to Amend de minimis Provisions and to Implement Transshipment and Minor Processing Provisions
- 2001 - WTO Consultations (Ministerial Meeting - Doha, Qatar)
- A Canadian Perspective on the Precautionary Approach/Principle
- Open Invitation to Civil Society in FTAA Participating Countries - November, 2001
- Requests for Accelerated Elimination of Tariffs under the NAFTA September 15, 2001)
- Consultations on Trade in Services Negotiations
- Canada - Singapore Free Trade Negotiations
- WTO - Transparency
- OECD Agreement on the Environmental Review of Officially Supported Export Credits
- Canada/Brazil WTO Panels- Aircraft - Possible Retaliatory Action
- WTO Services Negotiations - Virtual Consultations with Services Exporters
- 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
- 1999 - WTO and FTAA Consultations (Seattle and Toronto Ministerial Meetings)

source (Ciuriak, 2004)

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