



The North-South Institute · L'Institut Nord-Sud

## **The Canadian 'model' for public participation in trade policy formulation**

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August 2005

'The counterpart of building the right relationships internationally is grounding them domestically in a sustained consultative dialogue with partners in business, interested citizens, communities, and other orders of government, who share a stake in Canada's international success and in the domestic conditions that sustain it' (Canada 2005, p. 12)

'The Government is committed to working with all Canadians in making these choices in our best interests as we meet the challenges of today and secure our prosperity for tomorrow.... To this end, the Government will establish an advisory and consultative process to consider how this can best be achieved, in light of issues raised in Parliament and by stakeholders' (Canada 2005, p. 23)

'As recently as ten years ago ... the GATT, as the WTO was then called, was little known except to a select group of experts and its significance to the economic well being of Canada little appreciated by Canadians as a whole. Today there is a very different landscape. One in which experts in trade rub shoulders with representatives of business, labour, agriculture, academics, NGOs, politicians from all levels of government and citizens, all interested in ensuring that we are participating in a world trading system that advances our interests and, at the same time, reflects our values' (Graham, Foreword to SCFAIT 1999)

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<sup>1</sup> With the research assistance of Daniel Poon. Thanks to TDRI, the Conference Board of Canada and CIDA for the opportunity to prepare and present this paper.

## 1. Introduction

In the mid-1980s the Canadian government established a Royal Commission to consider the future of Canadian trade policy and particularly the arguments for and against a free trade agreement with the United States and its likely consequences for Canadian economic development. Since that time, there has been steady public interest in Canada in trade issues and the numerous trade agreements that the government has negotiated. This partly reflects the increasing openness of the Canadian economy, with trade now accounting for over 70% of GDP and exports for one in four jobs.

A second factor explaining the Canadian public's interest in trade policy negotiation and rule-making is that international trade rules no longer only deal with tariffs and other border measures like quotas. The World Trade Organization (WTO) now regulates government policy in behind-the-border areas, which in past were considered primarily of domestic concern, such as the duration of pharmaceutical and other patents, the obligations of foreign investors to use domestic inputs, and the provision of subsidies for specific industries, to name but a few. And the WTO has extended coverage to agricultural policies and services which were largely excluded from the previous General Agreement on Tariffs and Trade (GATT).

A third factor is the increasing number of trade agreements that are in place or being negotiated, on a regional or bilateral basis, creating questions about the nature and overall level of commitments being made by the Canadian government, and what it is expecting in return from other countries.

Canadians are not only interested; they want and expect access to information about what is being negotiated, and to any background studies that estimate benefits and costs, how these will be distributed, and possible compensation and adjustment mechanisms. They also expect to be engaged in the process of trade policy decision-making, whether through groups representing their interests such as producer associations, trade unions, farmer federations and community organizations, or through their federal parliamentarians or provincial representatives.

Concerns in Canada about transparency and greater engagement on trade rulemaking are reflected internationally – at the WTO, and in other countries around the world. Criticisms of the WTO have led to increased access to information about the state of negotiations and annual meetings with outside stakeholders. But there are still questions about access to proposals and the way in which negotiations proceed, i.e. whether they are open to input from all countries or undertaken by a smaller group behind closed doors, as in the case of the July 2004 so-called ‘framework agreement’ for the Doha negotiations, or via ‘mini-Ministerials’ such as the one held in July 2005 in Dalian, China. Despite the principle of decision-making in the WTO by consensus, these procedures mean that officials and even ministers are not always given adequate opportunity to advance their national interests. In recognition of this problem, one suggestion by the 2005 Consultative Board on the Future of the WTO in its report, also known as the Sutherland Report, is the creation of a consultative body of ministers or senior officials from capitals, with more formalized regional representation (2005 pp. 71-2).

Whatever changes are agreed at the WTO, it is clearly important that national level processes are reviewed and strengthened to incorporate greater input from a wide range of stakeholders. As UNDP states:

‘In both industrial and developing countries, no amount of reform to the multilateral and regional trade regimes can substitute for increased national ownership and better national governance of trade policy-making. ... Broadly based participation and ownership at the national level, involving discussions among parliamentarians, civil society organizations, community groups and the private sector, should be encouraged and supported. Engendering such broadly based national ownership can contribute significantly to long-term human development’ (2003 p. 77).

Experience has shown that governments have not always anticipated problems with the details of trade commitments they are negotiating. In Canada’s case, for example, some argue that the government was unprepared for the way in which the investor-state dispute provisions of the North American Free Trade Agreement (NAFTA) notably Article 1110 would be used to limit the scope of government environmental regulatory policy in Canada as much as in Mexico (IISD 2001).<sup>2</sup> Others have pointed to mistakes made by a number of governments when accepting tariff cuts in agriculture and on tabling services commitments (WDM 2003).<sup>3</sup>

This paper seeks to contribute to the debate in Thailand and elsewhere about public participation in trade policy formulation by drawing on the Canadian experience, particularly in the last decade. Section 2 briefly reviews approaches to trade policy consultations in a number of other countries and some of the issues related to their experience. Section 3 then considers the variety of strategies which Canada has adopted towards public participation in trade policy-making and implementation. Drawing on a series of interviews with stakeholders and various published sources, it assesses the impact of this trade-related participation. Section 4 concludes.

<sup>2</sup> ‘The nature of the challenges brought so far has even surprised many of the agreement’s authors’ according to IISD and WWF, 2001, p. viii. ‘Despite the initial pooh-poohing by the trade community several of the interpretations of Chapter 11 to date have actually outdone the predictions of civil society doomsayers’ IISD and WWF p. 16. The Chapter 11 provisions have also been criticized for the secrecy involved in the dispute process.’ Ibid.

<sup>3</sup> WDM notes that some countries have asked to amend their services obligations to correct for outright mistakes or misunderstandings about the scope of the commitments they were making in 1994.

## 2. Approaches to trade policy consultations

In this section we briefly review some of the models and issues relating to trade policy making and consultation, with selected country illustrations drawn from some recent literature in this area.<sup>4</sup> The issues raised range from the extent to which governments are prepared to increase their transparency and inclusiveness in determining new directions for trade policy and internationally binding trade agreements, and how such efforts with respect to inclusion are likely to affect the efficiency of trade policy making and negotiations.

According to Hocking (2004), most countries are moving along a spectrum of increased transparency and inclusiveness from the closed ‘Club Model’ (CM) to the ‘Adaptive Club Model’ (ACM), to the ‘Multi-stakeholder Model’ (MM) (see Table 1). In the CM, the number of participants is limited to those inside government, with the main focus being on how to manage different ministries’ objectives, within an overall framework of trade liberalization. In the ACM, business interests are directly represented, with the result that

Table 1. Hocking’s models of trade consultation

Model	Participants	Aims	Characteristics
Club Model - Internal bureaucratic consultation	Foreign/trade ministries; + other line ministries.	Policy coordination in face of increasingly complex trade agenda.	Closed bureaucratic system; marked by turf conflicts; tendency to assume free trade goals.
Adaptive Club Model - Business focused consultation	As above with addition of business representation.	Advice focused; to add private sector resources, particularly knowledge to trade policy processes.	Controlled openness operating within established rules; debates on relative gains from specific trade policies but not designed to question free trade goals.
Multi-stakeholder Model - Mixed mode consultation	Variable, but key feature is addition of civil society representatives to process.	Consensus-focused; aims to enhance consensus in favour of free trade in face of growing public opposition.	Linked to broader patterns of public diplomacy; designed to cope with questioning and legitimacy of goals of free trade; may produce a ‘crisis of expectations’ amongst governmental and non-governmental participants. This may result in withdrawal from consultative processes by some participants.

Source: Hocking 2004

<sup>4</sup> These include a series of country case-studies carried out for a workshop at the London School of Economics on Trade Policy Making in Developing Countries (March 25 2005, <http://www.lse.ac.uk/collections/internationalTradePolicyUnit/events.htm#generated-subheading2> ), and another series conducted jointly by the Inter-American Development Bank, the Institute for the Integration of Latin America and the Caribbean (INTAL), and the Munk Centre for International Studies (March 2002, <http://www.sice.oas.org/geograph/westernh/iis.pdf> ).

there is more discussion about gains and losses, or ‘offensive’ and ‘defensive’ interests, though still within an accepted trade liberalization framework. In the third MSM, in which civil society organizations are included, Hocking notes the challenge is to build consensus for the goal of free trade, in the face of considerable questioning by CSOs and suggestions that trade be viewed as a tool of national development, rather than a goal itself.

While the extent of engagement with groups outside government is a live issue in many developed and increasingly a number of developing countries, there are still issues to address concerning the division of responsibilities and collaboration within government – between different ministries and agencies within the executive, between the executive and legislative, and between federal and sub-federal layers of government. A country’s constitution plays a decisive role in allocating decision-making jurisdiction to different parts of government, thus establishing the overall structure within which trade policy is formulated. Responsibility for trade policy and negotiation is usually handled by the executive, with the legislative branches of government also playing a part in the process – for example, in amending and approving associated draft legislation. In federal systems, the division of power with sub-federal levels of government may require consultations on issues under sub-federal jurisdiction.

In India’s parliamentary democracy, provisions in the constitution moderate individual economic rights (such as property rights) for a variety of social, cultural and political reasons. The right to free trade is circumscribed in the achievement of other policy objectives which carry greater constitutional status and political legitimacy than the tenets of free trade. According to one analyst:

These conflicting provisions, together with the division of responsibilities between ministries and between the central and state governments, effectively means that free trade is not the starting point for much of what the government of India does, but something that can be considered only when there are no obvious objections to it, for which of course the constitution provides unlimited opportunities (Sen 2003, p. 16).

In South Africa, the National Economic Development and Labour Council (NEDLAC) and Parliament are two mechanisms intended to scrutinize trade legislation. NEDLAC has a legal mandate to review all legislation, in order to build a consensus amongst the constituents it represents (government, labour, business and community) before the legislation is then submitted to Parliament. But on trade it has tended to be bypassed by the government because of its defensive stance on many trade-related issues. Despite constitutional provisions allowing it to engage in public debate on trade policy and negotiations, Parliament plays a minimal role, though it is improving (Draper 2005, pp. 18-21).

Western nations have generally developed consultative mechanisms that extend to other parts of government. This can be seen in Europe with the European Commission's Committee of the Regions and in the US, particularly through the use of Congressional committees, while in Canada, parliamentary committees review trade issues and the federal government consults with the provinces through the C-Trade Committee (as discussed further below).

In developing countries, the process of consulting sub-federal levels of government has not received the same attention. While this could be a reflection of constitutional architecture, or a country's more limited human resource capability on trade policy, it is not yet perceived as a major issue. Nonetheless, Sen comments:

In the long run this is sure to become an issue of considerable significance, ... where regional disparities and regional impacts will assume increasing importance. For the time being, it appears that this is not a major issue or concern to policy makers in these countries [Brazil, China, India, South Africa] (2003, pp. 7-8).

The US and the EU have a layered structure to trade policy making. In general, each has formal executive and legislative consultative mechanisms that are supplemented by processes aiming at the non-government sector and the wider interested public. The EU has formalized its interactions with civil society actors (including even third-party countries) by establishing policies that outline a set of general principles and minimum standards to guide the manner in which the European Commission consults on a wide range of issues (culture, education, regional policy, transport, youth, etc.) including trade.

In contrast, developing country consultative mechanisms remain largely informal, ad hoc and more overtly political. Although countries such as Brazil, China, and India are making changes, their mechanisms are not layered in the same way as in developed countries, with trade policy making left largely in the hands of strong bureaucratic agencies that consult (mostly inter-ministerially and sectorally) as needed, and usually without the formality of Western institutions. In China and India, a priority has been to re-organize government structures and coordination as opposed to improving transparency or public engagement. This is most obvious in China, with the creation of a strong inter-agency ad hoc coordinating group, the Central WTO Work Leading Group, involving members of both the executive (State Council) and legislative (CPC Central Committee and the National People's Congress) branches, for the purpose of the WTO accession process (Huang 2005, p. 5).

Brazil's consultation mechanism is somewhat different again; on the one hand increasingly involving non-state actors, while on the other hand remaining for the most part informal, non-institutionalized and bureaucratic. Although the government included labour unions and civil society groups in consultative entities related to trade talks (such as the SENALCA - the FTAA's National Secretariat, and Mercosur's Economic and Consultative Forum), participation and agenda-setting within these fora are still determined by the government. While such informal settings can lead to non-government

groups joining the negotiation delegation itself, as well as greater convergence between civil society demands and a leftist-led government's policies, such a configuration has also led to 'forum-shopping' where stakeholders shop around for the government ministry or agency that best suits their interests and needs (Marconini 2005, pp. 7-8).

Experience in developed countries shows that sectoral consultations are essential for accessing and analyzing commercially pertinent and sensitive information from the private sector. This helps to inform and legitimize government trade policy positions insofar as they are addressing the needs and interests of domestic business. The lack of reliable trade data in developing countries, even for larger players like India, reportedly remains a major problem for trade policy making. According to Sen, NGOs access to data and studies via international networks has enhanced their influence despite the lack of non-government consultation and the Ministry of Commerce and Industry's anti-NGO bias. NGOs have been seen as more effectively driving the trade agenda (compared to private sector associations, academic institutes and unions) on issues such as intellectual property rights, investment, agriculture, and outstanding WTO implementation issues. Interestingly, he notes that in "very few of these debates is the business community active or articulate in setting out their ideas or concerns in advance of NGOs" (2003, pp. 19).

Haphazard collaboration between government and business has also been an issue in South Africa. Despite some improvements, coordination remains infrequent, narrowly sector-based, and focused on mission-limited forums. This leaves negotiators less-prepared and less effective, according to Draper. Other issues raised involve the lack of coordination between Export Councils and trade negotiators, as well as lack of commercial intelligence flowing into the government from overseas embassies and consulates (2005, pp.16-8).

A question facing both developed and developing countries following the trend to more open trade policy making – whether Hocking's Adaptive Club Model (ACM) or the Multi-stakeholder Model – is what they will achieve. Hocking considers both models have a core consensus-building rationale i.e. to counter opposition to free trade among first the business community (in the ACM) and then civil society (in the MM). Developed country consultative models have focused on policy processes as consensus on outcomes is more difficult particularly with greater inclusion of NGOs which has led to a larger debate about the overall goals and objectives of trade policy. As business is usually less interested with deeper societal issues, there may be some discomfort when these broad groups are included in the same consultation. Strategies are needed to avoid the 'hollowing out' of trade consultations, i.e. the possibility that business withdraws its participation and with it government access to data that can be useful for trade policy-making. How Canada has handled these issues is addressed in the next section.

### 3. Canadian experiences

Canada has a long tradition of engagement on trade policy issues with groups outside government, dating back to the early 1960s during the Kennedy Round of GATT negotiations when the government established the Canadian Trade and Tariffs Committee for consultations with the private sector. In the 1970s, informal consultations were organized with think tanks and industry associations during the Tokyo Round, to address a number of the non-tariff issues on the agenda (Ciuriak 2004, p. 222).

A much more extensive consultative process occurred in the early 1980s, in anticipation of Canada's negotiations with the US over a free trade agreement. In 1982 the government created the Royal Commission on the Economic Union and Development Prospects for Canada, also known as the Macdonald Commission after its Chair David Macdonald. The Commission had a broad mandate, namely to study Canada's long-term economic potential, prospects and challenges, and the legal and institutional arrangements needed to achieve its economic development goals. It organized public meetings and seminars across the country, involving presentations with hundreds of organizations and individuals. The Commission also sponsored a large amount of research (Hart 2002, p. 369)<sup>5</sup>

Since the FTA was signed in the late 1980s, public interest in trade policy issues has steadily increased, whether it be with the extension of the FTA to include Mexico – and the concerns this raised about social standards in Canada or the role of free trade in Mexican economic development, the expansion of the GATT to include services and intellectual property rights during the Uruguay Round, the challenges to Canadian agriculture and services sectors during the present Doha Round, or the continuing pressure to deepen integration with the US. In Canada, as in other countries, the collapse of negotiations over the Multilateral Agreement on Investment (MAI) in 1998 and the failure of the WTO Ministerial at Seattle in 1999 are also considered watersheds; senior officials and politicians realized that the lack of consultations had exposed them to suggestions of a 'democratic deficit', and led them to rethink their public engagement strategies in order to sustain support for trade liberalization and resist anti-globalization forces (Hocking 2004, p. 8).

In this section we first consider the changes in trade consultations within government – between the lead trade department and others, the role of Parliament, and the interaction of the federal and provincial governments. We then turn to the various ways in which the government has responded to the growing public interest in trade matters, and consider how far this response is largely a political management strategy or whether trade negotiators also see external consultations as assisting them in defining negotiating goals and strategies. The full array of consultations is presented in Diagram 1.

*Federal government – lead agencies and interdepartmental discussions* Within government, the International Trade Department (ITC) is the lead agency for trade negotiations. It works closely with other departments and agencies in a number of

<sup>5</sup> The commission filed 1,516 submissions, see <http://www.library.utoronto.ca/robarts/microtext/collection/pages/carylou.html> There were as many as 280 separate studies produced and published in 72 volumes.

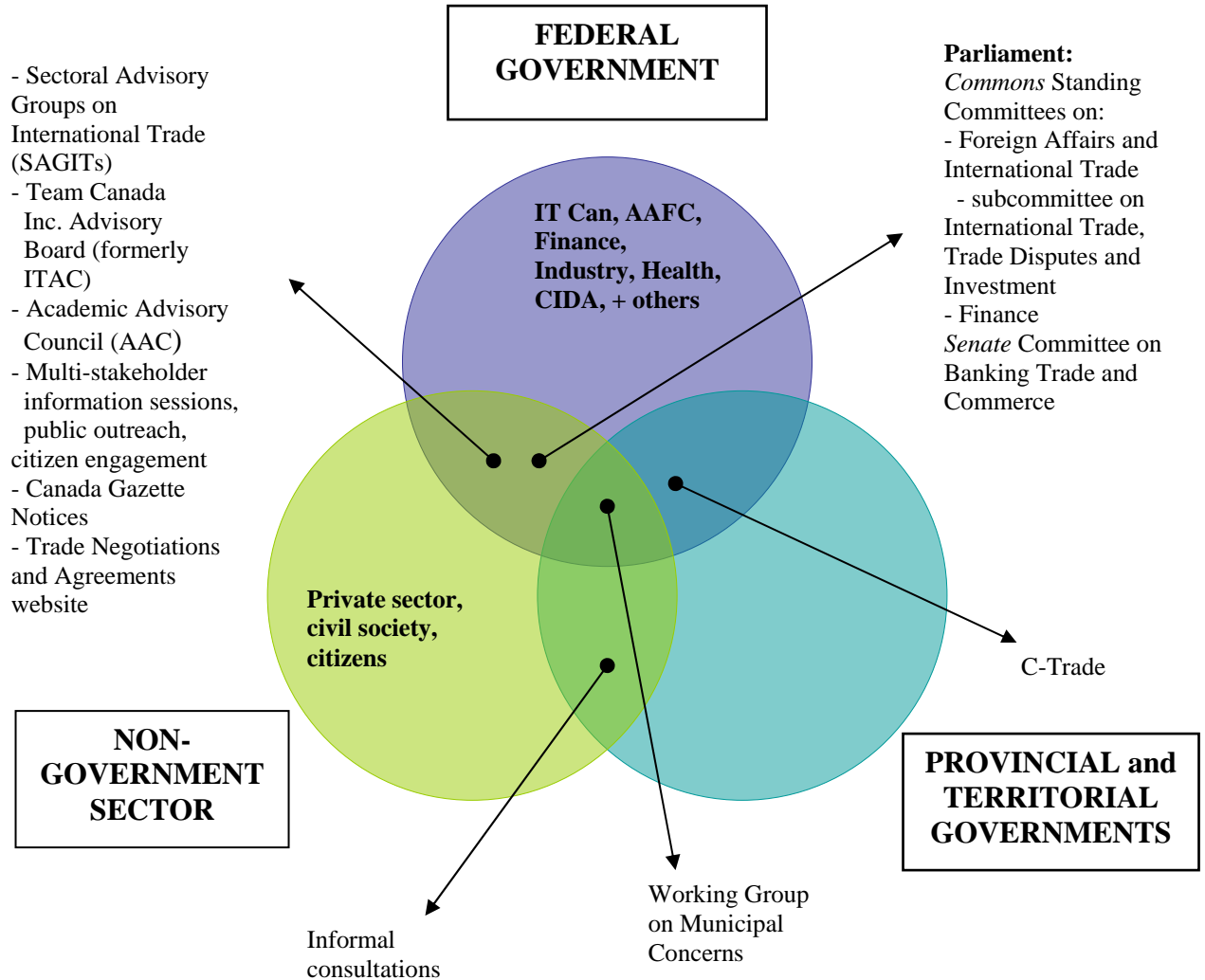
interdepartmental working groups that have been set up to pursue specific trade issues. Other departments may provide key technical inputs. For instance, the Department of Agriculture and Agri-Food (AAFC) is closely involved, particularly in the WTO where agriculture is a key focus of the ongoing Doha Round of negotiations, while the Canadian Heritage Department is ITC's lead partner on trade and culture. Departments which in the past have had less interest in trade now realize that it is critical for them to become involved in order to realize their departmental goals. This is the case, for example, with the Department of Health, Canadian International Development Agency (CIDA), and Status of Women, the federal agency responsible for promoting gender equality. In order to build their own expertise on trade, some departments have funded research. For instance, in 2001, Status of Women financed a number of studies in order to identify gender and trade linkages and issues they might promote within federal discussions on national trade strategies.<sup>6</sup>

Despite these efforts, it has been difficult to achieve a well-coordinated, 'whole of government' approach to trade, i.e. a process to ensure that the trade policies being promoted by the trade department are always consistent with the various objectives of other departments and agencies such as health, environment and development. While all departments are increasing their knowledge of international trade issues, their limited resources constrain their ability to anticipate and articulate how current negotiations will affect their areas of responsibility.

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<sup>6</sup> One such study undertaken by the North-South Institute examined gender aspects of labour mobility provisions in NAFTA and the WTO.

### DIAGRAM 1. CANADIAN TRADE POLICY CONSULTATION PROCESS



*Parliament* is involved in trade policy-making both through the parliamentary committees which undertake investigations into trade questions often at the request of the Trade Minister and through parliamentary debates on trade-related legislation.<sup>7</sup> Investigations may be carried out by the House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT), or its sub-committee on International Trade, Trade Disputes and Investment. Some investigations are intended to provide the Trade Minister and the trade department with advice, as in the case of the major SCFAIT report on the future of the WTO, published in 1999 ahead of the launching of a new round of trade negotiations (Canada and the Future of the World Trade Organization: Advancing a Millennium Agenda in the Public Interest). Similarly another report by the sub-committee published later in 1999 offered advice to the Minister on Canadian interests in the FTAA ahead of a hemispheric trade ministers meeting in Toronto in November that year (The Free Trade Area of the Americas: Towards a Hemispheric Agreement in the Canadian Interest). Most recently, in 2005, the Committee has issued two advisory reports, one on the Elements of an Emerging Markets Strategy for Canada and another on Dispute Settlement (Chapter 19) in the NAFTA: Fixing an Agreement under Siege.

Some reports are more tailored to examining draft legislation as in the case of the amendments required to accommodate China's entry into the WTO, or Canada's FTA with Costa Rica.<sup>8</sup>

The Senate Committee on Banking, Trade and Commerce also issues reports on matters relating to trade such as one in 2004 on Duty Remission and The Zero-Rating of Tariffs on Textile Inputs: The Canadian Apparel Industry, while it conducts hearings on issues such as amendments and renewal of Canada's preferential tariff legislation.

All these reports are based on background research by committee staff, evidence presented by expert witnesses from a broad range of communities who are called to appear before the committee, and debate among the committee members themselves. The reports make a series of recommendations to the government and usually call for a response.

The parliamentary hearings and reports are considered an important part of the national trade dialogue in Canada. Certainly the 1999 hearings on the future of the WTO attracted a lot of interest. As the report noted:

‘this was by far the largest and most intensive parliamentary consultation ever held on international trade issues. Not only was it unprecedented in scope, it was also the first time that such a process has been carried out

<sup>7</sup> NB where no legislative changes are required, ratification of a FTA may not need parliamentary approval; instead a Cabinet Order-in-Council may suffice.

<sup>8</sup> Other issues which have been the subject of SCFAIT reports since 1999 include: China's accession to the WTO, the FTA with Costa Rica, Canada's economic relationship with Europe, softwood lumber trade, economic relations with the Asia-Pacific region, deepening relations with the US and Mexico.

months prior to the start of formal negotiations. Altogether in the course of more than 30 public sessions, over 400 witnesses from across Canada made presentations, many accompanied by substantial written briefs’ (Preface, p. 2).

Building on this experience, the Committee’s first recommendation was that the government institute ‘a deeper and more sustained approach to democratic policy deliberation that is as representative and constructive as possible’ (p. 3), namely ‘regular consultations with the broadest possible range of stakeholders’, ‘independent studies of significant matters relating to trade’, and ‘timely information and feedback to parliamentarians and citizens during all pre-negotiation, negotiation, implementation and review phases of international trade and investment agreements.’

Many Canadian CSOs underscore the importance of the role played by Parliamentary committees and have called on the government on several occasions to use this process as a means for public dialogue on trade issues. For instance, in April 2005, the Common Frontier coalition lobbied the SCFAIT sub-committee to carry out a comprehensive review of the NAFTA Chapter 11 (on investor-state disputes). Others have called for hearings on free-trade negotiations with the four Central American countries (see CCIC/Americas Policy Group 2003, Section 3<sup>9</sup>). CSO groups working on HIV/AIDS were active participants in the hearings on the legislation (Bill C-9) to allow the production and export of generic medicines to countries without their own domestic production capacity; participation was critical to amend the draft legislation and ensure it complied more fully with the intent of the WTO August 2003 decision on access to medicines (though the final legislation still limited the scope of covered generic medicines to certain sicknesses even though the WTO decision made no such restrictions).

*Provincial governments* The federal government consults regularly with provincial and territorial governments about trade policy issues, through the Federal-Provincial-Territorial Committee on Trade (known as C-Trade). Such consultations occur for a variety of reasons. The provinces are interested in how trade rules affect both economic and political prospects within their jurisdictions, and the policies and regulations for which they are responsible under Canadian law, especially in the area of services, notably health and education. Since NAFTA, and the extension of trade rules to such behind-the-border regulatory issues, provinces have been increasingly engaged on trade policy matters. While the federal government has the authority to negotiate international agreements for Canada, it turns to the provincial governments for information on regional and sectoral interests – and how these might be advanced – as well as for cooperation in honouring commitments in areas of provincial responsibility.

C-Trade involves quarterly face-to-face meetings and more frequent teleconferences. The territories are usually represented in the quarterly meetings but may participate less in the teleconferences, reflecting their narrower economic base as well as their more limited policy capacity. Subjects of discussion include updates on negotiating issues, on trade

<sup>9</sup> [http://www.ccic.ca/e/docs/003\\_apg\\_cafta\\_pettigrew\\_statement.pdf](http://www.ccic.ca/e/docs/003_apg_cafta_pettigrew_statement.pdf)

disputes, and maybe some higher level analysis of trade patterns and issues. Typically the teleconferences are more focused. The meetings are considered useful in that they provide provinces with access to confidential trade negotiating documents originating in trading partners or from the federal government; they also provide access to federal technical experts and sometimes lead negotiators. There are also more frequent informal bilateral meetings between federal and provincial trade officials on an as needed basis e.g. on particular projects they are working on or on particular disputes with a narrower interest.

Some provinces have wanted to formalize this consultative process through an agreement between the federal, provincial and territorial governments. This issue has been raised at a number of Premiers' conferences, now known as annual meetings of the Council of the Federation. But work on such an agreement has stalled, perhaps due to federal government reluctance to limit or compromise its constitutional responsibilities. A major concern for provincial governments (Quebec and Alberta) leading this request is to formalize the regularity of such consultations – present practices remain at the discretion of the federal government and even at the discretion of officers in charge of particular files. For instance in some areas, such as agriculture the federal government consults regularly with its provincial counterparts – both before and after negotiating sessions, even when these are informal – and shares a considerable amount of information about negotiating proposals and positions. In other areas, however, there has been less engagement. Another request from Quebec is that provincial officials be part of the negotiating team when issues of provincial jurisdiction are under discussion. Some provincial governments, however, are concerned that a formal framework governing federal-provincial trade consultations may create pressure for a consensus to be required on matters relating to provincial jurisdiction, which in turn might constrain Canada's capacity to negotiate.

The federal government favours strengthening consultations with the provinces, as it needs their support to live up to Canada's international trade commitments; consultation is important on areas over which the provinces have jurisdictional responsibility.<sup>10</sup> Even on others, the federal government appreciates the information and views from the provinces, for example on investment agreements the provinces have provided a helpful perspective. Some provinces may have more resources to do dedicated studies that can inform the federal International Trade department about national interests and strategies. For example, Ontario has studied the professional services sector and this seems to have informed the federal government submission/offer on GATS Mode 4.

For *Quebec*, a key issue, besides agriculture and the promotion of certain service sector exports, has been to ensure that international trade rules do not constrain its promotion of

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<sup>10</sup> There are some areas where responsibility is shared, as in the case of food inspection. In others, there are complementary areas of responsibility. For instance, in insurance while the federal government regulates federally incorporated insurers and solvency, the provinces regulate products, licensing of insurance companies and have their own insurance regulators (TPRM 1996, p. 106). Some provinces maintain varying limits on foreign commercial presence in insurance (p. 108).

cultural diversity; it has therefore strongly opposed any liberalization of the cultural sector and favoured the creation of an international cultural diversity instrument acknowledging governments' right to develop, implement and maintain policies supporting culture.<sup>11</sup> Such a legal framework, it argues, should have the same standing as international trade law and include a dispute settlement mechanism in which disputes would be judged by cultural rather than trade experts. As part of its strategy, besides working with the federal government on these issues, the Quebec government has collaborated closely, and financially supported, the Coalition for Cultural Diversity (CCD) – an association of 33 Canadian cultural and communications groups<sup>12</sup> based in Montreal, as well as international coalition activities.<sup>13</sup> The federal government has also supported an International Network for Cultural Diversity, an association of artists and cultural groups, with a secretariat in Ottawa and membership in some 50 countries, to build international consensus on the cultural diversity instrument.

Some provinces have themselves established various ways to solicit views on trade negotiating objectives which they can promote in their dialogue with the federal government. For instance in 2002 the *British Columbia* government established the British Columbia Agri-food Trade Council, a group of 22 leaders representing a wide range of BC agri-food interests from producers to processors and retailers to provide advice on the WTO, FTAA and internal trade negotiations and issues. The BC government also undertook extensive consultations on the issues of subsidies and countervailing duties, which have affected in particular the lumber industry, in order to prepare a paper outlining its comments and recommendations for the federal government to pursue during the WTO negotiations on these issues.<sup>14</sup>

In *Ontario*, the government has also followed a focused consultative strategy by engaging with different groups in the course of particular studies or surveys rather than adopting the broader approach followed by the Federal government. For example in its work on professional services and Mode 4, the Ontario government collaborated with a number of regulatory bodies in a survey of their members. Another strategy is informal but regular interaction with groups like CCPA's network of researchers to discuss their studies e.g. on health and education services and GATS, or on the lessons of recent WTO GATS-related disputes.<sup>15</sup> Similarly in *Quebec*, government positions on agriculture and services were developed following a series of one-off consultations with a range of sectoral stakeholders including private sector representatives and regulatory agencies in case of services. The Quebec government has established an inter-ministerial committee of some 18 ministries or agencies which meets regularly to discuss trade matters – each may have its own approach to consultations.

<sup>11</sup> This now exists in the form of the UNESCO draft International Convention on Cultural Diversity.

<sup>12</sup> [http://www.cdc-ccd.org/Anglais/Liensenanglais/framewho\\_we\\_are.htm](http://www.cdc-ccd.org/Anglais/Liensenanglais/framewho_we_are.htm)

<sup>13</sup> [http://www.mri.gouv.qc.ca/en/politique\\_internationale/dossiers/diversite.asp#2](http://www.mri.gouv.qc.ca/en/politique_internationale/dossiers/diversite.asp#2) consulted August 3, 2005.

<sup>14</sup> <http://www.cse.gov.bc.ca/ProgramsAndServices/Trade/anti-dump.htm> consulted August 3, 2005.

<sup>15</sup> According to one interviewee, 'In my mind you cannot develop sound policy without understanding all views ... They are doing research we cannot do.'

*Municipalities* In November 2001, the government created a working group to address municipal interests and concerns with international trade.

*Consultations with non-government groups* As noted earlier, the government has steadily expanded its efforts to engage with the Canadian public about trade issues and government strategies for promoting Canadian interests. In 1998, a Trade Policy Consultations and Liaison Division (EBC) was established within the then Department for Foreign Affairs and International Trade to manage this process.<sup>16</sup> Here we review the range and scope of the mechanisms which have been used until recently. An evaluation of the procedures for engaging with non-officials was completed in 2004, and as a result these are being redesigned. The full details of the evaluation and the new mechanisms to be introduced will be released following ministerial approval, expected later in 2005. For the time being there is only preliminary information available on the evaluation's findings and recommendations for change.

The range of tools that were in use until recently included:

- the official *Gazette* in which the government would publish notices about changes in policy and solicit feedback, as needed (an example in 2002 was the government's proposal to provide duty-free, quota-free access to the Canadian market for imports from the 50 or so LDCs)
- an *internet website* has played an important complementary role to the *Gazette* especially since 1999 when the Trade Negotiations and Agreements (TNA) website was launched; it has made available a wide range of documents and information on particular issues being negotiated and updates on current trade events (such as the recent WTO mini-ministerial at Dalian); the website is also used to make announcements and solicit feedback on trade policy options (as in the *Gazette*). The agricultural department website has been used to disseminate information on agricultural trade goals and negotiations
- since the late 1980s, the government has organized a dozen or so *Sectoral Advisory Groups on International Trade* (SAGITs) which brought together representatives of industry, workers, consumers and/or other stakeholders including the occasional academic to discuss trade issues relating to particular sectors.<sup>17</sup> These operated under confidence, providing comments to officials on trade negotiations and issues of implementation. They communicated via face-to-face meetings, conference calls and a restricted web-site.
- *Team Canada Inc. Advisory Board* involving 20 representatives of industrial groups was created in 1998 by the Minister to provide private sector views about Canadian trade policy, market access and investment promotion, and the government's international business development plan

<sup>16</sup> Its mission was to 'facilitate and stimulate the involvement of Canadians in the development and implementation for Canada's trade policy agenda, to better reflect Canadian values, priorities and interests.'

<sup>17</sup> The 12 SAGITs were: Agriculture, Food and Beverages; Apparel and Footwear; Cultural Industries; Energy, Chemicals and Plastics; Environment; Fish and Sea Products; Forest Products; Information and Communications Technologies; Medical and Health Care Products and Services; Mining, Metals and Minerals; Services; Textile, Fur and Leather.

- *multi-stakeholder meetings*; some of these would be held with the Trade Minister; typically they involved business, labour, environmental, human rights, international development, consumer, and women's groups. Smaller meetings with trade officials were also organized in response to groups such as the Trade and Investment Research Project (TIRP) led by the Canadian Centre for Policy Alternatives
- an *Academic Advisory Council* served as an expert advisory body to the deputy minister, meeting at least twice a year to discuss trade and related issues
- an *Experts Group on Investment*
- *public opinion polls*

For the ITC evaluation, key issues were relevance, results and cost-effectiveness, and whether the mechanisms satisfied both the needs and expectations of external stakeholders as well as helping officials in accessing technical information. For non-government groups, key issues have been the transparency, timeliness and accountability of trade consultations, in sum whether they help to address the 'democratic deficit' for which trade negotiations are often criticized. Preliminary information about the evaluation as well as our own interviews with a number of stakeholders found instances when consultations had been useful i.e. relevant and with results for the government and non-government participants – both groups representing producers and business interests and CSOs.<sup>18</sup>

The agricultural SAGIT was considered particularly effective by many. This partly reflected the frequency of its meetings, with lead negotiators providing briefings and seeking feedback before, during and after negotiating sessions. Members were given access to confidential information and their feedback on technical details was often reflected in Canada's negotiating position. The nature of the engagement probably reflected the political sensitivities of the agricultural sector in Canada, and the challenges the government faces in defending its supply-management policies (e.g. in dairy and poultry) at the same time as adopting an offensive market opening strategy for its export-oriented commodities (such as wheat, beef and oilseeds).<sup>19</sup> The membership of the SAGIT was expanded about three years ago to include representatives of three organizations working in international development, in order to help the government

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<sup>18</sup> Hocking, however, notes that, 'the 'utility test' is a hard one to measure, given the differing interests of the various parties involved in the expanding consultative processes. Dymond and Dawson have concluded that there is little detectable impact on the substance of Canadian trade policy, with officials complaining that too much time is spent on fine-tuning consultative processes rather than focusing on the improvement of policy content.' (2004, p. 19).

<sup>19</sup> The Canadian Federation of Agriculture (CFA) which represents the bulk of Canadian farmers (both those which are export-oriented and the more domestically oriented supply-managed sectors) has strongly advocated that, 'The CFA must be fully involved and consulted from the outset during all trade negotiations, not only on the specific issues, but also on the direction of the focus of Canada's agricultural trade policy' (CFA 2004, p. 13).

understand developing country concerns (e.g. with respect to food security and the development box) and consider how to respond to them.

Despite the effectiveness of these meetings, participants also found it important to complement them with frequent bilateral talks with the lead negotiators, in order to present their organization's perspective on particular technical details. Participation in the SAGIT helped to establish familiarity – and continuing access to negotiators – even when an individual's term on a SAGIT had ended.

Another positive example from the government's perspective concerns Canada's relations with the Emerging Market Economies (EMEs, such as China, India and Brazil). In 2003, the government held a number of meetings on the strategy it might follow to promote Canada's trade with the EMEs. Feedback from meetings with the private sector, academics and NGOs (e.g. identification of key trends) is being used in the development of country strategies. But further more detailed consultations with private sector groups will be necessary for fleshing out these strategies, including how to meet financial targets for increased trade volumes.

The internet has been a useful tool for disseminating large amounts of information, and soliciting comments on particular initiatives or issues. Public polls have been effectively used for several years to gather information about public attitudes towards more general trade issues, and in order to gauge opinion about Canadians trade-related interests and concerns. In the past this was considered most useful for communications strategists, but recently policy units have also engaged both in setting questions and receiving the analysis of surveys of business leaders and other high level decision-makers, the media and other focus groups.

However there are several other aspects of the consultative mechanisms that were considered inadequate. Amongst the evaluation's findings were the importance of:

- carefully tailoring participants to match the scope and detail of issues being addressed at a meeting – in the past some meetings have mixed people with detailed expertise and specific objectives, with others who have more general interests<sup>20</sup>;
- clarifying whether a meeting is for outreach or for consultation this determines participants' expectations of the meetings – for consultations, follow-up is required to illustrate that non-governmental inputs have been taken seriously
- ensuring that meetings are driven by issues rather than process – this may mean creating a time-limited series of meetings that are linked to a particular external event. In the past some meetings were pro forma i.e. driven by the existence of a SAGIT committee rather than need. Trade officials felt that they had lost the

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<sup>20</sup> Hocking has suggested that the inclusion of CSOs in the multistakeholder model has led to more questions about the role and objective of trade, which has made some business groups reticent to participate in this type of multi-stakeholder meeting (2004, p. 23).

ability to talk to the right people at the right time – the structures they had created proved cumbersome

- face-to-face meetings to complement outreach via technology.
- understanding wider views on trade issues even if business views remain essential, and
- strengthening officials' consultative skills.

In response to the general conclusion that the government needs a flexible, responsive and inclusive approach to its trade consultations, the following mechanisms are under consideration:

- *Roundtables with the Trade Minister* at which business and key stakeholders will be invited to discuss key issues on as-needed basis
- a *Trade and Commerce Network* to provide regular updates on all levels of trade negotiations (multi, regional, bilateral) to key stakeholders (likely to be representatives of some 35-40 organizations) on a regular basis (e.g. 3 times a year) with dialogue on policy options
- *Academic roundtables* to which academics will be invited on an ad hoc basis, according to their expertise, to provide ideas on selected issues (e.g. to examine trends and policy options) and to advise the Deputy-Minister. Academic conferences may also be sponsored such as one on the North American market in June 2005 which was co-organized with Industry Canada and the government's Policy Research Initiative
- *Expert groups* will be created to provide specific, confidential advice to negotiators on specific technical trade issues as required by lead negotiators, for a limited time-frame. Pending ministerial approval, two groups were already active in July on a pilot basis and a third is already planned:
  - the *Market Access Advisory Group (MAAG)* has been set up to allow government negotiators to engage with 10-15 stakeholders from the private and NGO sectors on the non-agricultural issues being raised in the WTO negotiations leading up to and during the Hong Kong ministerial (after which the group will be disbanded)
  - an advisory group on agriculture, known as the *Agricultural Trade Negotiating Consultative Group (ATNCG)* involves elected heads of some 40 selected agricultural groups meeting with the lead Canadian agricultural trade negotiators (this is led by the agricultural department)
  - An advisory group for *Environmental assessment* of trade matters may be set up later in August 2005.
- The *Website* will continue to be updated and expanded as a key outreach tool, and to solicit feedback, alongside the *Gazette* with the intranet being used for more specific, confidential consultations. Finally, public *polling* will also be maintained as a key source of Canadian opinion on trade.

The trade department is also considering a number of tools to enhance the efficiency of its outreach and consultation, such as a set of good practices and guidelines (e.g. timelines for feedback), and training its officers in consultative methods.

Whilst recognizing that the Canadian government has made particular efforts to make information and officials available for consultation, a number of complaints have been made by CSOs, which will not be addressed by these proposed changes. One is that access to key information is still likely to be limited on grounds of confidentiality – in particular this relates to documents being considered in WTO meetings and bilateral or regional FTA negotiating texts. The request for public access has been raised several times. For instance, in the context of the CA-4 FTA, NGOs have requested copies of the draft negotiating text in order to be able to assess its likely impacts on different social groups and whether these are consistent with Canada’s human rights commitments.<sup>21</sup> In the case of services, non-government analysts have sought the release of technical documents on regulations issues being discussed in GATS working meetings in Geneva. Both sets of requests have been frustrated with the government arguing that this would contravene WTO practice, or that, in the case of the FTAs, draft texts cannot be released without negotiating partners’ consent. Yet the experience with services contrasts with that in the agricultural SAGIT (and now the ATNCG) in which information has been shared in confidence, while in the case of the CA-4, NGOs point to the Canadian government’s successful leadership in persuading the entire FTAA membership to release the draft negotiating text in 2001.<sup>22</sup> One concern with the trade department’s proposed new approach to consultations is whether the flexibility it suggests may diminish the amount of information that is released in confidence. It seems that senior officials may now have more discretion over the number of expert groups, the composition of the membership in those groups, and even the types of material made available to them, marking a major shift from the more institutionalized approach in the SAGITs.

Another concern is how to ensure that CSO analysis and alternative views are taken into account by federal trade officials, as much as by those in other federal departments and provincial ministries – as making a potentially valuable contribution to the design of policies, negotiating positions, litigation of trade disputes.

<sup>21</sup> ‘A coalition of churches, NGOs, unions, and others, including KAIROS, has been meeting with our government for several years trying to get information about what’s in the Canada-CA4 agreement and what it will mean for Central Americans. ... much of our concern is based on hypothesis because our government refuses to disclose draft texts or even basic information to the public and even to parliamentarians. The Canadian government claims its hands are tied because its Central American counterparts are unwilling to disclose draft texts.’ Rusa Jeremic, *The Ottawa Citizen*, August 12, 2005.

<sup>22</sup> ‘How can it be that, in Quebec City (in 2001), Canada managed to influence 34 countries -- including the United States -- to release negotiating texts, but now claims to wield zero influence over its Central American partners? Given the magnitude of concern surrounding free trade, for Canada to be true to its stated commitments on transparency, the government should disclose all information pertaining to this deal and encourage real public input and parliamentary debate.’ Rusa Jeremic, *The Ottawa Citizen*, August 12, 2005.

#### 4. Conclusions

In many countries there is now widespread interest in trade policy-making amongst many CSOs as well as business groups. This results from the expanding role of trade in many economies – and the opportunities and challenges that trade liberalization presents to national economic development. At the same time the scope of trade rules negotiated at the WTO, bilaterally and regionally, has broadened to include several issues considered previously of domestic policy relevance only; this is particularly clear in the area of services where domestic regulations are being reviewed for their impact on foreign service providers. CSOs are concerned to ensure transparency and accountability in the way that trade rules are negotiated and implemented. This requires participatory processes at both the national and international level.

At the WTO, there have been several changes in the last decade to increase the amount of information available on rules, disputes and negotiations. Annual meetings with CSOs, business groups and academics are now held, as a way of building understanding about the WTO, its procedures, its economic, social and environmental impacts, and related concerns. Nonetheless, there is still pressure for change at many levels, including increasing the degree of public access to WTO proceedings whether it be dispute panel hearings or negotiating sessions.

In many respects Canada has been a leader in encouraging greater public participation in trade policy dialogue – supporting moves for greater transparency and public engagement at the WTO, encouraging other countries in the Americas to release the draft negotiating text for the Free Trade Agreement of the Americas, and building the capacity of CSOs to engage on trade issues, as part of its trade-related capacity building programming.

Domestically, Canada has developed a complex web of mechanisms to consult widely – within the federal government, with other levels of government (provincial and territorial), with Parliament and outside government with a large number of interest groups from business to farmers’ associations, labour, development and women’s organizations. A starting point for this extensive engagement was the MacDonald Commission established in the early 1980s ahead of the negotiations on the Canada-US FTA, which identified key issues in the context of multiple studies and hearings on Canada’s economic development prospects. Key events since then have included the introduction of the SAGITs in 1988, the creation of a division in the trade department to manage trade consultations (1998), and the SCFAIT report on Canada the future of the WTO in 1999, reinforced from outside government by the opposition to the MAI, and the collapse of the WTO ministerial meetings at Seattle and Cancún, culminating in the 2004 review of consultative procedures, and the proposed changes to be introduced later in 2005. The purpose of the 2004 evaluation was to determine how to make the consultation process more effective – both for government officials leading the negotiations and for stakeholders. Whether their varied and sometimes conflicting objectives can be met in this way remains to be seen.

The involvement of other government departments in trade deliberations is essential to represent their perspectives which often differ from the market access interests of the trade department. Their participation can provide CSOs with alternative access to information about trade negotiations should this not be forthcoming from trade officials. Some CSOs have found greater commonality of interest, for example with the health department and were able to engage with health department officials on the importance of excluding health from Canada's requests in the GATS negotiations. Similarly the participation of provincial and territorial governments, besides being important for bringing regional and regulatory interests to the attention of trade negotiators, has created additional avenues for CSOs to gain information and potential influence, albeit indirect, over Canada's negotiating positions.

Parliament has played an important role in raising issues, gathering Canadians' views and delivering reports to the government with recommendations for action. Many would like to see its role strengthened, e.g. for it to have greater initiative in the focus of its enquiries (instead of depending on government requests) and for the government to be required to act on its recommendations. Another suggestion is for the Canadian parliament to lead those in other countries, by setting aside a day a year on which to deliberate the WTO and its actions.<sup>23</sup>

The process of engaging with Canadians as represented by business groups, farmers' associations, labour and a range of CSOs has had a mixed, albeit largely positive, record. Many would acknowledge that the Canadian government is ahead of many others in that it generally provides regular access to information about trade negotiations and other trade issues through the internet, various types of meetings, and is open to exchanging views with different groups about the issues involved. Nonetheless there are still criticisms about the degree of transparency particularly with respect to the technical detail involved and the extent to which officials are interested in alternative views and analyses, let alone in taking them into account in the design of policy positions.

Improvements in the structure of multistakeholder meetings may address some CSO concerns about their value and the contribution they make to developing policy in a pluralistic way. But while the process of engagement can be improved, for many the ultimate test will be whether the views expressed in these meetings are considered seriously and lead to different outcomes.

The SAGITs provided an important vehicle for access to confidential information and to engagement with trade negotiators at critical moments in the negotiating process. These were still predominantly representative of business and producer interests, although

<sup>23</sup> Lee recommends: 'As the world's most trade dependent country, Canada could lead in the establishment of a worldwide, national legislative day of debate on trade and the WTO. The government of Canada could commit on government business day of the House of Commons each calendar year for this debate ... Among other results, these national legislative debates, report and response would help inform the parliamentary process taking shape in the margins, parallel to WTO meetings.' In 'Towards Global Governance,' Optimum Online, The Journal of Public Sector Management, Vol. 35, Issue 2, July 2005 at [www.optimumonline.ca](http://www.optimumonline.ca)

labour and CSO representatives were involved in some SAGITs. Not all were as effective as the agricultural SAGIT, in terms of creating the basis for open dialogue and for inputs which shaped Canada's official position, both at the broad and at the detailed technical level. Nonetheless there may be some concerns with the disbanding of the SAGITs and the new approach being introduced in 2005. Its emphasis on flexibility and greater discretion for trade officials to adopt mechanisms best suited to their needs may lead to fewer groups being able to access confidential information. Such concerns may be allayed by the guidelines for consultative practices, which are yet to be published.

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