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## 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. The national trade policy process should have higher ambitions. If trade policy is made in the light of day, there is a better chance that it will serve all citizens. The study is an attempt to assess how well the Canadian trade policy process meets that objective.

In the early days of GATT, trade policy appeared to be a technical matter of no interest to non-experts, a confined issue that seemingly did not affect other domains. The usual assumption was that trade policy was about commercial interests; the policy process was designed, therefore, to accommodate such interests without being especially open to others. That world is gone. The changing nature of trade policy means that complex new agreements touch many domains, increasing the range of people who can contribute useful information to the negotiation process, and whose support will be needed for successful implementation of any agreement. It is now generally accepted that consultations with citizens and economic actors are a fundamental part of making good trade policy (OECD, 2001b), not least because officials need information too, if they are to be effective, and not just on the narrow “interests” of economic actors. New legal texts change little when they are incongruent with the informal practices and mutual expectations of actors in the trading system. Trade policy officials cannot make up their country’s “interests”—they need to hear from their citizens and their firms who are engaged in trade as importers and exporters, or producers and consumers. What problems do economic actors encounter? What new opportunities do they wish to pursue? Where are the rules as codified in the WTO discordant with their daily practices in the trading system? How are market practices interfering with the aspirations of citizens? The importance attached to transparency is, or should be, more than rhetorical: it goes to the heart of the policy process. This paper examines these issues in the context of one WTO member, Canada.

Canada is often seen as an exemplar of an open and transparent policy process (OECD, 2002: 33). Trade policy consultations have engaged numerous government departments, the provinces and municipalities; broad-based industry associations 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. The various mechanisms are described in Appendix B. After a description of what we know from survey research about public attitudes, the final part of the paper begins the process of asking whether the consultations make a difference to the legitimacy or effectiveness of policy. Appendix A presents a set of case studies of consultation in practice: agriculture, where there is a long tradition of active engagement by farm organizations in the policy process of most countries; services, the domain that has aroused considerable civil society anxiety; the environment, where the changing trade agenda has pulled established activist groups into the trade orbit; and efforts to engage consumers as opposed to producers in enforcement actions.

## **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 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

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<sup>1</sup> This paper was largely completed before the release of a major evaluation commissioned by the then Department of International Trade through the Office of the Inspector General (Canada, 2004b). That study in the event had more limited scope.

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 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.

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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.

## 2. Responsibilities for Trade Policy

Trade is vital to Canadians—exports of goods and services were equal to 37.7 per cent of GDP in 2003, while the corresponding share for imports was 33.7 per cent, shares considerably higher than any other country in the G-7 (Canada, 2004g). Canada is also one of the world's largest homes and hosts for foreign investment. The country was a founding Contracting Party of the 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 the Department of Foreign Affairs and International Trade (DFAIT). The domain of trade policy is defined in part by the mandate of the *Department of Foreign Affairs and International Trade Act*, RSC 1985, c. E-22. It includes the responsibility to conduct all official communication between the Government of Canada and the government of any other 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.” DFAIT is responsible for the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), the Asia Pacific Economic Cooperation (APEC) forum, Export and Import Controls, the promotion of investment in Canada, and the legislation authorizing the imposition of trade and economic sanctions.<sup>3</sup>

### 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>4</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

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<sup>3</sup> The department consults relevant stakeholders on its trade promotion and investment activities, but I consider only trade policy in this paper.

<sup>4</sup> The history of American mechanisms is noted in (Hocking, 2004), who cites (Winham, 1986). The current system is also briefly described in see (Canada, 2004b).

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 (Winham, 1979).

Officials responsible for trade promotion have always maintained extensive contacts with the Canadian business community, who are their clients and best source of information on commercial conditions, but trade policy consultations with economic actors became more elaborate at the time of the negotiation of the Canada-U.S. Free Trade Agreement (FTA) in the 1980s. Even then, the focus was clearly on the business community. Stairs (2000) reports that the Trade Negotiations Office (TNO), headed by Simon Reisman, a former Deputy Minister of Finance, made it clear from the beginning of the FTA negotiations that it did not wish to have its activities unduly complicated by excessive requirements for consultation with economic enterprises, provincial governments, other government agencies, or even other units within the then Department of External Affairs and International Trade, let alone with groups that were opposed to the free trade initiative in principle. Stairs infers, plausibly, that Reisman assumed that the government had decided to proceed despite the worries expressed in public debate, so opponents were no concern of his. Laura Ritchie Dawson adds that Reisman was used to bureaucratic autonomy bracketed by strong accountability to political masters in Cabinet, but ad hoc consultation was routine—he would pick up the phone when necessary to quiz a leading Canadian manufacturer about their interests on a pending agreement and other forms of. He would have preferred not to consult too closely with the provinces, but the requirement for close contact was part of a negotiated arrangement (brokered by the foreign minister, Joe Clark) that saw them forego the “seat at the table” that Prime Minister Brian Mulroney had promised them in exchange for regular consultation and review sessions with the Reisman and his staff.<sup>5</sup>

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

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<sup>5</sup> Laura Ritchie Dawson (private communication based on PhD dissertation, May 4, 2006.)

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

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

Such intense activity did not go unquestioned. In 2004 the Department commissioned a major review of all its consultation mechanisms (Canada, 2004b). The review was completed during a period of bureaucratic upheaval and political uncertainty so consequential change was slow. In 2006, the Department began implementing a more flexible system that differentiates between its strategic, tactical and technical needs. These three objectives correspond to three levels of engagement: Ministers and corporate CEOs; senior officials and corporate vice-presidents; and working level officials. Horizontal business associations are involved at all levels, but academics and NGOs are not involved at the strategic level. The two main differences from the old mechanisms are that multistakeholder meetings will be replaced by more focused roundtables and the old semi-permanent groups—the SGAITs and the Academic Advisory Council—have been replaced by ad hoc expert groups convened as needed. Extensive training resources are now available to support the officials who must give life to these mechanisms. Appendix B groups all of these mechanisms first by Information and then by Consultations.

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

Consultations are now part of the culture of government in Canada, but trade policy consultations have seemed more politically intense than others in recent years, in part because 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

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

consultations have therefore to adapt: “No longer can trade issues be dealt with as a brand of technocratic politics, insulated from the mainstream of political dialogue, a game for an elite operating behind closed doors, removed from prying eyes and the glare of publicity (Hocking, 2004: 3).”

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

First, routinization of consultations may mean that there is no longer a principle 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. Farm organizations are the majority of participants in WTO-related public events, such as WTO ministerials and the annual symposium for civil society (Wolfe, 2006). In standard political economy terms, it may not be surprising that the groups with the most at stake—concentrated producer interests—are more engaged in the process than 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 [DFAIT] to provide specific examples of barriers in countries have not been responded to by business with any great success. One interviewee suggested that if [DFAIT] wanted more specific information, the best possible route would be to focus on and increase their sector-by-sector meetings.<sup>7</sup>

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. The next section, therefore, considers 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

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<sup>7</sup> Similar views are reported in the Department’s own evaluation (Canada, 2004b).

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.

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.

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>8</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. Canadians do not expect to be actively involved in decision-making at an international level, but they do expect the kind of transparency that allows them to hold their government accountable. They want information, and they want occasions other than periodic elections on which they or their surrogates can use that information.

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

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

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<sup>8</sup> The data on these questions are found in (Wolfe and Mendelsohn, 2004).

consultations have not affected the paradigm. Whether consultations affect the detail of policy is another matter. The Department's own evaluation concluded that at best "some of the contributions made in technical and sector specific areas have influenced the development of the trade agenda.... (Canada, 2004b)"

To illustrate the difficulties, consider a particularly well-documented consultation process that allows a comparison of an initial proposal with a final policy, the 2002 consultation on trade with Least Developed Countries (LDCs). From March 30 until May 2, 2002, the government consulted Canadians on proposals to help LDCs by removing tariffs and quotas on most of the products they sell to Canada. The Government was seeking the views of parties, such as key industry sectors, 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 DFAIT 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). The Department's evaluation (Canada, 2004b) repeatedly mentions how participants wanted more feedback. Participation can be costly in time to prepare for and to attend meetings. Participants, including from business, want to know that their efforts are useful.

It is hard for analysts to see how consultations influenced the recommendations. The "decision" in most cases is the Canadian negotiating position. It is now 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>9</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.

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.

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<sup>9</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.

### *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, 2004c: Annex), and in general trade consultations (Ciuriak, 2004) show the huge range of people heard. It is not easy to assess their influence, however. Clearly, all agricultural producers, large and small, are heard. The official review of the agriculture 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.

As noted above, after a comprehensive review in 2004, in 2006 DFAIT began implementing a more streamlined set of mechanisms. The new system is designed to serve the needs of ministers and negotiators but is less attuned to the deliberative needs of the public, which may limit the Department's ability to mobilize public and even industry support for the results of negotiations. The differentiation among strategic, tactical and technical needs makes sense but at the first level, CEOs are not necessarily well-informed on complex international issues, and some of those who are head foreign-owned firms, which may limit a confidential exchange of views. The technical mechanisms aimed at ensuring that the people drafting changes to the regulatory framework are hearing from the actors to be regulated. Officials have always maintained their own networks of contacts with industry, but the process is now more sophisticated and systematic.

## **7. Conclusion**

I began this paper by evoking the 2001 mandate for the current round of negotiations in the WTO where transparency and participation receive only rhetorical support. The issue was also addressed in Chapter V of the Sutherland report on the future of the WTO (WTO, 2004), but there the focus 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. On some occasions providing information will be more

useful than holding a consultation; but in others, either ministers or officials will be the more appropriate interlocutor.

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

Here then is the dilemma, both for analyzing the effect of consultations and considering their value. On well-defined issues, like new tariffs, where officials know who the producers and consumers are, and everyone knows their “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 consultation mechanisms are or can be a substitute for the normal political process. The concern is not new (Stairs, 2001; Canada, 2001a), nor is the problem of the institutional design for social learning unique to trade policy (Risse, 2005), but it is unresolved.

## Appendix A: Case studies of consultation in practice

### A1. Agriculture

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

With new negotiations scheduled for 2000 as part of the WTO's "built-in agenda", the government signaled as early as January 1997 that it would engage in extensive consultations.<sup>10</sup> The first step was a discussion paper distributed by Agriculture and Agri-Food Canada (AAFC) that provided general background, and identified issues for negotiations. Department officials subsequently met with umbrella organizations like the Canadian Federation of Agriculture and more specialized groups like the Dairy Farmers of Canada and the Canadian Horticultural Council, at the regional and provincial, as well as the national, level. Officials met with provincial governments, supply management organizations and individual companies. 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, yet while negotiators heard from everybody in the *industry*, including labour, they heard from few people outside the industry. The people who came to the meetings were the people with the most direct interest. For this reason, too, the consultation process did not challenge the established WTO paradigm. Since 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>11</sup>

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<sup>10</sup> This history draws heavily on (Stairs, 2000: 21-2).

<sup>11</sup> Canadian consultations on genetic modification of food crops also reflected a producer bias (Agha, 2005).

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 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.

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.

The Department kept its promise to consult with key stakeholders. As the round progressed, large open consultations were not repeated, and the AAFC website is not terribly informative about the evolution of the Canadian negotiating position, but a large range of associations has been encouraged to participate in WTO-related activities, including observation of ministerial

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meetings as well as the annual public forums in Geneva. has also organized several roundtable discussions with industry representatives to discuss trade policy. In March 2006, for example, the agriculture and trade ministers jointly convened a roundtable discussion with industry stakeholders on Canada's approach to the WTO negotiations. Approximately 50 elected heads of national agri-food associations were invited to attend. Similar roundtable events were held in the summer and early fall of 2003, just prior to the Cancun ministerial, and again in October 2004 and May 2005.

These sorts of events are not sufficient for providing detailed information for both negotiators and economic actors, so Canada's Chief Agriculture Negotiator holds regular teleconference calls with industry stakeholders through the Agriculture Trade Negotiations Consultations Group (ATNCG).<sup>12</sup> They represent the full range of agri-food stakeholders, including supply management, export-oriented, and agriculture and agri-food processing interests. Approximately 20 producer organizations, 15 processor/ transportation organizations, 4 producer/processor organizations, 3 individual firms, 7 government organizations, 3 non-governmental organizations and 3 food service/retail organizations have representation in this Group. Consultations with the ATNCG provide for confidential dialogue between industry stakeholders and the Government. The frequency of those calls is determined by developments in the negotiations. The ATNCG includes stakeholders who have an interest, knowledge and technical expertise on agricultural trade policy and negotiations, have the ability to provide timely advice, and can serve as a contact point for their respective organizations. The conference calls should ensure that the industry understands what is going on, if association leaders keep their members informed.

After the massive exercise of the late 1990s was completed, 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).

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

Second, the auditors were critical of

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<sup>12</sup> This descriptive information was provided by AAFC officials in October 2006.

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

While some such groups are included in the current process, the critique would presumably be stronger today: both the confidential briefings provided by the department and the public hearings conducted by parliamentary committees tend to be dominated by private actors, with few voices attempting to articulate a general interest. An even stronger critique, but one that is hard for me to assess, would be that all of these mechanisms lack a deliberative component, which impedes social learning on both sides. The conference calls, for example, are excellent for providing information to stakeholders, but they are less useful as a channel for discussion, or for economic actors to pass information to negotiators. The stakeholders have views, of course, but they may need to find other less transparent or deliberative ways to pass them on.

## **A2. Trade in services**

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

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

Consultations on services have been multi-faceted, as shown in Table 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, 2004c)

The consultations are one of several mechanisms being used by the government to solicit the views of Canadians. Other consultative activities included:<sup>13</sup>

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

<sup>13</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>

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, 2004c).

The government then released its initial position on services negotiations in March 2001 at the same 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, 2004c). The government needed more detailed information from Canadian service providers to help prioritize their goals for greater market access. The report on these 13 consultations (see Canada, 2004c) reflects the views of participants while respecting the confidential nature both of some of the information received and of the Canadian negotiating strategy. Participants at the workshops represented a wide variety of perspectives, including a cross-section of the Canadian services industry: lawyers, accountants, engineers, management consultants, information technology businesses, telecommunications services providers, oil and gas, mining, research and development, environmental and construction services providers. Other participants included representatives from cultural industries, labour unions, provincial economic development departments, municipal governments, public interest advocates and consumer advocates.

Most non-industry participants underlined concerns 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, 2004f). 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>14</sup>

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<sup>14</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, 2004f).

Table 3 Consultative events for Agenda 2006

Consultative Events	Outcomes
<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, 2004f)

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

The public is consulted at each stage of the environmental assessment (EA) process: 1) notice of intent to conduct an EA; 2) preparation of an Initial EA; 3) preparation of a Draft EA; and 4) preparation of a Final EA report (for a graphical depiction of the process, see Canada, 2001b, 8). The EA has four elements: 1) identification of the scope of negotiations and overall economic relevance; 2) identification of the *likely* environmental impacts of “trade-induced economic and regulatory changes”; 3) assessment of the *significance* of these *likely* changes; and 4) identification of mitigation or enhancement measures to address negative or positive impacts. The Doha round of WTO negotiations provides a test case of Canadian environmental assessment of trade negotiations. DFAIT’s initial environmental assessment stated that the likely environmental impacts, in Canada, of the Doha round of negotiations were minimal (Canada, 2002, 45-6). A further Draft EA analysis of the various areas of negotiation under Doha was

promised, but has not been produced. A Final EA is expected once the negotiations are completed.

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

Trade liberalization is supposedly beneficial for consumers, yet a detailed legal analysis of the WTO agreements found few references to them or their interests (McGivern, 2004). The most direct references to consumers are in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement). Under both agreements, national investigating authorities must grant opportunities for “representative consumer organizations” to provide information on dumping or subsidization, injury to the domestic industry, and the so-called “causal link” between the dumped or subsidized goods and the injury to the industry. McGivern (2004) shows that such processes do exist in 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>15</sup> It seems that the implementation of these trade measures, which are inherently inimical to the interests of consumers (their effect is to raise domestic prices), may be transparent, but the process discourages participation.

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

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<sup>15</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 : [http://www.citt.gc.ca/dumping/interest/consider/pb98001\\_e.asp](http://www.citt.gc.ca/dumping/interest/consider/pb98001_e.asp). The Fédération nationale des associations de consommateurs du Québec was also involved in the last case.