

# **The Role of Civil Society in Shaping Trade Policy**

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## **Executive Summary**

Principles of good governance call for the participation of civil society in policy-making, including trade policy formulation. This paper seeks to identify arrangements that governments, particularly in the Caribbean, can learn from to address the challenges of developing effective civil society consultative mechanisms for the process of trade policymaking at the national level. The case studies selected, drawn from experiences of both developed and developing countries, allow for the identification of best practices in consultative mechanisms.

Governments should bring civil society organizations (CSOs) on board that can provide accountability and valuable information for governance processes and outcomes. Interestingly, these include a wider range of organizations than such traditional partners as business organizations. In fact, effective trade policy formulation requires the full and active participation of a wide cross-section of civil society at the national level. Governments of the Caribbean region should take into account the following lessons learned:

1. Make civil society partners in the creation of an overarching economic development strategy;
2. Provide a legal framework for civil society involvement in trade policy formulation;
3. Work jointly with government agencies and civil society organizations to address the data deficits and to improve analysis and research on trade-related matters; and
4. Expand the emerging Social Partnership models beyond trade unions and employers to include the range of stakeholders and civil society organizations that can provide greater accountability, contribute valuable information, and create stakeholders in the development of trade policy.

## Introduction

Think of “civil society” and trade and one image that may come to mind is that of the tens of thousands of demonstrators who converged in Seattle, Washington who disrupted and eventually shut down the December 1999 Ministerial meeting of the World Trade Organization (WTO). Many of the protesters had purposely gone to Seattle to obstruct the negotiations and to voice their concerns and opposition to globalization. Others, however, travelled to Seattle as credentialed representatives of their organizations hoping to play a more active role in the trade talks than that of mere observers.

Seattle marked a turning point in the relationship between civil society and the WTO, which now has established protocols for greater participation by civil society organizations (CSOs). Increasingly, both international and national CSOs are being included in national delegations at the WTO meetings.

Of the 738 organizations present at the Seattle talks, however, 635 were from the “northern” developed countries, according to Rafael Leal-Arcas.<sup>1</sup> This leaves 103 organizations from the “South,” comprising slightly fewer than 100 countries at this time. Even if one assumes the highly unlikely possibility of one organization per developing country member, the disparity between the representation from the North and South indicates a disproportionate representation of viewpoints from the former. Although international CSOs and those from the developed countries undoubtedly provide many developing countries with much-needed expertise and insight, at the same time, as non-citizens of the countries whose positions they advocate, their participation raises many questions about transparency and legitimacy. Without a doubt, these questions can only be addressed through increased participation of CSOs from the “South” in trade policy formulation, both at home and on the international stage.

This paper seeks solutions and tools for use by governments and CSOs, particularly in the Caribbean, to address the challenges of developing effective consultative mechanisms for incorporating civil society into the process of trade policymaking. One of the first challenges is to define civil society.

## What is Civil Society?

There is no consistent definition of the term “civil society.” The following working definition by the London School of Economics’ Centre for Civil Society captures the diversity of the concept:

*Civil society refers to the arena of [voluntary] collective action around shared interests, purposes and values. . . . Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations,*

*professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group[s].*<sup>2</sup>

The lack of a commonly-accepted definition for the term can create challenges for policymakers. The European Commission (EC) acknowledged this problem by developing its policy on the creation of a Civil Society Dialogue and later provided its own definition in a 2002 communication:

*Problems can arise because there is no commonly accepted –let alone legal– definition of the term ‘civil society organization.’ It can nevertheless be used as shorthand to refer to a range of organizations ... [which constitute] the principal structures of society outside of government and public administration.*<sup>3</sup>

The Commission’s consultation standards list the following as examples of CSOs: “labour-market players” such as trade unions and employers federations; organizations representing social and economic players, such as consumer organizations; non-governmental organizations that bring people together around such common causes as environmental, human rights and educational issues; grassroots-level organizations or community-based organizations; all organizations through which citizens participate in local and municipal life; and religious communities.

Policymakers have a choice of many other definitions with which to work as they grapple with the challenge of developing their own policy. However, as they work to incorporate civil society into trade negotiations and the overall process of trade policy formulation, these broad definitions point to a second challenge: effectively managing the process of outreach to civil society. Must this outreach extend to the range of actors described above or can one discriminate in this process? One point of departure is to prioritize those organizations concerned with issues of governance.

## **Civil Society and Governance**

The concept of “governance” means the process of decision-making and the process by which decisions are implemented or not. According to the United Nations Development Programme (UNDP):

*Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.*<sup>4</sup>

In other words, a proper and fully-functioning democracy requires an informed citizenry that is capable of providing oversight and of participating in shaping government policy. This statement holds true for all policy areas, including trade. Consequently, civil society participation in trade policy formulation should first and foremost be seen as a democratic end in itself and as an essential component of good governance.

CSOs contribute to the overall democratic process by providing accountability and valuable information, and by becoming stakeholders in governance processes and outcomes. With these attributes of civil society participation in mind, governments can better determine what CSOs should be given priority in outreach efforts linked to the process of trade policy formulation.

## **Civil Society Participation Provides Accountability**

Not all CSOs are concerned with governance. Many are predominantly concerned with philanthropic issues and activities such as relief work, mentoring and filling the gaps in the social net that the state does not cover. There are, however, many others that are concerned, whether exclusively or in connection with their other activities, with ensuring that government structures and procedures work as they ought to; that government policies and procedures are transparent and work for their membership or the broader citizenry. Jointly, these CSOs hold their governments accountable.

Governments sometimes have incentives to conceal or misstate their own levels of compliance, and are understandably reluctant to let other governments monitor their internal affairs directly. But as CSOs are often closely involved in government activities, they can effectively monitor implementation and evaluate outcomes. For example, NGO monitoring has been important in virtually all environmental regimes and remains crucial in the area of human rights as noted by Kenneth Abbott.<sup>5</sup>

In relation to trade and related economic activities, there is a general consensus that businesses in the course of their normal operations, as well as their representative organizations such as chambers of commerce, are effective monitors of the trade regime. However, it is much less recognized that community-based groups and consumer associations that are well-placed to assess the impact of trade-related economic activities on the poor and on consumers as a whole are also important monitors.

## **Civil Society Involvement Provides Invaluable Information**

Lessons from the international environmental and human rights regimes, where scientific and anecdotal information have played a particularly important role,

also show that CSOs can be invaluable sources of information. Governments, particularly those in developing countries, often lack information and CSOs with greater proximity to intended beneficiaries are well-placed to fill in these informational gaps. This statement is even truer when they represent groups that, for one reason or another, are unable to participate directly in the policymaking process. Community-based CSOs typically have stronger connections with their communities and hence better information on these communities than does the central government. Their proximity to the issues at stake also situates them as effective policymakers on these matters. As demonstrated in this paper, CSOs can assist in the trade area with information-gathering, policy formulation and implementation, as well as suggest concrete approaches supporting the negotiation and implementation of trade agreements.

## **Civil Society Involvement Creates Stakeholders**

Civil society participation in policymaking brings in representatives of affected interests —“stakeholders”— into the policymaking process. In addition to its general democratic appeal, such inclusiveness increases the perceived legitimacy of government action. A government that, prior to taking regulatory or other action, has taken the step of consulting with its citizenry and of getting and incorporating relevant input has the advantage of being able to rely on CSO support in the face of criticism or expressions of dissatisfaction with the new policy and in the implementation process.

Policymakers as well as scholars have traditionally recognized the value of making citizens stakeholders at the national level, but have typically left trade and international issues to the exclusive domain of government actors. More recently, the concept of an “international civil society” has gained currency, reflecting the increasing recognition of the value of its participation in areas that have traditionally been dominated by state actors. However, Abbott signals that proponents see a role for CSOs only at the level of international organizations, such as the United Nations and the WTO.<sup>6</sup> Yet, effective policymaking, whether on domestic or international issues, begins at home. A commitment to good governance requires the participation of CSOs in policy formulation at all levels and on all issues. An examination of the components of effective trade policy formulation illustrates the crucial role of CSOs in this process.

## **Components of Effective Trade Policy Formulation**

Effective trade policy formulation begins with enunciating a national economic and development strategy. It aims to articulate the role of trade in implementing this strategy. This process requires, at a minimum:

1. the political will of the decision-makers to identify a strategy;
2. consensus or policy direction provided by the state;

3. coordination by a lead agency;
4. determination of interests in the outcome by stakeholders, including CSOs;
5. an effective mechanism for involving stakeholders, including other state agencies, think tanks and CSOs;
6. the ability of stakeholders to make regular and technically-informed contributions;
7. regular, timely feedback of developments to stakeholders from the lead and other state agencies; and
8. the availability of current data for stakeholders to inform analysis.

A strategy that is aimed at addressing a country's economic and development goals must, in order to be effective, be informed by the goals and needs of the population. CSOs play a crucial role in ensuring that these goals and needs are articulated and reflected in the outcomes. Ideally, effective trade policy formulation also involves some government transparency in order to facilitate a minimum level of public knowledge on the issues and ability of civil society to contribute meaningfully to the debate on trade policy choices.

The following discussion examines models for trade policy formulation in developed and developing countries. Each case study identifies the extent to which the above components are present and assesses the strengths and weaknesses of CSO involvement. They also illustrate the benefits of CSO participation in the process of trade policy formulation.

## **Trade Policy Formulation: Developed Country Models**

In the **United States**, the framework for trade policy formulation and implementation is set by statute. The U.S. Trade Act of 1974 (19 USC §2155(a) & (j)) establishes the Office of the U.S. Trade Representative with primary responsibility for developing and coordinating the implementation of U.S. trade policy. The agency's head, the U.S. Trade Representative (USTR), is a member of the President's cabinet. The agency consults with 19 other U.S. federal government agencies through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). Included in this process is the National Economic Council (NEC) whose primary role includes ensuring that policy decisions and programs are consistent with the President's economic goals, and monitoring implementation of the President's economic policy agenda. The Trade Act also stipulates the role of the U.S. Congress in the formulation and implementation of U.S. trade policy.

The Trade Act further requires that the USTR seek information and advice from "representative" elements of the private sector through the Advisory Committee for Trade Policy and Negotiations (ACTPN). The composition of the ACTPN is also set by the Act as comprising up to 45 individuals who are "broadly representative of the key sectors and groups of the economy, particularly ... those ... affected by trade" which include representatives of labour, industry,

agriculture, small business, service industries, retailers, non-governmental environmental and conservation organizations, and consumer interests. The ACTPN may be convened at any time by the USTR or by a two-thirds majority of the members. In addition to the advisory committee structure, the agency is required to provide informal means for the submission of information and policy recommendations by “private organizations or groups, representing government, labour, industry, agriculture, small businesses, service industries, consumer interests, and others.” This last requirement is facilitated by the “notice and comment” procedures instituted through the Administrative Procedure Act and by judicial decision to ensure that affected interests have a say in administrative policy-making. The relatively high level of transparency within U.S. government apparatus in general facilitates access to the policymakers and to the information that the stakeholders need to provide informed contributions with respect to the direction of U.S. trade policy.

While the framework for U.S. trade policy formulation incorporates many of the elements needed for success, some flaws exist. Despite the requirement for broad representation, the ACTPN has typically been dominated by business representatives. Civil society representatives, primarily environmental groups and labour unions, have been relegated to participation on issue-specific advisory groups, such as the Trade and Environment Policy Advisory Committee and the Labor Advisory Committee. Though referenced by the Trade Act, these committees are not required and therefore exist solely at the pleasure of the USTR. Critics also complain that these committees have not been given any significant policy role, according to Abbott.<sup>7</sup> Another flaw is the ability of the USTR to exempt from the requirement to hold open meetings and provide public access to records, in those areas in which the USTR determines that such participation or access would “seriously compromise” the development of trade policy or negotiating positions. The agency has been criticized for overuse of these exemptions and for keeping a large proportion of advisory committee meetings and documents closed.

For these reasons, U.S. trade policy can sometimes hit a major road bump in its implementation. Many observers such as Abbott and Patti Goldman believe that the continued opposition in the United States to the North American Free Trade Agreement (NAFTA) with Canada and Mexico resulted from the failure to involve CSOs and to address their concerns during the negotiations, resulting in a politically embarrassing heated debate over the ratification of the agreement, which continues to reverberate today.<sup>8</sup>

In **Canada**, an equivalent framework is established by the Department of Foreign Affairs and International Trade Act (R.S., 1985, c. E-22). The Act establishes this department to be presided over by the Minister of Foreign Affairs. The Minister may be assisted by two other ministers, including a Minister of International Trade. The Act further provides for the establishment of “advisory and other committees to advise or assist the Minister.” Canada being a federal state, the Act also provides for the Minister to enter into agreements with

the provincial governments and agencies with respect to programs related to the Minister's powers, duties and functions.

Implementation of these provisions has resulted in the creation of the International Trade Department, which is the lead agency on trade negotiations and works closely with other departments and agencies in a number of interdepartmental working groups set up to address specific trade issues. For example, the Department of Agriculture and Agri-Food is the cooperating agency on agriculture issues and the Canadian Heritage Department is the lead partner on trade and culture issues. The Canadian Parliament is involved through investigations into trade issues and debates on trade-related legislation. The consultations with provincial governments occur through the Federal-Provincial-Territorial Committee on Trade, or "C-Trade," although the language of the Act suggests that these take place at the discretion of the federal government and are not mandated.<sup>9</sup>

At the level of civil society, the federal government has created a number of advisory groups and bodies including: (i) Sectoral Advisory Groups on International Trade (SAGITs) bringing together representatives of industry, workers, consumers and other stakeholders; (ii) Team Canada Inc. Advisory Board created by the Minister to get private sector views on Canadian trade policy; (iii) multi-sectoral stakeholder meetings; and (iv) an Academic Advisory Council which serves as an expert advisory body. Some provinces have established their own consultative processes for soliciting views from the broader society on trade issues to inform discussions at the federal level. The British Columbia government, for example, established the British Columbia Agri-Food Trade Council to represent the interests of producers, processors and retailers on trade negotiations. Canada complements these mechanisms with the use of the Internet, videoconferencing and other direct technology, which the government uses both to disseminate information and to solicit comments on particular issues and initiatives through public opinion polls.<sup>10</sup>

As with the U.S. system, a relatively high level of transparency exists within the Canadian government apparatus which facilitates access by civil society to policymakers and to the information that the stakeholders need to provide informed contributions with respect to the formulation of trade policy. The Canadian model also shares some flaws with the U.S. system, notably its focus on business interests and tendency to consider the contributions of other representatives of civil society as secondary. The language in the Act, which does not specify the composition of the advisory bodies, means that the participation of any particular group is discretionary and at the pleasure of the federal government, although long-standing practice (some of these groups have existed since the 1980s) leave little doubt about the commitment of the Canadian government to maintaining this practice. At the same time, a related flaw is the absence of any requirement that the government take into account the perspectives and analysis of CSOs in the development of trade policy and negotiating positions.<sup>11</sup>

The **European Union** has developed very clear mechanisms for ongoing dialogue and consultations with civil society in the formulation of trade policy. The EU member states have agreed to follow a common policy on international trade policy, which is set by the Council of the European Union (also known as the Council of Ministers) where each member state is represented at the ministerial level. As the primary decision-making body within the EU, the Council of Ministers also coordinates national policies and determines the overarching economic objectives within which the policy is set. The Directorate General Trade (DG Trade) of the European Commission is responsible for implementing trade policy and for briefing the European Parliament on the overall conduct of EU trade policy.

The EU commitment to consult with civil society has been institutionalized through the Civil Society Dialogue. Under this process, the DG Trade holds regular meetings with CSOs and seeks their agreement on new measures. To this end, the DG Trade regularly hosts meetings that allow EU civil society representatives to discuss trade proposals. The DG Trade sets the agenda and initiates the meetings. Full meeting reports are posted on its website. The Commissioner who heads DG Trade also regularly holds Internet chats and forums to correspond directly with the public. As in Canada, the process incorporates the use of the Internet to facilitate the receipt of comments on trade policy.

In general, then, Canada, the United States and the European Union present successful examples of trade policy formulation, albeit with different emphases on incorporation of required components. All three have procedures, clearly identified by a law or a directive of equal weight, that house responsibility for trade policy in a central decision-making body and set it in the context of a broader strategy for national economic growth. The mechanisms for involving and incorporating stakeholder viewpoints are also clearly established, although with varying degrees of inclusiveness. The EU, notably, has a more transparent process for keeping civil society informed about the outcome of discussions. As resource-rich entities the three countries also are able to facilitate access to analysis, technical data, reports, etc. and this helps to keep the public informed. Their different approaches indicate that there are a myriad of ways in which a country can incorporate the components for effective policymaking on trade issues.

## **Trade Policy Formulation: Developing Country Models**

This section examines some developing country models, most of which have been drawn from case studies on policymaking for the purposes of negotiating WTO accession or developing a WTO trade negotiating position. They are, nevertheless, instructive for our purposes, particularly in those cases where it appears that WTO activity is the focal point of trade policy formulation because

this focus suggests the absence of an overall economic development strategy to inform the process of trade policy formulation.

**Brazil** has emerged as a leading player on the world trade stage, most notably in the area of multilateral agricultural negotiations. Underlying this process has been the rapid growth of the agribusiness sector in Brazil, whose representatives in the late 1990s began pushing the Brazilian government to adopt a more aggressive stance in this sector. Continuous coordination between public agencies and public and private-sector representatives led to the establishment of an NGO financed by the main private associations of the Brazilian agribusiness and focused on technical research related to agricultural negotiations. This move provided Brazil with the expertise it needed to begin to adopt increasingly independent and autonomous negotiating positions on agriculture (having up to this point relied on Australian leadership within the Cairns Group to articulate its position). A second structure that has emerged is a working group on agriculture that started as a joint initiative by the Ministries of Agriculture and Foreign Affairs and was expanded to integrate other ministries, governmental agencies and private representatives from the agriculture and agribusiness sectors. The working group is focused on conducting analyses of other countries' negotiating positions and formulating independent and technically-sound responses and counterproposals, according to Pedro da Motta Viega.<sup>12</sup>

In this case study, the articulation of its needs by the agribusiness sector provided the directing strategy. The primary lesson, however, is that the mechanism that was created to involve the stakeholders was also an integral factor in developing the technical capacity needed for the successful articulation of a new direction for Brazil's negotiating policy in agriculture.

**Nepal** very starkly illustrates, on the other hand, that a non-business actor can also play an invaluable role in information-gathering, policy formulation and advocacy in support of trade negotiation and implementation of trade agreements. In 1998, Nepal began the process of accession to the WTO against a backdrop of societal fear and general lack of support. Some CSOs, however, in particular the South Asia Watch on Trade, Economics & Environment (SAWTEE), were strongly in favor of Nepal obtaining WTO membership as they believed the country stood to gain from this move. At the same time, they were also critical of the "WTO-plus" conditions often imposed by existing members on an acceding country.

SAWTEE operates as a regional network of NGOs located in Bangladesh, India, Nepal, Pakistan and Sri Lanka. Its primary goal is to build the capacity of concerned stakeholders in South Asia by equipping them with knowledge, information and skills to voice their concerns in the context of globalization and liberalization. One of its specific objectives is to enhance the participation of developing countries, in particular least developed countries (LDCs) and landlocked countries, in the global trading system. Consequently, SAWTEE believed that it should play a positive and active role in facilitating Nepal's

accession to the WTO. It did so in two primary areas: (1) creating a critical constituency of support for WTO accession; and (2) providing the Nepalese government with the technical and advocacy tools it needed to strengthen its hand in accession negotiations.

To achieve the first objective, SAWTEE and another Nepalese NGO, Action Aid Nepal (AAN), launched a massive education campaign about the WTO in an advocacy effort for accession. In addition to its quarterly printed and monthly electronic newsletters, SAWTEE published several papers on different aspects of the WTO, including a briefing paper on strategies to address the challenges of NGO participation and a study report on the gender implications of Nepal's accession to the WTO. SAWTEE also published a book entitled *The Road to Cancún* in July 2003, which analyzed WTO agreements in the context of Nepal's accession. SAWTEE's publications reached a large readership which included policy-makers, academics, media professionals and civil society activists. Over the course of a year SAWTEE and AAN jointly held a monthly forum on globalization and the WTO. Participants included a wide range of stakeholders including policy-makers, the private business sector, academia, the media and civil society and activists. The participants addressed various issues and discussed the way forward with respect to Nepal's WTO accession and the regional agreements signed by Nepal. Reports on the monthly forum were posted on the official website and included in the e-newsletters.

To strengthen the government's hand in the process of accession, SAWTEE and the Nepalese NGO community provided the government with informed negotiating positions, particularly in two areas in which challenges to Nepal's accession emerged: (i) tariff binding for agricultural products; and (ii) membership in UPOV.

First, despite agriculture being the mainstay of the Nepalese economy and the source of livelihood for more than 80 per cent of the population, Nepal's applied tariffs on agriculture were very low, ranging from zero to 10 per cent. NGOs in Nepal wanted to put in place an appropriate level of tariff binding at the time of WTO accession. Under the leadership of AAN they formed a loose network of CSOs with the Federation of Nepalese Chambers of Commerce and Industries (FNCCI) and the Ministry of Agriculture and Co-operatives (MOACS). The network determined the appropriate tariff bindings for 60 agricultural products with proper justifications and submitted them to the government. As a result, Nepal proposed binding tariffs on agricultural products at an average of 30 per cent. With the help of the detailed work done by the network, the Nepalese negotiators convinced WTO members of the need to create a policy space to protect its agriculture sector. The average tariff binding on sensitive agricultural products was fixed at 51 per cent for the transition period and 42 per cent thereafter.

Second, the day before the Nepalese delegation was scheduled to depart for Geneva to finalize its accession, Nepal received a request from a trading partner

that as a condition of membership it join the International Union for the Protection of New Varieties of Plants (UPOV). Nepal's NGOs were concerned about the likely impact of joining UPOV on the rights of Nepalese farmers regarding seeds and local biological resources. In response to the government's request, SAWTEE prepared a brief titled "Why Nepal cannot and should not join the UPOV." While the delegation was in Geneva, the NGOs also launched a public campaign blitz. Over the next four days, the National Alliance for Food Security in Nepal (NAFOS) and SAWTEE members published various newsletters and three articles in two leading national dailies that highlighted the need to ward off the pressure to join UPOV. Posters in Nepali and in English were distributed to all the concerned stakeholder groups. The CSOs also organized a press conference in Kathmandu that was attended by journalists from all the leading media organizations, farmers groups, lawyers and other stakeholder groups. The following day the issue was featured predominantly in the media, inevitably bringing it to the attention of the trading partner country's trade representative's office in Geneva. P.R. Rajkarnikar reports that on the final day of the accession negotiation it was agreed to include only minimal text in the final working party report that committed Nepal only to examining UPOV and other intellectual property-related conventions and to exploring membership, as appropriate.<sup>13</sup>

On April 23, 2004, Nepal became the WTO's 147th member and its first least developed country member. This case study suggests that, without the civil society coalition that led research, analysis, advocacy and education efforts, the Nepalese government would have either failed to achieve WTO accession or done so only at the expense of some key national interests.

The **Kenya** case study illustrates the importance of an effective mechanism for coordination and consultation by civil society. In Kenya, overall responsibility for trade matters lies with the Ministry of Trade and Industry (MTI). The National Committee on WTO (NCWTO) is the country's main trade coordinating body for engaging government, private sector and civil society on trade matters. Its mandate includes providing government with adequate information on the sectoral impact of the various agreements in order to enable it to review current and future trade policies. Within the NCWTO, membership of state agencies is quite broad and includes all of the key ministries, state corporations and para-statal entities. To handle the technical issues, the NCWTO has established sub-committees with specific expertise (i.e. agriculture, services, market access) with the relevant ministries acting as focal points.

To become a member of the NCWTO, CSOs need to be invited by the MTI, which is the national coordinator. Broader participation by CSOs is achieved through membership of sub-committees, which is much more open as it depends on the subject being handled and the stakeholders' interests. Each sub-committee gets most of its inputs from the focal points which have the capacity to handle technical issues. Deliberations at this level are forwarded to the NCWTO.

Kenya provides another example of community-based CSOs taking the initiative of developing analytical capacity for trade agreements and measures that are essential for effective civil society participation in trade policy formulation. Academic and research institutions have been the main organizations carrying out research on trade issues in Kenya but face a number of challenges including lack of resources for research. To address this constraint, community-based CSOs have organized themselves into a loose network coordinated by EcoNews, a Kenyan NGO. This network has commissioned research projects on various trade issues, using the forum to consolidate their deliberations, which are then passed on to the government. Civil society also sponsors some of the activities of the NCWTO and has sponsored the participation of a substantial number of delegates to WTO ministerial meetings.

One weakness in the existing framework has been the focus on WTO negotiations and therefore the absence of an overarching economic development strategy to inform the development of a national trade policy. This perception is reinforced by the distribution of responsibility for the specific multilateral, regional and bilateral trade arrangements among three ministries, resulting in the fragmentation of trade responsibility and of the trade policy framework. To further underscore the focus on responding to WTO deliberations it appears that NCWTO meetings are seldom convened except to prepare for major WTO events, such as the ministerial meetings. The sporadic and ad hoc nature of the meetings has generated a lack of interest on the part of the stakeholders.

Another weakness of the system is the absence of a legal framework for the operation of the NCWTO. This, observers note, has compromised both the operational and financial autonomy of the NCWTO. The NCWTO operates as an informal advisory body with no legal mandate, which has meant that the government is under no obligation to adopt its advice and recommendations. The NCWTO lacks financial capacity to operate effectively since it does not have its own budget and the Treasury has no obligation to allocate it funds. As noted by some observers, it is only through the financial support of CSOs that a few activities have continued. This has resulted in irregular meetings, poor information flow and poor co-ordination among members.<sup>14</sup>

Kenya's experience illustrates one method for broadening the participation of CSOs in trade policymaking through the use of sub-committees. It also highlights the limitations of this process in the absence of strong leadership, a legal framework and an overall scheme for trade policy formulation.

**India** demonstrates the challenge involved in shaping trade policy that takes into account the very diverse, and often opposing, views of a large number of stakeholders. The case study provides a successful example of coordinating civil society input into trade policy formulation on agriculture. A strong political impetus exists because agriculture is a very important issue to India, which is the second largest agricultural producer in the world with approximately 70 per cent of its population dependent on this sector for its livelihood. The sector yields

tremendous power and elections have been won or lost based on the perception of how well the needs of the rural sector are being met.

The main protagonists in the context of the agriculture negotiations are the Ministry of Commerce and Industry (MOCI) and the Ministry of Agriculture (MOA). They had to learn to work together to overcome differing positions and approaches. In developing a final proposal on agriculture for the Doha Round of negotiations, the most significant challenge was to institute a process that would take into account the very diverse views and positions of the various stakeholders, while ensuring that a cohesive proposal could be prepared. The process underwent several stages: the initial identification of the key issues; consultations with CSO stakeholders; initial drafting of the proposal; regional and inter-ministerial consultations; and final approval by the Cabinet. Indian industry associations, in particular, representing over 4,800 companies and 500 chambers of commerce, appear to have been involved in the entire consultative process. Academic institutions and think tanks, though hampered by the lack of resources and expertise required to conduct meaningful analysis, were also consulted during this process.

A primary challenge was the task of identifying CSOs to invite to the consultative process from a large pool of entities active in India. As Shishir Priyadarshi mentions in a WTO case study, Amrita Narlikar said, “the process of involving NGOs seems to be a self-affirming process with the more critical ones being often excluded from the inter-ministerial consultations; the checks and balances, so necessary in such a process of consultation, seem to be missing.”<sup>15</sup> This is, at least in part, the result of an overriding perception among the government that non-business civil society representatives are always protectionist.

Nevertheless, the consultations played an important role in giving final shape to the Indian proposal. The Commerce Ministry’s website specifically mentions that: “the Indian proposal jointly formulated by the Department of Agriculture and Co-operation and Department of Commerce, reflects the broad consensus which was achieved through a series of regional-level meetings, meetings with the state governments, interaction with political parties, representatives of farmers’ organizations, various autonomous institutions, agricultural universities and eminent agricultural economists.”<sup>16</sup> The inclusiveness of the consultative process is also borne out by the reactions of some of the key stakeholders. The associations representing Indian industry appear to be largely satisfied with the consultative process, notes Priyadarshi.<sup>17</sup>

## **Lessons for the Caribbean and the Way Forward**

The hue and cry that enveloped the Caribbean after the governments announced to their citizens that they had concluded an Economic Partnership Agreement (EPA) with the European Union provides the region with a sharp lesson on the consequences of failing to effectively involve civil society in trade policy formulation. At the time, individual businesses, business organizations,

universities, consumer organizations, media and individual citizens became involved as never before in discussing trade policy. Unfortunately, this all came after the fact and generally had a sharply negative, critical and even fearful tone. The formal signing of the agreement had to be delayed for several months to allow for the discussion that should have occurred earlier. Meanwhile, the debate and dissent continue, although it is highly unlikely that any meaningful changes can now be made to the content of the agreement. Undoubtedly, governments face an uphill battle to sway public opinion to support the EPA.

A look at one more case study, this time from within the region, can shed light on the way forward for the Caribbean. **Barbados** has emerged as a leading voice on trade issues within the region and as a very vocal supporter of the region's trade liberalization efforts. The country's trade policymaking process already appears to incorporate many of the components required for success. Its first national strategic plan which charts the country's development course up through 2025 provides the overall strategy within which trade policy is formulated. The strategy was developed with the assistance of CSOs and contemplates strengthening civil society participation as an essential component of governance in the 21<sup>st</sup> century. The Social Partnership created between the government, employers and workers' representatives includes the specific commitment to involve civil society in the process of making "regional, hemispheric and global trade agreements" on terms commensurate with the "nation's long-term economic and social development."<sup>18</sup> According to a trade association representative cited by Linda Schmid, "The government is very deliberate in including different actors in the decision-making process."<sup>19</sup> The process of stakeholder input into trade policy formulation is coordinated by the Ministry of Foreign Affairs and Foreign Trade.

Some or all of these components are present in other countries within the region. To build on this framework, the challenges and success of the case studies discussed in the paper illustrate the practical imperatives which demand a central role for relevant representatives of civil society in formulating trade policy.

## Conclusion

The policy goal of trade policy formulation is the articulation of the role of trade in achieving a country's national economic and development strategy. In this process, the state plays a leading role by providing the impetus, policy direction and mechanisms to facilitate the process. Civil society participation also has a key role in determining and voicing the goals and needs of the population and making informed contributions to the process. The case studies demonstrate both the necessity to include some essential components in trade policy formulation, as well as the myriad of ways in which they can be integrated. At the same time, there are important lessons to learn.

**Make civil society partners in the creation of an overarching economic development strategy:** The mechanisms that are being developed to shape civil society involvement in trade policy formulation have a tendency to

be too focused on developing short-term negotiating positions, primarily for WTO processes. The India and Nepal case studies illustrate the successes associated with involving civil society in developing an overarching economic development strategy. Indeed, they created the domestic support needed to sustain government positions in the WTO negotiations. It is clear that the model of “international civil society” participation in international fora discussed earlier is not sufficient; it could be broadened to bring civil society into the process of formulating an overarching economic development strategy to inform the development of a national trade policy. The trade policymaking bodies could meet on a regular basis, de-linked from WTO deliberations, and their work could be placed in the context of the overall development of trade policy.

**Provide a legal framework for civil society involvement in trade policy formulation:** The U.S., Canadian, EU and Brazilian experiences as well as the counter example of Kenya illustrate the need for a legal framework that establishes the mechanisms for trade policy formulation, including the incorporation of civil society. Such a framework provides accountability for both government and civil society, and indeed for the overall process. It was evident in the case of Kenya that the absence of this framework led to irregular meetings, an underfinanced structure, and most importantly to poor information flow and coordination between government and civil society, undermining the overall process. As the Caribbean struggles to address and overcome these same challenges, the countries of the region could benefit from a legal framework that establishes the mechanisms for trade policy formulation and involvement of civil society.

**Government and CSOs need to work jointly to address the data deficit:** The Brazil and Nepal case studies highlight the leading role that civil society played in developing the technical expertise to elaborate the countries’ WTO negotiating positions. At the same time, attempts made in the Caribbean and many other developing countries at developing trade analyses and negotiating positions quickly revealed the dearth of reliable and current trade-related statistics and other data. Governments and CSOs need to work jointly to enhance data collection capacity and to develop the research and analytical capacity on trade issues. The Brazil, Nepalese and Kenyan case studies demonstrate both the advantages of this approach and some innovative ways in which this goal can be accomplished.

**Expand the emerging Social Partnership models:** As a number of countries move to introduce Social Partnership models, similar to those in place in the EU and in Barbados, they need to reach beyond identified “social partners” such as trade unions to include broader CSO participation. Recognizing the benefits of civil society participation in trade policy formulation, including greater accountability, valuable information and creation of stakeholders, can help governments determine what CSOs should be accorded priority attention for involvement in the process. Such entities include those concerned with:

1. monitoring and ensuring that the trade regime works according to its rules (trade networks, academic institutions);
2. assessing and addressing the impact of trade rules on their membership and on the broader citizenry (business associations, trade unions, consumer groups, community-based organizations); and
3. mobilizing support for trade policy and negotiated agreements.

The Kenyan experience further suggests that sub-committees can be used to incorporate CSOs based on their area of interest or expertise. A small farmers' cooperative, for example, may not need to sit on the main trade policymaking body but could be incorporated into a sub-committee devoted to discussing the challenges of compliance with sanitary and phyto-sanitary requirements in export markets.

In sum, while governments are responsible for formulating and implementing trade policy, it is businesses that participate in the stream of commerce and consumers who benefit, or not, from the terms of trade. Consequently, a country's trade policy may be deemed to be at its most effective only when it leads to decisions and actions that maximize opportunities and minimize obstacles for its businesses while improving the lives of its consumers. The principles of good governance not only demand that these ultimate beneficiaries participate in shaping the policy, but also illustrate that they can be effective and invaluable partners in the process.

## Endnotes

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<sup>3</sup> European Commission. "Communication: Towards a Reinforced Culture of Consultation and Dialogue – General Principles and Minimum Standards for Consultation of Interested Parties by the Commission." COM(2002) 704 final, 6.

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<sup>5</sup> Abbott, Kenneth W. "The Decline of the Nation State and Its Effect on Constitutional and International Economic Law: 'Economic' Issues and Political Participation: The Evolving Boundaries of International Federalism." *Cardozo Law Review* 18 (1996): 971-1010, 1008.

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<sup>7</sup> Abbott 1996, *op.cit.*, 992.

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- <sup>11</sup> *Idem*.
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