

Unclassified

COM/TD/ENV(99)26/FINAL



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

OLIS : 21-Oct-1999
Dist. : 26-Oct-1999

PARIS

TRADE DIRECTORATE
ENVIRONMENT DIRECTORATE

Or. Eng.

Unclassified
COM/TD/ENV(99)26/FINAL

Joint Working Party on Trade and Environment

TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT

NATIONAL CASE STUDIES

Volume I

83287

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

Or. Eng.

This document was prepared as part of the OECD work programme on trade and environment. It is declassified under the responsibility of the Secretary-General.

This document can also be found on the following site: <http://www.oecd.org/ech/docs/envi/htm> and is also available in French.

Copyright OECD 1999

Applications for permission to reproduce or translate all or part of this material should be addressed to:

Head of Publications Service, OECD, 2 rue André-Pascal, 75775 Paris Cedex 16, France

or email to Laurence.gerrer@oecd.org or Luc.garcia@oecd.org

or via fax at +(33-1) 45 24 13 91

PREFACE

In 1993, OECD Ministers endorsed four Procedural Guidelines on Trade and Environment, covering: A) transparency and consultation; B) trade and environmental reviews, C) international environmental co-operation and D) dispute settlement. In 1994, Ministers decided that a review should be undertaken of OECD Members' actions to implement the Guidelines. This was first done in 1995 and then again in 1998-1999. The Member government's responses on each occasion were compiled and published, respectively as OCDE/GD(96)98 (22 countries) and COM/TD/ENV(98)132/FINAL (25 countries plus the EC).

In reviewing the implementation of the Procedural Guidelines at the meeting of the Joint Working Party on Trade and Environment (JWP) in December 1998, it was decided to deepen the review and to focus on the implementation of the first Procedural Guideline:

***Transparency and consultation:** Governments should provide for transparency and for consultation with interested parties in the development and implementation of trade and environmental policies with potentially significant effects on each other.*

To investigate more thoroughly how transparency and consultation is translated into practice, the JWP decided to undertake a series of short case studies focussing on the first Procedural Guideline in OECD Member countries. Eight subjects were selected for the first round of case studies: Australia, Canada, the European Commission, France, Germany, the Netherlands, the United Kingdom and the United States. The countries were chosen on the basis of proximity to the OECD, the undertaking of a joint project with the Commission for Environmental Co-operation in the cases of the US and Canada and the use of a local consultant in Australia. It is anticipated that further rounds of the case studies will be undertaken.

The approach was novel because the case studies involved interviews by an OECD staff member or consultant, not only with Ministry officials, but also with representatives of civil society -- environmental non-governmental organisations and business and industry federations. Each case study describes first, the mechanisms in place for consultation and transparency as outlined by government, and then records the impressions of civil society as to the efficacy of those mechanisms, and any suggestions made by civil society representatives as to how the procedures might be improved. It was decided at the JWP meeting that these first round case studies should be declassified before the information becomes out of date. This volume contains the reports of the eight initial case studies.

There are current plans to undertake similar case studies on other OECD Member countries, in four categories which were not covered in the first round: Asia, the Nordics, Southern Europe, new Members, including central and Eastern Europe. The 1999 OECD Ministerial meeting adopted a future work programme that includes "focussing on difficulties encountered and approaches which work best, aim[ing] at drawing lessons for good practices", once case studies have been undertaken in a "representative sample of countries using different approaches to transparency and consultation" (C/MIN(99)14).

TABLE OF CONTENTS

AUSTRALIA.....	5
CANADA.....	12
EUROPEAN COMMISSION	18
FRANCE	25
GERMANY	32
NETHERLANDS	40
UNITED KINGDOM	47
UNITED STATES.....	53

AUSTRALIA

I. Introduction

In preparing this case study, representatives of both the government and the non-government sides were interviewed. From the government side, officials from both the trade and environment ministries participated. From the non-government side, representatives from business, environment, and labour unions participated¹. The author also benefited from attendance at a consultative meeting held on 5 March 1999 concerning the upcoming WTO symposia on trade and environment, and on trade and development. The invitation to attend the meeting for the purposes of assisting with the production of this report was kindly extended by the Department of Foreign Affairs and Trade.

II. Background

The Australian Federal Government operates within a framework of relatively open access to information. Access to documentation is governed by the Freedom of Information Act, which requires release of information to the public upon request, with limited exceptions for reasons such as national security, certain Cabinet documents and commercially sensitive material. Government officials are also held accountable to the parliament, through annual Senate Committees which can request information from officials on the administration of public policy.

In addition, officials are quite accessible to the interested public – for example, names and contact details of responsible individuals are generally listed in publications, press releases etc. Informal contact between the public and officials is a normal and accepted part of government operation. Several participants in this study referred to this context of reasonably open access to government process, information and personnel as being a relevant background factor informing the transparency and consultation mechanisms on trade and environment.

It was noted that the ‘habit’ of consultation on environment-related issues was entrenched by an extensive and intensive exercise in 1990-91s called the Ecologically Sustainable Development (ESD) process. This involved the creation of nine working groups of government, industry, environmental and other community representatives, dealing with all sectors of economic activity, tasked with examining and reporting on how ecological sustainability could be incorporated into each area of economic activity. The ESD process was perhaps the high point in terms of multi-stakeholder policy development, but nevertheless it created the precedent for industry and environmental representatives sitting together with Government on policy issues of mutual concern.

1. NGOs contacted were: Australian Conservation Foundation, Australian Chamber of Commerce and Industry, Australian Council of Trade Unions, Australian Food Council, Greenpeace, National Association of Forest Industries, Women and Environment Network, BioWeb and Humane Society International.

As concerns trade and environment issues which are the subject of international treaties, a further factor provides relevant background. In 1996 the Federal Government introduced important reforms in the treaty making process in Australia. The essence of the reforms is to provide increased public and parliamentary scrutiny of treaties, be they existing, under negotiation, or subject to amendment. A Joint Standing Committee on Treaties, consisting of members from both houses of parliament, has the power to hold public hearings, summon witnesses including public officials, invite submissions and then report to the Government on particular treaties. Treaties can only enter into force after specified processes including tabling in both houses of parliament, and the submission to parliament of a National Interest Assessment which must include details of the extent of public consultation undertaken in the course of the negotiation of the treaty or subsequent amendments.

III. Description of Transparency and Consultation Mechanisms

A. *Formal standing consultation mechanisms*

There are two standing consultative processes in place which cover trade and environment issues directly. The first is the International Environmental Issues Advisory Group. This Group is chaired jointly by the Ministers for Environment and for Foreign Affairs. It has a membership of 18 appointed by Ministers, and is not open to participation by non-Members². It meets twice a year and discusses international environmental issues, primarily but not exclusively those issues currently subject to international negotiation. This clearly includes trade and environmental issues as they arise in the development of multilateral environmental agreements, or multilateral economic agreements. For example, upon request from civil society participants, the Multilateral Agreement on Investment was put on the agenda and discussed at the most recent meeting of June 1998. This is not generally a forum for discussion of trade and environment issues more generally.

Trade and environment issues are however the central focus of the second standing consultative body, namely the Trade and Environment Working Group. The Working group is run by the Department of Foreign Affairs and Trade in co-operation with Environment Australia. This Working Group does not operate at the ministerial level: it is chaired by a senior official of the Department of Foreign Affairs and Trade, usually at the level of a deputy head of Department. This Group meets approximately twice a year, depending on the timing of related *ad hoc* consultations, but often preceding the International Environmental Issues Advisory Group. Participation is by invitation to business and environmental representatives, and is broader and more flexible than the ministerial level Advisory Group. The agenda is focussed on the work program of international organisations, particularly the WTO Committee on Trade and the Environment.

Ongoing public consultation mechanisms are also in place for each international treaty, including climate change, the Biosafety Protocol, the Basel Convention, the Montreal Protocol, CITES, Prior Informed Consent and Persistent Organic Pollutants treaties, and others. Consultations are held at the stage of formulating negotiating positions and around significant meetings. More detailed information on consultation processes concerning the Montreal Protocol on Substances that Deplete the Ozone layer, and

2. Members are: Australian Chamber of Commerce and Industry, Australian Committee for the World Conservation Union, Australian Conservation Foundation, Australian Council for Overseas Aid, Australian Industry Group, Business Council of Australia, Environment Management Industry Association of Australia, Greenpeace, Institute of Engineers, Minerals Council of Australia, National Academies Forum, National Association of Forest Industries, National Environmental Law Association, National Farmers Federation, Plastics and Chemicals Industries Association, Sustainable Energy Industries Council of Australia, Waste Management Association of Australia, and the World Wide Fund for Nature.

on the Convention on the Prior Informed Consent procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) is contained in the Australian response to the OECD questionnaire on implementation of the Procedural Guidelines on Trade and Environment.

B. *Formal ad hoc consultation mechanisms*

Given the large range of policy issues where trade and environment issues can arise, ad hoc processes dealing with particular negotiations, events or issues are a very useful supplement to the standing consultative bodies. They allow people with specific expertise in certain areas to make expert contributions that are not always appropriate at the more general level of the standing bodies.

Currently, ad hoc processes are occurring on several issues. For example, an ad hoc consultation was held on 5 March 1999 relating to the two WTO High-Level Symposia on Trade and Environment and Trade and Development. A broader range of NGOs, particularly those concerned with development issues and human rights were invited, and attended, than would normally be the case. The Department of Foreign Affairs and Trade prepared a public information paper setting out the background and purpose of the Symposia, and explaining the work program of the CTE. The agendas of the symposia were attached. The public information paper set out the proposed broad lines of the policy position the Australian Government would take during the symposia. This paper was made available on the departmental web site.

Another ad hoc consultation currently under way of relevance to trade and environment issues is an open-ended request for public comment concerning Australia's approach to further multilateral trade negotiations. The Minister for Trade launched this public consultation process on 10 February, with advertisements placed in the major newspapers, and on the departmental website. This invitation to make submissions was explicitly extended to all participants at the recent consultative meeting on the WTO symposia on Trade and Environment.

C. *Informal mechanisms*

As noted above, informal contact between members of the public and government officials is a common and usual practice. Representatives of business and industry associations seem to be more active lobbyists than other parts of civil society. They pursue their interests with Ministers' office staff, with coordinating departments such as Prime Minister and Cabinet and the Treasury Departments as well as with the Department of Foreign Affairs and Trade and Environment Australia. The representatives of business interviewed in the course of this report expressed satisfaction with the nature of their informal contacts with Government on trade and environment issues. They used their private contacts for policy input much more than they used formal consultation processes for this purpose.

Environmental representatives tend to have a narrower range of contacts within the bureaucracy, although they have regular contact with Environment Australia and with Foreign Affairs and Trade. They tend to use the media and public campaigns as well as official contacts to pursue their policy interests. They did not generally experience obstruction of access to particular officials, with a few specific exceptions, but they generally pursue different methods of influencing public policy development.

Increasing use is being made of the Internet to improve transparency of information. There is a trade and Environment page on the DFAT website which provides agendas, documentation where possible, and summaries of meetings such as the CTE. A website has also been established, as part of the treaty reform process, which contains the texts of all treaties to which Australia is a Party, and other information such as National Interest Assessments where those exist³.

IV. Experiences with transparency and consultation

This section synthesises the responses from participants under the sub-headings of participation; agenda; documentation; format and style. Section V following then draws together overall assessments of what consultation and transparency is achieving and views on the factors which limit the usefulness of the various processes. Unless otherwise specified, the responses refer to the range of consultation mechanisms. Most participants in this study attend more than one consultation mechanism.

A. Participation

The general view of participants was that the consultation processes are reasonably inclusive. With a few exceptions, there was not a significant problem of civil society being denied access to consultation mechanisms or transparent information. Two reservations to this general satisfaction were raised during the course of the interviews. The first was that organised labour in the form of the Australian Council of Trade Unions (ACTU) or an affiliated union was no longer represented on the International Environmental Issues Advisory Group. The predecessor group had included a labour representative, but since its reconstitution in 1996, labour, as well as several other groups, were no longer represented.

The second comment made by a few participants concerned the range of non-business NGOs currently participating. It was felt that the focus on environmental groups meant that the social aspect of sustainable development issues was not well covered. Specifically, human rights organisations, social development groups and indigenous peoples were not regular beneficiaries of the consultation processes. This does not appear to reflect the exclusion of specific people or groups, but rather the traditional focus on environment rather than the broader concept of sustainable development. Furthermore, some groups such as those concerned with human rights have not focussed on trade and environment issues and so do not have the expertise or the interest in devoting resources to an area of relatively low priority for them. This situation seems to be changing in some quarters, for example human rights groups attended the March 1999 consultation on the forthcoming WTO symposia.

Several environmental NGOs noted that participation from their point of view was hampered by a lack of funding for this purpose. There is no financial assistance provided to facilitate their participation, thus limiting the number and range of people who can attend, particularly from outside Canberra.

Apart from participation in consultation mechanisms for trade and environment issues *per se*, it was pointed out by some environmental NGOs that the main advisory body on trade issues, the Trade Policy Advisory Committee (TPAC) was comprised of senior business representatives and chaired by the Trade Minister, but had no representatives from civil society more broadly. They felt that this body was better funded and gave business better access to the Minister than other consultation mechanisms. They are requesting admission to TPAC.

3. <http://www.austlii.edu.au/dfat>

B. Agenda

Each of the participants in this study expressed satisfaction with the content of the agenda for the various consultation processes. There was a consensus view that there was ample scope for civil society to raise issues they wished to raise, and that issues would be put on the agenda if requested. There was generally open invitations for people to comment on or add to agenda of various meetings, with relatively more formality applying to the ministerial level International Environmental Issues Advisory Group.

One participant noted that it is extremely rare for civil society to put their own different issues forward for discussion, or circulate their own work. This was thought to reflect the fact that Australian NGOs did not generally do original work on general trade and environment issues, but tended to rely on work done by their international affiliates.

C. Documentation

Participants were generally very pleased with the efforts made by Government to pass on information from international bodies and also to provide their own papers outlining issues. Special mention was made of the paper prepared by the Department of Foreign Affairs and Trade in the lead up to the 1996 CTE report. This provided people who had little time to follow the issues a succinct guide to the CTE work program. Similarly position papers on particular environmental negotiations are prepared as documentation to inform and focus consultations and are circulated prior to meetings.

However, there was also some frustration that consultation on matters the subject of current international negotiations suffered from a problem of documentation not being timely enough for considered responses. It was acknowledged however that this was in part a knock-on effect from international documentation not being available far enough in advance of meetings to enable governments to then go out to their public consultation partners. Even then, groups consulted need time to go out to their members and/or colleagues to be in a position to provide meaningful reactions and input.

D. Format and style

The format of the consultative meetings is that stakeholders from the business sector and the representatives of the environmental NGOs are invited to attend meetings in Canberra. The meetings are conducted as round table discussions, with opportunities for all participants to speak. The basic format is that the officials give a presentation of the position papers they have prepared and the floor is open for discussion. Documentation and a formal agenda provide structure and focus to the meeting. The ministerial level Advisory Group tends to be more formal than the Working Group is. Discussion at the Working Group level is interactive, in that participants respond to others' statements and discussion is not just two-way between the official chairs and a particular participant. Open discussion is encouraged and no minutes or records are made of the meetings.

While business and official participants regard the processes as relatively informal, some environmental NGOs feel that the consultations are rather daunting in their formality. Mention was made of the meeting room being too large and imposing to put outsiders at ease.

V. Assessments of benefits and limitations of consultation and transparency efforts

This final section summarises the views of the participants in this study on two main issues, firstly, what consultation and transparency is achieving; and secondly the factors limiting effective consultation and suggestions made for improving the current system.

All participants interviewed believed that the efforts made by government departments at making information transparent and consulting with civil society were extensive, substantial and beneficial. Several even noted that sometimes it felt like 'being consulted to death'.

This is not to say there is unanimous satisfaction from all participants. One of Australia's main environmental NGOs, The Australian Conservation Foundation, stated in its written submission to the current review of the treaties making process that "*..consultations are often disorganised and seemingly ad hoc, with very short time frames, poor targeting of participants, insufficient information provided to enable comment and lack of co-operation from Department officials in seeking constructive discussion of issues.*" The submission makes it clear that this comment specifically reflects strong differences of view with the government over climate change policy and associated policy processes. It serves to underline the fact that consultation and transparency does not guarantee that the views expressed will be accepted. The Department of Foreign Affairs and Trade noted that the 44 submissions received in the review of treaty making processes, currently being finalised, revealed a very large degree of satisfaction with existing processes.

In terms of transparency, the overall assessment was that transparency was extremely important in its own right, and that it was in everyone's interest to have open information as far as possible (within the confines sometimes of strategic negotiating positions). Civil society representatives generally believed they were given ample information about trade and environment issues within the WTO, and generally about other international negotiations where trade and environment issues arise. The MAI was often noted as the exception to this situation where one NGO has used (and is still pursuing) legal proceedings to gain access to information. Civil society representatives felt generally well informed of positions taken by Australia in international fora, and received debriefing after important meetings outlining the positions taken by key negotiating partners. This relatively high degree of transparency was felt by respondents to allay fears and suspicions about negotiations which would otherwise arise.

Going beyond transparency of information toward consultation as an input into policy development, the situation becomes a little more ambiguous. From the point of view of officials, the opportunity to hear the views of civil society is felt to contribute to the formulation of policy. Views of different interlocutors would generally be summarised in submissions or advice to Ministers and Cabinet. Consultations therefore do serve to inject civil society views directly into Cabinet decision making processes. Knowledge of the responses likely to be made by various groups on a particular policy decision was felt to have an influence on positions actually taken by the Government.

On the other hand, representatives from the environment side tended to feel there was generally a very limited degree of flexibility in policy positions brought to the consultation table, and that consultations seemed to be opportunities for the Government to explain its position, rather than coming with open minds and actively seeking ideas. They appreciated the opportunity to provide input, but felt some frustration that their views were not then reflected in Government positions. Business representatives by contrast felt that there had been an improved understanding of economic considerations in international negotiations, and that some credit was due to public consultation processes. Each category

of participants tended to agree that consultations where interested parties from all sides were present together had improved mutual understanding and had fostered more consensus than would have otherwise been the case. This highlights perhaps the differing expectations that participants may have in terms of what consultation can achieve.

From the perspective of officials, perhaps the main factor limiting the effectiveness of consultation processes as policy development vehicles is the degree of expertise that civil society has on trade and environment issues. Trade and environment in general is not an area to which most business or environment groups can afford to attach high priority and resources. Consequently there are only few individuals with sufficient expertise to make significant input, and there tends to be reasonably high turnover of individuals in these positions. This problem can be somewhat less acute in the more specific context of current negotiations such as the Biosafety Protocol, but remains nonetheless.

This same limitation on the effectiveness of consultation is seen from the perspective of civil society as one of inadequate resources. Industry associations and public interest groups can feel overwhelmed with the quantity of paper involved, and do not have enough people to deal with these issues effectively. Environment groups in particular believe there is a case for public funding of their participation.

Some other suggestions for how to improve consultation processes were made by participants. One is that greater use be made of the possibilities afforded by the Internet for interactive dialogue between consultative meetings. The idea was that an electronic forum could be used not just for information diffusion from the Government, which is well advanced, but for dialogue and information exchange among participants and their constituents. The Department of Foreign Affairs and Trade is examining this possibility.

Other suggestions for improving the quality of consultation procedures in general were made by the Australian Conservation Foundation in a written submission to the current review of the treaties making process. The ACF has proposed several changes to procedure. They propose that standardised protocols and procedures be established to provide staff with clear guidelines on how to conduct public consultations. They suggest that professional facilitators should be engaged to improve the effectiveness of communication in public meetings. They propose that an external treaty liaison officer be appointed for each treaty to liaise with the public in an ongoing manner, closer to the NGO community and for less cost than government-run meetings.

In conclusion, participants are generally satisfied with the level of transparency of information on trade and environment issues (the MAI negotiations providing a significant exception). They feel well informed of Australia's policy positions taken in international fora and of the general dynamics of international negotiations. Effective consultation is the more complex subject. Public consultation is well entrenched as a normal part of conducting government business. Officials see value in being aware of community opinions and incorporate these views into advice to Ministers. Business representatives interviewed were generally more comfortable with consultation processes which they saw as well structured, well documented and a good opportunity to hear the views of non-business non-government organisations. They felt consultation was increasing consensus, albeit slowly. Environmental representatives were somewhat less comfortable with the formal processes, but valued the consultation opportunities nevertheless. There is inevitably frustration with the fact that government policy is often at odds with their views. The main constraints were seen to be inadequate resources and expertise in all civil society to treat these issues as priorities and therefore make meaningful contributions to policy debates.

CANADA

Two general approaches can be identified in which the (federal) Government of Canada addresses transparency and public consultation objectives of relevance to trade and environment policies:

- a) Statutory obligations related to public access to information and related obligations; and
- b) Informal and ad hoc stakeholder and consultative processes undertaken by different federal departments involved in issues related to trade and environment.

In the course of assembling material on the various mechanisms and processes in place described in sections I and II below, officials in Environment Canada; Department of Foreign Affairs and International Trade; and the Privy Council Office were contacted. In the final section, the experience with transparency and consultation practices are set out based on the interviews with the following NGOs: Canadian Pulp and Paper Association; International Institute for Sustainable Development; and the Sierra Club.

Statutory provisions on transparency and access to information

The *Access to Information Act* (AIA, 1983) is the key legislative requirement covering access by the public to records under the control of federal department: the Act establishes an enforceable right of access to federal governmental information to the public. To obtain records, the AIA requires a written request for records by the public be made to the proper department. That request needs to be detailed so as to allow the department to make a “reasonable effort” to finding the record.

Under the Act, an independent Office of the Information Commissioner has been established, which reports to the Canadian Parliament. The Commissioner is a kind of “information ombudsman” with authority to investigate complaints from the public about public access to information, as well as seek formal judicial review where requests have been improperly denied. The Commissioner reports annually on the implementation of the AIA, including reports of public complaints and their disposition, as well as emerging barriers to access to information.

Various exceptions are identified in the AIA, including both mandatory and discretionary exceptions to information disclosure. Examples of allowable exemptions include information obtained in confidence from foreign governments or international organisations unless consent is provided to the information disclosed; third-party trade secrets or financial, commercial, scientific or technical information that is confidential unless the third-party consents to a public disclosure, or unless disclosure is in the public interest insofar as it relates to public health, safety or the protection of the environment.

1995 amendments to the *Auditor General Act* established the position of Commissioner of the Environment and Sustainable Development within the office of the Auditor General. The Commissioner reports annually to the House of Commons on environmental and sustainable development matters, including progress made by federal departments and agencies in meeting their sustainable development obligations.

The 1995 legislation also included amendments to ensure that the environmental effects of government expenditures are formally considered in the course of the Office's ongoing audit work. A petition process was also established as a vehicle for Canadians to register their concerns about specific environmental and sustainable development issues that fall under federal jurisdiction, and to obtain a ministerial response to those concerns.

Once the federal Cabinet has approved a policy in principle, draft regulations are published in Part I of the *Canada Gazette* for several months to allow the public adequate opportunity to comment on proposed regulations prior to their passage. In addition, federal institutions are required to demonstrate, by way of a regulatory impact analysis statement that must accompany the draft regulation, that the public has been consulted.

Environment-related transparency provisions

The *Canadian Environmental Assessment Act* (CEAA 1995) represents the main federal legislation setting out the public's legal right to access to information associated with environmental assessments at the project level. It also provides for public participation in the environmental assessment process. Although the Act has not been used explicitly in assessing the environmental effects of economic policies, including trade liberalisation policies, the procedures relating to transparency and public participation are nevertheless of indirect relevance to trade-environment issues, particularly with regards environmental reviews of trade agreements.

Among the key objectives of the Act is to ensure sufficient opportunities for public participation in the environmental assessment process, and to that end the Act requires federal authorities to establish public registries to assist in the public's access to records of relevance to environmental assessments.

The Canadian Environmental Protection Act (CEPA) establishes the duties of the federal government regarding providing information to the public on the state of the Canadian environment, as well as to encourage the participation of the public in decision-making that affects or may affect the environment. For example, CEPA requires the federal Minister of the Environment to publish in the *Canada Gazette* notification of substances to be evaluated for toxicity, the toxicity declaration of substances, and proposed regulations and orders made under CEPA. Any person may file a notice of objection to the proposed regulation within 60 days of publication, and the Minister may establish a Board of Review to investigate the objection.

Following a 1995 report from the Parliamentary Standing Committee on the Environment, the government has tabled a new CEPA that proposed the establishment of an electronic public registry.

Stakeholder and consultative processes

Various federal departments, including Foreign Affairs and International Trade; Natural Resources Canada; Industry Canada; and Environment Canada, are involved in different aspects of trade and environment, and undertake informal public consultations. Given the wide range of departments involved, this Note provides some examples of initiatives underway in the two lead departments dealing with trade-environment issues – Foreign Affairs and International Trade and Environment Canada.

The *Department of Foreign Affairs and International Trade (DFAIT)* undertakes public consultations on policy issues, including pending negotiations and other issues, in two ways: individual divisions within the Department initiate informal consultations on various issues of public interest, and through the Canadian Centre for Foreign Policy Development.

DFAIT organises periodic, informal consultations with representatives of civil society on various issues related to trade and environment. Rather than a formal mechanism, consultations are generally held prior to specific international meetings, to help NGO participants prepare to attend or follow such meetings. Examples include consultations organised by the Department for business and environmental NGOs attending the March 1999 WTO High Level Symposium on Trade and Environment, as well as consultations organised in support of various UN meetings, including the UN International Forum on Forests and the Convention on Bio-diversity.

More formal consultative mechanisms are in place, such as C-Trade meetings for consulting with provinces and territories, and the Sectoral Advisory Groups on International Trade (SAGIT) for consulting with the non-governmental sector. There are 14 SAGITs; each one is comprised on senior business executives with some representation from industry associations, labour/environment, and academia. Among the SAGIT groups is a new Environmental SAGIT. Initially, there was a question whether the group would address trade policy issues related only to the environmental policy sector. At a recent meeting, agreement was reached to adopt a broader mandate by including policy issues related to trade and environment. Other SAGITs may also address different aspects of trade and environment as well; more specifically the SAGITs dealing with Agriculture; Energy, Chemicals and Plastics; Fish and Sea Products; Forest Products; Mining, Metals and Minerals; and Services. Recommendations produced by the different Sectoral Advisory Groups on International Trade are submitted directly to the federal Minister of International Trade.

A recent example of soliciting public input to the trade agenda was the *Canada Gazette* Notice of "Consultations for Trade Negotiations" (6 February 1999) in which the Government of Canada announced it plans to seek "the opinions of Canadians on the scope, content and process of negotiations to establish the Free Trade Area of the Americas (FTAA) and for the expected negotiations at the World Trade Organization (WTO). The government believes that ongoing, broad-based consultations with the provinces, the business sector, and the public at large are essential for Canada to identify its negotiating positions and objectives. Views on various trade-related issues, including the "social dimensions" of trade, including environment, labour and development" are sought through the Public Consultation process by 30 April 1999.

As a complementary process to the notice for Public Consultation issued in the *Canada Gazette* (6/02/99), the Parliamentary Standing Committee on Foreign Affairs and International Trade announced in early 1999 that it would conduct cross-country hearings on international trade and the future negotiations at the WTO. Among the priorities of the Standing Committee is a commitment to include as many views from Canadians as possible in future negotiations, as well as a commitment to "open up the process" of trade policy. In his statement to the Standing Committee, the Minister of International Trade noted both the concerns of the public about international trade, as well as emphasising that "all trade is local" and therefore an objective of the Committee's work is to "encourage public participation in the global economy." The Parliamentary Standing Committee on Agriculture has undertaken similar hearings on different aspects of international trade and there is a major Agricultural conference in April co-hosted by the federal and provincial governments and the industry.

In addition to the informal public consultative procedures, the Department also maintains an "Enquiries Centre" which provides a toll-free telephone service for the public. The service is intended to respond to general inquiries about different aspects of foreign policy, including trade policy, as well as providing a referral service to departmental experts in response to specialised queries. Information services also include Faxlink and a web site (<http://www.dfait-maeci.gc.ca>) and clients may obtain copies of publications prepared by DFAIT officers. On the DFAIT web site, a revamped Trade Negotiations and

Agreements page will soon be posted with a strong emphasis on Consultations with Canadians. To attract interest and views, discussion papers have been developed, including one on trade and environment. Further activities are also being planned, such as the multi-stakeholder consultations with various civil society organisations.

In addition to the statutory obligations noted above (CEPA and CEEA), a broad range of activities related to public consultation exist in *Environment Canada*, both directly related to trade and environment, as well as indirectly related to various environmental quality and policy issues which may have indirect relevance to better trade-environment integration. For example, numerous initiatives are undertaken to seek public input and consultations on proposed regulations and policy discussions, including the issuing of the *Environmental Consultations Calendar*, which updates and itemises various upcoming consultations with stakeholders interested in proposed regulatory changes.

The Department's *Green Lane* Web-Site provides updates both on general policy questions related to such key areas as Climate Change, Clean Air, Clean Water and Nature, as well as specialised topics such as Environmental Law Enforcement and Eco-Efficiency, as well as more technical information. For example, the *Green Lane* provides detailed information in relation to toxics and chemicals, as well as providing information on public meetings.

A related area is the work of the Canada-Wide Standards (CWS) initiative, convened under the Canadian Council of Ministers of the Environment (CCME). The CCME is created to promote co-operation and co-ordination of various environment-related inter-jurisdictional issues such as waste management, air pollution and toxic chemicals, with a view to proposing nationally consistent standards to relevant jurisdictions (federal and provincial). As part of its work, the CCME also issues a Consultation Calendar providing prior notice of work in particular areas, such as multi-stakeholder workshops and meetings, such as one on Canada-Wide Standards for Particulate Matter and Ozone, held in the spring of 1999.

In addition to addressing public participation in the formulation of domestic regulations and policies, public participation is also sought in the negotiation of various international environmental agreements and environment-related accords. For example, Canada took a lead role in promoting transparency and permanent participation of diverse groups, including representatives of the native peoples, non-governmental organisations, community groups and others on the Arctic Council. Public consultations have also been sought in the recent negotiations towards a UN Convention on Persistent Organic Pollutants (POPs) under UNEP including on-going input from the industry sector. This position draws upon Canada's experience in industry consultations with regards the negotiations under the auspices of the UN ECE Protocols on POPs and Heavy Metals. Similarly, Canada has worked with NGOs in relation to the Convention on Bio-diversity, including inviting select non-governmental organisations to be part of the national delegation to the recent Conference of the Parties to the Convention, as well as undertaking on-going consultations with industry and environmental NGOs on the draft Protocol on Biosafety.

Perhaps the most extensive area of public consultation currently in place relates to Canada's public outreach in issues related to the Climate Change Convention and its Kyoto Protocol. In all, some 450 experts from all levels of government, the private sector, environmental groups and other groups participate in over 15 *issues tables*, with each table co-chaired by a government and non-governmental representative. Public consultations and partnerships also form an integral part of the Greenhouse Gas Emission Reduction Trading Pilot (GERT), which has initiated one pilot emissions trading scheme, and which is based on a multi-stakeholder process with the private sector, environmental, labour and other groups. In addition, a Stakeholder Advisory Group comprised primarily of the private sector and NGOs prepares recommendations to the Government of Canada on climate change negotiations.

Among the autonomous organisations dealing with different issues related to trade-environment is the National Roundtable on Environment and Economy (NREE). Established by an Act of Parliament in 1994, the Roundtable is charged with examining the relationship between environmental and economic issues from a variety of perspectives. Among the issues examined by the NREE is trade and environment, economic instruments, eco-efficiency, sustainable transportation and Aboriginal Communities and Resource Development. A cornerstone of the NREE has been its strong commitment to transparency and public participation by a diverse group of citizens representing labour, business, environmentalists, academic research institutes and representatives of Canada's First Nations.

The Commission for Environmental Cooperation (CEC) was created in 1994 by the North American Agreement on Environmental Cooperation (NAAEC) to facilitate co-operation and public participation in fostering conservation, protection and enhancement of the North American environment in the context of increasing economic, trade and social links between Canada, Mexico and the United States. Already a ground-breaking instrument as it relates to public participation, Canada has surpassed the requirements set out under the Agreement. For example, a National Advisory Committee (NAC) of independent citizens, has proved very active in its role of providing advice on CEC matters.

Experience with transparency and consultation practices

General

As a general point, it was noted that measuring the effectiveness on the one hand of transparency and access to information and on the other hand of public consultation processes remains difficult, since they represent two different objectives. Various mechanisms are in place at the federal level to inform the public of proposed policies and regulatory changes, including statutory and discretionary actions taken by different departments. Such mechanisms are viewed as being efficient in informing the public of upcoming issues, as well as advising the government of stakeholder views. However, they are viewed as being somewhat less successful in providing a genuine exchange of views between a wide selection of civil society and the government.

Transparency and access to information

Within the overall context of a positive assessment on access to information, the following particular points were raised. Certain records continue to be excluded. These include Cabinet-confidences such as Cabinet memos and documents, agendas and minutes, and draft legislation. Excluded documents also apply to any published material or material available for purchase by the public⁴.

Among the practical problems on obtaining information that have been expressed by stakeholders are: (a) the burden rests with the public to have prior and sufficient knowledge of the existence of records that are not public (however, a public inventory of government information holdings is widely available to the public), thereby creating some latitude within departments to either delay responding to requests because an unreasonable effort was needed to identify the record sought; and (b) given the interdisciplinary nature of trade and environment, it may be difficult for individuals to identify the proper Department holding a record. In this regard, it is worth noting that Departments bear no obligation under

⁴. A concern of environmental groups has been the exemption of record disclosure under the AIA if it has already been published elsewhere. Environmental and other data generated by different federal agencies are often protected under *Copyright Act*. While there is recognition of the importance of cost recovery by selling such data on a user-basis, in practice smaller, non-academic organizations working on environmental issues may encounter prohibitively high costs in obtaining key environmental data.

the AIA to take positive steps intended to help the public in submitting focused requests, but they do have an obligation to transfer the request to the institution having a primary interest. However, in practice many governmental institutions provide various forms of assistance in informing the public of reports and other materials available.

Consultation

There was a general appreciation expressed by representatives of civil society about the progress made by Canada in expanding a public dialogue with different groups on matters related to trade and environment. For example, one industry representative pointed to the progress Canada had made in holding inter-departmental co-ordination meetings prior to international negotiations and meetings. Such co-ordination work has often included informal consultations with different representatives of civil society, and this has contributed to the development of a consistent position by Canada at different international negotiations which deal with trade-environment issues, including the WTO, UNEP, different MEA Conferences of the Parties, and Commission for Sustainable Development.

Other groups expressed a concern about the absence of a clear, regular and formalised mechanism designed to interact with civil society on trade and environment matters on an on-going basis. While informal consultations with different stakeholders existed on an *ad hoc* basis, usually prior to international meetings – the consultations organised by DFAIT for Canadian groups prior to attending the March 1999 WTO High Level Symposium on Trade and Environment was cited as an example – some noted the need for on-going mechanisms. At the same time, one group noted that organisations following trade-environment issues should not await briefings from the government, but take the initiative to express their views.

Many also noted that the February 1999 initiative by DFAIT to solicit public views on upcoming international trade negotiations, coupled with the initiative of the Canadian Parliamentary Standing Committee on Foreign Affairs to hold cross-country public hearings on concerns and views about Canada's trade policy, were welcome steps in broadening consultation.

While such initiatives were welcome, some groups pointed to the lack of transparency and public input into the North American Free Trade Agreement (NAFTA) Operational Review which has been underway since 1998. This review has examined the mandates and priorities of the NAFTA Working Groups and Committees. The results were made public on the DFAIT website. Concern was also expressed by several groups about the opaque characteristics of investor-state disputes covered under Chapter 11 of the North American Free Trade Agreement. Statements by the federal Minister of International Trade regarding the need to improve transparency of NAFTA Chapter 11 disputes and other provisions were welcomed. In the context of the NAFTA Operational Review, an *ad hoc* advisory group, representing a cross-section of Canadian interests, was established for informal consultations on issues relating to the implementation of NAFTA Chapter 11, including the investor-state provisions.

Concern has been expressed by some public groups that the Environment SAGIT, which has replaced the now-defunct International Trade Advisory Committee (ITAC) Task Force on Trade and Environment, may be too focused on industry issues related to promoting Canadian exports of environmental goods and services, with insufficient emphasis on policy issues related to trade and environment. However, this should no longer be a concern. It has been made clear by now that the Environmental SAGIT has a mandate to deal with trade and environment policy issues, which includes the environmental industry sector, as well as other sectors dealing with environmental issues.

EUROPEAN COMMISSION

I. Introduction

This study describes the mechanisms used by the European Commission (hereafter the Commission) to promote transparency and to undertake consultation with civil society on trade and environment issues. While the Commission is not strictly speaking a “government”, this case study of the Commission mirrors the case studies on OECD Member countries, bearing in mind the differences in competency between a national government and the Commission. In relation to trade, the European Communities have exclusive jurisdiction, whereas in relation to environmental matters which may have effects on trade, competence is shared with Member States.

In the Commission, Directorate General I External Relations has general responsibility for trade issues. DG XI, Environment, Nuclear Safety and Civil Protection, has responsibility for environment issues. From the Commission, interviews were conducted with officials from DG I and DG XI. From civil society, interviews were conducted with Climate Network Europe, European Environment Bureau, Friends of the Earth Europe, World Wide Fund for Nature, Liaison Committee of Development NGOs to the European Union, Confederation of European Paper Industries, Eurochambers, European Chemical Industry Council, Foreign Trade Association, Government Policy Consultants, Telecommunications Network Operators' Association, and Union of Industrial and Employers' Confederations of Europe (UNICE).

II. Transparency and access to information

The right of access to Commission documents is provided by the *Code of Conduct on Access to Commission Documents*. Subject to certain exceptions, the Code provides that any person may request and obtain access to any written information held by the Commission. The rights under the Code include access to internal documents which have not been finalised and are not intended for publication. Requests will be refused if, among other reasons, disclosure could undermine:

- the protection of the public interest (including international relations)
- the protection of the institution's interest in the confidentiality of its proceedings.

The latest available statistics for the use of the code date from 1997, when total requests for Commission information under the code numbered 745. DG I was the most common target of requests (11.9%), and DG XI was the fourth most common, with 6.3% of the total. Figures compiled for refusals are combined across the Commission services. Access to documents was refused in 10.7% of cases, but almost 50% of refusals were justified on public interest grounds, and a further 23% on grounds of confidentiality of Commission proceedings.

Information about the Commission's activities can also be obtained through its Internet website. The Commission reports that it is making a greater amount of background documents available on the Internet, with DG I reporting that it places its documents relating to the WTO on the website when they are de-restricted, as well as Commission discussion papers.

III. Consultation mechanisms in relation to trade and environment

A. *Issues concerning the WTO*

In June 1996, DG XI convened a conference on "EU Policy and Global Trade and Environment". This conference was organised by European Partners for the Environment and provided an opportunity to discuss with a wide range of stakeholders (environment and development NGOs, industry, trade unions, consumers) the various policy matters addressed in the communication on trade and environment issued by the Commission in February 1996.

More recently, DG I, in co-operation with DG XI, has held a series of meetings on the subject of the relationship between trade and environment/development considerations in the context of preparations for a new Round of WTO trade negotiations.

The first of these meetings, held in November 1998, dealt with the content of the new Round in terms of broad objectives. The second, held in late January 1999, dealt with issues to be included in the Round and the procedures and meetings expected in the lead up to the new Round - including the March WTO High Level Symposia, as well as the scope of the proposed Sustainability Impact Assessment of the new Round. The Commission envisages holding a further meeting in April 1999. While announcing a preparedness to be more open with civil society, the Commission noted at the January meeting that once negotiations commence, timetables will be tighter, and the Commission will not be able to share confidential data in broad public meetings.

Civil society was invited to these meetings on the basis of a data base of those who have previously expressed an interest in the issue to the Commission, as well as by an open invitation on the Commission's website to all interested parties. The consultation session drew an audience representing business organisations, consumers, environment, development, animal rights groups and research organisations from a number of EC Member States. Although no Commission funding was available to assist representatives to attend these meetings, some Commission funding is provided for the general activities of the European Environment Bureau including the soon-to-be-launched Transatlantic Environmental Dialogue project (TAED).⁵

Under the EC's Fifth Environmental Action Programme, the Commission has established a Consultative Forum of experts which is currently working on trade and environment issues. The Forum consists of 30 people representing various categories of civil society including business, trade and NGOs across EC Member States, as well as representatives from the Czech Republic and Norway. Forum members are chosen on the basis of their own skills and expertise from recommendations across the EC. The Forum determines its own work programme. Once adopted, the Forum's reports are published as official Commission documents and sent to Commissioners.

5. The TAED is a project which will be conducted in partnership with NGOs in North America. One of its 5 core topics will be Trade and Environment issues.

B. Other trade agreements

In addition to the WTO Round, there are other agreements which contain trade provisions in the course of development, including the ongoing negotiations under the Euro-Mediterranean Partnership (EUMP).

The EUMP involves the ongoing negotiation of bilateral trade agreements with 12 Mediterranean countries⁶ which commenced with the Barcelona Declaration in 1995. Agreements have been finalised with around half the countries. According to the Commission's responsible unit, DG IB, the negotiations have been undertaken in the public domain, although no public meetings have been held. There is an environmental programme attached to the EUMP with a budget of around 6 million euros, although it is limited to funding projects. Contacts with business organisations to assist in developing business support structures in these less developed economies took place as early as 1995.

C. Environmental policies and agreements

Transparency on trade and environment goes beyond trade issues which have an effect on the environment. Environmental measures such as multilateral environmental agreements (MEAs) and domestic environmental legislation may also affect trade. On these issues DG XI is more directly responsible for transparency and consultation.

DG XI conducts informal briefing sessions with business and NGOs in preparation for and during the negotiation of MEAs on the position the Commission is taking to the negotiations. Sometimes (e.g. meetings of the Commission on Sustainable Development) NGO representatives are included in the EC delegation as observers. The Commission said that non-governmental groups are often present at the negotiation of MEAs, so debriefings after the negotiations are held only when requested. The Commission considers it likely that a debriefing will be held following the recent negotiations on the Biosafety Protocol.

On domestic policies, the proposal of a new Directive in the environment field is regularly preceded by discussion papers or meetings. A recent stakeholder discussion involved a "Brainstorming Workshop" on the Commission's approach to chemicals policy, attended by around 200 participants including regulators in EC Member and applicant countries, international organisations, environmental, consumer groups and trade unions, European and foreign industry groups, and independent scientists.

D. Ad hoc and informal practices

Contact with the Commission can also be made by arranging meetings with appropriate personnel. This type of *ad hoc* arrangement was the way that discussion on trade and environment took place before the instigation of the formal meetings on trade and environment, and remains an alternative avenue. The Commission indicated that, subject to other commitments, requests by civil society for meetings with Commission officials were not refused. However, the Commission noted that industry was more likely than NGOs to request meetings with the Commission, and groups such as UNICE commonly invite Commission officials to its working group meetings.

6. Tunisia, Morocco, Israel, Palestinian Authority, Egypt, Jordan, Lebanon, Algeria, Syria, Cyprus, Malta, Turkey

IV. Civil society reactions on transparency and consultation mechanisms and practices

A. *Transparency and access to information*

Knowledge of the existence of the Code appeared to be limited among NGOs and business, who tend to rely on other means of obtaining information. Few NGOs or businesses reported using the Internet as their main source of current Commission information. Informal contacts in the Commission and in Member States were more commonly cited as sources of Commission documents.

B. *Consultation mechanisms*

1. *On the WTO*

As will be apparent from the above chronology, the informal consultation practices in relation to trade and environment issues associated with trade liberalisation have recently been intensified. Non-business groups attributed the increased attention to consultation to the lessons learned from the MAI, and expressed the hope that this increased openness will be lasting.

Business representatives were generally satisfied with the conduct of the consultation meetings. Meetings were found useful as a forum at which business and non-business groups could hear each other's views. However, some said that these meetings were of limited use for obtaining information from the Commission, as they were already aware, from other sources, of the information imparted at the meetings. Business representatives also reported that individual companies (as distinct from business associations), did not usually participate in such meetings in numbers because their interests are already represented by the umbrella organisations concerned. One business organisation reported that the instigation of these meetings changed the way they approached consultation with the Commission. Whereas previously, they would seek a meeting with the Commission at a time which was suitable to their agenda, it was now necessary for them to abide by the timing of these meetings and to publish a position paper, in order to ensure that their views are heard.

While welcoming such meetings, some NGOs had the impression that the meetings were used as an opportunity to correct their myths and misunderstandings. It was also suggested that the agendas for these meetings should themselves be the subject of consultation.

Some NGO representatives reported that gaining access to background documents and discussion papers from the Commission on its current position in preparing for the trade negotiations was a general problem, and that for this reason it was common that they obtained documents from NGO colleagues via the Member States. In the case of the recent meeting, the Commission background paper was not provided in advance as it was subject to change as the Commission's position evolved preceding the High Level Symposium in March. The Commission is, however, undertaking to put more texts on its website as quickly as possible as part of its policy of greater transparency.

In relation to the *content* of the consultative meeting on trade and environment, a number of non-business groups expressed concern about the transparency of the Sustainability Impact Assessment of the new Round (SIA) which has been announced by the Commission. The Commission's procedure is as follows- an advertisement seeking expressions of interest has been published in the *Official Journal*, and interested consultants are invited to send their expressions of interest to DG I. The terms of reference for the study will be sent to those fulfilling the criteria set out in the *Official Journal*. The first stage of the consultant's brief will be to develop a methodology for best practice and the second stage will involve applying that methodology. The terms of reference will require the consultant to undertake public

consultation. According to the Commission, the tendering process including the setting of the terms of reference need to be determined confidentially, so that parties interested in applying for the contract are not able to influence the terms of reference in favour of their own profile. Once the contract has been let, the terms of reference can be made public.

However, non-business NGOs foreshadowed that representations would be made to DG I and copied to other international organisations seeking, among other things, that the process of undertaking the SIA be made transparent by including civil society input to the terms of reference, and providing for public review of drafts of the assessment. The contrary view was expressed by another NGO representative who said that the Commission was being quite open on the assessment, by discussing how the assessment should take place at the January 1999 consultative meeting. One NGO indicated that it was a good sign of integration of environmental considerations across the Commission that the directorate responsible for trade was authorising the assessment.

2. *Other trade agreements*

Issues raised by NGOs included that negotiations (and the conclusion of agreements with some countries) have been undertaken without seeking public opinion, and as a result important environmental safeguards to prevent further environmental degradation in the region have not been included in the agreements. A Conference of Ministers of the 27 countries in the EC -Mediterranean area to be held in April 1999 in Stuttgart will receive reports of a range of studies on the implications of the agreements on different sectors, but, according to NGOs these will not include environmental effects.

The Commission indicated that it will facilitate an NGO forum in conjunction with the Ministerial meeting and that it has heard requests for more specific environmental assessment of the Partnership. While such assessment is not currently planned, it may be undertaken at a later stage. NGOs proposed that transparency could be improved by giving NGOs observer status at meetings to be held in Brussels preparatory to the Ministerial meeting.

3. *On environmental policies and programmes*

Business representatives indicated that they were rarely taken by surprise by new environmental policy proposals, due to the Commission's practice of issuing Green papers to ascertain the views of all parts of civil society in advance of a proposal.

One industry group indicated that it was very satisfied by its dialogue with the Commission over the Convention on Prior Informed Consent. This dialogue had resulted in a Convention which was based on scientific principles, and due to its acceptability across a wide range of countries, is likely to have a less trade restrictive effect than might otherwise have occurred.

4. *Ad hoc and informal practices*

All civil society groups reported that Commission officials were readily available for ad hoc meetings. Many civil society correspondents commented that it was relatively straightforward to identify the appropriate Commission personnel with whom to discuss a particular proposal. This was contrasted with Member State governments, where the civil service tends to be larger and more intricate.

A business representative also offered comparison of the Commission's informal procedures with his experience of the Netherlands and Germany. He reported that it was necessary to be more proactive to influence decisions in the Commission. He contrasted this with what he described as Germany's more structured approach of inviting people representing different sectoral interests each time a ministry considers setting new rules.

Business representatives reported that while they were generally satisfied with the accessibility of Commission officials, there were some areas of weakness. One business representative no longer expected to receive a reply to letters sent to the Commission.

In describing their regular channels of communication with the Commission, representatives reported using their contacts across the Commission to put their view forward via the interservice consultation procedure. For example if DG XI had not incorporated their views, business would make representations to DG III (responsible for industry policy). The image presented was that Commission directorates have particular constituencies, and that through interservice consultation the different views of these constituencies are synthesised into Commission policy.

Business also reported that the industry body UNICE was an important channel to the Commission on trade and environment issues. Substantial industry groups would determine the appropriate level to pitch its submissions to the Commission, if necessary, contacting Commissioners or taking large delegations to meetings with the Commission. Large industry associations appeared to be more strategic in their relationship with the Commission seeking to influence the Commission at the earliest possible stage in the preparation of proposals. However as noted above, some parts of the business community are yet to take an interest in global trade issues. Others reported that it was often not possible to tell what effect, if any, representations have on Commission policy.

On the other hand, NGOs tended to be more reactive. Although several NGOs expressed regret that the Commission did not seek out their superior expertise of NGOs in some areas, they said that a positive reception was often received when NGO analysis or expertise was proffered. A number of NGO representatives said that their views are listened to politely and even sympathetically by Commission officials. However the same people said they were not able to judge whether there was any change in Commission positions as a result.

V. Summary and civil society's suggestions for improvements

The Commission is clearly making an effort to improve transparency by holding public meetings with a broad range of civil society on the issues arising from the WTO Round. Civil society was predominantly pleased with the introduction of these meetings, and positive about the future of the process.

Proposals for improvement included: consultation with civil society at the stage of agenda-setting for the meetings; allowing more time during the meetings for two way discussion of issues (as done at the January 1999 meeting), rather than set speeches from the Commission officialdom; improving access to papers reflecting the Commission's current thinking from Commission sources; and making papers available sufficiently early to allow for considered discussion at the meeting.

Many commentators have said that it is too early yet to predict the extent to which this meeting process will have an effect on the Commission's negotiating position in the Round. However there is an expectation that there will be less opportunity for such broad consultation closer to the start of negotiation. The Commission said this was difficult to avoid when in negotiating mode as to make public details of the Community's negotiating position would effectively weaken that position. Some civil society representatives have expressed a fear that negotiations will be used as an excuse for secrecy.

In relation to trade issues outside the context of the forthcoming WTO Round, there appears to be a reduced degree of engagement with civil society and particularly with environment NGOs. However the Commission is aware of these concerns but wants to prioritise transparency and the undertaking of the impact assessments of such trade measures in an open way.

In relation to issues arising from environmental policies, there appears to be greater transparency and consultation with both business and environmental NGOs, in part due to environmental NGOs longer history of interest in these issues.

FRANCE

I. Introduction

This case study describes the mechanisms and practices, which are in place in France for ensuring transparency and engaging civil society in consultation on trade and environment issues. The study is based on information collected through interviews with government officials about the transparency mechanisms and practices, and with civil society representatives, on their experiences with the operation of these. Given the fragmented character of consultation activities in France, the description is far from exhaustive. From the government side, interviews were primarily conducted with officials from the Ministry of Territorial Development and Environment (Ministère de l'aménagement du territoire et du développement), the Ministry of Economy, Finance and Industry (Ministère de l'économie, des finances et de l'industrie) and the Department of External Economic Relations (Direction des relations économiques extérieures, or DREE) and the Ministry for Co-operation (Ministère Délégué à la Coopération). From the non-governmental side, interviews were conducted with representatives from SOLAGRAL (Solidarités Agricoles et Alimentaires), RONGEAD (European NGO Network on Agriculture, Trade and Development), Les Amis de la Terre - France and the MEDEF (French Enterprises Movement). It should be recalled that, although the associative movement in France is extremely strong (some 730.000 associations were identified in the February 1999 National Meeting of Associative Life), internationally oriented NGOs tend to focus on development issues, rather than on international economic affairs. The study covers the extensive consultation activities in the field of development and co-operation only to the extent that they relate to the trade and environment debate.

II. Background

The French State is characterised by its tradition of a highly centralised administration. This tradition has fostered an ethic of top-down administrative decision-making in the interest of citizens, that is, the role of the administration is largely one of guaranteeing the efficiency of public policies and the primacy of general interests over individual interests. As a result, decision-making has tended to be monopolised by the administration without intervention by the public, and there has been in the past comparatively little sharing of information by the French administration with affected groups. In 1978, the Law on Access to Administrative Documents required administrative documents on individual cases or general decisions to be accessible to the individuals affected. The law instituted a Commission on Access to Administrative Documents (CADA) to hear complaints with respect to withheld information. In 1979 another law further required that the reasons for administrative decisions be explained to individuals affected.

In France, consultation has been traditionally used primarily as an information-gathering technique. It is intended to improve the quality of decisions by collecting advice from qualified experts or by collecting information not otherwise accessible to the administration. Qualitative information collected through consultation can be divided into two categories: technical information from professionals such as scientists or lawyers, and impact and practical information from labour and business interests and other affected groups such as consumers and non-governmental associations. This kind of information is used to

identify potential implementation problems and to avoid bureaucratic solutions in favour of more practical approaches. The tradition of seeking consensus building is only present in some policy sectors, such as agricultural policy.

In the late 1980s, communication between the administration and the public became a government priority. A number of reforms took place, aimed *inter alia* at improving the evaluation of the effectiveness of public policies and of simplifying legislation and administrative procedures affecting businesses. However, consultation with affected groups was not a central part of these reforms and has never been formalised in law, but instead has always been established through lower level regulations such as internal directives of the government. The result was to give ministries considerable discretion in when and how they consult affected groups. This led to consultation practices that tended to be informal, rather *ad hoc*, and conducted quite differently by the various ministries. In particular there was no practice of organising large-scale consultations involving many interest groups, but to depend on advisory bodies with more limited representation.

An important turning point in the political approach to civil society participation took place in recent years. A 1997 circular from the Prime Minister's Office⁷ on the organisation of government work recalled that "*decision-making frequently requires consultation with representatives of affected interests within civil society. Provided that such consultation does not create unacceptable delays in the elaboration of decisions, (Ministers) should give it all necessary attention. The quality of dialogue that public authorities undertake with representatives of various parts of civil society is not only the token of their respect for them but also the guarantee of success of State action.*"⁸ This explicit expression of political will seems to have considerably influenced practices of the political leadership of the government, filtering down to the entire administration. Parts of the administration that used to limit dialogue with civil society to business and labour interests have gradually opened themselves to other parts of the society. Public demonstrations around the MAI negotiations, unprecedented in terms of international economic affairs, brought awareness of the need to consult with civil society and thereby improved the position of NGOs. Although such consultation still takes on an informal character, it seems today to have found its place on the administration's priority list.

III. Transparency and consultation mechanisms

A. Formal standing consultation mechanisms

Standing mechanisms for consultation include the Social and Economic Council (Conseil économique et social or CES) and the General Planning Commission (Commissariat General au Plan, or CGP). These tripartite management structures, which institutionalise interest groups into the decision-making process, are less important than in some other European countries. They have declined in influence in recent decades, especially since the 1980s, as privatisation and more liberal economic policies have emerged. The CES, composed of representatives of business and labour organisations, was established in the French Constitutions of 1946 and 1958. Formal consultation with this body is mandatory on draft legislation or, more generally, issues of social or economic character (art. 70 of the French Constitution). CES offers no open debate with the public and participants to the hearings it organises are selected on the basis of their specific expertise. The CGP, created in 1946, draws up the five-year economic plans before they are presented to the CES for advice. The CGP is also composed of representatives of the major social and economic groups, but civil servants participate more actively in its work.

7. Circulaire du 6 juin 1997 relative à l'organisation du travail gouvernemental (J.O. n°131 du 7 juin 1997)

8. Unofficial translation by the Secretariat

Since the 1950s less formal consultative committees have proliferated within the ministries. Consultation with these bodies is often mandatory although the administration has complete discretion to accept or reject the advice solicited. A 1993 circular from the Prime Minister's Office reminded regulators of the necessity for "consultations with organisms other than the Council of State." Today it is formally expected that the consultative committees will be consulted at an early stage in the regulatory process, during the elaboration of the regulation. In practice, however, regulators are turning to even less formal working groups that can be created and disbanded more easily.

B. *Informal transparency and consultation activities*

As noted above, informal contacts between the French administration and civil society have been the main avenue available for involving civil society to the policy-making process. As a result, each Ministry has put in place its own networks, with which contacts are undertaken in a preferential manner. Contacts taken at the initiative of the administration were primarily addressed to business and professional interests, with the aim of identifying potential impacts of proposed regulation on economic activities. Other parts of civil society, namely environment and development NGOs, benefited rarely from such contacts beyond the Ministry of Environment and the Ministry for Co-operation. This situation is changing at present, as is demonstrated *inter alia* by the provision of counsellor posts in charge of relations with civil society in the Ministry of Economy, several years after such a post had been provided for in the Ministry of Co-operation in 1981. However, contacts of other Ministries with environment and development NGOs are often still undertaken at the initiative of NGOs, or through the intermediary of Environment or Co-operation administration. Yet, even if the administration still adopts a reactive attitude towards civil society, it tends to be more and more open to requests for information.

Economic Ministries, such as the Ministry of Economy and Finance and in particular the DREE, have a long tradition of regular contacts with French businesses in preparation to domestic regulations and to international negotiations to which those services were involved. With respect to trade negotiations, consultations with businesses, including the MEDEF, have always been undertaken well in advance of the launching of the negotiations at the initiative of the DREE. For instance, consultations in preparation of the Millennium Round have been initiated in December 1998. In the context of such consultations the administration provides businesses with extensive information on the prospective agenda, the issues at stake and their first reflections concerning the negotiating positions to be adopted. After the launching of the negotiations, information and consultation meetings between the administration and businesses take place practically every month. Consultation with business and environmental NGOs is also undertaken back to back with co-ordination meetings taking place in Brussels among EU members in advance of WTO meetings, as well as through the French Permanent Mission to the WTO in Geneva. Furthermore, the Ministry of Economy and Finance currently envisages the establishment of a more regular mechanism for consulting civil society by using and expanding on the focal points recommended in the OECD Guidelines on Multinational Enterprises.

On the other hand, the mobilisation of the Ministry of Economy and the DREE with respect to environmental issues seems more recent and is often limited to responding to requests for information by industry representatives. However it benefits now from the clear commitment of its political leadership. Although environmental issues raised in the WTO have been part of the usual consultation mechanisms covering trade matters, the relevant (non-environment) Ministries pointed out that they were still in a learning phase with respect to the negotiation of MEAs, such as the Climate Change Convention. The negotiation of the Kyoto Protocol has triggered an increased awareness of the economic impact of such instruments and of the importance of associating civil society representatives so as to avoid misunderstandings and allay unjustified concerns. Consultations in this context are primarily undertaken with businesses and business associations, but contacts are increasingly made with environmental NGOs,

often through the intermediary of the Ministry of Environment. For instance, to facilitate NGO participation to the March High Level Symposium in Geneva, NGO representatives were included in the French Delegation.

The Ministry of Environment has more frequent, regular and close contacts with environment and development NGOs. Frequently, consultation networks in areas that lack important public mobilisation have been developed at the initiative and active support of concerned civil servants. In the specific field of trade and environment the Ministry entrusted SOLAGRAL, a development NGO with an important researcher membership, to build up such a network and organise brainstorming sessions on questions of concern. These brainstorming sessions, bringing together governmental experts, NGOs and scientists, focus on important trade and environment themes chosen by the Ministry of Environment, which provides the financial support for their organisation. The agenda, choice of invited persons and organisation modalities are left to the discretion of SOLAGRAL. The latest sessions organised were about investment regulation and sustainable development (June 1998) and about property rights, institutions and markets with respect to natural resource management (November 1998). This initiative allows constructive exchange of views and the elaboration of synthesis documents on the positions of all participants. Similarly, Comité 21, an NGO concerned with issues of implementation of Agenda 21, frequently organises debates among environment and development associations, business associations and academics, with the financial support of the Ministry of Environment.

The Ministry of Environment consults environment and development NGOs in advance of MEA negotiations, Conferences of the Parties and other international events. Frequently such consultations are pursued during the course of such events, namely by incorporating NGOs, as well as Parliamentarians to the French Delegation participating in the events. Another recent example of such involvement was the Buenos Aires Conference of the Parties to the Kyoto Protocol.

C. *Ad hoc consultation mechanisms*

In an effort to upgrade the interaction between the administration and civil society, especially following public mobilisation against the MAI negotiations, the French government initiated a series of *ad hoc* consultation activities on specific prominent issues. Each of these "consultation missions", entrusted by the Prime Minister to a person with recognised expertise in a given field, aimed at helping the French government formulate a strategy on such issues, namely by identifying the general opinion of French society on them. Consultations in this framework were addressed both to personalities of the political or scientific communities and at associations representing the wider public, although the method and modalities were entirely left to the discretion of the consultant. The first and most widely known of these missions was the one entrusted to Catherine Lalumière, European MP, in April 1998 after the interruption of the MAI negotiations. The report, covering *inter alia* the opinion of French society on the negotiation and the issues at stake, was delivered in October 1998. It was based on a series of interviews with members of the government, the Parliament, representatives of business associations as well as isolated firms, trade unions, professional associations from the audio-visual sector and environment and development NGOs. However, there has been no single forum allowing the differing views to be confronted.

In the same vein, Laurence Tubiana, researcher at INRA (National Institute of Agronomic Research) and expert on sustainable development issues, has been entrusted with a consultation mission on environment and sustainable development. The aim of this mission was to prompt reflection on environment and sustainable development so as to help formulate the French government strategy in the framework of multilateral organisations, such as the WTO or the UNDP, European co-operation activities, such as the Lomé renegotiations, or bilateral co-operation activities. Her report is due by summer 1999.

Finally, an unprecedented “direct” citizens’ consultation was organised by the Parliament last year on the issue of the use of genetically modified organisms (GMOs) in agriculture and food. The conclusions of this consultation, undertaken by the Parliament Office for the Assessment of Scientific and Technological Choices (Office parlementaire d’évaluation des choix scientifiques et technologiques - OPECST) were then incorporated in an important report by MP Jean-Yves Le Déaut and taken into account by the Prime Minister when adopting the French policy on GMOs.

Box 1. Citizens Conference on the use of GMOs in agriculture and food

At the end of 1997, the authorisation to cultivate a variety of genetically modified maize in France has prompted an important controversy between partisans and opponents of GMOs. The government thus decided to organise a public debate in order to have a better sense of the public sentiment on this matter. In December 1997, the organisation of this debate was entrusted to the OPECST. The rapporteur, MP Le Déaut decided to undertake a series of hearings, including a public hearing where different views could be confronted, to establish an open forum on the Internet and to instigate a conference of laymen having received complete information on the subject.

Participating citizens were selected by a poll office among a sample of people that had no particular opinion nor any stakes on the question, diversified on the basis of criteria of sex, age, profession, political and religious preferences, etc. The fifteen people thus selected were offered two weekends of training, where all relevant information and all contradictory positions were presented to them to the extent possible. A public conference, organised on the 20th and 21st June 1998 gave the opportunity to the panel of citizens to question a roster of persons (experts, politicians, representatives of NGOs and of business interests) identified by them. Following the conference, the panel of citizens elaborated their conclusions on the issue, which were then incorporated in the report by MP Le Déaut.

IV. Experience with transparency and consultation

This section synthesises the responses of persons interviewed on their views and experiences with specific aspects of the transparency and consultation procedures. Unless otherwise specified, the responses refer to the whole range of consultation mechanisms.

A. Participation

The issue of comprehensiveness has been among the most challenging aspects of consultation activities in France. While the participation of business interests seems fairly satisfactory, the participation of environmental NGOs in the trade and environment debate has been relatively weak. According to the administration and NGOs alike, this situation has been at least partly due to a relative lack of interest on behalf of NGOs for these matters. Actually, while there is in France a reasonably wide associative movement on environmental issues, it focuses to a large extent on local matters. In its first attempts to identify contacts interested and knowledgeable on the interaction of the environment and the economy, the administration had to address to a number of development NGOs, which were more familiar with the concept of sustainable development. These NGOs, which often combine activism with

research activities, suffer from low membership as compared to their North American counterparts and from a consequent lack of financial independence. While branches of international NGOs, like Greenpeace-France, or Amis de la Terre (Friends of the Earth), can rely on support from their international structures, these NGOs are often partly financed by their consulting activities and depend for survival on financial assistance from the administration. Such assistance takes the form of structural and operational support by the Ministry of Environment, the Regional Councils, as well as the European Commission. In parallel, the Ministry of Environment entrusts various missions of research or organisation of public debates to NGOs mastering the necessary expertise. Furthermore, civil servants frequently rely on the actual participants to their networks, who undertake to contact other NGOs and attract them to the consultation process. The brainstorming sessions organised by NGOs, like SOLAGRAL, are also good opportunities for meeting and identifying new contact persons.

In order to widen the existing networks the administration needs thus to be quite proactive both with respect to financing and to outreach activities. To the extent that this is not yet the case in many parts of the administration, the dialogue with non-business parts of civil society is still arduous. Furthermore, the identification of persons or groups that can be considered representative is not an easy matter. Beside the Parliament, the groups that have an impact in the consultation process are those which are well organised, such as the professional and business associations, or the most outspoken. Some civil servants feel that French branches of international NGOs convey positions formulated in their international headquarters, which are sometimes at odds with what French civil society really believes. However, this opinion is not shared by other parts of the administration.

B. Documentation

Information on trade and environment issues is disseminated either in the framework of the described consultation processes or made available on request. The possibilities for information dissemination offered by the Internet have been insufficiently explored, but lost time is now gradually made up by all concerned services. However, environmental NGOs are largely dissatisfied by the amount of information put forward by the administration otherwise than upon their own request. Some complaints were even expressed with respect to refusals to provide information on GMO field trials. These refusals were due to the lack of sufficient personnel to satisfy the demand.

A criticism expressed by the administration concerned the information provided to federations of professional associations. It was felt that this information was not always satisfactorily distributed to members. In circumstances where federations do not efficiently play their role of intermediary it becomes necessary to circumvent them in order to convey the information to its final recipients, i.e. individual interested firms.

V. Overall assessment on transparency and consultation activities

The importance of transparency and consultation activities for the efficient operation of trade and environment policies is today widely acknowledged in France. Even if experiences are still relatively limited and fragmented, it is important to notice that the French government hardly needs any convincing on this issue. A lot of work still needs to be done to better organise and systematise available mechanisms. Civil servants interviewed considered that the current informal activities and in particular their reactive character seriously lack visibility. As a result the French administration ends up being perceived as less transparent than it really is and the increased openness to information requests remains unacknowledged. They noted that today it is no longer sufficient to respond to such requests; administration has to adopt a more proactive stance to communicate efficiently with civil society.

On the other hand, environmental NGOs insisted on the weakness of civil society involvement in this area. Although associations and citizens are today better informed on the interaction of the economy and environment, they felt that an educational effort was necessary to expand the debate away from strictly parochial concerns. The current structure and relative financial weakness of these NGOs active on trade and environment issues makes the financial support of the administration essential for an efficient and fruitful interaction with civil society.

GERMANY

I. Introduction

The focus of this study is on transparency and consultation arrangements operating at the federal level in Germany. This is an incomplete picture for Germany. The federal system in that country differs from the centralised political systems of some of the other OECD countries in that jurisdiction is shared with and at times exclusively given to the Länder, as is the case with the application of environmental laws and regulations. In addition, the creation of the European Union has shifted policymaking powers to Brussels in such areas as trade and other EU policies. As such, the federal government is not the only and often not the most important dialogue partner for German civil society groups.

For this study, representatives from the German government as well as from civil society groups with experience in trade and environmental issues and with existing arrangements for transparency and dialogue have been interviewed. On the government side, officials from the Ministry for Agriculture (BML); the Ministry of Economics and Technology (BMWi); and the Ministry for Environment, Nature Conservation, and Nuclear Safety (BMU) participated. On the side of civil society, representatives from the Bundesverband der Deutschen Industrie (BDI), the Bund für Umwelt und Naturschutz (BUND); GERMANWATCH e.V.; Weltwirtschaft, Ökologie & Entwicklung e.V. (WEED); and the Verband Entwicklungspolitik Deutscher Nicht-Regierungs-Organisationen (VENRO) were interviewed. In addition, the Internet homepages of the German government and the non-governmental organisations (NGOs) interviewed were examined.

II. Background

German civil society has undergone major transformation over the past two decades. Not only have the number of voluntary NGOs exploded, if measured for instance by the number of officially registered interest groups in Bonn but their spectrum has also broadened. Certain segments have developed particularly strongly, including environmental groups. Opinion polls show with consistency that environmental problems rank near the top of all national issues of concern to the German public. The high priority given to the environment is reflected in the network of well organised environmental groups and informal grass-root movements that are active at the federal, Länder and local levels, the emergence and staying power of the Greens as a political party since the late 1970s and the development of strong environmental programs and policies. Not all groups in this or the other segments of civil society however carry the same weight in the political arena. Effective participation and influence in the policy process requires a high level of informedness, good contacts and continuous communication with the policy community, sufficient financial and personnel endowment and credible backing through members.

While Germany's export-dependent business community has traditionally taken a strong interest in trade policy, few other NGOs take a specialised interest in trade. For NGOs focusing on environmental protection or development issues, trade and/or the environment is only one of several policy areas followed. Significant advocacy work at the national level on trade policy issues is carried out by a number

of these groups; still, interest in trade policy and the WTO is growing across the spectrum of civil society. Much of their activities on trade and environmental issues are co-ordinated amongst NGOs informally and on an ad hoc basis.

On the part of the federal government, policy integration on trade and environment is not carried out by any specialised bodies but rather via co-ordination procedures involving many divisions and other organisational structures of the bureaucracy. The Ministry of Economics and Technology (BMWi) is responsible for international trade policy, including WTO negotiations. The Ministry for Environment, Nature Conservation, and Nuclear Safety (BMU) is in charge of international environmental agreements. The Ministry of Agriculture (BML) is responsible for domestic and foreign agricultural policy. Health and environmental regulations is the primary responsibility of the Ministry of Health (BMG), whereas on issues relating to “sustainable development” the BMU and the Ministry for Economic Co-operation and Development (BMZ), which is responsible for development policy and negotiations with developing countries, have joint responsibility.

III. Transparency and consultation mechanisms

A. *Formal and informal mechanisms for access to information*

Although German law does not provide the public with a right of access to information, the framework for obtaining information is relatively open, with the exception of certain sensitive material. There are many ways in which citizens and civil society groups can obtain documentation and information. As a general rule, information is made available to the public upon request. Formal channels for distribution include publications of adopted laws and regulations in the government gazette, press releases, notices in news bulletins issues which individual government bodies regularly publish and a growing body of documents available on the government’s homepages on the Internet. Obtaining reports, legislative drafts and other unpublished documents requires a certain level of initiative on the part of the information-seeker. Direct and quick access to information is most readily available to those groups of civil society that are well organised and can draw on a network of personal contacts among officials in ministries, agencies and the Parliament.

More formal ways include hearings which Ministries as well as Parliament usually hold in the case of legislative initiatives so that every bill will be publicly discussed before it becomes law. Other, more “investigative” procedures for obtaining information exist with the Parliament. In reaction to concerns raised by constituencies, the political parties represented in the Parliament can introduce so-called “small” and “large” inquiries concerning the government’s policies which Ministries will then respond to either in writing or in a hearing. As a last resort, citizens can launch petitions if such inquiries have brought satisfactory clarification.

The government is striving to enhance transparency and openness of the information system. A major effort is going into the further development of on-line information services – the fact that almost every Ministry and agency now has a homepage on the government’s website – testifies to ongoing efforts by the government to carry out an active information policy and make the texts of laws, reports, and other documents more automatically available to the interested public. The possible adoption of a Freedom of Information Act is also being discussed. The SPD/Green Coalition Treaty pledged support for such an Act as one of several initiatives contemplated to strengthen citizens’ democratic rights of participation.

B. *Informal and standing mechanisms for dialogue and consultation with civil society*

a) *Informal consultation procedures*

Consultation with civil society is less based on formal structures than on informal and ad hoc procedures. Many initiatives for meetings are taken by government officials but NGOs also approach civil servants and members of Parliament.

While there are opportunities to participate in public hearings and question sessions in Parliament and networks of personal contacts exist with members of the political parties, the executive branch and in particular the various Ministries are at the centre of the policy process and the focus of advocacy work by civil society.

Issues at the interface of trade and environment typically cut across the jurisdictional boundaries of a number of Ministries and possibly agencies. The two Ministries almost always involved are the BMWi (in the case of agricultural trade BML) and BMU, but the inter-ministerial co-ordination mechanism to develop policies or positions can involve many other Ministries as well. Also, the BMWi has lead responsibility for WTO negotiations and the BMU for MEAs but the other Ministry participates always in the formulation of negotiating positions and is part of the national delegation to the negotiations.

For NGOs wishing to bring their views and concerns to the attention of the government, the “access points” are numerous. Consultation can take place at various stages of policy formulation. Of particular importance for effective lobbying however are the lower working levels of Ministries or agencies, where the initial drafting takes place. Policy proposals and positions become more difficult to modify once they have reached the levels of Minister or Cabinet. Therefore, informal discussions with stakeholders take place from the outset of the drafting process. A civil servant’s need to collect information by drawing on external expertise as well as a network of contacts comes into play here.

A set of common rules for federal ministries in the preparation of laws and regulations, the so-called Joint Rules of Procedures (Gemeinsame Geschäftsordnung, GGO II) constitutes the main framework for public consultation.⁹ According to these rules, ministries are expected to consult and maintain contact with the public. More specifically, GGO II, para 24 states: “*In the preparation of legislation the representatives from the affected professional organisations or interest organisations can be informed and asked for submission of material as well as be given the opportunity to present their views.*” Because, with some exceptions, the timing, scope and selection is within the discretion of the administrator, consultation is not a standardised process. Individual Ministries have substantial discretion in choosing the form of consultation as well as participants and the broad formulation of the guidelines leave considerable room overall for gradual adjustments and improvements in the consultation processes. Business and labour organisations traditionally have been the main groups represented in these consultations, but consumer, environmental and other groups have in recent times gained access to this process.

Input from NGOs can take many forms, ranging from written comments to attendance of hearings. Every Ministry has a list of interest organisations who are routinely invited to express their views on proposed initiatives. For the federal institutions the consultation partners are the umbrella organisations operating at the national level. This does however not prevent industrial groups from approaching officials in their own capacity.

9. Separate requirements for public consultations of a more formal character apply to certain environmental regulations (covering e.g., air pollution, noise, vibration) which are covered by the Federal Emission Control Act of 1974. The process in this case is a formal one which requires the government to form ad hoc groups which include representatives from State authorities, the scientific community and various NGOs.

b) *Ad hoc consultations*

Another frequent access route to civil society participation is for NGOs themselves to take the initiative and approach officials with their specific concerns or ideas. A good illustration is the regular meetings which officials of the BMWi have been holding recently on the request of a small group of NGOs interested in trade matters. Agenda and participants are determined by the participating NGOs. Discussions have covered a broad range of policy issues in contexts such as the 1996 WTO Singapore Ministerial, the MAI or, most recently, the High-level WTO Symposia on Trade and Environment and Trade and Development and the forthcoming WTO round. Representatives from industry have so far not been invited to these meetings but this issue is presently under discussion among the participating NGOs.

Other Ministries are also organising similar events which help sustain an active dialogue between government and civil society on topics related to trade and environment. After their last meeting with the BMWi, the same group of NGOs met also with officials of the BMU. In the same week the BMZ together with the Association of German Development NGOs (VENRO), the umbrella organisation concerned with North-South issues, organised a one-day brainstorming seminar on the subject of "Developing Countries in the WTO". This event, too, took place in preparation for the WTO Symposia on Trade and Environment/Trade and Development of 15-18 March and was attended by about 50 representatives from environmental and developmental NGOs. Discussants included officials from WTO, EU, FAO, and the World Bank.

With the approach of significant events at the EU or international levels, and before negotiating on trade or international environmental treaties like the Basle Convention and CITES, the dialogue between government and business and non-business civil society groups tends to intensify. Civil society groups are also becoming involved in the implementation of international commitments. For example, the government invited various civil society groups to participate in the drafting process when it prepared Germany's national report last year on the implementation of the Convention on Biodiversity for presentation at the Fourth Conference of the Parties.

Many consultation exercises are not broadly focused but deal with very concrete and specific policy issues. For example, officials from the BMWi, the BMZ, the Foreign Office and the Ministry of Finances briefed, upon request, several non-business NGOs on the policy and criteria for extending capital investment guarantees to German companies. The groups are lobbying for national export credit guarantee policies which give more weight to ecological, social and development considerations. In the context of this particular campaign, the NGOs have also frequent meetings with members of Parliament.

Numerous events organised by NGOs provide opportunities for government representatives to explain and debate public policies.

c) *Formal standing advisory mechanisms*

Of the many expert advisory bodies, which are the key standing mechanisms for expert advice and reflect a long-standing German tradition of involving recognised experts in public decisions, some address issues of special interest to the trade and environment community. Membership criteria usually rule out formal representation of the broad spectrum of civil society in these bodies. One such body is the "Advisory Council on Global Change" (WBGU). This Council regularly reports on global environmental trends and the problems these generate. It has given special consideration to international environmental agreements and Agenda 21 and has issued special reports on climate change.

Parliament has at its disposal similar tools for expert advice on long-term and complex subject through so-called “Enquête Commissions”, which have studied relevant issues such as genetic technology and climate change. According to their official mandate, the Commissions, which typically are composed of members of Parliament and outside experts, are to prepare decisions concerning comprehensive and significant issues. However, they also have the objective to strengthen the position of Parliament vis-à-vis the government, which is served by many expert groups of its own.

Founded in 1992, the German NGO Forum Environment and Development (*Forum Umwelt und Entwicklung*) today brings together more than 60 NGOs and operates 11 thematic working groups, including one on trade. The Forum receives financial support from the BMU and project funding by the BMZ. The working groups have developed considerable expertise in their respective areas and have become close dialogue partners for these and other Ministries.

C. Other forms of civil society involvement

German civil society groups in general attribute great importance to their own public information activities. These include maintenance of contacts with journalists, press releases, in-house publications, public campaigns and demonstrations. The biggest challenge often consists of pushing particular concerns onto the government policy agenda and keeping them there. An active information policy, such as issue-focused public campaigns, becomes then an indispensable tool. For example, “monster tomato” campaigns organised by the BUND helped stir public debate that eventually led the federal government to develop and adopt a regulation for voluntary “no genetic technology” (Ohne Gentechnik) labelling, which is intended to enable German consumers to identify more clearly food products which contain no genetic technology.

Networking and coalition politics with peer groups at the national as well as European and international level are seen as important instruments for amplifying the voice of NGOs in the political arena. Use of an active information policy, monitoring, lobbying and briefings have gained ground vis-à-vis demonstrations and other forms of protest. Through these activities, NGOs themselves are contributing to political openness and transparency and thus the accountability of political power.

IV. Experience with existing mechanisms

This section synthesises the experiences and views of the NGOs interviewed with respect to transparency and consultation procedures, including the outcomes and achievements of consultation, the factors limiting effective dialogue and consultation and suggestions for improving the current system.

Three points that were made deserve mentioning at the outset. First, integrated approaches to environmental and trade policy issues are only now developing. The NGOs interviewed meet regularly with their peers as well as with the government on a range of issues relevant to trade and to environment. However, no regular discussion fora have so far been set up in either of these dialogue arenas that would deal with the interface of environment and trade comprehensively or systematically.

Second, most of the NGOs interviewed did not regard the current arrangements of transparency and participation in place in Germany as being optimal and several offered thoughts on improvements. But there was broad agreement that the system was evolving in the direction of greater transparency and more involvement by civil society. Perhaps most importantly, the government was perceived not as blocking this evolution but as being interested in facilitating and strengthening the process.

Third, civil society groups consider access points not only at the national level but also at the EU level, as crucial for allowing them to participate adequately in the policy process related to trade and the environment. As a number of NGOs pointed out, for almost all policy decisions arising at the intersection of trade and environment, participation of civil society at the German national level was only one aspect of the broader process developing at the European level. Thus, in order for the system of participation to function satisfactorily, it was imperative for any progress at the national level to go hand in hand with greater transparency and more parliamentary control of the European Commission.

A. *General access to information*

As far as the German federal government is concerned, all NGOs interviewed felt that, overall, they were by and large able to obtain the information which was relevant to their work, even if this called at times for substantial efforts on their part. Existing formal distribution mechanisms were deemed insufficient in terms of the timeliness of obtaining documents and the scope of information. Unpublished documentation remained particularly inaccessible. Several individuals criticised the lack of systematic public distribution by the government of important documentation and explained that for this reason they needed to rely heavily on their own efforts to collect and disseminate information through the use of the media and alternative networks. This applied to many areas but also to international negotiations.

A more systematic information policy by the government -- *inter alia* by upgrading the quality of government web pages to match the richness of information offered by certain international organisations, such as the WTO -- was considered highly desirable so that all stakeholders would be able to access with equal ease. For smaller NGOs, such improvements could generate considerable savings in staff time spent on collecting information, which then could be invested in actual consultations.

B. *Consultation processes*

a) *Opportunities for participation*

There was general agreement that no lack of opportunity existed to meet with government officials to be briefed or hold consultations on policy issues. Once established, contacts allowed NGOs to carry out their advocacy work in a targeted manner. Government officials were described as usually approaching consultations with an open mind and with interest in obtaining issue-specific expertise. Meetings which simply served an "alibi" function for officials to discuss government positions that already had been decided were felt to be rare. One interviewee from the government explained that the informal arrangements in place in Germany had the advantage of allowing for adjustments to the evolving process of civil society. Dialogue partners could change over time. Given this dynamic environment, a more institutionalised framework for consultation might lead to the exclusion of newly emerging groups. Among NGOs, the absence of more formal structures for consultation was not seen as a particular handicap.

Government dissemination of information is important both for public education and the work of NGOs. But just as important is for expertise from outside sources to flow to government officials who depend on the knowledge which civil society groups can bring to the discussions for policy formulation. As a result, all parties benefit from the exchange of information and views. German NGOs prepare and publish many issue briefs and papers, but limited resources and project-focused work make it difficult for many environmental and developmental NGOs to develop the highly technical expertise often called for in specific areas. Only the largest groups have such specialised expertise on hand, such as for example the BUND in the area of genetic technology.

The frequency of consultations is not a good measure of the effectiveness or efficiency of public consultation arrangements. As the representative of an environmental NGO explained, now that the SPD/Greens coalition is in power his organisation is meeting with officials of the Ministry for Health much more frequently than at the time of the previous government, but the outcome is such that it may not really justify attending all the meetings.

Not all NGOs felt that openness was uniform. The MAI was cited as one example where the German government had neglected its information policy. Consultations had set in at a very late stage and in response to public campaigns that certain civil society groups had organised. In the discussions on possible approaches to regulating the marketing of food containing GMOs, the government was however described as being very open and offering extensive opportunities for input from various groups in the actual formulation of national regulation.

All NGOs have some contacts and dealings with all of the major Ministries involved in policy formulation for trade and environment issues, but the interviews also show that the various segments of civil society interact more intensively with those Ministries responsible for the policy area that is closest to their interests. This leads to a situation where certain Ministries tend to supply certain segments of civil society with desired information and other Ministries other segments.

Non-business NGOs interviewed felt that access to the BMU, BMZ and the BMG, as well as with some members of Parliament, was relatively easy and of high quality. These were also the Ministries which in their opinion pursue a particularly active outreach policy. One representative suggested this was part of a deliberate strategy of these Ministries for building a counterweight to industry interests within the broader government arena. On balance these groups felt that they were better served and understood by these Ministries than by others. Representatives from industry described their relations with the BMWi as being good and the focal point in their dealings with the government on issues related to trade and the environment, compared for example to the BMZ and BMU. Non-business NGOs characterised their relationship with the BMWi as being more distant and difficult. One explanation provided was that the Ministry had stronger ties with industry based on a long history of interaction, whereas many other NGOs are still relative newcomers to the political scene. Another view was that industry aspirations, which were reflected in the Ministry's policy objectives, diverged significantly from the views which environmental and other groups had on many trade-related issues and consequently created a less co-operative climate. Whereas the views of industry and non-business NGO differed also on environmental policy matters, but they were less apart in the area of development policy. At the same time all of the non-business NGOs interviewed were of the opinion that the BMWi had more recently stepped up its efforts to reach out to non-business groups. The ad hoc talks with the BMWi on the next WTO round and other trade policy issues were cited as a welcome avenue for building closer relations and a constructive exercise of exchanging views with Ministry staff on trade issues to which NGOs paid increased attention today.

With respect to Parliament's role, several NGOs reported that because trade and environmental policy entailed few decisions by Parliament, they tended to discount the value of providing input into the policy process through Parliamentary hearings. Also, in view of the fact that most important policy decisions were taken at European level many committees of the German Parliament had, as one representative put it, acquired the habit of "waving through" most of the proposals, directives and other output arriving from the European Commission. The MAI debate was recalled as the only recent event presenting an opportunity for the Parliament to play a major role.

b) *Transparency of outcomes*

Several NGOs noted that the extent to which their concerns, or input, were taken into account was not always transparent. Whereas position papers were usually read by their recipients and unofficial feedback might be provided, this was not a consistent practice. The same held for follow-up from meetings, where information was not available on an automatic basis. Often one would find out only when the final draft was ready. Transparency of follow-up depended significantly on the quality of the relationship which NGOs had with the officials in question.

c) *Co-ordination and comprehensiveness of dialogue*

Representatives from industry expressed frustration that there was not sufficient co-ordination between environmental and trade policies at the national level to ensure that trade was not threatened by environmental measures and the implications for trade were fully taken into account (for example that only trade measures are included in MEAs that are WTO consistent). They felt in particular that trade experts were not being drawn on sufficiently and at an early enough stage.

Another specific recommendation by a representative of a non-business NGO was that all government decisions concerning international organisations should be discussed in advance with NGOs. This should be done in particular where the issue was the signing of an international trade or environment treaty. Besides the MAI initiative, particular reference was made to the WTO treaty which, it was argued, had not been debated sufficiently in Germany when it was adopted in 1994. Mention was made by one participating NGO also of the need for improving the dialogue between civil society and the Parliament, especially in the context of a Parliament's greater involvement in the management of the global trading system. It was suggested that this could be instrumentalised *inter alia* by setting up a parliamentary "Enquête Commission" which would follow and advise Parliament on WTO developments. This idea for such a Commission is reportedly backed by the SPD/Greens coalition government.

Civil society's need to become organised is a fundamental prerequisite for effective participation; and likewise is the capacity of government institutions to deal with growing demands for participation. German industry associations and unions are financially powerful and particularly well organised and the largest environmental associations like Greenpeace (which has a German chapter) or the BUND have sufficient financial support. There are several ways in which the German State supports other civil society groups, such as through the financing of project work which developmental and environmental groups carry out or subsidisation of consumer organisations. Still, some non-business NGOs interviewed acknowledged that the resources at their disposal were a factor clearly limiting their capacity for conducting an intensive and broad dialogue with the government. Much of their lobbying was therefore incremental. The capacity factor was also underlined by a representative from the government side, who cautioned that the heavy agenda of meetings and other activities which many groups were already facing brought on the risk of "participatory overkill".

The government's consultation practice is comprehensive in the sense that all segments of civil society have the opportunity to participate through various channels. Several comments made by interview participants indicated that this does however not mean that communication and dialogue among the various segments of German civil society is developed evenly well. Government consultations on trade and environmental issues are often bilateral; meetings bringing representatives from business and environmental groups or a broader spectrum of stakeholders together are less frequent. While this appears to be a function of preferences which the various dialogue partners have, it can be a factor limiting the effectiveness of consultation. As one participant noted, one only finds out about other stakeholders' positions when sitting in on the same hearing and is therefore ill-prepared to respond to their arguments.

NETHERLANDS

I. Introduction

This case study describes the activities and mechanisms, which are in place in the Netherlands for ensuring transparency and engaging in consultations with civil society on trade and environment issues. The study is based on information collected through interviews with government officials about the transparency mechanisms in place, and with civil society representatives, about their experiences with the operation of those mechanisms. From the government side, interviews were conducted with officials from the Ministry of Agriculture, Nature Management and Fisheries, the Ministry of Economic Affairs and the Ministry of Housing, Spatial Planning and the Environment. From the non-governmental side, interviews were conducted with representatives from Greenpeace Netherlands, the International Union for Nature Conservation (IUCN), Tools for Transition and the Confederation of Netherlands Industry and Employers (VNO/NCW).

II. Background

Public consultation in the Netherlands is traditionally considered a key element of government decision-making. Sometimes called a “consensus society”, the Netherlands has sought to support national prosperity by building a social structure in which conflict was minimised. In the search of consensus, business and labour, also called “social partners”, were guaranteed an equal voice in the development of industrial policy-making and regulation. After the 1930s the role of social partners in policy-making was institutionalised through the creation of industrial advisory bodies, based on the *tripartite principle* (balanced membership between employer’s and employees’ organisations and the administration). Industrial advisory bodies not only advise the government with the aim of increasing the legitimacy of legislation, identifying “acceptable” policies and improving the level of “voluntary” compliance, but also wield considerable regulatory authority over their industries and are important in the enforcement of legislation. This organised structure of the economic system and economic policy-making in the Netherlands has often been described as highly corporatist.

In parallel, the Dutch government holds regular consultations with formal advisory bodies, created by individual laws as “*permanent advisory bodies for matters of legislation and administration of State*” (Art. 79 of the Dutch Constitution). These bodies, used as information-gathering fora aimed at improving the quality of decision-making, are mainly composed of experts on a given field, in accordance with the principle of “*separation of advice and consultation*”. Examples of these formal advisory bodies in the field of trade and environment have been the Advisory Council for Environmental Planning, the Council for Environmental Protection, or the Nature Conservation Council.

In recent years, it was felt that these bodies had become less representative of contemporary Dutch society, which has been diversified with the decline in union membership and the emergence of consumer, environmental and other forms of social organisation outside the corporatist structure described above. The Dutch Government stated in 1993 that “*the desired social base cannot always be obtained by consulting advisory bodies*”. There resulted a certain loss of legitimacy, which led to the reform of the formal consultation system. The number of formal advisory bodies was drastically reduced and their role, as well as that of industrial advisory bodies was reoriented. In parallel the government developed more informal and flexible approaches, where consultation takes place outside the corporatist structures of formal advisory groups and rests more on informal contacts with affected groups that may have been

excluded from traditional consultation processes. Such regular informal contacts between the bureaucracy and interest groups form now a channel for consultation of growing importance: they practically carry out the substantive work of building consensus, leaving the consultations with the advisory bodies little more than a formality.

Trade and environment issues tend to be covered almost exclusively through these informal transparency and consultation mechanisms. Informal consultation is conducted at the discretion of Cabinet, individual Ministers or departments in the absence of any legal requirements. Although public participation is not mandatory, it is nevertheless as inspired by the traditional objective of consensus building as in the more formal mandatory mechanisms. Officials are quite open to contacts with interested public and such contacts considered as a normal and indispensable part of government operation. Furthermore, in the search of expert advice to improve regulatory quality, the administration welcomes all relevant and thoughtful input from individuals and associations irrespective of the representativeness of such individuals or associations in terms of membership.

III. Transparency and consultation mechanisms

A. *Formal standing consultation mechanisms*

As noted above, standing mechanisms for consultation include the industrial advisory bodies, the most important of which is the Social and Economic Council (Sociaal-Economische Raad or SER), composed of 15 members representing employers' interests, 15 members representing employees and 15 independent experts appointed by the Crown on the advice of the government. SER's involvement with respect to trade and environment issues is in practice limited, also because of the absence of environmental and consumer interests among its membership.

Standing mechanisms for advice include the formal advisory bodies. Although their aim is to enhance regulatory quality rather than ensure civil society participation in the formulation of governmental policies, they do offer a forum where non-governmental opinions may be expressed. In the field of trade and environment mention should be made of the following bodies: The Advisory Council for the Rural Areas (Raad voor het Landelijk Gebied) set up on January 1997 by the Minister of Agriculture, Nature Management and Fisheries, covers "*strategic policy concerning agriculture, nature, forest and landscape, outdoor recreation and fisheries in the rural areas*". The National Council for Agricultural Research (Nationale Raad voor Landbouwkundig Onderzoek or NRLLO), reorganised in January 1995 and financed by the Ministry of Agriculture, Nature Management and Fisheries, covers social, scientific and technological changes which may affect developments in agribusiness, the rural areas and fisheries. The Advisory Council for Housing, Spatial Planning and the Environment (VROM Raad) gives advice to the Minister of the same name. The Netherlands Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid) covers the more general orientations of Dutch policy, including trade and environment issues. Finally, the Advisory Council for Research on Nature and Environment (Raad voor Natur- en Milieuonderzoek or RMNO), advises the Ministers of Economic Affairs; of Agriculture, Nature Management and Fisheries; of Housing, Spatial Planning and the Environment; of Transport and Public Works and of Education, Culture and Science on the research policy to be adopted in the fields of nature, environment and landscape. Its particularity compared to the other bodies is a tripartite structure of representatives from research, policy-makers and NGOs.

B. *Informal standing consultation mechanisms*

On specific subjects, regulating Ministries set up ongoing public consultation platforms that meet in regular intervals and bring together government officials and non-governmental environment, development and business organisations. These mechanisms are often designed for preparing input to international negotiations, meetings of the Conferences of the Parties and other international meetings, such as for the Biodiversity Convention, the Basel Convention, the Montreal Protocol or CITES. However, they may also aim at more general issues, such as the fortnightly meetings of the Commission for International Economic Relations, which bring together the Director for Trade Policy of the Ministry of Economic Affairs with representatives of the VNO-NCW.

In the area of forest management for instance, consultations between the government, the timber trade and environmental organisations led in December 1995 to the adoption of the Netherlands Framework agreement on Tropical Timber (NFATT). This agreement aimed at ensuring, with the co-operation of the main tropical timber exporting countries, that only timber from sustainably managed sources will be imported into the Dutch market place by the year 2000. In March 1997, the government in consultation with the business community and environmental NGOs formulated minimum requirements within the framework of WTO obligations for the labelling of timber originating from sustainably managed forests. Finally the government, the business community and environmental NGOs agreed to continue consultations about the timber trade and in particular the realisation of the Year 2000 objective for all kinds of timber after the expiration of the NFATT. For this purpose a trilateral platform was established which meets biannually.

Similarly, a meeting between the Ministry of Environment and environmental NGOs takes place 2 to 3 weeks in advance of every European Council of Environmental Ministers. Furthermore, these mechanisms often lead to the incorporation of environment and development NGOs in the national delegation to treaty conferences and international organisations, including the OECD.

C. *Ad hoc consultation mechanisms*

In addition to the above-mentioned standing mechanisms, there are *ad hoc* consultation mechanisms used to associate Dutch civil society in reflecting on trade and environment issues. These include notice-and-comment procedures; brainstorming meetings organised by the administration in advance of policy formulation (both with respect to domestic regulation and to the preparation of international negotiations); consultations with regions concerning the implementation of adopted policies; and hearings organised by the Parliament to receive informed public opinion positions.

“Notice-and-comment” procedures are introduced by a number of laws, which require pre-publication of regulatory proposals and invitation to comment from all members of the public. These procedures are also used as open discussion fora displayed on Internet for general themes of interest, such as the invitation to comment on deregulation or on international corporate affairs recently posted on the Internet by the Ministry of Economic Affairs. In the event of discussions undertaken between the government and Dutch businesses, such as Shell or Unilever, on corporate governance, non-business NGOs concerned about international corporate behaviour were invited to comment and the content of government-business talks displayed on Internet. The experience with this type of mechanism has not been very positive to date due to a low level of public participation.

Brainstorming sessions have been organised, for instance, on the issue of the relationship between MEAs and the WTO Agreements. The issue has been regularly debated between the Ministry of Economic Affairs and environmental NGOs, including Greenpeace and IUCN, since 1995. The negotiation

of the WTO CTE report for the Singapore Ministerial meeting has been the subject of extensive discussions with environmental NGOs. The elaboration of legislation expected to have a considerable impact on society and the economy is debated in the framework of frequent meetings between the administration, business NGOs and environmental NGOs (e.g. several monthly meetings have taken place when preparing the legislation on volatile compounds). Similarly, an open agenda was recently proposed to environmental NGOs on the preparation of the Millennium Round. The consultation process on this issue was expected to start in March.

The Dutch Parliament in its plenary session, as well as its specialised sub-committees, frequently organise public hearings and information sessions to consult with civil society on specific matters. Furthermore, business and environmental NGOs have regular contacts with members of the Parliament. On the occasion of CITES COP deliberations on the issue of allowing limited ivory trade, the position of environmental NGOs was collected together with the advice elaborated by the "CITES-Commission" (Commissie bedreigde uitheemse dier en plantensoorten, or Commissie BUDEP, which is the Dutch Scientific Authority for CITES). The Dutch negotiating position was elaborated prior to the Conference through consultations between the concerned Ministries, the Parliament and environmental and business NGOs. These consultations and contacts were pursued throughout the duration of the negotiations.

D. Other transparency and consultation activities

As noted above, informal contact between the Dutch administration and civil society has gained importance in the recent years. Such contacts may occur either at the initiative of the administration or at the initiative of citizens. They take place both at the working level and at the political level, between Ministers and Heads of non-governmental associations. All non-governmental representatives interviewed for this report expressed a high degree of satisfaction about the openness of administration in its totality to requests for information and contacts, irrespective of origin. On the other hand, informal contacts undertaken at the initiative of the administration are readily directed at personal networks and influenced by the importance Ministers in office attach to such contacts. There are thus closer, although not exclusive, contacts between the Ministry of Environment and environmental NGOs, or between the Ministry of Economic Affairs and business organisations.

In parallel, a very important avenue for consultation is the range of events and meetings organised by non-governmental organisations. Administration is regularly invited and extensively participates to these meetings. For instance, the National Commission for Sustainability, created by environmental NGOs and chaired by the IUCN, regularly brings together environmental and business NGOs, civil servants, members of the Parliament and of political parties. VNO-NCW discusses trade and environment in the framework of its committee on multilateral trade policy that meets six times a year and which always benefits from the presence of civil servants from the Ministry of Economic Affairs and of members of the Parliament.

IV. Experience with transparency and consultation

This section synthesises the responses of the persons interviewed on their views and experiences with specific aspects of the transparency and consultation procedures. Unless otherwise specified, the responses refer to the whole range of consultation mechanisms.

A. Participation

The general view of participants is that consultation mechanisms in the Netherlands are reasonably inclusive. Formal consultation mechanisms, and in particular the industrial advisory bodies, remain closed to large parts of the Dutch society and it would seem that proposals to enlarge membership of the SER to consumer associations were opposed by the social partners that are already members. However, this situation is counteracted by the wealth and extent of informal mechanisms, so that there seem to be no significant problems of civil society being denied access to information or consultation mechanisms. The question in the context of informal mechanisms is to identify who represents civil society. While the question seems more easily addressed with respect to business NGOs, which have a long tradition of participating in consultation mechanisms in the Netherlands (VNO-NCW claims to represent 75% of businesses active in the Dutch market), it proves more delicate with respect to other parts of civil society.

Although requests originating from the public seem to be always satisfied, consultation activities initiated by the administration are directed at personal networks. The criteria for inclusion in such networks are on the one hand the activism of concerned persons or groups and on the other hand their good sense of what the Dutch society thinks on specific issues, rather than whether such persons or groups formally represent a sufficient number of members. In an attempt to address this issue and to counter the existing dependence on personal networks, the Ministry of Economic Affairs undertook the elaboration of an inventory of non-governmental organisations. In this context they solicited the help of the groups that were known to the administration for being particularly active, in order to identify lesser known groups. The help and suggestions of more important NGOs are also solicited when preparing invitations for *ad hoc* consultation events.

Representatives of business and industry associations seem to be more active lobbyists than other parts of civil society. One of the reasons may be a better financial situation for business NGOs as compared to environmental NGOs, especially smaller ones. Although associations like Greenpeace enjoy a sufficient financial support from their membership and thus prefer to avoid being financially dependent on the government, several other NGOs cannot afford to pursue a meaningful interaction with policy makers without some kind of support. Parts of the Dutch administration, namely the Ministry of Agriculture or the Ministry of Environment have funds available to enhance civil society participation by providing structural support to NGOs. Support also takes the form of projects of public utility entrusted to NGOs, such as missions of elaborating an informed position or of mobilising public opinion on an issue. The Ministry of Economic Affairs used to support the functioning of consumer associations, but this support will be discontinued. Moreover, the Dutch administration sometimes finances travel expenses for NGOs that participate in consultation processes.

B. Agenda

All persons interviewed expressed satisfaction with the content of the agenda for the various consultation processes and the possibilities for civil society to raise issues they wish to raise. Agendas are generally elaborated either in close co-operation between the administration and civil society

representatives, or on the basis of indications forwarded by the public on the occasion of open invitations published by the administration. Agendas for consultations in preparation of international events are usually based on the agendas of those events, but other issues will be added if requested. Furthermore civil society representatives particularly appreciate the fact that on occasions they are directly entrusted with the formulation of the agenda.

C. Documentation

The importance of transparency of policy making is particularly stressed by the 1991 Law on the openness of policy (“Wet openbaarheid van bestuur”). Information on trade and environment issues is disseminated either in the framework of the described consultation processes or made available on request. Internet is also used to widely disseminate information. Developments in the WTO are described in a “WTO newsletter” published by the Ministry of Economic Affairs and updated on a monthly basis. However only documents open to the public can be displayed within this framework.

Although all NGOs interviewed recognised that requests for information are largely satisfied, environmental NGOs criticised the absence of an active information distribution policy. They felt that in general they have to actively seek the information themselves, either through requests to the administration or through their own channels. While considerable efforts are undertaken by the administration to improve the dissemination of information, such efforts do not always seem organised so as to reach addressees efficiently. Environmental NGOs indicated that it was sometimes difficult to identify the documents available or the civil servants in charge of a specific dossier. Dissatisfaction was expressed in particular with respect to documentation related to international events. Environmental NGOs stressed the importance of making such documents available in Dutch and complained that their distribution was not timely, although it was acknowledged that often such documentation was not available to the administration far enough in advance.

V. Strengths and limitations of transparency and consultation activities

All participants interviewed stressed the important role that transparency and consultation activities play in the efficient operation of trade and environmental policies in the Netherlands. The administration particularly values the contribution that civil society participation can make into regulatory quality: extensive consultation with affected parties helps identify likely impacts of laws, regulations and international policies and allows the necessary modifications to be made in order to minimise negative side-effects. In this respect civil servants stressed the high level of expertise and remarkable quality of input offered by NGOs. Although the government is by no means bound by the opinions expressed by civil society participants, there is a real concern to reflect such opinions in the policy-making process to the largest extent possible. This is entrenched in the Dutch consensus-building tradition, whereby consensus is valued as facilitating subsequent enforcement.

The overall assessment by NGOs is positive too, especially as regards the importance the government confers to civil society participation. However, the assessment was more nuanced with respect to the organisation of transparency and consultation mechanisms. Business NGOs were satisfied with the operation of these mechanisms to date. On the contrary, environmental NGOs felt that there was too little experience yet with the new expanded scope of such mechanisms, affecting their organisation, especially as far as information dissemination was concerned. They stressed that, while consultation should be an active process on both sides, to date the initiative came mostly from the NGOs. They further believed that they should be more actively involved in the regulatory impact assessment process. They wish the

administration would take their suggestions more seriously into account with respect to potential adverse effects of regulatory proposals and conduct the related cost-benefit analyses, rather than expect environmental NGOs to conduct such analysis on their own means.

An additional area of frustration relates to the formulation of trade and environment policies at the European level. The interaction between national governments and the Commission and the formulation of negotiating positions that national governments will adopt in the process of European decision-making is felt to be non-transparent both towards the Parliament and towards non-governmental organisations. The rhythm and methods of work imply very short timeframes for preparation and distribution of documentation, which makes timely information to NGOs very difficult. Civil servants interviewed felt that the only efficient way of keeping pace with developments at the European level was for NGOs to pursue trade and environment matters directly in Brussels. However, environmental NGOs pointed out that this situation *de facto* excludes parts of civil society that cannot afford to maintain appropriate representation in Brussels.

UNITED KINGDOM

I. Background

In the UK, four government departments are concerned with issues concerning trade and environment. These are the Department of Trade and Industry (DTI), the Department of Environment, Transport and the Regions (DETR), the Department for International Development (DfID) and the Foreign and Commonwealth Office (FCO). Interviews were conducted with each of these departments. On the non-government side, interviews were undertaken with Rio Tinto, International Chamber of Commerce, BP, Prince of Wales Business Leaders' Forum, Royal Institute of International Affairs, Foundation for International Environmental Law and Development, Friends of the Earth, ACTIONAID, UK Trade Network, and WWF.

To place the description of recent government initiatives below in context, one needs also to mention the role of the Environmental Audit Committee. This Committee of the House of Commons was established in 1997 to consider and report on the extent to which the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development. In its first report, on the Multilateral Agreement on Investment (MAI), the Audit Committee was critical of the UK's failure to undertake an adequate environmental review open to the participation of NGOs. This report has been important as a spur to improved government consultation procedures.

II. Transparency and access to information

The UK does not yet have Freedom of Information legislation, although it is expected to be introduced in the near future. Currently, access to government information is governed by the *Code of Practice on Access to Government Information* (the Code), as well as a right of access to environmental information.

The Code applies to all government information, and is based on the assumption that information should be released except where disclosure would not be in the public interest (as defined). The exceptions, which form the longest part of the Code, include:

- information whose disclosure would harm the conduct of international relations or affairs; and
- information whose disclosure would harm the frankness and candour of internal discussion;

The provisions of the Code, which is supervised by the Ombudsman, go beyond an obligation to *release* documents on request to a positive commitment to "*publish*" information.

There are also provisions for access to environmental information contained in the *Environmental Information Regulations 1992*. These *Regulations* make information which relates to the environment (as defined) which is held by any Minister, department or person carrying out public functions which *have responsibilities in relation to the environment* accessible to the public. Subject to certain exceptions, such

information must be provided to any member of the public on request and on payment of a reasonable fee. While trade and environment activities clearly have potential for an *effect* on the environment, it may be that the absence of environmental *responsibilities* in departments such as DTI would exclude them from the scope of the *Regulations*. Exemptions from disclosure include: matters affecting international relations, the confidential deliberations of any body, and information whose release would increase the likelihood of harm to the environment.

On access to government information, DTI officials intend to use the website more fully in the future for making documents widely available, as the website does not currently reflect all the documentation that is available in the public domain.

III. Consultation in relation to trade and environment

A. Consultation procedures

The UK system of consultation on trade and environment is not “formal” in the sense of being based around a formal committee structure. In the absence of such structure, this section will describe the consultation practices which are held regularly, or are initiated or sponsored by government. Citizen-initiated consultations will be described later, as informal practices.

The DTI is in the course of implementing a new Communications Strategy, which aims to build support and minimise opposition from the British public for the new WTO Round of trade negotiations. The strategy seeks assistance from the natural supporters of the new WTO Round (the trade and business community) to convince the majority of the population who are neutral on the issue, using three limbs.

The first limb involves using the media to publicise ‘good news’ and to rebut ‘bad news’ about trade liberalisation negotiations. The second limb entails preparing an information booklet to publicise the free trade agenda, aimed at people with little knowledge of the issues. The booklet will identify a contact point in the DTI for further information, to dispel suggestions of secrecy in the trade negotiation process. The booklet is to be distributed widely, including through regional government offices. An education campaign was considered necessary to ensure that the public debate which may take place during the trade negotiation process, happens on an informed basis. The first two limbs of the Communication Strategy involve the dissemination of the government’s message on trade issues.

The third limb offers an opportunity for civil society to participate in a dialogue with government on these issues. Dialogue with government on trade and environment issues will be facilitated by consultation meetings between government and non-governmental organisations (NGOs) from industry, consumer and environment groups, as well as trade unions and local government. The three Ministers responsible for trade, environment and development were to host their second joint meeting with civil society in the week prior to the WTO High Level Symposia. Rather than the substance of the trade negotiations, the meeting was to discuss the UK’s strategy for the year, and to set the agenda for future consultation on the new WTO Round. It was anticipated that two or three representatives of each sector would be permitted to attend the meeting. The co-ordinator of the UK Trade Forum was to decide which environmental NGO representatives would participate at the meeting. The UK Trade Forum is the main channel to the DTI on trade and environment issues for civil society from the non-business sector.

The UK Government undertook a major consultation exercise in relation to the UK Sustainability Strategy including a chapter on international issues such as trade, which will be published before the summer. The Sustainability Strategy was a major cross-government effort co-ordinated by DETR, dealing

with sustainability in all sectors of government. The government released a draft for comment which was publicised through regional seminars across the UK and through brochures seeking responses from the public. The paper has now been amended in response to the public contributions.

An environmental assessment of the activities of export credit agencies is currently being undertaken by government (principally DETR and DTI). On the topic of Environmental Assessments of Trade Agreements, a workshop is planned at Chatham House. An interdepartmental working group has been established which is considering whether and how the UK should undertake an assessment of the likely environmental impacts of further trade liberalisation but has not yet sought external input to its deliberations.

Jointly with the DTI, the DETR co-ordinates an Advisory Committee on Business and the Environment made up of leading business people whose advice goes directly to Ministers, as well as being published. The Advisory Committee has considered issues such as climate change, sustainable consumption and transport. The DTI also has regular meetings, with business on climate change policy issues. Non government participants are able to propose the agenda for these meetings. The DTI and DfID also initiated consultation with business on the OECD's Guidelines for Multinational Enterprises.

In reviewing the UK eco-labeling programme and structure, the DETR released a consultation paper accompanied by a questionnaire which was circulated to around 100 parties who had previously expressed interest in this issue. These included business and trade associations, consumer groups, and to a lesser extent, environmental groups. Following this first round of consultation, a proposal for a revised structure of the programme was formulated and distributed to a wider audience.

There are also strong links between DfID and NGOs and research institutions. DfID is seconding a number of staff from NGOs concerned with development issues, and recently sponsored two NGO symposia which were held back-to-back with WTO meetings in developing countries.

The Foreign and Commonwealth Office (FCO) has undertaken a number of initiatives to "green" the Foreign Office. The initiatives include establishing the *Green Globe Task Force* (GGTF), a high level advisory committee to directly advise the Minister on trade and environment issues. The GGTF consists of individuals who are chosen for their outstanding contribution to the debate in relation to trade and environment, rather than as representatives of an organisation. The GGTF sets its own work programme and the topics it has tackled include the priorities for the new WTO Round, embracing proposals for how to improve consistency between WTO rules and MEAS. Its membership includes experts from FIELD, the Royal Institute of the International Affairs and members of the Royal Society for the Protection of Birds, Green Alliance and the International Institute for Environment and Development.

Other FCO initiatives include seconding NGO representatives, business people and a person from a developing country into the FCO. The FCO has also established the Global Citizenship Unit, a program to "green" embassies, using embassies to put businesses in contact with the local communities, issues and customs, NGOs and multilateral organisations. The programme is intended to ensure that business is undertaken in a socially responsible manner and involves in effect the promotion of transparency in British businesses operating internationally.

In addition, each of the government departments involved in trade and environment issues has participated in or funded seminars on these issues facilitated by the neutral forum of the Royal Institute of International Affairs. These seminars are commonly conducted under "Chatham House Rules", named after the RIIA's headquarters, which provide that comments at the meeting will not be attributed to any person, and allows for a free exchange of views.

In preparation for international environmental meetings, the DETR commonly holds a briefing around 10 days before their departure. The briefing meeting, with NGOs as well as experts and researchers in the relevant field, also allows the delegation to gauge civil society's views. Debriefing meetings after COPs are held less frequently because the outcome of the meeting is often in the public domain. Occasionally scientific experts have attended a COP as UK delegates, and it is an aspiration of the DETR to include civil society representatives also. In relation to meetings of the Commission on Sustainable Development (CSD), civil society involvement is even deeper, and not infrequently, business and/or NGO representatives form part of the UK delegation. UNED-UK, a cross-sectoral NGO representing business, environment and other sectors of civil society, and partly funded by the UK government, is the main interlocutor with government on CSD issues.

B. *Informal practices*

Government staff indicated a willingness to be available as requested for informal meetings, and indicated that environmental NGOs made more frequent requests for meetings than did business representatives. It is part of the role of the co-ordinator of the new DTI Communications Strategy to be a contact point for civil society when NGOs are seeking to arrange meetings with relevant government personnel on a particular issue.

IV. *Civil society's views on transparency and consultation*

A. *Access to information*

Environmental NGOs described the UK government as 'formalist', tending to abide by rules that classified certain WTO documents as confidential, whereas the same documents were available to NGOs in other countries. A number of them have indicated that it is difficult to obtain internal documents- one NGO with significant experience in this area, indicated that internal assessments of government activities, such as those undertaken following the Green Book procedures, were not publicly accessible.

Business representatives were generally quite satisfied with their access to information. This difference of attitude could be explained by the greater depth to which environmental groups are currently pursuing the issues concerning the new WTO Round. In the framework of committees such as that dealing with climate change policy, a business representative described the flow of documentation between government and participants as passing freely.

B. *Consultation procedures*

The recent meetings with UK Ministers for trade, environment and development on issues of the MAI and trade and environment, were welcomed by civil society as an opportunity for their questions to be fully answered by the person who is ultimately responsible for an issue. However, while pleased at the increased number of meetings with Ministers, some environmental NGOs were dissatisfied with the short time allowed for the meetings and the small number of participants from each interest group who were able to participate. Several environmental groups said they were unsure of the value of the meeting and suggested that the meetings might represent "tokenism", so that government could say that they had consulted.

Some NGO groups said that they were still waiting for a promised debriefing on the MAI, contending that the scheduled second meeting with the three ministers replaced a scheduled meeting to discuss investment and environment. Government officials recalled that the first of the meetings with the

three Ministers in November 1998 had focused on the MAI. However, now that the MAI is no longer active, and with the proximity of the forthcoming new WTO Round, it was considered appropriate to broaden the agenda to trade and environment issues.

Some NGO representatives with long experience in the trade and environment sphere, commented that the consultation practice of the DTI has improved significantly in recent years, even before the change in government. As a general comment, most civil society respondents reported closer consultation with DETR and DfID than with DTI. One NGO expressed disappointment that the recent DTI document "*Liberalising Trade in Services: A consultative document on the GATS 2000 negotiations in the WTO and forthcoming bilateral negotiations*" made no mention of environmental considerations.

The DTI's own assessment of its civil society links is that it does not have a sufficiently strong base in the business community. To cure this deficit it is now looking to establish contacts in trade associations and with spokespersons for small business. One industry respondent commented that the government concentrated their efforts too much on trade associations, which represented the lowest common denominator of industry views, and too little on industry itself. The business representative suggested that the reason for the shortage of active business interlocutors with government is that few businesses have sufficient resources to devote to public policy issues.

Representatives of industry and business associations reported satisfaction with the climate change meetings held regularly, between about six government officials and up to 20 association members.

Feedback on the subject of interdepartmental co-ordination was generally positive. The phrase 'joined-up government' is commonly used to describe the government's aim of a seamless bureaucracy. However the necessity for such co-ordination can delay the time at which government policy can be made public. Civil society expressed understanding of the need for government to develop a position internally before releasing it for public comment.

C. *Informal practices*

On access to departmental personnel, most respondents indicated that it was not difficult to arrange meetings as required with departmental staff. There was praise for the DTI Communication Strategy Co-ordinator who facilitates meetings between civil society and the appropriate departmental personnel. And NGOs reported that whereas previously, contact had been almost exclusively at civil servant level, there was also increased contact with Ministers and particularly with the Minister for the Environment at both a formal and informal level.

Both business and environmental NGOs indicated that they felt that informal meetings were more fruitful than formal meetings, as there was less opportunity for misunderstandings than at the larger formal meetings. While they found an openness to discuss most issues in meetings with civil servants, NGOs reported that the result of such discussions was less certain.

Some business representatives observed that the consultation process was generally ad hoc, and attributed this character to the institutional structure involving four departments. One business representative reported that the government was open to, and "listened helpfully" to advice, and would give reasons if that advice was not taken. However, business representatives echoed the comments of government that relatively few in business were closely tracking trade and environment issues.

A number of business respondents confirmed that government was receptive to receiving policy analysis papers. Some environmental groups were frustrated by the lack of direct effect that they could perceive to result from their efforts to influence government policy. One environmental NGO

representative said that while they felt they had a constructive dialogue with government, government policy seemed to be immutable. Some blame for this result was attributed to the weekly meeting of the EC's "113 Committee", which to a large extent was beyond the power of the UK government to control.

V. Summary and civil society's suggestions for improvement

The UK government has introduced a number of new procedures for improving civil society's access to both the executive and the legislative arms of government. The greater willingness of Ministers in the key departments to meet with civil society on trade and environment issues has been welcomed, although the limitations of the length and number of the meetings means that they cannot be the sole basis for a serious dialogue on these issues. For more in-depth meetings, the appointment of an internal co-ordinator to assist with organising the relevant personnel has also been appreciated. Also promising are the new initiatives to bring fresh ideas and greater expertise to bear on the Foreign Office through a high level extra-departmental committee, as well as the inclusive and consultative manner in which the FCO has launched its Global Citizenship Unit.

In discussions, government officials were complimentary about the expertise of the UK NGO community and noted that UK business often has a greater international sphere of influence than the government. Government is now taking steps to make use of that expertise. The Foreign Minister's February 1999 speech to the Green Alliance drew attention to transparency as the key to accountability, but is preconditioned on concerned citizens and groups having access to the facts.

However, civil society considers that the formal Ministerial meetings, as the major plank of the government's consultation program for the new Round, need to allocate more time to trade and environment issues, as well as ensuring that the link between trade and environment is made in all trade agreements. Civil society feedback also suggests that improvements could be achieved in terms of ensuring that assessments of government's proposed activities are undertaken with the knowledge and participation of the public at the earliest possible stage - before proposals are, in the words of one business representative "half cooked". Greater access to documents concerning government's internal assessments of proposed projects would reassure civil society, as well as allowing it to draw attention to any oversights.

UNITED STATES

A wide range of statutory and informal procedures and initiatives are in place at the federal level in the United States to meet transparency and public consultation objectives related to trade and environment. This Note highlights three types of transparency and consultation activities:

- (I) Statutory obligations covering access to information, public notice and comment activities;
- (II) Less formal and *ad hoc* practices, including informal inter-agency co-ordination on trade and environment that includes aspects of public participation; and
- (III) Environment reviews and examinations of trade.

The first three sections below are intended to be illustrative of some of these activities, as opposed to representing a comprehensive description. This is not only because virtually all federal rulemaking and policy proposals contain various tiers of transparency and public participation provisions, but also because the parameters of trade and environment discussions themselves are broad. Consequently, this Note also describes different types of transparency and public consultation initiatives which cover issues not only explicitly relating to “*trade and environment*”, but those with indirect linkages, e.g. to trade and to environment. Officials in the US Environmental Protection Agency (EPA), United States Trade Representative (USTR), the Department of Commerce and the US Fish and Wildlife Service were contacted. In the final section, the experience with transparency and consultation practices are set out based on the interviews with the following NGOs: Center for International Environmental Law, Consumers Choice International, National Wildlife Federation, North-South Center and US Council for International Business.

Statutory obligations

Broad-based public participation represents a cornerstone of the regulatory decision-making process at the federal level in the United States. Federal laws provide a number of legal tools designed to allow public access to information related to rulemaking in general, and environmental, trade and other policies in particular. Among the foundations of public access and transparency provisions and procedures affecting federal agencies are freedom of information laws and right-to-know laws. In addition, several environmental-specific statutory requirements are in place to ensure public participation in environmental policy and rulemaking, including permitting laws and environmental impact assessment laws. Some of these laws are described below.

The *Freedom of Information Act* (FOIA) provides members of the public with the right to gain access to federal agency records and other types of information. Under this law, any individual can request any federal executive agency to provide copies of all records it holds in its possession and control of relevance to any particular subject. (There are several exceptions, including several exemptions related to national security, private personal records, ongoing criminal investigations or confidential business information.)

The FOIA is a statutory requirement applicable to all federal agencies rather than the function of a centralised agency. Although agencies respond to information requests with some latitude regarding the disclosure of records and files, numerous developments have occurred through judicial review, litigation, Executive Orders and other means to improve ease of access and create a more uniform approach among all federal executive agencies to FOIA obligations.

Among the Acts of relevance to the FOIA are the 1995 amendments to the *Paperwork Reduction Act*, which outlines several provisions covering public access policies. For example, Section Two states that each federal agency shall “ensure that the public has timely and equitable access to the agency’s public information”. Information covered under the Act includes data maintained in electronic format, soliciting and considering public input to an agency’s information dissemination activities, and providing notice when there are significant changes in information dissemination products.

The *Electronic Freedom of Information Act* Amendments of 1996 introduced several changes in the type of information that is required to be made available both through agency Reading Rooms, as well as through “electronic reading rooms.” Such categories include final opinions rendered in the adjudication of administrative cases, specific agency policy statements, and administrative staff manuals that affect the public – all of which must be made available to the public for inspection and copying. On trade and environment issues, an important source of information in the past has been through the public’s access to the USTR Reading Room.

Another foundation of transparency is the *Administration Procedure Act*. (APA), enacted in 1946. Like the FOIA, the APA (5 U.S.C.§§ 551-559) applies not only to trade and environmental issues, but rather to all federal proposed regulations, policies, programs or plans. A cornerstone of the APA is notice and comment rulemaking procedures in which administrative procedures relating to notice and comment have been codified, generally by requiring that all federal agencies notify the public of proposed rule changes in the *Federal Register*. Once published, there must be specified opportunities for the public to provide comments.

Notice of any proposed changes in rules of federal agencies is published daily in the *Federal Register*. In essence the *Federal Register* assembles the government’s entire rulemaking agenda. Examples of information in the *Federal Register* include the Environmental Protection Agency’s (EPA) work in such categories as air pollutants, air quality, pesticides, proposed rules and notices of public hearings, conferences and symposia. Notices are also published on public hearings to improve public participation itself. For example, in early 1999 the EPA provided notice of regional meetings intended to “define public environmental information needs.” Other examples of Register notices are provided below.

In policy discussions related to trade and environment, various advisory groups and other initiatives have been established: this includes for example the Trade and Environment Policy Advisory Committee (TEPAC) and other committees noted below. The *Federal Advisory Committee Act* (FACA), 5 U.S.C. App., requires that all advisory committee meetings be open to the public, take into account balanced perspectives and points of view of the public. This includes prior notice of advisory committee meetings published in the *Federal Register*. Advice provided by such advisory committees may then be considered as one part of a broader agency rulemaking process, including advice regarding any proposed rules submitted for full public review and comment.

Another source of public information is the *Semi-annual Agenda of Regulatory and Deregulatory Actions*. The *Agenda*, which all agencies are required to publish twice a year, describes regulatory actions that are currently under development or have been recently completed. In addition, under the Code of Federal Regulations, all agencies are required to provide input and updates into “Dockets”. For example,

Docket Title 40 – Protection of the Environment – contains information and supplementary documentation related to the rulemaking process, as well as public comments which have been received on rules and proposed rules.

Since 1974, the Congress supports a private sector advisory committee system to help ensure that trade policy objectives are in step with domestic economic interests. The private sector advisory committee system comprises over 30 advisory committees, with roughly 1,000 advisors from Congress, industry, labour leaders, academic and other individuals with an interest or expertise in trade policy matters. Among the formal advisory committees established under the 1974 Trade Act is the Trade and Environment Policy Advisory Committee (TEPAC), established in 1994. The Committee meets at least once a year, to provide a forum for non-governmental organisations to exchange views with the Office of the U.S. Trade Representative (USTR) and the US Environmental Protection Agency (EPA) on issues relating to trade and environment. At one time, during the NAFTA and WTO implementation periods, as well as during the work leading to the submission of the report to the Singapore Ministerial Conference by the WTO Committee on Trade and Environment, the Committee met as frequently as four times a year. However, it has met less frequently since 1997. In addition to public meetings, inter-agency staff-level meetings related to trade and environment are held. For example, the USTR and EPA work closely together on trade and environment issues through several mechanisms: EPA is represented at the sub-cabinet level Trade Policy Review Group (TPRG) as well as on the Trade Policy Staff Committee (TPSC).

Less formal and *ad-hoc* practices

The following provides some examples of initiatives undertaken by different agencies of relevance to transparency and public consultation, with an emphasis of activities undertaken by the two lead agencies dealing with trade and environment – USTR and the EPA.

In recent testimony to the US Senate Committee on Finance, Ambassador Barshefsky, the United States Trade Representative, identified transparency and openness as forming priority elements of the future Trade Agenda, priorities built around “accessibility to citizens and involvement of civil society in the institutions of international trade.” To that end and as a follow-up to President Clinton’s statement in to the May 1998 WTO Ministerial meeting, USTR has promoted transparency in several international trade institutions and initiatives, including the WTO (where civil society should be empowered to contribute to its work); FTAA, (where the US helped create a Committee of Government Representatives on Civil Society), and the Trans-Atlantic Business Dialogue (TABD) established between the private sectors of the United States and the European Union and including an Environmental Working Group. A Trans-Atlantic Consumer Dialogue, a Trans-Atlantic Labor Dialogue and a Trans-Atlantic Environment Dialogue are also being established.

In addition to promoting greater transparency in international organisations, USTR assists the public in identifying public records and documents by various means, including listing report titles, as well as in some cases the full text, on its Home Page. Additional information to the public is provided through its Public Affairs Offices, which often transfer questions to the relevant staff members. USTR issued the “Public Handbook for Gaining Access to USTR Information” which includes information on how to seek information, what type of information exists, as well as a “Fax on Demand” and other services.

USTR also issues formal “Notices of Proposed Action” which solicits public comment on proposed action or recent international trade decisions. For example, in 1997, USTR announced that a second round of accelerated tariff elimination talks under NAFTA would be initiated, and invited petitions

regarding proposed specific activities related to the NAFTA Operational Review. Based on those petitions, USTR in 1998 issued a Request for Comments on Activities to be Considered for Accelerated Tariff Elimination under NAFTA (Billing Code 3190-01-P).

Another example of seeking public input to future negotiations is the 1998 *Federal Register* Notice of "Solicitation of Public Comment Regarding the US Preparations for the World Trade Organization's Ministerial Meeting, Fourth Quarter, 1999." The purpose of the Notice was to seek public input was to "facilitate the Administration's participation in the [WTO] General Council's consideration of issues, preparation of U.S. proposals and positions regarding eventual recommendations and acceptances of such proposals by consensus by WTO Members."

The US Environmental Protection Agency (EPA) has a long-standing practice of a high level of transparency and public consultation in all aspects of rulemaking and policy issues. To illustrate with one example, in January 1999 the EPA published notices in the *Federal Register*, as well via agency press-releases, updates on its Home-Page, through its regional offices and by Public Meetings to address proposed initiatives on persistent bio-accumulative toxic chemicals in the environment

In addition to seeking public input into the formulation of domestic environmental regulations, EPA is also involved in a number of international environmental issues, as well as being a lead agency, with the USTR, on co-ordinating "trade and environment" issues. For example, the EPA Administrator, Carol Browner, recently emphasised the Agency's commitment to public participation in international trade and other issues, noting that "an openness to the public benefits international decision-making." One example of the Agency's work involving outside stakeholders is its work in promoting the development and export of environmental technologies. EPA works with such intermediary private sector organisations as the National Association of State Department Agencies as well as directly with the US private sector in such activities as hosting technology demonstrations internationally.

As noted, a wide range of comprehensive procedures related to transparency and public participation affect all aspects of EPA's work, including both rulemaking and public policy proposals. For example, an important emphasis of the EPA's efforts in the last six years has been to complement more traditional command and control regulations with private sector partnerships in such areas as voluntary compliance mechanisms, codes of conduct, the use of market-based instruments and other approaches.

Other federal agencies charged with international negotiations related to environmental policy also have in place *ad hoc* committees or providing notice of public hearings. For example, the US State Department invites a wide range of non-governmental organisation, representatives of the private sector and other interested citizens to participate in regular, informal meetings designed to provide updates on, and ensure public input into, various ongoing and upcoming international environmental negotiations.

The US Fish and Wildlife Service (USFWS) solicits public input and comments through the *Federal Register* prior to participating in CITES Conferences of the Parties (COP), as well as providing information to interested stakeholders about CITES decisions. Following CITES COP X, the Service published a notice to hold public hearings on the change in listings of sturgeons and paddlefish species and their products, with two public hearings held in 1998 to discuss implementation of the decisions. The purpose of the public meetings is to allow representatives of the Service to meet with different stakeholders, including importers and exporters, customs brokers and "other interested persons."

The Department of Commerce works in building private sector partnerships, through a formal procedure comprising 17 Industry Sector Advisory Committees which report to the Secretary of Commerce. In preparing for the APEC discussions on accelerated liberalisation in the environmental

goods and services sector, the Commerce Department established an Environmental Technologies Trade Advisory Committee. More recently, in addition to assessing sectoral liberalisation, the Advisory Committee has become more involved in policy issues, including the integration of trade and environment issues.

Environment reviews and examinations of trade

Although environmental reviews of trade agreements in the U.S. are distinct from formal Environmental Impact Statements (EISs) or Environmental Assessments (EAs) prepared under EIA legislation (i.e. NEPA), the EIA process under NEPA provides a useful reference in underscoring the commitment by federal agencies to transparency and public participation.

The federal regime under the National Environmental Policy Act (NEPA) provides a legal guarantee of the public's right to have access to EIA procedures. For example, under NEPA the public has the legal right to have access to information concerning every step of an EIA preparation and decision-making process. Although there are many different stages and agencies involved in the preparation of an Environmental Impact Statement (EIS), in general NEPA regulations require public comments and relevant documents must be available to the public, pursuant to FOIA requirements.

As noted, EIA documents under NEPA are usually applicable to specific projects, and environmental reviews of macroeconomic policies like trade liberalisation pose different types of methodological and public consent questions than project-specific issues. Past interpretations of NEPA have found that EIA procedures do not apply to international trade agreements. Nevertheless, at the beginning of NAFTA negotiations, the federal government issued a study evaluating the potential environmental effects of the agreement. Likewise, at the conclusion of both the NAFTA and the Uruguay Round, the Administration also issued a report outlining to what extent environmental issues had been addressed in both accords, as well as identifying the potential environmental implications of those agreements.

Since 1995, EPA has established a number of mechanisms to assess to what extent domestic environmental regulations may have implications for international trade rules. EPA has established a checklist of items that rule makers are required to consider in developing regulations, and added to that check-list that regulators are asked to consider are the potential implications for international trade rules.

More recently, the three Parties to the North American Agreement on Environment Co-operation (NAAEC) – Canada, Mexico and the United States – continued to support an assessment of the environmental effects of NAFTA, as required under Article 10(6) of the NAAEC. The NAFTA Effects work is based on broad-based public consultation as well as expert “peer reviews” of various drafts and approaches to this work, comprised of a NAFTA Effects project team and NAFTA Effects Advisory Team. Two workshops have been held to consider issues studies and analytical framework which comprises the report *Assessing the Environmental Effects of the North American Free Trade Agreement (NAFTA): An Analytical Framework (Phase II) and Issues Studies* (March 1999). The final draft of the *Analytical Framework* will be released in June 1999. Following this release, the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Co-operation will seek additional public input and comments on the Analytical Framework in the coming year, through public meetings and other processes.

Experience with transparency and consultation practices

General

In the course of interviewing various representatives of civil society several overall observations can be identified. First, there was broad appreciation of efforts made at the staff level in holding on-going, informal consultative processes with different stakeholders on trade and environment issues. Certain environmental NGOs were of the impression that, although progress has been made in building a meaningful dialogue with different groups, business interests tended to have greater access to policy formulation in the trade and environment debate than some environmental groups, although it was generally felt that all points of view were being considered in the formulation of trade and environment policies. Several individuals pointed to somewhat of a lack of consistency in the format and frequency of consultations with civil society. At the same time, it was noted that consultations and initiatives at the staff level continue to be improved, and consistently provide a forum for meaningful dialogue. There was wide appreciation of the efforts made by the government to advocate increased transparency and public consultations in various international organisations addressing trade and environment issues, including the WTO and FTAA, as a follow-up on President Clinton's May 1998 statement to the WTO in which the merits of greater transparency and the need for institutional reform were stressed.

In commenting on public participation, as a point of principle, it was noted that assessing the effectiveness of transparency and public consultation represented in fact two distinct questions: that is, gaining access to information through updates whether through or formal or informal procedures remains distinct from providing real input and influence to policy decisions on trade-environment.

Although there is not a clear consensus among different groups of how progress in trade and environment could be measured, it was noted that the end goal of public consultations should be better policy co-ordination and integration. Overall, it remains difficult to measure the success of this goal. What follows takes the form of a list of remarks made by various representatives of civil society on both areas of general satisfaction and points where it was felt that improvements still could be made.

Transparency and access to information

A general observation of the various initiatives underway within agencies was that interested stakeholders were provided with ample opportunity to be informed on a regular basis of developments related to trade and environment. Although no single mechanism in itself ensured that all interested groups or citizens could be informed of all issues at all times, various informal processes in place by different agencies ensured that civil society was kept abreast of the debate. There was some concern that smaller organisations located outside of the capital often had difficulty in attending informal consultations on trade and environment held in Washington itself.

Among the general comments on the FOIA and related processes is that information requests which are required to "reasonably describe" that record may presuppose a knowledge of the record which is not feasible for smaller groups and the general public. It was noted that using the Act in order to seek information about trade and environment represented a matter of last resort, given the procedures involved, although it was also noted that several judicial reviews and executive orders relating to FOIA have increased the flexibility of its provisions and underlying spirit of openness.

On the other hand, areas of exclusions and exemptions were noted. For example, the Department of State has adopted a procedure known as "Circular 175," which requires the negotiation and conclusion of virtually all international agreements to have the prior approval of the Secretary of State or his designee. The State Department in necessary cases oversees an interagency consultation to solicit the views of

interested and affected Executive Branch agencies. This process, as it presently stands, is strictly an interagency procedure. Draft requests for negotiating authority are not made public. There is no opportunity for direct public participation in the Circular 175 process itself -as Circular 175 requests tend to be classified, depending on subject matter. In any event, Circular 175 documentation is not customarily made available to the public. Any request under the Freedom of Information Act would be denied under the exception of inter- or intra-agency memoranda (FOIA, U.S.C. §552(b)(5)(1994); C.F.R. §171.11(a)(5)(1995).

Consultation

There was broad-based appreciation of the efforts of different agency staff members in taking various informal initiatives to inform and seek the views of different stakeholders. Consultations took various forms, including holding meetings, conference calls, one-on-one information updates and other more formal initiatives. It was also noted that because of the technical nature of many issues, agencies at times encountered difficulty in packaging information in a way that was accessible and relevant. It was also noted that although environmental groups were of the view that they had less access and influence on the debate than some business groups in trade policy formulation, it was difficult to judge different degrees of influence among different communities. There was also broad appreciation among individuals interviewed of the proactive willingness of staff members from different agencies to continue to build meaningful dialogue on trade and environment.

More specifically on the trade and environment issues, some individuals interviewed expressed the view that while the tradition of environmental policy-making in the United States is profoundly affected by traditions of public engagement, traditional trade-policy formulation has tended to be more opaque, with closer ties to some industries as opposed to environmental or other stakeholders. However, many noted the efforts at the staff level in both the USTR and EPA to improve meaningful dialogue with interested groups and individuals.

On practical issues related to informal departmental initiatives, some concern was voiced about the lack of consistency in the timing, detail of briefings and follow-up. It was also noted that preparations of public consultations could be improved, by providing agendas and lists of participants, together with relevant reports or working papers, well in advance of the meetings. One individual noted that an invaluable source of information on trade and environment issues outside the consultative process was through weekly publications like *Inside U.S. Trade* and the *Journal of Commerce*.

Convened usually on an informal basis, the public meetings and information updates organised by the Department of State to solicit input on various ongoing and upcoming international environmental negotiations have been viewed by different groups as providing valuable information to how the US negotiating position evolves in such areas as the UN Convention on Bio-diversity, the recent negotiations regarding the draft Protocol on Biosafety, Climate Change, Desertification and Persistent Organic Pollutants.

The "trade and environment"-specific advisory body, TEPAC, has provided a good opportunity for the public and interested stakeholders to be updated on emerging issues related to trade and environment. But frustration was expressed by industry and environmental groups alike that meetings often resembled a statement of different positions by different groups, with little real dialogue, and little scope for reaching consensus. As a result, TEPAC meetings more often than not ended in a stalemate, with little real progress towards policy integration achieved. The example of unsuccessful efforts to formulate a

cohesive position on eco-labelling was widely cited as an example in this regard. It was noted that in the absence of consensus on substantive issues, the process of consultation could hinder leadership by government on trade and environment issues.

Concerning the Trans-Atlantic Business Dialogue, the concern was expressed that although it is structured to seek industry perspectives and recommendations, participation by environmental NGOs was negligible, and the focus of the work was primarily on business issues. The establishment of other Trans-Atlantic Dialogues for Labor, Consumers and the Environment may alleviate these concerns. Concern was also expressed about the Administration's support of the FTAA's Committee of Government Representatives on Civil Society. Although any effort to include the views of civil society was welcome, it was felt that the lack of clarity in the Committee's terms of reference, which would only consider submissions from civil society that were deemed trade-related and constructive, were viewed as far too narrow to solicit diverse views of civil society.

Environment and trade reviews

In the context of the NAFTA Operational Review, environmental groups expressed concern that in contrast to the past debate about NAFTA, which have been characterised by broad-based and often intense public consultations involving USTR and EPA, the current NAFTA Operational Review (1998-1999) has been relatively less transparent, with little informal consultations with environmental groups, despite the fact that eleven NAFTA Working Groups or Committees have been addressing (directly or indirectly) environmental issues.

Some environmental groups also expressed hope that any future environmental review of trade agreements would not repeat the experience of the NAFTA Environmental Review. As noted, the Review had been de-linked from NEPA obligations regarding public consultations and review procedures applied both during the drafting stages and following the release of a draft document. While public comments were sought by both USTR and EPA in preparing the Review, in the view of some environmental NGOs, more formal NEPA public consultations were not applied to the Environmental Review. For this and other reasons, many environmental groups were highly critical of the Review when released in 1992.