

**STRENGTHENING PARLIAMENTARY OVERSIGHT OF
INTERNATIONAL TRADE POLICIES AND NEGOTIATIONS:
RECENT DEVELOPMENTS IN CANADA AND INTERNATIONALLY**

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
PARLIAMENTARY OVERSIGHT AND DEMOCRATIC ACCOUNTABILITY IN THE FIELD OF INTERNATIONAL TRADE POLICIES AND NEGOTIATIONS	1
A. “Opening Up” World Trade Organization Processes	1
B. Learning From Recent Canadian Parliamentary Experience.....	4
C. The Growth of Inter-Parliamentary Initiatives	6
D. Strengthening Parliamentary Oversight of Trade Policy at the National, International and WTO Levels: Comparative Contexts and Challenges	9
STRENGTHENING PARLIAMENT’S ROLE IN OVERSEEING MULTILATERAL TRADE NEGOTIATIONS.....	13
A. Delivering Negotiating Mandates to Governments	14
B. Monitoring Negotiations.....	15
C. Communicating With the Public and Responding to Its Concerns.....	16
D. Ratifying Multilateral Trade Agreements.....	16
E. Passing Implementing Legislation.....	17
CONCLUSION.....	17
APPENDIX	



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STRENGTHENING PARLIAMENTARY OVERSIGHT OF INTERNATIONAL TRADE POLICIES AND NEGOTIATIONS: RECENT DEVELOPMENTS IN CANADA AND INTERNATIONALLY

INTRODUCTION

As trade policy increasingly intersects with areas of domestic economic and social policy and as trade issues rise in importance, it has become increasingly vital that elected representatives' views influence the direction of international trade negotiations. Parliamentarians, as the representatives of their country's citizens, must also demonstrate that they are keeping their governments accountable on trade issues. In addition, they must play a central role in holding accountable the international institutions that make and enforce the rules of the multilateral trading system – principally the Geneva-based World Trade Organization (WTO), the membership of which has now grown to 149 countries. This publication highlights recent national and multilateral efforts to increase public and parliamentary involvement in the creation of international trade instruments.

PARLIAMENTARY OVERSIGHT AND DEMOCRATIC ACCOUNTABILITY IN THE FIELD OF INTERNATIONAL TRADE POLICIES AND NEGOTIATIONS

A. “Opening Up” World Trade Organization Processes

Strengthening democratic oversight of trade is a challenge that must be met by parliaments acting not only at a national level but also in collective multilateral terms. The point that “the days when trade policy was the exclusive domain of the executive are over” has been affirmed by a series of international parliamentary conferences on the WTO initiated since 2001 by the Geneva-based Inter-Parliamentary Union (IPU) in collaboration with the European Parliament. The latest, held in mid-December 2005 in conjunction with the Hong Kong Ministerial Meeting of the WTO, brought together 400 parliamentarians representing 65 countries and regional parliamentary assemblies. As a leading participant in these meetings, European Parliament Member Erika Mann has written:

In contrast to the GATT, the WTO's scope now covers more issues, extending far beyond the traditional domain of tariffs and trade in goods. ... In addition, decisions of the WTO judicial bodies now have a binding character. In short, the WTO has a direct impact on the lives of citizens and their societies. At the heart of globalization, the WTO encroaches on some of the traditional prerogatives of legislators as the primary lawmakers in democracies.

This important shift in WTO competencies and societies' concerns about it should be acknowledged by formally adding a "parliamentary dimension to the WTO."⁽¹⁾

The WTO is, of course, an intergovernmental body composed of sovereign states. So it makes sense that it is member governments that formally sit at the negotiating table and do the actual negotiating. Only governments can enter into agreements that are binding on their countries. This central role of states is broadly accepted. However, as noted, this role cannot be exclusive. Rights to public information, access, and participation must be addressed if adequate accountability is to be exercised over the decision-makers involved in these trade negotiating processes.

A large number of non-governmental civil-society organizations (NGOs, or CSOs as they are sometimes referred to) have become involved in campaigns to "open up" the WTO and to advocate for various reforms to the multilateral trading system. However, it is parliaments that have the formal duty to act as the representatives of their societies and that are accountable to their electorates. Moreover, it is becoming apparent that parliaments have an important oversight role to play prior to, during, and after trade negotiations take place. Those negotiations are no longer restricted to remote matters of foreign trade policy. As one analyst observes: "The more WTO rules affect *domestic* rule-making, the louder are the calls for parliamentary oversight of, and democratic participation in, intergovernmental rule-making and policy-making in the WTO."⁽²⁾

(1) Erika Mann, "A Parliamentary Dimension to the WTO – More Than Just a Vision?" *Journal of International Economic Law*, Vol. 7, No. 3, 2004, p. 659.

(2) Ernst-Ulrich Petersmann, "Challenges to the Legitimacy and Efficiency of the World Trading System: Democratic Governance and Competition Culture in the WTO," *Journal of International Economic Law*, Vol. 7, No. 3, 2004, p. 590. See also Ernst-Ulrich Petersmann, ed., *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance*, Oxford University Press, 2005.

Many argue that, in an age of rising democratic expectations, there is much still to be done in order to improve transparency and public engagement on the part of both the WTO and its member governments.⁽³⁾ Trade policy expert Robert Wolfe has observed that “discussions of transparency have hardly advanced since Doha. ... The institutional weaknesses that contributed to the problems in Seattle are still not on the agenda.”⁽⁴⁾

At the same time, some senior officials are recognizing that the WTO system must evolve and learn to operate in new ways. For example, Julio Lacarte, who has been an ambassador to the WTO and chaired its Appellate Body, has written that:

transparency should be reinforced by closer involvement of parliamentarians who have a strong and particular approach to the welfare of their electors. Their daily contact with public opinion and their constantly renewed contribution to national legislation make them ideal actors in these broad-ranging issues. There is considerable lack of knowledge of the WTO in many parliaments, and this works to the detriment of the Organization.⁽⁵⁾

For parliamentarians to do their job effectively, they need the opportunities and means to obtain a thorough understanding of the workings of the WTO system, of multilateral negotiating processes, and – equally important – of national processes of trade policy development. They need to be better informed and more “in the loop” at all of these levels if they are to perform oversight and accountability functions on behalf of the publics they represent. To that end, training materials, manuals, guides to agreements and to the WTO, and other communications and policy development tools could be useful. Parliamentarians should also be aware of all the key steps that have to be taken domestically to ensure that a country’s participation in a trade deal can be realized.

In a 2002 report, a Commonwealth Parliamentary Association “Study Group on Parliament and the International Trading System” put forward a series of useful recommendations on how to build up the necessary parliamentary capacities. (See the Appendix for the full list of these recommendations.)

(3) Cf. Steve Charnovitz, “The WTO and Cosmopolitics,” *Journal of International Economic Law*, Vol. 7, No. 3, 2004, pp. 675-682.

(4) Robert Wolfe, “Crossing the river by feeling the stones: where the WTO is going after Seattle, Doha and Cancun,” *Review of International Political Economy*, Vol. 11, No. 3, August 2004, p. 591.

(5) Julio Lacarte, “Transparency, Public Debate and Participation by NGOs in the WTO: A WTO Perspective,” *Journal of International Economic Law*, Vol. 7, No. 3, 2004, p. 686.

B. Learning From Recent Canadian Parliamentary Experience

Although extensive parliamentary hearings were held on the Canada-United States bilateral Free Trade Agreement and subsequently on the North American Free Trade Agreement (NAFTA), multilateral trade negotiations did not arouse substantial public and parliamentary attention in Canada until the latter half of the 1990s. Legislation required to implement Canada's obligations under the complex Uruguay Round agreements (which also established the WTO) did have to be passed by the Canadian Parliament in 1994; however, this occurred without much controversy or detailed study.

A marked change occurred as the implications of the new WTO regime became more apparent, and in light of the opposition that arose to the OECD's ill-fated attempt to negotiate a "Multilateral Agreement on Investment" (MAI). Under the pressure of mounting public concerns, hearings on the MAI were organized by the Canadian House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT) through its Subcommittee on International Trade, Trade Disputes and Investment, resulting in a major 1997 report.

Even as the MAI initiative was being abandoned, deeper and broader questions were surfacing in regard to the possibility of a major new round of trade-liberalizing negotiations (including in sensitive areas affecting investment and services) under the auspices of the WTO. Responding to these increased levels of public interest and concern, the Canadian government expanded and intensified trade policy consultations. Then Minister of International Trade Pierre Pettigrew also asked SCFAIT to undertake extensive public hearings across Canada during the year prior to the ill-fated 1999 Seattle Ministerial Conference of the WTO. The Committee's massive 300-page June 1999 report – which also included a "Citizen's Guide to the WTO" – devoted considerable attention to public access and process issues and underlined the necessary parliamentary dimension, highlighting as a first priority for action:

[instituting] a long-term public and parliamentary process that is capable of providing the democratic oversight that is needed over an expansive range of trade and investment policy issues in which complexity and change are a given. Accordingly, the Committee's first two recommendations are designed to address that fundamental requirement: both to improve the representation of civil society within trade policy development processes, along with the means of regular dialogue and feedback, and to ensure that Parliamentary institutions are sufficiently able to examine the results of international trade and investment negotiations *before* any binding agreements that Canada enters into take effect within domestic legislation. In short,

consultation in future must involve adequate public preparation, public knowledge, and public consent exercised through the role of elected representatives.⁽⁶⁾

As finance minister, former Prime Minister Paul Martin had agreed with putting the accent on the role of parliamentary oversight, telling University of Windsor students in a speech a few months after the failed Seattle WTO meeting that the protests there had been a “wake-up call.” As he put it, “in a democracy there is a place where people can have impact on the policies of the IMF, the World Bank, and the WTO, and the global issues they address. That place is the national legislature. In Canada, that place is Parliament. And that is where, first and foremost, the public will should be articulated.”⁽⁷⁾

Following the launching of the 2001 Doha Development Round, SCFAIT’s trade subcommittee undertook more public hearings and produced a second major report in 2002 on Canadian positions in the WTO negotiations. This remains the “high water mark” of parliamentary scrutiny of the multilateral trade system in Canada.⁽⁸⁾ Moreover, several expert analyses indicate that these parliamentary public hearings were more appreciated by participants than many of the departmentally managed patterns of trade policy consultations – including through a variety of advisory bodies and forums as well as Internet-based means – that have proliferated during the past decade.⁽⁹⁾

(6) SCFAIT, *Canada and the Future of the World Trade Organization: Advancing a Millennium Agenda in the Public Interest*, June 1999, “Executive Summary,” pp. 3-4 (emphasis in original).

(7) Hon. Paul Martin, quoted in *The Hill Times*, 19 June 2000, p. 10 (also available on the Department of Finance Web site at <http://www.fin.gc.ca/news00/data/speech0507e.html>).

(8) SCFAIT’s successive wide-ranging reports making recommendations to the government for negotiating positions prior to the WTO ministerial meeting in Seattle in 1999 and following up the launching of the Doha Development Round in 2001 were both undertaken partly in response to ministerial requests to undertake extensive public consultations. In 1999, in response to a request from then Minister of International Trade Pierre Pettigrew, SCFAIT produced Report 9, *Canada and the Future of the World Trade Organization: Advancing a Millennium Agenda in the Public Interest*, June 1999 (<http://www.parl.gc.ca/InfoComDoc/36/1/FAIT/Studies/Reports/faitrp09-e.htm>) (Government Response, November 1999, <http://www.dfait-maeci.gc.ca/tna-nac/documents/canwto-e.pdf>); and in 2002, in response to a request from former Trade Minister James Peterson, SCFAIT produced Report 19, *Building An Effective New Round of WTO Negotiations: Key Issues for Canada*, May 2002 (<http://www.parl.gc.ca/InfoComDoc/37/1/FAIT/Studies/Reports/faitrp19-e.htm>) (Government Response, October 2002, http://www.dfait-maeci.gc.ca/tna-nac/gov_response-en.asp).

(9) For a thorough review of public consultations on international trade during the past decade, see Robert Wolfe, “Transparency and public participation in the Canadian trade process,” paper delivered to the IPU Panel, “Transparency and Participation in the National Trade Policy Process,” WTO Public Symposium – WTO After 10 Years: Global Problems and Multinational Solutions, Geneva, April 2005. On the relative merits of parliamentary public hearings and government-conducted consultations, see Denis Stairs, “Foreign Policy Consultations in a Globalizing World: The Case of Canada, the WTO, and the Shenanigans in Seattle,” *Policy Matters*, Institute for Research on Public Policy, December 2000.

Sustaining that level of attentive oversight is a challenge for Canadian parliamentarians, however. Although Canada's chief agricultural trade negotiator did appear before the Senate foreign affairs committee in June 2005 (in connection with its study of Africa), during 2005 senior trade officials did not appear on the subject of the WTO negotiations before the House committees that had produced the major 1999 and 2002 reports referred to above. Only in late November 2005 did SCFAIT hold a hearing with non-governmental witnesses on the issues at stake in the crucial Hong Kong meeting. The submission by one of those witnesses, the Canadian Council for International Cooperation, made pointed reference to "the lack of an effective democratic negotiating process."⁽¹⁰⁾ Parliamentary scrutiny of international trade negotiations remains a work in progress within Canada's political system, occurring on an occasional rather than a regular and systematic basis.

C. The Growth of Inter-Parliamentary Initiatives

The need for multilateral as well as national parliamentary oversight of international trade rules gained attention with the advent of the WTO as a more potent and legally binding body than the General Agreement on Tariffs and Trade. In 1996, two members of a Swiss NGO coalition, Christophe Bellmann and Richard Gerster, published a lengthy article in the *Journal of World Trade* calling for more "democratic checks and balances" in the global trading system, including through the creation of a "WTO Parliament." Such a proposed parliament would have "parliamentary representatives from all Member States, in order to establish a direct link with national parliaments," and the accountability relationship would entail "closer involvement of Parliament in negotiations by providing regular briefings and by allowing its participation in the negotiating mandate and establishment of guidelines."⁽¹¹⁾

With the WTO agenda becoming more controversial, it was during the notably combative atmosphere of the December 1999 Seattle Ministerial Meeting of the WTO that a group of some 150 parliamentarians from 30 WTO member states, including Canada, met at the

(10) Canadian Council for International Cooperation, Background Briefing Paper, "The WTO Sixth Ministerial Meeting in Hong Kong: Demise of the Development Agenda?" submitted to the House of Commons Standing Committee on Foreign Affairs and International Trade, Meeting No. 75, 24 November 2005.

(11) Christophe Bellmann and Richard Gerster, "Accountability in the World Trade Organization," *Journal of World Trade*, December 1996, pp. 50 and 61-62.

initiative of Senator William Roth, then Chair of the U.S. Senate Finance Committee and the U.S. Congressional delegation to the ministerial conference. European Parliament delegates were also prime movers behind this inaugural gathering of legislators, which issued a unanimous call “for the establishment of a Standing Body of WTO Parliamentarians whereby members of Parliaments can exchange views, be informed and monitor WTO negotiations and activities.” The parliamentary meeting was strongly supported by then WTO Director-General Mike Moore, himself a former New Zealand parliamentarian, who continued to express the view that “[w]e need to involve Parliamentarians in a more focused, orderly and organized way.”⁽¹²⁾

U.S. Congressional interest in inter-parliamentary channels seemed to wane after Seattle. However, the multilateral challenge was strongly pursued by European and Canadian parliamentarians and in North-South terms through increasing involvement by the Inter-Parliamentary Union. Canadian members worked with the World Federalists of Canada to promote the idea of a WTO parliamentary assembly. In Europe, members of the European Parliament took a leading role, and scrutiny of the WTO also featured on the agenda of the Parliamentary Assembly of the Council of Europe. The Commonwealth Parliamentary Association was another multinational parliamentary body to take an active interest in parliamentary surveillance of international trade negotiations.⁽¹³⁾

On 8-9 June 2001, the IPU convened in Geneva a first global “Parliamentary Meeting for a Free, Just and Equitable Multilateral Trading System” with the explicit goal of “providing a parliamentary dimension.” Subsequently, as a joint initiative with the European Parliament, the IPU held a second such meeting on 11 November 2001 on the occasion of the WTO ministerial conference in Doha, Qatar, that launched the still-ongoing “Doha Development Round.” More than 100 parliamentarians were present, and they stated in a final declaration their “conviction that global trade concerns every individual and society as a whole. Therefore, parliamentary participation is necessary to ensure a better representation of citizens and we advocate a parliamentary dimension to the WTO.”

(12) WTO, Press Release, “Moore Calls for Closer Parliamentary Involvement in WTO Matters,” Geneva, 21 February 2000. See also Mike Moore, “Parliamentarians and the WTO: Accountability in the new global trading system,” *The Parliamentarian*, April 2000, p. 139.

(13) For more details of these developments, see Gerald Schmitz, *Creating an International Parliamentary Voice in World Trade Decision-Making*, Background Paper prepared for the Commonwealth Parliamentary Association 46th Annual Conference, London and Edinburgh, 20-29 September 2000.

A further, more elaborate “Parliamentary Conference on the WTO” under IPU and European Parliament auspices was held in Geneva on 17-18 February 2003, attracting more than 500 delegates from 77 countries. A few months later, on 17 June, the IPU organized a panel on “Parliament and the WTO” at the WTO headquarters itself as part of the annual WTO Public Symposium. Then, on 9 and 12 September 2003, the IPU with the European Parliament organized a “Cancun session” of the Parliamentary Conference on the WTO to coincide with the Cancun ministerial WTO meeting. On 24-26 November 2004, the European Parliament hosted a “Brussels session” of the Parliamentary Conference on the WTO.

As noted above, the most recent of these conferences was held in December 2005 at the time of the Hong Kong WTO ministerial meeting. The Final Declaration of this conference, adopted by consensus on 15 December, not only reiterated its call for an explicit WTO parliamentary dimension, but also addressed the need for building stronger parliamentary roles within countries, advocating “assigning trade issues to an existing committee or, when needed, establishing a special committee on the WTO in national parliaments, regional and global parliamentary organizations. These committees could monitor developments in multilateral trade, including capacity-building of parliaments and parliamentarians in multilateral trade, and offer parliamentary oversight.”⁽¹⁴⁾

In addition to the IPU and European Parliament efforts, in recent years the Commonwealth Parliamentary Association (CPA) has also been active, sponsoring a study group on the international trade system as previously mentioned and a series of regional workshops with the WTO Secretariat. Two are planned for 2006 in Asia and the Pacific. According to a discussion paper prepared by the CPA for the December 2005 Hong Kong Parliamentary Conference, these workshops “are designed to inform participants on the basic operations of the multilateral trading system and key issues on the international trade agenda, and to provide a forum for participants to discuss and exchange views and ideas on trade-related and development-related issues of particular concern to countries in that region.”⁽¹⁵⁾

(14) The full text of the Hong Kong declaration can be accessed on the IPU Web site at: <http://www.ipu.org/splz-e/hk05/declaration.pdf>.

(15) “Completing the Doha Development Agenda,” Discussion paper prepared by the Commonwealth Parliamentary Association for the Hong Kong Session of the Parliamentary Conference on the WTO, accessed at <http://www.ipu.org/splz-e/hk05/cpa.pdf>.

D. Strengthening Parliamentary Oversight of Trade Policy at the National, International and WTO Levels: Comparative Contexts and Challenges

While some common elements can be identified in regard to strengthening parliamentary oversight practices in the field of international trade (see, for example, the CPA recommendations in the Appendix), the reality is that large differences among the political systems of WTO member states make some comparisons difficult, and may also lead to divergent perspectives as to how best to advance democratic accountability goals.

Not only is the United States the most powerful state in the international system as a whole, the U.S. Congress possesses weighty powers that are the envy of other legislatures in regard to international treaties and trade agreements. That is because, as law professor Joanna Harrington points out, “there is a constitutional requirement to involve the Senate in the making of treaties, even though most treaties are considered under U.S. law to be ‘executive agreements’ and as such need neither Senate (nor Congressional) approval.”⁽¹⁶⁾ Congress especially guards its prerogatives when it comes to international trade affecting U.S. interests, and often mistrusts international or supranational forms of trade regulation. Former Congressman David Skaggs has expressed this American perspective:

More effective democratic control of the World Trade Organization – both real and perceived – is desirable. However, this issue is not yet at the top of the list for most members of Congress. If they worry about trade policy and democratic values, they are more likely to worry about the compromise of democratic values (or legislative authority) built into the U.S. domestic process for considering trade bills: the no-amendment rules of the trade promotion authority (TPS; formerly, ‘fast track’) law.⁽¹⁷⁾

(16) Joanna Harrington, “State Actors and the Democratic Deficit: The Role for Parliament in Treaty Making,” Paper submitted to the House of Commons Standing Committee on Foreign Affairs and International Trade, May 2005, p. 31. The paper has since been published as “Scrutiny and Approval: The Role for Westminster-Style Parliaments in Treaty-Making,” *International and Comparative Law Quarterly*, Vol. 55, January 2006, pp. 121-160.

(17) David Skaggs, “How can Parliamentary participation in WTO rule-making and democratic control be made more effective in the WTO?” *Journal of International Economic Law*, Vol. 7, No. 3, 2004, p. 656. See also in the same journal volume the views of another former U.S. Congressional representative who has served on the WTO’s Appellate Body, James Bacchus, “A Few Thoughts on Legitimacy, Democracy, and the WTO,” pp. 667-673.

The American congressional experience is clearly distinctive. That is also the case of the increasingly assertive role which the European Parliament is playing in regard to the European Union's approach to multilateral trade negotiations. Within the EU's unique inter-governmental framework, WTO negotiations are undertaken collectively by the European Commission acting on behalf of all 25 member states. The oversight powers of the directly elected European Parliament have been growing, though it is still far from obtaining the mandate approval and treaty ratification authorities that are exercised by the U.S. Congress.

The U.S. and EU examples may not be directly applicable to the Canadian parliamentary environment. However, Professor Harrington has argued in a lengthy 2005 submission to the House of Commons Standing Committee on Foreign Affairs and International Trade that there is a compelling need for Canadian practice to catch up to other more comparable legislative systems in the area of parliamentary scrutiny of executive treaty-negotiating and treaty-making powers. She notes that: "Among the older countries of the Commonwealth, Canada is the only one with no requirement for some form of parliamentary involvement in the making of treaties"⁽¹⁸⁾

Addressing what she calls a "federal democratic deficit," Professor Harrington believes that Canada could benefit from innovations that have occurred in other Commonwealth federations with Westminster parliamentary systems of government, in particular those in Australia and South Africa. Since 1996, the Australian Parliament has had in place a Joint Standing Committee on Treaties for the purpose of conducting public reviews of international agreements prior to the national government taking any binding action under international law. The creation of this committee was part of a package of reforms that included requirements for early public notification and access to treaty information, for a "national interest analysis" to accompany the tabling of all treaties, and for federal-state consultation through a "Treaties Council." In South Africa, the interim post-apartheid constitution that came into force in 1994, and then the final constitution that came into force in 1997, explicitly "mandated a role to Parliament in treaty-making in advance of ratification or accession." Both houses of the South African Parliament, as well as their relevant parliamentary committees, are thus empowered to review and approve nearly all treaties of significance, in addition to having authority over the enactment of any legislation required to give a treaty domestic effect.⁽¹⁹⁾

(18) Harrington (2005), p. 40.

(19) *Ibid.*, pp. 15-23 on Australian parliamentary involvement in treaty-making, and pp. 31-40 on the South African practice under the new post-apartheid constitution.

Whatever the specific country experience to date with parliamentary involvement in treaty negotiations and ratifications – which include of course those regulating international trade through binding legal agreements – one can anticipate growing public demands for closer and more continuous democratic scrutiny of all significant international trade agreements entered into by governments, of the negotiating processes whereby those agreements are arrived at, and of the policy-making institutions that do the negotiating and that formulate and adjudicate the binding obligations accepted under such agreements.

European Parliament Member Erika Mann has written that the movement for greater accountability of trade policy processes “does not prejudge the form, function, and structure parliamentary involvement may take. Since Seattle, several parliamentary meetings on international trade policy have been organized, alongside WTO Ministerial Conferences albeit outside the institutional framework of the organization.” But, she adds: “Now, the time has come to officially recognize and institutionalize the parliamentary dimension to the WTO in order to further enhance transparency and democratic legitimacy of WTO activities.” In that regard, she observes that: “One may envisage different institutional designs on a continuum ranging from a permanent parliamentary Assembly to occasional meetings of parliamentarians. Whatever outcome might finally emerge, the most important issue is to institutionalize the process.”⁽²⁰⁾

What, then, are some of the considerations that might guide achievement of that objective so that the parliamentary dimension of public oversight is developed and strengthened in the best way possible? An important recent article by American legal scholar Gregory Shaffer sheds valuable light on this question. As an overarching principle, Shaffer maintains that “the creation of a WTO parliamentary body should be judged in terms of its impact on the participation of less powerful stakeholders and, in particular of developing countries and their constituents.”⁽²¹⁾ As Shaffer explains, whatever institutional design is chosen must address developing nations’ concerns that a parliamentary dimension not reinforce existing power imbalances by favouring the larger delegations of powerful member states or detracting from efforts to improve the WTO’s “internal transparency” by making it first more accountable to its developing-country members.

(20) Mann (2004), pp. 659-660.

(21) Gregory Shaffer, “Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts,” *Journal of International Economic Law*, Vol. 7, No. 3, 2004, p. 629.

Shaffer then makes five main points on the process of institutionalizing a parliamentary dimension of trade oversight at the multilateral WTO level:⁽²²⁾

- First, that any options put forward should be assessed on a pragmatic comparative basis “in terms of how well they permit parties to participate in decision-making that affects them in a relatively unbiased manner.”
- Second, that both national and supranational elements of oversight must be involved. While the United States focuses on the first, and the European Union promotes the second, ideally both levels can be made complementary.
- Third, that parliamentary proposals must deal with the dominant and divergent approaches that have been followed in the United States compared to the European Union, especially given the distinctly different orientations and powers of the U.S. Congress⁽²³⁾ in relation to those of the European Parliament, which functions within the EU’s specific system of multinational and multi-level governance.
- Fourth, that parliamentary proposals must help to resolve “the central challenge facing current WTO decision-making – that of the difficulty of most developing countries to participate effectively in the WTO, whether in its political or judicial processes.”
- Fifth, parliamentary proposals must successfully tackle a number of practical issues related to the institutional challenges.

On that final point, Shaffer outlines a series of such issues, including:

- The role of inter-parliamentary meetings: would they remain only consultative and for the purpose of disseminating information and facilitating exchanges of views?
- Would inter-parliamentary gatherings be held on an ad hoc annual basis and coinciding with WTO ministerial meetings, or would they evolve into a regular standing body recognized within the WTO’s institutional structure?
- How would a strengthened, more institutionalized parliamentary dimension be funded? What would be its operative organizational rules and procedures and how would they be formalized to be fair to all countries, including developing countries?

(22) *Ibid.*, pp. 630ff.

(23) Shaffer observes that members of the U.S. Congress have not shown much interest in recent inter-parliamentary meetings on international trade. Indeed, no U.S. representative attended the international parliamentary conferences held in Geneva in February 2003 and in Cancun later that year, even though more than 30 Congressional representatives were present for the Cancun ministerial meeting (p. 641). Interviewing staff of Congress’s powerful trade and foreign relations committees, he also found no one who expressed much interest in inter-parliamentarian meetings (p. 644).

- How would parliamentary delegates be chosen on a continuing basis? Would there be a role for members of the trade committees of national parliaments? And how would they report back to their respective parliaments?
- How, given the growing range and complexity of the issues being dealt with at the WTO, would parliamentary functions be carried out in a substantive and more than symbolic way? Would specialized committees or working groups be formed in order to bring inter-parliamentary perspectives to bear on the key issues in advance of, during, and following up the meetings themselves?
- Can new technologies be further utilized to develop inter-parliamentary exchanges on trade issues between meetings (for example, through Internet-based communications, networks and “virtual forums”)?⁽²⁴⁾
- How should the WTO secretariat interact with parliamentary representatives? (Shaffer suggests that an “inter-parliamentarian liaison office could be established within the WTO secretariat, possibly in the Director-General’s office or in the external relations division.”)⁽²⁵⁾

Shaffer’s detailed analysis concludes that inter-parliamentary meetings can play a very valuable role, but that given limited time and resources they will need to show results and to work through these kinds of issues if they are to progress to the next level of stronger institutionalized oversight of multilateral trade policies, practices, and negotiations among governments.

The logical next steps would be to continue to build on what has already been achieved through the annual IPU-European Parliament inter-parliamentary conferences and, going forward from the Hong Kong session, to renew efforts to expand parliamentary capacities with the goal of making trade policy development more publicly accountable at every level from the global to the local.

STRENGTHENING PARLIAMENT’S ROLE IN OVERSEEING MULTILATERAL TRADE NEGOTIATIONS

The following part of this publication considers the range of potential parliamentary oversight functions, with particular reference to Canadian practice. As already indicated, the specifics of parliamentary action will likely continue to vary considerably across

(24) Shaffer also suggests that: “Parliamentarians could assign individuals from their national parliamentary staffs to attend to WTO-related matters and coordinate exchanges through the Internet” (p. 652).

(25) *Ibid.*, p. 652.

different state jurisdictions with their particular forms of government and diverse legislative arrangements. However, what should be common to the pursuit of better practices worldwide is building the capacity of parliamentary instruments at every level to tackle the increasingly complex interconnections of globalized trade. From the global to the local, parliamentarians must be able to develop the tools and be afforded the opportunities to perform the oversight functions described below, in the best interests of all the citizens they represent.

A. Delivering Negotiating Mandates to Governments

Parliamentarians have not tended to be directly involved in negotiations leading to ratification of multilateral trade agreements. However, parliaments are increasingly helping to define the parameters within which the executive branches in their countries can negotiate.

To make this parliamentary input more effective, it could be very useful for countries to establish specialized committees in their legislatures with mandates to study international trade issues, and – just as important – to provide them with the resources and authority to help influence the mandates that WTO members give to their trade negotiators. Members of these committees could also benefit from knowledge gained through inter-parliamentary meetings, notably the sessions of the Parliamentary Conference on the WTO organized by the IPU and the European Parliament.

In Canada, parliamentary input into the negotiating process has been largely provided precisely through its committee system. Major studies by the House of Commons Standing Committee on Foreign Affairs and International Trade and its Subcommittee on International Trade, Trade Disputes and Investment, as well as by the House of Commons Agriculture and Agri-Food Committee, have all provided concrete policy advice to the Government of Canada on the current WTO negotiations. The committees' reports and recommendations were based on consultations undertaken with Canadian stakeholders and interested individuals.

While the federal government is not obligated to accept the policy advice emanating from the committee reports, in practice these reports are carefully considered by senior government officials and the Canadian negotiating team in Geneva. In a number of instances, they have helped to define Canada's negotiating position.

B. Monitoring Negotiations

Parliament and its committees can also play a useful role in monitoring the work of country negotiators as the latter attempt to realize the negotiating mandates assigned to them. To accomplish this goal, parliamentarians need to intensify their efforts to closely follow trade negotiations.

To help realize more effective monitoring, the Minister in charge of the negotiations should be made answerable to parliament, either on the floor of parliament or in committee, throughout the various stages of the negotiating process. A regular flow of information from the executive branch to the legislative branch of government should be conducted to keep parliamentarians fully informed.

In Canada, the transfer of information on the WTO negotiations from the government to the country's federal parliamentarians occurs in several ways:

- Briefings are given on international trade topics such as the WTO at any time upon the request of the parliamentarian and/or when a given parliamentarian becomes the trade critic for his or her party;
- Senior government officials appear before parliamentary committees (e.g., SCFAIT and its International Trade Subcommittee, the Senate Foreign Affairs Committee, and the House of Commons Agriculture and Agri-Food Committee) examining WTO issues and negotiations;
- The Government of Canada must make a comprehensive official written response to recommendations in House committee reports addressing the WTO and international trade matters;
- The Canadian Ambassador to the WTO in Geneva has briefed members of the House of Commons International Trade Subcommittee on the WTO; and
- “Take note” debates have occurred in the House of Commons on issues such as the state of the agricultural trade negotiations at the WTO.

It would also help if more parliamentarians could regularly interact with WTO personnel, as well as with other elected representatives, either in Geneva or in other cities – notably through the inter-parliamentary meetings on international trade issues that have been organized by the IPU and European Parliament, and that have been incorporated within the WTO's annual Public Symposium. Moreover, it would be beneficial if parliamentarians formed

part of the national delegations to WTO ministerial conferences such as the recent one in Hong Kong.

C. Communicating With the Public and Responding to Its Concerns

Many citizens are becoming more concerned about what globalization and increased trade liberalization mean for them in their day-to-day lives. It is vital that elected representatives communicate to citizens how trade negotiations are developing and what impacts of any potential deal could be expected. In this matter, as in many others, parliamentarians can play a key role by serving as a relay between the government and the people. By keeping the public informed, and by bringing any concerns to the attention of the negotiators, legislators can help respond to any apprehension that may exist concerning the trade negotiations and their impacts. Much of the fear and antipathy directed at globalization could be dissipated if the public perceived that their elected representatives were actively involved throughout the negotiating period.

D. Ratifying Multilateral Trade Agreements

Parliaments can be given the power to vote on international trade agreements that their countries have entered into. This is notably the case for the U.S. Congress under the “fast-track” authority that it may grant (or deny) to the president. In Canada, however, the power of ratification lies with the Crown, not with Parliament. It is the prerogative of the federal government alone to enter into international treaties, and it may do so without parliamentary approval as there is no legal or constitutional requirement for such approval. Parliament may subsequently be consulted and even asked to approve international agreements and treaties; but the actual ratification is often, in Canada and other Westminster parliamentary systems, strictly an act of the executive branch of government. Nevertheless, parliamentarians should as a minimum insist on the right to be fully informed of the details of any international trade treaties, their obligations and implications. The Australian experience requiring preparation of a “national interest analysis” and review by a parliamentary joint committee on treaties is a particularly interesting one in that regard. South Africa’s post-apartheid constitution also provides a useful example of explicit parliamentary involvement in treaty-making that applies to international trade negotiations and agreements.

Canadian parliamentarians have in fact pressed for greater powers along these lines. The 1999 SCFAIT report on the WTO made a recommendation that: “Parliament’s institutions, and in particular this Committee, must also be able to examine fully all future trade and investment negotiations, most importantly at the WTO level, prior to Canada implementing into domestic law any binding agreements resulting from such trade and investment negotiations.”⁽²⁶⁾

The Conservative Party of Canada stated in its 2006 federal election platform that: “A Conservative government will place international treaties before Parliament for ratification.”⁽²⁷⁾

E. Passing Implementing Legislation

Although few parliaments have powers over ratification, parliamentarians are usually required to vote on the legislation that puts into effect in domestic law the provisions contained in multilateral trade deals. In the Canadian federal system, this means that legislators at the provincial level may also need to be involved to give effect to provisions that fall within the provinces’ areas of exclusive constitutional jurisdiction. Parliamentarians therefore have an opportunity to exercise due diligence in the scrutiny of such legislation. They also have a responsibility to ensure that any implementing legislation that is passed is in full conformity with the treaties – including those containing commitments to international human rights and environmental standards – that their governments have signed and ratified.

CONCLUSION

Parliamentary oversight of international trade matters, especially those involving multilateral negotiations and legally binding agreements, has made some, if sometimes unsteady, progress in recent years as a result of both national and inter-parliamentary initiatives. Canadian parliamentarians have played a significant role in these efforts, domestically and multilaterally. This has been happening at the same time as international organizations and trade regimes have

(26) SCFAIT, *Canada and the Future of the World Trade Organization*, Recommendation 2.

(27) *Stand Up for Canada: Conservative Party of Canada Federal Election Platform 2006*, January 2006, p. 45.

come under increasing strain and been subjected to much critical scepticism even as they attempt to respond to pressures for more accountability and to cope with the demands of globalization.

Parliamentarians, too, are confronting similar challenges and expectations coming from their own publics. Parliamentarians' capacities need to be expanded and strengthened in order to be able to respond effectively to those challenges and expectations. They need more opportunities, both within their own systems of government and through multilateral forums, to be centrally involved in trade policy developments up to and including the negotiation of global trade agreements.

There is, in short, a very large agenda still ahead – with much to be done by all participants – to advance the goals of transparent, accountable oversight of international trade relations. But only in this way will it be possible to build public confidence in the institutions of international trade governance.

APPENDIX

Conclusions and Recommendations from the Report of the Commonwealth Parliamentary Association Study Group on Parliament and the International Trading System, February 2002⁽¹⁾

RECOMMENDATIONS FOR PARLIAMENTARIANS

There is a need to build increased capacity among Parliamentarians to bring to fruition the benefits and solutions available through the liberalized international trading system. This need can be met by developing the role of Parliamentarians so that they are equipped to:

- Become more involved in trade matters as an essential part of their parliamentary roles;
- Be up-skilled on a continuing basis to perform roles appropriate to Parliamentarians in matters of international trade;
- Become more attuned to their obligations and responsibilities in respect of WTO deliberations and decisions;
- Keep abreast of developments in international trade, including the implications and interpretations of trade rules;
- Become advocates of the economic and social benefits of open markets, especially in developing countries and in sectors of developed countries;
- Participate in a skilled and informed manner in the rules-based trading environment, including the negotiating, ratification and legislative phases, and evaluation of structural adjustment measures, and
- Explore and access avenues for relevant funding and support, particularly those available to developing countries, for better participation in the process of analysis, negotiation and implementation.

(1) See pp. 18-19 of the report, accessed at:
<http://www.cpahq.org/uploadstore/docs/InternationalTradingSystemfullreport.pdf>.

RECOMMENDATIONS FOR INSTITUTIONS

Institutional resources need to be deployed via international organizations and bodies to support Parliamentarians to undertake the roles envisaged. The following strategies are recommended:

- A review of the work of Parliaments and Parliamentarians, and of parliamentary mechanisms such as committees, focused on the role of parliamentary structures in facilitating good practice in matters of international trade with particular regard for the needs of small and developing countries;
- The establishment of a system of roving ambassadors to provide support where required to address international trade matters as they impact at the regional and local level;
- Assistance to small and developing nations to make effective use of parliamentary hearings and other processes to engage with civil society, including non-governmental organizations, business associations and labour unions, within the context of trade liberalization and options provided by the rules-based approach;
- Workshops, study groups and other participatory processes focused on Parliamentarians' access to information, knowledge, skills and understandings for effective participation in international trade issues;
- The facilitation of interparliamentary and cross-organizational mentoring arrangements, work attachments and other forms of mutual exchange;
- The preparation of training materials, manuals, guides to agreements and other training tools in a format suitable for use by Parliamentarians, and
- The further development of linkages between the CPA and other organizations within and outside the Commonwealth to undertake related work.