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Does the Philippines Need a Trade Representative Office?

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Philippine Institute for Development Studies
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Does the Philippines Need a Trade Representative Office?

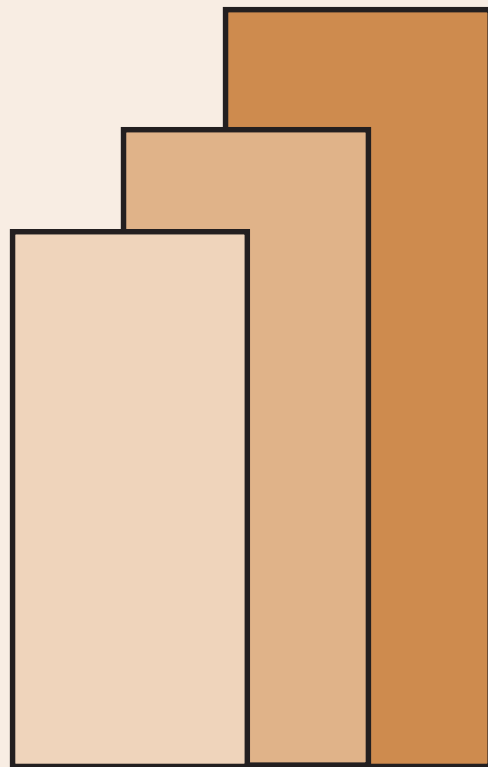
Gloria O. Pasadilla and Christine Marie M. Liao

DISCUSSION PAPER SERIES NO. 2005-26

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Does the Philippines Need a Trade Representative Office?

Gloria O. Pasadilla, Ph.D.¹
and
Christine Marie M. Liao

Abstract

The paper describes the current decision-making structure for trade policy formulation in the Philippines and compares it with the systems in selected countries. It cites difficulties in the current set-up, such as: 1) turf mentality among government agencies that tend to paralyze inter-agency committees in coming up with an overall position that fully acknowledges trade-offs; 2) lack of appreciation of and capacity for trade research that should inform negotiating positions; 3) unclear delineation of authority; 4) lack of suitable mechanisms for consultation and feedback on negotiation progress and impact, not only regarding tariffs but also of other items under discussion.

This paper argues that there is need for a single agency that will handle all international trade negotiations, coordinate effectively with other government departments and agencies, and formulate final trade positions for negotiations. It proposes either: 1) the creation of an independent agency for trade negotiation, something akin to the US Trade Representative Office; or, considering fiscal realities in the short-run, 2) at least, the strengthening of the existing Bureau of International Trade Relations (BITR) position within the Tariff and Related Matters (TRM) Committee structure. A stronger, centralized body, principally or primarily in charge of trade policy negotiations would be able to curb the turf battles among different agencies, or, at a minimum, prevent them from stalling the realization of trade mandates for negotiators.

The paper also stresses the crucial role of trade research in supporting negotiations and suggests ways to strengthen capacity in this area.

Keywords: Trade Negotiations, Philippines, Trade Institutions, Trade Capacity Building.

¹ Senior Research Fellow, PIDS, and Consultant, respectively. The views expressed in this paper are the authors' own and do not reflect the position of PIDS. Please email: gpasadilla@mail.pids.gov.ph for comments.

Section One

INTRODUCTION

Like other Asian countries, the Philippines is involved in bilateral and regional trade negotiations because WTO trade talks have gone into a crawl. The Philippines is part of the ASEAN FTA (AFTA) and APEC; it signed on the Early Harvest Program for the China-ASEAN FTA; and it has concluded bilateral negotiations with Japan, the results of which are now under review. Even as it maintains commitment to multilateral discussions, it is also considering bilateral negotiations with the US, Australia, Korea, and India and, perhaps, with more countries in the future. With the potential increase in the number of international negotiations, it is appropriate to ask whether the Philippines has adequate resources and capacity to enter into all these trade discussions, and more pointedly, whether we have adequate government structures that can effectively deal with presumably prepared and structurally organized foreign counterparts.

To the extent that successful negotiations rest on good preparation, the paper analyzes the current system's strengths and weaknesses and how policy formulation and preparation for negotiations are undertaken. It studies the systems and structures in selected countries, assesses their positive and negative aspects, and derives some policy recommendations for improving the current structure in the Philippines.

This paper argues that there is need for an agency that will have the decisive voice in coming up with final trade positions - something akin to the US Trade Representative Office – and that will handle international trade negotiations and coordinate effectively with other branches of government. This would curb many of the difficulties in the existing system, such as turf mentality among government agencies, discussed in the following sections, and prevent final trade position formulation from being unnecessarily and lengthily stalled. It would hopefully improve the formulation of domestic and national priorities that should drive trade positions. It would be a source and depository of all information affecting international trade negotiations, disseminate information and analysis on trade impacts of new rules, provide the public with a better handle on more and more complicated agreements involving sanitary and phytosanitary and technical standards measures, intellectual property rights, environmental and labor laws, and other agreements that would be eventually multilaterally adopted. With the proliferation of bilateral and regional agreements, the central agency should be in a position to analyze and ensure their consistency with each other and with the country's WTO commitments. The paper also stresses the crucial role of trade research that can effectively support negotiations and suggests ways this can be strengthened in the Philippines.

Nevertheless, the paper underscores the fact that the improvement of the policy formulation and negotiation structure is no panacea. Because the setting of national priorities from which trade positions are derived remains the responsibility of elected politicians, much of the success in trade negotiations and its actual impact on the economy still rests on the overall quality of national polity and choices. To put it succinctly, better structure can help but good policy choices still depend on the vision of whoever is at the top.

The paper is organized as follows: the next section gives an overview of the institutions and processes involved in trade policy formation and trade negotiations in the Philippines. It sheds light upon the organizational set-up, consultation mechanisms and dispute resolution mechanisms that are currently in place. Section three explores areas in which there is room for positive change, comparing the Philippine situation with those in other nations, specifically those that have significant influence in the world trade system. It takes the example of the United States, the European Union, Canada and Japan and delves into specific aspects of their trade policy formation and trade negotiation processes that could have benefited them and helped them in successfully concluding beneficial trade agreements. Malaysia rounds out the group as a nation that is in a situation similar to the Philippines and yet has more successfully navigated the waters of international trade negotiations. (For detailed information on the trade policy formation processes of these countries, see Sections 1 to 5 of Appendix A.). Section four concludes with an agenda for reform.

Section Two

TRADE POLICY FORMATION IN THE PHILIPPINES

The Philippines, unlike other countries, does not have a single agency that deals with the formation of trade negotiations for goods and services. While the Department of Trade and Industry (DTI) is the de-facto lead agency in most international trade negotiations, it has no *de jure* veto power over positions taken by other agencies. Rather, trade policymaking is done by consensus under the Tariff and Related Matters (TRM) Committee apparatus, and individual departments and agencies bring their own initiatives, research, and trade positions to the Committee. This section discusses in detail the trade policy formation process in the Philippines.

Tariff and Related Matters Committee

The Tariff and Related Matters (TRM) Committee was organized by virtue of Executive Order No. 230 (Reorganizing the National Economic and Development Authority [Annex A]) in 1987² with the following functions and responsibilities:

- To advise the President and the NEDA Board³ on tariff and related matters and on the effects on the country of various international developments;
- To coordinate agency positions and recommend national positions for international economic negotiations; and
- To recommend to the President a continuous rationalization program for the country's tariff structure.

It was decided upon by the NEDA and the DTI that “related matters” under the purview of the TRM would include trade and investment agreements and shipping matters.⁴

There are three levels to the TRM: 1) the Committee Proper, which is at the Cabinet level and is theoretically composed of the different Department Secretaries; 2) the Technical Committee, traditionally populated by Undersecretaries and Directors; and 3) the four Sub-Committees on a) Trade and Investment Agreements, b) Economic and Technical Cooperation Agreements, c) Shipping, and d) Tariff and Non-tariff Measures, also known as the Technical Working Group on Tariff Review.

The TRM Committee is chaired by the Department of Trade and Industry (DTI) and co-chaired by NEDA. The agencies that have seats in the Cabinet Level of the TRM are:

- Department of Foreign Affairs
- Department of Agriculture
- Department of Finance
- Department of Environment and Natural Resources

² The Executive Order amended Letter of Instructions No. 601 dated September 20th 1977 that established the National Economic Development Authority (NEDA) Board Committee on Trade, Tariff and Related Matters (TTRM).

³ The NEDA Board, which the TRM falls under and to which it is responsible, is composed of the President of the Philippines as Chairman, the Secretary of Socio-Economic Planning and NEDA Director-General as Vice-Chairman, and the following as members: the Executive Secretary and the Secretaries of Finance, Trade and Industry, Agriculture, Environment and Natural Resources, Public Works and Highways, Budget and Management, Labor and Employment, and Interior and Local Government.” In the years since the board was created, presidents have used their authority to add the Secretaries of Health, Foreign Affairs, Agrarian Reform, Science and Technology, Transportation and Communications and of Energy. The Deputy Governor of the Bangko Sentral ng Pilipinas was the last member added.

⁴ From the NEDA briefing paper on the CTRM

- Department of Budget and Management
- Department of Agrarian Reform
- Department of Labor and Employment
- Tariff Commission
- Central Bank

The Executive Secretary also sits in as a representative of the Office of the President.

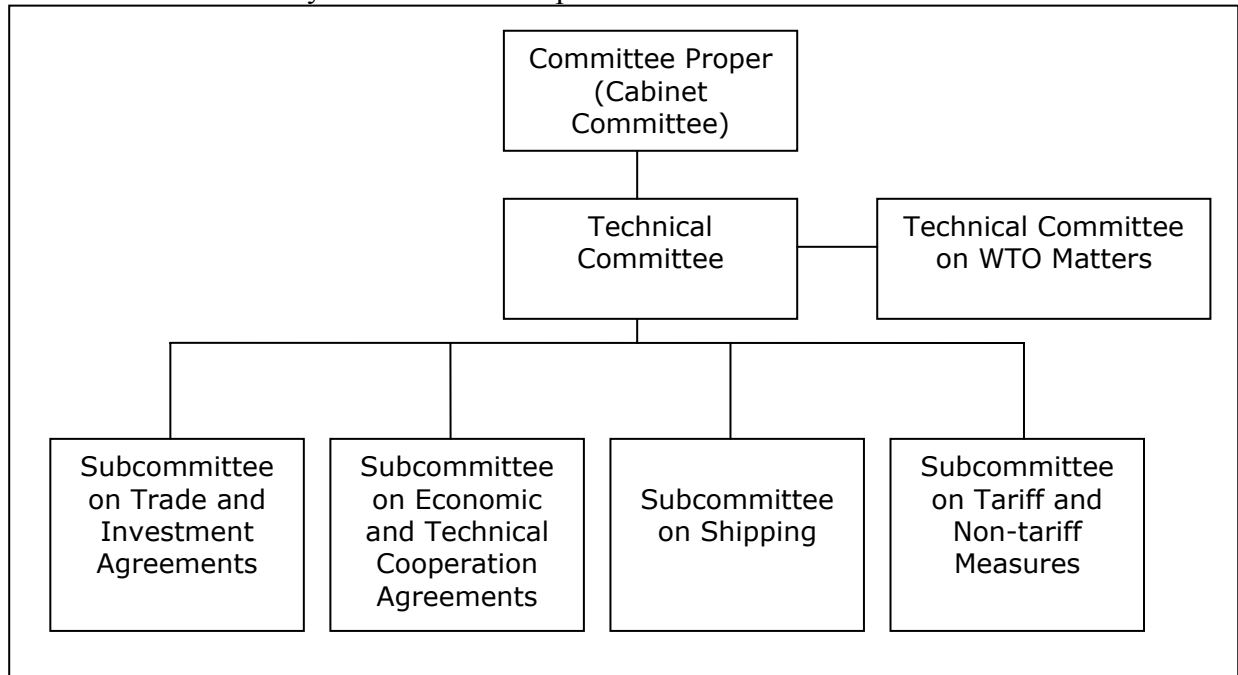


Figure 01. The Organizational Chart of the TRM

In the Technical Committee, senior officials from the Department of Transportation and Communications, the Board of Investments and the Bureau of Customs are added to the list. Representatives from the Department of Energy, the National Telecommunications Commission, the Securities and Exchange Commission and the Department of Science and Technology are also invited to the meetings as necessary. A representative usually from the legal office of the OP sits in to provide advice on legal issues as well as facilitate communication and liaise between the President and the TRM. There is a special Technical Committee on WTO Matters (TCWM) whose main function is “to discuss and recommend Philippine positions/strategies on issues with direct relevance to the country’s implementation of its WTO commitments and the continuing participation in the multilateral trading system.” Unlike the main Technical Committee, which receives support from the NEDA-based Secretariat, this group is provided with technical and administrative support by the WTO Desk of the Bureau of International Trade Relations (BITR) under the DTI. The TCWM also has its own interagency subcommittees and is divided into one for agriculture, headed by the DA, one for services, headed by the NEDA, one for industrial goods, headed by the DTI-BOI and one for other rules, headed by the DTI.

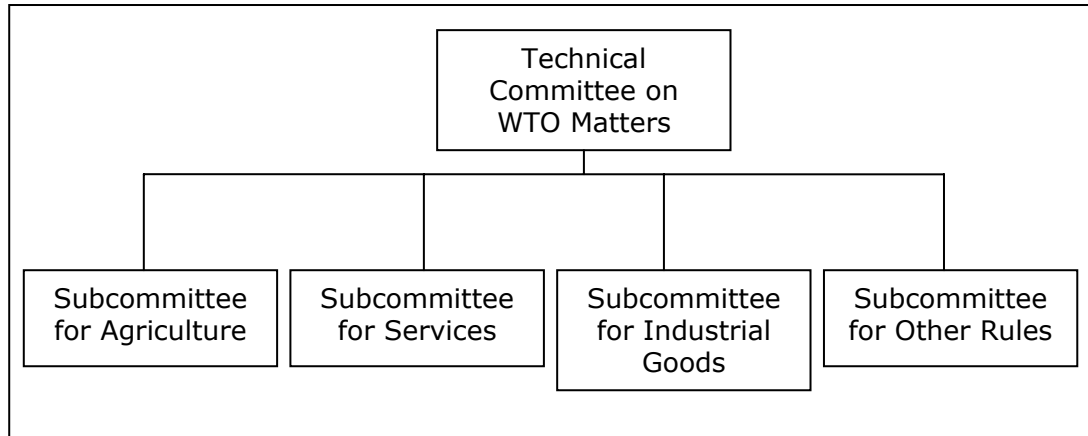


Figure 02. The Organizational Chart of the TCWM

The different committees of the TRM meet regularly. The traditional schedule of meetings of the Committee Proper and the Technical Committee, both of which are supported by a Secretariat composed of members of the Trade, Industry and Utilities Staff of the NEDA, is once every 45 days, although special meetings are called when necessary.

Process for Multilateral Negotiations

These line agencies involved in the TRM, in theory, carry out consultations with the respective producers and service providers or their constituencies regarding trade-related issues. Acting as sponsors and defenders of their industries, they submit policy proposals to the Committee on Tariff and Related Matters (TRM).

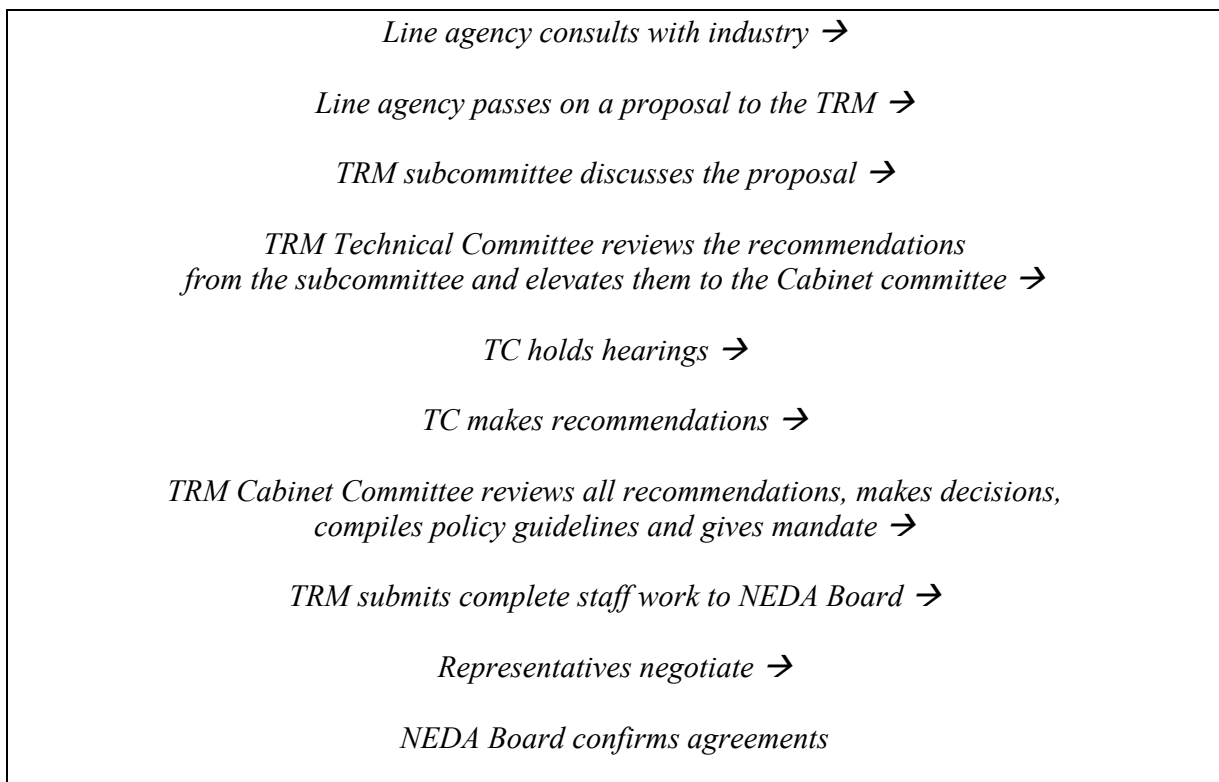


Figure 03. The Development of Negotiating Positions

When these officials meet, the proposals are reviewed and discussed until a consensus opinion is reached. The TRM's decisions are not arrived at via voting. The proposals that pass muster in the Committee Proper are forwarded to the Tariff Commission (TC), which is given the charge of holding public hearings on the matter. The TC makes its recommendations based on the hearings, and the TRM studies these recommendations. The TRM then compiles a set of policy guidelines, which are given to the negotiators themselves and act as the latter's mandate.

After negotiations are concluded, the NEDA Board confirms the agreements before these are elevated to the President and/or the Senate.

Other International Negotiations

There are several other agencies that handle trade policy depending upon the international body or trading partner with which the Philippines is negotiating. When it comes to ASEAN and APEC matters, for example, a separate committee called the Philippine Council on ASEAN and APEC Cooperation (PCAAC) that also has a Cabinet committee level and also falls under the NEDA, takes charge. For the Japan-Philippines Economic Partnership Agreement (JPEPA), meanwhile, the Philippine Coordinating Committee (PCC)⁵, created in May 2003 by an executive order, is the lead working group. The PCC Secretariat falls under the Bureau of International Trade Relations (BITR) of the DTI.

Unlike interactions in the area of trade in goods, which have a common venue and a dedicated agency (TC), when it comes to trade in services, the consultation process is even more decentralized. Be that as it may, the NEDA, as the head of the TCWM's Subcommittee on Services, acts as the main coordinator, while the line agencies themselves, such as the Departments of Environment and Natural Resources, Transportation and Communication, Trade and Industry, Tourism, Labor and Employment, and Energy, as well

⁵ The organizations involved in the PCC are Department of Trade and Industry as Chair, Department of Foreign Affairs as Vice Chair, Board of Investments, Tariff Commission, Bureau of Customs, Bureau of Export Trade Promotion, Center for International Trade Expositions and Missions, National Economic and Development Authority, Department of Energy, Department of Environment and Natural Resources, Department of Agriculture, Department of Finance, Tariff Commission, Philippine Economic Zone Authority, Garments and Textile Export Board, Construction Industry Authority of the Philippines, Bangko Sentral ng Pilipinas, Department of Tourism, National Telecommunications Commission, Air Transportation Office, Civil Aeronautics Board, Securities and Exchange Commission, Commission on Higher Education, Department of Labor and Employment, Maritime Industry Authority, Technical Education and Skills Development Authority, Department of Health, Professional Regulations Commission, Bureau of Immigration, Philippine Overseas Employment Administration, Department of Budget and Management, Department of Public Works and Highways, Department of Justice, Philippine International Trading Corporation, Bureau of Domestic Trade, Bureau of Trade Regulation and Consumer Protection, Intellectual Property Office, Bureau of Food and Drugs, Department of Science and Technology, Bureau of Agriculture and Fisheries Product Standards, Development of People's Foundation, Inc, Philippine Council for Agriculture, Forestry and Natural Resources Research and Development, Small Business Guarantee and Finance Corporation and Bureau of Small and Medium Enterprise Development.

as the Central Bank, the Professional Regulatory Commission, and the Commission on Higher Education, all handle trade issues affecting their particular industries.

Policy Administration and Dispute Resolution

For dispute resolution, the Department of Trade and Industry, as the Chair of the TRM, officially elevates the issues to the WTO. However, the respective line agencies are allowed to take the lead in the process. They coordinate with the Ambassador to the WTO who usually comes from the Department of Foreign Affairs (DFA).

When complaints from other nations are directed to the Philippines, a committee of three DTI undersecretaries, specifically those for Consumer Welfare and Domestic Trade Regulation, International Trade, and Industry, conduct meetings and discuss the culpability of the country. The BITR acts as the resource institution, which clarifies World Trade Organization (WTO) rules.

Again, the line agencies depend strongly upon the private sector for technical input in disputed cases. They request industry associations as well as specific firms to provide support and information.

Among the pieces of legislation that exist to protect Philippine trade interests are the Anti-Dumping Act of 1999 (Republic Act No. 8752), the Countervailing Duty Act of 1999 (Republic Act No. 8751) and the Safeguard Measures Act (Republic Act No. 8800). By law, any natural person may file a complaint if he feels that a domestic industry is being materially harmed by increased imports. The President, the appropriate Senate Committee or the appropriate House Committee may submit a request for the same. The petitioner is directed to file the necessary documents with the Secretary of Trade and Industry for all non-agricultural products and with the Secretary for Agriculture if the product is agricultural in nature. Upon confirmation of the receipt of the complete set of documents, the department has five days within which to come to a decision on whether or not an investigation should be opened. If the department decides that an investigation must be conducted, it carries this out within 30 days, requesting that interested parties submit evidence to legitimize the complaint. After this allotted period, the findings are submitted to the Tariff Commission, which also asks interested parties to submit evidence and positions over the course of 15 days. A formal investigation, including marathon public hearings, is then undertaken for 120 days. After this, a recommendation for appropriate action is made.

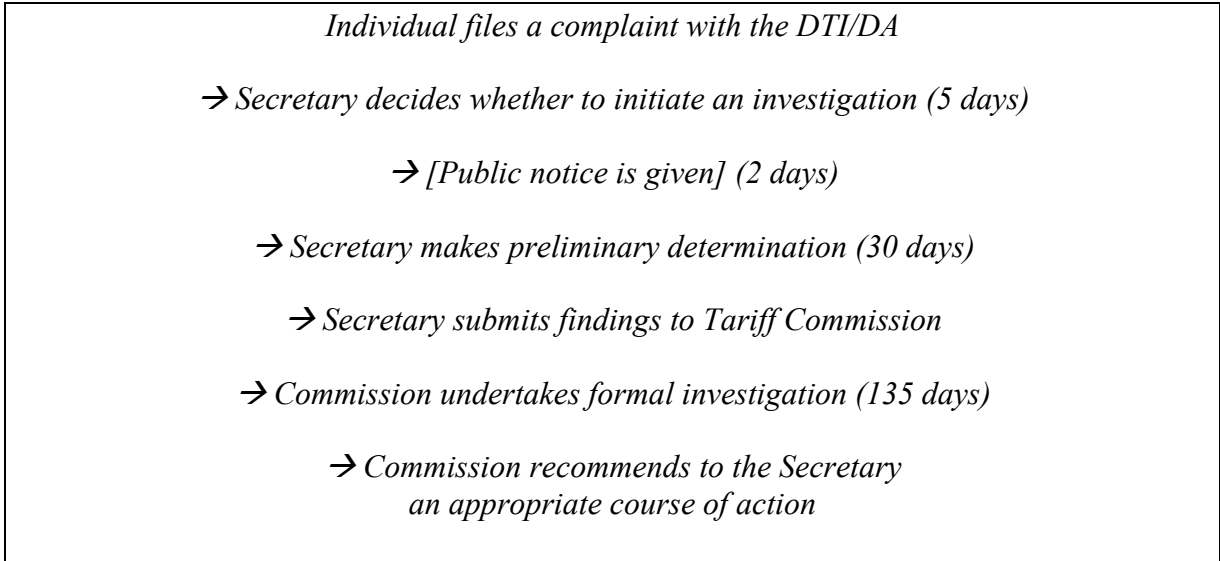


Figure 03. The Dispute Processing Mechanism

Section Three
INSTITUTIONAL INEFFICIENCIES IN THE CURRENT STRUCTURE

On paper, it would appear that the institutional structure in place for the handling of trade policy development and trade negotiations is not entirely dissimilar to those of other nations. However, the system is somewhat inefficient in practice, and certain institutional failures occur, brought about by both the less than ideal set-up and the unique political climate in the country.

Interviews with officials from different agencies of the government indicate several weaknesses in the current system.

3.1 Turf Mentality

The first among these is that the representatives of the different line agencies that sit in the TRM Committee tend to be caught up in a turf mentality that prevents the creation of a whole, cohesive cross-industry trade strategy. There is a spirit of competition instead of cooperation that prevails.

While the TRM is perhaps meant to be a unifying mechanism, it does not always effectively function as one. Instead of aspiring to teamwork and working toward the formulation of a sound overall strategy for the country, the different line agencies ascribe more to an “every industry for itself” attitude, in which representatives seem to be of the mindset that the industry they are fronting for must be protected at all costs, no matter how harmful the consequences of refusal to cooperate may be on other industries and on the

economy as a whole. This is ultimately counterproductive, especially in light of single undertaking framework of the WTO.

During the formulation of negotiating positions for the country, the representatives of the different line agencies always insist upon the protection of their own sectors. This conflict leads to a less than optimal final proposal. A good and balanced national position is not achieved, having been sacrificed in the name of furthering sectoral agenda. Priority sectors cannot be clearly identified because everyone wants his or her industry to be it. Focus, a very important part of effective negotiations, is lost.

It must be noted that even the chair of the TRM may find it difficult to have as his sole concern a unified view of trade because part of his responsibility is to pursue the good of domestic industry. It has been commented upon, not only in the Philippine context but also for other countries, that an agency that splits its focus between international trade and the domestic economy has a tendency to sacrifice sound trade strategy for the protection of local interests.

Contrast this divided attention and the endless jockeying among line agencies with the experience of far more successful negotiators from the United States and Canada, each of which boasts of having an efficient single agency tasked with handling trade policy, and trade policy only.

3.1.1 United States

In 1962, the United States Congress mandated, via the Trade Expansion Act, that the President needed to establish an inter-agency trade policy mechanism for developing and coordinating U.S. government positions on international trade and trade-related investment issues. The act also required the President to appoint a Special Representative for Trade Negotiations. The Congress recognized at the time that there was a need to find a way to balance domestic and international interests when it came to the formation and negotiation of trade policy. In 1963, executive orders issued by President John Kennedy established the Office of the Special Trade Representative, who was to represent the country in all negotiations under the 1962 Act as well as others that were authorized by the President.

Over the next decade, the Congress continued to expand the responsibilities of the agency, giving the STR jurisdiction over an ever-greater number of trade agreement programs. A legislative charter was set up as part of the 1974 Trade Act, and soon after, the office was elevated to Cabinet level. By 1979, the renamed United States Trade Representative (USTR) had the overall responsibility of coordinating trade policy. The United States had officially centralized US government policy-making and negotiating

functions for international trade. This was not the end of the growth of the USTR, as even presidential trade responsibilities were shifted to the agency in succeeding years. The Congress deemed that “the USTR should be the senior representative on any body the President establishes to advise him on overall economic policies in which international trade matters predominate and that the USTR should be included in all economic summits and other international meetings in which international trade is a major topic.”⁶ This was an unmistakable acknowledgement from the government of the significance of the body and the importance of centralization.

3.1.2 Canada

Canada has had a similar experience in the apprehension of the importance of having a single trade agency. While special attention was given to trade issues even back when there was only the Department of Foreign Affairs and International Trade, the Canadian government finally acknowledged that the best course of action would be to officially create separate bodies that focused solely on each of the matters at hand. Given that one in every four jobs in Canada is linked to trade and that roughly 38% of its gross domestic product is sent abroad, it is no surprise that the country promulgated the Department of International Trade Act, which created International Trade Canada (ITCan) in order “to recognize the central importance of trade and investment to the long-term growth of the economy and the prosperity of Canadians.”⁷ The entity, which was born in December 2003 and was spun off from the DFAIT, was given the charge of conducting and managing international negotiations, and coordinating Canada’s relations regarding international trade, commerce and investment.

3.1.3 Malaysia

Malaysia provides another alternative. While its Ministry of International Trade and Industry (MITI) does not have the USTR and ITCan’s special nature of being focused solely on trade, MITI nevertheless remains clearly and authoritatively the point agency when it comes to the country’s international trade affairs. In Malaysia, even more than in Canada or Japan, it can be seen that the trade ministry truly has jurisdiction over the myriad aspects of trade. From the initial choice of the sectors in which liberalization ought to be pursued, to the implementation of trade agreements and the monitoring of compliance, to the handling of disputes, the MITI is able to exercise its power and deliver cohesion to the process. A virtuous cycle occurs, for as the Ministry is able to gain more experience and knowledge

⁶ History of the USTR. Official website.

⁷ Introduction Of Department Of International Trade Act Caps Successful Year For Itcan, International Trade Canada

from all the trade-related activities it pursues, it is better able to deal with the ever-changing conditions in the trade arena.

3.1.4 Japan

The one other nation covered in this study that has some similarities to the Philippines' more decentralized style is Japan, which has four key players in the trade policy development field, namely the Ministry of Foreign Affairs (MOFA), the Ministry of Economy, Trade and Industry (METI), the Ministry of Agriculture, Fishery and Forestry (MAFF) and Ministry of Finance (MOF). (For details on this, see Appendix A, Section 4.) While Japan has had more success in arriving at beneficial agreements, one can reasonably argue that its accomplishments have been achieved not *because of*, but *despite*, this flawed institutional structure. It has been observed, for example, that the jurisdictional delineation between the MAFF and the METI has left the nation handicapped in negotiating industry-wide agreements, particularly in the WTO. Since Geneva conventions lump fishery and forestry with the manufacturing sector, METI has the responsibility of negotiating for them. However, MAFF retains jurisdiction over the two sectors, one that the collegial nature of the Japanese system prevents METI from counteracting. The result is a forced protectionist bent for METI, as MAFF places strict limits upon the liberalization of those industries. Having its hands tied in the manner reduces METI's ability to come up with the most ideal creative solutions in the barter system that exists.

Interviews with academics and those who have served in the Japanese ministries, as well as books and essays on the policy formation process in the country have hammered home the reality that the Japanese structure is problematic. For example, the insistence of the MOFA upon lording it over the line agencies who have more expertise on the particular trade areas and its practice of striking the nuances that the latter introduce into trade documents may not produce the most effective proposals.

It has also been acknowledged that the split focus of a ministry like METI intermittently leads to the prioritization of the domestic industrial side over the trade aspect. Even within the ministry itself, certain divisions make requests to protect less competitive domestic industries. The move toward liberalization is thus curtailed.

Having said that, it must be noted that a trait of Japanese bureaucrats that has yet to be strongly ingrained in many of their Filipino counterparts is an ultimate willingness to rise above the interagency conflicts of interest and aim for the common good.

3.02 Unclearly delineated and highly fragmented authority

Two of the practices of Japanese negotiators that allow them to overcome the natural shortcomings of the decentralized system are that authority, while divided, is clearly delineated, and that a rigorous consultation mechanism ensures a unified front. The jurisdiction of each ministry is set forth very clearly in Japan; no other ministry aside from the Ministry of Foreign Affairs, for example, can draft final proposals to third countries. Negotiators are also under strict instructions to consult back when talks lead to significant changes in the Japanese proposal. The members of Philippine contingent to the JPEPA negotiations were quick to note that their counterparts frequently conferred with one another, as well as with ministry officials in their home country, before agreeing to proposed alterations.

This is a far cry from the Philippine system, wherein the absence of a clear-cut hierarchy, mandate and delineation of authority has led to some confusion and a waste of resources, as discussed below.

Even in the policy building stage, before the nation offers to enter into an agreement with a third country, the insufficiently rules-based TRM encounters difficulties. The status quo is that any two line agencies with conflicting opinions on an issue in which both are directly involved tend to dominate the discussions. The chair is left in the unenviable position of wondering how the issue is to be resolved, as the amount of authority he has is nebulous. There is difficulty in terms of overcoming the committee's collegial nature in order to come to a decision on a hotly-contested matter.

Another demonstration of the insufficiency of the rules is that in the late 1990s, the BITR used to have a lead role within the TRM. While all agencies were allowed to voice their recommendations, the Bureau was there to set and clarify the nation's general policy orientation. The BITR had the strongest voice, and, at the end of the day, if agreements could not be reached, there was a sense that the Committee could turn to the BITR for final judgment. However, this is no longer the case. Because that authority of the BITR rested on tradition rather than legal mandate, it slowly dwindled over the years. Now, the bureau is simply another member of the committee.

The disorganization extends to the negotiating table as well. Due to limited resources, people from different line agencies sometimes end up being tasked to represent the country in bilateral talks. There are times when these assigned representatives in specific sectoral negotiations are simply not well-versed enough in the language and traditions of trade talks, and, without being trained to consult, they end up agreeing to terms and conditions that put the Philippines at a distinct disadvantage without their realizing the cost.

This discord was highlighted most recently in the JPEPA talks, in which less experienced negotiators were found agreeing to non-trade-related, governance-impinging demands by the Japanese that those more knowledgeable of its implications staunchly vetoed.

This disjointed behavior can negatively impact the nation in two ways. One is that more savvy trading partners can take advantage of the ignorance of negotiators (especially on “newer” trade related issues) and make demands that go beyond what is commonly acceptable. Another is that potential trading partners may become wary of dealing with the country because the mixed signals make the negotiations unreliable.

Another problematic aspect of the current delineation of authority is the fact that it is very fragmented. Wholly different interagency consultation mechanisms are in place for handling different trade organizations (e.g. TRM for WTO and other matters, PCAAC for APEC), and even with the existence of these bodies, the government still has to create *ad hoc* committees such as the PCC when it enters into bilateral talks. Aside from leading to the unfortunate loss of institutional memory that naturally results from not having a centralized agency to handle all negotiations, this ad hoc creation of committees is a strong indication that there is no proper fit between the system and the nation’s trade activities.

In contrast to the troubling stalemates in the TRM and the parceling out of responsibility over trade negotiations in the Philippines, an important feature of the USTR’s mandate as the trade department of the United States is its supremacy over other agencies with regard to determining final trade positions in all negotiations. While the US system places strong emphasis on interdepartmental consultations, and certainly, lengthy debates also take place in the meetings between the different departments, the fact remains that if particular issues are not resolved and a consensus is not reached, the USTR may overrule objections by specific line agencies with regard to different international, regional and bilateral talks. It is, *by law*, the lead agency on the development of trade policy, and functions as such. After considering all the tradeoffs, it has the power to table market access offers even without the unanimous agreement of the different agencies.⁸ All their negotiators belong to the USTR and not other government agencies, which makes strategy coordination easier. In the fast-changing environment of trade negotiations, this adaptability is key to creative solution-finding. Additionally, because it is issued by one strong and decisive voice, the negotiating position of the US is more consistent and more likely to inspire confidence and trust from other countries looking to form trade partnerships with the nation.

⁸ Taking into consideration, of course, the high likelihood of approval by US Congress of the trade package they want to table in negotiations. The USTR, in considering the trade package, have the vote count in Congress in mind, pitting the number of liberal members with those that come from districts that are going to be adversely affected and are, thereby, going to be more protectionists.

For its part, the European Union would not be successful if it were not for committed national political decisions to obey the rules set forth and agreed upon by the European Council and ably interpreted and protected by the European Court of Justice. Given the complicated political set-up of the community, to which belong 15 (now, 25) distinct, sovereign nations with greatly varying economic statuses and interests, it was recognized very early on that a clear set of rights and responsibilities needed to be laid out. Jurisdiction and hierarchy are specified in the treaties and the Constitution of the Union, allowing the institutions to function confidently as they go about their task of balancing these divergent stands and finding a position that the myriad governments will find acceptable.

3.3 Insufficient resources for trade research

As has been alluded to earlier, it is not simply the lack of coordination that threatens to undermine all efforts toward effective negotiation. Simply put, the Philippines is gravely weak in resources. The different line agencies do not have the monetary or technical capability to form the requisite in-house research teams to carry out the all-important task of preparing feasibility studies and analyses of planned adjustments to trade policy. Not only do the agencies not have enough manpower to conduct research into the actual implications of negotiating positions, they also rarely have time, proper skill, and understanding of the dynamics of international trade and negotiations.

A few outsourced studies from academia and think tanks are available, usually thanks to foreign funding, and these can be useful. Yet they are also often steeped in macroeconomic analysis with little bearing on and direct usefulness for negotiations. Because many economic researchers do not have a clear grasp of trade laws and negotiation, their reports often need further processing and ‘translation’ by overburdened in-house staff for these to be serviceable in negotiations. Due to this lack of resources, line agencies sometimes find themselves dependent upon analyses and studies initiated by private sector lobbyists, which may not always emanate from the most accurate and objective point of view. Even with this kind of help, there is still inadequate coverage of the myriad trade issues that need to be explored. As a result, there is insufficient understanding of the ramifications of the various agreements the country is entering or has entered into.

A government official notes that the TRM mechanism itself has shortcomings, being partly comprised of departments not usually involved in international trade and having representatives who do not fully grasp the ‘give and take’ dynamics of negotiations. Because of this low level of trade policy understanding in certain segments of the committee, the consensus papers that it comes up with are sometimes irrelevant to the actual issues in trade.

Contrast this to a nation like India, which allocates about 10 million US dollars per year to research efforts in support of negotiations and spins this large budget out to agencies that specialize in the development of trade policy, or to Korea, whose Korean Institute for International Economic Policy is mandated to do all research for negotiations. Consultants from the KIIEP are given an active role and allowed to sit in during negotiations, accompanying the nation's official negotiators throughout the process.. This practice carries the double-sided benefit of helping inform the institute's research and giving negotiators adequate technical backup. This form of participation is very helpful in negotiations, in which issues that the nation did not prepare for beforehand may crop up. With the presence of adept consultants, the negotiators can immediately process the costs and benefits of new proposals and are able to send clear, well-informed feedback to those in positions of authority back home, who can adjust the mandate as they see fit. The process is therefore greatly facilitated.

Canada, for its part, prides itself upon not only using the specialized in-house research teams of the ITCan, particularly the Trade and Economic Analysis Division (EET), which assesses the benefits and costs of certain trade commitments, but also taking full advantage of the resources of outside institutions and other federal departments, provincial and territorial governments, other intergovernmental organizations, think tanks, and other institutions.

In the United States, meanwhile, there is a federal agency whose main mandate is to provide trade input and information to the different departments of the government, with a special emphasis on assisting the USTR. The latter is heavily dependent on the International Trade Commission (USITC) for technical input, and the USITC is always ready with reports regarding the United States' prospects and analyses of its competitiveness.

Malaysia also strongly recognizes the value of technical input. Aside from MITI's very strong in-house planning group on which the ministry greatly relies, semi-independent research institutes such as the Malaysian Institute of Economic Research, various universities and the Institute of Strategic and International Studies Malaysia, are also invited to contribute to the preparation of policy initiatives.

Clearly, the lack of resources is not a big concern for the European Union. Aside from the 250 people employed by the Directorate-General Trade of the European Commission who are directly involved in the fashioning of trade policy and trade negotiations, each member state has its own able trade administration to provide technical support and manpower. Of course, the availability of resources does not automatically guarantee the wise use of them. In the case of the EU, however, there are indications of cooperation between the administrations of the member states of the Union's institutions.

The Commission also takes advantage of non-government resources by hiring independent researchers and analysts to conduct studies pertaining to trade issues.

3.4 Strong political influence on trade policy

Yet another area of concern is the fact that there is a very strong top-down influence in policy formation in the Philippines. Lobbyists are able to take advantage of the existence of multiple power centers in different segments of the government. Instead of systematic participation in the policy planning process, it is the ‘clientelistic’ process that has become the practice of big industrialists, who exert pressure on Congress and other key officials in the executive branch of the government. The unfortunate result of the current political climate in the Philippines is that the shield that is supposed to protect policy from inordinate public influence does not hold.

This is precisely the issue that the United States sought to address with the creation of the USTR. The presumption is that government sectoral agencies have the tendency towards ‘sectoral policy capture,’ such that an independent, non-aligned agency capable of doing a more objective processing of economic tradeoffs is needed.

Weaknesses in the political structure and the lack of discipline in the policy formation process, whereby decisions that have been processed and lengthily debated in interagency committees may be overturned by the stroke of a pen of a high-ranking politician successfully lobbied by private interests, can contribute to the lethargy of the TRM mechanism itself. When patronage rules the day and can eliminate decisions that were painstakingly arrived at by the committee, there is a sense of futility that may slow down the committee’s activities and increase its tendency to persist in deadlocks which the members feel are simply best resolved elsewhere.

3.5 Low level of awareness

It could be proposed that the deleterious impact of political lobbying could be reduced if more numerous formal consultations were conducted across a wider range of stakeholders before, during, and after trade negotiations. Before this can be done however, there is another concern that must be addressed: the fact that there is an alarmingly low level of awareness in practically all sectors regarding the depth of the Philippines’ involvement in trade agreements. In other countries, producers, who are naturally expected to have a vested interest in the issue of trade policy, are often eager to have their voices heard and protect their private interests by interacting with the government as much as possible. In the Philippines, however, industry players oftentimes do not have a clear idea of

the concessions they would like to obtain from the nation's trading partners.⁹ When consulted, they are unable to present the government agencies with well-outlined, reasonable goals and specific sets of expectations in terms of improved market access abroad. Given this experience, it is not unthinkable that the different departments would be less than enthusiastic about pursuing frequent consultations. The opportunity for the private sector to contribute constructively to trade policy formation is not taken advantage of.

In addition to this, the unfortunate reality is that government officials also often find themselves grappling with condescension from the private sector. In Philippine society, it is not unheard of to come across big industrialists who feel a strong sense of entitlement. The resource-weak and inadequately compensated government officials have a difficult time standing up to them and effectively pushing for the public good. Though undeserving of it, some highly qualified government officials involved in trade negotiations suffer from the public's generally poor opinion of government service and bureaucracy.

This is contrasted to other nations, in which trade officials are respected in their own right. In Japan, public servants are professionals and career people, and their work is considered a legitimate and no less illustrious alternative to working for the private sector. In the Japanese system, those who would like the privilege of working for a ministry such as the MOFA or the METI are required to take examinations to prove their qualification for the task, and this state examination bestows a certain legitimacy and prestige upon them. In Canada, a vast majority of ITCan employees have masteral or law degrees, with a good number of PhDs as well. The same goes for US and EU.

Summing up

Given these issues plaguing the institutional set-up, the inadequacy of noteworthy research, and the lack of a holistic vision of domestic priorities in the Philippines, officials sometimes go to trade negotiations without a clear strategy or specific objectives. Instead, a more passive mandate - "negotiate in order to achieve the policy space that our economy needs" – becomes the working rule. This partly explains why, unlike India, the Philippines seldom has "lead" trade positions which other countries could support; rather, the country satisfies itself with following and aligning with other countries' proposals. While it is not uncommon for smaller economies to band together in multilateral talks to get a good deal, it must also be remembered that good trade policy is one that is well integrated with the development strategy of a nation. When a third country knows that trade interests and

⁹ This is slowly changing though. At least the big industry associations are more aware of the possible adverse implications of trade commitments. But their orientation remains defensive, i.e. how to protect their domestic interests, rather than providing inputs on how the government should open up foreign markets for them.

objectives are not clearly defined, it is easy for it to take advantage and push for greater concessions.

In bilateral negotiations, the existence of a comprehensively studied, cohesive trade policy that ties into development strategy is even more important. In the JPEPA negotiations, for example, the Philippine negotiators brought no specific texts to the table. Instead, they were only armed with a very general idea of what the country wanted out of the agreement. As it was, all documents for the negotiation were written by Japan -- using templates of their previous agreement with Singapore -- outlining, of course, *their* objectives. The Philippines was expected to merely react to these proposals. The first mover advantage had been lost.

Without having a clear idea of what concessions Philippine industries truly want from the nation's trading partners and what concessions the country can and can absolutely not afford to offer, negotiators are already on shaky ground. Factor in inherently Filipino traits such as a desire to please others, and the nation may end up with a raw deal, giving the third country substantially more benefits than it itself is able to obtain.

Additionally, the absence of a specific mandate leads the negotiators to go for a "minimalist" approach to liberalization. Since there is no strong vision and backing from the top, no set of guidelines upon which to rely, the government representatives tend to aim for the least amount of liberalization possible because it is the most 'politically safe' and would guarantee their not being fired from their job. Sticking closely to the status quo reduces the likelihood of protests at home, and this is appealing to a negotiator who is concerned about his job security and future retirement. Realizing that further liberalization, while possibly a good step for the economy, also has the ability to spark a huge backlash from the public, he could easily grow concerned and become inordinately cautious. Here, as in other principal-agent relationships, the personal objectives of the negotiator—naturally inclusive of a stable career path—may not be congruent with the attainment of an economically efficient outcome for the State. By giving out broad parameters, not backed by clear assessment of overall costs and benefits to the economy, the government increases the likelihood that the negotiator will fall back upon the personal objective-maximizing default position of minimum change. The full benefits of liberalization end up unrealized.

Section Four **AN AGENDA FOR REFORM**

The major weaknesses in the Philippine system can be distilled into two important needs that must be filled.

First is the need for a government body that has the prime authority to determine the final negotiating positions of the nation on trade agreements and to authoritatively represent it in front of other nations. A department which nominally has the mandate to negotiate but which finds itself subordinated to other ministries and agencies in a variety of areas shall not be optimally effective in its task. The unanimity that is virtually required from the inter-agency groups, albeit chaired by the lead department, invariably leads to delays in finalizing possible offers and requests because of foot-dragging by departments that are hesitant to open up their sectors. Moreover, in the actual international trade negotiations, which are broken up by sectors, the overall lead negotiator loses full control over the negotiation by his inability to keep all the ‘cards close to his chest’. Anecdotal evidence has it that sectoral agency negotiators tend to give some (conditional) commitments during the sectoral negotiations even without knowing the result of the negotiations in other sectors. This lack of coordination hampers the capacity of developing countries to exploit within- and across-sector tradeoffs.

Second is the need for a strong technical support system, a research body that is able to provide up-to-date, accurate reports before, during and after negotiations. Studies must be conducted in order to determine the appropriateness of pursuing agreements for a particular sector, as well as to better predict the short and long-term effects of recently concluded negotiations. Within the context of the negotiations themselves, a team that is well-versed on the issues on the table can provide much-needed insight to on-the-spot negotiators. Given the dynamic nature of negotiations, representatives sent to meetings often find themselves having to react to ever-changing proposals. There is a clear requirement for a research body, either in-house or independent-but-government-owned, that specializes in trade research that will specifically and ably back these negotiators and provide the background and support that they need in order to make informed decisions within their mandate.

Even in the aspect of in-country public relations, it is valuable to have a technical group that undertakes detailed studies into particular trade areas. There is often what is termed as an “analytical deficit” in the eyes of the public that imbues the interaction between private interests or lobbyists and the government. The public is growing more and more uncertain about and fearful of the impact of liberalization, and the proper reaction of governments is to provide clear facts and analysis. It is only when it is apparent to the people that the matters have been thoroughly examined by those in charge and shown to be, on the whole, beneficial will a fair majority agreement on liberalization be reached.

Only when authority and proper support come together will an agency tasked with the formation and negotiation of trade policy be able to take advantage of all that the increasingly open global market has to offer.

To address the need for a strong lead agency, there are few avenues of action that we propose.

Independent Trade Representative Office

The first option is to carve out the trade groups from the DTI, DA, NEDA, and DFA to fuse them into a single agency, akin to the USTR or ITCan, that is devoted solely to trade negotiations, be they bilateral, regional, or multilateral. It will be headed by a Cabinet Secretary and will be directly under the President. All negotiators would come from this single agency, and no longer from different line agencies of the government. Its employees would ideally be well versed not only in the economics of international trade, but also in trade law.

It is envisioned that this new Philippine trade agency would have strong tie-ups with line agencies and intensely consult with them, but also have its own sectoral experts. For instance, it would have an expert with the agriculture portfolio who understands the agricultural sector and deals with the Department of Agriculture, another expert in Telecommunications, and so on and so forth. These experts would be in charge of coordinating with the line agencies in the run up to trade negotiations, and will carry out the negotiations with the trading partners. This agency is expected to be fully staffed to carry out good analysis and information dissemination before, during, and after the negotiations.

The interaction between this new international trade department or trade representative office and the specific line agencies is envisaged to allow for the education of those belonging to the line agencies, so that these will better understand the international trading environment. Frequent exchanges or sabbaticals from line departments to work in the International Trade Department or the Trade Representative Office have worked very well in the case of Canada, making line agencies more aware of the environment that those on the frontline of trade negotiations face. This allows them to be more supportive of trade negotiations, be it through carrying out adequate public-private sector dialogues or through providing the TR Office with adequate data, information, and feedback. Since line agencies would continue to interact with their respective industries and narrow constituencies, and would perhaps receive the most regular feedback from industrialists and other economic sectors, it is important for them to have a good understanding of how the needs of the domestic producers fit into the context of trade negotiations. It is in this way that they can be effective and responsive channels.

The new agency will lead all interagency subcommittees down to the director level and will coordinate the line agencies' positions, allowing for cross-sectoral trade-offs. Trade-off is always an important element in negotiations and particularly so in the *quid pro*

quo system in international trade negotiations. This system means that no matter how much the country may wish to, it cannot possibly protect all its sectors if it wants to take advantage of greater access to markets abroad for the sake of other competitive sectors. For example, the country may want to negotiate better access for Philippine mangoes in exchange for lower domestic tariff for other products, say, automobiles. Necessarily, any member country that engages in negotiations has to give up ‘something for something else,’ which demands that the national polity truly understands its strategic priorities, where its competitive advantage lies, and where it wants to take the economy.

There are, of course, advantages and disadvantages to this kind of set-up. On the positive side, the new agency would have a clear mandate to make final decisions while coordinating with line agencies. Its existence would facilitate the development of institutional memory, as it carries out multi-pronged trade negotiations, and it would have the incentive to undertake or be supported by transparent trade analysis and disseminate them. In many disputes on various positions, these analyses would be TR Office’s best defense. On the negative side, the first problem is that creating this fully-functioning department would be costly, necessitating the filling of a complete staff, together with its own department Secretary and Undersecretaries. Additionally, there is the political economy issue. Will individual line agencies be willing to relinquish some of their authority and allow themselves to be overruled by this independent agency? Will they agree to have their trade-related bureaus carved out and transferred to the new department?¹⁰

Reforming the TRM

Considering the budgetary and fiscal constraints of the government and other political distractions, it might not be very feasible to expect the creation of a wholly separate Cabinet-level agency dedicated solely to international trade negotiations. A second option, then, that could be successful if correctly implemented, is the strengthening of the current TRM system, particularly the role of BITR within it.

The BITR must head all subcommittees (whether they relate to agriculture, industry, or services, etc.) down to the director level for the TRM’s Technical Committee and the TCWM, and not be merely one more member. It has to proactively consolidate the

¹⁰ There exists a bill in the House of Representative, numbered 4798, which proposes the creation of the Philippine Trade Representative Office. Many aspects of the bill mirror our own proposed agency and the TRO described in the bill seems at least partly fashioned after the USTR. The bill, however, is unclear about the TRO’s relationship with Congress and forgets that Services is an important component of trade negotiations. Perhaps one thing that must be clarified further is the role of and extent of involvement of the recommended Advisory Committee for Trade Policy and Negotiations. Where is this committee expected to fall in the hierarchy? Is it taking the place of the TRM? What kind of authority does it have? The power of the Committee to dictate the attendance of particular representatives at any trade negotiation may be a cause for concern, and might promote the kind of undue outside influence that the creation of the independent agency was meant to combat in the first place.

positions of various relevant government agencies and provide them with deadlines to submit their proposals, otherwise the TRM would be mandated to accept the BITR's default trade strategy position.

To effectively carry out this strengthened mandate and provide better secretariat and trade policy analysis support to the TRM system, the BITR staff, which has dwindled to below twenty from a high of fifty-two when it started, must, once again, be expanded. Considering the high knowledge and skill requirements, i.e. proficiency in both economics of international trade as well as trade laws, for major positions in the BITR, an exemption from the salary standardization requirement would be appropriate to attract highly qualified candidates. Finally, given the difficulty of hiring highly skilled individuals for these positions, the BITR should also be exempted from the Attrition Law.

Additionally, the TRM structure itself must be improved. There is a need for greater teamwork among the different government agencies involved in the Committee. Senior and middle officials must actively combat the tendency toward turf myopia and instead approach meetings with a view toward determining what would be good for the country overall, rather than what would be good for their sector alone. Discussions within the committee and disagreements between agencies are inevitable, and, in fact, can be healthy as long as they are substantial, and backed up with hard facts. At the end of the day, however, the Committee members must devote time and effort to clarifying the national development agenda and clearly outlining the Philippines' trade priorities. They must come to an agreement in terms of defining the country's vital interests. The presence of core cabinet personalities with a keen understanding of the workings of trade policy brought about by close study will do much to inform the dialogues within the Committee and hopefully lead it to making optimal decisions.

Besides strengthening the decision-making structure within the TRM, its process and decisions should be respected. For instance, its recommendations, painstakingly arrived at through numerous meetings and discussions, should be made more difficult to overturn by parties that have the ears of the President or other influential politicians. The authority of the chair and his capacity to resolve deadlocks in the context of the collegial nature of the TRM must also be clarified.

This option, too, has its pros and cons. On the positive side, by remaining in the DTI, the BITR can exploit the research, linkages with industry associations, and experience built up by the latter over the years. This option is also cheaper and much more realistic, especially in the short run. On the negative side, however, unless the capacity of BITR is bolstered, the TRM reform might become cosmetic.

Strengthening Trade Research Capacity

Whether the BITR is merely strengthened or the government decides to create an independent trade office, the importance of allocating a sufficient budget for research cannot be stressed enough. The development of institutional capacity for analysis must be given strong emphasis. Given the knowledge-intensive nature of trade negotiations, technical analysis is the backbone of successful negotiation and can therefore not afford to be left in the hands of the unskilled. The lead agencies need to have a strong internal capacity for research, as well as links with private and foreign providers of research and information.

Much capacity building should be directed to bolstering in-house research capacity because these are the ones always available to address, in a timely and useful manner, new issues that emerge. This can imply an increased budget allocation for an expanded research group within the lead agency to support the negotiations.

The external research community should not, however, be left out of the effort to increase the country's research capacity. There is a need to engage their services, considering the limited human capital resources that the lead agency in negotiations can afford to hire. Here, India provides an example of a deliberate use of external research organizations. The Ministry of Commerce of India, under whose jurisdiction trade policy falls, parcels out different research projects to specialized research groups and draws advice from them in crafting trade positions. For instance, for issues related to investment, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), non-agricultural market access (NAMA), SPS and trade facilitation, it counts on the Research and Information System for Non-Aligned and Other Developing Countries (RIS). For issues on the Agreement on Agriculture (AoA) and SPS, it relies on the World Trade Organization Centre as well as the National Council on Applied Economic Research. The Indian Council for Research and International Economic Relations (ICRIER) pursues matters relating to services. For other issues, the Ministry of Commerce also draws from research of academe and institutions and civil society other than these four major institutions.

The example that should be adopted from India is the seriousness with which they carry out negotiations, and thus their need for solid research to back up their policy positions. Can the Philippine negotiators rely on the research community in the country? Sadly, the number of researchers in the Philippines who can straddle both the economics and law of trade is small and can be quite stretched out addressing many facets of trade implications. The majority needs greater exposure to international trade issues and greater understanding of trade laws to make their contribution more directly useful for negotiations. There is a need, therefore, to provide more scholarships and to increase exposure to trade

seminars dealing with trade laws and analytical techniques, in order to build research capacity for trade.

Another noteworthy lesson can be gleaned from Korea. Since it is important for negotiators to be able to stay in constant contact with a technical support group, Korea, and to a limited extent, India, make their research consultants part of the negotiating team. They may not be the spokespeople during the negotiations, but they are seated close by, ready to provide advice when new issues and demands from the opposite camp crop up. The experience of these countries has shown that the academics they brought with them helped government negotiators elevate the discussions to a higher level.

Clear Vision of Economic Priorities from the Top

The strengthened TRM or, eventually, the new Trade Representative Office will definitely enhance the decision-making process and make it more efficient. In the final analysis, however, the quality of the trade positions they carry with them ultimately rests on the quality of vision of whoever is at the top. The point is that success in international trade rests a great deal on a strong, visionary leadership. It is only this kind of leader who will be able to fight against narrow, vested interests and bring all the key players onto the same wavelength and subscribe them to a single game plan. The president alone, not an independent TR Office or a strengthened TRM structure, has the capacity to “bang the heads of major Cabinet departments” to come to an agreement. Thus, a leader with a clear grasp of national development priorities is crucial if there is to be hope of having a truly cohesive trade policy formulation and negotiation structure.

Appendix

INSTITUTIONAL STUDIES OF DIFFERENT COUNTRIES

Section 1. The United States of America

Organizational Set-up

The Office of the United States Trade Representative (USTR) is the principal trade policy development body of the United States of America. It is “responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries.”¹¹ The Office is headed by the United States Trade Representative, a Cabinet member whose different roles include being the principal trade advisor to and chief spokesperson for the president on trade, the primary negotiator on trade issues, and advisor on the impact of international trade on other U.S. Government policies. “USTR is part of the Executive Office of the President. Through an interagency structure, USTR coordinates trade policy, resolves disagreements, and frames issues for presidential decision. USTR also serves as vice chairman of the Overseas Private Investment Corporation (OPIC), is a non-voting member of the Export-Import Bank, and a member of the National Advisory Council on International Monetary and Financial Policies.”¹²

The major areas of responsibility of the USTR include:

- Bilateral, regional and multilateral trade and investment issues
- Expansion of market access for American goods and services
- International commodity agreements
- Negotiations affecting U.S. import policies
- Oversight of the Generalized System of Preferences (GSP) and Section 301 complaints against foreign unfair trade practices, as well as Section 1377, Section 337 and import relief cases under Section 201
- Trade, commodity, and direct investment matters managed by international institutions such as the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD)
- Trade-related intellectual property protection issues
- World Trade Organization (WTO) issues

¹¹ Mission of the USTR. Official website.

¹² Ibid.

Policy Formation and Trade Negotiations

Consultations between the USTR and the other agencies of the government take place via the Trade Policy Staff Committee (TPSC) and the Trade Policy Review Group (TPRG). Together, these groups are composed of 19 federal agencies and offices and form the “sub-cabinet level mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.”¹³ More specifically, the agencies involved in these committees are:

- Council of Economic Advisors
- Council on Environmental Quality
- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of Health and Human Services
- Department of Interior
- Department of Justice
- Department of Labor
- Department of State
- Department of Transportation
- Department of Treasury
- Environmental Protection Agency
- Agency for International Development
- National Economic Council
- National Security Council
- Office of Management and Budget
- Office of the United States Trade Representative – Chairman
- U.S. International Trade Commission (non-voting member)

The TPSC is the primary operating group, with representation at the senior civil service level. Supporting the TPSC are more than 90 subcommittees responsible for specialized regions, countries, sectors and functions, and several task forces that work on particular issues. If agreement is not reached in the TPSC, or if significant policy questions are being considered, the issues are taken up by the TPRG, which functions at the Deputy USTR or undersecretary level.

¹³ Ibid.

The final tier of the interagency trade policy mechanism is the National Economic Council (NEC), chaired by the president. The NEC Deputies' committee considers memoranda from the TPRG, as well as important or controversial trade-related issues.¹⁴

The International Trade Commission is an independent federal agency that provides trade expertise to both the legislative and executive branches of the US government. One of its stated missions is “to provide the ... USTR ... with independent, quality analysis, information, and support on matters of tariffs and international trade and competitiveness.” The latter is therefore heavily dependent on the ITC for technical input.

There are also 33 private sector advisory committees, composed of approximately 1000 advisors from industry, organized labor, non-government organizations, and other associations. Much like their public sector counterpart, these are arranged into three tiers. There is the President's Advisory Committee for Trade Policy and Negotiations (ACTPN). There are also six policy advisory committees usually appointed by the USTR, some in conjunction with related departments. Finally, there are twenty-six functional, technical and sectoral groups organized into the areas of industry and agriculture. These groups provide information and advice on US negotiating objectives and bargaining positions.

The general public's opinions on a wide variety of topics are also solicited via publication in the Federal Register several times a month. Written remarks from interested parties are given consideration in both in Congress and in interagency meetings.

Policy Administration and Dispute Settlement

The USTR's responsibility to “assert and protect the right of the United States under all bilateral and multilateral international trade and commodity agreements” is administered with the help of the Department of Commerce, whose International Trade Administration is in charge of monitoring compliance with international trade agreements.

In decades past, the Department of State had the full responsibility of negotiating trade agreements. Since the creation of the USTR, however, there has been a division of jurisdiction between the two. The Department of State is the chief representative of the US to the OECD Committee on Investment and Multilateral Enterprises and its subgroups. Meanwhile, the USTR has lead responsibility for all negotiations under the World Trade Organization, trade and commodity issues in the OECD, and trade, commodity and direct investment issues in the UNCTAD.

¹⁴ Ibid.

As part of the checks and balances system in the United States, there is a firm Congressional-Executive Partnership in the conduct of U.S. trade policy. The Constitution vests the Congress with the ultimate authority to regulate trade with foreign nations. Five representatives from each House are officially designated as the Congressional advisors on trade policy, and the USTR provides regular and detailed briefings to the Congressional Oversight Group. Apart from these, there are, annually, hundreds of congressional conversations between the USTR and the Houses spanning the range of trade issues from tariffs to textiles.

Section 301 of the Trade Act is the principal law of the United States that addresses unfair trade practices. A complaint under this section may either be filed by any interested individual or be initiated by the office of the USTR itself. Once a complaint is filed, the USTR is given 45 days to decide whether it desires to initiate further investigation into the matter. Its decision on the matter is then published in the *Federal Register*. If the office pursues the issue, it is given one year to complete the investigation and to decide on what action to take against the offending party. In this period, the USTR provides opportunities for the public to comment on the issues and holds public hearings upon the request of either the petitioner or any interested party. An important facet of the investigation process includes consultations with the foreign government that is the target of the complaint. While Section 301 asserts that the US does not need to gain approval from any other body in order to take action, the US is committed to pursuing dispute resolution mechanisms under the auspices of the WTO and the NAFTA insofar as this is possible.

Individual files a complaint with the USTR
→ *USTR decides whether to initiate investigation (45 days)*
→ *[Decision published in Federal Register]*
→ *USTR investigates the issue and decides upon appropriate action (1 year)*

Section 2. The European Union

Organizational Set-up

Based on Article 133 of the European Community Treaty, the European Union has a common trade policy that is based on uniform principles. The member states have all agreed to pool their sovereignty and follow a universal policy on international trade. This Common Commercial Policy aligns the states in terms of changes in tariff rates, the conclusion of tariff and trade agreements with non-member countries, the enactment of trade liberalization measures, export policy and trade protection. The main aspects of trade in both goods and services thus fall into the exclusive competence of the EU, such that the responsibilities are exercised entirely by the community and are not shared with the individual states. All

General Agreement on Tariff and Trade (GATT) 1994 and World Trade Organization matters are clearly delineated as falling within this exclusive competence.

Article 133 also spells out areas of mixed competencies, where responsibilities are shared by the Community as a whole *and* by the member states. Under this category fall matters pertaining to the General Agreement on Trade in Services (GATS) and to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These include trade in cultural and audiovisual services, educational services, and social and human health services. Agreements on mixed competency areas must be jointly concluded by the Community and the member states.

There is a balanced decision-making system in place when it comes to the implementation of the EU common trade policy. The EU Commissioner for External Trade, supported by the external trade administration known as the Directorate-General Trade of the European Commission (DG Trade), has the charge of negotiating on behalf of the Member States. The primary task of the directorate, as outlined in the Treaty of the European Community, is “to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade, and the lowering of customs barriers.” Its specific responsibilities are:

- to define (and reappraise) the trade interests of the European Community in both defensive and offensive terms ;
- wherever the Union's commercial policy objectives so require, to negotiate bilateral, regional or multilateral agreements on the basis of negotiating directives proposed by the Commission and adopted by the Council ;
- to monitor and ensure the implementation of international agreements by using the WTO dispute settlement system and the instruments for trade promotion or defense adopted by the Community (the anti-dumping and anti-subsidy rules and the trade barriers regulation (TBR)) ;
- to take part in devising and monitoring internal or external policies which have a bearing on the Union's trade and external investments (single market, consumers, health, environment, technology, intellectual property, competitiveness, competition, energy, transport, agriculture, sectoral measures) ;
- to ensure consistency within the Relex group between the commercial policy and the Union's general external relations policy on the one hand and the contribution of the European Union to global economic governance on the other ;
- to provide the public, both sides of industry, civil society and professional circles with clear, comprehensive and up-to-date

information while seeking their opinions in compliance with the rules set down in the Commission's codes of conduct

While the Commission is officially the administrative arm of the Union and its version of a central executive body, it is the Council of the European Union, usually composed of the foreign ministers of all the member states and operating on a qualified majority vote with a *one country, one vote* practice, which has the final decision-making authority and is in charge of establishing the main objectives of the Union. The Commission, as per Article 133 of the treaty, can only conduct negotiations “within the framework of such directives as the council may issue to it.”

Policy Formation and Trade Negotiations

It is for the aforementioned reason that the DG Trade, roughly 250 people in which are involved with negotiating trade policy, works closely with the Article 133 Committee, a special permanent consultative body composed of representatives of the trade administrations from the 25 member states and the European Commission. The main function of the Committee is to coordinate trade policy. Via weekly meetings, its members are able to discuss the full range of trade policy issues affecting the Community. Specialist meetings are also conducted by the Committee in order to discuss complex issues like trade in services and textiles in greater depth. The Committee listens to the Commission's reports on trade policy issues and examines its proposed negotiating mandate. It then makes recommendations and gives endorsements in behalf of the member states. The Committee's viewpoint is reflective of the stand of the Council, so the amendments it proposes are normally accepted by the Commission and integrated into the “directives for negotiation,” which are then forwarded to the Committee of Permanent Representatives (COREPER). The COREPER has the task of elevating the proposal to the General Affairs Council. Once the directives are adopted by the Council, they act as the Commission's mandate and guide the latter in its work. The major formal decisions, such as the agreement to launch or conclude negotiations, are confirmed by the Council of Ministers. Even in areas where the decision-making power was formally delegated by the Council to the Commission, the rules generally provide for the possibility of further review by the Council, which has the power to confirm, modify or reject the Commission's decision.

Other directorates within the European Commission which have considerable input on trade policy matters are the Directorate for the Internal Market and Industrial Affairs, the Directorate for Competition and the Directorate for Agriculture.

The DG Trade has a planning unit that conducts research on any policy issue of interest to the Commissioner. In addition to this, independent external consultants are often

hired to conduct Sustainability Impact Assessments (SIAs). These studies allow the Commission to examine the potential effects on sustainable development, particularly the economic, environmental and social impacts, of its own proposals for WTO trade negotiations. The results of these SIAs are posted on the Commission's website as soon as they are available.

In order to draft policy that takes into account the concerns of all affected parties, the DG Trade conducts a Civil Society Dialogue process with a wide variety of groups, ranging from non-governmental organizations to organized labor and employers' associations to the European Economic and Social Committee, in addition to the institutional contacts that regularly take place. Within this framework occur many plenary and *ad hoc* meetings. General ones are chaired by the Trade Commissioner himself, while smaller ones focusing on specific issues occur in between. Issue groups that include representatives of civil society, business and trade unions are also intermittently formed. The current Trade Commissioner also holds regular internet chats to directly correspond with the public with regard to their views on trade policy.

Member states maintain their own trade administrations for three major reasons:

- For their participation in the formulation of EU common trade policy
- For the implementation of issues related to shared competence
- For the management of issues of national competence, e.g. export promotion

Unless there is a need to impose a new budget measure or set up a new institution, the European Parliament currently plays no formal role in the formation of trade policy in the EU and simply issues comments on Commission policies and proposals when it is briefed on such issues for transparency's sake. However, the draft Treaty establishing a Constitution for Europe, which was adopted on the 25th of June 2004, gives the Parliament a stronger position. Once the Constitution is ratified and comes into effect, the Parliament will have a role similar to that of the United States Congress under the fast track procedure. It will become co-legislator for autonomous trade policy and will have to approve all international trade agreements. A duty will be passed onto the Commission to regularly inform the Parliament of the state of play of negotiations, similar to the treatment that the Article 133 Committee receives.

The European Court of Justice, as the interpreter of the provisions of the European treaties, has also played an important role in implementing the EU's common commercial policy. It was the ECJ that defined the competencies of the policy areas and, in the past, it denied the Commission's requests for the expansion of its jurisdiction over trade in services in 1994.

*Commission proposes →
133 Committee endorses/makes recommendations →
Council determines mandate →
Commission negotiates →
Council approves →
Parliament is informed*

Policy Administration and Dispute Settlement

Complaints and consultations are divided according to the Article 133 competencies as well. Shared competency issues may be brought up with the individual trade administrations of the member states, while the Commission has departments to deal with broader concerns. Individual industries with a stake in policy are may decide to operate either through their own national associations or via their head associations on the union level.

If a particular industry feels that it is being materially harmed by dumped or subsidized imports, it can address a complaint to the Commission's Antidumping Services group. Meanwhile, the Trade Barrier Regulation functions similarly to US Section 301, in that industries may lodge a complaint with the Commission if they feel that trade barriers restrict their access to third country markets. The DG Trade is responsible for ensuring compliance by third countries with international trade accords. If, upon consultation with the member states via an advisory committee, the Commission decides that a complaint merits a detailed investigation, it is bound to a strict timetable for dealing with the matter. Conclusions for or against remedial action must be made within 13 months for anti-subsidy cases and within 15 months for anti-dumping issues. All parties to the complaint are given full opportunity to state their case and appeals are allowed by the Commission. After all disclosures and verifications have run their course, the Commission proposes definitive measures to the Council. These measures traditionally apply for five years.

In general, when it comes to third countries lodging complaints against a member state, the Commission has an assisting and advising function. However, it has a direct role in anti-subsidy cases in which EU subsidies are involved, and in all cases where imports from the EU as a whole are concerned.

*Industry submits complaint to the Commission →
Commission consults member states via an advisory committee →
Formal investigation is undertaken (13-15 months)*

Section 3. Canada

Organizational Set-Up

Trade policy formation in Canada is characterized by strong interdepartmental consultation. ITCan takes the lead on issues relating to international trade, commerce and investment. Other departments such as Agriculture and Agri-Food Canada, Finance, and Industry Canada also play significant roles in the process. Any differences between departments and agencies are ironed out at the working level and elevated to deputy ministers, or ministers as appropriate. It is understood that the department with the lead responsibility over a given issue has a major say. Decisions are not reached by voting. Interdepartmental and inter-agency conflicts are minimized by instituting a transparent consultative process that involves relevant departments and agencies early in the process of trade policy formulation.

Policy Formation and Trade Negotiations

In the specific area of services negotiations, interdepartmental meetings involving around 15 departments and agencies are convened regularly to discuss issues relating to services negotiations, including the development of instructions for international meetings, and the preparation or revision of services requests and offers as in the case in the World Trade Organization. With some services sectors falling within provincial and territorial government jurisdictions, these governments are also consulted on a regular basis.

The services community is regularly consulted by ITCan via informal emails as well as formal interdepartmental meetings. The Services Trade Policy Division (ESB) takes the lead in discussions and negotiations on services. The Director of the Division is Canada's negotiator. It is the EBS that drafts documentation, while other departments provide input, confirmation and approval. Transport Canada, for example, is given a say in transport services issues, the Department of Finance in financial services issues, and Health Canada in health services issues.

It is the provincial and territorial governments that normally have jurisdiction over the specific service sectors, so they are consulted in the process of domestically determining which sectors are to be liberalized. Municipalities, Canadian businesses and civil society are also given the opportunity to air their thoughts, since they are also directly affected by any changes in the manner in which trade in services are conducted. Interdepartmental and inter-agency consultations provide supplementary material. With the information gathered from all these consultations, ITCan sets objectives and orders its priorities, formulates its negotiating positions, selects the trade interests it would like to promote or protect, and

decides whether concessions may be made in particular areas in order to meet specific objectives in other areas.

The Trade and Economic Analysis Division (EET) of ITCan is the in-house research group that tries to assess the benefits and costs of certain trade commitments. ITCan also uses takes advantage of information provided by the WTO, the OECD, other federal departments, provincial and territorial governments, other intergovernmental organizations, think tanks, and other institutions. The agency also takes it upon itself to recommend or support proposals for specific work in other organizations such as the OECD in order to enhance the general understanding of particular issues and shore up support for trade liberalization.

The mandate for negotiation is given to the Division by the Cabinet.

IT Can consults with territorial governments, business and civil society
→ *ITCan sets objectives and formulates negotiating positions*
→ *Other departments give recommendations*
→ *Cabinet gives mandate for negotiation*
→ *ITCan negotiates*

Other departments are given the opportunity to provide advice and submit recommendations based on extensive interdepartmental consultations and domestic consultations with provincial, territorial and municipal governments, business and academics, civil society, and other stakeholders. The outcome of parliamentary hearings may also be considered as reference points.

Foreign Affairs Canada (FAC), the other half of the former DFAIT, still plays some role in trade policy formation. Its geographical divisions gather information and intelligence, which the department passes onto ITCan. FAC also stays in close contact with Canada's various embassies and missions and the permanent delegates to inter-governmental organizations like the WTO and OECD, and these are able to provide valuable insight that help form particular positions on different issues in service negotiations.

The private sector may voice its opinions via lobbyists and national business associations or directly through mail (including electronic mail), in consultations undertaken by the government of Canada (including on-line surveys), or by phone. ITCan regularly prepares discussion papers delving into the different issues being considered by the agency. These are considered the main "basis for its consultations both inside and outside the government apparatus,"¹⁵ containing general background, identifying the possible issues

¹⁵ Stairs, Denis. (2003). Foreign Policy Consultations in a Globalizing World.

likely to come up in negotiations and giving indications of what the resulting negotiations might be like. The papers are often provided to any interested parties via download from the official website. Feedback on these papers is highly encouraged. On occasion, notices in the Canada Gazette have been published by the department, “requesting input from any and all Canadians on the scope, content and processes pertinent to the negotiations.”¹⁶ To supplement this kind of request, direct mailings to businesses and NGOs are sent and the notice is also posted on the website. Other information available online for perusal traditionally includes detailed information on pending WTO ministerial meetings and how NGOs can register for attendance, the list of official Canadian delegates and the text of Canadian proposals tabled in Geneva.

Aside from general public consultations, around the time of the negotiation of the Canada-U.S. Free Trade Agreement, 13 specific SAGITs (Sectoral Advisory Groups on International Trade) came into being, joining the pre-existing Team Canada Inc. Advisory Board in representing private sector interests. In the lead-up to major negotiations, the department conducts series of roundtable with independent advisers, largely consisting of well-established experts in the competition and trade policy fields. As a representation of the involvement of the private sector, it is worthwhile to note that out the 84 delegates to the WTO conference in Seattle, 14 were designated as “Private Sector Advisers.” Additionally, 65 private Canadian organizations registered at the conference by directly getting in touch with the WTO. All Canadian delegates, independent or not, were kept as well-informed as possible by the government throughout the proceedings.

The public is welcome to send any services trade-related inquiries or requests to the EBS. There are officers in the division responsible for the different sectors, and whomever is in charge of the sector in question has the charge of initiating contact with the individual as well as performing interdepartmental consultation.

ITCan supports its negotiators by providing them with information and intelligence, as well as with human and financial resource necessary in their pursuit of the objectives and positions set forth by the agency. Regular meetings are organized between lead negotiators in order to ensure that developments and challenges are dealt with and appropriately responded to, and to continually clarify and explore the nation’s official position on particular issues. Most of the groundwork is laid out at the working level, but the higher officers from the Directors-General to the Ministers also get involved when it is necessary to read interdepartmental consensus or to provide political guidance.

¹⁶ Ibid.

Policy Administration and Dispute Settlement

It is the Services Council of the WTO that monitors the implementation of the GATS, and adherence to or violation of the rules are brought up at official meetings. The WTO Secretariat also conducts regular trade policy reviews on all member countries and scrutinizes their policies and practices closely on occasion.

The member countries of the GATS have the responsibility of ascertaining whether their trade partners are upholding their commitments. In Canada, there is no particular department or division that monitors such affairs. Those who engage in trade – the Canadian service providers themselves – are in a position to determine whether markets are being opened up to them or kept closed, if barriers to trade are being maintained or built instead of broken down. If the firms or industries feel that trade is being hampered by a third country, they can be brought to the attention of the government. EBS can then assist the complainants in terms of ascertaining the schedule of commitments by other countries and determining whether the latter's actions constitute a breach of any agreement. In light of the information gathered, EBS can consult with the governments of other countries through bilateral discussions or demarches.

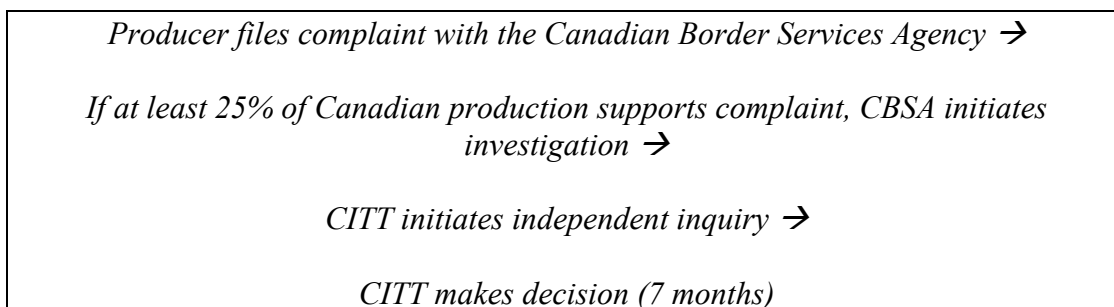
The Special Import Measures Act (SIMA) is Canada's anti-dumping and countervailing law, and it provides protection to Canadian industry. The administration of this act is jointly handled by the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT).

The Canadian International Trade Tribunal (CITT) is the quasi-judicial institution in charge of complaints. The CITT operates within the Canadian trade remedy system and reports to Parliament through the Minister of Finance. It has the authority to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of decisions of the Canada Customs and Revenue Agency made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act*;
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by the *North American Free Trade Agreement*, the *Agreement on Internal Trade* and the *World Trade Organization Agreement on Government Procurement*;

- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations.

Simply put, the process of investigation is as follows:



Section 4. Japan

Organizational Set-Up

Unlike the three previous examples, in Japan, there is no single ministry that has the primary charge for determining trade policy. Instead, there is what is known as the main group of four: the Ministry of Economy, Trade and Industry (METI), which, up until 2001, was known as the Ministry of International Trade and Industry; the Ministry of Foreign Affairs (MOFA), the diplomacy-oriented ministry whose institutional mandate gives it a charge over all international treaties and inter-governmental agreements that Japan concludes, which organizes and enables meetings between the negotiating parties and formulates the letters of agreement or treaties; the Ministry of Finance (MoF), in charge of customs affairs; and the Ministry of Agriculture, Forestry and Fisheries (MAFF), which has a leading voice in the realm of the importation of sensitive agricultural goods. These four ministries often conduct coordination meetings at various levels. Aside from these, other ministries also have a say when it comes to their specific jurisdictions. The Ministry of Health, Labour and Welfare (MHLW), for example, works on the mutual recognition of nurse qualification, while the Ministry of Internal Affairs and Communications (MIAC) plays an important role in talks concerning telecommunication liberalization.

Within the METI, it is the Trade Policy Bureau, known to be one of the prime advocates of free trade in the nation, that takes primary charge of trade policies. The Bureau has seven divisions, and one department that deals with multilateral trade issues. The seven divisions include a policy coordination division, a research division, region-specific

divisions (Americas, Europe and Middle East, Northeast Asia, Southeast Asia and Australasia) and a “regional cooperation” division dealing with bilateral FTAs or RTAs. Much like their ministerial counterparts, industry-specific bureaus under the METI do get involved when products under their jurisdiction is at issue. The Trade Policy Bureau coordinates the METI’s external trade policy and negotiates with the MOFA. This Bureau is also actively pursuing an integrated domestic and external economic policy with the twin objectives of maintaining the global free trade system while shaping the international business environment in such a way as to boost Japan’s industrial competitiveness.

Within the MOFA, it is the Economic Affairs Bureau that takes charge of trade issues. A Free Trade Agreement/Economic Partnership Agreement Division was established under this bureau recently, and the FTA/EPA Headquarters was created. This Headquarters conducts consultations regarding the formulation of Japan’s comprehensive strategy for FTAs and EPAs, with the intention of “ensuring a unified and coordinated response and supporting negotiations with specific countries on a ministry-wide basis.”¹⁷

Policy Formation and Trade Negotiations

Final decisions regarding policy are made at Cabinet meetings chaired by the Prime Minister. Decisions are made by consensus, though there is no established formal system of coordinating, integrating and synthesizing the diverse opinions and requirements of the various government institutions. In the run-ups to negotiations, informal inter-ministry meetings to discuss issues relating to policy are frequently held, especially between the ministries with a strong stake in the policy outcomes. These meetings take place at various levels, from Division Director to Bureau Deputy Director General. Before the formal negotiations open, however, the Cabinet Secretariat, which is formally superior to all ministries, summons representatives from all related ministries and agencies.

In principle, no ministry or agency is superior to others, and “different sectors of Japan’s bureaucracy seem to exercise veto power against each other.”¹⁸ During votation, however, the one with the loudest voice often prevails, as is the case with agriculture. In rare instances, the office of the Prime Minister intervenes in a limited capacity.

Proposals are finalized in the form of official cables issued by the MOFA. No standardized process for this exists. Sometimes, the MOFA drafts the original text. On other occasions, depending on the area of expertise, the METI or the MOF does it. Proposals relating to agriculture, forestry and fisheries are exclusively drafted by the MAFF. “In the process of coordination, other ministries often try to change the text, but the irony is much

¹⁷ Launching of the Headquarters for the Promotion of Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPAs) and Establishment of the Division for FTAs and EPAs. MOFA Official Press Release.

¹⁸ Funabashi, Yoichi. (1995). Asia Pacific Fusion.

of the inter-ministerial negotiations is conducted in Japanese. When the MOFA translates the text into English, the subtle nuance of the original Japanese is often lost and it is often the MOFA's stand that is most strongly represented.”¹⁹

When the METI comes up with proposals dealing with trade remedies (e.g. anti-dumping policies), it is given much latitude by the government. The bureaucrats are free to consult with the private sector, but can also begin the initiative for new negotiations themselves. The MAFF does not have such a privilege in agricultural issues. Instead, their mandates come from politicians and agricultural cooperatives. These are formally given out in Cabinet meetings. In major ministerial conferences, agricultural politicians and representatives of cooperatives are always present to monitor that MAFF officials (or officials of other ministries) are acting within their mandates.

Ministries which oversee domestic industries are often protectionist and passive in trade negotiations. The continuing liberalization of the economy is then often a result of external pressures from trading partners. Private initiative is traditionally the more common root of Japan's trade policy changes, although it is acknowledged in the inner circles that the government is often behind these so-called private sector moves anyway. To this end, study groups are organized, and these groups make joint recommendations that endorse particular courses of action. In response to these, the METI initiates the selection of sectors to liberalize. The MOFA has virtually no power to propose any domestic sector's liberalization.

The Research Institute of Economy, Trade and Industry (RIETI), an incorporated administrative agency affiliated with METI, has in its employ economists who can use the GTAP general equilibrium model to assess the benefits and costs of certain trade commitments. Industry associations are often consulted by the government, as private funding for research is often helpful in the undertaking of more detailed studies that are often necessitated by serious moves to liberalize.

The general mandate for negotiation is in the Law Establishing METI. METI has an uncontested jurisdiction over all manufacturing sectors, except for ships and pharmaceuticals. However, when it tries to assert its negotiating mandate over the service sector (be it finance or telecommunications), it is strongly objected by the relevant ministries.

Some sectors, such as the agricultural one, are more influential with the politicians and with the bureaucracy than others. In general, sectors lobby relevant ministries and agencies, the ruling Liberal Democratic Party and the so-called *zoku-gin* lawmakers, who

¹⁹ Araki interview

lobby in behalf of and are in turn benefited by specific sectors. Some representatives are able to talk to government officials and politicians, while others protest in the streets.

Public consultations are seen in Japan as more of a tool for information-gathering. Advisory councils or informal discussion groups are put together by the ministries interested in getting outside expert opinions. Consultative bodies are often composed of representatives from related industries, academia, journalism and non government organizations. The results of these discussions are kept shielded from the general public, however, retaining the air of mystery that surrounds policy-making. The limited information released by the ministries can be accessed at their official internet homepages, where members of civil society can post comments and questions regarding negotiations. Informal consultations with civil society are rare in Japan. Business organizations receive questionnaires on WTO negotiations in order for the Ministry to ascertain the needs of business stakeholders. Sectoral organizations such as the Central Union of Agricultural Co-operatives of Japan (JA Zenchu) who often lobby the government have more success in influencing trade policies to some extent. Inter-industrial business organizations such as the Japan Business Federation (Nippon Keidanren) often issue appeals on trade policies but do not necessarily influence or drive the government's trade policy formation a lot. Appeals are occasionally issued by NGOs, too, but influence policies even less than by business organizations. Generally speaking, NGOs interested in trade issues, which are anti-free trade in many cases, are not active in Japan as in Western and Southeast Asian countries. The Industrial Structure Council, the general advisory organ on any METI policy, is composed of academics, consumer groups and labor representatives. It is perhaps the one group with a truly notable voice. Its recommendations are given directly to the METI minister, to whom the ISC reports.

Trading partners exert external pressure to liberalize →
Private sector forms study groups and makes recommendations →*
METI initiates the selection of sectors →
Industrial Structure Council gives advice →
METI issues policy statement →
Cabinet discusses and decides on appropriate proposal →
Cabinet consults with the LDP →
Cabinet proposes →
Diet approves →
Cabinet gives mandate →
MOFA and co-chair negotiate

Policy Administration and Dispute Settlement

There are two methods by which an agreement can be implemented. One is through the passing of a piece of legislation, which goes through the Diet. The parliamentary democracy that operates in Japan allows for a close relationship between the Diet and the

bureaucracy to begin with, and many of the ministers are also Diet members. This results in a situation in which the policies pursued by the Cabinet are ones to which the Diet has already given tacit approval.

The other method by which a trade policy is implemented is by Cabinet order, again founded upon a consensus at a Cabinet meeting. The Cabinet Legislation Bureau ensures the consistency of the implementation of laws with the WTO and regional trade agreement rules. The liberalization in the trade of goods is monitored by the METI, under whose jurisdiction falls trade in general, and the MOF, which has the charge over customs affairs. Liberalization of trade in services is monitored by the relevant ministries and agencies. For example, financial liberalization is overseen by the MOF and telecommunications liberalization by the MIAC.

There is no equivalent of US Sec. 301 or EU's Trade Barriers Regulation that deal with complaints against third countries in Japan. All the complaints are handled on an ad hoc basis. If the charge is dumping or illegal subsidy, the complainants can have recourse to the antidumping/countervailing duty process administered by MOF. The Office of the Trade and Investment Ombudsman in the Cabinet also accepts such complaints. There are specific subdivisions of the manufacturing industry bureau, which is under the Trade Policy Bureau of the METI, that deal with specific industries. Firms and industry associations are free to informally approach these subdivisions in the case of complaints.

If there are complaints against a country's exports, METI has the jurisdiction. Its Trade and Economic Cooperation Bureau, which is separate from the Trade Policy Bureau, is in charge. Violators are criminally punished through fines and imprisonment.

Section 5. Malaysia

Organizational Set-Up

While the Federal Parliament of Malaysia has the constitutional authority over external trade policy, the task of administration has been delegated to the executive branch of the government. International trade policy in Malaysia is handled primarily by the Ministry of International Trade and Industry (MITI). The institutional objectives of this ministry are:

- 1) to promote and safeguard Malaysian interest in the international trade arena;
- 2) to spur the development of industrial activities; and
- 3) to further enhance Malaysian economic growth towards realizing Vision 2020.

Since MITI also has under its purview industry development as a separate objective from international trade, there are agencies under the ministry that deal with its different purposes. More specifically, the Malaysian External Trade Corporation (MATRADE) takes care of the export promotion of goods and services. Its mission is to develop and promote Malaysia's export to the world. The specific functions of MATRADE are:

- 1) to promote, assist and develop Malaysia's external trade with particular emphasis on the export of manufactured and semi-manufactured products and services
- 2) to formulate and implement export marketing strategies and trade promotion activities to promote Malaysia's export
- 3) to undertake commercial intelligence and market research and create a comprehensive database of information for the improvement and development of Malaysia's trade
- 4) to organize training programmes to improve the international marketing skills of Malaysian exporters
- 5) to enhance and protect Malaysia's international trade investment abroad
- 6) to promote, facilitate and assist in the services areas related to trade.

Policy Formation and Trade Negotiations

While MITI is the point agency when it comes to the formation of trade policy, all policy decisions in Malaysia are ultimately made by the Cabinet. The Ministry presents its opinions and suggestions to the cabinet and each ministry may provide feedback and air its objections to any issue or policy. If any ministry has a strong objection to a proposal, the policy cannot be passed. The Ministries of Agriculture and Health both play significant roles, especially with regard to import procedures, while the Ministry of Finance is the final arbiter as regards taxes, including tariffs.

MITI has regular consultations with sectoral ministries and industry. The MITI Minister conducts a formal dialogue with all trade and industry associations in Malaysia annually. Before any policy decision is made, industry is given an opportunity to present its view.

Those involved in international trade negotiations, be they made under the World Trade Organization or more narrow regional trade agreements, get their mandate, parameters and limits via formal consultations with the sectoral ministries or agencies and with industry. Regular updates as regards negotiation developments and plans are provided to Cabinet. The Ministry of Foreign Affairs is always involved in the consultation process.

Aside from handling negotiations, MITI also has the responsibility of monitoring the interactions in liberalized sectors to ensure that all parties are honoring the agreements. As part of this task, the ministry conducts regular consultations with industry and closely observes trade and investment flows.

The ministry has an in-house research department that undertakes feasibility studies in consultation with the sectoral ministries or agencies and with industry. Semi-independent research institutes such as the Malaysian Institute of Economic Research, various universities and the Institute of Strategic and International Studies Malaysia, are also invited to contribute to the preparation of policy initiatives. The results of these studies are presented to Cabinet for consideration before decisions as to which sectors to liberalize are made. Cabinet weighs in with its decision and is ultimately the body that bestows the mandate for negotiation on the ministry.

The negotiating officers of the Ministry are given the autonomy to consult. The necessary resources are made available upon the request of negotiators.

MITI undertakes feasibility studies →
*MITI gets preliminary mandate, parameters and limits from sectoral ministries
and the industry →*
MITI presents proposal to Cabinet →
Cabinet decides which sectors to liberalize and bestows final mandate for negotiation →
MITI negotiates

Policy Administration and Dispute Settlement

Individuals or firms may lobby or air their concerns by writing letters to the Minister, the Secretary-General of MITI or directly to the officers involved with the issue. They may also approach MITI via industry associations. MITI endeavors to present a very transparent and business-friendly environment that allows those concerned to give their opinions on its policies and decisions. Once received, the ministry considers these requests in light of national interests.

When it comes to dispute resolution, subdivisions of the MITI take charge. The Trade Practices Division handles complaints against foreign imports. Representatives from the Customs Department and the Attorney-General's Chambers assist in the investigation of the cases. Meanwhile, the Trade Services Division collaborates with the Industries Division when it comes to complaints against the country's exports. These two work in conjunction to find resolutions to such problems. If it is proven that an exporter has violated an agreement, the exporter will be blacklisted by MITI.

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