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Research Report

WTO processes would benefit from the input of civil society

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WTO processes would benefit from the input of civil society

by

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WTO negotiations involve complex issues. Negotiators are typically government officials who—while adept in international negotiations—may lack the detailed expertise and practical experience related to specific issues that are the subject of negotiations. Negotiators could therefore benefit from the information that civil society—including the private sector, trade unions, NGOs, academia—can provide. Civil-society representatives can contribute practical expertise and experience and increase the acceptability of outcomes. Their participation also adds transparency.

The WTO's 1994 Marrakesh founding document recognized the value of civil society in Article V.2: "The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO."

Yet, not much has changed since 1994.[1] Civil-society involvement today primarily consists of briefings, national and regional outreach and informal trade dialogues with the WTO Secretariat.[2] Members engage ad hoc at the national level. The only broad-based outreach event is the Public Forum organized by the Secretariat,[3] an annual series of panels involving WTO members, NGOs, academics, and private sector and labor organizations.[4]

The WTO negotiations of an Investment Facilitation for Development (IFD) Agreement offer an opportunity to at least institutionalize civil-society input into the implementation and operation of this prospective Agreement, an Agreement that focuses on specific technical measures. To this end, the negotiators can draw on the OECD's fruitful experience with its Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and OECD Watch:

- BIAC and TUAC represent key stakeholders from OECD members that "bring in the views of civil society", working as "formal consultative bodies".[5] BIAC and TUAC are umbrella associations.[6] They have official consultative status as OECD independent institutional partners and, specifically, are "designated as 'advisory bodies' to the OECD's Investment Committee".[7] BIAC liaises with the business community through its policy groups, while TUAC does so with trade unions through its Administrative Committee, to arrive at consensus positions that are presented in the OECD. Both engage in regular consultations with the Organisation on various policy matters, including the Investment Committee that oversees investment policy issues, including the OECD Guidelines for Multinational Enterprises. They also ensure that the Guidelines and National Contact Points are known to, and understood by, members.
- OECD Watch represents over 130 NGOs and other civil society organizations from 55 countries at the OECD. It is not an institutionalized committee like BIAC and TUAC; its current scope is primarily limited to advising the OECD's Investment Committee, including regarding the Guidelines and National Contact Points.

Reflecting on its experience, the OECD observes: "[W]e believe that engaging with civil society helps improve our policy recommendations and our impact on society".[8]

Given this experience, the negotiators of the WTO IFD Agreement should provide for a mechanism that gives consultative status to civil society in relation to the Committee on Investment Facilitation that the Agreement seeks to establish. The mechanism should create a clear process for input by civil society into the deliberations of that Committee. The purpose should be to contribute, in an on-going dialogue, ground-level, practical expertise and experience for the implementation and operation of this Agreement. Such a mechanism and process—complementing ad-hoc contacts—could be patterned on the OECD's successful model involving BIAC, TUAC and OECD Watch.

Almost 30 years ago, the WTO's Marrakesh Agreement provided the mandate to consult and cooperate with civil society. It is high time to take action. The WTO's Director-General should encourage members to do so and facilitate forging a consensus among WTO members. The negotiators of the IFD Agreement can pioneer this effort. They should aim for an effective Agreement and set a precedent for the modernization of the WTO. They should not miss this opportunity.

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[1] Even though the General Council agreed on "Guidelines" in 1996.

[2] Initiated by Roberto Azevêdo and organized upon request by civil society.

[3] Erin Hannah *et al*., "Reforming WTO-civil society engagement," *World Trade Review*, vol. 16 (2017), pp. 427–448.

[4] However, Supachai Panitchpakdi established informal advisory bodies with business organizations and NGOs in 2003; this initiative was discontinued—Carlos Braga and Athanasios Kondis, "The WTO and the business community", p. 13.

[5] OECD, "How we work : How we engage with civil society".

[6] Both have Secretariats. BIAC (https://biac.org/wp-content/uploads/2020/03/Business-at-OECD-Corporate-Brochure-1.pdf) has a General Assembly. It organizes its consultations in 38 policy groups, collaborating frequently with the ICC

and IOE. TUAC (https://tuac.org/wp-content/uploads/2018/04/ABOUT-TUAC-1.pdf) has Plenary Sessions, supported by an Administrative Committee, representing national members and partner international trade unions. Both organizations participate in the annual OECD Ministerial Council meetings.

[7] OECD Watch, "Advisory Groups", April 8, 2019.

[8] OECD, *op. cit*. The OECD is just one example of how the input of civil society is being sought. Regionally, e.g., APEC has a private-sector arm, the APEC Business Advisory Council, to advise governments and APEC officials on business-sector priorities and concerns. The EU has "Domestic Advisory Groups" as a mechanism for civil society to be engaged with, and monitor, the implementation of EU trade agreements. Consultative mechanisms exist also at the national level; the Office of the United States Trade Representative (USTR), e.g., has 26 thematic consultative committees that engage with civil society on a broad basis; https://ustr.gov/about-us/advisory-committees.

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