

DRAFT

**The consultative process with
civil society in the formulation
of Sweden's positions
on trade policy within the EU**

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1. Introduction

The conditions for trade policy formulation have changed significantly in many, if not all, countries over the past decade. The scope of trade policy has increased. Trade policy interrelates more directly with other policies that were previously perceived to belong to the sphere of exclusive national sovereignty. Globalization has increased the need for coherence between policy areas, both nationally and internationally. This has added to the complexity of contemporary trade policy formulation. It is not surprising that trade policy has gotten a higher profile in the public debate. In the aftermath of the World Trade Organization debacle in Seattle, the demand for political accountability has increased, and legitimately so. The successful outcome from the WTO Ministerial Conference in Doha helped to restore confidence in the multilateral trading system. But suspicion and uncertainty still characterize the approach taken by several governments and many Non-Governmental Organizations.

The challenges posted by the new trade policy landscape have necessitated more extensive preparatory processes within government offices as well as wider consultations with civil society stakeholders. This may have diverted resources from more traditional trade policy assignments. But it has also brought opportunities for improvements in the process of trade policy formulation.

WTO members have developed a host of approaches and instruments to trade policy dialogue with civil society. This paper focuses on the case of Sweden, and more

specifically on the consultative process with civil society in the formulation of Sweden's positions on issues on the EU agenda, in the so called 133 Committee and in meetings of the General Affairs Council, where the common EU trade policy is formed. The paper describes and evaluates the dialogue with civil society and points at some lessons of more general interest.

1. Sweden's trade policy civil society dialogue

1.1 Dialogue vs. accountability

Just as the North American Free Trade Agreement sparked a lively trade policy debate in North America in the early 1990s, the negotiation on a Multilateral Agreement on Investment within the Organization for Economic Co-operation and Development ignited a vivid debate in Europe, including Sweden. The nature of the discussion, including its weak factual base, underscored the need for improvements, both in terms of quantity and quality, in the contacts between governments and civil society stakeholders. The upcoming WTO Ministerial Conference in Seattle transformed that need into necessity.

The formal decision by the Swedish Government, in March 1999, to put in place a new structure for preparations of WTO negotiations was based on two fundamental premises. First, it rested on the conclusion that the main responsibility for civil society dialogue lies on the national level. This might seem self-evident, given the inter-governmental nature of the WTO. But many Non-Governmental Organizations sought direct access to the

negotiating tables at the WTO headquarters. While the Swedish government encouraged and sponsored direct contacts between the WTO in Geneva and, mainly, internationally organized Non-Governmental Organizations, it firmly held that such contacts could only complement, and in no way replace, a thorough dialogue with civil society domestically.

Second, a clear dividing line was drawn between the civil society dialogue on the one hand and the democratic foundation of trade policy in the *Riksdag* (Sweden's Parliament) on the other hand. While the former could help restore confidence, it could neither provide, nor substitute for, political accountability. The consultations were not set up to grant participating stakeholders disproportionate influence, on the expense of other, maybe less effectively organized groups. The responsibility for developing well considered positions that strike an appropriate balance between societal interests rested with Government alone. And Government could only be held politically responsible for its actions before the *Riksdag*, from which its power and mandate stem.

Based on these premises, the Swedish Government sought to set up a structure for trade policy formulation that balanced the competing demands of efficiency and accountability in an appropriate manner. A two-pronged strategy was launched. First, the need for accountability was addressed in the *Riksdag*. Second, a new structure for domestic trade policy preparations and dialogue was put in place to ensure efficiency.

The Government presented its proposal for a Swedish WTO policy in a formal Communication to the *Riksdag* ("Free Trade and Fair Rules of the Game",

Communication from the Government, 1998/99:59). The Social Democratic government put forward the Communication with the Left Party and the Green Party as co-sponsors. Together these parties formed a majority in the *Riksdag*.

The Communication emanated from the then ongoing policy debate within the EU. It emphasized the importance of open trade – for exports as well as imports – for economic efficiency and growth in Sweden and the EU. It highlighted consumer interest. A major theme was the need for major trade policy reform in order to spur the development of developing countries, including through the opening up of protected developed country market for developing country exports. The Communication supported the launch of a new, broad WTO round. It proposed a consistent free trade line – which included, among other things, the abolition of all tariffs for industrial products among sufficiently developed countries, the dismantling of trade barriers and trade distorting subsidies in agriculture, free trade in most services, and a fundamental reform of the WTO rules on antidumping. In addition to “traditional” topics for negotiations, the Communication argued the case for a widening of the WTO to areas such as investment, competition and trade facilitation.

In parallel with the overall advocacy for free trade -- and as an important contribution to a coherent structure of global governance -- the Communication stressed that the WTO had to take its appropriate responsibility for sustainable development and for securing important policy objectives in other issue areas. Thus, it contained proposals relating to the environment and internationally recognized core labor standards, which were

carefully crafted to secure the integrity of the trading system and to prevent resort to “green” or “blue protectionism”.

The four right wing opposition parties supported the Communication almost without reservation, the exception being a Center (agrarian) Party and Christian Democrat objection to the liberal approach to agriculture (together these parties represented about 16 percent of the votes). Thus, a solid *Riksdag* majority backed the Government proposal. The almost full endorsement by the *Riksdag* constituted a considerable asset for the Government in its complementary dialogue with civil society. (The Communication still forms the basis for Swedish positions on WTO issues.)

Since the debate on the Communication, the *Riksdag* has been kept informed about the WTO process in connection with the WTO Ministerial Meetings and the *Riksdag* Advisory Committee on EU Affairs has regularly been consulted in preparation for relevant debates and decisions on trade policy issues in the EU General Affairs Council. The Committee also arranged a public hearing on WTO in preparation for the Seattle Ministerial Conference. Two members of the *Riksdag* formed part of the Swedish delegation to the WTO Ministerial Conferences in Seattle and Doha respectively.

1.2 Civil society and the decision making structure

The Government decision to form a new structure for internal preparations for WTO negotiations put a State Secretary Working Group (political level) in the lead. It

comprised of State Secretaries (second in line after ministers) from relevant Ministries (Ministry for Foreign Affairs (trade – lead – and development), Ministry for Industry, Employment and Communications, Ministry for Finance, Ministry for Agriculture, Ministry for Social Affairs, Ministry for Culture and Ministry for Justice). Thereunder a Preparatory Group consisting of the heads of the relevant departments from the same ministries (civil servants) constituted the working level. It was chaired by the head of the Department for International Trade Policy in the Ministry for Foreign Affairs. It also included relevant boards and authorities, e.g. the National Board of Trade, the National Board of Customs, the Swedish International Development Authority, the Central Bank. Among these agencies, the National Board of Trade played a particularly important role as "trade policy think-tank" and advocate of free trade. The Preparatory Group held both comprehensive meetings and – as appropriate – ad hoc meetings on specific subjects, such as Agriculture, Services, Trade and Development and Intellectual Property Rights). In addition, the comprehensive preparations for the weekly 133 Committee meetings in the Council of the European Union regularly dealt with issues on the WTO agenda.

The decision also mandated the creation of an advisory Reference Group on WTO negotiations, comprising of relevant and interested Non-Governmental Organizations. Initially the same domestic NGO's that had been consulted during the negotiations on the Multilateral Agreement on Investment were invited. The group normally met -- and still meets -- on a monthly basis with shorter intervals between meetings near big events such as the Seattle or Doha Ministerial Conferences. Agendas and documents are normally, and to the extent possible, circulated two weeks in advance of the meetings. Just like the

Government Preparatory Group, the Reference Group was mandated to convene ad hoc meetings on specific topics, in order to explore issues more thoroughly. Information about the group -- including reports from its meetings -- was made generally available through the Internet (<http://www.ud.se/wto/referensgr.htm>).

The agendas of the Reference Group meetings contain issues that are relevant given the sequence of events in the WTO process and within the EU machinery. At the meetings a Government representative introduces the relevant topic and proposes a Swedish position, often in the form of a position paper. Thereafter civil society participants are invited to present their views on the topic and the proposed position. The process does not involve negotiations on consensus opinions from the Group.

Participation in the Reference Group is open to all interested stakeholders. Thus, in practice, a principle of self-selection of participating organizations has been introduced. The only condition imposed is that members of the group undertake to participate on a regular basis. The open nature of the group has not imposed difficulties, neither relating to the size of the group, nor with regard to the quality of its work.

The membership of the Reference Group has stabilized at around 30 organizations. Business and labor organizations represent about two thirds of the membership. Overarching and sectoral business coalitions take part, representing goods, including agriculture, and service industries, as well as both exporters and importers. Blue- and white-collar trade unions (central and sectoral) also belong to the group. Both the

Federation of Swedish Enterprises and the Swedish Federation of Trade generally share the free trade objective of the Government, as do the Swedish Trade Union Confederation (LO; blue-collar union) and the Swedish Confederation of Professional Employees (TCO; white-collar union). Two exceptions to the rule among business organizations are the Swedish Textiles Manufactures, who in general terms support a more cautious approach on textiles, and the Federation of Swedish Farmers, which leans more toward the Brussels than the Stockholm approach to trade in agriculture.

The strong support for the Government's free trade policy in the *Riksdag* and from business and trade unions, diminishes, or even abolishes, the risk of Government policy being captured by protectionist special interests. Opinion polls show that 54 percent of the Swedish population are "free traders" (compared to 44 percent in Mexico, 37 percent in the U.S. and 33 percent in Brazil) ("Liberalism lives", *The Economist* 2 January 1999). The fact that exports correspond to about 40 percent of Sweden's GDP makes the need for free trade evident. In addition, the active labor market policies pursued to facilitate structural adjustment, including by securing sufficient income levels for employees that loose their job – be it for domestic reasons or due to foreign competition – are important, not least for the trade union's support for free trade.

The main point of division between business and labor in the Reference Group related to WTO's contribution to observance of core labor standards. The importance of this issue was stressed by the trade unions, who -- as the Government -- view observance of internationally recognized core labor standards as a central element of global justice. The

trade unions advocated WTO rules to help secure the observance of core labor standards. From the Government side, the discussions in the group were helpful to explain why such a result would not be attainable, and why the mere suggestion would stall progress in the WTO. According to the Government line, the WTO should take its part of the responsibility for core labor standards by other means, including co-operation with the ILO. The EU process led to an agreed EU position, according to which a joint ILO-WTO standing working forum should be set up. The business representatives in the Reference Group did not share the trade unions' view, but the Confederation of Swedish Enterprises basically did not object to the Government line.

In addition, the Reference Group comprises organizations representing all three categories of NGO networks identified by Ostry (Ostry, Syliva: "WTO: Institutional Design for Better Governance, Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium, J. F. Kennedy School of Government, Harvard, June, 2000, p. 13). First, Swedish Attac belongs to the "mobilization networks", the main objective of which is to rally support for an alternative policy response to globalization. The Swedish section of the World Wildlife Fund and the Swedish Society of Nature Conversation could be categorized among what Ostry labels "technical networks". WWF provided valuable and specific input on several environment issues. The Swedish Consumer Coalition belongs to the same category. It generally attached more importance to issues of fairness and standards than to the issue of price. The publicly financed Swedish NGO Center for Development Cooperation, inspired by the Third World Network, can be mentioned among the developing country advocacy groups, as can the

Church of Sweden Aid. Some of these groups have advocated the need for a an alternative trading system and have objected to traditional trade rounds as a means for reform.

1.3 Evaluation of the dialogue process

According to the agreed terms of reference for the Reference Groups its task is twofold. First, it should constitute a venue for transparency. Second, it should improve the Government basis for decision making on relevant issues.

In order to safeguard transparency, the Government is fully open with regard to Sweden's positions and position papers on relevant issues. Equal treatment of group participants is important to build and keep trust. The information is shared under the constitutionally founded principle of public access to information, which is a cornerstone of Swedish public administration. Openness is the rule, confidentiality the exception. One important exception relates to documents, the disclosure of which would be harmful to Sweden's relations with foreign states or international organizations. Information on the EU and WTO negotiating process is shared with the Reference Group within this confinement. Thus, information and documents are shared to the extent it does not harm relations to negotiating partners, including the EU and the WTO as organizations. Documents containing non-disclosed positions of other WTO member states are -- for example -- not made public. Thereby, the integrity of the negotiating process is safeguarded. At the same time, the degree of transparency has increased substantially both within the EU and the

WTO, including through disclosure of documents and reports from meetings through the Internet. Thus, confidentiality is required to a significantly lesser extent today than, say, five or ten years ago.

From the Government's perspective, the Reference Group process has fulfilled its mandate relating to transparency. The sharing of information has resulted in a better understanding among civil society participants of both the intricate technicalities of trade issues and the often equally complex processes of trade negotiations. Thereby, the Reference Group has hopefully contributed to and promoted a more informed debate.

An additional aspect of transparency has been the participation of civil society stakeholders in the Swedish delegation to the WTO Ministerial Conferences in Seattle and Doha. At both occasions the delegation contained representatives from the blue- and white-collar trade unions, export and import business as well as one representative for mobilization/development advocacy groups. The access to a large number of WTO meetings granted to members of delegations have probably increased knowledge about the WTO process within civil society.

Openness with regard to information on the negotiating process has been an important aspect of work in the Group. This has hopefully helped avoiding some, if not all, criticism and debate about secrecy in trade policy formulation and allegation of "shady deals being struck by faceless bureaucrats in smoke-filled rooms beyond democratic control". In this context the Swedish model – openness as the rule, confidentiality the

exception – has served the process well. A relatively high degree of openness has ruled, without negative impact on the process and openness builds trust.

The value of having all types of civil society stakeholders – labor, business and others – in the same forum is worth stressing. Through the mixed composition of the Reference Group, a wide variety of policy options have been formulated, clarified and put on the table as alternative solutions. This has highlighted the need for the Government to develop appropriately balanced and arbitrated decisions on the final Swedish policy stance. The debate itself has also often made it necessary for the Government to refine and sharpen arguments for the policy position taken, which is yet a positive result of the dialogue.

The second main task of the Reference Group has been to improve the knowledge-base for decision making for the Government. The participating groups have brought their specific expertise and competence to the table and thereby often add specificity and widen perspectives that help Government to make well-informed decisions. The Reference Group participants – on the other hand – have hopefully benefited from being able to make their points directly to the officials involved in the relevant processes.

Overall, the Reference Group seems to have fulfilled its mandate and added quality to the preparatory process. A few randomly chosen -- and far from exhaustive -- examples illustrate the point. The Swedish section of *Médecins Sans Frontières* and the Swedish Association of the Pharmaceutical Industry, from their respective perspectives, provided

valuable insights on the linkage between intellectual property rights, HIV-AIDS treatment and trade. They helped develop the Government position on access to medicines in preparation for the Doha meeting. The Swedish Society for Nature Conservation has broadened the knowledge base on issues relating e.g. to the protection of plant varieties and the WWF has highlighted the relationship between the WTO and the UN Convention on Biological Diversity. The ILO expertise provided by the Swedish Trade Union Confederation contributed to the stance on WTO-ILO co-operation. The Federation of Swedish Enterprises brought deep knowledge on several issues – including technical barriers to trade – to the table. The Textile Importers' Association provided insights in the cumbersome reality of trade in textiles and clothing, including on rules of origin, which were used when developing Swedish positions. The development advocacy group contributed to the focus on and development of a development friendly stance, within the confines of the present trading system. The list could be made longer.

The Reference Group has not bridged all gaps between participants -- far from it. This is maybe particularly true regarding the gap between the Government, business and labor on the one hand and mobilization networks and development advocacy groups on the other hand. The latter have often taken positions that would require quite fundamental changes in the trading system -- including with regard to the present structure of power -- to be implemented. But bridging gaps like this has not been the purpose of the process, and that understanding has been important to all participants involved. Some groups have been sensitive to the how their participation is referred to by others, including Government, and do not – and rightly so – assume responsibility for a Government

position just because it has been subject to debate in the group. But again, from the Government's perspective, the work of the Group has improved the factual quality of the debate, as well as the basis for decision-making.

The evaluations that have been conducted among Reference Group members would generally indicate that Group members are satisfied with the process and feel that the Group has fulfilled its mandate -- criticism has been at hand, however, mainly from the "mobilisation groups" and the development advocacy groups, for what these groups perceive to be a continued lack of transparency.

2. Linking the Swedish process with the EU level

For most WTO member states, trade negotiations involve "two-level games". The government is involved in more or less formalized "negotiations" with stakeholders domestically, as well as in negotiations with other governments at the negotiating table in Geneva. For EU member states a third level – the EU-level – is added to the "game". This means additional challenges for the actors involved, including for the dialogue with civil society.

Trade policy decision making within the EU is for obvious reasons more complicated than national trade policy making. From Sweden's point of view, the positions developed through the domestic preparatory process, including after consultation with civil society, form the basis for Sweden's participation in the EU 133 Committee, the Committee of

Permanent Representatives (Coreper -- the meeting of member states' ambassadors in Brussels) and the General Affairs Council respectively, as the common EU trade policy is formed by these bodies. Thus, the agenda for Sweden's, and other EU member state's, preparations for WTO negotiations is – to a large extent – set in Brussels.

The formulation of EU trade policy is complicated by the fact that the degree of EU competence differ between issues. Concerning “traditional” trade policy, competence rests solely with the EU. In other trade policy areas, such as investment, intellectual property rights and services, "mixed competence" -- that is both national and community competence -- is at hand. In principle Council decisions are made by qualified majority, but in cases of mixed competence several exceptions to the rule apply and unanimity is required for decisions to be made. The content and single undertaking nature of the Doha Development Agenda means that unanimity will be required when the EU is to make its final decision on the DDA result, after the mandated conclusion of the negotiations by 1 January 2005.

The requirement of unanimity among EU Member States constrains the trade policy formulation process. It risks leading towards least common denominator type of solutions, which by definition wont be free trade oriented.

From the brief description of the content of the Government Communication to the *Riksdag* in section 1.1 it is evident that some national Swedish positions do not correspond with the common positions taken by the EU, as manifest in the EU Council

conclusions on "Preparations of the Third WTO Ministerial Conference", from October 1999, which also constituted the mandate for the Commission before the WTO Ministerial Conference in Qatar, and thus formed the basis for the EU agreement on the Doha Development Agenda. These differences have added an additional challenge to the Swedish dialogue with civil society. While the Swedish Government on the one hand pursues national Swedish objectives in the EU 133 Committee and the Council of Ministers, it has to rally behind and defend the common EU line -- which by definition is a compromise product -- once it results from the Brussels process.

While some Swedish civil society stake holders – such as farmers and textiles producers – may find comfort in the fact that Swedish and EU positions differ, others – including labor and business organizations and mobilization and development advocacy groups – often express frustration over slow and insignificant EU movement.

In areas of community competence the right of initiative rests with the European Commission, that also negotiates on behalf of the EU. According to established practice, the Commission performs the same function in areas of mixed competence. In the intergovernmental EU negotiating process leading to the Maastrich Treaty and to the Nice Treaty on the European Union, the Commission has sought to widened its own powers, to cover all subject matters dealt with by the WTO. The member states have basically not agreed to give up national competence over WTO-matters in policy areas that are not harmonized on the EU level. Before the conclusion of the negotiation in Nice,

member states were strongly backed in taking such a position by vocal parts of civil society.

Nevertheless, the Commission holds extensive trade policy powers. It is on the basis of a Commission proposal that the Council of the EU grants negotiating mandates to the Commission and decides on the final negotiating results. During the negotiating process the Commission is in the lead, both internally in the EU and as the single EU voice and negotiator externally. It is up to the Commission to suggest proposals for adapted EU positions in response to requests and interests of other WTO Member States, and to explore options in contacts with third countries. However, under Article 133 of the Treaty on the EU the Commission is obliged to conduct negotiations in consultation with EU Member States in the 133 Committee. Between the relatively few occasions at which trade policy is subject to discussion in the Coreper and the Council, the 133 Committee weekly meetings constitute the main trade policy arena for EU Member States. A host of formal and informal contacts, as well as written communications and submissions, are taken in connection with each and every 133 Committee meeting.

The extensive European Union competence over trade policy, the extraordinary role of the Commission and the nature of relations between EU Member States set specific conditions for dialogue with civil society on trade policy, both on the EU level and on the Member State level. The intricate Brussels process is viewed differently by different civil society groups. National business organizations and trade unions are generally represented in Brussels by affiliated EU level organizations. These groups are generally quite

comfortable with, and well connected to, the EU process. Other participants of the Reference Group are less familiar with the processes in the EU institutions. The parallel and elaborate civil society dialogue conducted by the Commission on the EU level helps spread light on issues dealt with in Brussels. Information from these meetings are rapidly spread to domestic NGOs, including via Internet. Still, an important task of the Swedish Reference Group has been to explain the EU process to participating stakeholders.

While the level of EU transparency has increased significantly in recent years, including through publication of EU submissions on the Internet, Swedish representatives in EU meetings often argue for even greater openness. Under present procedures it is sometimes difficult to handle a constructive process with civil society, while issues are simultaneously under debate in the 133 Committee and before EU positions have been finalized. The Swedish EU Presidency during the first half of 2001 sought to take further steps to improve transparency, including through Internet publication of the agendas of 133 Committee meetings. The ongoing debate on the level of transparency in the EU preparations of requests and offers in the WTO services negotiations points at both a continued high level of interest and willingness to get involved from civil society and a need to further develop the methods of transparency. The debate has i.a. led to an innovation in the form of publication of a quite detailed summary of the EU requests on the Commission homepage, and the Commission dialogue with civil society has helped clarify the situation. Nevertheless, the Swedish stand point has been that even further openness from the EU side could have been shown without detrimental effects to the negotiating process in Geneva.

In summary, the degree of civil society interest in EU trade policy formulation has rendered the opaque decision making process of the past obsolete. This is a positive development which vouch for a higher degree of both transparency and accountability in EU trade policy making for the future.

3. Concluding remarks

The account of Sweden's consultative process with civil society in the formulation of positions on trade policy within the EU give rise to the following observations of a more general nature:

1. The main responsibility for the trade policy dialogue with civil society lies on the national level, where the political responsibility is found. Direct contacts between WTO and NGOs in Geneva may complement, but not substitute for, a thorough domestic dialogue.
2. The principle of admittance to the domestic dialogue needs reflection. The method of self-selection in connection with the condition of participation on a regular basis has worked well in the Swedish context.

3. The advisory dialogue with civil society should be separated from the process of ensuring the political legitimacy of policies pursued. This is important in order to avoid policy capture by private interests and to ensure democratic control.

4. In order to avoid misunderstandings and unrealistic expectations, the purpose of the dialogue needs to be clearly specified. In the case of Sweden the dual purpose of enhancing the quality of the factual basis for Government decisions and information sharing, including concerning the EU process, has worked well and facilitated a spirit of partnership. Participants have generally been satisfied and felt that the Reference Group has fulfilled its mandate.

5. The comprehensive membership of the Swedish Reference Group -- i.e. collecting representatives for labor, business and other civil society interests in one forum -- has been helpful to the process since it clarifies both policy options and the need for Government to arbitrate between conflicting interests. Cross-fire in the debate helps Government sharpen its arguments.

6. A high degree of transparency is both desirable and possible. The full openness in the Reference Group with regard to positions taken by Sweden has not impacted negatively on Sweden's participation in the EU process. Transparency improves the quality of the debate and helps avoid unnecessary criticism for processes behind closed doors. Information should be shared on the basis of equal treatment of dialogue participants.