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Trade Policy Making in Latin America: A Compared Analysis

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Contents

Abstract	5
Introduction	7
I. Trade Reforms in Latin America	9
II. What does Participating in Policy Formulation Mean?	15
III. Formulating Trade Policy in Latin America	17
A. The Legislative Power	19
B. The Executive Power: <i>L'État c'est moi</i>	20
C. Relationship between the Public Sector and the Civil Society.....	23
IV. Conclusions	27
Bibliography	29
Serie Comercio Internacional: Issues published	31

Table Index

Table 1 Trade Reform in Selected Countries: 1985-1992.....	10
Table 2 Percentage of Imports Covered by Trade Agreements	12
Table 3 Trade in Selected Latin American Countries	13
Table 4 Coefficients of Imports and Exports of goods and Services.....	14
Table 5 Co-ordination within the Public Sector	22

Figure Index

Figure 1 Reform Index in Latin America: 1985-1999.....	11
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Abstract

This paper examines the way trade policy is formulated in a representative set of Latin American countries. Despite the fact that the economic reform process in Latin America has been substantial, the benefits of the reforms are under question. Some claim that part of the current disenchantment with structural reforms, including trade policy, in Latin America may be due to the fact that the quality of policies and of policy implementation has been tainted by structural characteristics of policymaking processes.

In recent years, the interest has arisen to know and understand how decisions on trade policy are taken in Latin America. This case is a mixture of schemes, which are more or less applicable depending on the actors involved internationally (multilateral, plurilateral or bilateral processes), how deep is the democratic tradition of the country in question and what is the level of organisation and complexity of the civil society. Bureaucracies in Latin America play a major role in designing and orienting the decisions on trade policy. On the other hand, the Legislative Power assumes an important role in the final stage, when it must accept or reject the terms of negotiations. Finally, co-ordination and consultation mechanisms within the public sector —and between it and other relevant players, such as the Legislative Power and the civil society— are weak.

Introduction

Formulating trade policy has become a special concern in modern society. In the late eighties, and largely as a result of the conclusions of panel reports that settled disputes dealing with environmental regulations under the General Agreement on Tariffs and Trade (GATT), wide sectors of civil society organised in international networks emerged as interested parties to better understand the way multilateral trading system works and try to influence trade-related matters.

The subsequent coming into effect in 1995 of the World Trade Organisation (WTO), that contained rights and obligations that went beyond the traditional trade-related issues, together with a stronger dispute-settlement system deeply involved in the countries' sovereignty, resulted in deepened interest of organised groups within the society to take part in decisions on trade policy, to ensure protection and promotion of their interests.

In a number of Latin American countries, the creation of the WTO was welcome in the beginning, but later on it arose concern when people better understood (and in some cases misunderstood) the extent and scope of related obligations and problems to implement it (see Lengyel & Ventura-Dias, 2004).

At the same time, the issue of becoming aware of the way in which trade policy is devised in the region has gained increasing interest, as the ignorance of such matters by the society is notorious. Furthermore, according to the Inter-American Development Bank “part of the current disenchantment with structural reforms in Latin America may be due to the fact that the quality of policies and of

policy implementation has been tainted by structural characteristics of policymaking processes”. Therefore, in order to understand how the trade policy-making process takes place it is important to analyze who are the actors and how they interact.¹

In recent years, the interest has arisen to know and understand how decisions on trade policy are taken in Latin America. One of the approaches used has taken as its reference the works by Putnam (1993), who studies international negotiations as a two-level game. The first level represents the negotiation that takes place between states or international organisations. In the second level are domestic negotiations, which must be conducted by those in charge of the first level, in order to ensure that the results achieved at that level will be subsequently ratified. Obviously, these games occur simultaneously and interact with each other constantly along the process.

The first level of negotiations is handled by government representatives, who can be defined in the terms of article 7 of the Vienna Convention. All the domestic players that can influence the ratification of the results of the negotiation handle the second level. These may range from Congress members to various representatives of the civil society, as defined in the aforesaid terms, which can be found in World Bank (2004). In the case of trade policy, because of the increase numbers of issues included in the agenda and the fact that there are more intrusive in domestic policies have increased the complexity of the second level of the game.

This paper examines the way trade policy is formulated in a representative set of Latin American countries.² The first section presents a brief analysis of the main trade reforms applied in the region and their outcomes. Section II discusses how the term “participation” is conceived in the formulation of public policies and the role it plays. Section III analyses participation mechanisms in the selected countries and their main players and the latter's involvement. The last section presents the main conclusions.

The paper objective is to identify common elements and not to highlight the differences between countries. This approach does not ignore that some weakness are more important for some countries than for others, but the important message is that the problems raised are present in almost all the cases.

¹ http://www.iadb.org/res/index.cfm?fuseaction=LaResNetwork.StudySummaryView&st_id=82

² This work analyses mainly the experiences of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Peru, Uruguay and Venezuela. Except where stated otherwise, statistics refer to this group of countries.

I. Trade Reforms in Latin America

In the mid-eighties, Latin American countries launched a deep process of economic reforms that also involved trade policy. The reform process in general, —and trade policies in particular— was the countries' response to the wide-ranging economic crisis that burst around 1982. However, not all processes are equal and share the same origin. Attaining macroeconomic stability and overcoming the foreign debt problem were the general objectives of the reforms, and trade policy was one strategic component to achieve them.

Despite the fact that the transformation process in Latin America has been substantial, the benefits of the reforms are under question. True, macroeconomic stability has improved, particularly through controlled inflation, but the benefits have not passed through to other areas of the economy. As a matter of fact, some claim that the reforms have produced no gains for the region in terms of increased economic growth, employment or poverty alleviation.

Countries in the Southern Cone, namely Argentina, Chile and Uruguay, started a unilateral “neo-liberal” reform process in the mid seventies. But, because of the debt crisis and political overturn in Argentina and Uruguay, reforms were partly reversed. In Chile, a backlash was also observed between 1982 and 1984, but the process restarted in 1985, when open trade and economic transformation process resumed, in particular oriented at stabilising the economy and bringing the massive foreign debt under control.

Other countries followed, many of them as part of adjustment programs backed by international organisations, which also

contemplated becoming member of the multilateral trading system (see table 1).

Table 1

TRADE REFORM IN SELECTED COUNTRIES: 1985-1992

Country	Beginning year	Simple tariff average %			Non tariff barriers coverage (%/M)	
		Beginning	1993	2003	1985-87	1991-92
Argentina	1989	43.7	10.9	11.8	31.9	8.0
Bolivia	1985	20.0	9.8	9.3	25.0	0.0
Brazil	1988	50.6	14.2	12.0	35.3	8.0
Colombia	1989	47.6	11.7	11.6	73.2	1.0
Costa Rica	1985	53.0	11.7	5.9	0.8	0.0
Chile	1973	94.0	10.0 ^a		n.a	n.a
	1985	35.0	11.0	6.0	10.1	0.0
Ecuador	1985	50.0	9.3	11.3	59.3	n.a
Mexico	1985	34.0	13.0	17.3	12.7	20.0
Paraguay	1985	71.3	9.2	11.3	9.9	0.0
Peru	1989	68.1	17.6	10.9	53.4	0.0
Uruguay	1985	32.0	17.0	12.0	14.1	0.0
Venezuela	1989	30.6	15.7	13.0	44.1	5.0

Source: ECLAC (1985), Edwards (1997), Lora 2001 and World Bank.

^a Chile had two trade reform processes.

The trade policy reform processes shared four basic features:³

- a) Reduced coverage of non-tariff barriers;
- b) Substantial reduction of tariff barriers; depth and rapidity;
- c) Reduced dispersion of tariff protection; and
- d) Reduction or elimination of export tax.

Trade liberalisation was coupled with the opening of the capital account in most countries, which resulted in a strong appreciation of the real exchange rate by the mid nineties that continued until 1998 (see Ffrench-Davis, 1999 and ECLAC, 2004).

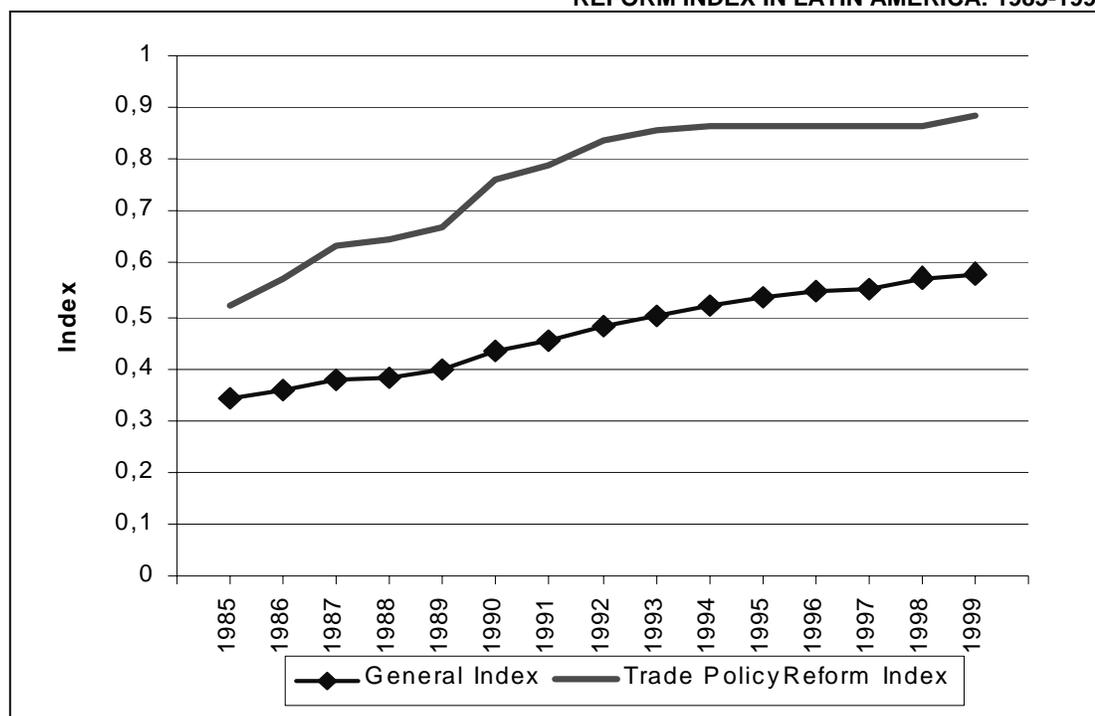
Figure 1 depicts an index for the reforms constructed by Eduardo Lora at the IDB for the period from 1985 to 1999. This index measures economic reforms in the areas of trade policy, financial systems, privatizations, the labour market and taxation. This General Index (GI) ranges from 0 (no reforms) to 1 (full reforms). Elements making up the GI can also take values between 0 and 1. For simplicity, figure 1 shows only the data corresponding to the GI and to the Trade Policy Index (TPI). It can be seen that the GI went from around 0.341 in 1985 to 0.583 in 1999. The TPI went from 0.522 to 0.885 in the same period, signalling that by the end of the century this reform was the most advanced in the region.⁴ Interestingly, this index stabilised in the mid nineties, when the WTO came into effect.

³ Edwards (1997) and Ffrench-Davis (1999).

⁴ The TPI is made up of tariff averages and dispersion. The purpose of this index is to measure changes in policies and not of outcomes. The other component of GI that has been a major driver of its increase during the decade is the one that measures the degree of reforms in the financial sector. Other indexes show varied degrees of progress.

Figure 1

REFORM INDEX IN LATIN AMERICA: 1985-1999



Source: Lora (1997 and 2001).

One feature of this liberalisation process in the region is that it has been accompanied by an increase of intraregional trade agreements, which have been complementary to trade opening. Although this was not the first time in the history of Latin America that countries used regional agreements actively (e.g. the LAFTA in 1961 and the Andean Pact in 1969), the present process has important differences with the previous experiences:⁵

- a) It is based on wide-ranging free trade agreements, that is, that cover a substantial fraction of traded goods;
- b) The process takes place within the framework of an “outward looking” development plan, as opposed to the former import-substituting scheme;
- c) It incorporates the many dimensions of trade, services, investments, intellectual property rights in addition to the traditional aspects of trade in goods; and
- d) The search for agreements is not limited to —although it does prioritise initially— the countries in the region, especially the members of the Latin American Integration Association (ALADI). Countries have moved on to integrate with the US, Canada, the European Union, Asia-Pacific economies, the latter being particularly the case of Chile and Mexico.

International trade under the bilateral and plurilateral agreements has ballooned in the past few years, and has gained great significance in the region. Some countries have even entered agreements outside the area (table 2).

Table 2 shows how imports in the region relating to some type of agreement increased during the nineties, to 21% of the total if Mexico and Chile are excluded. These two nations have been the leaders, but the process permeates the whole region. If negotiations between Colombia, Ecuador

⁵ For a recent analysis of the Latin American integration process during the nineties, see Devlin and Giordano (2004).

and Peru and the United States are concluded as expected in early 2005, imports covered by trade agreements including members from outside the region may soar.

Table 2

	ITA		ETA		ALL	
	1991	2003	1991	2003	1991	2003
Latin America	7.4	11.8	0.0	42.3	7.4	54.1
Latin America (excluding Chile and Mexico)	11.4	20.8	0.0	0.0	11.4	20.8
Argentina	20.8	32.1	0.0	0.0	20.8	32.1
Bolivia	3.7	54.8	0.0	0.0	3.7	54.8
Brazil	10.7	15.4	0.0	0.0	10.7	15.4
Chile	3.9	37.4	0.0	40.2	3.9	77.6
Colombia	9.4	19.3	0.0	0.0	9.4	19.3
Ecuador	7.0	27.5	0.0	0.0	7.0	27.5
Mexico	0.3	1.4	0.0	80.6	0.3	32.0
Paraguay	30.0	55.3	0.0	0.0	30.0	55.3
Peru	14.8	34.9	0.0	0.0	14.8	34.9
Uruguay	41.0	48.2	0.0	0.0	41.0	48.2
Venezuela	3.6	16.9	0.0	0.0	3.6	16.9

Source: ECLAC (2004), Table 5.8.

Notes: Latin America includes all Central American countries, Cuba, Panama and the Dominican Republic.

ITA: Intra-regional Trade Agreements; ETA: Extraregional Trade Agreements.

As a result of the trade policy reforms, it is worth noting that the composition of exports has changed remarkably in the region. Although this is not common to every country, Mexico and Central America, together with Panama and the Dominican Republic have changed their exports from commodities to manufactured goods, under special US market access programs. In South American countries, this has been less intense. One related development has been the concentration of exports from Mexico, Central American countries and the Dominican Republic in the United States market. South American exports, meanwhile, have kept a more balanced structure regarding their destinations (see ECLAC, 2004).

Table 3

TRADE IN SELECTED LATIN AMERICAN COUNTRIES

	Latin America (a)			Latin America (b)			Brazil			Mexico		
	1990	1995	2002	1990	1995	2002	1990	1995	2002	1990	1995	2002
	%	%	%	%	%	%	%	%	%	%	%	%
Exports												
Commodities	43.0	27.6	27.9	54.5	34.7	41.0	19.7	16.0	19.9	46.9	16.2	11.2
Agriculture	13.8	12.3	9.4	17.4	15.5	13.4	10.8	9.6	11.1	9.6	6.0	2.8
Mining	5.0	4.3	3.4	4.1	5.4	5.0	8.9	6.2	5.9	2.3	0.7	0.2
Energy	24.3	10.9	15.1	33.1	13.9	22.7	0.0	0.1	2.9	35.0	9.5	8.2
Manufactures	56.4	71.9	71.2	45.1	64.7	57.8	79.1	82.6	78.4	52.8	83.5	88.7
Traditional	19.1	23.0	21.9	18.6	23.9	22.3	28.7	31.5	29.1	8.6	15.8	18.7
Food, beverages and tobacco	10.2	10.9	9.6	10.2	12.9	12.7	16.5	17.5	16.0	2.7	2.0	2.4
Other Traditional	8.9	12.1	12.4	8.5	11.0	9.5	12.2	14.0	13.1	5.9	13.7	16.3
Scale-intensive	24.3	26.9	18.0	23.8	31.6	24.3	30.8	30.7	23.4	17.3	12.6	6.4
Durables	5.3	9.1	11.9	0.7	4.0	4.3	6.8	7.5	7.8	13.1	22.7	24.8
Diffusers of technical progress	7.7	12.9	19.5	1.9	5.1	7.0	12.8	13.0	18.0	13.8	32.5	38.8
Other	0.6	0.6	0.9	0.3	0.6	1.2	1.2	1.3	1.7	0.3	0.2	0.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Imports												
Commodities	16.5	9.4	9.5	11.6	9.8	12.1	33.2	14.4	16.2	9.0	4.9	4.7
Agriculture	5.7	4.7	4.1	4.8	4.9	4.8	5.2	5.5	4.7	7.1	3.7	3.2
Mining	1.5	0.9	0.6	1.3	0.9	0.8	2.4	1.2	1.0	1.1	0.5	0.4
Energy	9.2	3.8	4.8	5.5	4.0	6.6	25.6	7.7	10.4	0.7	0.6	1.1
Manufactures	83.2	88.5	90.0	87.8	89.3	87.4	66.8	85.6	83.8	90.9	88.2	94.6
Traditional	15.3	18.7	18.2	12.9	17.9	17.0	11.2	15.8	9.6	21.0	23.2	22.1
Food, beverages and tobacco	6.0	5.2	4.0	4.2	5.5	4.8	5.6	6.5	2.5	8.2	3.1	3.5
Other Traditional	9.4	13.5	14.3	8.8	12.4	12.1	5.7	9.3	7.1	12.8	20.1	18.7
Scale-intensive	25.2	24.3	22.6	31.2	26.2	26.9	21.8	25.8	27.4	21.5	17.7	16.4
Durables	10.4	12.5	11.0	10.4	13.9	10.1	3.7	12.8	6.5	15.6	8.2	13.3
Diffusers of technical progress	32.3	33.0	38.2	33.3	31.4	33.3	30.1	31.1	40.3	32.9	39.1	42.7
Other	0.2	2.1	0.5	0.6	0.9	0.5	0.0	0.0	0.0	0.1	6.9	0.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: ECLAC, on the basis of official figures.

Notes: (a) Includes: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

(b) Excluding Brazil and Mexico.

Table 3 shows the composition of trade in selected economies in Latin America. Between 1990 and 2002, manufacturing exports became important in these countries' trade. However, Brazil shows the most stability, and these figures are explained substantially because of developments in Mexico.

Despite the fact that the trade policy reform in Latin America has been significant, the populations putting reforms under question have enjoyed few tangible benefits. Some have argued that the reforms have produced no gains for the region in terms of increased economic growth, employment or poverty alleviation.

Table 4

COEFFICIENTS OF IMPORTS AND EXPORTS OF GOODS AND SERVICES*(percentages of the gross domestic product at constant prices)*

Country		1980	1985	1990	1995	2000	2001	2002
Argentina	M	9.7	4.5	4.5	10.9	13.5	11.9	6.6
	X	5.7	8.1	10.0	10.5	12.4	13.3	15.2
Bolivia	M	15.7	19.2	25.1	27.2	30.4	28.5	29.9
	X	14.5	13.5	19.3	22.5	20.4	22.4	24.5
Brazil	M	7.9	4.7	5.1	10.0	10.6	10.5	9.1
	X	5.0	7.7	7.5	8.2	10.3	11.3	12.0
Chile	M	35.5	19.9	18.5	26.0	28.8	28.8	28.4
	X	24.3	26.8	24.5	27.7	33.5	34.4	34.2
Colombia	M	21.4	16.8	9.6	21.0	16.7	18.4	18.1
	X	17.4	15.1	13.7	14.5	19.0	19.2	18.2
Ecuador	M	31.4	20.6	20.5	25.4	21.9	24.3	27.4
	X	19.7	22.5	14.7	19.9	21.1	19.8	19.2
Mexico	M	17.3	10.7	18.0	22.6	41.5	41.6	40.9
	X	10.3	15.3	14.9	24.6	36.2	35.7	35.2
Paraguay	M	24.7	19.5	29.0	55.3	30.9	29.7	28.5
	X	19.6	18.5	24.5	37.6	17.6	17.1	20.1
Peru	M	13.5	8.5	10.5	18.0	16.5	16.5	9.6
	X	13.6	14.4	11.3	12.5	18.2	19.5	8.4
Uruguay	M	19.6	12.0	12.4	20.1	21.9	20.8	15.8
	X	16.9	22.9	16.5	19.7	21.7	20.7	20.3
Venezuela	M	32.1	25.5	19.0	23.9	28.2	30.9	24.6
	X	27.6	30.8	26.9	29.4	32.5	31.3	31.8
Total (a)	M	14.8	9.4	11.2	16.9	22.5	22.5	20.8
	X	10.3	12.9	12.5	15.8	21.1	21.5	21.5

Source: www.eclac.cl

(a) Includes: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela.

The expansion of trade in general and of exports of goods and services was the driving force of economic growth in the 1990s. This pushed the ratio of exports of goods and services to GDP from 12.5% to 21.5%., table 4.

However, economic growth in the region was modest during the decade. This has raised a debate regarding the true benefits of the reforms, especially if contrasted with the region's economic performance in previous decades (see Lora, Panizza and Quispe-Agnoli (2003) and ECLAC (2004).

II. What does Participating in Policy Formulation Mean?

In the framework defined by Putnam (1993), international negotiations take place in a two-level game. The first level represents the negotiation that takes place between states or international organisations and is handled by government representatives, but taking into account domestic concerns: the second level.

In the second level negotiations with domestic interests takes place, in order to reflect those point of view in the first level, to ensure that the results achieved at that level will be subsequently accepted and ratified. At the second level, all stakeholders that can influence the ratification of the results of the negotiation participate. These may range from Congress members to various representatives of the civil society.

The society's participation in formulating public policies generally and trade policies in particular is a major concern, but developing countries lack a defined, solid, traditionally influential institutionality to allow that participation. Trade policy making has become increasingly complex and trade related matters are dealing with highlight sensitive domestic policy issues, like environment, public health, labour and social policies, together with the traditional problems arising from the short term impact of trade liberalization on non-competitive industries.

Participation is defined as the process whereby stakeholders can influence or share part of the control over priorities, policy

formulation and resource allocation, together with assuring public access to goods and services (World Bank, 2004).

Participation is not a synonym of consensus. In fact, the confusion that exists between the two terms can lead to conflict and frustration in the society. Participation may result in a consensual decision or course of action, but the society's objective is to allow policy-makers to choose between different actions and identify more accurately the transactions that arise from them, and the related costs and benefits.

In the area of trade policy, economic theory and practice recognise that it involves winners and losers. These permit those responsible for policy conduct to weigh the consequences of specific policy courses, assess costs, benefits and timing of policy actions and to create the necessary public policies to smooth the transition from old to new status (e.g. from trade barriers to trade liberalisation) and/or build coalitions in favour of certain course of action.

Then what is the advantage of participating?⁶ As aforesaid, participation favours the adoption of better-informed decisions. However, other elements exist that warrant an express policy to encourage participation. In the first place, it allows for the creation of alliances of various interests in favour of set objectives. Second, it creates a sense of ownership of adopted decisions, even if they oppose certain interests defended by them. Third, it contributes to sustainability of policies over time: it reduces the chances of backlash if participation is solid and decisions taken are considered legitimate in their origin and outcome. Fourth, participation, by providing a seal of legitimacy, favours increased policy effectiveness because it fosters order and sequence for more informed decisions. Lastly, participation permits society to demand more accountability of those in charge of public policies.

Nonetheless, some risks exist that require responsible management. Particularly, risks associated to exclusions, because the various interests are not properly represented. Both over—and under—representation may exist. Risks associated with mistaken expectations of outcomes; risks of exacerbating existing conflicts in society among different interests because the process is managed inappropriately; and risks of eroding institutions and other formal decision-making mechanisms by failing to take them into account in the participation process.

Finally, it must be kept in mind that participation in public policy formulation is normally specific to each country. This does not imply that in those countries with no participating tradition such status should be maintained. It rather means that each country must build its own institutional arrangement to gradually create instances of participation at different moments or stages along the process: formulation, adoption or implementation of policies. Though, taking into account the particulars of each country and depending on the type of policy involved. For example, participation is not the same to solve a “local” problem, such as specific environmental issues, as to deal with nation-wide matters, such as an economy's trade policy, (World Bank, 2004).

This explains the difficulties that exist in Latin America for creating and adopting participation mechanisms in the field of trade policy. Nevertheless, due to the cost associated to policy reversal, the existence of conflicting interests in the society together with an increasingly complex trade agenda makes participation in the trade policy field more necessary.

Moreover, the fact that trade policy changes may cause injury to others countries interests and can generate the adoption of retaliatory measures to compensate the losses, creates the need to build a strong domestic support for policies to ensure stability over time and avoid dispute between trading partners.

⁶ See World Bank (2004).

III. Formulating Trade Policy in Latin America

In recent years, the intense negotiations conducted in Latin American countries have awakened the interest for knowing what are the institutional arrangements that best support these countries' trade policies and how to reach more consensual policies. The objective of this section is to identify common elements and not to highlight the differences between countries. This approach does not ignore that some weaknesses are more important for some countries than for others, but the problems raised are present in almost all the cases.

The analysis defines four types of players taking part in the process of formulating trade policy: i) Governments or executive power; ii) Congress or legislative power; iii) Civil society; and iv) Trade partners.

Trade policymaking takes place in a general political and institutional context. In fact, it is the result of the level or depth of democratic regimes, to what extent there is a long tradition of democratic ruling in a country, the strength of the political system, "presidential" or semi-presidential, the role played by political parties, and the organization of civil society, that will determine the quality of policies.⁷

Latin American history is characterized, in general, by weak democracies and short democratic traditions. In the last 25 years democratic regimes began to be established in the region, and an

⁷ Quality is defined in terms of stability vs. volatility, flexibility vs. rigidity, coordination vs. coherence, decisiveness vs. resoluteness; see Alston, Melo, Mueller and Pereira (2004).

evolution towards a deeper participation in the public policy process has taken place “au fur et à mesure”. We observed that countries with a stronger democratic tradition, stable political system, respected institutions and with a clear system of checks and balances will tend to prepare, adopt and apply better policy with positive outcomes. Furthermore problem in trade policy making reflects more general problems of policy making in the region.⁸

Countries with imperfect and weak political institutions will promote high transactions cost in policymaking, cooperation among players will be more difficult, quality of decision making, policies and implementation will be impaired leading to volatile or rigid and less transparent and coherent policies.

Despite differences across Latin American countries because of the degree of maturity of their trade reforms (for instance, Chile and Mexico, and the rest of the countries analyzed), some elements are common to all. First, the legal tradition of South American countries places foreign policy and trade policy conduct in the Executive Power, with a secondary role for congresses. In effect, in most countries the Constitution assigns the Executive Power the responsibility of conducting foreign policy and of negotiating and signing international agreements. In this context, the task of the Congress is to approve or reject the terms and conditions of negotiations carried out by the Government, but there is no active role assigned in the Constitutions ex-ante to Congresses.

In general trade institutions in the Region are very weak, with the exception of Brazil, Chile, Colombia and Mexico, have limited budget resources, low technical capacity, and are under staffed. Until a decade ago, they played a secondary role mostly to administer prices, trade restrictions, and respond to protectionist interest and fiscal needs: trade institutions have been low priority for most governments up to now. Because, public service salaries are low, public servants that acquire a marginal expertise in trade policy making have become very appreciated in the market place, and are tempted by offers of better salary in the private sector.

Also, most Congresses have assumed a passive stand, in the sense that they intervene after the negotiations, only when results are submitted to their consideration, not in the earlier stages. Thus, in practice, the Executive Power is the main political force behind trade policy initiatives. It is interesting to note that there are no impediments to Congresses to increase their involvement in the processes of formulating, adopting and implementing international trade policies and economic negotiations, without having to alter any constitutional provisions.

In recent years, Mexico has experienced a change in relative power as a consequence of modification in the political scenario. The fact that the President has no majority representation in the Congress has produced a stronger involvement of this latter institution in economic policy making in general, and trade policy in particular, Ortiz Mena (2004).⁹

The recent experience of South America is that the civil society's participation has evolved over time. With varying degrees of effectiveness or interest, the entrepreneurial sector has traditionally influenced negotiations. However, as economic liberalisation has become the dominating policy paradigm, this sector's participation has changed. Civil Society interest groups involved with the cultural, environmental or labour-related issues have begun to intervene and are gradually increasing their participation.

As for the influence of trade partners, going back to Putnam (1993) framework, a number of elements intervene in the formulation of trade policy. Because of the Latin American countries' level of influence, individually or collectively, the second level is not always relevant when it

⁸ See Morón and Sanborn (2004) for an analysis of the Peruvian case.

⁹ Other countries have also in process of reviewing their trade policy making. For instance, in Peru Congress is analyzing a draft law for trade negotiations that gives the Congress a more active role in this area, see *New Review International Trade and Negotiations*, Latin American Trade Network, Year 3, N 134, 19 August, 2005, Buenos Aires, Argentina.

comes to influencing first-level negotiations. As we mentioned before, it will depend on what type of negotiation one is dealing with. In multilateral trade negotiations influence is relatively low, therefore the effort to organize and participate tends to be lower. Although, in the context of the current Doha Round of multilateral negotiations, developing countries, including Latin America, have pursued their interest through coalition building enhancing their influence at the WTO.

In the other hand, it is worth noting that when considering starting negotiations with the U.S., countries began thinking of the need to increase the participation of non-governmental players in formulating, adopting and applying trade policy. Mexico and Chile created special committees to incorporate private sectors representative early in the process, see Ortiz Mena (2001), Silva (2001) and Porras (2003). More recently, Colombia,¹⁰ Peru and Ecuador have improved their consultation process with private sector representative and other members of the civil society to face negotiations with the U.S.

Actually, it is observed in most countries reduced and narrowed participation channels in the trade policy area during the Uruguay Round negotiations, and, to a much greater extent, in previous negotiations in the GATT. The possibility of conducting negotiations for a free trade agreement directly with the US (or indirectly, through the Free Trade Area of the Americas, FTAA) brought about the preoccupation for extending and enhancing the participation of private players in the initiative. Also, however, participation is an element that is strongly driven from outside the countries, be it as a requirement to improve the “transparency” of these processes that arises as a domestic need of the trade partners themselves, particularly the US and Canada, and, to a lesser extent, the European Union. The exception has been the experience of MERCOSUR, that in 1994 created the Economic Social Consultative Forum in the Ouro Preto Protocol, integrated by representatives of the government, entrepreneurs, and workers¹¹. These regional processes have influenced the negotiating process in other forums, like WTO, improving Latin American countries participation.

A. The Legislative Power

The constitutions of the countries in our sample share four common principles: i) foreign relations are conducted by the Executive Power; ii) the Executive Power has the authority to negotiate international agreements; iii) the Legislative Power has the authority to approve or reject agreements proposed by the Executive Power; and iv) the provisions in international agreements dominate over domestic laws, although this is not always stated specifically in the constitutions.

Hence, legislative powers play a significant role in the agreements' approval, which explains their poor involvement in the earlier stages of trade policy formulation. Add to this certain legal principles that are common to Latin American countries regarding the operation of specific agreements. For example, in the framework of the Agreement that created the Latin American Integration Association (ALADI, in Spanish) in 1980, any trade agreements entered into by members of the Association do not require subsequent Congress approval. This means that in the Latin American integration process, congresses participate only marginally.

A second aspect that must be taken into account is that the legislative powers approve the agreements as such and, as aforesaid, they prevail over domestic legislation. In addition, countries are members of the Vienna Convention on the Law of Treaties, but provisions therein do not always specify the corresponding obligations thoroughly. Part of the implementation problems that

¹⁰ Ministerio de Comercio, Industria y Turismo, República de Colombia: Tratado de Libre Comercio: Línea Política Presidencial, 2004, power point presentation.

¹¹ Marconini (2005).

occur in some countries in the region originate in this model of incorporating obligations, because it is rarely possible to know how and to what extent the new agreements have amended or derogated domestic regulations that might conflict with some of the provisions in the new treaty. Furthermore, in countries like Chile and Mexico, that are members of several FTAs, that may have marginally different provisions, the full extend of the application of different disciplines is relatively complicated to follow.

Another problem observed in the Latin American experience is that Congress members have at their disposal very scarce human and financial resources to support their work. This means that priorities are assigned to other activities that have a greater impact on the domestic issues they handle, rather than orienting these resources to dealing with international matters.

In summary, in the Latin American countries analysed, legislative powers play an important part in the formulation of trade policy ex-post, especially when it involves international agreements. However, this role, even if not specified thus de jure, in practice is more important in the approval stages of the agreements. The latter stages require more knowledge and technical backup to ensure that they are fully aware of the implications of the commitments assumed. In some countries due to changes in political conditions, like Mexico, this is changing, Ortiz Mena (2004). In Chile a set of constitutional amendments that are under considerations in the Congress, includes a modification of the role played by legislative power, but it is a matter of time to assess its impact.

B. The Executive Power: *L'État c'est moi*

In most South American countries, the Executive Power conducts trade policy and, accordingly, it has the authority to negotiate international agreements that it subsequently submits to Congress for approval. Once the agreement has been so ratified, its provisions prevail over domestic regulations.

Within this legal framework, trade policy arising from international agreements is a key component of foreign policy, which is primarily conducted and oriented by the President himself. This is one difference with other countries whose heads of state have fewer degrees of freedom to take decisions, and normally must lobby with politicians or entrepreneurs to legitimise his resolutions.

As to who is responsible within the Executive Power to carry out the negotiations, it varies. Some countries have a Foreign Trade Minister, others rely on their Foreign Affairs Ministers, Jordania and Ramió (2002). However, whatever the arrangement, most face several operation problems.

In fact, after defining who will be responsible for conduct in a specific entity, either the Foreign Trade or the Foreign Affairs Minister, co-ordination and competition problems arise between ministries that undermine the process of formulating, adopting and enforcing foreign trade decisions and policies. Some countries have a more centralized system, whereby one or two institutions dominate the process. In other, the process is more fragmented and policy formulation is less efficient.

For instance, Jordania and Ramió (2002) considers that Brazil, Chile and Mexico have a less fragmented policy system, dominated by Foreign Affairs Ministries in the formers and by Economy in the latter. Although, in the case of countries with a high fragmented system, under the definition of these authors, like Argentina, Colombia, Ecuador or Uruguay, it is not possible to assert that they performed significantly worst than the formers.

One explanation for this is that, despite the fact that conduct is clearly defined, the ministries in charge of the issues domestically resist abiding by the rulings of another entity, plus the areas of internal and external competence are not always well bounded. In addition, because these ministries or agencies will have to deal with sectoral problems that will arise from the domestic commitments and will have to respond to public opinion, political authorities and even the courts of justice, regarding the benefits and costs of policies adopted, and must implement the international agreements that often clash with domestic policies, teamwork can be pretty burdensome. Furthermore, centralized system may alienate others agencies reducing the sense of ownership of results because of the reduce participation of in the decision making.

According to Ventura-Dias (2004), in Latin American states, because of their very nature, with major shortcomings in institutionality and accountability, public officials have great latitude to follow their own political preferences. Considering also that issues contained in international agreements are of increasing technical complexity and are difficult to follow up, it is no surprise that public officials have significant influence in policy definitions. On the other hand, bureaucracies related to foreign affairs are more stable than other bureaucracies in the public apparatus, so they handle more information and are more influential.

In addition, the jobs of high-ranking officials —ministers included— are uncertain in their duration, so they are pressed for quick results and are caught by the urgent matters of every day. Because of this, they rely on lower-rank officials with more experience in the area and with a longer “institutional memory”. All this favours the influence of public officials over other players.

Newcomers, such as representatives of the civil society and Congress members are beginning to acquire more means to influence and changing policy making, but have scarce resources to form and support their functions (Lengyel and Ventura-Dias, 2004).

In order to assure the conduct of trade policies and international negotiations, most countries have implemented co-ordinating mechanisms with varying success, depending on the political will of participants but, more often than not, the primary determinant is the personality of officials in charge. This is so because co-ordinating mechanisms do not necessarily result from a legal obligation, but rather from political arrangements between the main responsible parties, and they are not always respected (see table 5).¹²

It is not possible to reach a clear relationship between the degree of formality of the consultation/participation mechanisms and policy results. In fact, following Jordania and Ramió (2002) classification, we find that countries with high degree of formality, like Bolivia, Chile, Mexico, Nicaragua, Dominican Republic and Uruguay, can have different qualities of policy. In the other hand countries like Costa Rica and Peru that have a lower degree in formality are examples of different policy performance, even among themselves.

One explanation is that a frequent problem found in many countries, is a substantial lack of resources, both human and financial, to participate properly in a series of negotiating processes that are taking place simultaneously, among others: the Doha Round of the WTO, FTAA, and bilateral negotiations. This means that a very formal consultation/participation mechanism may be ineffective if the actors that intervened are not well prepared to contribute to the decision making process.

For this reason, countries have recently made efforts to strengthen foreign trade activities by taking advantage of the various technical co-operation initiatives that are being offered by regional international organisations, such as the Organisation of American States (OAS), the Inter American Development Bank (IADB), the Economic Commission for Latin America and the Caribbean

¹² In this study we followed our classification based on more recent information and others sources.

(ECLAC), and multilateral organisations like the World Bank, the United Nations Conference for Trade and Development (UNCTAD), and the World Trade Organisation (WTO).

Table 5

CO-ORDINATION WITHIN THE PUBLIC SECTOR

Country	Entity responsible for negotiations	Other relevant entities	Formal Public Co-ordination Mechanisms	Formal Public/ Private Co-ordination Mechanisms
Argentina	Ministry of Foreign Affairs and Cult	Ministry of Economic Affairs	NO	National Council of International Trade in November of 002 <i>Ad-hoc</i>
Bolivia	Ministry of Foreign Affairs	Ministry of Economic Development; Ministry of Finance; Ministry of Farming and Agricultural Affairs	Inter-institutional Committee	Participates in <i>Ad-hoc</i> and Inter-institutional Committee
Brazil	Ministry of Foreign Affairs	Ministries of Finance, Agriculture, Development, Industry and Foreign Trade, Planning, and Head of the Civil House of the Presidency of the Republic.	CAMEX Decree N° 4732, of 10 June 2003	<i>Ad-hoc</i>
Colombia	Ministry of Foreign Trade	Ministries of Economic Development, Foreign Trade, Foreign Affairs, Finance, Agriculture, Mining and Energy, Head of Department of National Planning, Central Bank, and President of the Republic.	Superior Council of Foreign Trade	Mixed Foreign Trade Commission
Chile	Ministry of Foreign Affairs	Ministries of Finance, Economic Affairs, Agricultural and General Secretary of the Presidency	Inter-ministerial Committee	Public/ Private Council (has no legal status)
Ecuador	Ministry of Foreign Trade, Industrialisation, Fishing and Competitiveness	Ministries of Finance and Economic Affairs, Agriculture, and Foreign Affairs	NO	COMEXI
Mexico	Ministry of Economic Affairs	Departments of Finance, Economic Affairs, Agriculture, Foreign Affairs	Inter-ministerial Commission for the Free Trade Agreement	Advising Council for the Free Trade Agreement Co-ordinating Council of Entrepreneurial Foreign-trade Organisms
Peru	Ministry of Foreign Trade y Tourism	Ministries of Foreign Affairs, Finance and Economic Affairs, Agriculture and Production	NO	<i>Ad-hoc</i>
Uruguay	Ministry of Finance and Economic Affairs/ Foreign Relations	Ministry of Finance and Economic Affairs, Ministry of Cattle, Agriculture and Fishing	NO	<i>Ad-hoc</i>

Source: Ostry (2002), Robin (2004) and Lengyel and Ventura-Dias (2004).

These institutions have encouraged the formation of public officials responsible for international negotiations, in addition to sponsoring seminars and conferences to disseminate the foreign trade agenda to a wider public.

Another frequent problem is that the work performed in the public arena is not always backed by economic studies and analyses assessing the probable consequences of the policy options at hand. This reflects the shortage of technical resources in the public sector to do the needed studies, the lack of financial resources to hire them from private experts and, finally, to the dynamics of the negotiating agendas of the countries, which, again, participate in a number of initiatives at the same time.

The pace at which the trade reforms have been developed in the region, together with the intense negotiating agendas in most countries, have made it difficult to have a strategic vision of trade policy. Actually, in several countries, representatives from both the public and the civil society often mention the absence of clear guidelines as the main weakness of their countries' trade policies.

But this is also a function of the degree of maturity achieved by the reform processes and their outcomes and of the economic moment they are experiencing. In effect, in those countries where reforms have been in place longer and have been deeper (Mexico and Chile), there is wider consensus regarding the orientation of trade policy. Where trade reforms are more recent or shallower, and with mixed results, consensus is lower. This, even independently of the quality of the institutional arrangements in effect (e.g., Colombia, Langebaek, 2002).

Hence, a preliminary conclusion that can be drawn from South America's experience is that, whatever the institutional arrangement, countries with the greatest consensus on the direction of trade policy are those where the reform process is deeper, more mature, and with more positive results.

C. Relationship between the public sector and the civil society¹³

Recently, the way non-governmental organizations in South American countries participate in the formulation, adoption and implementation of trade policy has been evolving. According to Ostry (2002), the change from an import-substitution policy to trade liberalisation altered the policy parameters under which economic agents used to operate. In the previous model, trade policy orientation favoured a close and non-transparent relationship among representatives of the bureaucracy and the private sector directly affected by policy decisions (Lengyel, 2004).

Also, as the MERCOSUR members' experience shows, the policy changes toward the creation of a common market, implied the need to incorporate to the process a wider base that would legitimise policy decisions coming "from above".¹⁴ Finally, because reforms come from above and from outside (as a response of the debt crisis of the eighties), and they occur in democracies (except in the case of Chile) where some consensus must be built, have made it necessary to establish or improve participation mechanisms.

Furthermore, as has been stress by Devlin, R. and A. Estevadeordal (2001) and Devlin and Giordano (2004), the new integration process differs widely with respect to the old paradigm based on import substitution policies, and incorporated a wide range of issues. The added complexity forced to open the door to new actors and interested parties that were not considered in the old trade policy making process.

In a comparative view, it appears that most countries had very imperfect participation mechanisms until the mid-nineties. Actually, in most of South America, the civil society recognises

¹³ The term civil society includes a wide spectrum of non-governmental, non-profit organisations that have a presence in public life, and that express their interests and values based on ethical, cultural, political, scientific, religious or philanthropic considerations (World Bank, 2004).

¹⁴ Bouzas and Avogadro (2004), da Motta Veiga (2004), Quijano (2004) and Marconini (2005).

that during the GATT's Uruguay Round, the level of consultation with the public sector was low or null. It is interesting to note that, with the exception of MERCOSUR, the need to extend participation in formulating, adopting and implementing trade policies toward non-governmental interests arises as the response to the decision to negotiate a free trade agreement with the US. In the region, the pioneer in this scheme is Mexico, that established a wide consultation mechanism to deal with negotiations with the US, which some analysts have singled out as very effective (Alba and Vega, 2002), Ortiz Mena (2004).

A similar deduction can be made for the rest of the countries in the region. Chile's experience (Saez, 2002 and 2005) is actually similar in the sense that the technical work needed upon deciding to start negotiations with the US demands to establish a work relationship with the entrepreneurial community, and even with unions (Silva, 2001). Later on, when technical work began with the construction of the FTAA in 1994, and then negotiations as such in 1998, the demands from Canada and the U.S. for a transparent negotiation process, meant that domestically a brand new participation process had to be established in Latin American countries, although with dissimilar results.

According to Quijano (2002) there are several reasons that fuel this increased participation, which in turn depend on the players' motivations. In the first place, the Executive Power, responsible in Latin America for the outcome of negotiations, seeks to "legitimise" its decisions through wide participation. So those who have the privilege to take part and in and influence the process, support the results of the negotiations. In other words, they acquire a sense of belonging and ownership.

Secondly, agents who feel affected, either positively or negatively, "demand" to participate in the process to make sure that they get these benefits, or to get protection or compensation for possible negative effects.

Finally, those responsible in the Executive Power do not have full technical command necessary for good negotiation, and hence require the technical contribution of outside experts. In this case, participation serves to acquire "value added".

This, however, has nothing to do with the quality of participation. In fact, in all the countries analysed except Mexico and Chile, participation mechanisms have brought no horizontal improvement of participation. The reason is that private agents are not always in the position to contribute to the negotiation process in a timely and appropriate basis. As is often the case, associations surveyed in the private sector do not always have a research department, technical equipment or know-how on negotiation processes, nor do they allocate the necessary resources to respond to public sector inquiries (see Ostry, 2002 and Robin, 2004).

Secondly, the quality of participation is often a function of the relative size of players consulted. In many countries, small and medium-sized enterprises believe their specific needs are not properly taken into account (even countries like Chile and Mexico). In other words, there is some inequality in participation that is a function of the size of the respective player, that may also implied political influence, of formal and informal relationships they may maintain with the proper persons and of the degree of transparency in the consultation process.

Inequity is also observed in the way players are involved. It is normal to perceive that the world of big businesses has more fluid contact than the rest of the civil society. Actually, in the scheme of the "cuarto adjunto", is essentially oriented at ensuring the participation of this category of the civil society.

Thirdly, in most cases the level of institutionalisation of procedures for participation is pretty low, which results in low possibilities to influence, weakness of discussed contents, and poor transparency (Lengyel, 2004).

Handling diverging visions within the civil society is difficult everywhere. The participation of representatives of the civil society permits to know the different viewpoints that exist around trade policy and adopt more informed decisions. However, tension exists since many of said representatives coming from cultural, environmental and labour-related areas are against globalisation and free-trade agreements, and even request explicitly that protection mechanisms be adopted that are at odds with the general objectives of these processes. Culture is a good example. The question is how to ensure participation and at the same time adopt the best decision for all the interested parties? If in a negotiating process a country follows the desire of one sector, not to open it to competition, how this may affect sectors that are ready for competition?

Also, in some experiences, consultation procedures vary from one case to another. Depth, quality and persistence over time of the consultation mechanisms used differ depending on the respective integration process. What causes this situation cannot be determined a priori, but three possible explanations can be proposed:

- a) consultation processes are not established as legal or formal requirements in the country, so not having them brings no legal, political or economic consequences;
- b) authorities in charge of trade policy are not always the same, and personal characteristics are very important in these mechanisms;
- c) there is deep mistrust between the public sector and civil society. The latter doubt the professional capacity of the former to carry out their responsibilities. The former are suspicious of the latter's intentions with respect to the interests they stand for; and
- d) all members of the civil society do not have the same reaction to the different negotiation processes, but respond according to the threats and opportunities that each of them perceives. For instance, in Chile there was a more sympathetic/indifference approach towards negotiations with the European Union, but more concern with regards to negotiations with the U.S.

Finally, the lack of a structured, legally established and mandatory scheme creates a confusion of roles. In some experiences, representatives of the private sector integrate negotiating teams, which arises doubts in the other party; and other members of the civil society who do not have the same access to such instances; there are problems of unregulated conflicts of interests and frustration when they cannot have the same level of participation in other processes. Also, members of the civil society wish to assume the responsibilities inherent in the conduct of the public functions.

IV. Conclusions

As was mentioned in the beginning, in recent years, the interest has arisen to know and understand how decisions on trade policy are taken in Latin America. Researchers have focused on the works by Putnam (1993), who studies international negotiations as a two-level game. The first level represents the negotiation that takes place between states or international organisations. In the second level are domestic negotiations, which must be conducted by those in charge of the first level, in order to ensure that the results achieved at that level will be subsequently ratified. Obviously, these games occur simultaneously and interact with each other constantly along the process.

To what extent is the two-level approach applicable in Latin America? To what extent are other approaches more pertinent, like those that study the role of “bureaucracy policy” or “the power of the State”? In our opinion, the Latin American case is a mixture of schemes, which are more or less applicable depending on who are the actors—size of the countries—and the scope of the process (multilateral, plurilateral or bilateral negotiations) involved internationally, how deep is the democratic tradition of the country in question and what is the level of organisation and complexity of the civil society. When we say complexity, we mean the number of players involved, the type of interests they pursue, their level of representation and their capacity for mobilisation to protect their interests.

Latin America shows differing realities on this issue and, therefore, different degrees of complexity in the second-level of negotiations. Also, because of the Latin American countries’ level of

influence, individually or collectively, the second level is not always relevant when it comes to influencing first-level negotiations. As we mentioned before, it will depend on what type of negotiation one is dealing with. For instance, Lengyel and Ventura-Dias (2004) analyse this point from the perspective of the GATT's Uruguay Round and its results. Within the context of UR negotiations, the influence of Latin American countries on the final outcome was low, and the influence of the group of developing countries and of several developed countries not in line with the United States or the European Union was also low. We mean the members of the Cairns Group that did not take part in the agricultural negotiations at Blair House that permitted concluding the UR. In this context, at the second level of negotiations there was little influence to be exerted on the results, and dissatisfied countries could not walk out of the negotiation process.

This situation changes when negotiations are carried out in other contexts, such as bilateral or regional stances. Even when Latin American countries negotiate with larger partners like Canada, the U.S. or the EU, the relative difference of power (i.e. the reciprocal capacity to modify the other party's position) is manageable (Robert, 2000). In this context, the second level of negotiation again becomes important, as pointed out by Putnam (1993).

However, as correctly indicated by Ventura-Dias (2004), bureaucracies in Latin America play a major role in designing and orienting the decisions on trade policy. This is so for many reasons. First, because public officials in charge of these areas are associated to foreign affairs departments, they have a longer permanence in time than others. This gives them access to more information, historical memory and technical know-how than other players have, whether public or private. Regarding the private sector, it should be pointed out that Latin American private associations, although they enjoyed a privileged access to public officials, do not have a well-developed technical infrastructure and are currently in the process of gaining expertise. Other organisations in the civil society also face problems arising from lack of resources, which they solve largely through elaborate international networks.

On the other hand, the Legislative Power assumes an important role in the final stage, when it must accept or reject the terms of negotiations. However, this does not explain why it doesn't take a more committed part in earlier phases. The normal justification is that there are domestic political urgencies to attend to, or the lack of resources that means a shortage of backup staff or infrastructure to take a more active role.

In addition, co-ordination and consultation mechanisms within the public sector —and between it and other relevant players, such as the Legislative Power and the civil society— appear to be very weak. These weaknesses come from a number of sources:

- a) No legal obligation exists to conduct these processes. Institutional arrangements are ad hoc and informal in terms of their procedures and substantive contents and objectives;
- b) When the legal obligation of co-ordination and consultation exists, institutional mechanisms are technically and politically fragile because, among other reasons, of institutional rivalries within the public sector, and the civil society mistrusts the public sector regarding their professional capacity to meet their responsibilities; and
- c) Institutions in the civil society lack the technical and financial resources to respond adequately to the consultation requirements of the public sector.

The described institutional weaknesses partly explain why economic reforms in general —and trade policy in particular— have been questioned in Latin America. In recent years, various international and regional organisations have implemented many programs for technical assistance, institutional strengthening, and of trade reform dissemination and international negotiations. The purpose is to explain the extent and scope of the processes and prepare the countries overall, the public sector and the civil society, so they can reap the most benefits from the reforms applied, and improve their international integration.

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