

**THE ROLE OF PUBLIC PARTICIPATION IN THE
IMPACT ASSESSMENT OF TRADE PROCESS**

**Speaker paper for the Impact Assessment
for Industrial Development – IAIA'04
(April 28th 2004, Vancouver)**

Stella Bastidas



Since/depuis 1970

**CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY**

**L'INSTITUT CANADIEN DU
DROIT ET DE LA POLITIQUE
DE L'ENVIRONNEMENT**

**The Role of Public Participation in the
Impact Assessment of Trade Process
Speaker paper for the Impact Assessment
for Industrial Development – IAIA'04
(April 28th 2004, Vancouver)**

Stella Bastidas¹

1) Introduction

Democratic governance will be meaningless if governments do not ensure an effective and fully informed public participation in decision-making, in particular, in the impact assessment of trade process.

Considering the increasing important effects that trade processes, including trade policies and international trade negotiations, have on public life, governments need to better take into account public participation not only to effectively engage the general public, but also to establish a more mutually beneficial government and citizen relationship.

2) Why is public participation important?

Broad public participation is a cornerstone of responsible democratic governance and a fundamental prerequisite to achieve sustainable development. It moves beyond traditional methods of public consultations by creating opportunities for the open exchange of ideas, transparency, mutual learning, and informed and representative decision-making processes.²

a) Benefits of Public Participation³

- Strengthens Democracy

By engaging in the impact assessment of trade process, citizens are encouraged to exercise their democratic rights. As a result, trade process becomes more representative. Openness to the public enables citizens to better assess trade process and gain a greater forum in which to present their concerns and cooperate with government. Therefore, insufficient public engagement limits the power of citizens to participate in democratic governance.

- Increases Accountability

Public participation can contribute to an accounting of the social, economic, and environmental impacts of trade process and of how the costs and benefits will affect different segments of society.⁴ Therefore, public participation helps to ensure that governments are accountable for their actions and responsive to public interests. By linking the public with decision-makers, citizen confidence in and support of trade process is strengthened and trade officials are held responsible for their actions.

- Improves Process Quality

Meaningful public participation allows trade officials to be better informed of different opinions and concerns and ensures that policies and international trade agreements are more robust because they have been tested through a comprehensive process of review and revision before being approved. Public participation brings not only additional skills, knowledge, concerns, and ideas to the table, but also solutions that might not have otherwise arisen.

-Manages Social Conflicts

Public participation can alleviate social conflicts, by bringing different stakeholders and interest groups to the same table to assess the impacts of trade process. Investment in public participation at an early stage of the impact assessment can minimize both the number and the magnitude of social conflicts arising over the course of the implementation of the trade process.⁵

- Safeguards against Externalities

Active public participation can identify environmental and other externalities that might otherwise be overlooked. By paying attention to, for instance, the impact assessment of trade process in advance, public scrutiny can prevent future problems from arising.

- Enhances Process Legitimacy

Meaningful public participation in the impact assessment of trade policy and international trade agreements will legitimize the trade process. Without significant public participation, citizens may feel manipulated and suspicious, which undermines an effective dialogue and can create distrust.

-Protects Business Interests

Active public participation can protect business interests, by reducing public conflict and safeguarding against future risks. Public protests have sometimes resulted in stock price depressions and market losses.

b) Concerns about Public Participation⁶

- Public Participation Does Not Represent all Citizens

Although public participation does not necessarily represent all citizens, an adequate selection process can reduce uneven representation. Therefore, governments must guarantee that participant selection best represents the diversity of public views.

- Feedback in Decision-Making

Governments must structure a participation process where the public has the opportunity to follow-up and to know how public input will be used to inform decision-making processes.

-International Trade Negotiations Require Confidentiality

Although international trade negotiations are conducted in secrecy --as a necessary prerogative of nation states-- governments should ensure that the citizen's right to information and participation is not unduly restricted.

- International Trade Policy is too Technical

The information provided by governments on international trade agreements and policy is often too technical in nature and inadequately explained. Therefore, trade officials should ensure that information on international trade policy be written in accessible language.

3) International, Regional and National Instruments

Numerous international and regional agreements affirmed the fundamental principle of public participation and have stimulated the development of national-level legal frameworks.

a) International Instruments:

-Rio Declaration, Principle 10:

Principle 10 of the 1992 Rio Declaration⁷ that emerged from the United Nations Conference on Environment and Development --also known as the Earth Summit--, articulated three pivotal principles that inform the formulation of participation policy and regulations. These principles are: access to information, access to participation and access to justice. Due to the scope of this presentation, I will only comment on access to information and access to participation.

-Universal Declaration on Human Rights and International Covenant on Civil and Political Rights

It is widely recognized that access to information and access to participation have an ultimately expression as human rights.

Article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights establish the right to information. "Both these texts protect the rights to freedom of opinion and expression, and to seek, receive and impart information through any media, regardless of national boundaries."⁸

Article 21 of the Universal Declaration of Human Rights provided the basic right to participation.

-Agenda 21

The United Nations Conference on Environment and Development recognized that the commitment and genuine involvement of all social groups is critical to effectively implement Agenda 21. Furthermore, in the context of the environment, Chapter 23 of the Agenda 21 recognized “the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions”.⁹

-The Vienna Declaration

The 1993 World Conference on Human Rights adopted the Vienna Declaration. It emphasized on participatory democracy and stated that: "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political economic, social and cultural systems and their full participation in all aspects of their lives."¹⁰

b) Regional Instruments

- Aarhus Convention

The 1998 UNECE Convention on Access to Information, Participation in Decision-Making and Access to Justice in Environmental Matters, also known as the Aarhus Convention, provides the fundamental aspects to facilitate the adoption of the necessary national regulations and guidelines, and to harmonize and improve practices to advance public participation in the European context.

It is worth mentioning that Canada as a state member of the Economic Commission for Europe should adopt this Convention.

- Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development

After a comprehensive multi-year public consultation process among governments and civil society, in 2000 the Organization of American States (OAS) approved the Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development (ISP). “This strategy provides a set of guidelines for strengthening participation that have applicability at a national and regional level. The ISP guidelines embrace six principles and offer “policy recommendations,” including specific recommendations on legal frameworks and institutional procedures and structures.”¹¹

- Inter-American Democratic Charter

The Inter-American Democratic Charter, adopted by the OAS in 2001, recognized public participation as a basic right and obligation, which informs a participatory democracy.¹²

c) National instruments:

The 1999 Canadian Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals enables the Canadian government to conduct environmental impact assessment of trade policies taking into consideration public participation.

3) Principles of public participation

a) Access to Information: Right-to-know

Access to information has been widely recognized as basic human right and an essential attribute of democracy. Thus, the right to information or the right-to-know enables citizens to make informed decision on issues relating to their development.

Access to information requires that information be relevant, be provided in a timely manner, that the procedures to obtain information be simple, that the cost to citizens be reasonable, and that it be available across boundaries.¹³ Access to information also imposes an obligation on the governments to ensure the production of appropriate and useful information and to information disclosure.

Public demand for access to information on environmental matters is increasing at an unprecedented rate. “At least three interrelated forces have driven this phenomenon: 1) the urgency and scope of environmental problems; 2) the increasingly active character of civil society; and 3) the revolution in information technology.”¹⁴ These forces will be further developed below:

1) There is wide agreement that information is necessary to support decisions that address the urgent and far-reaching nature of environmental problems.

2) The growing public use of freedom of information legislation to demand accessible information characterized the considerably increase on public participation. For example, according with the World Bank, 44 countries had passed access to information legislation as of 2000.¹⁵

3) The revolution in information technology (e.g., mobile phones, faxes, email, the Internet, satellite communications and geographic information systems) has generated an unprecedented level of interconnectedness. It also has helped citizens to raise awareness, for instance, of environmental problems “[...] through analysis, presentation, and dissemination of information, while enabling groups to work more effectively across national boundaries to encourage access to information.”¹⁶

b) Access to participation

Likewise the right to know, access to participation is also considered as a human right.

Meaningful participation, in terms of quality of the participation and whether it is timely, is fundamental to exercise a participatory democracy at all levels of government, including the international level.

Citizens have the right to participate in decision-making regarding sustainable development, especially during the impact assessment of trade process. Governments must ensure that all citizens can participate in decision-making processes, monitoring and follow-up. Participation must also include the right to oral and written commentary. This right has also expanded to include “consensus building, policy dialogues, stakeholder advisory committees [...] and multi-stakeholder regulatory negotiations”.¹⁷

Although public participation is not easy to define, the Aarhus Convention emphasizes that “there is no set formula for public participation, but at a minimum it requires effective notice, adequate information, proper procedures, and appropriate taking into account of the outcome of public participation”¹⁸

Before moving into my next point, I would like to refer to the question that has been posted, especially for the representative of the Office of the United States Trade Representative, during the previous sessions at this international conference, which is: Why governments are not getting much engagement from the public?

I would respond by saying that the general public has not been adequately engaged in international trade policy. People need to be better informed not only on trade issues, but also on what the public opportunities for inputs are. There is a need for a more proactive approach in soliciting public input. In addition, governments need to move beyond stakeholder consultation -- which involves the collection of public inputs and concerns and it does not require dialogue or two-way exchange of ideas-- to allow the general public to effectively participate in and contribute to trade process. Finally, it is important to note that people are more than willing to be involved in trade process as long as they are meaningfully involved.

5) How to engage public participation¹⁹

A broad range of techniques can be taken to encourage public participation, including but not limited to:

a) Public deliberation Workshops

This is the most comprehensive means of public involvement. These small, moderated group discussions enable a diverse group of participants to engage in informed dialogue and in-depth deliberation about the impact assessment of trade process.

b) Online public deliberation

This mechanism brings the same principles of public deliberation workshops to the Internet. It applies a two-way dialogue, which allows citizens to contribute shaping government process. People have more time to understand different reasons and to build and support their views. It usually lasts for minimum of a month. This technique reaches a broad and diverse audience, and is cost effective.

c) Educational programs

Citizens must first obtain the essential knowledge, awareness and participation skills before they can effectively participate in decision-making, in particular, the impact assessment of trade process.

d) Media Outreach

As the main source of news and public information, the media is the most wide-reaching way to inform and engage citizens. Governments anticipating or responding to public scrutiny performed better in providing meaningful public participation.²⁰

Other techniques or models such as public polling, focus groups, intervenor funding model (i.e., funding NGOs in the preparation of informed, detailed critique of proposed policies), and other consultation mechanisms can also be useful for informing the impact assessment of trade process.

Regardless of the technique used to encourage public participation, governments should ensure that adequate procedures are in place to evaluate the effectiveness of the mechanisms and develop a long-term public participation strategy.

As an example of how public participation has been considered within international trade negotiations, I would like to refer to the Free Trade Area of the Americas-FTAA aimed at integrating the 34 economies in the Western Hemisphere through trade liberalization by 2005. FTAA negotiations have been highly criticized for its lack of transparency. In April 2001, Canada advocated in the Quebec City Summit of the Americas for the release of the first draft FTAA text. The document was disclosed to the general public in July 2001 --more than six years after the first ministerial meeting in Denver, USA.²¹ Some countries including Canada, the United States and the Dominican Republic have established mechanisms to keep citizens informed on their negotiating positions.²²

It should also be noted that at the FTAA VIII Trade Ministerial Meeting civil society had the first-ever opportunity to present to the trade ministers of the Americas their concerns with respect to public participation within the FTAA negotiations.²³ Ministers supported the recommendation from civil society and adopted in the 2003 Miami Ministerial Declaration the creation of a permanent consultative committee for civil society access and dialogue within the institutional framework of the FTAA once implemented.²⁴ Although this does not guarantee that a meaningful mechanism will be created or

implemented, it represents an important step in the consideration of public participation within international trade negotiations.

6) Conclusions

Public participation is based on the principle that dialogue between decision-makers and the public benefits both parties. It allows the public to gain an understanding of government decisions and policies, while providing the government with input to help them design and implement a better and legitimate trade process. Effective public participation requires not only dialogue, but also the provision of relevant information and the allocation of adequate resources in advance.

If used properly, public deliberation workshops, online public deliberation, educational programs, and media outreach, among others, can enable government to effectively engage the general public and establish a more mutually beneficial government and citizen relationship.

It is important to emphasize that the lack of government capacity, such as staff, equipment, procedures and training, limits the rights to information and participation. Similarly, the lack of capacity in civil society restricts performance.²⁵

Feasible long-term solutions not only depend on government and intergovernmental action, but also on the involvement of a wide range of other actors--from international coalitions, NGOs, public interest groups, academia, aboriginal groups and corporations to the individual citizen. It is essential that these actors have meaningful access to information and participation to play their role effectively.²⁶

7) Recommendations

The Canadian Institute for Environmental Law and Policy- CIELAP wish to recommend adopting the Sustainability Impact Assessment (SIA) as a methodology to evaluate the impact of trade processes, including international trade negotiations. This methodology is applied to the three main components of sustainable development: economics, social policy and environmental protection.²⁷ Fundamental to any creditable and legitimate SIA is to ensure an effective and permanent component of public participation. CIELAP has extensive materials on this regard that can be found at its web site: www.cielap.org

Endnotes

¹ International Environmental Law and Policy Consultant with the Canadian Institute for Environmental Law and Policy-CIELAP.

² Lerner, Josh, "Beyond Civil Society. Public Engagement Alternatives for Canadian Trade Policy", Canadian Institute for Environmental Law and Policy, 2003 at 5.

³ Ibid. at 6-7.

⁴ World Resources Institute, "Closing the Gap. Information, Participation and Justice in Decision-making for the Environment", 2002 at 65.

⁵ Ibid. at 66.

⁶ *Supra* note 2 at 7-8.

⁷ Principle 10 states: “At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” Principle 10, U.N. Doc. A/CONF.151/26/Rev.1 (1992).

⁸ Ksentini, Fatma, Special Rapporteur, “Review of further developments in fields with which the Sub-Commission has been concerned. Human rights and the environment”, E/CN.4/Sub.2/1994/9, Commission on Human Rights, 1994 at para. 205.

⁹ Ibid. at para. 71.

¹⁰ A/CONF.157.23, Sect. I at para. 8 in *supra* note 8 at para. 73

¹¹ Dannenmaier, Eric, “Towards Civil Society Participation in the Americas”, Memoirs of the Trade and Environment Workshops in the Quito Ministerial, 2002 at 68.

¹² “Article 2: Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.”

“Article 6: It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.”

¹³ *Supra* note 8 at para. 204.

¹⁴ *Supra* note 4 at 35.

¹⁵ World Bank, “World Development Report 2002: Building Institutions for Markets”, in *Supra* note 4 at 34.

¹⁶ *Supra* note 4 at 35.

¹⁷ Ibid. at 66.

¹⁸ United Nations Economic Commission for Europe, “UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Aarhus Convention: An Implementation Guide”, 2000 in *supra* note 4 at 66.

¹⁹ *Supra* note 2 at 12-16.

²⁰ *Supra* note 4 Executive Summary at 9.

²¹ See the first draft FTAA agreement at: http://www.ftaa-alca.org/FTAADraft/draft_e.asp

²² *Supra* note 11 at 69.

²³ See the Americas Trade and Sustainable Development Forum-ATSDF at:

<http://www.miami.edu/nsc/pages/atsdfbrief.html>

²⁴ Article 28 of the 2003 Miami Declaration states:

“We express our interest in creating a civil society consultative committee within the institutional framework of the FTAA upon the Agreement’s entry into force. Such a committee could contribute to transparency and the participation of civil society on an on-going basis as the FTAA is being implemented. We instruct the Committee on Government Representatives on the Participation of Civil Society, in coordination with the TCI, to continue to study the issue and make recommendations to the TNC concerning it. We ask the TNC to review these recommendations and make a proposal concerning this matter for our future consideration.”

See the full text of the Declaration at http://www.ftaa-alca.org/Ministerials/Miami/declaration_e.doc

²⁵ *Supra* note 4 Executive Summary at 8.

²⁶ *Supra* note 4 at 35.

²⁷ Elwell, Christine, “Sustainability Impact Assessment of the Earth Summit @ 10 A Canadian Perspective”, Canadian Institute for Environmental Law and Policy, 2002 at 15.