Overseas Development Institute

# Developing Countries: Victims or Participants

## Their Changing Role in International Negotiations

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Globalisation and Poverty Programme

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For further information on this project, please contact:

Sheila Page
Research Fellow
Overseas Development Institute
111 Westminster Bridge Road
London SE1 7JD, UK

Email: s.page@odi.org.uk
Tel: +44 (0)20 7922 0300
Fax: +44 (0)20 7922 0399

For further information on the Globalisation and Poverty Programme, see www.gapresearch.org or email globpov@ids.ac.uk.

## Introduction

Negotiations are becoming an increasingly important part of the international system, with the increase particularly marked for developing countries. Multilateral trade negotiations have existed since the foundation of GATT in 1947, but these negotiations have become more complex and important for developing countries. Trade between developed and developing countries, previously largely regulated by unilateral concessions, is increasingly being moved into negotiated agreements. These negotiations have expanded to encompass previously excluded areas (e.g. agriculture) and to new types transaction (e.g. services, patents and copyright, product and regulatory standards). New multilateral negotiations involving developing countries have also emerged. Environmental issues are now being regulated and negotiated upon at the world level through conventions like the Framework Convention on Climate Change.

Can developing countries participate effectively in these negotiations, and can they obtain benefits from such participation? What lessons can be learnt from past negotiations about whether developing country participation is effective and how it might be made more effective? Can international institutions or donors help? Finally, what are the implications of more extensive and increasingly effective developing country participation in such negotiations for the way these negotiations are conducted?

New research on developing country participation in three negotiating processes - successive multilateral trade rounds, negotiations between the EU and ACP countries and the Framework Convention on Climate Change - provide answers to these questions. The studies are listed in Box 1.

**Box 1:Studies on which this policy briefing is based**

- Bojanic, Alan H, Bolivia's Participation in the UN Framework on Climate Change
- Bojanic, Alan H, Bolivia's Participation in International Trade Negotiations
- Durrant, Nigel, Guyana's Participation in Multilateral and Regional Trade Negotiations and the United Nations Framework Convention on Climate Change (UNFCCC)
- Frost, Peter G.H., Zimbabwe and United Nations Framework Convention on Climate Change
- Hess, Richard, Zimbabwe Case Study on Trade Negotiations
- McGregor, Claire, Reynolds, Rebecca, Weidmer, Daniel, Poverty and Climate Change: Assessing Impacts in Developing Countries and the Initiatives of the International Community
- Page, Sheila, Developing Countries in GATT/WTO Negotiations
- Richards, Michael, A Review of the Effectiveness of Developing Country Participation in the Climate Change Convention Negotiations
- Solignac Lecomte, Henri-Bernard, Effectiveness of Developing Country Participation in ACP-EU Negotiations

Full-text versions of all of these papers can be downloaded from:
www.odi.org.uk/iedg/publications/inter_negs_wps.html

## Can developing countries gain from participating in negotiations?

Two pessimistic views argue that they cannot. If the outcomes of negotiations depend on the balance of power, then no amount of negotiating will make a difference. The predicted outcome can change only if power changes, for example the rise of the EU in the GATT/WTO from the 1950s to the present. The second cause for pessimism is based on observation. It is argued that developing countries have achieved little or even lost in trade, climate change, and other environmental negotiations.

Research on developing country participation in negotiations rejects this pessimistic standpoint. And in apparent contradiction to these views, developing countries themselves are putting more resources into participation in negotiations. Developing countries have proved first that they can modify the outcome, then that they can block a settlement, and finally that they can initiate their own issues:

- In the 1950s and 1960s there were good reasons for developing countries not to participate in negotiations. Inward-orientated development strategies implied that there was little to gain from exports and little to lose (and possibly something to gain) from excluding imports. A country following this strategy *should* put minimal resources into international negotiations. GATT excluded many of the products of most export interest to them (agriculture and textiles), and networks of trade preferences gave them better-than-GATT trading terms without negotiation. On most trade rules, they could choose to opt out.
- By the time of the Uruguay Round (1986-1994), much more was at stake for developing countries. They (and their development advisers) were emphasising exports, and agriculture and textiles were on the table. Developed countries wanted market access and also sought a substantial number of agreements on issues such as intellectual property, customs valuation, anti-dumping and the use of subsidies Developing countries would not have *de facto* exemption from these requirements. Critically, the Uruguay round established the 'single undertaking'. Countries could no longer pick and choose which parts of the agreement they would sign up to. All agreements were to apply to all participating countries.
- By the end of the Uruguay round, some progress had been made on both agriculture and textiles and clothing. While developed country agricultural protectionism remained, the tariff, subsidy, and quota arrangements were brought under WTO discipline. The long-standing (from the early 1960s) restrictions on developing country exports of their principal manufactures, textiles and clothing, were scheduled to be phased out within 10 years.
- At the end of the Round, countries concluded that those who had gained were those who had participated in the negotiations. While those who had most to gain had participated most actively, the conclusion most non-participating countries drew was that absence was damaging.
- Five years later at the Seattle Ministerial in 1999 developing countries' refusal to accept a process from which they had been excluded led to a collapse of the meeting. There were other reasons for the failure, but the developing countries concluded that there had been a further shift in the real balance of power: developing countries could not only negotiate, they could block negotiations.
- At Doha, in 2001, there was further evidence of the ability of developing countries to influence outcomes. While the broad support for the successful anti-subsidy position in agriculture precludes claiming this as a developing country achievement, the developing countries were a visible part of the alliance. A clearer victory, in agriculture and other areas, was that the meeting accepted that special and differential treatment (allowing different policies by developing countries and requiring different policies towards them) would be 'an integral part' of any final settlement, potentially better than the Uruguay Round which had offered only minor adjustments to policy and non-obligatory concessions. Doha also

extended the times for Least Developed to comply with subsidy and intellectual property rules. These issues were accepted at Doha in spite of initial strong opposition by developed countries, indicating that developed countries thought they were a necessary part of any bargain.

The Doha meeting also showed that developing countries could initiate new negotiating issues. Developing country group and country positions included not only the issues of traditional concern to them (agriculture, non-tariff barriers, tariff discrimination and escalation), and opposition to the new 'developed country issues' (investment, competition policy, labour), but also new subjects for the agenda: the importance of infrastructure for trade, linkages between debt and trade, and the nature of commodity markets. The developing countries broadened the definition of 'development issues' beyond that suggested by those developed countries advocating a 'development round': technical assistance and liberalising trade. One of these new agenda items was approved at Doha: a new working group on 'the relationship between trade, debt and finance'.

## What makes developing countries effective in negotiations?

### *Lessons from evolution of multilateral trade negotiations*

Given the undoubted power of the leading developed countries, how is it possible for developing countries to make such progress in multilateral trade negotiations? The answer appears to be that in multilateral negotiations, the bargaining power of the strongest nations is limited by the need for agreement. If a powerful country considers market access or climate change action beneficial and this requires action by another country, it must secure its agreement. The studies on negotiations and country experiences identify when small countries have been able to negotiate effectively and change outcomes.

Nevertheless, this potential for obtaining benefits from trade negotiations has to be realised in specific negotiating situations, which requires negotiating capacity. Developing country trade negotiating capacity has clearly benefited from the experience of successive trade rounds. In 1986, at the beginning of the last trade negotiations, developing countries did not realise that the open-ended or vague commitments in the agenda could become significant agreements. Services, TRIPs (patents and copyright), and the single undertaking were all in the negotiating mandate, but their implications were not clear. At the Seattle ministerial (1999), to set the agenda for the following round, detailed rejection of points in the agenda led to failure, and at Doha (2001) countries were active in setting the agenda, realising that they could not remain outside any negotiation, however irrelevant or unimportant it might seem initially.

Similarly, developing countries have been able to develop more sophisticated positions, for example, on the issue of services. In the Uruguay Round they began with little information about their own interests. By the time of the Doha meeting there was greater confidence and precision in offers and positions. As other countries also had time to research their interests, and no longer simply followed the leading countries, this issue did not come to Doha with the ideological commitment to freer trade that characterised it in the Uruguay Round or that still applies to agriculture. All countries are making offers and are ready to negotiate.

The emergence of better-informed policy positions in the course of the Uruguay Round discussion of services and the improvements seen in competence of individual country delegations in the Round suggest that long negotiations can help to produce informed outcomes for new subjects or new participants. At the beginning, Brazil and India were almost the only developing countries to be effective: they had been active in the previous, Tokyo, Round. During the Uruguay Round, Argentina, Bangladesh, and other Asian and Latin American countries started to be active. At the Seattle conference and between then and the Doha conference (2001), the countries which had participated with little experience in the Uruguay Round started to be more active, and even the African countries started to present positions (more than half the position papers before Seattle and Doha were from developing countries). The countries which had participated without experience and with little success in the Uruguay Round were now seeing their second Round, and started to share the advantages of the 'old' developing country activists. Zimbabwe delegates were active in the preparations for the new Round. The pressure for limited duration Rounds may not be in the interests of developing countries, or (as the services negotiations show) of any countries in the new areas.

Negotiating experience was also acquired in the regional trade negotiations in which most Latin American, Caribbean, and African countries had participated by 1999. This provided experience in identifying negotiating issues and allies, and in negotiation itself. These negotiations also generated analysis and data, on trade rules, trade patterns and interests, useful in the multilateral negotiations. WTO negotiations had re-started on agriculture and services in 2000, these also contributed to greater contacts and familiarity with issues and positions.

Finally, developing country negotiators were starting to have more support from the private sector. The example of the developed countries in the Uruguay Round convinced some developing countries that the advantages of informed and participating private sectors outweighed any disadvantages from potential opposition or interference. Particularly on the 'new' issues – services, intellectual property, and rules – the developed countries faced lobbying from industrial interests and used private industrial groups and firms to provide the expertise which was not available within the government. Most developing countries lacked not only the industry groups, but also any formal mechanisms for their participation. This meant that there was neither support from private industry knowledge nor private sector commitment to the results. Zimbabwe's experience in trade negotiations illustrates the problems of a poor understanding by negotiators of the implications of the issues, especially on a sectoral economic basis. Negotiations were entered into without studying the implications for key economic sectors, e.g. textiles and clothing and the motor industry in the case of SADC Trade Protocol negotiations. Negotiating positions were of a general, "sweeping" or political nature, not backed up by solid evidence. There were inadequate consultations with the private sector or civil society.

### *ACP-EU and Climate Change Negotiations*

These findings are reinforced by examination of trade negotiations between the ACP countries and the EU and of the negotiations on climate change.

In the case of the negotiations between the EU and its associated ACP countries, there is much less evidence of serious participation, and no signs of success for developing countries. In EU-ACP negotiations, until 2000, trade relations were entirely non-reciprocal (so there was no option or need to participate). The countries have not yet adjusted to the change in the nature of their relationship proposed by the EU. The EU's 1998 proposals to change from preferences to reciprocal free trade required negotiation for the first time. The ACP countries were unable to mobilise opposition to the new regime. They were not able to protect the special commodity arrangements (for example sugar). They did not secure consultation in the face of new arrangements with other countries (Eastern Europe, Mexico, Chile, South Africa, etc.) which have reduced their margin of preference.

As some of the countries in the ACP are among those active in the WTO, and the same people were frequently involved in both sets of negotiations, this difference is striking. The reason for the difference appears to be fact that when negotiating with the EU. the role of the EU as donor was emphasised as part of the same negotiation. ACP negotiators could not simultaneously demand equal treatment as trading partners and beg for aid.

On climate change, most developing countries seem still at the post-Uruguay or Seattle stage of feeling too disadvantaged and excluded to participate effectively. The disadvantages mentioned by countries are the same as in trade: small and inexperienced delegations, lack of national research support, lack of familiarity with how negotiations are done.

Many countries have still not identified a strong interest in the outcome of climate change negotiations, and therefore choose to devote few resources to them, while there is little pressure on them to meet climate objectives: they are marginal to the major commitments being made on greenhouse gases. The initial responses are the same: mainly reactive, defensive participation, but the analysis of the experiences of three countries involved in these negotiations indicates significant differences.

## *Country experiences*

Bolivia, with an exceptionally vulnerable position, but also good prospects for cash gains under the Clean Development Mechanism (CDM-CER), which would allow polluting countries to 'buy' carbon sinks from non-polluting, participates actively. It has serious climatic concerns and a strategy. It has prepared adequately for the CDM market and it has performed well in the annual negotiations. It has developed a clear agenda, consulting the private sector, and found allies among countries with similar interests to pursue specific objectives. A major objective (and achievement) has been to attract funds for CDM projects. Other indicators of successful intervention are that its positions were supported by other countries and some of its ideas are reflected in the final documents. Bolivia has set up consultative groups for both trade and climate change negotiators, although intra-governmental groups remain more important. The Bolivian experience (especially the performance climate change which contrasts with weak performance on trade) suggests that a strongly felt national interest can help to overcome the disadvantages of poor resources.

In Guyana, however, although there is clear public interest and debate on trade issues, this has not been translated into effective mechanisms. Participation in climate change negotiations faced even less public or policy-making interest than trade. There are still few procedures. The low profile in public policy is due to the lack of an apparent link to more immediate socio-economic needs. All segments of the population are aware of the susceptibility of the coast to flooding but (in contrast to the mobilisation of concern about vulnerability to drought in Bolivia) this does not translate into a strong awareness of the perils of climate change/sea level rise. Other aspects of climate change (effects on fishbreeding grounds, possible declines in agricultural yields etc.) are even further from the minds of the average citizen. Unless government can be convinced that a deeper engagement in climate change issues will result in significant increases in assistance, more resources will be not be put into the negotiations.

Among the smaller developing countries Zimbabwe has been relatively prominent. This has not been wholly by chance. Although Zimbabwe also complains that there is lack of political will and appreciation of the importance of trade issues by Government Ministers and that there are still no clear policy goals in climate change, it has been able to secure the injection of funds, know-how and opportunities for developing local capacity in various fields. Zimbabwe has attracted one of the pilot climate change projects, and another is being planned. Although most of these activities have been initiated externally, rather than being planned from inside the country in relation to national priorities, and many have been one-offs, Zimbabwe may have developed a sustainable system for policy. After the Uruguay Round, Zimbabwe established various consultative mechanisms, a Standing Committee on Trade Policy as well as *ad hoc* committees and consultations. There has been an improvement in the availability and distribution of information. Countries were starting to build a policy-making system.

Problems also arise from the inexperience of individual negotiators. The senior developed country negotiators have had experience as junior negotiators and are usually in stable positions. There are also more of them, so that they can specialise and have support from others. In developing countries, many are facing their countries' first negotiations. Bolivia is represented by small, understaffed delegations with budget restrictions. These are rarely experienced, because of high turnover and low wages in the public sector. Guyana's participation has been almost too limited to identify problems. Zimbabwe sees the same difficulties of lack of training and experience, but is clearly starting to gain the experience. In both trade and climate change organisations, Zimbabwean representatives are starting to have positions of responsibility, and individual scientists have been involved in various technical bodies contributing to the UNFCCC.

## How to use financial and technical assistance

Some of the weaknesses can only be tackled by time (e.g. lack of inexperience) or require national changes (appreciation that negotiations matter). But some are straightforward resource constraints. Compared to the delegations of leading industrialised countries, developing negotiating teams have fewer delegates, are underpaid, and enjoy inferior technical support before and during meetings. Other weaknesses can only be remedied by training: on the issues, in negotiating procedures, even in languages. Improving the effectiveness of developing country participation would not only assist them: improving countries' ability to participate may lead to a more efficient outcome to negotiations and more legitimate outcomes.

Assistance began in the international institutions: notably UNCTAD from the 1970s, by the World Bank during the Uruguay Round. Both, however, have their own (albeit different) views of what developing country interests are and what trade policies, by them and by developed countries, should be to promote these. They have not, therefore, been primarily directed at helping countries formulate and achieve their own positions (although UNCTAD is now moving into this).

The WTO has only recently started to acquire a significant capacity to offer support, and remains bound by its legal position to concentrate on legal and technical issues, rather than offering negotiating assistance. (Other international institutions also offer technical information and training.)

There are some 'neutral' (but poorly resourced) agencies. The Commonwealth Secretariat, working for governments, but without negotiating roles or interests of its own, provides both general advice and an adviser in Geneva. Academic institutions and NGOs especially in Geneva provide some information (although some also take positions).

The main growth in assistance is by bilateral donors, but, as is increasingly recognised, this is a sensitive area, where the commercial interests of countries (which are themselves major participants in trade negotiations) may be in conflict with the development objective of building up the negotiating strength of 'the opposition', while developing countries are very conscious of the potential relation between aid and support in negotiations. Some distance or buffer between helpers who are also traders and donors and their clients seems useful.

In agricultural negotiations in the Uruguay Round, the food importing countries were tied to the developed country exporters of subsidised food directly through food aid and also by aid dependence. They were unable to obtain any compensation for their losses when subsidies were restricted. In the direct negotiations between the EU and the ACP, the identity between the trader with whom they are negotiating and their major source of aid money is not only more obvious, but deliberately emphasised by the legal association of aid and trade in the Lomé and Cotonou agreements.

Where countries do not have clear objectives of their own, they are at risk of being pressured to support the views developed by their advisers, whether well-intentioned or not. In contrast where they have programmes and specialist capacity of their own, advice can be used effectively.

## Increasing complexity of negotiations

### *More policies and more participants*

Both the increasing range of negotiations and the increasingly careful identification of interests and preparation by developing country negotiators have led to greater complexity in the positions adopted by individual countries and by groups of developing countries.

At the beginning of the Uruguay Round, there was still an identifiable 'developing country' position, particularly as it became clear that the developed countries would press for developing countries to participate in all aspects of the agreement. In all previous negotiations, where the central issue was 'special and differential treatment' for developing countries, they had operated as a group. Traditional leaders like India still considered that they could speak for the majority of developing country members. There were non-GATT fora like UNCTAD in which 'developing country' positions were formulated, principally by the secretariats, with some input from the leading countries, notably India and Brazil.

But it became clear during the Round that there were differences in interests: general differences: in their different importance to developed countries: only the rich or large (in Asia) were really pressed to liberalise markets to developed country exports, but also differences on issues: the opening by south east Asia was also welcomed, if not actually sought, by other Asian developing countries. The negotiations over the central 'developing country' issues, the MFA (the imposition of quotas by developed countries on major exporters of textiles and clothing) and agriculture, had to take account of important divisions: between the MFA quota-bound countries and the non-quota; between exporters of food and importers benefiting from subsidised developed country food.

Since the end of the Uruguay Round, there remain two conflicting influences on how developing countries act. International organisations like UNCTAD and some NGOs continue to argue that there are 'developing country' interests and that developing countries should work together, for strength (the G-77 model). Against this is increasing pressure at national level for countries to identify their specific interests, accepting that developed countries may sometimes be more appropriate allies. Pre-Seattle the former prevailed: the traditional groups like the G-77 met, and issued agreed positions, based on UNCTAD research and analysis. While there were differences in priorities, there were no obvious conflicts among developing countries, and no negotiations which required choices. All wanted more transparency and more direct developing country participation. Pre-Doha, developing countries again had meetings, in regions, for example SADC and COMESA in southern Africa; in broader areas, e.g. Africa, and in other types of group: all developing, the Least Developed, AOSIS (small islands). But, while on many subjects, the resulting positions showed similar priorities (and identical wording), on some policies they differ, indicating that in 2001 there was greater informed consideration than in 1999. The positions presented by individual countries further modified regional or interest group positions.

Since the Uruguay Round, the growing importance of regional trading groups among developing countries has led to an interest in using these as negotiating blocs, and some of the negotiating positions have been defined by region. But common characteristic groups (least developed, small islands, as well as exporters of particular commodities) have also been important, and at Doha, the common characteristic groups seem to have been more active and more effective than the regions: the least developed secured a range of special mentions, and avoided any expressions of opposition to special treatment for them; the small economies got a 'work programme to examine issues'. There was little evidence and no symbolic achievement suggesting active work by a formally established regional group among developing countries, although the (umbrella) Africa Group was effective in mobilising support for the developing countries' own issues, notably debt.

In the climate change negotiations, different positions are also starting to emerge. OPEC want no mitigation of climate change; the small islands want strong action; countries like Bolivia, with serious climatic concerns, but a possibility of obtaining payments in the Clean Development Mechanism Market (CDM-CER) have mixed interests.

### *Strong private sector lobbying can make any compromises or alliances more difficult*

Delegations without national support or interest had had considerable freedom to act, to form alliances, and to accept exclusion from decisions. But after the Uruguay Round this changed. The greater coverage of the agreement meant that domestic interests found themselves affected by new rules (TRIPs, standards...). Better communications meant that the protests in the more informed countries (not only the developed, but India) were heard in the less active. And the WTO, UNCTAD, and donors, for the first time, prepared a major campaign to inform all interests in even the inactive countries of the results and their implications. Governments therefore faced not only their own perception that if they participate actively, they can influence the result, but also strong and informed pressure to act more effectively in the future.

## How the international negotiations must adapt

Delegations with a clear mandate from their own government, perhaps in consultation with economic or other interests, may have much less flexibility to defer to the more powerful or to form alliances with other opponents. They must demonstrate that they participated actively. Deadlock may not be inevitable, but may now be more likely, and certain negotiations will be harder and longer.

In GATT negotiations before the Uruguay Round, there were no formal procedures, and *de facto*, in the early ones, the US dominated; by the 1970s, US-EU bilateral meetings were the forum. While the Uruguay Round had seen some increase in formal negotiations, supplementing, if not replacing the EU-US bilateral meetings of previous Rounds, there was still a heavy emphasis on 'informal' meetings, *ad hoc* groups with virtually no rules of procedure or specification of who should attend. These not only become increasingly impractical with more and more inexperienced participants, but do not offer the official evidence of participation which countries now require to be accountable to interested and informed national groups.

In the final months before the Seattle meeting (September-November 1999), there were procedures for including all countries at least occasionally in the consultations on the agenda for negotiations. This followed what had been established as the normal 'informal' procedure in negotiations in the Uruguay Round, of small committees which were effectively open to anyone who was known to have an interest. It had risks: countries which were too new or small (or absent from Geneva and the negotiations) to be known to have an interest were not always included, but it avoided official discrimination among countries, and was accessible to the active countries, which were those who might challenge exclusion.

In 2001, the WTO and its major members still supported informal consultations. Although some developing countries continued to question their legitimacy, two successive competent chairs of the General Council were able to engage and be trusted by most of the delegations. Although the drafts of the Doha ministerial declaration were based more on the informal consultations than on the formal submissions, good chairs plus the general will to avoid a second failure meant that the system did not break down, but it remained weak.

At Doha (and since) there was a return to informal meetings and *ad hoc* groups. It will not be clear until negotiations reach their end whether the system will work in the face of major divides. The climate change negotiations, although more regular in their timing (with annual meetings) also rely heavily on informal meetings during these negotiations, creating the same problems for developing countries.

## The balance sheet: negotiation can alter the outcome

Participation is working best in the longest established negotiations (WTO, not climate change), with the broadest range of allies and less obvious dependency (WTO, not ACP). It works best when and where developing countries can perceive their interests most clearly (trade now, but not in the past; climate change in Bolivia, less so in Guyana and Zimbabwe). In climate change, there are still complaints that developing countries are excluded and have little voice. At Doha, developing countries' participation was reasonably effective (small, weak countries will never take control from the larger). They were successful on their declared priorities (agriculture, other tariffs, intellectual property), achieved some of their own initiatives, and are not, yet, defeated on the developed country new issues. There was no protest that developing countries were not being heard, or that they had been badly defeated. But many countries have not yet made the transition to interest and effective participation, and the institutions have not yet been changed to 'fit' more players with more complex interests.