
In Practice

Parallel Informal Negotiation: A New Kind of International Dialogue

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Bargaining in the international arena is intrinsically positional. Negotiators are often instructed by their governments not to improvise or explore new options when they meet with their counterparts — even though the invention of additional tradeoffs or packages might well produce “better” results for all sides. This article describes an approach that we call “parallel informal negotiation” which encourages a collaborative effort between contending groups that were officially not even allowed to interact: international trade and environment policy makers.

Bargaining in the international arena is intrinsically positional: Negotiators from various countries arrive at international meetings with carefully crafted marching orders — from which they are not supposed to deviate in any way. Their stated “positions” are, for the most part, not open to revision.

Even though members of the international diplomatic community know that the invention of additional packages might well produce “better” results for all sides, they are allowed precious little leeway at the negotiating table. The risk that something offered in an informal exploratory exchange might be misinterpreted as a commitment or misused by the other side is too great. Moreover, the top leadership on both sides wants to retain the

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final say over any brokered agreement; they do not want this power to reside with their emissaries.

Practice-based negotiation theory acknowledges this limitation. In recent years, two approaches to deal with this problem in international conflict resolution have received a great deal of attention: workshops involving surrogate negotiators and informal mediation efforts dubbed “second-track” diplomacy. We have been testing a third approach that we call “parallel informal negotiation”¹ which merges the long-term relationship building that is the focus of the workshop approach with the brainstorming and problem-solving emphasis of second-track diplomacy.

In the workshop model, as described by Kelman and his colleagues (see, e.g., Kelman [1976] and Rouhana and Kelman [1994]), negotiations involve surrogate negotiators (“doves” not “hawks” on both sides), preferably with access to policymakers. In the relative safety of the workshop setting, they are free to hear how the world looks from the other side’s standpoint and to explore options that those in official negotiating positions might not allow themselves to consider. Over time, relationships are built between “doves” on both sides and, ideally, trust develops. As the workshop participants move into positions of influence and power, improved relationships permit more effective problem solving.

Second-track negotiations (see, e.g., Berman and Johnson [1977] and Susskind and Babbitt [1992]) rely on unofficial intermediaries who shuttle between the parties presenting unofficial proposals even as hostilities continue. Second-track diplomacy can generate and test possible elements of an agreement, even though it does not alter underlying relationships between the disputing parties.

Parallel informal negotiation merges critical elements of both of these approaches by bringing together the actual disputants (not their emissaries) to engage in a facilitated policy dialogue aimed at both relationship building and problem solving. Sharpening this distinction is intended to articulate the natural evolution of the other two approaches and advance the theoretical debate on the essential components of this interactive decision making.² In our experience, there are four key elements to the success of parallel informal negotiations:

- bringing the actual negotiating parties together, face-to-face, in a protected setting, for a series of confidential dialogues over an extended period (i.e., one to two years);
- promoting joint fact-finding aimed at encouraging inventive proposals and guiding substantive discussions to common ground, without necessarily attempting to reach agreement;
- preparing written summaries of each segment of the discussion, without any attribution, which the participants can use as they see fit; and
- relying on professional facilitators to manage each of the preceding elements.

A Test Case: The Policy Dialogue on Trade and Environment

Throughout much of the last two decades, international law and policymaking on issues involving trade and environmental protection have proceeded separately with little interchange between members of the two policy-making communities. As a result, misunderstandings among international negotiators are common, despite the fact that international environmental policy and international trade policy impinge on each other in many different ways.

For example, trade restrictions are sometimes used to enforce multilateral environmental agreements, like the Montreal Protocol provisions that restrict trade with non-parties in ozone-depleting substances. While intended to induce treaty compliance and discourage "free riders," such provisions sometimes violate the basic tenets of free trade. Multilateral environmental pacts like the Convention on International Trade in Endangered Species (CITES) prohibit trade in endangered species and employ trade restrictions to ensure compliance — yet they have sometimes been adopted without involvement of the international trade community. Unilateral trade restrictions aimed at achieving environmental policy objectives, such as the United States' limits on automobile emissions, may cause a trade disadvantage for auto makers in foreign countries. Another example would be America's efforts to constrain Mexico's capture of dolphins in the process of tuna fishing, an environmental initiative which caused enormous controversy in the trade community. Likewise, a nation's efforts to restrict the use of pesticides on imported fruit or hormones in imported meat may sometimes operate as unacceptable trade barriers. Finally, attempts to protect the global commons or to fend off the spillover effects of environmental or trade policies adopted by other countries have also been taken unilaterally by some countries without regard for either the formal trade policy-making process or the global environmental treaty-making process. Despite the obvious effects such policies have on the global trading system or global environmental treaty-making efforts, they are frequently adopted with no formal interaction between the managers of those systems.

To address problems created by such overlaps, at its founding in 1994, the World Trade Organization (WTO) established a Committee on Trade and Environment. Among the issues that this committee considers are the relationships between the provisions of the multilateral trading system and multilateral measures taken for environmental purposes; the effect of environmental measures on market access; transparency (i.e., an open process that allows for participation and information exchange) in decision making about trade; and the design of an institutional structure for sustaining a dialogue between the two communities.

A serious obstacle to resolving these issues is that the WTO (and before it, the General Agreements on Tariffs and Trade — GATT) operates pretty much as a "closed shop." It is not open — formally or informally — to non-governmental parties. That is, most environmental advocates have no access to WTO decision making, either in terms of the information that the WTO

uses to make decisions or in terms of opportunities to offer comments on decisions made by WTO policy-making bodies and dispute resolution panels. Thus, notwithstanding the good intentions that generated formation of the WTO Committee on Trade and Environment, the institutional structure still does not provide for the appropriate formal expertise interchange.

Environmental policymakers and nongovernmental organizations (NGOs) are not used to such a lack of transparency. When trade ministers appoint committees to deal with environmental issues but do not invite environmental experts or advocates to participate, environmentalists are left to make their case through the media or by bringing pressure to bear on governmental representatives from specific nations. Both strategies lead to confrontation and undermine the prospect of effective joint problem solving.

Several American foundations have had a long-term interest in stimulating a dialogue between the trade and environmental policy communities. One offered to sponsor a debate (as a way of beginning the conversation). On being invited to moderate this debate, the authors suggested that a formal debate would do little to promote consensus and proposed an alternative format — a policy dialogue. A preliminary meeting was held in New York in March of 1994 to permit representatives from the international environmental and trade policy communities to get to know each other, and to discuss privately and informally some of their conflicts. As the invitation to the preliminary meeting put it, the objectives were:

- to create a forum in which groups, who for too long have pursued an adversarial relationship with regard to trade and the environment, might seek common ground;
- to map the conflicts and to identify, to the extent possible, areas of agreement on at least a few of the many pending issues; and
- to see whether the scope of such areas of agreement can usefully be communicated to the relevant policy-making bodies such as the GATT Ministerial Meeting.

Most of this first meeting was devoted to consideration of three issues, chosen by the organizers in part because of their urgency and in part because they seemed likely candidates for convergence: the use of trade restrictions to enforce multilateral environmental agreements (MEAs); the use of scientific and other special expertise in WTO decision making; and transparency in the WTO policy-making process. For each issue, a scenario was devised to focus the discussion. (See Appendix I for a description of one of these scenarios.)

The immediate objective of the meeting was to map prevailing policy conflicts and to identify possible areas of agreement. The meeting also sought to create a forum in which groups — who were officially unable to communicate their views — might not only exchange information, but also develop a working relationship. The preliminary meeting of the Policy Dialogue was successful on all counts. It resulted in several items of agreement that were noted

in a report prepared by the authors (on their own responsibility and with no attribution). The report of the meeting was forwarded to delegates to the ministerial meeting of the GATT at Marrakech, Morocco, where the Uruguay Round agreements were signed. As hoped, the preliminary meeting afforded an opportunity for the members of the two communities to get to know each other and to begin the process of interactive policy building.

At the close of the meeting the participants encouraged the organizers to reconvene the group. They underscored the need for additional sessions as a continuing vehicle for resolving conflicts between the two policy communities during the two-year interval between ministerial meetings of the WTO.

The transition from a one-time workshop to an ongoing dialogue required substantial financial resources. The two host foundations for the New York meeting, together with three other American foundations,³ committed sufficient funds to cover three meetings of the Policy Dialogue. Each meeting (including steering committee meetings held in advance) costs nearly \$100,000, including the cost of travel for participants from North America, Europe, and Asia, meeting accommodations for three days, as well as research, analytic and staff support before, during, and after each meeting. Ideally, funding for such meetings would involve European and Asian as well as American sources to reflect the international nature of the issues.

Since the initial New York meeting, the Policy Dialogue has met three times in Talloires, France — one hour from the Geneva offices of the WTO. The Dialogue's steering committee (representing a balance of environmental and trade participants, as well as the concerns of developed and developing economies) synchronizes each Dialogue session with the work schedule of the WTO Committee. Accordingly, the Dialogue members have taken up the tougher, more contentious issues under consideration by the WTO Committee: environmental taxes or charges imposed to achieve environmental purposes, multilateral environmental agreements, transparency, unilateral trade actions for environmental purposes, export restrictions on domestically prohibited goods, and eco-labeling.

The first part of each Dialogue meeting is devoted to an overview and summary of general principles, followed by three working sessions. Each session begins with a brief, informal introduction by two of the participants (notified in advance by the organizers). These help to launch free-ranging discussions among all of the participants. The object is not to arrive at an agreement or build consensus, but to develop an intellectual and policy framework for dealing with conflicts between the trade and environmental points of view. Each session ends with the facilitators summarizing and identifying the main points of agreement and disagreement.

Developing a Theoretical Framework

While there is still much to learn about how such problem-solving and relationship-building dialogue ought to be handled, we have identified several considerations that are important in the informal parallel negotiation

process. From our standpoint as organizers of the Trade and Environment Policy Dialogue, we believe such events require:

Facilitated Meetings. A series of informal sessions — each several days in length — facilitated by professional neutrals and involving a core group of up to 35 people over an extended period (i.e., as long as two years). All stakeholding interests must be represented and the group must be balanced along multiple dimensions of concern. We have included senior officials from national governments, international organizations, and nongovernmental organizations. The participants are actual representatives (“partisans”) who attend in their personal — not their official — capacities. There is no effort to press for agreement or to issue agreed-upon statements. Meetings are entirely off-the-record. One of the ground rules agreed to by all the participants is that there will be no attribution of positions or statements to any participant. The organizers (i.e. neutrals) prepare a summary of the discussion, consistent with these ground rules, and participants have an opportunity to review each meeting summary in draft to ensure that it accurately reflects their sense of what occurred at the meeting.

Steering Committee. The policy dialogue should be conducted under the aegis of a steering committee of (eight to ten) regular participants who have substantial credibility with their own stakeholder communities. The steering committee should meet in advance of each meeting of the dialogue to set the agenda, provide guidance regarding preparation and data gathering, ensure that the roster continues to include the most relevant persons, and select sites for future meetings.

Substantive Research, Analytic and Staff Support. The success of an extended policy dialogue depends in large part on the quality of the substantive research, as well as the analytic and staff support provided by the neutrals. Participants need to learn not only how to talk to each other, but they often must also deepen the intellectual capital on which they can draw in attempting to reconcile competing interests. The dialogue is not intended primarily to serve as a “brainstorming” occasion; rather, the dialogue has the potential to promote learning, information exchange and clearer statements of interest, as well as create a setting in which question-asking and intellectual exploration will not be misread as signs of official “position-changing.” On the other hand, as the dialogue proceeds, it is not surprising that subgroups feel encouraged to develop new policy ideas.

The result is a kind of discussion that allows participants to say what is not possible under more formal circumstances. The quality of the dialogue depends heavily on interventions by the neutrals that are aimed at clarifying interests, testing assumptions, and promoting exchange. The goal is not closure, but rather sufficient progress to enable the parties to understand each other’s views and the issues well enough to negotiate more effectively in formal meetings.

Progress, or success, in the Trade and Environment Policy Dialogue has been quite visible. As the Committee on Trade and Environment prepares its recommendations for action at the second ministerial meeting of the WTO in Singapore in December 1996, WTO leadership has invited the continuing involvement of the Trade and Environment Policy Dialogue to help reach resolution on appropriate recommendations for action. Further, the authors have an opportunity to suggest a range of practical means for effectively involving NGO expertise in the WTO's deliberations.

Evaluating the Dialogue Model

Policy dialogues do not lend themselves to quantitative assessments. By definition, the outcomes of multinational negotiations, like those of the Committee on Trade and Environment, are the result of a complex interaction of many factors, including domestic and international political developments, macro-economic trends, sudden changes in the global environmental or scientific understanding, and the presence or absence of effective leadership. Nevertheless, we believe there are some outcomes of parallel informal negotiations which can be assessed:

Level and scope of participation: Do the meetings continue to attract a core group of committed participants who are influential in formal decision-making circles and who adequately represent the range of interests and stakeholders in the policy debate?

The Trade and Environment Policy Dialogue has consistently attracted 25-30 people to each session, nearly all of whom are repeat participants (subject to official appointment transfers). The participants, all of whom are invited to attend, either represent a national delegation, international organization, or NGO involved in the Committee's policy-making arena. The diversity of participants from the trade, environment and developing countries' perspectives has provoked a high level of engagement.

Agenda for the meetings: Do the meetings of the policy dialogue focus on issues that the formal negotiators are experiencing difficulty in resolving, and illuminate broader issues on which the two policy communities are divided?

Thanks to the steering committee and its relationships with senior WTO officials, the Policy Dialogue has been able to identify the key issues that would benefit most from discussion, gather appropriate current research, and prepare background papers that serve as analytic frameworks for discussion.

Information exchange: Do the working papers and other documents circulated to the participants prior to each meeting of the dialogue give the participants the sense that the "full story" is being told? Do the summaries of each discussion reflect accurately — in the eyes of all the participants — the points each was trying to make? Do all the participants feel that a balanced presentation of the arguments and considerations on all sides of the issue

was achieved, such that their ability to engage in mutual gains bargaining is improved?

The Dialogue's summary reports have been well received and circulated extensively among the two policy-making communities. WTO leadership has indicated that the Dialogue's reports are the only outside source of perspective recognized by the Committee on Trade and Environment and asked that the Dialogue remain "available" to assist the spring committee negotiations — a clear signal that this process has assisted the formal negotiators in addressing the issues before them.

Enhanced relationships among the participants: Is there evidence (i.e., continued participation in the meetings or new levels of cooperation outside the meetings) that relationships are improving? Are there observable shifts in country profiles that reflect an openness to new information and persuasion in the dialogue process? Is there evidence of long-term relationships emerging among the different institutions?

In little over a year, the Trade and Environment Policy Dialogue has observed explicit shifts in attitudes between the trade, environment and development communities in the sessions themselves, with relationships improving both inside and outside the Dialogue.

Practical Observations and Evaluation

The formal evaluation process planned for this spring will generate a more comprehensive review of the Dialogue's short- and intermediate-term effects. However, a few observations are noteworthy. The Policy Dialogue on Trade and Environment suggests, as have other domestic and international policy dialogues, that several propositions can be substantiated:

1. It is possible for official and non-state actors to engage in substantive, nondefensive dialogue, if these conversations are facilitated properly.
2. It is possible for off-the-record discussions to stay off-the record, that is, for there to be no attribution of views or positions outside the meetings.
3. It is possible to achieve improved levels of group problem solving over time.

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4. It is probably best not to institutionalize or formalize parallel informal negotiations, but to let them operate on a temporary basis only.
 5. It will be necessary to draw from a group of 50-60 invitees to get a balanced representation of at least 30 representatives at any meeting. This reflects the realities of individual schedules as well as shifting levels of interest as the topics of conversation shift slightly.
 6. Attractive surroundings and facilities enhance the quality of conversation and the ease with which partisans interact. Thus, adequate funding for policy dialogues is essential.
 7. Research results ought to be presented thematically (not chronologically).
 8. Multiple texts presenting multiple perspectives should be on the table at all times.
 9. High-ranking "champions" on all sides are needed to maintain the credibility of parallel informal discussions and to keep them connected to formal negotiations.

The Policy Dialogue on Trade and Environment is a good test of the concept of parallel informal negotiation. It not only brought together two "sides" that had no history of working together, but also actually produced a collaborative effort between contending groups that were officially not even allowed to interact.

It is not clear to what extent the process of parallel informal negotiation might work with groups that had been actively engaged in armed conflict. However, it would be interesting to see whether it would be possible to bring the "real" leadership on both sides to a confidential but informal extended dialogue, facilitated by a neutral party, aimed at finding common ground but not necessarily at producing a treaty or a signed agreement. Until more explicit documentation and evaluation of the concept is available, we can recommend that negotiators consider the possibilities offered by parallel informal negotiation, in addition to long-term, relationship building and second-track diplomacy.

APPENDIX I

Scenarios for Discussion:

Trade Restrictions in International Environmental Treaties

- A. Country X is a WTO member, but is not a party to the Montreal Protocol. Company A in Country X produces computer chips that as part of the production process have been cleaned with solvent containing CFCs. Assume that the Montreal Protocol provisions banning the import of products produced with controlled substances (CFCs) from non-parties is in effect. Company A has a customer in the United States that wants to purchase its products, but is prohibited from doing so on the basis of the Montreal Protocol ban. Country X files a complaint against the United States under the WTO.
- B. Botswana is a Member of the WTO and a signatory to CITES (The Convention to Regulate International Trade in Endangered Species of Flora and Fauna). Botswana has a model program for management of its elephant herds under which it has maintained sustainable growth levels. The program requires regular culling of the herds and proceeds from elephant ivory, meat and hide sales from the culls are used to support the elephant conservation program, as well as local community growth initiatives. In 1989, CITES placed African elephants on Appendix I, which effectively prohibits commercial trade in ivory. Botswana took a reservation to this prohibition under Article XXIII and now wishes to export ivory to customers in Hong Kong — who are ready, willing and able to purchase. Hong Kong's government has refused an import permit. Botswana has filed a complaint against Hong Kong.
1. What will be the likely decision of a WTO panel in these two cases?
 2. What would be the rationale for the decision?
 3. What kinds of trade restrictions in environmental treaties should constitute exceptions under Article XX to the general prohibitions of Article XI of the WTO, or should be otherwise treated as superseding WTO?
 4. By what process should such treaties be identified?

NOTES

1. "Negotiation" in this context is intended to describe a structured discussion of difficult issues, rather than the process of reaching a formal, binding agreement.

2. Several significant initiatives have taken place that applied very similar international frameworks. For an excellent description of the work of the Dartmouth Conference in this area, see Chufrin and Saunders (1993). Among other initiatives worth noting is the work of the Conflict Management Group of Cambridge, Massachusetts, which has long been involved in this type of negotiation practice in various parts of the world.

3. The Rockefeller Brothers Fund, The Henry P. Kendall Foundation, the German Marshall Fund of the United States, the Charles Stewart Mott Foundation, and the Pew Charitable Trusts.

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