

Environmental Governance at the WTO: Outreach to Civil Society

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Trade and investment liberalization promise to bring great benefits to the people of the world.¹ In recent decades, the opening of markets in many regions has lifted hundreds of millions of people out of the abyss of poverty. The gains from trade-driven economic growth offer a promise of improved environmental conditions as well, because wealthier countries are generally both more able and more willing to invest in ecological and public health protection than are poor ones. But there is no guarantee that this link will be made—that development will be environmentally sustainable. Or, to be more precise, carefully considered policies are required to ensure that trade gains do not come at the expense of the environment by causing market failures, welfare losses, distorted economic relations, allocative inefficiency, and unnecessary environmental degradation.² Finding ways to achieve these mutual returns and to maximize the synergy between freer trade and better environmental quality stands as an issue of great urgency for the international trading system.³

At the centre of this challenge lies the World Trade Organization (WTO). As nations become more economically integrated as a result of ongoing efforts to promote trade and investment liberalization, they need institutional support to promote collective action in response to global-scale risks of market failure. Only the WTO is available to play the role of facilitator of economic interdependence, coordinator of negotia-

tions on the terms of integration, and referee for international economic disputes.⁴ In particular, the WTO serves as the forum in which the rules of economic interaction are worked out. By setting the boundaries for appropriate economic behaviour at the global scale, the WTO helps to establish what constitutes a fair or legitimate basis for national comparative advantage. In the environmental realm, for example, some countries have chosen relatively low environmental standards. Are these lax pollution-control and resource-management rules appropriate, given the nation's early stage of development? In some cases, the answer will be yes. But when the harms caused by low standards spill across national boundaries and onto neighbouring countries or the global commons, they should not be considered legitimate. Such spillovers are, in fact, uninternalized externalities that threaten market failure.

The WTO must facilitate regulatory cooperation at the global scale to prevent the economic inefficiency and social welfare losses (not to mention the environmental harms) that might accrue from such trans-boundary pollution. However, the line between legitimate and illegitimate environmental standards will often be unclear, leaving the WTO to sort out which side a particular activity falls on.

Ensuring that the upside of globalization can be achieved without the people of the world suffering from the potentially serious downsides, such as environmental degradation, represents one of the critical public policy challenges of our era. Indeed, the backlash against globalization is already visible.⁵ The challenge is particularly acute for the World Trade Organization since it is emerging as one of the central institutions of global governance.

If the WTO is to play its role as a manager of economic and ecological interdependence effectively, it must be seen as having legitimacy, authoritativeness, and a commitment to fairness.⁶ Absent these virtues, decisions that emanate from the WTO will not be accepted as part of the process of global decision-making. The WTO's capacity to establish its legitimacy, authoritativeness, and fairness depends heavily on establishing a new relationship not just with the governments of the world, but also with the people around the world in whose name the WTO acts, that is, with civil society. Toward this end, the WTO needs to become better connected to the non-governmental organizations (NGOs) that represent the diverse strands of global civil society.⁷

1. Legitimacy

One key element of the challenge facing the WTO is to establish its *representativeness*. That the WTO takes action only at the direction of its member states is not enough to guarantee public acceptance of its decisions and actions. Public support cannot be founded on government authority. Individual acceptance is what matters. The organization must therefore demonstrate that it has genuine connections to the citizens of the world and that its decisions reflect the will of the people across the planet. Non-governmental organizations represent an important mechanism by which the WTO can reach out to citizens and build the requisite bridge to global civil society.

An essential precondition for acceptance is understanding. NGOs—whether environmental groups, consumer organizations, or labour unions—provide an organized structure for the flow of information. Building a stronger relationship with NGOs therefore offers a significant opportunity for the WTO to increase public understanding of the trading system. In particular, the WTO can use NGOs to disseminate information on the issues that influence the organization's internal deliberations.⁸ By informing NGOs about the choices that the organization is facing and the arguments that are being made to push the debate in one direction or another, the WTO can help to ensure that the public are informed about the workings of the international trading system and feel comfortable with the decisions that emanate from it. Explaining what is happening within the trade regime and developing a public appreciation of the work that goes on at the WTO are essential prerequisites for broader public support for trade liberalization in general and for the decisions of the WTO in particular. Currently, there is a great deal of suspicion in many countries about decisions that emerge from the WTO. Critics charge that trade policy is made by a set of faceless international bureaucrats.⁹ Environmental opponents of the WTO have staged demonstrations against the WTO in Geneva, Washington, and elsewhere. Better understanding of both the international trading system's procedures and the substantive issues that are under review would help to blunt charges of black box decision-making and to dispel the ignorance that fuels much of the popular criticism of the WTO.

NGOs have the potential not only to transmit information down from the WTO to the public, but also to draw information up into the international trading system. If NGOs were invited to offer opinions on the issues of the day more frequently, there would be fewer policy surprises at the WTO. Knowledge of the concerns that others are bandying about is always valuable and can result in stronger policies refined to address their complaints. Failure to listen to opponents can be fatal, as proponents of the Multilateral Agreement on Investment (MAI) have learned. The OECD negotiations on the MAI came under heavy criticism from the NGO community. Many argue that the international agreement was derailed by a well-coordinated campaign by global grassroots NGOs.¹⁰ Particularly when issues go beyond technical trade questions and involve connections to other policy domains such as the environment, the small WTO staff in Geneva cannot be expected to have sufficient expertise to recognize and process all of the relevant information. By drawing on submissions from NGOs, the base of information on which WTO decisions are made could be broadened. The organization's sensitivity to public opinion and politics around the world would likewise be heightened.

More importantly, national governments will continue to support international cooperation and the international organizations, such as the WTO, that facilitate collaboration only to the extent that these institutions demonstrate a capacity to deliver collective action gains.¹¹ And the public are likely to believe that there is a gain from international cooperation only if they perceive that their interests and values are being taken seriously at the global level. Unless this perception exists, national governments will be subjected to criticism by their domestic constituents about the ceding of decision-making to distant officials. Responsiveness, real and perceived, can be provided by public representation at the WTO in the form of NGOs.

A greater role for NGOs at the World Trade Organization would also help to diminish the tension that is created whenever political choices derive from higher (more centralized) levels of government, which are inevitably more distant from ordinary citizens.¹² In providing linkage between individuals and the WTO, NGOs help to reduce the danger that the trading system will be vulnerable to charges of democratic deficit. In particular, NGOs can provide a connective tissue that allows

localized citizens to feel better informed and better connected to the distant decision maker.¹³

By broadening the range of voices heard at the WTO, NGO participation will deepen the representativeness of the body and strengthen its legitimacy. Indeed, most of the officials engaged in trade policy-making at the WTO headquarters in Geneva represent national governments.¹⁴ But governments do not perfectly reflect public opinion.¹⁵ Many governments systematically disregard minority viewpoints. Yet a position that is in the minority across many jurisdictions may enjoy a plurality of support at a higher level of aggregation in voting.¹⁶ Permitting NGOs to participate in WTO discussions might also allow the organization to hear important voices that would otherwise be unrepresented or underrepresented in Geneva.¹⁷ By enriching the political dialogue at the WTO, NGO participation would, furthermore, move the international trading system beyond mere pluralism (governance by representative interest groups) toward a model of civic republicanism that emphasizes informed and thoughtful debate and decision-making.¹⁸ This shift toward republicanism and participatory decision-making would add to the legitimacy of WTO governance.

The participation of NGOs in WTO debates could also help to compensate for deficient representativeness at the national level. Weak democratic institutions and other public choice flaws mean that national policies often fail to represent the citizenry's views fairly and accurately. In some cases, authoritarian regimes seek to maintain their hold on power with little regard for public opinion. In other countries, leaders are corrupt. In every country, special interest lobbying, campaign contributions, or asymmetries of resources and political activity among interest groups distort policies and cause some degree of deviation from the true will of the people. It may seem ironic to suggest that the WTO, often criticized for its democratic deficit, could improve the representativeness of decision-making.¹⁹ But, in many cases, the WTO offers a potentially more open, transparent, and pluralistic forum than would be available at the national level. In brief, upgrading the quality of the WTO's political debates through greater transparency and an organized role for NGOs might substitute for the lack of fully functioning democracy in a number of countries around the world.

Perhaps more importantly, many people today do not have their identities determined by the geographic political jurisdiction in which they happen to live.²⁰ Non-governmental organizations cut across political boundaries and define communities of interest, or what Giddens calls communities of taste, habit and belief,²¹ uniting individuals who are committed to human rights, animal welfare, peace, or any number of other causes or viewpoints. In doing so, NGOs provide an alternative form of representation, and they offer a more refined and closely tailored reflection of an individual's views than the one obtained through his or her government. Citizens who care about protecting biodiversity, for instance, will find their views better represented in international forums, such as the WTO, by the Worldwide Fund for Nature than by their own governments.

One of the most important advances in political theory in recent decades is the growing understanding that interactions among people cannot all be mediated through the narrow channel of governments, particularly national governments. Indeed, the liberal critique of traditional realist international relations theory centres on the unwieldy assumption that states are the only actors on the international stage.²² Quite clearly, a wide variety of other forces now operate internationally, NGOs among them.²³ For the WTO to fail to take cognizance of this transformation or to continue to act as though international affairs were solely a contest of wills among sovereign governments would threaten the international trading system's ongoing viability.²⁴

An inclusive approach to NGOs at the WTO also offers important advances from the perspective of the political economy of trade liberalization. Notably, if environmental groups (especially those in North America) and others who have felt excluded from trade policy-making in the past perceive themselves to be included in the process and given a fair opportunity to shape decisions, they are much less likely to obstruct trade liberalization efforts.²⁵ The benefit of a strategy of inclusiveness was demonstrated during the course of the debate about the North American Free Trade Agreement in the United States. Both the Bush and the Clinton administrations worked hard to ensure that environmental groups were briefed regularly, included in the public advisory groups, and given access to the negotiation process. In the end, a number of environmental groups supported the treaty.²⁶

2. Authoritativeness

The credibility and legitimacy of any decision-making body depend on its capacity to make correct decisions. In its core work involving trade liberalization and the settlement of traditional trade disputes, the WTO (and the General Agreement on Tariffs and Trade before it) has an outstanding track record. Over the past 50 years the international trading system has developed a clear underlying economic theory, a well-established set of rules, and a body of dispute settlement precedents to follow. The WTO has both in-house staff and access to outside experts who are capable of providing clear direction and interpretation of the trade rules and of economic law more generally. These assets make the WTO authoritative and thus credible on purely economic issues.²⁷

Increasingly, however, the WTO must cope with disputes that involve issues at the intersection of trade policy and other domains, such as the environment. In these cases, the WTO often lacks ready access to the necessary expertise required for well-regarded and widely accepted decisions.²⁸ Beyond the limited depth of the WTO's own knowledge base, the organization's dispute settlement mechanisms and rule-making procedures lack credibility outside the realm of trade issues. In brief, the WTO faces serious questions about its capacity to deliver substantively correct decisions on trade and environment issues and on other conflicts arising on the periphery of trade law.

To add to the difficulties the WTO faces, policy-making in arenas such as the environment is never easy even in the best of circumstances. High degrees of scientific flux, economic uncertainty, and other complexities surround almost all questions of ecological and public health protection. In the face of this uncertainty, it is extremely helpful to have competing points of view that provide the decision maker with the capacity to triangulate on the truth. The presence of a richer mix of NGO views within the WTO would facilitate this triangulation. In many of these circumstances, the WTO's capacity to produce good policy outcomes that contribute to its reputation for responsiveness and authoritativeness depends on having its deliberations deepened through outside information and multiple policy perspectives. Simply put, the WTO would benefit from considering *competing* policy options.

The benefits of policy competition are well established.²⁹ In recent years, the gains from bringing competitive forces to bear in the regulatory domain have become a subject of great interest. In the context of international trade policy-making, this theory could translate into a system by which national governments advance competing visions of the direction the World Trade Organization should take. But the limits of horizontally arrayed governments acting as competitors in the regulatory arena have also been recognized.³⁰ In many policy-making settings, governments do not compete seriously. At the WTO, intellectual competition is particularly limited. Very few governments have sufficient resources to contribute in anything more than a superficial way to WTO policy debates. And this weakness is amplified when the policy questions go beyond the narrow set of trade issues with which the government officials in Geneva are familiar. For example, environmental policy-making often requires careful problem identification, epidemiological and ecological studies, risk assessment, policy design and options development, and cost–benefit analyses. Not many governments in the world can carry out this type of analytically intensive activity. Even fewer have the requisite capacity at hand at the WTO.

NGOs are frequently much better positioned to serve as intellectual competitors than governments are. NGOs often have in-house analytical and technical skills. In many cases, an NGO's *raison d'être* is to sharpen thinking about policy issues. NGOs are, moreover, often more nimble than governments. They work hard to spot new issues and to bring attention to them. In government, the emphasis on following established practices and traditions can translate into inertia. Thus, regulatory competition from outside the governmental domain becomes essential to a sound environmental policy-making process.³¹ Fundamentally, the greater the intellectual competition, the more likely it is that policies will be solidly grounded and durable. Better analysis and information also translate into greater authoritativeness and therefore legitimacy.

NGOs also provide an important oversight and audit mechanism. Citizen groups can act as watchdogs on national governments and report on whether they are fulfilling their WTO obligations. With better access to documents and meetings, NGOs would also be in a stronger position to review and critique actions and judgements, by both the WTO and

national governments. Although this may not seem intuitively attractive to those in Geneva, the value of peer review and information disclosure is now widely appreciated.³²

3. Fairness

In addition to substantive correctness, the WTO faces a further challenge of being, and being perceived to be, fair. Fairness has procedural and substantive requirements that must be met if WTO decisions, both in dispute settlement cases and in the negotiation of trade rules, are to have legitimacy.³³ Procedurally, those who believe that they have an interest in the outcomes of decisions must have an opportunity to be part of the decision-making process. This involves opportunities to submit views and to observe how a particular outcome is reached. Substantively, the established rules and precedents must be applied even-handedly over time and across issues, and in a way that does not appear to advantage any particular group or nation systematically.

Again, a broader relationship with NGOs would help the WTO establish a reputation for fairness. In particular, if NGOs believe that they have had an opportunity to participate in the decision-making process, they are much less likely to criticize it. Furthermore, if WTO procedures were more open and accessible to NGOs, it would be harder to argue that special interests dominate the decision-making process. In fact, the belief that the WTO has a pro-business bias would quickly be dispelled if the WTO were to undertake a serious commitment to transparency in all of its decision-making activities. One of the best ways to demonstrate such a commitment would be to allow increased NGO participation.

A more open process would allow both governments and outside observers (including NGOs) to understand the basis on which decisions were being made. An important element of modern governance is that the public have a clear sense of the data and arguments that support a particular decision, including the assumptions that underpin these arguments. Such disclosure at the WTO would go a considerable distance towards ensuring public support of the international trading system.

4. Debunking fears about NGO participation at the WTO

A variety of arguments have been raised against broader WTO links to civil society and a deeper relationship between the international trading system and NGOs. Some of these arguments represent little more than traditional trade community cant. Other concerns have a more serious foundation. But none of the claims bears up under scrutiny.

NGOs as special interests

Perhaps the central fear among trade experts about a broadened role for NGOs at the WTO stems from a belief that many of the groups that might join the trade policy dialogue would represent special interests. More specifically, the trade community sees many NGOs, including most environmental groups, as protectionist and therefore as likely to distort decision-making at the WTO.

It is true that, whenever lobbying of a decision-making body is permitted, there exists some degree of risk that particularized interests will exert influence and steer outcomes in directions that are favourable to them.³⁴ The tradition of rent-seeking is very long standing indeed. But there is little reason to believe that the current WTO decision process is free of these influences. To the contrary, there is good reason to believe that the level of special interest distortion would be reduced if the WTO's procedures were more open and a broader array of groups was able to exert countervailing influences.

Concerns about opening up the WTO to NGOs are certainly heightened by the perception that many NGOs are unsympathetic to trade liberalization efforts and perhaps are even against free trade.³⁵ These fears have some basis insofar as a number of environmental groups have aligned themselves with labour unions and other entities that are fundamentally opposed to freer trade. Almost by definition, environmental groups and other non-trade-oriented NGOs have agendas that are not trade centred. These groups bring to trade debates no special commitment to trade or investment liberalization. But forcing trade policy makers to contend with the competing issue demands of the NGO

world serves as an important policy discipline and cannot be avoided if the WTO is to be taken seriously as an element of global governance. Political decision makers are always forced to make trade-offs among conflicting goods or values and among competing policy interests. The trade policy choices made at the WTO are no different. Greater NGO participation would therefore complicate WTO decision-making, but a broader base of input would help to ensure a more complete decision process that took cognizance of more of the interests at stake in each decision. This breadth of perspective would ultimately improve the decisions that emanate from the process. With a more diverse set of interests included within the process, interest group manipulation would diminish as the various groups monitored each other and exerted countervailing pressures that would, in general, diminish the prospect of capture of the WTO by any single interest group.³⁶ A more refined argument along the lines of special interest domination focuses on the need governments sometimes feel to trade off competing domestic interests in order to strike agreements that liberalize trade. Trade officials argue, for example, that they must often go against the needs of domestic interests, particularly those that are hiding behind tariff barriers or other protectionist walls. Indeed, they argue that the capacity to go behind closed doors and cut deals that disadvantage these groups is one of the great strengths of the WTO.

In fact, the argument about the virtues of closed-door deals rests on two faulty assumptions. First, it is by no means clear that the current non-transparent negotiating style promotes freer trade. To the contrary, many protectionist results have emerged from the WTO and from the GATT before it.³⁷ Secondly, public choice distortions generally become more severe, not less so, when decisions are made out of public view.³⁸ Transparent decision processes, in which positions are openly disclosed and debated, represent a powerful force in support of outcomes that track the public interest.³⁹

The observation that many of the groups that seek access to the WTO are closet, if not overt, protectionists may be true, but it offers no real argument for closed-door meetings or for ducking engagement with civil society. WTO secrecy only serves to heighten anxiety about trade liberalization. Many environmental groups in particular are highly sensitive to process issues, and their opposition to freer trade might well be

more muted if they better understood how trade policy decisions are made. A more open WTO process, which involves NGOs, promises considerable advances for the international trading system. Openness and transparency will fuel a broader and more robust WTO politics, which in turn promises to make the decisions that come from the organization more representative, more authoritative, more likely to be perceived as fair, and thus more durable.

The WTO as an intergovernmental body

Some critics of the notion of an expanded role for NGOs at the WTO point to the organization's fundamental structure as an *intergovernmental* body as an argument against opening the organization up to civil society. Some commentators⁴⁰ suggest that it can be confusing to have statements being issued by constituencies opposing the positions that are being taken by the governments that are supposedly representing them. Others have argued that trade policy works more efficiently when governments can speak clearly to each other without a cacophony of other voices trying to join in the debate. Another strand of the argument turns on the question of whether NGOs might not be getting two bites of the apple if they are allowed to lobby both at the national and at the international levels.

More fundamentally, some analysts argue that the essence of international affairs must be relations among sovereign states.⁴¹ When international bodies attempt to deal with other actors, such as NGOs, their decision processes become murky and the foundation for their legitimacy uncertain. Although this state-centric view of the world might once have been an accurate description of the realm of international law and policy, it is no longer the case. States are, unequivocally, not the only actors that matter in international affairs.⁴² And the sovereignty that is important today is not that of governments but rather that of individuals.

In any event, concerns that the presence of NGOs would somehow undermine the WTO's internal logic as an intergovernmental agency miss the point. There is no need to give NGOs a vote at the WTO. Simply by participating in debates and observing WTO goings-on they would strengthen the information flow in and out of the organization.

Representativeness and accountability

A further set of concerns about the role of NGOs in the WTO relates to questions about their accountability and representativeness. Who are NGOs speaking for? How do we know who they really represent? To which groups should WTO officials listen? How do we know the things NGOs say are true?

Concerns about NGO accountability seem legitimate but are, in fact, a red herring. It does not matter how representative NGOs are or to whom they are accountable. NGOs do not purport to *represent* citizens in the same way governments do. Their influence does not derive from being able to cast a vote but arises almost entirely as a function of whether or not the issues and information they present illuminate the issue at hand. There is therefore no need for any external discipline to ensure the accountability of NGOs. A natural market will do the job. In particular, NGOs that present useful information in one set of meetings will find themselves listened to in the next. Groups that present foolish ideas or develop a reputation for presenting inaccurate data or incomplete information will not be taken seriously in future rounds of debate. Perhaps the WTO would need some modest degree of authority over NGOs to ensure that only groups that act within the decorum of the organization (do not conduct demonstrations within the walls of the WTO or abuse their rights of access to decision makers) continue to have the opportunity to participate in the WTO decision processes, but nothing more extensive would be required.

There is a further level of concern about the kinds of groups that might choose to participate in the WTO process. In particular, some Southern governments are worried that Northern NGOs would be more likely to join the WTO debate and further aggravate the political imbalance that already exists between the North and the South.⁴³ This fear is also misplaced. Although a significant number of the NGOs that would participate in WTO decision processes would be from developed countries, most of them would not be supporting the positions taken by Northern governments. Indeed, recent experience suggests that Northern NGOs at the WTO would more often support Southern governments' perspectives than those of their own governments. Furthermore, as the cost of information and international communications falls, it will be ever easier for NGOs,

wherever they might be located, to participate in WTO debates. And, increasingly, it is not physical presence that matters but rather the quality of the arguments that one advances. Solid logic presented by e-mail will almost always prevail over the loudest shouts of an on-the-scene lobbyist. In the Information Age, Southern NGOs will have no trouble being heard alongside their more established Northern counterparts.

Practicalities

Some of the worries about the role of NGOs at the WTO centre on the practical difficulties of accrediting and organizing NGO participation. How would the WTO determine which groups actually qualify as NGOs? Who would allocate the right to speak in particular meetings? Would not the already limited time available to government participants in open meetings be further diluted? Would the presence of NGOs reduce the candour of those who speak at WTO meetings? Some of these concerns do represent real issues, but none of the practicalities of NGO participation in the WTO decision-making processes represents a serious obstacle to outreach to civil society.

NGOs are already participating in a great number of international organizations and decision processes.⁴⁴ They have been accredited within the United Nations in New York for many years. Similarly, NGOs have played a role in all of the recent major international environmental negotiations.⁴⁵ And the Organization for Economic Cooperation and Development in Paris has increasingly found NGO participation in its deliberations to be constructive and not especially burdensome.

Whatever the expense of reaching out to NGOs, the WTO would find that the costs are more than justified by the benefits. With a relatively small staff devoted to outreach and a few simple procedural reforms, the WTO could easily make itself accessible to NGOs under most conditions. The link to civil society would quickly prove to be invaluable.

5. Differentiated WTO roles

It may make sense to vary the privileges extended to NGOs depending on the particular WTO activity involved. For instance, the arguments for allowing NGO observers to participate in WTO dispute settlement

procedures are overwhelming. Having NGOs watch the proceedings when parties give evidence to dispute panels and providing them access to written submissions would go a great distance towards dispelling fears about who is making decisions at the WTO and on what basis.

The Uruguay Round Dispute Settlement Understanding moves the WTO dispute resolution process solidly in the direction of more formal adjudication (GATT 1994). Opening the proceedings to non-governmental observers would be a useful additional step, at no risk to the integrity of the process. Indeed, it is hard to imagine how the presence of NGOs would distort the outcome of the panel process, except that governments could not say one thing to the panellists and something else publicly. To the extent that governments want to negotiate solutions to disputes privately, they would, of course, continue to be free to do so. That the WTO dispute resolution process would no longer be available as a forum for such discussions is of little consequence. All of the governments at the WTO know how to set up private intergovernmental meetings.

The practicalities of assigning seats in the audience for panel hearings represent an inconsequential administrative burden. Limited space might be allocated by lottery or given in turn to accredited NGOs. I would envision an accreditation process that gives WTO access to all non-governmental groups that agreed to abide by the WTO's rules and procedures. Any group that created a disruption could be, and should be, barred from future WTO access.

Allowing NGOs to make submissions to the panels would also be constructive. In many cases, WTO dispute panels would benefit from having outside views available. In cases where the scope of a case goes beyond the boundaries of trade law, when environmental questions or other scientific and technical issues are at play, for example, non-governmental viewpoints may be especially illuminating. Not only would NGO submissions thus be available to provide competing data, science, risk or cost-benefit analyses, and policy conclusions that would broaden the information base on which the panel could rely, but the NGO participation in the decision process would also help to legitimize the panel's decision and broaden public acceptance of the outcome.

If rules prohibiting *ex parte* contacts with panel members were in place and all submissions were required to be in writing and open to scrutiny

and rebuttal, the risk of manipulation by special interests is virtually non-existent. WTO decisions would rely on NGO submissions only to the extent that the arguments and information presented assisted the members of the dispute panel with their analyses. The administrative burden would be easy to manage through page limits, form requirements, and the provision of legal assistants to the panellists in any case in which the outside submissions were large in number.⁴⁶

Defining the bounds of NGO participation in WTO policy development, review, and rule-making activities would require a somewhat more complicated structure. With respect to formal meetings such as the General Council or to the sessions of subgroups such as the Committee on Trade and Environment, allowing NGO observers might broaden public understanding of the work of the WTO. If NGOs were permitted to watch the proceedings, they could, with their networks of contacts, help to disseminate information on policy issues under discussion. If they were given (carefully circumscribed) opportunities to present material, they could also add to the knowledge base of the WTO Secretariat and of governmental officials participating in the work of the WTO.

The risk of outcome manipulation by special interests is not especially serious in the course of *formal* meetings. The fact that information must be presented publicly, that records are kept on what is said, and that any material offered is open to scrutiny and debate minimizes the risk of inappropriate influence being exerted. The real danger of special interest distortion comes from *informal* contacts and private meetings. Of course, lobbying of the WTO staff or national representatives by special interests occurs today. Establishing formal roles for NGO participation in WTO activities would not add to, and might even diminish, the risk of inappropriate pressure in informal settings. In particular, if formal procedures for the airing of NGO views were in place, WTO officials could steer those seeking to meet with them privately toward these public sessions where attempts to win special favours would be more difficult.

The opening of formal WTO meetings to NGOs also might present an opportunity to introduce lobbying disclosure requirements that mandate public reporting of all informal contacts between NGOs (including business as well as public interest groups) and WTO officials.⁴⁷ At the same time, rules on gifts to officials might be put in place. As the WTO matures into a more important element of our global governance struc-

ture, it is reasonable to expect that it will have to adopt operating procedures that improve the transparency and perceived fairness of its decision processes.

In any case, the salient fact is that excluding NGOs from the WTO does not shelter the organization from special interest manipulation. Likewise, establishing a formal role for NGOs within the WTO creates no *additional* risk of protectionist results. Thus, the argument that excluding NGOs from formal meetings creates a useful “buffer” between decision makers and special interest groups has no foundation whatsoever.⁴⁸

Actual trade negotiations remain a fundamentally government-to-government bargaining process and thus present the strongest case for a measure of secrecy and exclusion of NGOs. Given the complexity of making trade deals and the added degree of difficulty that open negotiations would entail, WTO mandates on NGO involvement in negotiating sessions would be misguided. Whether national authorities want to share their negotiating positions and strategies with non-governmental entities must be left to each country individually. Although many countries have found it useful to consult with interested parties in the course of negotiations,⁴⁹ whether and how such discussions take place should remain a matter of national policy.

6. Conclusion

The WTO is emerging as a critical element of the world's governance structure. As the international body charged with managing economic interdependence, the WTO cannot help but make decisions that affect a great many other policy realms. In doing so, the WTO must show sensitivity to the concerns and values that are reflected by these other domains. To win ongoing public support, the WTO must attend scrupulously to its representativeness, authoritativeness, and reputation for fairness. At stake is nothing less than the organization's legitimacy. Broadening the base of its connections to the citizens of the world through NGOs represents an important step forward for the organization. Indeed, the future of the WTO can hardly be envisioned without a broader set of connections to civil society.

Acknowledgements

This article builds upon and draws on Daniel C. Esty, "Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion," *Journal of International Economic Law* 1, 1998, 123–147.

Notes

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7. Paul Wapner, "Governance in Global Civil Society," in Oran Young, ed., *Global Governance: Drawing Insights from the Environmental Experience*, Cambridge, MA: MIT Press, 1997, pp. 133–167.
8. Many NGOs are ideally situated to play this dissemination role insofar as they produce regular newsletters and devote significant resources to outreach. They thus have direct connections to millions of individuals with whom government officials have no easy method of contact.
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