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Abstract

The paper examines new opportunities within the World Trade Organisation (WTO) for the representation of transnational environmental concerns by non-governmental organisations (NGOs). Even prior to the Seattle protests in 1999, social movement pressure had prompted the WTO to increase its engagement with civil society groups, but this communication has deepened since 2001: it includes the de-restriction of documents, access to ministerial meetings, and the facilitation of NGO-oriented symposia and briefings. A survey of NGO participants in recent WTO environment briefings reveals shared goals for institutionalising civil society input. The feasibility and legitimacy of these proposed accountability gains are discussed.

Introduction

The Doha Declaration, agreed in November 2001 at the fourth Ministerial Conference of the World Trade Organisation (WTO), launched the current round of global trade negotiations.[1] Such a renewal of the trade liberalisation project – one with ambitious market access goals across key trade and services sectors – would have seemed inconceivable to anyone observing the street battles in Seattle two years earlier at the third WTO ministerial meeting. Yet the Doha Declaration was at least partly cognisant of the political realities represented by a decade of growing protests from anti-globalisation activists and non-governmental organisation (NGO) coalitions [*Williams and Ford, 1999; Weber, 2001*]. In the face of very public challenges to its democratic legitimacy as an intergovernmental organisation, the WTO flagged up a Doha Development Agenda geared, it was claimed, to facilitating the substantial welfare gains to developing countries that would flow from dismantling trade-distorting subsidies and other protectionist barriers in industrialised countries. Not only did the Doha Declaration also reaffirm the commitment to sustainable development embedded in the 1994 (Marrakesh) Agreement Establishing the World Trade Organisation, stressing the compatibility between environmental protection goals and open, non-discriminatory trade rules, it also contained a pledge to make the WTO's operations more transparent, entailing increased access to information and improved public dialogue. For the WTO the Seattle syndrome had been exorcised and the organisation was back in business [*World Trade Organisation, 2001; 2002: 3*].

However, political tensions remain over the incorporation of environmental (and social) concerns into the negotiations and rulings of the WTO.[2] Developing countries now comprise two-thirds of the WTO membership and are generally unsympathetic to the efforts of leading industrialised states, supported by environmental NGOs, to address at the WTO the ecological implications of international trade rules. At the same time, the significant political influence of NGO environmental constituencies within these states (notably the European Union countries) is evident in the Doha commitment of WTO member governments to launch formal negotiations on the relationships between trade rules and international environmental law. To be sure, these negotiations include the trade consequences *of*

environmental measures, where the geopolitical alignment of member state positions has been less predictable, varying according to the measure in question and the national export interests at stake. There is also no simple correspondence between member state grievances and environmental concerns at the level of the WTO enforcement regime – its compulsory dispute settlement mechanism – where several high-profile cases have exposed competing claims over whether the unilateral use of import restrictions for environmental protection ends is legitimate under international trade law. What is clear, though, is that as the ecological impacts of economic integration receive increasing regulatory attention from states, there is an ever more pressing need for agreement over which environmental constraints, if any, can justifiably impinge on trade rule-making.

This paper examines the new opportunities within the WTO for the representation of transnational environmental interests by NGOs. Even prior to Seattle, environmental social movement pressure had prompted the WTO to increase its engagement with civil society groups [*O'Brien et al., 1999: 134-53; Scholte et al., 1999*], but this communication has been deepened since 2001: it includes the de-restriction of documents, access to ministerial meetings, occasional meetings with the Director-General, and the facilitation of NGO-oriented symposia and briefings. Following a brief description of the key environmental provisions within the world trade system, I examine the new opportunities for environmental NGOs to interact with the WTO. Particular attention is directed at the 2002 NGO briefings on trade and environment, held at the organisation's centre in Geneva: their external relations rationale for the WTO Secretariat is clarified, while a survey of the NGO participants of these briefings reveals the motivations of those taking part and their assessments of these and other WTO efforts at civil society outreach beyond member states. Recent scholarship on WTO-civil society links has posited that there are structural limitations to inclusive, open dialogue with environmentalists [*Esty, 1999; Conca, 2000; Weber, 2001*]. The critical intent here is to identify whether the understandings of WTO public accountability, as revealed by the attendees of the briefings, point to shared goals for institutionalising NGO input. Along with questions about the political feasibility of these NGO recommendations, there are of course also issues about their legitimacy – would they promote a fairer representation of trade-related, cross-border ecological concerns?

Environmental Provisions Within the World Trade Regime

The WTO presides over a multilateral trading system of which the core international treaty is the General Agreement on Tariffs and Trade (GATT), as legally consolidated in 1994. Prior to this promulgation, the GATT had for half a century served as the focus for international tariff reduction efforts. Its durability and renewal under the WTO attests to the now global influence of neoclassical trade theory – in particular, the claim that the domestic economic benefits for states of trade liberalisation outweigh any negative adjustment costs from increased competition. Net economic gains are anticipated as domestic specialisation of production in areas of comparative advantage achieves, through increased efficiencies, globally competitive commodities. GATT 1994 obligations are informed, above all, by this theoretical understanding of free trade: at the heart of the trade system are the so-called non-discrimination principles of most-favoured-nation status (Article I) and national treatment provision (Article III). Their combined effect is to entrench in international law equality of treatment for globally traded products, such that contracting states agree to fair, open rules of economic interaction.

The generation of transboundary environmental degradation between and beyond countries subscribing to trade liberalisation constitutes a key challenge for WTO rule-making and adjudication. Insofar as economic activities within member states cause ecological damage beyond their national borders, and the affected publics are not compensated, the efficiency and welfare gains of trade liberalisation are compromised. As economic globalisation proceeds, increasing the scope and intensity of international trade, these external environmental costs can be expected to grow in the absence of coordinated policy responses; although their impacts vary according to the industrial sector, technologies and product characteristics involved [*Jones, 1998*]. There remains a lively discussion in the trade-environment literature about the impacts on competitiveness of measures to externalise (or internalise) environmental costs within and between countries. Evidence is inconclusive concerning, for example, whether trade liberalisation promotes a ‘race to the bottom’ in environmental standard-setting as polluting industries seek out jurisdictions with low compliance costs, or whether concerns about competitiveness can stall or defeat

proposed national environmental regulations [*e.g., Nordstöm and Vaughn, 1999; Neumayer, 2001; Ulph, 2001*]. This theoretical indeterminacy about the shifts in comparative advantage provoked by transboundary environmental spillovers has heightened the political role of the WTO in interpreting 'environmental exceptions' to GATT trade rules.

Article XX of GATT, allowing conditional exceptions to GATT/WTO obligations, includes scope for member states to appeal to human, animal or plant health and natural resource conservation reasons. This 'general exceptions' provision reflects an attempt to balance the sovereign rights of states to prescribe national standards affecting trade with the need to safeguard the free trade principle. A strict burden of proof imposed on any party asserting an Article XX exception is reinforced by a 'chapeau' (qualifying clause), whereby the proposed trade-restrictive measures are illegal if they are applied in a manner constituting 'arbitrary' or 'unjustifiable' discrimination between countries where the same conditions apply, or act as a 'disguised restriction on international trade'. These qualifications have proved onerous for states defending environmental exceptions before the compulsory, binding Dispute Settlement Body (DSB) of the WTO, comprising independent adjudication panels and an Appellate Body. Not until a 2000 panel ruling on a French ban of asbestos imports from Canada, as necessary to protecting human life or health, has an environment-related trade restriction under Article XX been accepted.[3] Additional rules on environmental standard-setting within the GATT/WTO regime, sharing the non-discriminatory intent of Article XX, are provided under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). Both pertain to product standards and have generated several high-profile disagreements between WTO member states; for example, the SPS dispute over EU import bans on US beef products treated with growth hormones and the combined US/Canadian opposition to EU proposals to label genetically modified foods, alleging a violation of the equal treatment provisions of the TBT agreement.

From WTO dispute settlement adjudication on Article XX exceptions, the key pronouncement on trade sanctions oriented to non-domestic environmental impacts is set out by two appellate body decisions in 1998 and 2001 on the legality of a US

import prohibition of shrimp products from countries without certifiable means for reducing the incidental mortality of endangered sea turtles in their commercial shrimp trawling.[4] Until these rulings, it was accepted that trade measures under GATT Article XX with environmental protection objectives could be justifiable only within the jurisdictional boundaries of the implementing state. Lives or resources affected by environmental harm outside the country imposing the trade barrier could not legitimately be the basis for exceptions to Article XX: to do so would seemingly breach the *territoriality principle* – that the sovereign right of states to protect their populations against the threat or incidence of trade-related harm is respected, but that this right has no extra-territorial reach [*Mattoo and Mavroidis, 1997: 329-32; Byron, 2001: 31-34*]. The ruling out of (unilateral) state trade sanctions invoking Article XX to achieve environmental protection beyond national jurisdiction was taken to be an enduring lesson from the well-known, but unadopted, GATT panel rulings in the 1990s against US embargoes on tuna imports from countries allowing fishing practices killing large numbers of dolphins. However, as Schoenbaum [*2002: 707-13*] notes, the *Shrimp-Turtle* rulings of the Appellate Body upheld the right of WTO member states to employ trade restrictions to protect environmental resources *beyond national jurisdiction*, provided that they had already undertaken good faith efforts to reach a negotiated environmental agreement with the relevant trading states.

It is instructive that the most significant clarification of WTO environmental obligations has arisen from the decisions of the DSB panels and Appellate Body. Even though the WTO Agreement restricts exclusive authority in interpreting GATT 1994 to the majority decisions of the Ministerial Conference and General Council, and DSB rulings are treated as imposing no binding precedents on future disputes, legal commentators have argued that it is inevitable that, as the body of decisions builds, previous decisions will hold influence on the judgments of future panels [*Cameron and Gray, 2001: 272-76*]. In contrast to the evolving interpretation of trade-environmental obligations within the dispute settlement system, the WTO body charged with exploring these linkages – the Committee on Trade and Environment (CTE) has made slow progress. Created in 1994, the CTE serves as the forum for member states to address the relationship between trade and environmental measures, with a view to determining whether rule changes are required in the multilateral trading system to enhance their positive interaction. The lack of substantive

agreement in the CTE on trade-environment measures is largely attributable to divergent state priorities and positions, most notably between industrialised countries sympathetic to environmental regulations impinging on trade and developing countries fearful of a discriminatory 'green protectionism' excluding their exports from lucrative overseas markets [*Olsen et al., 2001; Shaffer, 2001*].

A renewed mandate for the CTE was provided by the Doha Ministerial Declaration, introducing the first formal negotiations between WTO member states on environmental issues. Initial discussions, launched in March 2002, have centred on paragraph 31 of the declaration:

(i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question.

(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;

(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

In two accompanying paragraphs on trade and environment, the CTE is instructed to retain its previous focus on the effect of environmental measures on market access, but to pay attention to the priorities of developing countries, in particular the least-developed among them, including their needs for technical assistance and capacity building in the field of trade and environment.

During 2002 CTE talks were dominated by paragraph 31(i) and, even at the preparatory phase, soon exposed significant differences between states.[5] Inclusion of this topic had been a core European Community (EC) demand at Doha and, supported by Switzerland, Norway and Japan, the EC sought support for establishing general 'principles and parameters' on the relationship between WTO and MEA obligations.

This overarching approach was opposed by states - notably Australia, New Zealand and the US, along with most developing country delegates - sceptical of rule-making or interpretation likely to impose constraints on the WTO regime. The latter group proposed instead a 'bottom-up' approach, looking case-by-case at the specific trade obligations of relevant MEAs, thus protecting WTO rules from a more wide-ranging scrutiny according to international environmental law. When discussions in 2003 moved in this direction, it was agreed that the most relevant MEAs to scrutinise were those three already in force with mandatory trade measures – the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the 1989 Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal (Basel Convention), and the 1987 Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

World Trade Organisation Engagement with Environmental NGOs

The absence of consensus among member states about the nature of appropriate relations between the WTO and NGOs has coloured the organisation's stance in this area since 1994. Article V.2 of the Marrakesh Agreement is noncommittal:

> The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Guidelines for conducting these relations with NGOs were not issued by the General Council until July 1996 [*World Trade Organisation, 1996*]. While these included improved public access to WTO documents and an instruction to the WTO Secretariat more actively to seek direct contacts with NGOs – through such mechanisms as symposia, meetings and briefings – the guidelines conveyed also the view of most member states that the distinctive trade treaty basis of the WTO precluded any basis for the direct involvement of NGOs in the work of the organisation. According to this view, the 'special character' of the WTO means that the *national* political procedures of member states are a more legitimate focus of NGO trade-oriented concerns and lobbying than the organisation itself – a stance Steve Charnovitz has labelled 'WTO

exceptionalism' [*2002: 32-25*] to distinguish it from the established norms of NGO participation found, for example, in United Nations organisations. Reinforcing this position, the commitment to increased WTO transparency and public dialogue in the Doha Declaration includes no specific invitation for NGO involvement.

However, according to WTO Secretariat officials, the exceptionalist charge shortchanges the real advances made in recent years in opening the organisation up to public scrutiny. For environmental NGOs, the key developments have been: de-restriction of documents, NGO symposia on trade and environment, NGO briefings on WTO council and committee work (notably the work of the CTE), and access to Ministerial Conferences.

De-restriction of Documents

In parallel with its decision in 1996 on relations with NGOs, the WTO General Council adopted procedures for the circulation and de-restriction of WTO documents, establishing the basic principle that most documents would be circulated as unrestricted. The bulk of the exceptions to this – including working documents, minutes of meetings of WTO committees and Ministerial Conference summary records – were considered for de-restriction after six months, although members retained the right to block public access for selected documents. It became apparent quite rapidly to NGOs that de-restriction was neither straightforward nor timely and calls were made to accelerate the process [*Bellman and Gerster, 1996*]. The General Council discussed such proposals in 1998, with Canada and the US subsequently championing a presumption of immediate de-restriction for most WTO documents, but developing countries proved reluctant to support this, perceiving that it would disproportionately benefit (global) northern lobbying groups – notably environmentalists and labour rights activists - at odds with their trade interests [*Loy, 2001; Shaffer, 2001: 67*]. After four years of discussions, the General Council reached a decision in May 2002 to accelerate de-restriction of official WTO documents, cutting the time period in which most documents are publicly made available to 6-12 weeks, and also reducing significantly the list of exceptions.

As part of its express intention to increase transparency in the functioning of the WTO, the General Council also decided to make available online, in all three

official WTO languages (English, French and Spanish), all de-restricted WTO documents. Since 1998 there has also been a special section of the WTO website dedicated to NGO issues: the website itself is heavily used, receiving about 600,000 user sessions a month in 2002 and has earned praise from media and NGO representatives. For example, the UK charity, One World Trust, has commended the WTO on its range of available online documents, highlighting the access to non-technical summaries of legal texts, the provision of detailed decision-making information, and a clear information disclosure policy [*Kovach et al., 2003: 15*]. While the Secretariat, due to staff constraints, proved unable to maintain the monthly online bulletin for NGOs launched in 2002, the gains here in organisational transparency of the WTO have been significant.

NGO Symposia on Trade and Environment

Under the 1996 General Council decision on relations with NGOs, the Secretariat has been allowed significant discretion to experiment with different modes of interaction, both informal and formal [*Werner, 2002*]. Perhaps the most high profile in the trade and environment area has been the organisation of Geneva-based symposia oriented to environmental NGOs and other interested non-state actors. A GATT symposium on trade, environment and sustainable development had been held in 1994, in response to an environmentalist backlash against a dispute settlement panel ruling on the tuna-dolphin US import controls: unsurprisingly, this symposium facilitated only a vocal expression of disquiet from the attending NGOs. In September 1996, the first WTO symposium with NGOs on trade and environment, attended by 35 NGOs, featured more constructive exchanges with the Secretariat [*O'Brien et al., 1999: 139*]. Nine months later, the number of NGOs attending a second symposium on trade and environment had doubled, with, significantly, the participation of developing country NGOs funded by the Australian, Canadian and Dutch governments. Since then, prompted by US and EC proposals, NGO input has been encouraged in more formal WTO symposia (including environment and development themes), featuring the participation also of member states and high-ranking representatives from other international organisations. Environmental NGOs have welcomed the opportunity to participate in these high-level symposia, although the Secretariat has, on request, carried on organising informal symposia and seminars dedicated to NGOs.[6]

WTO Secretariat Briefings for NGOs

The success of the trade-environment symposia, combined with European and US calls for increased WTO transparency, persuaded Director-General Renato Ruggiero to convene an internal taskforce in May 1998 to suggest ways of enhancing cooperation with civil society actors. As endorsed by the General Council, the key innovation to emerge from this taskforce was the creation of regular briefings for NGOs on the work of WTO committees and working groups. As the Secretariat already organised press briefings in Geneva, it was deemed to be both feasible and legitimate to extend this opportunity to relevant NGOs [*Marceau and Pedersen, 1999: 19-20*]. The first NGO briefing, in September 1998, was delivered to over 20 environment and development NGOs on the deliberations of the CTE, and briefings were soon rolled out to cover the activities other WTO committees. Given the significance of the Doha trade round, the Secretariat has, in addition to arranging briefings on regular meetings of WTO bodies, responded to strong interest in the special sessions mandated by the Doha Ministerial Declaration – briefing NGOs on the negotiations taking place in the Committee on Agriculture, the Committee on Trade and Development, the CTE and the Council for Trade in Services.

NGO briefings are organised by the External Relations Division – a relatively small division of the WTO Secretariat comprising one director and eight regular staff in 2002. In recent years, External Relations has become the focal point for NGO interactions with the WTO, and is charged with developing relationships with civil society groups (alongside liaison with international intergovernmental organisations and national legislative representatives). Initial NGO contacts with the CTE were facilitated by the WTO Trade and Environment Division, which organises the NGO symposia in this thematic area. However, in 1996 Director-General Ruggiero entrusted External Relations with coordinating transparency and NGO input activities across the WTO: subsequent Directors-General (Mike Moore 1999-2002; Supachai Pantichpakdi since 2002) have maintained this locus of NGO liaison responsibility within the Secretariat. As the briefings have become regularised, External Relations has experimented with other points of contact, from invited NGO seminars and position papers to occasional meetings with the Director-General.

NGO Attendance at WTO Ministerial Conferences

The first WTO Ministerial Conference, in December 1996 in Singapore, followed the publication of WTO guidelines for arrangements on relations with NGOs; but these guidelines contained no instructions on participation at ministerial meetings. Again, it was pressure coming from European and North American member states that prodded the General Council to mandate the Secretariat to coordinate civil society representation in Singapore. Lacking the legal template available to United Nations bodies for accrediting NGOs to participate in relevant conferences[7], the Secretariat invited NGO registration on the basis of Article V.2 of the Marrakech Agreement – that they were non-profit organisations 'concerned with matters related to those of the WTO'. In practice, the Secretariat sent registration forms to all 159 NGOs expressing an interest in attending the Singapore Ministerial Conference, almost all of which were accepted with 108 actually turning up (including 10 environment and/or development NGOs, in contrast to 48 business lobbying groups). The provision of an NGO centre at the meeting, with office and media facilities, was praised by the NGO attendees, and has become a regular feature of ministerial conferences. However, they also criticised their restriction as observers to plenary sessions, being excluded from the negotiations [*Marceau and Pedersen, 1999: 12-15; O'Brien et al., 1999: 92-97*]. With no support among WTO members for this type of NGO access, the organisation has maintained its strategy of truncated NGO involvement. Subsequent ministerial conferences in Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003) have, nevertheless, seen a gradual formalisation of NGO accreditation and an increasing number of registered NGOs. These include a growing number of environmental NGOs: interestingly, the high profile transnational groups and activist coalitions – e.g. Friends of the Earth International, Greenpeace International, International Forum on Globalisation, Third World Network – have all received recognition status at WTO ministerial meetings in spite of their challenges to the existing system of trade rule-making – challenges routinely aired by their supporters outside the meetings.

NGO Involvement in CTE Briefings: Reasons for Attendance and Assessments of WTO-Civil Society Relations

As the only routine locus of physical interaction between NGOs and the Secretariat in Geneva, the regular briefings on WTO work provide an opportunity to gauge the usefulness of this information access tool from the perspective of NGO participants, as well as their broader views on the openness of the organisation. The Doha negotiating agenda in trade and environment has heightened the significance of the CTE meetings and, in response to outside interest, the WTO Secretariat has maintained regular NGO briefings to report on the progress of member state discussions in this area (as well as developments in other WTO committees). In 2002 there were three briefings for interested NGOs on CTE meetings, centred on member state discussions of paragraph 31 of the Doha Declaration. The author attended, as an observer, the CTE briefings for NGOs in October and November.[8] In addition, the WTO External Relations Division consented to the author contacting relevant NGOs on their briefings mailing list, in order to undertake a short questionnaire survey. The questionnaire was designed to elicit from NGOs their reasons for attending the CTE briefings, their assessment of these meetings as an outreach tool, and their position on more general WTO-civil society relations, including attitudes on various recommendations for extending or formalising NGO participation in the WTO.

The questionnaire, which was administered in October-November 2002, was directed at all NGOs who had participated in the 2001-2002 CTE briefings on a regular or occasional basis, as registered with the WTO External Relations division.[9] It was sent to 30 NGOs, supported both by a letter from the author and a verbal invitation to participants at the CTE briefings in late 2002. 14 replies were received comprising 12 completed questionnaires (the non-complete replies comprised the Geneva Quaker mission, which declined to take part, and a private news organisation which excluded itself because of it for-profit status). Two questionnaires were from organisations that had almost entirely attended NGO briefings on other WTO committees, so their responses were taken into account only for the issue of general WTO-civil society relations. Ten questionnaires were CTE-relevant: these responses, completed on the basis of non-attribution of individual views and comments,

represent the bulk of the dozen regular attendees at the CTE briefing sessions in 2001-2002. They comprise five environment and development NGOs, two international business associations, an international trade union federation, a global faith alliance and a university law professor. With the exception of the trade union federation (based in France) and one environmental NGO (located elsewhere in Switzerland), all the respondents were from organisations with headquarters or offices in Geneva.

From the survey it is clear that NGOs are turning up at the WTO with the expectations that the briefings will provide important, up-to-date information on the state of play of negotiations within the CTE. Reasons for attendance prioritise the information dissemination function of the NGO briefings (mentioned by all respondents). However, the relatively one-way disclosure parameters of the briefings – receiving feedback from WTO Secretariat External Relations and Trade and Environment staff – does not preclude active use of the briefing time: NGOs make full use of opportunities for questions to ascertain the positions of particular member states, which are often not specified in the official reports of meetings. Questions are also used to convey views to Secretariat staff, pushing briefings in a more interactive direction, even if WTO staff are able only to express personal assessments in line with Secretariat norms of impartiality and confidentiality. Furthermore, three respondents also acknowledged the opportunity to network with other participants as a reason for attending the briefings: from personal observation, this side-benefit of participation is evident in the briefing room before and after the official business; and points to a circle of professional familiarity among the Geneva-based NGOs.

TABLE 1

NGO SATISFACTION WITH 2001-2002 WTO BRIEFINGS ON CTE NEGOTIATONS

Aspect of NGO Briefings on CTE	**Satisfied**	**Not satisfied**	**Don't know**
Advance notice of meetings	10		
Convenience of meeting times	10		
Usefulness of verbal reports on CTE negotiations	9	1	
Opportunities for questions to WTO representatives	8	1	1
Response of WTO representatives to questions	9	1	
Opportunity to talk to WTO CTE representatives	6	4	

Total: 10 responses.

Table 1, above, summarises from questionnaire replies the satisfaction of NGO participants with various aspects of the 2001-2002 briefings. The organisation of the briefings, in terms of advance notice to interested parties and meeting times (during office hours), finds favour with all respondents. Of course, the modest information dissemination function of the briefings means that the regular attendees are those transnational NGOs locally or regionally located, and hence unlikely to face significant scheduling problems; although the clustering of international organisations in Geneva results in numerous environmental and trade-related NGOs already being based there (whether there is an inherent northern bias here is discussed in the next section). As far as the content of the NGO briefings is concerned, there is widespread satisfaction with the usefulness of the verbal reports from WTO Secretariat staff on the work of the CTE – this being the core function of this liaison tool. Both direct observations of the author and survey results attest both to time being made available for Secretariat staff to receive all questions and also the genuine efforts made by them to answer as thoroughly as possible. The only significant source of NGO disquiet – albeit still a minority one – is that there is insufficient opportunity during or after briefings to consult WTO Secretariat staff servicing the CTE. Two respondents (both

environmental NGO representatives) registered a separate concern that the member state representative chairing the CTE had not attended briefings, even though provision is made in the 1996 General Council guidelines for WTO-NGO relations that chairpersons can participate in briefings in a personal capacity (and have done so for briefings on other WTO committees).

Not surprisingly, when prompted to make any recommendations for change in the organisation or delivery of the NGO briefings, these two respondents suggested formal opportunities to interact with the CTE Chair and/or other member state representatives active in the work of that committee. Another environmental NGO recommended that time and space should be made available after the briefings for participants to consult WTO Secretariat staff on a bilateral basis – a proposal that stretches beyond the terms of reference for the meetings, signifying a desire for more formal WTO-NGO consultative relations. A fourth environmental NGO representative, who had expressed the sole note of dissatisfaction with the response of the Secretariat staff to participant questions in the briefings, wanted a more detailed account of member state positions during CTE discussions, including some analysis both of their development and their purchase on other state parties. However, most of the participants of the briefings were satisfied with the organisation and content of the meetings: both international business federations and the global faith alliance expressed a preference for no change. The only remaining respondent with reform proposals was the university law professor who stated that there should also be briefings on environmental discussions in other WTO committees and councils, noting that these forums – e.g. the SPS, TBT, Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Trade Negotiating Committee – were more important in world trade rule-making than the CTE.

During recent years, commentators [*e.g. Scholte et al., 1999; Olsen et al., 1999; Charnovitz, 2002*], alongside environment and development NGOs [*e.g. Greenpeace International, 2002; Oxfam, 2002*], have put forward various suggestions for opening up the WTO to public scrutiny and increased NGO participation. Ten of the most prominent reform recommendations were distilled from this literature and included in the questionnaire to NGO briefing attendees: Table 2, below, summarises their responses.

TABLE 2

NGOS' POSITIONS ON WTO-CIVIL SOCIETY RELATIONS

Statement on WTO-Civil Society Relations	**Strongly support**	**Support**	**Don't support**	**Don't know**
The current level of public access to WTO documents is satisfactory	1	2	9	
There needs to be further de-restriction of WTO documents for public access	7	4	1	
There should be regular WTO meetings with NGOs on trade and environment issues	9	3		
There should be a permanent WTO-civil society liaison group	5	4	2	1
NGOs formally liasing with the WTO should be internationally accredited	5	5	1	1
There should be observer status for recognised NGOs on WTO committees	9	1	2	
NGOs should have a right to submit briefs to WTO dispute settlement hearings	8	3	1	
There should be regular WTO regional symposia with relevant civil society actors	6	5	1	
Southern NGOs should be supported by WTO members to attend Geneva briefings/symposia	9	2	1	
The WTO should be a permanent member of the UN Non-Governmental Liaison Service	4	2	1	5

Total: 12 responses.

While it is not unexpected to find NGOs supporting measures that would increase their access to WTO documentation and meetings, the table records some

notable differences in emphasis. The majority of respondent NGOs are clearly in favour of further de-restriction of WTO documents – a preference even more pronounced for the environmental NGOs, as the respondents in favour of the status quo include both transnational business associations. Registering the strongest intensity of support from briefing attendees are those proposals related to facilitating greater NGO participation in existing WTO decision-making – regular meetings with NGOs on trade and environment issues, the conferral of observer status for recognised NGOs at WTO committee meetings, and the right of NGOs to submit briefs to WTO dispute settlement hearings. Perhaps in realisation of the current practical bias at briefings in favour of European-based NGOs, strong aggregate approval is expressed (with the exception of a business federation) for enabling southern NGOs to attend WTO briefings and symposia in Geneva. This concern to ensure more equitable geographical inclusion of relevant non-state interests is reinforced by significant (though less strong) support for making routine the WTO regional symposia with civil society actors. Increasing NGO interest in engaging with the WTO centrally has prompted the organisation's Secretariat to consider ways of formalising their input, while retaining the valued flexibility of existing arrangements. Both the idea of a permanent WTO-global civil society liaison group and accreditation of transnational NGOs are being actively considered [*Werner, 2002*]. Responses to the questionnaire indicate majority endorsement for both, although one environmental NGO is opposed to the former proposal. The only option where no majority preference is expressed is the suggestion that the WTO join the United Nations Non-Governmental Liaison Service: the five 'don't knows' here suggest the need in the questionnaire to have clarified the nature of such involvement, which is perhaps more accurately captured by the idea of sponsorship than formal membership.

Finally, the questionnaire invited respondents to offer any further suggestions for strengthening WTO-civil society relations. Three of the environmental NGOs made overlapping observations – registering satisfaction with the progress achieved in the past few years by the WTO in fostering improved central access for civil society groupings, but noting that there now needs to be an 'institutionalisation' or 'mainstreaming' of these links. There is also the charge that the WTO propensity for discretionary relations with NGOs has allowed the Secretariat to select non-state participants for technical trade meetings on a private and partial basis - for example:

> NGOs should be allowed to attend the WTO's technical seminars and symposia for members, e.g. the WTO is holding a two day seminar on investment – a topic of crucial importance for NGOs; nevertheless, an NGO representative asking to participate was refused access. This has happened on several occasions. On other occasions, some NGO representatives were allowed in on an informal, ad hoc and individual/personal basis.

Interestingly, there is a convergence between environmental NGOs and transnational business associations on the need to build up trade policy dialogue within civil society at the national level. However, whereas for the former this is one of various scales admitting interest representation, for the latter it is the only appropriate forum. As articulated by one of the business associations:

> Such [WTO-civil society] relations should not be formalised but nurtured at a national level between the public/private sectors and NGOs. Otherwise, a parallel structure seeking input into the WTO is created that has neither a legitimate, coherent knowledge base nor a meaningful mandate. At the level of the WTO such input could be provided sensibly only by its members.

This last point raises the critical issue of the legitimacy of NGOs representing transnational environmental interests in WTO rule-making and enforcement. How can moves to formalise WTO-civil society relations be seen more openly and fairly to address cross-border environmental impacts attributable to international trade policy? In other words, we need to consider now the potential role within the WTO for new norms of accountability for transnational environmental harm – and how these would be applied.

WTO Rule-Making and Cross-Border Environmental Harm: New Norms of Accountability?

As relayed in the questionnaire survey above, the expectation of NGOs that the WTO should accelerate opportunities for the representation and communication of environmental interests raises the prospect of applying new accountability norms to

the organisation. The WTO is accountable in principle to its member governments and thereby indirectly to the national publics represented by these states - each of which has sovereign equality in international law. NGO calls for environmental accountability of WTO policy decisions carry the claim that the ecological consequences of trade rule-making impact beyond as well as between national territories (e.g. on the global atmosphere and the high seas), and that these consequences are systemic. Both the extra-territorial reach and routine production of environmental externalities promoted by current trade rules, it is argued, warrant the representation of damaged communities by NGOs on the basis of their expertise and moral commitment to prevent ecological damage. If by transnational environmental accountability, we mean mechanisms of public answerability and redress against responsible actors for significant environmental harms involuntarily received then it would have to be demonstrated that these mechanisms are needed in WTO rule-making. Schematically, this can be discussed according to the accountability norms of environmental harm prevention, the legitimate inclusion of affected parties, and the impartial consideration of environmental claims [*Mason, 2001; Renn and Klinke, 2001*].

Prevention of Environmental Damage

The obligation on states to prevent damage to the environment of other states or areas beyond the limits of national jurisdiction is of course now a widely accepted norm in international law. It is articulated in the Stockholm and Rio Declarations, several international judicial or arbitral decisions, and numerous MEAs [*Birnie and Boyle, 2002: 109ff*]. With the preamble to the Marrakech Agreement and the restated commitment to environmental protection (and sustainable development) in the Doha Declaration, the obligation to prevent transboundary or global environmental damage is, at least in principle, one internal to the aims of the WTO. The accountability challenge to the WTO presented by environmental NGOs is that the organisation is not addressing the harmful ecological consequences arising from its rule-making and enforcement, which run counter to its environmental protection commitment. Above all, the key GATT/WTO principle of non-discrimination undermines, it is claimed, the efforts of countries to employ trade measures against imports produced in an ecologically unsustainable manner. Furthermore, in performance of their role arbitrating trade disputes over conflicting national TBT and SPS standards, WTO

dispute settlement panels are charged by environmentalists with making or endorsing environmental risk assessments in a closed, ill-equipped manner [see *Byron, 2001*].

The recent preoccupation of the CTE with the relationship between WTO rules and specific trade measures in MEAs attests to concerns that there are international ecological obligations existing in potential conflict with trade rules. Under a restrictive legal definition of specific trade obligations promoted within the CTE by the US, Canada and India, WTO-incompatibility is a possibility for three MEAs already in force (CITES, the Basel Convention and the Montreal Protocol) and a prospective problem for three others still to enter force (the 1998 Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the 2000 Cartagena Protocol on Biosafety, and the 2001 Stockholm Convention on Persistent Organic Pollutants).[10] The move by the WTO in 2003 to confer *ad hoc* observer status on relevant MEA Secretariats at CTE meetings signifies an acknowledgement of their legal and technical authority in representing particular transnational environmental interests, although the EC push to extend this involvement to other negotiating committees has not found favour among WTO member states. It is certainly evident from the regular information exchange and meetings between MEA Secretariats and the WTO Secretariat that existing cooperation is valued by all parties and, even with legal uncertainties remaining over rule compatibilities, this is enhancing perceptions of mutual trust [*World Trade Organisation Committee on Trade and Environment, 2002*]. As environmental NGOs remain excluded from the CTE itself, the MEA Secretariats are seen as the most promising channel to communicate ecological concerns over WTO rules; after all, these NGOs are typically a core constituency of political support for MEAs outside contracting states. However, the strict remit of the CTE prevents a more fundamental interrogation of WTO accountability for the ecological consequences of trade rule-making. And the MEA Secretariats themselves have stated that while observer status in WTO negotiations is important, and real tensions remain over formalising this, the priority is convincing national trade representatives at the WTO – both industrialised and developing states – of the need to embed environmental protection norms in trade negotiations [*Abaza, 2002; Zedan, 2002*].

A key claim of transnational environmental groups is that policies designed to prevent ecological harm from material trade flows cannot be legitimately recognised by the WTO as long as the precautionary principle is not explicitly incorporated into trade rule-making [*e.g. Friends of the Earth International, 2002; Greenpeace International, 2002*]. The charge that precautionary norms are discounted by the WTO finds support, it is argued, in a 1998 ruling of the Appellate Body, stating that the EC violated the SPS Agreement by banning imports from the US of beef treated with growth-promoting hormones. Crucially, the dispute settlement body struck down the EC argument that the trade barrier was justified on precautionary grounds, on account of purported health risks. To be sure, it noted that the precautionary principle finds reflection in Article 5.7 of the SPS Agreement: but pulled the EC up for failing to conduct a required scientific risk assessment.[11] However, for environmental NGOS this confirmed an unwillingness of the WTO to acknowledge the precautionary principle as a customary rule of international environmental law [*e.g. Friends of the Earth International, 2001*].

Inclusion of Affected Non-National Publics

The inclusion of the concerns of citizens in decisions significantly affecting them is a core principle of political legitimacy in liberal democratic states. By maintaining that member states remain the only legitimate bodies for representing relevant interests in trade rule-making and enforcement, the WTO is running against the grain of the trend in global governance to admit at least the arguments of non-state actors – NGOs, activist networks, epistemic communities, etc. Robert Howse [*2002: 114-15*] notes that these types of actors present a particular challenge for the WTO at the transnational level, where the third-party effects of trade policy-making routinely extend beyond national borders; and, crucially, where domestic political systems often fail to register transnational ecological and social impacts. The continuing WTO reliance on the indirect representation of public values through member governments, he argues, seems incapable of working effectively toward mutual understanding of trade-related externalities. For the communication of environmental interests and values, NGOs and activist networks claim to expose the full ecological impacts of trade policy – e.g. the external sink costs associated with climate change not included in the pricing, use and international trade of fossil fuels [*Greenpeace, 2002: 2*]. The democratic legitimacy of including environmentalist voices rests on their authority as

'intellectual competitors' – that is, the veracity of their claims to represent otherwise unacknowledged trade impacts on valued ecosystem goods and services [*Esty, 1999*].

Without doubt, the recent moves to greater transparency in WTO decision-making have certainly improved the capacity of environmental NGOs to scrutinise its work and publicly communicate their concerns. Trade and environment issues have been at the centre of tentative innovations in civil society interaction – notably the NGO symposia and briefings, while it has also been shown above that NGO participants of the CTE briefings have an appetite for more institutionalised involvement in WTO business. Perhaps the most realistic focus for the next step in evolving WTO-NGO relations is the creation of an NGO Advisory Committee, which is already under consideration by the WTO Secretariat. Director-General Panitchpakdi has endorsed the recent work of the WTO Secretariat in building up civil society links and has expressed a preference for more regular NGO exchanges. However, there remains the firm position that the appropriate target for NGO lobbying is member states rather than the WTO itself. The granting of observer status for environmental NGOs at the CTE seems unlikely and certainly ruled out of the key trade negotiation and policy review bodies. This stance has become more secure within the General Council with a clear shift in the US position on NGO participation in the WTO – the Bush administration reversing the Clinton-led initiative to encourage more NGO involvement in the work of the organisation.

While dispute resolution within the WTO remains a purely interstate mechanism, in practice private groups alleging economic injury arising from trade restrictions frequently lobby their national trade representatives to initiate litigation. Not surprisingly, member states – particularly powerful ones – have not hesitated to defend the interests of domestic industrial and commercial constituencies, even if wider geopolitical calculations impinge on the timing and nature of legal proceedings [*Keohane et al., 2000: 486-87*]. State-controlled access to WTO dispute resolution acts as a significant constraint on the inclusion of issues not easily translatable into national economic interests. Yet transnational NGOs have found encouragement in the occasional recourse of dispute settlement panels to *amicus curiae* (friend of the court) briefs as a legitimate input into their deliberations. Provision for panels to seek information from any relevant source, and to consult appropriate experts, is enabled

by the dispute settlement understanding annexed to the Marrakech agreement (Article 13.2). However, it was the 1998 *Shrimp-Turtle* ruling of the Appellate Body that interpreted this provision to include the right of dispute settlement bodies to solicit briefs from NGOs, and also to accept non-requested submissions from them. As this case involved the submission of three environmental NGOs, and entailed extra-territorial trade and environment effects, it holds particular relevance for the ability of NGOs to represent collective ecological values. Since this and other supportive rulings on NGO briefs, numerous developing country members at the WTO have expressed criticism of the practice, fearing an additional source of legal leverage against them by well-resourced environment and development NGOs [*Charnovitz, 2002: 344-52*]. This disquiet has been made vocal during the Doha dispute settlement review and, until these fears can be allayed, the strong support in the above survey for formalising a right for NGOs to submit such briefs will not find enough political support among WTO member states to realise.[12]

Impartial Consideration of Transnational Environmental Claims

Impartiality as an accountability norm denotes that decisions in the 'public interest' are those which can be accepted by all affected parties as reasonable according to even-handed procedures and the avoidance of unjust distributive outcomes. Thomas Franck [*1995*] has identified an emerging fairness discourse in international law and institutions, linked to the widening embrace by state actors of impartial standards in global governance. Despite the pervasive presence of power-based motives in international negotiations, there is evidence of such fairness dialogue having some purchase in both multilateral trade and environment rule-making. The core principles of the GATT/WTO regime – sovereign equality, consensus decision-making, non-discrimination, special and differential treatment for developing countries – inform WTO claims to even-handed trade governance [*Albin, 2001: 100-40*]. And international environmental agreements covering ozone depletion, climate change, transboundary air pollution, the high seas and Antarctica share, alongside the sovereign equality and consensual decision-making principles of the trade regime, redistributive notions of differentiated environmental responsibilities, technological-financial transfers to developing countries, and the equitable allocation of common resources [*Franck, 1995: 380-412; Albin, 2001: 54-99*]. The 'fairness overlap' between the trade and environmental governance domains questions the stance of

WTO exceptionalism in addressing trade-related ecological matters. In order to further the impartial consideration of transnational environmental interests in WTO policy and judicial forums, it suggests the need to formalise opportunities for environmental NGOs to make regular representations to the relevant bodies and also legally to embed ecological protection provisions in GATT/WTO rules.

It is widely acknowledged that, in spite of recent moves to increase transparency in the WTO, trade rule-making is still secretive – particularly in relation to comprehensive 'single undertaking' negotiations, such as the current Doha Round, where proposals are presented in an 'all-or-nothing' framework package for member states. The single undertaking approach, first employed by the US and EC in the early 1990s to pressure developing countries to accept new trade obligations under the Uruguay Round, has been argued to favour the exercise of power-based bargaining by leading industrialised countries under the cloak of consensus decision-making [*Steinberg, 2002: 359-65; Lynas, 2003*]. Allowing transnational NGOs access as observers to trade negotiating rooms is forecast to advance impartiality by enabling them to monitor the behaviour of national representatives [*Howse, 2002: 107*], publicly inviting these states to consider the possible cross-border ecological effects of their proposals. In this way, also, the means by which producer or corporate lobbyists attempt to monopolise national negotiating positions become more transparent. Alongside, the other reforms in WTO-civil society relations discussed above, this enhanced NGO participation anticipates a fairer consideration of environmental concerns in trade rule-making.

For this to be realised, a necessary condition is that the authority of key international environmental agreements is explicitly recognised in WTO law. One promising suggestion is the introduction of an MEA exception clause in a renegotiated GATT, stating explicitly which obligations with potential WTO inconsistency are exempted from GATT/WTO rules, and providing a decision-making rule for adding others [*Neumayer, 2001: 177-80*]. Interestingly, the evolution of dispute settlement case law may also support reinforcement of the influence of international environmental obligations on the basis of authoritative interpretations of Article XX exceptions. Here the Shrimp-Turtle Appellate Body decisions are important, given their acceptance that unilateral trade controls to achieve conservation

goals beyond national jurisdiction could be legitimate insofar as they are directed against states wilfully undermining those goals through their process and production methods [*Howse, 2002: 11-14*]. An acknowledgement of extra-territorial environmental impacts is even more reason to render the WTO dispute settlement process more transparent, and accept our survey finding in Table 2 above that transnational NGOs should have a right to submit briefs to dispute settlement hearings. The impartiality gains to be made here rest on the fact that WTO panel and Appellate Body decisions have significant legal independence, enabling them in principle to reach fair judgments in support of regime integrity. Embedding ecological provisions or exceptions in WTO law is thus essential to promoting structural redress for environmentally injurious trade rule-making that would otherwise be deemed acceptable.

Conclusion

There are grounds for predicting the emergence of less asymmetric bargaining within the WTO, which would favour openness to trade-related concerns from a wider range of member states. For example, Steinberg [*2002: 368-69*] forecasts an erosion of the established dominance of EC and US interest in WTO rule-making, facilitated by the expanding membership of the organisation and more sustained cooperation among developing countries. In the run-in to the next WTO Ministerial Conference in Cancun in September 2003, the prospect of gridlock in the Doha Round of negotiations is becoming more likely. The major reason for this is acknowledged within the WTO to be concerted opposition by developing countries to further trade liberalisation in the absence of significant EC and US moves to address their own agricultural subsidies, textile import quotas and tariffs on imports from the global south. With the increasing negotiating competence and combined clout of developing states, the ‘double standards’ of the industrialised countries are becoming less defensible in practice. Ironically, the shift to fairer trade bargaining threatens the Doha trade and environment negotiations at the WTO, as their very existence rests on EC agenda-setting power and a northern perception of trade-related ecological issues. Without meaningful input by developing countries into the CTE, which would undoubtedly fuse ecological protection with development-oriented priorities, the

notion of environmental accountability for WTO decision-making is politically vulnerable.

Of course, environmental NGOs routinely claim to represent those transnational (and future) publics negatively affected by international trade rules. The support of our survey respondents to the new informational openings at the WTO is self-evident, as is their commitment to more interactive, institutionalised NGO access. These groups themselves nevertheless face open interrogation of their global civil society legitimacy – their constituencies, decision-making and financing, as well as the validity of their epistemic and normative arguments. For some observers, the claims of transnational environmental NGOs often reflect unquestioned assumptions, constructing 'global' environmental problems suffused with unexamined European or North American values [*Kellow, 2000; Shaffer, 2001*]. A contrast suggests itself with those northern development or humanitarian NGOS who, in partnership with southern civil society actors, address the incidence or potential for specific injuries to local populations arising from WTO decisions – for example, the campaign of Médicins sans Frontières and Oxfam International (against the lobbying of US and EC drug companies) to ensure that poor countries are able to import affordable generic medicines.

However, there are signs that northern environmental NGOs concerned with international trade are also finding common ground with southern civil society groups and states. In February 2003, for example, over 30 environment and development NGOs took part in an 'international civil society hearing' in Geneva on a proposed WTO Agreement on Agriculture, charging the US and EC with defending inequitable farming systems [*Friends of the Earth Europe, 2003*]. And the Geneva-based International Centre for Trade and Sustainable Development is currently involved in a two-year project facilitating consultations with developing countries to promote a more united communication of a 'southern agenda on trade and environment' [*Cameron, 2003*]. These efforts to construct trade agendas compatible both with ecological and development-oriented needs anticipate a fairer, perhaps more effective, representation of transnational environmental interests in future WTO-civil society interaction.

NOTES

1. Meeting at least once every two years, the Ministerial Conference is the governing body of the WTO, and is empowered to take the final decisions on trade negotiations. Between sessions of the Ministerial Conference, the WTO General Council – representing all 146 member governments as the Trade Policy Review Body and Dispute Settlement Body – undertakes key executive functions, whilst also overseeing a range of councils and committees dealing with specific trade policy issues [*WTO, 2002: 152-68*]. While there are legal provisions for majority voting, rule-making within the WTO has been overwhelmingly based on consensus among members (under the principle of sovereign equality).

2. While my emphasis here is on environmental claims, there are of course other standards from which trade rules face interrogation, e.g. labour rights and social equity. On the general issue of linking non-trade issues with international trade rule-making, see the Symposium on the Boundaries of the WTO published in the American Journal of International Law, Vol.96, No.1, (2002), edited by José Alvarez.

3. This part of the panel ruling on Article XX(b) of GATT 1994 was upheld by the Appellate Body in March 2001. Significantly, the Appellate Body quashed the assessment of the panel that the health risks associated with asbestos fibre were not relevant to the determination of 'like products' under the national treatment provision of GATT 1994 (Article III:4): see WTO Appellate Body (2001), European Communities – Measures affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March, Geneva: WTO.

4. The relevant rulings are: WTO Appellate Body (1998), United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 12 October, Geneva: WTO and WTO Appellate Body (2001), United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/RW, 22 October, Geneva: WTO.

5. In 2002 there were four meetings or 'special sessions' of the CTE under the Doha mandate – 22 March, 11-12 June, 10-11 October and 12 November, all held at the WTO headquarters in Geneva. The November session was devoted to information exchange with the secretariats of various MEAs – the first such meeting in the context of WTO trade and environment negotiations. Agreement among WTO members on the success of this meeting led to the invitation of the United Nations Environment Programme and six MEA secretariats, as *ad hoc* observers, to a full negotiating session of the CTE on 1-2 May 2003.

6. In addition to the Geneva meetings, the WTO Secretariat has also organised several regional trade and environment/development symposia for NGOs, usually in parallel with intergovernmental symposia in developing countries. The first regional NGO symposia on these issues, in 1998 in Chile and Zimbabwe - with funding support from the Dutch government – set the template for subsequent meetings. Shaffer (2001: 46) attributes support for these symposia from industrialised countries to a desire on their part to elicit wider member state appreciation of environmental concerns in trade negotiations.

7. The consultative status of NGOs within the United Nations system is enabled by three resolutions of the Economic and Social Council in 1950, 1968 and 1996. These resolutions specify the criteria for the recognition – and accreditation – of NGOs across the United Nations system.

8. The briefings took place on 11 October and 12 November, at the conclusion of the CTE meetings: across the two briefings, there were four environment and development NGOs represented – Center for International Environmental Law, Friends of the Earth International. International Centre for Trade and Sustainable Development, and WWF International – two international business organisations, an international union federation, two peace/religious organisations, as well as several individuals in an academic or journalistic capacity. The author also interviewed the WTO Public Affairs Officer running

the briefings and a representative from the United Nations Non-Governmental Liaison Service (NGLS) in Geneva – an inter-agency programme within the United Nations to facilitate interactions with NGOs.

9. The internal listing of NGOs maintained by the WTO External Relations Division was initially compiled with the assistance of NGLS, including advice on whether NGOS interested in attending WTO briefings had United Nations NGO accreditation. In practice the WTO Secretariat has maintained its own NGO access criteria according to the 1996 General Council guidelines, issuing briefing invitations on a 'first come, first served' basis according to meeting room capacity (typically about 20 spaces).

10. For an informative summary of the role of trade measures in these MEAS – and their potential WTO-inconsistency – see Neumayer [*2001: 153-84*].

11. WTO Appellate Body (1998), EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R; WT/DS48/AB/R, 16 January, Geneva: WTO at pp.44-47.

12. Shaffer and Mosoti [2002] find grounds for optimism in a September 2002 ruling of the WTO Appellate Body against the EC on behalf of Peru. The complaints of the latter (over EC mislabelling of Peruvian fish products) were supported by a written representation from a UK consumer NGO, marking at least one instance where northern NGO concerns have effectively aligned with southern development goals.

ACKNOWLEDGEMENTS

The research on which this working paper is based was funded by a British Academy Research Grant – No. SG-34522 (awarded July 2002). The author is most grateful to the British Academy for this financial assistance. Thanks also to those individuals who participated in interviews with the author in Geneva (in October and November 2002) and who replied to the questionnaire.

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