

that opening some WTO meetings to observers will result in decisions increasingly being made in private sessions that are not open to the less-influential Members.

There is some irony in the contrast between many WTO Members' desire to achieve greater transparency in terms of access by Members to information about the negotiation process and ability to influence that process, and their lack of interest in enabling civil society to gain similar access and influence. For those in civil society committed to achieving these goals, it appears that greater efforts will be needed to build a global consensus in favor of greater openness at the WTO and affect the positions of WTO Members on this issue.

AN ENVIRONMENTAL PERSPECTIVE ON SEATTLE

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From an environmental point of view, the big news coming out of Seattle was not the (non) results of the Ministerial Meeting but rather what took place in the streets. The presence of 20,000 protestors, many of them motivated by a conviction that globalization in general and the work of the WTO in particular was a threat, marks a watershed for the international trading system. In particular, the days of trade negotiations being conducted by a close-knit group of trade cognoscenti out of sight from the rest of the world are gone forever. Trade policy – and its implications for other policy realms, including the environment – is now a very high-profile business. Prior to Seattle, the WTO had failed to come to grips with its role at center stage. It now must.

The WTO lies at the heart of the emerging structure of global governance. The rules and procedures of the trading system are increasingly understood to be of critical importance to efforts to manage worldwide economic interdependence. Historically, the trade community has been happy to operate below the radar of most of the people in the world. It has long been received wisdom in the trade domain that more can be accomplished if the public does not know what is going on than will be achieved through open debate in the light of day. Whether this hypothesis was ever correct is now moot. The WTO will never again be able to operate under the cover of darkness.

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Demands at Seattle for greater trade policy-making 'transparency' (and for a new WTO culture of openness) came not just from environmentalists, human rights advocates, and labor leaders, but also from officials from many developing countries who felt marginalized by the closed-door process. Post-Seattle, the WTO must re-double its efforts to understand the interests of the South and simultaneously to institutionalize its outreach to civil society, and to the many non-governmental organizations (NGOs) that have felt excluded from past trade policymaking.

While many delegations remain skeptical about greater transparency *vis-à-vis* NGOs, both the United States and the European Union expressed support at Seattle for a number of measures designed to open up the WTO in general and the dispute settlement process in particular. Elements of transparency in this regard might include the release of all briefs filed by parties to a dispute, the taking of evidence in public, provision of a mechanism for NGOs to submit statements of interest with regard to disputes (i.e. creation of a process akin to the filing of *amicus* briefs in the United States court system), and the immediate release of panel decisions.

Unveiling what goes on within the 'black box' that many outside of the trade community perceive the WTO to be will, in fact, greatly strengthen the trading system. The legitimacy of WTO decisions will be enhanced by having the public understand the issues that are in play before the Organization, the interests that are weighing in on these questions, the assumptions that underlie the decisions that emerge, and the logic that is laid out for a particular course of action.⁹ A more open set of processes for global-scale trade policy-making promises to deliver outcomes that are more authoritative, better understood by the public, and more durable because of the legitimacy of the process that generates them.

While the cause of a more open WTO was probably advanced in Seattle, the push by environmental advocates for *substantive* refinement of the GATT rules that address environmental concerns lost ground. The protests in the streets, driven by a coalition of environmentalists and protectionists marching arm-in-arm, confirmed in the minds of most developing country delegates the suspicion that the 'trade and environment' agenda was protectionist at its core. Thus, a number of ideas for building greater sensitivity to pollution control and resource management issues into the GATT system fell by the wayside, including proposals to recognize the over-riding validity of existing multilateral environmental agreements; bless the use of eco-labels (perhaps in return for the acceptance of a set of disciplines on how such labels get constructed and implemented); clarify the applicability of the 'precautionary principle'; and adopt some kind of interpretative statement regarding GATT Article XX to codify the recent advances in 'trade and environment' jurisprudence, notably

⁹ See Daniel C. Esty, 'Non-governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion', 1 J Int'l Econ L 123 (1998).

the highly regarded logic of the Appellate Body decision in the *Shrimp-Turtle* Case.

Also lost in the din were a number of interesting proposals to strengthen the WTO Committee on Trade and the Environment (CTE). In addition to suggestions that the Committee structure be enhanced by more active participation from environmental officials, some delegates called for the CTE to become a clearinghouse for environmental reviews of the potential impacts of a new round of trade liberalization, which a number of countries including the United States have committed to do. Others proposed that the CTE be given a mandate to provide technical assistance to developing countries wishing to undertake such reviews, perhaps in collaboration with the United Nations Environment Programme (UNEP). Other participants in the Seattle discussions argued for making the CTE the official 'watchdog' on all of the negotiating groups set up in the next round with a charge of ensuring systematic attention to environmental issues wherever they might arise.

Ultimately the signal-to-noise ratio on the environment in Seattle was very low. The collapse of the talks overshadowed an emerging consensus to address 'win-win' issues such as reducing environmentally harmful and trade-disruptive subsidies in fisheries and agriculture (and perhaps timber, water and energy as well). Also lost was a commitment to accelerated tariff reduction for environmental goods and services in support of a program of 'super-liberalization' in this realm to promote technology transfer to the developing world.

Many of the environmental activists in the streets cheered the failure to launch a new round of global trade talks. Yet many of the protestors really want not to eliminate the WTO but to deploy its power to support environmental goals. Thus, other environmental leaders recognized that, while the environment-trade linkage received great attention, the difficult work of 'greening the GATT' may have been set back by a hardening of the perception, especially in the developing world, that such linkage gives cover to protectionist mischief and is therefore dangerous. Such a perception narrows the space within which pro-free-trade, pro-environment advocates must work.

ANTIDUMPING AT THE SEATTLE MINISTERIAL: WITH TEAR GAS IN MY EYES

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Much was discussed but very little was agreed at Seattle on antidumping. The US stated its firm opposition to any reopening, but enough WTO Mem-

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