

CHAPTER V

Transparency and dialogue with civil society

176. A distinct feature of the tremendous transformation that has taken place in the global order over the past two decades has doubtless been the expanding role of civil society. The rise of mass democracy, or what some have called the “global associational revolution” was particularly powerful in the decade of the nineties as the UN world conferences galvanized the forces of civil society globally in a bid to promote a more inclusive, participatory and transparent system of global governance. This, amidst a growing sense that many global problems could only be effectively addressed through a partnership of state and non-state actors.

177. This new partnership has not been without its tensions. The concerns of civil society organizations for more meaningful and substantive participation, the anxieties of sovereign governments about the invasion of their hitherto uncontested space, and the challenges faced by global institutions in reconciling their mandates and legal frameworks with these new realities are still very much alive.

178. Even so, the new partnership has in many ways been a welcome and beneficial experience. It has focused political and public opinion on the importance of trade and often has revealed key intersections between trade policies and economic, foreign, social and other policy areas. At the same time, for those who recognize the large benefits the multi-lateral trading system has brought to hundreds of millions of people across the globe, it has often been a frustrating and discouraging experience. While some non-governmental organizations have sought to acquire the necessary expertise on trade issues to make a productive contribution, others have not, being content to protest the existing order.

179. To be sure, civil society activism and advocacy for inclusion in global governance is not an entirely recent phenomenon. In 1946, at

the London Preparatory Conference for negotiations on what was eventually to become the GATT, the International Chamber of Commerce complained bitterly about the lack of consultation with non-governmental organizations. At the same time, the World Federation of Trade Unions protested about the prevalence of “neo-liberalism” in the draft texts. Nevertheless, the expanded role of civil society in the global arena and, with it, the quest for greater transparency in the business of global institutions has become well established and arguably an irreversible tendency in the global order. Today, the issue is no longer whether, but how to partner and collaborate effectively.

180. The WTO Secretariat has rightly sought to engage civil society to the best of its limited capacity, in the full knowledge that it is the Member governments themselves that must shoulder most of the responsibility for developing these relationships. The efforts have borne some fruit, while provoking new demands for access and influence.

181. However, these issues are not challenging for the WTO alone. Generally, the efforts to create new partnerships between state and non-state players in the global arena have been marked by tensions. The simple ideological divide that marked the global political order during the Cold War has been replaced by more complex alliances among a larger and more diverse body of actors.

182. For the WTO, the problem is more pressing and in some ways more difficult than it is for other intergovernmental organizations. For one thing, it is not a lending institution and does not have the leverage of the purse; its rather tight budget is also a constraint on the extent and forms of engagement it can adopt with civil society. Nevertheless, the institution of the WTO is squarely in the eye of the storm of the international development debate. In these circumstances the WTO needs to keep all

the options of transparency and dialogue with civil society under regular review.

A. THE WTO HAS ALREADY TAKEN BIG STRIDES IN INCREASING TRANSPARENCY

183. Like many intergovernmental organizations, the WTO has made significant progress in the areas of external communications and the strengthening of relations with civil society over the past few years. The General Council, in 1996, adopted guidelines which, among other things, sought to improve transparency and develop communication with non-governmental organizations. In 2002, the General Council decided to expedite the derestriction of documents. This move alone has generated an explosion of easily accessible documentation - much of it available almost simultaneously with its delivery to Members. For the first time ever, most strands of most negotiations can be followed through first-hand sources. Taken together with the excellent explanatory material now on the WTO website, WTO negotiations are remarkably transparent. It is unclear that the process could go much further without being counter-productive to the conduct of negotiations.

184. The Director-General and staff of the WTO Secretariat meet with non-governmental representatives regularly, there are briefings for Geneva-based representatives of civil society groups on meetings of WTO Councils and Committees and a good cross section of non-governmental organizations attend plenary sessions of Ministerial Conferences and symposia on specific issues in Geneva. Indeed, some 1578 participants representing 795 NGOs attended the Cancún Ministerial, compared to 235 participants representing 108 organizations who attended the Singapore meeting, seven years earlier.

185. Online outreach has improved tremendously and the extended online forums to

which government officials, private sector representatives, NGOs and other non-state actors are invited are a particularly helpful innovation. As a result of this much-improved outreach, the perception that the WTO is a rather closed organization has been relieved - although those who wish to portray the institution as secretive and sinister continue to do so regardless.

B. IS THERE A CASE FOR ADDITIONAL EXTERNAL TRANSPARENCY AND CIVIL SOCIETY ENGAGEMENT?

186. The case for external transparency cannot rest simply on political expediency; it is not a matter of following a “politically correct” path in a changing international environment. There need to be explicit objectives, with the gains and risks properly assessed, as they have been in some of the internal discourse on these matters within the WTO. While all intergovernmental organizations share common objectives in the pursuit of transparency, each organization’s peculiar mandate and structure may call for specific objectives, modes of engagement and the choice of civil society organizations with whom to collaborate. One of the objectives of the World Bank’s relations with civil society organizations, for instance, is to enhance community ownership and sustainability of bank-supported projects by consulting with, and tapping the knowledge of, community-based civil society groups. Clearly, that would not often be an appropriate model for the WTO.

187. For the WTO, the starting point of our discussion must be Article V:2 of the Marrakesh Agreement, which authorizes the General Council to “make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO”. This makes the WTO one of a small number of intergovernmental organizations whose charters explicitly talk of relations with civil society organizations. Although the Agreement does not spell out the

rights and responsibilities of non-governmental organizations with which the WTO might enter into such relations, the understanding is clearly that such arrangements would respect the inter-governmental character of the organization.

188. The inclusion of Article V:2 was arguably a more conscious and deliberate decision than the faint and guarded clause in Article 71 of the UN Charter, which authorized the Economic and Social Council (ECOSOC) to “make suitable arrangements for consulting with non-governmental organizations concerned with matters within its competence”. The Marrakesh Agreement, after all, was made against the background of the momentum generated by the expanded participation and prominent role of civil society organizations in the early 1990s. One view of that experience had been that in spite of their great diversity, the NGOs and other civil society organizations could, if properly engaged, play a positive role in enriching debate, influencing shifts in the positions of state actors and helping to achieve convergence in difficult areas of policy. Indeed many had come to see in the new global movement, an effective bulwark against unilateralism. Transparency in the conduct of the business of intergovernmental organizations and their active collaboration with civil society organizations were thus the most promising way to tap this potential.

189. These sentiments have resonated in debate within the WTO about external transparency. In response to widespread criticism of the organization’s processes as undemocratic and non-transparent, the 1998 Ministerial Conference among other things acknowledged the importance of informed public opinion in the debate on the reform of the multilateral trading system. Ministers urged that ways be found to improve the transparency of the WTO’s work and internal processes.

190. There are continuing tensions around the issue and something of a North/South divide in

the positions of WTO Members reflecting important nuances in the way Members perceive and state the case for external transparency. Even so, there is broad agreement among Members that transparency and some degree of active engagement with civil society are in the interests of the organization itself and also of its Members. However, there is also a widely held view that the primary responsibility for communicating the business of the organization rests with the Members themselves who must inform the different national constituencies to whom they are accountable.

191. Given the intergovernmental character of the organization, WTO Members generally consider that its efforts at enhancing external transparency will bear little fruit unless they themselves are transparent at home with national stakeholders. At the same time, it should also be recognized that the WTO is not exactly a sum of its parts; that it does have an image and personality of its own which must be perceived to be democratic and transparent. In other words, the WTO must communicate well on its own behalf - we return to this theme in Chapter IX.

192. While it can be regarded as a natural duty of any intergovernmental organization, the case, in the WTO, for external transparency and dialogue with civil society exists, therefore, on a number of levels. For a start, it helps to promote the image of the WTO as an effective and equitable organization at the helm of the multilateral trading system. More important, it can help promote an understanding of the principles that underlie WTO rules and with that a more willing acceptance of the value of WTO obligations to its Members.

193. Dialogue with civil society, business and other stakeholders should also enable the WTO to tap the knowledge and expertise of these groups. Transparency is not a one-way process in which the WTO seeks to inform, persuade

and educate. Many stakeholders in the trading system have their own understanding and experience that should permeate the institution from time to time. Managed properly such engagement could make the civil society organizations of all kinds active agents in support of multilateralism.

194. As the experience over the past 15 years has demonstrated, the leadership of civil society organizations can be quite effective in building caucuses and in influencing governments to shift positions and strengthen their commitment to agreed rules. Although admittedly the unresolved issues in the current Doha Round negotiations are more difficult than say those of the UN Conferences, there is some reason to believe that properly engaged, they could be more helpful than has often appeared to be the case.

195. Finally, as some Members have again noted in internal debates about transparency and civil society participation, improved external transparency and engagement with civil society can also serve to create space in the domestic policy-making arena for Member governments to overcome domestic barriers to further liberalization.

196. The administrative and financial implications of a more active programme of civil society engagement must be carefully assessed. The World Bank and other intergovernmental organizations, that have developed extensive relations with civil society, have done so with substantial budget support. The External Relations Division of the WTO is currently responsible for relations with civil society, intergovernmental organizations and parliamentarians. This outreach work is handled by a small number of professionals in a small division. No specific resources are earmarked for civil society related work as such, in either the WTO's general budget or the division's budget. The division's total travel budget amounts to about CHF 25000 a

year and mostly goes into WTO representation at meetings of other intergovernmental organizations. In practice, this means representation at mainly UN and OECD meetings. The WTO's high profile and largely successful Annual Public Symposium as well as its outreach programmes for parliamentarians and NGOs, which started in 2002, are all fully funded from extra-budgetary resources.

C. SOME UNDERSTANDABLE RESERVATIONS REMAIN

197. However, a number of caveats are warranted here. While many non-governmental organizations are well informed and a good number have the expertise and the interest to be constructive commentators or advisors on WTO issues, others do not. Moreover, such competence and financial capacity as there is tends to be concentrated in developed countries. In recent years, some non-governmental organizations have been actively advising governments especially in poorer countries on their WTO negotiating positions. Clearly, that must in part reflect unfortunate gaps in the level of competent, independent technical assistance being made available to governments by the multilateral agencies or the inability of those countries themselves to mobilize available national expertise. It must also reflect a greater local credibility on the part of non-governmental organizations that may have been active in the field over decades. Either way, this is not an ideal state of affairs especially for the countries involved, whose objective, long-term interest must surely reside in the development of national capacity and policy ownership.

198. Another often-expressed concern by some WTO Members is that excessive transparency merely opens up new fronts on which already hard-pressed trade negotiators must engage. Some governments are well equipped domestically to deal with multiple constituencies when considering trade issues. Many others

are not; and that goes especially for developing countries. The principal requirement of a WTO Member is to engage with fellow Members at the governmental level. Adding parallel tracks, the argument goes on, in which, for example, international non-governmental organizations with large budgets and huge capacity must also be engaged is likely to be burdensome and not necessarily constructive. However, leaving aside the obvious difficulty in deciding what is excessive and what is not, this is an argument that has doubtful merit from the point of view of the developing countries. Historically, it is not the NGOs that have burdened and stretched developing country negotiating capacity by overloading the negotiating agenda on trade. At any rate, surely what is needed is for new fronts to be opened where they represent real issues, and for poor countries to be assisted in coping with the extra demands on their negotiating capacity.

199. A further criticism of the trend towards increased WTO transparency is that the critics of the current practices - and those lobbying for more access - are often neither especially accountable nor particularly transparent themselves. It is important that the underlying interests of civil society groups be apparent if they are to expect any special rights in the WTO itself or in their dealings with WTO governments.

200. Finally, on the negative side of the slate must be counted one practical reality. Trade negotiations require some level of confidentiality. Wholly public negotiations do not always deliver meaningful results. For a start, trade negotiations are about commercial interests. Governments have every right, indeed duty, sometimes to keep those interests to themselves. It is governments that negotiate - and have responsibility for - the contractual detail of the WTO. Internal transparency in the WTO should therefore keep Member governments well informed, that much is clear. On the other hand, the dynamics of trade negotiations - at

least at the point when deals are close - are, by their very nature, sensitive. External transparency, in other words, must have its limits. Without such limits the WTO is not going to be able to do its job and deliver commercially worthwhile agreements that provide opportunities for those who create jobs and provide investment in the global economy. Therefore, civil society is always likely to be frustrated by being left out of the deal making. What is important is for all sides in the debate to fully recognize these practical realities in seeking norms of transparency that are required to protect the public interest.

D. SOME LIMITED ADDITIONAL PARLIAMENTARY INVOLVEMENT

201. The continuing tensions around the issue of transparency and civil society involvement are also evident in the area of parliamentary involvement. Clearly the primary democratic oversight of the WTO is reposed in national parliaments and there are widely differing parliamentary systems applied around the world. Some of these may be open to the criticism that the executive branch does not adequately obtain informed consent from national parliaments for negotiating positions in the WTO. However the constitutional requirements in individual WTO Members or in deeply integrated groups such as the EU are matters that can only be modified or developed internally and cannot be effectively addressed in this Report.

202. The question as to whether the WTO should have a parliamentary dimension is now a matter of some debate within many jurisdictions. The EU, at least its former Trade Commissioner, is in favour of inter-parliamentary meetings at the WTO level. Elsewhere, particularly in the US, and in developing countries generally, there is opposition. In the US in some measure this may reflect the stronger role of Congress in authorizing and ratifying the terms of trade negotiations than, for example, that of

the European Parliament or indeed the parliaments of the member states of the EU.

203. Parliamentary involvement in the affairs of the WTO has been increasing, and some momentum for the creation of a Parliamentary Assembly of the WTO has indeed developed. A proposal was launched in the margins of the 1999 WTO Ministerial meeting in Seattle by members of the European Parliament and was adopted by all the parliamentarians present. This initiative was pursued further at the Doha Ministerial Conference in 2001.

204. Certainly, legitimacy is central to the effective development of the WTO as a force for good in the world, and national parliaments are the key mechanism to secure that legitimacy. Particularly in the early decades of its existence, diplomats and technocrats from trade ministries drove negotiations in the GATT, largely behind closed doors. That has changed. Legitimacy requires, in part, that parliaments be associated with the adoption of negotiating positions by governments and WTO rule-making more generally. The manner in which that participation is achieved will vary but needs to be addressed. Parliaments, in short, need to be engaged, at the national level, in the “forum for negotiations” established by Art III: 2 of the Marrakesh Agreement Establishing the WTO.

205. The arguments for even greater parliamentary involvement through an assembly under the aegis of the WTO do not appear to command adequate support. In July 2002, a group of parliamentarians actively interested in WTO issues who had formed an independent Parliamentary Steering Committee³² admitted the “massive resistance of developing countries” to the creation of a Parliamentary Assembly as part of the WTO. Several developed countries share this position. We think, therefore, that the most that can be done in this area is: first, to promote transparency by WTO governments towards their own parliamentary institutions

and, second, to advocate domestic parliamentary involvement that more effectively connects negotiations and decisions with the people they affect.

E. WHAT DIRECTION FOR THE FUTURE?

206. Clearly, it is important for the WTO to keep the issue of its relations with non-governmental organizations under periodic review. Within the limited bounds of an institution founded on negotiated contractual commitments among governments, there are limits to how much further the organization can go.

207. Some ideas have been put forward by non-governmental organizations themselves. A system of accreditation has been proposed to help formalize relations with civil society organizations, reflecting practice in some UN organizations. While it has some attractions, perhaps in ensuring that responsible NGOs get the advantage of a closer relationship with the WTO, such a move would impose a continuing bureaucratic burden to receive, sieve and make judgments about candidate organizations. More important, it is unclear what the purpose of accreditation might be. Apart from attendance at the plenary sessions of Ministerial meetings every two years, it is unlikely that accreditation would mean the right to observe WTO meetings first hand. A quite different approach to access would be the use of web broadcasts of certain meetings. This would not necessitate an accreditation system.

208. Given that the practical benefits of formal accreditation can be obtained with a simple system of ad hoc registration for conferences and other events, it is by no means certain that this is a worthy investment for a small organization with a limited budget. Indeed, accreditation implies a contained group with a long-term relationship; possibly an over-rigid approach that might make access difficult for newcomers. However, if the organization should decide, for

³² This body has grown out of a series of Parliamentary Conferences on the WTO organized by the Inter-Parliamentary Union and the European Parliament.

good reason, to go that route, there are models, including the ECOSOC system of accreditation, that it might wish to study. In any event, we draw a distinction between formal systems of accreditation and the Secretariat's need to make decisions about the organizations with which it will have regular or ad hoc relationships (see our recommendation on guidelines for the Secretariat below).

209. One step further on is the issue of direct participation in the decision-making process of intergovernmental organizations, in this case the WTO. The issue is common in the UN system. While there is now a broad recognition among member states of the UN of the substantial and proven benefits of non-governmental participation in intergovernmental debate on global issues, there are continuing concerns about the legitimacy, representativity, accountability and politics of non-governmental organizations. There is also a serious imbalance in the capacities of non-governmental organizations from developed and developing countries.

210. Many, but by no means all, governments hold the view that direct participation by non-governmental organizations in decision-making is incompatible with the character of intergovernmental organizations. Concerns of this type are more acute for an organization like the WTO, in which governments must make critical decisions that affect their citizens. Those same governments must implement those decisions and be accountable at home for their actions in Geneva.

F. A FRAMEWORK FOR THE WTO'S RELATIONS WITH CIVIL SOCIETY

211. **Much has already been achieved in the areas of both external and internal transparency within the WTO over the past few years.** Those who choose to believe that the WTO remains a closed institution will probably never be persuaded otherwise no matter what actions

are taken. **Nevertheless, it would be a mistake not to keep the issue of transparency under periodic review and to consider, from time to time, whether gaps exist that could be usefully filled.**

212. **A framework for reviewing WTO relations with non-governmental organizations as well as with the public generally could reasonably be based on the following general principles:**

- **It must continue to be recognized that the primary responsibility for engaging civil society in trade policy matters rests with the Members themselves.** While the WTO's relations with civil society have their own integrity and dynamics, they are inextricably bound with government /civil society relations at the national level.
- **The membership should thus develop a set of clear objectives for the WTO Secretariat's relations with civil society and the public at large.** Within the general framework of these objectives, the 1996 General Council Guidelines for Arrangements on Relations with Non-Governmental Organizations should be further developed so as to guide Secretariat staff in their consultations and dialogue with civil society and the public. Guidance should be included on the criteria to be employed in selecting those civil society organizations with which the Secretariat might develop more systematic and in-depth relations. **Trade policy competence would be a natural criterion, but not exclusively so. Nor should any single set of organizations be constituted to the permanent exclusion of all others. We particularly emphasize the need for the Secretariat to work with NGOs from poor countries** that seek to develop trade expertise in areas of their choice.

- **Certainly, the Secretariat should be under no obligation to engage seriously with groups whose express objective is to undermine or destroy the WTO in its present form.** The dialogue needs to be constructive on both sides and, given the expertise of non-governmental organizations in certain areas, it ought to be mutually reinforcing.
- **A special effort should be made to assist local civil society organizations specializing positively in trade issues in least-developed countries, especially in Africa.** This might be done in collaboration with continent-wide and regional organizations and think tanks.
- **Clearly, the administrative capacity and financial resources of the WTO Secretariat would need to be scaled up to support a renewed effort at further enhancing the WTO's external transparency with respect to civil society.** However, the Director-General should give some thought to whether the most appropriate course is to strengthen the External Relations Division or reinforce and better coordinate non-governmental relationships and activities across the Secretariat.