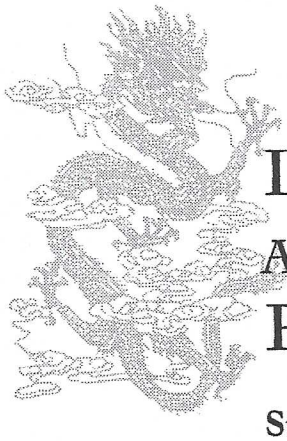
Chapter 12



Improving the Trade and Environment Regimes[1]

Steve Charnovitz

The trade and environment debate — as it has flowered during the 1990s — is a significant event in the evolution of international governance. Although much attention has been devoted to the ways in which trade policies may interfere with environmental goals and the ways in which environmental policies may interfere with trade goals, it is important not to lose sight of the fundamental complementarities between the trade and environment regimes. Open trade and investment should normally be good for environmental protection. Pollution control and biodiversity protection should normally be good for transnational business.

There are many ways in which the two regimes can proceed independently. There is no need to transform the General Agreement on Tariffs and Trade (GATT) or the World Trade Organization (WTO) into an environmental agreement. There is no need to subordinate one regime to the other. Nevertheless, it is important that the trade and environment regimes attain greater harmony. As Agenda 21 cogently stated: "Environment and trade policies should be mutually supportive." Given the large number of issues on which the two regimes share a mutual interest, it would be useful to seek co-ordination — and some interpenetration — between trade and environment treaties and organizations.

In this chapter, I shall focus on the WTO, rather than environmental conventions. I shall consider three institutional issues: first, building on the Uruguay Round of trade negotiations; second, the link between the WTO and intergovernmental organizations; and third, and in more detail, links between the WTO and non-governmental organizations.

Building on the Uruguay Round

The Uruguay Round was a monumental achievement in lowering tariffs and establishing new disciplines on non-tariff barriers and subsidies. It is vital that the Singapore Ministerial keep this momentum going. To that end, several initiatives should be considered.

First, the Ministers could make a commitment to achieve world-wide free trade by a certain year. Fred Bergsten, director of the Institute for International Economics, made an interesting proposal along these lines in his speech in Singapore in 1996.[2] Dr Bergsten proposes free trade for its benefits to the world economy. Yet free trade should also be good for the global environment if appropriate environmental policies are in place at the national and international levels.

Second, the Ministers could establish a schedule for the phase-out of the reduced obligations on developing countries to lower their trade barriers. Reducing lingering protectionism will be good not only for the economies of developing countries but also for their domestic environments.

Third, renewed attention could be given to the problem of subsidies in international trade. Some environmentalists have put forward a win-win scenario wherein the WTO Committee on Subsidies and Countervailing Measures develops a work programme aimed at reducing environmentally harmful subsidies. Reducing such subsides — for example in agriculture and energy sectors — is called "win-win" because it would be good both for the economies and the environments of countries that still retain such subsidies. This is one area where environmentalists and free traders could join forces to pursue sustainable development.

Fourth, the Ministers should begin a process of making the WTO more compatible with international public law. In that regard, the trade regime could follow in the path of international environmental law. As Professor Murase has noted in his recent lecture to the Hague Academy, some environmental treaties create general obligations that go beyond the reciprocal contractual obligations in traditional treaties.[3] One area in which the WTO might do this involves the treatment of non-members, particularly, those who are trying to join the WTO. Right now, WTO members are free to ignore WTO norms, such as non-discrimination, in their dealings with China. Another way of improving the WTO would be to incorporate principles of openness and free trade as general obligations.

Fifth, the Trade Policy Review Mechanism could be expanded to include trade-related environmental issues. This is already happening to some extent, for example, in the recent report on Sri Lanka. But it would be useful to codify this development by amending the understanding achieved during the Uruguay Round.

Sixth, the upcoming Ministerial meeting is expected to address the so-called new issues of international trade policy. Several of these new issues have significant environmental implications. One in particular is investment. In the past couple of years, the Organization for Economic Co-operation and Development (OECD) has been developing a new code for international investment. Some countries would like to see this code brought to the WTO for further work. So far, the OECD effort has focused only on commercial concerns about investment. It has yet to consider the environmental dimension. These issues need to be brought into the debate at the earliest available opportunity.

The WTO and Intergovernmental Organizations

The second topic I want to discuss is the relationship of the WTO to international organizations that pursue environmental objectives. The WTO treaty provides that, "The General Council shall make appropriate arrangements for effective co-operation with other intergovernmental organizations that have responsibilities related to those of the WTO".[4] Since the Preamble to the WTO Agreement notes the objective of "sustainable development", it seems clear that other intergovernmental organizations, including the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD) and the Commission on Sustainable Development, are within the purview of this mandate.

In the first one and a half years of the WTO, the General Council has not taken steps to achieve effective co-operation with agencies working on environmental matters. This omission is particularly noticeable in light of the good working relationships that have developed between UNCTAD and UNEP on trade and environment issues. While it is true that representatives from UNEP are allowed to attend and observe meetings of the WTO Committee on Trade and Environment, they are not allowed to speak at these meetings. It is hard to accept that this constitutes "effective co-operation".

Ambassador Winfried Lang has proposed one modality for achieving co-operation, namely, joint sessions of the WTO with UNCTAD, UNEP and Bretton Woods Institutions.[5] Such sessions, according to Lang, would allow for a periodic dialogue facilitating the exchange of views. They would not be negotiations, but would serve a purpose of exploring cross-cutting issues. For example, one might imagine a joint meeting of the UNEP Governing Council and the WTO General Council.

The WTO should also develop effective co-operation with the World Conservation Union (IUCN). Although the IUCN is not an inter-

governmental organization, it has government members, and thus qualifies under the WTO mandate. Despite the fact that the GATT and the IUCN both came into being in 1948, and are in close locational proximity, they have had surprisingly little contact with each other.

Effective co-operation between the WTO and environmental organizations will be helpful to both regimes. The trade regime has developed an effective dispute settlement mechanism that the environmental regime can learn from. The environmental regime has developed techniques for negotiating complex agreements quickly that the trade regime can learn from. Both regimes could work together in assessing the trade impact of environmental policies and the environmental impact of trade policies.

WTO *and Non-Governmental Organizations*

The third topic I want to discuss is the relationship of the WTO to non-governmental organizations — or NGOs — that pursue environmental objectives. The WTO treaty provides that, "The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO".[6]

In the first one and a half years of the WTO, the General Council has not taken steps to consult and co-operate with NGOs, despite the apparent willingness of international NGOs to engage in such relationships. Although some WTO Secretariat officials and national ambassadors have met occasionally with NGOs, this is not a substitute for formal consultation and co-operation.

It is unclear why the WTO has moved so slowly to implement this mandate. One reason may be that the WTO lacks robust decision-making rules. Decisions are taken by consensus and therefore persistent objectors can block progressive action. In my own informal discussions with ambassadors to the WTO, I have got the impression that many of them view the WTO as a sealed, self-contained set of relationships that have little to do with public international law or international civil society. From that parochial perspective, the fact that most other international organizations have ongoing relationships with NGOs says nothing about whether the WTO could institute the same kinds of constructive relationships.

NGOs should be given opportunities to participate in the work of the WTO. Such opportunities need not be unbounded; they can be structured carefully to maximize the benefits of NGO participation and to minimize any ensuing costs. But it is important that the WTO abandon the insularity and secrecy that characterized its predecessor, the GATT. Eliminating the most resilient and restrictive barriers to trade will require popular approval. Thus, it

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is vital for the public to understand the aims of the WTO and to develop trust in that organization.

The issue of public participation in the GATT did not originate in the "trade and environment" debate. In fact, a primary American objective in the previous Tokyo Round was the adoption of international fair labour standards and of public petition and confrontation procedures in the GATT. That objective was never achieved. Fifteen years later, when the issue of public participation arose again, some environmental NGOs cleverly borrowed the term "transparency", a word which at that time in GATT circles referred to the trade laws and practices of each country. The NGOs reasoned that if transparency was an appropriate norm at the national level, it was also appropriate at the international level. In calling for more transparency, the NGOs challenged the GATT to live up to its own principles by increasing the flow of information to and from the public.

These efforts towards transparency, initiated by NGOs, stimulated governmental pressure within the GATT and resulted in several advances toward openness. For instance, the GATT, and now the WTO, release Secretariat-drafted studies sooner; the Secretariat staff holds informal consultations with NGOs; the new WTO dispute settlement rules permit governments to publicly disclose statements of the positions they are taking in a pending dispute; and the WTO recently joined the World Wide Web.

Yet in many other ways, the WTO remains as distant from the public as the GATT was. Dispute settlement panels continue to hold closed sessions; the WTO will not release basic biographical information about panelists that would be useful in assessing qualifications or potential conflicts of interest; panel reports are not released to the public until after a report is adopted; NGOs may not observe regular meetings of the WTO General Council and, indeed, minutes of these meetings remain secret for two years; and finally all WTO committees, including the Committee on Trade and Environment, convene in closed sessions that NGO representatives may not attend.

The criticism of the GATT/WTO by NGOs is broad-based. Environmental NGOs have been at the forefront of the criticism, but have been joined by NGOs from labour, development, consumer, public interest and farm groups. Their arguments can be summarized by stating that the *World* Trade Organization must look at the interests of the entire world. This globalized perspective cannot be achieved effectively with input only from those governmental trade officials who routinely attend WTO meetings.

NGOs are on solid legal ground in seeking greater transparency and participation in the WTO. Drawing on the expertise of NGOs is a hallmark of other intergovernmental organizations and institutions. For example, Agenda 21, a programme of action implemented by the United Nations Conference on Environment and Development (UNCED), states that:

> all intergovernmental organizations and forums should, in consultation with non-governmental organizations, take measures to: ... enhance existing or, where they do not exist, establish, mechanisms and procedures within each agency to draw on the expertise and views of non-governmental organizations in policy and programme design, implementation and evaluation; [and] ... [p]rovide access for non-governmental organizations to accurate and timely data and information to promote the effectiveness of their programmes and activities ...

In fact, most other international organizations have done far more than the WTO to involve NGOs in their work. For example, the OECD has active advisory groups drawn from business and trade unions. The International Labour Organization (ILO) includes workers and employers as *delegates* to that organization. Especially in recent years, NGOs have become important players in many international conferences and organizations.

Indeed, the World Bank is searching for a new kind of employee it calls an "NGO Specialist". Of course it should be noted that NGOs remain largely shut out of the International Monetary Fund, as well as international military, nuclear and law enforcement organizations.

NGOs are playing increasingly important roles in direct negotiations with governments. For example, in September 1995, several environmental groups undertook discussions with the Government of Mexico to explore the possibility of a new convention to protect dolphins during tuna fishing. This compromise led to a declaration by 12 nations, calling for a binding international agreement to be signed by 1996. In January 1996, the Worldwide Fund for Nature reached an agreement with the Government of Finland and a major forestry company in Finland to permit a recommencement of logging operations in Russia's Karelian forest.

It is sometimes suggested that NGO involvement in the GATT/WTO would contradict the principles upon which the global organization was established. This argument, however, ignores the early attempts by the post-war multilateral trading system to involve NGOs. The original plan of the Bretton Woods system provided for an International Trade Organization (ITO) to be flanked by the World Bank and the International Monetary Fund (IMF). The United Nations initiated negotiations for ITO in 1946 and concluded in 1948 with the Charter for the International Trade Organization. Article 87(2) of the ITO Charter provided that "[t]he Organization may make suitable arrangements for consultation and co-operation with nongovernmental organizations concerned with matters within the scope of this Charter".

For various political reasons, the ITO never came into existence.[7] Instead, the GATT — which was originally intended to be superseded by the ITO — replaced the ITO as a *de facto* treaty and organization. It is instructive,

however, to look at how the Interim Commission for the ITO intended to implement ITO Article 87(2). In May 1949, the Interim Commission Secretariat — which later become the GATT Secretariat — prepared a report for the first ITO Conference which, among other topics, proposed procedures for NGO involvement in the ITO. This proposal suggested that: (1) appropriate NGOs be listed as consultative organizations; (2) these listed organizations be invited to ITO Conference sessions; (3) NGO representatives be able to make statements on items at the discretion of the chairpersons; and (4) these organizations receive ITO documents as necessary for effective consultation. Member governments extensively discussed these procedures and would likely have adopted them if the ITO came into existence.

The fact that the negotiators of the ITO treaty provided for NGO participation, combined with evidence that the Interim ITO was prepared to implement this provision, together demonstrate that NGO participation is consistent with the design and aspirations of the multilateral trading system. That the GATT behaved in a more introverted way does not detract from the intention of the founders of the trading system.

The WTO Agreement provides that "[t]he General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO". So far, the WTO General Council has not begun to implement this provision. There is a wide range of opinion on what is "appropriate" for NGOs to see, hear and do. Nevertheless, the straightforward nature of this provision, and its similarity to the original provision in the ITO, make it difficult for WTO members to argue convincingly that the WTO is different from other international organizations in its ability to institutionalize NGO participation.

There are two major issues relating to NGO participation in the WTO. The first is NGO participation in the policy work of the WTO as carried out in various committees, such as the Committee on Technical Barriers to Trade. The second is NGO participation in the WTO dispute resolution process as plaintiffs, *amici curiae*, witnesses, or observers. These general issues are separable. The WTO could involve NGOs in the policy committees but not in dispute resolution on the grounds that public disclosure would harden positions, chill negotiations and hinder settlements. Likewise, the WTO could open up dispute resolution but not the policy committees on the grounds that fact collection and adjudication should be insulated from interest group pressure.

Participation in WTO Policy-making

Some may be concerned that member countries would be unwilling to entrust negotiations involving sovereignty to any entity other than themselves.

Assuming this is true, there remain a number of useful NGO activities which fall short of this. For example, NGOs can facilitate negotiations in several ways by providing expert information, serving as a sounding board for possible compromises, injecting new ideas into a substantive debate, securing public support necessary for parliamentary approval, and serving as monitors to enforce governmental commitments.

Another concern about NGO involvement is that it would slow down WTO policy-making, which would be an undesirable effect. On the other hand, NGO participation in the GATT Uruguay Round, which took over seven years to negotiate, might have expedited the negotiating process. The NGOs might have catalyzed trade negotiators and encouraged them to look beyond mercantilist interests. Certainly, the involvement of NGOs in the environment regime has not caused undue delay in negotiating environmental agreements. In fact, during the seven years of Uruguay Round negotiations, no less than seven global environmental agreements were reached.

One reason why the Uruguay Round took so long to complete was because little occurred during extended periods of time as governments either stewed at each other or awaited national elections in individual countries. With NGOs at the table, the governments might have been prodded toward more diligent negotiations. NGO involvement also might have stimulated the trade negotiators to obtain more significant results than those that were achieved.

The presence of NGOs may seem to undermine the apparent authority of governments, and thus their ability to negotiate trade policies. While it is true that NGOs could have that effect, NGOs also could stimulate the opposite reaction. A government backed by NGOs might actually find its credibility strengthened in negotiations as other countries perceive an enhanced ability to follow through on its commitments. One need not posit a failure in democracy to support greater NGO participation in international organizations. On the contrary, NGO participation should be viewed as an exemplification of the democratic vision.

The case for policy-making participation of national NGOs in international organizations is not premised on the incompetence of national governments to balance domestic interests. Instead, the contention is that international organizations will perform more effectively if they have the input of interest groups. The same argument justifies NGO involvement in domestic rule-making. Why should NGOs be involved in the creation of national law, but not international law?

The case for the policy-making involvement of international NGOs in international organizations is a different matter. While one can argue that the views of national NGOs are represented by national governments, the same argument cannot be made for international NGOs, such as the Worldwide Fund for Nature, the International Confederation of Free Trade Unions, or the

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Critics may suggest that any scheme would not equitably allow for direct participation by all of the citizens of the world. This view is correct. Nobody, however, calls for such direct participation, but rather NGOs advocate an organized process of NGO involvement. Borrowing from the procedures of the United Nations Economic and Social Council, the OECD, the ILO, and the 1949 ITO Secretariat proposals, the WTO General Council could easily formulate a workable set of arrangements for NGO participation.

Some groups would have greater resources for participation than others, but the issue of disparate resources is a pervasive problem in any organization. In fact, disparate resource allocation is currently a problem for *governmental* representation at the WTO. After all, the United States Trade Representative has more staff in the WTO headquarters city of Geneva than does the Geneva delegation of the trade ministry of the Congo.

The most serious concern is that trade scholars believe that the GATT's "low public profile" was "one of the largest contributors to trade liberalization over the past fifty years". Even if the GATT's low public profile largely contributed to trade liberalization in the past — and it is possible that the GATT's low public profile was the main reason why trade liberalization proceeded so slowly over the past 50 years — it seems unlikely to remain so in the future as trade assumes a larger role in American political discourse.

A recent American public opinion poll found strong support among American citizens for protectionism. Over 68 per cent of the public would support the imposition of "tariffs on products from countries that have a trade imbalance with the United States".[8] In recent years, there has been a resurgence in protectionist literature and in 1995, with the advent of a Republic-controlled Congress, trade liberalization proposals stalled. By winter 1996, trade became a key issue in the Republic Presidential campaign.

Given the heightened public attention to trade, it is unlikely that the WTO will be able to maintain the anonymity of the GATT. Nor should it. The WTO should actively engage in educating the public about the dangers of protectionist trade policies, just as the World Health Organization educates the public about communicable disease.

The notion that the international trade regime should be a buffer between the makers of trade policy and the public is an elitist view that should not find refuge in liberal governance. The founders of the international trade regime were well aware of the need to obtain popular support in removing domestic trade barriers. Indeed, the American reciprocal trade agreements programme, begun in 1934, contains institutional procedures for broad public participation. Individuals and NGOs will need to become more deeply involved in the legislative process by which the world trade community creates

rules and standards. The trading regime must be more inclusive in order to integrate both trade and non-trade values.

If the WTO is going to expand its work into new areas such as investment, competition policy, environment, labour standards and corrupt practices, it will need a broader base of participation than just national trade ministers. However, even if the WTO were to focus only on narrow issues of trade liberalization, the case to include NGOs would still be strong, primarily because eradicating protectionism is an enormous task which requires the full involvement of all stakeholders.

Participation in WTO Dispute Resolution

For better or worse, no government or major NGO argues that NGOs ought to have "standing" as a plaintiff to invoke WTO dispute resolution. Instead, the contemporary debate addresses whether an NGO ought to be able to submit an *amicus* brief or testify before a dispute panel in a public hearing.[9] NGOs also seek access to government briefs. At this point, NGOs are not pursuing the right to make oral arguments before a panel, nor the right to cross-examine the plaintiff or defendant governments.

If history is a guide, whether NGOs should have standing as WTO plaintiffs is an interesting legal question that surely will arise in the next century and has been resolved in other contexts. For example, as delegates to the ILO, employers and worker NGOs do have standing to lodge complaints about a government's conformity with its responsibilities under a ratified ILO convention. Furthermore, environmental NGOs have standing in American courts to challenge federal actions as "interested" humans, but not generally as representatives of nature. In the European Union, individuals who are challenging laws in national courts may seek to refer the case to the European Court of Justice under Article 177 for a determination as to whether a national law is violative of provisions of the Treaty of Rome ensuring the free flow of goods. The North American Free Trade Agreement (NAFTA) contains a provision giving a private investor the right to invoke arbitration when it believes that a NAFTA member government has violated NAFTA's rules on investment. This provision was invoked for the first time in March 1996 by a Mexican drug company who complained about Canadian regulations of generic drugs.

One certainly can imagine a system whereby NGOs or individuals would be able to invoke the WTO dispute process. For example, the European Union has entered into an agreement with several developing countries to limit imports of bananas. A consumer group in Europe should be able to file a complaint that this agreement violates GATT Article XI, which requires the

general elimination of quantitative restrictions, especially if no government is willing to do so.

For the foreseeable future, however, the WTO seems unlikely to grant that sort of standing. A logical interim step would be to give the WTO Secretariat the right to lodge complaints, in the same way that the European Commission has the right to bring a matter before the European Court of Justice. In one area, the WTO does require standing for private parties in national tribunals. The Agreement on Trade-Related Aspects of Intellectual Property Rights provides that:

> Member shall ... adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.

Environmental and public interest NGOs are seeking an opportunity to participate in WTO dispute resolution because the WTO has become an important forum for international environmental adjudication. As Ernst-Ulrich Petersmann pointed out, "[t]he GATT dispute settlement system has been used more frequently for the settlement of '*environmental disputes*' between states than any other international dispute settlement mechanism".[10]

There are two main justifications for NGO participation in dispute resolution. First, NGO participation will increase the information available to the panel, thereby leading to better informed — and hopefully better quality — panel decisions. Second, a closed dispute resolution process will undermine popular support. The general public of a country that loses a WTO dispute will be more apt to co-operate with the required legislative change if the WTO dispute resolution process seems fair.

An impetus behind NGOs' desire to participate in WTO dispute resolution is that the GATT panels have not performed well in adjudicating environmental disputes, particularly in the tuna-dolphin controversy. The tuna panel decisions were neither thorough nor entirely logical. The low quality of these environmental decisions — as compared to typically high quality GATT decisions in the more common commercial disputes — suggests a need to improve the information provided to a WTO panel. Although it does not provide a mandate for NGO *amicus* briefs, the Uruguay Round Agreement does take steps to improve the adjudication process. Most importantly, the Uruguay Round established an appellate review process that will provide a mechanism for correcting erroneous panel decisions.

Those critical of direct access by NGOs to WTO panels usually argue that NGOs should filter comments through their sovereign governments. There are, however, several problems with this argument. First, as noted above, international NGOs do not fit the traditional citizen-government model.

Second, NGOs from countries who are not members of the WTO are not represented by governments with WTO participatory rights. Thus, environmental NGOs in large nations like China or Russia might have valuable information for a WTO panel, but are prevented from supplying such input. Third, a government may not want to present a point urged by one of "its" NGOs. There could be a benign reason for this: the point could be incorrect. But, there might also be a less benign reason: a government might not want to repeat an NGO point if doing so could undermine the government in another WTO case or in domestic litigation. For example, while the United States Trade Representative defended the American tuna import ban against the European Commission, the United States Trade Representative pressed the Commission to repeal a pending ban on the import of furs caught in countries permitting leg-hold traps. Perhaps the United States Trade Representative withheld arguments in the tuna-dolphin case for fear that the Commission would turn those arguments against the United States in a fur trapping case or in another subsequent panel. Such latent conflicts of interest would provide a compelling reason to allow NGOs to present their best points directly.

Additionally, there is the possibility that defendant governments — particularly the United States with its separation of powers — might prefer to lose a WTO case if the executive branch dislikes the law being contested. Similarly, one group within a government, such as the trade officials who speak before WTO panels, might mount a weak defence. In such scenarios of conflicting governmental interest, assumptions that governments can be depended on to synthesize and balance values are not warranted.

Even some supposedly pro-participation governments are sometimes reluctant to listen to NGOs. For example, in March 1994, the Clinton Administration, with great fanfare, created a trade and environment NGO advisory committee. Two years later, however, the administration had not yet held the first meeting of this advisory committee.

We should not be overly concerned about the spectacle of a domestic constituency opposing the position of the government that is supposed to represent that constituency. Surely, we are used to that by now. Domestic opposition to a governmental position is quite common in domestic public law litigation and is increasingly common in transnational public law litigation. One such spectacle occurred in 1981 when the United States Senate restaurant workers lodged an ILO complaint stating that the Senate management refused to negotiate with them. The ILO performed a fair investigation without irreconcilable dissonance.

Thus far, I have focused on possible inadequacies in the representations made by governments to WTO panels, yet there is even a more fundamental reason to move to allow NGOs a role: defects within the WTO itself.

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Fundamentally, the WTO Agreement fails to recognize the global environment. It is a treaty about trade across economic borders. If there were no ocean, no atmosphere, no Antarctica, no cross-border pollution and no biodiversity, not a single word in the WTO would need to be rewritten. The WTO is replete with constructive rules on the topic of economic interdependence, but it is vacuous on the topic of ecological interdependence.

The absence of attention to ecological interdependence necessitates fundamental reform of the WTO. In the meantime, to fill this gap it would be useful to permit NGOs to make written presentations to WTO panels. Each panel might also hold one day of public hearings where NGOs could testify. An appropriate time for such NGO input would be after the panel completes a draft on the factual background of the dispute and summarizes the positions of the parties. The WTO should release these interim factual and positional drafts to the public before the hearing so that those testifying can comment on them. It will be impossible to hear from thousands of NGOs. As with any legislative hearing, the chairperson can determine who will be allowed to speak. Alternatively, NGOs could act collectively to select their spokespersons.

If direct participation by NGOs produces too much incoherence, the WTO might try a more organized approach. For example, the WTO could ask an intergovernmental environmental organization, such as the United Nations Environment Programme or the World Conservation Union, to name an "Environmental Advocate" to speak in WTO environmental disputes. The Environmental Advocate would work with NGOs and scientists to produce a report discussing the significance of the environmental treaty or law challenged in the WTO dispute resolution procedure.

Another model that could assure a just representation of environmental interests before WTO panels existed within the Permanent Court of International Justice. This court provided for a special chamber — for labour issues only — in which the judges appoint "technical assessors" who would be chosen with a view to ensuring a just representation of the competing interests.

Conclusion

The establishment of the WTO should improve international trade governance. The WTO has the authority to consider new trade rules, to review national trade laws, and to adjudicate disputes. The Charter of the ITO, written between 1946–1948, recognized the need for involving NGOs. Although that organization never came into existence, the birth of its nephew, the WTO, provides an opportunity to correct the GATT practice of excluding NGOs.

NGOs play constructive roles in numerous international organizations. It seems clear that these roles will increase in the years ahead. If it is appropriate for NGOs to provide input to national governments about trade issues, then it is also appropriate for NGOs to provide input to international organizations about trade issues.

Simply put, there are no good reasons for the WTO to refuse to provide systematic participation rights for NGOs. One hopes that WTO members will see this reality while the WTO still enjoys the goodwill afforded to new international institutions. As United States Secretary of State, Cordell Hull, told the Dumbarton Oaks Conference in 1944, "[n]o institution will endure unless there is behind it considered and complete public support".[11]

ENDNOTES

1 Portions of this chapter are adapted from Steve Charnovitz, "Participation of Non-governmental Organizations in the World Trade Organization", *Journal of International Economic Law*, 17(1), (Spring 1996).

2 C. Fred Bergsten, "A New Vision for the World Trading System", Paper presented at Singapore World Trade Congress, 24 April 1996.

3 Shinya Murase, "Perspectives from International Economic Law on Transnational Environmental Issues", *Recueil des Cours de l'Académie de Droit International de la Haye*, 253(II), forthcoming.

4 WTO Article V:1.

5 Winfried Lang, "Is Protection of the Environment a Challenge to the International Trading System?", *Georgetown International Environmental Law Review*, 7:481 (1995).

6 WTO Article V:2.

7 See William Diebold, "Reflections on the International Trade Organization", *North Illinois University Law Review*, 14:335 (1994) (citing lack of business and government support as well as uncertainty about the effectiveness of certain provisions as primary reasons why the ITO failed). See Philip M. Nichols, "Extension of Standing in World Trade Organization Disputes to Nongovernmental Parties", *University of Pennsylvania Journal of International and Economic Law* 17:295, 307, n. 57 (1996) (noting participation by International Chamber of Commerce in the early years of the GATT).

8 John Maggs, "Poll Shows Opposition to Clinton's Trade Policy", *Journal of Commerce*, 14 November 1995, at 1A. It is unclear whether respondents were told that almost all countries do have an imbalance with the United States.

9 See Robert F. Housman, "Democratizing International Trade Decision-making", *Cornell International Law Journal* 27:699, 744–46 (1994); Benedict Kingsbury, "Environment and Trade: The GATT/WTO Regime in the International Legal System", in A.E. Boyle (ed.), *Environmental Regulation and Economic Growth* (Oxford: Clarendon Press, 1994).

10 Ernst-Ulrich Petersmann, *International and European Trade and Environmental Law After the Uruguay Round* (Boston: Khmer Law International, 1995).

11 As cited in Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (Uppsala: Dag Hammarskjold Foundation, 1994).

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