

# **NGOs, Agenda-Setting and the WTO**

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## Abstract

The scholarly debate about relations between the World Trade Organisation (WTO) and civil society has been preoccupied with the benefits of allowing non-governmental organisations (NGOs) to formally participate in decision-making at the organisation alongside nation-states. For example, NGO proponents charge that many nation-states fail to balance economic interests with social justice and environmental concerns claiming that NGOs are the antidotes to the organisation's 'democratic deficits'. While this is an important theoretical debate, this paper attempts to advance the WTO-civil society literature in a more productive direction. Instead of focusing on whether NGOs should be granted formal power at the WTO, the paper provides an empirical account of the way in which NGOs *already* exercise significant agenda-setting impact at the organisation. In doing so, I examine two NGO campaigns: the access to essential medicines campaign targeting the WTO's intellectual property agreement, and the campaign against a WTO foreign investment agreement. I argue that the NGOs were able to exert agenda-setting influence because they utilised political opportunities to mobilise normative consensus among the relevant NGO communities and provoke international debate in relation to the issues at stake. They also worked cooperatively with developing WTO member states to inform their positions in the WTO arena. While it is unlikely that NGOs will be granted participation status at the WTO in the foreseeable future, an examination of recent NGO activity in relation to international trade issues contributes to understandings about exactly how NGOs have become significant actors in international politics.

## Introduction

The role of non-governmental organisations (NGOs) in global governance is a subject that has gained increasing salience over the past decade. Yet there is still relatively little known about the circumstances under which NGOs can impact on deliberations at international economic policy institutions such as the World Trade Organisation (WTO).<sup>1</sup> This paper looks beyond the current literature on relations between the WTO and civil society, which focuses on the deficiencies of the WTO's civil society engagement mechanisms, to show that NGOs are able to exert agenda-setting influence at the WTO, and in some cases, impact on the outcomes of negotiations. Instead of progressing a normative claim about their potential to alleviate democratic deficits at international institutions or contribute to the formation of a global civil society, I argue that NGOs are significant in international politics because they can affect outcomes at intergovernmental arenas like the WTO by working to fuse their normative goals to particular state interests. The paper does not enter the debate about the accountability or representativeness of NGOs. NGOs are important actors in the international arena regardless of whether they display these desirable attributes.

Many of the contributions to the literature on NGOs in international politics attempt to show that NGOs are significant actors by focusing upon their role as 'norm entrepreneurs', who mobilise global normative consensus to bring about changes in states' behaviour and at intergovernmental bodies (Klotz 1995; Risse-Kappen 1995; Keck and Sikkink 1998; Boli and

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<sup>1</sup> O'Brien, Goetz, Scholte and Williams (2000) is one notable exception, however these authors focus more on the emerging relations between global social movements and the IMF, World Bank and the WTO, which they describe as a process of 'complex multilateralism'.

Thomas 1999; Khagram, Riker and Sikkink 2002; Price 1998). Many herald what they see as an emerging process whereby NGOs are becoming insider policy-making participants, especially within several United Nations (UN) organisations (see Willetts 1996). Yet the strengths of NGOs lie elsewhere. The mobility of NGOs, their capacity to utilise and disseminate information, and their flexible organisational structures are geared not towards imitating the behaviour of nation-states, but provoking and shaping the terms of international debates, mobilising public opinion, challenging corporate behaviour, and utilising state power in order to affect international decision-making. These activities are especially important in international arenas where NGOs do not have formal participation rights, such as at the WTO. Thus, limiting the theoretical scope of NGO activities to norm entrepreneurship and dissemination, as constructivist scholars often do, ultimately underestimates the significance of NGOs in international politics.

This paper adopts an approach that considers that the normative agendas of NGOs and the interests of states can be complementary in understanding how NGOs wield agenda-setting impact at the WTO. As case studies, I examine two NGO campaigns directed at circumscribing an aspect of the WTO's authority in relation to developing states. The access to medicines campaign, which officially began in 1999, attempted to limit the application of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement to developing nations by clarifying the intended use of the TRIPS safeguards to allow developing countries to employ policy instruments to make patented medicines more affordable. Although the NGOs did not achieve all their goals in relation to TRIPS, they played a significant role in having the issues addressed at the 2001 Doha ministerial. The second case study details the NGO campaign against the launch of investment negotiations at the WTO. In the lead up to the 2003 Cancún ministerial conference, the NGOs worked closely with developing countries, encouraging them to block the issue in the WTO arena. Debate about investment was one of the key factors leading to the collapse of the Cancún meeting. WTO members subsequently agreed to remove investment from the Doha agenda in July 2004. The cases illustrate that while the mobilisation of normative consensus is an important aspect of the way in which NGOs exert influence in international politics, the NGOs must also leverage from political opportunities and take into account state interests.

The paper begins with a brief review of the WTO-civil society literature, which includes an overview of the WTO's mechanisms for engagement with civil society. Then, I clarify the suitability of the selected cases, and outline the framework for evaluating the agenda-setting role of NGOs at the WTO. The case study section that follows provides an account of the NGO campaigns in the key areas of intellectual property and investment. The final part of the chapter demonstrates that both normative consensus and state interests are vital for understanding how NGOs successfully wage campaigns directed at impacting WTO decision-making. In each case, three factors were significant for the NGOs in exerting agenda-setting impact: the presence of political opportunities, issue framing and the mobilisation of normative consensus, and utilising state power.

### **NGOs at the WTO: antidotes for democratic deficits?**

'WTO exceptionalism', a term coined by Steve Charnovitz (2000, 187) sees the organisation departing from what some analysts have come to consider a norm in global governance whereby NGOs are granted formal participation rights at intergovernmental institutions. This so-called deficiency, along with the WTO's mechanisms for engagement with NGOs, has been a source of contention for scholars who promote the role of NGOs as democratising actors in world politics. This contention represents a dominant thread within the literature on

the WTO and civil society that has emerged over the past decade, especially following the collapse of the 1999 Seattle ministerial conference (see Charnovitz 2000, 2002 and 2004, Esty 2002; Wilkinson 2002a and 2005; Scholte, O'Brien and Williams 1999; Nanz and Steffek 2004; Loy 2001; Tuerk 2003; Buchanan 2003; Payne and Samhat 2004; Lacarte 2004; Bellman and Gerster 1996).

Much of the literature on the WTO and civil society has been devoted to investigating the shortcomings in the WTO's provisions for contact with NGOs. At present, the WTO's mechanisms for engagement with civil society include NGO attendance at bi-annual ministerial conferences (as spectators not participants); WTO-organised issue-specific NGO dialogues and briefing sessions; the annual WTO public forum (since 2000); and WTO website space for NGOs, including NGO position papers and a community e-forum (WTOa). In May 2002, WTO members agreed to relax the rules for the derestriction of WTO documents, reducing the waiting period from approximately eight months to between six and eight weeks (WTO 2002). Since taking office in 2005, WTO Director-General Pascal Lamy has made himself available via the WTO website for 'chat events', and even uploaded his Hong Kong ministerial conference 'diary' detailing his views of the meeting's progress (WTOb; WTO 2005). In 2006, the WTO secretariat upgraded the WTO website and conducted online surveys, aimed at the general public, to assess the changes.

First and foremost, critics point to the inequities of the WTO's engagement mechanisms. For example, Scholte et al (1999) and Wilkinson (2005) argue that the WTO's NGO accreditation process for attendance at ministerial conferences provides privileged access for business associations and international NGOs at the expense of social movements and grassroots organisations from the developing world (see also Buchanan 2003). The mechanisms, many of which are internet-based, are also said to neglect those organisations, especially in developing nations, which do not have access to the internet (Wilkinson 2005). As such, the WTO's utilisation of its website is said to underscore the organisation's focus on responding to 'noisy' NGOs based in developed countries rather than engage with a broad cross section of NGOs. Detractors have therefore alleged that relations between the WTO and civil society have reinforced global structural inequalities in world politics (Wilkinson 2002b). In addition to the inequities in the WTO's arrangements, scholars have also criticised the absence of permanent NGO accreditation for ministerial conferences and other symposia, and the lack of a dedicated civil society liaison committee (Charnovitz 2002 and Scholte et al 1999). Most critics therefore have dismissed the WTO's 'overtures' to civil society as a public relations exercise designed to limit criticism of the organisation, especially following the failure of the Seattle ministerial.

The major thread within the WTO-civil society literature centres on the potential benefits of allowing NGOs to participate in WTO decision-making. Nanz and Steffek (2004, 328) for example, advocate a global public sphere in which civil society plays a key role, stating that external transparency at international organisations is necessary for informed political debate. Charnovitz (2004, 681) proposes a participatory role for NGOs in order to inject new energy and ideas and make the WTO more open and transparent, while Esty (ICSTD, 9) promotes the role of NGOs as 'intellectual competitors'. Among their list of potential benefits and pitfalls of NGO participation, Scholte et al (1999) state that NGOs could stimulate debate, offer alternative perspectives, force the WTO to explain and justify its decisions, act as channels through which marginalised stakeholders can voice their concerns, and educate citizens about trade. For Tuerk (2003), the most promising aspect of NGO participation at the WTO is their capacity to improve the status of developing countries at the WTO by providing technical expertise and information services to address problems related to non-transparent decision making processes. In contrast, only a handful of scholars question the benefits of increasing

NGO participation at the WTO, arguing that opening up the WTO to NGOs would compromise the decision-making process (see Robertson 2000 and Wolf 2001). The vast majority of this literature nonetheless supports the idea that NGOs can boost the WTO's legitimacy and alleviate its democratic deficits.

### **A framework for assessing NGO agenda-setting**

The WTO has now been in operation for over a decade and a number of questions about the relations between NGOs and the WTO still require examination. As early as 1998, only three years after the creation of the WTO, Dunoff (1998, 434) argued that the preoccupation with NGO participation at the organisation does not represent current WTO practice, and fails to acknowledge the ways in which NGOs already participate in trade politics at the WTO, though in an 'indirect, unofficial and largely *ad hoc*' manner. This paper addresses this challenge by examining the way in which NGOs participate in international trade politics as agenda-setters at the WTO.

The term 'NGO' has become increasingly well-used in social and political science over the past two decades. In the context of global governance, it commonly refers to voluntary, non-profit organisations that engage in governance activities as insider policy-making participants and/or outsider challengers. This definition is necessarily broad because as Peter Willetts (1996: 62) states, 'there is no such thing as a typical NGO'. However, many scholars have unduly limited NGOs to those groups that they deem to be pursuing principled or noble causes. They have therefore excluded actors that pursue instrumental objectives, or some mixture of normative and instrumental goals, for example, business associations, terrorist groups, labour unions or non-profit research institutes. Even though some of these groups may pursue 'uncivil' goals, they can still be considered NGOs (see Keane, 2003).

In the WTO context, Bellmann and Gerster (1996, 35) usefully categorise NGOs into three groups: non-profit organisations that engage in advocacy and lobbying, umbrella professional associations such as trade unions and business associations, and research institutions and universities. The one common feature of all these types of NGOs is that they often seek to have their normative/instrumental objectives reflected in decision-making (see Sell and Prakash 2004). Of these different types of NGOs, this paper focuses on non-profit advocacy groups that attempt to reform the WTO rather than professional associations such as those that represent business interests. This selection represents a 'hard' test case for examining the impact of NGO agenda-setting power at the WTO. This is because they not only lack formal participation status, but the WTO is often considered to provide privileged access for organisations representing business interests. Further, the WTO's mandate is clearly compatible with general business interests in that it focuses on market liberalisation and thus expanding business opportunities. Although this paper examines non-profit advocacy organizations, a subtype of NGO, it does not necessarily seek to cast these actors as praiseworthy or virtuous, as is frequently the case in a dominant proportion of the literature on NGOs in international politics.

I examine two NGO campaigns: the access to medicines campaign, and the campaign against a WTO investment agreement. Both campaigns aimed to curb an aspect of the WTO's authority over developing nations. The TRIPS campaign was directed at limiting the application of the TRIPS agreement in order to allow developing nations to meet public health priorities, while the investment campaign worked toward preventing the WTO from adopting a new agreement on foreign investment. Both campaigns declared that the application of 'one-size-fits-all' international rules would be inappropriate, and supported the

autonomy of developing countries to make decisions about their economic development and social priorities independently of WTO rules. In doing so, both campaigns challenged powerful states: the United States in the TRIPS case and the European Union (and Japan) in the investment case. However, the campaigns differ in that one attempted to clarify the application of already existing rules (TRIPS), while the other worked to prevent the launch of an entirely new agreement (investment). Given that both campaigns accomplished a number of their objectives, they illustrate some of the ways in which NGOs can be successful agenda-setters at the WTO.

Investigating NGO campaigns rather than the activities of individual NGOs or broader NGO networks and movements (such as anti-poverty NGOs, environmental NGOs, or aid NGOs) allows a closer examination of how NGOs work together in fluid networks that do not respect state boundaries or predefined issue-areas. A focus on NGO campaigns allows for the identification of the NGOs' objectives, shared and supported by a large range of organisations, which can be evaluated by comparing the campaign goals with their achievements. This approach has been employed by a number of scholars including Wapner (1995), Keck and Sikkink (1998), Fox and Brown (1998), Price (1998) and Sell and Prakash (2004) amongst many others.

In establishing a framework to evaluate how the NGO campaigns had agenda-setting impact at the WTO, the general literature on NGOs in world politics, whilst generally overplaying NGO agency, is of use in understanding how NGOs mobilise consensus. For example, Keck and Sikkink (1998) illustrate how NGOs activate transnational networks to generate normative consensus in order to oversee changes in nation-state behaviour in regard to human rights violations. Similarly, Price (1998) examines how international normative consensus built by transnational non-state actors led to the international ban on anti-personnel landmines. Such accounts suggest that mobilising normative consensus is an important aspect of how NGOs work informally to put external pressure on a target actor. But, it is only a partial explanation of how NGOs wield influence in international politics. It does not fully specify how normative consensus translates into agenda-setting influence at intergovernmental organisations. In undertaking international campaigns, NGOs are better considered strategic actors, rather than simply 'norm entrepreneurs', who navigate the political environment, utilise political opportunities to frame the terms of debates, and regularly work with nation-states on an informal basis to oversee changes at international institutions, such as the WTO.

Thus, the paper adopts a lens that views the normative agendas of NGOs and state interests as complementary in its investigation of how NGOs have agenda-setting influence at the WTO. For each case study, I show how the NGOs mobilised consensus by examining the significance of NGO-organised international workshops on the key campaign issues, how they disseminated their ideas at international organisations other than the WTO, and engaged in public demonstration activities to raise the profile of the issues at stake. Each case study then examines the extent to which NGOs lobbied specific WTO member governments while working cooperatively with others in order to get their issues onto the agenda at WTO ministerial conferences. In comparing how each campaign was able to impact on the WTO, I explore three key interrelated factors:

1. the political opportunities available to the NGOs in waging their campaigns;
2. the way in which the NGO campaigners framed the issue at stake and worked to both built normative consensus among the NGO community and stimulate debate among nation-states; and

3. the extent to which the NGOs worked cooperatively with particular nation-states to achieve their objectives in the WTO arena.

### **The TRIPS and access to medicines campaign**

The WTO's TRIPS agreement, one of the most controversial WTO accords, came into force on 1 January 1995. It defines the minimum standards of intellectual property (IP) protection that member states must uphold, which are applicable to all types of internationally-traded goods, including pharmaceuticals (WTOc). The major debate over TRIPS revolved around the circumstances under which developing members may invoke the TRIPS safeguards to override pharmaceutical patents and provide citizens with access to low-cost generic versions of patented medicines. For developing countries, the uncertainty about how to interpret the use of the TRIPS safeguards cast considerable doubt over the legality of their normal practices in relation to providing access to medicines for diseases such as HIV/AIDS, tuberculosis and malaria. The most widely used policies, compulsory licensing and parallel importing, had been important bargaining tools for maintaining stable and low-cost access to medicines by inducing pharmaceutical companies to offer their products at affordable prices in developing nations.<sup>2</sup>

The establishment of TRIPS saw a number of developing countries, notably South Africa, Brazil, India, and Thailand, face diplomatic pressure from the US and the EU, as well as legal action from multinational research pharmaceutical corporations, over their continued use of compulsory licensing and parallel importing. In 1998, a large coalition of research pharmaceutical MNCs, supported by the US and EU, initiated legal action over South Africa's 1997 legislation, which allowed for the generic substitution of off-patent medicines and parallel importation of patented medicines.<sup>3</sup> The case generated an international NGO campaign, which pinpointed the WTO's TRIPS agreement as a prominent factor in allowing these events to have taken place. The NGOs were concerned that the implementation of patent regimes in developing nations, combined with the uncertainty about the use of the TRIPS safeguard measures, would limit affordable access to medicines for life-threatening diseases such as HIV/AIDS, malaria, and tuberculosis (Ford 2004, 138-39). The campaign network comprised a number of organisations, ranging from development NGOs to HIV/AIDS activists. The leading NGOs included Health Action International (HAI), Médecins Sans Frontières (MSF), Oxfam International, Third World Network (TWN), ActionAid, Quaker United Nations Office (QUNO), Consumer Project on Technology (CPTech), Treatment Action Campaign (TAC) in South Africa, Affordable Treatment and Action Campaign (AMTC) in India, and Thai NGO Coalition on AIDS (TNCA).

The NGOs leading the campaign worked to build a common agenda and generate consensus among the broader NGO community through a number of international workshops at which the key issues were discussed and a campaign platform was established. In March 1999, MSF, CPTech and HAI sponsored the first series of international NGO meetings to discuss the use

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<sup>2</sup> Issuing a compulsory license involves a government forcing a patent holder (the owner of the intellectual property) to allow either the government or others to use the intellectual property. The motivation for issuing a compulsory license is that previous attempts by a government to obtain a license under reasonable commercial terms have failed. The patent holder may or may not receive royalties. Parallel importing involves a government taking advantage of different prices in different countries for a patented product by importing the cheaper good without the patent holder's permission.

<sup>3</sup> The MNCs alleged that the legislation violated the South African constitution and South Africa's commitment to the TRIPS Agreement. See *Pharmaceutical Manufacturers' Association and others v. President of the Republic of South Africa and others* (1998) Case no. 4183/98 (filed 18 Feb. 1998).

of compulsory licensing as a policy instrument for increasing access to essential medicines in developing nations (CPTech 1999). Held in Geneva at the Palais des Nations, these high-profile meetings involved approximately 60 public health and consumer NGOs from around the world, and representatives of governments, pharmaceutical companies, and international organisations including the WTO and World Health Organisation (WHO) (Williams 1999, 1; CPTech 1999a). In November 1999, immediately prior to the WTO's Seattle ministerial conference, 350 NGO representatives from fifty countries met in Amsterdam for an NGO conference entitled 'Increasing Access to Essential Drugs in a Globalised Economy: Working Towards Solutions' ('t Hoen 2002, 46). The conference resulted in the release of a joint NGO declaration, the 'Amsterdam Statement', which contained a proposal to establish a working group at the WTO on TRIPS and public health in order to address the ambiguity surrounding the TRIPS safeguards. These NGO-sponsored meetings helped to spearhead the international campaign on TRIPS and public health by mobilising consensus among the NGO community and stimulating a wider debate about the need for the clarification of the safeguard measures at the WTO.

During 2001, in the lead up to the Doha ministerial conference, the NGOs continued to hold press conferences and issue public statements in parallel with official WTO meetings. In September, the NGOs held a press conference in Geneva to highlight their concerns about the implications of TRIPS on access to medicines. They released a joint statement entitled 'Re-thinking TRIPS in the WTO – NGOs Demand Review and Reform of TRIPS at Doha Ministerial Conference' (TWN 2001). Another NGO statement issued on 11 November 2001 called on WTO members to endorse an interpretation of TRIPS allowing for compulsory licensing and parallel importing (Health GAP 2001). Later in 2001 Oxfam International presented a petition signed by 32,000 people in 163 countries calling on the WTO to change its patent rules (Oxfam International 2001).

The NGOs worked to mobilise support for the clarification of the TRIPS safeguard measures in policy-relevant international organisations. The WHO, the World Bank and other UN agencies provided important policy arenas for the NGO network to publicise the link between access to affordable medicines, the HIV/AIDS crisis and TRIPS implementation. One of the outcomes of NGO participation at the WHO's 1998 World Health Assembly (WHA) was the publication of a WHO information booklet containing recommendations to member states for implementing TRIPS in a manner allowing for equitable access to essential medicines (WHO 2001). The United Nations Conference on Trade and Development (UNCTAD) also conducted research on the impact of the implementation of TRIPS and provided advice to developing country members about TRIPS implementation. In August 2000, the UN Sub-Commission for the Protection and Promotion of Human Rights adopted a resolution, which noted that the implementation of TRIPS has the potential to impact on the right to enjoy the benefits of scientific progress, the right to health, and the right of self-determination (UN Sub-Commission for the Protection and Promotion of Human Rights 2000). The World Bank also supported the use of policy measures such as compulsory licensing and parallel importing of pharmaceuticals, itself a major provider of medicines in developing nations (Sell and Prakash 2004, 162). Together, these international bodies helped legitimise the claims of the NGO campaigners and emphasise the need for the issue to be addressed at the WTO.

In the lead up to the 2000 US presidential elections, HIV/AIDS activists and other public health NGOs publicised the role of the Clinton administration in pressuring developing nations, especially South Africa, over the use of compulsory licensing. The activists targeted presidential candidate and US Vice President Al Gore, staging publicity stunts at his campaign rallies with banners that said, for instance, 'Gore's greed kills' (Sell and Prakash 2004, 165). In doing so, the activists argued that only affluent South Africans (predominantly

white) could afford the cost of patented pharmaceuticals (ACT UP Philadelphia 1999). The activists' strategy was one of the contributing factors when in June 1999, the US withdrew its objections to the South African legislation (Morrison 2001, 199-200; Sell and Prakash 2004, 166; Thomas 2002, 257). In November 1999, at the WTO's ministerial conference in Seattle, Clinton in his speech referred specifically to South Africa and the HIV/AIDS crisis, stating that 'the United States will henceforward implement its health care and trade policies in a manner that ensures that people in the poorest countries won't have to go without medicine they so desperately need' (Clinton 1999). In May 2000, an Executive Order entitled 'Access to HIV/AIDS Pharmaceuticals and Medical Technologies' was issued to this effect.<sup>4</sup>

The NGO campaigners actively supported developing countries in contesting the TRIPS issue at the WTO. In Geneva during 2001, the NGOs strongly influenced the developing countries' strategy for clarifying the right of developing countries to employ the TRIPS safeguards at the WTO's TRIPS Council. The NGOs worked closely with developing countries, such as Brazil, India, and the African Group, helping to articulate exactly how developing countries could utilise the TRIPS safeguards. They assisted these nations to arrive at a common position to take to the TRIPS Council Special Sessions. The lead paper submitted by a large group of developing nations for consideration at the first TRIPS Council Special Session entitled 'TRIPS and public health' drew heavily upon the concerns raised by NGOs (Abbott 2002, 482).<sup>5</sup> The NGOs, particularly QUNO, also enhanced the influence of developing countries by making finances available to engage leading IP experts who provided technical assistance, and suggested strategies for negotiating the issue at the WTO (Tuerk 2003, 190 and 201; QUNO). Specifically, the NGOs helped to transform the terms of the TRIPS safeguards debate from one of policy substance to that of legal interpretation and procedure (Shadlen 2004, 95). As a result of the NGO assistance, the developing countries insisted on a ministerial declaration on the use of TRIPS safeguards in relation to public health at the 2001 TRIPS Council meetings.

The NGO campaign, combined with the assistance provided to developing countries for contesting the issue at the WTO, resulted in the TRIPS and public health issue becoming a key item of discussion at the Doha ministerial conference. Members agreed upon the Doha Declaration on TRIPS and Public Health, which affirmed WTO members' sovereign right to utilise the TRIPS safeguards to meet public health objectives:

We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly while reiterating our commitments to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, promote access to medicines for all (WTO 2001).

The process of clarifying the TRIPS agreement at Doha led to further developments at the WTO on the matter, including the 'August 30 solution' and the December 2005 decision to permanently amend TRIPS, the first ever modification of a core WTO agreement (WTO 2005).<sup>6</sup>

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<sup>4</sup> Executive Order No 13155, 'Access to HIV/AIDS pharmaceuticals and medical technologies', 65 Federal Register, 30521, 2000.

<sup>5</sup> This paper was supported by the Africa Group, Barbados, Bolivia, Brazil, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Philippines, Peru, Sri Lanka, Thailand, and Venezuela.

<sup>6</sup> It should be noted that most NGOs involved in the campaign opposed the August 2003 and December 2005 decisions taken by WTO members. MSF, for example, has stated that the rules contained within the August 2003 decision, which outline the conditions under which a compulsory license can be granted for export, are 'prohibitively complex' to the extent that they are unworkable (See MSF 2006).

## **The NGO campaign against a WTO investment agreement**

At the 2001 Doha ministerial conference, the ongoing international debate between WTO members over the launch of negotiations for a WTO foreign investment agreement (and the other three ‘Singapore issues’) elicited strong opposition from a united international NGO network.<sup>7</sup> Despite the lack of consensus at Doha over the issue, the EU and Japan (the major proponents) managed to secure a reference to the launch of investment negotiations in the Doha Declaration:

Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly FDI, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations (WTO 2001).

The disagreements among WTO members greatly intensified in the lead up to the 2003 Cancún meeting, prior to which a critical mass of NGO opposition to a WTO investment agreement facilitated unity among a large group of developing countries, the Group of 90 (G-90) to oppose the launch of investment negotiations (Jawara and Kwa 2004, 1). With the developing countries effectively vetoing the negotiation of a WTO investment accord, the Cancún Ministerial Conference ended in disarray. The ‘July Package’, put together by WTO members to rescue the Doha round following the Cancún debacle, decisively removed investment and the other Singapore issues from the negotiating agenda.<sup>8</sup>

Despite the significant contribution of NGOs to this outcome, their role is often neglected in accounts of the Cancún meeting collapse and the shelving of the proposal to launch investment negotiations at the WTO. Most analysis simply consigns NGO and civil society action to the public demonstrations held on the streets without reflecting upon the productive relations forged between the prominent, resource-rich NGOs and developing countries. The decision made at Doha to launch negotiations on foreign investment rules at the WTO generated an NGO campaign supported by a wide range of NGOs. The NGO campaign drew heavily upon the previous campaign against the Organisation for Economic Cooperation and Development’s (OECD) Multilateral Agreement on Investment (MAI); it reinvigorated the contest surrounding the issue of rules for foreign investment. The NGOs leading the campaign included Oxfam International, TWN, Centre for International Environmental Law (CIEL), International Institute for Sustainable Development (IISD), Friends of the Earth International (FOEI), Public Services International (PSI), World Development Movement (WDM) and Institute for Agriculture and Trade Policy (IATP).

The NGOs cited a range of reasons for their opposition to a WTO investment agreement: that it was antithetical to the development character of the Doha round; that it would be a ‘disaster’ for equitable and sustainable development; and that domestic policy flexibility

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<sup>7</sup> In the WTO context, investment is one of the four ‘Singapore issues’, which also include competition policy, government procurement, and trade facilitation. The four issues first arose at the 1996 WTO ministerial meeting in Singapore.

<sup>8</sup> The July Package was the WTO’s General Council’s decision agreed to on 1 August 2004. Its purpose was to refocus the Doha round negotiations and it contained frameworks and other agreements designed to advance the negotiations.

would be lost. They highlighted the limited progress on the key issues of importance to developing countries including market access, agricultural barriers, special and differential treatment, and several other remaining Uruguay Round commitments. The NGOs accused the nations that supported an investment agreement of hypocrisy and 'historical amnesia' as most now industrialised nations had in the past 'systematically discriminated between domestic and foreign investors in their industrial policy' in order to generate economic growth (Bailey, Green, Hardstaff, Hilary and Melamed 2003; Change and Green 2003; Chang 2002). Underpinning the major concerns of the NGOs was that an investment agreement would grant MNCs too much power in the global economy at the expense of developing states. In their joint statement launching the campaign, the NGOs stated that a WTO investment agreement would 'create a corporate bill of rights that will fundamentally favour multinational corporations while at the same time eviscerating the ability of governments to regulate foreign investment' (Trade Observatory 2003).

The NGOs leading the campaign engaged in a great deal of joint activity, organised a number of high-profile international meetings, launched the website 'Investment Watch', and released a number of sign-on statements. Their ultimate goal was to have investment removed from the Doha Development Agenda at the 2003 Cancún ministerial conference. Early in 2003, CIEL worked to garner support from a wide range of civil society groups by organising a workshop on trade and foreign investment at the World Social Forum in Porto Alegre, Brazil (CIEL 2003a). In March 2003, the leading NGOs, TWN, Oxfam International, WWF, Public Services International, CIEL and IATP, hosted a high profile conference in Geneva, comprising an international workshop for NGOs and a public seminar attended by representatives of WTO members and international organisations as well as academics and trade experts (CIEL 2003b). The NGO workshop produced a joint declaration entitled 'No Investment Negotiations at the WTO: Declaration of Non Governmental Groups and Civil Society Movements', supported by than fifty NGOs and social movements (TWN 2003). It called upon governments to drop the launch of negotiations on investment and the other Singapore issues. In May 2003, CIEL, FOE, Oxfam America, National Wildlife Federation, Heinrich Böll Foundation and the Global Development and Environment Institute of Tufts University organised a conference held in Washington D.C. entitled 'Investment, Sustainable Development and the WTO: Allies or Antagonists?' (CIEL 2003c). In addition to the NGO workshops, conferences, declarations, and sign-on statements, the prominent NGOs published and disseminated reports and articles challenging the efficacy of a WTO foreign investment agreement. These were published on their websites and circulated around the world via affiliate organisations (See Oxfam 2003; FOE International 2003; Bailey et al 2003; Chang and Green 2003; and Smythe 2003-04). These papers became important tools that identified the key issues at stake and helped build consensus among the NGO community involved in trade issues.

In provoking international debate about a WTO investment accord, the NGOs lobbied against a WTO foreign investment agreement at a number of international governmental arenas. They campaigned at the G8 meeting in Evian, France in June 2003, and in July 2003, at a meeting of European trade ministers in Italy, over seventy European NGOs demanded that the EU drop their goal of launching investment negotiations on the Singapore issues and delink them from agriculture (WDM 2003). Further, the NGOs successfully sought and utilised the support of prominent international institutions including the World Bank and International Monetary Fund (IMF) (Cho 2004, 240). UNCTAD had been active in monitoring developments at the WTO, and the NGOs used the organisation's research as evidence that a liberalised foreign investment regime would be of dubious benefit to developing and under-developed countries (Bailey et al 2003, 2; Smythe 2003-04, 73; see also UNCTAD 2000a; UNCTAD 1999; UNCTAD 2000b). The NGOs also drew upon World Bank research and

analysis for the same purpose (see Bailey 2003, 2). Similarly, FOEI employed a 2003 UNDP report, *Making Global Trade Work for People*, which found that there is 'no clear correlation between the volume of foreign direct investment and development success' (UNDP 2003 in FOE International 2003, 3). The use of research produced by these international organisations boosted the legitimacy of the NGOs' claims about the potential risks stemming from liberalised investment rules.

Given that the EU was a major proponent of a WTO investment agreement, the NGOs focused their efforts on lobbying European governments and arguing that the EC reconsider its support for the agreement (Smythe 2003-04, 74). In mid-September 2002, a group of forty European NGOs launched their campaign against investment by issuing a declaration entitled 'Joint Statement by European Civil Society Groups Against an Agreement on Investment in the WTO' (S2B Network 2003). It called for the EC to drop its proposals to begin investment negotiations, instead requesting that Europe address the lack of enforceable multilateral rules governing the behaviour of MNCs within the UN. The NGOs also discussed the issues with individual European governments, many of which claimed that the push for a WTO investment agreement came largely from the EC (Bach 2003, 5). In April 2003, a German NGO, Forum on Environment and Development, organised a conference at which a range of NGOs discussed the Singapore issues with governmental representatives, including the EC's Director-General for Trade (Bach 2003, 4).

The NGOs played a key role in assisting developing countries to oppose a WTO investment agreement. The analysis produced by the NGOs helped inform the developing countries of the key issues at stake. The IISD's provision of foundation funding for an electronic newsletter on developments in foreign investment issues was a particularly important resource (Smythe 2003-04, 74). A number of other NGOs, such as the International Centre for Trade and Sustainable Development (ICTSD), TWN, Focus on the Global South, and IATP, also monitored the trade negotiations and provided their own research and analysis. The NGOs facilitated meetings and contact between developing WTO members and NGOs to highlight commonalities (Smythe 2003-04, 74). For example, in April 2003, at a workshop run by the Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) in Arusha, Tanzania, NGOs urged African policy-makers and negotiators from Angola, Kenya, Lesotho, Malawi, Mozambique, Tanzania, Uganda, Zambia and Zimbabwe to oppose the launch of negotiations on the Singapore issues (SEATINI 2003). Unity among developing nations was further entrenched at the Least Developed Countries' (LDC) Trade Ministers meeting in Dhaka, Bangladesh in early June, as well as the Trade Ministers of the African Union meeting in Grand Baie, Mauritius on 20 June. At both meetings, developing nations called for the continuation of the study process on a foreign investment agreement rather than beginning the negotiations (South Centre 2003, 7). These events proved crucial for consolidating the position of developing nations in opposing the launch of investment negotiations at the Cancún conference.

In September 2003, the Cancún ministerial conference ran for four days before disagreements among members over the Singapore issues, agriculture, non-agricultural market access (NAMA), and special and differential treatment, resulted in the abandonment of the meeting. Investment and the other Singapore issues were discussed at the behind-the-scenes 'green room' meetings. During a break in the green room discussions, a combined meeting of the Africa, Caribbean, and Pacific (ACP) countries, the LDC countries and African Union members (which together became known as the G-90) decided to maintain their opposition to an investment agreement until progress had been made on agriculture (Khor 2003b). On the third day of the ministerial, sixty-nine developing members sent a letter to the Canadian facilitator of the Singapore issues meetings that comprehensively outlined the reasons for

their opposition to an investment agreement and the other Singapore issues (Jawara and Kwa 2004, xxv; Khor 2003a). The deep divide between the G-90 and Europe on the Singapore issues and agriculture resulted in the conference chairman's decision to prematurely conclude the meeting.

Following the collapse of the Cancún conference, ministers from the Group of 20 (G-20) developing countries, the African Union and the G-90 agreed to work towards a July 2004 deadline to resume the WTO negotiations. Ultimately, the rescue package, known as 'the July Package', not only blocked, but removed, investment and the other Singapore issues (except trade facilitation) from the Doha Round:

...the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Program set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round (WTO 2004).

This result was seen as a major victory for developing countries and the NGOs that campaigned against the creation of a WTO investment accord.

### **Understanding the agenda-setting role of NGOs at the WTO**

There were three interlinked factors that allowed the NGOs to play an agenda-setting role at the WTO in relation to both the TRIPS agreement and the proposed investment agreement. The first factor was the available political opportunities, which provided a legitimatising set of circumstances for each NGO campaign. The NGOs strategically utilised these opportunities to inform their campaigning approach. Second, the NGOs successfully projected their own interpretation of each of the issues in an emotive manner that captured attention from the broader NGO community. Each NGO campaign network widely disseminated their views in national and international political arenas in order to mobilise consensus on both the nature of each of the issues and instigate debate among WTO members. Third, the NGOs worked to utilise state power by fusing their normative goals with particular states' interests in order to affect the WTO negotiations. The NGOs achieved this by informing the strategies of the developing nations to contest the issues within the WTO arena.

#### *Political opportunities*

A number of political opportunities facilitated the NGO network's campaign on TRIPS and public health. The most significant was the research pharmaceutical companies' legal action against the South African government over its patent law amendment. The case served as a major catalyst for the development of the NGO campaign and assisted the NGOs in drawing international attention to the role of TRIPS in stifling access to essential medicines in developing countries. Another opportunity utilised by the NGO network was the public anxiety over the HIV/AIDS crisis that had emerged in the 1980s (Sell and Prakash 2004, 160-161), which heightened the sense of urgency surrounding the TRIPS and public health issue. Further, during the course of the campaign, the 2000 US presidential elections allowed the NGOs to highlight the Clinton/Gore administration's role in pressuring developing nations over their continued use of compulsory licensing and parallel importing (Sell and Prakash 2004, 153; Morrison 2001, 199-200; Thomas 2002, 257;). Together, the opportunities served

as important levers that the NGOs activated to inform their strategies for disseminating their interpretation of the TRIPS and public health issue.

In relation to the investment case, the previous NGO campaign against the OECD's MAI had been a major boost for the NGOs in opposing a similar agreement at the WTO. Many among the international NGO advocacy community perceive the anti-MAI campaign as immensely successful, and has been characterised as marking the emergence of global civil society in contesting corporate globalisation (see Lalumiere 1998). The NGOs were able to argue that the attempt to launch investment negotiations at the WTO was simply an effort to transfer the MAI to a new international arena. It thus proved a significant opportunity for the NGO campaigners in that they were able to regenerate the support of civil society for what is a complex economic issue.<sup>9</sup> In addition to the examples set by the MAI, another major political opportunity for the NGOs was the sheer enormity of the Doha agenda. Not only was the Doha work plan beyond the capacity of many developing countries to adequately negotiate, many were already struggling to implement commitments made during the Uruguay round. The failure of developed nations to reduce barriers to trade in agriculture was a particularly sore point. The NGOs pointed to the designation of the Doha round as the 'development round', intended specifically to benefit poorer nations. The NGOs used these duplicities to inform and build their campaign.

#### *Issue framing and the mobilisation of consensus and international debate*

The political opportunities available to the NGO campaigners significantly determined the way they were able to frame the issues at stake, which in turn had important ramifications for their ability to mobilise support and debate among the broader NGO community, in domestic political arenas and at intergovernmental fora. For the TRIPS case, the political opportunities allowed the NGOs to argue that the legal ambiguity surrounding the use of the TRIPS safeguards, perpetuated by developed nations and their research pharmaceutical companies for their own economic benefit, was to blame for the countless deaths from diseases including HIV/AIDS. The NGOs claimed that overly stringent patent protection reduces equitable access to medicines, which has 'life and death' consequences for citizens of developing countries. As Keck and Sikkink (1998, 17) argue, campaigning on issues of bodily harm may be a particularly successful strategy for NGOs, 'especially when there is a short and clear causal chain (or story) assigning responsibility'.

The simplicity of the argument that affordable access to medicines is a right that should be enjoyed by all resulted in overwhelming consensus among the broader NGO community ranging from development and aid NGOs, HIV/AIDS activists, anti-poverty campaigners, and religious organisations. Working through well-respected international institutions such as the WHO, and other UN-affiliated agencies, the NGOs participated in numerous international forums alongside nation-states in which they publicised the access to medicines issue and the difficulties developing nations faced in implementing the TRIPS agreement. Some of these international organisations subsequently provided legal and technical advice to developing nations in regard to meeting their TRIPS obligations. The support of these international organisations contributed to the sense of urgency generated by the NGOs. In turn, the mobilisation of consensus among NGOs and policy-makers at international institutions

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<sup>9</sup> Though not discussed here due to space constraints, the ongoing controversy surrounding the investment Chapter 11 of the North American Free Trade Agreement (NAFTA) served a similar purpose of demonstrating the negative consequences of instituting a high standards investment agreement in terms of the disputes and compensation that have posed considerable harm to Mexico.

prompted debate among WTO members about the legal status of the TRIPS safeguards and how the issue might be resolved at the WTO.

In relation to the investment case, the NGOs managed to combine ideas about the escalating power of MNCs, shrinking domestic policy space, and overburdened developing member states into a coherent frame of opposition to a WTO investment agreement. Drawing attention to the main beneficiaries of such an agreement, the NGOs proclaimed that MNCs would exploit developing nations and redirect the profits back to their home countries. They stated, therefore, that a WTO investment agreement would essentially constitute a 'bill of rights' for MNCs. In doing so, they drew upon fears about the loss of national policy autonomy to corporate globalisation. This argument resonated among those in developed nations concerned about neoliberal economic policies. In this way, the NGO campaigners portrayed the WTO as invasive international body that, if permitted to preside over foreign investment, would compromise national sovereignty in favour of market rule.

Despite the complexities and the number of threads contained within the general frame of opposition to the investment agreement, the NGO campaigners were able to mobilise sufficient opposition for it to prove decisive. They generated support among a broad cross-section of civil society from anti-globalisation activists and trade unionists to development NGOs and religious groups. The NGO campaigners also drew on the support of policy-makers at a number of international organizations to argue that an investment agreement would be detrimental for developing nations. At UNDP, UNCTAD, the UN Sub-Commission on Human Rights and the World Bank, the NGOs worked to mobilise support against a WTO investment agreement. They drew on research generated by these bodies to progress the idea that international consensus had been reached about the risks of a WTO investment agreement for developing countries. This 'consensus' generated and informed the divide between the G-90 and the WTO members over the issue.

### *Utilising state power*

The TRIPS and access to medicines campaigners effectively utilised power to influence the WTO by working to unify and consolidate the position of a group of developing nations. Rather than acting as 'norm entrepreneurs', the NGOs served as 'resource enhancers' for the ACP countries and the LDC group, many of whom had been struggling with a lack of technical expertise and finances (see Tuerk 2003). The NGO network provided the developing country negotiators with technical knowledge, especially legal expertise, and financial resources. As Shadlen (2004, 80) states, the 'NGOs served as unofficial "technical advisers" to the developing countries at the WTO'. The NGOs helped clarify the options available for tackling the TRIPS and public health issue at the WTO's TRIPS Council and assisted in the formulation of collective goals and strategies (Shadlen 2004, 80 and 95). After WTO members had agreed that the issue would be addressed at the Doha conference, the NGOs assisted the developing nations to formulate draft texts for the proposed ministerial declaration. The NGOs thus played a significant role in the development of the Doha Declaration on TRIPS and Public Health.

In relation to the investment campaign, the utilisation of various political opportunities, effective issue-framing and the mobilisation of consensus and international debate, proved vital for engendering the alignment of the NGOs' normative goals with the developing nations' interests. Because many of the developing nations initially had little understanding of the ramifications of an investment agreement at the WTO, the NGOs had to work to convince these nations that an investment agreement would be counter to their interests in terms of

economic development. The NGO-organised workshops and the research and analysis that they produced were of crucial importance for the NGOs in utilising the power of the developing countries to contest the issue at the WTO. For example, the March 2001 seminar series constituted an important forum for informing the developing countries of the issues at stake. With support from other international organisations and the major developing countries, including India, many smaller developing countries were persuaded about the risks of a WTO investment agreement. The NGO research papers were also beneficial for those developing countries with limited capacity to represent them adequately in Geneva, let alone arrive at an informed position to take to ministerial conferences. Thus, NGO resources and expertise were crucial in getting the developing countries to formally oppose an investment agreement and the other Singapore issues at the 2003 Cancún ministerial. The unity of the developing countries effectively halted the progression of the Doha round until members agreed to drop investment from the round altogether in July 2004.

## **Conclusion**

This paper suggests that the preoccupation within the WTO-NGO literature on the potential role of NGOs as agents for democratic accountability at the WTO neglects the important contribution that NGOs already make in international trade politics. The illustration provided by two case studies reveals that the skills of NGOs in regard to achieving agenda-setting influence at the WTO lie in activating support within the general NGO community, generating and shaping international debates, and engaging international bodies other than the WTO to add weight to their claims. However, in order to influence the actual deliberations at the WTO, NGOs are required to be more than simply 'norm entrepreneurs'. They must translate normative consensus into agenda-setting influence by actively engaging with WTO members, working to fuse their normative ambitions with states' interests, in order to affect the decision-making at this 'states only' institution. In doing so, I find that NGOs require the presence of political opportunities to assist them to frame the terms of debates in a manner that helps to generate consensus among civil society, the wider policy-relevant community and in domestic political arenas. The NGOs must also work to align their objectives with the interests of developing nations by facilitating a range of meetings, workshops and conferences to provoke discussion of the issues at stake. The creation of ad hoc 'alliances' between developing nations and the NGOs, with their significant financial resources and technical expertise, provided a basis for informing the developing nations' strategies for achieving their complementary objectives within the WTO arena.

Overall, the cases demonstrate that NGOs are significant actors in trade politics at the WTO, which represents a 'hard' test case for examining the influence of non-profit advocacy NGOs in international politics given expectations that business actors enjoy privileged access and that civil society lacks formal status at the institution. The paper argues that these types of NGOs have a special capacity to operate as highly strategic actors in attempting to impact upon international policy deliberations in terms of agenda-setting. In this manner, the emergence of productive ad hoc relations between NGOs and developing countries requires further investigation, as does the way in which international institutional settings affect NGO behaviour. Similarly, more research is needed to examine the circumstances under which NGO campaigns fail, in order to further elaborate how the three explanatory factors presented here – political opportunities, issue-framing and mobilising normative consensus, and utilising state power – are useful for understanding the agenda-setting influence of NGOs both at the WTO and in other international arenas.

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