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Democracy and the WTO

What happened in Seattle last December? World leaders came from over 130 countries to the 3rd Ministerial meeting of the World Trade Organisation, to launch negotiations aimed at a major extension of the rules governing international trade – the so-called Millennium Round. And they failed. The meeting broke up in disagreement and everybody went home.

Derek Reed

But while negotiators indoors were marking up a failure, protestors outdoors, in the streets, were scoring a huge victory. Record numbers of protestors came to Seattle determined to stop the Millennium Round. Trade unionists, environmentalists, anarchists, consumer groups, development NGOs, each had their own agenda, their own reason to be on the streets of Seattle, but they had one theme in common – opposition to the concentration of power in an undemocratic WTO.

Historians of the events in Seattle will differ about how much influence the street demonstrations really had on the failure of the negotiations indoors. Many other factors played a part: poor preparation; a long stalemate over appointing a new WTO Director-General, ending with the appointment of Mike Moore – former Socialist Prime Minister of New Zealand – only three months before the delegates gathered in Seattle; irreconcilable differences between rich and poor countries, and between Europeans and Americans, on what should be on the Millennium Round agenda; and the politics of an impending US Presidential election. But while it was these difficulties indoors that played the decisive role in the failure of the Seattle negotiations, it was the demon-

strators outside who changed forever the popular perception of the WTO, and therefore the politics of future trade talks.

The very presence of civil society, in massive numbers, on the streets of Seattle, and then on the TV screens, websites and newspaper pages of the world, sent out a message that the rules of international trade were no longer the preserve of trade ministers, specialist diplomats and lawyers, and the lobbyists of multinational corporations. The rules of the trading system are a matter for high-profile public concern and political debate. And that puts the democracy issue in centre stage.

What's all the fuss about?

By some measures, the demonising of the WTO is something of a puzzle. Compare it to other international organisations which wield power over us – the IMF, the World Bank, NATO, the United Nations itself – the WTO is neither the least democratic nor the most powerful of the bunch. The WTO does not have the IMF or World Bank's concentration of power in the hands of unelected bureaucrats. It has no Security Council, to exclude smaller and poorer countries from the big decisions. It has no «conditionality» rules, forcing supposedly sovereign countries to balance their budgets, and liberalise their domestic economies in return for essential aid. The WTO has no armies and no airforces to bomb those who step out of line. It has, in fact, no sanctions at all against those who break its rules. Moreover, those rules are made by consensus – on the basis of one country, one vote. So in formal terms, Niger has the same voting power as the USA, and Nicaragua the

same rights of veto over all negotiations as the EU.

Part of the answer to the puzzle lies in the distinction between the WTO as an organisation, and the Treaties of which it is the custodian: the WTO is a weak organisation guarding some powerful Treaties.

As an organisation, the WTO acts as a forum for the negotiation of trade agreements; administers those agreements once adopted; settles trade disputes; and provides technical assistance and training for developing countries. Its budget and staffing are a fraction of those of the international organisations mentioned above – and a fraction of those enjoyed, for example, by the WWF.

But the WTO Treaties, or trade agreements, are a different matter altogether. The Treaties are important, and powerful, for three reasons.

The first reason is that trade itself is very, very important. Every country in the world exports on average one-fifth of its production, and for developing countries the figure is one-third. The export sectors are usually the highest-paid, highest-profit, and highest-growth sectors. And trade is, with few exceptions, good for economic growth at national level. Its impact on the poor, or on the environment, may well be another story, but what governments generally want is growth. For that they are heavily dependent on trade, and therefore on the rules that govern trade.

The WTO Treaties are also important because they have teeth. Before the WTO was created in 1995, there was no effective international mechanism for resolving trade disputes. Since 1995, the WTO trade agreements are backed by a Disputes Settlement Understanding, which allows any WTO member country to bring a case against a trading partner which it thinks is breaking the rules.

Finally, and most controversially, the WTO Treaties are important because they extend the reach of trade rules into new territory, into a grey area where trade collides with non-trade issues such as environmental and consumer protection, intellectual property, and development cooperation. The way that the WTO Treaties deal with this interface between trade and non-trade issues has raised particularly acute questions about sovereignty, legitimacy, and democracy.

Trade Rules, OK?

The Uruguay Round of trade negotiations, which led to the setting up of the WTO in 1995, and negotiated the Treaties which it administers, expanded the scope of multilateral trade rules in two main ways. First it brought within the system some politically sensitive sectors such as agriculture, textiles and services, which previously had been largely excluded. Second, and crucially, it tackled non-tariff barriers.

«Non-tariff barriers» is trade talk for all the ways that countries, intentionally or unintentionally, keep foreign goods or services out of their markets by means other than customs tariffs. Vastly slow or complicated customs procedures, discriminatory distribution systems, technical product standards that favour domestic manufacturers, health and safety regulations, environmental standards and many other devices can be, and have been, used to cheat on open trade agreements. So the Uruguay Round set out to define some rules to ensure that such practices were confined to genuine public policy objectives, were not disguised protectionism, and interfered as little as possible with the open trading system. And that's where the trouble started.

Since the Uruguay Round Treaties took effect, governments making environmen-

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tal policy, or laying down rules for food safety or consumer protection, for instance, must keep one eye on the WTO Treaties. If those rules have the effect of banning or impeding imports from another WTO member, they may find themselves brought before a WTO Disputes Panel. The Treaty provisions concerned are ostensibly designed to allow domestic policy-makers to set whatever standards they want – and therefore, not to intrude on sovereignty. But the rules also require, for example, that there should be a sound scientific basis for domestic standards which impede trade; that the procedures for adopting and applying standards should be fully transparent; and that a given policy objective – such as environmental or consumer protection – should be achieved in the least trade-distorting way.

In practice, these tests can both complicate and constrain domestic policy-making, and they create a situation where domestic policy-makers can be second-guessed by WTO Disputes Panels. So, for example, while EU policy-makers and scientists took the view that some GM foods, or hormone-fed cattle, present health risks, WTO disputes panels have taken a different view. The arguments about how the Treaties balance domestic sovereignty against the WTO's «no cheating on trade» philosophy are complex, but they have raised a huge public question about the legitimacy of the WTO: why is a trade body in the position of dictating to governments what is or is not acceptable policy-making on the environment, food safety and other areas?

Democracy, Sovereignty and Legitimacy

The erosion of sovereignty among Member States over domestic policy is, then, the first threat that the WTO poses to democracy. Not all WTO Member States

are democracies, but for those which are, this erosion of sovereignty means a transfer of power from the national arena, with relatively strong democratic control, to an international arena which is more remote, less subject to democratic control, and dominated moreover by trade specialists whose mindset could be expected to be more sensitive to violations of the open trading system, than to the policy priorities of governments and citizens.

For that reason, there are attractions in saying that non-trade issues, such as environment, food safety, development policy and labour standards, should be totally divorced from the WTO. But that would mean abandoning attempts to tackle non-tariff trade barriers – which in turn means less trade, less investment, less growth.

This is a problem for progressives for two reasons: it's a problem for those who believe that growth is, actually or potentially, the most powerful anti-poverty strategy. And it's a problem for all progressives who are looking for a winnable strategy to protect the poor, and the planet, from inadequately regulated trade, because any anti-trade, anti-growth position will line up an unbeatable coalition of governments and economic interests on the other side of the debate. So that option, desirable or undesirable, is unattainable.

The alternative is to integrate non-trade issues fully into the trade system. To do that, WTO rules must explicitly recognise, and defer to, Multilateral Environmental Agreements. And the WTO must have access to fully competent, independent mechanisms for judging the defensibility of environmental, consumer protection and other policies which incidentally impede trade. That means that when trade disputes arise, for example, issues of environmental standards, food safety, labour standards or development strategy, WTO disputes panels would be required to defer

on these issues to the judgment of the WHO, ILO, UNCTAD or whichever international body had the recognised competence.

Strengthening Democracy within the WTO

If the biggest democratic reform of the WTO is arguably to make sure that it does only the things it is competent to do, and stays out of non-trade issues which are beyond its competence, other changes are needed to make it more democratic also within its area of competence. These concern transparency, resources and accountability.

The first principle to apply is that there can be no democracy in secret. The WTO has already made some steps towards openness, particularly in the area of trade negotiations. Negotiating submissions tabled to the WTO are placed immediately on the website, as are reports on major meetings. But more is needed, particularly in the disputes settlement area. Submissions to disputes panels and Appellate Bodies could be immediately published, as could panel and Appellate findings. Panel hearings could be opened to the public. «Amicus» briefs could be allowed, whereby parties other than the interested governments could make submissions to the panel and Appellate body.

Of course, democracy is complex. One of the strongest advocates of this opening up of the disputes process is the US government. And one of the most eager beneficiaries would be US multinational corporations, with batteries of expensive lawyers and lobbyists, who will be more than happy to enhance their role in the process. And among the most reticent groups are developing countries, who generally cannot command the resources either of northern multinationals or of northern NGOs.

This brings us to the second failure of democracy within the WTO: the inequality of power between rich and poor, large and small countries. Not all of this can be blamed on the organisation itself. The WTO did not invent the world's huge imbalances of power and wealth and it cannot be expected to eliminate them. But some of the WTO's own ways of working reinforce inequalities between nations.

The fiercest criticisms of developing countries are directed against the so-called «green room» procedure: because it's hard to negotiate complex agreements in a room with 137 delegations, the WTO uses informal, green room sessions with a restricted number – usually the bigger delegations – to take the negotiations to a point where they can be brought back to a formal plenary session. For those excluded from the green room, what they are presented with is often a *fait accompli*.

WTO procedures must be made internally as well as externally transparent: that is, they have to give all member countries the same access to information and the same opportunities to participate in the negotiations.

To turn formal equality into real equality, however, the key issue is resources. The big powers maintain tribes of lawyers and diplomats in Geneva, and can call on vast reserves of expertise back home. Many developing countries cannot afford permanent representation of any kind, and have perhaps one negotiator who flies in for negotiations with just a briefcase and a laptop for support. Radical measures – limits on the size of rich country delegations, funding for small country delegations – are needed to create a level playing field, both in negotiations and disputes.

Finally, there must be a forum for public debate and accountability. The Socialist

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Group in the European Parliament is currently leading international efforts to create a WTO parliamentary assembly. There are good prospects that it will take shape in the next year or so. But it will be essential to ensure that this assembly is used to open up the policy-making process to wider influences – for example, to trade unions and NGOs, from the South as much as the North. It must have as its mission to counterbalance the hold of big business and trade ministers on the world trade system. Now that would be a first.

Postscript: smash the WTO?

Whatever reforms might be made to the WTO, there is every reason to doubt that democracy can work as effectively at international as at national or local level – so perhaps the best reform is abolition? But far from eliminating the ability of rich and powerful countries to bully smaller and weaker ones, abolishing the WTO would simply remove all constraints on the use of trade as a weapon: it would guarantee the

triumph of economic (and diplomatic) muscle.

Now, when a WTO disputes panel rules against an EU ban on hormone beef, the WTO itself takes no action, but the US then has permission to adopt trade sanctions against the EU. Without the WTO, the US would not need permission, it could adopt whatever sanctions it wanted against any country that displeased it. And that is exactly what it did, pre-WTO. On the other hand, without a rules-based system, smaller countries had little chance of forcing the US to abandon its protectionist policies.

No WTO means no rules for global trade. The alternative is a long tough battle to make the WTO democratic, so that global trade follows rules that reflect wider interests than those of big business.

Der Schotte Derek Reed arbeitet seit 1990 als Wirtschaftswissenschaftler für das Europäische Parlament.