

WTO: EXTERNAL TRANSPARENCY

Contribution by Australia

The following note, dated 12 October 2000, is a contribution by Australia to informal consultations on external transparency.

Introduction

1. A number of delegations have argued that, in view of the growing interest in its work, the WTO needs to respond to the issue of external transparency. Suggestions have been made that some reform of current WTO procedures is desirable. Australia considers that WTO processes do not require radical change, but could contemplate reform in specific areas. The following sets out Australia's views on the limits of the external transparency debate and the scope for possible change.

The limits of external transparency

2. The discussion on external transparency should be limited to those issues that are relevant and appropriate for the WTO to address. These do not include, for instance, areas that are, or should be, the responsibility of Member governments. How Members arrive at national positions is an issue for each Member to determine in the context of its own constitutional arrangements and approach to national governance. In developing national positions it is the responsibility of Member governments to keep their domestic interest groups informed of relevant developments in the WTO.

3. At the same time, Member governments must be allowed to carry out internal domestic consultations without unnecessary or disproportionate confidentiality restraints. Most WTO confidentiality constraints, outside of the dispute area, have been removed. More rapid dissemination and derestriction of documents would, however, be desirable.

4. Most WTO debates and formal decisions are taken in an open way and full records are published of the discussion at meetings. The role of informal consultations, that are a normal part of decision-making in the WTO, were addressed in the context of consultations on internal transparency, and improved procedures have been operationalized through current WTO consultation practices.

Derestriction of documents

5. Apart from those relating to dispute settlement, many documents are either unrestricted or are derestricted after a relatively short period. In the light of experience with current practice, it would be desirable to reach agreement on shorter periods for derestriction, or circulating more documents as unrestricted in the first place.

6. One improvement might be to have a faster circulation of unrestricted "minutes" of meetings, or alternatively the prompt circulation of a genuine minute of the meeting with the longer summary

record following later. The Secretariat has gone some way towards this latter approach with its daily bulletin, and its press briefings.

Special cases

7. The WTO already accords priority to external transparency in relation to Ministerial Conferences and the policy debate on the linkages between trade, environment, and development, reflecting the high level of non-governmental interest. The hosting of NGO symposia has provided a forum for policy discussion among WTO delegates, a wide range of NGOs, and representatives from research organizations and other international organizations. The symposia have proved useful for promoting more informed debate on the complex issues involved in the role of the WTO in contributing to sustainable development. The WTO should continue to take appropriate opportunities in the future to hold more symposia, including, perhaps, on additional policy issues where they would enhance the WTO's work and promote more informed public debate.

Dispute settlement

8. This is one area where some Members see scope for enhanced transparency. A key issue here, however, is to ensure that attempts to increase external transparency avoid impacting negatively on internal transparency among Members. Specifically, there is a need to guard against the possibility that, through enhanced transparency, non-governmental persons or organisations acquire rights/access to the dispute settlement system superior to those of Member governments. Yet some have expressed concern that this may be the situation in relation to amicus briefs/third party Member rights before panels and the Appellate Body.

Attendance and participation

9. There have been some suggestions that, in addition to the existing arrangements for Ministerial Conferences, formal WTO meetings should be open to the public. Consideration of non-governmental participation in meetings is clear-cut. The WTO is an inter-governmental organization and the positions advocated and decisions taken are those of its Member governments.

10. There are other, more appropriate avenues for interaction between the WTO Membership and NGOs, that complement the primary role of consultation between governments and NGOs at the national level. NGO symposia provide appropriate opportunities for policy debate between Members, NGOs, and representatives of research bodies and other international organizations, as evidenced by the successful experience with these symposia. In addition, there is already a facility for NGOs and others to make material available to Members through the Secretariat.

11. Whatever positive responses could be forthcoming from non-government organisations as a result of more open meetings would need to be weighed against potential downsides for the WTO membership. At a practical level, with its membership approaching 140, the WTO's meeting facilities would come under increased pressure from non-governmental attendance. While, in practice, many meetings may not generate much interest among non-governmental organisations, the Secretariat would need continually to be arbitrating on the limited available seating. Alternatively, other conference facilities would have to be hired, at considerable cost, for at least meetings of the DSB and the General Council.

12. Other ways of making formal meetings available to the public have been suggested, e.g. through web casting. This would create limitless global access to meeting discussions without any control over the use to which information so acquired might be put. More generally, should WTO meetings become open to anyone with internet access, the nature and dynamic of the discussion at

formal sessions would change. Inevitably greater use would be made of informal consultations, with the risk that formal meetings would become less meaningful for decision-making in the WTO.

Conclusion

13. The Secretariat's efforts to enhance external transparency, including the extensive public advocacy by the Director-General and his deputies, have gone a long way to meeting the legitimate demands of non-governmental persons and organisations. At the same time, it is important that the Secretariat's role not displace that of Member governments in dealing with the demands for external transparency. The interpretation and explanation of events, and the interface with private persons, is the responsibility of governments. For governments to forsake that role would only serve to encourage allegations that the WTO operates independently from its Members.

14. There is scope for change, e.g. the distribution of documents and the holding of symposia. Evolution in this area will only continue, however, if WTO Members feel comfortable that measures proposed to meet legitimate demands for improved external transparency can respect the existing inter-governmental character of the organisation.
