

would be allowed into Appellate Body hearings. Moreover, unless other WTO members were given the same right, they would appear to be less privileged than CSOs.

How this issue will play itself out is unclear. The decision of the WTO *not* to accept briefs in the *Canada – Asbestos* case after several environmental CSOs and at least one academic requested permission to do so was interpreted by some CSOs as a clear sign of failure to "learn the lessons from Seattle."³² Accordingly, there is more than a little public relations fallout from this for an organization that is sorely in need of better public relations. More importantly, the Appellate Body *has* dealt with substantive issues – and probably must continue to do so if it is to fulfil the broad purpose envisaged for it, namely of serving as a safeguard against bad panel decisions.³³

Whatever the course ultimately charted by the WTO, governments and international institutions will have to make an attempt to engage constructively with as many non-government groups as possible. While experience shows that some of these groups will be reluctant and/or hostile, most CSOs will respond with interest and with positive ideas. The alternative is to be continually on the defensive, fending off criticism from both these groups and the media, which will often result in a waste of effort and of momentum.

³² See "A Court without Friends? One Year after Seattle the WTO Slams the Door on NGOs," press release issued by Greenpeace International et al., November 22, 2000.

³³ The technical complexity of issues considered by the Appellate Body under the SPS Agreement – such as the Beef Hormones and Australian Salmon cases – provides some justification for procedural flexibility to admit expert witnesses. For a discussion of this issue, see M. Trebilcock and J. Soloway, "International Trade Policy and Domestic Food Safety Regulation: The Case for Substantial Deference by the WTO Dispute Settlement Body under the SPS Agreement," paper presented at the conference *The Political Economy of International Trade Law*, University of Minnesota Law School, September 15-16, 2000.