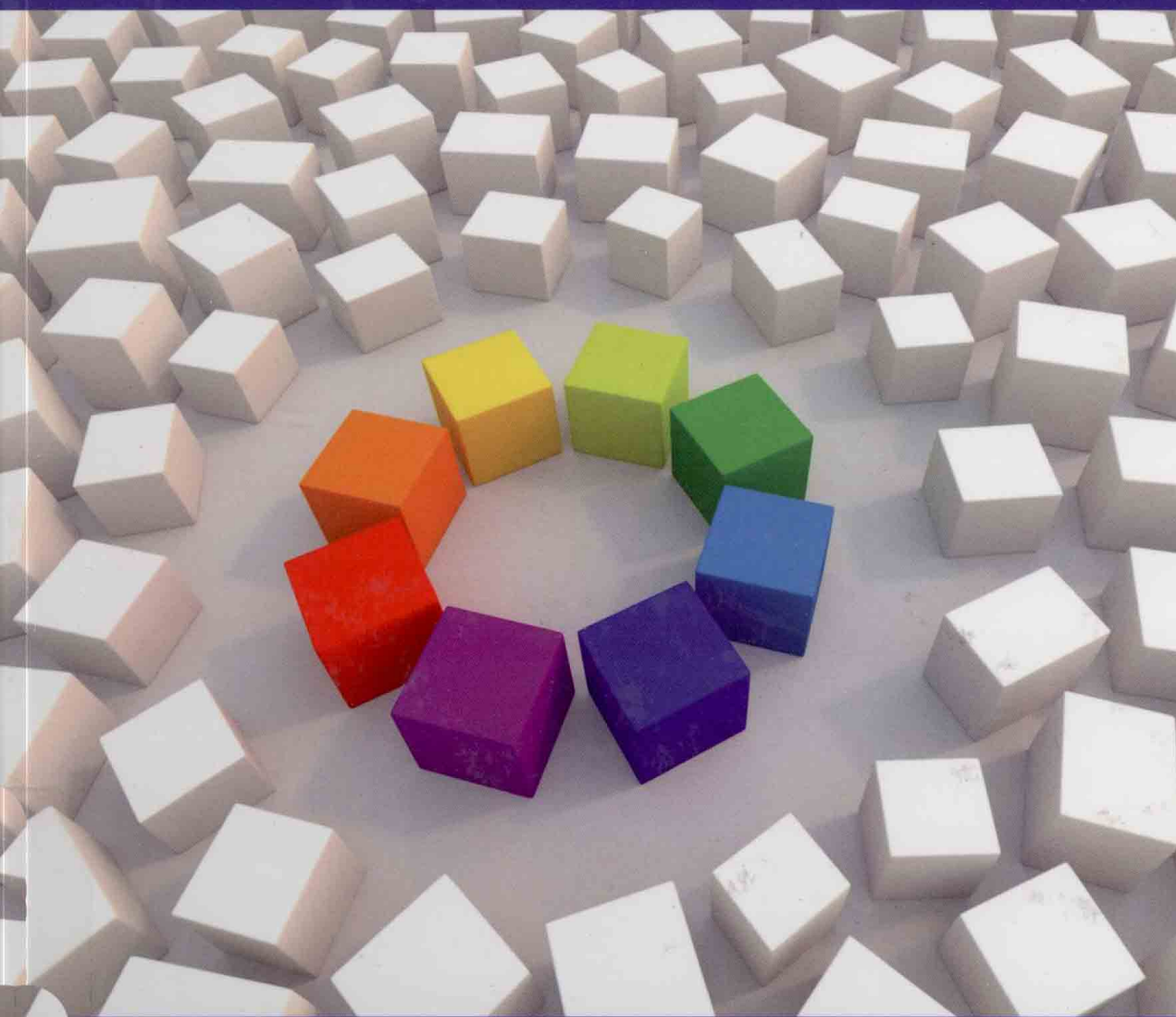




Hannah Murphy

# The Making of International Trade Policy

NGOs, Agenda-Setting and the WTO



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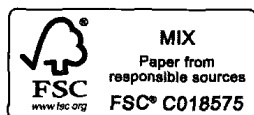
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## Foreword

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The discipline of international relations is in disarray, now that sovereign national states are no longer its exclusive actors. But what can non-state, non-governmental actors accomplish – or prevent from happening? In this pioneering work, Hannah Murphy explores both the potentialities and limits of NGO intervention in the substantive arena of international trade policy. Her empirical findings are paradoxical: the WTO does not formally include such organizations in its negotiations, yet its agenda and member-state alliances are informally influenced by them. Her theoretical conclusions are unorthodox: the influence of these NGOs is neither confined to their ‘radical’ capacity for the mobilization of protest, nor to their ‘constructivist’ impact upon the norms of national representatives, nor to their ‘realist’ conformity to prevailing conceptions of national interest. Rather, she finds the answer in the obscure corridors of something called ‘governance’ where public and private actors interact, try to convince each other, exploit momentary crises, provide alternative wordings, form transnational factions, and sometimes contribute to forming a consensual rather than a hegemonic solution.

*Philippe C. Schmitter*  
*Professor Emeritus*  
*European University Institute*

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## Abbreviations

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ACP	African, Caribbean and Pacific Group
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
BIT	bilateral investment treaty
CAFOD	Catholic Agency for Overseas Development
CIEL	Center for International Environmental Law
COSATU	Congress of South African Trade Unions
CPTech	Consumer Project on Technology
CUT	Central Única dos Trabalhadores
CUTS	Consumer Unity and Trust Society
DSB	dispute settlement body
ECOSOC	Economic and Social Council
ETUC	European Trade Union Confederation
EU	European Union
FDI	foreign direct investment
FOEI	Friends of the Earth International
FTA	free trade agreement
FTAA	Free Trade Agreement of the Americas
G-20	Group of 20 (interest grouping at WTO)
G-77	Group of 77 (interest grouping at WTO)
G-90	Group of 90 (interest grouping at WTO)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HAI	Health Action International
Health GAP	Health Global Access Project
IATP	Institute for Agriculture and Trade Policy
ICC	International Chamber of Commerce
ICFTU	International Confederation of Free Trade Unions
ICSID	International Centre for Settlement of Investment Disputes
ICTSD	International Centre for Trade and Sustainable Development
IGTN	International Gender and Trade Network
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund

IP	intellectual property
ITO	International Trade Organization
ITSs	international trade secretariats
LDCs	least developed countries
MAI	multilateral agreement on investment
MFN	most-favoured nation
MIGA	Multilateral Investment Guarantee Agency
MNCs	multinational corporations
MSF	Médecins Sans Frontières
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OME	Office of Monitoring and Enforcement
PhRMA	Pharmaceutical Research and Manufacturers of America
PI	portfolio investment
PSI	Public Services International
QUNO	Quakers United Nations Office
SEATINI	Southern and Eastern African Trade Information and Negotiations Institute
TAC	Treatment Action Campaign
TAG	Treatment Action Group
TILS	Task Force on Trade, Investment and Labour Standards
TNCA	Thai NGO Coalition on AIDS
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Intellectual Property Rights
TSMO	Transnational Social Movement Organization
TUAC	Trade Union Advisory Committee
TUC	Trades Union Congress
TWN	Third World Network
UNCHR	United Nations Commission for Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNGASS	United Nations General Assembly Special Session
USTR	United States Trade Representative
WDM	World Development Movement
WGTI	Working Group on Trade and Investment
WHA	World Health Assembly
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WSF	World Social Forum
WTO	World Trade Organization
WWF	World Wide Fund for Nature

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# 1. Introduction: NGOs and the WTO

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In recent decades the negotiation of international rules to manage trade liberalization has become increasingly controversial. Whereas free market proponents claim that trade liberalization can deliver a range of benefits such as job creation, increased efficiency and technology transfer to the least developed countries (LDCs), critics maintain that it destroys national industries, displaces workers, negatively impacts the natural environment and threatens national identity. For these reasons the World Trade Organization (WTO), since its establishment in 1995, has become a major target for non-governmental organizations (NGOs) representing a diverse range of interests. Contrary to popular perception, the NGOs that target the WTO do not simply stage street demonstrations outside WTO ministerial conferences – typified by the 1999 ‘Battle of Seattle’ protests outside the WTO’s third ministerial conference – but undertake a variety of lobbying activities in their efforts to impact the negotiating positions of WTO member states.

Beginning in the mid-1970s, political scientists, international relations scholars and NGO practitioners have contributed to the burgeoning literature on the activities of NGOs in global governance, particularly in regard to the policy domains of human rights, development and the environment. But far less systematic research has been conducted into NGO activities in international economic policy arenas where conditions for influencing policy outcomes are generally considered to be less propitious for NGOs seeking to represent social or environmental interests. Given the formal constraints on NGO decision-making input at the WTO and the considerable economic and political costs and benefits of trade liberalization for states, the WTO arena serves as a good test case for assessing the contributions of NGOs to international policymaking.

By focusing on the activities of NGOs in relation to the international trade policymaking process, this book seeks to add to the emerging scholarship on agency in international relations, in particular, the parameters of NGO agency in global governance. Specifically I examine the campaign tactics employed by NGOs in contesting international trade issues and their dynamic relationships with WTO member states and intergovernmental organizations in order to discover more about their roles in international trade governance. The overarching question that this study tackles is: what impact, if any, do NGOs have on international trade governance at the WTO?

To help address this question, the case study chapters of the book employ NGO campaign materials, WTO documents, interview data and existing scholarly literature to investigate three prominent NGO campaigns directed at the WTO. These NGO campaigns pertain to the issues of labour standards, intellectual property (IP) rights and foreign investment rules. Each case study traces the campaign tactics used by NGOs and the ways in which NGO campaign activity impacted trade negotiations at the WTO. The cases were selected on the basis that they provide insight into the nature of relationships between NGOs, intergovernmental organizations and a variety of WTO member states. The policy issues raised in regard to each campaign led to interesting and differing 'alliances' between NGOs, WTO member states, as well as intergovernmental organizations in related policy domains. Each campaign also sees NGOs advocating different scales of policy change at the WTO and this sheds light on the varied roles and impacts of NGOs in the international trade regime. A core task of the book is to elucidate some of the key constraints and opportunities that NGOs must navigate in order to exert influence in international policymaking.

## THE WTO AND NGOS

Established in 1995 with its headquarters in Geneva, Switzerland, the WTO is a legal institution that provides an arena for member states to negotiate the rules governing the multilateral trading system, work towards trade liberalization and settle trade disputes. It also periodically reviews the trade policies of member states to assess their openness to trade. As of November 2009 the WTO had 153 member states, while another 30 (mostly developing countries) were awaiting accession. For 2009 the organization had a budget of approximately \$US 188 million and a secretariat staff of 629, which provides technical support, analyses world trade and manages the WTO's relations with the public and media. The small size of the budget and secretariat staff (in comparison with other intergovernmental organizations) reflects the role of the WTO as a negotiating forum and governance mechanism rather than a funding source for nations suffering balance of payment problems or other economic crises. This is the role of the WTO's sister organizations, the World Bank and International Monetary Fund (IMF).

According to Robert Keohane and Joseph Nye (2001a), the recent politicization of global economic institutions, particularly the WTO, is largely due to their achievements. In addition to the 1947 General Agreement on Tariffs and Trade (GATT) dealing with trade in goods, the WTO administers a broad range of accords, which include (among many others) IP rights, trade in services, agriculture, textiles, civil aircraft, food safety, electronic commerce

and government procurement. Once negotiated, these agreements and articles are mandatory for all WTO members through the imposition of legal obligations. Although the ongoing attempts to finalize the 2001 Doha Round of trade negotiations have been thwarted by the significant variations in the distribution of costs and benefits of the round for member states, in terms of its judicial and regulatory powers, the WTO nonetheless remains one of the most effectual intergovernmental organizations currently in existence (see Gilpin 2001: 382).

The broad range of issues dealt with at the WTO spanning food safety, textiles, agriculture, trade in services and IP reflects the growing trend towards global governance whereby domestic policy issues are increasingly transferred to the international level of decision-making, thus consolidating interdependencies among nation-states. This phenomenon has meant that NGOs and other types of non-state actors no longer work solely within domestic contexts to influence policymaking. Since the 1970s most major intergovernmental organizations have consequently experienced a growth in direct exchanges with NGOs, although there is little consensus about how these relationships should be conducted and for what purpose. In regard to the WTO, member states have repeatedly concurred that the distinctive trade treaty basis of the organization precludes the involvement of NGOs in the decision-making process. Instead the WTO directs those seeking to influence international trade negotiations to their national representatives.

Despite the limits on formal NGO participation at the WTO, the expansion of global trade law through the WTO and the recent explosion in the number of NGOs operating internationally (see Katz 2008; Union of International Associations 2008–9) has seen a vast number of grassroots, national and international NGOs developing an interest in the activities and decision-making processes of the WTO. Professional international NGOs, such as Catholic Agency for Overseas Development (CAFOD), World Wide Fund for Nature (WWF) and the International Centre for Trade and Sustainable Development (ICTSD), concede the necessity of global trade rules but seek to shape WTO decision-making. Their campaigns often highlight the negative impacts of WTO rules on the environment, public health, labour standards, national culture and identity, and the provision of public services.

In addition to social, environmental and other alleged side-effects of WTO rules and agreements, the organization has also come under fire from both scholars and NGOs deeply concerned with a perceived lack of democratic accountability in WTO decision-making procedures. These criticisms, particularly in the wake of the 1999 Seattle Ministerial Conference, have revolved around the transparency of decision-making processes and the absence of meaningful NGO consultation and/or participation mechanisms. For example, Rorden Wilkinson (2002) claims that powerful member states dominate WTO

decision-making, business actors have disproportionate access and influence at the organization, and day-to-day working practices are closed to public scrutiny. It is further argued that WTO member states are constrained by the neoliberal framework underpinning the international trade regime, committing national governments to the liberalization and deregulation of their national economies. Indeed, Jackie Smith contends that at the WTO, economic policy decisions are simply considered technical, rather than inherently political, decisions (2002: 209).

While the sources of civil dissatisfaction with trade liberalization and the WTO have received a satisfactory level of scholarly attention, much remains to be understood about the tactics employed by NGOs in targeting the WTO and the resultant roles they play in the functioning of the international trade regime. The broad range of NGOs that seek to influence international trade policy at the WTO not only wage public campaigns on policy and procedural issues but also engage with various WTO member states on a regular basis, sharing information and in some cases obtaining positions on official governmental delegations to the WTO. Similarly, limits on formal NGO participation at the WTO have not prevented an increasing number of NGOs from attending WTO biennial ministerial conferences as observers.

Despite the growing number of NGOs, their increasingly active engagement with international trade issues and evolving relationships with nation-states, much of the academic literature in this area has focused on the untapped potential of NGOs to improve the WTO's legitimacy. This theoretical debate is at odds with the empirical reality of the growing number of NGOs seeking to influence decision-making at the WTO. While there is some discussion in the WTO-NGO literature regarding the success of single NGO campaigns leading to NGOs playing important roles in affecting the negotiation of particular WTO agreements, there is little examination of the mechanisms or patterns of NGO influence at the WTO, the reasons why some NGO campaigns succeed and others fail to achieve their goals, or the roles they play in international trade governance more generally. This book aims to address this mismatch between the existing WTO-NGO literature and the real world activities of NGOs to assess their contribution to the international trade policy process.

## NGOs AND TRANSNATIONAL ACTIVISM

The focus on the democratizing potential of NGOs for the WTO parallels developments in the literature on NGOs and transnational activism more generally. Despite their presence in the global polity for over a century, it has only been in recent decades that international relations scholars have begun to

consider the important roles that actors other than nation-states play in international politics. The literature on NGOs and transnational activism is an emerging inter-disciplinary field that represents an attempt to bridge at least two sets of scholarship: first, the literature on transnationalism, regimes, and norms in international relations; and second, the discourse on the globalization of social movements and the diffusion of norms in sociology (see Tarrow 2001 and Risse 2002 for thorough and insightful reviews of developments in these areas). Of most relevance to this study are the contributions concerning international NGOs (Weiss and Gordenker 1996; Willetts 1996; Keck and Sikkink 1998; Bob 2005; DeMars 2005); the organizational patterns of different types of non-state actors beyond the state (Smith, Chatfield and Pagnucco 1997; Stiles 2000; Smith and Johnston 2002; Bandy and Smith 2005; della Porta and Tarrow 2005); and NGO activity in relation to particular issues and institutions (Sikkink 1993; Wapner 1995; Ayres 1998; Fox and Brown 1998; Price 1998; O'Brien et al. 2000; Nelson 2002; Joachim 2007).

Across the transnational NGO advocacy literature, the majority of contributions, many emanating from the 'normative turn' in international relations scholarship (see Tarrow 2001), have focused on successful NGO campaigns, often in the areas of human rights and the environment. Such accounts detail the role of NGOs in creating and disseminating ideas that are said to overwhelm the instrumental goals and interests of other actors, including nation-states and business organizations. For example, Keck and Sikkink's (1998) landmark text, *Activists Beyond Borders*, explains that successful NGO action against a government's human rights violations involves weak, resource-poor domestic NGOs linking up with more powerful international NGOs, other governments and international institutions, who then place external pressure on the recalcitrant government to reform. Similarly Paul Wapner (1995) illustrates how NGO campaigns that publicize the environmentally unfriendly practices of large corporations can result in these corporations capitulating to NGO demands and altering their production techniques. In ceasing their offending activities, seemingly more powerful actors are said to have had their interests, or even their sovereignty in the case of nation-states, 'reconstructed' by the moral pressure of NGOs (see also Sikkink 1993; Klotz 1995; Price 1998; Risse, Ropp and Sikkink 1999; Khagram, Riker and Sikkink 2002; Joachim 2007).

The normative cast of research in this area has resulted in scholars attempting to demonstrate that NGOs are important actors in international politics with the potential to rival nation-states. But in emphasizing the power of moral values *vis-à-vis* the interests of nation-states, much of the NGO scholarship does not pay sufficient attention to specifying the conditions that *constrain* NGO activity. These may include the structure of the international system; the material and political interests of nation-states; the profit-maximizing behaviour of business;

alternative or competing moral values; and the rules, practices and decision-making processes of international institutions. By claiming that norms and ideas disseminated by NGOs can reconstruct interests, insufficient attention is paid to the ways in which the normative goals of NGOs and the strategic, material and political interests of nation-states (and other actors) may be complementary. This suggests that a different characterization of the role of NGOs in international politics might be more accurate. Instead of being simply categorized as agents of moral pressure, the effects of NGO activity in international politics may additionally involve enhancing the clout of particular states in international negotiations and increasing the likelihood that certain policy decisions will be taken over others. It is in this direction that this study proceeds to investigate the role of NGOs in the international trade policy process at the WTO.

The emphasis on the issue areas of human rights and the environment in the norms-based literature on NGOs in international politics has also diverted attention away from NGO advocacy in economic policy areas, especially international trade, where NGO success has been more nuanced and thus less visible (see O'Brien et al. 2000). The prevailing constructivist model of NGO advocacy, whereby states and other actors reconstruct their interests to accommodate the ideas and values created and disseminated by NGOs, does not easily apply to NGO activism at the WTO. This is because international trade is a policy arena dominated by states and business actors seeking to realize their economic and political interests. NGOs have not been granted participation status at the WTO and trade negotiations are technical and complex. Yet despite this, the number of NGOs that actively campaign on WTO issues is steadily increasing. This study attempts to address this puzzle and, in doing so, boost understanding of NGO advocacy in international economic policy arenas.

## RATIONALE AND APPROACH

In this book I seek to understand more about the activities of NGOs in relation to international trade governance to highlight the varied roles of NGOs in international politics. Specifically I do so by examining (1) the strategies and tactics employed by NGOs in attempting to influence decision-making at the WTO; and (2) the ways in which NGOs contribute to the international trade policy process.

Of the many different types of NGOs, I focus on public interest, non-profit advocacy organizations, such as Oxfam International and Third World Network (TWN), which have broadly reformist platforms in relation to the WTO. In contesting the international trade regime, NGOs join together to

wage international campaigns, using a number of different strategies to influence WTO policies and decision-making processes. I do not examine professional associations that represent business interests such as the International Chamber of Commerce (ICC) (for typologies of non-governmental actors in the WTO context see Bellmann and Gerster 1996: 35 and Scholte et al. 1999: 112–16). Unlike the normative literature on NGOs in international politics that heralds their democratizing potential, I do not necessarily seek to cast NGOs as inherently noble actors. Additionally I do not explicitly debate the accountability or representativeness of NGOs – I contend that they play roles in the international policy arena regardless of whether they possess these desirable attributes.

In adopting a governance-centred approach based upon notions of complex interdependence (Keohane and Nye 1977; 2003) and global public policy networks, I focus on the international trade policy process and the interactions of political actors in this process. This approach enables sufficient scope to examine not only the normative values and ideas disseminated by NGOs and the role of states' interests (and how the two intersect), but also the institutional characteristics of the WTO. Given that NGOs are formally excluded from directly participating in WTO decision-making, I investigate how NGOs support, through normative argument, the interests of particular WTO member states with whom they share common objectives in relation to given issues at the WTO. Additionally I examine the institutional characteristics of the WTO in terms of its rules, norms, practices and decision-making procedures that shape interactions among governments and NGOs, affecting their capacity to realize their objectives.

I employ a comparative case study method to investigate the role of NGOs in the governance of international trade by way of three international NGO campaigns on trade-related issues. The selected NGO campaigns are: (1) the campaign for the incorporation of core labour standards into WTO rules; (2) the access to medicines campaign challenging the application of the WTO's Trade-Related Intellectual Property Rights (TRIPS) Agreement to pharmaceutical products required in developing member states; and (3) the campaign against the development of a comprehensive foreign investment agreement at the WTO. Each set of NGO campaigners attempted to mobilize international consensus for their campaign positions to convince nation-states with compatible objectives to pursue an issue at the WTO and simultaneously pressure states with opposing positions. I draw upon the insights of Alexander L. George (1979) in designing the case study framework.

Each of the three campaign issues broadly split WTO members along North/South lines. The goals of NGOs in relation to TRIPS and investment closely resonated with those of developing member governments, while the goals of the labour standards campaigners aligned with the objectives of the

US and several European nations. The NGO campaigns also differ in the type of action or policy change demanded of WTO members. The access to medicines campaigners attempted to modify an existing WTO agreement, the investment campaign attempted to remove an issue from the WTO agenda, while the labour campaign sought to enact a new WTO accord. Whatever their goals for the WTO arena, all three worked alongside various WTO member states in an attempt to get their issues addressed inside the organization. The case study chapters of the book examine in detail how NGO campaigners attempt to build support for their goals and engage WTO members on their issues.

The selection of the above NGO campaigns to evaluate the contribution of NGOs to the policy process at the WTO provides an opportunity to see how issues raised by NGOs are dealt with by WTO members in different ways once on the WTO agenda. While both the issues of access to medicines and investment were addressed in a manner broadly supporting the goals of NGOs and developing countries, the labour standards issue, backed by more powerful WTO members, did not result in any substantive policy change at the organization. This study shows that the resolution of issues is heavily conditioned by WTO decision-making procedures. Specifically, the organization's 'single undertaking' and consensus decision-making procedures, and the one-state, one-vote system heavily condition whether actors in the policy process (be they states or NGOs) can achieve their goals (see Chapter 2 for a detailed discussion of these processes). That influential WTO member states did not achieve their objectives on any of the three campaign issues further highlights the significance of WTO decision-making procedures.

## DATA SOURCES

The case study chapters of NGO campaigns draw upon two types of data: NGO and WTO web-based documentation and media reports; and existing literature that provides information and analysis of the NGO campaigns and WTO proceedings. The major types of NGO material used are campaign documentation including mission statements, campaign statements and declarations; NGO research reports; and accounts of workshops and other NGO-sponsored meetings. From the WTO website, the major resources used were those pertaining to the ministerial conferences including ministerial conference declarations, statements of WTO members, explanations of WTO agreements and news items.

As a tool of preliminary investigation, semi-structured interviews were conducted with representatives of five NGOs: Global Trade Watch Australia and Oxfam Community Aid Abroad Australia, in December 2005; and Oxfam



International (Geneva Advocacy Office), MSF, and the ICFTU, in September 2006. A representative of the WTO's external relations division was interviewed in September 2006. These interviews comprised broad discussion of:

- (1) the relations between NGOs, WTO member states, the WTO and other non-state actors;
- (2) the WTO's mechanisms for engagement with NGOs;
- (3) the relationships between selected WTO member states and NGOs;
- (4) the strategies used by NGOs in their medicines, investment and labour standards campaigns; and
- (5) the impact of the above campaigns.

Finally, I attended and participated in the September 2006 WTO Public Forum. The annual WTO Public Forum is a two-day event held at the WTO headquarters in Geneva open to civil society, academics, WTO members and the business community, as well as the general public, to discuss the challenges for the multilateral trading system. Importantly the WTO invites NGOs to submit topic proposals for sessions at the forum. I attended sessions closely linked to the NGO campaign issues examined in this study, including 'Can trade deliver decent work in the XXIst century?' organized by the ICFTU; 'G-20 civil society views on the WTO' organized by the Friedrich-Ebert Foundation (FES) and Consumer Unity and Trust Society International (CUTS); and 'Stocktaking of WTO negotiations: concerns of developing countries' organized by the South Asian Association for Regional Cooperation Chamber of Commerce (SCCI). Attendance and participation in these sessions was valuable for hearing alternative views and discussing issues relevant to the selected NGO campaigns with stakeholders.

## ORGANIZATION OF THE BOOK

After providing some background information about WTO operations and the growing role of NGOs in international politics, the following chapter reviews and critically analyses the WTO-NGO and transnational activism literature. In regard to the WTO-NGO literature, I explain that normative understandings of NGOs as democratizing agents come at the expense of analysis into the mechanisms and impact of NGO advocacy directed at the WTO and the role of relations between NGOs and member states. The second part of the chapter turns to the literature on NGOs and transnational activism in general. It assesses the relevance of the constructivist, social movement, and what I call 'governance-centred' perspectives for understanding NGO influence at the WTO. The governance-centred perspective incorporates global public policy