

Press Release

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A COURT WITHOUT FRIENDS?

ONE YEAR AFTER SEATTLE THE WTO SLAMS THE DOOR ON NGOS

A group of non-government organizations has been refused the opportunity to file *amicus curiae* – or friend of the court – submissions in the WTO Asbestos case.

The organizations include Greenpeace International, World Wide Fund for Nature – International, Ban Asbestos Network, the International Ban Asbestos Secretariat, the Foundation for International Environmental Law and Development and the Center for International Environmental Law.

The World Trade Organisation (WTO) looked ready to come out and play but was quick to retreat again behind closed doors. Having invited the participation of civil society in Canada's appeal of a decision upholding a French ban on asbestos, the WTO's appeals body has now told non-government organizations (NGOs) to go home.

“Obviously they have not learnt the lesson from Seattle”, said Greenpeace Political Director, Remi Parmentier. “Once again, the WTO has arbitrarily dismissed the input of civil society, fuelling concerns about the secretive way in which it makes decisions that impact on human lives and the environment.”

The WTO General Council is convening at 3 pm today, Wednesday November 22 in Geneva to discuss *amicus curiae* briefs in a special meeting --- an indication of the controversy the issue has raised amongst WTO Member governments.

Bait and Switch

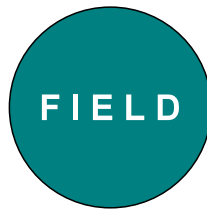
The NGO group supports the French ban on asbestos that has been challenged by Canada as a contravention of the international trade regime. Laurie Kazan-Allen, from the International Ban Asbestos Secretariat is deeply involved in worldwide efforts to ban the use and sale of asbestos. “Thousands of people die from asbestos related diseases every year. And yet, throughout the entire WTO dispute resolution process, not one word was heard from asbestos victims, their families or medical personnel who work with them”, Ms Kazan-Allen explained.

In a rare moment of clarity, the WTO issued special procedures inviting NGOs to file requests to make legal submissions in the case by 16 November. Despite misgivings about the time-frame and other restrictions imposed by the Appellate Body in its invitation, NGOs welcomed the move as one that recognized the value of their contribution to the WTO's decision-making process.

However, less than twenty-four hours after it had filed its request, the group of NGOs received a standard form letter refusing the application. The WTO provided no detailed reasons for its refusal. Other applications by civil society were also refused without explanation.

“What the WTO gave with one hand, it took with the other. We were encouraged by the WTO's invitation as a sign that it might have finally got the message about the importance of civil society participation. To then be summarily refused without reasons shows gross indifference to the interests of our constituencies and lack of due process”, said Aimee Gonzales, WWF International Senior Policy Advisor.

One step forward, two steps back



By failing to give adequate consideration to directly affected groups, the WTO runs the risk of increasing widespread distrust in its dispute settlement procedures which are already heavily criticised for giving free trade precedence over other values such health, the environment and sustainable development.

The WTO's Appellate body has instructed its Members to observe principles of "basic fairness" but has proven itself incapable of honouring its own preachings. Its decision to deny the group's request was swift but, without reasoning, appears arbitrary. Failing to provide adequate reasons for its refusal demonstrates a lack of procedural fairness that is not tolerated in democratic legal systems.

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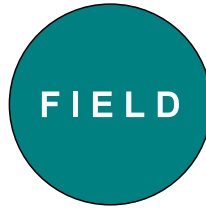
Background

In September this year, the WTO Panel upheld the French ban on asbestos, which is designed to protect French workers and consumers from this cancer causing material. Concerned that its remaining markets might impose similar restrictions on the use and sale of asbestos, Canada filed an appeal with the WTO Appellate Body in late October.

Although the WTO Panel Body had reached the right conclusion by upholding the French ban, it did so through flawed reasoning. It found that deadly asbestos was "the same" as its innocuous substitutes and that the ban was therefore a violation of international trade laws. Only the WTO's narrow health and safety exception saved the ban from being struck down. While optimistic that the Appellate Body will endorse the Panel's finding in favour of the French ban, the coalition nevertheless wanted an opportunity to correct the Panel's faulty reasoning. Applying the same "toxic logic" to other equally dangerous substances could send a signal to regulators that distinctions between safe and poisonous products could raise a WTO dispute, freezing their efforts to make laws to protect human health and the environment.

This group of NGOs, comprising organisations concerned about the deadly effects of asbestos, environmental protection and sustainable development, sought to provide expert legal analysis informed by individuals and groups whose interests are directly affected by the risks associated with the use, sale and international trade in asbestos. The coalition's concerns transcend national boundaries and extend to broader issues of health, safety and the environment.

In the aftermath of Seattle, civil society will not accept inaccessible trade experts deciding in secret whether or not domestic policy measures to protect human health and the environment are compatible with international economic obligations. Any decision must take into consideration other non-economic bodies of law and give adequate consideration and access to directly affected groups. If national policy measures are to



be scrutinized, the process must be fully open and transparent, allowing input to and free flow of information from the proceedings.