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Postscript to The Environment and the World Trade Organization

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POSTSCRIPT TO *THE ENVIRONMENT AND THE WORLD
TRADE ORGANIZATION*

I would like to raise three points that I think are presented by Professor Cone's paper. The first is that nongovernmental organizations ("NGOs") have already been successful, in the sense that the World Trade Organization ("WTO") has been much more sensitive concerning the environment in its recent decisions as a result of the pressure that the NGOs have put on them.

Secondly, because the likelihood that there will be a multilateral environmental organization in the foreseeable future is so remote, arguments based on that possibility might not carry much weight at this time.

Lastly, it could be argued that because of the environmental responsibilities that the WTO does have, whether by choice or not, the WTO has an affirmative duty to educate the NGOs. Not only about where it stands on certain issues, but also about how it functions and what its future plans are, particularly plans involving trade and the environment, as those two issues are often linked. As a result of those links, the WTO cannot escape dealing with environmental issues and in order to deal effectively with future trade issues the WTO is going to have to make an effort to build constituencies in many areas, including the environmental NGOs. Rather than the WTO hiding behind the fact that these groups do not have a specified formal status regarding the environment, perhaps one way for the WTO to build the contacts it needs would be to promote increased interaction between its own Commission on Trade and the Environment, and the environmental NGOs, so that they can work together toward common goals.

RESPONSE BY PROFESSOR SYDNEY M. CONE, III:

I don't insist on the last word, for this is supposed to be a discussion. Between professor and student, professors supposedly have the answers, but this is an area in which no one really has the answers. I suspect that Amy Wichowski is quite correct, that the efforts made by the environmental NGOs have not gone unnoticed by the World Trade Organization and that the WTO has probably taken their com-

ments into account. I certainly am not arguing that the NGOs should not make whatever comments they want to make to the WTO. I draw the line at inciting people to riot in the streets; I suspect that in doing that the NGOs really didn't advance their cause very much at all. Still, although one probably can never know what causes a judge or official to think in a certain way, I agree with Amy Wichowski that the NGOs have probably had an influence and a useful one.

On the second point, the remoteness of the likelihood that we will soon have a multilateral organization with authority over the global environment: alas, indeed, when one looks at the marginalization of Christie Whitman in the Bush Administration one sees that this may not be the moment for multilateral success in dealing with the environment. On the other hand, one of the nice things about being in scholarship is that we can free ourselves just a bit from day-to-day concerns and look into the future. As a result I will hide behind academic freedom and say I think it is useful to suggest to the NGOs that their objective should be a multilateral organization. In that respect they might study the success of the WTO a lot more closely, in order to see what is needed – the political support, diplomatic skills, and other qualities needed to develop a successful multilateral institution.

I am certainly in agreement with Amy Wichowski as to the need for a dialogue between the WTO and the NGO's. Not only so that the WTO educates the NGO's but also so that they educate each other. However this is going to be difficult. The WTO has 144 members, who keep it under close surveillance, and are very sensitive not only to budgetary matters but also to everything the WTO does. The WTO can not just say "we're going to turn on a spigot" and have a series of conferences with the NGOs. The WTO Commission on Trade and the Environment, which Amy Wichowski mentioned, is at the moment unhappily deadlocked between the industrialized world and the developing countries. Certainly, one must hope that the Commission will become more vigorous and successful, and so I conclude by agreeing that there must be more dialogue between the WTO and the NGOs.

Amy Wichowski