Civil Society Participation in Multilateral Institutions: the Case of Dispute Settlement within the World Trade Organization.

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In this paper I discuss the relationship between NGOs and the World Trade Organization. Since its creation in 1995 the WTO has been celebrated as the most accomplished multilateral organization, particularly due to its advanced mechanisms to resolve disputes (Sands 2001; Reinhardt 2000; Reinhardt & Bush 2001).

The WTO trajectory has also been populated by outspoken criticism from the part of a segment of the NGO community. The Seattle Ministerial Meeting and the more recent Cancun meeting (part of the Doha Round of negotiations) are concrete examples of this dynamic. In this context, the relationship between the NGO sector and the World Trade Organization is deserving of a closer look.

This research focuses on NGO participation in the dispute settlement procedures under the WTO. The submission of amicus curiae briefs constitutes an important participation mechanism; it has a long tradition in public international law. The main international regimes for the protection of human rights, namely the United Nations Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights are receptive of the institute, and in some instances have had a long record of addressing these submissions in their decisions and recommendations. A comparison of the development of this mechanism of participation in the arenas of human rights, environmental law (often times adjudicated through the International Court of Justice), and GATT/WTO law will be offered, and tentative conclusions on the WTO’s case law performance eight years since its inception will be provided.

Because of the novelty aspect of the WTO and its case law, literature on the subject is scarce. A recent symposium on legalization and world politics published by International Organization brings the WTO case to the forefront as an instance of hard legalization; in this same issue, Abbott and Snidal (2000) analyze the reasons for this move by GATT members during the Uruguay Round. The choice for hard law came at the expense of more flexible mechanisms of participation, including the submission of amicus curiae briefs by NGOs. Another cluster of research focuses on the comparison between the trade and environmental regimes (Araya 2001 and Dunoff 2001); for them, trade disputes that involve environmental concerns should be dealt in a way that is more receptive to principles and practices peculiar to environmental law. The submission of amicus briefs by NGOs is among these practices. Elsewhere, authors address the need for harmonization among the fields of trade law, environmental law, and human rights law – at the international level (see Krist 2001; Schoenbaum 1997; Weinstein & Charnovitz 2001).

This paper analyses the current circumstances pertaining to amicus curiae briefs submissions and discusses the procedures created by the Appellate Body to regulate the submission process. Tentative conclusions on accountability and democratization are offered.