

Civil Society Participation at the WTO – a Cure for its Democratic Deficit?

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Abstract

In this paper we seek to assess whether the existing practice of civil society participation in the World Trade Organization (WTO) is mitigating its democratic deficit. The first section briefly presents our conception of 'democracy' and how we operationalized it for empirical research. We then use a parsimonious list of four criteria to evaluate a) the institutional framework for cooperation between governmental and non-governmental actors as it developed since the foundation of the WTO in 1994, and b) the de facto practice of cooperation between organized civil society and the WTO. Our empirical analysis is structured along the lines of various types of consultation and outreach activities that the WTO has organized in recent years to respond to the calls for more public participation in world trade governance. As for political content we focus on the trade-related aspects of the regulation of genetically modified organisms (GMOs) because it is a highly contested issue that mobilized all types of civil society organizations, from business lobby groups to advocacy NGOs. The conclusions that we draw from the general overview and the case study are ambivalent. On the one hand, the number of consultative mechanisms in the WTO has increased remarkably over time, as has the transparency of the formal policy-making process. On the other hand, we observe that these new mechanisms remain detached from the intergovernmental negotiation processes. Therefore, civil society actors have only a very limited chance to impact the formulation of policy proposals, and in fact, many of them do not even aspire to do so. They rather see their role in making the general public more aware of (and more sensitive to) the manifold consequences that WTO policies have on peoples' lives all over the world.

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I. Introduction: international governance and the democratic deficit

In the literature on international cooperation and global governance three major debates may be distinguished. The first of these debates, back in the late 1970s and 80s, was concerned with the nature of international governance or, in the terminology of that time, international regimes (e.g. Krasner 1982). Did these cooperative arrangements have an independent influence on world affairs or were they just epiphenomena of state power? Having settled this issue and accorded the status of independent actors to international organizations and regimes, scholarly attention turned mainly to question of regime effectiveness (e.g. Young 1999). Although this increasingly specialized discussion is far from over a new issue rose steadily on the agenda of international governance studies: the question of democratic legitimacy. That internationalized policy-making is often opaque, elite-biased and unaccountable to national constituencies was hardly a discovery of the 1990s (Kaiser 1971). Yet the Maastricht ratification crisis in Europe and the wave of popular protests against global economic governance brought it home to the discipline that international governance might not always be perceived as legitimate by affected citizens.

Since then, the ‘democratic deficit’ of international governance has become a standard term in the vocabulary of political science, and scholarly volumes devoted to it fill libraries rather than shelves. The probably most popular and in fact normatively attractive strategy towards the democratisation of global governance is an institutionalization of political deliberation. Deliberative politics are said to enhance the rationality and democratic legitimacy of political decisions made within and beyond the nation state.² At the international or even global level of policy-making, however, it is hard to imagine how all stakeholders of governance (and this in many cases will mean citizens) could participate directly in such deliberative processes. Hence the two interrelated questions of ‘who deliberates?’ and ‘whose arguments are included in deliberation?’ seem to be of crucial importance for the democratizing effects of such arrangements. Negotiation among diplomats, civil servants and experts is unlikely to secure the inclusion of all relevant concerns of the global constituency into decision-making at the global level. Moreover, what is missing is a strong link for communication between the global constituency and these settings of internationalized deliberation. In other words, what we need from the normative point of view

² We cannot discuss the broad variety of deliberative approaches at length here. For a concise overview of deliberative democratic theory see Chambers, 2003 or King, 2003.

is the development of some sort of a transnational public sphere. Debates and conflicts over governance at the international level need to reach citizens as the ultimate stakeholders of governance, and, in turn, citizens' interests and concerns need to be channelled into the settings of global decision-making.

Some authors have argued that civil society participation is key to the democratization of international governance (e.g. Bichsel 1996; Esty 1999, 2002; Nanz/Steffek 2004). Civil society participation holds two major promises. First, by taking part in political debates at the global level, civil society organizations have the capacity to transport new issues, interests and concerns from (local) stakeholders to global governance arrangements. Second, their presence contributes to the emergence of a global public sphere in which policy choices are exposed to public scrutiny. Representatives of civil society monitor internationalized policy-making and critically comment on it, often adding counter-expertise and alternative viewpoints. They then disseminate the information on global policy developments to their own constituency, thus triggering the emergence of public debate. So there are several good reasons to believe that civil society has an important role to play in the democratization of governance beyond the nation-state. Yet this should not lead us to declare all modes of governance that involve civil society automatically as legitimate, or democratic. We should always investigate carefully if civil society really fulfils the democratizing role that political theorists envisage for it and that for lack of space we could only sketch here.

This paper presents the results of such a critical empirical enquiry. It is part of a larger research project in which we assess the democratic quality of international governance with a focus on consultative arrangements between international governmental organizations (IGOs) and civil society organizations (CSOs)³. Emanating from a model of deliberative democracy, we are focusing hereby on the inclusion of CSOs in policy-making processes. Such a process will be judged 'democratic' according to its capacity to bring about free, informed and inclusive deliberation (Nanz/Steffek 2005). The following parsimonious list of four indicators captures the key determinants of democratic quality of a policy process. We believe these four indicators to be both empirically manageable and normatively informative:⁴

- 1) Access to deliberation
- 2) Transparency and access to information

³ We differentiate between the term non-governmental organization (NGO) which is commonly used for public interest organizations and the term civil society organization (CSO) to include industry associations and academic non-profit institutions.

⁴ This list is explained in more detail in Nanz and Steffek 2005.

- 3) Inclusion of all voices
- 4) Responsiveness to stakeholder concerns

The subject of our empirical study here is the *World Trade Organization* (WTO). Using the above indicators as guidelines we investigate several institutional mechanisms through which representatives of civil society are involved in the proceedings of the WTO. The first section of this paper briefly reviews the history of cooperation between the WTO and its predecessor GATT on the one hand side, and non-state actors on the other. It evaluates the current participatory landscape at WTO with regard to access and transparency. The following sections then focus on the regulation of genetically modified organisms in the WTO. We wish to know to what extent the consultative agreements established at several levels of WTO policy making and dispute resolution really foster a give and take of reasons between civil society representatives and decision-makers. Based on interviews and document analysis the case study also seeks to identify problems of responsiveness and inclusion.

II. Civil Society and the WTO

a) **Civil Society and the GATT/WTO – a very brief history**

The original, or ‘1947’, General Agreement on Tariffs and Trade (GATT) was a side agreement to the aborted International Trade Organization (ITO). This remote ancestor of the WTO was envisaged as an encompassing organization in the field of international economic cooperation and only *inter alia* concerned with trade. The ITO was supposed to tackle a much wider range of issues, including full employment and economic development (Gardner 1956, Graz 1999). For the purposes of the ITO, an extensive cooperation with civil society was envisaged by the drafters of the Treaty. Provisions for an institutionalized consultation of CSOs were also made in the first draft of the ITO Charter that the United States had sponsored. Article 71, paragraph 3 of the draft envisaged that the ITO “may make suitable arrangements for consultation and co-operation” with CSOs and “may invite them to undertake specific tasks”.⁵ The rationale behind this formulation was that CSOs had research staff, expertise and facilities so that the ITO might ask them to carry out certain studies on the international economy (Charnovitz/Wickham 1995:114). In the course of the Charter

⁵ The Draft Charter is included in the *Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment*, London, October 1946, UN Doc. E/PC/T/33 (1946).

negotiations, the reference to these “specific tasks” dropped out, but the call for consultation and co-operation remained.⁶ The ITO Charter was adopted in March 1948 at the *United Nations Conference on Trade and Employment* in Havana, but, as is well known, was never ratified.

What remained from the multilateral effort was the *General Agreement on Tariffs and Trade* (GATT) that had been already concluded in 1947. Due to its status as a mere tariff agreement, the original GATT dealt almost exclusively with trade in products and “was not intended to be a comprehensive world organization. It was a temporary side affair meant to serve the particular interests of the major commercial powers who wanted a prompt reduction of tariffs among themselves” (Hudec 1990:57). Thus, the GATT was constructed according to a ‘club model’ of international cooperation (Keohane/Nye 2001). It relied on confidentiality of proceedings, excluded minor actors from them and was geared towards establishing ‘*faits accomplis*’ that would bind national governments to multilateral agreements and limit the influence of domestic protectionist lobbies. Esty (2001) points out that the GATT and later the WTO benefited from the widespread belief that international trade raises highly technical questions and should be left to technocratic decision-making by qualified experts. Given its limited tasks and its institutional design, it is not surprising that the GATT did not develop formal arrangements for consultation or collaboration with non-governmental organizations. Tariff negotiations were of interest to industry associations that lobbied their national governments. General interest CSOs were not too much concerned with questions of international trade.

Policy-making and dispute settlement in GATT remained closed to observers and documents about its activity trickled scarcely. Not least because of its insulation, GATT spawned a transnational community of trade experts and diplomats who cultivated a considerable team spirit and an ethos of problem solving (Weiler 2001:337). Things changed, however, at the beginning of the 1990s as attention turned to the GATT with the rise of the trade and environment debate.⁷ Unlike trade, environment was a field in which activist CSOs had a huge interest. Representatives of environmental CSOs as well as academic commentators started to argue that in resolving disputes such as *Tuna-Dolphin*, the GATT reached out beyond the scope of its trade facilitation mandate and *de facto* adjudicated environmental policies (Esty 1999). CSO networks started campaigning against the pitfalls of

⁶ Cf. Havana Charter for an International Trade Organization, Art. 87, Paragraph 2, UN Doc. E/Conf.2/78, 24 March 1948, published in: *United Nations Conference on Trade and Employment, Final Act and Related Documents*, Havana 1948.

⁷ For the trade and environment debate see e.g. Pfahl 2000.

globalization and the neoliberal principles that guided the institutions of global governance, in particular the IMF and the World Bank. Yet CSOs not only exposed international organizations to public scrutiny, they also knocked on their doors, demanded access, insight and a voice in their policy-making.

b) Transparency and Access to Meetings at the WTO

At roughly the same time, negotiations of the Uruguay round were coming to a close and the *World Trade Organization* with a much broader mandate than the GATT appeared at the horizon. The world trade regime entered a phase of enhanced (re-)politicization (Howse 2002), with non-state actors playing an important part in this process. For the newly founded WTO the question of how to deal with non-state actors and an increasingly alerted public became imminent (Charnovitz 1996). In the *Agreement Establishing the World Trade Organization*, it is stated only that “[t]he General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO” (Art. V, Paragraph 2). The “may” in this paragraph leaves an ample discretion to policy-makers to determine what this might mean in practice. The WTO General Council took a first step towards clarification in July 1996 when it adopted its “Guidelines for arrangements on relations with Non-Governmental Organizations”.⁸ In this document, Members pledge to enhance transparency of WTO policy-making and state that “[t]he Secretariat should play a more active role in its direct contacts with NGOs who, as a valuable resource, can contribute to the accuracy and richness of the public debate.”⁹ Thus, the WTO officially views the main benefit of liaising with CSOs in their capacity to bring critical arguments into public debate.¹⁰ The organization acknowledged that there was insufficient public debate on its policy choices.

With regard to transparency and access to documents, the WTO in fact made some remarkable progress over the years, at least if compared with the old GATT regime. The organization’s web site has been judged as being among the best in the field of international organizations (One World Trust 2003:15). In fact, compared to the electronic jungle that the EU and the UN have created, the WTO’s presence on the web is remarkably accessible, user-friendly, and reasonably up to date. On 14 May 2002, the General Council eventually revised

⁸ Cf. WTO Doc. WT/L/162, 23 July 1996.

⁹ Ibid., Paragraph IV.

¹⁰ See also Paragraph II of the Declaration, in which “[m]embers recognize the role NGOs can play to increase the awareness of the public in respect of WTO activities and agree in this regard to improve transparency and develop communication with NGOs”.

its procedures for the circulation and derestriction of documents.¹¹ According to this decision, all official WTO documents shall be unrestricted and made available via the website in the organization’s official languages.¹² This provision includes the minutes of meetings that will be derestricted automatically 45 days after their circulation.¹³ Hence, with regard to the documentation of its policy process, the WTO has become a rather transparent international organization.

The situation is completely different, however, with regard to direct access by observers. In its 1996 guidelines on relations with NGOs, the General Council states that “there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings.”¹⁴ Thus, CSOs are excluded from almost all meetings of WTO bodies, even at the level of specialized committees. There is only one exception to this general rule. Since 1996, some sort of accreditation (officially: registration) is possible for the Ministerial Conferences that are convened at least once every two years. Applications from CSOs are accepted “on the basis of Article V, paragraph 2 of the WTO Agreement”.¹⁵ This means in practice that, when filing their request for registration, CSOs must indicate in detail how they are “concerned with matters related to those of the WTO”. Although participatory rights are confined to attending the Plenary Sessions of the Conference, numerous CSOs have sought accreditation to the Ministerials in recent years.¹⁶ The following table illustrates this development.

Table 1: Participation of CSOs in WTO Ministerial Conferences since 1996

Ministerial	Accredited CSOs	CSOs represented	Registered participants
Singapore 1996	159	108	235
Geneva 1998	153	128	362
Seattle 1999	776	686	approx 1,500
Doha 2001	651	370	370
Cancún 2003	961	795	1,578

Source: http://www.wto.org/english/news_e/news03_e/ngo_minconf_6oct03_e.htm (accessed 28 April 2005).

¹¹ Cf. ‘Procedures for the Circulation and Derestriction of WTO Documents’, WTO Doc. WT/L/452, 16 May 2002.

¹² Ibid., Paragraph 1 and 3.

¹³ Ibid., Paragraph 2(c).

¹⁴ WTO Doc. WT/L/162, 23 July 1996, Paragraph VI.

¹⁵ Source: http://www.wto.org/english/forums_e/ngo_e/intro_e.htm, accessed 16 July 2004.

¹⁶ The politically most interesting part of the negotiation at international conferences, however, does not take place in the plenary sessions but in official or non-official meetings of smaller groups of delegates.

In addition, the WTO organizes three kinds of outreach meetings whose functioning will be described in more detail in the case study below. First, since 1997 there are large-scale public symposia to consult with CSO representatives on topics that are of particular concern to CSOs, such as environment and development. Symposia take place approximately once a year, and at times have been co-organized with other Geneva-based IGOs, such as UNCTAD.¹⁷ They are designed, however, to cover a wide range of trade topics and are rarely devoted to the discussion of specific proposals on the WTO agenda. These symposia *inter alia* are attended by government representatives. In 2005, for example, the programme listed 21 government representatives among some 150 speakers.¹⁸ Second, CSOs that have published trade-related studies or reports on issues falling within the WTOs mandate may be invited to the *Centre William Rappard* for an informal discussion of their work with interested delegations and Secretariat officials. CSOs are invited on the initiative of the WTO Secretariat or of a member state. Third, the Secretariat organizes briefings for CSO representatives by WTO staff on current issues of world trade governance. Yet, none of these activities entails a political dialogue with national delegates.

Finally, in the WTO dispute settlement system there is the possibility for CSOs and private individuals to file *amicus curiae* briefs. There is no explicit reference to such a practice in the respective agreements, so that the issue has spurred quite some controversy among WTO state parties and academic experts.¹⁹ In several of its rulings, the WTO Appellate Body affirmed that it has the authority to accept unsolicited statements by non-governmental organizations or individuals, even if the latter do not have a legal right to make such submission or to be heard by the Appellate Body.²⁰ In one controversial case, the Appellate Body even devised an *ad hoc Special Procedure*, setting out modalities for the

¹⁷ In 1997, the WTO and UNCTAD co-sponsored an NGO meeting that preceded the ‘High-Level Meeting on Integrated Initiatives for Least Developed Countries’ Trade Development’, see WTO Doc. WT/LDC/HL/16, 24 October 1997.

¹⁸ Source: http://www.wto.org/english/news_e/events_e/symp05_e/symposium_2005_e.htm (accessed 29 April 2005). Some speakers, however, among them several ambassadors, cancelled their attendance at short notice.

¹⁹ This controversy is focused *inter alia* on the interpretation of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* which is Annex 2 to the *WTO Agreement* (DSU), and the *Working Procedures for Appellate Review* (WTO Doc. WT/AB/WP/7, 1 May 2003); see Appleton 2000, Mavroidis 2001, Howse 2003.

²⁰ For a discussion by the Appellate Body on the admissibility of briefings from non-governmental actors to the Dispute Settlement Panel, see *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body, WTO Doc. WT/DS58/AB/R, 12 October 1998, para 104-110. For the right of the Appellate Body to receive and consider such briefs, see *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, Report of the Appellate Body, WTO Doc. WT/DS138/AB/R, 10 May 2000, para 42; and *European Communities – Trade Description of Sardines*, Report of the Appellate Body, WTO Doc. WT/DS231/AB/R, 26 September 2002, para 164.

submission of *amicus curiae* briefs (without considering any of them in the end).²¹ Given the legal uncertainty around the current practice, it is difficult to assess if this is likely to become a valuable tool for non-state actors wishing to make their concerns heard in WTO dispute settlement. In this respect, much will depend on the outcome of the Doha round of negotiations whose agenda comprises a review of rules and procedures guiding WTO dispute settlement, aiming *inter alia* at a clarification of the *amicus curiae* issue.

III. Case study: civil society & GMO regulation at the WTO

a) The selection of the case

To assess the responsiveness to and inclusion of stakeholder concerns in WTO policy-making an in-depth case study is necessary. In the following sections of this paper we will turn to a recently highly debated example – the case of regulating genetically modified organisms. This case has been chosen as the focal point of the study for several reasons: First, the issue of GM regulation is of high concern to different branches of civil society. In food safety, ethical considerations and social issues are especially relevant and controversially debated (Jensen/Sandoe 2002). Across countries, there are considerable differences in citizens' preferences (Gaskell/Bauer 2001: 108-109) and national regulatory systems (Bernauer/Meins 2003, Pollack/Shaffer 2001, Princen 2002). Particularly in Europe, agricultural biotechnology is highly unpopular among consumers. Therefore, free consumer choice through compulsory labelling and precautionary measures are given priority in regulation on this shore of the Atlantic. US consumers, on the other hand, are much less reluctant in purchasing GM products. Hence the American system is characterized by more regulatory laxity and support of the new technology.

Second, GMO regulation is a salient issue for policy-makers as well. Trade in GM crops is a matter of considerable economic importance – export losses of American farmers due to restrictive policies in Europe allegedly already amount to \$ 300 Mio a year (Augsten/Buntzel-Cano 2004: 14). Europe's restrictive regulations on GMOs and agrobiotechnology have been contested by major producers of GM food and feed. GMO regulation therefore has caused tensions among major trading partners, currently debated

²¹ This procedure was introduced by the Appellate Body in the *Asbestos* case, which was of great interest to environmental CSOs; see *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, Communication from the Appellate Body, WTO Doc. WT/DS135/9, 8 November 2000.

before the DSB (Busch/Howse 2003, Howse/Mavroidis 2000).²² Third, the GMO problem exemplifies a ‘trade and’ or linkage issue that poses severe challenges to a single-issue organization like the WTO. These issues represent a new type of conflict in the WTO as the organization has moved from making rules on tariffs towards a system that decides more and more on the legality of domestic regulations which are not necessarily or primarily about trade. GMO regulation is an example for a potential non-tariff barrier to trade as it might infringe on the free movement of goods. As we have seen, it leads to “regulatory polarization” (Bernauer 2003: 44) between interests groups, governments and different international organizations involved in the regulatory framework.²³ To sum up: in its complexity of actors, values and interests involved, GMO regulation seems to be an especially interesting topic for studying civil society participation.

Nevertheless, certain problems arise with the selection of this particular case as well. GMO regulation is not primarily carried out in WTO decision-making procedures. Only through its interaction with other standard-setting organizations and its binding dispute settlement procedure the WTO came to play a role in global risk regulation (Gehring 2002, Gstöhl/Kaiser 2004). Currently, it is mainly the DSB that is concerned with the issue. Nevertheless, civil society campaigns heavily on prospective WTO rule-making in the area of food safety. Hence, we need to distinguish between CSOs aiming at influencing DSB decisions on biotechnology and ‘regulatory’ WTO activities. Additionally, we face a certain lack of documentation to assess the actual influence of civil society on intergovernmental rule-making and adjudication. Consensus documents of CSOs on the matter are rare and the WTO decision in the GMO case was delayed beyond the deadline for this conference paper, to the end of 2005. This implies for our study that we have to rely on other sources and documents in order to assess whether civil society’s concerns are reflected adequately in the WTO.

²² The dispute was initiated by the United States in May 2003, supported by Argentina and Canada. In substance, the claimants argue that the European authorization system of GMOs violates several WTO agreements: the GATT, the TBT-, the SPS- and the Agriculture Agreement. National safeguard measures of Austria, France, Greece, Germany and Luxembourg are also challenged. For the dispute *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, see WTO Docs. WT/DS291 (United States), WT/DS292 (Canada), and WT/DS293 (Argentina), 13 May 2004. For a good summary of arguments raised in the dispute, see the First Written Submission by the European Community, 17 May 2004.

²³ For the interaction between the organizations and regimes involved in the process of GMO regulation, see i.e. Raustiala/Victor 2004, arguing that “regime complexes”, resulting from overlapping rules in a non-hierarchical international system, evolve differently from single regimes and result in legal inconsistencies, forum shopping and a distinct evolution of new rules or rules systems.

b) Types of CSOs active in GMO Regulation at WTO

As we also strive to identify problems of stakeholder inclusion we deem it helpful to differentiate between various segments of civil society active at the WTO. We can distinguish three types of CSOs with different incentives to interact with the WTO in different ways. We can explicate these types along the lines of the strategies they follow in their interaction with the respective institutional level of WTO decision-making, as described in Table 2 below. On the vertical axis, we distinguish between three types of CSOs: public interests and activist CSOs, research and academic institutions, and actors representing industry and business. Activist CSOs campaign on issues of public interest, mobilize people and engage in fund-raising for these activities. Research CSOs and academic institutions seek to provide for scientific knowledge and integrate single issues into broader contexts. Industry CSOs usually lobby on specified economic interests of a rather narrow base of stakeholders. Nevertheless, they might also be a provider of economic data that is highly relevant for regulatory decisions.

On the horizontal axis that differentiates between prevailing types of interaction with WTO, our typology is threefold: First, we expect to find CSOs that address the public only and hence do not interact with the WTO directly but have WTO-related issues as main objectives on their agenda. Those CSOs follow the strategy of non-engagement. Their function in global governance can be described as democracy-enhancing inasmuch as they transport a certain issue discussed on the global level back into society, inform the public on distant activities and therefore set the preconditions for the emergence of a global public sphere – at least for specific issue areas. Second, we expect to find CSOs that address the WTO from the outside in a unidirectional way trying to effectuate policy-changes in the intergovernmental forum. Those CSOs fulfil the same functions as CSOs from the first category but perform additional tasks. They too have a mediating function but in contrast to CSOs only addressing the public they also transport concerns into the WTO. Their aim is to raise public interests *and* to make them heard within WTO decision-making. Third, we expect to find CSOs that engage in a dialogue with delegates and WTO staff without having clear-cut political demands. They would engage in capacity building activities and act as formal or informal providers for external advice. Their objective is mutual learning rather than immediate policy change. They are likely to have a more intense relationship with staff from the WTO Secretariat or with particular diplomats from national delegations.

Table 2: CSO activities at the WTO: A typology

Type of CSO	Prevailing type of CSO strategy		
	Addressing the general public	Addressing WTO (unidirectional)	Dialogue/interaction with WTO
Public interest/ Activist CSOs	Campaigning, Shaming, Blaming	Demanding policy changes	...
Research/ Academia	Raising public awareness	Communicating scientific information	Expert deliberation
Industry/ Private sector	...	Lobbying WTO staff and national delegates	...

Our investigation of the GMO case shows that private business interests still are heavily represented in CSO activities at the WTO and in international standard setting bodies.²⁴ The International Chamber of Commerce (ICC) e.g. is coordinating business interests as a CSO on global scale. While formally it does not have privileged access to the WTO, it still quite effectively pushes commercial interests to be addressed in negotiations (Hoekman/Kostecki 2001: 70). Industry has been so successful in lobbying policy-makers that some observers came to argue that biotechnology regulation is “regulation for business rather than regulation of business” (Newell/Glover n.d.: 6) and that the development of WTO rules has been determined by industries and commercial interests (Correa 2001: 112). Yet this is not only a question of financial resources, professional organization and manpower. In the field of GMOs, biotechnology firms have been for a long time key providers of scientific expertise. The companies conducted scientific studies and controlled the release of highly relevant information. Contacts of government officials with industry representatives guaranteed privileged access to that information. Policy-makers were in need of their capacity and were in turn responsive to industries’ demands. The Transatlantic Business Dialogue (TABD) for example, a network of European and American companies, was highly influential in pushing for their interests. They worked with government officials on food related issues and were invited to present their recommendations at high level meetings of ministers. Examples show

²⁴ This “simplification” is contested by Bernauer 2003: 68, arguing that the empirical evidence of the variation between regulations for the US biotech industry and those for the European biotech sector contest conventional economic theory of regulation that sees regulatory outcomes reflect concentrated interests of industries.

that there also was a system of “revolving doors” between biotech companies and government delegations, switching high ranking individuals from private firms to public offices and vice versa (Newell/Glover n.d.: 14).

There is a striking contrast with the counterpart of the TABD on the public interest side, the Transatlantic Consumer Dialogue (TACD). Consumer representatives were denied similar access and had no means to speak directly to decision-makers for their interests (Levidow/Murphy 2002: 9).²⁵ Compared to the business sector, public interests CSOs have limited means to put their demands onto the agenda, such as arguments against the unrestricted release of GMOs into the environment, and for consumer protection and precautionary policies. They therefore chose other ways of contesting governmental and private biotech regulation: one via litigation at the national level,²⁶ the other via physical presence in international organizations and on the streets in front of them.

Public interest CSOs also intensified the flow of press releases, looked for personal contacts to journalists and learned how to stage pseudo-events²⁷. In the GMO case strategies to raise public attention included consumer boycotts, staged pulling GM crops out of the ground, or lobbied supermarket chains to declare their shops GM free.²⁸ Many advocacy groups focused on campaigning outside international organizations or governmental bodies without addressing them directly, or seeking dialogue.²⁹ Some scientific CSOs, by contrast, became highly recognized groups which participated regularly in meetings of international decision-making bodies for standard setting in food safety and got involved in national bodies as well. Others again had an educative impetus, analysing WTO decision-making, offering

²⁵ See also the Consumer International’s annual report 2004 “The Global Voice for Consumers”, 12, at <http://www.consumersinternational.org>, pointing to the fact that the TABD was explicitly invited to the 2004 EU-US summit, whereas the TACD was not. For the website of the Transatlantic Consumer Dialogue see <http://www.tacd.org>, for the Transatlantic Business Dialogue <http://www.tabd.com>.

²⁶ Recently for example, Greenpeace Germany sued the GMO producer Monsanto on the release of its MON863 study which contained controversial data on its testing of MON863 as a food additive that was for request for release before the European Commission, see *Sueddeutsche Zeitung*, June 23rd, 2005 or *Die Tageszeitung*, June 23rd, 2005: 7.

²⁷ For the concept of pseudo-events see Boorstin 1963, Bentele 1994: 245.

²⁸ For strategies of CSOs like Greenpeace to reach media attention, see Böttger 2000.

²⁹ Several CSOs had no interest in getting directly involved into WTO decision-making (Andretta et al. 2002: 188). After an initial optimism that the WTO would open for questions other than trade and would include non-trade interests, several CSOs deliberately chose not to engage in dialogue with the WTO. They had been disappointed by the institutionalization of committees dealing with linkage issues such as trade and development (CTD) or trade and environment (CTE), which they found to be acts of symbolic politics in the end. Neither in development issues nor in environmental matters stakeholders were formally included into policy-processes and policy-formation. In case of the CTE i.e., discussions remained dominated by trade experts from governments, with only a very limited opportunity for observership by other international organizations and none for stakeholders from CSOs (Ehling, forthcoming). Even staff from other IOs argued that their human and financial resources were better spent elsewhere than in debates that were not responsive to their demands and did quite often not even touch on their interests and concerns. Only few CSOs remained continuously involved in the “backyard of the WTO”.

their results to an interested public and by those means build awareness of linkages of trade and environment. In sum, CSOs activities (apart from industry activities) were an attempt to form a coalition among scientists and activists that could not be ignored by policy-makers. Coalition building also involved an attempt to initiate a transnational discourse on GMO regulation, bringing together different interests and concerns, directly aimed at the relevant institutions in the regulatory process – among them the WTO. Interestingly, however, in Europe public interest CSOs had a higher capacity to shape governmental and business behaviour than in the US (Bernauer 2003: 100). That success was dependent on several factors. First of all, multilevel policy-making in Europe provides multiple access points. Moreover, given widespread consumer scepticism towards GMOs CSOs were quite successful in taking the hurdle of media coverage.

In the following sections we analyse how these different types of CSOs have made use of the institutional options for consultation and cooperation that the WTO provides. We are particularly interested in how the WTO responds to CSO inputs at different levels of decision-making and for each of the CSO types identified. Besides our analysis of official WTO documents and CSO publications (to be found mainly on websites), we conducted interviews with WTO officials from the Secretariat as well as with CSO staff. We also draw on other published research results and to a limited extent on media coverage of Ministerials. Additionally, by trying to comprehensively assess the nature of CSOs participation in WTO outreach activities in the issue area of GMO regulation, we hope to be able to draw some tentative conclusions about the democratizing effects of CSO participation.

IV. Civil society participation in WTO fora

a) The Committee Level: CSOs and the TBT- and SPS-Committee

In this section we analyse proceedings of two different WTO committees that are central to the question of GMO regulation, i.e., the committees on the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS-Committee) and on the *Agreement on Technical Barriers to Trade* (TBT-Committee). Our interest lies in which arguments were brought forward by WTO members and whether public opinion and external activities did have an influence on internal debates. As pointed out earlier, CSOs do not have direct access to committee meetings and observer status is limited to selected international governmental

organizations.³⁰ Only members or the chair of the respective committee can add items to the committee's agenda. Therefore, we searched the minutes of TBT- and SPS-Committee meetings for references made by governmental delegates to stakeholder interests as promoted by CSOs. In the WTO context, disagreement over food safety issues remains concentrated in debates among developed countries, especially between the US and Canada on the one hand side, and the European Union on the other. Specific regulatory measures are contested in committee deliberations. In the SPS- as well as the TBT-Committee the EU's authorization system, having several GM crops pending for authorization for the European market, has been an issue of fierce debate.³¹ In the TBT-Committee, the European system of labelling GM products (forcing producers for reasons of transparency to indicate that their products may contain GMOs) is being discussed extensively.³²

In the minutes of meetings, repeated references to *consumer interests* are found, with particular mention to consumer information and labelling requirements. Consumer choice has been a central concern of many CSOs and can be found in several campaigns against the WTO, arguing that "it's [the citizens'] own right and not up to the WTO to decide what we eat and what crops we farm" and that "governments around the world have the right to develop laws to protect their environment and the well being of their citizens [...] including the right to impose a ban [...] or strict labelling requirements".³³ Among WTO members, those issues were contested: The "regulatory polarization", particularly between the American trading partners and the European Union, is also reflected in committee deliberations. The US, Canada and Argentina (all parties to the pending GMO dispute) questioned whether the European labelling system was really to benefit consumers or whether it was only a discriminatory barrier to trade, whereas the EU, Switzerland and Norway found the labelling systems "...to inspire consumer confidence in new products and technology".³⁴ While debates

³⁰ Discussions on observer status have been especially contentious in sessions of the CTE. According to the Secretariat it would be "inappropriate to allow NGOs to participate directly as observers in the proceedings of the CTE [as] the primary responsibility for informing the public and establishing relations with NGOs lies at the national level" (WTO Secretariat 2004: 45). International organizations with observer status are among other the Codex Alimentarius Commission (CAC), the International Plant Protection Convention (IPPC), the World Health Organization (WHO) or the Food and Agriculture Organization (FAO). They report regularly on their activities in GMO regulation. For the question of observer status in general, see von Moltke 2001.

³¹ Discussions on the issue in the SPS-Committee subsided once formal consultations under the dispute settlement procedure were requested. The peak of the debate in the SPS-Committee can be viewed in the minutes of meetings, see WTO Docs. G/SPS/R/25-29.

³² As early as 1997, Canada complained about the non-notification of technical regulations relating to GMOs by the European Communities in the TBT-Committee, see WTO Doc. G/TBT/M/8, 20 June 1997 and G/TBTR/M/10, 3 October 1997. For the general peak of the debate on GMOs see WTO Docs. G/TBT/M/21-27 and 32-34.

³³ Citizens' objection from the "bite-back" campaign, <http://www.bite-back.org/objection/index.php>, see also section IV.b of this paper for more details on the campaign.

³⁴ See WTO Doc. G/TBT/M/16, 11 June 1999 para 35.

among members focus on contesting different regulatory systems, agreement on the labelling issue is still out of sight and serious reference to arguments brought forward from civil society remains limited.

With regard to *industry concerns*, export losses of GM producing countries³⁵ as well as the request for voluntary labelling systems³⁶ were issues of debate. Particularly, GMO producing countries wanted to foster the new technology because they saw potential gains for their economy. Several countries argued that European regulations were “overly burdensome and created unnecessary barriers to trade for [...] exporters”.³⁷ Either longer implementation periods were needed in order to comply with new rules, or demands were voiced for a voluntary labelling system which could provide for both, consumer information and compliance with WTO obligations. However, no serious deliberation on alternative forms of consumer information took place in committee sessions. As decisions on labelling requirements were taken elsewhere, lobbying by companies and business CSOs did as well.³⁸

As for *science*, debates on GMOs are imbued with references to scientific testing methods or scientific evidence necessary to demonstrate that GM products differ from conventional food and might be harmful to human health and the environment. However, explicit reference to any specific study or research organization cannot be found in the minutes of meetings. In particular, arguments raised by CSOs to include non-science parameters in regulatory decision-making on food safety and to reach beyond science-based justifications for SPS measures are hardly reflected in committee deliberations.³⁹ On the contrary, countries were reluctant to open the regulatory process to other than science-based elements.⁴⁰ Only the representative of Switzerland pointed out that it was central to the debate to take “...ethical concerns and attitudes towards the use of biotechnology in different parts of

³⁵ The US argued that the European approval system has resulted in agricultural export losses and that China’s food safety regulations could have similar effects on exporters, see WTO Doc. G/SPS/R/26, 19-21 March 2002 para 33 and G/SPS/R/27, 25-26 June 2002 para 21.

³⁶ Discussions on this issue had a peak in 2001 and 2002, see WTO Doc. G/TBT/M/17, 1 October 1999 para 30, G/TBT/M/23, 30 March 2001 para 29-34, G/TBT/M/25, 9 October 2001 para 5-8, G/TBT/M/26 as well as G/TBT/W/134.

³⁷ See e.g. WTO Doc. G/TBT/M/26 15 March 2002 para 65, for the quote G/TBT/M/33, 1 July 2004 para 74.

³⁸ Among others, the labelling issue was debated in the Codex Alimentarius Commission (CAC), where several CSOs have observer status. There in particular private firms played a key role in shaping debates, see Newell/Glover, n.d.: 16.

³⁹ On the one hand, there are several examples for the insufficiency and unreliability of risk management and scientific data: The ‘StarLink’ episode is a case in point where GM maize that was only approved for animal feed was found in taco shells being sold for human consumption or currently, when in EU member states traces of the unapproved Bt-10 maize were found in authorized Bt-11 maize. On the other hand, biotech companies had a deep-rooted believe in their scientific results based on sound science to result in broad acceptance of the new technology. See a statement of a leading Monsanto official, Krueger 2002: 3.

⁴⁰ WTO Doc. G/TBT/M/26, 15 March 2002 para 27 and WTO Doc. G/TBT/M/32, 23 March 2004 para 69.

the world”⁴¹ into account. So sometimes arguments raised by CSOs can also be found in minutes of WTO committee meetings. Yet, without explicit reference to CSO sources the mere fact that similar arguments are being raised by CSOs and by state representatives cannot lead us to conclude that CSOs are influencing WTO committee deliberations. Moreover, since there are hardly any CSO statements on GMOs addressed explicitly to the committee level within the WTO, it is difficult to trace concerns raised by civil society in that particular setting. Moreover, only among activist CSOs it is common to express precise demands and expectations, such as the one to dismiss the US position in the current GMO case.

It is also noteworthy that only few CSOs keep track with all activities and deliberations going on in the day-to-day work at the WTO committee level. This can be explained by a combination of agenda overload, a lack of manpower, and very limited prospects of influencing any substantial decisions as the competences of the committees are clearly circumscribed and limited (Blackhurst 1998).⁴² According to our interviews, only academic CSOs see their primary objective in the documentation of what is being debated in WTO committees.⁴³ However, debates in committee meetings are not characterized by what one might define as expert deliberation on food safety. National delegates are in most part trade experts, and this usually means generalists (lawyers or economists) with rather little understanding of linkage issues, such as effects of trade on environmental or health policies (Esty 1999: 200). In practice, committee sessions are dominated by reporting activities, notification procedures or information exchange and only to a very limited extend by deliberations on the variety of arguments concerning GMO regulation.⁴⁴ Additionally, the DSB may but is not obliged to refer to committee deliberations, limiting further the relevance

⁴¹ WTO Doc. G/TBTM/13, 15 September 1998 para 27.

⁴² Blackhurst has calculated that there is an average of at least eleven WTO meetings a week for national delegates to participate in (1998: 37). Most of these meetings take place at the level of committees and are on a wide range of issues.

⁴³ Some of the long term delegates to the WTO have their Geneva based “pet NGOs” which they supply with recent and sometimes even confidential information. This information is then circulated to the stakeholders via several means – among them are monthly newsletters or even weekly briefings, such as “Bridges” issued by the International Centre on Trade and Sustainable Development (ICTSD), see Bridges Weekly Trade News Digest at <http://www.ictsd.org>. Their aim is to disseminate information and highlight questions of concern to environmental CSOs, but they do not try to alter the WTO’s agenda.

⁴⁴ On the issue of transparency, there are other means for informing policy-makers and the interested public about matters concerning member states measures on trade and environment: According to provisions in the TBT- and the SPS Agreements, trade and environmental measures (TREM) are to be declared by WTO Members (Marceau/Pedersen 1999: 25-32). Those notification systems include declarations of Members on the export of domestically prohibited goods (BISD 29S/19), declarations on sanitary and phytosanitary measures (SPS Agreement, Annex B), as well as declarations on technical barriers to trade (TBT-Agreement, Artt. 10.6, 10.7). The last two categories include notifications on GMO related measures, such as labelling requirements or authorization procedures. The evaluation of the notification systems is part of the committees’ work, their administration lies in the responsibility of the Secretariat. This tool is primarily for information exchange among member states. Nevertheless, it gives CSOs the opportunity to enhance their knowledge base as well and to keep up with relevant activities on the members’ side.

of committee deliberations in WTO decision-making. Hence, the Ministerial Conferences remain the supreme decision-making body. As long as no re-negotiation of the respective agreement is under way and no special negotiating sessions are launched, WTO deliberations on the committee level seem to be only of limited importance to both, governments and civil society. Given their limited resources, continual “engagement” by CSOs here would hardly be worth the trouble.

b) The Negotiating Level: CSOs and Ministerial Conferences

Civil society participation at Ministerial Conferences by contrast has increased steadily within the last couple of years. Since the founding of the WTO, five Ministerials have taken place. Table 1 above already documented the growing number of CSOs participating in those meetings. The increasing interest in Ministerial Conferences might be explained by the fact that the WTO generally has become under increased public scrutiny but additionally, bringing forward concerns at the level of ministers and raising public attention there is deemed most effective by CSOs. In this section, we focus on CSOs that lobbied at Ministerials for consumer interests or have GMO related campaigns on their agenda. To be better able to document their arguments and activities, we selected those CSOs that have not only participated in Ministerial Conferences but in parallel WTO outreach activities as well. In total, we identified a number of 22 CSOs that participated at least once in Ministerials and either offered panels at public symposia or issued an amicus curiae brief in the current GMO case. Several of the CSOs, such as *Greenpeace International* or *Consumers International* (CI), attended all five Ministerials. Others were present only at one out of five. Of the 22 CSOs identified, all appear to be either public interest or research oriented CSOs. Industry or business associations were also present at the Ministerials but did not engage in parallel public activities on the GMO issue at the WTO.⁴⁵

Generally, presence at Ministerials is limited to CSOs that went through an accreditation procedure.⁴⁶ For each Conference, the number of representatives to be allowed to attend per CSOs is evaluated individually, depending on the total number of applications and the capacity of the facilities provided for at the conference venue. It has become a general procedure to provide for an “NGO Centre” either directly at the conference venue or close by. It remains in the responsibility of the Secretariat to organize regular briefings about the state

⁴⁵ In Cancún, for example, the Transatlantic Business Dialogue as well as the Transatlantic Consumer Dialogue were present at the Ministerial. However, they did not engage in any other WTO outreach activities and are therefore not included in our list.

⁴⁶ See for the current procedure on the Hong Kong Ministerial WT/MIN(05)/INF6, 1 June 2005.

of the negotiations or to provide additional facilities for meetings of CSOs.

At Ministerial Conferences the different types of CSOs pursue different strategies for raising attention to their concerns. Whereas academically oriented CSOs see once again their main objective in knowledge generation on the side of the stakeholders, public interest CSOs and industry try to bring their interests more or less directly to the negotiators' attention. For public interest CSOs such as *Friends of the Earth International* (FoE), campaigning outside the conference venue but in sight of media as well as delegates is an important tool for raising attention on their demands. Big protests at Ministerials, where decision-makers meet, promise to be much more effective than small demonstrations in front of the WTO Secretariat, where mainly administrative staff passes by. Analysing media coverage on the Cancún Ministerial, it became additionally evident that the media focus is on public protests *outside* the WTO and to a much smaller extent on problems arising *inside* working groups or on decisions taken by ministers.⁴⁷ For CSOs, this implies that they might successfully direct public attention beyond WTO activities and current negotiations towards more general problems of world trade or their general criticism of free market policies. Hence, the concerns raised outside the conference do not necessarily relate to the negotiating items inside the venue. Rather, CSOs look for innovative forms of protest and new forms of networking to bring the perceived effects of free trade on citizens to the trade negotiators' but also to the citizens' attention.

For the upcoming Hong Kong Ministerial, public interest CSOs have organized preparatory meetings of stakeholders in order to see whether different CSOs have similar objectives and could agree on a common denominator.⁴⁸ CSOs fear the danger of dispersion, i.e., presenting too many opinions which in the end do not result in having any serious impact on the upcoming negotiations. Nevertheless, with the resulting consensus statements, CSOs try to lobby primarily at the national level – not at the WTO. Some focus on direct contacts to bureaucrats in the respective ministry, others on parliamentarians who have to ratify the agreements in the end or can check directly on the executive's activities. To our knowledge, in the case of GMO regulation, no consensus has been achieved that would reach beyond the initiative of FoE and their "bite-back" campaign that is supported by some 730 groups

⁴⁷ It has to be pointed out though that media – as CSOs – do not have access to meetings and can – as CSOs – only attend briefings by WTO Secretariat members or national delegations. Hence, their knowledge of what is happening behind the doors is also limited.

⁴⁸ The General Council of Peoples was held in parallel to the WTO General Council meeting in July 2005. It was meant to bring stakeholders together as well as to debate with WTO delegates and to observe the negotiations. In October 2005 a similar preparatory meeting will be held in Geneva, see <http://www.omc-wto.org>.

worldwide.⁴⁹ Yet, other CSO networks such as Consumers International (CI), a global non-profit federation of 250 consumer organizations with observer status to several international institutions, also campaign on GMOs and try to influence standard setting and decision-making in different fora.⁵⁰ They, too, do not concentrate on WTO activities.

The biotech industry, in contrast, had a great interest specifically directed at the WTO. In 1999, the year of the chaotic Seattle Ministerial, they wanted a Working Group on Biotechnology to be established within the confines of the world trade regime to enhance trade in biotech products. This request was converted to a formal inquiry of the US at the Seattle Ministerial and was supported by Canada and the EU trade commissioner Pascal Lamy. Protests from member states, especially European environmental ministries, and the failure of the entire conference brought an end to the idea. Nonetheless, the fact that the proposal was brought to the negotiating table reflects the potential influence of industry on WTO decision-making. The structural advantage of industry in general to take direct part in international policy-making was also emphasized by an interview partner. Representatives of business associations usually have the capacities and networks for organizing high level dinner meetings or even personal lunches with the Director General in the run-up to a Ministerial Conference. They look for direct contacts to delegates and decision-makers and are sometimes even members of national delegations, thus, have direct access to intergovernmental negotiations.⁵¹

Similar to their activities at the committee level, research CSOs such as ICTSD monitor negotiations, attend briefings by the WTO Secretariat on each working group as well as briefings and informal information sessions by delegates. At the Doha and Cancún Ministerials ICTSD in cooperation with the *International Institute for Sustainable Development* (IISD) produced a daily brochure on the negotiations, also providing for

⁴⁹ FoEE initiated the “bite back – WTO hands off our food!” campaign. Central to the campaign is a citizens’ objection which was agreed upon by several initiating environmental CSOs. It is a consensus document by the groups participating, among them trade unions, farmer associations, consumer groups and environmental CSOs. According to their own record, the CSOs participating in the campaign represent 55 million consumers, having 130.000 individuals additionally signed the objection.

For more details on the campaign see <http://bite-back.org>, accessed 20 June 2005.

⁵⁰ Consumers International’s focuses its campaign on three principal aspects: 1) mandatory labelling of all foods containing or derived from GMOs, 2) independent safety testing of GMOs and implementation of international safety guidelines, and 3) protection of organic and conventional crops from contamination by GMOs through establishment of GM-free areas. For more information on the “Consumers Say No to GMOs” campaign, see Consumer International’s annual report 2004 “The Global Voice for Consumers” at <http://www.consumersinternational.org>, accessed 15 August 2005, or at <http://www.consumersinternational.org/Templates/News.asp?NodeID=89677&int1stParentNodeID=89650>, accessed 19 August 2005.

⁵¹ This is not only true for business CSOs, also public interest or research CSOs could theoretically be part of national delegations, depending on accreditation procedures of national governments. A comparison of the list of delegation members with high ranking company employees or other CSOs could not be conducted due to time constraints. The information put forward here relies entirely on interviews with both a member of a business network as well as an official from the WTO Secretariat, both conducted in Geneva, August 2005.

background information on contentious issues. They distributed it via internet and directly at the conference venue.⁵² Here again, they aim at knowledge generation and capacity building *on* but not necessarily agenda-setting *in* the WTO.

In sum, at the negotiating level, participation in WTO deliberations is only possible if national governments take CSO representatives into their national delegations.⁵³ Otherwise, CSOs rely on informal contacts and there is no way of presenting their arguments directly to the assembly of negotiators. The consequences of the lack of institutionalized input mechanisms at the political branch of WTO (committees and Ministerials) are twofold. First, CSO activities remain focused on international standard-setting organizations where they have more access (such as CAC), and on delegates and politicians from the national level (Glowka 2003: 25). Hence, CSOs look primarily for direct contact to decision-makers and policy dialogue within the confines of the nation-state.

c) **The Judicial Level: CSOs and the DSB**

In contrast to the committee and the negotiating level, lobbying in the case of a dispute is directed straight to the WTO, either the respective division or the panellists. Nevertheless, transparency remains a matter of constant concern to CSOs. Hearings are not public and scientists advising the panel are not known.⁵⁴ In the upcoming hearing on the *Continued suspension of obligations in the EC Hormones dispute* this practice will change for the first time, as stakeholders are invited to apply for admission.⁵⁵ Members of the WTO Secretariat welcome this decision and share the opinion that this will be the first step to open hearings to the public on a regular basis.⁵⁶ In other cases, the lack of transparency remains. In the event of additional demand for scientific expertise, information on who is participating in scientific advisory panels remains unknown until the final ruling is out. In the scientifically complex GMO case, the panel established a scientific advisory panel to assist in non-judicial questions such as on the consequences of the introduction of GMOs to the open environment or the

⁵² For organizations like ICTSD that have Geneva based offices, it is of advantage to be known to delegates as well as WTO officials. As there are hundreds of CSOs present, they obtain a better chance to get information informally. The full series of the brochure can be found at <http://www.ictsd.org> or <http://www.iisd.org>.

⁵³ The UK NGO Trade Network submitted a NGO position paper to the WTO in the advance of the Doha Ministerial in 2001 on the diplomatic and political means to send a CSO representative with a national delegation. It is available on the WTO website, http://www.wto.org/english/forums_e/ngo_e/posp19_e.htm.

⁵⁴ FoEE tried to get information on the European position in the WTO public hearings directly at the European Commission but their request was denied. They now complained to the European ombudsman to get access to the documents.

⁵⁵ For request of consultations by the EU see WTO Doc. WT/DS320/1 or WT/DS321/1, 10 November 2004. Seats for a closed circuit broadcast of the panels' hearings in a separate viewing room were granted to the public and other WTO members, see also the Communication from the chairman, WTO Doc. WT/DS320/8 and WT/DS321/8, 2 August 2005.

⁵⁶ Interviews with WTO Secretariat members, Geneva, August 2005.

potential harm to human health. In the process of establishing this advisory panel, all parties to the dispute, the three panel members and the WTO Secretariat proposed scientists to join the scientific committee. Several lists of recommendations were made and in the end, the panel decided on the experts to form the advisory body. CSOs cannot obtain information on its members in order to be able to judge on whether different points of view, different scientific opinions and different scientific disciplines are reflected in the panel. As there are controversial debates among scientists on the effects of GMOs and there exist only limited experiences and very few systematic studies on the issue, the selection of the scientific advice might be decisive in the current dispute.

Besides transparency concerns, at the judicial level, we find different procedures and strategies for raising attention to civil society's interests. First, there is the possibility to submit *amicus curiae* briefs. In the GMO case, three briefs were submitted to the panel.⁵⁷ Two came from public interest CSOs, one from researchers, though all three of them bringing forward arguments in favour of the European authorization system.⁵⁸ They want to put their arguments forward which they see underrepresented in WTO obligations or in submissions by the parties to the dispute. It is more, but not exclusively, public interest CSOs that have an interest in raising the panels' attention to environmental or consumer concerns. Debate on the issue in the private sector seems not as vivid.⁵⁹ The issue of *amicus* briefs remains contentious as no formal procedures are provided for to stipulate that they have to be considered in the ruling. Against this setting, several public interest CSOs decided on other strategies to make themselves heard. Instead of submitting *amicus curiae* briefs to the panel, FoEE looked for symbolic action to be taken, as they were not certain about what would happen if they raised an objection in form of a formal *amicus* brief. Therefore, we find as a second strategy public protests, in this case the FoEE initiated campaign "bite back – WTO hands off our food!" that was already mentioned in section IV b) above. It is a consensus document by the groups participating, among them trade unions, farmer associations, consumer groups and

⁵⁷ Unfortunately, it is not possible in the case study to take into consideration whether those briefs are being considered by the panel or not, since the final ruling has been delayed to December 2005.

⁵⁸ The *amicus curiae* brief submitted from researchers see Busch et.al. 2004. The *amici* briefs from public interest CSOs, see (1) Gene Watch UK, Foundation for International Environmental Law and Development (FIELD), Five Year Freeze, Royal Society for the Protection of Birds (RSPB), The Center for Food Safety, Council of Canadians, Polaris Institute, Grupo de Reflexion Rural Argentina, Center for Human Rights and the Environment (CEDHA), Gene Campaign, Forum for Biotechnology and Food Security, Fundacion Sociedades Sostenables, Greenpeace International, Californians for GE-Free Agriculture, International Forum on Globalisation and (2) Center for International Environmental Law (CIEL), Friends of the Earth - United States (FOE-US), Defenders of Wildlife, Institute for Agriculture and Trade Policy (IATP), Organic Consumer Association – United States (OCA – USA).

⁵⁹ This could be explained by the fact that companies do not feel their interests to be undermined or underrepresented in WTO disputes as governments usually have an interest in improving conditions for national companies and tend to argue in their favour.

environmental CSOs. Their attempt to submit the petition directly to the WTO Director General, however, failed.⁶⁰

The third way of trying to influence deliberations in a dispute is confrontation with counter expertise. Research CSOs hold workshops and offer counter expertise to panels and national delegates. They conduct research on contentious, specifically legal questions and try to bring forward alternative viewpoints or arguments to the debate. CI for example held a workshop on consumer interests with WTO Appellate Body members, being one of very few CSOs to do so. According to an official from the WTO Secretariat, however, no real alternatives are presented, neither in the amicus curiae briefs nor in research activities, which are not reflected in one or the other argument in the submissions by the parties to the dispute.⁶¹ One major reason for this is that in drafting the submissions at the national level, CSOs are quite often already included in the process. This is particularly true for industry organizations. In order to bring other parties' non-compliance before the dispute settlement body of the WTO, states need to show that they suffer economic losses from deviant behaviour. As companies usually are the first ones to notice this, industry associations often play a crucial role in setting the process of litigation into motion. Even individual companies with high stakes in an issue area or profound interest in the export conditions for a certain product have triggered national action in the past. In sum, in the case of dispute settlement, demonstrable CSO influence is to be found mainly within the confines of the nation-state and not within global governance arrangements.

d) The Administrative Level: CSOs and the WTO Secretariat

In contrast to the closed political decision-making process, the administration of the WTO provides some opportunities for direct stakeholder involvement. In fact, the External Relations Division of the WTO Secretariat is primarily occupied with CSO requests.⁶² For CSO-representatives there is some limited access to the WTO Secretariat and its Divisions, which is granted on a personal basis, not for the CSO as a whole. Contacts between the Secretariat and CSOs are informal to a large extent. So it needs to be stressed that in comparable IGOs, CSO consultations or policy dialogues are far more structured. The World Bank, for example, established a specific NGO Committee to guarantee for a certain

⁶⁰ Their attempt, to submit the petition directly to the WTO Director General, however, failed. He was replaced by a Secretariat member, arguing that the objection would aim at the wrong target, as it was in the responsibility of the member states to resolve the matter politically or to clarify WTO obligations in negotiations. Before the panel decides on the case, FoEE will try once more to hand in citizens' complaints directly to the WTO.

⁶¹ Interview with WTO Secretariat member, Geneva, August 2005.

⁶² Contacts with the press lie in the responsibility of the Media Division.

responsiveness of the organization to stakeholders' concerns.⁶³ In the WTO, no equivalent body exists. However, there is a range of activities through which CSOs can present alternative viewpoints and bring attention to new issues: Public symposia, internal briefings at the WTO and NGO position papers. All three mechanisms, however, have been criticized for being not focused enough on a *dialogue* between civil society representatives and WTO delegates.

Public symposia: In our study on the activities of CSOs on food safety matters and the regulation of GMOs at WTO symposia, we found that panels at the symposium covered many aspects of deliberations in WTO fora and tried to remain focused on actual WTO activities and responsibilities. In 2001, we identified the first two panels relating to the question of GMOs, organized by the IISD and Kyoto University, Japan. They were on labelling systems and "precaution" in the SPS Agreement. Four more panels on the issue were offered in 2003 and 2004, organized by *Greenpeace International*, the *Consumers' Choice Council*, the University of Geneva and FoE. They focused on labelling requirements, on the Biosafety Protocol and its implications to the WTO as well as on the GMO trade dispute.⁶⁴ Additionally, ambassadors, delegates and members from the European parliament were invited to the discussions, enhancing dialogue between member states and civil society. Although exchange with WTO delegates remains limited, the panels constitute real multi-stakeholder platforms as they bring all different types of CSOs together: public interest CSOs such as Greenpeace or Consumers International, research oriented CSOs such as IISD or several universities, and industry such as various farmer associations.⁶⁵

Public symposia are generally conceived as an interesting tool for information exchange but that "dialogue within the confines of the WTO is just the same as civil society dialogue outside the WTO".⁶⁶ Attempts to invite relevant decision-makers failed. FoEE for example invited the head of the current GMO panel to the 2004 public symposium – not as a discussant but to listen to stakeholders' arguments. He turned down the request, arguing that he was not allowed to attend due to the current dispute.⁶⁷ Hence, for research and public interest CSOs organizing expert panels or regional workshops with different stakeholders, national representatives and officials from IGOs independent of WTO activities are a tool as

⁶³ On the World Bank Inspection Panel see <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html>

⁶⁴ Despite the GMO case expected to be resolved this year, there was no GMO related panel in the 2005 public symposium.

⁶⁵ The authors attended several of the panels; for early symposia, lists of participants can be found at i.e. http://www.wto.org/english/forums_e/ngo_e/ngo_symp2001_partic_e.htm, accessed 9 June 2005.

⁶⁶ Interview with research CSO, Geneva, July 2005.

⁶⁷ Interview with public interest CSO, July 2005.

effective as WTO public symposia. Regional workshops in particular offer the possibility for direct interaction between policy-makers and civil society representatives with a focus on specific problems arising in the respective region.⁶⁸ Therefore, many CSOs see networking among each other as the prime incentive for joining public symposia. They use them as an opportunity to gain an overview of CSOs acting on the interface of trade and environment; they can exchange information and can coordinate activities. Theoretically, they could form issue-based coalitions, could mobilize the public in a joint effort and could try to influence policy-making via campaigning. However, meetings at the WTO seem not to result in joint civil society statements which could then be distributed to WTO members. Only once, in 1999, a joint statement was submitted before a WTO public symposium, calling for more action-orientation, as “the Symposia must also have a clear action agenda towards the next WTO negotiations if they are not to become mere ‘talking shops’”.⁶⁹

Internal briefings: In contrast to the (limited) dialogical character of public symposia, CSO briefings by the WTO Secretariat are perceived to be unidirectional; having a Secretariat member tell what is being discussed in WTO committees and councils but not offering CSOs opportunities to make an issue out of their concerns. The briefings are open to any CSO with an interest in the subject. However, CSOs not being based in Geneva do not receive information on those briefings in advance. According to a Geneva based CSO, there are usually 11 or 12 CSOs that are permanently based in Geneva who are attending those meetings. Criticism or discussions hardly ever arise as briefings are not attended by experts from divisions and very rarely by national delegates and decision-makers.⁷⁰ Only very few CSOs organize briefings at the WTO for delegates themselves, bringing forward their interests and concerns.⁷¹

Position papers: Finally, NGO position papers are meant to be a tool for awareness building and mutual exchange. However, as indicated by CSOs, they are seen more as a “visibility tool”, not so much aiming at influencing the WTO agenda.⁷² Since the establishment of the WTO, several NGO position papers on food safety were submitted to the Secretariat. In total, we have identified 29 position papers relating to the subject, either directly to GMOs or to food safety in a broader sense, such as on the precautionary principle

⁶⁸ Many IGOs carry through regional workshops on specific questions in their capacity-building activities. Among CSOs, ICTSD offers similar regional workshops, though not on a regular basis, see “dialogues” at <http://www.ictsd.org>.

⁶⁹ See <http://www.globalpolicy.org/soecon/bwi-wto/wto99-2.htm>, accessed 4 July 2005.

⁷⁰ Interview with staff from a research CSO, Geneva, July 2005.

⁷¹ Consumers International is one of the few. In their annual report they point out that they have organized internal briefings at the WTO and discussions events with national delegates to the WTO, see CI Annual Report 2004: 12.

⁷² Interview with business oriented CSO, Geneva, August 2005.

or ecolabelling. Some are submitted by single CSOs, others are joint statements by farmers or several environmental CSOs. All three types of CSOs seem to use the tool on a regular basis, most commonly in the advance of a Ministerial Conference.⁷³ Nonetheless, position papers are hardly expected to be read and taken into consideration by delegates or ministers.

In concluding the analysis of the administrative level, it remains to be pointed out that there is a vital debate on the WTO Secretariat's role in decision-making processes (e.g. Xu/Weller 2004). Secretariat members emphasize their mere administrative status, not being able to influence discussions or to table papers. For public symposia they make rooms available, but have no influence on the level of interaction between civil society and government representatives. Briefings remain in a reporting mode, not meant to be forum for an exchange of views. Research based CSOs seem to share the view on the WTO Secretariat's limited mandate, whereas public interest CSOs perceive the role of the Secretariat in decision-making as crucial.⁷⁴ Particularly, in a complex dispute such as the GMO case, public interest CSOs expect the Secretariat to bring in expertise, to draft papers or to consult on the issues in question – and by those means to have influence on policy-making. Hence, opinion on the WTO Secretariat's significance to WTO policy-making remains contentious.

V. Conclusion: Who deliberates at the WTO?

In this paper we have confronted deliberative democratic theory with the practice of global governance. We have tried to assess whether current practices of consulting civil society at the WTO can be regarded as democratizing the organization. Our evaluation of the interaction between the WTO and civil society followed a list of four criteria and yielded ambivalent results. First of all, it has to be noted that when compared with the GATT47 the WTO has made remarkable progress over the last ten years. The organization now officially acknowledges civil society actors as significant and legitimate interlocutors. It also has devised some guidelines on how to relate to non-state actors, even if those remain rudimentary. The most notable evolution has taken place with respect to external *transparency*: access to official WTO documents has been liberalized and its website caters them to the public in a remarkably user-friendly way. This disclosure of the organization's

⁷³ In years of Ministerials 2003 Cancún 117, 2001 Doha 86 and 1999 Seattle 115 position papers were submitted, whereas in 2004 only 42, in 2002 45 and in 2000 30 papers were received by the WTO Secretariat. For the list of GMO related NGO position papers, see annex III.

⁷⁴ Interviews with public interest and research CSOs, July/August 2005. On the potential importance of international bureaucracies in general, see Barnett/Finnemore 2004, Biermann/Bauer 2005.

documentary record is contrasted, however, by the extremely limited *access* of observers to its policy-making process.

There is no civil society access to the official meetings, not even at the committee level. In this respect, the WTO lags far behind other international organizations. Opportunities for civil society to influence the deliberation process at the WTO directly are quite scarce. Remarkably little has changed since GATT became operational in 1948. Consultation takes place mainly in the form of so-called outreach activities, such as public symposia. These meetings create a forum for discussion between non-governmental actors and, occasionally, a limited number of government representatives. Yet, it has to be stressed that such discussions remain detached from the WTO's regular policy-making process. There is no way in which non-state actors could enter a regular dialogue with policy-makers on concrete regulatory proposals, or to exchange views with the assembly of national delegates as a whole. Intergovernmental and non-state areas remain clearly separated. The clear separation and protection of the intergovernmental realm from CSO activities is characteristic of other forms of WTO outreach to civil society.

These rather adverse conditions for CSO activity quite obviously have repercussions on the strategies by which CSOs try to influence WTO policy-making. Public interest CSOs concentrate on awareness building, hence addressing the public, and on campaigning, and hence addressing the WTO. It is through informal, personal contacts with state delegations and WTO officials that most civil society representatives seek to influence policy-making. For research based CSOs this is especially valid. We found examples of Geneva-based CSOs that are in a quite privileged position as they entertain personal contacts to delegates and Secretariat staff. Yet even those informal ways of interaction that are buttressed by long-standing personal relationships do not seem to result in much of a two-way dialogue. Interviewed members of research CSOs saw themselves not in the position to transport concerns of civil society *into* the WTO, but only to enhance public knowledge *about* the WTO. Finally, industry CSOs enjoy the most privileged position to influence processes of regulatory decision-making. Their concerns seem to be particularly reflected in WTO deliberations as member states are quite ready to take them up. In their interaction with the WTO though, they too seem to remain focused on informing themselves on WTO activities and current discussions in order to be able to act on contentious issues without delay. Given the lack of documented direct interaction between delegates and CSOs it is very hard to assess to what degree policy makers are *responsive* to civil society's concerns. The privileged position of industry CSOs in addressing national delegates and WTO officials points to

potential problems of *inclusion*, in particular when compared with the difficulties of developing country representatives (both from national delegations and civil society) in following policy-making at WTO.

So we come to conclude that there is very little evidence for a real dialogue going on between the WTO and organized civil society. What does this mean for the potential democratization of global governance and the role that civil society presumably should play in it? In the introduction to this paper we have argued that participation by civil society in global governance holds two promises: First, CSOs have the capacity to transport new issues, interests and concerns from citizens to the settings of international decision-making. Second, CSOs might monitor policy-making and expose decisions taken and decision-makers to public scrutiny. Our study has shown that in the case of the WTO the latter promise is fulfilled, with some limitations. Many CSOs in fact focus their activities on generating and disseminating knowledge on internal WTO processes. Their observation of decision-making, however, is hampered by informal policy practices, and the restricted flow of information on dispute settlement processes. As for the first promise, a dialogue between CSOs and the WTO that allows for concerns to be brought directly to the WTO's attention and into its rule-making processes, we could not detect any reliable evidence that this is likely to be fulfilled. Our analysis revealed that governmental delegates in WTO committees take up issues that are also promoted by civil society. Yet it is rather unlikely that CSO activities at the WTO have brought them to do this. A good deal of CSO activity and potentially successful informal lobbying takes place in the national context but not in Geneva or at the venues of the Ministerials.

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