



Project no. CIT1-CT-2004-506392

NEWGOV

New Modes of Governance

Integrated Project
Priority 7 – Citizens and Governance in the Knowledge-based Society

New Modes of Civil Society Participation in the WTO
reference number: 11/D02

Due date of deliverable: August 2005
Actual submission date: 29 August 2005

Start date of project: 1 September 2004

Duration: 48 months

Organisation name of lead contractor for this deliverable:
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Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
PU	Public	X
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	

Summary

This report reviews new modes of civil society participation in the World Trade Organization (WTO). The first section of this paper analyses the general framework for cooperation between governmental and non-governmental actors as it developed since the foundation of the WTO in 1994. It presents 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. After this general overview we focus on the trade-related aspects of the regulation of genetically modified organisms (GMOs). This case study is designed to assess the practice of civil society consultation in one specific – and highly contested – policy field. 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 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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List of Abbreviations

AB	WTO Appellate Body
CAC	Codex Alimentarius Commission
CBD	UN Convention on Biological Diversity
CI	Consumers International
CSO	civil society organization
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
FAO	Food and Agriculture Organization
FoE	Friends of the Earth
FoEE	Friends of the Earth Europe
GATT	General Agreement on Tariffs and Trade
GM	genetically modified
GMO	genetically modified organisms
ICC	International Chamber of Commerce
ICTSD	International Centre of Trade and Sustainable Development
IGO	intergovernmental organization
IISD	International Institute on Sustainable Development
IMF	International Monetary Fund
IO	international organization
IPPC	International Plant Protection Convention
ITO	International Trade Organization
NGO	non governmental organization
OIE	Office International des Epizooties
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
STDF	Standards and Trade Development Facility
TABD	Transatlantic Business Dialogue
TACD	Transatlantic Consumer Dialogue
TBT Agreement	Agreement on Technical Barriers to Trade
TREMs	trade-related environmental measures
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WHO	World Health Organization
WTO	World Trade Organization

I. Introduction: civil society and international governance

Governance by international organizations is often charged with being undemocratic. These institutions are said to be remote from citizens, while decisions within them are made by non-elected diplomats, bureaucrats and experts. Their decision-making process itself is often quite secretive, and there is insufficient public debate about the resulting policy choices. Nevertheless, international organizations have an increasing capacity to generate law and regulations binding democratic communities. Their only form of democratic legitimation¹ available today is a highly indirect one derived from (elected) national governments, rather than from a potential constituency of world citizens. In the absence of a convincing parliamentary solution to this problem, many scholars of global, and in particular EU governance, have turned to theories of deliberative democracy in order to devise some blueprint for institutional reform. In essence, many authors have come to argue that the institutionalization of deliberative practices may enhance the rationality and legitimacy of political decisions made beyond the nation state.

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 ‘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 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. Nanz/Steffek 2004, Esty 1999, 2002). 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 a functionally limited public sphere. At least a certain type of civil society actor, the activist non-governmental organization (NGO), often also seeks to bring such issues on the agenda of the mass media. In doing this they contribute to a broader public sphere, that is, a media debate on global governance that potentially reaches a high number of stakeholders.

Thus, 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 good or democratic. We always need to investigate carefully if civil society really fulfils the democratizing

¹ In this paper we refer to a normative notion of legitimacy. Normatively, legitimacy means the conditions under which a system of governance or government deserves support.

roles that political theorists envisage for it. This paper presents the results of such a critical enquiry. It investigates the ways in which representatives of civil society are involved in the World Trade Organization (WTO), the history and prospects of this relationship. 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. The following sections review the current deliberations on the regulation of genetically modified organisms in the WTO. It tries to shed light on the interaction of selected civil society organizations (CSOs)² with different levels of WTO decision-making.

II. From GATT47 to the WTO

a) Rise and Decline of the Club Culture in GATT

From the perspective of non-state actors, international trade governance came to a promising start after World War II. From 1946 to 1948, the predecessor of today's WTO, the International Trade Organization (ITO), was negotiated, envisaged as an encompassing organization in the field of international economic cooperation and only *inter alia* concerned with trade. It was supposed to tackle a much wider range of issues, including full employment and economic development (Gardner 1956, Graz 1999). On the initiative of the United States, non-state actors were admitted to the meetings of the preparatory committee that was in charge of producing a Charter for the ITO. Thus, CSOs were able to follow the negotiation of the ITO Charter and to submit documentation to state representatives (Charnovitz/Wickham 1995). Provisions for an institutionalized consultation of CSOs were also made in the first draft of the ITO Charter that the U.S. 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”.³ 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 (Charnovitz/Wickham 1995:114). In the course of the Charter negotiations, the reference to these “specific tasks” dropped out, but the call for consultation and co-operation remained.⁴ 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 GATT regime was not supposed to develop into a proper international organization. The original GATT was a Treaty which 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 following 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

² 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 and academic institutions.

³ 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).

⁴ 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.

the influence of domestic protectionist lobbies. Esty (2001) points out, that the GATT and later the WTO benefited from the belief that international trade raises highly technical questions and should be left to technocratic decision-making by qualified experts. Insulating the GATT from the dynamics of wider international relations was also useful in a different respect. It helped to shield the GATT from too much political interference motivated by geo-strategic or other non-trade concerns. In turn, by resolving trade disputes within the GATT, economic tensions could be prevented from doing too much damage to ‘high politics’.

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. From the IGO’s point of view, there was little to gain from CSO presence in tariff bargaining. What crucial information could they have provided? Enhanced publicity of proceedings would not have been conducive to the smooth functioning of intergovernmental tariff negotiations or dispute settlement. Also from the CSO point of view, there was little interest in a direct presence at GATT. Tariff negotiations were of interest to industry associations that lobbied their national governments. General interest CSOs were not too much concerned with questions of trade. Moreover, media interest in the GATT was limited, due to the highly technical character of its agenda. In the age of confrontation between two rival geopolitical blocks, more exciting things happened in international affairs than the mostly intra-Western struggles over trade rules and tariffs.

As actors within the GATT system did not see advantages in opening the regime, and actors external to it did not ask for it, it was almost overdetermined that trade governance became a secretive affair. 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 also 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.⁵ 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 globalization and the neoliberal principles that guided the institutions of global governance, in particular the IMF and the World Bank. “GATTzilla” was held responsible for the death of sea turtles and currently fears arise that the WTO “force feeds” consumers genetically modified “Frankenfoods”. Not only did CSOs expose international organizations to public scrutiny, they also knocked on their doors, demanding access, insight and a voice in their policy-making. At 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), non-state actors playing an important part in this process.

b) Transparency and Access to Information at the WTO

In the 1990s, CSOs were pushing into the intergovernmental institutions of global governance, seeking to influence their agenda and their policy choices. For the newly founded WTO the question of how to deal with transparency and access for such non-state actors 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 consulta-

⁵ For the trade and environment debate see e.g. Pfahl 2000.

tion 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”.⁶ 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.”⁷ Thus, the WTO officially views the main benefit of liaising with CSOs in their capacity to bring critical arguments into public debate.⁸ In this, the WTO seems to acknowledge that there is a deficit in its relations with its global constituency. Assigning CSOs the task to improve the “accuracy and richness of the public debate” sounds quite magnanimous, given that many vociferous CSOs campaign against WTO principles and policies. Yet, it documents that the WTO was responding here to a legitimacy challenge posed by non-state actors. The organization in fact acknowledged that there was insufficient public debate on its policy choices.

With regard to transparency and access to documents, the WTO 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 its procedures for the circulation and derestriction of documents.⁹ According to this decision, all official WTO documents shall be unrestricted and made available via the website in the organization’s official languages.¹⁰ This provision includes the minutes of meetings that will be derestricted automatically 45 days after their circulation.¹¹ Hence, with regard to the documentation of its policy process, the WTO has become a rather transparent international organization.

c) Access to WTO Meetings

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.”¹² Thus, CSOs are still 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”.¹³ This means in practice that, when filing their request for registration, CSOs must indicate in detail

⁶ Cf. WTO Doc. WT/L/162, 23 July 1996.

⁷ Ibid., Paragraph IV.

⁸ 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”.

⁹ Cf. ‘Procedures for the Circulation and Derestriction of WTO Documents’, WTO Doc. WT/L/452, 16 May 2002.

¹⁰ Ibid., Paragraph 1 and 3.

¹¹ Ibid., Paragraph 2(c).

¹² WTO Doc. WT/L/162, 23 July 1996, Paragraph VI.

¹³ Source: http://www.wto.org/english/forums_e/ngo_e/intro_e.htm, accessed 16 July 2004.

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.¹⁴ The following table illustrates this development.

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

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

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

The possibility to watch Plenary Meetings is certainly not the main incentive for CSO representatives travelling to the Ministerials. Presence at the conference venue enables them to lobby national delegates, to contact journalists and to distribute information material in the designated CSO areas that the WTO provides at the sidelines of the conference. Yet, there is no way in which non-state actors could enter a regular and mutual dialogue with policy-makers or to exchange views with the assembly of delegates as a whole. Intergovernmental and non-state areas remain separated. The clear separation and protection of the intergovernmental realm from CSO activities is characteristic of other forms of WTO outreach to civil society.

The WTO organizes three kinds of outreach meetings. 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.¹⁵ 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.¹⁶ 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.

¹⁴ 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, see also section V.b of this report.

¹⁵ 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.

¹⁶ 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.

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.¹⁷ 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.¹⁸ In one controversial case, the Appellate Body even devised an *ad hoc Special Procedure*, setting out modalities for the submission of *amicus curiae* briefs (without considering any of them in the end).¹⁹ Given the legal uncertainty around 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.

d) The WTO at 10: New Developments Ahead?

The tenth anniversary of WTO in 2005 has spawned a good deal of stocktaking and critical review. Outgoing Director General Supachai Panitchpakdi on that occasion commissioned a report on the Future of the WTO which addresses the main institutional challenges facing the organization (WTO 2005). The group of authors chaired by the WTO's former Director General Peter Sutherland devotes an entire chapter of this report to issues of transparency and dialogue with civil society. Quite in accordance with deliberative political theory the authors argue that a "dialogue with civil society, business and other stakeholders should also enable the WTO to tap the knowledge and expertise of these groups. Transparency is not a one-way process in which the WTO seeks to inform, persuade and educate. Many stakeholders in the trading system have their own understanding and experience that should permeate the institution from time to time" (2005: § 193). So there is an epistemic gain in CSO inclusion: receiving more information on the issue at stake will lead to more informed policy choices. With regard to direct access, however, the authors are quite cautious to follow the official line of the WTO in stressing the intergovernmental character of the organization (§§ 187, 190). So it is unsurprising that the programmatic part of the report does not call for any major changes in the present practice of consulting with civil society. Nevertheless, it suggests formalizing the relationship further through some sort of accreditation procedure for CSOs by which the WTO Secretariat might establish "more systematic and in-depth relations" with certain CSOs (§ 212). Moreover, some new hopes have been raised by the choice of Pascal Lamy as incom-

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

ing Director General of WTO. During his term as EU Commissioner for Trade, Lamy had intensified relations between the Commission and trade stakeholders.²⁰ Yet for the time being there is no indication as to how Lamy will handle CSO matters at the WTO in the future.

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

a) The selection of the case

In the first section of this paper, we described the general preconditions for civil society to participate in WTO policy-making. As we have seen, calls for an inclusion of stakeholders in WTO deliberations were on the rise as people started to understand that the regime change from GATT 47 to the WTO had direct effect on their daily lives. CSOs managed to mobilize their members, to put certain concerns on the public agenda and consequently, demanded access to and participation in WTO decision-making bodies (Marceau/Pedersen 1999: 6). Their mobilization was especially successful on matters with public uncertainty on new technologies, perceived risks to human health and irreversible effects to the environment. As pointed out above, there is a lack of institutionalized mechanisms for CSO representation in WTO decision-making and there are arguments brought forward that this lack cannot be compensated by national processes. This in turn gives rise to public distrust and credibility problems of WTO decisions.²¹ It has been argued that, in the end, the WTO's ability to face external criticism of CSOs on its dealing with consumer interests will be as decisive for the resolution of its current legitimacy crisis as will be its ability to deal with internal challenges (Esty 2002). From the perspective of the WTO, therefore, inclusion of stakeholders in their decision-making process may yield promises. And an in-depth study of the existent interaction of stakeholders with actors involved in WTO decision-making may yield insights into the potential for a democratization of global governance.

In the following sections of this report we confront these rather theoretical arguments about the role of CSOs in the WTO with empirical practice. We will turn to a recently highly debated example – the case of regulating genetically modified organisms – in order to exemplify how civil society interacts with the different levels of WTO decision-making. Nevertheless, the questions to be answered remain general in nature: What do CSOs offer to WTO Members? How does the WTO respond to CSO activities? And which types of CSOs have what degree of involvement in WTO decision-making? The case of regulating genetically modified food and feed has been chosen as the focal point of the study for several reasons: First, the issue of GM risk regulation is of high concern to civil society (Deane 2001). In food safety public values, ethical considerations and social issues are especially relevant and controversially debated when determining an appropriate and desirable level of protection. There are considerable differences in citizens' preferences resulting in differences in 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 the implementation of precautionary measures are given priority on this shore of the Atlantic. US consumers, on the other hand, are much less reluctant in purchasing GM products and hence the American system is characterized by more

²⁰ For the 'Civil Society Dialogue' organized by the Commission's DG External Trade see <http://trade-info.cec.eu.int/civilsoc/index.cfm>, accessed 25 August 2005.

²¹ See Bernauer/Caduff 2004: 104 addressing the issue of "risk regimes" and the problems arising out of implementation failures, low transparency and delayed action. They argue that public trust will inevitably erode.

regulatory laxity and support of the new technology.²² This controversial debate among consumers, scientists and decision-makers offers the potential for vibrant activity and maximum mobilization of CSOs, trying to influence national as well as international policy. Hence, civil society activity on the issue aiming also at WTO decision-making has considerably increased in the last couple of years.

Second, GMO regulation is a matter that has caused controversy among major trading partners, currently debated in a dispute before the WTO Dispute Settlement Body (Busch/Howse 2003, Howse/Mavroidis 2000).²³ Since the export of GM crops is a matter of considerable economic importance – export losses of American farmers due to restrictive policies in Europe already amount up to 300 Mio US\$ a year – Europe’s regulatory choice on GMOs and agro-biotechnology has been contested by major producers of GM food and feed, namely the United States, Canada and Argentina. Third, the WTO has moved from a system of rules prohibiting tariffs to a system that decides on the legality of domestic rules which are not necessarily or primarily about trade. The transport and handling of GM products is a prime example for a linkage issue affecting both, public interests on environment and health protection as well as economic interests in free trade. Hence, GMO regulation touches on questions of non-tariff trade barriers and the free movement of goods and leads to the emergence of “regulatory polarization” (Bernauer 2003: 44-65) between interests groups, governments and different international organizations involved in the regulatory framework.²⁴ The linkage issue may pose severe challenges to a single-issue organization like the WTO if it does not manage to coordinate policies and to address public concerns. To sum up: in its complexity of actors, values and interests involved, GMO regulation seems especially interesting for an in-depth case study.

Nevertheless, problems arise with the selection of the case as well. GMO regulation is not primarily – not even secondarily – carried out in WTO decision-making procedures. Through its interaction with other standard-setting organizations and through 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, there is a difference between CSOs aiming at influencing DSB decisions on biotechnology and regulatory WTO activities. Additionally, we face a certain lack of documentation on both sides to compare the actual influence of civil society. Consensus documents of CSOs on the matter are rare and the WTO decision in the GMO case was delayed beyond the deadline for this report, 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.

b) The case of GMOs and the GMO case: What is it about?

Genetical engineering is in fact a quite novel technology that allows for the transfer of genes

²² For the global controversy on biotechnology see articles in Bauer/Gaskell 2002, for consumer views on GM food in particular Gaskell/Bauer 2001: 108-109.

²³ 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.

²⁴ 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 different from single regimes and result in legal inconsistencies, forum shopping and a distinct evolution of new rules or rules systems.

into different cells, in order to either make plants resistant to certain diseases and drought or to raise their nutritional benefits. The worldwide production of biotechnology products is concentrated in very few large chemical companies, such as Monsanto, Du Pont or Novartis. GM crops were first introduced to the open environment on test fields in the United States, starting the commercial development in 1994. Despite some research and testing, scientific uncertainty on its effects to nature and to human health remains. Hence, public distrust on the technology has been constantly on the rise. The rapid evolution of agricultural biotechnology and several food scandals were doing their share in raising public attention: Once people, governments and industry started to realize which potential losses but also which potential gains might be attributed to GM technologies, increased activity on all levels – local, national and international – and among different actors – civil society, bureaucracy and business – can be detected (Bernauer 2003).

Governments had an ambiguous part to play in this setting. On the one hand they wanted to foster the new technology because they saw potential economic gains, on the other they wanted to respond to the concerns raised by the public. This is why they addressed the biotech industry and the commercialization of GM crops in often inconsistent ways through their international, national and regional policies.²⁵ The ratification of the Biosafety Protocol, an agreement under the auspices of the UN Convention on Biological Diversity (CBD) that deals with the handling and transport of GMOs and GMO products, can be regarded as a step towards a stricter regulatory approach in GMO regulation and hence an answer to the consumers' demand for precaution. Yet, since the Biosafety Protocol is seen as an "implicit or de facto trade agreement" (Phillips/Kerr 2000: 67), it conflicts in several aspects with WTO obligations. In contrast to the Biosafety Protocol, WTO Agreements, namely the Agreements on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT-Agreement), do not allow barriers to trade on the basis of production methods, they do not allow to take social, ethical or economic factors in the authorization procedure into account and they do neither provide for precautionary²⁶ measures nor for labelling procedures on products. Therefore, WTO Agreements focus on an enhanced and simplified commercialization, including GM crops whereas the Biosafety Protocol takes a more cautious stance.

Product standards may function as barriers to trade if applied arbitrarily. Hence, regulatory choices on food safety are closely linked to the attempt to remove trade barriers between nations (Hagen/Krainin 2002). Therefore, WTO members agreed with the SPS Agreement to base their national food safety regulations on international standards of standard-setting organizations such as the Codex Alimentarius Commission (CAC).²⁷ In the Uruguay round, sanitary and phytosanitary measures were deliberately taken out of the TBT-Agreement because further specification on food safety measures was needed. The SPS Agreement does now not only strive for a harmonisation of international standards, in case of food safety, but

²⁵ For the policy-making at international level see Buckingham/Phillips 2001, for the European level see Tiberghien/Starrs 2004.

²⁶ Artt.5.7 SPS contains a reference to precautionary measures but members are obliged to "seek additional information necessary for a more objective assessment of risk and review the sanitary and phytosanitary measure accordingly within a reasonable period of time".

²⁷ The SPS-Agreement is specifically referring to the Codex Alimentarius Commission. The Codex Commission is a joined international standard-setting body of the FAO and WHO. It has approved three risk analysis standards for GM food in 2003, among them labelling and a reference to the "tracing of products" as mechanisms of risk management. For the CAC see e.g. Boutrif 2003, Merkle 2001.

also for a justification of the respective measures based on sound science.²⁸ Scientific evidence is highly recognized by WTO members as a means to prevent discriminatory and arbitrary trade restrictions.

In the current dispute over the European authorization system and member states' safeguard measures on the approval of new GM products the role of science remains a contentious issue.²⁹ The dispute was initiated by the United States in May 2003, supported by Argentina and Canada.³⁰ 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. The EU on the other hand argues that the legislation does not fall under the scope of the SPS Agreement and denies that a failure to act can be a measure itself. The panel will have to concentrate on which WTO Agreement actually applies but also on questions whether GM products are like products to non-GM products, whether the precautionary approach applies and the requirements for risk assessment are fulfilled and in which way WTO agreements fit into the body of international law, meaning its relationship to other international treaties such as the Biosafety Protocol.

According to science, the claimants argue that the scientific evidence justifying a de facto moratorium on GM food and feed is lacking. As for deliberative democracy, science might be a necessary but not a sufficient precondition for making informed decisions. However, a sufficient and legitimate science-based justification for SPS measures cannot always be given. This is for several reasons: First, the released scientific data might be one-dimensional in favour of the technology and limited to certain aspects of the study only, as examples in the past have indicated.³¹ It depends on national legislation on information release in general and on the company's information policy in particular which kind of information and data will be accessible to public scrutiny. Second, risk management lies in between rules on paper and rules in practice, meaning that there may be strict rules on the release of only approved GM crops, not being able to prevent in all cases the release of other GMOs as well. 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. Currently, in member states of the European Union traces of the unapproved Bt-10 maize were found in authorized Bt-11 maize, both being examples for the insufficiency and unreliability of risk management.

Yet, as several advocates of deliberative democracy theory have argued, science cannot be the

²⁸ Art. 5 SPS addresses risk assessment and the determination of the appropriate level of protection. It has been interpreted by several WTO panels in past disputes. In the Hormones case, see WTO Doc. WT/DS26/AB/R, 16 January 1998, the Appellate Body accepted that temporary or permanent measures such as bans could be based on scientific minority opinions and did not have to reflect mainstream thought.

²⁹ For the dispute see fn 22. For the problem of the WTO's science-based disciplines, particularly scientific uncertainty in risk assessment, see Walker 1998.

³⁰ After several delays, a first interim review by the WTO panel to the parties of the dispute is expected to be issued in October 2005, making the actual panel report not publicly available before December this year. Additionally, an appeal phase is likely. Consequently, an Appellate Body report cannot be expected before 2006.

³¹ Currently, we have seen a decision by a German court on the release of information on GM product testing. Greenpeace had 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. In general, 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.

last resort to decision-making (e.g. Habermas 1969). Public values and concerns need to be included into the process. This seems especially true for matters of risk regulation (Jensen/Sandoe 2002) where there is up till now a deliberate distinction between risk assessment and risk management. While the former applies to scientific research and input by experts, the latter involves public deliberation and political choice. In its reference to science, WTO panelists concentrate on questions of risk assessment and do not necessarily have to take the social or ethical dimensions of risks into account. This distinction itself seems for several reasons arbitrary. As some social scientists have pointed out in their amicus curiae brief to the WTO, “both national and international regulatory frameworks have been developing in ways that systematically call into question this account for risk assessment” (Busch et.al. 2004). Consequently, they call for systematically drawing on public participation in the definition of what a risk actually is, which preferences exists, and what is considered to be worth of protection.

c) Private interests & public outrage: Why public participation in GMO regulation?

It lies in the nature of decision-making processes at the international level that decision-making is distant from the public, that debates are cumbersome, often complex and very legalistic and that for many years international fora were reserved for elites from national and international bureaucracies (Schott/Watal 2000). On the one hand, the normatively demanding idea of global governance as an inclusive process that takes the interests of those affected by decisions into account, has changed this perspective thoroughly. On the other hand, “real world politics” has come to conclude that not only business as non-state actors may offer expertise and resources but other CSOs may also make information available and may be providers of legitimacy. Both tendencies hint to a new understanding of international decision-making that includes stakeholders into the process as they represent interests beyond the confines of the nation-state. From the perspective of deliberative democracy and normative global governance theory the assumption that diplomatic delegates alone are the legitimate representatives of interests at the international level is somewhat flawed: Not all members to the WTO are democratic countries with mechanisms ensuring stakeholder inclusion into national decision-making. Consequently, interests of stakeholders may not be reflected in international deliberations. As sovereign states get increasingly under pressure when exclusively drawing on indirect representation in international politics, we detect a number of examples with pluralized decision-making processes.³²

Nevertheless, private business interests still dominate policy-making in the WTO and in international standard setting bodies.³³ Particularly in the WTO, it is difficult for other stakeholders to overcome the lack of representation of consumer interests. Industry has been successful in lobbying policy-makers in several arenas, demanding a proactive decision-making on GMOs. Some 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 dominated by industries and commercial interests (Correa 2001: 112). Whereas business has always had channels of participation and structural power to influence international nego-

³² A particularly worthwhile example is the World Commission on Dams, a system of transnational rule-making that includes a set of stakeholders and state representatives in their decision-making, see Dingwerth 2005.

³³ 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.

tiations³⁴, public interests CSOs had limited means to put their demands onto the international agenda. As for business, biotechnology firms were for a long time indispensable to decision-makers as the main providers for expertise. The companies conducted scientific tests and were responsible for the release of the information. Contacts of government officials with industry representatives guaranteed privileged access to 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. On the contrary, the counterpart on the public interest side, the Transatlantic Consumer Dialogue (TACD), was denied similar access and had no means to speak directly to decision-makers for their interests (Levidow/Murphy 2002: 9).³⁵ Examples show that there 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). Hence, in the early years an epistemic consensus arose that was one-sidedly supporting GM products and was in favour of their distribution.

The perceived imbalance brought CSOs to the scene, trying to bring forward their arguments against the unrestricted release of GMOs into the environment and for consumer protection and precautionary policies. As public interest CSOs did not have the same structural advantage of influencing policy-making as industry had, they chose other ways of contesting governmental and private biotech regulation: one via litigation at the national level,³⁶ the other via physical presence in and at global institutions, linking and coordinating groups with similar interests and targets. Our study will focus on the latter. A growing number of CSOs surveyed activities in and around biotechnology regulation, raised public attention on the issue, formed coalitions among like-minded CSOs and conducted research themselves. In Europe, CSOs had a higher capacity to shape governmental and business behaviour than in the US (Bernauer 2003: 100). Their success was dependent on several factors. Besides multilevel policy-making in Europe, CSOs depended to a large extent on taking the hurdle of media coverage. Many improved their press work competence and media relations. They staged pseudo-events (Boorstin 1963, Bentele 1994: 245), they intensified their press releases and they looked for personal contacts to journalists. Consumer boycotts, staged pulling GM crops out of the ground or forcing supermarkets to declare their shops GM free all of which were strategies to raise public attention on the issue and to hold companies as well as decision-makers accountable to their actions.³⁷ Some CSOs became highly recognized advocacy groups which participated regularly in meetings of international decision-making bodies for standard setting in food safety and got involved in national bodies of decision-making. Others focused on campaigning outside the core political sphere, not directly addressing international organizations or governmental bodies. And others again had an educative impetus, analysing WTO decision-making, offering 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

³⁴ The International Chamber of Commerce (ICC) is coordinating business interests as a CSO on global scale. While it does not have privileged access to the WTO, it still provides the WTO with the interests of companies which they like to see addressed in future negotiations, see Hoekman/Kostecki 2001: 70.

³⁵ 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>.

³⁶ For an example see fn 30.

³⁷ For strategies of CSOs like Greenpeace to reach media attention, see Böttger 2000.

activities) were an attempt to form a coalition among consumers that could not be ignored by policy-makers and it was an attempt to initiate a transnational discourse on GMO regulation, bringing together interests from the developing and the developed, from GMO producing and GMO rejecting countries, directly aimed at the relevant institutions in the regulatory process – among them the WTO.³⁸

IV. Types of CSOs & levels of WTO decision-making

a) A typology of CSOs

We find different types of CSOs with different incentives to interact in different ways with the WTO. In the following section, we explicate these types of CSOs along the lines of the strategies they follow in their interaction with the respective institutional level of WTO decision-making. First of all, what do we mean by the term civil society organizations? We include social movements that are traditionally active on the local or regional level, non-hierarchical in their organizational structure and are an integrative part of civil society. We also include institutionalized CSOs that have a long history of engagement with politics, have leadership structures and financial as well as human capacities for interaction. In our understanding, CSOs generally are non-governmental and non-profit organizations. In exceptional cases, however, we would also regard business as part of civil society. This is the case when business addresses issues of public interest in a public debate on a public forum (thus excluding lobbying activities). Hence, we define CSOs as those non-state actors that shape public discourses, that have issues of global importance on their agenda and that address matters regarding international organizations in one way or the other (Nanz/Steffek 2004). Especially relevant for our purposes is to differentiate between different strategies of interaction with the WTO which could be expected to be found among CSOs as described in table 2. 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. Whereas activist CSOs campaign on certain issues, mobilize people and engage in fund-raising, academic institutions provide for (non-political) knowledge and integrate single issues into broader contexts, while industry CSOs might lobby on specified economic interests and be a provider of relevant economic data.

On the horizontal axis, our typology is threefold: First, we expect to find CSOs that address the public sphere 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

³⁸ However, not all CSOs had an 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”.

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, therefore not being involved in direct interaction. 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 sphere they also transport concerns into the WTO. Their aim is to raise public interests *and* to make them heard within WTO decision-making. However, their engagement remains concentrated on limited and selected issues, and these CSOs themselves often are ambivalent about the intensity of their attention paid to the WTO. Third, we expect to find CSOs that interact with the WTO addressing the organization via formal and informal dialogue. They may fulfil the same functions as the two types mentioned above but have a more steady relationship with staff from the WTO Secretariat or with particular diplomats from national delegations. They would engage in capacity building activities and act as formal or informal providers for external advice.

Table 2: CSO activities at the WTO: A typology

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

b) Levels of analysis

As mentioned above, we will need to analyze the interaction of civil society with the WTO along the lines of different levels of decision-making. We find the agreement establishing the WTO following the idea of the separation of power known from the nation-state: the Dispute Settlement Body (DSB) could be regarded as the judicative (Art. III Par. 3 WTO Agreement), the Ministerial Conference as a possible equivalent to the legislative (Art. III Par. 2 WTO Agreement) and the WTO Secretariat and the committees as the executive (Bogdandy 2002: 4). Existing studies on WTO decision-making often focus on the DSB and its judicial decisions whereas the role of political deliberation in committee and council meetings seems to be of less interest.³⁹ This is justified insofar as the institutional structure of the organization has been altered substantially in 1995 and the WTO is now equipped with a strong dispute settlement system that can sanction unlawful behaviour (e.g. Petersmann 2001, Gagné 2000). In our view, however, a study on CSO influence should take two more levels of decision-making into account: the Ministerial Conference as the highest negotiating level with decision-making power, and the committee level with administrative support from the WTO Secretariat.

It is plausible to assume that CSOs engage in interaction with the different levels of decision-

³⁹ The nexus of law and politics among the WTO's institutions remains an interesting and demanding issue for further analysis; see Bogdandy 2001, Roessler 2000, Shaffer 2002, Trachtman 1999. Given the fact that the WTO Members are still constrained to consensus voting, decision-making in general is rendered difficult, see Steinberg 2001.

making differently. This is due to the described differences in institutional preconditions within the WTO but also due to different assessments among CSOs as to where trying to influence opinions and agendas is deemed most effective. On the one hand, arguments have been raised that it is not effective to mobilize the public on issues that are not on the negotiating agenda of the current negotiation round since no changes of the agreements are to be expected and no reply to criticism is likely.⁴⁰ Additionally, it has been argued that lobbying WTO officials directly on the international level is of little effectiveness due to the limited scope of the Secretariat's mandate.⁴¹ On the other hand, transboundary problems – especially those regarding linkage issues such as environmental concerns – are often not represented by national governments in international arenas and the WTO itself lacks competence and expertise in other than trade related matters. Certain issues neither being on the regular nor on the negotiating agenda therefore may just reflect this lack of knowledge – this being a particular incentive for CSO action. Esty (1998: 143-147) therefore points out that it is to be expected that CSO participation in WTO decision-making would vary considerably between activities and levels of decision-making.

Before we come to analyse specific examples of interaction between CSOs and the WTO, we first need to scrutinise the different institutional settings, namely the WTO Committees and Councils, the Ministerial Conferences, the Dispute Settlement Body and the WTO Secretariat. As indicated above, CSOs remain excluded from Council and Committee meetings and only have limited access to plenary meetings at Ministerial Conferences. Therefore, any legislative activity by WTO bodies is not open to the public and there are no institutionalized consultative processes between stakeholders and WTO decision-makers. As Blackhurst (1998) has pointed out, however, the WTO is something like a network organization that depends on the varied range of input by civil servants from national capitals, by other IO officials based in Geneva *as well as* by business and CSOs that raise issues to their government's attention. The operation of the organization builds on the input from different actors at different levels. Hence, despite the lack of formal access to meetings and financial restraints in attending Ministerials, CSOs try to influence WTO decision-making and to lobby for their interests. Anyhow, most of the activities decided upon in WTO decision-making processes are the sole responsibility of members. The Secretariat does not have the mandate to initiate negotiations or to introduce new trade related questions to the WTO agenda. It is also not in their competence to file complaints or to settle disputes. But it is the Secretariat's responsibility to keep the network idea of participation in and adjacent to the WTO alive as well as to coordinate input and to administer activities.

Nevertheless, when talking about WTO decision-making processes and daily operations within the organization one has to keep an additional factor in mind: WTO members do not only deliberate or bargain on questions of world trade in its assigned institutional fora. Since 148 countries are now member states to the WTO, mechanisms are necessary to prepare for consensus decisions among a smaller group of participants, the so-called 'green room meetings'. Participation in those meetings is usually limited to members from the developed world or – by invitation – to delegates with a great interest in the product or issue area to be negotiated. Many members – particularly developing countries – are excluded from this process and can only agree or disagree with the outcome after substantial deliberations have taken place (Kwa 2003). As the meetings are informal and not initiated by an institutionalized executive

⁴⁰ Those were arguments raised by several interview partners from different CSOs, Geneva July/August 2005.

⁴¹ The Secretariat itself is limited to support services and administrative activities. It does engage in interaction with CSOs but has no mandate to table papers on CSOs arguments in committee or council meetings. For a different assessment of the influence of the WTO Secretariat, see Xu/Weller 2004.

board there is an additional lack of transparency, not only to stakeholders from civil society but also to WTO delegations (Hoekman/Kostecki 2001: 60). In this case also research would entirely rely on information brought forward by delegates who actually participated in Green room meetings. This level of WTO decision-making is therefore excluded from our study.

In our empirical study, first, we analyse two different committees that are central to the question of GMO regulation, the SPS- and the TBT-Committee meetings. 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. We analysed minutes of meetings for both committees from the year 1995 up to the year 2004. Both committees meet three times a year and have the mandate to interpret their agreements. Their work aims at the improvement of the implementation of specific articles of the respective agreement and at resolving complaints if one member believes an agreement is being violated before filing a dispute to the DSB. The SPS-Committee in particular has far reaching competences in information exchange with other international standard setting bodies (Art. 12.3 SPS) and in attempts to harmonize international standards (Art. 12.4 SPS). Recently it has conducted a review of the SPS Agreement, concluding that the committee's work does live up to members' expectations.⁴² As for the TBT-Committee, it has the competence to grant special and differential treatment for developing countries in their obligations to implement the agreement (Artt. 12.8 TBT) but is otherwise limited in its competences (Art.13 TBT).

Second, we analyse stakeholder participation of CSOs concerned with food safety issues at Ministerial Conferences. For this part, we rely on interviews conducted with representatives from selected CSOs, on NGO bulletins and WTO data, as well as on an analysis of German newspapers' media coverage of the Ministerial Conference in Cancun in the year 2003. Ministerial Conferences are of special interest since they are the highest decision-making body to the WTO. They meet at least once every two years. During the Uruguay Round, participation of ministers in trade negotiations on a more frequent basis was rendered important and expected to "strengthen the political guidance of the WTO and enhance the prominence and credibility of its rules in domestic political arenas" (Hoekman/Kostecki 2001: 50). Later, plenary meetings of the Ministerial were opened to accredited CSOs as the concern of a lack of public and eventually governmental support was increasing. However, working groups on the different negotiating items, where serious arguing and bargaining takes place, remain closed. During the few days session, CSO activity around the conference venue is usually high. Many CSOs take the opportunity to campaign on topics that need not necessarily to be on the current negotiating agenda. They use the media attention on the Ministerial in general to raise awareness about WTO related topics and to put pressure on negotiators.

Third, we analyse the process of dispute settlement. CSOs are especially interested in enhancing access to and transparency of dispute settlement processes as their rulings affect citizens directly and are binding to members. In general, only states can launch a dispute. If companies feel that an importing country breaches WTO obligations, they must convince their governments to bring the case to the WTO DSB.⁴³ As for all other WTO bodies, the dispute settlement procedures do not provide for direct access of CSOs to hearings, expert consultations

⁴² The Ministerial Conference instructed the committee to review the Agreement at least once every four years. For the report of the committee on the second *Review of the operation and implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures*, see WTO Doc. G/SPS/36, 11 July 2005.

⁴³ In cases like Kodak-Fuji the link between companies' interests and government action become already visible in the name of the dispute.

and panel meetings.⁴⁴ However, two mechanisms of influence should be pointed out here: First, companies or private actors can provide governments with necessary information conducted either in coordinated research activities or via direct contacts to government officials responsible for filing the dispute and writing the submissions. Those coordinated efforts on the business side do not only exist for the national level but can also be found on global scale. Second, as indicated above, amicus curiae briefs are potential means of influence in cases of disputes.⁴⁵ The AB interpreted WTO law as giving CSOs the opportunity to submit briefs to the DSB even without request by the Panel. In a later case⁴⁶, the AB however ruled that the panel had the right but not the obligation to consider briefs by friends of the court.

Finally, we analyse stakeholder participation in outreach activities of the WTO Secretariat, namely the annual public symposia as well as the possibility to submit NGO position papers directly to the WTO. As mentioned above, those activities coordinated by the Secretariat have been criticized by many as remaining isolated from WTO decision- and negotiating-processes because participation of national delegates or parliamentarians is limited. However, they are a tool for information exchange and networking and are increasingly attended by CSOs. To assess their relevance in the case of GMO regulation, we include them into our study as the fourth level of analysis.

Our empirical investigation does not claim completeness. Our aim rather is to shed light on what CSOs do to put forward their interests, concerns and preferences – despite the fact that there are no formal or institutionalized mechanisms to participate or even observe WTO meetings. In general, we look at all three levels of WTO decision-making fora for each of the CSO types identified. Besides analysis of official WTO documents and CSOs websites, we conducted interviews with WTO officials from the Secretariat as well as with regular staff from CSOs. We also draw on other research results published and to a limited extent on media coverage of Ministerials. Additionally, by trying to assess the complete participation of CSOs in WTO outreach activities in the issue area of GMO regulation, we hope to be able to draw a picture on whether a link between civil society and global trade governance is provided for.

V. Empirical analysis: Civil society participation in WTO decision-making

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

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. Such committee meetings are concerned with a wide range of topics ranging from anti-dumping practices to trade in financial services. 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 policy (Esty, 1999: 200). Only few countries send additional staff to committee meetings to offer expertise on such linkage issues. This implies that many TBT and SPS committee meetings are not charac-

⁴⁴ The first exception has just been announced. In the *Continued suspension of obligations in the EC Hormones* dispute, 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.

⁴⁵ See fn 17.

⁴⁶ See the AB report on *United States – Imposition of countervailing duties on certain hot-rolled lead and bismouth carbon steel products originating in the United Kingdom*, WTO Doc. WT/DS138/AB/R, 10 May 2000.

terized by what one might define as expert deliberation on food safety. In practice they are dominated by reporting activities, notification procedures or information exchange and only to a very limited extent by deliberations on the variety of arguments concerning GMO regulation. Furthermore, committees can interpret WTO obligations and can suggest changes to an agreement but cannot decide on it. These are the institutional conditions that CSOs are confronted with in this case.

The range of CSOs present in the context of the TBT and SPS committees can be characterized as follows. *Consumer organizations* lobby at the international level for policies which respect consumer concerns, particularly the right to consumer information. *Industry lobbies* have an interest in favourable conditions for marketing GM products. CSOs focused on *scientific research* want to enhance the understanding of WTO activities on GMOs and hope to provide decision-makers with scientific data beyond mere trade arguments. As pointed out earlier, CSOs do not have direct access to committee meetings and observer status is limited to selected international governmental organizations.⁴⁷ Only members or the chair of the respective committee can add items to the committee's agenda. Therefore, we need to search 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 measures are contested in deliberations on the WTO committee level. In the TBT-Committee, the European system of labelling GM products, forcing producers for reasons of transparency to indicate that a product may contain GMOs, is being discussed extensively.⁴⁸ 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.⁴⁹ In the minutes of meetings, repeated references to *consumer interests* are found, with particular reference to consumer information and labelling requirements: In the TBT-Committee,⁵⁰ the US representative contested European arguments that labelling requirements "...were necessary to ensure that the final consumer is informed of any characteristic of food property, such as composition, nutritional value or nutritional effects or the intended use of the food...".⁵¹ The Canadian delegate also saw consumers to be already "...confused and misinformed..." and the European labelling regulation "...encourage[ing] incorrect consumer perceptions about biotechnology".⁵² Canada did not

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Discussions on the issue in the SPS-Committee subsided once formal consultations under the dispute settlement procedure were requested. As a member of the Secretariat indicated, WTO members would not consult on an issue any longer in committee deliberations once the conflict has reached the stage of a formal dispute, Interview with Secretariat official in Geneva, August 2005.

⁵⁰ See WTO Doc. G/TBT/M/12, 1 July 1998, para 9-32.

⁵¹ Ibid., para 11.

⁵² Ibid., para 25.

believe that “...these statements [labels] provided information about nutrition, composition or use...” and requested the EU “...to demonstrate that the wording of the label truly informed consumers about the characteristics of concern” as he “...questioned how a complicated and technical production tool, such as biotechnology, could be explained by a five word label”.⁵³ Whereas Argentina questioned whether the system was really to benefit consumers or whether it was only a discriminatory barrier to trade,⁵⁴ Norway saw the labelling systems “...to inspire consumer confidence in new products and technology”.⁵⁵ While in SPS-Committee meetings, the delegate of Cyprus [not yet EU member state at that time] agreed with the “EC measures [addressing] a legitimate objective” of consumer information, the EU representative drew attention to the fact that “...to inform consumers about what they ate and to avoid deceptive practices...” was one of four objectives of the European labelling system.⁵⁶ The EU mentioned special interest of “green NGOs” to extend the labelling system to other production methods.⁵⁷ Generally, all members agreed “...that providing consumers with accurate, understandable information about biotechnology and genetically modified foods had to be a key objective for all countries”⁵⁸, though as Argentina put forward its view, “...the [European] regulation not only failed to achieve its objective, but could ultimately confuse and deceive consumers”.⁵⁹ Hence, references to consumer concerns were made regularly, though agreement on the labelling issue is still out of sight. Debates among members focus on contesting different regulatory systems but structured and serious reference to arguments brought forward from civil society remain limited.

With regard to *industry concerns*, direct reference to export losses was made by the US arguing that the European approval system has resulted in an annual loss of 200 Mio US\$ in agricultural exports and that China’s food safety regulations could have similar effects on exporters.⁶⁰ Additionally, countries that imported US GM products would face difficulties in exporting them again, another drawback to US companies. Several countries argued that longer implementation periods were needed in order to comply with new rules and that regulations were “overly burdensome and created unnecessary barriers to trade for [...] exporters”.⁶¹ In the name of their export industry, Canada requested information on how companies could comply with labelling requirements⁶² and supported a voluntary labelling system which was to be prepared with participation from consumer groups, food companies, producers, interest groups and the government, providing for both, consumer information and compliance with WTO obligations.⁶³ Regulatory systems based on voluntary obligations would be less trade restrictive and in the interest of the business sector, and could at the same time fulfil expectations of consumer organizations. In general, voluntary regulatory systems are in the interest of

⁵³ See WTO Doc. G/TBT/M/13, 15 September 1998 para 22&23 and G/TBT/M/15, 31 March 1999 para 21.

⁵⁴ See WTO Doc. G/TBT/M/13, 15 Sep 1998 para 20.

⁵⁵ See WTO Doc. G/TBT/M/16, 11 June 1999 para 35.

⁵⁶ See WTO Doc. G/SPS/R/26, 19-21 March 2002, para 122.

⁵⁷ See WTO Doc. G/TBT/M/26 15 March 2002 para 41.

⁵⁸ See WTO Doc. G/TBT/M/13, 15 September 1998 para 22.

⁵⁹ WTO Doc. G/TBT/M/13, 15 September 1998 para 15.

⁶⁰ WTO Doc. G/SPS/R/26, 19-21 March 2002 para 33 and G/SPS/R/27, 25-26 June 2002, para 21.

⁶¹ See for example WTO Doc. G/TBT/M/26 15 March 2002 para 65, for the quote G/TBT/M/33, 1 July 2004 para 74.

⁶² WTO Doc. G/TBT/M/13, 15 September 1998, para 24-25.

⁶³ 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.

industry, as they meet expectations of the public to act on an issue but companies can decide on regulatory details themselves. In the committee, reference to Canada's idea of a voluntary labelling system was made but no serious deliberation took place. As decisions on labelling requirements were taken elsewhere, lobbying of companies did as well.⁶⁴

As for *science*, GMO regulation is confronted with a constant, abstract reference 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. This might be due to the fact that the WTO itself is no standard-setting organization and does neither have the decision-making competence on testing methodologies nor the analytical expertise to judge on scientific results. Nevertheless, extended reporting on analytical methods and factors can be found included in regulatory decisions.⁶⁵ Argentina for example raised concern on opening the regulatory decision-making process to other than science-based elements.⁶⁶ The US added that labelling measures not based on science "could further undermine consumers' confidence" and "were unclear, cumbersome, unworkable and trade disruptive without providing any real benefit to consumers".⁶⁷ The representative of Switzerland, however, pointed out that from his point of view, it was central to the debate to take "...ethical concerns and attitudes towards the use of biotechnology in different parts of the world"⁶⁸ into account. The use of non-science parameters in regulatory decision-making on food safety was one of the major requests put forward by public interest CSOs (e.g. Busch et. al. 2004). They argue that science cannot be the sole legitimate factor in determining regulatory decisions. In instances of uncertainty, the precautionary principle but also cultural diversity and ethical concerns should be regarded as legitimate foundations for imposing import bans or labelling requirements.

Public interest CSOs have repeatedly tried to bring concerns of consumers to the WTO's attention. Consumer choice and consumer information has been a central concern of many CSOs and can be found in several campaigns against the WTO, arguing that "it's our 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".⁶⁹ Generally, they call for the Cartagena Protocol to be the lead international treaty for regulating trade in GMOs and to respect the precautionary principle as a legitimate base for import bans in instances of uncertainty. Those arguments were supported by research institutions and academically oriented CSOs and reference to the Cartagena Protocol as well as the precautionary principle can also be found in minutes of committee meetings.⁷⁰

⁶⁴ Particularly in the Codex Alimentarius Commission and the WTO Committee on Intellectual Property private firms played a key role in shaping debates, see Newell/Glover, n.d.: 16.

⁶⁵ See for example WTO Doc. G/TBT/M/15, 31 March 1999 para 10-24.

⁶⁶ WTO Doc. G/TBT/M/26, 15 March 2002 para 27.

⁶⁷ WTO Doc. G/TBT/M/32, 23 March 2004, para 69.

⁶⁸ WTO Doc. G/TBT/M/13, 15 September 1998, para 27.

⁶⁹ Citizens' objection from the "bite-back" campaign, <http://www.bite-back.org/objection/index.php>, see also section V.c of this paper for more details on the campaign.

⁷⁰ See in particular WTO Doc. G/TBT/M/21, para 84-95 on the precautionary principle and the Cartagena Protocol as well as WTO Doc. G/SPS/R/12, 15-16 September 1998 para 78-80, information by the Secretariat on negotiations to the Cartagena Protocol, G/SPS/R/30, 24-25 June 2003 para 72-74 on Japan's notification on the use of GMOs (G/SPS/N/JPN/9) and Korea's notification on the movement of GMOs (G/SPS/N/KOR/49); G/SPS/R/20, 8-9 November 2000 on concerns raised by other IO on inconsistency between the treaties.

Yet, the mere fact that similar topics are being raised by CSOs and by state representatives cannot lead us to conclude that CSOs are influential in WTO committee deliberations. Since there are hardly any statements on GMOs directed by CSOs explicitly to the committee level within the WTO, it is difficult to trace concerns raised by civil society in arguments stated by governmental delegates in that particular setting. Moreover, only among activist CSOs it is common to express precise demands and expectations, such as to dismiss the complaints in the current GMO case. According to our interviews, especially academic CSOs see their primary objective not in influencing WTO policies but rather in the documentation of what is being debated in the respective committees, to give profile to the trade aspect of sustainable development and to empower stakeholders in their dialogue with governments at the national level.⁷¹ Their aim is to disseminate information and to produce publications as a tool for knowledge generation and capacity building *on* but not necessarily agenda-setting *in* the WTO. They report on committee meetings and highlight questions of concern to environmental CSOs, but they do not try to alter the WTO's agenda.⁷²

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. The Ministerial Conferences remain the supreme decision-making body and the DSB may but is not obliged to refer to committee deliberations. What is more, as a member of the WTO Secretariat has pointed out, regular sessions of committee meetings are not attended very much by governmental delegates either.⁷³ According to staff of a research oriented CSO this is an additional drawback to investing much resources on influencing the committees' agendas informally.⁷⁴ As long as no re-negotiations 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. 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.

⁷¹ Interview with staff from a research CSO, Geneva, July 2005.

⁷² Their information procurement depends on official dissemination of documents by the WTO Secretariat but also on direct contacts to delegates. 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>.

⁷³ Interview with WTO Secretariat Member, Geneva, August 2005.

⁷⁴ Interview with staff from a research CSO, Geneva, July 2005.

Others were present only at one out of five.⁷⁵ 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.⁷⁶

Generally, presence at Ministerials is limited to CSOs that went through an accreditation procedure.⁷⁷ 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.⁷⁸ It has become a general procedure to provide for an “NGO Centre” either directly at the conference venue or close by. The country hosting the Ministerial is not only obliged to provide conference rooms for negotiators but also for stakeholders and media representatives. It remains in the responsibility of the Secretariat to organize regular briefings about the state of the negotiations or to provide additional facilities for meetings of CSOs. 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 is deemed most effective by CSOs. Lobbying activities at Ministerial Conferences are likely to come too late, as ministers meet to decide on matters which have been discussed in committees and councils in the time between the Ministerials. According to a CSO member, there is “no way to influence current negotiations”.⁷⁹ On the other hand there have been cases in which no agreement was found on the committee or council level in advance of a Ministerial and that no set agenda for Ministerials existed before the beginning of the conference. In such cases, lobbying for certain interests to be taken into account would theoretically still be possible.⁸⁰

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. As a Secretariat member pointed out, once protests at Ministerials attract a large number of people, delegates and negotiators inside the conference venue will take notice of their concerns.⁸¹ Therefore, 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 negotiating fora and to a much smaller extent on problems arising *inside*

⁷⁵ For the total list of identified CSOs see the list in appendix I.

⁷⁶ In Cancún for example the Transatlantic Business Dialogue as well as the Transatlantic Consumer Dialogue were both present at the Ministerial. However, they did not engage in any other WTO outreach activities and are therefore not included in our list.

⁷⁷ See for the current procedure on the Hong Kong Ministerial WT/MIN(05)/INF6, 1 June 2005.

⁷⁸ Number of representatives allowed entering the facilities for accredited CSOs: Seattle 4, Doha 1, Cancún 3.

⁷⁹ Interview with staff from a research CSO, Geneva, July 2005.

⁸⁰ Both Seattle and Cancún are prime examples for failed Ministerial Conferences accompanied by a high level of public protests. However, protests outside the conference venues are not responsible for failure of the two Ministerials. Several other factors, such as highly divergent interests or bad preparation of working groups, played an important role as well. For the failure of the Cancún Ministerial, see Cho 2004.

⁸¹ Interview with WTO Secretariat Member, Geneva, August 2005.

working groups or on decisions taken by ministers.⁸² 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 for example have organized preparatory meetings of stakeholders in order to see whether different networks and CSOs have similar objectives and could agree on a common denominator. CSOs fear the danger of dispersion of too many opinions which in the end do not result in having any serious impact on the upcoming negotiations. In different working groups, they try to identify topics where – in their opinion – stakeholder interests are not reflected in the WTO agenda. Their aim is to find a minimum level of agreement among CSOs to be able to show how many individuals and organizations do not agree with WTO policies.⁸³ 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.⁸⁴ To our knowledge, in the case of GMO regulation, no further consensus, reaching beyond the initiative of FoE and their "bite-back" campaign, was achieved. Yet, other CSO networks such as Consumers International (CI), a global non-profit federation of 250 consumer organizations with observer status to international institutions such as WHO, CAC or UNCTAD, also campaign on GMOs and try to influence standard setting and decision-making in several fora. Their aim is usually multifaceted, depending on the issues to be covered by the respective international organization.⁸⁵ They, too, do not merely – not even primarily – concentrate on WTO activities.

The biotech industry on the contrary, had a great interest specifically directed at the WTO. 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 to establish a working group 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 on the negotiating table

⁸² 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.

⁸³ 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>.

⁸⁴ The Norwegian farmers' initiative is an example for a consensus statement of 111 agricultural CSOs send directly to parliamentarians as well as to the chairperson of the WTO Agriculture Committee Tim Grosser, see <http://www.stwr.net/modules.php?name=News&file=article&sid=27>, accessed 19 August 2005.

⁸⁵ 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.

reflects the potential influence of industry on WTO decision-making. As indicated by an interview partner, representatives of business associations look for direct contacts to delegates and decision-makers. Usually, they have the capacities and networks for organizing high level dinner meetings or even personal lunches with the Director General in the advance of a Ministerial Conference. Additionally, members of business associations are sometimes delegates in national delegations, having direct access to the negotiations.⁸⁶ This points to a structural advantage of industry in general to take direct part in international policy-making.

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 background information on contentious issues. They distributed it via internet and directly at the conference venue.⁸⁷ 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.

In sum, at the negotiating level, besides spectacular events commonly organized by public interest CSOs outside conference venues, participation in deliberations is only possible if national governments take CSO representatives in their national delegations.⁸⁸ Otherwise, contacts rely on waiting in front of negotiating rooms or in hotel lobbies, talking to delegates directly or joining official briefings. Any form of structured input is not provided for. Indeed, the consequences of the lack of institutionalized input procedures are that lobbying activities remain focused on international standard-setting organizations or on the decision-makers from the national level (Glowka 2003: 25). Hence, CSOs look primarily for direct contact 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. On the resolution of the GMO case, public scrutiny is especially high, as a) it is unclear which WTO agreement applies in the first place, b) the panel has to decide on criteria for like products, c) there remains uncertainty on the rights and obligation of member states concerning the precautionary principle and risk assessment procedures and finally, d) questions remain whether the panel takes into account international legal norms beyond WTO law, such as the Biosafety Protocol. Some of those issues have long been debated. Several panels already decided on some of the questions, i.e. the definition of “like products”. The relationship of WTO Agreements to multilateral environmental agreements (MEAs) have been discussed at the committee level in both, in the regular sessions of the CTE (item1) since its establishment in 1995 as well as in

⁸⁶ 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.

⁸⁷ The full series can be found at <http://www.ictsd.org> or <http://www.iisd.org>.

⁸⁸ 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, see the list of NGO position papers received before 19 April 2001 on the WTO website.

the CTE special sessions under Para.31(i) Doha Declaration since 2001.⁸⁹ Therefore, the panel does not only decide on a case with strong differences in citizens' preferences and industries' interests but also on issues highly debated among WTO members. Observation of their action from governments and civil society is guaranteed.

In the WTO dispute settlement, transparency remains a matter of constant concern to CSOs. Hearings are not public and scientists advising the panel are not known.⁹⁰ 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.⁹¹ Members of the WTO Secretariat welcome this decision and share the opinion that this will be the first step to open hearing to the public on a regular basis.⁹² Further lack of transparency refers to the scientific advisory panels. In the event of additional demand for scientific expertise, information on who is participating in the scientific advisory panel remains unknown to the public 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 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.⁹³ Two came from public interest CSOs, one from researchers, though all three of them bringing forward arguments in favour of the European authorization system.⁹⁴ 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 inter-

⁸⁹ At the Doha Ministerial, members have agreed in principle to negotiate on the issue and to clarify the legal relationship of WTO norms and MEA rules. Anyhow, negotiations on this matter are stalled and in a deadlock.

⁹⁰ 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.

⁹¹ See fn 43.

⁹² Interviews with WTO Secretariat members, Geneva, August 2005.

⁹³ 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.

⁹⁴ 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).

est in raising the panels' attention to environmental or consumer concerns. Debate on the issue in the private sector seems not as vivid.⁹⁵ 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. FoEE initiated the "bite back – WTO hands off our food!" campaign which is now supported by 730 groups world-wide. Central to the campaign is a citizens' objection which was agreed upon by several initiating environmental CSOs.⁹⁶ 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. With this tool, FoEE hoped to be more effective in both awareness building among citizens on the one hand as well as in raising attention in the WTO on the other.⁹⁷ 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.⁹⁸ 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, 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 Rela-

⁹⁵ 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.

⁹⁶ Besides FoE initiating partners are ActionAid Alliance, Public Services International, Public Citizen, the International Gender and Trade Network, the French Confédération Paysanne, the Indian Research Foundation for Science, Technology and Ecology and Greenpeace International. For more details on the campaign see <http://bite-back.org>, accessed 20 June 2005.

⁹⁷ 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.

⁹⁸ Interview with WTO Secretariat member, Geneva, August 2005.

tions Division of the WTO Secretariat is primarily occupied with CSO requests.⁹⁹ 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 responsiveness of the organization to stakeholders' concerns. 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 two-way-dialogue between civil society representatives and WTO delegates. As pointed out earlier, national delegates or parliamentarians are present at public symposia but their number is limited. NGO position papers submitted to the Secretariat are publicly announced via internet or email but are not distributed directly to governments. And internal briefings at the WTO are by invitation only and not really aiming at a political dialogue. Only very few CSOs organize briefings at the WTO for delegates themselves, bringing forward their interests and concerns.¹⁰⁰

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.¹⁰¹ 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.¹⁰²

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".¹⁰³ 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.¹⁰⁴ Hence, for research and public interest CSOs

⁹⁹ Contacts with the press lie in the responsibility of the Media Division.

¹⁰⁰ 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.

¹⁰¹ Despite the GMO case expected to be resolved this year, we found no GMO related panel in the 2005 public symposium. For a complete list of the panels and participating CSOs see Appendix II.

¹⁰² 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.

¹⁰³ Interview with staff from a research CSO, Geneva, July 2005.

¹⁰⁴ Interview with public interest CSO, July 2005.

organizing expert panels or regional workshops with different stakeholders, national representatives and officials from IGOs independent of WTO activities are a tool as 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.¹⁰⁵ 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’”.¹⁰⁶

Internal briefings: In contrast to the (limited) multi-stakeholder 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.¹⁰⁷

On the issue of transparency, as indicated above, the WTO is exemplary in its derestriction of (formal) documents and the accessibility of its website. In addition to the access on WTO documentation of consultations and dispute settlement, 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)s 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 does not genuinely belong to any WTO outreach activity as it 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.

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.¹⁰⁸ Since the establishment of the

¹⁰⁵ 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>.

¹⁰⁶ See <http://www.globalpolicy.org/soecon/bwi-wto/wto99-2.htm>, accessed 4 July 2005.

¹⁰⁷ Interview with staff from a research CSO, Geneva, July 2005.

¹⁰⁸ Interview with business oriented CSO, Geneva, August 2005.

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 or ecolabelling. Some are submitted by single CSOs, others are joint statements by farmers or several environmental CSOs. Not all of them are available electronically; some have to be requested directly at the CSO submitting the paper. All three types of CSOs seem to use the tool on a regular basis, most commonly in the advance of a Ministerial Conference.¹⁰⁹ Nonetheless, position papers are hardly expected to be read and taken into consideration by delegates or ministers.

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. 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.¹¹⁰ 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 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.

VI. Conclusion: Who deliberates in the WTO?

An evaluation of the relationship between the WTO and civil society yields 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 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 small number of government representatives. Yet, it has to be stressed that such discussions remain detached from the WTO's regular policy-making process.

These rather adverse conditions for CSO activity quite obviously have repercussions on the strategy with which CSOs try to influence WTO policy-making. In our study, we set out to assess the role of CSOs and public opinion in the day-to-day work of the WTO. For this pur-

¹⁰⁹ 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.

¹¹⁰ Interviews with public interest and research CSOs, July/August 2005. For the role of the WTO Secretariat, see Xu/Weller 2004. On the potential importance of international bureaucracies in general, see Barnett/Finnemore 2004, Biermann/Bauer 2005.

pose, we distinguished between different types of CSOs and their strategies put forward. The results of the study in which we analysed only one policy field (GMO regulation and food safety) reveal that public interest CSOs concentrate on awareness building, addressing the public sphere, and on campaigning, 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 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. So 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.

The lack of formal consultative processes can hardly be counterbalanced by WTO outreach activities or its informal mechanisms of information exchange. We should also notice, however, that the incentives for stakeholders to get involved in WTO decision-making are limited as well. In the particular case of GMO regulation that was analysed here, it is more effective to lobby for consumer interests at international standard setting organizations, such as the Codex Alimentarius Commission. To be proactive in its committees and working groups may guarantee that a consumer perspective is reflected in international standard setting, whereas the WTO itself is not involved in the generation of food safety standards. Several consumer or environmental CSOs have obtained observer status at global organizations like CAC, FAO or WHO. From their point of view, activities at WTO are of less importance. Adding on this, currently, there are no negotiations on the SPS- or the TBT-Agreement, making any form of decision-making or merely deliberations on food safety related matters in WTO committee and council meetings less likely. Another factor that limits the potential for CSO-WTO collaboration is the fact that the WTO, unlike the World Bank, for example, is a rule-making or-

ganization and simply does not have any projects to implement.¹¹¹ Joint implementation or delegation of implementation to CSOs is a typical lever that opens intergovernmental organizations to civil society. The monitoring of member States' compliance with WTO rules is carried out by the organization itself, for example, through its trade policy reviews – without any participation of CSOs.

In sum, for the time being there is little incentive for the WTO to pull CSOs into its policy-making process and little incentive for CSOs to interact directly with the WTO. Therefore, the question arises of who CSOs should actually work with at the WTO: the Secretariat with its limited mandate, the DSB on a case-by-case basis or national delegates in trade negotiations? Most CSOs have come to realize that participation at the national remains to be most effective. Additionally, many activist CSOs do not engage in interaction with the WTO in the first place because they fear the risk of giving legitimacy to an organization which they disapprove of in their entirety. Hence, there are little incentives for CSOs to lobby at the level of WTO decision-making. This report is certainly not the place to engage in a thorough assessment of the repercussions that our findings might have for normative approaches to global governance. This is reserved for a later stage in the CISONANCE project. At the empirical-analytical level it can be argued, however, that the WTO's legitimacy crisis is rooted at least partly in the imbalance between the impact of WTO obligations on member states national policy-making processes on the one hand, and the lack of involvement of affected stakeholders on the other. In the ongoing discussions on an institutional reform of the WTO, debate on consultative mechanisms with CSOs should be an integrative part. To a minimum, observer status in disputes and committee meetings should be granted and the inflow of new ideas into the deliberation process should be guaranteed via submitting briefs to those bodies.

¹¹¹ Exceptions are the WTO's activities within the framework of the Standards and Trade Development Facility (STDF). The STDF assists developing countries to meet sanitary and phytosanitary standards. It is a financing and coordinating mechanism that approves project grants to private and public organizations. For the current work plan, see WTO Doc. G/SPS/GEN/523, 21 October 2004, for a note by the WTO Secretariat on an update of its operations G/SPS/GEN/572, 22 June 2005, for the STDF homepage <http://www.standardsfacility.org>.

VII. Appendices

1. CSO participation at WTO Ministerial Conferences with respect to GMO regulation

Ministerial Conference	CSO	Parallel activities	
Singapore 1996	CIEL	Amicus Brief III (2004)	
	Consumer Unity and Trust Society	Symposium (2003, labelling)	
	Consumers International	Symposium (2003, gmo)	
	FIELD	Amicus Brief II (2004), Symposium (2004, gmo)	
	Greenpeace	Amicus Brief II (2004, gmo)	
	IISD	Symposium (2001, gmo, 2005, cs)	
	Third World Network	Symposium (2004, gmo)	
	Geneva	CIEL	Amicus Brief III (2004)
Consumer Unity and Trust Society		Symposium (2003, labelling)	
Consumers' Choice Council		Symposium (2003, labelling)	
Consumers International		Symposium (2003, gmo)	
Defenders of Wildlife		Amicus Brief III	
FIELD		Amicus Brief II (2004), Symposium (2004, gmo)	
Friends of the Earth Intern.		Symposium (2004, gmo)	
Friends of the Earth – US		Amicus Brief III	
Greenpeace		Amicus Brief II (2004, gmo)	
Institute for Agriculture and Trade Policy		Amicus Brief III	
IISD		Symposium (2001, gmo, 2005, cs)	
Research Foundation for Science, Technology and Ecology		Symposium (2004, gmo)	
Third World Network		Symposium (2004, gmo)	
Seattle		CIEL	Amicus Brief III (2004)
		Consumer Unity and Trust Society	Symposium (2003, labelling)
	Consumers' Choice Council	Symposium (2003, labelling)	
	Defenders of Wildlife	Amicus Brief III	
	Forum for Biotechnology and Food Security	Symposium (2003, gmo)	
	FIELD	Amicus Brief II (2004), Symposium (2004, gmo)	
	Friends of the Earth – US	Amicus Brief III	
	Greenpeace	Amicus Brief II (2004, gmo)	
	Institute for Agriculture and Trade Policy	Amicus Brief III	
	International Forum on Globalization	Amicus Brief III	
Doha	Center for Human Rights and Environment (CEDHA)	Amicus Brief I	
	Consumer Unity and Trust Society	Symposium (2003, labelling)	
	Consumers' Choice Council	Symposium (2003, labelling)	
	Consumers International	Symposium (2003, gmo)	
	Council of Canadians	Amicus Brief I	
	Friends of the Earth Intern.	Symposium (2004, gmo)	
	Greenpeace	Amicus Brief II (2004, gmo)	
	Institute for Agriculture and Trade Policy	Amicus Brief III	
	International Forum on Globalization	Amicus Brief III	
	IISD	Symposium (2001, gmo, 2005, cs)	
Third World Network	Symposium (2004, gmo)		

Cancún	Center for Human Rights and Environment (CEDHA)	Amicus Brief I
	CIEL	Amicus Brief III (2004)
	Consumer Unity and Trust Society	Symposium (2003, labelling)
	Consumers' Choice Council	Symposium (2003, labelling)
	Consumers International	Symposium (2003, gmo)
	Council of Canadians	Amicus Brief I
	Defenders of Wildlife	Amicus Brief III
	FIELD	Amicus Brief II (2004), Symposium (2004, gmo)
	Friends of the Earth Intern.	Symposium (2004, gmo)
	GeneWatch – Council for Responsible Genetics	Amicus Brief II
	Greenpeace	Amicus Brief II (2004, gmo)
	Institute for Agriculture and Trade Policy	Amicus Brief III
	International Forum on Globalization	Amicus Brief III
	IISD	Symposium (2001, gmo, 2005, cs)
	Organic Consumers Association	Amicus Brief III
	Polaris Institute	Amicus Brief II
	Public Citizen	Symposium (2004, gmo)
	Royal Society for the Protection of Birds (RSPB)	Amicus Brief II
	Third World Network	Symposium (2004, gmo)

2. CSO activities on regulation of GMOs in WTO public symposia

WTO Symposium	Panel	Participating CSOs
July 2001	<p>“Trade & Environment”: PPM and labelling/GMOs</p> <p>“Food Safety & the SPS Agreement”: precaution & GMOs</p>	<p><i>Moderator:</i> IISD <i>Discussant:</i> Department of International Law, University of Geneva</p> <p><i>Moderator:</i> School of Medicine, Kyoto University <i>Discussant:</i> Consumers Union, USA</p>
May 2002: “The Doha Development Agenda and Beyond”		
June 2003: “Challenges Ahead on the Road to Cancun”	<p>“WTO and GMOs: A clear case for contamination”</p> <p>“Eco-labelling: Trade Opportunities and Challenges”</p> <p>“Session on GM Food/Bio-Safety Protocol”</p>	<p><i>Organizers:</i> Greenpeace, Int. <i>Discussants:</i> Greenpeace, Int. GE Campaign; Forum for Biotechnology and Food Security; Greens, MEP; Focus on the Global South; SADC Advisory Committee on Biosafety <i>Organizers:</i> Consumer’s Choice Council <i>Discussants:</i> Global Ecolabelling Network; China Ecolabelling Center; Ministry of Environment, Brazil; Consumer Unity & Trust Society (CUTS); Executive from Ghana; Mexican National Commission for the Knowledge and Use of Biodiversity <i>Organizers:</i> University of Geneva <i>Discussants:</i> Faculty of Law, Uni Geneva; WHO; Uni Bern (former Gen Swiss Foundation); Consumer International, UK</p>
May 2004: “Multilateralism at a Crossroads”	“The GMO dispute – rules, risks and reality”	<p><i>Organizers:</i> FOE, Intern. <i>Discussants:</i> FOE, Policy & Campaign Director; Research Foundation for Science and Technology, India; FIELD; Third World Network; Environmental Protection Authority, Ethiopia; Public Citizen, USA</p>
April 2005: “WTO after 10 years: global problems and multilateral solutions”		

3. NGO Position Papers on food safety and GMO regulation submitted to the WTO

Date	CSO	Title/topic
October 1998	International Federation of Agricultural Procedures	Farmers and the New Concerns on Biotechnology
January 1999	ActionAid	WTO and food security
March 1999	Consumers Unity & Trust Society	TRIPs, Biotechnology & Global Competition
October 1999	EU Committee of the American Chamber of Commerce in Belgium	EU Committee Position Paper on a Comprehensive Risk Analysis Process
	International Chamber of Commerce	TRIPs and the Biodiversity Convention: What conflict?
November 1999	American Lands Alliance	SPS Agreement
	Association Internationale pour la Protection de la Propriété Industrielle (AIPPI)	Genetic Material (and microbiology)/ Biodiversity and Bioavailability
	Institute of Science in Society submitted by Third World Network	Open Letter from World Scientists to all Governments and press release about GM crops and products
	Center for Science in the Public Interest	Proposal for Reforms to the SPS Agreement
	Consumers International	Food safety and the WTO
	Consumers International	Consumer Rights and the Multilateral Trading System – What needs to be done before a Millenium Round
December 1999	Centre for Agriculture and Environment (CLM)	Towards a sustainable world trade in farm products
	European Centre for Nature Conservation (ENC) & Institute for Globalization and Sustainable Development (GLOBUS)	The Tilburg Manifesto – Towards a sustainable Europe where economy and biodiversity conservation unite
April 2000	International Institute for Sustainable Development (IISD)	The Cartagena Protocol on Biosafety: an analysis of results
April 2000	IISD & Royal Institute of International Affairs	Science and Precaution in the Trading System
January 2001	Union of Industrial Employers' Confederations of Europe (UNICE)	Discussion Paper on the Precautionary Principle in International Trade
April 2001	EU Committee of the American Chamber of Commerce in Belgium	Paper on the proposed Regulation laying down the General Principles and Requirements of Food Law, establishing the European Food Authority and laying down procedures in matters of Food Safety
June 2001	Pacific Basin Economic Council	Statement on food safety
July 2001	Réseau pour l'Environnement et le Développement Durable en Afrique (REDDA)	Le commerce international, la protection de l'environnement et le principe de précaution : la nécessaire conciliation
July 2002	Pacific Basin Economic Council	Statement on the 2002 World Food Summit and APEC Food System
December 2002	International Chamber of Commerce (ICC)	Precaution, science, risk and trade
May 2003	Consumer's Choice Council -USA	Briefings on Ecolabelling
July 2003	UNICE	Labelling Scheme for Environmental Purposes

September 2003	WWF International	Briefing series on... Ecolabelling Observer status & precaution
September 2004	Consumers International – UK	Consumers Charter for Trade
May 2005	National Foreign Trade Council – USA	Looking behind the curtain: The growth of trade barriers that ignore sound science
		“Enlightened” environmentalism or disguised protectionism? Assessing the impact of EU precaution-based standards on developing countries
		EU regulation, standardization and the precautionary principle: The art of crafting a three-dimensional trade strategy that ignores sound science

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