

decisions on matters that had been considered, but not agreed to, during the Review of the Dispute Settlement Understanding in 1998-1999. In particular, during the DSU Review, proposals had been made to:

- expand the Appellate Body's scope of review to allow it, under certain circumstances, to review "manifestly erroneous or unreasonable characterization or appreciation of the facts before a panel"; and
- deal with unsolicited information from outside sources.²⁹

Amicus briefs would for the most part deal with facts and their interpretation rather than the interpretation of WTO provisions; accordingly, insofar as the Appellate Body restricts its scope of deliberation to interpretation of WTO law (which is where the failure of the members to amend the DSU in line with the proposal to expand the Appellate Body's scope of review left matters), the point of it receiving amicus briefs is unclear.

Similarly, the decision to establish procedures to accept unsolicited briefs represented a decision on a matter considered but left unresolved by WTO members during the DSU Review.³⁰ Further, it appears to create procedural inconsistencies in connection with two other proposals considered but not agreed to in the DSU Review:

- to open Appellate Body hearings to the public; and
- to allow WTO members that had not been third parties before a panel to appear before the Appellate Body on appeal.³¹

Insofar as those submitting amicus briefs might be invited to explain issues to the Appellate Body, members of the public

²⁹ See Debra P. Steger, "The Appellate Body and Its Contribution to WTO Dispute Settlement," paper submitted to the conference *The Political Economy of International Trade Law*, University of Minnesota Law School, September 15-16, 2000.

³⁰ A similar proposal had also been put forward unsuccessfully during the Uruguay Round.

³¹ See Debra P. Steger, *op. cit.*