

ASIAN WTO MEMBERS AND THE AMICUS BRIEF CONTROVERSY: ARGUMENTS AND STRATEGIES

*C.L. Lim**

ABSTRACT

This paper follows the publication of my recent article on the issue of amicus briefs. In this paper, I propose to further flesh out my arguments from that article. I argued there that this is a critical time for legislative accommodation in the context of the on-going DSU review, on which this issue has stalled. Here, I would like to expand upon my earlier views and to discuss some of the ways in which the admission of amicus briefs may be regulated. I would like to argue that it may be the better part of valor for Asian Members to concede on the question of admissibility. I argue that what really matters is not the question of admissibility in abstract legal terms, but the criteria that would govern the admission of a particular brief. If I am right, it may be more prudent for developing country WTO Members and Asian Members to accept that amicus briefs are admissible, and to involve themselves in determining when a particular brief should actually be admitted in exchange for relenting on the admissibility issue. I conclude by proposing a way forward.

KEYWORDS: *trade law; international organizations; WTO; DSU; amicus*

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