

**MONITORING THE MONITORS:  
STRENGTHENING THE WTO'S INFORMATION SYSTEM<sup>†</sup>**

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### Abstract

*Lack of information is a severe barrier to effective participation by developing countries in the international trade regime. Information systems in international regimes are the sets of institutions, actors and procedures involved in collecting, analysing and disseminating information about members' actions and the regime's effectiveness. The multilateral trade regime's information system, including the Trade Policy Review Mechanism as its latest and most institutionalised form, has evolved over more than five decades. The TPRM in particular, in operation since 1989, shoulders a fundamental responsibility in making the trade regime more transparent. This paper asks: how has monitoring in the trade regime, particularly the TPRM, responded to demands from developing countries for information and transparency? The paper uses a framework of information systems in international regimes to explain the evolution of surveillance in the trade regime. It then conceptualises the functions of an ideal-type information system and inquires whether the TPRM was at all designed to perform as an effective information system. The paper, then, presents empirical evidence on the functioning of the TPRM, with particular attention to the participation of developing countries. Finally, it discusses new initiatives for monitoring in the WTO as well as efforts made by developing countries to boost surveillance capacity at the domestic level. The paper ends by outlining a few priorities for the debate on monitoring and governance in the trade regime.*

**Key words:** Information, Transparency, Information Systems, WTO, Trade Policy Review Mechanism, Developing Countries

*Advance knowledge cannot be gained from ghosts and spirits, inferred from phenomena, or projected from the measures of Heaven, but must be gained from men...*

- Sun Tzu, *Art of War*, 6<sup>th</sup> c. B.C.

## I. Introduction

More than two millennia ago, the Chinese strategist Sun Tzu was explicit in his advice that gaining information about the activities of one's adversaries would need deliberate effort. Today, lack of information is a severe barrier to effective participation by developing countries in the international trade regime. One reason why international regimes are created is because they provide information that would not otherwise be easily available. Information systems in international regimes vary in their design and their purpose, but their objective is to promote cooperation among states by reducing information gaps and increasing transparency. The trade regime's information system has evolved over six decades, with the WTO's Trade Policy Review Mechanism representing the most institutionalised form. The TPRM has been a regular feature of the multilateral trade regime since 1989 and shoulders a fundamental responsibility in making the trade regime more transparent. This paper asks: how has monitoring in the trade regime, particularly the TPRM, responded to demands from developing countries for information and transparency? It explains the evolution of information systems in the trade regime, the design and purpose of the TPRM, and how developing countries have participated in the mechanism and monitoring more generally. The purpose of this paper is to present evidence on trade monitoring that can facilitate a substantive discussion on how to strengthen the WTO's information system.

The paper develops uses a conceptual framework for the demand and supply of information in international regimes to explain the evolution of the trade regime's information system (section II). In so doing, it asks what member states expected out of the TPRM and whether the mechanism was designed to respond to those expectations (section III). The paper then presents evidence from an analysis of all trade policy reviews conducted during 1995-2006 to evaluate developing countries' participation in the mechanism (section IV). The paper then discusses new initiatives for monitoring in the WTO as well as efforts made by developing countries to boost surveillance capacity at the domestic level (section V). The paper concludes by outlining a few priorities for debating monitoring and governance in the trade regime.

The paper argues that the TPRM, although highly institutionalised, suffers from weaknesses in its mandate and design, which undermine its ability to disseminate appropriate information and promote compliance. It also suffers from a lack of confidence among many developing countries, thereby resulting in poor participation rates. The paper also argues that even as some developing countries have started to engage with new monitoring mechanisms within the WTO or build their own capacities, for a majority of the WTO's membership strengthening the multilateral information system is still an essential requirement for getting credible and timely information as a means to improved participation in the trade regime.

At the outset, it is important to clarify the limits of the paper. As will become evident, information systems can be broadly defined to include a number of actors and institutions. This is true for the WTO as well but the paper primarily focuses on the TPRM. Although other mechanisms (including domestic monitoring) are discussed, the TPRM gets the most attention because it is the most institutionalised in the trade regime, and absorbs one of the largest proportions of the WTO's budget. More importantly, as the chapter explains, for developing countries with limited resources, multilateral and institutional monitoring was particularly important, and therefore it is pertinent to examine how well the mechanism has worked.

This leads to the second clarification, that of the measures used to evaluate the mechanism. The framework used in this paper helps to evaluate the design of the TPRM against ideal-type information systems. By extending beyond mere description of the TPRM (which has been the shortcoming of a lot of the literature), such an approach frames the debate on monitoring in the trade regime in terms of how it could function as against how it is actually designed. Moreover, the paper offers empirical evidence to evaluate the mechanism's operation (both the product and the process), based on specific metrics: whether the TPR reports analyse issues of critical importance to member states, whether different sets of countries raise questions on issues of concern to them, and whether different sets of countries participate in the review meetings. The evidence presented in the paper should offer a clear and objective insight into one of the least discussed, yet one of the most important, functions of the WTO.

## II. Watchdog, not judge – Explaining the evolution of surveillance in the trade regime

Just as it would be inefficient for a country to negotiate individual agreements with other countries, it is equally costly for a country to monitor whether each of its treaty partners is complying with the rules or not. The task of monitoring becomes particularly complex in large multilateral regimes, where member states are not only numerous but also at very different stages of development. One of the key reasons that international regimes are demanded is because regimes can help to mitigate imperfect information and increase transparency about members' policies and practices.<sup>1</sup> In this way, international institutions provide information that would have been otherwise difficult to acquire. The increased transparency helps to *coordinate* state actions, *reassures* members that once agreed a treaty will be abided by, and serves as a *deterrent* against states considering defection.<sup>2</sup> This section uses a typology of information systems to explain the historical evolution of surveillance in the trade regime.

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<sup>1</sup> Robert O. Keohane, "The Demand for International Regimes" In *International Regimes*, ed. Stephen D. Krasner (Ithaca; London: Cornell University Press, 1983), p. 154; also Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), pp. 86-97.

<sup>2</sup> Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, First ed. (Cambridge, Massachusetts: Harvard University Press, 1995), pp. 22, 136-153.

Information systems in international regimes are the sets of institutions, actors and procedures involved in collecting, analysing and disseminating information about members' actions and the regime's effectiveness. Institutions can operate both at the international level (the regime secretariat) and at the domestic level (parliamentary committees, government departments). Actors refer to state actors (bureaucrats, ministers, legislators) and non-state actors (NGOs, firms, business associations). The procedures in information systems pertain to the formal and informal mechanisms through which different actors obtain information about member states' policies and actions.

In order to understand variations in the designs of information systems, we need to understand the demand for information by outlining the information gaps that countries encounter. Information gaps are varied and affect all phases of regime design and sustenance: agenda-setting, negotiation, implementation, monitoring and enforcement. This paper uses three types of information gaps, as briefly described below.<sup>3</sup>

- *Asymmetric information* – Negotiators are often uncertain about their counterparts' true preferences and are, therefore, concerned about unfair outcomes.
- *Hidden or inaccurate information* – This gap arises when states deliberately withhold or supply inaccurate information even when procedures exist for reporting.
- *Resource-constrained information gaps* – States have to invest considerable time and money in gathering information during the negotiation phase as well as for developing implementation strategies and monitoring other states.

Table 1 summarises the information gaps and their implications for regimes and developing countries. For developing countries, then, it is ultimately the resource-constrained information gap that is the most critical. It adversely affects the potential for developing countries to participate in all phases of a regime.

<i>Types of information gaps</i>	<i>Implications for regimes</i>	<i>Challenges for developing countries</i>
Asymmetric information – lack of information on others' preferences and actions	Particularly affects agenda-setting & negotiation	Reinforces power asymmetries; lack of alternative sources of information
Hidden/inaccurate information – deliberate misrepresentation	Particularly affects implementation, monitoring & enforcement	Little access to independent sources of information
Resource-constrained information – lack of resources to monitor activities	Affects agenda-setting, negotiation, implementation, monitoring & enforcement	Lack of financial and technical resources to collect information; uncertainty about welfare implications of new issues and rules

<sup>3</sup> A more detailed conceptualisation of information gaps and information systems can be found in Arunabha Ghosh, "Information Gaps, Information Systems, and the WTO's Trade Policy Review Mechanism," *GEG Working Paper* (April, 2008).

The design of information systems depends on a range of factors. In our typology we outline five design types that result from the interaction of actors' interests in a regime, actors' own capabilities for monitoring, and the kinds of information gaps they face.

- *No reporting* – Although all regimes require information, it is conceivable for some to have no explicit reporting or information gathering mechanism. We should expect this outcome when regime membership is small, members have equivalent capacities, and behaviour is clearly observable.
- *Self reporting* – States report on their own activities, policy direction and legislative changes to show compliance or justify non-compliance with regime obligations. We should expect this outcome when the number of actors increases, the threat of hidden/inaccurate information increases, but where states are unwilling to cede sovereignty to the regime secretariat.
- *Other reporting* – Actors gather and report information about the actions of other actors, whether states or non-state actors. We should expect this outcome when states face hidden/inaccurate information hurdles, but have the capacity to monitor others' actions of others.
- *Institutional reporting* – The regime secretariat collects information on member states' actions and the functioning of the regime as a whole. We should expect this outcome when regime membership is large, the scope of issues is wide with asymmetric information hurdles, and a high proportion of states are resource-constrained.
- *Non-state actors (NSA) reporting* – Non-state actors collect and analyse information, both to report individual member states' behaviour, as well as on the implications of the regime's operation for the NSAs's interests in a particular issue area. We should expect this outcome when the incentives of states and non-state actors do not coincide, when states are resource-constrained or when states suffer from asymmetric information in new areas of negotiations.

There is no stylised surveillance mechanism in the real world, where information systems are often a combination of the above designs. We now apply the above framework to explain the evolution of information systems in the trade regime. The demand for surveillance in the multilateral trade regime has been a long-standing one, but surveillance has radically changed over the decades.

### ***1950s: Ad hoc reviews***

Information gaps and actors' incentives and capacities help to explain the evolution of surveillance in the GATT. During the GATT's initial years (1947-1955) its membership was small (only 33) and developing countries accounted for less half the membership (48 per cent). Information gaps would have been minimal in the mostly developed country-dominated trade regime. As a result, there was no institutionalised monitoring mechanism in these early years (a case of 'no reporting').

The earliest example of formal surveillance can be found in the early phases of the GATT. The 9<sup>th</sup> Session of the GATT (28 October 1954 – 18 March 1955) was unique in the GATT's history in that it served as a Review Session as well. The previous session had recognised

that 'international trade continues to be restricted by high tariff barriers...' There was also a perception that trade was being hampered 'by widespread application of other restrictions [including quantitative restrictions].'<sup>4</sup> Contracting parties recognised the need to garner information about whether these measures were being used legitimately or not. The Review Session looked into quantitative restrictions, schedules and customs administration, other barriers, and organisational questions. Following the submission of working party reports, regular consultations were established to review quantitative restrictions maintained for balance-of-payments purposes.<sup>5</sup> Thus, limited surveillance was established to counter a potential threat of hidden information on non-tariff barriers. But contracting parties decided not to extend additional authority to the GATT Secretariat to conduct reviews on other trade issues.

Another example of *ad hoc* institutional reporting occurred after the Haberler Committee Report was submitted in 1958. It had argued that the trade policies of developed countries were hindering less developed ones from participating in the trade regime. Meanwhile, developing countries asserted that their interests were not being taken into account, nor did they have the resources to undertake a review of rich countries' trade policies. In response a Committee dealing with agriculture trade conducted consultations with forty contracting parties during 1959-61 on agricultural policies.<sup>6</sup> With the advent of the Common Agricultural Policy in 1962, the Committee also held consultations with the European Economic Community.<sup>7</sup> However, these rare examples of systematic reviews, although responding to the incentives of contracting parties, remained too issue-specific to result in a more permanent information system.

### ***1960s-1970s: Mixed information systems***

The situation began to change as the GATT grew in size, the proportion of developing countries increased, and more complex issues started dominating the trade agenda. By the end of the 1960s GATT membership had more than doubled to 75. The issues under negotiation also broadened in scope, such as those concerning balance-of-payments restrictions, agriculture, various multilateral trade negotiations (MTN) codes, and textiles. The risk of asymmetric information would increase in a heavily-laden trade agenda and contracting parties would have had an incentive to monitor issues of specific interest to them.

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<sup>4</sup> GATT, General Agreement on Tariffs and Trade, "The 1954/55 Review Session - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/12 (14 August, 1987), para. 2.

<sup>5</sup> *ibid.*, para. 4.

<sup>6</sup> This was largely a comprehensive exercise, since the GATT had only forty-three Contracting Parties in end-1962.

<sup>7</sup> Richard Blackhurst, "Strengthening GATT Surveillance of Trade-Related Policies" In *The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Aspects*, eds. Meinharf Hilf and Ernst-Ulrich Petersman (Deventer: Kluwer Law and Taxation Publishers, 1988), p. 135.

As a result, several *ad hoc* and sector-specific surveillance mechanisms were established in the 1960s and 1970s.<sup>8</sup> The Committee on Balance-of-Payments Restrictions consulted annually with relevant developed countries, and every two years with developing countries. The Textile Surveillance Body, set up under the Multi Fibre Agreement (MFA), had a 'small but geographically representative membership, meeting as often as necessary.' It received annual notifications on textile restrictions from all MFA signatories, and reviewed bilateral and unilateral actions by the signatories. The Textiles Committee also set up a Sub-Committee on Adjustment in 1981 to review measures adopted to facilitate adjustment. The various MTN codes were also subject to notification requirements by the contracting parties that had signed the codes. Some countries independently conducted surveillance over the implementation of the codes as well. However, all documentation was restricted only to the code signatories and observers.

The 1960s and 1970s were, thus, a mix of 'self reporting' (textiles, MTN codes), 'other reporting' (the European Community and the United States conducted their own surveillance targeted at major trading partners) but minimal 'institutional reporting'. These developments can be explained by the fact that although contracting parties were recognising the need for a degree of surveillance, they continued to protect their sovereignty and were unwilling to give a strong mandate to the Secretariat.<sup>9</sup>

### ***Early 1980s: Issue-specific institutional reporting***

It was not until the 1980s that a series of proposals for strengthened institutional surveillance in the GATT came forward. In 1979 the Tokyo Round had concluded with an Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, which provided for special GATT Council meetings to review developments in the trading system.<sup>10</sup> Furthermore, although tariffs had been cut significantly, there was a growing need to monitor the use of non-tariff barriers. From 1980 onwards, the Special Council meetings were held twice a year with the Secretariat submitting a note detailing developments in the preceding six months. In 1983 the scope of the meetings was broadened to ensure that trade policies were consistent with GATT principles and to 'avoid measures which would limit or distort international trade.'<sup>11</sup> This was largely due to a growing risk of asymmetric information in negotiations, hidden/inaccurate information related to non-tariff barriers, and a poor record on compliance with notifications.

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<sup>8</sup> GATT, General Agreement on Tariffs and Trade, "Existing Surveillance Functions in the GATT - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/3 (9 June, 1987), paras. 12-15.

<sup>9</sup> Even now the major trading powers use their national surveillance systems, like the U.S. Trade Compliance Center which provides information about the United States' trading partners' record on compliance with trade commitments.

<sup>10</sup> Victoria Curzon Price, "New Institutional Developments in GATT," *Minnesota Journal of Global Trade* 1, no. 1 (1992), p. 97.

<sup>11</sup> GATT, General Agreement on Tariffs and Trade, *Existing Surveillance Functions in the GATT - Note by the Secretariat*, para. 7.



Surveillance on issues of concern for developing countries also increased to some extent via the Committee on Trade and Development (CTD).<sup>12</sup> The CTD had emerged as a result of the inclusion of Part IV in the GATT in 1964, which focused on the special circumstances and needs of less developed countries in the trading system.<sup>13</sup> In 1979, when poor countries were 70 per cent of the GATT membership, the Sub-Committee on Protective Measures was established to monitor actions by rich countries that could block imports from developing ones. Also, the Sub-Committee on Trade and Least Developed Countries was made responsible for reviewing trade policy developments of interest to this category of contracting parties. After a GATT Ministerial Declaration in 1982, the CTD adopted a programme of consultations ‘to examine how individual contracting parties have responded to the requirements of Part IV.’ But no conclusions were reached until the start of the Uruguay Round.

Developing country concerns did not translate into wider institutional review. Although developing countries were increasing in number, their engagement with the trading system was very limited in the 1960s and 1970s, focusing on securing preferential access to markets. Thus, the degree to which asymmetric information would have hindered their negotiating capacities was limited. Instead, they were largely affected by hidden information about rich countries’ policies and were constrained by a lack of resources to undertake reviews themselves; hence, the call for institutional reporting within the CTD. At the same time, developing countries had been traditionally very protective of their sovereignty; they were reluctant to let the GATT Secretariat monitor trade policies more regularly.<sup>14</sup> So, a combination of limited issue-specific interests and resource-constrained information gaps resulted in limited surveillance oriented towards developing country interests.

### ***Late 1980s: Debating and designing the TPRM***

In 1985 an Eminent Persons Group (chaired by Dr. Fritz Leutwiler) proposed that ‘countries should be subject to regular oversight or surveillance of their policies and actions...’<sup>15</sup> The GATT Secretariat was to collect and publish this information. The rationale for surveillance was that ‘governments should be required regularly to explain and defend their overall trade policies’, so as to ‘prevent departures from the [GATT] rules.’ The group also proposed that the Secretariat ‘should be empowered to initiate studies...’ of trade policy changes. But it made clear that the GATT Secretariat would act ‘as watchdog (though not judge)’ on behalf of the trading system.<sup>16</sup> A watchdog, by definition, acts as the guardian of others’ rights. So, an appropriate surveillance mechanism for the Eminent Persons Group would not only review members’ trade policies but would also raise the alarm when non-compliance affected other members’ rights in the system. For developing countries, the value of a

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<sup>12</sup> *ibid.*, paras. 9-11.

<sup>13</sup> By 1964, developing countries accounted for 65 per cent of the membership.

<sup>14</sup> Developing countries were reviewed periodically by the IMF and the World Bank, but in both fora they usually had the status of debtors with limited bargaining power. The trade system, with nominally equal status for all members, was different.

<sup>15</sup> Fritz Leutwiler and others, *Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT, 1985), p. 42.

<sup>16</sup> *ibid.*, p. 42.

multilateral watchdog would become evident only if they perceived it to be defending their trade interests.

Until the mid-1980s there was no mechanism in the multilateral trading system that involved the periodic review of all contracting parties as well as of the system as a whole. There was a growing perception among developing countries that an 'unwarranted asymmetry' existed in surveillance obligations: some countries had to get their trade policies reviewed under balance-of-payments consultations and as conditions of accession to the GATT, but there was no surveillance of the policies of major trading powers.<sup>17</sup> Moreover, there was the question of neutrality and credibility of information. A chief concern among contracting parties was that the only available review of global trade policies was one published by the United States Trade Representative (as expected, these reports steered clear of U.S. trade barriers).<sup>18</sup>

The Punta del Este Ministerial Declaration that launched the Uruguay Round committed 'to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices...and their impact on the functioning of the multilateral trading system.' On 28 January 1987 a Surveillance Body was established to monitor the standstill and rollback provisions in the Declaration. The Surveillance Body would, in turn, submit reports to the Trade Negotiations Committee. Thus, surveillance in this case was a way of increasing confidence in the GATT system while a major trade round was being negotiated.<sup>19</sup> It was a response to asymmetric information gaps that all contracting parties were encountering in a crucial negotiating round.

Simultaneously, as a result of the Punta del Este Declaration, a negotiating group on the Functioning of the GATT System (FOGS) had been established. In the first proposal submitted to the group, Australia criticised the existing system of surveillance through biannual reviews, pointing to 'arbitrary data collection, and lack of quantification of support measures and their trade effects.'<sup>20</sup> The United States proposed that the Secretariat prepare country reviews, so that the GATT would engage in 'enhanced surveillance' of countries' trade regimes on a regular basis. It also wanted greater economic analysis and research and the quantification of the effects of trade measures.<sup>21</sup> The European Community felt that there was a need to rationalise existing GATT notification and surveillance mechanisms. It

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<sup>17</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 23 June 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/2 (26 June, 1987), para. 7. Also see GATT, General Agreement on Tariffs and Trade, "Meeting of 7 April 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/1 (10 April, 1987), para. 6.

<sup>18</sup> Joseph F. Francois, "Trade Policy Transparency and Investor Confidence: Some Implications for an Effective Trade Policy Review Mechanism," *Review of International Economics* 9, no. 2 (2001), p. 304. Also see Donald B. Keesing, *Improving Trade Policy Reviews in the World Trade Organization* (Washington, D.C.: Institute for International Economics, 1998).

<sup>19</sup> Victoria Curzon Price, "GATT's New Trade Policy Review Mechanism," *The World Economy* 14, no. 2 (1991), p. 229.

<sup>20</sup> GATT, General Agreement on Tariffs and Trade, "Communication from Australia," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/1 (3 April, 1987), para. 5.

<sup>21</sup> GATT, General Agreement on Tariffs and Trade, "Initial Submission by the United States to the Uruguay Round Negotiating Group on Functioning of the GATT System," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/9 (23 June, 1987), pp. 2-3.

demanded that the country reports be policy-oriented, highlighting the objectives, challenges and direction of a country's trade policies.<sup>22</sup>

Among the similarities in developed country positions was recognition that surveillance activities should serve not only as an 'early warning system' but should also be 'used to ensure compliance with contractual obligations...' Multilateral surveillance could also provide a 'counter-weight to pressures from domestic special interest lobbies.'<sup>23</sup>

Developing countries were, in principle, in favour of a multilateral surveillance system in the trade regime. Strengthening the existing surveillance procedures meant regular monitoring of the trade policies of major trading powers, 'so as to ensure symmetry in surveillance in the GATT.'<sup>24</sup> At the same time developing countries did not want any new obligations. Instead, they felt that a new mechanism for surveillance had to focus more on the richer countries.

Jamaica (a member of the more moderate coalition, the Group of Twenty) was keen to ensure that the TPRM 'does not explicitly require any new obligations...'<sup>25</sup> Arguing that the credibility of the GATT system was undermined by the actions of 'those having major shares and stakes in world production and trade,' Jamaica contended that any effort to improve the GATT system had to start with '*trade policy (any other policies) at the national level.*'<sup>26</sup> Jamaica insisted on rationalising the several GATT bodies that carried out surveillance activities, improving the monitoring of MTN codes, the functioning of the Textiles Surveillance Body, surveillance of a strengthened Article XIX, and reviewing the liberalisation of trade in agriculture.<sup>27</sup>

Several developing countries echoed similar sentiments during negotiations. They argued that the GATT system needed less new mechanisms and more of improved adherence to existing principles.<sup>28</sup> The Leutweiler Group had noted that GATT surveillance was meant to 'strengthen the ability of all countries – and especially the smaller and developing countries – to *defend* their trade interests.'<sup>29</sup> India, submitting a note on behalf of developing countries, pointed out that the reviews were not intended to lead to any binding conclusions or recommendations, nor establish a legal process.<sup>30</sup> But it also hoped that the process would lead to improved adherence with GATT rules. Developing countries warned that GATT surveillance should not become another means to pressure them to change their trade

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<sup>22</sup> GATT, General Agreement on Tariffs and Trade, "Communication from the European Community," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/20 (22 March, 1988), p. 3.

<sup>23</sup> GATT, General Agreement on Tariffs and Trade, *Meeting of 7 April 1987 - Note by the Secretariat*, para. 4.

<sup>24</sup> GATT, General Agreement on Tariffs and Trade, "Communication from the Delegation of India," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/23 (22 June, 1988), para. 3.

<sup>25</sup> GATT, General Agreement on Tariffs and Trade, "Communication from the Delegation of Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/22 (16 May, 1988), para. 3.

<sup>26</sup> GATT, General Agreement on Tariffs and Trade, "Communication from Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/11 (8 July, 1987), para. III(i) (emphasis original).

<sup>27</sup> GATT, General Agreement on Tariffs and Trade, "Statement by the Delegation of Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/29 (30 September, 1988), para. 1.

<sup>28</sup> GATT, General Agreement on Tariffs and Trade, *Meeting of 23 June 1987 - Note by the Secretariat*, para. 4.

<sup>29</sup> Leutwiler and others, *Trade Policies for a Better Future: Proposals for Action*, p. 42 (emphasis added).

<sup>30</sup> GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of India*, para. 3.

policies.<sup>31</sup> They felt that talks on the GATT system had to address the issue of special and differential treatment.<sup>32</sup>

At the Mid-term Review of the Uruguay Round in Montreal in December 1988 contracting parties agreed to a proposal to set up a Trade Policy Review Mechanism (TPRM); the decision was confirmed on 12 April 1989. At a time when developing countries were opposed to several changes in the trade regime, why did they agree to the TPRM?

Among the incentives, as already pointed out, was a desire to fix the asymmetry in surveillance obligations in the regime. Here was a chance for poorer countries to influence the functioning of the GATT system (the Uruguay Round provided 'a useful opportunity for a review of the institutional framework of the GATT').<sup>33</sup> As one former GATT official put it, 'developing countries wanted to use the resulting trade policy reviews to put developed countries on the block.'<sup>34</sup> According to this view, given that developing countries had little recourse to the dispute settlement mechanisms in the GATT, they decided that moral suasion would be a better option.

Secondly, periodic surveillance could serve as a 'multilateral stamp of approval' for their policies.<sup>35</sup> At a time when many developing countries were under pressure from international financial institutions to reform their economies, a trade policy review would have been a legitimate forum to defend one's trade policies.

Thirdly, developing countries expected the reviews to be an opportunity to attract investment. In other words, a positive review would be a 'signal' to the markets that the country had a conducive environment for investment.<sup>36</sup> Joseph Francois (2001) argues that the TPRM increases the credibility of domestic policy reform and strengthens trade-promoting policies.<sup>37</sup> By reducing uncertainty about conditions in export markets, it should also increase investments in tradable sectors. The reduction in risk, in turn, would have a salutary effect in reducing the cost of capital for poor countries.

Fourthly, there was a potential benefit of improved policymaking within countries. A senior WTO official who had been involved in the TPRM in its early days argued that the reviews ensured coordination between government agencies that would not otherwise have communicated with each other.<sup>38</sup>

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<sup>31</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 28 September 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/3 (8 October, 1987), para. 6.

<sup>32</sup> GATT, General Agreement on Tariffs and Trade, *Meeting of 7 April 1987 - Note by the Secretariat*, paras. 2-3.

<sup>33</sup> GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of Jamaica*, para. 16.

<sup>34</sup> Interview with former GATT/WTO/UNCTAD official, 14 June 2007.

<sup>35</sup> Interview with Member of the Director-General's Cabinet during the FOGS Negotiations, 2 July 2007.

<sup>36</sup> Interview with a delegate at the Permanent Mission of Tanzania to the WTO, 4 July 2007.

<sup>37</sup> Joseph F. Francois, "Maximising the Benefits of the Trade Policy Review Mechanism for Developing Countries" In *Developing Countries and the WTO: A Pro-Active Agenda*, eds. Bernard Hoekman and Will Martin (Oxford: Blackwell, 2001), p. 150-154. Also see Francois, *Trade Policy Transparency and Investor Confidence: Some Implications for an Effective Trade Policy Review Mechanism*, 303-316.

<sup>38</sup> Interview with senior WTO Secretariat official, 1 July 2007.

Finally, the TPRM was expected to have a demonstration effect by highlighting the beneficial impact of trade liberalisation. Donald Keesing (1998) writes that the TPRM 'imposes a useful discipline' by forcing members to re-evaluate their own trade policies.<sup>39</sup> The information generated in the reviews, by being available to NGOs, businesses and academics, would add to the pressure for change in policies. Several officials claimed that one of the chief attractions of the TPRM was its value in stimulating policy reform.<sup>40</sup> As an Australian trade delegate involved in TPRs pointed out, the reviews were an opportunity 'to ask GATT/WTO staff to do what domestic reformers [could not] do politically.'<sup>41</sup>

Developing countries were also aware of the limits to their capacity and resources to gather and process information. As Keesing notes, by making information about foreign trade practices a public good, the TPRM has the greatest marginal value to small countries that do not have the resources to collect information by themselves.<sup>42</sup> Nevertheless, for the first time in the trade regime, the TPRM promised to become a source of 'neutral and unbiased information'.<sup>43</sup>

In addition to the resource-constrained information gap, developing countries were also steadily encountering asymmetric information problems during the Uruguay Round. Until then, they had largely been passive participants in the trade regime, interested mainly in gaining and maintaining preferences. But the Uruguay Round involved new issues that all contracting parties had to negotiate, including services and intellectual property. Developing countries were increasingly unsure about the nature of these complex negotiations. They hoped that a new *and* neutral information system would assist them in understanding the issues and in demanding changes to rules that adversely affected their welfare.

Figure 1 illustrates how surveillance has evolved in the trade regime over the past half a century. Developing countries agreed to the TPRM for reasons that had to do with their incentives in the trade regime, monitoring capacities and the information gaps they faced. At the Marrakech Ministerial in 1994, which heralded the close of the Uruguay Round, the Jamaican Trade Minister said that his country strongly supported a monitoring mechanism in the WTO *because* 'there [was] a difference of opinion as to the benefits to be derived...' Monitoring, in his opinion, would evaluate the negative effects from multilateral trade liberalisation so that the losing parties could seek appropriate redress.<sup>44</sup> That belief in the use

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<sup>39</sup> Keesing, *Improving Trade Policy Reviews in the World Trade Organization*, p. 6.

<sup>40</sup> Interviews with officials in the European Commission's Mission to the WTO (6 July 2007), GATT Secretariat (14 June 2007) and WTO Secretariat (5 July 2007).

<sup>41</sup> Interview with official in the Permanent Mission of Australia to the WTO (6 July 2007).

<sup>42</sup> Borrmann and Koopmann also point to the usefulness of the TPRs as inputs into the Poverty Reduction Strategy Papers (PRSP) process. See Axel Borrmann and Georg Koopman, *Adapting the WTO Trade Policy Reviews to the Needs of Developing Countries: Starting Points and Options* (Hamburg: Hamburgisches Welt-Wirtschafts-Archiv, [2002]).

<sup>43</sup> Interview with senior official at the Trade Policies Review Division, 5 July 2007.

<sup>44</sup> GATT, General Agreement on Tariffs and Trade, "Jamaica - Statement by the Hon. Paul Robertson, Minister of Foreign Affairs and Foreign Trade," *GATT Trade Negotiations Committee*, no. MTN.TNC/MIN(94)/ST/36 (13 April, 1994), p. 2.

of the TPRM as a source of information for use in negotiations has continued to the present day, even though experience might have belied some of the expectations.<sup>45</sup>

### III. Institutionalising peer pressure – explaining the purpose of the TPRM

This section investigates whether the TPRM was designed to fulfil the functions expected of an ideal-type information system. Although their common objective is to fill the information gaps and increase transparency, information systems perform different functions. The trade regime's members differed on what they wanted the mechanism to do and how it would link to other functions of the GATT/WTO.

#### *Functions of an ideal-type information system*

Our framework outlines three broad categories of functions for information systems:<sup>46</sup>

- *Information dissemination* – International regimes review national policies by comparing them with international standards and the commitments that states have made. Information collection and dissemination by neutral organisations is also necessary to reduce the risk of systematic information biases.
- *Compliance promotion* – Where deviations from commitments are found, information systems often go one step ahead and recommend changes in policies. This is the task of promoting compliance, whether by means of peer pressure among member states, the threat of use of explicit sanctions following litigation, or by pressure from non-state actors whose interests are directly affected by non-compliance.
- *Regime evaluation* – Review activity not only facilitates compliance but also engages in in-depth learning on particular issue areas, monitors external conditions to identify risks, and evaluates the effectiveness of the regime itself, thus helping to develop new norms. By evaluating the impact of the regime (or its underlying rules) on different states, policy reviews inform states more clearly about the preferences of different categories of states. The same exercise could reduce general uncertainty about the impact of the regime on global welfare and thereby shape preferences for the development of new norms and rule modifications.

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<sup>45</sup> Interviews with a senior negotiator at the Permanent Mission of South Africa to the WTO, and a member of the WTO Director-General's Cabinet, 3 July 2007.

<sup>46</sup> For a more detailed discussion, see Ghosh, *Information Gaps, Information Systems, and the WTO's Trade Policy Review Mechanism*. Mavroidis had also suggested three surveillance functions – review, corrective and creative – but within these broad categories there are a range of tasks that the literature did not clearly specify. Petros C. Mavroidis, "Surveillance Schemes: The GATT's New Trade Policy Review Mechanism," *Michigan Journal of International Law* 13, no. 2 (1991-1992), pp. 408-409.. These ideas were first developed in G. J. H. van Hoof and de Vey Mestdagh, K., "Supervisory Mechanisms in International Economic Organizations" In *Supervisory Mechanisms in International Economic Organizations*, eds. P. van Dijk and et al, (1984).

### ***High expectations but restricted mandate for the TPRM***

So, what did GATT contracting parties expect the TPRM to do? The FOGS group had concluded that a smoothly functioning trading system depended on 'improved adherence' to rules and commitments, which in turn depended on 'greater transparency in, and understanding of, the trade policies and practices of contracting parties.' The TPRM's aim was to enable the 'regular collective appreciation and evaluation' of such policies and practices.<sup>47</sup>

At the basic level of information provision, most countries agreed to make the reviews available to the public. Japan had initially suggested that only press releases would be issued while the report itself would remain unpublished.<sup>48</sup> But the function of 'information dissemination' was largely uncontested. To be sure, it was up to the contracting parties to decide how widely the reviews would be circulated. But delegations expected the reviews to be used to exert external pressure to encourage internal debate on policy questions.<sup>49</sup>

There was also the hope that the information collected during the reviews would be useful in future negotiations. Delegations suggested that the reports had to be relevant and useful, so that parties could 'keep track of how political pressures on trade policies were developing.'<sup>50</sup> After the WTO started functioning, member states suggested that they should be free to use the trade policy reviews (TPRs) as reference material in WTO committees.<sup>51</sup> This was the first time that member states had explicitly recognised the use of TPRs in negotiations, rather than think of them as merely information-gathering exercises. The TPRM was potentially a response to the resource-constrained information gaps that developing countries encountered in negotiations and post-negotiation phases.

On the expectation of 'compliance promotion', a few developed countries highlighted the importance of following up with policy changes. Canada argued that while surveillance was the '*fundamental* question' for the Negotiating Group, there was also the need to consider what the follow-up to the surveillance would be and its relationship with the dispute settlement system.<sup>52</sup> The Nordics subscribed to a similar view, arguing that the aim of surveillance was to 'improve the adherence to agreed rules...'

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<sup>47</sup> GATT, General Agreement on Tariffs and Trade, "Functioning of the GATT System: Decisions of 12 April 1989," *Negotiating Group on Functioning of the GATT System*, no. L/6490 (12 April, 1989), para. I(A)(i).

<sup>48</sup> GATT, General Agreement on Tariffs and Trade, "Communication from Japan - Proposal for the Trade Policy Review in the GATT," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/8 (23 June, 1987), para. 6.

<sup>49</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 20 and 22 June 1988 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/8 (13 July, 1988), para. 36.

<sup>50</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 19-20 June 1989 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/12 (30 June, 1989), para. 10.

<sup>51</sup> WTO, World Trade Organization, "Procedural Improvements to the Trade Policy Review Mechanism - Note by the Chairman," *Trade Policy Review Body*, no. WT/TPR/13 (13 December, 1995), para. 7.

<sup>52</sup> GATT, General Agreement on Tariffs and Trade, "Communication from Canada," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/10 (2 July, 1987), p. 2 (emphasis original).

Yet, neither proposal clarified how the expected policy changes would occur in practice. In fact, information derived from the trade policy reviews could not be used to enforce specific GATT obligations or be used in dispute settlement proceedings.<sup>53</sup> If adherence to GATT rules had to improve then countries could only rely on 'moral suasion' or 'peer pressure'. But how would peer pressure work when the power asymmetries between contracting parties were so vast? As Amrita Narlikar (2005) points out, thanks to the practice of consensus, 'developing countries have never been able to make use of the power of large numbers in the GATT or the WTO.'<sup>54</sup> On balance, compliance promotion remained an implicit aim for the TPRM.

As regards 'regime evaluation', the Nordics and the European Community wanted the Secretariat to make periodic assessments of trends in trade policies based on the trade policy reviews.<sup>55</sup> India stated that since Special Sessions of the GATT Council had served as 'early warning mechanisms' in the past, enhanced surveillance should encompass an overview of general developments affecting the trading system.<sup>56</sup> In fact, according to the Indian delegation, the concept of 'enhanced surveillance' had a stronger connotation of moral suasion for developing countries than did 'trade policy review'.<sup>57</sup>

Based on these demands, the GATT also institutionalised 'an overview of developments in the trading environment which are having an impact on the multilateral trade system.'<sup>58</sup> The procedure involved annual meetings of the GATT Council, assisted by a report from the Director-General. This form of enhanced surveillance, it was believed, would 'strengthen the existing "early warning" aspect' of Council meetings.<sup>59</sup> Annual overviews were, then, the closest the trade regime would come to having an explicit regime evaluative mandate. The question as to the kind of issues the overviews would cover and the implications for negotiations of new rules in the system would remain open.

The design of the TPRM demonstrates its ability to perform the three surveillance functions only to a limited degree. The reporting requirements would increase transparency and would also make countries conscious of the need to explain their policies to others. But the impact of the reviews would depend on how widely they were distributed and the kind of domestic debate on policy issues they encouraged. Transparency could also promote better compliance only if the additional information generated by the reviews was used by contracting parties to initiate new consultations.

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<sup>53</sup> GATT, General Agreement on Tariffs and Trade, *Functioning of the GATT System: Decisions of 12 April 1989*, para. I(A)(i).

<sup>54</sup> See Narlikar's critique on the GATT/WTO's decision-making procedures in Amrita Narlikar, *The World Trade Organization: A very Short Introduction* (Oxford: Oxford University Press, 2005), pp. 44-45.

<sup>55</sup> GATT, General Agreement on Tariffs and Trade, "Communication from the Nordic Countries," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/17 (28 January, 1988), paras. I(1) and I(5). See also GATT, General Agreement on Tariffs and Trade, *Communication from the European Community*, p. 4.

<sup>56</sup> GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of India*, para. 9.

<sup>57</sup> GATT, General Agreement on Tariffs and Trade, *Meeting of 20 and 22 June 1988 - Note by the Secretariat*, para. 32.

<sup>58</sup> GATT, General Agreement on Tariffs and Trade, *Functioning of the GATT System: Decisions of 12 April 1989*, para. I(F).

<sup>59</sup> *ibid.*, para. I(F).



Finally, it was possible for the TPR to have what Asif Qureshi calls a ‘prescriptive trait’ or an evaluative role.<sup>60</sup> It was a means by which the process allowed parties to evaluate varying interpretations of trade rules and options for implementation. As Pascal Lamy noted in a recent speech, part of the surveillance function requires the WTO to offer the forum to discuss ‘how best to operationalize...market opening’ as well as ‘the need for measures that translate the results of negotiations into real benefits for all Members’.<sup>61</sup> In other words, Lamy recognises the regime evaluation function of surveillance, which extends beyond merely monitoring whether members are complying or not to include the impact of rules on members at varying levels of development.

However, it was evident from the beginning that, without structural changes in the trade regime’s governance, any new information system would only have limited impact. Julius Katz, the Chairman of the negotiating group and a prime mover of the TPRM, considered that transparency ‘was not a modest objective.’<sup>62</sup> He wanted countries to exert ‘moral suasion’ over each others’ trading practices.<sup>63</sup> But developing countries feared that too broad an interpretation of surveillance spelled more chances for abuse of the process. Economic analysis of trade policies could easily slide into the realm of economic prescription of ‘good’ policies, which would then be imposed on them. They did not expect the reviews to give them greater flexibility or influence within the trade system. Without developing countries having additional means to influence developed members’ policies or the removal of restrictive practices, it would simply ‘build up unrealizable expectations.’<sup>64</sup>

As the first mechanism by which developed countries would offer their policies for scrutiny and criticism by developing countries, the TPRM represented the first attempt to ‘institutionalise peer pressure’ in the multilateral trade regime.<sup>65</sup> But the TPRM was not a standalone mechanism; its effectiveness depended not only on its own design but also on how developing countries could leverage their power in a new multilateral trade institution.

#### IV. Challenges with the practice of the TPRM

How have developing countries leveraged their power within the TPRM? At the inception of the WTO, monitoring was listed as one of the organisation’s primary tasks. Trade policy

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<sup>60</sup> Asif H. Qureshi, "The New GATT Trade Policy Review Mechanism: An Exercise in Transparency Or "Enforcement"?" *Journal of World Trade* 24, no. 3 (1990), p. 147.

<sup>61</sup> Pascal Lamy, *Monitoring and Surveillance: The Rising Agenda of the WTO*, Vol. Address to Georgetown University Law Centre, Washington, D.C., 22 October 2007), [http://www.wto.org/english/news\\_e/sppl\\_e/sppl78\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl78_e.htm).

<sup>62</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 3 and 4 November 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/4 (30 November, 1987), para. 11.

<sup>63</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 21-23 March 1988 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/6 (15 April, 1988), para. 7.

<sup>64</sup> GATT, General Agreement on Tariffs and Trade, *Communication from Jamaica*, para. III(ii).

<sup>65</sup> Curzon Price, *GATT's New Trade Policy Review Mechanism*, p. 231.

reviews are now a regular feature of the WTO. This section inquires into the participation of developing countries in the TPRM and, in the process, outlines some key challenges.

### *Capacity challenges*

The first question of inquiry is whether the TPRM, in practice, has been a source of relevant information for developing countries. On the positive side, almost all countries have undergone a review at least once, with more than 190 reviews having been conducted since 1995. Moreover, technical assistance and additional funding has been offered since 2000 to conduct reviews of least developed countries: to date, 27 of the 32 LDC members have been reviewed. Another innovation has been the increasing use of regional reviews (so far, there have been six), with the aim of making more efficient use of financial and staff resources and also to highlight challenges to trade policy from a regional perspective.

With a growing membership of the WTO there is constant pressure to increase the frequency of reviews. More staff and financial resources have been devoted to the Trade Policies Review Division (TPRD) (figures 2 and 3). According to senior Secretariat staff, improved staff efficiency, better communication links with capitals, and the reliance on joint reviews have contributed to the rising frequency. But as figure 4 shows, the TPRM has never been able to match the number necessary to maintain the cycle of reviews. For a majority of the WTO's membership reviews occur once in six years. If even this frequency is not maintained then the purpose of improving transparency in trade policy gets undermined.

Further, with resources and staff constantly stretched, the depth of analysis in the reports tends to suffer. Consider that the IMF has about ten staff working over 12 months in preparing the review for a country like the United States. Consider again, that at most two WTO Secretariat staff members are assigned to write a report much broader in scope in a span of eight to nine months. Every single member country's representative interviewed has called for more analytical research. Yet, members also remain wary about strengthening the mandate of the Secretariat to conduct more probing reviews. Although the Secretariat has editorial control, much of the information is supplied by governments and there is limited reliance on non-official data sources. If governments do not supply timely and up-to-date information, the product suffers. A further challenge relates to the use of expertise on sector-specific issues. The TPRD, at times, seeks inputs from other WTO divisions while preparing the reports. But since this is not part of the primary mandate of other divisions, there is little political priority to respond on time.

### *Content-related challenges*

Noting these challenges, I conducted an analysis of the content of a large number of government and Secretariat reports, by linking them to the Dispute Settlement Mechanism. The objective of the analysis was to evaluate how far the reports provide information on issues most important to member states. Even if the TPRs are not the only source of information on members' trade policies, they are frequently cited as the most comprehensive (by policymakers and academic reviewers). Furthermore, as the previous section showed, information from TPRs is collated in other WTO documents and feed into summary notes

that are prepared for discussions in various WTO committees. Therefore, we should expect TPRs to highlight or analyse issues that are considered critically important for individual members and for the trading system.

The disputes that a country initiates are treated as a proxy indicator of the most important trade concerns for that country. We ask whether information about these issues and concerns were revealed in TPR-related documents. Note that this analytical link between TPRs and the DSM does not undermine the legal mandate of the TPRM. It merely evaluates the 'information dissemination' and 'compliance promotion' functions of the WTO's information system, namely that of revealing information that would be useful in promoting better adherence with the regime's rules. That, indeed, is the mandated purpose of the TPRM.

For this analysis, I construct a database of dispute-dyads of complainants and respondents in the DSM. This is ongoing research, so for this paper a total of 172 dispute-dyads were analysed. The complainants in the dispute-pairs cover all developing and least developed economies, transition economies and newly industrialised countries that have ever initiated a dispute at the WTO.<sup>66</sup>

Each dispute might have more than one complainant but every complainant is treated separately, in order to consider its interests in the issue under contention. The focus, however, is on the TPRs of the respondent in each dispute. The objective of the analysis is to examine whether the respondent's TPR refers to, analyses or criticises the policy or measure that is disputed. For each dispute the database gives evidence from the TPR reports that both preceded and followed the request for consultations on a dispute.

The rationale for examining the preceding report is clear-cut: to see if the report highlighted the contentious policy. It also helps to examine whether WTO members other than the complainant also use the TPR as an opportunity to raise questions about the disputed issue.

The rationale for examining the succeeding report is slightly different. It relates to the dynamic of peer pressure by which the TPRM is expected to promote compliance. If succeeding reports highlight and analyse the issue under contention, they serve to apply pressure on the respondent. This is particularly so because the TPRB has the status of the General Council, and therefore pressure can be applied by parties that need not be the original complainants. Moreover, the Dispute Settlement Body almost invariably defers the establishment of a panel, which gives parties time to resolve the dispute via consultations. A TPR during this period provides a further opportunity to analyse the economic merits of a trade measure, while not passing a legal judgment on it.

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<sup>66</sup> The countries analysed as complainants are: Antigua and Barbuda, Argentina, Bangladesh, Brazil, Chile, China, Colombia, Costa Rica, Czech Republic, Ecuador, Guatemala, Honduras, Hong Kong, China, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Nicaragua, Pakistan, Panama, Peru, Philippines, Poland, Singapore, Sri Lanka, Chinese Taipei, Thailand, Turkey, Uruguay, and Venezuela. Adding the respondents (including developed countries like Canada, the EU, Japan, and the US) increases the total number of countries analysed.

After running the analysis on 172 dispute-dyads, the results reveal interesting insights. In many cases the Secretariat reports did mention, highlight or analyse policies that would eventually be taken up by complainants as formal disputes. This occurred only 53 per cent of the time for TPRs of respondents preceding the initiation of disputes. When the reports of developing countries are analysed separately, one finds that the coverage of critical issues has certainly increased since 2000. But in the case of developed countries' reports, the trend remains more or less stable around an average of 54 per cent.

Even after disputes had been initiated, the Secretariat reports mentioned or analysed the contested policies 80 per cent of the time (and in many cases, it was only a footnote mention). In fact, in recent years (since 2003) there seems to be a downward trend in the average coverage of disputed issues. This is accounted for largely in the reports of developed countries, since coverage of disputed issues in developing countries remained high.

The above trends reveal a real content-related challenge for the TPRs. The Secretariat has a vast amount of information to collect and put together in the report with limited resources at its disposal. In the process of aiming to be comprehensive, it is perhaps falling short in highlighting the more critical aspects of members' policies, aspects that would be relevant for other members of the WTO.

### ***Participation challenges***

Further, when it comes to applying peer pressure on the critical/disputed issues, the record is poorer. In just a quarter of the cases did future complainants send in advance questions to the party under review. That proportion fell under 20 per cent even *after* a dispute had been initiated. In sets of cases, however, the trends increased until about 2001, after which they dipped to even below these average levels.

The results seem to suggest that member states did not consider the TPR process to be the effective forum for applying pressure, contrary to what the TPRM had originally been envisaged for. Moreover, the trends show that there might have been a spike in the interest member states had in the mechanism after a few years of experience with WTO monitoring. But the declining trends in recent years suggest a growing disillusionment with the purpose or use of the mechanism.

But when we consider how member states other than the complainant behaved, the results are slightly more encouraging. Prior to a dispute, 60 per cent of the time other states also sent in advance questions on the contested issue(s). After the dispute had been initiated other parties continued to submit written questions 55 per cent of the time. Thus, even if the complainant country did not apply direct pressure, the numbers reveal that other states could add pressure for policy change.

Another interesting result is that the proportion of times that advanced questions were sent when developed countries were respondents far exceeded that when developing countries were defending their policies. This highlights the usefulness of more frequent reviews, since they allow members to quiz the respondents on current and topical disputed issues.

The above results highlight the potential value of the TPRM, but only when members engage with the mechanism. However, a related challenge pertains to participation in review meetings. Many supporters of the TPRM stress that simply participation is a good exercise in transparency and learning. This had been predicted even during the debates on the TPRM. Disappointed that the report format would not be broad in scope, one delegation had claimed that, irrespective of measures covered by the report, it ‘would not shy away...from asking questions about *any* measure that affects trade.’<sup>67</sup> The Trade Policy Review Body is equivalent to the General Council and comprises all WTO member states, giving developing countries equal rights and opportunities to review the policies of rich member states. Among other international economic institutions, this is a very different setup, compared to say the weighted voting systems in the IMF and the World Bank, which limit the voice of poor countries, or the OECD reviews in which developing countries cannot participate.

However, developing country participation in the TPR meetings remains poor. Once again an analysis was conducted of all trade policy reviews from 1995 to mid-2007, a total of 174 reviews (barring a few for which complete documents were not available). We find that the participation of a majority of the WTO’s members is almost negligible. The top four trading powers almost always participate in review meetings. But even among the next sixteen, there are only a few active participants: only a minority has participated in more than half the meetings (see figure 5). Worse still, an average LDC has participated in three meetings; and there have been only four discussants from LDCs. The likelihood that an LDC will ask questions or raise a point is just 2 per cent.

There are a few possible reasons for this. Some argue that LDCs are basically interested in maintaining preferences, so have no incentive to closely review the policies of richer trading countries. LDCs, in turn, point to the review meetings clashing with other meetings of more immediate importance. Many LDCs do not even have permanent representation in Geneva. Added to these problems is the technical expertise that is often lacking in developing countries to understand the policies of their trading partners and ask questions that have relevance for their export interests.

The final challenge, thus, is the outcome of the reviews. The TPRM has no systematic procedure for following up after reviews have been completed. At the domestic level, there have been cases where the reviews have resulted in improved coordination among government agencies. But often there is no further review or discussion of policy changes that might be needed. Furthermore, governments have the prerogative to choose which NGOs and business associations to consult with during the preparation of the reports. If the consultations are limited in scope, there would be little external pressure for policy change once reviews have been completed.

At the international level, potentially countries can use information from TPRs for negotiations. In practice, they seldom rely on the reports for the kind of sophisticated analysis necessary to take informed positions in trade talks. So, even as the richest traders

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<sup>67</sup> GATT, General Agreement on Tariffs and Trade, *Meeting of 19-20 June 1989 - Note by the Secretariat*, para. 6 (emphasis added).

subject other countries to close scrutiny during review meetings (a form of peer pressure), developing countries do not find this avenue of much use in demanding or influencing policy corrections.

## V. 'Active transparency' and the challenges of domestic capacity

Monitoring and surveillance, according to Pascal Lamy, is the 'rising agenda of the WTO'.<sup>68</sup> He believes monitoring in the WTO is a mix of individual and collective actions, assisted by the Secretariat, which aim to explore, understand, discuss and influence Members' implementation of their commitments. In this section, we review the new developments in monitoring and surveillance in the WTO and discuss them in the context of national efforts to collect, collate and analyse information.

Nearly all WTO agreements have extensive requirements for notifying new or changed national laws and regulations related to WTO matters. Some, like the Agreement on Agriculture or the Anti-dumping Agreement, also have provisions for 'other reporting' whereby members can point out measures applied by other members, which are alleged to have an impact on the trading system.

But it is not sufficient that publishing new measures will ensure transparency. As Lamy puts it, 'Full transparency also requires an understanding of what is being notified.'<sup>69</sup> Thus, members not only have to be aware of changes in each others' policies but should also have the capacity to analyse such changes in terms of their implications for one's own commercial interests. Lamy cites 'peer review' in WTO committees as the basis for 'active transparency'. He rightly points out that the chances of developing countries being able to litigate against market-restricting measures is low, whereas peer review mechanisms allow them to put collective pressure on developed countries.

Yet, delegates from several member states have commented in interviews that monitoring within committees is either 'too technical' or 'not structured enough'. The vast amount of information to process makes effective peer review a daunting task for many countries. Moreover, there is a growing sense among members that delays in notifications have undermined the objective of transparency. Even if members were to rely on their own monitoring capacities to detect non-compliance elsewhere, they would still need a minimum degree of information from multilateral sources. As Lamy says, '[I]n order to initiate a dispute, one needs to know what is happening...But cross-notifications also require a certain level of knowledge.'<sup>70</sup>

In fact, some delegates suggest that the trade policy reviews are the means to gather information that some members have not submitted through notifications. Secretariat officials agree that they rely on notifications to provide the latest information on members' policies. But where notifications are dated they ask for updated information through the

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<sup>68</sup> Lamy, *Monitoring and Surveillance: The Rising Agenda of the WTO*.

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

country-specific questionnaires. Thus, the TPRs are an important means to fill the 'notifications gap'. But, since the questionnaires are not public documents, it is difficult to ascertain whether Secretariat pressure indeed yields information that was otherwise not forthcoming via the notifications route.

### *New demands for transparency in the WTO*

Meanwhile, several new monitoring mechanisms have started functioning or have been proposed and are being currently debated in the context of the Doha Round and outside of its scope as well. The following discussion lists these initiatives to give a sense of the interests of developing countries in the evolving framework of WTO monitoring.

- *DFQF Market Access for LDCs.* At the Hong Kong Ministerial Conference in 2005 it was agreed that 'developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from LDCs...'<sup>71</sup> Developed and developing countries agreed on a timeline for implementing these commitments and, in this context, agreed to 'notify the implementation of the schemes adopted...every year to the Committee on Trade and Development.'<sup>72</sup> The CTD would undertake annual reviews of progress made towards providing DFQF market access to LDCs. Information submitted since the decision show Canada, the EC, Japan, New Zealand, Norway, and Switzerland as having provided DFQF market access to at least 97 per cent of LDC exports. Among developing countries, Brazil, China, India and South Korea have also informed members that they are working towards expanding DFQF market access.
- *Transparency Mechanism for Regional Trade Agreements.* In December 2006 a provisional transparency mechanism for RTAs was established, recognising that better understanding of RTAs and their effects was of 'systemic interest' and would benefit all members.<sup>73</sup> In addition to notifications about RTAs, the Secretariat was tasked with preparing factual reports. Although the decision is to be implemented jointly by the Committee on Regional Trade Agreements (for those falling under Article XXIV of GATT 1994 and Article V of GATS) or at the Committee on Trade and Development (for those falling under paragraph 2(c) of the Enabling Clause), the actual reviews of the factual reports occur in the CTD in dedicated sessions. In addition to institutional reporting, the mechanism also permits 'other reporting' whereby any member can submit information that it considers 'ought to have been submitted to Members in the framework of this Transparency Mechanism'.<sup>74</sup>

In conformity with the new mechanism, Members have made early announcements in regard to new RTAs proposed or those currently under negotiation. As of 7 April 2008,

<sup>71</sup> WTO, World Trade Organization, "Doha Work Programme Ministerial Declaration Adopted on 18 December 2005," *Ministerial Conference Sixth Session, Hong Kong*, no. WT/MIN(05)/DEC (22 December, 2005), para. 47.

<sup>72</sup> *ibid.*, Annex F.

<sup>73</sup> WTO, World Trade Organization, "Transparency Mechanism for Regional Trade Agreements: Decision of 14 December 2006," *WTO General Council*, no. WT/L/671 (18 December, 2006).

<sup>74</sup> *ibid.*, para. 20.

six signed agreements and twenty-six RTAs under negotiation had been announced under the mechanism. Changes in another six RTAs had been notified as of end-January 2008. And by end-February 2008, thirteen factual presentations had been prepared.

- *SPS Transparency.* The latest developments on transparency procedures have occurred within the WTO SPS Committee. At its meeting of 2-3 April 2008, the Committee provisionally adopted revised recommendations on how governments submit information on new or proposed measures taken with regard to food safety and animal and plant health. The SPS Committee reviews these submissions to ensure that the measures are not used as hidden protectionist devices. The current guidelines date back to 2002, outlining procedures for complying with the transparency requirements in Article 7 of the SPS Agreement,<sup>75</sup> as well as notifications of recognition of equivalence of SPS measures.<sup>76</sup> The new procedures were debated in October 2007 and again in April 2008 and incorporate new forms for notifications, online databases for compiling notifications, adoption of international standards, and access to international electronic resources such as the WTO's SPS Information Management System and the FAO's International Portal on Food Safety, Animal and Plant Health.<sup>77</sup> If no member objects by 30 May, the new procedures would have been adopted.
- *Reviews of Aid-for-Trade.* The Hong Kong Ministerial Declaration of 2005 asked the WTO Director-General to set up an Aid-for-Trade (AFT) task force that would recommend how AFT could be operationalised. The task force argued, 'Monitoring and evaluating progress is essential in building confidence that increased Aid for Trade will be delivered and effectively used.' In July 2006 the task force recommended monitoring aid recipient countries for mainstreaming trade in national development strategies (including the poverty reduction strategy papers), whereas donors would be expected to report on the funds disbursed in line with their commitments.<sup>78</sup>

Further proposals were presented by the Director-General in December, suggesting monitoring at three levels: assessing global flows; progress reports from multilateral and regional agencies; and in-country assessments.<sup>79</sup> Subsequently, in the past year the WTO

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<sup>75</sup> WTO, World Trade Organization, "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) - Revision," *Committee on Sanitary and Phytosanitary Measures*, no. G/SPS/7/Rev.2 (2 April, 2002).

<sup>76</sup> WTO, World Trade Organization, "Notification of Determination of the Recognition of Equivalence of Sanitary and Phytosanitary Measures - Decision by the Committee, Addendum," *Committee on Sanitary and Phytosanitary Measures*, no. G/SPS/7/Rev.2/Add.1 (25 July, 2002).

<sup>77</sup> WTO, World Trade Organization, "Compilation of Proposals regarding the Revision of the "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)" - Note by the Secretariat, Revision," *Committee on Sanitary and Phytosanitary Measures*, no. G/SPS/W/215/Rev.1 (14 February, 2008).; WTO, World Trade Organization, "Compilation of Proposals regarding the Revision of the "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)" - Note by the Secretariat," *Committee on Sanitary and Phytosanitary Measures*, no. G/SPS/W/215 (8 October, 2007).

<sup>78</sup> WTO, World Trade Organization, "Recommendations of the Task Force on Aid for Trade," *Aid for Trade Task Force*, no. WT/AFT/1 (27 July, 2006), para. F6.

<sup>79</sup> WTO, World Trade Organization, "Follow-Up to the Aid-for-Trade Task Force Recommendations (WT/AFT/1): WTO Monitoring and Evaluation - Report by the Director-General," no. JOB(06)/262 (12



has organised one global review and three regional reviews for monitoring progress on AFT. On 25 February 2008 the CTD gave the 'green light' to the Director-General's proposed AFT roadmap, under which reviews would be 'more focused, technical and results-oriented, with the aim of assisting in advancing – and then monitoring – the implementation of concrete national and especially sub-regional plans.'<sup>80</sup> Thus, in 2008-2009 we should expect another global review along with national and sub-regional reviews, and the establishment of an AFT 'knowledge network' and several new Regional AFT Networks.

As the AFT framework develops its own momentum, there is a need for developing countries to articulate their priorities for what ought to be included in the scope of such reviews, the quantitative and qualitative indicators used for evaluations, and the follow-up linkages between reviews, on one hand, and coherent and credible delivery of AFT funds, on the other.

- *Proposals on monitoring mechanisms in agriculture.* In reaction to significant delays in notifications from some of the world's biggest subsidisers in agriculture, the G-20 and the Cairns Group have submitted proposals to increase transparency in this sector. The proposals (both from June 2007) are also a response to the gridlock in agricultural negotiations because, in the absence of information about subsidies, members have been unsure about the degree of subsidy reductions to ask for. This is a typical example of asymmetric information in negotiations, one that can be mitigated only through a credible and neutral source of information.<sup>81</sup>

The Cairns Group proposal clearly articulated the existing challenges with notifications in agriculture: the notifications provisions of Article 18 of the Agreement on Agriculture are weak; members do not comply with the requirements; many notifications are overdue; there exists no process for dialogue and debate; and some developing countries have limited capacity to prepare and analyse notifications or assess compliance.<sup>82</sup> Meanwhile, the G-20 proposal outlined extensive ideas on not only improving the quality of notifications (stronger obligations, predictable schedules, specific and usable information), but also establishing the institutional framework for surveillance. The proposal called for a new Sub-Committee on Monitoring and Surveillance, an annual report and high-level debate to monitor progress, and periodic reviews of members'

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December, 2006), paras. 5-7. WTO, World Trade Organization, "Agenda Item 8 - Aid for Trade - Follow-Up to Report and Recommendations of the Task Force - Statement by the Director-General," *General Council*, no. JOB(06)/267 (20 December, 2006).

<sup>80</sup> WTO, World Trade Organization, "2008 Aid-for-Trade Roadmap,"

[http://www.wto.org/english/news\\_e/news08\\_e/a4t\\_feb08\\_e.htm](http://www.wto.org/english/news_e/news08_e/a4t_feb08_e.htm) (accessed 15 April, 2008).

<sup>81</sup> In a related development, the Hong Kong Ministerial Conference had requested the WTO Director-General to establish 'an appropriate follow-up and monitoring mechanism' to keep track of cotton-specific development assistance to poor countries; the mechanism would help to keep the Sub-Committee on Cotton fully informed. WTO, World Trade Organization, *Doha Work Programme Ministerial Declaration Adopted on 18 December 2005*, para. 12.

<sup>82</sup> WTO, World Trade Organization, "Cairns Group Proposal: Improving Monitoring and Surveillance," *Committee on Agriculture Special Session*, no. JOB(07)/88 (11 June, 2007), para. 2.

policies to assess ‘conformity with commitments’.<sup>83</sup> The mechanisms are still being debated under the draft modalities for agriculture negotiations.<sup>84</sup>

- *Transparency in Preferential Trade Agreements.* Alongside the RTA Transparency Mechanism, in December 2006 the General Council also requested the CTD to consider transparency in other preferential trade arrangements (PTAs), namely the Generalised System of Preferences (GSP). Although the GSP has been in place for several decades, the often-controversial negotiations on the Economic Partnership Agreements between the ACP countries and the EU have brought PTAs back into sharp focus. WTO members are interested both in the outcome of new arrangements for PTAs and in the impact they could be expected to have on the multilateral system.

In this regard Brazil and India submitted a non-paper in October 2007, arguing that there was a need for coherence in PTAs and the members should have the opportunity to questions specific aspects of current or future arrangements. They propose similar procedures for transparency and review as in the RTAs case. However, the Secretariat’s role would be kept to a minimum of organising the information for easy reference, and did ‘not imply any involvement of an analytical nature’.<sup>85</sup> The proposal is currently being more fully developed in conjunction with other major trading powers, so one cannot anticipate the final outcome. However, based on the experience with the RTA mechanism, we could expect a framework similar in nature.

- *Monitoring Mechanism on Special and Differential Treatment.* The CTD recommended a mechanism to monitor the implementation and effectiveness of SDT provisions favouring developing countries. The Africa Group (the originator of the proposal) believes that the Monitoring Mechanism would regularly evaluate the utilisation of SDT provisions, thereby highlighting challenges that countries face. More importantly, the mechanism would also serve as a framework for ‘initiating and considering recommendations that the CTD could make to Members on complying with obligations under special and differential treatment provisions, as well as best practice for utilization of the provisions.’<sup>86</sup> The proposal is still under negotiation but it shows that for issues of interest to them, developing countries expect monitoring mechanisms not only to disseminate information but also to offer recommendations that might promote compliance.

Some of these new proposals respond to the challenges that the TPRM has faced over the years. On the question of quality of information generated, the G-20 proposal for agricultural monitoring is explicit in demanding data that can be evaluated easily. Further, Secretariat reports (in the RTA mechanism) can rely on data from non-official sources, something that

<sup>83</sup> WTO, World Trade Organization, "Improving Monitoring and Surveillance Mechanisms: Contribution by the G-20," *Committee on Agriculture Special Session*, no. JOB(07)/97 (20 June, 2007), p. 8.

<sup>84</sup> WTO, World Trade Organization, "Revised Draft Modalities for Agriculture," *Committee on Agriculture Special Session*, no. TN/AG/W/4/Rev.1 (8 February, 2008), Annex M.

<sup>85</sup> WTO, World Trade Organization, "Transparency for Preferential Trade Arrangements - Non-Paper by Brazil and India," *Committee on Trade and Development*, no. JOB(07)/142 (1 October, 2007), p. 2.

<sup>86</sup> WTO, World Trade Organization, "Report to the General Council," *Committee on Trade and Development Special Session*, no. TN/CTD/3 (26 July, 2002), para. 7.

TPRs also do but is now an explicit provision for this mechanism.<sup>87</sup> Similarly, members are now more aggressive in proposing monitoring mechanisms that specify conformity with commitments.

In relation to better accessibility to information, there is growing reliance on electronic submissions and online databases. This has been the case with SPS-related transparency as well as in calls for monitoring of RTAs and PTAs.<sup>88</sup> Moreover, there is growing stress in getting information in advance of major policy developments. Both the G-20 proposal and the RTA decision call for notifications of 'intended changes' or 'early announcement' of RTAs. Such arrangements would be similar to TPRs analysing potentially disputable issues, although this time the transparency requirements would be more explicit.

Another innovation relates to better linkages between specific committee-based monitoring and the more general and wide-ranging trade policy reviews. For instance, the AFT task force recommended that assessments of AFT should be included in the TPRs. This is an important recommendation because delegates of some major developing countries (like South Africa) have called for closer scrutiny in TPRs of the extent to which rich members are fulfilling their obligations to poorer ones, in terms of access to markets, aid-for-trade and support for technical assistance and capacity building.

In order to facilitate more informed and substantive review meetings, the RTA mechanism ensures the distribution of factual reports eight weeks in advance (much earlier than is the case with the TPRs). Written questions and answers are also demanded sooner.<sup>89</sup> This again is a useful development, since many delegates (from developed and developing countries) have voiced the need to have the information prior to TPR meetings, so that they have time to prepare for more engaging discussions.

Finally, the proposals incorporate positive and negative incentives to encourage compliance with reporting, for instance demanding explanations for delays, using estimates if complete data are unavailable, provisions for challenging incomplete information, and publishing annual lists of non-compliant members.

### ***Building monitoring capacity at home***

As we have seen, developing countries are increasingly becoming *demandeurs* for better information and more credible monitoring in a range of WTO-related areas. Yet, the collective actions of members at the Geneva level represent a mixed record if the evidence from the TPRM is any indication of a general trend. Active transparency, as espoused by Lamy, would only work when members are able to analyse, evaluate and use the information that would be generated from existing and forthcoming transparency mechanisms. The

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<sup>87</sup> WTO, World Trade Organization, *Transparency Mechanism for Regional Trade Agreements: Decision of 14 December 2006*, para. 9.

<sup>88</sup> Martin Glass, the permanent representative of Hong Kong, China, mentioned the lack of access to electronic or online databases in some countries as the primary information hurdle that Hong Kong faces in securing new markets and in trade negotiations. Interview with Martin Glass, Geneva 28 February 2008.

<sup>89</sup> *ibid.*, para. 12.

challenges described above highlight the need for improved capacity for monitoring at the domestic level as well.

At its origins domestic transparency was considered an essential component of the TPRM. The reasons put forward are many: to oversee gradual changes in government policy; to ensure compatibility between trade policy and macroeconomic policies to ease adjustment costs; to monitor external pressure on governments to change policy course; and to ensure that individual sectors in the economy do not come to dominate the policymaking process.<sup>90</sup> As two scholars have recently put it, '[T]rade policy democracy begins at home, not in Geneva.'<sup>91</sup>

In the late 1980s, although some GATT members had supported an institutional basis for securing domestic transparency, there was little backing from other delegates.<sup>92</sup> Several remained sceptical, arguing that there was no need to supplement already existing national government procedures to evaluate the impact of trade policies. Others supported the principle, but were unwilling to endorse any proposal that imposed further commitments. Also, many developing countries suggested that domestic transparency was more needed for countries whose policies had the greater impact on the trading system – and that the cost of their policies for developing countries' export interests should also be highlighted. Thanks to such concerns, contracting parties modified the TPRM's remit to ensure that 'implementation of domestic transparency must be on a voluntary basis and take account of their own legal and political systems.'<sup>93</sup>

Times have changed since then. While debates on domestic transparency have not been renewed, there is growing acknowledgment of the need to boost domestic capacities to engage in trade monitoring. The earlier debates were on surveillance of domestic policies that could have adverse welfare impacts. Now, developing countries are also keen on monitoring developments elsewhere, even as they continue to rely on multilateral information systems.

In the course of this research, I interviewed the permanent representatives and senior officials of twenty-six WTO Member States, representing one-sixth of its total membership. Officials were asked a series of questions relating to: the information gaps they continued to face, the evolution of trade policymaking within their countries; their views on the design and functioning of the TPRM; the use of information generated through reviews; processes

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<sup>90</sup> Samuel Laird and Patrick Messerlin, "Institutional Reform for Trade Liberalization," *The World Economy* 13, no. 2 (1990), pp. 234-235.

<sup>91</sup> Robert Wolfe and Jesse Helmer, "Trade Policy Begins at Home: Information and Consultation in the Trade Policy Process" In *Process Matters: Sustainable Development and Domestic Trade Transparency*, eds. Mark Halle and Robert Wolfe (Winnipeg: International Institute for Sustainable Development, 2007), p. 1.

<sup>92</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 19 February 1990 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/15 (23 March, 1990), paras. 3-12. Also see, GATT, General Agreement on Tariffs and Trade, "Meeting of 2 April 1990 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/16 (9 May, 1990), paras. 3-14.

<sup>93</sup> GATT, General Agreement on Tariffs and Trade, "Meeting of 22-23 May 1990 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/17 (19 June, 1990), para. 2.

centring on inter-ministerial coordination and consultations with non-state actors; capacities for gathering commercial intelligence and engaging in monitoring activities; and ideas about reforming the TPRM. Here, I present a few insights from these discussions to shed light on what seems to have changed in developing countries' approach to monitoring and what kind of problems persist.

First, the nature of information barriers has changed since the end of the Uruguay Round. At that time many countries faced severe asymmetric information problems, in terms of not having a clear understanding of new issues on the trade agenda and thereby being unclear about their counterparts' as well as their own interests and preferences. Since then developing countries, at least the larger ones, have invested significant resources in seeking to build analytical capacity to understand the implications of rules. Further, the growth in RTAs and FTAs involving developing countries has also allowed them to develop expertise on a range of subjects, particularly in relation to their main trading partners.

At the same time, new information barriers have become more prominent. Almost all interviewees pointed to the challenge of notifications not being submitted on time. Ironically, a related problem is the capacity to absorb notifications and other information that are already available. Several delegates pointed out that neither they nor officials in the capital had the time to process the information in a sufficiently analytical way that would assist with negotiations. Finally, some areas in international trade simply have far less information. Interviewees repeatedly noted that monitoring flows of international services is notoriously difficult and it is impeding negotiations.

Delegates from LDCs and some African countries note all of the above but add specific problems of their own. Most important among them is the lack of reliable data within their own countries. This is due to: the underdevelopment of productive sectors that would have an interest in monitoring on particular issues; institutional capacity combined with institutional segmentation that acts as a hurdle against better access to data; bureaucratic barriers whereby questions do not get to the appropriate resource persons; and lack of information technology facilities to process and store data. Another problem is that the poorest countries have failed to see a clear link between the resources invested in monitoring processes and better access to markets or improved capacity at home. Although some efforts have been made to use TPRs as inputs into the Integrated Framework, the perception remains that despite the reviews there is no guarantee of appropriate technical assistance or capacity building. Initiatives like AFT monitoring can potentially address this concern, but we have to see how it functions in practice.

A second revealing insight is that although consultations between government officials and non-state actors (businesses, NGOs, research bodies) have increased, progress has been uneven. On one hand, almost all interviewees recognised increased consultations and engagement in recent years. Some countries have set up institutional procedures for soliciting inputs. For instance South Africa's National Economic Development and Labour Council (NEDLAC) serves as a forum for government, business, labour and community groups to engage in a 'social dialogue'. In Thailand the new 2007 constitution enjoins the

state to organise thorough ‘public consultation’ before making any economic development plan (Section 57) or concluding any treaty within international organisations (Section 190).

Transparency has also increased in some cases through the use of websites to disseminate information and to seek regular inputs from businesses. In China, various trade and industry associations can submit comments online on upcoming negotiations. Similarly, the Ministry of Commerce announces upcoming trade policy reviews several weeks in advance, so that parties interested in the review of a particular country can send in questions. Similarly, the website of the Hong Kong Trade and Industry Department is used to solicit comments from industry bodies. Websites are also used to disseminate information on TPRs of other countries, although this is less common.

On the other hand, several delegates complained that consultations with industry groups often fail to provide specific information and analysis that would be helpful in negotiations. Delegates argue that businesses tend to focus on short-term interests, or that they miss the ‘big picture’ in terms of negotiating priorities. The delegate of Chinese Taipei explained that often businesses try to resolve trade disputes with their suppliers or customers directly, which results in the government remaining ‘in the dark’. Moreover, only a few countries mentioned specific processes that are used to consult with non-state actors when other countries’ trade policy reviews are on the calendar. The big traders – the EC, Japan, and the United States – all initiate consultations with other agencies and their missions in the countries under review to invite questions. Countries like Mexico, Singapore, South Korea and Thailand also mentioned distributing the draft Secretariat reports to other agencies, but other countries only reported informal consultations. As one representative from Latin America put it, the multilateral system does not matter to most businesses, so there is also little interest in others’ TPRs.

Thirdly, some countries seem to be taking commercial intelligence more seriously. Most delegates mentioned commercial counsellors in their diplomatic missions as the officials responsible for monitoring developments in particular countries. However, some countries have also started relying on separate trade offices for further inputs, as the examples below show:

- The Korea Trade-Investment Promotion Agency (KOTRA) has offices around the world and the embassies contact these offices to solicit questions for upcoming reviews.
- Hong Kong’s Trade Development Council (TDC) is a statutory organisation with the responsibility to create and facilitate opportunities for international trade for Hong Kong. It has set up its own boards and committees to collect commercial intelligence.
- Chile has established Trade Promotion Offices in major markets, although their officers are not yet well trained to regularly monitor and collect intelligence.
- Similarly, Mexico relies, among other sources, on the network of offices belonging to ProMexico, another specialised government agency.
- Singapore’s Ministry of Trade and Industry gets inputs from the Economic Development Board and International Enterprise Singapore, both of which have agents posted in partner countries.
- Japan directly gets intelligence inputs from businesses, through the Nippon Keidanren (Japan Business Federation).

- Finally, China has set up a Division of Notifications and Trade Policy Reviews within the Ministry of Commerce, staffed with 6-7 persons. This number is much more than many other countries have in terms of staff dedicated to monitoring activities. Moreover, three WTO Consultation Centres have opened up in Beijing, Shanghai and Shenzhen, which provide direct service to firms while also giving information to the government from time to time.

Another trend related to commercial intelligence is the use of official publications to highlight trade barriers in various markets. This practice preceded the TPRM in major developed countries, for instance the USTR's National Trade Estimates on Foreign Trade Barriers, and the EU's Market Access Database. Other recent developments include:

- Japan's MITI has started publishing the 'Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA, BIT' since 2007. Until 2006 it used to publish a 'Report on the WTO Inconsistency of Trade Policies by Major Trading Partners'.
- South Korea's Ministry of Foreign Affairs and Trade publishes the Korea Trade Barriers Report.
- Chinese Taipei's Bureau of Foreign Trade also compiles an annual report on trade barriers.
- Chile's Department of Foreign Trade in the Ministry of Economy publishes the 'Catastro Nacional Sobre Barreras Externas al Comercio'.
- Argentina's National Commission for External Trade used to produce an report that focused on anti-dumping and subsidy investigations.

The above discussion points to growing efforts among major developing countries to both boost their domestic institutional and analytical capacities for monitoring as well as engage more actively at the multilateral level in active transparency. But this is a learning process, the benefits of which will only be known in time. Moreover, a majority of developing countries, not only LDCs but also many large ones, have not yet adopted new processes for monitoring and surveillance in international trade. For them the multilateral information system is still the prime source of periodic monitoring. Even as domestic transparency gains importance, the WTO will continue to have to think about making its surveillance processes more credible, timely and effective.

## **VI. Conclusion – Priorities for future debates**

Looking at GATT and WTO history, it becomes evident that several common threads run through all of the calls for improved surveillance. The first is a desire to bring discipline into the trade regime. Secondly, confidence in a rule-based system would only increase if all contracting parties were subject to periodic monitoring. Thirdly, a distinction was drawn between monitoring and enforcement, although it was also recognised that the latter depended on the former. Fourthly, all proposals involved some form of consultation with the party under review, in order to give it a chance to explain its policies. Surveillance was not an entirely independent activity of the international regime; rather it was a learning process.

But given the trends, most developing countries are failing to engage effectively with the process, either to get the information and analysis they seek, or promote compliance and evaluate regime rules. In light of the above discussion, there are four key priorities that future research and policy debate must centre on.

- How can the content of monitoring reports be improved?

The calls for more analytical research have implications for the mandate and the resources available to the Secretariat: the ability to use non-official sources of information and greater editorial independence. On the Secretariat side, there is a need for a new kind of coordinating mechanism to drawing on staff with regional and sector-specific expertise from across WTO divisions. There is also need for more quantitative evaluations of the regime's rules, with the WTO acting in collaboration with other international agencies that are undertaking similar research. Additionally, some delegations stress the need to understand the implications of relatively new members (China, Saudi Arabia) or those expected to join in future (Russia), whose policies have significant implications for the trade system. Further, processes would have to be developed that link monitoring activities in different committees with the over-arching TPRs, so that members can get more timely information from predictable and credible sources.

- What steps are necessary to strengthen the review process?

At the domestic level, member states have to think about drawing in business groups and NGOs in a wider domestic dialogue on trade policy. The TPR process could be combined with the establishment of national policy forums on trade policy. Some countries already have such mechanisms, so the model can be used more extensively. The review meetings in Geneva can benefit from procedural changes: external discussants to provide more neutral yet critical comments; ensuring review meetings do not clash with other meetings; and making high-level representation in meetings mandatory. In order to facilitate the participation of poor countries, the design of technical assistance might have to change: not just training sessions on an individual country's obligations, but a wider understanding of rules and flexibilities. The aim would be for representatives to understand the implications of rich countries' policies for their own interests. Similarly, capacity building activities at the regional, national and sub-national levels would also have to focus on boosting domestic monitoring institutions and processes.

- How do we ensure that there is adequate follow up after each review?

Member states can use the national policy forums to develop procedures that link TPRs more closely with the policymaking process. The long gaps between two reviews often result in forgotten policy lessons. Interim national-level policy dialogues (between two reviews) can help in taking stock of changes and improvements in policies. Some delegations have suggested submitting brief follow-up reports a year after the trade policy reviews, as a means of increasing transparency and faith in the review process.



The WTO, in turn, will have to think about: increasing the dissemination and visibility of the reports; and establishing more structured links with the Integrated Framework and technical assistance needs more generally. For aiding negotiations, the coordinators of coalitions should establish processes to outline the implications of the policies of their trade rivals. The aim would be to ensure that information from the TPRs feeds into negotiations and a structured process of demanding policy change.

- Finally, would the TPRM benefit from a re-think of its aim and objectives?

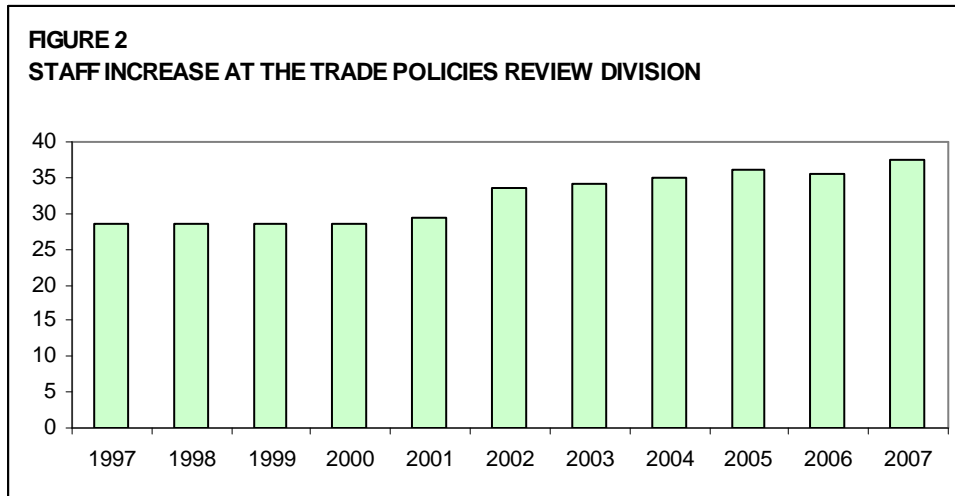
Many of these proposals cannot be implemented given the current mandate, organisational structure and resource allocation in the WTO. The reports and review meetings, as they are structured, cannot possibly be expected to generate the kind of information that the regime needs for negotiations, implementation and enforcement. Without new innovations in gathering and disseminating information, the TPRM might lose relevance exactly when the need for better information has become so evident. In 1989, at a time of uncertainty in a trade round, the TPRM was meant to increase the collective understanding of members' policies. In 2008, in the middle of another round, perhaps the WTO's information system warrants a greater development orientation, focusing on the needs of two-thirds of its membership.

Developing countries had the bitter experience of not understanding the implications of new rules negotiated during the Uruguay Round. But they accepted the TPRM expecting several benefits. The TPRM is not the only source of information for developing countries, certainly not the larger ones. Yet, it is the institutional representation of WTO monitoring with all classes of member states (developed, developing and LDCs) having a stake in its effective operation. The experience of the past decade shows that poor countries have found only limited value from the process. If transparency and the WTO's information system have to be taken seriously, there is need for a rethink of the mandate, the content of the reports, strengthening and deepening the substance of the review meetings, and finding ways to follow up on reviews and link them with the other functions of the trade regime.

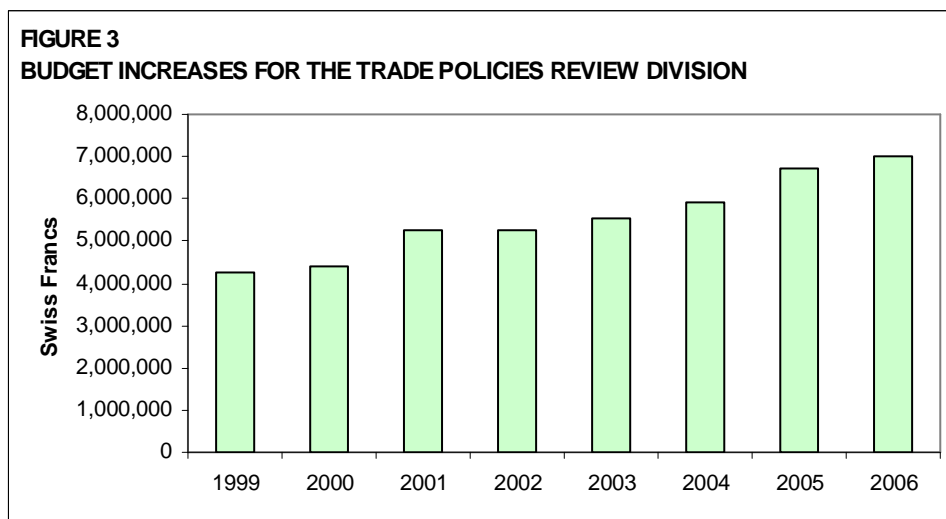
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**FIGURE 1 EVOLUTION OF SURVEILLANCE MECHANISMS IN THE MULTILATERAL TRADE REGIME**

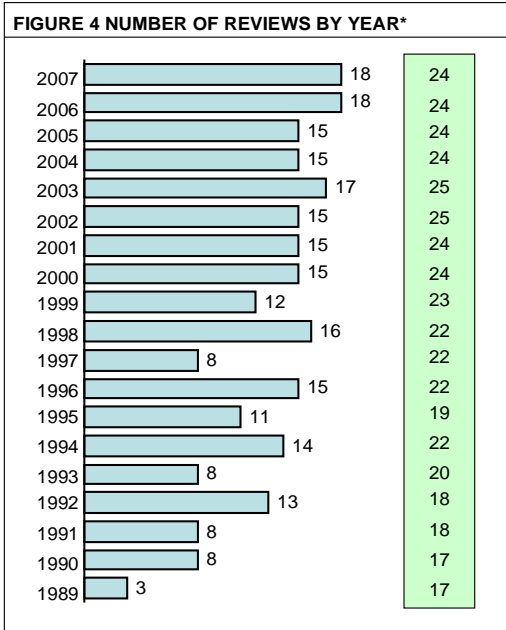
	1950s		1960s-70s		Post-Tokyo Round (1979-85)	Early Uruguay Round (1986-89)	GATT TPRM (1989-94)	WTO TPRM (1995 onwards)
<b>Type of information system</b>	Ad hoc	Issue-specific institutional reporting	Self-reporting; Other reporting	Institutional reporting	Institutional reporting	Ad hoc institutional reporting	Formal institutional reporting	Formal institutional reporting
<b>Originating mandate</b>	GATT Review Session	1958 Haberler Committee Report	Committee on BoP Restrictions; Committee on Textiles; Committees on MTN Codes	Committee on Trade & Development	1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance; Committee on Textiles; Committee on Trade & Development	1985 Eminent Persons Group; 1986 Punta del Este Ministerial Declaration	1989 Negotiating Group on Functioning of the GATT System	1994 Marrakech Agreement
<b>Scope</b>	QRs, schedules, organisational questions – extended to BoP consultations	Agriculture, including Common Agricultural Policy	BoP restrictions; textiles; MTN codes	Developed country trade barriers against developing countries; LDC-specific issues	General developments in the trading system; non-tariff barriers; adjustments under MFA; trade and development	Standstill & rollback commitments	Trade in goods; measures affecting trade system; all Contracting Parties	Goods, services, intellectual property; some analysis of fiscal, monetary & environmental policy; all Member States
<b>Frequency/Period covered</b>	1954-55	1959-62	Annual (biannual for developing countries)	From 1979, annually	Twice-yearly Council meetings from 1980; CTD consultations from 1982	Thrice a year from 1987	Periodic - Based on share of world trade	Periodic - Based on share of world trade
<b>Reporting responsibility</b>	Four working parties	Committee II	Notifications by Contracting Parties; Monitoring by individual parties		GATT Secretariat	Surveillance Body; notifications by Contracting Parties	GATT Secretariat & Contracting Party core budget financing	WTO Secretariat & Member State core budget financing
<b>Review authority</b>	GATT Council		Committee on BoP Restrictions; Textiles Surveillance Body	Sub-Committee on Protective Measures; Sub-Committee on Trade & LDCs	Special Council; Sub-Committee on Adjustment; Consultations with CTD	Trade Negotiations Committee	GATT Council	Trade Policy Review Body
<b>Number of country reviews</b>	N/A	40 plus EEC	N/A	N/A	N/A	N/A	54	190 (until 31 Dec 2007)



Source: WTO Secretariat

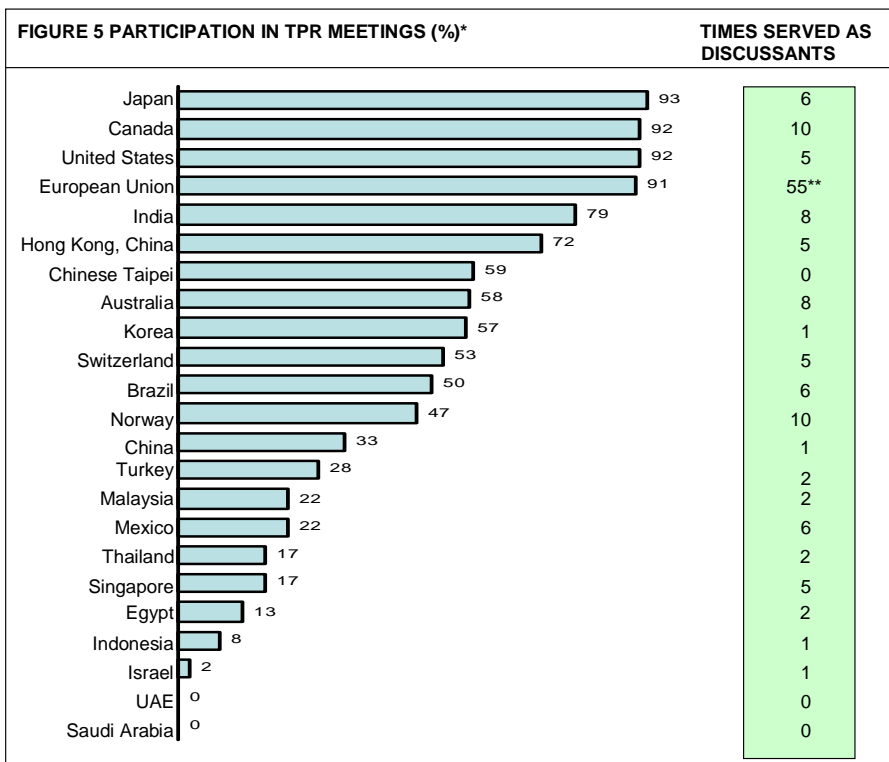


Source: WTO Secretariat



Number of reviews required by review cycle (assuming a six-year cycle for LDCs as well)

\* Until 31 December 2007



\* Participation implies asking questions or raising points during review meetings (expressed as percentage of 174 TPRs analysed since 1995, adjusted for year of accession to the WTO)

\*\* Includes discussants from the European Communities plus EU member countries

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