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# The WTO's Trade Policy Review Mechanism: How to Create Political Will for Liberalization?

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## ABSTRACT

THE ECONOMIC CRISIS has sparked fears about emerging protectionism and created wide interest in initiatives to monitor trade policies. The WTO regularly examines its members' trade policies – but its reports tend to be superficial and uncritical. How could they be improved to become a more powerful tool for trade liberalization? This paper argues that trade policy reviews (TPRs) should be resolutely aimed at shaping domestic politics. They should help domestic constituents to compare trade policies across time and countries. Furthermore, they should reveal the economy-wide costs of protectionism and identify winners and losers on a sectoral basis. Besides, the process of how TPRs are prepared, discussed, and disseminated should be improved. The drafting of the Secretariat's report should be more transparent and allow for greater stakeholder participation, the TPRs should be presented and debated in the country under review.



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## 1 INTRODUCTION<sup>1</sup>

GOVERNMENTS ARE VULNERABLE to backsliding on liberal policies in their dealing with the global financial and economic crisis. A replay of the tariff surges that exacerbated the Great Depression of the 30s will most likely be prevented. But evidence is mounting that governments are resorting to creeping protectionism as they did after the oil shocks of the 70s and whose pernicious effects lasted well into the 80s. Recent monitoring of trade policies shows a growing number of antidumping investigations, subsidy programs that favor domestic employment and lending, non-automatic licensing, discriminatory government procurement, and suspicious food safety measures.<sup>2</sup>

In this situation, the WTO's Trade Policy Review Mechanism (TPRM) assumes particular importance. It serves 'the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the multilateral trading system.'<sup>3</sup> This mandate sounds promising. The TPRM could take stock of trade distorting policies and reveal their costs, so that governments and their domestic constituents become more willing to embrace liberalization. However, little is known about the actual quality and effectiveness of the TPRM. The self-assessments of the Trade Policy Review Body offer much praise and no evidence, while the academic literature is largely descriptive and outdated.

Therefore, this paper undertakes an in-depth examination of the workings of the TPRM. This reveals striking weaknesses. TPRs are cumbersome to read and clogged with compendium-style information. They are analytically superficial and relentlessly uncritical. They differ in their coverage and approach one from another. Furthermore, the procedures for preparing and discussing TPRs lack efficiency and public participation. It is therefore unsurprising that TPRs are deemed to have no discernible effect on trade policies. Other trade policy assessment, for instance by the World Bank, are more rigorous and outspoken. Lagging behind other organizations in its core domain is an embarrassing situation for the WTO.

To give greater clout to the TPRM, the paper makes recommendations regarding its objectives, the reports, and the TPR process. Importantly, all recommendations could be realized within the existing mandate of the WTO agreement – and would indeed come much closer to its ambitious wording than current practice.

**Objective:** TPRs should be resolutely aimed at shaping domestic politics. They could do so by focusing the attention of domestic constituents and the media on their country's trade policies. They could also help domestic constituents to compare trade policies across countries and time as well as to better understand the trade and welfare effects involved. In this way, TPRs could convince readers of the benefits of liberal reform and serve as a reference in domestic policy debates.<sup>4</sup> An explicit commitment to this set of objectives would allow the TPRM to develop into a more coherent instrument.<sup>5</sup>

**Reports:** TPRs should follow a standardized analytical grid. This would make TPRs easier to read, facilitate comparison across time and countries, and assure that reports are complete. It would also secure consistency in the severity of criticism, making reports more acceptable to governments who care about their relative standing and treatment. Regarding their content, TPRs should rely much more strongly on existing analysis that shows the economy-wide costs of protectionism and identifies winners and losers on a sectoral basis. Besides, they should scrutinize

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not only trade policies but also policy-making processes. TPRs should compare actual processes to best practices and summarize available analysis on the quality of policy making.

**Process:** The process of how TPRs are prepared, discussed, and disseminated should be improved. The drafting of the Secretariat's report should be more transparent and allow for greater stakeholder participation. A further step in the attempt to transform TPRs from a diplomatic exercise in Geneva into an event in members' domestic politics should be to present and debate TPRs in the country under review. To realize these more ambitious objectives, the budget of the Trade Policy Review Division (TPRD) should be substantially increased.

Section 2 gives background information on the TPRM. Section 3 discusses which objectives the TPRM should pursue in the future. It looks at related sources on trade policy which TPRs should complement and at future trade policy challenges to which TPRs should respond. Section 4 develops suggestions for improving TPR reports, giving examples of the questions that could be asked on anti-dumping measures, agricultural policies, sanitary and phytosanitary regulation. Section 5 adds recommendations on the TPR process (frequency of reviews, management and resources, independence of the Secretariat, stakeholder participation, review meetings, dissemination/use of TPRs, TPRM appraisal). Section 6 assesses the political feasibility of TPRM reform. The concluding section summarizes the argument.

## 2 BACKGROUND ON THE TPRM

LET US START with some brief considerations of the history, process, content, and performance of the TPRM.

### 2.1 HISTORY

THE GRANDFATHER OF all transparency devices in the WTO is Article X of the GATT 1947. It prescribes that all laws, regulations, judicial decisions and administrative rulings of general application affecting trade 'shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.' Regrettably, states never acquired the habit of notifying the WTO of their trade restrictive policies. The 1979 Understanding on Notification, Consultation, Dispute Settlement, and Surveillance entrusted the Secretariat with submitting two reports per year on the state of the world trading system. However, these reports could not mend the lack of comprehensive data on countries' individual trade policies. Several influential study groups urged greater transparency in trade policies (Leutwiler Report 1985, Long Report 1989, 'Functioning of the GATT System' debate). This prepared the way for the provisional establishment of the TPRM in 1989, an early harvest of the Uruguay Round midterm review, which the 1995 Marrakesh Agreement made definitive and extended beyond goods. The four countries with the largest share of world trade are to be reviewed every 2 years, the next sixteen every 4 years, and the rest every 6 years. As of April 2009, 260 TPRs have been conducted, 16 of them in 2008.

### 2.2 PROCESS

THE TPR PROCESS can be divided into three steps.<sup>6</sup>

**Preparation of reports:** The Secretariat first sends one or two questionnaires to the country under review and collects information from various sources (the country's official web pages, reports by other international institutions, NGOs, academic work). Members of the TPRD of the Secretariat then travel to the country to discuss outstanding questions with the government and

other stakeholders. The Secretariat drafts a report and sends it to the country under review for verification. The final report, together with a policy statement from the country under review, is circulated to the member states at least five weeks before the review meeting. Member states are summoned to submit their written questions two weeks before the meeting. The Secretariat identifies the main points contained in the questions and makes them available one week before the meeting. Countries under review often give written responses to the questions they have received in due time before the meeting.

**Review meeting:** The Trade Policy Review Body (TPRB) is open to all members and elects a chairperson for one year, who opens and guides the meetings. The member under review and a discussant, chosen among the members and acting in a private capacity, receive each 15 minutes for their initial remarks. The statements from the floor, following the outline of main issues drawn by the chairperson, should not exceed seven minutes. The meeting takes two half-days, separated by a one-day break during which the country under review can prepare responses to new questions that have arisen during the first discussion.

**Dissemination:** The Secretariat's report and the policy statement from the country under review are released at the end of the first review meeting. The chairperson, assisted by the Secretariat, gives a press conference immediately after the second meeting. The minutes of the meeting are made available online. This is also done with the written questions and answers, with the country under review asked to provide responses to all questions that have not been answered during the meeting within one month of the meeting.

## 2.3 CONTENT

FOR MORE THAN a decade, the Secretariat's reports have been abiding by the same main structure. The summary observations are followed by four sections. First, the economic environment of the country under review is discussed, looking at output, trade, investment, employment, public finances, exchange rates, and related macroeconomic issues. Second, the trade policy regime is characterized by describing the institutional framework for trade policy making, trade policy objectives, preferential trade agreements, and nonreciprocal preference schemes, among others. Third, trade policies and practices are examined by measure. This includes measures directly affecting imports (customs procedures, rules of origin, tariffs, technical regulations etc.), measures directly affecting exports (documentation, restrictions, taxes, subsidies etc.), and other measures affecting production and trade (competition policy, government procurement, intellectual property rights, state-owned enterprises etc.). Fourth, trade policies are addressed by sector, typically with extensive coverage of agriculture and services where trade restrictive measures are frequent and complex.

## 2.4 PERFORMANCE

PARAGRAPH A OF Annex 3 of the WTO Agreement defines the mission of the TPRM:

The purpose of the Trade Policy Review Mechanism ("TPRM") is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the

multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.

The TPRB has worked out three appraisals of the TPRM.<sup>7</sup> The body finds that the mechanism is functioning effectively and achieving its mission, and it expresses its satisfaction with the structure, content, and quality of the Secretariat's reports. The most recent appraisal sees the need for highlighting more explicitly the significant trade policy changes made by member states since the last review. It also suggests making discussions during the review meetings more structured and interactive.

Media coverage indicates that TPRs have become less critical since the mechanism's initial phase in 89-91, which ended when all the great trading nations had been reviewed.<sup>8</sup> In line with this, media interest in TPRs has been steadily declining. The media repeatedly notes, in a side-remark, a lack of clear conclusions.<sup>9</sup>

The academic literature produced numerous evaluations of the TPRM and specific TPRs as long as the issue was new.<sup>10</sup> In recent years, this stream has dried up.<sup>11</sup> Studies consistently stress the importance of having a well-functioning TPRM. They mostly commend the work of the TPRD in the face of its limited resources, whereas they criticize a lack of analytical rigor and sometimes also a lack of normative appraisal of countries' trade policies.<sup>12</sup>

More outspoken criticism typically comes from observers in Australia and New Zealand. Carmichael (2005), former chairman of the Industries Assistance Commission, Australia's domestic transparency institution at the time, castigates the TPRM for having 'done nothing to ease the negative pressures governments face at home'. Stoeckel and Fisher (2008) also dismiss the TPRM in a comparative study of transparency institutions:

The WTO's Trade Policy Review Mechanism is the poorest of all transparency exercises of trade policy. Trade policy reviews contain no economic analysis at all — let alone economywide analysis. Since the effect on national interest from each country's trade policy is not evaluated, there is no indication of what policy changes would be in the national interest. Also, trade policy reviews may not be perceived as being fully independent. . . . Trade policy reviews conducted under the auspices of the WTO therefore have had no material effect on the quality of trade policies.

More generally, Carmichael (2005), Stoeckel and Fisher (2008) and The Tasman Transparency Group (2006) cast doubt on the ability of any international transparency mechanism to influence policies and heavily favor domestic transparency agencies. They argue that domestic institutions are closer and thus more relevant to domestic politics.

### **3 SELECTING THE OBJECTIVES OF THE TPRM**

IN SUM, THE TPRM has assumed a characteristic shape during its first 20 years of operation — but there is widespread disappointment with this shape if one looks beyond the formal WTO appraisals. Indeed, the very rationale of the TPRM has been cast into doubt compared to the potentially superior performance of domestic transparency institutions. Without denying the advantages of local ownership and close ties to policy actors and processes inherent in domestic institutions, a complementary WTO mechanism is justified for at least three reasons.

First, a WTO mechanism can guarantee that a review of a certain quality and coverage is undertaken with a certain frequency for all countries. The minimum level of transparency thus ensured is valuable as many countries will, for political reasons or a lack of resources, not institute sound transparency mechanisms domestically or at least not entrust them with regular reviews of all trade matters.

Second, an international mechanism can support domestic transparency institutions. It accustoms governments to tolerate reviews, stakeholders to contribute to the review process, and the media to use the results. Furthermore, international reviews can report on the quality of domestic transparency institutions, drawing attention to persistent shortcomings and acute governmental encroachments. Such reporting could include information on the mandate, resources, and independence of the domestic mechanisms; on the issues they have covered since the last international report; and on the integration of their results into policymaking.

Third, an international mechanism can serve not only as a backup and prop for domestic institutions but deliver its own, unique contribution. Namely, it facilitates country comparison through standardization. An international mechanism can ask the same questions for all countries, analyze the matter with consistent methods, and apply a similar standard of rigor in its conclusions. Information on where the individual country stands on an international scale is a powerful tool to mobilize stakeholders and influence policy debates.

One should therefore not abandon the TPRM but enhance its effectiveness. Such an effort has to start with defining the priority objectives of the TPRM. Remarkably, no official document defines and prioritizes the objectives of the TPRM in detail or identifies the channels through which the mechanism shall obtain its results. Taking documents from the TPRB and the academic literature as well as interviews as sources, several potential functions for the TPRM can be identified.<sup>13</sup>

**Facilitating negotiations:** TPRs may generate the information about countries' current trade policies and their compliance with past trade agreements that governments need in order to engage in trade negotiations. TPRs may also enhance the legitimacy of trade negotiations by reducing the informational disadvantage of small and developing countries (the TPRM has partly been an attempt to match the US that began in 1985 with its National Trade Estimates, a systematic stocktaking of trade barriers encountered by US businesses abroad).

**Focusing international attention:** The TPRM as an event concentrates the attention of all members on a country's trade policies. This may incline governments toward more liberal trade policies in order to reap praise and avoid criticism. The TPRM also provides a forum where member states can question dubious trade practices in detail. This external pressure can help to change specific trade restrictive measures.

**Influencing domestic politics:** A first potential benefit is that the government and domestic constituents in the country under review may learn about its own country's trade policies and their effects. This may lead to more liberal policies as TPR readers become aware of the condensed results of the dispersed processes of trade policy making, which involve many issues, measures, and governmental bodies and that stretch over long periods of time. Second, TPRs may strengthen liberal stakeholders in the country under review by providing them with new, better accessible, or more authoritative information. TPRs may thus serve as reference points in the domestic arena. Third, TPRs as events concentrate the attention of domestic constituents and the media on a country's trade policies. Fourth, TPRs in their entirety may demonstrate the liberal trend in trade policies and spread the knowledge of successful liberal reforms. They may thus convince governments and domestic constituents of the benefits of trade liberalization.

The policy-related benefits of TPRs are thus manifold and heterogeneous.<sup>14</sup> In the future, the main objectives of the TPRM should be to shape domestic politics. This mission for the TPRM results from an examination of related sources on trade policy that reveals where the TPRM can best assume the role in the ensemble of transparency mechanisms. Such a mission also responds best to the challenges of future trade policy making.

### 3.1 RELATED SOURCES ON TRADE POLICY

WHICH OF THE potential objectives should be privileged, so that TPRs add maximum value, depends on which other sources of trade policy information and analysis are available. The following list is neither exhaustive with regard to the providers of information nor concerning the ‘information products’ they offer. In particular, it does not delve into the universe of academic work and commercial intelligence, such as the Economist Intelligence Unit. The purpose is confined to characterizing the nature and quality of available information.

**WTO:** WTO agreements oblige member states to notify changes in trade policies and to give periodic summary notifications. This information can be easily accessed through the WTO document database. The WTO uses some of the information contained in the notifications to update specific databases, such as on trade volumes, tariffs, and regional trade agreements. It also publishes an annual profile of each member state that includes some key figures on trade policy (tariffs; anti-dumping measures, countervailing duties, and safeguards in place; services sectors with GATS commitments; dispute settlement system involvement; outstanding notifications). Moreover, member states can address difficulties they encounter with other countries’ trade policies in the specific working committees of the WTO. The minutes of these meetings are publicly accessible.

**Country reports:** Several organizations conduct regular country studies that exclusively or partly concern trade. The World Bank addresses trade issues in their ‘Country Economic Memoranda’. Besides, it produces further trade-related country and country group studies (document type ‘Foreign Trade, FDI, and Capital Flows Study’). They focus mostly on export strategies but also diagnose countries’ import policies. These studies cover only developing countries, they are not written on a regular basis, and they are selective in their treatment of trade issues. Just as the Country Economic Memoranda, they can be outspoken in their criticism – reaching beyond policies to domestic policy-making processes and institutions.

Most countries agree to publish the IMF’s annual ‘Article IV Consultation’, a very uncompromising analysis of a country’s macroeconomic developments and policies. While trade policies usually take a backseat, some strong criticism of protectionist measures can be found in these documents.

APEC conducts a ‘Report of the Individual Action Plan (IAP) Peer Review’ for its members. The reports are very similar to TPRs in their coverage. Worth mentioning are tables that show ‘Improvements Implemented Since Last IAP’, ‘Current Non-Tariff Measures Applied’, and ‘Further Improvements Planned’.

The United States Trade Representative (USTR) writes a ‘National Trade Estimate Report on Foreign Trade Barriers’ every year. This description of foreign trade policies is driven by the US priorities of the moment rather than the ambition to give a comprehensive and comparable picture. It selectively contains quantifications of trade effects to show the damage to US interests.

**Databases and indices:** A few databases stand out for their coverage of trade policies and their

analytical power. UNCTAD's Trains database lists non-trade barriers according to a detailed classification scheme. Country summary reports are offered for selected developing countries.

The Market Access Map is a joint CEPII, ITC, UNCTAD, and WTO project. It covers 185 importing countries and provides information on trade flows, tariffs (bound, MFN applied, preferential applied, tariff quotas), anti-dumping duties, and rules of origin down to the most detailed national tariff line level. It also permits aggregation of data across sectors and countries, country comparisons, and simulation of the trade effects of tariff cuts.

The World Trade Indicators collected by the World Bank carry the telling sub-title 'Benchmarking policy and performance'. They offer about 300 indicators for 210 countries, together with country rankings for each indicator.<sup>15</sup> Data can be accessed in different formats (country snapshots, country comparison through tables and maps, and longitudinal comparison) and users have great flexibility in designing their queries. The trade policy section includes

- all sorts of traditional tariff indices (different averages, shares of duty-free trade, tariff peaks, tariff overhangs, tariff escalation)
- trade restrictiveness indices (the uniform equivalent tariff that would have the same trade effect as the set of measures examined) for applied MFN and preferential tariffs, with or without non-tariff barriers
- most of the trade policy section of the WTO Trade Profiles
- GATS Commitment Indices (aggregating sector coverage and a rough measure of commitment quality) from the World Bank and the US International Trade Commission.

In addition, many indices exist that assess trade policies and the general conditions of doing business in a country. They include the Doing Business Report, the World Governance Indicators, and the Logistics Performance Index of the World Bank, the Global Competitiveness Report and the Global Enabling Trade Report of the World Economic Forum, the Fraser Institute Index of Economic Freedom, the Heritage Foundation Index of Economic Freedom, the Opacity Index of the Milken Institute, and the Corruption Perceptions Index of Transparency International.

**Government information:** Many countries are providing increasingly detailed and well-presented information about their trade-related policies. Among the drivers of the trend are, first, a general increase in government transparency; second, growing public interest in trade policies; and third, the ease of delivering information through the Internet.

The lead ministry on trade of larger/more developed countries typically offers information on trade flows, trade policy objectives, preferential tariff agreements, non-reciprocal preferential tariff schemes, and trade defense instruments, among others.<sup>16</sup> Additional information on subsidies and non-tariff barriers can be found on the web pages of other ministries.

A different kind of transparency comes from independent public review institutions where Australia's Productivity Commission takes pride of place.<sup>17</sup> In its annual 'Trade and Assistance Review', it gives a succinct overview of Australia's tariffs and subsidies, calculating net benefits and costs for numerous sectors.

In sum, one can note that since the inception of the TPRM in 1989, a revolution in the availability of trade policy information has taken place. The WTO is offering additional venues and formats for generating and distributing information; non-WTO country reports have been commenced or improved that deal partly or exclusively with trade; standardized data on trade policies has



been created and disseminated through online databases and reports, many of them aggregating many measures into comparative indices; member states have become much more transparent in their policies and measures; and finally, academic and think-tank research, as well as commercial intelligence, has multiplied. Nevertheless, there is still no authoritative and periodic review of individual countries' trade policy-making processes and trade policies trying to influence domestic politics. This is a gap the TPRM should fill.

By contrast, the availability of alternative sources of information lowers the importance of other potential objectives for the TPRM. Providing information for negotiations should not be a priority objective of the TPRM because countries generally have (to the extent that they genuinely care) more detailed information on their key trade concerns and their main trading partners than what can reasonably fit into a TPRM. On trading nations of lesser importance, for which information may be more difficult to obtain, TPRs tend to be outdated at the time of negotiations as these countries are on the six-year cycle.<sup>18</sup>

Focusing international attention should not be a key objective, either. Member states have sufficient possibilities to express their trade concerns - bilaterally, at WTO working committees, or in public. The states that are most dissatisfied with certain trade policy practices of a given trading partner are common knowledge. For the 'trade bureaucrats' community, TPRs are uninspiring rehearsals of well-known positions and complaints.<sup>19</sup> They are not an engaging debate where harmed trading partners discover shared concerns and where the country under review genuinely cares about winning praise and responding to criticism.

The opportunity for governments and domestic constituents to learn from foreign policy experiences through TPRs is also limited. For conveying the liberalization trend, summary studies that consider the entire membership as well as examining groups of countries are more effective (such as the World Bank's World Trade Indicators). For communicating success stories, studies are more appropriate that scrutinize the link between trade policies and outcomes; that focus on the sequencing of reform measures and transition management, including how to cope with adjustment pains; and that take the reform period as their timeframe.

### 3.2 TRADE POLICY CHALLENGES

WHICH FUNCTIONS THE TPRM should fulfill also depends on the trade policy challenges of the future. The most important trend is the move from border barriers clearly targeted at trade to behind-the-border regulatory barriers embedded in policies that pursue non-trade values. That is, from tariffs, quota, and non-automatic import licenses to obstacles such as technical standards, sanitary and phytosanitary standards, and barriers to trade in services.

These 'deep integration' issues have several characteristics in common. First, WTO agreements prescribe general disciplines but do not define forbidden measures in detail. One reason for this is that the number, technical complexity, and normative contestedness of the issues prevent specification during negotiations. Furthermore, measures, problems, and best practices evolve too quickly for a WTO agreement to keep abreast. Second, compliance is difficult to monitor because it cannot be inferred from a single figure, such as a tariff line, but results from a broad range of practices whose conformity with the general WTO disciplines is hard to assess.

Third, enforcement through the dispute settlement system is awkward. The implications of one ruling even for similar practices often cannot be derived with reasonable certainty. The number of trade-restrictive practices that could be pursued through the dispute settlement system is

enormous. Measures found to be in non-compliance may form part of a legislative package that is politically sensitive and cannot be easily re-opened. And WTO rulings may be perceived as sacrificing non-trade values on the shrine of liberal ideology, thus harming the WTO's public image.

If negotiation, monitoring, and enforcement of trade agreements on the issues that increasingly occupy the center stage of trade concerns is difficult, the challenge is to foster a domestic political environment conducive to good economic governance that is also internationally responsible.

Another background trend, related to the changing agenda of trade liberalization, is the politicization of trade. The 'club model' of multilateral cooperation that isolated the trade ministry from involvement by other ministries and the general public, thus immunizing agreements from disaggregating, has come to an end.<sup>20</sup> Since the Uruguay Round, trade has become increasingly contested at the domestic level.<sup>21</sup> The broader WTO agenda has been (1) reflected in a greater involvement of ministries and regulatory agencies beyond the trade, economic, finance, and foreign policy ministries that have traditionally reigned over these matters. Special interest groups and civil society organizations show (2) a growing interest in participating in the formation of a national negotiating position. At the same time, governments have become more accommodating towards private actors because they believe in the legitimacy and effectiveness of an inclusive trade policy-making approach. These two developments have led to the establishment of national councils (3) in which various ministries, regulatory agencies, special interest groups, civil society organizations, and academic institutions discuss trade policy. What these councils have in common is that they do not produce policies which are governmentally binding, but they create expectations that their recommendations should be respected. While public awareness of trade issues varies (4) across countries, issues, and time, discontent with liberal trade policies played a central role in some elections, such as in India and Mexico.

These changes in domestic trade policy making are largely perceived as leading to more protectionist stances. Some of the reasons behind more protectionist inclinations of newly arrived stakeholders are structural and cannot be changed through TPRs. For instance, parliamentarians have narrower constituencies, and thus more specific interests to protect certain industries, than the executive bodies. But protectionist views can also be traced back to lacking knowledge or erroneous beliefs about the likely effects of liberalization.<sup>22</sup> Convincing a broader audience of the benefits of free trade – e.g. through TPRs – is therefore increasingly important if further liberalization is to succeed.

Finally, it is important to see that most liberalization after the Second World War and up to the 1980s has been achieved in multilateral negotiations among developed countries. Since then, unilateral liberalization has picked up steam in eastern Asia and spread among developing countries around the globe.<sup>23</sup> The World Bank (2005) estimates that 65% of trade liberalization between 1983 and 2003 has been attained through unilateral reform, compared to 25% through WTO negotiations and 10% through preferential trade agreements. This unilateral reform drive is especially powerful in services, such as telecommunications and financial services, where governments deem that international competition is crucial to their countries' growth. If TPRs succeed in fostering a domestic environment that is supportive of open markets, this will yield not only additional multilateral but also unilateral liberalization.

#### 4. IMPROVING THE TPR REPORTS

WHAT SHOULD TPRs look like in order to influence domestic politics?<sup>24</sup> A first recommendation is that TPRs should follow a detailed analytical grid. Such standardization would have several advantages:

- With a clearer, sharper, and more consistent structure, TPRs would be easier to read and specific information could be more quickly retrieved.
- TPRs could be better compared across time and countries. Contextualization through comparison is a wish frequently expressed by TPR users.
- Applying a detailed grid could help to make reports more succinct.<sup>25</sup>
- It could make reports more complete and avoid unpleasant aspects being omitted.
- An analytical grid would secure greater consistency in the severity of criticism across TPRs. Using a more similar yardstick would thus make criticism more acceptable.<sup>26</sup>
- It could guide countries as to what information is expected from them over the long term (and countries might release such information, once routines for their collection have been created, on a regular basis, independently of TPRs).

The application of the analytical grid should be adapted to the country under review. The review should go into greater detail for large and developed countries. For these countries, the global interest in understanding and shaping their trade policies justifies a more substantial analytical effort. Their governments are better able to provide the necessary information and have lesser opportunity costs of assigning administrative resources to this task. In addition, more critical analysis from third parties, such as researchers and domestic transparency and auditing institutions, is available.

Besides this flexibility in response to countries' overall economic characteristics, the application of the analytical grid should also be responsive to countries' policies on each issue. For instance, questions about the policy-making process for antidumping measures could be dropped for countries whose antidumping measures remain below a certain threshold. Similarly, the quantitative description could be much reduced in such cases. By the same token, it makes little sense to prod into the details of policy making in agriculture if the country under review leaves the sector largely to the market.<sup>27</sup>

The flexibility to drop certain elements for which no change has occurred since the last TPR may be required to avoid excessive repetition. The reports could give short summaries of these elements and refer back to past TPRs.<sup>28</sup> But it should be noted that repetition is of much lesser concern if the target audience reaches beyond trade experts. The broader the public, the more it forgets between reviews. Repetition may even be desirable: Promoting change is not about sorting out things once, so that they can be looked up by those who care, but about repeating the message and rubbing it in until it is accepted.

##### 4.1 ELEMENTS OF THE ANALYTICAL GRID

SEVERAL ELEMENTS THAT should be included in the discussion of most or all trade policy measures and sectors are presented in table 1.

TABLE 1: STANDARDIZED TPR ELEMENTS

ELEMENT	FUNCTION
Qualitative description	provide non-experts with an overview of the main policies to facilitate understanding of the subsequent analysis, and give insight into the evolution of the system by highlighting policy changes and future regulatory intentions
Quantitative description	facilitate comparison of policies across time and countries through standardization and aggregation
Analysis of trade and welfare effects	offer an impartial and qualified review of the literature to give policymakers and domestic constituents a sense of domestic and international policy effects
Issues raised by trading partners	summarize discussions in working committees and dispute settlement activities in order to spread knowledge about the problems trading partners encounter, their arguments, and independent assessments by panels and the Appellate Body
Policy making processes	make key aspects of the policy-making process comparable across countries, examine them in the light of best practice benchmarks, and adduce existing analysis on the quality of the policy-making process and evidence of capture by special interest groups

The first element, qualitative description, should provide an overview of policies, policy changes, and future regulatory intentions. It should help the reader understand the content of the legislative framework and not turn into a rehearsal of legal acts. Footnotes should indicate not only the pertinent legal sources but also good summaries and discussions thereof.

The extent of the quantitative description will have to vary greatly from one issue to the other. Tariffs and subsidies lend themselves to quantification, while regulatory barriers are more difficult to aggregate. Nevertheless, it would be helpful to provide estimates of the frequency with which different types of regulatory barriers are used as well as of the trade flows thereby affected.

TPRs should draw heavily on existing analysis of trade and welfare effects. By offering an impartial and qualified review of the literature, TPRs can give policymakers and domestic constituents a sense of the extent to which independent experts agree in their evaluation of current policies and which gains could be reaped from reform. The analysis does not need to be limited to the economic realm: it is important to also address broader effects, for instance to trace how imported technology and services enable environmental protection and how trade in health services cuts health care costs while improving quality and choice. Mistaken beliefs about the harmful repercussions of trade on such values are ever more prominent obstacles to trade integration that should be addressed upfront.

Issues raised by trading partners in the WTO working committees and through the dispute settlement system should be systematically presented. Such an integrated presentation adds value above and beyond the long and overlapping laundry lists of complaints brought forward in the context of the TPR meeting. In addition, WTO rulings enjoy authority that simple complaints do not. At the same time, examination of countries' compliance record with WTO rulings through the TPRM enhances the 'compliance pull' of such rulings by increasing visibility of non- or insufficient compliance.

A final element of the analytical grid should aim at policy-making processes, especially for issues susceptible to capture by special interest groups. The grid should implicitly define best practice standards on key aspects of the policy-making process through the choice and wording of its

standardized questions. Where countries deviate from suggested best practices, they should give reasons. Existing analysis on the quality of the policy-making process should also be added.<sup>29</sup> Exercising pressure to enhance processes is most important in domains where regulatory barriers, once put in place, are difficult to tackle through quantitative description and analysis. Sanitary and phytosanitary regulation is a good example for such an area where ex-post oversight is hard to implement and the preventive approach through sound policy-making processes thus essential.<sup>30</sup>

## 4.2 EXAMPLES OF THE ANALYTICAL GRID

IN THE FOLLOWING, examples for the kind of questions that could be raised in the analytical grid are given. The focus is on policy-making processes as this element has received scant attention in traditional TPRs.

### *Antidumping (AD)*

- How independent are the different stages of decision-making on antidumping measures from political influence?
- How transparent is the decision-making on AD measures? To what extent are the data that do not contain confidential business information and the models used to calculate dumping margins, damage to domestic industries, and causality between dumping and damage publicly available?
- What are the minimum thresholds for initiating AD investigations, such as minimal shares of domestic producers supporting or not opposing investigations or minimal domestic market shares of dumped products?
- Is there a test whether AD measures are necessary to preserve competition, that is, whether dumping can be expected to lastingly and significantly diminish competition if only domestic competition policies are applied, taking competition through new market entrants and substitute products into account?
- Is there a test of the welfare costs of AD measures? What importance does it attach to consumer interests? What kind of quantitative assessment does it include?
- Is there an automatic review of AD measures? When/how is it triggered? Does it presume maintenance or termination of AD measures as its default option?

### *Agriculture*

- Are the general objectives of agricultural policies and the specific objectives of each policy program defined in concrete, wherever possible measurable terms?
- Is the efficiency of policy programs for attaining their stated objectives systematically evaluated and a cost-benefit analysis conducted before passing them into law? Are the results of such analyses published?
- Is governmental information about the country's farm structure, including farm income, made public? Specifically, what information is not made public and why?
- Is governmental information about subsidy programs (their effects and recipients) made public? Specifically, what information is not made public and why?
- Are income support programs separated from other programs aimed at promoting

public goods? Which programs mix income support and public good promotion and why?

- To what extent are programs aimed at promoting public goods targeted? This includes the use of market-based mechanisms for allocating subsidies, such as auctions for environmental stewardship contracts; the use of outcome oriented compensation; and negotiation of individual contracts with farmers based on transparent selection criteria and compensation schemes.
- Are efficient monitoring and sanctioning systems in place to prevent farmers from shirking on their obligations and reaping unwarranted subsidies?

### *Sanitary and phytosanitary regulation*

- Are risk assessment (the scientific evaluation of hazards and of the exposure of different population subgroups to these hazards) and risk management (the political decision on appropriate prevention and control measures) clearly separated?
- To what extent are risk assessment principles (e.g. when data is sufficient to make inferences and when default assumptions are to be preferred, which safety factors to take in the face of uncertainty, and which weight to give to different kinds of evidence) documented in a risk assessment policy?
- Do risk assessment reports explain which choices risk assessors have made (which data, which assumptions/inferences/models, and which studies they used; which importance they attached to different pieces of evidence, to different health threats, and to population subgroups), for which reasons these choices were made, and which degree of uncertainty is attached to the data and the interpretative choices?
- Are draft risk assessments made available for public commenting, and is a peer review commissioned in important cases?
- Which procedures are in place in order to take into account negative trade effects when determining the appropriate level of sanitary or phytosanitary protection and in order to select the least trade-restrictive measures?
- Which procedures are in place in order to attain coherent levels of sanitary or phytosanitary protection across SPS measures?

## 4.3 FURTHER ELEMENTS

SOME ELEMENTS THAT are not (sufficiently) treated in traditional TPRs and that do not fit into the proposed analytical grid could be added or extended.

**Indices:** The first part of a TPR should give an overview of trade-related indices (see section 3 for the wide set of indicators from which the WTO can pick). Their advantages are that they are highly comparable across time and countries, and that they embody a type of normative assessment through the choice and definition of factors and their aggregation that can, for resource constraints and political reasons, not be conducted by the Secretariat. While some indices are sufficiently specific to be allocated to a trade measure, most cut across measures, so that a joint presentation of all indices appears advisable.

**Domestic transparency mechanisms:** TPRs should enquire into the existence and nature of domestic transparency mechanisms that evaluate trade-related policies. This should include

information on their mandate, resources, and independence; on the trade-related issues they have covered since the last TPR; and on the integration of their results into policy making. The TPRM must not be seen as an alternative to but as a way to strengthen the standing of domestic transparency mechanisms.<sup>31</sup>

**Notifications:** Even developed countries fail to reliably adhere to the obligation to timely notify trade policy changes and to periodically submit summary notifications to the WTO. One brief section should therefore evaluate the completeness and timeliness of notifications, and countries should be asked to give explanations for shortcomings. In this way, the TPRM provides not only aggregated description and analysis drawing on existing data but reinforces the continuous bottom-up generation of trade policy information.

**Focus topics:** While a central recommendation of this paper is to enhance standardization of TPRs, it would also be useful to combine this with additional flexibility by dedicating the last chapter of the TPR to one or a few focus topics. These would be topics where the country's policies are particularly trade restrictive, where policies have become or run the risk of becoming more protectionist, or where substantial changes have created the need for a thorough stocktaking. For the 2009 TPR of the EU, for instance, this could have been agriculture, a notoriously sensitive issue, and technical regulation where the EU has notably introduced far-reaching legislation on chemicals (REACH). Such focus topics can also address trade from a non-economic angle where concerns over conflict between trade integration and sustainability objectives emerge as impediments to reform.

## 5. IMPROVING THE TPR PROCESS

UP TO THIS point, the recommendations have concerned the structure and content of the Secretariat report. What shall be reconsidered now is the broader picture: how and how often TPRs are conducted, how reports are discussed and disseminated, and how the TPRM itself should be reviewed.

### 5.1 FREQUENCY

THE CURRENT DIVISION into 2-, 4-, and 6-year cycles is not useful. A 6-year gap between two reviews is insufficient to establish a sense of continuity (reviews are seen as one-time events with which one has to grapple and can forget about afterwards). It would be preferable to review all countries at least every four years. Some argue that a full-blown review every two years comes too often, leaving not enough time for changes worth reporting. While this is certainly true under the current format, a 2-year cycle may be suitable if the objective is to shape domestic discourse (including through repetition of key messages and events sufficiently frequently to be on people's minds).

### 5.2 MANAGEMENT AND RESOURCES

TO OBTAIN AN accurate picture of the managerial challenge of conducting improved TPRs, one has to note that the WTO can build strongly on pre-existing information. This means both sources from within the WTO (notifications, working committees, dispute settlement system) and from outside the WTO (information which the Secretariat could not collect itself because of resource constraints or political limitations where analysis requires contested methodological choices or value judgments).

Furthermore, the WTO could more actively disseminate the announcement of which countries are soon to be reviewed. The analytical grid would serve as a guideline on the information needed. It could inform academics about the best available information on a country and create incentives to fill knowledge gaps with the prospect of being quoted in future TPRs.

For small developing countries and least developed countries a simplified analytical grid could be established. This would have the twofold advantage of not making those countries look bad for not providing all the information required and of relieving the TPRD.

Nevertheless, collecting the additional information while also improving presentation will require significant additional resources. Not all additional employees would have to work for the TPRD on a permanent basis. More of the work could be done within the WTO's specialized departments and then be 'assembled' by the TPRD. For instance, experts in agriculture could review agricultural policies for all countries under review. This would improve the coherence in treatment of each measure and sector across countries. It would, in addition, increase quality and efficiency through rationalization. This will become crucial if TPRs go deeper into analyzing policy-making processes and trade and welfare effects.

But the WTO should not go to the other extreme and outsource the work on TPRs, either. First, coherence across TPRs is key to producing meaningful, comparable results. Second, countries will accept criticism only if they feel that the same yardstick is applied to all of them. The consistent quality needed can best be assured through in-house production. Third, outsourcing makes much less sense if TPRs are written by different experts and integrated by the TPRD. The multiplicity of managerial interfaces speaks in favor of conducting the work within the boundaries of one organization – possibly in cooperation with a local research institute.

### 5.3 INDEPENDENCE

HOW CAN THE independence of the Secretariat be ensured? How can it be immunized against members' attempts to water down the Secretariat's draft report before publication or to subsequently retaliate with diplomatic and public outrage? The most effective shield will be respect for the TPRM's performance and the conviction of its systemic utility. In this regard, the status of the Appellate Body can serve as a model.

On a more practical level, experienced researchers could be invited for instance for two-year terms, similar to the practice of the World Bank or the Australian Productivity Commission. Having more researchers working at the WTO that are not acquainted with the 'member-driven' culture of the Secretariat could help to sharpen TPRs in everyday practice.<sup>32</sup> Furthermore, two measures discussed below would also have beneficial effects for independence. Regular independent reviews of the TPRs could shed light on the actual working of the TPRD and highlight undue political influence. And elaborating TPRs under greater public scrutiny and with stronger stakeholder participation would exercise pressure on the Secretariat to take up critical contributions in their report and limit countries' ability to purge the Secretariat's drafts before publication.

### 5.4 STAKEHOLDER PARTICIPATION

CURRENTLY, THE SECRETARIAT delegation visiting the country under review meets with selected stakeholders to obtain input for its report. Only the final TPRs, but neither stakeholders' contributions nor draft reports, are made public. In the future, the process of elaborating TPRs should



become more open. Everybody should have the right to submit contributions. All contributions that fulfill minimal requirements of pertinence and quality, the Secretariat's draft report, and the reviewed country's response to the draft report (signaling factual mistakes but also attempting to soften criticism) should be published. Such a transparent process would not only strengthen the Secretariat's independence vis-à-vis the reviewed country but it would also spur domestic interest in the TPRM and instill a sense of co-ownership.<sup>33</sup>

## 5.5 REVIEW MEETINGS

THE CURRENT FORMAT of review meetings is unattractive. Most questions have already been discussed bilaterally or in the working committees. The questions are redundant across countries intervening in the meeting and these questions repeat over the years for countries frequently under review. Many questions are driven less by informational needs than by the tactical intent to get complaints 'on the books' and build up one's negotiating positions in the Doha Round.

Answers tend to be defensive and no genuine deliberation takes place. Rather, the meeting reproduces the written answers and questions (which are most boring and excessively numerous – the US, for instance, received more than 800 questions for its 2008 review, the EU almost twice as much in 2009). The discussants tend to deliver yet another summary of the TPR instead of critically tackling the reviewed country's trading practices (and the quality of its responses to the written questions).

Unsurprisingly therefore participation is weak except for the most important trading nations that attract much attention and participate in most other countries' review meetings. A press conference is organized by the WTO after the second meeting (though this has been discontinued for lesser trading nations due to poor media interest). But the conference does not produce any news and most newspapers publish their article already after the first meeting when the reports are released.

It would be much more coherent with the proposed objective that the TPRM should shape domestic policy making if review meetings were made an attractive event for policymakers, the trade community, and the media. An apparent point to start with is that holding the meetings of a transparency mechanism behind closed doors sends an awkward signal. Irrespective of actual public interest, TPR meetings should be accessible, at least through video streamlining.

The first review meeting should take place in the capital of the country under review.<sup>34</sup> The review meetings should start with a long presentation by a member of the TPRD. This should be followed by a brief response of a high-ranking representative of the country under review. Subsequently, several discussion panels should focus on specific aspects of the report. They should be mainly composed of national and international economists (known to speak jargon-free language). One panel could involve representatives from business federations and other non-governmental organizations.

A second meeting could be organized in Geneva for the members. The advantage of this sequence is that the first meeting attracts public attention (like the première at the Opera) when the objective is to involve a maximum of stakeholders and attract the media spotlight. The lack of public interest in the second meeting is conducive to a more serene discussion among member representatives that can dispense with posturing and finger-pointing. Which form this second meeting will ideally take remains to be seen. The better the specialized WTO committee's function, the less complaints-driven discussions for each individual country will be needed. Something that could be envisaged is discussions for small groups of similar countries.

## 5.6 DISSEMINATION/USE OF TPRS

CHANGING TPRS AND review meetings according to the recommendations would already make a great difference for the dissemination of the results. If TPRS are well-written and well-presented, and contain information that is directly critical or can be easily used for criticizing policies, people will read it, the media will draw on it, and public discourse will refer to it.

In order to further facilitate dissemination, a summary brochure with an appealing layout could be written that reports especially on improvements since the last review and remaining weaknesses. Reports could be written by the Secretariat that compare overall trade policies among a small set of similar countries or that compare specific fields of trade policy across many or all members. And all information could be fed into an online database that can be searched by country and piece of information (e.g. to compare average durations of AD measures across EU, US, India, and China, or to compare the responses of the four countries as to how they separate income support programs for farmers from other agricultural subsidies aimed at promoting public goods).

## 5.7 TPRM APPRAISAL

THE SELF-EVALUATION BY the TPRB has proven ineffective. Delegates do not take the time to seriously examine the workings of the system and to think about alternatives. Also, if they know that it will be periodically their turn to defend their countries' trade policies, they are hesitant to make TPRS more stringent. It seems more appropriate to convene an outside advisory body of independent experts to assess the substance, methodology, and presentation of TPRS.<sup>35</sup> This body could realize a fully fledged evaluation every three years.

## 6. POLITICAL FEASIBILITY OF REFORM

REFORMING THE TPRM along those lines appears acceptable if one believes that the WTO is about helping governments to implement rational policies, which are at the same time in the interest of their people and their trading partners, and not to succumb to special interest groups and misguided beliefs about the advantages of protectionism and state interventionism. In this case, the TPRM would play a central role in the WTO architecture, requiring member states to tolerate criticism and to grant the Secretariat significant autonomy and resources to live up to the task. But this runs afoul of the traditional view of the WTO as a forum for negotiations and an enforcement mechanism, with the TPRM being an auxiliary to provide information for bargaining and compliance monitoring.

What the 'right' mission for the WTO is partly depends on factors beyond the scope of this paper, linked notably to national sovereignty and democratic legitimacy. Resistance will be particularly strong once TPRS scrutinize domestic policy-making processes.<sup>36</sup> Nonetheless, some strong points in favor of not limiting the TPRM out of concern over such broader political considerations can be made.

Since the inception of the TPRM, governments have become much more used to being entangled in a net of international, transnational, and domestic institutions that monitor, evaluate, and advise on policies. Most notably, the global economic crisis will result in a far-reaching expansion of international cooperation on financial regulation and supervision. The long-standing culture of the WTO as a member-driven organization with a weak Secretariat is not an inevitable aspect of an international system grounded in national sovereignty but a relic in contradiction with the groundswell of global governance. States have delegated much more authority to the secretariats of other international organizations to review their policies, indicating that reticence in the WTO is more of an idiosyncratic than a principled concern.

A look at the Breton Woods institutions is revealing. The World Bank's 2008 Country Economic Memorandum on Turkey tackles trade policies without hesitation:

Non-tariff barriers that may hamper efficiency gains are still present in an otherwise largely open trade regime. Despite progress in aligning with the EU *acquis*, import customs clearance is still relatively slow in Turkey. Moreover, Turkey has remained a fairly frequent user of anti-dumping measures since the tariff regime was liberalized in 1996 (World Bank, 2006 CEM). Such measures protect inefficient domestic industries while increasing the cost of inputs for firms that use the goods that the measures are targeting. State aid is also an issue as it disrupts a level playing field and usually is in favor of uncompetitive firms.

So much for Turkey, one might warn, but the world's great powers would not tolerate such assertiveness. Well, what about the US, powerful by all means, fond of its sovereignty, and harsh when it comes to disciplining international organizations? In times of the financial crisis, when the US government is least likely to tolerate outsiders telling it how to run its business, the 2008 IMF Article IV Consultation observes: 'While the focus on the balanced federal budget by 2013 is encouraging, significant medium-term pressures are being obscured by unrealistic budget plans ... little progress has been made in Congress on reforming unsustainable pension and health entitlement programs.' And on the trade front, the report criticizes: 'Proliferation of US preferential trade agreements could undermine the multilateral fabric of world trades unless the agreements include open-access clauses and simple rules of origin.'

Moreover, the potential infringement on sovereignty through an enhanced TPRM has to be weighed against the sovereignty costs of other WTO reform measures. Alternative reform options under debate include establishing a formal steering committee where selected states prepare agreements before presenting them to the entire membership, introducing some form of majority voting, strengthening the role of the Director General as a broker in negotiations, and admitting actors other than representatives of member states' governments into WTO decision-making. These are not all direct alternatives, they do not work at the same levels and through the same channels, but all of these measures are considered by some as means to improve the effectiveness of the WTO and promote trade liberalization. Among these options, it appears that reforming the TPRM is a comparably 'soft' approach that respects national sovereignty. After all, it does not force countries to do anything; it just confronts them with an honest picture of their trade policies.

The emerging practice of global governance and the sovereignty costs of alternative reform measures are structural long-term factors weighing in favor of the proposed domestic-policy oriented TPR reforms. What about the current political climate? Several aspects deserve consideration:

- The 5-yearly self-appraisal by the Trade Policy Review Body did not produce strong conclusions.<sup>37</sup> But it showed that major players (with the EU and Japan in the first place) promote changes to give the TPRM greater bite.
- The blockade of the Doha Round is sufficiently solid to free up political attention and human resources. Governments can now look beyond negotiating positions to systemic issues. The WTO Ministerial Meeting in November 2009 is dedicated to systemic issues in the world trading system. India has already submitted an interesting proposal to strengthen the WTO's transparency function.<sup>38</sup>
- The financial and economic crisis created momentum for fundamental re-thinking and reform of international institutions. In particular, it sparked concerns about insufficient monitoring of trade policies.

- Pascal Lamy, the WTO's Director General, and the Secretariat have been successfully pushing transparency mechanisms as a complement to negotiations and dispute settlement. Most notably, they introduced a new review mechanism of preferential trade agreements,<sup>39</sup> and they started reporting to the Trade Policy Review Body on recent trade developments associated with the financial crisis.<sup>40</sup> In April 2009, Richard Eglin assumed office as new director of the TPRD. He brings with him a reputation as an energetic doer and is set to drastically improve the TPRM.

Structural factors and current trends are thus both playing into the hands of sharpening the TPRM. If governments nevertheless fail to undertake serious reform, civil society could (and should) assume responsibility. The leading world economy think tanks or university departments of the economically important countries could create a network to conduct trade policy reviews themselves.<sup>41</sup> Such a coordinated approach would offer several advantages. First, a standard format could be developed that would facilitate cross-country comparison. Second, the network could assure the quality and thus the legitimacy of the reviews by selecting the most competent research units and by exercising peer review. Third, a coordinated undertaking would signal the longevity of the review project and attract attention. The perspective that enhanced transparency of trade policies will otherwise be brought about by civil society may incline governments to accept reform of the international TPRM.

Some proposals may still be unacceptable at a first reform step. But it is important to see the dynamics of reform: Just as greater political attention and support under current circumstances can facilitate 'technical' improvements of the mechanism, a more effective TPRM will attract greater attention and support over time. Much of the resistance against the TPRM is not principled insistence on sovereignty but bad administrative habits and laziness. This can gradually be overcome if the higher administrative hierarchies and political decision-makers engage more with the TPRM.

It should also be noted that enhanced transparency could be pioneered by a coalition-of-the-willing, with a limited number of members accepting to be reviewed according to stricter standards. This would facilitate a gradual spread of enhanced TPRs, driven by international herd behavior and peer pressure. Also, if liberal governments accepted enhanced TPRs, their successors would have difficulty in reversing these WTO commitments. Such a gradual process sits well with the idea that international mechanisms for transparency and good governance serve countries' own interests even more than those of their trading partners. Countries can do without the old mantra of concession trading and reciprocity.

## 7. CONCLUSION

WHEN THE TPRM was inaugurated 20 years ago, some observers saw in its first fledgling steps the future strides that would transform trade politics, but the mechanism did not grow strong and bold. It remained neglected, deficient in resources and political backing. Political attention was directed at it only to bully it back into its corner if it stuck out its nose. As a result, the Secretariat reports are superficial, tame, and convoluted, and they are discussed in closed-door, boringly repetitive review meetings driven by individual complaints.

Today more than ever, the world trading system needs a powerful transparency mechanism that creates the political will for liberalization. The new regulatory, behind-the-border agenda for trade liberalization – on issues like services, investment, competition policy, or technical standards – cannot be attained through negotiations among bureaucrats isolated from public opinion.

It depends on broad public support for unilateral reform and multilateral disciplines.

Therefore, the TPRM should be redesigned from scratch. It should follow a standardized analytical grid that improves readability, allows easy comparison across time and countries, and asks all countries of similar levels of development the same tough questions. Using studies from scientifically reputable sources, it should rigorously analyze trade and welfare effects – including non-economic repercussions on broader sustainability objectives. It should also inspect policy-making processes, applying best practice benchmarks and again relying on pre-existing in-depth studies. To improve the quality of its reports, the Secretariat should receive additional resources and independence. The process of writing reports should become more transparent and participatory. Last but not least, the discussion and dissemination of the reports should be geared up and turned into an interesting public event.

The window of opportunity is wide open. The deadlock of the Doha Round lends urgency to the institutional reform of the WTO and frees up the necessary human and political resources. The financial and economic crisis has further added to the perception that the architecture of global economic governance deserves refurbishing, and that transparency and analytical monitoring are essential for stable prosperity in an interdependent world. The WTO Secretariat has recently expanded its role in ensuring transparency – through close-up surveillance of emerging protectionism and databases on preferential trade agreements and sanitary and phytosanitary measures – and it is determined to overhaul the TPRM. Key members have signaled their willingness to join in. It is thus well possible that the TPRM will see more change in the next two years than it has seen in its first two decades.

## ANNEX 1

THE POLICY-RELATED BENEFITS of TPRs are thus manifold and heterogeneous.

- TPRs may affect trade policies through multilateral and unilateral liberalization.
- They change governments' trade policy preferences through different channels (governments' beliefs about suitable policies, international peer pressure, and domestic politics).
- Their effect may be in the information they deliver as well as in the attention the TPR as an event focalizes on one country's trade policies.
- They have an effect on the country under review but also beyond by communicating international trends and experiences.
- They may influence specific measures as well as the overall direction of trade policies.
- They may further compliance with WTO norms or improve trade related policies independently of legal obligations.
- TPRs can change substantive policies or related procedures, such as policy-making processes, domestic review institutions, and WTO notifications.

In addition, TPRs may create positive spillover effects independently of whether they change trade policies. For instance, TPRs of developing countries may serve as a diagnostic for aid for trade and technical assistance in trade policy making. Businesses may use TPRs for their trade and investment decisions, and academics may use it in their research.

## ANNEX 2

SEVERAL CRITERIA CAN be developed to select the issues that should be included and the analysis that should be provided on each issue:

- **Trade relevance:** Information should have a clear linkage to trade.
- **Policy impact:** Information should be preferred that has the potential of influencing policies, in particular by making the costs of trade restrictive measures visible and by enabling comparison across time and countries.
- **Change:** Information should be preferred where significant developments frequently occur between two reports.
- **Differentiation:** Information should be preferred that differs across countries in a meaningful way.
- **Quantification:** Information should be preferred that can be quantified (thus enabling comparison across time and countries).
- **Relative availability and quality:** Information should be preferred where TPRs offer information that cannot be easily collected from other sources of at least equal quality.

TPRs have to fulfill some further requirements to be user-friendly. This is crucial if TPRs are to reach political decision-makers or opinion leaders that have limited knowledge of trade issues and are unwilling to invest time and effort to engage with an uninspiring, unnecessarily cumbersome compendium.

- **Succinctness:** Eliminating information that does not add significant value makes the report more attractive and accessible to readers and directs the attention to the essential elements. This also eases the burden on the Secretariat and permits more analytic work on the remaining issues.
- **Structure:** The structure of TPRs should be detailed, explicit, coherent within a report, and coherent across reports.
- **Standardization:** A large share of information should be provided in all TPRs, so that readers know what to expect and are able to compare across time and countries.

Much TPR content cannot be justified according to the criteria proposed above. Section 1 of the TPRs on the economic environment should be largely dropped and several parts of Section 2 on the policy regime also be eliminated. Many of these elements lack trade relevance and the potential for influencing policy. Many elements remain unchanged over long time periods and read quite similarly across TPRs of different countries. Especially on the economic environment, better information is easily available from other sources. The annex of this paper takes the 2007 TPR of the EU as an example to show the potential for cuts.

Those sections that deserve to be kept need serious improvement. The quantitative description of trade policies is often superficial. The TPR give snapshots without reference points that would help to assess policy evolution over time and make comparisons across countries. Analysis on the trade and welfare effects is mostly absent. In addition, description and analysis are selective, with very different levels of detail across issues and countries, apparently driven by the information the country under review supplies. Policy-making processes are summarized at a highly general level instead of comparing specific processes, for instance on antidumping investigations, to best practices.

A further problem arises with the presentation of the analysis. The most important shortcomings concern the lower-level structure of the TPRs (that is, the fine-grained sequencing of the text that does not show up in the table of contents). The structure is not sufficiently explicit. Sometimes, there is no heading on several consecutive pages; it is difficult to quickly grasp the content of a paragraph (something that could be mended by formulating the first phrase of a paragraph as a lead and possibly highlighting it or by highlighting one or several keywords ahead of or within the paragraph); and there is virtually no text guiding the reader. Moreover, the sequence of paragraphs and of issues within a paragraph is not intuitive. There is no overarching principle that would help readers to find their way, such as regularly separating the legal framework, policy changes, policy objectives, implementation measures, trade effects, future regulatory intentions into different paragraphs and ordering them as consistently as possible throughout the report.

### ANNEX 3

THE 2007 TPR of the EU can serve as an example of the potential for cuts.<sup>42</sup> Regarding the economic environment, Section 1.1 'Main characteristics' sounds like the general country information in a travel guide:

1. The 25 Member States of the European Communities (EC-25) cover a land area of 3.9 million km<sup>2</sup> and have a combined population of 459.5 million, of which 68% resides in the euro area. Germany is the most populated country, followed by France and the United Kingdom; France is the biggest in surface, followed by Spain and Sweden; and Malta is the smallest in both area and population.

Section 1.2 ‘Recent economic developments’ offers general macroeconomic information drawing on EU sources without establishing any link to trade and trade policies. The only section to be retained is Section 1.3 ‘Trade performance and investment’ that gives an overview of trade and investment flows. The very short Section 1.4 ‘Outlook’ is again macroeconomic without a link to trade.

Moving on to the trade and investment regime, Section 2.1 ‘Institutional framework’ unites almost all the possible vices: The very general description of the institutional setup of the EU has no apparent link to trade, the information is unlikely to influence policies, change cannot generally be expected between two reviews, and similar descriptions can be easily found in many other sources. The Section 2.2 ‘Policy formulation and implementation’ is more trade specific and could be kept in an improved form. Section 2.3 ‘Trade policy objectives’ is a lofty self-declaration that could equally well decorate the EU website – or the website of about any other country. It is not useful in a Secretariat report but can be placed in the accompanying policy statement issued by the government of the country under review. Section 2.4 ‘Trade regulations and business environment’ explains the EU’s enterprise policy and in particular the single market. To the extent that this information is pertinent, it should show up in sections 3 and 4 where trade measures are being discussed. Section 2.5 ‘Trade agreements and arrangements’ contains some interesting topics (WTO notifications, dispute settlement activity, preferential trade agreements, non-reciprocal preference schemes) – but also ample opportunity for cuts. The reader ‘learns’, at even greater length in other TPRs, that the country under review is active in the Doha Round and a promoter of the open and rules-based trading system (despite its reluctant PTA expansion as a complimentary strategy).

The topics of sections 3 and 4 of the TPRs, which examine policies by measure and sector, are mostly justified in the light of above criteria. Some subsections, however, could be purged. For instance, the discussion of transport and energy should be limited to aspects relevant to market access in these industries and not describe a country’s situation and policies in general terms. The introductory paragraph on the energy sector starts (and carries on) like this:

49. The EC is an energy-intensive economy; it accounted for about 15% of world energy consumption in 2000. As the world’s largest energy importer, and the second largest consumer, the EC’s demand for primary energy grew by 10% between 1990 and 2000. In 2002, the United Kingdom was the leading producer of primary energy (28.5% of the EC’s total production), while Germany was the largest consumer (19.4% of final energy consumption) (Table IV.12). Industrial demand for energy has been relatively stable, but demand from households and the tertiary sector has increased as a result of the transition to a more service-oriented economy.

On transport, the TPR states:

112. Transport accounts for 7% of EC GDP, around 5% of employment (more than 10 million jobs), and 71% of total oil consumption. During 1995-04, transport demand grew by 2.8% a year for goods and 1.9% for passengers. However, there is unequal growth in the different modes of transport. Road transport accounted for 44% of the goods transport market over the period, followed by 42% for waterborne transport (39% for short-sea shipping routes, and 3% for inland waterways), 10% for rail, and 0.1% for intra-EC air; on the passenger transport market, road accounted for 84%, rail for 7%, and air for 8% (Table IV.16). Some of the main prob-



lems faced by the subsector include congestion on the main road and rail routes, in cities, and at certain airports; environmental and public health concerns; poor road safety; security threats; and, in general, difficulties in implementing the Treaty of Rome common transport policy.

Information about the composition of a country's energy sources or the relative importance of different modes of transport does not provide a focal point for other countries or domestic constituents to lobby for better trade policies. TPRs should be cleaned of such compendium-style information.

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## FOOTNOTES

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2. See Baldwin and Evenett (2009), Erixon (2009), Gamberoni and Newfarmer (2009) and several reports by WTO Director-General Pascal Lamy.
3. Paragraph A of Annex 3 of the WTO Agreement.
4. Such an approach would complement the Secretariat's effort to reach out to domestic constituents and create a more trade-friendly climate, for instance through public fora, informal meetings with NGOs, and the WTO website. For a recent survey of these activities, see Van den Bossche (2008).
5. The objective determines issue selection, written presentation of the report, the process of developing and discussing reports, and the frequency of reports, among other aspects.
6. See Annex 3 of the WTO Agreement and the TPRB's rules of procedure – WTO (2008a).
7. See WTO (1996), WTO (2005) and WTO (2008b). The annual reports of the TPRB on its work are highly repetitive and uncritical. See WTO (2008c), WTO (2007a) and earlier reports.
8. Comparison is possible thanks to the WTO's collection of media clippings. The feeling that TPRs have become more deferential over time has been shared by all interview partners with an opinion on the issue. The following statement, made after the first review of the European Communities by its permanent representative to the GATT, Mr. Tran Van-Thinh, offers a telling snapshot of how the TPRM was tamed: 'One should have a sense of balance, a sense of proportion, a sense of relativity to give more encouragement, to urge the political authorities and decision-makers of the Community to realize and recognize that European integration is all very well ... I have always contended that without the Community nothing gets done here. A fortiori, one can do nothing against the Community.' See Van-Thinh (1991).
9. The Swiss newspaper *Neue Zürcher Zeitung* has been most emphatic in this regard.
10. A good overview of sources up to 1996 can be found at [http://www.wto.org/english/tratop\\_e/tpr\\_e/tppubs\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tppubs_e.htm). The *World Economy* dedicated two special issues to the TPRM in 1995 and 1996.
11. Five discussions of individual TPRs can be found in volume 31, issue 11 of the *World Economy* – but they contain few reflections on the TPRM in general.

12. For instance, Kimura (2008) observes that, 'To encourage Japan to reform its agricultural sector, we must conduct much more penetrative analyses than the general description provided by the TPR.'
13. See Francois (2001a), Francois (2001b), Keesing (1998) and Laird (1999).
14. See Annex 1.
15. The World Bank also publishes an annual overview report of the World Trade Indicators that shows mostly global and regional developments but also singles out individual countries (for instance, it provides a table with countries whose simple average MFN Tariff has increased).
16. See, for instance, India's amazingly rich section on anti-dumping at <http://commerce.nic.in>.
17. See Stoeckel and Fisher (2008) for a comparison of domestic transparency agencies across seven countries.
18. The most important use for TPR information in negotiations appears to be for negotiating preferential trade agreements where countries need information on the individual trade policies of even small developing countries. But promoting derogations from the Most-Favored Nation principle can hardly be an objective for the WTO.
19. Groser (2007) notes: 'Once the two TPRM reports have been written, the diplomatic process that then unfolds is, to use an old Australian phrase, about as useful as a glass door on a dunny [toilette]. ... So if it is, say, Canada that is being reviewed, then the NZ representative will come along and say all manner of nice things about Canada as a sort of throat-clearing exercise before she or he zeroes in, on instructions from Wellington, to make the usual bitch about the Canadian dairy regime. ... There is no output. If you want an output, you use dispute settlement, not the TPRM.'
20. See Esty (2002) and Keohane and Nye (2001).
21. See Jackson and Sykes (1997), Macrory, Appleton, and Plummer (2005), and WTO (2006a) for collections of case studies. See also Zahrnt (2008) for a survey of delegations to the WTO.
22. Skaggs (2005) reports that "a Member [of Congress] most often hears about trade from angry constituents. The anger may be because of job or business losses, or it may be couched in terms of philosophical opposition: from the left usually because of lack of transparency, and from the right usually because of national sovereignty."
23. See Razeen (2008).
24. A list of criteria that TPRs should fulfill, and a discussion of the weaknesses of current TPRs in the light of these criteria, is contained in annex 2. An example of the weaknesses, taken from the 2007 TPR of the EU, is given in annex 3.
25. It could be examined whether information that does not fit into the standard structure really matters; and it could be examined whether information that is unusually long for a given element of the structure could not be condensed
26. Currently, some countries feel they are treated more harshly than others (and mention this as a reason for resisting critical remarks when giving feedback on the Secretariat's draft report before its publication).
27. Employing an analytical grid flexibly as a function of clearly set-out criteria is still very different from current TPR practice.
28. When accessing TPRs electronically, hyperlinks could directly lead to the most recent detailed treatments of the omitted/abbreviated elements.
29. A review of the EU's policy-making practices in agriculture, for instance, could refer to several evaluations by the Court of Auditors that criticize the lack of clarity of stated objectives, carelessness in the choice of policy instruments, incoherence in implementation, and weak monitoring and enforcement. See for instance European Court of Auditors (2008). Similarly critical records exist of the EU's anti-dumping practice. See Davis (2009).
30. See Zahrnt (2009).
31. Leutwiler and Bradley (1985) and Long (1989) have already stressed the interplay between the WTO and domestic transparency. Australia, Canada, New Zealand, and Hong Kong proposed even an agreement during the Uruguay Round to enhance domestic transparency, and UNCTAD exhorts its members to establish transparency mechanisms on trade policies. See Banks (1992).

32. It could also help to bridge the gap between the academic and analytical community and the work within the WTO itself. Other international organizations, such as the World Bank and the IMF, are closer to the leading edge of research.
33. A counter-argument can be made that draft reports contain too many holes and mistakes for public release. However, this weakness can be clearly highlighted in drafts. At the very least, a first draft could be sent to the country under review and be released together with a second draft (highlighting all changes from the first draft) for public commenting. In this way, technical flaws would be mended before the release, while politically dictated changes could be spotted.
34. For financial and logistical reasons, review meetings in capitals may have to be limited, for instance to the 20 biggest economies. Review meetings could also take place in capitals of all those countries that offer to pay the costs or that find donors to sponsor the meeting. There are also substantial funds for technical cooperation on trade that could be used to organize review meetings.
35. This idea has already been brought forward by Keesing (1998).
36. An amusing example of such stubborn sovereignty claims is the EU's reply (G/ADP/Q1/EEC/28) to Chinese worries that EU anti-dumping measures can be taken by a minority of the Council as abstentions are counted as votes in favor: 'The internal decision making process is by no means governed by WTO law and therefore lies within the sole discretion of each Member of the WTO! Is it not the EU that time and again prods China to change its domestic governance?'
37. See WTO (2008b).
38. See India (2009).
39. See WTO (2006b).
40. See [http://www.wto.org/english/news\\_e/archive\\_e/trdev\\_arc\\_e.htm](http://www.wto.org/english/news_e/archive_e/trdev_arc_e.htm).
41. I am grateful to Patrick Messerlin for pointing out this option. See [www.globaltradealert.org](http://www.globaltradealert.org) for a non-governmental transparency initiative.
42. See WTO (2007b).