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Stefan Voigt\*

# The Trade Policy Review Mechanism

## A New Instrument with Defects

*The "Trade Policy Review Mechanism" passed within the framework of the Uruguay Round is intended to increase the transparency of national trade policies and to improve adherence to the rules of GATT. The following article offers a first evaluation of the new instrument.*

Since the mid-1970s the rules of the General Agreement on Tariffs and Trade have been broken by ever more governments ever more frequently. The multilateral system of rules has been substituted increasingly by bilaterally agreed-upon quantitative trade restrictions. Many observers<sup>1</sup> suspect that quantitative restrictions are so attractive because usually tedious parliamentary consultation is required neither for their installation nor for their execution. In many cases, non-tariff trade barriers can be installed by the administration without informing the public extensively.

In order to increase the transparency of national trade policies, a "Trade Policy Review Mechanism" was passed within the framework of the current Uruguay Round. It is the aim of the Review Mechanism to improve adherence to the rules of the General Agreement. This is supposed to be reached "by achieving greater transparency"<sup>2</sup> of the trade policies of the individual GATT member states. Insofar the desired transparency could be considered an intermediate goal.

The four most important trading nations (presently the United States, the European Community, that is treated as an economic entity, Japan and Canada) are obliged to publish a report on their trade policies every other year, the following 16 nations every four years, and all the other nations every six years. The reports are discussed in specially convoked sessions of the GATT Council. The Geneva-based Secretariat of the GATT draws up country reports on its own responsibility. They are discussed, together with the reports of the national governments, by the GATT Council and published immediately afterwards.

In November 1989, the United States published its first country report. It was discussed, together with the report by the GATT Secretariat, in the Council in

December.<sup>3</sup> Subsequently an attempt at a first evaluation of this new GATT instrument will be made.

The two reports show great resemblance in their structures: both describe the aims and the institutional framework of US trade policy, followed by a description of the instruments used. Additionally, the GATT report contains a chapter on sectoral trade policy. Both reports evaluate US trade policy keeping the "economic environment" in mind. The far-reaching formal resemblance did not come about incidentally but was intended by the Uruguay Round to make the assessments comparable.

But this is already the first point of the new GATT instrument which must be criticized: the criteria on which the reports should be judged according to the decision taken at ministerial level during the course of the Uruguay Round are much too woolly to produce any sort of public pressure as a consequence of a negative evaluation of the discussed trade policy. The decision taken at ministerial level prescribes that "the assessment to be carried out under the review mechanism will, to the extent relevant, take place against the background of the wider economic and developmental needs, policies and objectives of the contracting party concerned, as well as of its external environment".<sup>4</sup> To achieve consensus on what is to be understood by "wider economic and developmental needs" should be just as difficult as the evaluation of the relevant "external environment". The question arises why the delegations did not agree on the most obvious criterion, which would have been the conformity of the

<sup>1</sup> E.g. Finger, Hall, Nelson: The Political Economy of Administered Protection, in: American Economic Review, Vol. 72, 1982, p. 452 ff.; or E. U. Petersmann: Grey Area Trade Policy and the Rule of Law, in: Journal of World Trade Law, Vol. 22, 1988, p. 23 ff.

<sup>2</sup> Cited according to "News of the Uruguay Round", No. 027 of April 24th, 1990.

<sup>3</sup> "Trade Policy Review Mechanism", report by the United States of America, published as GATT printed matter C/RM/G/3, report by the Secretariat published as printed matter C/RM/S/3.

<sup>4</sup> GATT-Activities 1988, p. 160.

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analyzed trade policy with the system of rules of the GATT. Presumably, this would have brought about a legalistic character that was avoided on purpose. ("It is not, however, intended to serve as a basis for the enforcement of specific GATT obligations or for dispute settlement procedures,..."<sup>5</sup>) One may harbour doubts as to how the reports can increase the degree to which the aim striven for (adherence to the GATT rules) is reached just by increasing the transparency of trade policies.

### Lack of Comparability

A second criticism of the new instrument is that the report issued by the United States does not make its trade policy as transparent as would be desirable, given that transparency not only means having knowledge of the aims and instruments of a national policy but also includes possibilities of comparison. This is because the United States has based its report on the "Tariff Schedule of the United States (TSUS)" which is neither convertible into the GATT Tariff Study Format nor into the familiar SITC categories. Consequently, the published data have only limited informational value because possibilities to compare them with other data are partially non-existent.

In the report of the Secretariat, more weak points are mentioned: in the United States there is no regular official report that would list the level of subsidies in the different industries and the effects of protectionism on output, employment and trade (page 139). It is exactly these data though that should be delivered through a "Trade Policy Review Mechanism". Insofar, the Secretariat criticizes the decisions of the Uruguay Round that are obviously insufficient to make national trade policies really transparent.

On the other hand, the Secretariat's report contains severe criticisms of the present US trade policy: several consecutively passed trade laws had increased the possible degree of discretion and intervention which could be used by the administration, including the interpretation of GATT rules. And furthermore: "In some cases, the laws have provided for 'solutions' not covered by, or contrary to, GATT rules and disciplines" (page 141). An analysis of the now famous "Section

301" of the 1974 Trade Law shows that between January 1975 and September 1989 a total of 79 cases had been investigated. In six cases, retaliatory measures were imposed without the consent of the Contracting Parties – the plenary session of the GATT and its highest decision-making institution. In common language such conduct is referred to as "taking the law into one's own hands".

Furthermore, it could be asked if the publication of the report has initiated a discussion of the analysed trade policies and has led to some moral pressure on those in charge to behave in a manner conformable to the GATT rules. The *Frankfurter Allgemeine Zeitung*, Germany's daily paper with the most extensive coverage of economic events, printed exactly 120 lines about the new GATT instrument,<sup>6</sup> the *Neue Zürcher Zeitung*, the leading Swiss daily, announced the first use of the new instrument with 88 lines.<sup>7</sup> At least outside GATT's institutions the discussion has hardly been stimulated by the country reports. For reports yet to appear, the media coverage is most likely going to be even less extensive since the instrument itself will not be new anymore. Considering the fact that the United States is still the most important trading nation this could even be more true for countries not as big and influential. The hope of GATT's Director General Arthur Dunkel, that through the new instrument "the nature of public debate on trade policies will be greatly enhanced at a national level and that policy decisions will be taken in a better-informed environment"<sup>8</sup> has at least for the time being not been fulfilled.

### Protection Balance Sheet

The "Trade Policy Review Mechanism" has been ratified by the Uruguay Round only provisionally so that an improvement of the instrument seems still possible. Especially the realisation of a proposal that was already advanced in 1985 by the so-called "Leutwiler Commission" seems to be recommendable: costs and benefits of the trade-policy instruments should be made transparent through a "protection balance sheet".<sup>9</sup> According to that proposal private as well public enterprises should be obliged to publish in their balance sheets all the subsidies received. Naturally, this is not a perfect instrument either: "The idea has limitations in that the least quantifiable elements in the 'balance sheet' will often matter most" (page 35). Together with unequivocal criteria for the assessment of the analyzed trade policy, uniform statistical categories and additional data on output, employment and trade, an improved and extended "Trade Policy Review Mechanism" could eventually still contribute to achieving the striven-for aim of improved adherence to the GATT rules.

<sup>5</sup> Ibid.

<sup>6</sup> "Mehr Schutzmauern für Amerikas Branchen", in: *Frankfurter Allgemeine Zeitung* of December 15th, 1989.

<sup>7</sup> "Die handelspolitische Überwachung im GATT", in: *Neue Zürcher Zeitung* of Dec. 13 th, 1989.

<sup>8</sup> GATT-Activities 1988, p. 9.

<sup>9</sup> Trade policies for a better future, Proposals for action, Geneva, March 1985.