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Information Gaps, Information Systems, and the WTO's Trade Policy Review Mechanism

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Abstract

Lack of information is a severe barrier to effective participation by developing countries in the international trade regime. Information systems in international regimes are the sets of institutions, actors and procedures involved in collecting, analysing and disseminating information about members' actions and the regime's effectiveness. The multilateral trade regime's information system, including the Trade Policy Review Mechanism as its latest and most institutionalised form, has evolved over more than five decades. The TPRM in particular, in operation since 1989, shoulders a fundamental responsibility in making the trade regime more transparent. This paper asks: how has the TPRM responded to the demands for information and transparency in the trade regime, particularly from the perspective of developing countries? The paper builds a framework for the demand and supply of information in international regimes, using it to explain the evolution of information systems in the trade regime. It then conceptualises the functions of an ideal-type information system and inquires whether the TPRM was at all designed to perform as an effective information system. Finally, the paper investigates developing countries' participation in the mechanism to outline several challenges that prevent the TPRM from fulfilling its stated objectives and potential.

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

I. Introduction

Lack of information is a severe barrier to effective participation by developing countries in the international trade regime. According to institutionalist IR theory, regimes are demanded partly because they provide information that would not otherwise be easily available. Information systems vary in their design and their purpose, but their objective is to promote cooperation among states by reducing information gaps and increasing transparency and trust. The trade regime's information system has evolved over six decades, with the WTO's Trade Policy Review Mechanism representing the most institutionalised form. The TPRM has been a regular feature of the multilateral trade regime since 1989 and shoulders a fundamental responsibility in making the trade regime more transparent. This paper asks: how has the TPRM responded to the demands for information and transparency in the trade regime, particularly from the perspective of developing countries? It explains the evolution of information systems in the trade regime, the design and purpose of the TPRM, and how developing countries have participated in the mechanism.

The paper develops a conceptual framework of information gaps as a source of demand for information in a regime (section II), and of information systems as the source of supply of information (section III). It uses the framework to explain the evolution of the trade regime's information system (section IV). In so doing, it asks what member states expected out of the TPRM and whether the mechanism was designed to respond to those expectations (section V). The paper then presents evidence from an analysis of all trade policy reviews conducted during 1995-2006 to evaluate developing countries' participation in the mechanism (section VI). The paper argues that the TPRM, although highly institutionalised, suffers from weaknesses in its mandate and design, which undermine its ability to disseminate appropriate information and promote compliance. It also suffers from a lack of confidence among developing countries, thereby resulting in poor participation rates and a reluctance to strengthen the WTO's information system.

At the outset, it is important to clarify the limits of the paper. As will become evident, information systems can be broadly defined to include a number of actors and institutions. This is true for the WTO as well. However, this paper focuses specifically on the TPRM, not because other mechanisms (including domestic monitoring) are not important, but because the TPRM is the most institutionalised in the trade regime, not to mention that it absorbs one of the largest proportions of the WTO's budget. More importantly, as this paper explains, for developing countries with limited resources, multilateral and institutional monitoring was particularly important, and therefore it is pertinent to examine how well the mechanism has worked.

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

evidence presented in the paper should offer a clear and objective insight into one of the least discussed, yet one of the most important, functions of the WTO.

II. Information gaps and the demand for information

Just as it would be inefficient for a country to negotiate individual agreements with other countries, it is equally costly for a country to monitor whether each of its treaty partners is complying with the rules or not. The task of monitoring becomes particularly complex in large multilateral regimes, where member states are not only numerous but also at very different stages of development. One of the most important rationales for creating international regimes is so that they can fulfil this task.

For information systems to matter it is important that we have a clear idea of their role in promoting international cooperation. The demand for information systems would depend on what states identify as the key information gaps they face in negotiating, implementing and enforcing rules. In response, the supply of information depends on a combination of institutions, actors and processes. The design of information systems is, therefore, contingent upon how important a regime is for a set of actors, their capabilities for monitoring, and the use to which they expect to put information to.

International regimes are demanded when at least one of three conditions obtains: the lack of a framework establishing legal liability for state actions; positive transaction costs; and imperfect information.¹ Regimes help coordinate state actions and act as negotiating forums that reduce transaction costs and facilitate agreements. But the third condition is also critical because international institutions provide information that would have been otherwise difficult to acquire. The increased transparency helps to *coordinate* state actions, *reassures* members that once agreed a treaty will be abided by, and serves as a *deterrent* against states considering defection.² Once rules in an international regime have been specified, states are reassured by the regular monitoring of compliance by all parties. As Abram and Antonia Chayes put it, ‘transparency converts the prisoners’ dilemma into an assurance game.’³ In other words, actors continue to comply if they have complete information that others are complying as well.⁴ The same information that helps states monitor compliance by others, in turn, raises the cost of defection because of the threat of retaliation (say, in a security regime) or the loss of benefits from cooperation (say, from an agreement to jointly share a natural resource).

Institutionalists argue that, along with efficiency in negotiations, reciprocity, and regime-oriented norms, transparency about state actions helps to promote compliance within international regimes.⁵ Ronald Mitchell (1994) calls this ‘treaty-induced’ compliance, as opposed to ‘coincidental compliance’ that realists propound, the idea that conforming behaviour would have occurred even in the absence of the treaty.⁶

Whether it is a concern for its reputation or the threat of retaliation, a state’s decision to comply would ultimately rest on the chances of its non-compliant behaviour being found out. Any hypothesis about generally compliant behaviour by states would be contingent upon monitoring and enforcement mechanisms. If there were any chance that deviant behaviour would not be spotted, then a state would have an incentive to renege on its commitments if the short-term payoffs from defection are greater than the discounted long-term benefits of cooperation. The

decision to cooperate or defect is solely determined by the fear of being caught and having to face retaliatory measures.

Moreover, not all non-compliance need be deliberate. There are several reasons why states might find themselves in non-compliance of a treaty without wilfully wanting to do so: ambiguity in the actual agreement; incapacity of states to fulfil a commitment; the temporal dimension to account for the period between treaty conclusion and implementation.⁷ If non-compliance were due to ambiguity, then we need to specify what forms ambiguity or uncertainty take. Without such a specification of imperfect information it would be impossible to discern wilful from involuntary non-compliance. Nor would it be possible to understand the specific constraints that the lack of information poses for developing as against developed countries. Axelrod and Keohane argue that international regimes reduce the degree of uncertainty in judging state actions, thereby adding credibility to reciprocal strategies while also avoiding mistaken disputes.⁸

Consequently, the manner in which monitoring (fear of being caught) and enforcement (fear of retaliatory measures) happens is crucial. The theory on the demand for regimes provides no clear explanation about how exactly regimes collect and disseminate information. In order to understand the variations in the design of information systems, we need to understand the demand for information by outlining the information gaps that countries encounter.

What does imperfect information really mean? Information gaps hamper attempts to enhance cooperation among states during all phases of regime design and sustenance: agenda-setting, negotiation, implementation, monitoring and enforcement. Not all information gaps, however, are of the same variety. Nor do they affect different types of states in similar fashion or different stages of regime design to equal degree.

At the outset, states are victims of *asymmetric information*. Negotiators are often uncertain about their counterparts' true preferences and are, therefore, concerned about unfair outcomes. Some states might also have more information than others on particular issues, either because they have the resources or because their interests are more closely aligned with the issue in question. (One can think of firms in the United States and European Economic Community that pressed their governments to include rules on intellectual property and trade in services during the GATT's Uruguay Round.) Asymmetric information hampers successful agenda-setting and negotiations because states are unsure of the value other parties attach to the issue. The resulting uncertainty leads to either excessive defensiveness against issue areas or protracted negotiations whereby states 'hold out' for a better deal.

Asymmetric information, as described, is less problematic in the latter phases, but it is not completely irrelevant. Implementation, monitoring and enforcement are usually not one-off occurrences but repeated cycles. How rules are interpreted, complied with and enforced change over time along with changing interests and preferences of states. In every new cycle of rule interpretation or renegotiation asymmetric information poses constraints to cooperation.

A second type of information gap results from *hidden or inaccurate information*, which arises when states deliberately withhold or supply inaccurate information even when procedures exist for reporting. Here, the intentional abuse of information and the systematic bias in the availability of information among parties undermines trust in the regime and reduces incentives for

compliance and cooperation. The threat of inaccurate information is particularly problematic during the implementation, monitoring and enforcement phases. The onus falls on the regime/institution to provide more objective, accurate and timely information about member states' actions. For developing countries, which might not have independent sources of information, hidden/inaccurate information is a major challenge to enforcing compliance by other states.

Finally, information gaps arise because of a lack of resources. States have to invest considerable time and money in gathering information during the negotiation phase as well as for developing implementation strategies and monitoring other states. In regimes with large membership, effective monitoring can become a prohibitive exercise. *Resource-constrained information gaps* affect all phases of regime creation and functioning. But they are particularly problematic for developing countries, which suffer from a lack of financial and technical resources to collect and analyse the necessary information.

In addition, information gaps also fall under a residual category of *general uncertainty*. Even the wealthiest of countries cannot monitor all developments in all regimes all of the time. Nor would it have the incentive to do so, given varying interests across regimes. Furthermore, not all regimes develop around issues whose implications for national and global welfare are immediately obvious. Whether it is climate change or intellectual property provisions in trade agreements, the need for further research is often necessary.

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

How information gaps affect developing countries

Information gaps should affect all states to some extent. However, it can be reasonably presumed that developing countries face more of a challenge than richer ones. The question is, which information gap should we expect to be most problematic for developing countries? Table 1 summarises the information gaps and their implications for regimes and developing countries.

Asymmetric information during negotiations is doubly problematic for developing countries. In many issue areas poor countries are often uncertain about their own preferences. This can be partly resolved if countries invested in additional research in the issue area, analysed the implications of new rules on national as well as global welfare, or relied on alternative sources of

information and analysis such as NGOs and business associations. But the lack of financial and technical resources hinders developing countries' efforts in these directions.

Hidden/inaccurate information is problematic if developing countries remain unaware of non-compliance by other states. Lack of information about the actual policies and actions of member states is a barrier to measuring the impact on one's own interests. In rich countries, export-oriented groups can be expected to monitor actions elsewhere, but such capacities are limited for developing countries firms. Even governments are constrained in their ability to monitor policies due to a lack of resources.

For developing countries, then, it is ultimately the resource-constrained information gap that is the most critical. It adversely affects the potential for developing countries to participate in all phases of a regime. But resource-constrained information also presents an opportunity for the regime to improve participation. Technical assistance and capacity building measures could directly target and alleviate resource constraints. In this manner a key hindrance to developing country participation could be removed. In the trade regime, this is possible both in the process of trade policy reviews and in following up on policy changes based on the type of information and analysis that the reviews outline.

III. Information systems and the supply of information

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

The dependent variable in our framework is the type of information system obtaining in an international regime. Thanks to sovereignty concerns, as well as to wilful non-compliance, governments are often loath to provide information about their actions or allow international organisations to collect information independently. Their decision would depend on expectations of what the regime can provide and perception of influence in the regime, in short actors' incentives in using new information to further their goals. Information systems are also influenced by actors' capacities to fill various information gaps on their own and their reliance on alternative sources of information. Thus, the relevant independent variables for the design of information systems are: information gaps; actors' incentives; and actors' capacities.

The framework for understanding the design of information systems partly draws on the Rational Design (RD) literature. In their article outlining the RD framework Koremenos, Lipson and Snidal (2001) identified actors and uncertainty as two key variables influencing institutional design.⁹ The RD schema considers the number of actors as potentially relevant to the joint welfare implications of a regime. This includes the 'asymmetric distribution of actors' capabilities', in other words power asymmetries. Koremenos et al propose that while control over

an institution might decrease in general with more actors (conjecture V1), the asymmetry over control increases with asymmetry among the contributors to the institution (conjecture V2).

For our framework, the distinction between weak and strong states (depending on the issue area) is relevant, because it affects control over the regime. The distinction is also important because of the varying capacities of weak and strong states to undertake monitoring activities. It affects decisions to delegate authority to specialised agencies to collect, analyse and disseminate information. For similar reasons, the framework developed here also distinguishes between state and non-state actors. This is because their preferences for the success of the regime need not align and because non-state actors have different strategies for overcoming information gaps.¹⁰

The specification of uncertainty in the RD literature – uncertainty about behaviour, uncertainty about the state of the world, and uncertainty about others’ preferences – is similar to the formulation of information gaps developed in this chapter, but not entirely. First, uncertainty about the behaviour of other states can be better understood by considering resource-constrained information gaps and hidden/inaccurate information separately. The two have different implications for information system design, as we shall presently see. Secondly, uncertainty about preferences is similar to the asymmetric information problem. In our typology, this kind of uncertainty extends to include a lack of awareness of one’s own preferences, which the RD literature does not account for. When new and complex issues come on the agenda, states (and non-state actors) might not be sure about their own preferences in a given issue area.

Five design types result from the interaction of the independent variables, as discussed below.¹¹

No reporting

Although all regimes require information, it is conceivable for some to have no explicit reporting or information gathering mechanism. We should expect this outcome when there are few actors in the regime (membership is small) and behaviour is clearly observable. We should also expect no reporting where members are similar in size and capacity, resulting in a degree of trust among the states. But such outcomes are rare in international regimes. For instance, the United Nations Convention on the Law of the Seas (UNCLOS) is the only major environmental agreement that has no formal reporting procedure. But even in this case, the UNCLOS Secretariat requests information from states on straddling fish stocks in order to prepare its report every alternate year.

Self reporting

In self reporting systems states report on their own activities, policy direction and legislative changes to show compliance or justify non-compliance with regime obligations. We should expect this outcome when the number of actors increases (thereby creating a need for regular information inputs) but where states are unwilling to cede sovereignty to the regime secretariat. Self reporting would also be more acceptable where hidden/inaccurate information is the predominant gap but behaviour is observable with relative ease. This way the failure of states to report on their own actions (especially, non-compliance) would be easily exposed. The predictability of surveillance activity helps to keep states on their guard. The ILO considers

timely reporting by member states so important that it blacklists states that habitually fail in the task.¹²

The problem with voluntary reporting, however, is the danger of incomplete information, wherein either all the relevant issues are not reported on or incorrect information is provided.¹³ If a regime relies solely on member states filing reports, then the threat of cheating against weaker states becomes a more realistic one. Thus, with rising power asymmetries between member states, the credibility of self reporting procedures would come under pressure.

Other reporting

In such information systems actors gather and report information about the actions of other actors, whether states or non-state actors. This involves states reporting on the actions of their own citizens, the actions of other governments, or the actions of other states' citizens.

We should expect this outcome when states, while unwilling to cede control to the regime secretariat, have the capacity to monitor the actions of other relevant actors. Hidden/inaccurate information is once again the key hurdle that this type of information system responds to. Actions are not easily observable in such regimes, which increases the need for deliberate monitoring. The system, however, also relies on a reasonable equivalence in the capacities of states to collect and analyse information.

Institutional reporting

Under institutional reporting, the regime secretariat collects information on member states' actions and the functioning of the regime as a whole. We should expect this outcome when regime membership is large and varied in their interests. As membership of a regime increases, the risk of hidden/inaccurate information increases. Koremenos et al propose that centralisation increases with greater uncertainty about behaviour (conjecture C1). Similarly, institutional reporting becomes more likely with the widening scope of issues governed by regimes. In the trade regime, for instance, not all states would have an interest in monitoring tariffs on textiles or subsidies in agriculture. States with more capacity to monitor a particular issue-area would focus their energies on developments in that sector, even while other issues remain under-examined.

Institutional reporting should also be expected when a high proportion of states are resource-constrained. It is only when large numbers of states realise that their incapacity to monitor each others' actions would undermine the regime's effectiveness, would they be willing to cede control to the secretariat.

Surveillance can be directed at an individual country, conducted regionally, or undertaken simultaneously for all member states. Similarly, information systems could look at a few issues or all issues under the regime's scope. We should expect that the greater the threat of hidden/inaccurate information, the more the risk to the entire system. The risk would increase with more actors in the regime or an expansion of the issues under a regime's scope.

Institutional reporting is also more likely when states suffer from asymmetric information. If agreements are subject to multiple interpretations (as is possible in international trade) or if the

rationale behind policies needs deeper investigation (for instance, in the various ways in which countries liberalise monetary policy), then international institutions would have a more active role. Koremenos et al note that as the number of actors increases, centralisation also increases in order to coordinate the actions of several states (conjecture C3).¹⁴

Non-state actors (NSA) reporting

Non-state actors collect and analyse information, both to report individual member states' behaviour, as well as on the implications of the regime's operation for the NSAs' interests in a particular issue area. We should expect this outcome when the incentives of states and non-state actors do not coincide, when states are resource-constrained or when states suffer from asymmetric information in new areas of negotiations.

Xinyuan Dai (2002) argues that where the interests of the victims of non-compliance do not align with their states (in human rights regimes, for instance) NSAs often serve as low-cost monitors.¹⁵ But even where interests are aligned the costs of monitoring might vary even *within* regimes. In trade regimes it is often expected that business associations would be able to easily identify non-compliance in export markets and alert their governments.¹⁶ The proposition, however, assumes equivalence in the costs of monitoring as well as the capacity to do so, irrespective of where business interests are located. It is unlikely to be so between rich and poor countries or within groups of poor countries. However, to the extent that NSAs rely on alternative sources of information, their reporting activities could reduce the resource-constrained information gaps that states face.¹⁷

Moreover, when new and complex issues are introduced in regimes, it is not necessary that states or NSAs would be in a position to articulate their own interests with sufficient clarity as to monitor how other countries comply. The role of pharmaceutical companies in the United States in pushing for the TRIPS Agreement was followed up with them monitoring of implementation in developing countries. It is only in recent years that pharmaceutical firms in large developing countries (Brazil, India) have managed to effectively monitor policy developments elsewhere and play an active role in domestic policymaking.¹⁸ By doing so, non-state actors have helped to shape preferences of their representative states under conditions of information asymmetries.

There are, of course, several challenges with NSA monitoring. In the trade regime, export-interests ultimately have to push their demands through a 'government filter'.¹⁹ Another problem is that of the difficulty in securing collective action. Further, NGOs tend to concentrate on a few issue areas or high-profile cases, thus undermining the objective of general surveillance.

More importantly, there is no stylised, ideal-type of surveillance mechanism. A regime's information system is often a combination of the above designs. How the systems are designed depend on the nature of information gaps affecting regimes and their member states, the power imbalances between states and their incentives towards the regime, and the capacities of state and non-state actors to monitor developments. In the trade regime, for instance, Hoekman and Mavroidis propose an independent 'transparency body' whose role would be to solely collect relevant data in the trade regime. It would not only help in dispute settlement cases, but also strengthen what they call the 'upstream dimension' of enforcement, namely monitoring and surveillance.²⁰

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

We now apply the above framework to explain the evolution of information systems in the trade regime. The demand for surveillance in the multilateral trade regime has been a long-standing one, just as has been its practice. But the manner in which surveillance has been conducted has radically changed over the decades. At times it was *ad hoc*, while at other times it was focused on a few specific areas of the trade regime. Later, demands for more regular and strengthened surveillance grew.

1950s: Ad hoc reviews

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

The earliest example of formal surveillance can be found in the early phases of the GATT. The 9th Session of the GATT (28 October 1954 – 18 March 1955) was unique in the GATT's history in that it served as a Review Session as well. The previous session had recognised that 'international trade continues to be restricted by high tariff barriers...' There was also a perception that trade was being hampered 'by widespread application of other restrictions [including quantitative restrictions].'²¹ Contracting parties recognised the need to garner information about whether these measures were being used legitimately or not. The Review Session looked into quantitative restrictions, schedules and customs administration, other barriers, and organisational questions. Following the submission of working party reports, regular consultations were established to review quantitative restrictions maintained for balance-of-payments purposes.²² Thus, limited surveillance was established to counter a potential threat of hidden information on non-tariff barriers. But contracting parties decided not to extend additional authority to the GATT Secretariat to conduct reviews on other trade issues.

Another example of *ad hoc* institutional reporting occurred after the Haberler Committee Report was submitted in 1958. It had argued that the trade policies of developed countries were hindering less developed ones from participating in the trade regime. Meanwhile, developing countries asserted that their interests were not being taken into account, nor did they have the resources to undertake a review of rich countries' trade policies. In response a Committee dealing with agriculture trade conducted consultations with forty contracting parties during 1959-61 on agricultural policies.²³ With the advent of the Common Agricultural Policy in 1962, the Committee also held consultations with the European Economic Community.²⁴ However, these rare examples of systematic reviews, although responding to the incentives of contracting parties, remained too issue-specific to result in a more permanent information system.

1960s-1970s: Mixed information systems

The situation began to change as the GATT grew in size, the proportion of developing countries increased, and more complex issues started dominating the trade agenda. By the end of the 1960s

GATT membership had more than doubled to 75. The issues under negotiation also broadened in scope, such as those concerning balance-of-payments restrictions, agriculture, various multilateral trade negotiations (MTN) codes, and textiles. The risk of asymmetric information would increase in a heavily-laden trade agenda and contracting parties would have had an incentive to monitor issues of specific interest to them.

As a result, several *ad hoc* and sector-specific surveillance mechanisms were established in the 1960s and 1970s.²⁵ The Committee on Balance-of-Payments Restrictions consulted annually with relevant developed countries, and every two years with developing countries. The Textile Surveillance Body, set up under the Multi Fibre Agreement (MFA), had a ‘small but geographically representative membership, meeting as often as necessary.’ It received annual notifications on textile restrictions from all MFA signatories, and reviewed bilateral and unilateral actions by the signatories. The Textiles Committee also set up a Sub-Committee on Adjustment in 1981 to review measures adopted to facilitate adjustment. The various MTN codes were also subject to notification requirements by the contracting parties that had signed the codes. Some countries independently conducted surveillance over the implementation of the codes as well. However, all documentation was restricted only to the code signatories and observers.

The 1960s and 1970s were, thus, a mix of ‘self reporting’ (textiles, MTN codes), ‘other reporting’ (the European Community and the United States conducted their own surveillance targeted at major trading partners) but minimal ‘institutional reporting’. These developments can be explained by the fact that although contracting parties were recognising the need for a degree of surveillance, they continued to protect their sovereignty and were unwilling to give a strong mandate to the Secretariat.²⁶

Early 1980s: Issue-specific institutional reporting

It was not until the 1980s that a series of proposals for strengthened institutional surveillance in the GATT came forward. In 1979 the Tokyo Round had concluded with an Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, which provided for special GATT Council meetings to review developments in the trading system.²⁷ Furthermore, although tariffs had been cut significantly, there was a growing need to monitor the use of non-tariff barriers. From 1980 onwards, the Special Council meetings were held twice a year with the Secretariat submitting a note detailing developments in the preceding six months. In 1983 the scope of the meetings was broadened to ensure that trade policies were consistent with GATT principles and to ‘avoid measures which would limit or distort international trade.’²⁸ This was largely due to a growing risk of asymmetric information in negotiations, hidden/inaccurate information related to non-tariff barriers, and a poor record on compliance with notifications.

Surveillance on issues of concern for developing countries also increased to some extent via the Committee on Trade and Development (CTD).²⁹ The CTD had emerged as a result of the inclusion of Part IV in the GATT in 1964, which focused on the special circumstances and needs of less developed countries in the trading system.³⁰ In 1979, when poor countries were 70 per cent of the GATT membership, the Sub-Committee on Protective Measures was established to monitor actions by rich countries that could block imports from developing ones. Also, the Sub-Committee on Trade and Least Developed Countries was made responsible for reviewing trade policy developments of interest to this category of contracting parties. After a GATT Ministerial

Declaration in 1982, the CTD adopted a programme of consultations ‘to examine how individual contracting parties have responded to the requirements of Part IV.’ But no conclusions were reached until the start of the Uruguay Round.

Developing country concerns did not translate into wider institutional review. Although developing countries were increasing in number, their engagement with the trading system was very limited in the 1960s and 1970s, focusing on securing preferential access to markets. Thus, the degree to which asymmetric information would have hindered their negotiating capacities was limited. Instead, they were largely affected by hidden information about rich countries’ policies and were constrained by a lack of resources to undertake reviews themselves; hence, the call for institutional reporting within the CTD. At the same time, developing countries had been traditionally very protective of their sovereignty; they were reluctant to let the GATT Secretariat monitor trade policies more regularly.³¹ So, a combination of limited issue-specific interests and resource-constrained information gaps resulted in limited surveillance oriented towards developing country interests.

Late 1980s: Debating and designing the TPRM

In 1985 an Eminent Persons Group (chaired by Dr. Fritz Leutwiler) proposed that ‘countries should be subject to regular oversight or surveillance of their policies and actions...’³² The GATT Secretariat was to collect and publish this information. The rationale for surveillance was that ‘governments should be required regularly to explain and defend their overall trade policies’, so as to ‘prevent departures from the [GATT] rules.’ The group also proposed that the Secretariat ‘should be empowered to initiate studies...’ of trade policy changes. But it made clear that the GATT Secretariat would act ‘as watchdog (though not judge)’ on behalf of the trading system.³³ A watchdog, by definition, acts as the guardian of others’ rights. So, an appropriate surveillance mechanism for the Eminent Persons Group would not only review members’ trade policies but would also raise the alarm when non-compliance affected other members’ rights in the system. For developing countries, the value of a multilateral watchdog would become evident only if they perceived it to be defending their trade interests.

Until the mid-1980s there was no mechanism in the multilateral trading system that involved the periodic review of all contracting parties as well as of the system as a whole. There was a growing perception among developing countries that an ‘unwarranted asymmetry’ existed in surveillance obligations: some countries had to get their trade policies reviewed under balance-of-payments consultations and as conditions of accession to the GATT, but there was no surveillance of the policies of major trading powers.³⁴ Moreover, there was the question of neutrality and credibility of information. A chief concern among contracting parties was that the only available review of global trade policies was one published by the United States Trade Representative (as expected, these reports steered clear of U.S. trade barriers).³⁵

The Punta del Este Ministerial Declaration that launched the Uruguay Round committed ‘to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices...and their impact on the functioning of the multilateral trading system.’ On 28 January 1987 a Surveillance Body was established to monitor the standstill and rollback provisions in the Declaration. The Surveillance Body would, in turn, submit reports to the Trade Negotiations Committee. Thus, surveillance in this case was a way of increasing confidence in the GATT

system while a major trade round was being negotiated.³⁶ It was a response to asymmetric information gaps that all contracting parties were encountering in a crucial negotiating round.

Simultaneously, as a result of the Punta del Este Declaration, a negotiating group on the Functioning of the GATT System (FOGS) had been established. In the first proposal submitted to the group, Australia criticised the existing system of surveillance through biannual reviews, pointing to ‘arbitrary data collection, and lack of quantification of support measures and their trade effects.’³⁷ The United States proposed that the Secretariat prepare country reviews, so that the GATT would engage in ‘enhanced surveillance’ of countries’ trade regimes on a regular basis. It also wanted greater economic analysis and research and the quantification of the effects of trade measures.³⁸ The European Community felt that there was a need to rationalise existing GATT notification and surveillance mechanisms. It demanded that the country reports be policy-oriented, highlighting the objectives, challenges and direction of a country’s trade policies.³⁹

Among the similarities in developed country positions was recognition that surveillance activities should serve not only as an ‘early warning system’ but should also be ‘used to ensure compliance with contractual obligations...’ Multilateral surveillance could also provide a ‘counter-weight to pressures from domestic special interest lobbies.’⁴⁰

Developing countries were, in principle, in favour of a multilateral surveillance system in the trade regime. Strengthening the existing surveillance procedures meant regular monitoring of the trade policies of major trading powers, ‘so as to ensure symmetry in surveillance in the GATT.’⁴¹ At the same time developing countries did not want any new obligations. Instead, they felt that a new mechanism for surveillance had to focus more on the richer countries.

Jamaica (a member of the more moderate coalition, the Group of Twenty) was keen to ensure that the TPRM ‘does not explicitly require any new obligations...’⁴² Arguing that the credibility of the GATT system was undermined by the actions of ‘those having major shares and stakes in world production and trade,’ Jamaica contended that any effort to improve the GATT system had to start with ‘*trade policy (any other policies) at the national level.*’⁴³ Jamaica insisted on rationalising the several GATT bodies that carried out surveillance activities, improving the monitoring of MTN codes, the functioning of the Textiles Surveillance Body, surveillance of a strengthened Article XIX, and reviewing the liberalisation of trade in agriculture.⁴⁴

Several developing countries echoed similar sentiments during negotiations. They argued that the GATT system needed less new mechanisms and more of improved adherence to existing principles.⁴⁵ The Leutweiler Group had noted that GATT surveillance was meant to ‘strengthen the ability of all countries – and especially the smaller and developing countries – to *defend* their trade interests.’⁴⁶ India, submitting a note on behalf of developing countries, pointed out that the reviews were not intended to lead to any binding conclusions or recommendations, nor establish a legal process.⁴⁷ But it also hoped that the process would lead to improved adherence with GATT rules. Developing countries warned that GATT surveillance should not become another means to pressure them to change their trade policies.⁴⁸ They felt that talks on the GATT system had to address the issue of special and differential treatment.⁴⁹

At the Mid-term Review of the Uruguay Round in Montreal in December 1988 contracting parties agreed to a proposal to set up a Trade Policy Review Mechanism (TPRM); the decision

was confirmed on 12 April 1989. At a time when developing countries were opposed to several changes in the trade regime, why did they agree to the TPRM?

Among the incentives, as already pointed out, was a desire to fix the asymmetry in surveillance obligations in the regime. Here was a chance for poorer countries to influence the functioning of the GATT system (the Uruguay Round provided ‘a useful opportunity for a review of the institutional framework of the GATT’).⁵⁰ As one former GATT official put it, ‘developing countries wanted to use the resulting trade policy reviews to put developed countries on the block.’⁵¹ According to this view, given that developing countries had little recourse to the dispute settlement mechanisms in the GATT, they decided that moral suasion would be a better option.

Secondly, periodic surveillance could serve as a ‘multilateral stamp of approval’ for their policies.⁵² At a time when many developing countries were under pressure from international financial institutions to reform their economies, a trade policy review would have been a legitimate forum to defend one’s trade policies.

Thirdly, developing countries expected the reviews to be an opportunity to attract investment. In other words, a positive review would be a ‘signal’ to the markets that the country had a conducive environment for investment.⁵³ Joseph Francois (2001) argues that the TPRM increases the credibility of domestic policy reform and strengthens trade-promoting policies.⁵⁴ By reducing uncertainty about conditions in export markets, it should also increase investments in tradable sectors. The reduction in risk, in turn, would have a salutary effect in reducing the cost of capital for poor countries.

Fourthly, there was a potential benefit of improved policymaking within countries. A senior WTO official who had been involved in the TPRM in its early days argued that the reviews ensured coordination between government agencies that would not otherwise have communicated with each other.⁵⁵

Finally, the TPRM was expected to have a demonstration effect by highlighting the beneficial impact of trade liberalisation. Donald Keesing (1998) writes that the TPRM ‘imposes a useful discipline’ by forcing members to re-evaluate their own trade policies.⁵⁶ The information generated in the reviews, by being available to NGOs, businesses and academics, would add to the pressure for change in policies. Several officials claimed that one of the chief attractions of the TPRM was its value in stimulating policy reform.⁵⁷ As an Australian trade delegate involved in TPRs pointed out, the reviews were an opportunity ‘to ask GATT/WTO staff to do what domestic reformers [could not] do politically.’⁵⁸

Developing countries were also aware of the limits to their capacity and resources to gather and process information. As Keesing notes, by making information about foreign trade practices a public good, the TPRM has the greatest marginal value to small countries that do not have the resources to collect information by themselves.⁵⁹ Nevertheless, for the first time in the trade regime, the TPRM promised to become a source of ‘neutral and unbiased information’.⁶⁰

In addition to the resource-constrained information gap, developing countries were also steadily encountering asymmetric information problems during the Uruguay Round. Until then, they had largely been passive participants in the trade regime, interested mainly in gaining and

maintaining preferences. But the Uruguay Round involved new issues that all contracting parties had to negotiate, including services and intellectual property. Developing countries were increasingly unsure about the nature of these complex negotiations. They hoped that a new *and* neutral information system would assist them in understanding the issues and in demanding changes to rules that adversely affected their welfare.

Figure 1 illustrates how surveillance has evolved in the trade regime over the past half a century. Developing countries agreed to the TPRM for reasons that had to do with their incentives in the trade regime, monitoring capacities and the information gaps they faced. At the Marrakech Ministerial in 1994, which heralded the close of the Uruguay Round, the Jamaican Trade Minister said that his country strongly supported a monitoring mechanism in the WTO *because* ‘there [was] a difference of opinion as to the benefits to be derived...’ Monitoring, in his opinion, would evaluate the negative effects from multilateral trade liberalisation so that the losing parties could seek appropriate redress.⁶¹ That belief in the use of the TPRM as a source of information for use in negotiations has continued to the present day, even though experience might have belied some of the expectations.⁶²

V. Institutionalising peer pressure – explaining the purpose of the TPRM

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

Our framework outlines three broad categories of functions for information systems:⁶³

- *Information dissemination*
- *Compliance promotion*
- *Regime evaluation.*

Information dissemination

International regimes review national policies by comparing them with international standards and the commitments that states have made. This is one of the primary functionalist explanations for why regimes are created.⁶⁴ The task of collecting and disseminating information is in response to hidden information problems as well as resource constraints. Similarly, even where some states might not find it in their interest to monitor actions in each and every regime, the regime can facilitate that task. Information collection and dissemination by neutral organisations is also necessary to reduce the risk of systematic information biases.

Compliance promotion

The risk of not correcting deviant behaviour would result in reduced trust in the regime. Where deviations are found, information systems often go one step ahead and recommend changes in policies. This is the task of promoting compliance, whether by means of peer pressure among member states, the threat of use of explicit sanctions following litigation, or by pressure from non-state actors whose interests are directly affected by non-compliance. The OECD’s or the

ILO's reports make non-binding recommendations, but which carry weight. Lombardi and Woods argue that peer pressure has a stronger impact on countries adopting the IMF's voluntary standards and codes.⁶⁵

Of course, effective monitoring must be able to distinguish between wilful and involuntary non-compliance. The failure to do so can result in wrongful retaliation, which can undermine the stability of the regime. Axelrod called it the 'echo effect', an infinite regress of retaliation and cross-retaliation. There is also a need to define the *acceptable* levels of non-compliance, whether determined on a case-by-case basis or by establishing broad 'zones' of compliance. In order for information systems to have any influence on policy, there is a need for significant investments in learning (on the part of the international institution) along with education and training (of national policymakers).⁶⁶

Regime evaluation

Monitoring can be viewed more broadly as well. Review activity not only facilitates compliance but also engages in in-depth learning in particular issue areas, monitors external conditions to identify risks, and evaluates the effectiveness of the regime itself, thus helping to develop new norms. Thus, closely related to the advisory role of compliance promotion is the evaluative and interpretative function of any review mechanism.

Regime evaluation occurs in response to asymmetric information as well as resource constraints. This is because when countries are unsure about the preferences of other parties they would be less committed to implementing the rules fully themselves. By evaluating the impact of the regime (or its underlying rules) on different states, policy reviews inform states more clearly about the preferences of different categories of states. To extend the logic, the same exercise could reduce general uncertainty about the impact of the regime on global welfare and thereby shape preferences for the development of new norms and rule modifications.⁶⁷

How is regime evaluation conceptually different from information dissemination and compliance promotion? Ronald Mitchell (1998) argues that the demand for information in a regime can have two motivations: to evaluate the performance of individual parties (compliance-oriented transparency) or to evaluate the performance of the regime itself (effectiveness-oriented transparency).⁶⁸ He clarifies that it is the use to which the information is put rather than the substance of the information which serves as the key distinction between the two motivations. Thus, in effectiveness-oriented measures, information is used to 'identify directions for revision and renegotiation' of the regime.⁶⁹ However, as Kal Raustiala claims, effectiveness review is perhaps the hardest task because of the methodological difficulties in evaluating regime effectiveness.⁷⁰

High expectations but restricted mandate for the TPRM

So, what did GATT contracting parties expect the TPRM to do? The FOGS group had concluded that a smoothly functioning trading system depended on 'improved adherence' to rules and commitments, which in turn depended on 'greater transparency in, and understanding of, the trade policies and practices of contracting parties.' The TPRM's aim was to enable the 'regular collective appreciation and evaluation' of such policies and practices.⁷¹

At the basic level of information provision, most countries agreed to make the reviews available to the public. Japan had initially suggested that only press releases would be issued while the report itself would remain unpublished.⁷² But the function of ‘information dissemination’ was largely uncontested. To be sure, it was up to the contracting parties to decide how widely the reviews would be circulated. But delegations expected the reviews to be used to exert external pressure to encourage internal debate on policy questions.⁷³

There was also the hope that the information collected during the reviews would be useful in future negotiations. Delegations suggested that the reports had to be relevant and useful, so that parties could ‘keep track of how political pressures on trade policies were developing.’⁷⁴ After the WTO started functioning, member states suggested that they should be free to use the trade policy reviews (TPRs) as reference material in WTO committees.⁷⁵ This was the first time that member states had explicitly recognised the use of TPRs in negotiations, rather than think of them as merely information-gathering exercises. The TPRM was potentially a response to the resource-constrained information gaps that developing countries encountered in negotiations and post-negotiation phases.

On the expectation of ‘compliance promotion’, a few developed countries highlighted the importance of following up with policy changes. Canada argued that while surveillance was the ‘*fundamental* question’ for the Negotiating Group, there was also the need to consider what the follow-up to the surveillance would be and its relationship with the dispute settlement system.⁷⁶ The Nordics subscribed to a similar view, arguing that the aim of surveillance was to ‘improve the adherence to agreed rules...’

Yet, neither proposal clarified how the expected policy changes would occur in practice. In fact, information derived from the trade policy reviews could not be used to enforce specific GATT obligations or be used in dispute settlement proceedings.⁷⁷ If adherence to GATT rules had to improve then countries could only rely on ‘moral suasion’ or ‘peer pressure’. But how would peer pressure work when the power asymmetries between contracting parties were so vast? As Amrita Narlikar (2005) points out, thanks to the practice of consensus, ‘developing countries have never been able to make use of the power of large numbers in the GATT or the WTO.’⁷⁸ On balance, compliance promotion remained an implicit aim for the TPRM.

As regards ‘regime evaluation’, the Nordics and the European Community wanted the Secretariat to make periodic assessments of trends in trade policies based on the trade policy reviews.⁷⁹ India stated that since Special Sessions of the GATT Council had served as ‘early warning mechanisms’ in the past, enhanced surveillance should encompass an overview of general developments affecting the trading system.⁸⁰ In fact, according to the Indian delegation, the concept of ‘enhanced surveillance’ had a stronger connotation of moral suasion for developing countries than did ‘trade policy review’.⁸¹

Based on these demands, the GATT also institutionalised ‘an overview of developments in the trading environment which are having an impact on the multilateral trade system.’⁸² The procedure involved annual meetings of the GATT Council, assisted by a report from the Director-General. This form of enhanced surveillance, it was believed, would ‘strengthen the existing “early warning” aspect’ of Council meetings.⁸³ Annual overviews were, then, the closest the trade

regime would come to having an explicit regime evaluative mandate. The question as to the kind of issues the overviews would cover and the implications for negotiations of new rules in the system would remain open.

The design of the TPRM demonstrates its ability to perform the three surveillance functions only to a limited degree. The reporting requirements would increase transparency and would also make countries conscious of the need to explain their policies to others. But the impact of the reviews would depend on how widely they were distributed and the kind of domestic debate on policy issues they encouraged. Transparency could also promote better compliance only if the additional information generated by the reviews was used by contracting parties to initiate new consultations. Finally, it was possible for the TPR to have what Asif Qureshi calls a 'prescriptive trait' or an evaluative role.⁸⁴ It was a means by which the process allowed parties to evaluate varying interpretations of trade rules and options for implementation.

However, it was evident from the beginning that, without structural changes in the trade regime's governance, any new information system would only have limited impact. Julius Katz, the Chairman of the negotiating group and a prime mover of the TPRM, considered that transparency 'was not a modest objective.'⁸⁵ He wanted countries to exert 'moral suasion' over each others' trading practices.⁸⁶ But developing countries feared that too broad an interpretation of surveillance spelled more chances for abuse of the process. Economic analysis of trade policies could easily slide into the realm of economic prescription of 'good' policies, which would then be imposed on them. They did not expect the reviews to give them greater flexibility or influence within the trade system. Without developing countries having additional means to influence developed members' policies or the removal of restrictive practices, it would simply 'build up unrealisable expectations.'⁸⁷

As the first mechanism by which developed countries would offer their policies for scrutiny and criticism by developing countries, the TPRM represented the first attempt to 'institutionalise peer pressure' in the multilateral trade regime.⁸⁸ But the TPRM was not a standalone mechanism; its effectiveness depended not only on its own design but also on how developing countries could leverage their power in a new multilateral trade institution.

VI. Challenges with the practice of the TPRM

How have developing countries leveraged their power within the TPRM? At the inception of the WTO, monitoring was listed as one of the organisation's primary tasks. Trade policy reviews are now a regular feature of the WTO. This section inquires into the participation of developing countries in the TPRM and, in the process, outlines some key challenges.

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

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

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

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

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

For this analysis, I construct a database of dispute-dyads of complainants and respondents in the DSM. This is ongoing research, so for this paper a total of 172 dispute-dyads were analysed. The complainants in the dispute-pairs cover all developing and least developed economies, transition economies and newly industrialised countries that have ever initiated a dispute at the WTO.⁸⁹

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

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

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

After running the analysis on 172 dispute-dyads, the results reveal interesting insights. In many cases the Secretariat reports did mention, highlight or analyse policies that would eventually be taken up by complainants as formal disputes. This occurred 53 per cent of the time for TPRs of respondents preceding the initiation of disputes. Once disputes had been initiated, the Secretariat reports mentioned or analysed the contested policies 80 per cent of the time (although in many cases, it was only a footnote mention).

However, when it came to applying peer pressure on the same issues, the record is poorer. In just a quarter of the cases did future complainants send in advance questions to the party under review. That proportion fell under 20 per cent even *after* a dispute had been initiated. The results seem to suggest that member states did not consider the TPR process to be the effective forum for applying pressure, contrary to what the TPRM had originally been envisaged for.

But when we consider how member states other than the complainant behaved, the results are more encouraging. Prior to a dispute, 60 per cent of the time other states also sent in advance questions on the contested issue. After the dispute had been initiated they did so 55 per cent of the time. Thus, even if the complainant country did not apply direct pressure, other states would be adding pressure for policy change.

The above results highlight the potential value of the TPRM, but only when members engage with the mechanism. However, a related challenge pertains to participation in meetings. Many supporters of the TPRM stress that simply participation is a good exercise in transparency and learning. This had been predicted even during the debates on the TPRM. Disappointed that the report format would not be broad in scope, one delegation had claimed that, irrespective of measures covered by the report, it 'would not shy away...from asking questions about *any* measure that affects trade.'⁹⁰ The Trade Policy Review Body is equivalent to the General Council

and comprises all WTO member states, giving developing countries equal rights and opportunities to review the policies of rich member states. Among other international economic institutions, this is a very different setup, compared to say the weighted voting systems in the IMF and the World Bank, which limit the voice of poor countries, or the OECD reviews in which developing countries cannot participate.

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

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

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

At the international level, potentially countries can use information from TPRs for negotiations. In practice, they seldom rely on the reports for the kind of sophisticated analysis necessary to take informed positions in trade talks. So, even as the richest traders subject other countries to close scrutiny during review meetings (a form of peer pressure), developing countries do not find this avenue of much use in demanding or influencing policy corrections.

VII. Conclusion – Transparency to what end?

Looking at GATT and WTO history, it becomes evident that several common threads run through all of the calls for improved surveillance. The first is a desire to bring discipline into the trade regime. Secondly, confidence in a rule-based system would only increase if all contracting parties were subject to periodic monitoring. Thirdly, a distinction was drawn between monitoring and enforcement, although it was also recognised that the latter depended on the former. Fourthly, all proposals involved some form of consultation with the party under review, in order

to give it a chance to explain its policies. Surveillance was not an entirely independent activity of the international regime; rather it was a learning process.

But given the trends, most developing countries are failing to engage effectively with the process, either to get the information and analysis they seek, or promote compliance and evaluate regime rules. So, what implications do the above challenges hold for the quest for improved transparency and better participation of developing countries in the WTO?

The first question is whether better monitoring matters at all. In an organisation with more than 150 members, no country can adequately monitor the policy changes in each and every member state. But for developing countries, owing to their limited resources and technical capacity, these informational problems are magnified. The poorer a country is, the greater are the marginal benefits of an effective multilateral surveillance system.

A related concern is that asymmetries in access to information and analysis might be widening not only between developing and developed countries, but between large and small developing countries as well. Major developing countries, like Brazil, China and India, have been building up their internal research capacities, in turn supported by domestic NGOs and industry lobbies. For the poorest countries, institutional reporting is still most likely the most reliable means of gaining information about and understanding of the trade policies of richer members. Without effective institutional monitoring, the risk of further marginalisation becomes greater.

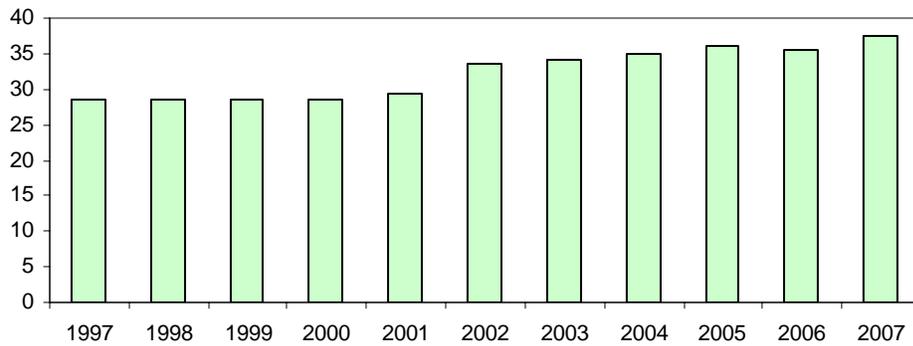
A third implication is the potential use of information. Since the launch of the Doha Round a new trend of developing country coalitions has emerged. But many of them continue to be constrained by limited technical expertise. Objective analysis under the rubric of regime evaluation could be useful as research and policy inputs in the negotiating positions that new coalitions adopt. But, as yet, coalitions have shown no signs of linking their need for information with the WTO's information system.

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

FIGURE 1 EVOLUTION OF SURVEILLANCE MECHANISMS IN THE MULTILATERAL TRADE REGIME

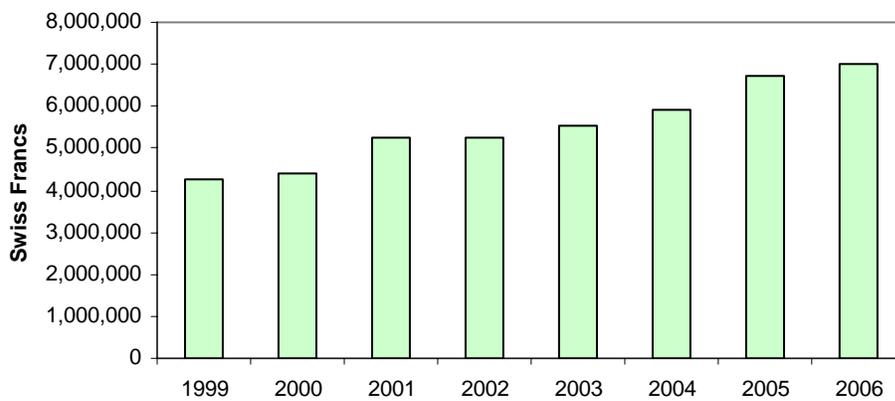
	1950s		1960s-70s		Post-Tokyo Round (1979-85)	Early Uruguay Round (1986-89)	GATT TPRM (1989-94)	WTO TPRM (1995 onwards)
Type of information system	Ad hoc	Issue-specific institutional reporting	Self-reporting; Other reporting	Institutional reporting	Institutional reporting	Ad hoc institutional reporting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

FIGURE 2
STAFF INCREASE AT THE TRADE POLICIES REVIEW DIVISION



Source: WTO Secretariat

FIGURE 3
BUDGET INCREASES FOR THE TRADE POLICIES REVIEW DIVISION



Source: WTO Secretariat

FIGURE 4 NUMBER OF REVIEWS BY YEAR*

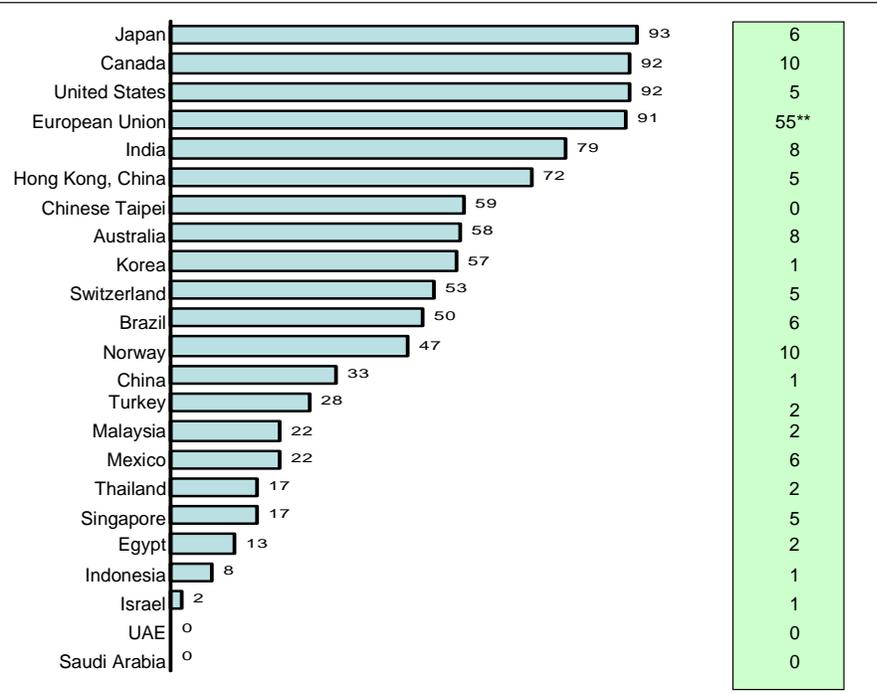


Number of reviews required by review cycle (assuming a six-year cycle for LDCs as well)

* Until 31 December 2007

FIGURE 5 PARTICIPATION IN TPR MEETINGS (%)*

TIMES SERVED AS DISCUSSANTS



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

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

¹ Keohane, 1983, p.154; also Keohane, pp. 86-97.

² Chayes and Chayes, 1995, pp. 22, 136-153.

³ Chayes and Chayes, 1995, p. 144.

⁴ Ostrom describes states as adopting a 'contingent strategy', which is dependent on the availability of information. See Ostrom, 1990, p. 187.

⁵ Reciprocity is considered 'the most effective strategy for maintaining cooperation among egoists.' Keohane, 1984, p. 214. Also Keohane, 1986, p. 1-27. Furthermore, the norm of *pacta sunt servanda* – that treaties are meant to be obeyed – is a fundamental norm in international relations.

⁶ Mitchell, 1994, p. 429.

⁷ Chayes and Chayes, 1993, pp. 188-197

⁸ Axelrod and Keohane, 1986, p. 226.

⁹ Koremenos, Lipson and Snidal, 2001, pp. 773-779. The other independent variables in the RD framework were bargaining problems and enforcement problems, but these are not directly relevant to the design of information systems.

¹⁰ Mattli and Woods, in their framework to explain regulatory change, use 'public' (state, NGOs) and 'private' (firms, business associations) as actor categories. See Mattli and Woods, 2007 (forthcoming). However, in our framework, since states ultimately negotiate at international regimes, the distinction between state and non-state (NGOs, firms) is more useful. The distinction also helps to think about the kind of information gap the two categories of actors could be expected to fill during surveillance.

¹¹ Some of the design types are similar to those developed by Ronald Mitchell. See Mitchell, 1998, pp. 109-130. But Mitchell's categories are incomplete when we account for different types of actors in the supply of information, and also for different types of information gaps. The incompleteness in Mitchell's framework becomes evident when we account for institutional reporting and non-state actors reporting.

¹² Chayes and Chayes, 1995

¹³ Mavroidis points out that the GATT secretariat reports largely relied on the information provided through national reports. See Mavroidis, 1991-1992, p. 380.

¹⁴ Abbott and Snidal argue that centralisation and independence are two key conditions for the regime to be able to effectively monitor and enforce compliance. There is, however, an inherent trade-off between using resources to promote compliance or to monitor non-compliance. Abbott and Snidal, 1998, pp. 3-32.

¹⁵ Dai, 2002, pp. 412-419.

¹⁶ Dai, 2002, p. 425.

¹⁷ Kal Raustiala argues that NSAs might have better capacities to monitor non-compliance through 'fire alarm' procedures, as opposed to centralised 'police patrols'. Raustiala, 2003-2004, 389-413. Also see, McCubbins and Schwartz, 1984, 165-179. Examples of fire alarms include the Citizens Submissions Process in North American Agreement on Environmental Cooperation, the World Bank Inspection Panel, the ILO's *ad hoc* review processes, the Inter-American Human Rights system, and even the WTO Dispute Settlement Mechanism.

¹⁸ Some NGOs or networks, like IP-Health and IP-Watch, have also become involved in monitoring day-to-day developments in intellectual property.

¹⁹ Hoekman and Mavroidis, 2000, p. 529.

²⁰ Hoekman and Mavroidis, 2000, p. 539.

²¹ GATT, General Agreement on Tariffs and Trade, "The 1954/55 Review Session - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/12 (14 August, 1987), para. 2.

²² GATT, General Agreement on Tariffs and Trade, "The 1954/55 Review Session - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/12 (14 August, 1987), para. 4.

²³ This was largely a comprehensive exercise, since the GATT had only forty-three Contracting Parties in end-1962.

²⁴ Blackhurst, 1988, p. 135.

²⁵ GATT, General Agreement on Tariffs and Trade, "Existing Surveillance Functions in the GATT - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/3 (9 June, 1987), paras. 12-15.

²⁶ Even now the major trading powers use their national surveillance systems, like the U.S. Trade Compliance Center which provides information about the United States' trading partners' record on compliance with trade commitments.

²⁷ Curzon Price, 1992, p. 97.

²⁸ GATT, General Agreement on Tariffs and Trade, *Existing Surveillance Functions in the GATT - Note by the Secretariat*, para. 7.

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- ²⁹ GATT, General Agreement on Tariffs and Trade, *Existing Surveillance Functions in the GATT - Note by the Secretariat*, paras. 9-11.
- ³⁰ By 1964, developing countries accounted for 65 per cent of the membership.
- ³¹ Developing countries were reviewed periodically by the IMF and the World Bank, but in both fora they usually had the status of debtors with limited bargaining power. The trade system, with nominally equal status for all members, was different.
- ³² Leutwiler et al., 1985, p. 42.
- ³³ Leutwiler et al., 1985, p. 42.
- ³⁴ GATT, General Agreement on Tariffs and Trade, "Meeting of 23 June 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/2 (26 June, 1987), para. 7. Also see GATT, General Agreement on Tariffs and Trade, "Meeting of 7 April 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/1 (10 April, 1987), para. 6.
- ³⁵ Francois, 2001, p. 304. Also see Keesing, 1998
- ³⁶ Curzon Price, 1991, p. 229.
- ³⁷ GATT, General Agreement on Tariffs and Trade, "Communication from Australia," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/1 (3 April, 1987), para. 5.
- ³⁸ GATT, General Agreement on Tariffs and Trade, "Initial Submission by the United States to the Uruguay Round Negotiating Group on Functioning of the GATT System," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/9 (23 June, 1987), pp. 2-3.
- ³⁹ GATT, General Agreement on Tariffs and Trade, "Communication from the European Community," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/20 (22 March, 1988), p. 3.
- ⁴⁰ GATT, General Agreement on Tariffs and Trade, *Meeting of 7 April 1987 - Note by the Secretariat*, para. 4.
- ⁴¹ GATT, General Agreement on Tariffs and Trade, "Communication from the Delegation of India," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/23 (22 June, 1988), para. 3.
- ⁴² GATT, General Agreement on Tariffs and Trade, "Communication from the Delegation of Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/22 (16 May, 1988), para. 3.
- ⁴³ GATT, General Agreement on Tariffs and Trade, "Communication from Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/11 (8 July, 1987), para. III(i) (emphasis original).
- ⁴⁴ GATT, General Agreement on Tariffs and Trade, "Statement by the Delegation of Jamaica," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/29 (30 September, 1988), para. 1.
- ⁴⁵ GATT, General Agreement on Tariffs and Trade, *Meeting of 23 June 1987 - Note by the Secretariat*, para. 4.
- ⁴⁶ Leutwiler and others, *Trade Policies for a Better Future: Proposals for Action*, p. 42 (emphasis added).
- ⁴⁷ GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of India*, para. 3.
- ⁴⁸ GATT, General Agreement on Tariffs and Trade, "Meeting of 28 September 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/3 (8 October, 1987), para. 6.
- ⁴⁹ GATT, General Agreement on Tariffs and Trade, *Meeting of 7 April 1987 - Note by the Secretariat*, paras. 2-3.
- ⁵⁰ GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of Jamaica*, para. 16.
- ⁵¹ Interview with former GATT/WTO/UNCTAD official, 14 June 2007.
- ⁵² Interview with Member of the Director-General's Cabinet during the FOGS Negotiations, 2 July 2007.
- ⁵³ Interview with a delegate at the Permanent Mission of Tanzania to the WTO, 4 July 2007.
- ⁵⁴ Francois, 2001a, p. 150-154. Also see Francois, 2001b, 303-316.
- ⁵⁵ Interview with senior WTO Secretariat official, 1 July 2007.
- ⁵⁶ Keesing, 1998, p. 6.
- ⁵⁷ Interviews with officials in the European Commission's Mission to the WTO (6 July 2007), GATT Secretariat (14 June 2007) and WTO Secretariat (5 July 2007).
- ⁵⁸ Interview with official in the Permanent Mission of Australia to the WTO (6 July 2007).
- ⁵⁹ Borrmann and Koopmann also point to the usefulness of the TPRs as inputs into the Poverty Reduction Strategy Papers (PRSP) process. See Borrmann and Koopman, 2002.
- ⁶⁰ Interview with senior official at the Trade Policies Review Division, 5 July 2007.
- ⁶¹ GATT, General Agreement on Tariffs and Trade, "Jamaica - Statement by the Hon. Paul Robertson, Minister of Foreign Affairs and Foreign Trade," *GATT Trade Negotiations Committee*, no. MTN.TNC/MIN(94)/ST/36 (13 April, 1994), p. 2.
- ⁶² Interviews with a senior negotiator at the Permanent Mission of South Africa to the WTO, and a member of the WTO Director-General's Cabinet, 3 July 2007.

⁶³ Mavroidis had also suggested three surveillance functions – review, corrective and creative – but within these broad categories there are a range of tasks that the literature did not clearly specify. Mavroidis, 1991-1992, pp. 408-409. These ideas were first developed in Hoof and de Vey Mestdagh, 1984.

⁶⁴ Raustiala uses the term ‘review institutions’, to describe those that gather and assess information on the ‘implementation of, compliance with, adjustment of, and effectiveness of international obligations...’ Raustiala, 2001, p. 3.

⁶⁵ Lombardi and Woods, 2007 (forthcoming).

⁶⁶ OECD economic surveys offer non-binding recommendations to member countries, which tend to adopt them for the sake of attracting additional investment. The IMF has also developed a combination of bilateral consultations, global reporting and voluntary surveillance of codes and standards. See Lombardi and Woods, 2007 (forthcoming).

⁶⁷ Note the role of data collection by the Intergovernmental Panel on Climate Change in informing new rounds of negotiations at the UNFCCC.

⁶⁸ Mitchell, 1998, p. 113.

⁶⁹ Mitchell, 1998, p. 113.

⁷⁰ Raustiala, 2001.

⁷¹ GATT, General Agreement on Tariffs and Trade, "Functioning of the GATT System: Decisions of 12 April 1989," *Negotiating Group on Functioning of the GATT System*, no. L/6490 (12 April, 1989), para. I(A)(i).

⁷² GATT, General Agreement on Tariffs and Trade, "Communication from Japan - Proposal for the Trade Policy Review in the GATT," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/8 (23 June, 1987), para. 6.

⁷³ GATT, General Agreement on Tariffs and Trade, "Meeting of 20 and 22 June 1988 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/8 (13 July, 1988), para. 36.

⁷⁴ GATT, General Agreement on Tariffs and Trade, "Meeting of 19-20 June 1989 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/12 (30 June, 1989), para. 10.

⁷⁵ WTO, World Trade Organization, "Procedural Improvements to the Trade Policy Review Mechanism - Note by the Chairman," *Trade Policy Review Body*, no. WT/TPR/13 (13 December, 1995), para. 7.

⁷⁶ GATT, General Agreement on Tariffs and Trade, "Communication from Canada," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/10 (2 July, 1987), p. 2 (emphasis original).

⁷⁷ GATT, General Agreement on Tariffs and Trade, *Functioning of the GATT System: Decisions of 12 April 1989*, para. I(A)(i).

⁷⁸ See Narlikar’s critique on the GATT/WTO’s decision-making procedures in Narlikar, 2005, pp. 44-45.

⁷⁹ GATT, General Agreement on Tariffs and Trade, "Communication from the Nordic Countries," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/W/17 (28 January, 1988), paras. I(1) and I(5). See also GATT, General Agreement on Tariffs and Trade, *Communication from the European Community*, p. 4.

⁸⁰ GATT, General Agreement on Tariffs and Trade, *Communication from the Delegation of India*, para. 9.

⁸¹ GATT, General Agreement on Tariffs and Trade, *Meeting of 20 and 22 June 1988 - Note by the Secretariat*, para. 32.

⁸² GATT, General Agreement on Tariffs and Trade, *Functioning of the GATT System: Decisions of 12 April 1989*, para. I(F).

⁸³ GATT, General Agreement on Tariffs and Trade, *Functioning of the GATT System: Decisions of 12 April 1989*, para. I(F).

⁸⁴ Qureshi, 1990, p. 147.

⁸⁵ GATT, General Agreement on Tariffs and Trade, "Meeting of 3 and 4 November 1987 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/4 (30 November, 1987), para. 11.

⁸⁶ GATT, General Agreement on Tariffs and Trade, "Meeting of 21-23 March 1988 - Note by the Secretariat," *Negotiating Group on Functioning of the GATT System*, no. MTN.GNG/NG14/6 (15 April, 1988), para. 7.

⁸⁷ GATT, General Agreement on Tariffs and Trade, *Communication from Jamaica*, para. III(ii).

⁸⁸ Curzon Price, 1991, p. 231.

⁸⁹ The countries analysed as complainants are: Antigua and Barbuda, Argentina, Bangladesh, Brazil, Chile, China, Colombia, Costa Rica, Czech Republic, Ecuador, Guatemala, Honduras, Hong Kong, China, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Nicaragua, Pakistan, Panama, Peru, Philippines, Poland, Singapore, Sri Lanka, Chinese Taipei, Thailand, Turkey, Uruguay, and Venezuela. Adding the respondents (including developed countries like Canada, the EU, Japan, and the US) increases the total number of countries analysed.

⁹⁰ GATT, General Agreement on Tariffs and Trade, *Meeting of 19-20 June 1989 - Note by the Secretariat*, para. 6 (emphasis added).

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