

# PROPOSALS TO IMPROVE MONITORING AND TRANSPARENCY

In defense of multilateralism and the reform of the  
World Trade Organization  
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Group of  
Punta del  
Este (G.P.E),  
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One of the central pillars of the multilateral trading system is transparency, which is fundamental to ensure legal security and predictability for economic stakeholders. Regrettably in this regard, the WTO is affected by lack of compliance and dysfunctions.

The transparency system can be improved in three areas:

- to. The Trade Policy Review Mechanism (TPRM).
- b. The general monitoring of measures that affect trade.
- c. Transparency: notifications and review.

**a) Trade Policy Review Mechanism (TPRM)**

The TPR was a great improvement of the system in the Uruguay Round and was formalized after a trial period. More than 400 policy reviews have been carried out and the effort of the Secretariat is really commendable. The procedures that have been developed strengthen the review and the accumulated experience in the preparation of the reports constitutes an important institutional capital. However, the mechanism presents problems or loopholes that can be resolved.

The reports are a highly valuable source of information for all interested parties, but such value decreases over time as it gradually ceases to reflect up-to-date information. Therefore, the review every 2, 4 and 6 years, depending on the trade of the reviewed member, does not respond to the needs of governments and other stakeholders. In some cases, there are no relevant trade policy changes that justify frequent reviews. In other cases, situation is the reverse. This problem has been compounded by changing the frequency to 3, 5 and 7 years as from 2019, apparently to solve a problem of scarce resources.

The discussion of the reports takes place between diplomatic representatives and, as a consequence, the comments or observations lack the critical approach of a mechanism that should allow the concerns over the trade policy measures implemented by the reviewed member to be frankly conveyed.

The debates are held behind closed doors, without the participation of other interested stakeholders, such as the private sector, media and civil society.

The TPR mechanism has been regularly reviewed every 5 years, and the next should take place in year 2021. In our view, without waiting for the next review members could consider the following ideas:

**a.1) Proposal on the frequency of the TPR:**

The frequency should not depend exclusively on the size of the economy to be monitored. It is more relevant to take into account the level of changes introduced in each economy and their eventual global impact. We propose that Director General can decide on the basis of the available information and in consultation with the Chairs of the main bodies of the WTO,<sup>1</sup> whether the trade policy review of a member should be moved forward.

### **a.2) Proposals on the analytical and critical depth of the TPR:**

The TPR is currently a peer review that over the years has become a process perhaps too "amicable" since it is essentially a dialogue of diplomats. While preserving a collegial spirit and management the TPR should enhance the analytical instead of a merely descriptive approach. We propose that other actors participate to add to the exercise more capacity to question and to be critical, as follows:

- So far, the discussant is usually an Ambassador. It should be allowed the discussant to be a trade policy expert or an academic, without governmental affiliation, who can deliver a critical and impartial vision. It could be complemented by a private sector discussant appointed, for example, by the International Chamber of Commerce (ICC).
- The private sector should also be allowed to formulate observations or questions, with an appropriate filter. The reviewed government would determine which ones to respond.

### **a.3) Proposals on the external transparency of the TPR:**

The policy review is an exercise of transparency among governments. However, its usefulness would be enhanced if it were open to the public as with dispute settlement panels sessions. Therefore, we propose:

- Sessions must be open to the public, totally or partially, including to the media.
- Open sessions must be broadcast in real time (streaming).
- The outcome of the sessions must be kept on the WTO website

### **b) The general monitoring of measures that affect trade.**

Since the financial crisis of September in 2008, the Secretariat produces a report (before quarterly and now twice a year) that compiles a brief list of restrictive and liberalizing trade measures applied by members during the period. In addition, together with UNCTAD and OECD, the Secretariat presents to the G20 an annual report concerning the countries of group. The Secretariat collects information from various sources and governments validate it, and a separate annex identifies measures that governments have not confirmed. This reveals the ability of the Secretariat to gather information. However, having to wait 6 months for the update reduces the value of the information.

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<sup>1</sup> Trade Policy Review Body, General Council, Dispute Settlement Body, and the Councils of Trade in Goods, Trade in Services and Trade-Related aspects of Intellectual Property.

**b.1) Proposal for a constant flow of information.** The Secretariat should publish the measures on its website as soon as it becomes aware of them.

**b.2) Proposal for global analysis and measurement:** Every six months (or annually) the Secretariat should make a global analysis and measure, for example, the share of international trade that is impacted by the stock of trade-restrictive measures.

**b.3) Proposed definition.** The Secretariat must define what it means by a "trade restrictive measure". For example, the definition of the Global Trade Alert: "a significant and unilateral change in the relative treatment of foreign versus domestic interests" could be used

**b.4) Proposal to improve the collection of information.** Each member should be monitored by an official of the Secretariat, taking advantage of language skills.

**b.5) Proposal of agreements.** The WTO should maintain agreements with academic centers or with agencies such as the International Monetary Fund, the World Bank and OECD to share information.

**b.6.) Proposal on the WTO website.** Include a window to allow for anyone to provide information, safeguarding the confidentiality of the source.

**c) Particular monitoring: transparency and review of measures.**

The first and most basic level of transparency is the exchange of reciprocal information among the members of the WTO, pursuant to the obligations of multilateral agreements.

This is the meaning of Article X of the GATT Agreement since 1947. In addition to this basic transparency standard, there are specific publication and notification obligations in virtually all multilateral agreements covered by the WTO constitutive agreement<sup>2</sup>.

However, having a system entirely based on "notifications" is very limited; it will always be incomplete and late, in addition to lack of compliance with transparency obligations, thus giving rise to frequent complaints.

There is a stigma associated with "notifying", even though most often than not the information is in the public domain, because the domestic sectoral authorities tend to regard a notification as self-incriminating.

Many governments claim they lack resources to comply properly and in a timely manner, or to assume new transparency obligations. At the same time, exercises such as the TPR and the monitoring of restrictions reveal that the Secretariat is capable of collecting, receiving and organizing information, which governments could then validate.

It's a fact that without timely information many countries with fewer resources cannot defend their interests. In addition, the lack of information conspires against the opportunities to

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negotiate new or better disciplines, because members lack the means to assess the dimension of the problems or the impacts of the proposals. This is why we attach great importance to overcome the notification's deficit to which end we propose the following:

**c.1) Complement Members' obligations with strengthened action by the Secretariat.**

- The Secretariat should take a very active role in supporting governments to comply with their notification obligations in all agreements, in a complete and timely manner. For this purpose, notwithstanding that the obligation to notify lies with the member, the Secretariat could provide the information to be validated by government.
- The Secretariat must be active to expand and improve the iTIP portal for goods and services.
- The Secretariat should be able to organize and disseminate other relevant information, in the most convenient formats, for which the consent members is not required.

**c.2) Implement proposals to strengthen compliance with notification obligations**, such as those put forward a group of countries (in particular document JOB/GC/204-JOB / CTG/14 and addendum circulated by Argentina, Australia, Costa Rica, United States, Japan, Chinese Taipei and the European Union), which contains concrete and practical ideas that generate incentives to comply with the notifications, including "sanctions" that do not alter the balance of rights and obligations and deepen the "bona fide ". This proposal seems to be convergent with the initial exploration of ideas carried out by Canada in its general initiative contained in JOB/GC/201.