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Letting the sun shine in at the WTO: How transparency brings the trading system to life

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Abstract:

Without transparency, trade agreements are just words on paper. Transparency as disclosure allows economic actors and trading partners to see how rules are implanted; transparency in decision-making ensures fairness and peer review. In the first section of this paper, I discuss the logic of transparency in general and the motivation for its use in the trading system. Considerable information on WTO transparency mechanisms is available in the Minutes and annual reports of the various WTO bodies, and in the Director-General's annual overview of the trading system, but comparative analysis is not easy. In the second section, therefore, I develop a framework in which different transparency mechanisms can be compared to each other using the metaphor of three generations in the evolution of transparency in the trading system as a means of explaining how transparency works in the WTO. For sunshine to work, at least two things must happen. Information must be made available, and Members have to use it. Probing the extent to which Members comply with their notification obligations, in the third section, and their efforts to improve the notification process, allow an assessment of their commitment to being transparent. In the fourth section I consider how WTO committees are used to ensure that Members are accountable for their commitments, including to notify. Since the committees differ, I use the metaphor of the great pyramid of the legal order to compare committees to each other. Assessment of whether these mechanisms work underpins observations in the conclusion on whether more sunshine is needed, and efforts underway to improve existing mechanisms.

Keywords: international agreements, transparency, accountability, disclosure, decision-making, notification, peer review, surveillance

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Reports of the death of the World Trade Organization (WTO) are exaggerated. Even with the Doha Round of multilateral trade negotiations in suspended animation since 2011, the importance of the WTO to the daily life of the trading system is undiminished. Formal rounds of negotiations and resort to the dispute settlement system are the traditional ways of thinking about the role of the WTO, but the third dimension of ongoing WTO work, which can be broadly grouped as transparency and accountability mechanisms, may be the most important. Drafting a new agreement, and entertaining legal arguments about what it might mean, both forms of codification, are less important in this constructivist interpretation of social life, in which trade law is seen as dynamic not static, than the interaction structured by the agreement. The focus of this paper, therefore, is on how Members use WTO committees to make the trading system a living thing. Sunshine is the foundation.

The first use of sunshine as a metaphor for transparency as a policy tool is attributed to the American jurist Louis Brandeis. In writing about efforts to regulate finance, he said "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman (Brandeis, 1914, 92)." The transparency norm is based on the principled belief that democratic governance and efficient markets are both enhanced when participants know what is going on, and when administrative agencies have a degree of autonomy, or independence from political interference. The one is effectively a constraint on the other: administrators must be free to get on with the job, but openness is a constraint on abuse of discretion.

Americans certainly brought these ideas with them to the international organizations created in the last century, but they were not alone. Others have argued that Article X of the General Agreement on Tariffs and Trade (GATT) 1947 on "Publication and Administration of Trade Regulations", like the US *Administrative Procedures Act* of 1946, whose language it appears to replicate (Ostry, 1998, 16), was based on an American belief that transparency was the best way to control the discretion of administrative agencies (Ala'i, 2008, 873). But Article X was partly based on Articles 4 and 6 of the 1923 *International Convention Relating to the Simplification of Customs Formalities* (WTO, 2005, para 3), while transparency and independent judicial review had been part of English administrative law since the seventeenth century (Arthurs, 1985).

Sunshine as a policy paradigm is not especially novel, or American, therefore, but it is associated with the powers who once dominated the trading system. Do newer players attach the same importance to transparency? Is sunshine effective in the presence of great imbalances in power and wealth? Rich countries with sophisticated bureaucracies are better able to take advantage of transparency and accountability mechanisms, but those mechanisms do bring institutional power into play, which is distributed differently than material power (Barnett and Duvall, 2005). Developing countries are strong proponents of increased internal transparency at WTO, but many of them are weak in meeting their transparency obligations. They also do not use transparency as effectively as they might to hold the major traders to account. Nevertheless, transparency is increasing at WTO, no doubt in part because of the transparency wave in governance generally, which extends well beyond the Atlantic core of the original GATT.

Transparency matters for the ability of citizens to hold their governments accountable, but it has an institutional logic in global economic governance: transparency is part of how the world hangs together. Social forces contribute to global order along with material factors, even in the absence of hierarchical authority. Put differently, ideational factors are part of an explanation of how global order is possible. I am interested in transparency, therefore, because I think sunlight contributes more to order than coercion. If the point of signing trade agreements is that binding commitments reduce policy uncertainty for economic actors (importers and exporters) then the credibility of those commitments matters. The standard approach sees the threat and reality of coercive enforcement as essential for credibility. Since poor countries are challenged rarely if at all in formal disputes, if their commitments are to be credible, transparency can help (Bown and Hoekman, 2007). And if coercive enforcement does not matter much for the weakest participants in the system, then it probably matters even less for the strongest. This paper is an attempt to show how transparency helps them too.

In the first section of this paper, I discuss the logic of transparency in general and the motivation for its use in the trading system. Considerable information on WTO transparency mechanisms is available in the Minutes and annual reports of the various WTO bodies, and in the Director-General's annual overview of the trading system, but comparative analysis is not easy. In the second section, therefore, I develop a framework in which different transparency mechanisms can be compared to each other using the metaphor of three generations in the evolution of transparency in the trading system as a means of explaining how transparency works in the WTO. For sunshine to work, at least two things must happen. Information must be made available, and Members have to use it. Probing the extent to which Members comply with their notification obligations, in the third section, and their efforts to improve the notification process, allow an assessment of their commitment to being transparent. In the fourth section I consider how WTO committees are used to ensure that Members are accountable for their commitments, including to notify. Since the committees differ, I use the metaphor of the great pyramid of the legal order to compare committees to each other. Assessment of whether these mechanisms work underpins observations in the conclusion on whether more sunshine is needed, and efforts underway to improve existing mechanisms.

1. Why think about transparency?

Transparency is a representation of reality. As with a painting or a photograph, what we choose to include within the frame, and how it is portrayed, depends on what we think is important. Transparency, generally accepted as both legitimate in itself and essential to modern governance, is often seen as part of a basic right of access to government information, a principle that has become more important especially in OECD countries over the last 30 years. In the trading system, however, the objective of disclosure requirements on governments is neither to enhance the capacity of citizens nor to promote domestic objectives that can be achieved without the need for international obligations. Trade policy transparency is a policy tool, a non-coercive instrument for improving the operation of the trading system, rather than merely a right of citizens in itself.

The ultimate objective of transparency is systemic stability. The trading system is based on diffuse reciprocity, which requires trust, which requires transparency about the beliefs and intentions of actors, part of a mutually constitutive process in which trading partners learn about each other and the nature of the system without which no regime can function. The proximate objective of transparency is reducing information asymmetries among governments, and between the State, economic actors, and citizens.[2]

Start with economic actors, for whom uncertainty, including about the rules in foreign markets, can be crippling. An emerging body of literature conjectures, theoretically and empirically, that greater transparency improves trade flows (Lejarraga, 2011; Helble, Shepherd and Wilson, 2009), perhaps by reducing fixed or sunk costs and policy uncertainty (van Tongeren, 2009; Handley and Limão, 2012). Transparency about product quality through ISO certification (labels are a form of transparency) increases developing country exports (Potoski and Prakash, 2009). Still, some argue that imperfect information may not be much of a problem for the U.S. economy (Winston, 2008). Moreover, it would be naïve to think that transparency achieves its effects in isolation: just as disclosure requirements may need to be buttressed by regulations that require or prohibit certain actions (Stiglitz, 2010, 27), accountability in the trading system may need more coercive measures.

As for governments, information asymmetry exacerbates power imbalances. By reducing such information gaps, WTO helps to level the playing field. In this sense the disproportionate effort rich countries put into WTO transparency and surveillance is a kind of subsidy to other Members for whom information is costly. Information too can be multilateralized under the Most-Favored Nation rule.

One of the questions in any international legal regime is the extent to which differing national laws are functionally similar, or recognizably similar. Good faith implementation of international obligations need not and does not result in identical national law.[3] The purpose of transparency mechanisms in reducing information asymmetry is thus to allow verification by other Members that national law, policy, and implementation achieve the intended objective. Governments, especially developing country governments, usually lack perfect information about themselves. Ironically, one of the benefits of WTO transparency, both the process of notification and of responding to questions from others Members, is helping governments to understand their own policy better so that they can explain it to others. Creating opportunities to discuss new measures in advance can reduce the potential for conflict between states, for example when the measure is modified to accommodate the interests of partners, and it provides time for economic actors to adjust.

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[2] For an analysis that relates institutionalist arguments for transparency to the trade economics literature, see (WTO, 2007, 162-3). In brief: acquiring information is costly, and much of the relevant information will be held asymmetrically, which can be a particular problem with contracts that are necessarily incomplete: even rational actors cannot anticipate every contingency. In this context, "a useful definition of transparency is the presence of symmetric information… (Geraats, 2002, F534)."

[3] On the indeterminacy of WTO law see (Lang, 2011, 5).

Some authors stress the importance of attention to committee processes in WTO (Lang and Scott, 2009a; Lang and Scott, 2009b); others think that they are mere manifestations of underlying interests and power (Steinberg, 2009). The latter approach does not expect WTO procedures to alter the interests of domestic actors, and transparency can hardly be expected to make a difference. And yet, scholars note, "both coercion and incentives depend on transparency, either to identify the violators to be sanctioned or the compliers to be rewarded (Mitchell, 2011, 1883)." The former approach asks if participants in a committee process acquire information about each other's preferences that was not available in some other way, or if they learn from observation—apparently autonomous decisions to change national policy could originate in some multilateral process leading to policy learning, policy transfer or policy diffusion. Regardless of conditions in the world economy, or the wax and wane of domestic coalitions, regimes depend on the constant evolution of shared understandings of the essential rules and norms of the system. The final codification is not necessarily the most significant "outcome"—the real outcome is changed expectations of mutual obligations that will affect how officials respond to the pressure of domestic actors. The point a relational contract like the WTO, therefore, is not the thing itself but the capacity to structure the future interaction of the parties (Soltan, 1999, 396). That interaction would be empty without the high quality information that regimes provide.

WTO obligations require both transparency at national level, and transparency in Geneva. The necessary information, and the relation among actors, will differ between these locations, as summarized in Table 1. This transparency serves three purposes. First it lets actors know what others are doing, so they can act accordingly. Information users make better choices based on new information; information disclosers improve practices in response to the changed behaviors of users. Transparency in this sense is educational: when actors receive new information about themselves, become aware of alternatives, or perceive the social acceptability of particular norms, they may adopt new behaviours (Mitchell, 2011, 1882, 4). Governments are then assumed to be likely to change their behaviour because they learn about the benefits of socially acceptable policy action.[4]

Table 1 Purposes of transparency

	Information	Influence/participation	Accountability
Citizens	√	At home	At home
Economic actors	√	At home	At home
NGOs	√	At home (and Geneva?)	At home
Other Members	√	Geneva	Geneva

[4] Related ideas are found in the liberal convergence literature—see (Simmons, Dobbin and Garrett, 2006). Economists believe that if the public knew the real costs of protection and subsidies, politicians would be less likely to make bad decisions. Providing information to trading partners might deter defection from the obligations by ensuring that noncompliance will be restrained by peer pressure. Such thinking underlay the Leutwiler Group's recommendations for a public "protection balance sheet" and for regular public surveillance in the GATT of the ensemble of a country's trade-related policies (GATT, 1985, 35-7, 42).

Second, transparency is the basis for one actor to try to influence another actor to act differently. Governments use WTO as a forum for intervening in the design of another government's regulations. They act in part on behalf of economic actors in their country who may be affected by new regulations—engagement with regulatees usually diminishes potential conflict while leading to better regulation. In this sense the practices of WTO committees make for stronger and more extensive governance networks (Downes, 2012, 523). As a result of questions and challenge in a committee, a government may provide more information, change policy, or pressure other units of government to respond.

Third, transparency is the basis on which an actor can be held accountable for obligations, both those inherent in holding an office, and those accepted as part of some formal or informal agreement. One of the ultimate purposes of transparency is to ensure accountability for commitments, in this case by governments holding each other to account. Transparency was the central component of the novel accountability mechanism Members developed to restrain protectionist impulses associated with the Great Recession (Wolfe, 2012).

Accountability relations in the third column of Table 1 can be horizontal, including among governments, or vertical. In Geneva only governments are full participants, although NGOs have some capacity to influence debate and, as delegates of citizens, have some engagement in accountability mechanisms. Depending on how each of those purposes is understood, information needs will differ. Why information is made available, and for who, affects the process. Similarly each of those purposes implies a set of relations among actors, often expressed as a multiplicity of accountability relationships. The possibly relevant actors include any individual affected by policy; economic actors trying to operate in a particular market; other governments; and citizens.

Against this complex background of the motivation for WTO transparency, in the next section I describe an analytic framework for understanding how it works.

2. Three generations of transparency at WTO

Transparency in the trading system means the "Degree to which trade policies and practices, and the process by which they are established, are open and predictable."[5] This WTO Glossary definition necessarily requires choices both about how to be transparent, and what to be transparent about. It refers to a number of inter-related actions, including how: a rule or a policy is developed domestically; the rule is enforced or a policy is implemented; the rule is published; the other Members of the WTO are notified of the new rule or a policy action; a notification is discussed in Geneva; and the results of the Geneva process are published. The categorization of transparency as first, second and third generation policies (see Table 2) is a typology developed to think about the evolution of transparency policies in advanced economies (Fung, Graham and Weil, 2007).

[5] http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm. For a detailed discussion of definitions, see Box B.1 in (WTO, 2012r). This definition includes both the notion of regulation of states by disclosure, normally applied to private actors in domestic legal systems; as well as the familiar transparency demands placed on decision-makers.

The first generation is the emergence of open government or "right to know" policies, the second is regulation by disclosure, and the third is e-government. When adapted for analysis of the WTO,[6] first generation refers to the original GATT policies on information from 1947 as elaborated over the years, while second generation refers to the monitoring and surveillance mechanisms introduced with the conclusion of the Tokyo Round negotiations in 1979, and enhanced in the Uruguay Round negotiations that led to the creation of the WTO in 1995. Third generation refers both to managing an enlarged WTO with 157 Members, and to greater openness to the public, facilitated by the emergence of the internet, especially after a 2002 decision on access to documents (WTO, 2002a).

Table 2 Transparency generations

Generations	Principle	WTO example
1. right to know	access to most government processes and files with the general aim of informing the public and guarding against arbitrary government action.	allow governments and economic actors to know the trade policy environment at home and abroad.
2. targeted transparency, or monitoring and surveillance	mandate access to precisely defined and structured factual information from private or public sources with the aim of furthering particular policy objectives	move government actions in direction of consistency with implicit norms and explicit obligations of the trading system.
3. collaborative transparency, or reporting and engagement	employ new technologies to combine information from first- and second- generation policies with a new user-centered orientation.	combine 1st and 2nd generation results in a user-friendly format so that the public can readily understand more about what states and firms are doing.

Based on (Fung, Graham and Weil, 2007, 25)

Right to know in the WTO

A trade agreement is first a set of rules that should govern policy in a given domain. If nobody knows what the policy is, however, the agreement cannot work. Citizens cannot hold governments accountable and firms cannot navigate global markets if they do not know what tariffs or rules apply, and whether they are likely to change. Governments need to know how their trading partners are implementing their obligations. Simple publication of tariff schedules, though still an essential form of transparency, is no longer sufficient. An ad valorem tariff

[6] This section is based in part on (Collins-Williams and Wolfe, 2010) as adapted in (Halle and Wolfe, 2010). For a review of WTO transparency mechanisms organized by how they provide illumination on non-tariff measures, see (WTO, 2012r). For a review of the implementation of WTO transparency measures, see Part VI of (WTO, 2011c, and; WTO, 2012k). For an analysis of WTO provisions and their importance, see (WTO, 2002b).

imposed at the border is transparent in itself, and can readily be compared to the rate bound in a Member's published Schedules, but trading partners cannot see what is going on "behind the border" without help. Now trading partners and economic actors need to have information about a wide range of legitimate domestic policies that have the capacity to affect the flow of transactions across borders, notably those related to product safety and animal health, domestic policies that are increasingly subject to WTO obligations (WTO, 2012r).

Most of the first generation WTO transparency provisions listed in Table 3 [about here] relate to the obligations incumbent on governments for trade policy transparency at home. The basic *right to know* principle is publication of all trade-related international obligations (1), most notably the codification of Members' specific mutual obligations in the thousands of pages of "schedules" attached to the general obligations of the WTO agreements. Data on bound tariffs is now available on the WTO website in the Consolidated Tariff Schedules database, and a growing share of Members' applied tariffs is available in the Integrated Data Base (Bacchetta, Richtering and Santana, 2012, 19), both now part of the new Integrated Trade Intelligence Portal (I-TIP).

Equally important for economic actors are the many provisions requiring publication of all legal requirements affecting trade (2), and publication in sufficient time for anyone affected

Table 3 WTO right to know provisions[7]

Principle	**Examples**
1. Publication of international obligations	GATT Article II, GATS Article XX (schedules); trade agreements
2. Publication of laws and regulations	GATT Article X; GATS Article III:1; TRIPS Article 63
3. Enquiry points for trading partners and economic actors	SPS; TBT; GATS Article III:4
4. Independent administration and adjudication, including rights for foreign firms	GATT Article X; GATS Telecoms reference paper Agreement on Government Procurement, Articles XVIII and XIX
5. Notification through WTO	notifications can be classified by the form they take or by the use to which they are put in WTO.

by the rules to know about them before they come into force, both to allow time to comment and time to prepare to take advantage of the new opportunities created. "Notice and comment" provisions are common in many administrative law systems, since "the essence of the rule of law lies in the fact that men affected by the decisions which emerge from social processes should have some formally guaranteed opportunity to affect those decisions (Fuller, 1963, 19)." The

[7] An earlier version of this table was in (Collins-Williams and Wolfe, 2010); for a legal description of the provisions see (Ala'i, 2008).

WTO obligation is first to do it domestically, and then to extend the same courtesy to trading partners.

Given the complexity of measures affecting trade, some agreements require the establishment of an Enquiry Point (3) where other Members can obtain information on domestic regulations. The General Agreement on Trade in Services (GATS) even provides for the establishment of "contact points" where private companies from developing countries can obtain relevant information. An important right to know obligation is having regulators who are independent of the executive (4), whose actions are therefore made more visible. This principle is first seen in Article X of GATT 1947, but it is also found in other WTO agreements, most obviously Government Procurement, where transparency before and after the fact is meant to discipline the discretionary award of government contracts. Arms-length administration is an essential aspect of the competitive principles for services regulation embodied in the Reference Paper for the basic telecoms agreement.

Standards development and implementation is inherently decentralized among multiple multilateral and national bodies. Article 3.5 of the SPS Agreement requires the Committee to "develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations." Annex 3 of the TBT Agreement on good regulatory practice includes transparency and the possibility to comment on draft standards as objectives for government and non-governmental standardizing bodies.

Table 4 Types of WTO notifications

A. Self-reporting	**information provided by an actor on its own behavior**
a. "one time only"	Notification of laws, regulations or other measures implementing WTO obligations at a time specified in the agreement
b. Ad hoc (often ex ante)	Some notifications are required when Members take or propose to take certain actions that might affect other Members—e.g. change is legislation, new standards in SPS, or new measures in ILP
c. regular or periodic (usually ex post)	Many agreements have requirements for regular notification, either qualitative information on actions taken (e.g. an anti-dumping investigation) or quantitative data on subsidies (ASCM, Agriculture)
B. Other-reporting	**information provided by an actor on other actors' behaviour**
d. Reverse notification	Many agreements allow Members to notify measures that they think a trading partner should have notified, which then creates the basis for peer review e.g. Safeguards 12.8, SCM 25.10, Agriculture 18.7, GATS III.5
e. Dispute settlement	The formal complaint that launches a dispute is a form of reverse notification
f. Third parties	Many sources are used by the Secretariat in the monitoring reports, with a request for "verification" by Members

Table 5 Notification obligations as of 2011

	Regular	Ad hoc	Total
Development		7	**7**
Government Procurement	3	8	**11**
Intellectual Property	3	23	**26**
Services	3	11	**14**
Trade in Goods			
Agriculture	8	7	**15**
Market Access	9	27	**36**
Rules	7	34	**41**
Technical Barriers to Trade	1	13	**14**
TRIMs	1	2	**3**
General			
Balance of payments	1	1	**2**
RTAs	6	0	**6**
TPRM	0	1	**1**
Total	**42**	**134**	**176**

Source: (WTO, 2011c, Box 1)

All of the preceding right to know provisions are subject to notification requirements (5), as listed in part A of Table 4. In the WTO Glossary, a "notification" is defined as "a transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other Members." The requirements are all inherently ambiguous, in that Members are asked to notify something that "might have an effect on other Members," which those other Members might find negative. The basic principles were codified at the creation of the WTO, based on GATT practices that had been evolving since 1947 (Bacchetta, Richtering and Santana, 2012).

In one of the "decisions" adopted at the end of the Uruguay Round (WTO, 1995a), Members recalled the general obligations to notify, "such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations." They established a Central Registry of Notifications to receive and maintain the notifications, to inform each Member annually of their regular notification obligations, and to draw the attention of individual Members to regular notification requirements that remain unfulfilled. As shown in Table 5, the central database now covers 176 notification requirements, of which 42 are recurring requirements (semi-annual, annual, biennial, triennial). Important as they are, WTO notifications are notoriously incomplete, late, or non-existent. Efforts to improve this vital aspect of the system are discussed in section 3 below.

Monitoring and surveillance

Some WTO notifications are effectively "tombstone" data because no discussion takes place, but some are linked to the possibility of review by a relevant WTO body before or after the measure takes effect. Second generation transparency at WTO refers, therefore, to a set of *monitoring and*

surveillance mechanisms listed in Table 6. Monitoring means any activity where Members review each other's implementation of the Agreements. The meetings are opportunities for Members to learn more about the incidence of a particular policy, and to understand the rationale for their use. Surveillance might focus on checking whether governments have created national legislation that incorporates an agreement into law; or on whether those laws are adequately enforced. Monitoring takes place in the various WTO committees, often with an opportunity for Members to ask each other questions about notifications. The Agriculture Committee, for example, has reviewed 2,266 notifications since 1995, and the TRIPS Council had reviewed national implementing legislation for 117 Members by the end of 2010. The Committee on Regional Trade Agreements' new Transparency Mechanism allows discussion of notification of new RTAs to expose the potentially negative aspects of an RTA without requiring Members to give it formal approval (Mavroidis, 2011), yet Members do not notify all RTAs, or supply all requested data.

Table 6 WTO monitoring and surveillance mechanisms

Principle	**Examples**
1. General clarity in domestic trade policy	Trade Policy Review Mechanism - country reviews - Annual Report - monitoring reports
2. Peer review	Committee review - "specific trade concerns" in SPS 12:2, TBT 13:1 - similar procedure in Agriculture 18:6 and 18:7, ASCM 25:8, and ILP 4.
3. Third party adjudication	Dispute settlement system

The most formal monitoring and surveillance mechanism is now known as the "specific trade concerns" (STC) procedure. That term is not mentioned in the text of any WTO agreement, although many agreements encourage a process where Members may engage in ad hoc "consultations'. The STC process has evolved the most in the SPS and TBT committees, where questions of the sort that later came to be called STCs were raised in their first meetings in 1995. The first compendium of STCs was issued by the SPS committee in 2000 (WTO, 2000). In TBT the term first appeared in a document in 2002, and the first compendium was only issued in 2008. The data have been available for some time in a searchable database (now incorporated in I-TIP), which means better statistics on consultations among Members are available for these committees than others.

Although the term "specific trade concerns" is most explicitly associated with the SPS and TBT committees, a more informal process is found in many other committees, as shown in Table 9, below. The issues covered by STCs and analogous questions in other committees include concerns about how a member is implementing its obligations (e.g. is a measure an unnecessary barrier to trade?), and requests to clarify a measure that has been notified. Some concerns are raised just once, by one Member; but others come up at many meetings, with many Members expressing a concern about the same matter. Sometimes an issue comes up repeatedly because a government is signalling its support of an aggrieved domestic interest.

Peer review is also found in the Trade Policy Review Body (TPRB), which is responsible for the Trade Policy Review Mechanism (TPRM), whose objective is "achieving greater transparency in, and understanding of, the trade policies and practices of Members." Discussion in the TPRB is based on major reports written by the WTO Secretariat and the Member under review (WTO, 2011c, para 178 ff). IMF surveillance is different, because that international organization has a degree of autonomy and a mandate to provide advice (Wolf, 2011). The distinction is subtle, but the WTO Secretariat only speaks as an entity in the Director-General's annual "Overview of Developments in the International Trading Environment". In these reports to the TPRB, the Secretariat sometimes warns or expresses worries but never criticizes Members explicitly, and never ever comments on their rights and obligations under the WTO agreements.

Members created a new mechanism in response to the Great Recession that began in 2008. After the G-20 asked the WTO and other international organizations to monitor their collective commitment to avoid protectionism, the WTO began issuing periodic crisis monitoring reports, a novel extension of the mandate of the TPRB (WTO, 2012o). The Director-General claimed that he had the authority under the WTO agreements to conduct the crisis monitoring, but Members only formalized this role in December 2011 (WTO, 2011g). One factor that contributed to legitimizing this more autonomous role for the Secretariat was simply experience with the mechanism. Members discovered that the periodic Secretariat reports were factual and useful, especially for smaller Members who could not begin to generate such data on their own, and that the Secretariat was not trying to add to the dispute settlement system through the back door (Wolfe, 2012). The possibilities for further improving surveillance are discussed in section 4 below.

Reporting and engagement

Third generation transparency is represented at WTO by greater attention to what is done with the information available. Information is aggregated in new ways, and made more readily available. This dimension has greatest relevance for civil society, for smaller developing countries, and for LDCs. Rather than producing information, this type of transparency, as shown in Table 7 is more about communicating information, listening to the views of stakeholders, and improving WTO decision-making procedures. The latter is the focus of critics who see the WTO as undemocratic, arguing that civil society cannot properly participate in the organization and that many small countries are severely disadvantaged by the WTO's practices.

With what is sometimes called *collaborative transparency,* the *internal* challenge is to create a more inclusive decision-making process in Geneva, ensuring that all Members have and can make use of information. Whether developing countries have the capacity to generate their own notifications, to analyze the notifications of other Members, or be full participants in monitoring and surveillance mechanisms, affects both the operation of existing agreements and new negotiations. Transparency may contribute to learning, but the extent of such learning is limited by the small number of Members to whom questions are addressed in committees and by the

Table 7 Reporting and Engagement

Principle	**Examples**
Internal transparency for Members	- Rules of procedure for committees and negotiations - Extensive reporting on STCs in TBT and SPS - Database of questions and answers in Agriculture - Minutes of questions and answers in ASCM, ILP
External transparency for citizens and economic actors	- Documents publicly available on the website - Publish TPR reports, WTO Annual Report, and annual World Trade Report -Development of I-TIP, a searchable "umbrella" database
Role for NGOs	- annual Public Forum - *Amicus Curiae* briefs - limited use of third-party data

small number of active questioners, as discussed in section 4, below.[8] While the ability to engage in the process may not have been a major preoccupation of the Atlantic countries who created the GATT in the 1940s, it is increasingly critical now.

As to *external transparency*, the challenge is to enable better policymaking in capitals, engaging both economic actors and citizens. Domestic transparency, including an active process of seeking information from economic actors and consulting citizens, can be daunting.[9] Even helping people outside the WTO understand what is going on inside takes effort (Bonzon, 2008). Encouraged by environmental NGOs, meetings of the Committee on Trade and the Environment were the first to use the web to make the results of the meetings quickly accessible to the public (Shaffer, 2001, 75). By 2002, Members had agreed that all official WTO documents should be available to the public on the website, including minutes of meetings, dispute settlement reports, and the results of negotiations (WTO, 2002a). In practice Members have found myriad ways around these fine principles.[10] The rules apply only to documents in an official WTO series, but the most sensitive issues in negotiations often surface first in un-numbered "room documents" handed out during a meeting (available on a separate internal website), or in documents with the "JOB" code that are generally not made available to the public on the website. Documents on "accession" to the WTO are released only when the working party created to examine an application reports to the General Council, but the negotiations can drag on for many years, without the public formally knowing what is going on. Draft dispute settlement reports are released to the parties to a dispute long before they become generally available, and the submissions of the parties may never be released (Marceau and Hurley, 2012).

[8] On the difficulties facing smaller delegations, see (WTO, 2009c). In brief, with few staff in Geneva and limited professional support in capitals, exploiting the detailed information available, even attending all the relevant committee meetings, can be a challenge.

[9] On the value of domestic trade policy consultations, see (Halle and Wolfe, 2007) and the literature cited there.

[10] On why diplomats can be reluctant to be more transparent about what they do see (Roberts, 2004).

Efforts are underway in the Secretariat to improve the collection, management and dissemination of data by strengthening existing databases, by building new ones (e.g. for policies affecting trade in services), and by developing a comprehensive "umbrella database" that would bring all data together in one place. The work has taken longer than expected because each committee has its own notification format. The new database launched on January 16, 2013 as the Integrated Trade Intelligence Portal (I-TIP Goods). The initial version includes tariff data; notifications in SPS, TBT, and antidumping and countervailing measures; accession commitments; and the RTA Transparency Mechanism database. Import licensing, quantitative restrictions, agriculture notification, state trading and safeguards are coming next. Later in 2013, the database will be expanded to cover trade in services and other areas, including information on trade measures taken by WTO members and observers since the financial crisis began in October 2008, and all dispute settlement records since 1995. It seems that questions in the committees are not going to be in I-TIP except for "specific trade concerns" raised in SPS and TBT.

WTO has learned to be more engaged with civil society (Perez-Esteve, 2012), though with the exception of *amicus curiae* briefs in the dispute settlement system, NGOs have no ability to speak directly in any WTO meeting. Most meetings, including most dispute proceedings, are closed to the public. Some observe that the WTO dispute settlement system is considerably more open than comparable international organizations (Marceau and Hurley, 2012), but others think that a right of public access could be stronger, with more documents made available, and greater recognition of amicus curiae submissions by citizens and economic actors (Puig and Al-Haddab, 2011). In many environmental agreements, in contrast to WTO, NGOs are directly engaged in the work of the organization, notably CITES, where NGOs like TRAFFIC help gather additional information the organization's transparency mechanisms may miss while providing on the ground support and resources within States (Wolfe and Baddeley, 2012). WTO could make much more effective use of such third party information. In the case of crisis monitoring, for example, the Secretariat made use of data published by the Global Trade Alert, but did not have any kind of formal or systematic engagement with this NGO (Wolfe, 2012).

WTO Members are committed to making information available in Geneva, but that information is largely a by-product of information otherwise generated by the WTO transparency mechanisms that serve Member governments. The new I-TIP database will be a wonderful resource, but its use requires considerable expertise, which is hardly surprising. Even experts in one domain at WTO, such as trade in services, would have trouble following debates on "regionalization" of SPS measures. The WTO makes a vast amount of information available, but only a small amount is published with civil society organizations, economic actors, or citizens in mind. For example, the Trade Policy Review reports are written for Members, and in a specialist language, although the summary observations are written for a general audience. When a Member wishes, more active steps will be taken to disseminate the results at home. The crisis monitoring reports are explicitly aimed at Member governments, but the Secretariat has been working hard to report the results on the web in a way that makes complex data readily accessible to an interested but not necessarily professional audience.[11] While committee minutes

[11] See for example, "Lamy reports no slowdown in new trade restrictions" (WTO news item http://www.wto.org/english/news_e/news12_e/devel_29jun12_e.htm accessed 29 June 2012), in which he announced the release of (WTO, 2012c).

are necessarily dry and technical, the Secretariat also posts informative reports on the website soon after meetings take place. And in February 2013, a new web portal was created to meet the needs of business users.

Having in mind GATT practice, Members discussed the need for annual reporting as soon as the WTO was created (WTO, 1995). Subsidiary bodies are to report either to the respective sectoral Councils (Goods, Services and TRIPS), or directly to the General Council, which itself must prepare a report. The required reports are to be factual in nature, containing an indication of actions and decisions taken. All of this information provides the basis for the relevant discussion, which may be more anodyne, in the WTO Annual Report, which is aimed at the interested public.

The evolution of the GATT/WTO through three generations of increasing complexity and sophistication has created a remarkable window on the trading system, but it remains cloudy. In the next section I discuss how WTO can obtain better information, and in the subsequent section how more discussion in committees might help make better use of it.

3. Why notification is weak, and how it can be improved

The central right to know device in WTO is notification, the means of assembling detailed high quality information on the trading system and the trade policies of WTO Members. Notification does not work as well as it should. Across WTO, ex post notification of legislation is adequate to good. Ex ante notification of proposed regulations, including voluntary notification of regulations that follow an international standard, is also good, but ex post notification of implemented regulations is inconsistent.[12] Notification of ex post data on subsidies is weak, especially industrial subsidies, yet timeliness is essential for economic actors and trade negotiators alike when making forward-looking decisions.

Given the limited trade policy resources available to many Members, the intensity of the early Doha Round negotiations may have distracted attention from notification. The 2008 breakdown in the round created time for Members to devote to neglected routine work at the same time as efforts to monitor the response to the financial crisis highlighted weaknesses in WTO as a repository of trade policy data. The chairperson of the General Council wrote to the chairs of all WTO bodies in February 2009 asking them "to consult with Members on ways to improve the timeliness and completeness of notifications and other information flows on trade measures." They were asked to report to the Chair of the TPRB on the results. The subsequent annual overview of the trading system by the Director-General (WTO, 2009b) contained a new section on transparency, since repeated every year.

While active users of anti-dumping generally make good efforts to comply with notification requirements, semi-annual reports are often submitted late and notifications are sometimes

[12] Since under Article X of GATT 1994, all new measures of general application affecting trade must be published, it is curious that Committees have not discussed why such measures once published are not also notified.

incomplete, or do not comply with the format (WTO, 2012k, 241). In previous work Collins-Williams and Wolfe (2010) showed how the record of industrial subsidies notification under the Agreement on Subsidies and Countervailing Measures (ASCM) was poor. It still is. More than half of the Members are still not notifying their subsidies (WTO, 2012j). Some Members have not submitted a notification for many years, and Members question the comprehensiveness of those notifications that have been submitted. While some run to hundreds of pages, others are very brief. More information on subsidies is available in Trade Policy Review reports, but there too the coverage is uneven due to the difficulty of assembling comparable data (WTO, 2012k; WTO, 2006b). Collins-Williams and Wolfe also found that notification of agricultural subsidies was better than industrial subsidies, which it still is, but notifications trickle in slowly. At the end of September 2011, only 20% of the Members were in full compliance with their agriculture notification obligations up to the end of 2009 (WTO, 2011c). Even when Members comply with the agriculture transparency requirements, why they notify is based on the obligations in the agreement, including out-dated reference price data, so the results do not necessarily allow a satisfactory analysis of the state of support to agriculture in Member countries (WTO, 2012k, setion B3).

Notification under other agreements is little better. Under the GATS, any changes to laws, regulations or guidelines that "significantly affect" trade in scheduled sectors should be notified, but this obligation has been widely ignored (Adlung and Soprana, 2012, 19), including by rich Members with sophisticated services regimes, like the U.S. and the EU. The record of notification is dismal: up to the middle of 2010, only 565 notifications of any kind had been submitted under the various GATS provisions (WTO, 2010b). In one recent year, only 22 such notifications were received, from four Members (WTO, 2011c, para 168). The Agreement on Trade-Related Aspects of Intellectual Property rights (TRIPS) has a great many notification requirements. In recent years the Secretariat has developed a number of tools that make it easier for Members to notify, and for users to find the information online. Most of the notifications could be described as ex post descriptions of national legislation, which are reasonably complete, but the notification of subsequent amendments is uneven (WTO, 2012k, 244). Under Article 12 of the Safeguards Agreement, Members notify both national legislation with respect to safeguards, and specific safeguard actions. The record of notification is reasonably satisfactory. One of the fundamental goals of the GATT since 1947 is disciplines on quantitative restrictions, which are inherently less transparent than tariffs for economic actors and other governments, but it was only in 2012 that Members agreed to provide detailed notifications of all quantitative restrictions in force along with any changes over time (WTO, 2012b). The number of notifications received in the Committee on Import Licensing has increased during the last five years, but 17 Members, including the recently acceded ones, have not submitted any notification since joining the WTO. The Committee has prepared a simplified form for notification intended to upgrade the quality and standardize the information submitted by Members, facilitating the tasks of officers responsible for notifications in their capitals (WTO, 2012h).

A caveat is in order. The absence of notification may mean a Member had nothing to report that year. Knowing what measures should have been reported, but were not, is hard. One sophisticated analysis found that the EU manifestly notifies fewer SPS measures than it might, in contrast to Brazil, who seems to notify everything, which is not necessarily helpful if it distracts attention from a greater focus on measures most important for international trade (Downes,

2012). Looking at the number of notifications is not a good measure for identifying under-notification: one country might submit 50 notifications, yet only have raised 1% of the matters it is obligated to notify; while another country may make just one notification, and in so doing have notified everything required by its obligations.

Why do Members not notify?

Notification is a legal obligation, but compliance is voluntary in practice, with no tangible or coercive penalty for non-compliance. Six sorts of reasons can be advanced as an explanation of why governments do not improve notification. The first is *bureaucratic incapacity*, which is the case for many developing countries whose trade ministries lack the data, knowledge or clout with other departments to generate the notification. Helping developing countries to learn how to notify is a key part of WTO technical assistance, with some success, but such assistance cannot change the institutional reality that while the notification obligations apply equally to all Members, states are not all the same (Biersteker and Weber, 1996). Many committees have taken steps to simplify notification formats to make it easier to fill the templates out online, and reduce duplication between obligations under different Agreements. The Import Licensing Committee (ILP) previously did not have a format for notifications, so information was not standardized, or accurate, because whoever was in charge in a capital put in what they thought needed to be notified. And of course everybody has capacity constraints. Even the U.S. was behind on notifying domestic support notifications in agriculture: the more complicated the program, the harder it is to notify.

A second issue, related to capacity, is language. Members whose capitals do not work in one of the official WTO languages, especially Asian Members (even Japan), face particular difficulties—they all have to translate WTO documents so that officials in capitals can understand them, and then translate back. In the TBT committee, more and more Members submit notifications with a hyperlink to the regulation itself in the original language. Avoiding the cost of translation in this way would be a huge saving for many countries in ILP, where notifications can be 60 to 100 pages long, but having the summary alone might disadvantage Members who cannot read the texts in the original language. In TRIPS, Members must submit their "main dedicated intellectual property laws and regulations" in a WTO language, but all other laws and regulations may be submitted in the original language. The EU must translate documents into 27 languages, but it then notifies their unofficial translation of Chinese measures, which is a service to the whole membership.

The third reason advanced for poor notification is a *refusal to see information as a public good*. One Secretariat official argues privately that governments do not value information enough, or that they value it too much, but in the wrong sense. That leads to a fourth reason, a *conscious unwillingness to notify*, where Members might worry about opening themselves to criticism, in a dispute, perhaps about a measure they suspect might be illegal; or where a notification might require showing one's cards in a negotiation. They may also not notify because a regional power is not notifying the same thing. An additional factor that may limit reverse notification is what insiders call the "glass house" problem: Members may not want to notify each other's subsidies, for example, for fear of drawing attention to their own transgressions.

A fifth reason is a lack of trust between trade negotiators and other government agencies in capitals, which is said to be more significant than any lack of trust in Geneva. Members find it easier to notify qualitative data on actions taken by the trade authorities (like new dumping investigations) than quantitative data on for example subsidies offered by other ministries, or other levels of government. The services potentially subject to notification in GATS are found in a great number of sectors, and thus require the involvement of many regulators and authorities, who can be hard to coordinate. WTO institutional structures lack a consistent interface with capitals, and the agreements are not always drafted with the diversity of national systems in mind, but the reverse is also true. In any government, if a program is not designed at the outset with the possibility of evaluation in mind, subsequent assessment can be hard, a difficulty compounded by the needs of multilateral reporting and accountability. Perhaps over time more Members will emulate the one who claimed to take account of WTO notification requirements in designing policy implementation so that data collection and reporting mechanisms are shaped in a WTO-compatible manner (WTO, 2009c, para 14).

The final reason advanced for poor notification is an *inability to characterize an issue in WTO language*, which is perhaps the case with emerging issues, like green subsidies, or issues where Members still lack an agreed definition of the issues. When the Global Trade Alert (GTA) tried to present data on "murky protectionism" (Baldwin and Evenett, 2009), a concept grounded in economic theory but not legal obligations, the report had little resonance in WTO. In GATS Members remain confused about which measures "significantly affect trade in services" and therefore require notification (WTO, 2009a), and Members' individual commitments are also often vague (Adlung, et al., 2013). Norway in commenting on its own recent notifications saw a need to explain why they had thought to notify—even if an obligation is clear, considerable interpretation is needed about whether other Members are affected, and what they might want to know about a new measure (WTO, 2012m, para 9-11). Notification of agriculture subsidies is better than industrial subsidies, if still inadequate, because successive rounds of negotiations have clarified what is to be notified. Members' agriculture export subsidy and domestic support commitments must be set out in their Schedules along with their market access commitments, and those Schedules define the ex post notification requirements (WTO, 1995b). In deciding what to notify, no further judgement is needed on the effects of a measure or the specificity of a subsidy, unlike the ASCM, where confusion still reigns. Members are to provide prior notification before imposing an agriculture export restriction under Article 12.1 b), but few such measures are notified, perhaps because the provision (and related provisions in GATT Article XI.2 a) are unclear (Howse and Josling, 2012, 11). Even when Members notify, one notification is not the same as another, since Members may differ in good faith on how they interpret the rules, or calculate a particular subsidy (Orden, Blandford and Josling, 2011, 13). The problem has been acute in ILP, where Members hope that a new template will help national officials know what to notify, and how.

What can be done about notification?

The intersection of the crisis monitoring process with the reflection on transparency in each committee initiated by the letter from the chair of the General Council has led to a considerable improvement in notification in the last couple of years, with many committees working to improve their notification formats and to facilitate online submission. Many of the annual

committee reports are increasingly informative on notification, including indications of who is late and questions raised. Despite these efforts, current data based on formal notifications are still inadequate in two dimensions: it can be hard to know if the notified data are accurate, or complete; and real-time monitoring is hampered by late notifications. In response to both inadequacies, Members have assigned the Secretariat an increasingly active role. The Integrated Database (IDB), for example, contains bound, applied and preferential tariffs, and data on import flows at the tariff-line level, but it has been hampered by poor notification. The Secretariat now also collects data on tariff rates from official and non-official sources, verifying it with the authorities concerned, which is helping to fill the gaps in the IDB (WTO, 2012k, 257). Similarly, the core of each TPR report is based on the notifications of the Member under review, but each report depends on a far wider range of data and information than is available from regular WTO notifications. The Secretariat collects this data from official sources (questionnaires to the Member under review) and non-official sources. To ensure accuracy, the Secretariat seeks verification of the data from non-official sources when discussing the draft of its report with the Member (WTO, 2011c, para 180).

The crisis monitoring reports and annual reports on the trading system use a similar method, but the 2012 monitoring report notes that replies to the request from the Director-General for information on measures taken during the period under review were received from 60 Members (counting EU Members separately), which represents only 38% of the Membership, although responses were received from around 60% of the 43 delegations (counting the EU as one) who were asked to verify information received from other sources (WTO, 2012k, para 19). Responses from the G-20 countries whose leaders called for this process have been better (Wolfe, 2012).

Understanding the incidence of agriculture subsidies poses special difficulties. Because they are based on a Member's obligations, and do not use comparable methodologies, WTO notifications of domestic support are not an accurate measurement of the value of support to producers, even if they were timely. It would be helpful to use OECD data for analytic purposes, although the OECD's Producer Subsidy Equivalent (PSE) is not a measure of trade distortion but of transfers to agricultural producers (WTO, 2012n). If used to enhance the timeliness of the data available for understanding national trade policy, but not as a tool for enhancing accountability obligations, they can be thought of as "shadow notification" or "pre-notification" (Josling and Mittenzwei, 2013). The issue has apparently provoked lively debate in the TPRB, since developing countries led by Brazil and India think that the Secretariat should not use OECD data. Another under-exploited source of trade policy data is economic actors—large firms must navigate the trade policy landscape every day, yet they may not realize what they know. Firms may be as unwilling as Members to make what they know available for fear of drawing attention to themselves.

Many agreements have provisions for "reverse notification" as shown in Part B of Table 4. Such provisions were used in the GATT at least from the 1960s, but have progressively lost importance under the WTO (Bacchetta, Richtering and Santana, 2012, 40), perhaps because many questions asked in committees are aimed at eliciting information that one Member thinks another ought to have notified (WTO, 2012p). A 1995 decision to allow reverse notification of NTMs (WTO, 1996) was used only once. More recently, the U.S. submitted extensive reverse notifications of Chinese and Indian subsidies, but few other Members have the capacity to

generate such analysis of another Member's policies. Requests to notify a measure that seems to fall within the ambit of the transparency obligations are in effect a reverse notification. In the context of the poor record of subsidies notification, the U.S. proposed a clarification of the provisions for reverse notification (Article 25.8) under which Members would be required to submit requests for clarification of measures that they think ought to have been notified in writing, and answers are to be submitted in writing within a reasonable time. Such reverse notifications would stay on the committee's agenda until they had been addressed (WTO, 2012l). The analytic challenge is illustrated by Norway's October 2012 reverse notification of Thailand's telecommunication's rules. This first ever under use of GATS Article III.5 was based on careful analysis of a Thai regulation that required considerable expertise (WTO, 2012i).

In many administrative law regimes template monitoring, for example a checklist of submission requirements, can be a helpful monitroing mechanism. The Secretariat is required to prepare a central report annually on compliance with notification requirements by country and by agreement (WTO, 1996), but the report (WTO, 2011h) is opaque to all but experts able to keep track of what is intended by the 176 notification obligations. In the periodic Trade Policy Reviews of each Member, the Secretariat reports on compliance with official notifications, with only a judicious choice of adjectives to signal a raised eyebrow for less than stellar performance, but sophisticated readers in other delegations can easily identify the areas where no notification was made or where notification is late. During the TPRB meeting, Members often call on the country under review to improve its notification record. Many committees provide detailed information on new notifications and they increasingly try to hold each other accountable for meeting their notification obligations, although because of the Glass House syndrome, Members are loathe to direct too much public attention to each other's shortcomings. In Agriculture Members discuss overdue notifications on the basis of a Secretariat report that is periodically updated (WTO, 2012a). The TBT Secretariat notes which countries have notified in the course of the year, for example, and how many notifications the Member has ever submitted—some Members have submitted few or none. In its most recent report on the Import Licensing Committee, for example, the Secretariat noted that 18 Members had never submitted an notification, and then named them (WTO, 2012h, para 10). In the face of continued weak notification, the chair of the SCM Committee began reading out the names of Members who were late. When that did not improve the rate of notification, he invited all of the Members who were late to explain the delay to the committee. Among the major players invited to offer such explanations at the April 2012 meeting were China, the European Union (on behalf of Austria and Greece), India, Indonesia, Nigeria, South Africa, and Thailand. The excuses offered included technical and capacity constraints, and coordination difficulties. The explicit tables in the Secretariat report on subsidies notification (WTO, 2012j), and the periodic discussion of notifications, provide transparency about transparency, but few Members are embarrassed, and little changes.

Finally, reflection on the circumstances under which Members are more likely to notify might help in thinking about improvements. The first is evident benefits: providers of information must see how doing so helps them meet their own objectives. Do they believe that the information they provide will be analyzed, aggregated and disseminated in a way that is helpful to them or crucial for the regime? Notification is also easier when the same agency is the authority for a measure, is responsible for notification, and is the user of the results in WTO. The exemplar

outside the WTO may be the three metals study groups where government and industry work closely together to ensure the availability of complete information on the legislative and regulatory requirements affecting extraction and trade in lead and zinc, copper, and nickel. Their reports aggregate information from 30,000 sources. The notifiers are also the users of the data, so they benefit from their contribution to the public good (White, 2012).[13] We see this virtuous circle in SPS, where the measures subject to notification are well-defined, what is being notified are changes in policy (not their imagined effects, as in subsidies), and usually the agent of notification also has responsibility for the measure in question. Furthermore, the outcome of notification in the SPS Committee is engagement in a dialogue that normally takes place among officials responsible for the policies being notified who can apply the results directly to their own experience.

This last factor may be critical. The experts from capitals who attend SPS meetings are the people who must provide notifications and who rely on other countries' notifications. They know the issues and are not caught up in other political issues within the WTO that trouble Geneva delegates. The TBT Committee also attracts experts from capitals, but unlike SPS, technical regulations can be the responsibility of many ministries increasing the importance of coordination by trade officials. In the subsidies committee (SCM), in contrast, the Geneva delegates typically report to treasury ministries, who have a very different interest in the use of public money in their own and other countries than operational ministries or sub-national governments. Fewer experts from capitals attend the Agriculture Committee, and capital-based attendance is rare for import licensing (ILP) or the Committee on Trade and Environment (CTE). In short, something about the nature of committees seems to affect the propensity to notify. Closer attention to what the committees then do with information is therefore warranted.

4. Transparency and surveillance as conflict management

The dispute settlement system is said to be the jewel in the WTO crown. The possibility for compulsory adjudication is one of the factors that explains why binding trade agreements are negotiated at the WTO rather than the OECD (Wolfe, 2011). And yet its use for issues other than trade remedy has been in decline for a long time. Table 8 eliminates disputes from the first ten years of the WTO, when Members were getting used to the system, in order to show the pattern in recent years. The first observation about the recent pattern is that the overall number of disputes is not large, and is in decline, down to only 11 new cases in 2011. Why? The literature as a whole seems to take dispute propensity to be specific to countries, looking for the micro-foundations of disputes (Horn and Mavroidis, 2007). No authors appear to have considered systemic factors that might explain the pattern, including yearly fluctuation in the overall level of disputes.

[13] The situation seems much more ambiguous with respect to finance—see the discussion and some of the sources in (Freixas and Laux, 2012).

*Table 8 Agreements invoked in disputes, 2005-11**

Anti-dumping 31	SPS 7
SCM 27	GATS 5
Safeguards 9	Customs valuation 4
Agriculture 9	Rules of origin 3
TRIMs 8	TRIPS 3
TBT 8	Import licensing 1

*GATT invoked much more frequently, but not always as the main subject
Source (Leitner and Lester, 2012, Table 5)

"Dispute" is a precise term meaning issues recognized as such under the DSU (Petersmann, 2003, 10). Disputes are either a "violation" of a specific obligation, or something that leads to "nullification and impairment" of a benefit that a Member thought had been obtained. The rate of new disputes may be low because many delegations lack the legal capacity to pursue disputes (Busch, Reinhardt and Shaffer, 2009), or because panel and Appellate Body reports might have little impact outside the small group of officials and jurists capable of understanding the complex jurisprudence. Formal SPS cases are expensive, requiring many technical experts, specially commissioned studies, and sophisticated legal advice. It takes years to get a decision, and by the time a decision is rendered (e.g. Canada's complaint about Australia's rules on salmon DS18) the commercial interests of producers have moved on. Domestic support is central to the Agriculture agreement, but no dispute has cited a Member's "Final Bound Total Aggregate Measurement of Support". Since this obligation covers support in a given year, experts observe that "a case of a violation would specifically refer to the year(s) in which the commitment was exceeded. Given the time needed from initiating a case to obtaining a ruling, possibly also involving litigation about implementation, the ruling may be rendered several years after the year of the infraction (Orden, Blandford and Josling, 2011, 12)."

When the disputes for 2012 are added to Table 8, we will see a rise over previous years, but the apparent trend may be a blip that does not reflect the forces discussed in this paper, since many of the 2012 disputes are either politically driven, or tit-for-tat responses. China responds to the Americans, Argentina responds to the Europeans, who were trying to force Argentina to explain measures that they had avoided discussing in committees. Channelling such trade tensions through dispute settlement is better than a unilateral response. Another set of cases reflect societal concerns: tobacco, seals, tuna, COOL, clove cigarettes. Even when these cases were discussed in the committee first, a dispute could not be avoided because the domestic force driving the measure had little to do with trade. And the eventual Appellate Body report in some of these cases (e.g. seals) may fail to resolve the conflict.

The second observation about the pattern in Table 8 is that the number of cases differs widely between agreements. Is part of the explanation for so many more disputes in subsidies and anti-dumping in the nature of those issues and the lack of alternative fora for adjudication, or is the better question about something in WTO institutional design that explains the relatively small number of disputes in other areas? In this section I consider how transparency mechanisms are used to ensure accountability for commitments. I use the metaphor of legal order as a pyramid first to show how the parts of the WTO system relate to each other, and then to compare what happens under the various agreements. This section concludes by probing the relation between transparency and disputes.

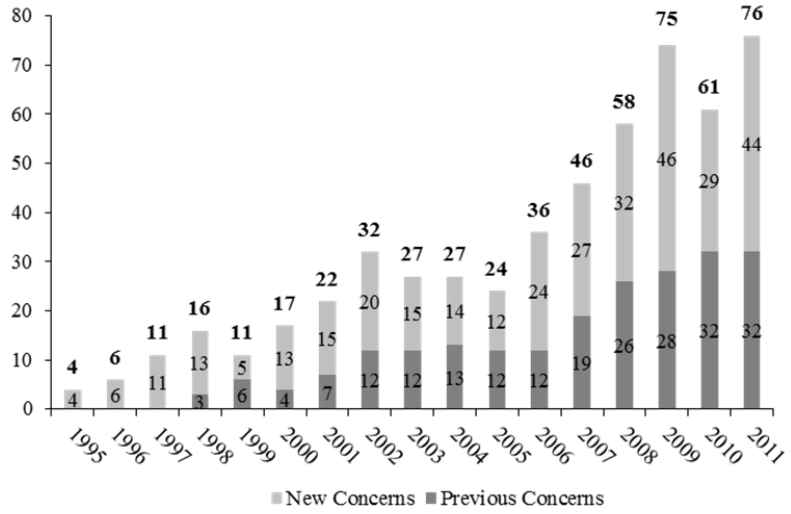
The great pyramid

The dispute settlement system receives more attention than other aspects of WTO monitoring and surveillance because it is more visible, and because it appears to provide binding decisions with definitive interpretations of the rules. But we should not think that all law, and all law-governed behavior, is found only in courts. The Appellate Body is merely the small tip of a substantial pyramid of WTO activity, and most of the real action in holding Members accountable for their obligations is lower down towards the base. For the 'Legal Process School' in American public law scholarship, courts are part of a larger institutional structure that might be imagined as 'The Great Pyramid of Legal Order' (Hart and Sacks, 1994, 286-7). Most things in life just happen, Hart and Sacks argued, usually in accord with some understanding of appropriate action, with no subsequent questions asked. These billions if not trillions of social interactions are the base of the legal pyramid. The second layer of the rapidly narrowing pyramid comprises those situations in which some general arrangement is thought to have been violated. A small fraction of this fraction are subject to some formal process, but that process is usually private—examples include commercial arbitration, and the internal processes of associations. Higher up the pyramid are those cases that are launched in formal courts and tribunals, most of which are settled prior to any formal decision being rendered, sometimes by guilty plea or consent decree. Close to the top of this great pyramid of legal order is where we find the relatively tiny number of litigated cases. At the very tip, the farthest from the great mass of actions that consciously or unconsciously follow legal arrangements, are the few cases that come before some sort of reviewing tribunal. In between the informal base and the highly formal tip of the pyramid, we find a variety of forms of conflict management. Each level is a fraction of the whole universe. Matters do not move up or down; they are found on one level or another.

The elements of WTO transparency as described in section 2 can be thought of as being levels in this WTO legal order. The normative framework established by the WTO has an enormous influence on the massive flows of goods and services in the world economy, only a fraction of which become sufficiently conflictual to come within the formal ambit of the surveillance system. Using SPS and TBT examples, the base of the great pyramid is the myriad interactions between officials and economic actors in these domains, where national rules are clearly framed and implemented having the WTO legal obligations in mind, and where the activities of farmers and producers may be structured by WTO rules, just as pressure on regulators influences the positions Members adopt in Geneva.

On the second level, Members have submitted more than 14,500 TBT notifications since 1995, and more than 11,000 in SPS. Many of these notifications would provoke questions addressed to national enquiry points, and perhaps informal consultations among regulators. The SPS and TBT Secretariats provide detailed information on every specific trade concern in cumulative summary reports that are revised annually. As of early 2012, 340 STCs had been raised in the TBT committee since 1995, and 328 in SPS. The use made of this process in TBT has been increasing, as shown in Figure 1 [about here]. The number of new SPS concerns peaked at over 40 in 2002. Since 2007, the number is usually around 15 per year (WTO, 2012p, Figure 1). The agreement gives Members a language in which to characterize their conflicts, and the committees provide a forum for their discussion (Wolfe, 2005).

Figure 1: Number of TBT specific trade concerns raised per year



Source: Figure 4 in (WTO, 2012p)

The TBT obligations have figured in 42 complaints in the dispute settlement system, while SPS has occasioned 37. (When complaints on related matters are combined, the total is 25 SPS "matters" raised in disputes.) In each of TBT and SPS, only one new complaint was started in 2011. At the tip of the pyramid, the supposed jewel in the WTO crown, only 4 SPS disputes have been the subject of Appellate Body reports. Whether or not these reports have helped to clarify codified SPS law, most of the normative and conflict resolution work is clearly farther down the pyramid. The forum helps Members avoid disputes, and it helps trade officials illustrate international concerns for domestic regulators.

How big are other pyramids?

The pyramid metaphor is a theoretically-informed description that should apply across WTO. Simple comparison is not easy. On the second level, each agreement and hence committee has different types of notification obligations and different committee processes. A small number of notifications in one committee could be as significant as a large number in another. Import licensing has had 245 notifications since 1995, subsidies 2,257 to the end of 2012, and TBT over 14,000. On the third level, as shown in Table 9, STC-like provisions similar to those authorizing the SPS and TBT "specific trade concerns" procedure exist in other committees, but those committees have evolved in different ways. The table shows whether a committee is used for a simple review of notifications, or is used to ask more wide ranging questions, including about reverse notifications, and whether the results are maintained in a useful database. An STC is effectively a question asked in a committee. SPS and TBT have a well-developed protocol for coding and tracking such questions, but other committees do not.

Table 9 Process analogous to Specific Trade Concerns in selected WTO agreements[14]

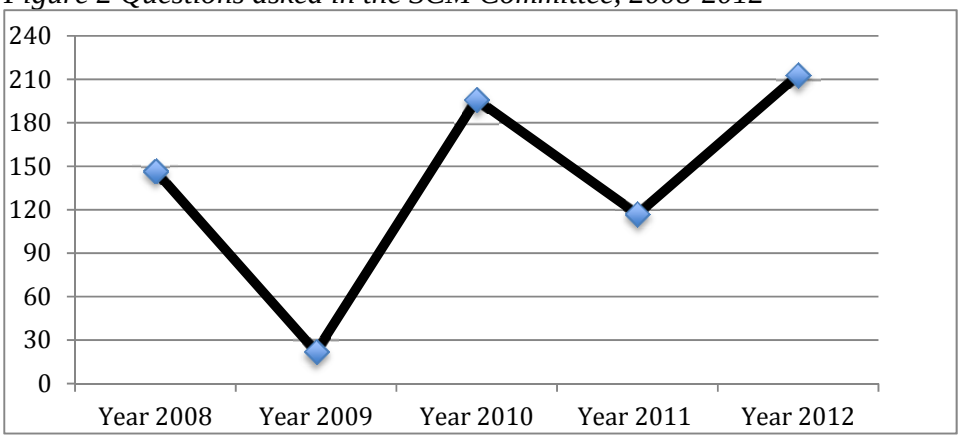
Agreement	Consultations	Reverse notification	Database
Agriculture	Yes 18.6	Yes 18.7	Yes G/AG/GEN/86 series
Anti-dumping	Yes 16.1	No	Yes G/ADP/Q2 series
Customs Valuation	Yes 18	No	No
GATS	Yes XX.1	Yes III.5	No
Import Licensing	Yes 4	Yes 5.5	Yes G/LIC/Q/- series
Information Technology	Yes Para. 3	No	No
Intellectual Property (TRIPS)	Yes 68	No	No
Market Access	Yes WT/L/47	Yes	Yes G/MA/QR/- series
Procurement	Yes 21.1	No	No
Safeguards	Yes 13.1(c)	Yes 12.8	Yes G/SG/Q2 series
Subsidies (SCM)	Yes 24.1	Yes 25.8 & 25.10	Yes G/SCM/Q2 series
Rules of Origin	Yes 4	No	No
Trade in Civil Aircraft	Yes 8.1	Yes 8.7	No

Members differ hugely in ability to ask questions. Delegates from small countries ask questions sent by capitals, and not always well-informed questions. Collins-Williams and Wolfe (2010) found in Subsidies and Agriculture that a small number of Members consistently asked questions in 2007-8, and were also consistently targets. The nearly 700 questions asked in the SCM committee from 2008 to 2012 were asked by only 14 Members, all but two of whom are G-20

[14] Column one asks if a Committee has a process of consultations mandated by the Agreement (the Article is indicated) and systematically placed on the agenda whereby Members either undertake a formal or an *ad hoc* review of notifications, for example by asking questions in the committee. Column two asks if the committee is systematically used for requests for information about measures that ought to have been notified, amounting to *de facto* reverse notification, or for explicit reverse notification (the Article is indicated) of another Member's measures. Column 3 asks if the Committee/Council tracks questions and replies in some formalized manner beyond a simple record in the minutes (the document series is indicated).

countries, but the questions were posed to 42 Members (counting the EU as one).[15] Figure 2 shows the yearly pattern. The Agriculture committee has never asked the Secretariat to produce the kind of analytic summaries that are produced in SPS and TBT, although at least now the Agriculture questions and answers are online and the annual report describes the types of questions asked in the committee during the year. In 2012, 161 notifications were subject to detailed review in the committee, and 303 questions were raised, 80% of which dealt with domestic support issues (WTO, 2012k, 226). Having to think your way through an answer to a question is also a form of learning. In Agriculture, Canada and the EU make a point of trying to ask questions of smaller Members, because it helps them learn, although the effort to draft these questions takes time away from the more important analysis of the notifications of major traders. The TPRB must deal with 26 country reports a year, so most questions from Members will be planted by the Secretariat. Countries with well-developed domestic transparency mechanisms, and strong analytic capacity are also best able to participate in Geneva. TPRB questioning is dominated by a few large Members, most notably the United States and European Communities (Ghosh, 2010). Asking questions depends on knowledge and expertise that smaller countries may lack, yet Members who do not engage in the deliberative process will learn less about the rules and the process than those that do.

Figure 2 Questions asked in the SCM Committee, 2008-2012



Estimating the size of the pyramids is also complicated by the different ways in which committees work. The TRIPS Council spends a day reviewing national implementing legislation

[15] These numbers were compiled by Robin Fraser from SCM committee minutes and other documents. Counting "questions" in WTO requires arbitrary judgments, and will lead to some inconsistencies between counts of questions posed by a particular Member, and questions directed at a given Member. In the SCM committee, where more than one delegation at the same meeting raised questions or concerns about a particular subsidy program maintained by a given Member, Fraser counted one question directed at that country, but, for the purpose of counting questions by those countries asking, he counted each delegation's question separately, even if it concerned the same subsidy program. For example, if Canada, the EU and Japan each asked questions about the U.S. Fisheries Finance Program, he counted three questions, one each by Canada, the EU and Japan, but only one (rather than three) directed at the U.S.. Multiple questions asked by one delegation of one subsidy program is counted as one question. Where a delegation named multiple subsidy programs under the heading of one written question, he counted only one question.

once the provisions have come into force for a given Member. By the end of 2010, the Council had completed 117 such reviews. The questions and answers from the review meetings are available online (Taubman, Wager and Watal, 2012). As in the case of TPRB meetings, it would be tedious to count all the questions asked, although many of them are similar to an STC question. While the TRIPS Council is meant to be a forum for consultations on any problems relating to the agreement, it does not otherwise seem to discuss notifications. Subsequent notifications of changes are weak, and review rare. In recent years the Council has discussed a small number of issues that look like STCs—indeed one began as an STC in TBT: Australia tobacco plain packaging (WTO, 2012f). Obviously in the tobacco case the discussion did not avoid a dispute settlement complaint (see DS434).

No disputes have ever centred on the import licensing agreement, but there have been 245 notifications under the agreement, and dozens of written and oral questions in the ILP committee that look a lot like STCs (G/LIC/W/41). All the written questions and answers are circulated and synthesized in the committee minutes, but will not be included in I-TIP. Notification of legislation, or of changes to laws, is reviewed by the anti-dumping committee, but the written questions and answers are not included in a database. Similarly, questions raised concerning the required semi-annual reports can be found in the minutes of the meeting and in a document series, but are not in a database.

In the Safeguards Committee, Members pose questions and receive answers in writing about the notifications; separate sections of the agenda of each meeting for the two types of notification provide for further discussion. Comments and questions are made orally and the review of safeguard actions is as robust as in the anti-dumping and SCM committees. The "Friends of Safeguards" have recently expressed concern about how Members implement their obligations, notably being slow with notifications, but the concerns do not seem to be about the operation of the Committee. The annual report to the Council provides information on notifications, but not on questions raised in the committee, so one cannot easily count how many new or continuing "concerns" were raised in the committee. It does appear, however, that many more matters are raised in the committee each year than ever surface as formal disputes.

A different issue in assessing the pyramid is knowing whether a process concludes. Issues are resolved when the Member that raised it has enough information, or when the member maintain the measure modifies it in some way, perhaps because it sees the merit of the concerns raised by trading partners, or because discussion in the committee helped it to learn about alternative solutions to its regulatory problem (Lang and Scott, 2006). But Members are reluctant to report back to the committee when they have reached a bilateral accommodation. Apparent "resolution" of an issue might in reality be due to shifting interests in domestic lobbies and side-payments brokered on other issues. Big players having found a way around an non-tariff measure themselves might not want to let others know how it was done. The lack of transparency might be helpful if the parties to a conflict can resolve an issue to their satisfaction without having to reveal to everyone else how the solution accords with general principle. On the other hand, if social interaction is how the system evolves, other Members ought to be able to engage. A similar problem affects the dispute settlement system with complaints that never move past the consultations stage—other Members have no idea how (or if) the matter was resolved. And of

course the panel reports are not available to other Members until sent to the Dispute Settlement Body for approval.

The pyramid metaphor is an explicit acknowledgement that throughout the WTO system we have no way of knowing if we observe all conflict, since many irritants, especially on the first level, are dealt with in the corridors outside meetings, or on the phone between experts, and most issues never get near the dispute settlement system. Nor can we know whether all conflict that might be resolved in WTO is brought there. The EU and the U.S. together are only involved in a small percentage of SPS and TBT STCs. Are they able to resolve their difficulties in another forum? In contrast they asked each other 90 of the 700 questions posed in the SCM committee between 2008 and 2012.

One reason that we cannot be sure whether we observe the universe of trade conflict is the interaction between WTO and the conflict management and transparency mechanism of RTAs. Do RTA participants use its mechanisms to settle disputes? Do they notify new provisions to the relevant RTA but not to the WTO? In both cases, other WTO Members might be deprived of useful information about the trade policy of participants (Rey, 2012, 31). In contrast, do RTA participants use WTO mechanisms preferentially because the institutional provisions of the RTA are weak or non-existent? Since 2008, only 14 Members have posed questions in the SCM Committee, and 8 of them had posed questions to an RTA partner. Only 3 of the 57 questions asked by Australia went to its RTA partners, but 31 of the 70 questions posed by Canada went to the U.S., its NAFTA partner.

While interactions within an RTA are difficult to observe, bilateral efforts to resolve conflict, even farther down the pyramid, are impossible to observe. We know that many international organizations structure transnational networks of experts and officials, a phenomenon particularly associated with the OECD, and with the SPS and TBT committees at WTO. Officials who know each other through these bodies will have conversations on the margins of meetings, and on the phone in between meetings. We also know that all countries use their embassies to advance the concerns of their citizens and economic actors, none more assiduously than the Americans. A U.S. Commerce Department official reported, for example, that while the Obama administration had initiated 14 formal cases in WTO or RTA dispute settlement, the "Trade Agreements Compliance" program had opened 874 cases in 108 countries, resolving more than half the cases (Inside Trade, 2012).

Notification, committees, and disputes

A claim running through this paper is that transparency, in the form of good data and a forum for surveillance, can reduce the propensity to resort to dispute settlement. The general question is whether Members tend to characterize matters as disputes, leading to formal decisions in the dispute settlement system that in turn lead to changed behaviour, or whether other levels of the pyramid are more salient in managing conflict. My approach to this question begins with systematic investigation of whether matters raised in a committee are also raised in the DSB, and whether matters subject to a request for consultations under the DSU had ever been the subject of a notification.

A significant proportion of TBT STCs have environmental policy objectives, making the Committee an important forum to address conflicts over environmental policies (Horn, Mavroidis and Wijkström, 2012). Contrary to what one might expect, environmental STCs are launched by developing countries, and they are particularly directed against the EU and the USA. Consistent with the general pattern, few environmental STCs lead to complaints in the dispute settlement system. In order to probe the relation between notification, STCs and dispute settlement, I first looked at the 81 environmental STCs raised in the TBT committee until June 2012, of which 14 were about matters not notified, only one of which became a dispute. I then selected a set of environmental issues for closer examination—see Table 10.

Table 10 Environmental disputes and STCs

Straight to Dispute	STC (or equivalent) then Dispute	Only STC (or equivalent)
1. EC Sardines (DS231) 2. China wind power equipment (U.S. challenges China subsidy DS419)	1. Canada Feed-in Tariff (DS412, 426) 2. EC Ban on seal products (DS369, 400, 401) 3. China solar panels (China challenges U.S. CVD DS437) 4. India solar (DS 456)	1. Colombia biofuels 2. Korea solar panels 3. EU Eco design for air conditioners 4. Mexico energy label 5. India E-waste 6. France Grenelle 2 7. EU REACH 8. EU e-waste

In the sardines case, in 1999 the EC began to enforce a regulation that had been on the books when the WTO was created. When bilateral consultations failed, Peru launched a dispute, probably judging that the EC would be unable to overcome domestic opposition to change until it had formally lost the case before the Appellate Body (Davis, 2012, Chapter 7). The seals case is so political on both sides of the Atlantic that a dispute could not be avoided. The India solar case (DS 456) concerns the Jawaharlal Nehru National Solar Mission Program (JNNSM), which was never notified. The case was preceded by de facto reverse notifications from Japan and the U.S. in the form of questions in the SCM and TRIMs committees, and in the 2011 TPR of India, with presumably unsatisfactory responses from India. The JNNSM first appears in WTO as a "non-verified" measure in the 2010 monitoring report (WTO, 2010a), meaning that the Indian government declined to answer a Secretariat request for information.

The most interesting comparison that emerges in this probe of environmental conflicts is of the two cases involving the U.S. and Chinese renewable energy subsidies. Both measures were included in the huge U.S. reverse notification in 2011 (WTO, 2011e). In the wind case, the U.S. had requested consultations in 2010, before the reverse notification (DS419 **not** DS449). China eventually notified the measure in 2011 (WTO, 2011d), an explicit acceptance that the measure was a subsidy. The measure is no longer in force, and the U.S. never requested a panel. In the solar case, the U.S. also asked questions about the measure in the China trade policy review (WTO, 2012q) before imposing a countervailing duty. China requested dispute settlement consultations in 2012, and a panel has been composed (DS437).

Preliminary investigation of the pyramids as a set suggests that

a) Most issues are not/need not be notified
b) Most notifications occasion no questions
c) Most questions in committees do not precede disputes
d) Most disputes do not mention notifications

Why the differences between committees and processes? The norms and principles of the WTO apply, in general, but the agreements differ widely on what they cover and who in capitals is engaged. WTO is no more monolithic than modern governments. In principle a notification implies acceptance that a thing can be characterized in WTO terms. Do Members only notify things that will not provoke a dispute? This claim is often made with respect to subsidies notification, where it might have some validity, but it hardly seems the case in those committees with a large number of notifications and a small number of disputes. More research is needed first to get a better sense of the size of each pyramid, and then the relation between the various forms of conflict management available. It does appear, however, that the absence of a notification (information asymmetry), or the lack of an opportunity to discuss a measure in a committee, might be more likely to provoke a dispute than the converse. The default option is not using dispute settlement: adjudication is the slowest and most expensive way to resolve a conflict.

5. Conclusion: Is more sunshine needed?

Transparency is the foundation for the trading system as a living thing not just a legal text stored in a Geneva filing cabinet. Some think transparency is the antechamber to dispute settlement; I think dispute settlement, useful for managing a limited range of conflict, is what happens when transparency and other accountability mechanisms fail.

We have seen that the WTO's windows on its Members and on the trading system are cloudier than they ought to be. But they are not equally cloudy. The notification of obligations and the monitoring procedures are a disappointment in some areas and for some Members, and excellent in others. Transparency does contribute to accountability for commitments, and informal mechanisms can be more effective than formal dispute settlement, but not all Members use either one, and neither is useful in all circumstances.

Making transparency work matters because the WTO evolves and grows first through ongoing discussion among Members, not through episodic codification in rounds of negotiations or dispute settlement decisions. Many scholars have observed that the norms that have emerged in the SPS Committee now shape the governance of this domain more comprehensively than the formal rules (Downes, 2012, 521). Members that do not know how to fill out a notification, or ask and answer questions in the committees, are not full participants in the evolution of the system, and cannot reap its full benefits at home. Developing country hesitancy about transparency is an obstacle to improving the mechanisms and making better use of them. But if transparency is a benefit, then the WTO needs to find ways to do better.

Efforts to improve transparency

Transparency featured in many Doha Round negotiating groups, with few results so far. Transparency is central to the trade facilitation negotiations, notably on improvements to Article X of GATT, with proposals to enhance provisions on the publication and availability of information; prior notice and opportunities for consultation on new rules; extensive notification requirements (Article 4.1); and provisions to ensure impartiality and opportunities to appeal rulings (WTO, 2012d). The trade facilitation negotiating group has developed a remarkable self-assessment tool that would allow a Member to assess its readiness to accept the new obligations—the self-assessment of the new notification obligation (WTO, 2013) would be one many Members might usefully complete for all existing notification obligations. Perhaps something for the next letter from the General Council chair to the chairs of committees?

Early in the round transparency figured in the work on the relationship between trade and investment (WTO, 2002b), but that part of the negotiations was abandoned. Although a number of good proposals were made (WTO, 2003), Members showed no inclination to discuss subsidies transparency in the Rules negotiations. The EC argued in that negotiating group that uncertainty about how national authorities use their anti-dumping regimes can be harmful for exporters. The EC proposal for something like a TPR process where the ADP Committee could review a Member's policies and practices on the basis of separate reports prepared by the Member concerned and the Secretariat (WTO, 2006a) is retained as a proposed new Annex III in the Rules Chair's draft texts (WTO, 2008a). The chair reported, however, that while some delegations welcomed the EC proposal, other delegations either expressed serious concerns or strong opposition to the proposal on the familiar grounds that the new procedure would either be duplicative, or too burdensome, or both (WTO, 2008c).

In the NAMA negotiations Members had extensive discussions of a *Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers*. This so-called "horizontal mechanism" would sit between regular procedures in committees and the dispute settlement system, using a facilitator to help Members reach a positive outcome when conflict arises (WTO, 2011f). While many Members supported the proposal (especially the EU), among the remaining worries of opponents (including Japan, Canada and the USA) is whether it would undermine existing provisions in committees for the discussion of specific trade concerns (WTO, 2012g). Proposed improvements to transparency in TBT remain on hold, in part because of worries about how to use information from non-governmental stakeholders (WTO, 2011f, Annex C). The NAMA transparency proposal had a hortatory provision urging Members to publish an annual regulatory agenda identifying planned technical regulations and conformity assessment procedures. Certain members resisted a similar provision with respect to standards: as that work is undertaken by independent bodies, it is unreasonable to expect governments notification work for which they are not responsible—although in the case of the EU, when the Commission issues a mandate to a standardizing body that could be notified. The important revisions proposed for Article 18 of the Agreement on Agriculture (WTO, 2008b, Annex M) seem unlikely to survive, but the provisions on enhanced transparency with respect to domestic regulation of services were largely agreed (WTO, 2011a).

The General Council chairperson's letter of February 2009 has provoked continuing discussion about transparency in all WTO bodies, with a great many incremental improvements, and one major advance in the creation of I-TIP. These improvements are ones where the Secretariat can do the work as long as Members provide the mandate. Improvements to surveillance, which require more engagement by Members themselves, have been slower. Members have frequently discussed the possibility of building on existing rules and procedures to encourage some sort of ad hoc mediation in the SPS Committee using the "good offices" of the chairperson (G/SPS/W/259/Rev.4). The intent is to formalize a practice where some (many?) issues raised in the committee are also discussed bilaterally by the parties. It will be up to the parties to decide whether other Members may observe the proceedings, and what information will be made available to the Committee, although the conclusions will be included in the STC database.

At the 2011 Geneva Ministerial Conference, the EU failed to gain support from other Members for a proposal to improve adherence to notification commitments, although Members did promise to "comply with the existing transparency obligations and reporting requirements needed for the preparation of these monitoring reports, and to continue to support and cooperate with the WTO Secretariat in a constructive fashion (WTO, 2011g)." The right to know at WTO is a work in progress.

Transparency in a changing WTO

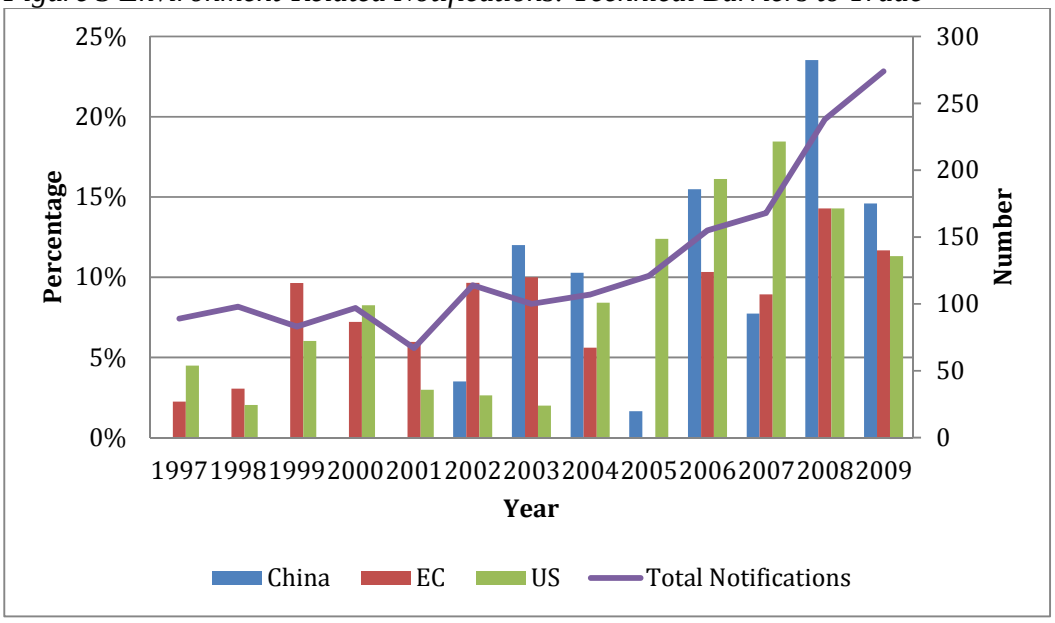
Will current transparency tools remain effective as power shifts to the emerging economies? The relation between the environment and trade could be said to be a preoccupation of rich countries. If so, one might expect that new WTO Members would attach less importance to related transparency mechanisms than the original Members who drafted the rules. The assumption can be probed with the database of TBT STCs. The US and the EU are the target of nearly 55% of environmental TBT STCs but are complainants in only 27%. Almost a quarter of all environmental TBT STCs are developing countries raising issues with EU and US measures. Initiating an STC may be easier than submitting one's own notification, so a different probe is to query the excellent database of all environment-related notifications under all WTO agreements compiled for the Committee on Trade and the Environment (WTO, 2012e) with a focus on China, the most important emerging power.

Before China joined the WTO, analysts worried that it would be unable to meet transparency requirements due to domestic politics, institutional capacity and the nature of the legal system (Ostry, 1998; Wu, 2002). Although reform did occur in the years since accession, issues with regulatory transparency, notification of subsidies and implementation of reforms at sub-central government levels persist. Notifications do not cover all years or the magnitude of support provided, and the application of reform is inconsistent at different levels of government. Analysts cannot determine if reform is consciously resisted, or is impeded by limited technical and institutional capacity (OECD, 2009; Biukovic, 2008; United States, 2012).

For convenience Figure 3 reports only TBT notifications, probably the most important for environmental matters, which in most years are between 9 and 13% of all notifications. The dark line in the figure shows, on the right hand scale, the absolute number of notifications; and the bars show, on the left hand scale, the share of the EU, U.S., and China in the total. Since it joined

in 2001, China has submitted over 850 TBT notifications, many of which are environmental notifications, in some years exceeding the more established Members. Of course it has been said that China emphasizes codification rather than implementation—the government may find it easier to file WTO notifications than to make real changes in how things work. Nevertheless, in the final "transitional review" by the TBT Committee, other Members praised China for making many of its regulations and policies more transparent and predictable (WTO, 2011b). Chinese governance is not as transparent as more established Members might like, but WTO documents are a mine of information about the domestic administration of standards and conformity assessment. Members would like to know more, and would like the administrative procedures to be more open and accessible to foreign firms, but much of what Members know that they find problematic about China's practices they know because of WTO transparency. To take a different example, China has learned through participation in the Trade Policy Review process, willingly responding to questions in most areas of policy. They still react conservatively to requests for transparency in some areas they think sensitive such as subsidies, or government procurement—their cultural predisposition to secrecy is the obverse of the American obsession with sunshine. What remains for further investigation is whether horizontal transparency in Geneva produces more policy change than the apparently limited impact of NGOs attempts to promote vertical accountability through environmental transparency (Tan, 2012).

Figure 3 Environment-Related Notifications: Technical Barriers to Trade



Source: (WTO, 2012e)

The transparency trilemma

Sunshine may well be the best disinfectant, as Brandeis wrote, but too much sunlight can be harmful. The transparency that modern governance demands undermines the privacy essential for negotiations (Stasavage, 2004). It might also undermine liberalization, or force protection into less transparent forms (Kono, 2006). A literature in contract law suggests that contracts

work because parties do not have to be transparent about their aims, objectives and products. Agreements are possible precisely because both sides value certain things without having to tell each other why or how much.[16] Transparency is also costly, and the benefits may not always be proportionate to the effort required. Significant resources are devoted to maintaining the database of tariffs on goods, whose incidence is much diminished, while analysts know little about measures that restrict trade in services.

Transparency about trade policy is a minor subset of transparency in governance generally. Transparency can comprise many instruments, each of which embeds paradigmatic assumptions about the relations between citizens and the state. Countries that struggle to make information available at home may not be able to provide any more of it to the WTO. Transparency is straightforward for Members where such provisions are a normal part of the domestic regulatory process, but more difficult for some developing countries (Wolfe, 2003). Being transparent may be good for governance, good for trade, and good for investment, but complying with WTO rules may not be the prime motivation.

I said above that the proximate objective of transparency is reducing information asymmetries among governments, and between the State, economic actors, and citizens, but that objective poses a trilemma. The surveillance system is designed to monitor official obligations on behalf of governments, but citizens and analysts are interested in the economic or social impact of policy, not the implementation of commitments, while firms are only served if governments publish information at home, and if all WTO data is accessible, in a user-friendly form.

Third generation transparency policies reflect an awareness that it is now harder for ordinary people in every country to understand and observe the administration of public affairs, in general, so ideas about sunshine alone as the best disinfectant are no longer sufficient. Where once we could imagine that citizens could monitor politicians and sanction them effectively through voting in elections, such simple delegation models no longer describe political reality in a complex policy environment. Citizens find it even harder to hold international organizations to account, but WTO monitoring and surveillance can be seen as a kind of horizontal accountability, where governments hold each other accountable for their obligations. Such accountability requires the kind of transparency described in this paper.

[16] I owe this insight to Rod Macdonald.

References

Adlung, Rudolf, Peter Morrison, Martin Roy and Weiwei Zhang, (2013) 'Fog in GATS Commitments -- Why WTO Members Should Care,' World Trade Review 12:01 1-27.

Adlung, Rudolf and Marta Soprana, (2012) 'SMEs in Services Trade - a GATS Perspective,' World Trade Organization, Staff Working Paper ERSD-2012-09, 27 April 2012.

Ala'i, Padideh, (2008) 'From the Periphery to the Center? The Evolving WTO Jurisprudence on Transparency and Good Governance,' Journal of International Economic Law 11:4 (December 2008), 779-802.

Arthurs, Harry W., (1985) 'Without the Law': Administrative Justice and Legal Pluralism in Nineteenth-Century England (Toronto: University of Toronto Press).

Bacchetta, M., J. Richtering and R. Santana, (2012) 'How Much Light Do WTO Notifications Shed on Ntms?,' in Cadot, O. and M. Malouche, eds, Non-Tariff Measures: A Fresh Look at Trade Policy's New Frontier (Washington D.C. and London: World Bank and Centre for Economic Policy Research), 19-50.

Baldwin, Richard and Simon Evenett, eds, (2009) The Collapse of Global Trade, Murky Protectionism, and the Crisis: Recommendations for the G20 (Brussels: Centre for Economic Policy Resarch and VoxEU.org).

Barnett, Michael and Raymond Duvall, (2005) 'Power in International Politics,' International Organization 59:1 (Winter 2005), 39-75.

Biersteker, Thomas J. and Cythnia Weber, (1996) 'The Social Construction of State Sovereignty,' in Biersteker, Thomas J. and Cythnia Weber, eds, State Sovereignty as Social Construct (Cambridge: Cambridge University Press), 1-21.

Biukovic, Ljiljana, (2008) 'Selective Adaptation of WTO Transparency Norms and Local Practices in China and Japan,' J Int Economic Law 11:4 (December 1, 2008), 803-25.

Bonzon, Yves, (2008) 'Institutionalizing Public Participation in WTO Decision Making: Some Conceptual Hurdles and Avenues,' J Int Economic Law 11:4 (December 1, 2008), 751-77.

Bown, Chad P. and Bernard M. Hoekman, (2007) 'Developing Countries and Enforcement of Trade Agreements: Why Dispute Settlement Is Not Enough,' World Bank, Policy Research Working Paper 4450, December 2007.

Brandeis, Louis D., (1914) Other People's Money and How the Bankers Use It (New York: F.A. Stokes).

Busch, Marc L., Eric Reinhardt and Gregory C. Shaffer, (2009) 'Does Legal Capacity Matter? A Survey of WTO Members,' World Trade Review 8:4 (2009), 559-77.

Collins-Williams, Terry and Robert Wolfe, (2010) 'Transparency as a Trade Policy Tool: The Wto's Cloudy Windows,' World Trade Review 9:4 (November 2010), 551–81.

Davis, Christina L., (2012) Why Adjudicate? Enforcing Trade Rules in the WTO (Princeton N.J.: Princeton University Press).

Downes, Chris, (2012) 'The Impact of WTO Transparency Rules: Is the 10,000th SPS Notification a Cause for Celebration?—a Case Study of EU Practice,' Journal of International Economic Law 15:2 (June 2012), 503-24.

Fuller, Lon L., (1963) 'Collective Bargaining and the Arbitrator,' Wisconsin Law Review (1963), 3-46.

Fung, Archon, Mary Graham and David Weil, (2007) Full Disclosure : The Perils and Promise of Transparency (Cambridge ; New York: Cambridge University Press).

GATT, (1985) Trade Policies for a Better Future (Geneva: General Agreement on Tariffs and Trade).

Geraats, Petra M., (2002) 'Central Bank Transparency,' The Economic Journal 112:483 F532-F65.

Ghosh, Arunabha, (2010) 'Developing Countries in the WTO Trade Policy Review Mechanism,' World Trade Review 9:03 419-55.

Halle, Mark and Robert Wolfe, eds, (2007) Process Matters: Sustainable Development and Domestic Trade Transparency (Winnipeg: International Institute for Sustainable Development).

Halle, Mark and Robert Wolfe, (2010) 'A New Approach to Transparency and Accountability in the WTO,' ENTWINED, Stockholm, Issue Brief 06 September 2010.

Handley, Kyle and Nuno Limão, (2012) 'Trade and Investment under Policy Uncertainty: Theory and Firm Evidence,' National Bureau of Economic Research, Inc, Working Paper 17790 January 2012.

Hart, Henry Melvin and Albert M. Sacks, (1994) with prepared for publication from the 1958 tentative edition by, and containing an introductory essay by, William N. Eskridge, Jr. and Philip P. Frickey, The Legal Process: Basic Problems in the Making and Application of Law (Westbury, N.Y.: Foundation Press).

Helble, Matthias, Ben Shepherd and John S. Wilson, (2009) 'Transparency and Regional Integration in the Asia Pacific,' World Economy 32:3 (2009), 479-508.

Horn, Henrick and Peter C. Mavroidis, (2007) 'International Trade: Dispute Settlements,' in Guzman, Andrew T. and A. O. Sykes, eds, Research Handbook in International Economic Law (Cheltenham: Edward Elgar), 177-210.

Horn, Henrik, Petros C. Mavroidis and Erik Wijkström, (2012) 'Between Transparency and Adjudication: Environmental Measures in the WTO TBT Committee,' ENTWINED, Stockholm, Working Paper 28 February 2012.

Howse, Robert and Tim Josling, (2012) 'Agricultural Export Restrictions and International Trade Law: A Way Forward,' International Food & Agricultural Trade Policy Council, Position Paper September 2012.

Inside Trade, (2012) 'Commerce Official Touts Efforts on Trade Enforcement Beyond Litigation,' Inside U.S. Trade, October 18, 2012.

Josling, Tim and Klaus Mittenzwei, (2013) 'Transparency and Timeliness: The Monitoring of Agricultural Policies in the WTO Using OECD Data,' World Trade Review (forthcoming),

Kono, Daniel Y., (2006) 'Optimal Obfuscation: Democracy and Trade Policy Transparency,' American Political Science Review 100:3 (August 2006), 369-84.

Lang, A. and J. Scott, (2006) 'Regulatory Convergence--a Role for the WTO,' (paper delivered to the Annual BIICL WTO Conference, Gray's Inn, London, 23-24 May 2006)

Lang, Andrew, (2011) World Trade Law after Neoliberalism : Re-Imagining the Global Economic Order (New York, NY: Oxford University Press).

Lang, Andrew and Joanne Scott, (2009a) 'The Hidden World of WTO Governance,' Eur J Int Law 20:3 (August 2009), 575-614.

Lang, Andrew and Joanne Scott, (2009b) 'The Hidden World of WTO Governance: A Rejoinder to Richard H. Steinberg,' Eur J Int Law 20:4 (November 1, 2009), 1073-6.

Leitner, Kara and Simon Lester, (2012) 'WTO Dispute Settlement 1995-2011: A Statistical Analysis,' Journal of International Economic Law 15:1 (March 2012), 315-25.

Lejarraga, Iza, (2011) 'Multilateralising Regionalism: Strengthening Transparency Disciplines in Trade,' Organisation for Economic Co-operation and Development, Working Party of the Trade Committee TAD/TC/WP(2011)28, 19 September 2011.

Marceau, Gabrielle and Mikella Hurley, (2012) 'Transparency and Public Participation in the WTO: A Report Card on WTO Transparency Mechanisms,' Trade, Law and Development 4:1 (2012), 19-44.

Mavroidis, Petros C., (2011) 'Always Look at the Bright Side of Non-Delivery: WTO and Preferential Trade Agreements, Yesterday and Today,' World Trade Review 10:03 375-87.

Mitchell, Ronald B., (2011) 'Transparency for Governance: The Mechanisms and Effectiveness of Disclosure-Based and Education-Based Transparency Policies,' Ecological Economics 70:11 1882-90.

OECD, (2009) China: Defining the Boundary between the Market and the State (Paris: Organisation for Economic Co-operation and Development).

Orden, David, David Blandford and Tim Josling, (2011) 'Introduction,' in Orden, David, David Blandford and Tim Josling, eds, WTO Disciplines on Agricultural Support : Seeking a Fair Basis for Trade (Cambridge ; New York: Cambridge University Press), 3-22.

Ostry, Sylvia, (1998) 'China and the WTO: The Transparency Issue,' UCLA Journal of International Law and Foreign Affairs 3:1 (1998), 1-22.

Perez-Esteve, Maria, (2012) 'WTO Rules and Practices for Transparency and Engagement with CSOs,' World Trade Organization, Staff Working Paper ERSD-2012-14, 18 September 2012.

Petersmann, Ernst-Ulrich, (2003) 'Prevention and Settlement of Transatlantic Economic Disputes: Legal Strategies for EU/US Leadership,' in Petersmann, Ernst-Ulrich and Mark A. Pollack, eds, Transatlantic Economic Disputes : The EU, the US, and the WTO (Oxford ; New York: Oxford University Press), 3-64.

Potoski, Matthew and Aseem Prakash, (2009) 'Information Asymmetries as Trade Barriers: ISO 9000 Increases International Commerce,' Journal of Policy Analysis and Management 28:2 (2009), 221-38.

Puig, Gonzalo Villalta and Bader Al-Haddab, (2011) 'The Transparency Deficit of Dispute Settlement in the World Trade Organization,' Manchester Journal of International Economic Law 8:1 (2011), 2-17.

Rey, Jean-Daniel, (2012) 'Antidumping Regional Regimes and the Multilateral Trading System: Do Regional Antidumping Regimes Make a Difference?,' World Trade Organization, Staff Working Paper ERSD-2012-22, October 2012.

Roberts, Alasdair, (2004) 'A Partial Revolution: The Diplomatic Ethos and Transparency in Intergovernmental Organizations,' Public Administration Review 64:4 (July/August 2004), 410-24.

Shaffer, G. C., (2001) 'The World Trade Organization under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters,' Harvard Environmental Law Review 25:1 1-93.

Simmons, B. A., F. Dobbin and G. Garrett, (2006) 'Introduction: The International Diffusion of Liberalism,' International Organization 60:4 (Fall 2006), 781-810.

Soltan, Karol, (1999) 'A Social Science That Does Not Exist,' in Witteveen, William J. and Wibren van der Burg, eds, Rediscovering Fuller: Essays on Implicit Law and Institutional Design (Amsterdam: University of Amsterdam Press), 387-408.

Stasavage, D., (2004) 'Open-Door or Closed-Door? Transparency in Domestic and International Bargaining,' International Organization 58:4 (Fall 2004), 667-703.

Steinberg, Richard H., (2009) 'The Hidden World of WTO Governance: A Reply to Andrew Lang and Joanne Scott,' Eur J Int Law 20:4 (November 1, 2009), 1063-71.

Stiglitz, Joseph E., (2010) 'Government Failure Vs. Market Failure: Principles of Regulation,' in Balleisen, Edward J. and David A. Moss, eds, Government and Markets : Toward a New Theory of Regulation (Cambridge ; New York: Cambridge University Press), 13-51.

Tan, Yeling, (2012) 'Transparency without Democracy: The Unexpected Effects of China's Environmental Disclosure Policy,' Governance n/a-n/a.

Taubman, Antony, Hannu Wager and Jayashree Watal, eds, (2012) A Handbook on the WTO TRIPS Agreement (Cambridge ; New York: Cambridge University Press).

United States, (2012) 'U.S. Statement on the Trade Policy Review of China Delivered by Ambassador Michael Punke,' Office of the United States Trade Representative, 12 June 2012.

van Tongeren, Frank (2009) 'Transparency in the Design of Non-Tariff Measures and the Cost of Market Entry: Conceptual Framework,' Organisation for Economic Co-operation and Development, Working Party of the Trade Committee, TAD/TC/WP(2009)33, 20-Nov-2009.

White, Paul, (2012) 'Transparency Activities of the International Metal Study Groups,' (paper delivered to the OECD Workshop on Regulatory Transparency in Trade in Raw Materials, Paris, May 10-11, 2012)

Winston, Clifford, (2008) 'The Efficacy of Information Policy: A Review of Archon Fung, Mary Graham, and David Weil's Full Disclosure: The Perils and Promise of Transparency,' Journal of Economic Literature 46:3 (2008), 704-17.

Wolf, Martin, (2011) 'Surveillance by the International Monetary Fund,' IMF, External Commentary, 2011 Triennial Surveillance Review, IMF Board Paper August 15, 2011.

Wolfe, Robert, (2003) 'Regulatory Transparency, Developing Countries, and the WTO,' World Trade Review 2:2 (July 2003), 157-82.

Wolfe, Robert, (2005) 'See You in Geneva? Legal (Mis)Representations of the Trading System,' European Journal of International Relations 11:3 (September 2005), 339-65.

Wolfe, Robert, (2011) 'The OECD Contribution to the Evolution of 21st Century Trade Law,' The George Washington International Law Review 43: (2011), 277-93.

Wolfe, Robert, (2012) 'Protectionism and Multilateral Accountability During the Great Recession: Drawing Inferences from Dogs Not Barking,' Journal of World Trade 46:4 (August 2012), 777-814.

Wolfe, Robert and Shane Baddeley, (2012) 'Regulatory Transparency in MEAs: Controlling Exports of Tropical Timber, E-Waste and Conflict Diamonds,' (paper delivered to the Workshop on Regulatory Transparency in Trade in Raw Materials, OECD, Paris, May 10-11, 2012)

WTO, (1995a) 'Ministerial Decision on Notification Procedures, Adopted by the General Council,' World Trade Organization, 31 January 1995

WTO, (1995b) 'Notification Requirements and Formats,' World Trade Organization, Committee on Agriculture, G/AG/2, 30 June 1995.

WTO, (1996) 'Decision on Reverse Notification of Non-Tariff Measures,' World Trade Organization, G/L/60, 10 January 1996.

WTO, (2000) 'Specific Trade Concerns, Note by the Secretariat,' World Trade Organization, Committee on Sanitary and Phytosanitary Measures, G/SPS/GEN/204, 27 September 2000.

WTO, (2002a) 'Procedures for the Circulation and Derestriction of WTO Documents: Decision of 14 May 2002,' World Trade Organization, WT/L/452, 16 May 2002.

WTO, (2002b) 'Transparency,' Working Group on the Relationship between Trade and Investment, World Trade Organization, WT/WGTI/W/109, 27 March 2002.

WTO, (2003) 'Compilation of Issues and Proposals Identified by Participants in the Negotiating Group on Rules: Note by the Chairman,' World Trade Organization, Negotiating Group on Rules, TN/RL/W/143, 22 August 2003.

WTO, (2005) 'Article X of GATT 1994 – Scope and Application,' Negotiating Group on Trade Facilitation, World Trade Organization, Note by the Secretariat TN/TF/W/4, 12 January 2005.

WTO, (2006a) 'Transparency of Anti-Dumping Activity: Submission from the European Communities ' World Trade Organization, Negotiating Group on Rules, TN/RL/GEN/110, 20 April 2006.

WTO, (2006b) World Trade Report 2006: Subsidies, Trade and the WTO (Geneva: World Trade Organization).

WTO, (2007) World Trade Report 2007-- Six Decades of Multilateral Trade Cooperation: What Have We Learnt? (Geneva: World Trade Organization).

WTO, (2008a) 'New Draft Consolidated Chair Texts of the AD and SCM Agreements,' World Trade Organization, Negotiating Group on Rules, TN/RL/W/236, 19 December 2008.

WTO, (2008b) 'Revised Draft Modalities for Agriculture,' World Trade Organization, Committee on Agriculture, Special Session, TN/AG/W/4/Rev.4, 6 December 2008.

WTO, (2008c) 'Working Document from the Chairman, Annex A,' World Trade Organization, Negotiating Group on Rules, TN/RL/W/232, 28 May 2008.

WTO, (2009a) 'Compliance with Notification Requirements under the GATS: Communication from Switzerland,' World Trade Organization, Council for Trade in Services, S/C/W/297, 13 March 2009.

WTO, (2009b) 'Overview of Developments in the International Trading Environment: Annual Report by the Director-General,' World Trade Organization, WT/TPR/OV/12, 18 November 2009.

WTO, (2009c) 'Results of the Survey on the Improvement of Timeliness and Completeness of Notifications under Existing Procedures: Note by the Secretariat,' World Trade Organization, Committee on Agriculture, G/AG/GEN/85, 15 June 2009.

WTO, (2010a) 'Overview of Developments in the International Trading Environment: Annual Report by the Director-General,' World Trade Organization, WT/TPR/OV/13, 24 November 2010.

WTO, (2010b) 'Overview of Notifications Made under Relevant Provisions: Informal Note by the Secretariat,' World Trade Organization, Council for Trade in Services, JOB(09)/10/Rev.2, 21 June 2010.

WTO, (2011a) 'Disciplines on Domestic Regulation Pursuant to GATS Article VI:4: Chairman's Progress Report,' World Trade Organization, Working Party on Domestic Regulation, S/WPDR/W/45, 14 April 2011.

WTO, (2011b) 'Ninth Annual Transitional Review Mandated in Paragraph 18 of the Protocol of Accession of the People's Republic of China,' World Trade Organization, Committee on Technical Barriers to Trade, G/TBT/30, 23 November 2011.

WTO, (2011c) 'Overview of Developments in the International Trading Environment: Annual Report by the Director-General,' World Trade Organization, WT/TPR/OV/14, 21 November 2011.

WTO, (2011d) 'Subsidies -- New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures -- China,' World Trade Organization, Committee on Subsidies and Countervailing Measures, G/SCM/N/155/CHN; G/SCM/N/186/CHN, 21 October 2011.

WTO, (2011e) 'Subsidies -- Request from the United States to China Pursuant to Article 25.10 of the Agreement,' World Trade Organization, Committee on Subsidies and Countervailing Measures, G/SCM/Q2/CHN/42, 11 October 2011.

WTO, (2011f) 'Textual Report by the Chairman, Ambassador Luzius Wasescha, on the State of Play of the NAMA Negotiations: Addendum,' World Trade Organization, Negotiating Group on Market Access, TN/MA/W/103/Rev.3/Add.1, 21 April 2011.

WTO, (2011g) 'Trade Policy Review Mechanism: Decision of 17 December 2011,' World Trade Organization, WT/L/848, 19 December 2011.

WTO, (2011h) 'Updating of the Listing of Notification Obligations and the Compliance Therewith as Set out in Annex III of the Report of the Working Group on Notification Obligations and Procedures,' World Trade Organization, Council for Trade in Goods, G/L/223/Rev.18, 9 March 2011.

WTO, (2012a) 'Compliance with Notification Obligations: Note by the Secretariat,' World Trade Organization, Committee on Agriculture, G/AG/GEN/86/Rev.12, 2 November 2012.

WTO, (2012b) 'Decision on Notification Procedures for Quantitative Restrictions, Adopted by the Council for Trade in Goods on 22 June 2012,' World Trade Organization, G/L/59/Rev.1, 3 July 2012.

WTO, (2012c) 'Director-General's Report on Trade-Related Developments (Mid-October 2011 to Mid-May 2012) Summary,' World Trade Organization, 29 June 2012.

WTO, (2012d) 'Draft Consolidated Negotiating Text,' World Trade Organization, Negotiating Group on Trade Facilitation, TN/TF/W/165/Rev.12, 8 May 2012.

WTO, (2012e) 'Environmental Database for 2009: Note by the Secretariat,' World Trade Organization, Committee on Trade and the Environment, WT/CTE/EDB/9, 6 November 2012.

WTO, (2012f) 'Minutes of Meeting Held in the Centre William Rappard on 28-29 February 2012,' World Trade Organization, Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/M/69, 15 May 2012.

WTO, (2012g) 'Negotiating Group on Market Access: Report by the Chairman, Ambassador Luzius Wasescha,' World Trade Organization, Negotiating Group on Market Access, TN/MA/23, 18 July 2012.

WTO, (2012h) 'Ninth Biennial Review of the Implementation and Operation of the Agreement on Import Licensing Procedures,' World Trade Organization, Committee on Import Licensing, G/LIC/W/41, 19 October 2012.

WTO, (2012i) 'Notification Pursuant to Article III:5 of the General Agreement on Trade in Services (Norway),' World Trade Organization, Council for Trade in Services, S/C/N/653, 26 September 2012.

WTO, (2012j) 'Notification Requirements under the Agreement on Subsidies and Countervailing Measures: Background Note by the Secretariat,' World Trade Organization, Committee on Subsidies and Countervailing Measures, G/SCM/W/546/Rev.3, 12 April 2012.

WTO, (2012k) 'Overview of Developments in the International Trading Environment: Annual Report by the Director-General,' World Trade Organization, WT/TPR/OV/15, 29 November 2012.

WTO, (2012l) 'Proposed Procedure for Submission of Questions and Answers under Articles 25.8 and 25.9: Proposal from the United States,' World Trade Organization, Committee on Subsidies and Countervailing Measures, G/SCM/W/557, 25 April 2012.

WTO, (2012m) 'Report of the Meeting Held on 5 October 2012: Note by the Secretariat,' World Trade Organization, Council for Trade in Services, S/C/M/111, 21 November 2012.

WTO, (2012n) 'Report on G-20 Trade Measures (Mid-May 2012 to Mid-October 2012,' World Trade Organization, 31 October 2012.

WTO, (2012o) 'Report to the TPRB from the Director-General on Trade-Related Developments (Mid-October 2011 to Mid-May 2012),' World Trade Organization, Trade Policy Review Body, WT/TPR/OV/W/6, 28 June 2012.

WTO, (2012p) 'Seventeenth Annual Review of the Implementation and Operation of the TBT Agreement,' World Trade Organization, Committee on Technical Barriers to Trade: G/TBT/31, 2 March 2012.

WTO, (2012q) 'Trade Policy Review China: Record of the Meeting, Addendum,' Trade Policy Review Body 12 and 14 June 2012, World Trade Organization, WT/TPR/M/264/Add.1, 22 August 2012.

WTO, (2012r) World Trade Report 2012: Trade and Public Policies: A Closer Look at Non-Tariff Measures in the 21st Century (Geneva: World Trade Organization).

WTO, (2013) 'WTO Negotiations on Trade Facilitation: Self Assessment Guide,' World Trade Organization, Negotiating Group on Trade Facilitation, TN/TF/W/143/Rev.4, 27 February 2013.

Wu, E. Y., (2002) 'China Today: Why Its Accession to the World Trade Organization Is Inevitable and Good for the International Community,' Journal of International Economic Law 5:3 (Aug), 689-718.