
**A new approach to transparency
and accountability in the WTO**

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By *Mark Halle and Robert Wolfe*

It is sometimes said that the World Trade Organization (WTO) exists either to negotiate or to settle disputes. This view obscures transparency mechanisms – the third way in which WTO rules and practices influence the trading system. It also obscures questions about WTO accountability.

At their April 2009 Summit in London, the G-20 countries supported a novel approach to using transparency as a tool to ward off the dangers of protectionism in domestic policy actions (G-20, 2009). This effort was stimulated by a call from WTO Director-General Pascal Lamy to create what he called a “radar picture” of new trade measures. This new use of so-called transparency mechanisms was part of the collective response to the financial crisis that began in 2008. The G-20 leaders agreed that “we will notify promptly the WTO of any such measures and we call on the WTO, together with other international bodies, within their respective mandates, to monitor and report publicly on our adherence to these undertakings on a quarterly basis.” Holding states accountable for the implementation of their commitments and not merely for their good intentions is all too rare in global governance (Najam and Halle, 2010). This innovative attempt to ensure the accountability of the G20’s commitments required an extension of WTO transparency policies.

TRANSPARENCY AND THE WTO¹

Transparency – one of the fundamental norms of international trade – is generally accepted as both legitimate in itself and essential to modern governance. The WTO Glossary defines transparency as the “Degree to which trade policies and practices, and the process by which they are established, are open and predictable.” It refers to a number of interrelated 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 concept of transparency refers, therefore, both to generating information and to generating agreed interpretations of the information.

The dozens of transparency procedures in the WTO Agreements go beyond what is normally found in multilateral regimes. WTO transparency norms, however, are not about the accountability or

transparency of the WTO itself. Nor do they address whether governments and other centres of authority disclose sufficient information to the public. Transparency to the public can be part of the broader WTO transparency norms, but in the first instance the objective is neither to enhance the capacity of citizens nor to promote domestic objectives that can be achieved without the need for international obligations. The aim is to enhance the effectiveness of the WTO agreements.

A trade agreement is first and foremost a set of rules that should govern policy in a given domain. If no one knows what the policy is, the agreement cannot reduce uncertainty. Simple publication of tariff schedules, though still an essential form of transparency, is no longer sufficient. Trading partners and economic actors need information about a wide range of domestic policies that may affect the flow of transactions across borders. Domestic standards and regulations – notably those related to product safety and animal health – are difficult to observe, and are ambiguous in trade policy terms. Creating opportunities to discuss new measures before they are adopted can reduce the risk of conflict between states. This transparency provides an opportunity to modify the measure to accommodate the interests of partners and time for economic actors to adjust.



¹ This section is based on Collins-Williams and Wolfe, 2010

Analysts consider five factors in assessing whether transparency mechanisms can be a useful policy tool in a given context:

1. A specific policy purpose: Providing information works well when users and providers share objectives. It works poorly when uniform compliance is important. It does not work at all if the recipient of the information is unable to influence the situation (Weiss, 2002: 233-4). Weather reports help me to decide whether or not to cancel my picnic, but they do not enable me to change the weather.

2. Specified discloser targets: Who must provide the information? Who must collect data?

3. A defined scope of information: What information is needed to address the policy problem? Transparency works best if providers and users of information can agree, for example, on how to measure temperature, or on the definition of a hurricane. In the WTO, the most basic information on trade flows is based on well-developed theory about which statistics are useful and how data are to be collected.

4. 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 trade regime?

5. Defined information structure and vehicles: Information must be aggregated and presented in useful forms. A great deal of data is needed before a meteorological service can generate a webpage forecast with symbols for “partly sunny” in the morning, and “risk of thunderstorms near the lake.” It is even harder to generate aggregate data that allows policymakers to make quick comparisons between countries. One example is the annual World Bank report “Doing Business,” which provides cross-country comparative data likely to resonate with governments and business, like the number of days it takes a package to clear customs (Bown and Hoekman, 2007).

For convenience, WTO transparency practices can be categorized in three groups (Fung, Graham and Weil, 2007): first, second and third generation policies.

First generation: WTO transparency provisions have their deepest roots in Anglo-American administrative law, where they go back centuries. These WTO principles relate to the obligations incumbent on governments at home, not in Geneva. The basic “right to know” principle is reflected in the publication of all trade-related international obligations, most notably the codification of Members’ specific mutual obligations in the thousands of pages of “schedules” attached to the general obligations of WTO agreements. Firms cannot navigate global markets if they do not know what tariffs or rules apply. In one of the decisions adopted at the end of the Uruguay Round (WTO, 1995a), WTO members recalled the general obligation to notify, “such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations.” Notification is a right-



to-know tool, but it can also be used to elicit changes in policy or practice, especially with ex ante notification requirements, which makes notification the first step in targeted transparency.

Some WTO notifications are linked to the possibility of review by a relevant WTO body before or after the measure takes effect. Second generation WTO transparency policies can therefore be grouped as monitoring and surveillance measures. The behavioural assumption is that, 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.

Monitoring takes place in the various WTO committees, but peer review is also found in the Trade Policy Review Mechanism (TPRM), which aims at “achieving greater transparency in, and understanding of, the trade policies and practices of Members.”



The behavioural assumption is that providing information can influence policy; if the obstacles in a given market are understood, economic actors can make alternative decisions, which might induce the government to change policy to maintain the benefits of investment. Such illumination might also generate political pressure for change.

Third generation transparency policies are the most recent and least developed at WTO. With collaborative transparency the internal challenge is to create a more inclusive process in Geneva, ensuring that all Members have and can make use of information. This is a major issue for developing countries. After much debate and considerable adjustments, the negotiation process seems to work well. But whether developing countries have the capacity to analyze the information generated by the transparency mechanisms

is a different matter, one that affects both the operation of existing agreements and new negotiations.

As to external transparency, the challenge is to enable better policymaking in capitals, engaging both economic actors and citizens. If trade policy is made in the light of day, it may not always be captured by interest groups (Halle and Wolfe, 2007). 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. Nevertheless much of what the WTO secretariat does can serve both needs-e.g.; compiling negotiation proposals aids both smaller delegations and citizens.

The effectiveness of WTO transparency mechanisms varies considerably depending on the subject matter and its relationship to



WTO obligations. When the information to be provided bears on new negotiations or dispute settlement, it can expose capacity constraints on the key players, or a desire not to show one's cards. We observe a difference between notifications about issues that can be subject to dispute (such as actionable subsidies, or a measure that significantly affects trade in services), that can be questioned (such as so-called non-trade distorting support for farmers), or those that involve policy change (new safety or technical standards). Differences can also be related to whether the information to be provided regards the operation of the trade regime itself (direct compliance with a WTO rule), a set of government policies or actions (subsidies or regulations), or something about economic circumstances within a Member state (statistics).

DID THE G20 MEMBERS RESIST PROTECTIONISM?

A different way to assess transparency is to consider its contribution to mitigating the effects of the global financial crisis. All of the usual WTO discussions of notifications continued during the crisis, and committees explicitly discussed crisis measures. For ex-

ample, on many occasions during 2009 the U.S. faced questions about the Buy America provisions of its stimulus package in the Committee on Government Procurement.

More interesting was the commitment of G20 leaders to hold themselves accountable for their commitment to resist protectionism. Their agreement to monitor domestic policy responses to the crisis had a number of novel elements, but it was rooted in first generation (notification) and second generation (the possibility to affect behavioural change through the use made of the information) aspects of WTO transparency.

The WTO in collaboration with OECD and UNCTAD concluded in its monitoring reports that G20 countries have been accountable for their commitments to varying degrees, with a trivial percentage of world trade affected by dubious measures (see for example, WTO, 2010). We only know this because international organizations controlled by the G20 members have told us so. The reports may have missed many measures, especially in stimulus programmes, and they gloss over the commitment to refrain from WTO-inconsistent measures. The paucity of new disputes,

and of other indicators of conflict within the WTO, suggests that Members are not overly concerned. The official reports do not assess G20 accountability for the monitoring and reporting commitment, however, because they are written by the Secretariat, not Members, and because they are prepared under the auspices of the Trade Policy Review Body (TPRB). Consistent with the mandate of the TPRB, the reports carried the explicit caveat that they were issued under the responsibility of the Director-General, with no “legal implication with respect to the conformity of any measure noted in the report with any WTO Agreement or any provision thereof.”

This reticence might not matter if the data required were more objective, or if they had been collected for another purpose, as in the case of the OECD Development Assistance Committee (DAC) data used for the G8 accountability report to the Muskoka Summit (June 2010). For these reasons, an independent third-party assessment of the accountability of governments might be warranted. NGOs often assume the role of performing such assessments, and one undertook to monitor G20 trade commitments made in response to the financial crisis.

The Global Trade Alert (GTA) is an independent group of analysts whose well-financed and sophisticated website has an extensive and searchable database of measures taken in response to the financial crisis. The GTA concluded that protectionism increased during the crisis. This conclusion, which was widely reported in the world’s financial press, has been the subject of some critique regarding the GTA’s sources and methods. A question for further analysis is whether this independent exercise added much to the data collected by international organizations either as a tool for analysis or as an influence on governments. Moreover the GTA effort is open to the same criticism regarding accountability as the WTO exercise, since GTA did not directly engage citizens in considering the questions to be asked, the data to be collected, or the interpretations of the data collected.

FUTURE WORK

How can accountability for summit commitments and regime obligations be more systematic? Can transparency and accountability be used to attain public policy goals more quickly and less expensively than the alternatives, such as new negotiations or dispute settlement? Is the WTO sufficiently accountable for defining its objectives, meeting those objectives, and the process it uses?

Transparency and accountability are frequently connected in WTO discourse, making the concepts hard to untangle. At one level, transparency is simply seen as a means to ensure accountability of WTO Members to each other (accountability within the WTO). If we go further, we can see it as being about the accountability of the WTO not only for what it has done in terms of specific commitments, but for what it ought to have done in terms of its apparent general aspirations. Accountability mechanisms function well in some aspects of the WTO’s work (e.g. on food safety notifications) and poorly in others (e.g. industrial subsidies). ENTWINED will examine why that is and what might be done to improve overall accountability and reduce the gap between promise and action, while being attentive to the gaps between the agents of governance and those who are governed (Borowiak, 2007). Transparency is the basis of accountability, and accountability is essential for legitimacy. ■

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The research programme ENTWINED – Environment and Trade in a World of Interdependence – examines the interplay between the global trade regime and environmental policies promulgated by governments and private entities with a particular focus on the treatment of transboundary problems. ENTWINED is actively engaged with policy makers and other stakeholders to the Trade and Environment Debate. The team

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