Ever since the General Agreement on Tariffs and Trade (GATT) was founded in 1947, member countries have felt keenly the need to monitor each other’s trade policies as they engaged in negotiations and eventually entered into agreements to reduce trade barriers. In theory, most countries would better serve their national interest by simply dropping their trade barriers unilaterally, whatever other countries might choose to do. Some have actually done this. But, for most, in practice, trade concessions hurt. They hurt certain groups in the economy even as they help others (and help the economy as a whole), and the injured groups are often well organized and politically powerful whereas those that benefit are neither. Therefore, in multilateral trade, countries usually hold onto their protectionist policies, even the most self-punishing ones, as if they were valuable bargaining chips. They then grudgingly trade these chips away for similar concessions from their trading partners. This bargaining ultimately leads to a set of carefully balanced mutual commitments to reduce protectionist barriers, and to a set of rules to which the countries agree to adhere.

This tendency for countries to play the trade negotiations game close to the chest turns accurate information about countries’ trade policies into a valuable commodity. The lawyers, diplomats, and economists who participate in these negotiations have a pressing need to find out as much as they can about the actual policies and practices of the countries represented by their counterparts across the table. What barriers do they have in place today, and what is their practical effect? What is the value of the concessions they are offering? Are they real reductions in barriers, or will their effect be nullified by other barriers left in place or newly erected? How credible are their offers? Do they have a record of adhering to com-
mitments made in past negotiations? And if their offer is accepted and a bargain is struck, what should they be asked to do next, to keep the process of trade liberalization moving forward?

Such information, like all information, is not costless to gather and digest. Large countries can afford the expense, but it is clearly inefficient for each of a number of large countries to generate essentially the same information independently and keep it to itself. Smaller countries cannot afford to play this game at all. Some means of mutual surveillance, of sharing the costs of gathering unbiased information on each and every country’s changing practices and making that information available to the rest, is needed if the system of multilateral trade negotiations is to operate efficiently and fairly.

Until at least the end of the Tokyo Round of GATT trade negotiations in 1979, the principal formal mechanism for mutual surveillance of members’ trade policies was notification: still nominally in force under the WTO today, Article X of the GATT requires that each member make public all changes in its trade policies. Notification never worked well, however. In practice, few countries provided notifications. Even when they did, keeping track of members’ constantly changing policies, to say nothing of analyzing their impact or putting them into meaningful context, taxed the limited resources of the GATT Secretariat, especially as membership climbed from the original 23 countries to more than 100.

As a result of changes introduced in the Tokyo Round, beginning in 1980 the Secretariat prepared twice-yearly reports on general developments in the world trading system. The findings of these reports were debated at meetings of the GATT Council (the “legislative” arm of the GATT, at which all member countries are represented) and subsequently published. But this did not answer the need for detailed information on trade policies at the level of the individual country.

The GATT’s 1985 “Wisemen’s Report” (Leutwiler et al. 1985), recognizing this unfilled need, called for regular surveillance by the organization itself of all its members: “Governments should be required regularly to explain and defend their overall trade policies,” the report argued (Curzon Price 1991). That same year the United States instituted its series of National Trade Estimates. These annual reports (discussed further in Appendix A) amount to a summary of what the Office of the US Trade Representative considers the most serious national barriers to trade and investment worldwide—or, more precisely, of those barriers that do the greatest harm to US interests. It is quite likely that the emergence of this series lent urgency to efforts to develop a more comprehensive and probing review of trade policies within the GATT. It clearly would not do for the only regularly published review of members’ trade policies to reflect the biases and interests of a single country, even (indeed especially) the largest.

4 IMPROVING WTO TRADE POLICY REVIEWS

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In 1988, following on the wisemen’s proposal, the so-called FOGS (Functioning of the GATT System) group offered a set of detailed recommendations that included a virtual blueprint for the TPRM. Energetically led by Jules Katz, this group played a crucial role in persuading the trade ministers at the Montreal midterm review of progress in the Uruguay Round to recommend the immediate establishment of the TPRM on a trial basis while the round itself continued. The TPRM was established on a provisional basis within the GATT in April 1989. It thus became one of the first fruits of the Uruguay Round.

Consonant with the FOGS recommendations, it was agreed that the trade policies of all member countries would be made subject to periodic review. The interval between reviews for each country would depend on its relative importance in world trade: the four largest trading powers—currently Canada, the European Union, Japan, and the United States—would be reviewed every two years; the 16 member countries next in the value of their trade would be reviewed every four years; other members would be reviewed every six years, with possibly a longer interval (still to be established as of this writing) for the least-developed members. According to Katz (personal communication), the major countries volunteered to be reviewed every two years not because they deemed that to be the ideal interval, but to set an example so that the other countries would be led to accept the principle of submitting to reviews at fixed intervals.

At the conclusion of the Uruguay Round, and following a review of the TPRM in the spring of 1994, the January 1995 Marrakesh Agreement establishing the WTO incorporated the TPRM as a permanent part of that organization. It also created the Trade Policy Review Body (comprising all member countries) as the organ responsible for conducting the reviews, and it continued the staff unit, the TPRD, assigned the task of gathering and analyzing the information on which the reviews are based. Coverage of the reviews was extended around this time to trade in services, intellectual property, and other topics included under the final Uruguay Round agreements; previously TPRs were restricted to reviewing trade in goods. The first review meetings under WTO auspices were held in July 1995, and the first TPRs published by the WTO appeared in October of that year.

Annex 3 of the Marrakesh Agreement describes the purpose of the TPRM as follows:

The objectives of the TPRM are to contribute to improved adherence by all WTO Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smooth functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual Members’ trade poli-
cies and practices and their impact on the functioning of the multilateral trading system. It is not intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.

This passage, reprinted in the preface of every published TPR since 1995, makes clear that the TPRM is intended for enlightenment, not enforcement. It provides an “external audit” of members’ trade and economic situation (Appendix B). It is thus a means of shedding light on both the policies and the practices of member countries—both the direction of trade policy and its implementation—but not for compelling change. It uses sweet reason, not the threat of retaliation or the empowerment of some quasi-judicial authority, to induce countries to liberalize. The TPRM also provides a forum within which countries can question each other about their dubious trade practices; indeed it is the only WTO forum in which all aspects of trade policies can come under discussion by the whole membership. But the process is expressly nonconfrontational and nonlegalistic. It is specifically delinked from the WTO’s dispute settlement mechanism. All this is not to suggest, however, that information generated through the TPRM does not reappear in other WTO forums. Indeed, TPRs often do provide countries with ammunition for use in later negotiations and elsewhere.

The TPRM’s limited mandate results from the deep-seated reluctance of sovereign trading nations to transfer power—even the power to make official pronouncements on their policies—into the hands of international bureaucrats. The fact that it took more than 40 years for the GATT to put in place even so mild-mannered an institution as the TPRM testifies to how strongly countries resist any infringement on their sovereignty.

Yet even with its innate limitations, the TPRM is of great value to the world trading system and its participants. It is valuable, obviously, to those exporting countries that would like to see the removal of foreign barriers to their goods and services. But the country under review benefits as well. The TPRM imposes a useful discipline on members, inducing them to reexamine and reevaluate their own trade policies on a regular basis. Too often, trade policy evolves as an ad hoc, haphazard accretion of rules and procedures by different agencies and ministries across different administrations and changes in regime, to address different objectives under changing circumstances. For those countries that take it seriously, a TPR provides the occasion for a searching self-examination and stimulates interagency discussion and cooperation.

By providing an independent, outside assessment of a country’s trade policies, the process also lends intellectual and moral support to those within the country who favor liberalization. Arguably the most effective pressure that can be brought to bear to repeal protectionist policies comes from other countries, whether acting individually or collectively. At the same time, in cases where a country remains convinced of the correctness
of its policies, the TPRM provides a forum where it can respond to critics and advance its own more favorable interpretation of its trade regime.

The formal review of trade policies can also, potentially at least, benefit third countries—that is, those besides the country under review and its chief trading partners. In a world in which many formerly protectionist countries are now reaping the benefits of a regime much closer to free trade, the publicity that the TPRM gives these liberalizing trends—and their mostly positive results—can amplify a powerful demonstration effect, spreading the good news to countries that still retain high barriers.

The marginal value of the TPRM may be greatest to the world’s smaller countries. The larger trading powers still can and do set up their own networks of diplomatic and consular officials, economic offices, and private business contacts, and thus have at least some means of finding out on their own about the trade policies and practices of their trading partners, large and small. The US National Trade Estimates series, mentioned above, is perhaps the clearest manifestation of the imbalance of resources between countries in acquiring such information. TPRs make information about foreign trade policies and practices a public good, allowing smaller countries to participate in trade negotiations with a clearer understanding of the state of play and on more of an even footing. The TPRM forum also allows smaller countries to use the information so gained to criticize the trade practices of the larger ones. No longer confined to a mouse’s-eye-view of the playing field, they can roar their disapproval of the bigger players’ misbehavior.

Finally, the TPRM has value not only to trade officials in Geneva and in the national capitals but, potentially at least, to many others who are not players in the game of global trade negotiations. Secondary users can include private businesspeople and academics, who are free to use the information gathered through the TPRM process for their own ends, however far removed from those of the WTO and its member governments. In other words, the information gathered through the TPRM generates positive externalities. The implications of this broader potential readership for the dissemination of TPRM reviews are discussed in chapter 4.