

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/358817281>

TITLE: WTO's Trade Policy Review Mechanism –Indian experience & best practices!

Article · February 2022

CITATIONS

0

1 author:



Anurag Sehgal
Universität Bern

1 PUBLICATION 0 CITATIONS

SEE PROFILE

TITLE: WTO's Trade Policy Review Mechanism – Indian experience & best practices!

AUTHOR: Anurag Sehgal¹

¹ <https://www.wti.org/institute/people/921/mile-22-anurag-sehgal/>

Introduction

Maintaining effective transparency is an important objective of the World Trade Organization [WTO] as it reduces the asymmetry of information and thereby plays an important role in the decision-making processes. One of the principal instruments to enforce transparency in the WTO context is the Trade Policy Review Mechanism [TPRM].

As per Marrakesh Agreement establishing the WTO, *“The purpose of the TPRM is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members.”*

The TPRM is thus designed to act as an evaluation tool of individual members’ trade policies and is carried out at regular intervals.

As a capital based nodal coordinator of India’s seventh TPR [in the Department of Commerce (DoC)], the author had the opportunity to observe this unique WTO functionality closely and appreciate its importance in the smooth functioning of the global trading regime. In this paper, the author attempts to describe step by step process of how the WTO conducts TPR of a country through the example of India, while highlighting the important lessons learnt in the process.

What is TPRM?

One of the earliest harvests of the Uruguay round of negotiations, TPRM was agreed to in 1989 and is one of the oldest functions to have run smoothly to the benefit of WTO membership. All WTO members are subject to review depending on the country’s share in international trade. The top four [EU, US, Japan & China] are reviewed every three years and the next sixteen every five years. Remaining members are reviewed every seven years. A TPR exercise² is based on the two documents:

² The WTO’s General Council meets as the Trade Policy Review Body for the TPR meeting.

- i. Secretariat report³ - detailing economic environment of the member being reviewed. Written independently by the WTO Secretariat with cooperation of the member concerned, and
- ii. Government report - a policy statement prepared by the member under review.

For preparation of the Secretariat report, the Secretariat calls for detailed information and documents from the member concerned on developments since its last review. The Government report, on the other hand, elaborates upon the government perspective on overall trade environment and is a futuristic document. The reports are then circulated to all WTO members for written questions / concerns over the trade policy of the member under review. These reports and the written replies to the questions of the WTO membership becomes the basis for proceedings of the TPR meeting.

The TPR meeting takes place in Geneva in two sessions. In the first session, the member concerned makes an initial statement, providing an overview of its policies, and reporting new developments since its last review. While in the second session, a summary of answers and replies to additional questions is provided. The complete review process can thus be subdivided into three parts, (i) Information collation, (ii) Report preparation, and (iii) Peer review.

It is noteworthy to mention however that the TPR is performed independently of any legal effect as it is not a 'covered agreement'⁴.

India's seventh TPR

India, a founding member of the WTO, is reviewed every five years and has been reviewed seven times so far [first being in 1993]. India's seventh TPR was held on the 6th & 8th of January 2021 with widespread participation and assessment of India's trade policy by the WTO members. Predictably, India's fast paced reforms over the years drew a note of appreciation while a few concerns were also expressed.

³ The Secretariat Report contains 4 Sections: (i) Economic Environment, (ii) Trade & Investment Regimes, (iii) Trade Policies and Practices by Measures, & (iv) Trade Policies by Sectors.

⁴ Appendix 1 to the Dispute Settlement Understanding refers.

Preparation for the seventh TPR began as early as April 2019, with the Secretariat communicating important timelines and seeking information. Simultaneously, the Secretariat worked on information collation through various open sources. This was followed up by the travel of the Secretariat team to India to discuss further questions with the government and other stakeholders in November 2019.

Post this, further specific information like HSN-wise applicable import tariff, etc. was sought. Subsequently, a draft report was prepared and shared by the Secretariat for verification and / or comments, which led to the second set of detailed interaction between the two sides [conducted virtually due to the pandemic]. These discussions contributed to the final report, which, together with India's policy statement, was circulated to all the members in November 2020. The members were required to submit written questions almost two weeks prior to the TPR meetings and India's responses to these questions were needed by 5th January 2021, a day before the TPR meeting.

The TPR meeting was opened up by the TPRB chairperson and followed up by an opening statement by the India's Commerce Secretary, who detailed India's trade policy making since the sixth TPR and highlighted important reforms carried out. This was followed up by the remarks of the discussant [acting in a private capacity] which set the tone for statements from the membership, each of whom were allotted seven minutes for their comments. This round witnessed oral interventions from fifty-one WTO Members. The second session took place on 8th January, separated by a day's break and involved a detailed Indian response to the main themes in the members interventions during the first session. The seventh TPR of India concluded successfully with a wrap-up statement by the Chairperson of the TPRB and India responded to all the remaining follow up questions within a month of the meeting.

The above process, though summarised briefly, entailed a mammoth task of regular coordination for about 20 months with the WTO Secretariat as well as 50 odd line ministries / organisations in India to ensure that the two documents acting as a base for member countries questions i.e. the Secretariat report and the policy statement by the government, represent factual and accurate details. In addition, a total of 1091 written questions were replied by India, satisfactorily, within the slated timeline.⁵

⁵ Including questions asked after the prescribed deadline as well as the follow up questions.

Challenges and India's response

1. Cooperation from line Ministries – Success of any TPR depends upon the degree of cooperation extended by the various divisions of the government. Therefore, a conscious and continuous effort was made by us to keep other wings of government on board throughout the TPR exercise. This involved getting TPR nodal officer(s) appointed from each ministry; regular interaction with these nodal officers to make them aware of the progress; conducting inter-ministerial meetings for intensified sensitisation by the senior officials of DoC; circulating a TPR drill, explaining the process during final phase in brief, to all; etc.
2. Information updation – Being up to date with their notification commitments is difficult for any WTO member country. This got exacerbated for India since Covid-19 was at its peak and a lot of changes occurred in the import and export regulations. In addition, the Foreign Trade Policy [FTP] of India, which is conventionally formulated for five years at a time, and was due in 2020, was extended by a year. This thus led to information gaps. The former was addressed by fast-tracking notifications to the WTO, while the latter was addressed by regularly gathering details on latest trade issues, domestic programs, tariff changes, etc. from the line ministries and updating internal datasets.
3. Precise timelines – TPR process as a whole operates on a committed timeline. However, meeting the timelines during the final phase of the TPR, when the written questions are received from the fellow members, is a challenge. This was pre-empted and the Secretariat report was analysed well in advance to assess the areas where possibilities of queries exist. These possible question areas were conveyed to all the concerned for preparation in advance. In addition, a ministry-wise broadsheet for the topics covered in the Secretariat report was created for quicker dissemination of questions to the line ministries, as and when received through the Secretariat.

Take-aways

Information has long been considered central to cooperation among states. No wonder that only agreement entered into force during the Doha round, the Trade Facilitation Agreement, has a considerable emphasis on dissemination of cross border trade information! The key TPR takeaways from India's experience can be summed up as under:

1. Updated collation of country's trade & economic policies as well as future policy perspective in a well understood and concise format, which can be accessed at the WTO website.⁶
2. Utilising this unique opportunity to align notifications to the WTO with the country's commitments under the various WTO agreements.
3. An occasion to showcase domestic policy reforms during the review period [Ease of doing business, Trade facilitation, Banking reforms, Labour, FDI, IPR, Infrastructure reforms, etc.]⁷.

Best Practices

A TPR is an immensely enriching experience for the officers involved in the exercise. Since this is more than a year-long project, meticulous planning right at the beginning is the key. Some of the best practices adopted for India's TPR, which may also be useful for other WTO members are:

1. Forming a TPR team comprising of officials with expertise in WTO policy matters, and entrusting a nodal coordinator for coordinating the entire process.
2. A conscious and continuous effort to keep other ministries on board all along and to get nodal officers nominated by all the ministries at the beginning itself. The interaction was done only with these nodal officers and they were made accountable for arranging responses.

⁶ https://www.wto.org/english/tratop_e/tp/e/tp503_e.htm

⁷ We also took the Secretariat team for a field visit to India's biggest port [Nhava Sheva, Mumbai], showcasing India's best practices in customs and trade facilitation.

3. Creating a format of information collection. A format containing (i) Sector [Customs tariffs; Import policy; Agriculture; etc.], (ii) Information sought for Secretariat report, (iii) Division's details [Ministry of Finance; Reserve Bank of India; etc.], (iv) Nodal officer's details [email, contact], (v) last TPR details [excerpts of the sector specific details captured in the reports], were shared with all the concerned for information collection during initial stages.
4. An informal chat group was created on a social media platform, with various nodal officers being part of it. This platform was used for apprising and reminding them of the information request sent through mail; why such information is required; importance and urgency of their response; issues to be considered while responding; etc.
5. Beginning the exercise of writing the Govt. report atleast six months in advance. This enabled updation of notification alignment chart; seeking timely policy inputs from other ministries on futuristic policy aims; and capturing the recent happenings in the trade front; adequately.
6. Creating a Rapid Response Team [RRT] in the DoC for handling questions and replies during the final phase. This was a wider team involving almost all officials handling the WTO issues. RRT was made responsible for communicating and collecting responses for incoming questions from the ministries, topic-wise. For eg., the author was responsible for "Macroeconomic issues, customs related matters, other miscellaneous questions, and overall coordination".
7. Circulation of last TPR's questions and replies to all Ministries, along with possible issues of concern, for their internal preparation, within a few days of the release of the two reports.
8. Putting in a systematic mechanism to track and monitor the status of each question. Created in a spread-sheet format to ascertain the status [answer finalised; answer pending; pending with whom; questions yet to be sent; etc.], the details in the spread-sheet were filled twice every day and captured updates from the RRT. This ensured timely receipt of response and also ensured that each question was tracked and not lost.
9. Ensuring a multi-disciplinary delegation for the TPR meetings, who are familiar with activities of various schemes and policies, to assist the Indian lead during the meetings.

10. Setting up a control room [team of officers]. These officers were to render assistance to the Indian delegation for handling urgent matters and questions raised during the meetings.
11. Most importantly, creating a culture of persuasive but firm follow-up. Timelines are precise and the country's reputation is at stake!

Conclusion

One of the most severe barriers to international trade cooperation is the lack of information. The authors' experience of India's TPR however showcased the definitive resolve of the WTO to overcome this barrier through a well-structured and universalised format. In addition, India's resolve to facilitate this five yearly assessment in a most efficient manner, resulted into a successful seventh Trade Policy Review of India, which was received well and appreciated by both, the fellow Members as well as the WTO Secretariat.

References⁸

- i. Chaisse, Julien, and Mitsuo Matsushita. "Maintaining the WTO's supremacy in the international trade order: a proposal to refine and revise the role of the trade policy review mechanism." *Journal of International Economic Law* 16.1 (2013): 9-36.
- ii. Francois, Joseph F. "Maximizing the Benefits of the Trade Policy Review Mechanism for Developing Countries." prepared for the World Bank Institute, February (1999).
- iii. Ghosh, Arunabha. "Developing countries in the WTO trade policy review mechanism." *World Trade Review* 9.3 (2010): 419-455.
- iv. https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm.
- v. Kende, Mathias. *The trade policy review mechanism: A critical analysis*. Oxford University Press, 2018.
- vi. Zahrnt, Valentin. *The WTO's trade policy review mechanism: How to create political will for liberalization?*. No. 11/2009. ECIPE Working Paper, 2009.

⁸ Credit is also due to the nodal coordinators of India's past TPRs. The author drew heavily from their experience [for eg. fifth TPR in 2011] for planning and execution of the latest TPR.