

BOOK REVIEWS

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## ***Transparency in the WTO SPS and TBT Agreements: The Real Jewel in the Crown***

**by Marianna B. Karttunen**  
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In this extraordinary work, Marianna Karttunen explores the crucial role of transparency in the WTO focusing on the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). Based on a detailed assessment of both legal requirements and actual practice, she identifies a range of interrelated transparency mechanisms and reveals how these accomplish several essential functions, including alerting governments and traders to (proposed) regulatory changes, monitoring compliance, facilitating international regulatory cooperation, and resolving trade frictions. By shifting academic attention to seemingly mundane everyday processes such as managing notifications and discussing so-called Specific Trade Concerns in the WTO committees, this contribution heralds a broader trend in the trade literature. Partly motivated by the paralysis of the WTO's negotiation and dispute settlement functions, a new generation of scholars has recently focused their curiosity (and PhD dissertations) on the organization's 'regular work', which is mainly concerned with implementation and monitoring (Manak, 2019; Dorlach and Mertenskötter, 2020). Overall, Karttunen provides a convincing and innovative, albeit at times more descriptive than analytical, account of transparency in the multilateral trade system.

The book is subdivided into three parts: the first part offers a detailed discussion of the legal framework established by the SPS and TBT Agreements. It explains the central function of transparency within this framework, elaborates on an earlier typology of WTO transparency tools ('decentralised', 'centralised', and 'collaborative' transparency, cf. Collins-Williams and Wolfe, 2010), and establishes the link between transparency and international regulatory cooperation. The second and third parts study to what extent the various transparency tools act as 'substitutes' for or 'complement' to formal dispute settlement under the Dispute Settlement Understanding (DSU). Part two starts with a data-driven explanation of what Karttunen labels the 'Disputing Pyramid', with the many notifications that members submit to the WTO forming the pyramid's base and the rare Appellate Body reports sitting at the top. Showing how transparency can help resolve disagreements among members before these escalate into formal disputes, part two focuses on the bottom half of this pyramid. Part three, in turn, discusses the upper portion, or transparency as a complement to dispute settlement, explaining how committee debates feed into formal disputes and assist members in collecting the necessary information for them.

The author is very careful in acknowledging some limitations of her analysis. The key one is that this account is limited to the SPS and TBT areas; it draws no comparisons to other WTO areas or international organizations, and neither does it incorporate or explicitly address the broader scholarship on transparency in (global) governance. This unfortunately limits the broader appeal of the study, which otherwise offers much new and fascinating empirical detail. By radically prioritizing analytical depth over breadth, the account also remains relatively indifferent to the broader struggle over transparency that has defined the WTO since its creation – members' failure to comply fully with their notification obligations is a 'historical constant' (VanGrasstek, 2013, 273). The book thus provides an admirably thorough account of notifications, committee debate and dispute settlement over time and for different groups of developing and developed WTO members. But we learn little

about how the experience of the SPS and TBT Committees fits into the general struggle over what level of actual transparency the members are willing to tolerate, or even what makes the SPS and TBT experience special. And although Karttunen confirms that ‘transparency is high on Members’ agendas’ (278) and that the existing SPS and TBT transparency tools hold ‘untapped potential’ (293), her ideas for the current debate on WTO reform are perhaps unsurprising: strengthen the role of the WTO Secretariat to facilitate information flow; broaden the range of available information on domestic measures (for example, by reminding Members to update their notified draft measures); and strengthen the dialogue with the private sector and between trade and regulatory communities.

What is, however, remarkable is the book’s attention to the under-explored regular committee work and how it has allowed the delegates to handle ambiguous legal provisions and resolve a wide variety of (technical) disagreements about domestic measures. Much of the analysis revolves around the committee practice known as Specific Trade Concerns, which enables member state representatives to request information on – and sometimes discuss – another member’s (proposed) domestic measures in the regular sessions of the SPS and TBT Committees. In fact, Karttunen’s analysis is even more ambitious because it does not only discuss notifications, committee exchange, and dispute settlement separately, but pays attention to points of transition, i.e., how notifications prepare the ground for committee debate or the pre-litigation phase, and when trade concerns escalate into formal disputes. In this regard, Karttunen provides a much more dynamic and lively picture of the ‘Disputing Pyramid’ than earlier accounts – although the high level of detail sometimes leaves the reader at a loss how to interpret the abundant data and appreciate their broader relevance.

Perhaps the most salient criticism that can be levelled against this account is that it reduces the WTO’s rules and processes to technical accomplishments, slighting their political character and the political work they do. In other words, the admittedly much harder questions on why certain members might prefer one type of transparency over another, or why semi-formal committee practices, such as the Specific Trade Concerns, emerged over the last decades in one way but not in another are not explored. The author certainly draws on the well-known imbalances of power and resources among WTO members to explain unequal access to formal dispute settlement and gaps in notifications. However, the related concerns that states might behave strategically in what information they disclose or might be unwilling to confront powerful members receive little attention.

Despite its specific title, this fascinating work thus covers much more than transparency. But just like transparency in the WTO, the book’s contribution is both broad and narrow at the same time. It is broad in the sense that it provides a largely unprecedented look at the various ways in which trade frictions move up and down the disputing pyramid and are resolved through both informal understandings and authoritative interpretation. And it is narrow in the sense that it is a largely technical account focused on a small subset of WTO committees, ignoring much else of what is going on in the trade system and beyond.

## References

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