Beyond the Carrot and the Stick: 
(How) Do State Reporting Procedures Matter?

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Abstract

This paper addresses the question of whether, under which organisational conditions, and through which mechanisms state reporting procedures can contribute to compliance with international rules. Although reporting procedures operate in almost all international regimes and organisations, we know very little about the extent to which and the way in which they matter for increased rule adherence. The proposed paper seeks to address these questions both from a theoretical and empirical point of view by examining the example of the Trade Policy Review Mechanism (TPRM) of the GATT/WTO installed in 1989.

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1 Introduction

The topic of compliance has traditionally figured prominently in rationalist IR theory. Realist and neo-realist approaches maintain pessimistic expectations about rule compliance due to the likelihood of self-help and rule-defiant behaviour in an anarchical world. Cooperation researchers in the rational choice tradition do not deny the possibility of sustained cooperation, but consider the supervision of states’ behaviour and the punishment of transgressors crucial. Central to this latter approach is the assumption that states wishing to cooperate frequently find themselves in prisoner’s dilemma (PD) situations where individual rationality would bring states to defect from commitments, provided that the benefit obtained from defection is higher than its potential cost. Consequently, cooperation approaches consider it crucial to install potent sanctioning mechanisms in order to increase the cost of non-compliance. The flipside of such considerations is the expectation that due to the latent fear of exploitation by third parties states will be ready to cooperate only if powerful enforcement mechanisms are in place (Keohane 1984; Downs 1998).

A still relatively new contender to established compliance theory is the so called “managerial school”, which brings together a number of international lawyers and political scientists interested in the effectiveness of international organisations and regimes. The main hypotheses of this relatively coherent strand of thinking are that a) that most compliance problems stem from inadequate capacity of states to fulfil their obligations, inherent ambiguity of the rules, or exogenous developments, but not from wilful violations of the rules, and b) that therefore the concerns of rationalist cooperation theory with enforcement of the rules by sanctioning are vastly exaggerated. Scholars in this tradition also point out that overall compliance levels are relatively high and that the yardstick to judge compliance should not be perfect but “acceptable” compliance, depending on the nature of the treaty and the social relations among regime members. The decision what is an “acceptable” level ultimately is a political one for the managerialists (Chayes/Chayes 1995: 20). As a consequence, compliance problems should not be dealt with through a transgression → punishment logic, but through the political “management” of faulty compliance. For the managerial school, capacity building, ongoing regime dialogues by which the meaning of rules is clarified, and a general cooperative and supportive attitude vis-à-vis transgressors are key to improved compliance records and to the evolution of cooperation in the international system.

Many of the points made by the managerial school are ambiguous in that prescriptive and empirical parts are not clearly distinguished. Partly as a result of this, the managerial school has drawn a number of criticisms, the most common of which are unjustified generalisations concerning the effectiveness of systems of compliance “management” and

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1 See footnote 9 for variants of this approach.

naivety as concerns the latently self-interested and uncooperative nature of state behaviour. It is argued that the managerial school may be right about the sources and cures of non-compliance in cases of relatively shallow cooperation and in pure coordination efforts. However, the “soft” instruments put at centre stage by the managerialists will prove unsuccessful in situations where states face PD situations, i.e. in situations where the premium on exploitative behaviour is high and/or where the enforcement power of the relevant international organisation or the community of states remains low. Consequently, if states want to enter into more meaningful cooperation, they need to install the necessary enforcement mechanisms in order to overcome the exploitation problem (e.g. Downs/Rocke/Barsoom 1996). While for Downs and his co-authors the “depth” of cooperation is the crucial variable determining the feasibility of different compliance designs, others argue that cultural variables are crucial. Zangl, for instance, delineates “managerial”, “enforcement” and “adjudication” approaches and argues that these approaches work differently e.g. in OECD and non-OECD settings. One interesting claim is that due to the tradition of judicial control and the “thick” normative institutions in the OECD world, adjudication strategies should suffice to ensure good compliance records in most cases (Zangl 1999).

While these writers as well as most cooperation theorists and managerialists see enforcement and management as competing and mutually exclusive recipes for achieving compliance, it may as well be argued that both strategies complement each other and work best when employed in combination. Research shows that the European Union achieves relative good compliance records due to a “management-enforcement ladder”, where compliance problems are first addressed through an informal administrative dialogue and reach the stage of enforcement only in cases of continued transgression (e.g. Börzel 2001; Tallberg 2002). Another case in point is the dialogue and sanctioning system installed in the Cotonou Accord between the European Union and the developing states of Africa, the Carribean and the Pacific (Beck/Conzelmann 2004), and still another the recently installed compliance system of the Kyoto Protocol, which explicitly combines a so-called “Facilitative Branch” and an “Enforcement Branch”. The former “aims to provide advice and assistance to Parties in order to promote compliance, whereas the enforcement branch has the power to determine consequences for Parties not meeting their commitments”. The idea behind such arrangements is to combine carrot and stick in novel ways, i.e. to lead the regime dialogue favoured by the managerial school “in the shadow of” an ultimate capacity to sanction transgressors – the scenario seen as crucial by the enforcement scholars.

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3 Adjudication being a mechanism which seeks to bring compliance about through sanctioning, but faces the inherent legitimacy problem of decentralised and power-driven sanctioning by a community of states by delegating the judgement on the seriousness of transgressions and the appropriate sanctions to a neutral arbiter. See Zangl 2001.

4 Quote taken from the web page [http://unfccc.int/text/issues/comp.html](http://unfccc.int/text/issues/comp.html) (26 March 2004). The sanctions that the enforcement branch may impose for non-compliance with emission targets are quite harsh, including a 30 percent higher reduction obligation in the “commitment period” starting 2013, the temporary barring from emissions trading, and the requirement to develop a “compliance action plan” which is to lay out strategies to improve one’s own compliance record (ibid.).
What is missing in this picture of peaceful and happy co-existence of carrot and stick? Two points stand out: First, the idea of a “management-enforcement ladder” leads to situations where the dialogue stage serves the main purpose to explain and, possibly, to deny rule-deviant behaviour and to bargain over the terms under which a case may be dropped (so as not to reach the sanctioning phase) or to negotiate the severity of sanctions. While there is nothing wrong with such a design within specific international institutions, using it as a general model greatly reduces the functions that the managerialists assign to regime dialogues and implicitly puts the logic of dialogue and argument second to the logic of enforcement and bargaining. The mirror image of this narrowing of functions of regime dialogue is that it sheds little light on institutions such as the Trade Policy Review Mechanism (TPRM) of the WTO or OECD peer reviewing procedures, where considerations such as the convergence of policies through mutual learning, information and experience sharing and the collective interpretation of rules play a large role (Joint Group on Trade and Competition 2001; Pagani 2003). Second, other than in the WTO and EU contexts, most international organisations and regimes do not have any sanctioning power at hand, hence, the “management-enforcement ladder” may simply not work the way that it is envisaged in the examples given above. This is not to say, however, that such organisations will have to live with blatant and permanent transgressions of their rules. As shown above, the soft compliance mechanisms favoured by the management school may serve other functions than being a simple prelude to the enforcement stage, and may develop their own compliance dynamic. In other words, it is important not to rule out a priori that there may be more to such mechanisms than either serving as a pre-stage to enforcement or being a mere exercise in window-dressing and mutual patting on the back.6

This paper serves to discuss the question of whether, under which organisational conditions, and through which mechanisms soft compliance instruments can contribute to rule adherence. In doing so, I shall contrast the arguments of the rationalist cooperation scholars with contributions that use a broader conception of how states form preferences and to what extent images, identities and interpretations matter in world politics. In that sense, the paper also is an exercise in discussing the relative merits of rationalist and reflective approaches7 in International Relations. Empirical arguments are drawn from the Trade Policy Review Mechanism (TPRM) of the GATT/WTO mentioned above.

The paper starts with a broad-brush discussion of rationalist and reflective approaches to rule adherence and the compliance instruments considered crucial by these strands of thinking. I continue by defining in more detail what is meant by “soft compliance procedures” and by discussing the central role of state reporting within that class of

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5 Among such functions are the preparation of new accords, the interpretation of rules, the socialisation of states into the universe of rules of the international organisation or regime, and the strengthening of the overall legitimacy of regime rules. See section 2.1 for a fuller discussion.

6 These two interpretations relate to the neoliberal institutionalist and the neorealist interpretations of state reporting mechanisms.

7 The labels are taken from Keohane 1988. See sections 2.1. and 3 for more detail.
compliance instruments (section 2). Building up on this debate, the next section tackles
the question of institutional design of compliance mechanisms. While both rationalist and
reflective scholars attribute certain functions to state reporting within the overall
compliance system, they differ radically on the question of how much open to the public
these approaches should be and how close a link to “hard” sanctioning mechanisms is
advisable (section 3). Finally, I discuss the relative merits of these two approaches using
the example of the TPRM (section 4).

2 What is a “soft” compliance instrument?

2.1 Approaches to the compliance problem

As highlighted by students of international norms, there are many sources why individuals
or states are willing to obey a norm. The most unproblematic and at the same time least
interesting answer are situations where there is congruence between individual interests
and the obligations implied in the norm. People will follow the norm since it is in their
perceived interest to do so. The interesting part begins where self-interest and norms
conflict. Why would normative principles become effective in such situations?

One answer to that question may be fear of punishment, the answer that is principally
favoured by the enforcement school. Starting from rationalist assumptions, the argument
is that individuals calculate the costs and benefits resulting from a breach of the rules and
that they will only restrain if the likelihood and severity of punishment is large enough to
outweigh potential benefits. Hence the concern of rationalist IR scholars to design
compliance systems effective enough to keep self-interested behaviour at bay. While both
decentralised sanctioning by a community of states and more centralised enforcement by
an international organisation may be feasible, a central concern is to increase the
transparency of behaviour within the relevant international regime or organisation so that
breaches of the rules will in most cases not go unnoticed.

It has been noted by several scholars that a public order resting exclusively on sanctions
and deterrence will demand enormous resources in overseeing compliance and will
quickly become ineffective, since it cannot count on the voluntary compliance of
individuals with the law. One answer why public order still is possible rests on the
argument that the “operating assumption” for most individuals is norm compliance due to
a moral obligation to follow norms. Reasons for this moral motivation may be found in the
reference to a generalised norm such as *pacta sunt servanda* or in the legitimacy ascribed
to the norm as such and/or the procedure by which it was defined. A third and fourth
motivation for norm compliance lies in between these two more extreme views. One is the

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8 For the present discussion, I define a norm as “a normative principle that exists within a given social
system and which most members of the social system seriously consider acting upon in most situations
where it applies”. The definition is taken from Malnes 1992: 279.
danger of social stigma that comes with an open and unashamed breach of common rules. This principle is often referred to by the three “-ame verbs” (namely name, blame and shame) and also figures prominently in the discussion on the “reputation” of states. The common idea behind these otherwise rather different literatures\(^9\) is that “social” or “political” costs may be incurred by a breach of the rules, so that transgressors will be brought to compliance even in the absence of formal sanctions. This conception is rationalist in that it focuses on the costs of non-compliance as the ultimate mover of state behaviour, but it does not really work without borrowing from the reflective school. The reputation of trustworthiness and reliability of a particular state as well as its desire to belong to a certain “in-group” are social constructs that result from a process of dialogue and repeated questioning of identities (Johnston 2001). An even stronger inclination towards the reflective pole is to be found in contributions that see socialisation and persuasion as reasons for state compliance (e.g. Checkel 1999; Schimmelfennig 2003). While the „socialisation“ literature deals with norms that may be considered the fundamentals of international order (such as the observance of human rights norms and democratic rule; cf. Schimmelfennig 2003: 406-407), “persuasion” may have a more issue-specific character. The common assumption is that states may be „talked into“ rule compliance through repeated regime dialogues that ultimately lead to a redefinition of interests and identities. The reasons for compliance are similar to “moral motivation” if the process is viewed “from the end”: it starts, however, with individual or collective actors that seriously consider to or actual transgress rules and only later are brought to follow regime norms since they have been persuaded that it is in their own interest to do so. A further difference is that “moral motivation” would lead to general rule compliance within a social system irrespective of the content of the rule (as long as the rule and rule-making procedures per se are considered legitimate), while “persuasion” denotes a more issue-specific process leading to internalisation of a particular set of cognitive and normative ideas, while other norms within the same social system may still be rejected.

In sum, the four approaches to explaining compliance discussed here may be ordered along a continuum ranging from the “rationalist” to the “reflective” pole, with rationalism denoting a theory of action focusing exclusively on the “logic of consequences”, and the reflective pole focusing on the “logic of appropriateness” (March/Olsen 1984).\(^10\)

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\(^9\) The “-ame” literature sees the criticisms voiced by other states, international NGOs or the media as crucial for the opinions formed among domestic electorates and argues that the domestic costs of non-compliance will rise as states are shamed by the international public. See Keck/Sikkink 1998; Risse 1999. The idea of the reputation literature is that the trustworthiness and reliability of states as future cooperation partners will be judged by making inferences from their past behaviour. A reputation for blatant and repeated violation of agreed norms in the past will let future cooperation appear a risky exercise, hence a non-compliant state will forego future cooperation opportunities. The two classical works on this are Henkin 1968; Keohane 1984. See Malnes 1992: 290-294; Hasenclever/Mayer/Rittberger 1997: 174-176 for a discussion.

\(^10\) It may be argued that the continuum depicted in Matrix 1 is misleading in that it suggests there are two poles on a common dimension, while in fact rationalist and reflective approaches differ fundamentally on issues of ontology and epistemology and cannot be combined into one dimension. While this is of course true on a theoretical plane, empirical reality usually shows that both kinds of motivations are present when states comply with rules. See Börzel/Risse 2002 and Wiener 2003 for an effort in delineating different “bridges” over the gap between the two poles.
Matrix 1: Approaches to explaining compliance

<table>
<thead>
<tr>
<th>Fear of punishment</th>
<th>Avoidance of social and political cost</th>
<th>Persuasion</th>
<th>Moral motivation</th>
</tr>
</thead>
</table>

Rationalist pole

Reflective pole

2.2 Defining “soft” instruments

As a consequence of the different metatheoretical foundations of the schools discussed above, different instruments are considered crucial in ensuring compliance. On the rationalist pole, enforcement instruments are considered crucial, and norms do not play any role in shaping behaviour;\(^\text{11}\) at the reflective pole, pure moral motivation makes individual and collective actors comply with norms, hence enforcement instruments are not necessary. The range where “soft” compliance instruments work in principle lies in between these two extremes (shaded area in Matrix 1). Soft instruments do not seek to elicit compliance through penalties, fines or other forms of sanctions, but are nonetheless designed to address regime members that are not morally motivated to follow regime norms. The defining element of soft compliance instruments, then, is that they seek to induce or stabilise compliant behaviour, while the material sanctioning or punishment of transgressors is ruled out. In other words, soft instruments seek to mould behaviour by changing the orientations of actors instead of steering it through coercion and hierarchical order.\(^\text{12}\)

Within the inventory of soft compliance instruments, state reporting takes a central role. The reason is that soft compliance works by an evaluation of individual behaviour in the light of norms, and this evaluation must be done on the basis of shared factual knowledge about this behaviour. State reporting aims at collecting evidence on the conduct and accomplishments of individual states concerning norms laid down in the individual regime, and thus to make the behaviour of regime members transparent. This may be done by self-reporting, by on-site inspections, and/or by mixed arrangements where the secretariat of an international organisation or regime and the respective state independently collect evidence. State reporting has become a very common instrument in international politics; Chayes and Chayes argue that “international treaty makers seem to have gotten the message that transparency is key to compliance. The incidence of reporting requirements is so high that they seem to be included almost pro forma in many agreements” (Chayes/Chayes 1995: 154).

\(^{11}\) The reason is that it is not the content of the norm, but the fear of punishment that makes actors comply.

\(^{12}\) See Göhler 1994 for an institutionalist account of order and orientation.
As concerns the process of putting together reports, the mere existence of a reporting requirement forces the bureaucracies of parties to the treaty to generate information about activities within the respective issue area of the treaty and to assess the relative achievements in the light of regime requirements. At the very least, a certain acknowledgement of duties under the regime and a certain familiarity with its concepts and implicit theories will be established within those parts of the administration that are responsible for the reporting. Regime members are exposed to new ideas and policy concepts and are forced to view their own policies in the light of these (Chayes/Chayes 1995: 154; Weisband 2000).

The extent to which state reporting actually is relevant for compliance more centrally depends on the evaluations of reports. There are many examples of regimes where state reports receive no or at most cursory attention and where reporting therefore becomes a rather pointless exercise. On the other hand, there is an increasing range of examples where reports are scrutinised and evaluated in great detail. There are different ways of doing this: A well known example is the ILO reporting system, where a committee of experts both collects and evaluates the relevant data (Weisband 2000). A similar procedure exists in the two UN Human Rights Covenants (Hanschel 2000; Riedel 2003). Both procedures result in a final evaluation of the compliance record of members, which is, however, often shielded behind diplomatic language. Another variant is the OECD method where reports are “peer reviewed”, i.e. evaluated by the other regime members, but where there are no final and binding judgements concerning the policy records of member states (Joint Group on Trade and Competition 2001; Pagani 2003). A recent and interesting example of a newly established peer review mechanism is the African Peer Review Mechanism installed under the roof of NEPAD (Cilliers 2002; Kanbur 2004); an older example is the IMF peer review (OECD 2002), which is special since in the case of stand-by agreements, the review may lead to legally binding demands for compliance (also see Mavroidis 1992: 408). The WTO Trade Policy Review Mechanism lies in between these two variants, since reports are evaluated both by the other states and the secretariat.

The evaluation stage of reports is of central importance, since it allows a calculation of member state performance in relation to other regime members and in the light of regime norms. Invariably this will trigger a dialogue both on individual behaviour and on the norms and rules to be complied with. In cases where individual breaches are discussed, such dialogue may lead to

- the provision of technical and/or administrative assistance in cases where the lack of capacity gave rise to compliance problems;
- a clarification or interpretation of rules in cases where ambiguous treaty language gave rise to the problem at hand; or
- a formal identification of points of problematic or inadequate compliance, possibly coupled with duties to improve the record until the next report.¹³

¹³ Formal disapproval of the behaviour of a state party will result in political and social costs incurred by the
Many observers of regime dialogue point out, however, that such tangible results of a reporting exercise are potentially less important than the intangible ones, which relate to the social function of state reporting and regime dialogues. The repeated interaction within a regime is important both for the institutionalisation of standards of conduct, as well as for the socialisation of transgressors or newcomers within the regime. Compliance dialogues, then, serve to

- construct a certain “status identity” among the members of the regime in question (Weisband 2000);
- install benchmarks and discursively clarify the borderline between acceptable and inappropriate demeanour,
- expose states to regime norms and, by means of repeated interaction and “socialisation”, eventually to reshape their identities and preferences so that they become supporters of the regime.

The debate among the managerial and enforcement school in this respect is not only about reasons of and cures for non-compliance, but also about ontological questions such as the concept of international order and the preference formation of states. The underlying theoretical and ontological assumptions that consider such “intangible” results of state reporting important are those of the “reflective” approach to international cooperation. In this perspective, state reporting and regime dialogue are understood as mechanisms of the permanent definition and redefinition of interests and identities. Consequently, this “social” interpretation of regime dialogues views the process of regime building and development via state reporting as much more important than the “rationalist” interpretation that focuses much more on the results of such an exercise. These differing viewpoints feed back into different design recipes for effective compliance systems and the role of state reporting therein.

3 How should soft compliance mechanisms be designed?

As mentioned above, fear of punishment is the main motive for compliance in the rationalist ontology. Starting from the assumptions of a universe consisting of rational utility maximisers, the emergence of institutions is expected in situations where “the costs of communication, monitoring, and enforcement are relatively low compared to the benefits derived from political exchange” (Keohane 1988: 387). “Soft” instruments will serve as means to enhance communication and monitoring, while enforcement must be secured by changing the cost-benefit calculation of actors. Such costs may result either from penalties or sanctions imposed by an international organisation or from the community of states that may choose to isolate and shame a transgressor or may respond non-compliant party. States can be expected to avoid being shamed, hence looming or actual shaming may constitute a particularly powerful compliance pull. It would be wrong, however, to see such costs as formal sanctions, since the extent and dynamic of such costs cannot be controlled by the reviewing body. Hence, reporting procedures that conclude by the publishing of instances of ill compliance would still count as a “soft” mechanism.
by “tit-for-tat”, i.e. by reducing cooperative behaviour in response to a transgression of norms. State reporting, in this context, should therefore be designed to

- increase the transparency of state behaviour so that transgressions may be detected and may result in a damaged “reputation” of a state among its peers or may serve as argumentative ammunition for a shaming campaign by NGOs;
- unite the community of states behind any sanctioning effort through establishing common knowledge concerning the misconduct of one party; or
- in cases where transgressions can be punished within the regime or international organisation itself, establish a clear link between the regime dialogue and the sanctioning stage, as it is done in the “management-enforcement ladder” discussed above.

It is one of the main achievements of the management school to have widened both the debate on reasons for non-compliance and on adequate cures. As was mentioned above, the management school assumes a principal propensity of states to comply with international treaties they have signed (otherwise there would be no point in signing them in the first place), even more so if one sees – as is generally done by the management school – such treaties not as bodies of rules and principles that are cast into stone, but as ongoing negotiation frameworks within which divergent interests of signatory states and points of disagreement can be discussed and settled – possibly within a renegotiated framework.14 Regime building and extension, then, becomes a “creative enterprise through which the parties not only weigh the benefits and burdens of commitment but explore, redefine, and sometimes discover their interests. It is at its best a learning process in which not only national positions but also conceptions of national interest evolve” (Chayes/Handler Chayes 1993: 180).

It would be crucial for such a logic to work that dialogue and debate can work free from fear of being named and shamed – a closed in-camera setting, the lack of an explicit judgement concerning the absence of compliant behaviour and a deliberate de-coupling of soft compliance procedures from any form of material or socio-political sanctioning would be the appropriate design principle. The reason is that a dialogue standing in the shadow of potential shaming and exposition to the public or a sanctioning effort of states will invariably lead to a “bargaining” style dialogue. In such a setting, the accused state will deny that there was a breach of the rules and/or will negotiate over the severity of sanctions or the toning down of language concerning his alleged non-compliance. If, however, the aim is to initiate learning and a redefinition of interests, the exercise should facilitate argumentative exchange in the absence of sanctioning threats and should be shielded from the public (also see Elster 1992: 46-47).

In sum, there are not only divergent interpretations of soft compliance mechanisms in the enforcement and management schools, but also different recommendations concerning institutional design. Three dimensions stand out as crucial (see Matrix 2): These are the

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14 A recent interesting contribution that offers a similar interpretation of international regimes but does not explicitly put itself into the “management camp” is Spector/Zartman 2003.
degree of publicity that exists within the compliance system, the existence of final judgements concerning behaviour, and the question of a loose or tight link between soft and “hard” compliance instruments. The rationalist school would consider state reporting significant only if it increases the transparency of behaviour and results in unambiguous naming of transgressions (so as to enable shaming) and/or if it automatically leads to sanctions if there is enough evidence of non-compliant behaviour. The reflective interpretation would advise exactly the opposite, namely a low or non-existent degree of publicity, the absence of formal judgements and a loose or non-existent link with formal or informal sanctions.

Matrix 2: Design recommendations for reporting requirements and regime dialogue

<table>
<thead>
<tr>
<th>Institutional design dimension</th>
<th>Degree of publicity</th>
<th>Final judgement on (non-)compliance</th>
<th>Link with sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationalist recommendation</td>
<td>high</td>
<td>exists</td>
<td>tight</td>
</tr>
<tr>
<td>Reflective recommendation</td>
<td>low or non-existent</td>
<td>is absent</td>
<td>loose or non-existent</td>
</tr>
</tbody>
</table>

The main point about matrix 2 is that it principally enables research to be conducted on the question of how state reporting may have mattered in concrete cases. To the extent that a change in compliance behaviour can be causally related to the existence of state reporting systems, an analysis of institutional design would give some clues on how this changed behaviour came about. The regime dialogue installed through soft mechanisms may either have stimulated learning and re-learning of interests and a change of identities, or it may have produced transparency of behaviour that resulted in peer pressure or the threat of sanctions. Due to the secrecy of international negotiations and the difficulty of “getting inside heads” (Checkel 2002: 9-11), a look at institutional mechanisms may offer at least some clues concerning the way in which soft compliance instruments work. In the next step, I shall discuss such institutional design questions using the example of the WTO’s Trade Policy Review Mechanism.

4 How do soft compliance instruments matter?
As mentioned above, there is a whole range of examples of state reporting mechanisms which in principle could be looked upon to know more about the way in which such soft instruments work. In what follows, I will focus on the Trade Policy Review Mechanism of
the WTO for three reasons: First, it is one example that has received a relatively broad attention in the literature. Debate in this context has evolved around the question of whether the TPRM really works as an enforcement mechanisms or as something else (cf. Qureshi 1990; Laird 1999). Secondly, it has existed for one and a half decades now – enough time to assess its functioning over an extended period of time. A third reason is that roughly in the middle of that period (1995), the WTO’s compliance system has changed fundamentally with the introduction of an enhanced dispute settlement system and a overall greater capacity to enforce compliance with WTO rules. It will be interesting to see whether the function of the TPRM has undergone significant changes due to these events or whether its operating logic has remained roughly the same.

After a short description of the principal functioning of the TPRM, I will continue by analysing the three institutional dimensions outlined above (existence of judgements on non-compliance and of specific policy recommendations; degree of publicity; link with sanctioning mechanisms). A final step is to look at the style of discussion within the TPRM and to consider whether – in the light of its specific institutional features – it conforms to the theoretical expectations that were discussed in previous sections.

4.1 The TPRM – History and functions within the GATT/WTO

The need for accurate information on the trading practices and policies has been a concern at the GATT ever since its foundation. The original GATT agreement required members to notify the secretariat of all changes in their trading practices, a system which suffered both from poor notification records of many members and the lack of information on what such changes would mean in practice, i.e. how they would affect other partners and the world trading system in general. Accordingly, a proposal within a 1985 report of a group of “Wise Men”, which was later taken on by the FOGS Group called for the implementation of a regular and systematic review of member state’s trade practices and policies. The basic idea was to supplement the dispute settlement system by an instrument that would regularly assess the broad picture of member state practices in the light of GATT rules, but to keep the authority of interpretation of compliant or non-compliant behaviour in single cases firmly within the community of states. Hence, the TPRM is intended to do “more” than the Dispute Settlement Body (DSB) in the sense of covering not only single cases, but also “less” than the DSB in the sense of not delegating the judgement on compliance or non-compliance to a third party. The additional function of the TPRM, then, is to generate information on the overall conduct of WTO members with regard to their duties under the WTO rules. As Mavroidis points out, “the very agreement to use the TPRM as a separate procedure shows that the dispute settlement procedure is not an effective tool for increasing coordination of national trade policies” (1992: 392).

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15 See Curzon Price 1991: 228-229; Keesing 1998: 4-7 for useful historical overviews on the development of the TPRM.

16 The acronym stands for „Functioning of the GATT System“. 
More information on the TPRM mechanism is given in Box 1.

Box 1: The WTO’s Trade Policy Review Mechanism

“The trade policy reviews are conducted by the Trade Policy Review Body (TPRB) which undertakes the regular collective appreciation of the trade policies and practices of all individual Members. (...) The reviews of the TPRB are conducted on the basis of a report prepared by the WTO Secretariat and a “policy statement” by the Member under review. The Secretariat report provides the bulk of the information for consideration by the TPRB on the trade policies of the Member under review. The most critical source of information are responses to detailed Secretariat questionnaires and an early mission to the capital for fact-finding purposes. These missions include consultations with Government as well as private enterprises and research institutes. The Secretariat has sometimes tried to work largely from published sources, official reports and the internet – an approach which can reduce the overall time for preparation of a review by about one to two months, but shifts a substantial burden of research on the Secretariat and can only work effectively where there are adequate published sources. (...)

The Secretariat progressively submits its draft report to the Government whose policies are under review for verification and factual content. The Secretariat then revises its text in light of the Government’s comments and finalises the report on its own authority. To preserve the independence of its evaluation, the summary observations are not subject to the same checking process however.

At the meeting of the TPRB, the Government whose policies are under review makes an introductory statement, followed by comments from two discussants chosen from the Membership to act on their own responsibility (and not as representatives of their Governments) to stimulate debate in the TPRB. Subsequent to the discussants’ statements, other Members may make statements and raise questions. At the end of the meeting the Chair presents concluding remarks.

The Secretariat report and the Member’s policy statement are published after the review meeting, along with the minutes of the meeting and the text of the TPRB Chair’s concluding remarks. Critically, at no stage in the process are there formal recommendations on actions to be taken by the Member under review.”

As can be seen from box 1, the mechanism shows a relatively large sophistication both in the reporting and the evaluation stages. The reporting procedure is heavily institutionalised, with the WTO secretariat taking the main responsibility in putting together the reports. In doing so, however, it relies heavily on the information provided by the national government in its “policy statement”. The reports issued by the secretariat may concern critical observations concerning the trade policy conduct of particular members. For example, high levels of agricultural subsidisation, protection of domestic industries through “Voluntary Restraint Agreements” and the discriminatory attitude towards developing countries in the US and the EU have been mentioned in the reports as.

17 The box contains a shortened quote from Joint Group on Trade and Competition 2001: paragraphs 24-34. See Laird 1999: 744-754 for a detailed insider description of how the process works.
potential threats to the multilateral trading system (also see Mavroidis 1992: 380-393). Such remarks then serve as a basis for discussions within the TPRB (the WTO Ministerial Council) within which the secretariat report and the respective member state’s policy statement are considered over two mornings.

Reviews of the TPRM point out that its logic largely is one of policy dialogue and management in providing “a forum where policies can be explained and concerns can be expressed on a non-confrontational and non-legalistic basis” (Joint Group 2001: 9; cf. Keesing 1998: 6). Within that general framework of thought, the TPRM is credited with fulfilling a number of functions within the GATT/WTO system, namely to

- increase the transparency of trading behaviour and providing 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 policy can come under discussion by the whole membership” (Keesing 1998: 6). This may be particularly valuable for those member states that do not have large administrative apparatuses to collect such information by themselves; particularly as the “TPRM represents the first and so far only instance of developing countries offering their policies for scrutiny and criticism by developing countries (Curzon Price 1991: 232);  

- implant the idea of trade liberalisation within national administrations, provide an opportunity for interagency debates and increase the overall rationality of policy making through regular reviews of what otherwise would be a largely incremental and haphazard policy process (ebd.); 

- increase the legitimacy of criticisms directed at an individual states’ policies. If a negative assessment of trade policies is confirmed by the TPRB, then such criticism “is no longer simply the criticism of another Contracting Party, but instead expresses the corresponding view of the GATT” (Mavroidis 1992: 410). The existence of a critical appraisal of a country’s policies generated by a TPR will also help to organise “peer pressure” and will make it more costly for individual member states to free-ride (Curzon Price 1991). The legitimacy argument is also important with respect to coalitions within states that are critical of their government’s policies and may receive additional legitimacy for their struggle through critical remarks made during the TPRM procedure; 

- in the context of the LDC membership of the WTO, to identify areas where the WTO rules prove to be too challenging for its members and identify technical assistance needs (Laird 1999: 754; Joint Group 2001: 15-16; Borrmann/Koopmann 2002).

While it is beyond the scope of this paper to assess the overall accuracy of such mainly positive reviews, it seems safe to argue that the TPRM fulfils a number of functions that are not necessarily linked to compliance. For example, the TPRM generates information concerning the overall functioning of the world trade system and acts as an early warning mechanism on potentially dangerous developments (Laird 1999: 757-760). Such overall concerns are likely to feed back both into future WTO negotiation rounds and into

18 In addition to this, the generation of information on international trade and the functioning of the trade system and the opportunities for collective learning emerging from that may be of value to all WTO members (Laird 1999: 755-756; Joint Group 2001: 8-9).

19 See OECD 2002; Pagani 2003 for more recent discussions of the concept of “peer pressure”.

domestic policy debates. In this respect, the effect of the TPRs is to bring member state policies and WTO rules into greater congruence over the long term, not so much to address short-term deficits. Nevertheless, the trade policy reviews do also focus on specific policy problems and go into considerable detail on certain problematic aspects of member state policies. As is pointed out by Laird (1999: 756), “the TPRM is not just intended to give an idea of the broad sweep of policies but also to cover the practices of member states, that is the implementation of policy (…): the devil is in the detail”. This is why the TPRs irrespective of their sometimes rather broad character can be important in changing the details of member state policy, and in those instances can actually serve as a compliance mechanism. The question then (again) arises whether such compliance is achieved through mutual learning and socialization or whether mechanisms are at work that are considered to be important by rationalist scholars.

4.2 The TPRM in operation

The more detailed discussion below will consider how the TPRM exercise works in practice. The different dimensions that will be looked at are (a) the existence of explicit policy prescriptions within the secretariat report, (b) the publicity of results, and (c) the link with other WTO fora, most notably the dispute settlement procedure. These dimensions are informed by the theoretical discussion led in chapter 3. A final section will look at the style of discussion within the TPRM and will aim to highlight to what extent the one or other compliance logic may actually be at work.

(a) Existence of specific policy recommendations

As has been described in box 1, the meeting of the TPRB ends with concluding remarks made by the chairperson. These remarks may take up observations made in the secretariat’s report as well as results of the debate during the meeting of the TPRB. There is a certain ambivalence about these remarks since neither the chairperson nor the WTO staff have the right to qualify measures as being legal or illegal under WTO rules. The right to interpret the GATT, the GATS or the TRIPS agreements rests exclusively with the Contracting Parties and, in specific instances, with the DSB. There is however, the possibility both for the secretariat and the chairperson to draw attention to those parts of a nation’s trade policy that have certain adversarial effects on the world trading system. The secretariat reports have not infrequently made critical comments on specific aspects of national trading practices, and these comments receive increased salience if they are taken up in the concluding remarks of the chairperson and thus receive the political support of the WTO members present at the review exercise. This logic is emphasised even more in cases of repeated reviews, the results of which tend to get more specific and also more critical and also shed light on the progress made since the last report (Laird 1999).
(b) Publicity and dissemination of results

The development of the TPRM in general and the dissemination of its results in particular has changed from a closed inter-state practice to a rather transparent procedure including semi-public debates during the last 15 years. While the first published reports from the 1990 and 1991 review rounds have met very little public attention, the External Relations Division of the WTO has recently put more effort into achieving a wider distribution. As mentioned above, all documents from the TPR exercise (the government report, the Secretariat report, the concluding remarks by the Chairperson of the TPRB on the member's review, and the minutes of the meeting) are published on the WWW since 1995.\(^{21}\) The respective website attracted, according to a figure given by Keesing (1998: 24), 18,000 visits per month during the mid-nineties and probably receives even more attention currently. In addition, the press is informed on the results of every TPR exercise directly after the meeting of the TPRB (Laird 1999: 750). Nonexclusive contracts on the use of TPRM material were signed with the Financial Times network and Reuters, while CD ROM versions of the TPR material are available from Kluwer International. Compared with these dissemination procedures, the significance of the printed versions available from WTO headquarters is relatively modest, with most of the reports remaining with national trade delegations at Geneva (Ibid.: 23-24). Although much information on the TPRM seems to be available for those demanding it, Keesing (1998: 46-48; 52-53) nevertheless deplores a relatively passive attitude of the External Relations division in distributing the TPRM material to other multipliers such as the international media and trade lobbyists, trade policy scholars, and business managers and consultants.

(c) Links with the DSB and other WTO bodies

The sanctioning power of the international trade regime has changed considerably due to the change from GATT to WTO in 1995. Rulings of the DSB have become more imperative, and there are far fewer possibilities for individual member to unrail the process. The TPRM, however, is explicitly de-linked from any sanctioning mechanism. Annex 3 of the Marrakech WTO agreement, that deals with the TPRM, states that the instrument “is not … intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures”.\(^{22}\) The report of the TPRB to the Singapore Ministerial also noted that the TPRM’s “specific de-linkage from dispute settlement procedures is an essential feature which must be safeguarded”.\(^{23}\) Members of the WTO division dealing the TPRM highlight that the procedure would largely lose in value if it would be used as a pre-stage to enforcement, and that the Dispute Settlement Body declines to use information generated through the TPRM within

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\(^{21}\) The minutes of the meetings are published since September 2001.

\(^{22}\) Letter A, paragraph i. See Mah 1997; Laird 1999 for a discussion.

\(^{23}\) WTO 1996; quoted after Keesing 1998: 75-76.
It is pointed out, on the other hand, that it is highly unlikely that a DSB process concerning a particular instance of alleged treaty violation will be unmindful of the debate on the topic in previous TPRM reviews (Mavroidis 1992: 410; also see Qureshi 1995: 495-496). Keesing points out that “TPRs often do provide countries with ammunition for use in later negotiations and elsewhere” (1998: 6). In a similar vein, the report for the Singapore ministerial meeting makes the case that there might be a certain degree of “cross-fertilisation” between TPRB discussions and those undertaken in other WTO forums (cf. Laird 1999: 755). The interpretation of such “cross-fertilisation” may be positive if one thinks in terms of problems that are identified and tackled in later negotiations. On the other hand, such cross-fertilisation may also work in the sense of a “glass house effect” (see below), leading to a situation where the full exploitation of potential benefits of the TPRM is hindered by the asymmetric interdependence of poorer WTO members.

(d) Style of debate

While it is unlikely and beyond the powers of the TPRB that the results of the trade policy reviews become part of dispute settlement procedures, the increasing powers and significance of the WTO for national trade policy might lead to a more strategic approach of WTO members concerning the information given to the TPRB. Against the background of the theoretical arguments developed above, one could therefore reason that in accordance with the greater institutional powers of the WTO and its stronger compliance instruments, debates within the TPR should have shifted from interaction and socialisation to a greater emphasis on bargaining.

Concerning the reporting stage, it has been observed that there is an increasing resistance on the side of member states to making information available for the TPRB (Laird 1999: 752 and 761-762; Joint Group 2001: 17). Obviously, this has to do with the greater analytical rigour and the more detailed observations made in recent reports.

“These developments appear to have resulted in greater caution by authorities under review and sometimes longer delays in the provision of materials for the review. Increasingly, it has been noted that the Secretariat is confronted with questions such as “(w)hy do you need this information?” or “(w)hat has this to do with the WTO?” (Joint Group 2001: 17).

Such developments are witness both to the more than marginal importance of the reviewing exercise for member state administrations as well as to the potential changes of review procedures within a changed institutional context.

It has been argued above that the evaluation stage is of central importance in any state reporting exercise. The basis for evaluation are the secretariat report and the policy statement of the member country under review. Both documents are distributed to the WTO delegations at least four weeks in advance of the meeting of the Trade Policy Review Body (TPRB). The meeting itself lasts two days. The first day starts with a

24 Interview, WTO TPR division, 2 July 2003; also see Laird 1999.
presentation of a high-rank representative from that country and is followed by statements from two discussants drawn from two other WTO member states. Their task is “to be frank and critical and ask awkward questions” (Curzon Price 1991: 230), so as to stimulate a lively discussion within the TPRB. Next are questions that mostly have been submitted in writing in advance of the meeting. Notably, the reviewed member state does not respond immediately, but has the afternoon and evening of the first day for preparing answers. The actual discussion then takes place on the next morning. Observers that have taken part in such an exercise, however, are not very enthusiastic, noting that “responses are not infrequently evasive … and follow-up is less than persistent” (Keesing 1998: 11). Keesing also notes

“a ‘glass house’ effect [that] inhibits participants from throwing stones. Countries are often reluctant to criticize fellow members on whom they are dependent for special privileges: when the European Union is up for review, for example, developing-country beneficiaries of EU trade preferences conspicuously hold their fire” (ibid.).

Another concern is that discussions during the meetings of the TPRB are often rather formalistic and tend to consist of pre-formulated statements read out to the audience. The TPRB itself encourages members to provide written answers whenever possible (WTO/TPRB: para. 12), which on the one hand enables a systematic follow-up of debates, but at the other hand does not provide for a lively debate and tends to lead to a rather pointless exchange of statements. There also is a problem with questions left unanswered during the review, which may be due to political reasons as well as to technical detail. Again, members are encouraged to provide written answers during the follow-up of meetings in such instances. Another problem is the relatively low presence of non-reviewed members during the review meetings; in particular during reviews of LDCs and trading nations with little relevance in world trade. This is particularly deplorable in the case of LDCs since it will be those countries that are the most promising candidates for a “socialization” exercise. The 1999 report of the TPRB to the Seattle Ministerial Meeting quite frankly noted that “more interactive discussion was encouraged, as was greater participation in reviews of smaller members” (WTO/TPRB 1999: para. 11; also see Joint Group 2001: 17). The 1996 report to the Singapore Ministerial stated that “(i)fn the role of the TPRM is to be preserved and strengthened, it is important both that there be a substantial number of delegations present in Trade Policy Reviews and that these delegations be represented at appropriate level” (quoted after Keesing 1998: 77).

Partly as a result of the increased publicity of the reports, member states also have begun to negotiate about the wording of the secretariat report as well as on the concluding remarks made by the chairman. In particular, it has been demanded that more consideration should be given to the achievements of individual members rather than on critical points to be addressed (WTO 1996, Laird 1999). The WTO secretariat is vulnerable in this respect since it crucially depends on the cooperation of WTO members under review to put together reports.

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25 More details on the reviewing process may be found in Keesing 1998 and Laird 1999.
Although much more empirical work is needed on this, the TPRM seems to be an example of a state reporting mechanism working predominantly through a rationalist logic. The style of debate seems to be rather formalistic and sometimes adversarial. Bargaining about the wording of reports and chairman conclusions are a clear sign of member states entering the TPRM with the aim of minimizing potential social and political costs of the exercise. It was also noted that the interaction among states seems to be influenced by a “logic of consequences”, i.e. considerations of potential detrimental effects of candid questions and open critique (the “glass house effect”). The approach of some member states during the reporting stage seems to be guarded and defensive, trying to delimit the amount of information that needs to be provided to the TPRB’s secretariat. These findings seem to be a consequence of certain institutional features of the TPRM, notably the relatively high degree of publicity, the at least indirect links with other fora within the broader WTO negotiation system and the possibility for the secretariat and the chairman to make public and critical remarks about the trading practices of a particular nation. It should be noted, however, that these are hypothetical remarks made at rather high level of abstraction. Clear inferences about causality are most likely to be verifiable at the level of behaviour of individual trade delegations – a task which merits further research.

5 Summary

The lack of empirical knowledge on soft compliance mechanisms is mainly due to the predominance of rationalist accounts in IR theory. These approaches consider reporting and other soft compliance mechanisms to be of no or, at most, secondary importance in bringing about changes in state behaviour. Reporting procedures are either seen as mere invitations for window-dressing and cheap talk or are considered to work mainly as “managerial” tools in situations of inadvertent non-compliance or lacking capabilities to stick with the rules. Other rationalist scholars argue that reporting can work in situations of deliberate non-compliance since it increases the transparency of behaviour, but is unlikely to produce results on a stand-alone basis (i.e. if it is not undergirded by sanctioning mechanisms or by mechanisms to put pressure on violators, thereby raising the political and social costs of non-compliance). This, however, begs the question why soft compliance mechanisms are mostly designed to exclude or at least downgrade sanctioning possibilities (e.g. by de-linking them from sanctioning procedures, by excluding sanction mechanisms altogether, and/or by employing in-camera-settings that cannot lead to situations where a flouting of obligations is publicly debated).

An alternative and possibly more appropriate interpretation is the “reflective” one. It identifies soft compliance mechanisms as fora where social interaction, arguing and persuasion can take place. Compliance in this view is accomplished through the transformation of identities and interests and the “socialisation” of wrong-doers into the universe of international rules. Necessary institutional requirements for this logic of compliance to work would be: (1) to bring reporting mechanisms out of the shadow of potential sanctions in later stages or other contexts, and (2) the exclusion of any public
and/or binding judgement on the compliance or non-compliance of member states. Otherwise, there would be a danger of forsaking the chance of interest transformation and socialisation, since actors will focus on how to avert political and social costs and abandon any openness that may be there for argumentative exchange.

The analysis the GATT/WTO Trade Policy Review Mechanism against the background of those empirical and theoretical puzzles has shown that there is as yet considerable debate concerning the functions the instrument fulfils within the broader WTO context and its overall significance for increased rule adherence. One important result of this paper, however, is that the compliance logic of the instrument if anything leans towards the rationalist end. While the style of debate during the TPRB meetings seems to be rather adversarial and impregnated by bargaining and defensive postures, the greater publicity of results and the increased powers of the WTO to sanction transgressors have increased the cost for non-compliance. Peer review and state reporting procedures operating “in the shadow of” such potential sanctioning work in a different way from what is assumed in much of the management literature and in the reflective interpretation of international cooperation.

This is not to say, however, that the reflective interpretation of state reporting procedures and soft compliance instruments generally is mistaken. First, the current paper has treated just one case which needs to be contrasted and/or supplemented by other case studies. Second, the analytical approach taken in this paper can only show that the TPRM shows certain institutional features making a rationalist compliance logic more possible, but cannot prove that it this logic is solely or even predominantly responsible for any instances of increased rule adherence that may be attributed to the TPRM. Finally, the hypothesis advanced in this paper that socialization and persuasion work best within sanction-free zones and in-camera settings can itself be challenged (e.g. Schimmelfennig 2001). It may well be that sanctioning threats are necessary to focus minds and to trigger creative discourses within the complex bureaucratic apparatuses of member states, but that the lessons learned and their institutionalization in the standard routines of administrations crucially depend on the repeated interaction within fora such as the TPRM and, most importantly, the periods in between trade policy reviews.
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