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Kontakt/Contact

ZBW – Leibniz-Informationszentrum Wirtschaft/Leibniz Information Centre for Economics
Düsternbrooker Weg 120
24105 Kiel (Germany)
E-Mail: [rights\[at\]zbw.eu](mailto:rights[at]zbw.eu)
<https://www.zbw.eu/>

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Options for Improving the Transparency of Fisheries Subsidies

Arthur E. Appleton



International Centre for Trade
and Sustainable Development

Reference Paper

Options for Improving the Transparency of Fisheries Subsidies

Arthur E. Appleton
Appleton Luff - International Lawyers



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and Sustainable Development

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International Centre for Trade and Sustainable Development (ICTSD)
 International Environment House 2
 7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492
 ictsd@ictsd.ch

Fax: +41 22 917 8093
 www.ictsd.org

Publisher and Chief Executive:
 Programme Manager, Environment and Natural Resources:

Ricardo Meléndez-Ortiz
 Alice Tipping

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LIST OF ABBREVIATIONS

ACP Group	African, Caribbean, and Pacific Group of States
CVD	countervailing duty
EEZ	exclusive economic zone
FIRMS	Fisheries and Resources Monitoring System
FSE	Fisheries Support Estimate
IUU	illegal, unreported, and unregulated
FAO	United Nations Food and Agriculture Organization
OECD	Organisation for Economic Co-operation and Development
RFMO	regional fisheries management organisation
S&DT	special and differential treatment
SCM	Subsidies and Countervailing Measures
SOFIA	State of World Fisheries and Aquaculture
TPR	Trade Policy Review
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

FOREWORD

Harmful fisheries subsidies are recognised as an obstacle to the sustainable exploitation of fish stocks. Under a specific target in the United Nations 2030 Agenda for Sustainable Development, governments have given themselves a deadline of 2020 for the prohibition of certain subsidies that contribute to overcapacity and overfishing and eliminating subsidies that contribute to illegal, unreported and unregulated fishing.

World Trade Organization (WTO) members have intensified work on new rules on fisheries subsidies in the lead-up to the organisation's 11th Ministerial Conference in December 2017. An area of particular interest is improved notifications of subsidies to fishing, as well as data on fisheries whose exploitation is subsidised. By expanding the subsidy notification requirements of members to include fishery-specific data, a WTO agreement has the potential to improve our understanding of the impact of subsidies on fish stocks, an important step in conservation efforts. However, compliance for existing notification obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM) is notoriously low, so an expansion of these obligations could be matched with ways to provide incentives for notification.

This paper, written by Arthur Appleton, aims to clarify the challenges facing negotiators as they balance the twin goals of providing thorough information and increasing notifications. The author is a Founding Partner of Appleton Luff and has over 25 years of experience in international trade law. He is uniquely positioned to provide expert insight on the mechanisms of the SCM's notification obligations and how they could be built upon.

The paper outlines the options on the table for improved notification of fisheries subsidies and fisheries information, as well as options to address the challenges governments face in notifying subsidies. These options seek to respond not only to the challenges governments face but also to the particular objectives of notification in the fisheries subsidy context. These include helping WTO members to assess each other's compliance with eventual disciplines and helping WTO members to assess the impact of subsidies on fish stocks.

As governments seek to fulfil the commitments in the 2030 Agenda for Sustainable Development, notification obligations present an opportunity to not only support disciplines on harmful subsidies, but to enrich our knowledge of how economic policies impact on the environment. WTO members are working hard on subsidy disciplines that could help to protect an immensely valuable part of the global commons. We hope that this paper is helpful in that effort.



Ricardo Meléndez-Ortiz

EXECUTIVE SUMMARY

As part of the WTO negotiations on new subsidy rules for the fishing industry, members have several proposals on the table to improve the notification of fisheries subsidies. These proposals include some information that is already required for subsidies notifications but would also oblige members to notify certain kinds of fisheries-related information not required under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Of the fisheries-specific details that members have proposed for addition to the reporting requirements, there appears to be the most support for notifying: conservation and management measures, fleet capacity, and the status of the fish stocks in the fishery for which a subsidy is provided, although several other ideas have also attracted interest.

In assessing what notification requirements to include in a new fisheries subsidies agreement, WTO members may wish to consider how notifications could be designed to meet the following transparency objectives:

- (i) To produce information that would help WTO members to assess one another's compliance with new fisheries subsidy rules;
- (ii) To identify the environmental effects of fisheries subsidies; and
- (iii) To enable members to learn more about their own policies as well as those of other members, thus contributing to awareness and reform of fisheries subsidies deemed inappropriate or impermissible by the members.

Based on the proposals now tabled, WTO members may want to consider whether to require notification of identified illegal, unreported, and unregulated (IUU) fishing activity, or information on whether a stock, whose exploitation is subsidised, is overfished.

Members may also wish to consider how new notification requirements could address underlying problems with subsidy notifications more generally:

- (i) That the quantity of notifications is low;
- (ii) That the notifications are often not of adequate quality; and that
- (iii) Members are not taking advantage of existing mechanisms within the SCM Agreement to boost notifications.

Furthermore, WTO members may also want to explore other means to make available additional information about fisheries practices, fisheries legislation, and even fisheries subsidies, from WTO members unwilling or unable to fulfil their notification obligations under Article 25 SCM and Article XVI GATT. These could include working with the Food and Agriculture Organization (FAO), the Organisation for Economic Co-operation and Development (OECD) and Regional Fisheries Management Organisations (RFMOs), to avoid duplication of effort. The FAO already has considerable data available on certain matters that WTO members have proposed for inclusion in fisheries subsidy-related notifications, including conservation and management measures, imports and exports by species, catch by species, and the status of fish stocks. The FAO also uses data collection methods that WTO members could consider replicating in order to improve information on fisheries subsidies. The OECD also collects data on financial support to fisheries.

Finally, it may be time to consider steps to simplify the SCM notification system and to incentivise members to notify their fisheries subsidies. If members want to improve the notification process, a better economic understanding of what particular subsidy programmes are designed to accomplish could be built into notifications or supported with technical assistance. Streamlining the fisheries subsidy notification process may result in more, and better quality, notifications, as would removing disincentives to notify.

1. OBJECTIVES OF THIS PAPER

The main purpose of notification requirements under the Agreement on Subsidies and Countervailing Measures (SCM Agreement) is to provide WTO members with the information they need to establish whether other members' subsidies are causing trade effects and whether members are abiding by their obligations with respect to prohibited or actionable subsidies. In the context of a fisheries subsidies agreement, the objectives of notification would include monitoring compliance with the disciplines established and could also include helping members to assess the environmental impact of subsidies (their own and those of others) on fish stocks.

Several proposals that would expand subsidy notification requirements are on the table in the WTO fisheries subsidies negotiations. They include proposals to notify fisheries-related information, such as the capacity of subsidized fleets and the status of stocks exploited by subsidized fleets. This information could help assess the environmental impact of subsidies. These proposals also raise important technical and policy questions related both to the ability of developing countries to provide new

and additional information and to the means by which WTO members might structure disciplines so as to incentivise the members to provide new and additional information.

WTO negotiations on fisheries subsidies have taken on renewed urgency in 2017. This paper seeks to support the on-going negotiations by identifying common ground and differences with respect to notifications and transparency, analysing the feasibility of various ideas, and discussing how new transparency requirements could be designed to address notification challenges. Based on a review of existing subsidy obligations and tabled proposals, the objectives of this paper are twofold:

1. Identify the common elements of additional fisheries-related information proposed for new notification disciplines and discuss the feasibility of requiring all WTO members to provide this information; and
2. Identify and briefly discuss a range of options through which WTO members could establish incentives to notify this information.

2. BACKGROUND

2.1 Current Subsidy Notification Requirements: GATT Article XVI and SCM Article 25

The obligation of WTO members to notify subsidies regularly, including subsidies to the fisheries industry, is present in both Article XVI:1 of the General Agreement on Tariffs and Trade (GATT) 1994 and Article 25 of the WTO SCM Agreement. Additional notification disciplines are set forth in G/SCM/6/Rev.1 of 11 November 2003, reproduced as Annex 1 to this paper, which provides a format for subsidy notifications (WTO 2003).

In the event that a member “grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory,” GATT Article XVI:1 requires that members provide a written notification to other members “of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary.”

In addition, Article 25 of the SCM Agreement (Notifications) requires members to notify “specific” subsidies, as defined by Article 2 of the SCM Agreement, by 30 June of each year and sets forth the framework for such notifications. The content of members’ “regular”¹ notifications is set forth in Article 25.3. Among other requirements, the notification must be “sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes,” and the notification must contain the following information: the form of the subsidy, the subsidy per unit (and, if not possible, the total or annual amount of the subsidy), the objective

of the subsidy, the duration of the subsidy, and statistical data permitting an assessment of the trade effects of a subsidy.

There are existing mechanisms in the SCM Agreement by which WTO members can inform other members of information that another member has not notified. Pursuant to Article 25.8, members may make written requests for information on the “nature and extent” of a subsidy, and the requested member has an obligation pursuant to Article 25.9 to “provide such information as quickly as possible and in a comprehensive manner.” Under Articles 25.9 and 25.10, any member that considers that required information has not been provided, or that a subsidy has not been notified, may bring the matter to the attention of the other member and to the Committee’s attention. This procedure is referred to as “counter-notification.” For example, the United States reported in April 2017 that it had submitted counter-notifications identifying over 470 Chinese subsidies that China had not notified to the WTO, including 44 in the fisheries sector (WTO 2017).

SCM Article 26 establishes a “Surveillance” mechanism that requires the Committee to examine subsidy notifications in special session every third year, and during the regular meetings of the Committee, although the paucity of notifications means this mechanism does not function nearly as well as it should.

Neither Article 25 nor Article 26 establish sanctions for non-compliance with notification obligations, nor do they provide incentives (beyond “naming and shaming”) for noncompliance. While failure to notify could result in a WTO dispute, this would be an unlikely event, unless the subsidy had enormous trade effects within the territory of the complaining member. There are, therefore, few risks, other than reputational risks, arising from the failure to notify subsidies.

1 In addition to the regular notification procedures set forth in Article 25, Article 27 (Special and Differential Treatment of Developing Country Members) provides developing countries with certain special notification procedures that are not relevant for purposes of this note.

2.2 Low Compliance Rate

Compliance with existing notification obligations is patchy. Based on the 2017 report by the WTO Secretariat (WTO 2017a), the Chairman of the SCM Committee characterised the subsidy notification rate as “discouraging” (WTO 2017). This is in line with his 2016 assessment of notifications as “discouragingly low” (WTO 2016). The chairman also noted in 2017 that “79 members have yet to make their 2015 subsidy notifications [...], 60 had not yet submitted notifications for 2013, and 55 had not submitted notifications for 2011” (WTO 2017). He went on to state that “The chronic low compliance with the fundamental transparency obligation to notify subsidies constitutes a serious problem in the proper functioning of the [SCM] Agreement” (*ibid*). Other committee members echoed his concern remarking, “the problem was not only missing notifications but the poor quality of some of those submitted” (*ibid*).

There are several possible explanations for this poor performance. They include factors ranging from the lack of member capacity within trade ministries, the burden of translating information between one of the WTO official languages and the language used by national governments, a lack of clarity as to notification requirements (e.g. difficulty in benchmarking what constitutes a financial contribution; difficulty in knowing what constitutes specificity), difficulties in obtaining information - particularly with respect to sub-national programmes where a lack of trust between government officials could make cooperation difficult, lack of political will, and the fear of being held accountable in the event that a Member notifies illegal subsidies.² However, very few WTO disputes have involved evidence gathered from a defendant’s subsidy

notifications. This information is more frequently used by domestic industries in lobbying for duties to be imposed to countervail a WTO member’s subsidy.³

2.3 Recent Efforts to Increase Compliance with Subsidy Notification Obligations

At the behest of the Chairman of the General Council, since 2009 there has been an on-going discussion in the SCM Committee to improve subsidy notifications (WTO 2017a, 2). Nevertheless, as described above, notifications remain low, particularly among new members (para. 8). The SCM Committee has based its recent discussions on G/SCM/W/546 which recounts notification obligations and tracks member notifications. This document is now in its eighth revision.

G/SCM/W/546/Rev.8 notes some of the steps members have taken to increase compliance:

- They have developed a questionnaire format to improve subsidy notifications;
- They have employed a “naming and shaming” exercise in the form of Annex B of W/546, which provides a list of new and full subsidy notifications by member for various time periods and identifies members that have never notified their subsidies;
- They have developed a list of Requests for Information filed by members under Article 25.8 (Annex C of W/546) (para. 10).⁴
- They have created a list of subsidies notifications made as a result of requests lodged under Article 25.10 which can be found in Annex D (counter-notifications) (para. 11).⁵

² See also Wolfe 2013; Wolfe and Mavroidis 2015.

³ Some of these explanations were discussed in a presentation made by Iain Sandford at an ICTSD E15 Roundtable held on 5 October 2017. Talking points from Mr Sandford’s presentation are on file with the author.

⁴ Article 25.8 “stipulates that any Member may make a written request for information on the nature and extent of a subsidy granted or maintained by another Member, or for explanation why a specific measure is not considered as subject to the requirement of notification” (WTO 2017a, 4).

⁵ “Article 25.10 provides that where a Member fails to notify a subsidy the notification of which is required under the SCM Agreement, any other Member may bring this matter to the attention of the Member failing to notify. If the subsidy is still not notified, such Member may bring the matter to the notice of the Committee” (WTO 2017a, 4).

The attempt by members to improve the notification of fisheries subsidies is one manifestation of the on-going effort to improve subsidy notifications across-the-board. These efforts face challenges. One challenge concerns the effectiveness of existing rules – it is difficult to compel members that do not make proper notifications to fulfil their notification obligations. It is unlikely that a member will resort to WTO dispute settlement solely to challenge another member's failure to notify a subsidy. Furthermore, according to G/SCM/W/546/Rev.8, only the European Communities and the United

States have taken advantage of SCM Article 25.10 (counter-notifications). This may be in part because producing a counter-notification is both resource-intensive, making it more difficult for members with smaller bureaucracies, and risky, as the targeted member may resort to a tit-for-tat response: for example, they may counter-notify subsidies provided by the first member. A second challenge concerns the coverage of new subsidy notifications. How could members usefully expand existing rules to cover new disciplines, when many are not complying with the existing rules?

3. PROPOSALS TO INCLUDE FISHERIES INFORMATION IN SUBSIDY NOTIFICATIONS

3.1 Notification Proposals

Although notification obligations applicable to fisheries subsidies are already present under Article 25.3 of the SCM Agreement and Article XVI:1 of GATT 1994, as noted above, many members are not in full compliance with their obligations. Members of the Negotiating Group on Rules are discussing ways to improve existing notification disciplines to better assess compliance with new fisheries subsidies rules and, in light of the negotiations' objectives, to help assess the potential environmental effects of these subsidies, beyond their potential distortions of trade flows. Through a review of proposals on the table, this section addresses the fisheries-related notification proposals, listing them by frequency of appearance (thus reflecting which elements of information are identified by all, some, or only one proponent).⁶

Some proposals (such as those by Iceland *et al* and by the United States of America) also suggest members should provide information on specific kinds of subsidies, such as fuel subsidies. The EU also suggests that developing country members should notify the use of flexibilities provided under proposed disciplines. Some of the proposals go beyond notification requirements and set forth a broader role for the SCM Committee in monitoring and surveillance of the proposed disciplines. The proposal by Argentina *et al*, for example, includes a provision for the SCM Committee to receive information from regional fisheries management organisations (RFMOs) and members to identify vessels engaged in IUU fishing activities (discussed below). The proposal by Iceland *et al* suggests the Committee should hold a biennial review of the implementation of the Agreement, informed by information from members and relevant international organisations.

Table 1: Notification Elements on the Table

	Iceland, New Zealand, and Pakistan	European Union	Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay	LDC Group	USA
Programme name [#]	✓	✓	✓	✓	✓
Legal basis and granting authority for the programme [#]	✓	✓	✓	✓	✓
Conservation and management measures in place: (a) for the relevant fish stock; (b) in the relevant fishery; (c) applied to the fish stock targeted by the vessel benefitting from the subsidy.	✓ (a)	✓ (c) (best endeavour)	✓ (a)	✓ (b)	✓ (a)
Level of support provided* [#]		✓	✓	✓	

⁶ The proposals are: TN/RL/GEN/186 from Iceland, New Zealand, Pakistan; TN/RL/GEN/181/Rev.1 from the European Union; TN/RL/GEN/187/Rev.2 from Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay; TN/RL/GEN/193 from Cambodia on behalf of the LDC Group; and JOB/GC/148 from the United States of America. Note that the proposal by the United States would require all of the elements of information listed be notified "to the extent possible".

Table 1: *Continued*

	Iceland, New Zealand, and Pakistan	European Union	Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay	LDC Group	USA
Fleet capacity in the fishery for which the subsidy is provided	✓		✓	✓	✓
Status of the fish stocks in the fishery for which the subsidy is provided (for example, overfished, fully fished, underfished; or overexploited, depleted, fully exploited, recovering, underexploited) ⁷	✓	✓ (best endeavour)	✓		✓
Type or kind of marine fishing activity supported by the programme	✓			✓	
Members shall also provide information in relation to other subsidies granted to the fisheries sector (for example, fuel subsidies)*	✓		✓ Granted or maintained, in parti-cular fuel subsidies		✓
Catch data by species in the fishery for which the subsidy is provided	✓		✓ (to the extent possible)		✓
Total imports and exports per species [#] (discretion in G/SCM/6/Rev.1)	✓		✓ (to the extent possible)		✓
Vessels and operators fishing in areas beyond national jurisdiction, for which the subsidy is provided			✓		
Any fishing capacity management plan applied to the fleet to which the vessels benefitting from the subsidy belong			✓ (best endeavour)		
Name of recipient					✓
Vessel name, identification number					✓

Source: Author's elaboration based on the proposals cited.

Notes: An asterisk (*) indicates that an item is already covered by SCM Article 25 and GATT Article XVI:1.

A hash sign (#) indicates that an item already falls within existing notification disciplines set forth in G/SCM/6/Rev.1 of 11 November 2003.

Unmarked items appear to go beyond existing disciplines.

Dark shaded cells indicate an item that is present in only one proposal. Lighter shading indicates ideas with a bit more support (in some cases qualified by "to the extent possible").

7 Note that the indicator for Sustainable Development Goal 14.4.1 speaks of the "Proportion of fish stocks within biologically sustainable levels." See <https://sustainabledevelopment.un.org/sdg14>.

Several conclusions can be drawn from the table:

- Several members propose items for notification that should already be notified under existing WTO rules (see items with asterisk);
- Proposals with *fisheries-specific* details are largely additional to existing reporting requirements (see items without asterisks);
- For “new items” where WTO rules presently do not require notifications, there seems to be most support across proposals for notifying:
 - o Conservation and management measures in place;
 - o Fleet capacity in the fishery for which the subsidy is provided, either for the relevant fish stock or in the relevant fishery; and
 - o The status of the fish stocks in the fishery for which the subsidy is provided.

3.2 Special and Differential Treatment

Two of the proposals referenced above and a proposal by the ACP Group contain provisions

that qualify or leave room for special and differential treatment (S&DT):

1. The transparency proposal set forth by the *LDC Group* would apply to developed and developing countries, but not LDC members (TN/RL/GEN/193).
2. The ACP Group’s proposal is largely silent with respect to transparency issues, only supporting the existing notifications provisions in SCM Article 25 and GATT Article XVI:1, but it leaves room for less burdensome notification requirements for LDC Members (TN/RL/GEN/192).
3. The proposal from Iceland, New Zealand, and Pakistan provides a placeholder for special and differential treatment that does not undermine the effectiveness of SCM disciplines.

In summary, there appears to be some support for S&DT with respect to LDC subsidy notifications, in the form of relaxed notification disciplines. Since LDCs generally lack the financial resources to subsidise their fisheries sectors extensively, this issue should not be an obstacle to the negotiations.

4. FEASIBILITY OF COLLECTING AND REPORTING OF FISHERIES SUBSIDY-RELATED INFORMATION

In assessing the feasibility of requiring WTO members to collect and report fisheries subsidy-related information and other fisheries-related information to the WTO, it is useful to begin by establishing where this data is already collected. This section identifies information that is already available in the OECD and the FAO – the two most important inter-governmental sources collecting the type of information proposed by some members for notification in the fisheries negotiations.

4.1 OECD Data

The Organisation for Economic Co-operation and Development (OECD) collects very detailed information from its members, and from some third countries, on use and allocation of fisheries support.⁸ Much of the data collected by OECD members is the subject of various WTO notification proposals.

In May 2017, the OECD published a report entitled *Support to Fisheries: Levels and Impacts* which “contains information on support policies implemented in 31 countries, including four outside the OECD” (OECD 2017). This important database is due to be expanded by the end of 2017 to “37 countries representing more than half of global landings” (*ibid*, 4).

Another source, OECD.stat, provides a wide variety of fisheries-related information that may be relevant in WTO fisheries negotiations as it demonstrates the variety of data available:

- International trade of fisheries products;
- Fisheries Support Estimate;
- Government financial transfers – Historical Archive;
- National landings in domestic ports;
- National landings in foreign ports;
- Foreign landings in domestic ports;
- Production from aquaculture;
- Employment in fisheries;
- Fishing fleet; and
- Inland Fisheries.

Of particular importance is the OECD Fisheries Support Estimate (FSE) database, which provides fisheries-related data on OECD countries (with the exception of Austria, Finland, Israel, Luxembourg, the Slovak Republic, and Switzerland). In addition, the FSE provides data on several non-OECD WTO members: Argentina, Chinese Taipei, Colombia, and Indonesia (OECD n.d.). This report is designed “to measure fisheries support policies in a way that allows users to compare how fisheries supports differ between countries and evolve over time” (*ibid*).⁹

The OECD is also in the process of implementing a new “targets and thresholds” questionnaire that seeks to determine whether fish stocks, for which targets and thresholds are set, are in acceptable condition.

8 See also “Annex 2” to this paper. The OECD is now using the term “fisheries support,” rather than “fisheries subsidies,” stating that “Fisheries support is defined as the financial transfers from governments to the fisheries. The support consists of direct revenue enhancing transfers (direct payments), transfers that reduce the operating costs, and the costs of general services provided to the fishing industry. These general services consist mainly of fishery protection services and fisheries management. In some cases, they also include the costs of local area weather forecasting and the costs of navigation and satellite surveillance systems designed to assist fishing fleets. This indicator is presented as a total and per type of support, and is measured in USD. Support for R&D is measured as a share of total fisheries support” (OECD 2017). Previously, the OECD divided “fisheries subsidies” into market price support, direct income support, indirect income support, and other support (see Cox and Schmidt 2002, in particular para. 12).

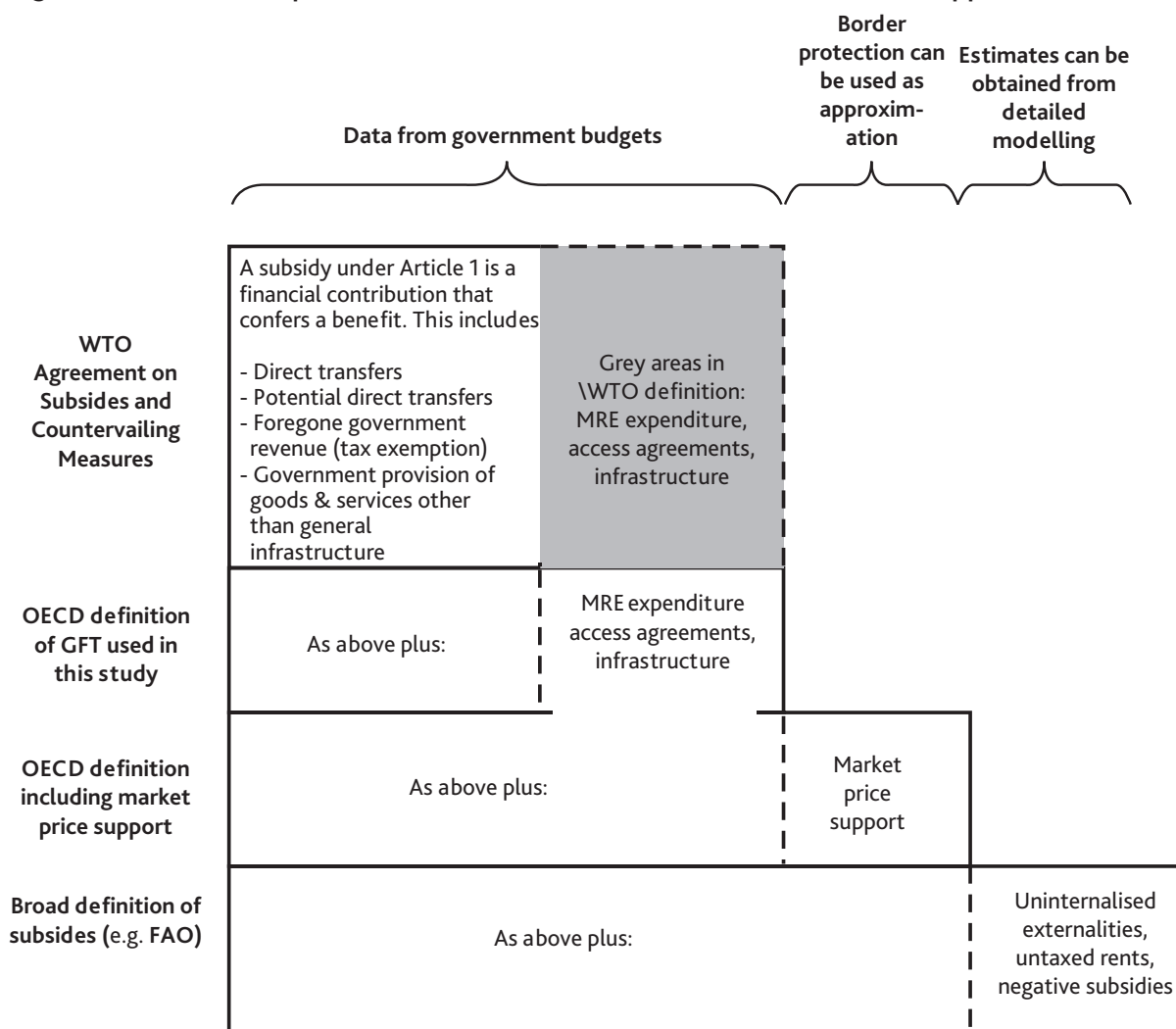
9 The *OECD Review of Fisheries: Country Statistics 2015* is an earlier report that sets forth some of the categories of data collected by the OECD, such as data on (i) Fishing fleet capacity, (ii) Employment in fisheries, (iii) Fish landings, (iv) Aquaculture production, (v) Recreational fisheries, (vi) Fisheries support estimates, and (vii) Imports and exports of fish (OECD 2016).

This list above demonstrates that the OECD has considerable information concerning many of the types of subsidy-related issues under discussion in the WTO fisheries negotiations, including statistics reflecting fleet capacity and imports and exports of fish products proposed for notification. The OECD work also demonstrates that it is possible to collect detailed information on fisheries subsidies and other fisheries industry statistics (at least from relatively financially well-off countries). It should, therefore, be feasible for OECD countries to provide fisheries industry information to the WTO that is already reflected in OECD databases (for example, on fleet capacity). Of course, as noted above, not all important fishing members participate in OECD data collection activities, but the number of countries participating in these activities appears to be increasing, as evidenced by the

participation of certain non-OECD members in various OECD surveys, and perhaps eventually by participation in the “targets and threshold questionnaire.”

Using OECD financial support data as input in WTO subsidies notifications would require additional analysis, in particular because the definitions of fisheries support in each forum are different. The WTO notification obligations, designed to help monitor compliance with the SCM Agreement, require notification of subsidies as defined in that agreement. The OECD collects data on a wider range of financial programmes. Figure 1 illustrates the issue schematically. The difference in definitions means that, at a minimum, data notified to the OECD would need to be adapted if it were also to be used in WTO notifications.

Figure 1: Schematic representation of alternative definitions of fisheries support



Source: OECD (2017).

Note: MRE refers to management, research and enforcement.

4.2 FAO Data

Although the United Nations Food and Agriculture Organization (FAO) does not deal specifically with subsidies issues, it is another very important source of fisheries information with data on many countries. Within the context of WTO fisheries subsidies negotiations, WTO members may wish to consider whether the FAO's information-gathering *methods* could be adapted to support notification of fisheries information, including subsidies information, and to support monitoring of new WTO rules.

The FAO is mandated by its constitution to “undertake the worldwide collection, compilation, analysis and diffusion of data and information in fisheries and aquaculture” (FAO 2015).¹⁰ In light of the FAO's broad and important mission, FAO fisheries data provides considerably more granularity than that of the WTO or other international organisations. The following FAO programmes, identified below, may be of particular interest to negotiators.

4.2.1 National Fishery Sector Overviews

The FAO's National Fishery Sector Overview examines fisheries for all featured countries, “including economic and demographic information, structure of the industry, development prospects, sector management and status and trends” (FAO 2017a). The FAO commissions *a national expert to collect data from a particular country*, and produces fishery country profiles for approximately 170 countries.

The National Fisheries Sector Overview includes some information about conservation measures put in place by certain FAO members, which suggests that when conservation measures exist they could be notified to the WTO by governments on their own or through the FAO.

While data obtained is of varying degrees of quality, the fact that the FAO employs national

experts for data collection, as opposed to relying solely on notifications from UN members, suggests two alternative approaches to subsidy notification that WTO members could consider:

1. The WTO Secretariat could work with the FAO to *collect* data on subsidies as part of the National Fisheries Sector Overviews (provided the FAO's members agree); or
2. The WTO Secretariat, with agreement of the members, could commission national experts to collect missing subsidy data for inclusion in national notifications.

4.2.2 FAOLEX and FISHLEX Databases

FAOLEX is a database administered by the Development Law Service of the FAO's Legal Office that contains “national legislation, policies and bilateral agreements on food, agriculture and natural resources management” (FAO 2017b). FAOLEX is updated with, on average, 8,000 new entries per year. The database contains “legal and policy documents drawn from more than 200 countries, territories and regional economic integration organizations,” as well as a well-developed system of readily accessible country profiles.

In addition to FAOLEX, the FAO maintains FISHLEX, which “contains the coastal state requirements for foreign fishing” and allows searches by country and maritime delimitation (FAO n.d.). Like FAOLEX, FISHLEX is a source of legislation, but one that is more oriented towards fishing licenses, fishing agreements, and fisheries.

These databases may be relevant to WTO discussions on the notification of fisheries subsidies and conservation policies. The possibility exists that, with UN members' approval and sufficient resources, FAOLEX (or FISHLEX) could be expanded to collect subsidies-related legislation and policies in the

10 The State of World Fisheries and Aquaculture (SOFIA) is the flagship publication of the FAO's Fisheries and Aquaculture Department (see <http://www.fao.org/fishery/sofia/en>).

fisheries sector, including programmes' names, their legal basis and granting authority, the level of support provided, and the conservation measures in place in relevant fisheries. This information could be transmitted to the WTO and would complement on-going but presently lagging efforts on the part of WTO members to compile similar information through the notification process.

4.2.3 FAO Global Fishery and Aquaculture Statistics Programme¹¹

FAO Data on Global Fleet Statistics - Four proposals in the WTO negotiations would require members to notify the *fleet capacity* in the fishery for which a subsidy is provided. Fleet statistics are currently reported by approximately 70 countries (many of which are EU member states), with on average 55 countries reporting by vessel length overall. The relatively small number of reports may suggest that notifying fleet capacity and vessel length overall in specific fisheries might currently be a challenge for some WTO Members.

FAO Data on Global Capture Production - Three proposals would require WTO members to notify (one only to the extent possible) data on *catch by species* in various fisheries for fishing activity that benefits from subsidies. The FAO also collects this data, updated annually for approximately 230 countries and territories. The level of detail available in this information is variable: more data is available from industrial fisheries than small-scale fisheries and from EEZ fishing rather than High Seas fishing (although no such distinctions are provided in the FAO database). Overall, reporting the catch by species for large-scale fishing activity would be possible for most countries. Reporting catch by species for

small-scale fishing activity is currently possible for developed countries and for some, but not most, developing countries; this is a focus of current FAO efforts.

FAO Commodity and Trade Statistics - *Information on imports and exports per fish species* is part of three tabled proposals, and may be included – albeit at members' discretion – in existing subsidy notifications. This information may be among the most feasible for members to notify, as the FAO's Fishery Commodity and Trade Statistics provide information on imports and exports of fish products covering approximately 1,000 fish species, by volume and by value. The data is based on annual updates from national authorities in roughly 130 countries. Where data is not available (some data from African countries and Pacific and Caribbean islands is incomplete), the FAO provides estimates based on statistics from trading partners.

4.2.4 Fisheries and Resources Monitoring System (FIRMS)

The FAO also maintains its **Fisheries and Resources Monitoring System (FIRMS)** database, which “provides access to a wide range of high-quality information on the global monitoring and management of fishery marine resources”(FAO 2017c). FIRMS operates as a partnership between FAO and intergovernmental fisheries organisations. Data is collected by FIRM partners, as well as through the FAO's Strategy-STF Framework which works at the national level to collect fisheries-related information.¹² FIRMS provides an extensive database¹³ dealing with fisheries and fish stocks, including species captured. The FAO also holds information and factsheets on regional fisheries bodies (RFB),¹⁴ and countrywide information on legislation.¹⁵ The

11 This sub-section and the next draw on a presentation made by the FAO at a Knowledge-Sharing Seminar on Fisheries Subsidies organised by ICSTD on 16 November 2017, available at www.ictsd.org.

12 The FishCode-STF database is available at <http://www.fao.org/fishery/fishcode-stf/en>.

13 See the Fisheries and Resources Monitoring System (FIRMS) at <http://firms.fao.org/en>.

14 Regional Fishery Body information is available at: <http://www.fao.org/fishery/rfb/collection/en>.

15 National fisheries legislation and country profiles are available at: <http://www.fao.org/faolex/country-profiles/en/>.

FAO databases include some of the fisheries information proposed for notification in the WTO, which suggests that WTO notification of this information should be feasible and that FAO data could be used to fill gaps in national notifications. The WTO Secretariat could be mandated, for example, to collate and make available to the SCM Committee summaries of relevant data available in the FAO.

Four proposals also call for notifications to include information on the *status of fish stocks* whose exploitation is subsidised. The FAO collects information on the status of fish stocks that cover about 70-80% of captured marine species by volume. National governments provide information on stocks under national mandates, while regional fisheries management organisations and bodies provide information for shared and straddling stocks. Where information is not available or is not reliable, the FAO undertakes its own analysis of the status of particular stocks based on catch trends per species by FAO-defined areas.

There are synergies that could be exploited by WTO members and the WTO Secretariat working in cooperation with the FAO. Stock status information will be required as part of monitoring efforts under the UN Sustainable Development Goals, and some of this information could be notified, as relevant, to the WTO. Importantly, the FAO offers technical assistance to help countries build their ability to assess stocks. As this capacity is developed (hopefully in the short-term), SOFIA and FIRMS estimates could be used in WTO notifications, in particular for High Seas catch and stock assessments.

Two proposals would require WTO members to notify the *type and kind of marine fishing activity* supported by a notified subsidy programme. While it may be feasible for most WTO members to provide a general description of the kinds of fishing activity that benefit from subsidy programmes, many members may find it challenging to identify such activities with precision, particularly if small-scale. The FAO's Global Record of Stocks and Fisheries, which is expected to be released in 2018, could

eventually provide a single set of references for fisheries activities that members may be able to correlate with various subsidy programmes.

In summary, FAO data covers an enormous number of countries, including almost all WTO members active in the fisheries sector. The FAO already has considerable data available on certain matters that WTO members have proposed for inclusion in fisheries subsidy-related notifications:

- Fleet capacity (FAO's Global Fishery and Aquaculture statistics);
- Catch by species (FAO's Global Fishery and Aquaculture statistics);
- Status of fish stocks (FIRMS);
- Conservation and management measures (National Fisheries Sector Overview); and
- Imports and exports by species (FAO's Global Fishery and Aquaculture statistics).

Data for several matters that WTO members have proposed for inclusion in WTO notifications could be reported to or obtained by the FAO, including:

- Programme names (FAOLEX);
- Legal basis and granting authority (FAOLEX);
- Level of support provided (FAOLEX); and
- Conservation measures in place (FAOLEX).

4.3 Challenges to Information Collection

The challenges that WTO members experience with respect to subsidy-related and fisheries-related information collection take several forms:

1. WTO members may face resource challenges to the extent that they lack the human, financial, and technical resources to collect and notify fishery-related information. In the context of subsidy information, these difficulties may be compounded by the need to make a legal assessment of whether programmes meet the requirements for notification; and

2. Members may lack the political will to make subsidy and other fishery-related information public and may be wary of the information being used against them in dispute settlement proceedings.

Only the *first* challenge is readily curable. WTO members and the Secretariat could provide additional technical assistance and financial resources to help with the collection and notification of fisheries subsidy-related information, perhaps working to the extent feasible with the FAO, which is also helping UN members improve their domestic data collection skills.

Alternatively, data could be collected outside of normal government channels, through national experts and staff members of international organisations (the FAO approach), or through the WTO Secretariat, as is done with the reports produced by the Secretariat in conjunction with Trade Policy Reviews (TPRs).

The *second* challenge, increasingly the political will to notify, is more difficult to

address and would take concerted action on the part of members - perhaps through naming and shaming exercises in SCM Committee meetings. However, it appears that, until now, notified information has rarely been used against a member in dispute settlement; work to confirm this view is underway.¹⁶

Several conclusions can be drawn from information challenges faced by members. Providing additional technical assistance and financial resources to help members meet notification disciplines will help those members who want to notify their subsidy regimes, but such provisions will not overcome problems stemming from political will. Addressing the harmful effects of fisheries subsidies may be addressed within the WTO by working with organisations like the FAO and the OECD. In addition, WTO Members could adopt the FAO approach of dedicating Secretariat resources to data collection, and engaging national experts to assist in data collection. This data could then be submitted by the Secretariat to the SCM Committee and incorporated by the Secretariat into TPR Reports.

¹⁶ See presentation by Robert Wolfe at the Knowledge-Sharing Seminar on Fisheries Subsidies, organised by ICTSD on 16 November 2017 (<https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies-0>).

5. REDESIGNING NOTIFICATION REQUIREMENTS AND DEVELOPING INCENTIVES TO NOTIFY

5.1 Introductory Thoughts

First, *it is useful to remember that most WTO member governments know when, at least at the national level, they allocate subsidies to their fisheries sectors, and they generally know how much money they have appropriated as subsidies.* This is a typical task entrusted to senior government officials exercising either a legislative or executive function. As the knowledge of subsidy allocations is generally available within national government circles, if not publicly available to all, the mechanics of federal-level subsidy notification to the WTO should not in principle be a difficult task, particularly as “instructions” are available on the WTO website with respect to notification procedures,¹⁷ as are sample notifications.¹⁸ In practice, however, governments face very real challenges in developing comprehensive notifications. Federal government officials may not, for example, know exactly what has been disbursed to the fishing industry at sub-national levels, and government officials – particularly at the sub-national level – may struggle to establish exactly what subsidies are required to be notified under WTO rules.

Second, it might be advantageous for negotiating purposes to separate certain issues. Ensuring that members fulfil their WTO obligations to report subsidies, including fisheries subsidies, could be considered separately from members’ desire to obtain additional fisheries data – such as data that could be used to link overfishing and illegal, unreported and unregulated (IUU) fishing *with* the provision of subsidies.

Third, it is useful to remember that, as described above, *the FAO is already collecting, through its members, national experts, and its Secretariat, considerable fisheries-related information, even if not directly related to subsidies.*

Focusing first on the issue of obtaining additional fisheries data, WTO members may find it easier in the long run to agree to notify to the WTO the same fisheries data they already provide to the FAO, in particular with respect to fish stocks, fleet capacity, marine fishing activity, and marine management activities. In order to help fill gaps where fisheries data is missing from individual notifications, WTO members could authorise the WTO Secretariat to source, and table in the SCM Committee, specific kinds of fisheries information gathered by the FAO beyond that provided in national notifications (such as estimates of stock status). To be clear, this might involve a commitment of both WTO and FAO resources, and a degree of duplication of effort, which could be minimised if the FAO and WTO Secretariats work together to ensure that WTO and FAO databases are updated as necessary. The importance of nevertheless requiring governments to notify subsidy and related fisheries information in the WTO is that this would allow both the subsidizing member and other members to identify more easily where subsidisation may be having negative environmental effects. Alternatively, to reduce duplication, the range of information to be notified by WTO members to the Committee could be narrowed if the members agreed that the SCM Committee could draw information from other reliable sources, such as the FAO.

With respect to compliance with obligations to notify subsidies, another option could be to eliminate the incentive not to report, or to make a qualitatively poor report, by establishing a mechanism to feed information about subsidies into the WTO when it is not being provided by members. For example, the FAO and WTO Secretariats could be instructed to work together to obtain missing subsidy-related information (using the WTO definition of a subsidy, if the information will be discussed in the WTO), and this could be published on

¹⁷ See WTO 2003.

¹⁸ See WTO 2013.

both websites, thus serving to incentivize WTO members to make adequate fisheries subsidies notifications. Members could eventually discuss this information in the SCM Committee. A more general discussion of financial support to fisheries and relevant fisheries information could also be included in Trade Policy Reviews.

If FAO members were to agree that FAO staff and experts begin to collect subsidy-related information, and if sufficient financial and human resources were allocated to this task, the way forward for developing country WTO members would be easier as resource constraints would be less likely to be an obstacle. Likewise, members that lack the political will to provide fisheries subsidies notifications might then have an incentive to begin to produce notifications, as the information would be available from other sources. However, increased FAO involvement in the fisheries subsidy field would require either allocating more resources to the FAO Secretariat or prioritising subsidy-related fisheries work over other FAO activities. FAO involvement would also be facilitated if the FAO were to exchange data on financial support to fisheries support with the OECD.

With these introductory points in mind, several of which point to complementary means of achieving the results sought in the fisheries subsidies negotiations, this paper now turns to elements in the proposals that may incentivise improved notifications.

5.2 Elements of Proposals That Seek to Incentivise Improved Notifications

A number of WTO members have proposed ways in which incentives could be created to encourage members to provide better subsidy notifications, including using data generated outside the WTO and building incentive mechanisms into notification rules.

5.2.1 Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay

In the context of the fisheries subsidies negotiations, Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay propose that “to enable the

effective surveillance of subsidies” the SCM Committee shall receive communications from Regional Fisheries Management Organizations (RFMOs) that a vessel or operator has engaged in IUU activity and from Members that a vessel of a third country flag has engaged in IUU activity.

The proposals by Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay (hereafter “Latin Group”) that the Committee receive notifications from RFMOs is sensible and virtually cost-free. Regional Fisheries Management Organizations are in a good position to know about IUU fishing within their region of competence. From the WTO perspective, an important point would be that the detail available to the RFMO is included in the notification, in order to help members assess whether subsidies are facilitating IUU activity. The Latin Group’s proposal could be expanded to allow international organisations, such as the FAO, and other organisations (such as the OECD), to notify or share information about IUU activities and various state and local subsidy schemes.

The Latin Group’s proposal, that the Committee receive notifications from other members that a vessel or operator has engaged in IUU fishing within its waters, would be one means of building awareness of IUU fishing in foreign EEZs under new fisheries subsidy rules. To the extent that this approach would enable members to make other members aware of possible subsidy-related IUU activity, this proposal could be cost-effective and would increase transparency. The Latin Group’s support for notification of technical assistance and capacity building activities and review of these activities by the Committee would also seem to be a sensible and cost-effective way forward, as is WTO co-operation with FAO and UNCTAD on fisheries issues.

5.2.2 The European Union

The EU has tabled proposals within the context of general industrial subsidy notifications that could conceivably be applied to fisheries. The EU suggests two steps: an examination of

members' semi-annual CVD reports to ascertain whether notifications were made, and to have the Secretariat prepare notifications when subsidies have not been notified (WTO 2015a). This could be a reasonable fall-back provision in instances when members are not fulfilling their legal notification requirements. Given the quantity and quality of the problems plaguing the existing SCM notification system, the WTO Secretariat would need to dedicate one or more staff members, with some degree of fisheries knowledge, to this task. One could envision this task being undertaken in cooperation with the FAO and data being shared between the two organisations.

The EU has also suggested that notified subsidies would benefit from a rebuttable presumption of non-actionability or an increase in the standards governing *de minimis* or serious prejudice thresholds; or conversely that the failure to notify would lead to a rebuttable presumption of actionability (with technical assistance for developing countries) (*ibid*; WTO 2015b). This proposal suggests that notifications may have more value as a source of information than as the basis for a dispute (Wolfe 2017).

5.2.3 United States

The United States has also tabled a proposal for a Ministerial Decision at the December 2017 Ministerial Conference that is designed to improve notifications across the WTO Agreements, including a commitment to provide, *to the extent possible*, information about fisheries subsidies and related fishing activities (WTO 2017b). The proposal draws on the procedures applicable to members in arrears in setting out a range of significant consequences that would apply to members that did not submit timely notifications under existing WTO Agreements and did not cooperate with the WTO Secretariat in completing alternative notifications. The consequences listed would provide a strong incentive to comply with notification requirements, which might help address challenges related to political will. It is less clear how challenges related to a member's capacity would be addressed.

5.3 Designing Rules to Meet Transparency Objectives and Address Notification Challenges

There are several ways in which WTO members could design new notification obligations to help meet the overall objectives of transparency in the fisheries subsidies context and to help meet some of the challenges they face with respect to notification.

5.3.1 What Should WTO Members Notify?

As noted in Section 1.0, the main goal of SCM notifications is to provide WTO members with the information they need to establish whether subsidies are causing trade effects and whether members are abiding by their obligations with respect to prohibited or actionable subsidies. In the context of a fisheries subsidies agreement, the objectives of notification would be similar, but because the objective of the new disciplines is primarily environmental, notifications should help discern whether subsidies are having a negative effect on fish stocks. Notifications should also help members to assess whether other members are complying with their obligations under the new disciplines.

Notifications related to the prohibition of subsidies furthering IUU activity and the fishing of overexploited stocks: In the absence of new disciplines from an eventual agreement on fisheries subsidies, it is difficult to define precisely what information should be notified to the Committee. On the basis of what is currently on the table, negotiators could consider whether it would be useful for members to commit to notify the SCM Committee of some or all of the following:

- Members could agree to notify the SCM Committee of national lists of IUU vessels, where these exist;
- If the disciplines allowed identification of vessels engaged in IUU activities by coastal states, those coastal state WTO members could notify the SCM Committee of the name, registry (and to the extent possible known ownership information) of vessels found fishing illegally in their waters;

- Members could agree that RFMOs inform the SCM Committee of vessels and operators engaged in IUU activities in waters under the RFMO's management; and
- If Members decide to prohibit subsidies that facilitate the catch of overfished stocks, they could require the subsidising member to notify the Committee whether it, or an RFMO, has assessed the status of the stock(s) exploited by subsidised vessels, and the determination made.

Where information is politically sensitive, such as lists of vessels engaged in IUU fishing, the SCM Committee could simply take note of the notifications made, rather than engage in lengthy discussion of whether a vessel should or should not have been listed by an RFMO. Similar suggestions were made by the E15 Expert Group on Oceans and Fisheries, which noted that the SCM Agreement already requires notifications of subsidies, but that there is a need to verify notifications and that this could be facilitated, not only by counter-notifications, but by receiving information from other sources (Sumaila 2016, 31).

Prohibitions on subsidies for capital costs, variable costs (such as operating costs), fishing in distant waters, and price support: Alice Tipping noted in 2015, in a paper focused on the fisheries sector that “Subsidies that incentivize further production aggravate the commons problem” (Tipping 2015, 2).¹⁹ Subsidies for operating costs (such as fuel subsidies) or capital costs (ship construction), for purchasing licenses to fish in distant waters, and for price support, usually fall into this category as they encourage overfishing.

It would be important, from an economic perspective, to eliminate one possible cause of overfishing (by prohibiting subsidies for capital costs, variable costs, fishing in distant waters, and price support), as well as the

potential “downstream” result of a subsidy (IUU fishing). Members could be required to notify as part of the programme design what specific costs the subsidy is designed to reduce. Such subsidies could be phased out over a transition period.

Alternative sources of information: It is unlikely that members appropriate money specifically for IUU activity, or for fishing in overexploited waters. It is also unlikely that a WTO member will, of its own volition, notify the Committee of information admitting that its subsidised fishing fleet, or a particular vessel under its flag, is engaged in IUU activities.

The solution, therefore, may lie in looking for additional sources of information that can cast some light on compliance with new fisheries disciplines. It is likely that increased cooperation between organisations with greater expertise in fisheries (the OECD, FAO, UNCTAD, and RFMOs) and the WTO Secretariat, as a collator of information for the SCM Committee, would produce additional information about IUU activities and fleets that fish for overexploited stocks; this information could be used to encourage recalcitrant members to take action against subsidies provided for poor fishing practices.

Cooperation between the WTO Secretariat and other international and regional organisations is not only sensible, it is politically and economically wise as members would not be placed in the difficult position of “turning themselves in” to the Committee (without prodding), and the Committee and the WTO Secretariat would benefit by contributing their subsidies expertise to, and working with, organisations that have greater strength working on fisheries issues (OECD, FAO, UNCTAD, etc.). Input could also be sought by the Committee from other entities and perhaps even non-governmental organisations that closely follow fisheries issues.

¹⁹ Tipping notes that UNEP breaks fishing subsidies into eight categories: subsidies to capital costs, subsidies to variable costs, subsidies for access to foreign countries' waters, fisheries infrastructure, income support and unemployment insurance, price support subsidies, vessel decommissioning and license retirement subsidies, and management services and research (3).

5.3.2 Improving the Notification Process

As indicated above, the subsidy notification process is not functioning efficiently: too many members are not fulfilling their notification obligations, and those that do make timely notifications do not always produce quality notifications. Prohibiting certain types of fisheries subsidies should be the priority; amending the notification process would play a supporting role.

If Members want to improve the notification process, there is a need for *a better economic understanding of what particular subsidy programmes are designed to accomplish* and incorporating this understanding into notifications:

- Notifications of fishery-related subsidy programmes could contain an explanation of the objectives behind a particular subsidy programme; and
- Capacity-building initiatives designed to help members better comprehend the economic effects of their fisheries subsidies may further a member's understanding of why a particular subsidy is being employed, and the net economic effect that the subsidy is designed to produce.

Streamlining the fisheries subsidy notification process may result in more and better-quality notifications:

- Training could be given to members on how to make fisheries subsidy notifications;
- Time periods for notifications, in particular for LDCs, could be extended, and technical assistance could be provided to LDCs by the WTO Secretariat; and
- FAO and RFMOs could work with members to improve the quality of both notifications and data collection (and help them to

better understand the economic effects of fisheries subsidies).

Avoid disincentives to notification:

- Members could encourage the WTO Secretariat, other international organisations, RFMOs, and NGOs to notify the Committee of information that is relevant to the application of the disciplines, such as lists of vessels from RFMOs engaged in IUU activity;
- More ambitiously, international organisations or NGOs could be allowed to notify the SCM Committee when it appears that subsidies are leading to poor fishing practices, or when a member that makes heavy use of subsidies fails to discipline ship owners and captains engaged in poor practices; and
- New disciplines could encourage counter-notifications from members under SCM Article 25.

Duplication should be avoided where possible:

- Notification requirements should be simple and clear, and cross-reference relevant existing information available from other sources; and
- Training could be given to members with respect to what fisheries data is already available from other sources.

How the information provided is used is also crucial. A dedicated annual session of the SCM Committee on fisheries subsidies would enable members to pose questions and discuss information provided in notifications as well as from other sources. This would enable members to learn more about their own and other members' subsidy policies and their environmental effects (Wolfe 2017).

6. CONCLUSION

This paper (i) identifies common elements of additional fisheries-related information proposed for new *notification* disciplines and discusses the feasibility of requiring all WTO members to provide this information; and (ii) identifies and briefly discusses a range of options by which WTO members could establish incentives to *notify* this information.

In fulfilling these objectives, this paper recognises that members are already required to notify certain fisheries subsidies under the

SCM Agreement, and that other information proposed by certain members for notification is already being collected by the OECD, the FAO, and other organisations that could either be incorporated into the member's notifications or provided independently to the SCM Committee.

The paper concludes by suggesting steps to simplify and improve the notification process, and calls for wider engagement between WTO members and the OECD, FAO, RFMOs, and NGOs, to the extent that each follow fisheries issues.

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ANNEX I. QUESTIONNAIRE FORMAT FOR ASCM AND GATT SUBSIDY NOTIFICATIONS

World Trade Organization

G/SCM/6/Rev.1
11 November 2003
(03-6007)

Committee on Subsidies
and Countervailing Measures

Original: English

QUESTIONNAIRE FORMAT FOR SUBSIDY NOTIFICATIONS UNDER ARTICLE 25 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES AND UNDER ARTICLE XVI OF GATT 1994¹

Revision

General Rules

1. The following subsidies are subject to notification under Article 25 of the Agreement on Subsidies and Countervailing Measures and under Article XVI of GATT 1994:
 - (a) all specific subsidies, as defined in Articles 1 and 2 of the Agreement on Subsidies and Countervailing Measures ("the SCM Agreement"), shall be notified pursuant to Article 25.2 of the SCM Agreement;
 - and
 - (b) all other subsidies (i.e., in addition to those described in (a)), which operate directly or indirectly to increase exports of any product from, or to reduce imports of any product into, the territory of the Member granting or maintaining the subsidies, shall be notified pursuant to Article XVI:1 of GATT 1994.
2. It is understood that notifications made in accordance with the following questionnaire format will satisfy the notification requirements of both Article 25 of the SCM Agreement and Article XVI of GATT 1994.
3. Any Member considering that there are no measures in its territory requiring notification under the SCM Agreement and Article XVI of GATT 1994 shall so inform the Secretariat in writing.
4. The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidies.

¹ This format replaces G/SCM/6. This document is prepared solely to assist Members in the preparation of subsidy notifications under Article 25 of the *Agreement on Subsidies and Countervailing Duties*, and is without prejudice to the legal obligations therein.

5. It is recognized that notification of a measure does not prejudice either its legal status under GATT 1994 and the SCM Agreement, the effects under the SCM Agreement, or the nature of the measure itself.
6. To the extent that subsidies are provided on the basis of specific products or sectors, notifications of those subsidies should be organized by product or sector.
7. To the extent that information called for in any question is not provided, the response to that question shall explain why not.
8. In accordance with Article 25.1 of the SCM Agreement, subsidy notifications shall be submitted no later than 30 June of each year.
9. Members shall submit new and full notifications each third year (with 1995 understood to be the year for the first new and full notifications under Article 25 of the SCM Agreement and under Article XVI of GATT 1994), and shall submit updating notifications in the intervening years.

Information to be Provided²

1. Title of the subsidy programme, if relevant, or brief description or identification of the subsidy.
2. Period covered by the notification. The period to be covered by the notification should be the most recently completed calendar or fiscal year. In the latter case, the start and end dates of the fiscal year should be specified.
3. Policy objective and/or purpose of the subsidy.
4. Background and authority for the subsidy (including identification of the legislation under which it is granted).
5. Form of the subsidy (i.e., grant, loan, tax concession, etc.).
6. To whom and how the subsidy is provided (whether to producers, to exporters, or others; through what mechanism; whether a fixed or fluctuating amount per unit; if the latter, how determined).
7. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year) . Where provision of per unit subsidy information (for the year covered by the notification, for the previous year, or both) is not possible, a full explanation.
8. For the information cited in items 3 to 7 above, the notification does not necessarily have to have an independent heading corresponding to each item, and may provide information on

2 The information requested in points 1-9 below must be provided in full:

(a) for all subsidies in the case of full notifications

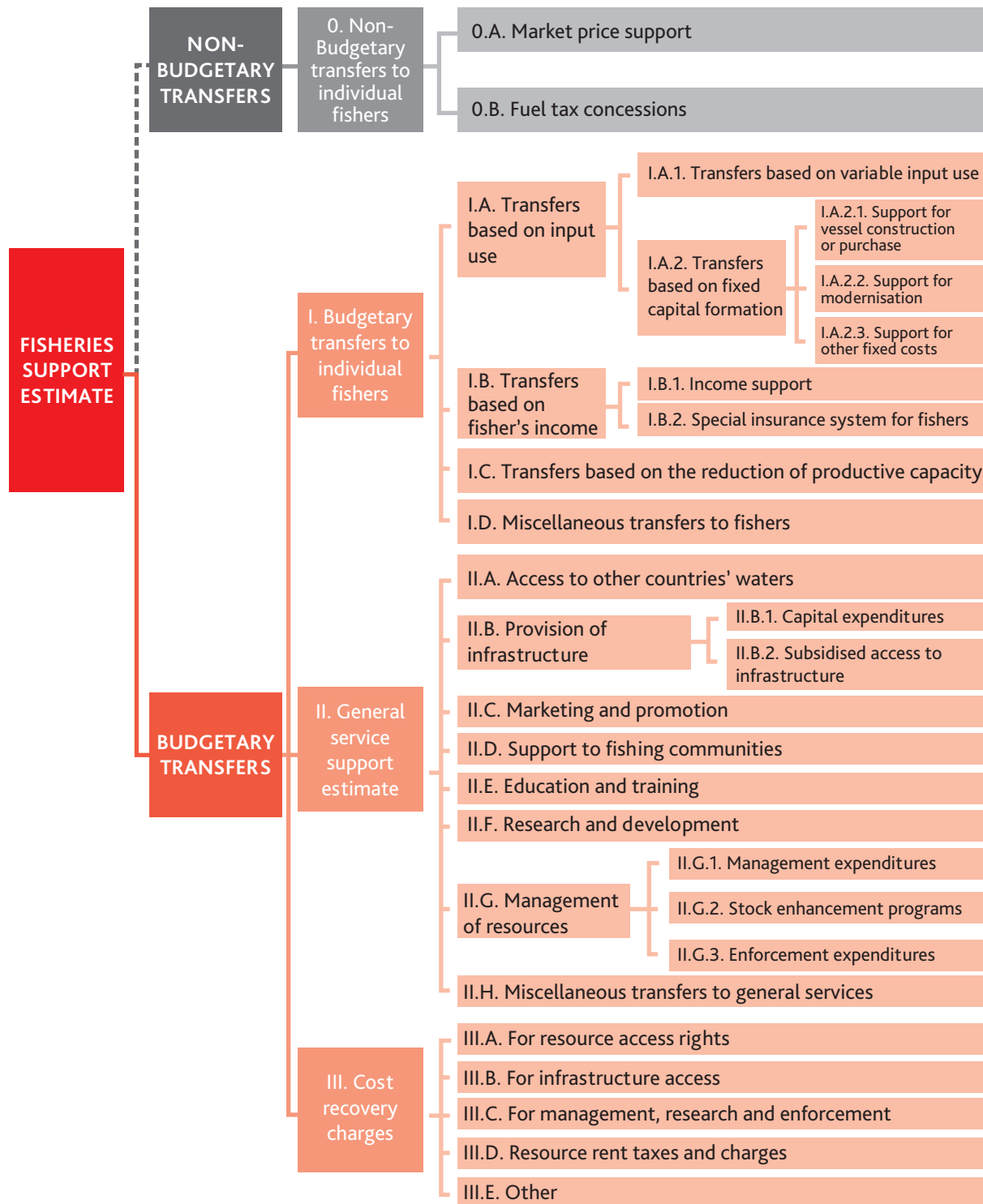
(b) for subsidies notified for the first time in update notifications.

In the case of subsidies which have previously been notified, the information provided in update notifications under points 3, 4, 5, 6 and 8 may be limited to indicating any modifications (or the absence thereof) from the previous notification.

multiple items in one heading (e.g. provide information on items 3 and 4 under one heading). In this case, the notification must clearly specify what items are covered by which heading.

9. Duration of the subsidy and/or any other time limits attached to it, including date of inception/commencement.
10. Statistical data permitting an assessment of the trade effects of the subsidy. The specific nature and scope of such statistics is left to the judgement of the notifying Member. To the extent possible, relevant and/or determinable, however, it is desirable that such information include statistics of production, consumption, imports and exports of the subsidized product(s) or sector(s):
 - (a) for the three most recent years for which statistics are available;
 - (b) for a previous representative year, which, where possible and meaningful, should be the latest year preceding the introduction of the subsidy or preceding the last major change in the subsidy.

ANNEX II. COMPONENTS OF OECD FISHERIES SUPPORT ESTIMATES



Source: OECD. 2017. "Support to fisheries: Levels and impacts." *OECD Food, Agriculture and Fisheries Papers 103*. Paris: OECD Publishing.

Other selected publications from the ICTSD Environment Programme include:

- Options for the Legal Form of a WTO Agreement on Fisheries Subsidies
Lorand Bartels and Tibisay Morgandi, 2017
- The 'Law of the Sea' Obligations Underpinning Fisheries Subsidies Disciplines
Margaret Young, 2017
- Shared Stocks and Fisheries Subsidies Disciplines: Definitions, Catches, and Revenues
U. Rashid Sumaila, 2017
- Small-scale Fisheries and Subsidies Disciplines: Definitions, Catches, Revenues, and Subsidies
U. Rashid Sumaila, 2017
- Issues and Options for Disciplines on Subsidies for Illegal, Unreported and Unregulated Fishing
Carl-Christian Schmidt, 2017
- Trade Measures to Combat IUU Fishing: Comparative Analysis of Unilateral and Multilateral Approaches
Gilles Hosch, 2016
- Trade Policy Options for Sustainable Oceans and Fisheries
U. Rashid Sumaila, 2016
- Trade-Related Measures to Address Illegal, Unreported and Unregulated Fishing
Margaret Young, 2015

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