Bringing a fisheries subsidies agreement to life: Learning from WTO best practice on transparency

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IISD Dialogue on Fisheries Subsidies: Structure and institutional issues
Geneva, November 26, 2019
Why bother with fisheries subsidies transparency?

- Support the process of **domestic reform** of fisheries policies by helping members to learn about their own fisheries policies as well as those of others
- Use sunshine to support **new discipline** on trade effects while avoiding dispute settlement system
- Ensure Members have a **dynamic understanding** of national fisheries regimes
Transparency has two modes

- **Rules-based surveillance** of implementation (Art. III.1 of WTO Agreement)
  - Helps to reduce inherent information asymmetry when a government knows more about its domestic policies than do its trading partners
  - Verification that differences in national law, policy, and implementation are consistent with obligations

- **Policy-based surveillance** aimed at understanding Members’ trade policies and practices (Art. III. 4 and Annex 3 of WTO Agreement)
  - Good policy not consistency with obligations.
  - Task is assigned explicitly to the TPRB but surveillance and analysis happen in most WTO bodies.
SPS and TBT as benchmark—the inverted pyramid

Source: WTO.
Note. Data valid as of March 2019.

Four takeaways from the SPS/TBT inverted pyramid

1. Information: Huge number of SPS/TBT notifications
2. Discussion:
   – STCs seek clarification; can lead to modification/withdrawal/resolution
   – Can signal support of an aggrieved domestic interest without a dispute
3. Formal procedures, good databases means we know about these committees
4. **Dispute settlement is at the tip of the pyramid**
   – Great many more STCs than disputes
   – Disputes are not the universe of WTO conflict management
Does inverted pyramid metaphor apply to SCM committee?

1. Information: Notification record is weak
2. Discussion: Reviews notifications, good detail in the Minutes, Q&A document series
3. Less formal procedures and no searchable database means quantification not possible
4. **Dispute settlement is still at the tip of the pyramid**
   - Measures that are notified and then discussed rarely end in a dispute.
   - Disputes are enormously costly: only launched when there is a domestic interest with a lot at stake
   - NB SPS/TBT committees have significant capital-based participation, which facilitates conflict management role
Implications for fisheries subsidies negotiations

- Both information and discussion are necessary to bring new disciplines to life
  1. Learn from notification experience
  2. Draw on WTO reform proposals for institutional arrangements
Notification compliance varies by type of notification*

- A one-time obligation, say of the existence of an enquiry point, means finding out what your policy is, and notifying it.
- Ad hoc ex ante notifications, for example of a proposed new animal health regulation, are also relatively straightforward.
- Some regular ex post notifications require being able to monitor your own policy every year, which can be harder when the responsible authority is not the trade ministry.

Why do Members not notify?

- Trade officials lack knowledge about domestic programs
- Domestic officials may not think in WTO terms
  - Lack of clarity on what to notify
  - Complex templates
- Fear of public criticism, and/or disputes
- Inability to see information as a public good
  - Transparency relies on Members wanting to be good citizens
- Punishment for non-compliance won’t help
  - compare JOB/GC/204/Rev.1 and JOB/GC/218/Rev.2
Example: ASCM notification

25.2 Members shall notify any subsidy as defined in para 1 of Art. 1, which is specific within the meaning of Article 2
   – Requires coordination with many ministries and sub-national governments
   – And understanding what “specific” has come to mean—not an economic concept
25.3 v) Statistical data permitting an assessment of the trade effects of the subsidy.
   – Requires officials to understand trade patterns of other Members
Under what circumstances are Members more likely to notify?

- Evident benefits: providers of information must see how doing so helps them meet their own objectives.
  - Notification is not merely an obligation
  - If countries do not think they are learning about themselves in preparing a notification, then notification is merely a burden

- Notification easier when same agency is the authority for a measure, is responsible for notification, and is the user of the results in WTO
  - We see this virtuous circle in the SPS committee, but not in SCM
Update from last week

- News in SCM Committee that the number of members submitting notifications on their fisheries subsidies has increased
  - Of the world's 26 biggest providers of fisheries subsidies, 17 have now provided notifications
- But some members have still failed to report their subsidies.
What should be notified about fisheries subsidies?

- Depends on new obligations; clearly related to how information will be used
  - What information is **essential** for monitoring implementation?
    - e.g. what would be needed if the cap approach is agreed?
  - What information is **desirable** in order for Members to learn about themselves and others in this domain?

- Likely additional to ASCM, with justification of why more data needed

- Do governments collect the necessary data now?
  - If not, can they create it easily, without unnecessary burdens?
  - Is it available from other international organizations?
Institutional arrangements: A role for SCM Committee?

- Probably not
- SCM Geneva delegates typically from Treasuries, not Fisheries
  - Agreement on Agriculture only possible in Uruguay Round because Treasuries insisted on curbing farm subsidies
  - BUT review of agriculture subsidies notifications only works because handled in CoA by agriculture experts
- A sectoral agreement needs a sectoral committee
Institutional arrangements: lessons from SPS/TBT

- Design should encourage capital-based participation
  - Provide opportunity for experts to seek clarifications and raise concerns to help avoid dispute settlement

- Mandate in agreement should be stronger than 1995 language on affording Members the opportunity of consulting (ASCM 24.1)

1. **Surveillance**: require STC process and periodic review of implementation and procedures

2. **Understanding**: require an informal process for discussion of policy context for fisheries subsidies
Fisheries Committee can decide on working practices

- Review of formal implementation
  - based on mandatory notification obligations
- Drawing on 777* proposals, which facilitate work of smaller delegations
  - Written questions and answers in advance
  - Annotated agenda for meetings
  - Database of notifications, questions, and answers
- Help for developing countries
  - Capitals need help to know they have a concern worth raising and to formulate it, as well as to respond to concerns of others
  - Funds needed to assist capital-based officials to attend meetings

* Proposal for guidelines for all WTO bodies led by EU supported by 15 other Members, not all OECD (WT/GC/W/777/Rev.3)
Collaboration with other international organizations

- Representatives of relevant international organizations (e.g. FAO, OECD, RFMOs) should have Observer status in committee
  - Should be encouraged to inform the committee about their activities
  - Could also be asked to prepare synthesis reports in areas of their expertise
    - e.g. information on IUU fishing and over-fished stocks, or OECD fisheries support estimate (FSE)
Institutional arrangements: Thematic or dedicated sessions

- Thematic or dedicated sessions could promote understanding of fisheries regimes and specific topics more **informally**
  - Opportunity to learn about the broader policy framework
  - Based on notifications provided “to the extent possible”
  - Observer organizations could be asked to help provide data
Institutional arrangements: A role for the TPRB?

- Annual monitoring reports could provide a forum for understanding fisheries regimes, and the global state of fisheries
- Director-General could mandate a new section of the monitoring report
- TPRD Secretariat can draw on wider sources of information, including questionnaires to Members, and provide a synthesis
  - Verification process helpful for countries with capacity problems

Box 3.7 OV/21 contributed by OECD, so no FAO, no academics, no RFMOs, no reference to WTO notifications
Recall objective for fisheries subsidies transparency

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- Use sunshine to support **new discipline** on trade effects while avoiding dispute settlement system

- Ensure Members have a **dynamic understanding** of national fisheries regimes