

# 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

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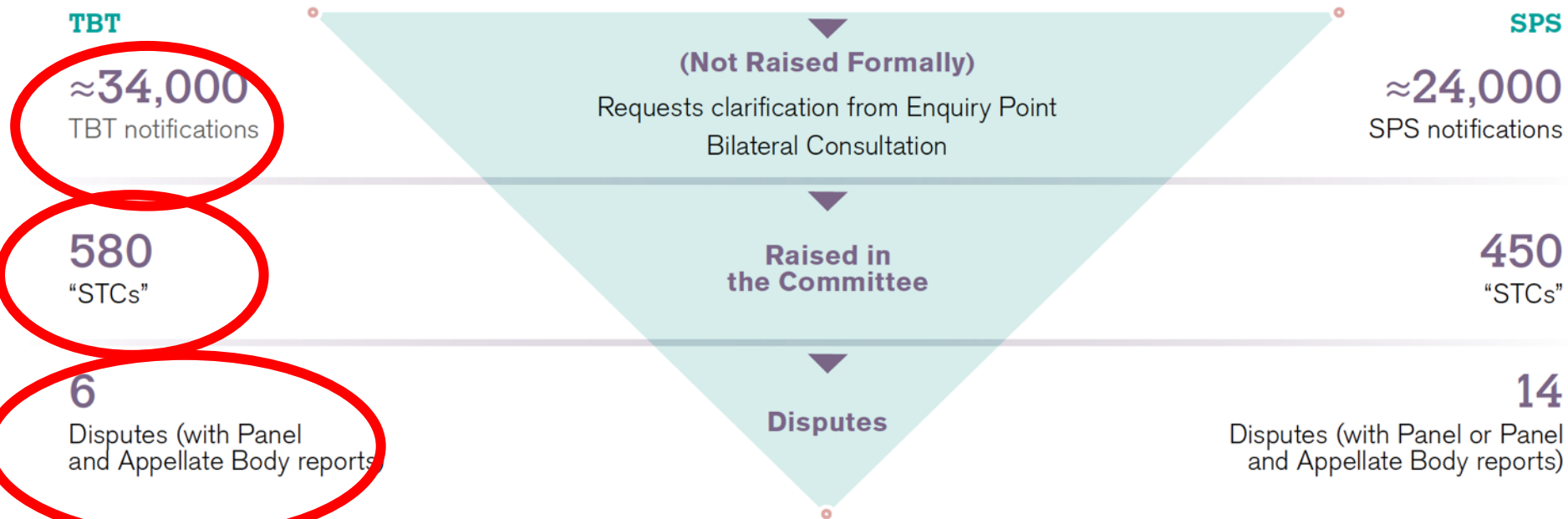
## Why bother with fisheries subsidies transparency?

- 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.

WTO and OECD, (2019) Facilitating Trade through Regulatory Cooperation: The Case of the WTO's TBT/SPS Agreements and Committees (Geneva: World Trade Organization).

## 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.

\*Wolfe, Robert, (2018) 'Is World Trade Organization Information Good Enough? How a Systematic Reflection by Members on Transparency Could Promote Institutional Learning,' Bertelsmann Stiftung, July 2018.



## 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

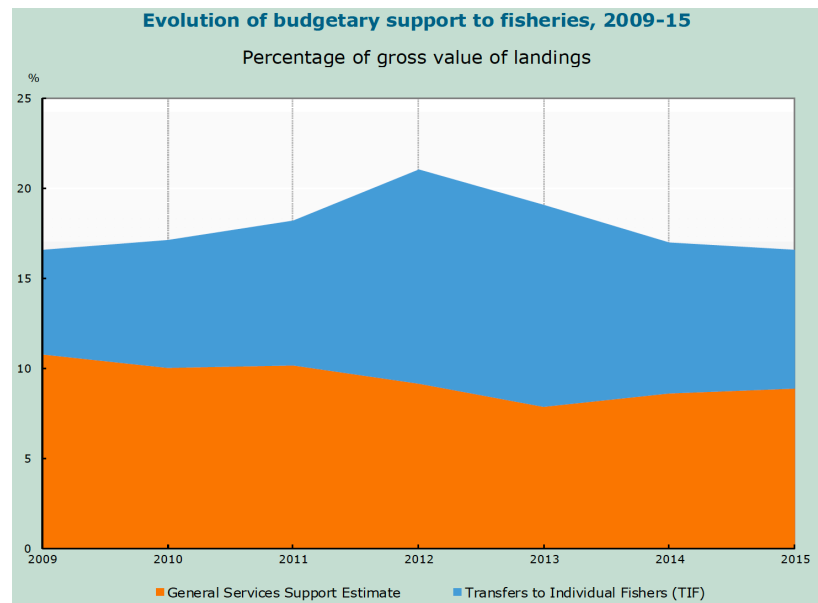
- Representatives of relevant international organizations (e.g. FAO, OECD, RFMOs) should have Observer status in committee
  - Should be encouraged to inform the committee about their activities
  - Could also be asked to prepare synthesis reports in areas of their expertise e.g. information on IUU fishing 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
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## 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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