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GATT/WTO RULES ON SUBSIDIES AND AIDS GRANTED IN THE FISHING INDUSTRY

Note by the Secretariat

I. INTRODUCTION

1. This Note has been prepared in response to a request by the Committee on Trade and Environment under item 6 of its work programme for factual background information on WTO rules and fishing industry subsidies.

2. In Section II, the Note describes the rules which were applicable to subsidies under GATT 1947. Section III provides highlights of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter "SCM Agreement"), which is the instrument currently applying to subsidies in the fisheries sector. Section IV presents an overview of possible subsidies related to the fishing industry, which have been notified under Article 25 of the SCM Agreement. This Note also contains two Annexes: Annex I briefly reviews related activities in international and regional fora and Annex II provides an overview of recent literature on the subject of subsidies and fisheries.

II. GATT 1947 AND THE TOKYO ROUND AGREEMENT ON SUBSIDIES AND COUNTERVAILING DUTIES

3. Before the entry into force of the WTO agreements, the basic rules on subsidies were contained in the provisions of Article XVI of GATT 1947 and, for those contracting parties which had signed it, in the 1979 Tokyo Round Agreement (hereinafter the "Subsidies Code").

4. Section A of Article XVI requires that contracting parties providing subsidies that operate directly or indirectly to increase exports or reduce imports to so notify and to be ready to discuss limiting a subsidy causing serious prejudice to the interests of another GATT contracting party. Under Section B, contracting parties should seek to avoid using subsidies on the export of primary products, but are not actually forbidden to do so. Paragraph 3 of Article XVI, contained in Section B ("Additional Provisions on Export Subsidies" [footnote omitted]) reads as follows:

"... contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product [footnote omitted]".

5. The *Ad Note* to Section B of Article XVI defines "primary product" as follows:

"For the purpose of Section B, a "primary product" is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade". [emphasis added]

6. The Subsidies Code, negotiated during the Tokyo Round, was an attempt to tighten the disciplines contained in GATT Article XVI. For the purpose of disciplines on export subsidies, the Code distinguished between primary and non-primary products. Article 9.1 provided that "[s]ignatories shall not grant export subsidies on products other than certain primary products"; an Annex to the Agreement contained an illustrative list of export subsidies. Article 9, however, did not apply to developing countries (Article 14.2).

7. Article 10, which addressed export subsidies on certain primary products, largely repeated the language of GATT Article XVI:

"In accordance with the provisions of Article XVI:3 of the General Agreement, signatories agree not to grant directly or indirectly any export subsidy on certain primary products in a manner which results in the signatory granting such subsidy having more than an equitable share of world export trade in such product, account being taken of the shares of the signatories in trade in the product concerned during a previous representative period, and any special factor which may have affected or may be affecting trade in such product".

8. Regarding the definition of "primary products", the SCM Agreement noted in footnote 29 to Article 9 ("Export subsidies on products other than certain primary products"):

"For purposes of this Agreement "certain primary products" means the products referred to in Note Ad Article XVI of the General Agreement, Section B, paragraph 2, with the deletion of the words "or any minerals".

III. WTO RULES

A. The Uruguay Round Negotiations

9. The 1986 Punta del Este Decision which launched the Uruguay Round initiated a different subsidy regime for agricultural and non-agricultural products. Among the objectives of the Negotiating Group on Agriculture was to increase "disciplines on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade ...". On the other hand, a Negotiating Group on Subsidies and Countervailing Measures was tasked with "improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade".

10. Whereas it fell under the definition of "primary products" under the GATT 1947 regime, fish and fish products were explicitly excluded from the coverage of the Agreement on Agriculture. Pursuant to its Annex 1, the disciplines of the Agreement on Agriculture cover all products contained in HS Chapters 1 to 24 less fish and fish products. Subsidies in the fisheries industry are therefore fully subject to the disciplines of the SCM Agreement.

B. The WTO Agreement on Subsidies and Countervailing Measures¹

11. Under the SCM Agreement a subsidy is deemed to exist when a *benefit* is conferred on an industry as a result of (Article 1.1):

- a direct transfer from the government of funds (e.g. grants, loans, and equity infusion), or potential direct transfers of funds or liabilities (e.g. loan guarantees);
- foregone or uncollected government revenues (e.g. fiscal incentives such as tax credits);
- government providing goods or services other than general infrastructure or purchasing goods;
- government making payments to a funding mechanism or to a private body to carry any of the three functions described above; or,
- there is any form of income or price support in the sense of Article XVI of GATT 1994.

Only *specific* subsidies are subject to the disciplines laid down in Parts II, III and V of the SCM Agreement (Article 1.2), i.e. subsidies determined to be limited to a an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting authority, including subsidies which are limited to certain enterprises located within a designated geographical region within the jurisdiction of a granting authority; prohibited subsidies as defined in Article 3 of the Agreement are also deemed to be specific (Article 2).

12. The SCM Agreement classifies subsidies as prohibited (Part II, Articles 3-4), actionable (Part III, Articles 5-7) or non-actionable (Part IV, Articles 8-9). These three categories are commonly referred to as, respectively, red, amber and green subsidies.

(a) Prohibited subsidies

13. These are export subsidies and subsidies contingent on the use of domestic over imported goods (Article 3.1 and Annex I). This category is subject to an accelerated dispute settlement procedure and the Member found to grant or maintain such a subsidy must withdraw it without delay (Article 4).

(b) Actionable subsidies

14. Subsidies others than prohibited subsidies can in principle be granted or maintained, unless they cause *adverse effects* to the interests of other Members. Adverse effects exist when there is "(a) injury to the domestic industry of another Member (footnote omitted); (b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994 [footnote omitted]; (c) serious prejudice to the interests of another Member [footnote omitted]" (Article 5).

15. Pursuant to Article 6, *serious prejudice* is deemed to exist in the case of: "(a) the total ad valorem subsidization [footnote omitted] of a product exceeding 5 per cent [footnoted omitted]; (b) subsidies to cover operating losses sustained by an industry; (c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures, which are non-recurrent and cannot

¹The following highlights are in no way meant to interpret the text of the SCM Agreement.

be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems; (d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment [footnote omitted]" (Article 6.1). The subsidizing Member can rebut the presumption of serious prejudice by demonstrating that the subsidy has not resulted in any of the effects described in Article 6.3.

16. When none of the conditions of Article 6.1 exists, a Member can otherwise establish that a serious prejudice exists if it demonstrates that the subsidy results in one or several of the following effects: (a) the imports of a like product of another Member into the market of the subsidizing Member are displaced or impeded; (b) the exports of a like product of another Member are displaced or impeded from a third country market; (c) there is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market; (d) there is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity (Article 6.3).

17. Actionable subsidies are subject to an accelerated dispute settlement procedure. If the subsidizing Member does not remove the adverse effects nor withdraw the subsidy, the complaining Member can take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist (Article 7).

(c) Non-actionable subsidies

18. In addition to non-specific subsidies, three categories of specific subsidies are considered to be non-actionable, provided they meet all the conditions laid down in paragraphs 2(a), 2(b) and 2(c) of Article 8. These non-actionable subsidies involve:

- "assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms [footnotes omitted]", subject to the conditions enumerated in paragraphs (i) to (v).
- "assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development [footnote omitted] and non-specific (within the meaning of Article 2) within eligible regions", provided that they comply with the conditions contained in paragraphs (i) to (iii).
- "assistance to promote adaptation of existing facilities [footnote omitted] to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms," provided that the assistance complies with the conditions contained in paragraphs (i) to (v).

19. Any subsidy programme for which non-actionable status is invoked must be notified in advance of its implementation to the SCM Committee, and shall be subject to yearly updates thereafter (Article 8.3). If a Member believes that a notified programme does not satisfy the criteria of Article 8, or that the conditions set out in a notified programme have been violated, that Member may request binding arbitration (Article 8.5).

20. Unlike prohibited and actionable subsidies, non-actionable subsidies are not subject to countervailing action nor to dispute settlement challenge. However, if the implementation of a programme under Article 8 paragraph 2 results in serious adverse effects to the domestic industry of a Member, "such as to cause damage which would be difficult to repair", that Member may request consultations with the Member implementing the programme. If no mutually acceptable solution can

be reached, the requesting Member can refer the matter to the Committee on Subsidies and Countervailing Measures. If the Committee determines that such adverse effects exist, it can recommend that the subsidizing Member modify its programme. In case its recommendations are not followed, the Committee shall authorize the requesting Member to take appropriate countermeasures. (Article 9)

(d) Remedies

21. Two types of remedies are available for a Member which has reason to believe that its interests are adversely affected by the use of a subsidy. First, if it considers that a prohibited subsidy is being used or that an actionable subsidy results in adverse effects, a government can initiate a dispute settlement procedure before the DSB. Second, if a government determines that subsidized imports cause "injury"² to its domestic industry, it can impose countervailing measures, following the procedure contained in Part V (Articles 10 to 23) of the SCM Agreement.

22. For prohibited and actionable subsidies, the procedure before the DSB and the procedure foreseen in Part V can be invoked in parallel. However, only one remedy shall be available with regard to the effects of a particular subsidy in the domestic market of the importing Member: either (i) a countermeasure under Articles 4 (for prohibited subsidies) or 7 (for actionable subsidies), or (ii) a countervailing duty, if the requirements of Part V are met.

23. Non-actionable subsidies may be subject neither to dispute settlement nor to countervailing measures.

(e) Special and Differential Treatment of Developing Country Members

24. WTO Members recognizing that "subsidies may play an important role in economic development programmes of developing country Members", Part VIII of the SCM Agreement allows for a more flexible approach for developing countries in the use of subsidies. For instance, the prohibition on the use of export subsidies will apply to developing country Members only eight years after the entry into force of the SCM Agreement, i.e. in 2003. These countries nevertheless are not allowed to increase the level of their export subsidies (Article 27.4). Moreover, least-developed country Members and designated Member country whose GNP per capita is less than US\$1,000 per annum are not subject to the prohibition contained in Article 3.1(a).³

25. The prohibition on subsidies contingent on the use of domestic over imported goods (Article 3.1(b)) will apply five years and eight year from the date of entry into force of the Agreement to, respectively, developing country and least-developed country Members (Article 27.3).

26. Further, certain developing country Member subsidies, including "direct forgiveness of debts [and] subsidies to cover social costs ...", are not subject to Part III of the Agreement, if such subsidies "are granted within and directly linked to a privatization programme". Those subsidies must, however, be limited in time and notified to the SCM Committee and must result in eventual privatization of the enterprise concerned (Article 27.13).

² Footnote 45 to Article 15 of the SCM Agreement defines "injury" as follows: "Under this Agreement, the term 'injury' shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article".

³ See Annex VII of the SCM Agreement.

(f) Notifications

27. Under Article 25 of the SCM Agreement, Members must notify any subsidy as defined in Article 1 paragraph 1, which is specific within the meaning of Article 2 (Article 25.2). The notification must include the form of the subsidy, its amount, its policy objective or purpose, its duration and statistical data permitting other Members to assess its trade effects (Article 25.3).

28. Under Article 25.7, "Members recognize that notification of a measure does not prejudice either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself".

D. Countervailing Action Regarding Subsidies in the Fishery Sector

29. A review of semi-annual reports of countervailing duty actions submitted since 1987 under Article 25.11 of the SCM Agreement and its predecessor provision, Article 2:16 of the Subsidies Code, shows that two countries (the United States and Australia) have conducted countervailing duty investigations with respect to wild-caught fish or wild-caught fish products.

IV. NOTIFICATIONS OF FISHERIES RELATED SUBSIDIES

30. A survey of the subsidies notified since 1 January 1995 under the SCM Agreement identified possible subsidies related to the fishing industry.

31. They are listed below, in four broad categories: (a) subsidies to the harvesting sector; (b) subsidies to the shipbuilding industry; (c) subsidies to the processing industry; (d) various other subsidies, in particular those related to R&D or marketing. This list is not exhaustive and is not meant to interpret the notifications. It is therefore recommended to consult the original documents for a complete description of the subsidy programmes in question. Moreover, the attempt of classification may be arbitrary in some instances; this is due to the fact that the information provided in the notifications does not always permit to identify precisely the nature of the subsidy.

32. This list is without prejudice to the compatibility of the subsidy programmes in question with the rules of the SCM Agreement, its effect under the Agreement or the nature of the measure itself. Similarly, this list is not meant to pass any judgement on the effects of those subsidies on fishing resources. Its purpose is merely to illustrate the types of subsidies notified so far by WTO Members and to show that the notification mechanism of the SCM Agreement represents a source of transparency in this sector.

33. In that regards, it is useful to note here that effective compliance of WTO Members with Article 25.1 has been a matter of concern. The Report (1996) of the SCM Committee to the Singapore Ministerial Meeting mentions that, "while a substantial number of Members have submitted notifications of subsidies ..., discussions in the Committee indicate a widely held view that compliance is not fully adequate, both in terms of the number of notifications and the content of the notifications received".⁴ Continued expressions of concern about the status of subsidies notifications have been made at subsequent meetings of the Subsidies Committee.⁵

⁴ See G/L/126, 28 October 1996.

⁵ See, for instance, G/SCM/M/15, 28 January 1998.

34. Further information on subsidies can be obtained under Article 25.8 of the SCM Agreement, which allows a Member, at any time, to request in writing information on the nature and extent of a subsidy granted or maintained by another Member, or for the reasons for which a specific measure has not been notified. As far as subsidies in the fisheries sector are concerned, the written answers submitted pursuant to this procedure have furnished more detailed information on notified programmes and/or have lead to the notification of additional programmes.⁶

A. To the harvesting sector:

- "Fisheries Alternative Programme (FAP)": financial assistance in the form of grants and contributions toward eligible costs, loan insurance and interest buy-downs to help "long-term diversification of affected fishery-dependent communities and/or to employment for workers displaced by the downturn in the fishing industry". (G/SCM/N/25/CAN; G/SCM/N/16/CAN)
- "Special Economic Development and Adjustment Fund for Quebec Fishing Communities": regional programme providing repayable or non-repayable contributions to "speed-up the adjustment and long-term economic development of fishing communities most affected by the decline of bottom-living stocks". (G/SCM/N/25/CAN; G/SCM/N/16/CAN)
- "Additional depreciation on fishing boats": tax deferral in the context of a plan to facilitate the structural improvement of small- and medium-sized enterprises. (G/SCM/N/25/JPN; G/SCM/N/16/JPN)
- "Support for development of deep-sea fishery": loans with preferential interest rate granted to "reduce the financial burden of deep-sea fishermen" and "support the costs necessary for technical cooperation with foreign countries". (G/SCM/N/25/KOR and G/SCM/N/3/KOR/Rev.1)
- "Fund for supporting fishing activities": loan with preferential interest rate granted to "coastal and off-shore fishermen, inland and deep-sea fisheries' employers". Its purpose is "to maintain a stable fishing operation and to alleviate the financial burden of fishermen". (G/SCM/N/25/KOR and G/SCM/N/3/KOR/Rev.1)
- "Reduction in local taxation on building and acquisition of vessels for deep-sea fishery": tax concession (50 per cent reduction in acquisition or property tax) provided to "persons who build or import" ships, *inter alia*, "licensed ocean fishery vessels". (G/SCM/N/25/KOR and G/SCM/N/3/KOR/Rev.1)
- "Transport support": grant distributed to sales organizations which are "responsible for the distribution of the transport support to the fishing industry. Each sales organization must submit a plan showing how they intend to apply these funds so that fishing activities are secured throughout the year". The objective of the subsidy is "to be used partly for financing the direct costs of the transport support schemes in order to facilitate implementation of fisheries activities in specific districts". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
- "Support for specific fisheries": grant paid to sales organizations, which are "responsible for the distribution of the support for specific fisheries to the fishing industry". The subsidy is

⁶ See, for instance, documents G/SCM/Q2/CAN/8; G/SCM/Q2/EEC/4; G/SCM/Q2/EEC/10; G/SCM/Q2/ISL/6; G/SCM/Q2/KOR/7; G/SCM/Q2/KOR/9; G/SCM/Q2/MUS/2; G/SCM/Q2/NOR/1; G/SCM/Q2/NOR/6; G/SCM/Q2/PER/6; G/SCM/Q2/USA/4; G/SCM/Q2/USA/10.

- given with the purpose of "converting to more profitable operations". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
- "Marketing fund": grant paid to "groups of firms that produce or sell Norwegian fish or fish products ...". The policy objective of the subsidy is to "promote the sale of fish and fish products domestically and for exports. Emphasis is placed on joint efforts that will strengthen the identity of Norwegian sea products in the markets. The programme is also viewed as a tool for strengthening cooperation among firms in the fishing industry". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Interest rate subsidies for fishing vessels for domestic deliveries - Long term financing and construction loans": (a) interest rate subsidy granted to shipowners and (b) construction loan subsidy for the yards, both aiming at "modernization of fishing vessels". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Support to fishing vessels for domestic delivery, contract subsidies and construction loan subsidies": contract subsidy to the shipowner, calculated as a percentage of the contract price, for new building, "large" and "extensive" conversions. The "primary objective of the scheme is to support the shipbuilding industry". The "secondary" objective is the "modernization of fishing vessels". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Grant for building or purchase of vessels to the County Finnmark": grant, covering 15 per cent of the price of a new-built or acquired vessel, given to "buyer or builder of fishing vessels in Finnmark county". The stated policy objective of the subsidy is to support a specific region. (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Support to long-line baiting facilities": grant given to "members of organized long-line baiting facilities" whose policy objective is "structural support to the fisheries sector in certain regions". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Support for energy saving devices on board fishing vessels": grant, covering between 25 and 50 per cent of the investment cost, given to registered fishermen, as part of an "environmental scheme". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - "Support for the formation of management groups in the coastal fleet": grant given to registered fishermen whose stated policy objective is "structural measure to reduce costs in the fishery sector". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)
 - Incentives (mainly in the form of various tax exemption) available to all industries in the country, and in particular to producers fishery and industries providing inputs and services to fisheries. The general policy objective of the scheme is, *inter alia*, to "encourage private domestic and foreign investment to provide significant employment and export opportunities for the economy". (G/SCM/N/3/PHL)
 - "Subsidies to the interest from bank credit" granted to domestic business entities engaged in the "procurement and storage of sea fish stocks". (G/SCM/N/9/POL)
 - "Production for export incentive": tax incentive given with respect to "approved manufacturing activities and deep sea fishery". (G/SCM/N/6)

- "Regime for free zone enterprises": various tax incentives available, *inter alia*, to export-oriented enterprises, including those active in fisheries. (G/SCM/N/3/SEN/Suppl.1-G/SCM/N/16/SEN/Suppl.1-G/SCM/N/25/SEN)
- "Restructuring and development of Slovenian fishery": grants available for the implementation of programmes relating, *inter alia*, to "catch of blue fish for the processing" and "restructuring of fisheries". The stated purpose of the subsidy is "restructuring of Slovenian fishery ...". (G/SCM/N/3/SVN)
- "Commercial fishing exemption from deficit reduction rate component of excise tax on motor fuels": commercial fishermen can purchase untaxed diesel fuel or can receive a refund for any taxes paid on gasoline used in commercial fishing boats. The stated policy purpose of the tax is to "treat fisherman comparably to farmers in the provision of a partial exemption from the motor fuel excise tax for fuel consumed in the course of business". (G/SCM/N/16/USA)
- "Vessel retirement scheme in the fishing industry": subsidy granted to "help achieve a balance between fleet size and fishing possibilities". (G/SCM/N/16/EEC, notified by Denmark)
- Reduced costs of administration in connection with refinancing of loans in the Royal Fisheries Bank of Denmark. "The refinancing scheme is made with the purpose of ensuring that Danish fishing vessels with an economically warrantable operation are getting their financing adapted to the changed economic situation". (G/SCM/N/16/EEC, notified by Denmark)
- "Laying-up arrangement for the Baltic Sea": subsidy granted to fishermen of a specific region, in connection with the laying-up of their vessels. "The laying-up arrangement is to compensate fishermen for the loss of income caused by exceptionally poor fishing possibilities and subsequential suspension of fisheries for cod in the Baltic Sea". (G/SCM/N/16/EEC, notified by Denmark)
- Subsidies to hauling-up winches for the fishing from beaches: direct aid accorded to a specific region, whose purpose is "to secure fishing possibilities from beaches on the Westjutlandic Northern Coast". (G/SCM/N/16/EEC, notified by Denmark)
- Modernization and development of the fishing industry: subsidy granted in connection with "relevant capital investments" to "adapt the fisheries sector to the changed economic situation and to the changed fishing possibilities during the period 1994-1999" and to "improve efficiency, quality and utilization of resources in the fisheries sector". (G/SCM/N/16/EEC, notified by Denmark)
- Repayment of hydrocarbon oil and LPG excise duty in the case of sea fishing: repayment of excise duty provided to sea fishermen "to assist the sea fishing industry". (G/SCM/N/16/EEC; G/SCM/N/3/EEC notified by Ireland)
- Interest subsidy for investment in the construction of vessels: interest subsidy or grant available in relation to 3 different types of vessels and its policy objective is "to promote investment in production units in the fishing sector". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)
- Interest subsidy for investment in the conversion or improvement of vessels: interest subsidy available "to promote investment in production units in the fishing sector". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)

- Interest subsidy for the purchase of engines and of the equipment for fishing vessels: its policy objective is "to promote investment in the fishing sector". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)
- Interest subsidy for the purchase of fishing gear and tools: available in "cases where the specifications of the gear are reoriented or modified", but does not cover the regular replacement of fishing gear and tools. (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)
- Interest subsidy for the purchase of second-hand vessels: the policy objective is "to prevent vessels in good condition from being left idle". The availability of this subsidy is made conditional upon several conditions; in particular the purchase is accompanied by modernization or conversion of the vessel resulting in "catching less heavily fished species; improving fishing operations; improving the preservation of the catch; saving energy". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)
- Interest subsidy for investment in the purchase of propulsion, navigation, detection and communication equipment and auxiliary and safety equipment. (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Portugal)
- "Support for the construction and modernization of fishing vessels with length < 9 and length > 9 metres if the investment is less than the minimum necessary to obtain Community aid": grant "to support action to solve the specific problems of the regional communities that live on fishing". (G/SCM/N/3/EEC, notified by Portugal)
- Aid for vessel purchase "in order to improve the conditions of access to the fishing grounds of the fleet fishing in Community waters": grant given for the purchase of secondhand vessels with rights of access to the Community fishing grounds. (G/SCM/N/3/EEC, notified by Spain)
- Aid for "structural purposes in the fisheries and aquaculture sectors and the processing and marketing of its products": grant for "renewing, technologically improving, rationalizing and increasing the competitiveness of the Galician fleet. Another aim is to raise incomes without increasing the catch, by improving product added value, quality, processing, preservation, etc". (G/SCM/N/3/EEC, notified by Spain)
- "Fisheries promotion programme": grant for the "development of the provincial non-industrial fishing and shell-fishing fleet at the small boat level". (G/SCM/N/3/EEC, notified by Spain)
- "Aid for modernization of fishing vessels": non-repayable subsidies available to shipowners in the fishing sector. The policy objective is "to modernize vessels without an increase in the fishing capacity of the Spanish fleet, since modernization work ... entailing an increase in registered tonnage and/or engine capacity involves ... an obligation to scrap one or more vessels with a tonnage and/or engine capacity that is not less than the increase in tonnage and/or capacity of the vessel to be modernized". (G/SCM/N/16/EEC, notified by Spain)
- "Aid for the building of fishing vessels": non-repayable subsidies given to shipowners in the fishing sector to replace old vessels by new ones, "without an increase in the fishing capacity of the Spanish fleet (...)". (G/SCM/N/16/EEC, notified by Spain)
- "Aid for the temporary stoppage of activities of fishing vessels during 1994, provided in 1995": non-repayable subsidies given to shipowners to allow a temporary cyclical halt to cut down on fishing with the basic objective to renew the fishing grounds. (G/SCM/N/16/EEC, notified by Spain)

- "Special economic aid to ship owners affected by the stoppage of fishing": non-repayable subsidies given to shipowners of fishing vessels whose activity in third-country fishing grounds was halted because, for instance, a new fishing agreement between that country and the EEC had not been signed or the third country ordered a temporary "biological halt". (G/SCM/N/16/EEC, notified by Spain)
- "Final halt to fishing": capital grant given to shipowners in the fishing sector with the purpose of "restructuring of the fleet to encourage a complete end to fishing by certain vessels". (G/SCM/N/16/EEC, notified by Spain)
- Aid to the Málaga fishing fleet affected by the prohibition on the capture of bivalve molluscs. (G/SCM/N/16/EEC, notified by Spain)
- Aid for the temporary cessation of activity by the fishing fleet in Valencia, in order to restock the fishing grounds. (G/SCM/N/16/EEC, notified by Spain)
- "Aid to the fishing and aquaculture sector": grant given to "natural and legal persons that exploit fishing resources" in the Autonomous Community of Valencia. The objective is to establish "a line of aid to permit the standardization of criteria and act as an incentive to private initiative for the implementation of modernization and adaptation projects in the fishing sector that are not subsidized through Community funds and regulations". (G/SCM/N/16/EEC, notified by Spain)
- "Structural assistance programme in the fisheries and aquaculture sector, and the processing and marketing of its products": grant available to "shipowners, owners of boats or those seeking to become boat-owners, enterprises owning farms or new enterprises established, owners of marine cultivation establishments, ..." in the Autonomous Community of Galicia. The purpose is to "facilitate the adjustment of capacity, definitive cessation of activity by fishing boats, renovation and modernization of the fishing fleet, and the handling, processing, conservation and treatment of fishery, shell fishery and aquaculture products". (G/SCM/N/16/EEC, notified by Spain)
- State investment aid to fishing enterprises: grant or guarantee given as "sectoral aid" to SMEs, in particular for the purchase of new or second-hand fishing vessels. (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)
- State aid by temporary cessation of fishing activity: grant given to fishing enterprises and "intended to offset partially the loss of income suffered during temporary involuntary cessation of activity". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)
- State aid for the scrapping of fishing vessels: grant given to fishing enterprises. (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)
- State aid for damages to fishing gear: grant to fishing enterprises "to reduce the effects of harsh weather conditions". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)
- State aid for temporary exemption for amortization and payment of interest and for extension of period of amortization: grants and guarantees for fishing enterprises affected by "disturbances linked to biological factors - the severe situation for the cod stock in the Baltic". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)

B. To the shipbuilding industry:

N.B.: Several countries notified subsidies granted to the shipbuilding industry but there is no indication as to whether these subsidies include fishing vessels.

- "Aid to shipbuilding": incentive in the form of direct subsidy, interest subsidy or guarantee available to shipyards, including for fishing boats. (G/SCM/N/16/EEC, notified by Belgium)

C. To the industry engaged in processing and/or sale of wild-harvested fish:

- grants to promote the quality awareness and the quality of the working life within the industry with the result of "better products and more pleased workers". (G/SCM/N/3/ISL-G/SCM/N/16/ISL)
- "Support for fish products processing development": loan with preferential interest rate granted to "companies engaged in constructing facilities for handling, storing and processing fish". The objective of the subsidy is "to develop new fishery food products, to enlarge and to modernize fish storage and processing facilities". (G/SCM/N/25/KOR and G/SCM/N/3/KOR/Rev.1).
- "Aid to structural measures and rationalization in the fish processing industry": grant given to enterprises engaged in fish processing "to strengthen the competitive ability" of these enterprises. (G/SCM/N/3/NOR-L/7611/Add.14 and G/SCM/N/16/NOR and G/SCM/N/25/NOR)
- Structural intervention in the industry for the processing of edible fish: grant linked to relevant capital investments which "improve efficiency, quality and utilization of resources in plants dealing with the processing or storage of fish and fishery products for direct human consumption". The general aim is to "adapt the fisheries sector to the changed economic situation and to the changed fishing possibilities during the period 1994-1999". (G/SCM/N/16/EEC, notified by Denmark)
- Internationalization of the fish-canning industry: grant "to encourage investment intended to improve the competitiveness of enterprises and ensure their internationalization". (G/SCM/N/3/EEC, notified by Portugal)

D. Other subsidies related to the fishing industry (R&D, marketing, for instance):

- Grants to promote "development and marketing" in the fishing industry, covering primary R&D costs, innovation costs and cost of developing new content for training courses. (G/SCM/N/3/ISL-G/SCM/N/16/ISL)
- Encouragement of "vocational training in the fishing industry". Grants available to domestic fish processing companies whose policy objective is to "promote the quality awareness and the quality of the working life within the industry with the result of better products and more pleased workers" (G/SCM/N/3/ISL-G/SCM/N/16/ISL).
- "Aid to development and rationalization in the fishing industry": grant accessible to "private persons, firms and research institutions" in the fields of "(1) products and processing technology, (2) integrated sea/land production, (3) develop the cultivation of new species". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR; G/SCM/N/25/NOR)

- "Research fishery": grant payable to fishing fleet and research institutions whose policy objective is "(1) research fishery, (2) development of fishing gear with good selective characteristics". (G/SCM/N/3/NOR-L/7611/Add.14; G/SCM/N/16/NOR)
- "Promotion of technology, research and development and energy saving": as part of that programme, capital grants are available for research and development by enterprises in the fisheries sector. (G/SCM/N/3/TUN-G/SCM/N/16/TUN-G/SCM/N/25/TUN)
- Subsidies to fishing consultant activity: subsidy granted "for the employment of fishing consultant in order to give technical and economical counselling to the fishermen". The objective of the subsidy is in particular to help fishermen "to take economically warrantable decisions". (G/SCM/N/16/EEC, notified by Denmark)
- Aid to product development of agricultural and fishery products: subsidy to "promote the development of activity in primary agriculture, and the manufacturing sectors". (G/SCM/N/16/EEC, notified by Denmark)
- Popularization and promotion of fishery products: grant to popularize and promote fishery products and facilitate their marketing and distribution. (G/SCM/N/3/EEC, notified by Portugal)
- Facilities for fishing ports and improved marketing of fisheries and aquaculture products: the form of the subsidy is an "aid to official or private investment for fishing port installations and facilities and also intended to improve marketing from unloading right through to the end product". Its objective is to promote investment for fishermen. (G/SCM/N/16/EEC, notified by Spain)
- Aid for the establishment and management of fisheries producer organizations: granting aid to create the organisations in question. (G/SCM/N/16/EEC, notified by Spain)
- Aid to improve the structures of the fisheries and aquaculture sector: up to 25 per cent of the eligible costs is paid to "natural and legal persons in the fishing sector" to "improve the structures of the fishing and aquaculture sector". (G/SCM/N/16/EEC, notified by Spain)
- Aid to improve the processing and marketing of fisheries and aquaculture products: up to 25 per cent of the eligible costs to "natural and legal persons" with the purpose of granting "aid for the processing and marketing of fish products". (G/SCM/N/16/EEC, notified by Spain)
- Aid for investment in fishing ports and processing of fisheries and aquaculture products: 5 per cent of the eligible costs available to "fisheries producer sector and other bodies involved in marketing fish products (except retailers)". The objective is to grant aid for "port facilities and the processing and marketing of fishing products". (G/SCM/N/16/EEC, notified by Spain)
- Aid for long term information measures for the benefit of the consumption of fish: grant "to inform the consumer of the positive effects of a fish diet". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)
- Research and development within the fishery sector: grant to "develop fishing gear with improved selectivity" and to "improve techniques for the processing of herring and develop new products of herring". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)

- State aid for stocking of fish: grant whose objective is "increasing of stocks of eel and salmonids for the commercial fisheries in coastal and inland waters". (G/SCM/N/16/EEC; G/SCM/N/3/EEC, notified by Sweden)

ANNEX I

Activities in Other Fora

1. Concern over the link between subsidies and overfishing has been expressed in several international and regional fora. Among the "major issues in world fisheries", the FAO Committee on Fisheries "urged that the issues of excessive fishing capacity and fishing effort leading to overfishing should be given special consideration by FAO and Member Countries. Many delegations also stressed that frequent use of direct and indirect subsidies in fisheries often aggravated excess capacity. Other delegations pointed out that the effects of subsidies cannot be systematically linked with fishing overcapacity".⁷

2. At its fourth session, the UN Commission on Sustainable Development listed among the actions required for the implementation of Chapter 17 of Agenda 21 towards sustainable development of oceans and coastal areas: "[g]overnments are urged to reduce subsidies to fishing industry and abolish incentives leading to over-fishing".⁸ One year later the CSD stated that there was an "urgent need for: ... [g]overnments to consider the positive and negative impact of subsidies on the conservation and management of fisheries through national, regional and appropriate international organizations and, based on these analyses, to consider appropriate action".⁹

3. At the regional level, the Fisheries Working Group of the Asia-Pacific Economic Cooperation (APEC) has decided to undertake a four-year study on trade and investment liberalization in fisheries, that will include the issue of subsidies.¹⁰

4. In April 1997, the Fisheries Committee of the OECD agreed to study "government financial transfers that affect the transition to responsible fisheries". Member countries have been invited to submit to the Secretariat information on governmental financial transfers, levels of fishing capacity and activity, and fish stock status. Based on this information, the OECD Secretariat is expected to prepare a synthesis report by Spring 1999. The study will analyze the relationships between government financial transfers, fishing capacity and activity, and fish stock status; it would not, for the time being, analyze the relationship between government financial transfers and international trade.¹¹

⁷ *Report of the twenty-second session of the Committee on Fisheries*, Rome, 17-20 March 1997, FAO Fisheries Report No. 562, paragraph 11.

⁸ Commission on Sustainable Development, Fourth Session, 18 April-3 May 1996, *Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources*, Report of the Secretary General, E/CN.17/1996/3, Section IV paragraph 18.

⁹ UNGASS, *Report of the Commission on Sustainable Development on Preparations for the Special Session of the General Assembly for the Purpose of an Overall Review and Appraisal of the Implementation of Agenda 21*, doc. E/1997/60, paragraph 30.

¹⁰ APEC, *Summary Conclusions of the Seventh APEC Fisheries Working Group Meeting*, Seventh Fisheries Working Group Meeting, 29-31 May 1996.

¹¹ OECD Fisheries Committee, *Impact on Fisheries Resource Sustainability of Government Financial Transfers*, Doc. AGR/FI(97)11, 5 September 1997.

ANNEX II

Overview of the Literature on Subsidies¹² and Fisheries

1. Building on WT/CTE/W/67, this Annex presents a brief overview of recent literature which addressed subsidies in the fisheries sector.
2. Worldwide overexploitation of fish stocks has been identified as one of the major factors responsible for the severe deterioration of marine resources over the last 30 years.¹³ Experts tend to consider overcapacity¹⁴ of fishing fleets as one of the main factors responsible for unsustainable fishing effort, while open access to marine resources and inefficiency of traditional management measures (such as restrictions on gear or seasons, tradable catch quotas) have contributed to and even exacerbated this situation.
3. While it is not the purpose of this Annex to undertake a detailed account of all the factors that have led to the current situation, some figures can be singled out to illustrate the subject.¹⁵ Between 1970 and 1989, two decades during which the world of fisheries registered important changes, total gross registered tons ("GRT") of world fishing fleets increased by an average of 4.6 per cent a year; during the same period, total world fisheries landings increased at an average of 2.4 per cent annually. Thus, the world fishing fleet grew about twice as fast as the landings.¹⁶ Moreover, FAO calculations indicate that annual operating costs of the global marine fleet exceed by some US\$22 billion the total revenues, without taking into account capital costs (see paragraph below). According to FAO, subsidies are, together with open access of marine resources, the main reason for overcapitalization of fishing fleets. In the same report, FAO notes that 'such massive recourse to subsidies arises from governments' efforts to preserve employment opportunities in the ship building as well as the fishing industries and may be a response to the general economic plight of fisheries. However, as the opportunities for an increased catch from fishery resources have declined considerably, a continuation of the high subsidies can only lead to greater and greater economic distress as well as further depletion of stocks'.¹⁷

¹² The term "subsidies" utilized in this Annex does not necessarily coincide with the definition contained in the WTO Agreement on Subsidies and Countervailing Measures.

¹³ See WT/CTE/W/67, paragraphs 87-88 and the references cited therein.

¹⁴ Stone defines "overcapacity" as "a state in which the value of inputs to fishing is greater than required for most efficiently achieving the desired level of fishing activity." He notes, however, that there is no consensus as to what would be the right level of capacity or the right level of input; too many uncertainties make them difficult to identify. He concludes, nevertheless, that "features of the industry and its environment, and the government subsidies in particular, fairly support the allegations of wide-spread overcapacity, even though it is impossible to put a dollar or tonnage figure on that excess." C. Stone, 1997, *Too Many Fishing Boats, Too Few Fish: Can Trade Laws Trim Subsidies and Restore the Balance in Global Fisheries?*, Ecology Law Quarterly, Vol. 24, pp. 513-514 (hereinafter "Stone, 1997").

¹⁵ See FAO, 1992, *Marine Fisheries and the Law of the Sea: A Decade of Change*, in *The State of Food and Agriculture* (hereinafter "FAO, 1992"). Although it does not contain the latest data, this document gives an excellent overview of the problems faced by fishery resources.

¹⁶ M. Milazzo, (1996), *Reexamining Subsidies in World Fisheries*, Paper presented at the Symposium on the Interrelationship between Fisheries Management Practices and International Trade, 24-26 November 1996, Wellington, New Zealand, p. 6 (hereinafter "Milazzo, 1996").

¹⁷ FAO, 1992, pp. 147 to 152.

4. Subsidies in the fishing industry take many different forms¹⁸ and no clear definition exists. Commentators generally adopt a broad approach, which includes: the costs of environmental externalities; resource rents collected by private firms; tariff and import quotas; the use of various financial instruments such as subsidised loans, loans guarantees, grants, to support both capital and labour; tax deferrals and exemptions; free access to exclusive economic zones; conclusion of international fishing agreements to buy access rights to foreign exclusive economic zones; investments in general infrastructure, such as port facilities; and assistance to the shipbuilding industry.¹⁹

5. For the time being, a lack of transparency in assistance programmes and a lack of comprehensive data does not permit to determine precisely the magnitude of the problem. A systematic identification and categorization of the different subsidies in the fishing industry would allow the more precise determination of their effect on fishing efforts and, therefore, their impact on marine resources. Despite these uncertainties, some striking figures have already been pronounced. The 1992 FAO report made the following estimate based on available 1989 data: the total annual operating costs of the global fishing fleet being US\$92.2 billion for a gross revenue of US\$70 billion, the annual operating deficit is around US\$22 billion; adding US\$32 billion for capital costs, the annual deficit would amount to about US\$54 billion.²⁰ Even though these figures are not universally accepted, they cannot be ignored. The same FAO report indicates that "[i]f management measures are implemented to allow stock rehabilitation, the 20 million tonnes of increased catch that could eventually occur would add more than US\$16 billion to the gross revenue, *ceteris paribus*. This estimated foregone loss, however, is only a portion of the economic waste in global fisheries, since total world catch could be taken with considerably lower amounts of fishing effort and considerably lower total costs".²¹

6. From the point of view of resource sustainability, commentators distinguish two different types of subsidies in the fishing industry.²² In a first category, we find those subsidies affecting negatively fish resources by encouraging fishing efforts. The second category consists of subsidies whose purpose is to reduce fishing efforts to make fishing more environmentally sustainable and restore fish stocks. However, caution is required when using this distinction because of the potential secondary effects of subsidies; a "good" subsidy may have "negative" secondary effects if it is not accompanied by other policy measures.

7. The harvesting sector benefits from various kinds of subsidies aimed at reducing operating and capital costs. These subsidies directly contribute to increasing fishing effort and, therefore, the quantity of fish removed from the sea. In this category, we find for instance: (a) loans, loan guarantees, favourable interest rates, granted to fishermen to acquire or modernize fishing vessels, including subsidies for the purchase of engine and other equipment of fishing vessels, fishing gear and tools; (b) contribution to operating costs, such as tax exemption on fuel; (c) direct income support to compensate a temporary impossibility of fishing due, for instance, to exhausted fish stocks or bad weather conditions. Fishing licenses at reduced or no costs is another form of subsidy granted to the harvesting sector. Some governments grant their national fleet free access to their exclusive

¹⁸ See WT/CTE/67, 7 November 1997, paragraphs 91 to 95.

¹⁹ See for instance, Milazzo, 1996; Stone, 1997; G. Porter, (1997), *Fishing Subsidies, Overfishing and Trade*, Paper presented at the UNEP/WWF Workshop on "The Role of Trade Policies in the Fishing Sector", 2-3 June 1997, Geneva (hereinafter "Porter, 1997"); P. Weber, 1994, *Facing Limits in Oceanic Fisheries*, Natural Resources Forum, 18(4), pp. 293-303.

²⁰ FAO, 1992, p. 145-146.

²¹ *Ibid.* p. 157.

²² See, for instance, Sone, 1997; Milazzo, 1996; Porter, 1997.

economic zones, or, through international fishing agreements, grant their national fleet access to the exclusive economic zones of other countries at no or reduced costs.²³ Moreover, the harvesting sector benefits indirectly from subsidies granted to other sectors of the fishing industry, such as ship building and fish processing, and as well as from improvements in port infrastructure. Although not totally absent, export subsidies do not seem to be a major problem in the fisheries industry.

8. So-called "positive" subsidies are those which aim at reducing the capacity of the fishing fleet in order to relieve fishing grounds, or to adjust the fleet size to the fishing possibilities. They include, *inter alia*: (a) vessel retirement schemes (or buy-back programmes) to restructure the fleet and encourage the phase-out of certain fishing vessels; (b) financial assistance to projects or activities leading to the reconversion of fishermen into other activities; (c) aids for the building and/or modernization of fishing vessels, without an increase in the fishing capacity, to improve efficiency, quality and utilization of resources in the fisheries sector. These measures must often be implemented together with other measures to be effective: for instance, a vessel buy-back programme will have to be supported by a moratorium on the entry of any new vessel in the fleet. According to Porter, "[s]ubsidies aimed at reducing overcapacity have been growing both in absolute terms and relative to subsidies to overcapacity. ... But thus far capacity-reducing subsidies have been too small and too poorly targeted to have any major impact on global fishing capacity. And they are still overshadowed by subsidies for increasing or maintaining fishing overcapacity".²⁴

9. Some commentators are of the view that the subsidization of fishing fleets leads to resource misallocations. As noted by Porter, "[a]ny of the forms of subsidization [benefitting the fishing industry] can confer a competitive advantage on a subsidized fishing firm over one that is not subsidized".²⁵ Because many of the commercially valuable fish are highly migratory or transboundary, or are harvested in international waters, by distant-water fleets, Milazzo concludes that "subsidies provided to fishing fleets inevitably have a negative effect on the operations of non-subsidized fleets. ... Oftentimes, increases in production shares of subsidized fleets come at the expense of declining shares of unsubsidized fleets. Stated simply, subsidized harvests of transboundary, highly migratory, and highseas ... resources will tend, other things being equal, to depress the harvests of others".²⁶

10. The impact of subsidies on international trade in fish products is the other side of the same coin; however, it appears that no systematic analysis has been made in this field. Nevertheless, given the importance of international trade in fish products on the one hand²⁷ and the estimates produced for fisheries subsidies (see for instance paragraph 5), there is reason to believe that fisheries subsidies do lead to significant trade distortions.

11. The link between overfishing and subsidies has led commentators to pay more attention to the role that trade law could play in remedying fisheries subsidization, thus relieving pressures on fish

²³ See G. Porter, 1997, *Euro-African Agreements: Subsidizing Overfishing in African Waters*, in *Subsidies and Depletion of World Fisheries*, WWF Case Studies.

²⁴ Porter, 1997.

²⁵ See for instance Porter, 1997, p. 34.

²⁶ Milazzo, 1996, p. 76.

²⁷ In 1994, the value of international fish trade reached US\$47.4 billion. Preliminary figures for 1995 indicate an increase in the value of trade, reaching US\$51.7 billion, owing to higher prices. These figures include capture fisheries and aquaculture production, the latter representing 20.9 million tonnes in 1995 and the former 92 million tonnes for the same year. FAO, 1997, *The State of Food and Agriculture*, p. 29-30.

stocks. They have examined in particular how the disciplines contained in the WTO SCM Agreement could apply to subsidies in the fishery sector.²⁸

12. It is recognized that the dismantling of subsidies regimes will have to be accompanied by other policy measures to permit a return to more sustainable fishing practices. However, removing existing subsidies remains the priority issue to reduce fishing capacity and facilitate other changes.²⁹

"The elimination or confinement of these subsidies would not, in themselves, heal the world's fisheries. But it would relieve national budgets of perverse expenditures, ease the task of fisheries managers, remove distortions to trade, help foster a larger, more valuable catch in the long-term, and protect the environment. It is time to act".³⁰

²⁸ See Milazzo, 1996; Porter, 1997; Stone, 1997.

²⁹ FAO, 1992, p. 176.

³⁰ Stone, 1997, p. 537.