

International Legal Instruments Relevant to Fisheries and Fishing Communities: A Handbook

Theme VII
Trade



International Collective in Support of Fishworkers
27 College Road, Chennai, India

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Contents

1. Introduction	1
2. Convention on International Trade in Endangered Species of Wild Fauna and Flora	3
3. Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations	7
4. Marrakesh Agreement establishing the World Trade Organization	9
5. General Agreement on Tariffs and Trade, 1994	12
6. Understanding on the interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994	22
7. Agreement on the Application of Sanitary and Phytosanitary Measures	24
8. Agreement on Technical Barriers to Trade	27
9. Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994	30
10. Agreement on Import Licensing Procedures	33
11. Agreement on Subsidies and Countervailing Measures	35
12. General Agreement on Trade in Services	38
13. Decision on Trade and Environment	41
14. Preferential tariff treatment for Least-developed countries: Decision on waiver	44
15. Doha Ministerial Declaration.....	45
16. Draft Cancun Ministerial Declaration	48

Introduction

International trade in fish and fishery products has grown tremendously in the last two decades. This section provides information on instruments relevant to fisheries trade. Some of the agreements relevant to fisheries are: Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Agreement on Import Licensing Procedures and Agreement on Subsidies and Countervailing Measures. This section also includes decisions on trade and environment that are important for the fishing industry.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973) is the first convention that relates to trade and environment issues. It aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The Convention lists some of the commercially important fish species as endangered species (such as certain species of seahorse and shark) and bans trade in them. Species are listed under three Appendices, according to the degree of protection they require.

The Marrakesh Agreement established the World Trade Organization (WTO) as the outcome of the Uruguay Round negotiations. It formulates a single institutional framework, encompassing all agreements (multilateral and plurilateral agreements), and provides the functions of the WTO. It asks Members to make optimum use of the world's resources in accordance with the objective of sustainable development in a manner consistent with economic development. The agreement covers goods, services and intellectual property as well as dispute settlement. The agreement for the two largest areas—goods and services—shares a common three-part outline, even though the detail is sometimes quite different. They start with the General Agreement on Tariffs and Trade (GATT) for goods, the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS). Besides these, there are extra agreements and annexes, ministerial decisions and declarations dealing with the special requirements of specific sectors or issues.

The Ministerial Conference is the highest decision-making authority of the WTO. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements. The day-to-day working of the WTO is handled by three bodies: the General Council, the Dispute Settlement Body and the Trade Policy Review Body. All three consist of all WTO members, and these bodies report to the Ministerial Conference. The Goods Council, Services Council and the TRIPS Council report to the General Council. All Members can participate in all Councils, except Appellate Body, Dispute Settlement Panels, Textile Monitoring Body and plurilateral committees.

Dispute settlement is the central pillar of the multilateral trading system and unique to WTO's structure. The system is based on clearly defined rules, with timetables for completing the case. Settling disputes is the responsibility of the Dispute Settlement Body, which consists of all WTO Members. The Dispute Settlement Body has the sole authority to set up a panel of experts to consider the case, and to accept or reject the panel's findings or results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

The Ministerial Conferences, held once in two years, play a crucial role in trade negotiations, and provide the agenda for negotiations. The Doha Declaration, adopted at the Doha Ministerial Conference in 2001, calls for clarifications and improving WTO disciplines on fisheries subsidies. The Doha Ministerial Conference also initiated negotiations on the relationship between WTO rules and specific trade obligations under multilateral environmental agreements. The Draft Cancun Declaration, adopted at the Cancun Ministerial Conference in 2003, reaffirmed the commitments from Members towards negotiations.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

SHORT TITLE

1973 Washington Convention

ACRONYM

CITES

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Convention

OBJECTIVES

To ensure that international trade in specimens of wild animals and plants does not threaten their survival

DATE OF ADOPTION

3 March 1973

PLACE OF ADOPTION

Washington, D.C., USA

OPENED FOR SIGNATURE

3 March 1973

DATE OF ENTRY INTO FORCE

1 July 1975

RATIFICATIONS

167 (as on 24 March 2005)

CONTENTS

Preamble and 25 articles; 3 appendices

ADDITIONAL INSTRUMENTS

There are two Amendments to the main Convention: Bonn Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Art.XI), was adopted on 22 June 1979, amended Article XI, paragraph 3 a) on financial provisions and entered into force on 13 April 1987 and the Gaborone

Amendments (Art XXI) adopted on 30 April 1983 (not entered into force) amended Article XXI to permit accession by regional economic integration organizations.

INITIATING BODY

IUCN-The World Conservation Union

WORKING OF THE INSTRUMENT

Decision-making body

Conference of the parties

Subsidiary bodies

Standing Committee, Animals Committee, Plants Committee and Nomenclature Committee

Periodicity of meetings

The Conference of Parties meets once every two or three years. (The COP has met 13 times till December 2004.)

Participation in meetings

Voting rights: According to Article XI of the Convention, States which are Party to the Convention have voting rights.

Observers: United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

- (a) international agencies or bodies, either governmental or non-governmental, and national

governmental agencies and bodies; and

- (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

For participation in the meeting of other subsidiary bodies, please check www.cites.org.

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GUIDELINES

- Guidelines for transport and preparation for shipment of live wild animals and plants
- Guidelines for a procedure to register and monitor operations that breed Appendix-I animal species for commercial purposes
- Guidelines for evaluating marine turtle ranching proposals submitted pursuant to Resolution Conf. 11.16
- Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species

SELECTED ARTICLES

Article II

Fundamental Principles

1. Appendix I shall include all species threatened with extinction, which are

or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:
 - (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
 - (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

KEYWORDS

Trade, endangered species, permits, legislation, species, conservation, regulation, jurisdiction, dispute resolution, convention, reservation, imports, exports, CITES, aquatic species, seahorse, shark

RELEVANCE TO FISHERIES/ FISHWORKERS

The Convention explicitly envisages application to marine species, and, as noted by recent FAO Technical Papers, commercial fisheries can pose risks of long-term detrimental impacts to, or extinction of, certain marine species.

Some of the commercially important aquatic species listed in Appendix I are two species of *Acipenser* (sturgeon) and coelocanth, in Appendix II are whale shark and basking shark, other species of *Acipenseriformes*, *Hippocampus* species (seahorse) and in Appendix III are great white shark (Australia) and sea cucumber (*Isostichopus fuscus* (Ecuador)).

The Convention regulates international trade in about 30,000 species. Despite the Convention's name, only a small percentage of these are currently endangered, the majority being species for which trade measures have been introduced to avoid extinction threats. CITES Parties agree to implement international trade controls on species listed in one of the three Appendices, according to the level of threat they face. Many marine species are currently listed.

In practice, CITES is widely used to promote sustainable use of wild species, including fish. Some listed species are traded in high volumes: for instance, the international trade in skins of crocodilians listed on Appendix II is worth around US\$200 mn a year. Heavily traded Appendix I fishery products include sturgeon caviar, queen conch and hard coral.

Potential beneficial synergy exists between fisheries management and CITES listing under certain circumstances. Listing of fish species on

Appendix II can contribute to sustainable fisheries management by:

1. providing support to existing national, bilateral and multilateral fisheries management measures;
2. providing a tool to combat IUU fishing, where this targets fish that primarily enter international trade; and
3. providing a standardized global monitoring system for application of trade-related measures to marine fish.

At the COP 9, a resolution (Conf 9.24) was adopted on "Criteria for amendment of Appendices I and II", which listed the criteria for split-listing of species in Appendices. It stated that the "Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates. When split-listing does occur, this should generally be on the basis of national or continental populations, rather than subspecies. Split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted." This is of particular importance to fisheries as Article 1 of CITES defines "species" as "any species, subspecies, or geographically separate population thereof". The listing of fish stocks (which are either highly migratory in nature or those that straddle the coastal State's waters and high seas) in different Appendices would be based on this criteria.

At the 12th COP a resolution (Conf 12.6) was passed on "Conservation and management of Sharks". It raised concerns over the lack of implementation of the IPOA-Sharks by States and asked the Animal Committee to review the status of implementation of the IPOA-Sharks by major fishing and trading

nations. Resolution (Conf 12.7) on “Conservation of and trade in sturgeons and paddlefish”, asked Range States to curtail illegal fishing of, and trade in, sturgeon and paddlefish, and adopted guidelines for the universal labelling system for the trade in, and identification of, caviar.

Decision 12.53 on ‘Seahorses and other members of the family Syngnathidae’ encouraged Parties to allow sustainable trade in specimens of *Hippocampus* species, and directed the Animals Committee to identify a minimum size limit for specimens of all *Hippocampus* species.

RELEVANCE TO SMALL-SCALE FISHERIES/FISHWORKERS

Appendix II has a few species of shark and seahorse listed. Banning trade in these species has implications for the livelihoods of small-scale fishers in developing countries dependent on these species. The listing of some of the commercially important aquatic species could have impacts on the employment, income and food security of fishworkers in developing countries. Banning trade in turtle, and special protection for the conservation of turtles, for example, has impacts on the livelihoods of fishworkers, as seen in a few countries.

Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations

SHORT TITLE

Final Act

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

By signing the present Final Act, the representatives agree:

- (a) to submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and
- (b) to adopt the Ministerial Declarations and Decisions.

DATE OF SIGNATURE

15 April 1994

PLACE OF SIGNATURE

Marrakesh, Morocco

CONTENTS

6 paragraphs

ADDITIONAL INFORMATION

The “Final Act” signed in Marrakesh in 1994 is like a cover note. Everything else is attached to this. Foremost is the ‘Agreement Establishing the WTO’ (or the WTO Agreement), which serves as an umbrella agreement. Annexed are the agreements on goods, services and intellectual property, dispute settlement, trade policy review mechanism and the plurilateral agreements, as well as a number of Ministerial Decisions and

Declarations. The schedules of commitments also form part of the WTO agreement.

The agreement establishing the WTO calls for a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round. Its structure is headed by a Ministerial Conference, meeting at least once every two years. A General Council oversees the operation of the agreement and ministerial decisions on a regular basis. This General Council acts as a Dispute Settlement Body and a Trade Policy Review Mechanism, which concern themselves with a full range of trade issues covered by the WTO, and has also established subsidiary bodies such as a Goods Council, a Services Council and a TRIPs Council. The WTO framework ensures a “single undertaking approach” to the results of the Uruguay Round—thus, membership in the WTO entails accepting all the results of the Round, without exception.

The Final Act has no date of entry into force as such. It is an agreement signed on 15 April 2004 and refers to the entry into force of the WTO Agreement.

SELECTED PARAGRAPHS

3. The representatives agree on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as “participants”) with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994,

Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declaration, to decide on the international implementation of the results, including the timing of their entry into force.

4. The representatives agree that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants

pursuant to Article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in Annex 4 of the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.

KEYWORDS

WTO, trade, GATT, ministerial conference, negotiations, Marrakesh

Marrakesh Agreement establishing the World Trade Organization

SHORT TITLE

WTO Agreement

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

International Treaty

OBJECTIVES

The agreement establishing the World Trade Organization (WTO) calls for a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round.

RATIFICATIONS

148 (as of December 2004)

CONTENTS

Preamble plus 16 Articles

ADDITIONAL INFORMATION

The WTO Agreements cover goods, services and intellectual property as well as dispute settlement. The agreements for the two largest areas—goods and services—share a common three-part outline, even though the detail is sometimes quite different.

They start with broad principles: the General Agreement on Tariffs and Trade (GATT) (for goods), and the General Agreement on Trade in Services (GATS). (The third area, Trade-Related Aspects of Intellectual Property Rights (TRIPS), also falls into this category although at present it has no additional parts.) Then come extra agreements and annexes as

well as ministerial decisions and declarations dealing with the special requirements of specific sectors or issues.

Finally, there are the detailed and lengthy schedules (or lists) of commitments made by individual countries allowing specific foreign products or service-providers access to their markets. Underpinning these is dispute settlement, which is based on the agreements and commitments, and trade policy reviews, an exercise in transparency.

INITIATING BODY (INSTRUMENT)

WTO Agreement

WORKING OF THE INSTRUMENT

Decision-making body

Ministerial Conference

The day-to-day work of the Ministerial Conference is looked after by:

General Council, Dispute Settlement Body and Trade Policy Review Body

Subsidiary bodies

- Council for Trade in Goods
- Council for Trade in Services
- Council for Trade-Related Aspects of Intellectual Property Rights
- Committee on Trade and Development
- Committee on Trade and Environment
- Committee on Regional Trade Agreements
- Committee on Balance-of-Payments Restrictions and
- Committee on Budget, Finance and Administration

Periodicity of meetings

The Ministerial Conference meets, in principle, once every two years.

Participation in meetings

Decision-making body:

According to Article IX of the agreement Members, the ministerial conference and general council,

Voting rights: Each Member of the WTO shall have one vote. Where the European Communities exercise its right to vote, it shall have a number of votes equal to the number of their member States, which are Members of the WTO. By consensus except as otherwise provided.

Observers: States not party to the agreement and international organizations

WTO and NGOs

According to Article 5 of the Marrakesh Agreement establishing the WTO, "the general council may take appropriate arrangements for consultation and co-operation with non-governmental organizations concerned with matters related to those of the WTO". Further to this, on 18 July 1996, the council clarified the framework for relationship with NGOs by adopting a set of guidelines, which recognize the role NGOs can play in increasing the awareness of the public in respect of WTO activities. These are important for both the Members and the WTO secretariat in maintaining an informal and positive dialogue with the various components of civil society. Since then, NGOs have focused on attendance at the Ministerial Conferences, and participation in issue-specific symposia. NGOs that can demonstrate that their activities are concerned with the works of the WTO, are now allowed to participate in the plenary session of the Ministerial Conference. During the General Council on 15 July 1998, new initiatives were introduced. Starting from autumn 1998, the WTO secretariat has been providing briefings for NGOs and has established an NGO section on the WTO website, which will provide specific information for civil society. Besides this, a monthly compilation of NGO position papers received is being circulated by the secretariat to Members for information.

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SELECTED ARTICLES

Preamble

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development...

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also

Trade

provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.
4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.
5. With a view to achieving greater coherence in global economic policymaking, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for

Reconstruction and Development and its affiliated agencies.

KEYWORDS

Agreements, GATT 1947, GATT, WTO, dispute resolution, DSB, ministerial conference, GATS, trade, trade barriers, TRIPS

RELEVANCE TO FISHERIES/ FISHWORKERS

This Agreement establishes a single institutional framework, encompassing all agreements (multilateral and plurilateral agreements). It asks Members to make optimum use of the world's resources in accordance with the objective of sustainable development in a manner consistent with the economic development. It provides the functions of the WTO.

Given that a large proportion of the world's total fish production is traded, negotiations under the WTO, which basically sets the rules for trade, are of great importance to fishworkers.

General Agreement on Tariffs and Trade, 1994

ACRONYM

GATT 1994

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

The General Agreement on Tariffs and Trade 1994 ("GATT 1994") consists of:

- (a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;
- (b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:
 - (i) protocols and certifications relating to tariff concessions;
 - (ii) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with

legislation existing on the date of the Protocol);

- (iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement;
- (iv) other decisions of the CONTRACTING PARTIES to GATT 1947;
- (c) the Understandings set forth below:
 - (i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;
 - (ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;
 - (iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;
 - (iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;
 - (v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;
 - (vi) Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994; and
- (d) the Marrakesh Protocol to GATT 1994.

CONTENTS

3 Articles, should be read along with GATT 1947 (38 Articles)

Trade

WORKING OF THE INSTRUMENT

Monitoring and implementation

Council for Trade in Goods (Goods Council) and the various Committees reporting to the Goods Council.

Participation in meetings

Only Members of the WTO are allowed to participate in the working of the council and in the committees.

SELECTED PARAGRAPHS IN GATT 1947

Part I

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

Article II

Schedules of Concessions

1.

(a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the

appropriate Part of the appropriate Schedule annexed to this Agreement.

- (b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.
- (c) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those

imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:
 - (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
 - (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;
 - (c) fees or other charges commensurate with the cost of services rendered.
3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.
4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed
 5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.
 6. (a) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges

Trade

maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; provided that the CONTRACTING PARTIES (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(b) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

Part II

Article III

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal

sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded

to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.
6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; Provided that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.
7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.
8.
 - (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.
 - (b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.
9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.
10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Trade

Article XI

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.
2. The provisions of paragraph 1 of this Article shall not extend to the following:
 - (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
 - (b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
 - (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:
 - (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

- (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or
- (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Article XIII

Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.
2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:
 - (a) Wherever practicable, quotas representing the total amount of

- permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;
- (b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
- (c) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with subparagraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
- (d) In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.
- 3.
- (a) In cases in which import licences are issued in connection with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; Provided that there shall be no obligation to supply information as to the names of importing or supplying enterprises.
- (b) In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry; Provided that they may be counted so far as practicable, against the quantity permitted to be imported

in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods; and Provided further that if any contracting party customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this subparagraph.

(c) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of Article XI, the selection of a representative period for any product and the appraisal of any special factors* affecting the trade in the product shall be made initially by the contracting party applying the restriction; Provided that such contracting party shall, upon the request of any other contracting party having a substantial interest in supplying that product or upon the request of the CONTRACTING PARTIES, consult promptly with the other contracting party or the CONTRACTING PARTIES regarding

the need for an adjustment of the proportion determined or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party, and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

Article XVI: Subsidies

Section A - Subsidies in General

1. If any contracting party 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, it shall notify the contracting parties in writing 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 any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the contracting parties, the possibility of limiting the subsidization.

Section B - Additional Provisions on Export Subsidies

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.
3. Accordingly, 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.
4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.
5. The contracting parties shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;

Trade

- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the contracting parties and not disapproved by them or which is itself so submitted and not so disapproved;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The contracting parties shall review the need for this sub-paragraph not later than 30 June 1960.

KEYWORDS

Trade, GATT, developing countries, developed countries, WTO, agreement, exports, imports, tariffs

RELEVANCE TO FISHERIES/ FISHWORKERS

According to Article I on Most-Favoured Nations (MFN), WTO Members are bound to grant to the products of other Members treatment no less favourable than that accorded to the products of any other country. Article III stipulates that once goods have entered a market, they must be treated no less favourably than equivalent domestically produced goods.

Article XI addresses the elimination of quantitative restrictions introduced or maintained by countries on the importation or exportation of products.

Article XX on General Exceptions (paragraphs (b) and (g)) provides options for WTO Members to adopt measures which are required for the protection of human, animal or plant life or health; and also measures relating to the conservation of exhaustible natural resources if measures are made effective in conjunction with restrictions on domestic production or consumption. Some of the cases that have been brought before the Panels and the Appellate Body of the Dispute Settlement, in the application of Article XX, include the shrimp-turtle dispute (conservation of sea turtles), under WTO cases, and under GATT, the tuna-dolphin dispute (conservation of dolphin stocks), and the conservation of salmon and herring (United States-Canada).

Understanding on the interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994

SHORT TITLE

Regional trade agreements

ACRONYM

Article XXIV

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

Aims for a common understanding of the obligations of Members, under Paragraph 12 of Article XXIV

CONTENTS

Preamble and 15 paragraphs

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Regional Trade Agreements (CRTA)

ADDITIONAL INFORMATION

There are 250 regional trade agreements (RTAs), which have been notified to the WTO; of these, 170 are in force. WTO Members, meeting at the Fourth Ministerial Conference in Doha, while recognizing that RTAs can play an important role in promoting trade liberalization and in fostering economic development, also stressed the need for a harmonious relationship between the multilateral and regional processes. On this basis, Ministers agreed to launch negotiations aimed at clarifying and improving the disciplines and procedures

under the existing WTO provisions applying to RTAs, while taking due account of the developmental aspects of these agreements.

The Committee on Regional Trade Agreements (CRTA) has two principal duties: to examine individual regional agreements; and to consider the systemic implications of the agreements for the multilateral trading system and the relationship between them.

SELECTED PARAGRAPHS

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV:5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties

Trade

collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim

agreement leading to the formation of a customs union.

KEYWORDS

GATT 1994, customs union, free trade areas, tariffs, RTA, trade agreements

RELEVANCE TO FISHERIES/ FISHWORKERS

Article XXIV states that, if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed substantially on all sectors of trade in the group. It also states that non-members should not find trade with the group any more restrictive than before the group was set up. Paragraphs 4 to 10 provide for the formation and operation of customs unions and free-trade areas covering trade in goods.

Similarly, Article 5 of GATS provides for economic integration agreements in services. Other provisions in the WTO Agreements allow developing countries to enter into regional or global agreements that include the reduction or elimination of tariffs and non-tariff barriers on trade among themselves.

Some of the RTAs that have fish products as one of the components of trade, are ECOWAS, WAEMU, Mercosur, COMESA, AFTA and SADC.

Agreement on the Application of Sanitary and Phytosanitary Measures

SHORT TITLE

Sanitary and Phytosanitary Measures

scientific evidence, except as provided for in paragraph 7 of Article 5.

ACRONYM

SPS

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

Aims to provide for basic rules for food safety, and animal and plant health standards

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

CONTENTS

14 Articles and three Annexes

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Sanitary and Phytosanitary Measures

SELECTED ARTICLES

Article 2

Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.
2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient

Article 3

Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.
2. Sanitary or phytosanitary measures which conform to international standards, guidelines or

Trade

recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

Article 4

Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.
2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

ANNEX A

DEFINITIONS

1. Sanitary or phytosanitary measure - Any measure applied:
 - (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
 - (b) to protect human or animal life or health within the territory of the Member from risks arising from

additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

- (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

KEYWORDS

GATT 1994, SPS, guidelines, quality control, human health, standards

RELEVANCE TO FISHERIES/ FISHWORKERS

According to this Agreement, Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of the Agreement.

An annex to the Sanitary and Phytosanitary Measures Agreement names the FAO/WHO Codex Alimentarius Commission (CAC) for food, and the International Animal Health Organization (Office International des Epizootics—OIE) for animal health. In the definitions listed in the Annex, “animal” includes fish.

The basic important provisions under the SPS Agreement that are relevant for trade in fish and fish products are: the harmonization principle, equivalence principle and scientific evidence.

One example of a dispute involving fish products is the case brought by the United States against Australia for measures applied on imported salmonids.

Agreement on Technical Barriers to Trade

SHORT TITLE

Technical Barriers to Trade

ACRONYM

TBT

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

To encourage the development of international standards and conformity assessment systems

To ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade and to protect human safety or health, protect animal and plant life or health, protect environment and prevent deceptive practices

CONTENTS

15 articles and two annexes

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Technical Barriers to Trade

ADDITIONAL INFORMATION

The Agreement seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to adopt the standards they consider appropriate, for example, for human,

animal or plant life or health, for the protection of the environment, or to meet other consumer interests. Members are not prevented from taking measures necessary to ensure their standards are met. The Agreement, therefore, encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.

Innovative features of the revised agreement are that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private-sector bodies as well as the public sector, is included as an annex to the agreement.

The Committee reviews annually the implementation and operation of the Agreement, taking into account its objectives, and at the end of each three-year period, the operation and implementation of the Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of the Agreement, where necessary.

SELECTED ARTICLES

Article 1

General Provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the

meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

- 1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.
- 1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.
- 1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.
- 1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.
- 1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

Article 2

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

- 2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national

origin and to like products originating in any other country.

- 2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

KEYWORDS

GATT 1994, TBT, standards, technical regulations, developing countries

RELEVANCE TO FISHERIES

The Technical Barriers to Trade Agreement covers all technical regulations, voluntary standards and the procedures to ensure that these are met, except when these are sanitary or phytosanitary measures as defined by the SPS Agreement. The principles of the TBT agreement are harmonization, avoidance of unnecessary obstacles to trade, non-discrimination and national treatment, equivalence of technical regulations, mutual recognition of conformity assessment procedures and transparency.

The Agreement sets out a code of good practice for the preparation, adoption and application of standards by central

Trade

government bodies. It also includes provisions describing how local government and non-governmental bodies should apply their own regulations—normally they should use the same principles that apply to central governments.

Technical regulations and standards applied to fish products, such as labelling disputes or testing procedures, at times lead to distortions or obstacles to trade.

The TBT Agreement sets the rules for procedures and requirements for these standards. One of the recent disputes on labelling was the disagreement between Peru and the European Community regarding the exports of a species of sardine, which was different from that found in European waters, under the sardine label. Using the Codex Alimentarius as an internationally agreed reference standard, this case was resolved.

Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994

SHORT TITLE

Anti-dumping

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

To make provisions that govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations

To provide detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures

CONTENTS

18 Articles and two Annexes

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Anti-Dumping Practices

Periodicity of meetings

Committee on Anti-Dumping Practices meets not fewer than twice a year.

Participation in meetings

Members of WTO can participate in the meetings of Committee on Anti-Dumping Practices.

ADDITIONAL INFORMATION

Article VI of GATT provides for the right of Members to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. More detailed rules governing the application of such measures were provided in an Anti-dumping Agreement concluded at the end of the Tokyo Round. Negotiations in the Uruguay Round resulted in a revision of this Agreement, which addresses many areas in which the Tokyo Round Agreement lacked precision and detail.

SELECTED ARTICLES

Article 2

Determination of Dumping

- 2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.
- 2.3 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the

Trade

domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

- 2.6 Throughout this Agreement the term “like product” (“produit similaire”) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 3

Determination of Injury

- 3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

Article 5

Initiation and Subsequent Investigation

- 5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient

evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

Article 9

Imposition and Collection of Anti-Dumping Duties

- 9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

Article 15**Developing Country Members**

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

KEYWORDS

GATT 1994, anti-dumping, dumping, like product, country of origin, domestic industry, injury, *de minimis*, developing country

**RELEVANCE TO FISHERIES/
FISHWORKERS**

The Agreement provides three methods to calculate a product's normal value. It provides for greater clarity and more detailed rules in relation to the method of

determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, it clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

Article 1 of the Agreement defines the basic principle for imposing the anti-dumping measures. Article 2 provides the rules for the determination of dumping, while Article 3 contains rules regarding the determination of material injury caused by dumped imports. Article 5 defines margin of dumping (*de minimis*).

One of the few cases in fisheries to which this agreement has been applied is the Norwegian Atlantic salmon imports into the United States in 1994.

Agreement on Import Licensing Procedures

SHORT TITLE

Import Licensing

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

To ensure that import licensing, particularly non-automatic import licensing, be implemented in a transparent and predictable manner

CONTENTS

Eight articles

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Import Licensing

SELECTED ARTICLES

Article 1

General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.
2. Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as

interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

Article 2

Automatic Import Licensing

1. Automatic import licensing is defined as import licensing where approval of the application is granted in all cases, and which is in accordance with the requirements of paragraph 2(a).
2. The following provisions, in addition to those in paragraphs 1 through 11 of Article 1 and paragraph 1 of this Article, shall apply to automatic import licensing procedures:
 - (a) automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade-restricting effects unless, *inter alia*:
 - (i) any person, firm or institution which fulfils the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licences;
 - (ii) applications for licences may be submitted on any working day

prior to the customs clearance of the goods;
 (iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days;

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licences.

Article 3

Non-Automatic Import Licensing

1. The following provisions, in addition to those in paragraphs 1 through 11 of Article 1, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2.
2. Non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

KEYWORDS

GATT 1994, imports, licence, licensing

RELEVANCE TO FISHERIES/ FISHWORKERS

The Agreement strengthens the disciplines on the users of import licensing systems and increases transparency and predictability. It requires parties to publish sufficient information for traders to know the basis on which licences are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications. The Agreement sets criteria for automatic licensing so that the procedures used do not restrict trade.

Import licences and import quotas for fish and fishery products are still widely used by a majority of developing countries. Japan and the European Commission use them for some products.

Agreement on Subsidies and Countervailing Measures

SHORT TITLE

Subsidies and Countervailing Measures

ACRONYM

SCM

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

To define the different kinds of subsidies and the use of countervailing measures on subsidized imported goods

CONTENTS

32 articles and seven annexes

WORKING OF THE INSTRUMENT

Monitoring and implementation

Committee on Subsidies and Countervailing Measures

Subsidiary bodies

Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations.

Periodicity of meetings

The Committee on Subsidies and Countervailing Measures meets at least twice a year.

ADDITIONAL INFORMATION

The Agreement on Subsidies and Countervailing Measures builds on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, which was negotiated in the Tokyo Round.

SELECTED ARTICLES

Article 1

Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits) ;

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and

(b) a benefit is thereby conferred.

1.2 A subsidy as defined in paragraph 1

shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

Article 3

Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) subsidies contingent, in law or in fact 4 , whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I 5 ;
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.

Article 5

Adverse Effects

No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.:

- (a) injury to the domestic industry of another Member ;
- (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 ;
- (c) serious prejudice to the interests of another Member.

This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

Article 6

Serious Prejudice

6.3 Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

- (a) the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member;
- (b) the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;
- (c) the effect of the subsidy 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) the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity as compared to the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

Article 16

Definition of Domestic Industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major

Trade

proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term “domestic industry” may be interpreted as referring to the rest of the producers.

Article 19

Imposition and Collection of Countervailing Duties

19.1 If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn.

Article 27

Special and Differential Treatment of Developing Country Members

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

- (a) developing country Members referred to in Annex VII.
- (b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing

country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement.

KEYWORDS

GATT 1994, subsidies, countervailing measures, SCM

RELEVANCE TO FISHERIES/ FISHWORKERS

The Agreement contains a definition of subsidy and introduces the concept of a “specific” subsidy—for the most part, a subsidy available only to an enterprise or industry or group of enterprises or industries within the jurisdiction of the authority granting the subsidy. Only specific subsidies would be subject to the disciplines set out in the agreement. The Agreement establishes three categories of subsidies: prohibited, actionable and non-actionable. The rules with respect to non-actionable subsidies were terminated on 31 December 1999. One part of the Agreement concerns the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and arguments.

For the first time in multilateral trade negotiations, the theme of “fisheries subsidies” appears in the Doha Declaration, which asks to “clarify and improve WTO disciplines on fisheries subsidies”. Several countries have submitted their proposals on fisheries subsidies to the Negotiating Group on Rules; the results of the negotiations are to be adopted at a future Ministerial Conference.

General Agreement on Trade in Services

CRONYM

GATS

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Agreement

OBJECTIVES

To establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries

To facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, through the strengthening of their domestic services capacity and its efficiency and competitiveness

DATE OF ADOPTION

15 April 1994

PLACE OF ADOPTION

Marrakesh, Morocco

CONTENTS

28 articles in six parts. Article 29 "Annexes" has 8 Annexes.

ADDITIONAL INSTRUMENTS

- Annex on Article II Exemptions
- Annex on Movement of Natural Persons Supplying Services under the Agreement

- Annex on Air Transport Services
- Annex on Financial Services
- Second Annex on Financial Services
- Annex on Negotiations on Maritime Transport Services
- Annex on Telecommunications
- Annex on Negotiations on Basic Telecommunications

WORKING OF THE INSTRUMENT

Monitoring and implementation

Council for Trade in Services

Committee on Specific Commitments

Working Party on Domestic Regulations

Working Party on GATS Rules

ADDITIONAL INFORMATION

GATS has three components to it—first, a framework agreement containing basic obligations, which apply to all member countries; second, the national schedules of commitments, containing specific further national commitments which will be the subject of a continuing process of liberalization; and third, a number of annexes addressing the special situations of individual services sectors.

SELECTED ARTICLES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

Trade

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.
 3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.
- inconsistent with the provisions of this Agreement including those relating to:
- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

Article V bis

Labour Markets Integration Agreements
This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration of the labour markets between or among the parties to such an agreement, provided that such an agreement:

- (a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;
- (b) is notified to the Council for Trade in Services.

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not

Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.
2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

Article XVI**Market Access**

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.

Annex on Movement of Natural Persons Supplying Services under the Agreement

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of,

and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

KEYWORDS

GATT 1994, GATS, services

**RELEVANCE TO FISHERIES/
FISHWORKERS**

Part I of the Agreement defines its scope, while Part II sets out general obligations and disciplines (most favoured nation), and Part III contains provisions on market access and national treatment, which are not general obligations but are commitments made in national schedules. Part IV establishes the basis for progressive liberalization in the services area through successive rounds of negotiations and the development of national schedules. Part V provides for consultation, dispute settlement and enforcement, and formation of the Council for Trade in Services.

The first of the Annexes to the Agreement concerns the movement of labour. It permits parties to negotiate specific commitments applying to the movement of people providing services under the Agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the Agreement would not apply to measures affecting employment, citizenship or residence on a permanent basis. This section could be of interest to the fishing sector since several industrialized countries have room in their depopulated fisheries to accommodate fishworkers from developing countries.

Decision on Trade and Environment

ACRONYM

DTE

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Decision

OBJECTIVES

To co-ordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies, which may result in significant trade effects for its members

DATE OF ADOPTION

15 April 1994

PLACE OF ADOPTION

Marrakesh, Morocco

CONTENTS

14 paragraphs (including preamble)

WORKING OF THE INSTRUMENT

Decision-making body

General Council

Monitoring and implementation

Committee on Trade and Environment (CTE)

Participation in meetings

Committee on Trade and Environment (CTE) is open to all members of WTO.

Observers: Intergovernmental Organizations

ADDITIONAL INFORMATION

The DTE was adopted by the trade negotiations committee. The other relevant WTO agreements that relate to environment are: Preamble to WTO Agreement. GATT Article XX, TBT, SPS, Agriculture, Subsidies, and TRIPS, GATS Article 14 and the Decision on Trade in Services and the Environment.

The CTE took over from the GATT group on Environmental Measures and International Trade (GATT EMIT) group. Its mandate is:

- to identify the relationship between trade measures and environmental measures in order to promote sustainable development; and
- to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.

SELECTED PARAGRAPHS

7.

- (a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;
- (b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular
 - the need for rules to enhance positive interaction between trade and environmental

measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and

- the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and
- surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;”

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

8. -that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:

-the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;

-the relationship between environmental policies relevant to trade and environmental measures with significant trade

effects and the provisions of the multilateral trading system;

-the relationship between the provisions of the multilateral trading system and:

- (a) charges and taxes for environmental purposes;
- (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;

- the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;

- the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;

-the issue of exports of domestically prohibited goods,

KEYWORDS

GATT 1994, committee, trade, environment, CTE

RELEVANCE TO FISHERIES/ FISHWORKERS

This decision of the General Council of the WTO established the Committee on Trade and Environment (CTE) to co-ordinate the policies in the field of trade and environment, without exceeding the competence of the multilateral trading system (limited to trade policies) and those trade-related aspects of environmental policies, which may result in significant trade effects for its Members.

Trade

It directed the establishment of the CTE to ensure that there is no policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system, on the one hand, and acting for the protection of the environment, and the promotion of sustainable development, on the other.

At the Fourth Ministerial Conference in Doha, Ministers instructed the CTE, in pursuing work on all items of its work programme, to focus particularly on three issues: the effects of environmental measures on market access, the relevant

provisions of the TRIPS Agreement, and labelling requirements for environmental purposes. The Doha Round also initiated the negotiations on the relationship between WTO rules and specific trade obligations under multilateral environmental agreements.

Some of the disputes relating to trade and environment are the United States shrimp-turtle dispute; United States–Canada tuna dispute; Canada salmon and herring dispute; United States–Mexico tuna dispute, and the United States–European Community tuna dispute, under GATT.

Preferential tariff treatment for Least-developed countries: Decision on waiver

LEGAL STATUS

Binding

TYPE OF INSTRUMENT

Decision

OBJECTIVES

To provide an additional means for developing country Members to offer preferential tariff treatment to products of least developed countries

DATE OF ADOPTION

15 June 1999

CONTENTS

Preamble and six paragraphs

SELECTED PARAGRAPHS

1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.

3. Any preferential tariff treatment implemented pursuant to this Waiver shall be designed to facilitate and promote the trade of least-developed countries and not to raise barriers or create undue difficulties for the trade of any other Member. Such preferential tariff treatment shall not constitute an impediment to the reduction or elimination of tariffs on a most-favoured-nation basis.

KEYWORDS

GATT 1994, waiver, tariff, developing countries, market access, LDC

RELEVANCE TO FISHERIES/ FISHWORKERS

The decision allows developing country Members to provide preferential tariff treatment to products of least developed countries, designated by the United Nations. The European Union-Africa, Caribbean and Pacific (EU-ACP) partnership agreement requires preferential tariff treatment by the European Community for export of products (including fish products) originating in the ACP States.

Doha Ministerial Declaration

LEGAL STATUS

Non-binding

TYPE OF INSTRUMENT

Conference Declaration

OBJECTIVES

To undertake a broad and balanced work programme. The work programme incorporates both an expanded negotiating agenda and other important decisions and activities necessary to address the challenges facing the multilateral trading system

CONTENTS

52 paragraphs

NAME OF DECLARATION

Doha Ministerial Declaration

PLACE OF DECLARATION

Fourth Session of the WTO Ministerial Conference, Doha, Qatar

DATE OF DECLARATION

14 November 2001

WORKING OF THE INSTRUMENT

Monitoring and implementation

Trade Negotiations Committee and its various negotiating bodies.

Periodicity

Ministerial meeting is held once every two years.

SELECTED PARAGRAPHS

Market Access for Non-Agricultural Products

16. We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or

elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade-distorting practices, that they seek to clarify and improve in the subsequent

phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

Trade and Environment

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also

Trade

encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

KEYWORDS

Multilateral trading system, trade, developing countries, environment, labour standards, tariffs, investment, fishery subsidies, dispute resolution, environmental labelling, development, WTO, subsidies, TRIPS, MEA, CTE

RELEVANCE TO FISHERIES/ FISHWORKERS

For the first time in multilateral trade negotiations, the theme of “fisheries subsidies” appears in the Doha Declaration, which asks to “clarify and improve WTO disciplines on fisheries subsidies”.

Also, under Market Access for Non-agricultural Products—the category under which fish trade falls—the Doha Declaration calls for agreement on modalities to reduce or eliminate tariffs,

particularly on products of export interest to developing countries. Such negotiations can potentially contribute to employment benefits, especially to women, in several developing countries that export processed fish products to, for example, the US and the EC.

A third area of relevance to fisheries is the negotiations on the relationship between WTO rules and specific trade obligations under multilateral environmental agreements (MEAs).

Other areas relevant to fisheries include the reference to the WTO Committee on Trade and Environment to continue its work on the effects of environmental measures on market access as well as labelling requirements for environmental purposes.

The reference to the ongoing negotiations on trade in services, especially on “movement of natural persons”, could also be of some interest to the fisheries sector, particularly to fishermen from developing countries seeking employment in labour-scarce fisheries of the industrialized countries.

Draft Cancun Ministerial Declaration

LEGAL STATUS

Non-binding

TYPE OF INSTRUMENT

Conference Declaration

OBJECTIVES

To take stock of progress in negotiations and other work under the Doha Development Agenda

CONTENTS

Draft Ministerial Declaration

1. Annex A: Framework for Establishing Modalities in Agriculture
2. Annex B: Framework for Establishing Modalities in Market Access for Non-Agricultural Products
3. Annex C: Special and Differential Treatment
4. Annex D: Transparency in Government Procurement
5. Annex E: Trade Facilitation

PLACE OF DRAFT DECLARATION

Cancún, Mexico

DATE OF DRAFT DECLARATION

13 September 2003 (2nd revision)

ADDITIONAL INFORMATION

The General Council adopted a decision on the Doha Agenda Work Programme (called the “July Package”) on 1 August 2004, which contains frameworks and other agreements, to help focus the negotiations. The Annex B of the Decision on the “Framework for Establishing Modalities in Market Access for Non-Agricultural Products” contains the initial elements for the negotiations on market access. The negotiations aim to reduce or, as appropriate, eliminate tariffs,

including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. The “July Package” recognized the formula approach as the key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs and tariff escalation. One of the products, listed under these negotiations includes fish and fish products.

SELECTED PARAGRAPHS

NAMA negotiations

5. We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration. We take note of the progress made by the Negotiating Group on Market Access in this regard and agree to intensify work to translate the Doha objectives into modalities for these negotiations. To this end, we adopt the framework for modalities for negotiations on non-agricultural products set out in Annex B to this document. We direct the Negotiating Group to conclude its work on establishing modalities by [...] and to take the necessary further steps to ensure the conclusion of negotiations by the agreed date.

Rules negotiations

7. We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions. We note the progress that has been made in

Trade

the negotiations on improving transparency in Regional Trade Agreements and encourage the Group to reach a provisional decision soon on its work on transparency and to accelerate its work on the clarification and improvement of RTA disciplines under existing WTO provisions, taking into account the developmental aspects of RTAs.

Environment negotiations

9. We take note of the progress made by the Special Session of the Committee on Trade and Environment in developing a common understanding of the concepts contained in its mandate in paragraph 31 of the Doha Ministerial Declaration. We reaffirm our commitment to these negotiations.
10. We agree that the Committee on Trade and Environment Special Session continue to invite to its meetings, in accordance with its current practice, the secretariats of the multilateral environmental agreements (MEAs) invited thus far and of the United Nations Environment Programme (UNEP) and the United Nations Conference

on Trade and Development (UNCTAD). This invitation shall be for the duration of the negotiations. It shall be without prejudice to any additional invitations that the Committee on Trade and Environment Special Session extends in future, and to paragraph 31 negotiations.

KEYWORDS

Fish products, tariff, MEA, market access, trade negotiations, fisheries subsidies, NAMA, RTA

RELEVANCE TO FISHERIES/ FISHWORKERS

The Declaration reaffirmed the commitments from Members towards negotiations, and Members called upon the Negotiating Group on Rules to find solutions on anti-dumping and countervailing measures, including fisheries subsidies. It also adopted the framework for modalities for negotiations on non-agricultural products (which includes fish and fish products). The declaration reaffirmed the commitments made by the Members at the Doha Ministerial Conference.

**International Legal Instruments Relevant
to Fisheries and Fishing Communities:
A Handbook**

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International Legal Instruments Relevant to Fisheries and Fishing Communities: A Handbook

International Legal Instruments Relevant to Fisheries and Fishing Communities: A Handbook provides detailed information for a wide range of legal instruments relevant to fisheries and fishworkers. It covers 114 legal instruments, categorized into the following seven themes:

- Human Rights, Food Security, Women and Development
- Environment and Sustainable Development
- Oceans and Fisheries Management
- Environmental Pollution
- Fishing Vessels and Safety at Sea
- Labour
- Trade

The handbook also includes the working of the instruments (decision-making bodies, monitoring and implementation agencies, periodicity of meetings, rules for participation in meetings of the decision-making bodies and implementation agencies for States and non-governmental organizations), regional instruments/agencies and follow-up. Apart from being a ready reckoner to the instruments, it highlights the important sections of relevance to fisheries/small-scale fisheries/fishworkers.

The companion CD-ROM provides the full texts of the instruments in a searchable database. The handbook will be useful for fishworker and non-governmental organizations, and also for researchers and others interested in fisheries issues. It is also available online at www.icsf.net



ICSF is an international NGO working on issues that concern fishworkers the world over. It is in status with the Economic and Social Council of the UN and is on ILO's Special List of Non-Governmental International Organizations. It also has Liaison Status with FAO. Registered in Geneva, ICSF has offices in Chennai, India and Brussels, Belgium. As a global network of community organizers, teachers, technicians, researchers and scientists, ICSF's activities encompass monitoring and research, exchange and training, campaigns and actions, as well as communications.

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