

WORLD TRADE ORGANIZATION

TN/RL/W/3
24 April 2002

(02-2352)

Negotiating Group on Rules

Original: English

THE DOHA MANDATE TO ADDRESS FISHERIES SUBSIDIES: ISSUES

Submission from Australia, Chile, Ecuador, Iceland,
New Zealand, Peru, Philippines and the United States

The following communication, dated 23 April 2002, has been received from the Permanent Missions of Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States.

PURPOSE

This paper is intended to provide some early direction to discussions on fisheries subsidies in the Rules Negotiating Group. It is without prejudice to the views of any of the sponsors with respect to interpretation of the Agreement on Subsidies and Countervailing Measures.

SUMMARY

- Fisheries are a major global industry. Fisheries products are heavily traded. A broad range of WTO members, including developing countries, have a direct interest in the sector.
- Subsidies to the fisheries sector are conservatively estimated at US\$14.0-\$20.5 billion, approximately 20-25 per cent of revenues. A distinctive feature of fisheries sector subsidies is the effect that over-capacity and over-fishing by subsidised producers can have in limiting other producers' access to the shared resource.
- The SCM agreement prohibits certain types of subsidy, and provides remedies in situations where a subsidy causes certain defined adverse effects to the interests of another member. However SCM rules primarily address market distortions (including price undercutting) arising from subsidisation. They do not adequately address other negative trade, environment and development impacts of fisheries subsidies, particularly the distinctive production distortions subsidies can cause in the fisheries sector.
- In addition, the heterogeneous nature of fisheries products, and the diffuse nature of support to the sector, make it harder to demonstrate the existence of market distortions of the kind envisaged by existing SCM disciplines. This limits the effectiveness of those disciplines in this sector.
- Improved WTO disciplines are required to address the exceptional and distinctive adverse effects arising from some fisheries sector subsidies.

INTRODUCTION

1. While many factors contribute to depletion of the world's fish stocks, harmful subsidies are one important factor within the WTO's competence to address. The Doha ministerial declaration calls for negotiations aimed at clarifying and improving WTO disciplines on fisheries subsidies. The mandate reflects members' concerns about the potentially harmful trade, developmental and environmental effects of subsidies to the fisheries sector, and the benefits, in particular for developing countries, that stronger WTO disciplines would achieve.

2. This paper summarises the key problems arising from fisheries sector subsidies, identifies gaps in the ability of existing SCM rules to address these problems, and examines issues related to the application of WTO disciplines to fisheries subsidies.

FISHERIES SUBSIDIES: THE KEY PROBLEMS

3. Previous submissions to the Committee on Trade and Environment have outlined in some detail the negative effects fisheries subsidies can have on trade, the environment, and development. Subsidies cause distortions to trade, in particular through their effects on prices and production levels. Further, these subsidies can contribute to the environmental problems caused by excessive fishing capacity, most importantly the depletion of fish stocks. The world's fisheries industry is significantly overcapitalised: the FAO¹ estimates capacity in the main high-value fisheries (species comprising 70 per cent of total catch value) to be 30 per cent above that required for sustainable exploitation. This stems in part from incentives unique to the fisheries sector, with its "race for fish" dynamic. But it is exacerbated by transfers from governments which lower the costs and risks of investment. Excess capacity, coupled with the difficulties inherent in managing and policing fisheries resources, in turn leads to effort and catches well in excess of sustainable levels.

4. Trade distortions and overcapacity impede the sustainable development of many countries with significant fisheries resources. Ten of the world's 41 "vulnerable single-commodity economies" in the agricultural and fisheries sector rely on seafood for at least 40 per cent of total export value.²

ADDRESSING THE PROBLEMS IN A GLOBAL CONTEXT

5. Addressing the harmful effects of fish subsidies requires action in a number of different policy areas and international forums. Intergovernmental organisations such as the FAO, UNEP, APEC and the OECD provide research and policy analysis on fisheries resources, management, and production. UNCLOS and the Straddling and Highly Migratory Stocks Agreement provide legal frameworks for the development and implementation of sound management regimes. Management at the national and regional levels is a crucial factor in the management and sustainable use of fish stocks.

6. As the forum in which global trade rules are negotiated and enforced, the WTO has a unique and important role to play as part of a multi-layered global response. The WTO's mandate, experience, expertise, and pre-existing framework of rules and dispute settlement mechanisms are critical to dealing effectively with the trade-related aspects of this problem.

SUBSIDIES AND MARKET DISTORTIONS IN THE FISHERIES SECTOR

7. It has long been recognised that subsidies operate to allow recipient industries to reduce prices or increase profits, or both, and that this can result in adverse effects to the interests of foreign

¹ *State of World Fisheries and Aquaculture - 1996*

² See submission by the United States, WT/CTE/W/51 of 10 May 1997

competitors. The need for multilateral trade rules to address the damaging impact of various subsidies on industry and trade has long been reflected in GATT and WTO rules.

8. The adverse effects of subsidies depend in part on their magnitude. The poor quality of fisheries notifications under the SCM agreement, and the inaccessibility of information on government programmes in the fisheries sector, have made it difficult for researchers to develop authoritative assessments of the level of transfers. But a range of studies conclude that annual subsidies in the fisheries sector are between US\$14.0 billion and US\$20.5 billion, or approximately 20-25 per cent of revenues.³ The true figure may be significantly higher: poor transparency forced the authors of these studies to use conservative estimates in their work. While the bulk of these subsidies are provided by OECD countries, available evidence suggests that some developing countries also have significant subsidy programmes.⁴ Given that approximately 50 per cent by value of world catch is traded internationally⁵, it can be inferred that transfers of this magnitude significantly distort trade in fisheries products by lowering the costs of subsidised production, increasing the volume of subsidised production and thus distorting competitive relationships in markets for fisheries products.

DISTINCTIVE TRADE DISTORTIONS IN THE FISHERIES SECTOR

9. The fisheries sector is subject to distinctive production dynamics. Fisheries resources are finite, renewable if properly managed, but subject to depletion if over-exploited. Modern technology allows industry to catch fish at extreme depths, over great distances from home ports and at a high level of efficiency. Many commercially significant fisheries resources are exploited or potentially exploited by more than one country, whether because their fishers operate in the same area or because the stocks straddle or migrate between areas with different jurisdictional status.

10. These features of the sector mean that subsidies have consequences for international trade beyond the distortion of competitive relationships in markets for fisheries products. In other sectors subsidised production in one country typically has no effect on another country's ability to produce the relevant good; distortions to trade are manifested in the form of changes to the relative competitive positions **at market** of producers in the respective countries. In the fisheries sector, however, subsidies may also distort access to shared fish stocks, **limiting productive access by other participants** by depleting an exhaustible resource.

11. There are various damaging consequences. Non-subsidisers who seek to restrain total catch to safeguard a shared fish stock thereby lose to subsidising countries the extra catch those subsidies enable their fishers to take. Competition from subsidized distant-water fishing fleets can make it economically unviable for developing countries to develop their own fisheries industries and thereby gain access to the full potential value of catches from their exclusive economic zones. Subsidies can be a contributing cause of stock depletion, with serious economic, trade, and environmental implications for other countries with a productive or environmental interest in the resource. The dramatic decline in many fish stocks in recent decades is due to catch greatly in excess of sustainable levels.

THE NEED FOR IMPROVED WTO DISCIPLINES

12. Subsidies provided to the fisheries sector are subject to the provisions of the SCM Agreement. However, the distinctive features of the sector limit the effectiveness of existing SCM rules in addressing the harmful effects of fisheries subsidies. Improved WTO disciplines are required.

³ World Bank TP 406 (1998), p. 73; APEC 2000.

⁴ See APEC 2000.

⁵ *State of World Fisheries and Aquaculture - 1996*

13. Existing SCM rules are primarily designed to offset the benefits or eliminate the distortive effects in markets associated with certain subsidies. These rules address market distortions such as effects on price or market-share, caused by subsidised products. These rules do not, however, adequately address the unique problems raised by fisheries sector subsidies.

14. There are two key reasons to support the development of improved WTO disciplines.

- First, the fisheries sector is distinctive in that, in addition to the standard market distortions addressed by existing SCM rules, fisheries sector subsidies can also **distort access to productive resources**, and can have negative effects from an environmental or developmental perspective.

15. Subsidised production reduces the access of existing and potential participants to **fisheries**, as well as to **markets**. Subsidies that limit others' access to stocks are trade-distorting, because in altering production patterns they necessarily alter trade patterns. However, in causing these kinds of production and trade distortions, subsidies need not have the particular adverse effects on market share or prices addressed by existing SCM provisions. The effects of such subsidies might be to keep unsubsidised catches at low levels where they would otherwise have increased. In such cases, it may be difficult to determine which industries have been affected and by how much. If subsidised fishers deplete a shared stock, all other fishers lose access to that stock, not merely those competing alongside the subsidised product at market.

16. It would be difficult under the SCM agreement to identify or address these distortions. For example, in relation to actionable subsidies, the serious prejudice provision (Article 6.3) is concerned with the effect of the subsidy in altering competitive conditions in markets, either by undercutting prices, or by displacing or impeding imports. Similarly, the injury provision in Article 15 is concerned with the effects on prices of subsidised imports into the domestic market of a complainant country. These provisions are not designed to address the exceptional and distinctive trade and production distortions that subsidies in the fisheries sector can generate.

- Second, there are significant practical problems that arise in applying existing SCM rules to fisheries sector subsidies. In particular, the **heterogeneous nature of fisheries products**, and the **economic structure of the fisheries industry** make it more difficult to identify the sort of market distortions at which SCM disciplines are directed.

OPTIONS FOR ADDRESSING THESE ISSUES

17. Regardless of action taken in other forums on such issues as management, there is a clear need to improve WTO disciplines in the fisheries sector. Specific proposals reflecting the analysis in this paper are under development and will be submitted in the course of the negotiations.

References

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