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WTO FISHERIES SUBSIDIES DISCIPLINES

ARCHITECTURE ON FISHERIES SUBSIDIES DISCIPLINES

Paper from Antigua and Barbuda; Barbados; Dominican Republic; Fiji;
Grenada; Guyana; Jamaica; Papua New Guinea; St. Kitts and Nevis;
St. Lucia; Solomon Islands; and Trinidad and Tobago

Revision

The following communication, dated 5 July 2005, is being circulated at the request of the Delegations of Antigua and Barbuda; Barbados; Dominican Republic; Fiji; Grenada; Guyana; Jamaica; Papua New Guinea; St. Kitts and Nevis; St. Lucia; Solomon Islands; and Trinidad and Tobago.

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/143/Rev.2), also be circulated as a formal document.

I. INTRODUCTION

1. We recall the paper on Fisheries Subsidies (TN/RL/W/136) addressing the specific concerns of Small Vulnerable Coastal States in the Pacific and Indian Ocean and in the Caribbean. As noted in TN/RL/W/136, the multilateral trading system should identify and implement responses to issues of concern to small vulnerable coastal states.
2. TN/RL/W/136 identified three primary categories of economic activity in the fisheries sector of small vulnerable coastal states as being:
 - (i) Revenue generation from access fees for distant water fleets;
 - (ii) Domestic and foreign fisheries export-related operations in the EEZ and territorial sea to supply canneries, loining facilities and domestic processing facilities;
 - (iii) Artisanal fishing within the territorial sea and the EEZ for the domestic and export market.
3. The fisheries sector is not only of economic importance, but is also a key factor in the drive to eradicate poverty in developing countries. Artisanal, or small-scale fisheries, as providers of fisheries products for domestic consumption are important for maintaining food security.

II. ADDRESSING THE OVEREXPLOITATION OF FISHERIES RESOURCES

4. We reaffirm the commitments made in the WSSD in Johannesburg to replenish fish stocks to sustainable levels by 2015. We recognize the efforts made through the FAO, UNEP and other environmental organizations, in regional organizations, and through donor-assisted programmes to increase the capacity of developing countries to implement sustainable fisheries management strategies, in accordance with the UN Convention on the Law of the Sea (UNCLOS).

5. We further recognize that inadequate human and institutional capacity for effective fisheries management is a major constraint facing many developing states, particularly small vulnerable coastal states, may lead to overexploitation and degradation of fisheries resources. Efforts to build and strengthen fisheries management capacity at national and regional levels, through multilateral agencies and donor-assisted programmes should continue as a priority.

6. As was highlighted in the communication from Japan (TN/RL/W/164), illegal, unregulated and unreported (IUU) fishing is a major contributor to over-exploitation of fisheries resources. The international community should accelerate efforts to control IUU through strengthening the monitoring and supervision of fishing activities, including those of distant water fishing vessels operating in foreign EEZs.

7. The Negotiating Group on Rules should continue to consult with the Committee on Trade and Environment (CTE) to avoid duplication of efforts on matters related to environment and in identifying practical methods for enhanced cooperation between the WTO, multilateral environmental agreements (MEAs) and international environmental organizations.

III. ISSUES

Conservation of Fisheries Stock

8. The proponents of this paper, being environmentally fragile and vulnerable, strongly support initiatives to protect the environment. We are concerned that measures developed in this Group may not adequately address the environmental concerns that motivate their development. The so called "traffic-light" approach may not serve to promote conservation of fish stocks; for example, in the event of a dispute brought to the Dispute Settlement Body, fisheries resources could continue to be depleted during litigation. We concur with the observation that it may be difficult to explicitly address overcapacity and overfishing in WTO rules¹, even if a general prohibition or "top-down" approach is adopted. In this regard we view mechanisms to strengthen regional and national fisheries management bodies, and identify and rehabilitate endangered species, such as those employed by the FAO and MEAs more responsive to the problem of threatened fisheries species.

Capacity of Developing Countries to Develop Fisheries Resources

9. Some developing Member States have small domestic fleets and have ongoing initiatives to localise the distant water fisheries, develop the in-shore fishery sector, and forge linkages with other sectors of their economies including tourism. The prohibition of measures that may increase fishing capacity in a responsible manner, without negatively affecting the productivity of the resource and sustainability of the ecosystem, would unduly limit the ability of certain states to develop and utilize their fisheries resources for sustainable development, food security and poverty reduction. We are concerned that the information used in examining the relationship between subsidies and fisheries

¹ Communication from New Zealand 'Fisheries Subsidies: Overcapacity and Overexploitation' TN/RL/W/154, 26 April 2004; Communication from the United States 'Additional Views on the Structure of the Fisheries Subsidies Negotiations' TN/RL/W/169, 13 December 2004.

depletion has been based mainly on data for more advanced countries with large scale industrial fleets.²

Product heterogeneity

10. The need for clarification and improvement of fisheries subsidies disciplines stems from the legitimate concern expressed by some members that the ASCM does not provide clear disciplines for heterogeneous goods such as marine products because it is extremely difficult to demonstrate price effects or to apply countervailing measures where necessary.³ As a means of addressing this issue, and in order to generally improve the ASCM's treatment of the fisheries sector and others where product heterogeneity arises, members should consider the best approach to defining such a heterogeneous product. We note with interest suggestions from the United States to clarify "serious prejudice"⁴, while underscoring the importance of appropriate consideration of small vulnerable coastal states if such an approach is adopted.

11. We are therefore of the view that it is incumbent upon members who are *demandeur* in these negotiations return to this issue, especially if disciplines based on a cost/revenue approach are to develop.

IV. PROPOSED APPROACHES TO FISHERIES SUBSIDIES DISCIPLINES

12. The "traffic light" architecture previously proposed in several submissions represented an ambitious drive to curb the negative trend of fisheries stock depletion by categorizing fisheries subsidies based on their relative production distortion effects. By extending the application of subsidies beyond trade effects and to include overcapacity and over-fishing, such an approach goes beyond the technical and administrative competence of the WTO. It is foreseeable that, using the "traffic light" approach, a dispute could be initiated against a WTO Member based on the use of fisheries subsidies that: "directly promote overcapacity and overfishing"⁵ without direct reference to any trade effects. That the dispute settlement mechanism could be used to resolve a fisheries management issue constitutes a systemic institutional risk for the WTO that is not supported by the proponents of this paper.

13. While the cost-based approach to fisheries subsidies disciplines is consistent with the competence of the WTO, a top down approach to fisheries subsidies, as outlined by New Zealand in TN/RL/W/154 would only address the goal of sustainable development of the fisheries sector in developing coastal states if the appropriate exceptions are made to allow for the realization of development objectives.

² This was recognized in 'Fisheries Subsidies – Submission from New Zealand on paragraph 32 (i) of the Doha Declaration' WT/CTE/W/204, 19 March 2002 Committee on Trade and Environment.

³ Submission from Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States 'The Doha Mandate to Address Fisheries Subsidies: Issues' TN/RL/W/3, 24 April 2002; and, Submission from New Zealand 'Fisheries Subsidies: Limitations of Existing Subsidy Disciplines' TN/RL/W12, 4 July 2002

⁴ TN/RL/W/169, 13 December 2004.

⁵ Communication from the United States to the Negotiating Group on Rules 'Possible Approaches to Improved Disciplines on Fisheries Subsidies - Communication from the United States' TN/RL/W/77, 19 March 2003; Communication to Negotiating Group on Rules from Japan 'Proposal on Fisheries Subsidies' TN/RL/W/164, 27 September 2004; 'Communication from the European Communities to the Negotiating Group on Rules – Fisheries Subsidies', TN/RL/W/82, 23 April 2003; Communication from Chile to the Negotiating Group on Rules 'Possible Approaches to Improved Disciplines on Fisheries Subsidies' TN/RL/W/115, 10 June 2003; Communication to Negotiating Group on Rules from Japan 'Proposal on Fisheries Subsidies' TN/RL/W/164, 27 September 2004.

14. Regardless of the approach employed, it should be explicitly stated that development assistance granted to small vulnerable coastal states does not constitute a subsidy and, therefore, does not fall under the remit of subsidies disciplines.

V. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

15. We are heartened by the recognition of several Members, in their respective submissions, that any new measures on fisheries subsidies should take into account the importance of the fisheries sector to developing countries.⁶ We also recognize the ongoing work in the Committee on Trade and Development (COMTD) to address the particular needs of small vulnerable coastal states. The sponsors of this proposal will provide further contributions in this area as negotiations proceed.

16. Small vulnerable coastal states seek appropriate special and differential treatment in any disciplines on fisheries subsidies. In this regard the following should not be subject to subsidies disciplines:

- (i) Any development assistance to developing coastal states;
- (ii) Assistance to artisanal or small-scale fisheries. This requires a consensus on the definition of artisanal or small-scale. Some existing definitions of artisanal are based on vessel size in metres, capacity in gross registered tonnage (GRT), or area of operation in terms of proximity to the shoreline. We invite discussions on prevailing definitions used by Member States and possible approaches for arriving at a definition for use in the WTO; to facilitate the discussions, the sponsors of this paper will share information with Members on definitions currently being used in their respective jurisdictions;
- (iii) Access fees in fisheries access agreements;
- (iv) Fiscal Incentives - to facilitate the development of capabilities of small vulnerable coastal states.

17. We propose that the special and differential treatment provisions of the ASCM for Least Developed Countries be maintained in future disciplines.

18. This proposal is without prejudice to individual country positions and rights to submit additional proposals in this or other WTO Bodies on any issues contained in this statement and/or on any other issues not included here.

⁶ 'Communication from the European Communities to the Negotiating Group on Rules – Fisheries Subsidies', TN/RL/W/82, 23 April 2003; Communication from China to the Negotiating Group on Rules 'Proposal from the People's Republic of China on Fisheries Subsidies' TN/RL/W/9, 20 June 2002; Communication from New Zealand to the Negotiating Group on Rules "Fisheries Subsidies: Overcapacity and Overexploitation", TN/RL/W/154, 26 April 2004; Communication from Korea 'Questions and Comments From Korea On New Zealand's Communication On Fisheries Subsidies (TN/RL/W/154)' TN/RL/W/160, 8 June 2004.