

**CONTRIBUTION TO THE DISCUSSION ON THE FRAMEWORK  
FOR THE DISCIPLINES ON THE FISHERIES SUBSIDIES**

Communication from Japan; the Republic of Korea; and the Separate Customs Territory  
of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 21 February 2005, is being circulated at the request of the Delegations of Japan; the Republic of Korea; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

**I. INTRODUCTION**

1. Since the adoption of the July package on 1 August 2004, the negotiation in the rules group has largely focused on the structure of the potential new disciplines for fisheries subsidies. At the November meeting, six countries (Argentina; Chile; Ecuador; New Zealand; Peru and the Philippines) in their proposal (TN/RL/W/166) trumpeted the merits of the top-down approach based on a broad ban coupled with narrowly defined exceptions. This *ex ante* comprehensive prohibition on subsidies that benefit the fishery industry, with some exceptions, practically means that fisheries subsidies should be banned simply because of their existence without any effect test. This approach can hardly constitute an adequate framework for the potential new rules for fisheries subsidies.

2. The six countries, predicting that consensus will eventually be found around the top-down approach, suggested to start with a *prohibition on subsidies that benefit the fishing industry* (para. 8). This proposition that subsidies that benefit the fishing industry should be prohibited needs to be examined closely because the appropriateness of the top-down approach depends on the soundness of this proposition. A subsidy, whether it be a fishery subsidy or otherwise, by definition, confers benefit to the recipient. Currently, the only subsidies that are prohibited merely because they provide benefit to the recipient without an adverse effect test are the subsidies within the meaning of Article 3.1 of the ASCM which are prohibited because they are deemed to be trade distorting *per se*. Now, the six countries are proposing to treat fisheries subsidies the same way as the prohibited subsidies within the meaning of Article 3.1 of the ASCM. It has never been established that fisheries subsidies *in general* distort trade *per se*. To the contrary, there are many benign or noble fisheries subsidies. The top-down approach as advocated by the six countries is misplaced, and we do not believe consensus will be found around such an approach as it is, in our view, fundamentally wrong.

3. Besides, this negotiating group is bound by the mandate provided in paragraph 28 of the Doha Ministerial Declaration, which clearly set out that the negotiations, including in the area of fisheries subsidies, should “aim 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”. It means that any new disciplines for the fisheries subsidies should conform to the basic concepts and principles of the current ASCM, which, among other things, requires an adverse effect test. To introduce any new discipline prohibiting subsidies that benefit the fishing industry totally disregarding the adverse effect test would exceed the mandate given by the Ministers.

## **II. DEMERITS OF BROAD-BAN APPROACH**

4. The broad-ban approach as described above has, in our view, the following demerits:

### **Inconsistency with the basic principles of the ASCM**

5. The current ASCM takes a positive-list approach, prohibiting only two types of severely trade distorting subsidies under Article 3. By contrast, the broad-ban approach advocated by the six countries is based on a negative-list approach, generally forbidding fisheries subsidies without any test on adverse effect of the subsidies. This constitutes a significant discrepancy with the basic principles of the ASCM.

### **Lack of flexibility for future policy needs**

6. The broad-ban approach unduly restricts policy tools needed for coping with a changing environment. Flexibility should be maintained in order to adequately respond to the future policy needs, such as structural adjustment of the fishery sector, achievement of sustainable fishery, the livelihood of fishermen, food security, etc.

### **Race for exceptions**

7. Under the broad-ban approach, the negotiating members will be forced to try to include their wish list in the exception box as dictated by their policy needs. The negotiations will then be plagued by a “race for exceptions” as was the case with the steel negotiations which had been conducted until recently under the auspicious of the OECD without success.

### **Inequity with other sectors**

8. The top-down approach, by eliminating the effect test in relation to the fishery subsidies, would differentiate fisheries from other sectors which are disciplined on the basis of the adverse trade effect test. Under the mandate of para 28 of the Doha Ministerial Declaration, the potential new disciplines for the fisheries subsidies should be based on a test of the adverse effect of subsidies either on resources or on trade.

9. The US, in its proposal TN/RL/W/77, proposed the prohibition of fisheries subsidies that “directly promote overcapacity or overfishing or that have other direct trade distorting effects”. The EC suggested in TN/RL/W/82 to prohibit the fishery subsidies that “enhance fishing capacity.” Also, Japan proposed prohibiting fisheries subsidies that are related with “IUU fishery or construction of fishing vessels engaging in poorly managed fishery”. Even though these proposals contain different formulations with regard to the issue of prohibition of fisheries subsidies, they all have one thing in common – namely, they expand the scope of prohibition of subsidies. Therefore, a reasonable starting point of the discussion would be the expansion of prohibited subsidies (red box) based on an adverse effect test.

### **III. Major issues for the future framework**

#### **Government support not subject to the ASCM**

10. It is important to note that the potential new disciplines for the fisheries subsidies shall be a subset of the ASCM. Therefore, if governmental support for a certain fishery activity does not fall under the coverage of the ASCM, it should not be the subject of such disciplines on fisheries subsidies.

11. In this context, general infrastructure such as construction of fishing ports, sewage facilities for the fishing communities and coastal protection facilities against storms and waves should be outside the scope of the new disciplines for fisheries subsidies by reason of Article 1 and Article 2 of the ASCM.

#### **Expansion of prohibited subsidies under the current ASCM**

12. One of the misstatements often heard is that the bottom-up approach would lead to weaker disciplines than the current rules. The fact that the bottom-up approach intends to add to the current list of prohibited subsidies which is limited to export subsidies and import substitution subsidies disproves such a claim.

13. Fisheries subsidies which are to be deemed to directly cause serious harm to the resources should be treated as prohibited subsidies. At the same time, a transitional period should also be allowed for the fishery sector to adapt to the new environment. The following types of subsidies may be candidates for the prohibited subsidies.

- (i) Subsidies for the construction of new fishing vessels resulting in capacity enhancement
- (ii) Subsidies for fishing vessel modification for capacity enhancement.
- (iii) Subsidies for shipbuilding yards for fishing vessels
- (iv) Subsidies for overseas transfers of fishing vessels to non-CPCs (contracting parties, cooperating non-contracting parties, entities or fishing entities) of RFMOs (regional fisheries management organizations)
- (v) Subsidies relating to IUU fishing

#### **Restoration of green box**

14. The following government programs which have positive effects on fish stock recovery, social security, welfare and R&D should be permitted as non-actionable:

- (i) Fishing vessel decommissioning with vessel scrapping and withdrawal of fishing license
- (ii) Resource enhancement and protection of environment (artificial reef, ocean ranching, fingerlings release, fishing ground clean-up, etc.)
- (iii) Expenditure for fisheries resource management
- (iv) R&D for the sustainable fishery (development of environmentally friendly fishing gear and technology, stock sampling and assessment, etc.)
- (v) Retraining of fishermen and early retirement schemes
- (vi) Assistance for the fishermen in terms of social safety net (crew insurance, disaster relief, compensation for suspension of fishing activity, etc.)

### **Consideration of resource management**

15. There is a widespread understanding of the importance of resource management in achieving sustainable fisheries. However, opinions differ on whether resource management falls under the competence of the WTO. Even so, in light of paragraphs 28 and 31 of the Doha mandate, we should not fail to address important factors such as proper resource conservation and management for sustainable development. We also should consider the positive aspects of dealing with the resource management issue within the WTO. It will make members more concerned about and committed to resource management.

### **Small-scale fisheries**

16. Each country has a different fishery environment in terms of the level of development and stock status. In some countries, large-scale commercial fisheries and small-scale subsistence fisheries co-exist. Also, there are vulnerable fishery sectors or groups of fishermen in each country. Given this situation, it would be desirable to allow flexibility for each country's domestic small-scale subsistence fisheries to ensure adequate protection for the vulnerable fishermen. At the same time, devices to prevent loopholes must be put in place.

17. However, there is no agreed definition of small-scale fisheries and each country has its own criteria based on the circumstances surrounding its fishery sector. Therefore, we perceive the need to discuss the issue of definition of small-scale fisheries eligible for exception to prohibition, and ways to prevent loopholes.

### **S&D for developing countries**

18. In accordance with the Doha mandate, special consideration should be given to the concerns and needs of developing countries by allowing some flexibility in the application of the prohibited subsidy category.

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