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**PROMOTING DEVELOPMENT AND SUSTAINABILITY IN
FISHERIES SUBSIDIES DISCIPLINES:
AN INFORMAL DIALOGUE ON SELECT TECHNICAL ISSUES**

Communication from New Zealand

The following communication, dated 14 July 2005, is being circulated at the request of the Delegation of New Zealand.

In the interests of keeping the Rules Negotiating Group informed of related events outside the WTO, we attach the Summary of the Chair of the recent UNEP Workshop on Fisheries Subsidies Disciplines.

**PROMOTING DEVELOPMENT AND SUSTAINABILITY IN
FISHERIES SUBSIDIES DISCIPLINES:
AN INFORMAL DIALOGUE ON SELECT TECHNICAL ISSUES**

International Environment House, Geneva
30 June 2005

Chair's Summary

Background

On 30 June 2005, as part of the recently launched UNEP project on “Subsidies, Development and Sustainable Fisheries Management”, UNEP convened an informal dialogue on fisheries subsidies in Geneva, the sixth meeting UNEP convened on this issue since 1997. Preparation of the background papers was made possible with generous support from the Government of New Zealand. All workshop materials are available at the UNEP website (<http://www.unep.ch/etb/events/2005rtGeneva.php>).

The focus of the workshop was on select issues of trade, development, and sustainability in the current WTO fisheries subsidies negotiations. Specifically, this meeting sought to:

- Identify options that advance sustainable development of artisanal fisheries while disciplining fisheries subsidies in the WTO;
- Investigate how Special and Differential Treatment in the context of fisheries subsidies can link new trade rules to development, poverty reduction and environmental issues,
- Receive feedback on three UNEP-commissioned studies and identify follow-up steps that will direct UNEP's future efforts in this area.

Participants included approximately 50 individuals from governments, IGOs and NGOs, all speaking in their personal capacities.

This summary report was prepared by Anja von Moltke (UNEP, Economics and Trade Branch) under her personal responsibility as the workshop chair. It is neither a consensus document nor fully comprehensive. Instead it seeks to review the main issues raised and suggestions made by participants.

Introductory Session

1. The meeting was opened by Hussein Abaza (Chief, UNEP, Economics and Trade Branch) and Ms. von Moltke, who outlined the need for disciplines on fisheries subsidies that safeguard sustainability, ensure development, and promote opportunities for developing countries to produce and trade fisheries products, as called for by the Doha Declaration (¶¶ 28 & 31), and the 2002 World Summit on Sustainable Development Plan of Implementation (¶ 31(f)).

2. Sebastian Mathew then made an opening presentation, setting the current negotiations in the context of the urgent need for a “paradigm shift” towards sustainability in the fisheries policies of many developing countries, calling in particular for governments to move from a simple focus on the “development of fisheries” towards “better resource management”. With the continuing growth in marine fishing by developing countries (up from a 40% share of total capture in the 1960s to 70% in

2002), due consideration must be given to the fact that 75% of all fisheries are currently either over-exploited, fully-exploited or significantly depleted. Mr. Mathew further noted that although the quantity of fisheries subsidies provided by developing countries is relatively small, it remains important to address how subsidies can be meaningfully reemployed to emphasize sustainable development and effective resource management.

Session I — Approaches to Artisanal Fisheries: Options for Their Definition and Treatment Under New WTO Rules

3. David Schorr presented a UNEP-commissioned paper entitled “Artisanal and Small-scale Fishing: Promoting Poverty Reduction and Community Development through New WTO Rules on Fisheries Subsidies”. Among the main points presented were: (i) the importance of artisanal fisheries to sustainable development, to livelihoods, food supplies, and resource husbandry in critical coastal regions; (ii) the fundamental need for poverty reduction and development in artisanal fishing communities; (iii) the worldwide “sustainability challenge” facing artisanal fisheries as a result of multiple factors, including the dramatic growth in fishing capacity in many artisanal fisheries; (iv) the relatively small quantities of subsidies to artisanal fisheries, and the clear evidence that they sometimes have positive and other times significant negative impacts; and (v) the overall importance within the WTO context of finding balanced solutions on artisanal fisheries, taking account of both the pressing need for human development and the reality of the sustainability challenge.

4. In this context, the paper described the difficulty in finding a universally applicable definition of “artisanal fishing”, and proposed that WTO negotiators craft a narrow definition based on consideration of the policy motives underlying current or future subsidies to artisanal fisheries (with particular attention to poverty reduction and development). The paper argued that there would remain an inevitable need for close attention to sustainability issues whenever subsidies to artisanal fisheries were aimed at transforming the pattern or scale of fishing. Finally, the paper proposed identifying “high risk” subsidies to artisanal fisheries, and suggested several options for incorporating sustainability considerations into new rules designed to give special treatment to artisanal fisheries.

5. Prepared comments by three developing country participants supported many of the conclusions drawn by the paper, emphasizing: the importance of artisanal fishing; the sustainability problem in the sector and the mixed role of subsidies in the context of that problem; the absence of a single universally applicable definition of “artisanal fishery”; and the need for attention to sustainability in new WTO disciplines on artisanal fishing. Two of the commentators questioned whether a very narrow definition of “artisanal fisheries” would be possible, but agreed that an overly broad definition could also be problematic. All agreed with the basic notion that criteria related to sustainability should be explored within new rules.

6. The subsequent open floor discussion emphasized the following points:

(a) Both the “developmental imperative” and the “sustainability challenge” are very real in the artisanal fishery sector, and both should be reflected in any new WTO subsidies disciplines.

Data limits continue to hamper understanding of subsidies to artisanal fisheries, and further quantification and analysis of these subsidies and their impacts would be very useful. Several developing country experts referred to the problematic nature of some subsidies to artisanal fisheries, and noted the tendency of such subsidies to have unintended consequences and to endure beyond their original purpose.

(b) In the absence of a universally applicable definition of artisanal fisheries, there is a clear need for a definition tailored to the specific needs of the WTO context. Such a definition could reflect the motives for subsidizing the sector while being narrow enough to avoid creating a broad loophole in any new disciplines. The principal policy motives underlying subsidies to

artisanal fisheries include poverty reduction, economic and social development, food security, maintaining employment, and improving fisheries management. In this regard, it was noted that there is significant overlap between some of the questions raised in the context of artisanal fisheries and the more general questions of “special and differential treatment” for developing countries, discussed in the second session of the workshop.

- (c) Participants also discussed subsidies aimed at maintaining the viability of small-scale fishing communities in the absence of a link to poverty reduction or development. Such subsidies (tentatively labelled “cultural preservation” subsidies in the workshop background paper) clearly reflect a set of social policies considered legitimate and important by many governments. The difference in character of such from those aimed at poverty reduction and development opened the question whether such subsidies would best be captured within provisions for “artisanal” fisheries. This discussion also touched on whether provisions for artisanal fisheries should extend to all WTO members, or only to developing country members, as well as on the potential need for a distinction between “artisanal” and “small scale” fisheries.
- (d) Participants broadly agreed on the need for disciplines appropriate to the WTO’s competence and mission, and thus for rules that concentrate on the prevention of international economic distortions, including production distortions as well as classic export market distortions. There is a need for further consideration of how subsidies to the artisanal fishery sector may cause such distortions, and in particular for an effort to identify subsidies to artisanal fisheries that pose a particularly “high risk” (e.g., capacity-enhancing subsidies).
- (e) Many participants reiterated the need to consider the biological and regulatory “fisheries management context” surrounding fisheries subsidies, given the role it can play in determining whether a given subsidy programme has positive or negative impacts. Both the need for and the difficulty of including such considerations in WTO subsidy rules were discussed, and a number of options considered. The concept of avoiding subsidies to fisheries considered “patently at risk”, as recently introduced into the negotiations, has drawn substantial interest. The concrete details of an approach along those lines are a priority for further discussion, as is the institutional framework within which related questions could be handled during implementation of new WTO rules. In this regard, the special problems of the artisanal context were discussed, including the possible “sequencing” of conditionalities (e.g. phasing in requirements for certain minimum levels of fisheries management regulation within artisanal fisheries).

Session II – Approaches to Special and Differential Treatment for Developing Countries in the Context of New WTO Subsidy Disciplines\$

7. Vice Yu presented a UNEP-commissioned paper on “Reflecting Sustainable Development and Special and Differential Treatment of Developing Countries in the Context of New WTO Fisheries Subsidies Rules”. Among the main points presented were: (i) S&D is not an exception to WTO rules, but rather a fundamental part of the multilateral trading system that aims to take into consideration the differing situations and needs of developing countries; (ii) many developing countries feel that S&D has historically proved ineffective, for a variety of reasons; and (iii) given the extraordinary strategic importance of the fisheries sector to developing countries, new WTO fisheries subsidies disciplines should avoid the imbalances and deficiencies that have impaired other S&D clauses.

8. In this context, the paper presented five possible approaches to S&D within the context of new fisheries subsidies disciplines: (i) clarifying the definition of “subsidy”; (ii) imposing prior authorization requirements on qualifying programmes; (iii) crafting a “positive list” of permitted

subsidies; (iv) granting S&D to subsidies below a *de minimis* threshold; and (v) imposing “sustainable development-based” eligibility criteria on qualifying programmes. The paper provided a critical analysis of the strengths and weaknesses of each option. In addition, the paper examined other means of ensuring that S&D returns meaningful benefits to developing countries, such as reducing developing country exposure to dispute settlement and countervailing duty measures, and increasing positive measures for technical assistance and capacity building. Finally, the paper briefly examined approaches to “transitioning out of S&D”, as a complement to accepting the permanent and non-exceptional nature of S&D provisions themselves.

9. Prepared comments by three developing country participants noted the timeliness and relevance of the paper to the current WTO talks, and considered that the options set out in the paper offered a good basis for discussion. Emphasis was placed on the important role trade can and likely must play in the development strategies of many developing countries, particularly in the fisheries sector.

10. Much of the ensuing roundtable discussion focussed on specific options for including S&D within new fisheries subsidies disciplines. While the discussion clearly reflected a variety of views, the conversation revealed the following trends:

- (a) The “clarifying the definition” approach did not receive significant interest or support. Among the shortcomings of such an approach would be incorporating distinctions among WTO members into the fundamental terms of Article 1, and the strong likelihood that altering the Article 1 definition in this way could overly weaken new fisheries subsidies disciplines.
- (b) The “prior authorization” approach received only a few comments, but was considered by some to be politically difficult and possibly burdensome.
- (c) The “positive list” approach was viewed favourably by a number of participants. One possibility would be a hybrid of the “positive list” and the “sustainable development-based eligibility” approach.
- (d) The “*de minimis*” approach also drew positive attention, although it was also noted that even this approach could result in overinvestment and overcapacity if no additional precautions are taken.
- (e) The “sustainable development-based eligibility approach” also received substantial positive attention. The critical link between long-term sustainability of developing country fisheries and the achievement of economic development goals was repeatedly noted. Here again, participants called for further exploration of the terms and institutional mechanisms needed to allow appropriate attention to the fisheries management context within WTO rules.

11. The discussion of the “sustainable development-based eligibility approach”, and of such related terms as “patently at risk” fisheries, raised a number of significant questions similar to those discussed in the first session on artisanal fishing, including:

- (a) What would be the baseline for establishing sustainable development-based criteria?
- (b) How could such an approach deal with the variable availability, reliability, and independence of fisheries data?
- (c) What institutions outside the WTO could be brought into the implementation of any new WTO fisheries subsidies rules?

- (i) The FAO has been proposed as an organization that could offer technical and scientific support for fisheries subsidies S&D provisions. Such an arrangement would require a legal mandate and appropriate allocation of resources.
- (ii) Existing regional fisheries management organizations (“RFMOs”) and FAO agreements such as the ‘Code of Conduct’ could be used as a starting point, but more legally binding instruments would eventually be needed.
- (iii) While new fisheries subsidies rules must be “grounded in the WTO”, the WTO has experience with a range of institutional mechanisms for creating linkages to other IGOs with expertise and authority in areas where overlap with the WTO mandate occurs. Such linkages could provide a basis for further exploration of potential institutional mechanisms in the fisheries subsidies context.

12. Other views expressed by various participants during the open floor discussion on S&D included:

- (a) Discussion of S&D in the context of fisheries subsidies might be more effective if kept separate from broader systemic efforts at S&D reform;
- (b) S&D provisions contributing to trade, development, and environmental goals for developing countries should remain distinguishable from ‘green box’ non-actionable subsidies that will apply for all countries (some participants emphasised that developing countries are not seeking a ‘blank cheque’ via S&D rules, but rather provisions that enable them to meet their goals);
- (c) The issue of eligibility for S&D, including questions of initial distribution of rights to S&D and subsequent “graduation” provisions, need further discussion. It is clear, however, that S&D provisions should be revised and reviewed over time to reflect changing trade, environmental, and development conditions and needs;
- (d) Many of the issues surrounding artisanal fisheries discussed in session 1 feed into the S&D debate. Similarly, the question of government-to-government payments in the context of fisheries “access agreements”, although not discussed in detail during this workshop, was seen as an issue critical to developing country concerns, and in need of resolution.
- (e) Technical assistance is essential both for creating and utilizing reliable scientific information and for effectively implementing reforms.

13. In general, most participants agreed that S&D rules should be defined simply and operationally, yet sophisticated enough to encapsulate the complexity of the issues while avoiding loopholes. It is important that negotiations remain centred on subsidies and on production and trade while tackling sustainability issues. Further, for rules to reflect the intentions of negotiators, they need to be strong enough to avoid WTO appellate bodies interpreting or making judgements over ambiguous terminology. In recognition of its core competencies, it is clear that new WTO rules cannot solve all of the problems of overcapacity and overfishing.

Way forward

14. UNEP informed participants that the two papers would be revised in line with the discussion and the comments received. They will be made available prior to and at the Hong-Kong WTO ministerial meeting.

15. Participants considered the meeting very timely and useful for the ongoing WTO negotiations. UNEP was encouraged to continue to convene meetings in such an informal atmosphere in order to address the technical side of highly complex and political issues.

16. Continued technical research by UNEP and dialogue between stakeholders was suggested in particular in the following areas:

- (a) additional information about subsidies and development in the context of artisanal and small-scale fisheries;
- (b) access agreements, with particular attention to sustainability, development and trade goals within access agreements;
- (c) options for sustainability conditionality criteria and benchmarks;
- (d) options for institutional mechanisms to implement and monitor conditionality criteria.

17. UNEP was also encouraged to continue providing technical and political assistance through its country studies on the impact of fisheries subsidies.
