

**FISHERIES SUBSIDIES
SUBSIDIES FOR VESSEL CONSTRUCTION AND MODIFICATION**

Paper from Japan

The following communication, dated 2 March 2006, is being circulated at the request of the Delegation of Japan.

Introduction

1. The discussion of the disciplines on fisheries subsidies at the WTO Rules Negotiating Group has made significant progress since its beginning. Japan is confident that it has made a substantial contribution to the discussion, particularly through its proposals in June and September 2004 as well as the joint proposal co-sponsored by Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in February 2005 (TN/RL/W/159, 164 and 172 respectively).
2. The progress of the fisheries subsidies negotiation is duly recognized in the Hong Kong Ministerial Declaration. In paragraph 9 of Annex D, Ministers “*note* that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and *call on* Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability”.
3. The bottom-up approach supported by Japan, Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the European Community as well as some developing countries, which intends to prohibit fisheries subsidies that are deemed to directly cause serious harm to the fisheries resources, is clearly in line with the Ministerial Declaration. In the joint proposal, Japan, Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu specified the 5 types of fisheries subsidies which could cause serious harm to the fisheries resources and proposed to prohibit them. Further discussion was made on the details of the 2 types of subsidies out of the 5 candidates to be prohibited, namely “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)” and “subsidies relating to IUU (illegal, unregulated and unreported) fishing” in Japan’s contribution in June 2005 (TN/RL/GEN/47).
4. In this document, Japan further examines the 2 other types of proposed prohibited subsidies from the joint proposal, i.e. subsidies for the “construction of new fishing vessels resulting in capacity enhancement” and for the “fishing vessel modification for capacity enhancement”. It should be noted that this is not Japan’s final position and it reserves its right to make further proposals in the course of the discussion.

Background

5. Most of the marine fisheries production is made within the EEZs (Exclusive Economic Zone) of each country and the UN Law of the Sea Convention, which came into force in 1994, recognizes the sovereign rights of coastal countries on the fisheries resources in their EEZs. Therefore, it is Japan's basic understanding that the responsibility of the fisheries resources management within their EEZs, including whether they provide fisheries subsidies or not, lies with the coastal country. Therefore, Japan made a proposal in September 2004 which suggests permitting vessel construction subsidies if the resources are properly managed. With regard to this proposal, many constructive comments were made by various Members such as "the threshold or the standard of proper management is unclear", or "it is inappropriate for coastal countries to determine whether their own fisheries management is proper or not".

6. Japan strongly supports the prohibition of fisheries subsidies which have negative effects on the fisheries resources. Therefore, Japan took into account comments made by various Members after the September 2004 meeting, held bilateral and plurilateral meetings with other Members and proposed, in its joint proposal with Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, to prohibit subsidies for the "construction of new fishing vessels resulting in capacity enhancement" and for "fishing vessel modification for capacity enhancement", aiming at providing more amenable disciplines for a WTO framework. In this document, we are trying to transfer those concepts into a more concrete rule which can be easily transformed into a legal text. While doing so, it is indispensable to construct a clear, workable and enforceable rule in order to prevent the enhancement of the fishing capacity while maintaining the right to provide subsidies which do not result in capacity enhancement.

How to manage fishing capacity

7. Let us look at the examples of the fishing capacity management measures implemented by RFMOs as well as Japan as a reference for our discussion.

(i) Measures taken by RFMOs;

- (a) In 1999, ICCAT¹ introduced a measure to limit the number of vessels belonging to each Member that are over 24m and that target bigeye tunas. The upper limit is the average number of those vessels belonging to each Member in 1991 and 1992.
- (b) IOTC² restricts the increase of either the number or the sum of the gross tonnage of the vessels of each Member who holds more than 50 vessels over 24m. Those Members who hold less than 50 vessels and intend to increase their number must notify their plan to the Commission.

(ii) Measures taken by Japan;

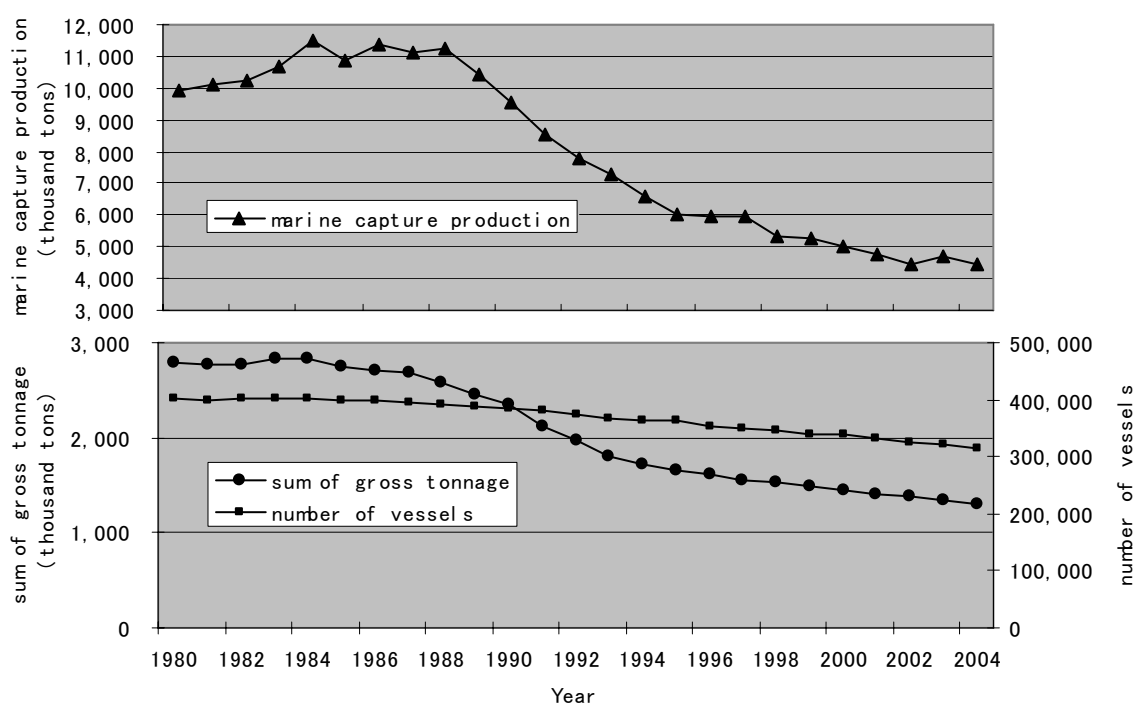
- (a) All vessels which are intended to be used for commercial fishing must be registered to the fishing vessel registration system. Registration is possible only when the owner of the vessel possesses a valid fishing license or it is confirmed that the owner will obtain a license.
- (b) An authorization in advance is necessary for vessel construction. In order to obtain an authorization, information such as whether the future owner possesses a valid fishing licence and detailed specifications of the planned vessel will be required.

¹ International Convention for the Conservation of Atlantic Tunas

² Indian Ocean Tuna Commission

- (c) A fishing licence is periodically renewed. Inappropriate licence holders (e.g. those who violate regulations, who do not actually operate, etc.) cannot renew their fishing licences.
- (d) A limited entry system is adopted, i.e. the number of licences to be issued for each vessel size class is determined based on the stock assessment. A new licence is issued only when there is a withdrawal of an existing licence.
- (e) Due to the measures above, the number of fishing vessels as well as the sum of their gross tonnage in Japan has been declining steadily in the long run. In addition, the total fisheries production has also been decreasing due to other management measures such as the limitation of operating days and TACs. (below)

Figure: Transition of Japan’s marine capture production, number of vessels and sum of gross tonnage of fishing vessels



8. Japan implements many layers of fisheries management, as mentioned above, and ensures to avoid any negative affects on the global fisheries resources. Implementing those strict management measures as a prerequisite condition, the Japanese government provides a minimum amount of vessel construction subsidies (subsidy to the interest of the loan provided for fishermen) to vessel construction for small-medium business owners engaging in the risky business called fisheries. It is obvious from the above information that those subsidies do not result in the enhancement of fishing capacity.

How to define “capacity enhancement” at WTO

9. In order to transfer the concept in our joint proposal to prohibit subsidies for “construction of new fishing vessels resulting in capacity enhancement” and for “fishing vessel modification for

capacity enhancement” into a WTO suitable wording, a clear definition or common understanding of “capacity enhancement” at the WTO is indispensable. If we are to use fisheries production, which is an output of the industry, as an indicator of the level of activities, such issues as the relationship between the fisheries management and the WTO and the fluctuation of production caused by non-human factors cannot be avoided. Therefore, we believe that it is more suitable for the WTO to establish disciplines on fisheries subsidies which are based on the inputs such as fishing capacity rather than outputs such as production.

10. Based on the discussion above, Japan suggests the transfer of the prohibition of subsidies for “construction of new fishing vessels resulting in capacity enhancement” and for “fishing vessel modification for capacity enhancement” in the joint proposal, into a more specific proposal as follows. Please note that these are to be applied only to marine capture fisheries since Japan believes that the new discipline should be applicable only to subsidies which are provided directly to those who engage in marine capture fisheries activities.

- (i) If any of the following conditions is not met, the likelihood of capacity enhancement is deemed to exist and those fisheries subsidies for vessel construction or modification will be prohibited.
 - (a) A limited entry system is in place where:
 - each vessel obtains a licence from the flag country, and
 - the vessel to be constructed or modified possesses a valid fishing licence or is confirmed to obtain a licence after the construction or modification.
 - (b) In case of new vessel construction, the vessel(s) are withdrawn in exchange for the new vessel to be constructed. In addition, neither (i) gross tonnage, (ii) volume of fish hold, nor (iii) engine power of the new vessel increases compared with the sum of the criteria of the vessels to be withdrawn. Furthermore, in case there are multiple vessels to be withdrawn, the gross tonnage of the newly constructed vessel is reduced by more than 20% of the sum of the gross tonnage of the vessels to be withdrawn (e.g. when 2 vessels, 100GT respectively, are withdrawn, the new vessel is less than 160GT.).
 - (c) In case of modification, neither (i) gross tonnage, (ii) volume of fish hold, nor (iii) engine power increases.
- (ii) As an exception to the prohibition of paragraph 10(i), fisheries subsidies for vessel construction or modification can be provided in case the gross tonnage of a vessel to be constructed or modified increases for the improvement of safety or the working conditions of the crew³, provided that neither the volume of fish hold nor the engine power increase. Members must ensure that those subsidies do not undermine the conservation and management measures taken by RFMOs.

11. As recognized by the Members, there are many different ways to manage fisheries in the world. However, the information on the criteria suggested above; number of vessels, individual gross tonnage, volume of fish hold, and engine power, is relatively easy to obtain and to evaluate objectively, and we believe that they are being used in many countries as criteria for the management

³ The improvement of safety and working conditions of crew on fishing vessels includes the expansion of the living area per crew or the heightening of the accommodation. This is an important issue for fishing crew so the ILO Convention concerning Accommodation on Board Fishing Vessels also addresses this issue. The construction or modification of fishing vessels are made often not with the purpose of increasing the production, but as a response to external requirements such as the ILO convention. Therefore, it is unnecessary and unreasonable to prohibit all vessel construction and modification subsidies as long as there is an effective rule to prevent them from resulting in overcapacity or overfishing.

of fishing capacity. The larger the volume of fish hold is, the longer the vessels can stay in fishing grounds. Engine power substantially affects the scale of gear to be used, the ability to tow the net and the time to reach fishing grounds. If this proposal is supported by the Members, Japan would also need to implement additional monitoring on volume of fish hold and engine power since they are generally not controlled in the Japanese fisheries management system. However, we believe this could be done quite effectively by requiring this information from applicants upon the application of subsidies. Of course, there can be other criteria and we welcome the contribution from other Members. Japan believes, however, that the combination of these four criteria (i.e. number, gross tonnage, volume of fish hold and engine power of vessels) would be efficient and appropriate in order to make the new discipline applicable to all types of fisheries and effectively preventing the expansion of fishing capacity while allowing necessary flexibility for policy makers.

12. In order to give Members sufficient time to adapt the domestic legal framework to the new discipline, a 5-year transitional period would be recognized.

13. The treatment of subsidies to small-scale fisheries as well as artisanal fisheries needs to be discussed and determined separately.

Special and differential (S&D) treatment for developing and least-developed countries

14. As reaffirmed in the Hong Kong Ministerial Declaration, the fisheries industry is an important sector especially for developing and least-developed countries and this must be taken well into account when we develop a new discipline on fisheries subsidies. At the same time, we must be aware that the fisheries industry has a special and unique character given the following aspects. The first one is that the fisheries resources are limited and are a common property of the world. The second one is that some of the current main players in the world fisheries production are developing countries.

15. Therefore, the primal recipients of the S&D treatment should be those developing Members who have only a small fisheries industry and whose impact on the global fisheries resources is very small or negligible. One possible framework of the S&D in terms of the vessel construction subsidies would be to exempt Members from the application of the prohibition referred to in paragraph 10 until such time when the level of their fisheries production reaches a certain level. (Further discussions would be required on the appropriate level of the threshold and how to determine whether the threshold is reached.) Giving priority to the S&D for developing Members with a small fisheries industry is in line with the fundamental purpose of fisheries subsidies negotiations, which is to contribute to the sustainable utilization of fisheries resources, and is worth our serious consideration.

16. Furthermore, taking into account the importance of this sector to all developing Members, additional S&D treatments applicable for all developing Members should be recognized. One example would be that a longer transitional period should be provided for developing Members and a further longer transitional period should be provided for least-developed Members than described in paragraph 12. This is for the consideration of the Members and Japan is very flexible on this issue. We welcome suggestions by Members.
