

**Negotiating Group on Rules**

**SUMMARY REPORT OF THE MEETING  
HELD ON 28 SEPTEMBER 2004**

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 28 September 2004.
  - A. ADOPTION OF THE AGENDA
2. The Group adopted the following agenda:
  - A. ADOPTION OF THE AGENDA
  - B. SUBSIDIES AND COUNTERVAILING MEASURES, INCLUDING FISHERIES SUBSIDIES
  - C. ANTI-DUMPING
  - D. OTHER BUSINESS
    - Date of the next meeting of the Group.
- B. SUBSIDIES AND COUNTERVAILING MEASURES, INCLUDING FISHERIES SUBSIDIES
3. The Group discussed one new submission, entitled "Proposal on Fisheries Subsidies" (TN/RL/W/164). The sponsor recalled its concerns regarding proposals for a broad prohibition with exceptions, as this could prohibit too many good subsidies. The paper discussed three categories of measures: fisheries subsidies, general subsidies outside of fisheries subsidies and government payments outside of the Agreement on Subsidies and Countervailing Measures (the "ASCM"). The sponsor noted that general subsidies were provided with broad socio-welfare policy goals in mind and for all industries, not just fisheries. Government payments outside of the ASCM related to infrastructure such as fishing ports and residential amenities which were not for the exclusive use to fishers. Fisheries subsidies were subdivided into three categories: subsidies to promote the conservation and sustainable utilization of fisheries resources; subsidies – including cost reducing and revenue-enhancing subsidies - which caused neither adverse effects nor deterioration of resources because there was proper management; and subsidies which caused adverse effects and thus should be prohibited. The latter were mainly subsidies relating to IUU fishing, in particular subsidies for registration of vessels of countries that were not members of international organizations, and subsidies to fishers who had both properly licensed and IUU vessels.
4. The sponsor believed that consistency with UNCLOS, UNIA, and national laws were the basis for proper management. Capacity monitoring and capping mechanisms were important components, and should be implemented in a transparent manner through the publication or notification of such mechanisms. The sponsor illustrated its own experience in management, noting

that it had implemented fishing capacity restrictions. As regards the issue of trade distortion, 75 per cent of world fish resources were fully or excessively utilized. Thus, conservation and sustainable utilization of resources was the priority issue priority and a fundamental premise for the development of fishery products trade.

5. Some Participants welcomed the paper as a sensible policy response to the problems facing the fisheries sector. They considered that overcapacity and over-fishing was a matter of resource management, and that there was not necessarily a causal link between fisheries subsidies and overcapacity and over-fishing. Therefore, new disciplines should be based on the harmful impacts of certain subsidies on fisheries resources, taking into account the resource management regime employed. These Participants favoured a bottom-up approach under which Participants could identify subsidies and prohibit that led to overcapacity and over-fishing in poorly managed fisheries, or promoted IUU activities. The definition of IUU should be consistent with that in the "Nature and Scope of IUU Fishing and the International Plan of Action of the FAO". At the same time subsidies that were not trade-distorting and could contribute to resource management and conservation could be non-actionable. This would encourage Members to undertake relevant measures for resource conservation, promote sustainable development and transform their red light measures into green light ones. Government payments for the improvement of general infrastructure such as fishing ports, residential amenities in fishing villages, and seashore protection were outside the definition of a subsidy in the current ASCM. The issue of trade distortion should be addressed through clarifying and strengthening the rules and disciplines of the ASCM across all the sectors of non-agricultural goods.

6. Other Participants disagreed with the sponsors' focus on the effects of fisheries subsidies on resources. Some of these Participants considered that the disciplines should address both conservation and trade distortion issues, focus while others considered that only disciplines on trade distorting subsidies should be negotiated, although the disciplines might have the consequential effect of reducing incentives for the fisheries sector to invest in overcapacity. One Participant noted that the sponsor's definition of a properly managed fishery covered most, if not all, of the 75 per cent of fisheries that were currently overexploited. It was also observed that the sponsor's approach would introduce into the WTO concepts such as that of a "properly managed fishery" which were novel to the WTO. The same Participants generally opposed a bottom-up approach to the prohibition, but they considered that subsidies for management, general infrastructure, access payments, and social security programmes could be considered as possible exceptions to a general prohibition. For some types of programmes, such as vessel decommissioning, conditions needed to be attached to ensure that such programmes achieved their objectives. High seas subsidies should be prohibited immediately. Subsidies for new shipbuilding did not help global conservation of stocks and could eventually lead to subsidizing the fisheries, either on high seas or in the economic areas of other countries. It was submitted that the proposal provided for an empty red box and a full green box, and that the sponsor's approach to differentiating between these categories lacked transparency and could lead to subjective judgements. While some Participants acknowledged the social and economic importance of fisheries for developing countries, the paper lost sight of the fact that not all developing countries required special and differential treatment. In sum, some Participants regarded the sponsor's position as a significant step backwards from the current, inadequate structure of fisheries subsidy disciplines. Instead of proposing ways to clarify and improve fisheries subsidies disciplines, the sponsor sought to exempt nearly every fishery subsidy programme, even those granted for fishing vessel construction, if the fishery was properly managed, regardless of any possible adverse effect on trade.

7. One Participant submitted that any new disciplines should allow for the use of proper management of fisheries resources to alleviate poverty meet rural development objectives for developing countries. Subsidy programmes to enhance capacity in developing countries should include investment subsidies, measures of assistance including direct payments to encourage fishing and rural development, poverty eradication among the fishing community, training and educational

programmes, assistance to the fishing industry or marketing boards and cooperatives, fiscal incentives and reducing marketing and transport costs. There was a need for a detailed discussion on subsidies for artisanal fishing to help clarify its scope. Developing countries should not be deprived from the opportunity to use subsidies to develop their fishing industries.

8. A series of questions were raised. Clarification was requested regarding whether the sponsor was suggesting that the areas covered by the green box should be treated as non-actionable subsidies, whether the list of areas described in the paper was exhaustive and whether the sponsor was suggesting that Article 8 and Article 6.1 of the ASCM should be reinstated in order to accommodate such programmes. The sponsor was asked how its proposal took into consideration the different situations and problems of developing countries and LDCs. The sponsor was also requested to illustrate what percentage of its subsidies fell within its proposed green box. It was inquired whether the sponsor believed that subsidies granted for shipbuilding should be permitted if such ships were intended to fish on high seas and whether the use of general subsidies should fall outside the disciplines.

9. The sponsor emphasized that the WTO was the proper forum for the consideration of fisheries resources sustainability. It did not deny totally the trade distorting effects of certain types of subsidies, but stressed that the concepts of conservation and suitable utilization of fisheries resources are fundamental. It emphasised the importance of its bottom-up approach and requested that it remain as a subject for future discussions. Finally, it expressed its readiness to accept S&D for developing countries, especially artisanal fishing. It added that it had no intention to categorize developing countries.

C. ANTI-DUMPING

10. No new papers were submitted for consideration under this agenda item and no participant raised any issue relating to anti-dumping at the meeting.

D. OTHER BUSINESS

11. The Chairman recalled that the next meeting of the Group relating to anti-dumping and subsidies and countervailing measures including fisheries subsidies would be held on 1 to 3 November 2004. The deadline for any informal elaborated proposals for consideration in informal mode at that meeting was Monday, 18 October 2004, close of business.

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