
JAPAN'S BASIC POSITION ON THE FISHERIES SUBSIDIES ISSUE

The following communication, dated 1 July 2002, has been received from the Permanent Mission of Japan.

I. INTRODUCTION

1. In order to explain Japan's position on the fisheries subsidies issue, Japan submitted several papers in the past (JOB (99)5367 dated 16 September 1999 and WT/CTE/W/173 dated 23 October 2000). Japan also responded orally to the paper (TN/RL/W/3) presented by eight Members in the May meeting of the Negotiating Group on Rules. Japan hereby presents formally its basic position on the fisheries subsidies issue in a written form.

II. HOW THE EXISTING AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (ASCM) ADDRESSES THE FISHERIES SUBSIDIES ISSUE

2. Trade distortion caused by subsidies is not unique to the fisheries sector. Therefore, we cannot agree to the claim that special disciplines are required for fisheries subsidies.

3. The eight countries' paper argues that fisheries subsidies adversely affect not only trade but also fisheries resources and development. We consider that it is indispensable to first examine whether effects on trade are different between the fisheries and other sectors.

4. There is also an argument that fisheries subsidies create trade distortions, which the ASCM cannot address. That is, while importing countries may introduce countervailing duties against import of subsidized products, (i) an exporting country cannot take similar measures against an importing country when subsidies provided by the importing country impede export from the exporting country, (ii) an exporting country cannot take similar measures against another exporting country when products of the former cannot compete with subsidized products from the latter in a third country market.

5. It is clear, however, that Part III of the ASCM provides remedies for these two cases. If a WTO member considers that fisheries subsidies provided by other members cause problems in these cases, it can resort to the WTO system for rectifying them. Those who insist that fisheries subsidies distort trade should first make every effort to correct the alleged trade distortion by applying the relevant provisions of the existing ASCM. We have difficulties in supporting the approach of jumping to amend the ASCM without making such efforts. If the problem is a deficiency of the said provisions of the ASCM, it is not restricted to the fisheries sector. This issue should be discussed in terms of clarification and improvement in disciplines as applicable to all the sectors covered by the ASCM. As long as no convincing explanation is made as to the special nature of the fisheries sector

with regard to trade distortion, we cannot help being cautious about dealing with fisheries subsidies in a distinct manner based on trade distortion.

III. ACCESS LIMITATION TO FISHERIES RESOURCES

6. The eight countries' paper states, as the reasoning for requiring special rules on fisheries subsidies, that fishing capacity enhanced by fisheries subsidies brings over-exploitation of resources and limits access to shared fisheries stocks by others. There is no concrete supporting example, and no logical explanation is provided for endorsing the said reasoning that it is a problem unique to the fisheries sector for one country's subsidies to deplete shared stocks and to impede commercial activities of other countries. Also, it is not clear how the loss of certain shared stocks causes trade distortion, and no good explanation is presented on this point either. To sum up, we do not see enough evidence to support special treatment of the fisheries sector in terms of trade distortion that the ASCM is supposed to address.

7. Although the eight countries' paper claims that fisheries subsidies need special disciplines due to the nature of the shared stock, it is not clear which fishing area they have in mind (i.e., territorial waters, inland waters, exclusive economic zones (EEZs), high seas, etc.). As much as about 95 per cent of the world fisheries production takes place within national jurisdictions, namely, within EEZs of 200 nautical miles of coastal states. The United Nations Convention on the Law of the Sea (UNCLOS) stipulates that conservation and management of fisheries resources including management of access to resources is the duties as well as rights of coastal states within their EEZs. Conservation and management of fisheries resources can and should be achieved through the implementation of the duties under the UNCLOS by the coastal states that have the jurisdiction over their EEZs.

8. With regard to the remaining 5 per cent of the world fisheries production, namely, high seas stocks utilized by multiple countries, their conservation and management is basically a fisheries management issue to be handled by regional arrangements such as fisheries management organizations in accordance with the provisions of the UNCLOS. In fact, each regional fisheries management body discusses the factors causing stock depletion respectively. For example, the International Commission for the Conservation of Atlantic Tunas (ICCAT) is tackling IUU (illegal, unreported and unregulated) fishing activities; the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is dealing with fishing operations of non-members; the Inter-American Tropical Tuna Commission (IATTC) is discussing over-capacity of purse seine fishing boats and bycatch of small fish; the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is addressing IUU fishing activities. We will continue to cooperate with other members of these regional fisheries bodies to solve relevant issues.

9. Above all, we consider that the assumed limitation of access to shared fisheries stocks caused by over-exploitation is largely due to lack of proper fisheries management. In principle, this should be dealt with under the framework of the UNCLOS.

IV. DATA ON FISHERIES SUBSIDIES AND UTILIZATION OF EXPERTISE OF INTERNATIONAL BODIES

10. Attention should be drawn to the following estimates on the total amount of fisheries subsidies in the world or of groups of countries. According to a study conducted by the OECD Fishery Committee, the total amount of government financial transfers by the OECD members is \$6.3 billion in 1997.¹ 70 per cent of these transfers are used for research, management and enforcement that are not likely to affect fisheries resources or trade negatively.

¹ OECD, 2000. Government Financial Transfers and Resource Sustainability

11. A study conducted by the APEC estimates that the total amount of fisheries subsidies of the APEC member economies is \$12.6 billion.² Since the total amount of financial transfers by those that are both APEC and OECD members (Australia, Canada, Japan, the Republic of Korea, Mexico, New Zealand and the United States) is \$4.6 billion according to the OECD study, the total amount of fisheries subsidies by non-OECD APEC members (Brunei; Chile; China; Hong Kong, China; Indonesia; Malaysia; Papua New Guinea; Peru; the Philippines; the Russian Federation; Singapore; Chinese Taipei; Thailand and Vietnam) is calculated to be \$8 billion.

12. The APEC study concludes that only 10 out of the 162 fisheries subsidy programmes provided by the APEC members would pose a medium to high risk of being actionable subsidies under the ASCM and likely to be challenged. These 10 programmes amount to \$370 million, which is equal to only 3 per cent of the total, \$12.6 billion. This means that only 3 per cent of the APEC members' fisheries subsidies are highly likely to distort trade.

13. These estimates from international bodies clearly show that most fisheries subsidies and government financial transfers, provided by developed or developing countries, neither pose adverse impacts on resources nor distort trade. The World Bank paper (which clearly states that the findings, interpretations and conclusions expressed in the paper are entirely those of the author, and should not be attributed in any manner to the World Bank), to which the eight countries' paper refers, estimates that the total amount of the problematic subsidies is between \$14 and \$20.5 billion. As we have repeatedly pointed out, however, this figure is not reliable as it is an overestimate using very ambiguous basis.

14. We consider that the WTO should improve subsidy notifications in order to ascertain the facts and promote better understanding of subsidies. This should be discussed in a comprehensive and non-sector specific manner, as it is a matter of operation of the ASCM applicable to all the sectors covered thereby.

15. Research and policy analyses have been carried out on fisheries subsidies by various bodies such as the FAO, UNEP, APEC and OECD. For example, the above OECD study explicitly concludes that possible negative effects of fisheries subsidies can be minimized with proper fisheries management in place. We recognize that such scientific and factual analyses by such specialized international bodies should be the basis for further policy discussions.

16. The FAO will hold the second expert consultation on fisheries subsidies later this year to be followed by a government-to-government consultation. The OECD is to tackle the fisheries subsidies issue in a comprehensive manner for two years from the year 2003, including effects of subsidies on fisheries trade. It will analyze the fisheries subsidies issue more thoroughly, taking into account the results of the work in 1992 and 2000. The results of such work are expected to clarify policy implications of fisheries subsidies and should be duly utilized in conducting discussions at the WTO.

V. SUSTAINABLE DEVELOPMENT OF FISHERIES IN DEVELOPING COUNTRIES

17. We are of the view that due consideration should be given to subsidies for fisheries development of developing countries as long as these subsidies do not harm sustainable use of fisheries resources. For instance, consideration should be given from the viewpoint of subsistence and food security in local communities to fisheries subsidies provided to coastal small-scale fisheries. However, such special and differential treatment of developing countries is not confined within the fisheries sector, and thus should be discussed as a generic matter of the ASCM.

² APEC, 2000. Study into the Nature and Extent of Subsidies in the Fisheries Sector of APEC Members Economies

18. It should be noted that over-exploitation occurs in not only developed countries but also developing countries, especially their small-scale coastal fisheries.³ In order to realize sustainable development of fisheries in developing countries, the FAO and other relevant international bodies with expertise in fisheries should examine this issue, taking into consideration the aspects of sustainable development of fisheries resources as well as of environment and development in developing countries.

VI. CONCLUSIONS

19. Paragraph 28 of the Doha Ministerial Declaration reads, “we agree to negotiations aimed 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.” It also states clearly that fisheries subsidies shall be dealt within this context. Therefore, Japan believes that the fisheries subsidies will be discussed from the viewpoint of trade distortion as part of the overall clarification and improvement of the ASCM.

20. While there must be clear reasons to treat fisheries subsidies in a special fashion, we do not believe that valid reasons have been provided to conclude that the ASCM cannot address trade distortion of fisheries subsidies. Those who insist on special and separate treatment of fisheries subsidies have a burden of proof to fulfill. There is an argument that special disciplines are required for fisheries subsidies that restrict access to shared fisheries stocks. It is not evident how the loss of certain shared stocks causes trade distortion, and no adequate explanation is given on this point. About 95 per cent of the world fisheries production takes place within EEZs. Conservation and management of fisheries resources within EEZs can and should be achieved through the implementation of the duties under the UNCLOS by the coastal states that have the jurisdiction over their EEZs.

21. WTO members should give careful consideration to whether special disciplines are required for fisheries subsidies. If the existing ASCM has certain deficiencies, they should be fully studied and duly rectified. Pursuit of sectoral approaches without exhausting such efforts would invite fragmentation of the ASCM and unnecessarily complicate rules. It will result in going against the GATT/WTO history of integrating different sectors to be disciplined by common rules.

22. We consider in principle that the ASCM should be reviewed, if necessary, from the viewpoint of trade distortion. On the other hand, international bodies report that many of fisheries subsidies are spent on resource management and do not distort trade. In order for the WTO to appropriately deal with the complex nature of the fisheries subsidies issue, it should fully consider the results of studies conducted by international bodies with fisheries expertise such as the FAO and OECD, taking into account sustainable use of fisheries resources.

³ Porter, G, 2001. Fisheries Subsidies and Over fishing: Towards a Structured Discussion