

**Negotiating Group on Rules**

**KOREA'S VIEWS ON THE DOHA DEVELOPMENT AGENDA  
DISCUSSIONS ON FISHERIES SUBSIDIES**

**I. Introduction**

- Through previous submissions made to the rules negotiating group, some WTO Members argued that the fisheries subsidies have certain peculiarities, for which reason the SCM Agreement does not provide sufficient discipline on fisheries subsidies and there is a need to 'improve WTO disciplines in the fisheries sector'.<sup>1</sup>
- On several occasions, Korea expressed its concern that sectoral treatment of fisheries subsidies should not lead to the fragmentation of the SCM regime. Such a development will not be consistent with the mandate we have from the Doha Ministerial Declaration, which states "the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives" should be preserved in clarifying and improving disciplines under the SCM Agreement.<sup>2</sup>
- The peculiarities of the fisheries subsidies, which have been presented so far by a group of WTO Members, seem to be focused on the following two points:
  - (1) The fisheries subsidies can distort access to productive resources in addition to the standard market distortions addressed by existing SCM rules; and
  - (2) SCM rules do not provide sufficient discipline for fisheries subsidies, because the heterogeneous nature of fisheries products and the economic structure of the fisheries industry make it difficult to identify the market distortions at which SCM disciplines are directed.<sup>3</sup>
- Through this submission, Korea wishes to see, if the peculiarities of the fisheries subsidies are of such a nature as to justify the sectoral treatment of fisheries subsidies at the risk of the fragmentation of the SCM regime, which is a major corner stone of the WTO system as we understand it today.

**II. Do fisheries subsidies distort access to productive resources?**

- The relevant logic of a group of WTO Members seems to be that subsidy is responsible for the depletion of fishing stocks and, for this reason, subsidy, in addition to market distortions, distorts access to productive resources. Korea wishes to address these points in the remainder of this section.

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<sup>1</sup> TN/RL/W/3, para 17

<sup>2</sup> Doha Ministerial Declaration, paragraph 28

<sup>3</sup> TN/RL/W/3, paragraphs 14 and 16

## 1. Is subsidy responsible for the depletion of fish stocks?

- As noted in a WTO Secretariat's note submitted to the CTE, "the principal cause of stock depletion is inadequate management of fisheries resources".<sup>4</sup> As for the argument that fisheries subsidies is responsible for the stock depletion, it should be pointed out that no reasoned determination has been made on the causality between fisheries subsidies and the depletion of stocks. An OECD study concluded "the effects of transfers on resource sustainability is difficult to determine, as there are many influences on fish stock health that are difficult to disentangle".<sup>5</sup> A WTO study noted "further work is needed to analyze the nature, extent and implications of fisheries subsidies on trade and sustainable management."<sup>6</sup>
- Presently, relevant research and discussions are taking place on the issue in various fora, including OECD and FAO. Until we have more definitive outcome from these studies, in Korea's view, it is premature for the WTO to base its discussions on the assumption that subsidy is responsible for the depletion of fishing stocks.
- Pending the outcome of studies conducted at more qualified organizations, the following facts should be considered with respect to the causality between fisheries subsidies and the depletion of stock.

## 2. The level and the nature of subsidies

- First, it should be recalled that there is no agreed understanding on even the basic underlying facts, such as the level and the nature of the fisheries subsidies. So far, as will be illustrated below, available information diverges widely depending upon sources.
- A submission, citing a World Bank paper, argues that annual subsidies in the fisheries sector are between \$14 and 20.5 billion, or approximately 20-25% of the revenue.<sup>7</sup> The submission also suggests that the 'bulk' of these subsidies are provided by OECD countries.
- Another submission questions the authority of such figures. According to the latter submission, the total amount of financial transfer by the OECD members is \$6.3 billion, less than half of the OECD members' subsidies cited in the former submission.<sup>8</sup>
- More importantly, according to the latter submission, there is no dividing line between developing and developed countries in the provision of fisheries subsidies. Among the APEC members, 7 OECD members provided \$4.6 billion, while 14 non-OECD members provided \$8 billion, both figures according to APEC 2000 study.<sup>9</sup>
- As for the nature of subsidies, a submission to the CTE stated that fisheries sector subsidies are provided mainly to the harvesting sector, and thus impact on trade and harvesting operations.<sup>10</sup> Such an argument does not seem to be supported by an OECD study, which stated "most transfers (77%) are general services that are devoted to fisheries infrastructure and expenditure on activities, such as research and enforcement, that are essential for ensuring

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<sup>4</sup> WT/CTE/W/167, paragraph 15

<sup>5</sup> OECD, Government financial transfers and resource sustainability, 2000

<sup>6</sup> WT/CTE/W/167, paragraph 46

<sup>7</sup> TN/RL/W/3, paragraph 8

<sup>8</sup> TN/RL/W/11, paragraph 10

<sup>9</sup> TN/RL/W/11, paragraphs 10 and 11

<sup>10</sup> WT/CTE/W/51, paragraphs 16 and 17

the sustainable use of fish stocks and the aquatic eco-system".<sup>11</sup> Another submission to the rules negotiation, citing an APEC study, concluded that most fisheries subsidies are not of such a nature as to pose adverse impacts on resources or distort trade.<sup>12</sup>

- The argument that fisheries subsidies lead to over-capacity should be analyzed against the nature of the subsidies. If, as the OECD study suggests, most transfers are on general services, it will be difficult to argue that fisheries subsidies are the substantial cause of over-capacity.
- Given such a wide divergence of views on basic underlying facts, Korea believes that it is premature for the WTO to attempt to base its discussions on the assumption that subsidy is responsible for the depletion of fishing stocks.

### **3. The legal regime for the preservation of fishing resources**

- The argument that fisheries subsidies lead to depletion of fish stocks is based on the observations that fish stocks are shared among many countries and that stocks straddle or migrate between areas with different jurisdictional status.<sup>13</sup> The argument ignores the prevailing legal regime for the preservation of fishing resources, which imposes an important restraint on the sharing of fish stocks and the abuse of straddling and migratory stocks. Such a restraint will remove much of the putative impact of subsidy upon the depletion of stocks.
- Under the prevailing UNCLOS (U.N. Convention on the Law of the Sea) regime, 90-95% of fish is harvested within the EEZ's. The UNCLOS stipulates that conservation and management of fisheries resources including management of access to resources is the duty as well as rights of coastal states, having sovereign rights over EEZ's. The access of non-coastal states' fishing vessels, whether subsidized or not, is regulated by the conservation scheme of coastal states. Thus, with respect to fishing within the EEZ's, fish stocks are not shared among many countries.
- With respect to fishing within the high seas and the fishing of straddling and migratory stocks, catches are regulated by Regional Fishery Bodies (RFBs), "which are considered to be important elements of effectively addressing fisheries sustainability, particularly in the context of implementing UNCLOS".<sup>14</sup> A WTO research made a non-exhaustive list of no less than 28 RFBs, regulating the catch of important straddling and migratory species caught in the high seas throughout the world.<sup>15</sup> The access of fishing vessels, whether subsidized or not, is regulated by the conservation scheme of these regional organizations.
- The combination of the sovereign right of coastal states within the EEZ's and the extensive network of regional and/or specie-specific conservation schemes remove the possible effect of the sharing of fish stocks and the straddling and migration of certain stocks. This factor must not be ignored in reviewing the argument that fishery subsidies lead to the depletion of fish stocks. The sea is no longer an open sea with respect to fishing.

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<sup>11</sup> OECD, Government financial transfers and resource sustainability, 2000. Korea's national experiences are in line with the outcome of the OECD study, which was presented to the CTE through WT/CTE/W/175 (24 October 2000).

<sup>12</sup> TN/RL/W/11, paragraph 13

<sup>13</sup> TN/RL/W/3, para 9

<sup>14</sup> WT/CTE/W/167, paragraph 26

<sup>15</sup> WT/CTE/W/167, Annex II

### **III. How unique are the heterogeneous nature of fisheries products and the economic structure of the fisheries industry?**

#### **1. The global structure of the fisheries industry**

- According to a submission to the rules negotiating group, a peculiar structure of the fisheries sector is that most of the major subsidizing members are also major consumers, and have relatively limited exports. Countervailing duties under Part V are thus of little relevance in such a case; they can only be applied to imports into the complaining member's market.<sup>16</sup>
- The submission does not provide any substantiation of the summarized peculiarity of the fisheries sector. The argument could have been substantiated, if the major subsidizing members had been identified and their export in the fisheries sector verified. More importantly, were such an assertion to be true, the peculiar structure of the fisheries industry does not seem to support the argument that the SCM Agreement does not provide sufficient discipline for the fisheries subsidies.
- The SCM agreement provides different disciplines for different purposes. Part II remedies are provided to deal with prohibited subsidies. Part III remedies, to deal with actionable subsidies. The purpose of Part V subsidies is to deal with 'the injury caused by the subsidized imports'. Each of these remedies can be imposed, only when the conditions stipulated in the relevant provisions are met. Otherwise, there would be a risk of abuses.
- As for the countervailing measures, the condition is that there should be subsidized imports, causing injury. In fact, one of the fundamental principles underlying most trade remedy measures, including anti-dumping, safeguard and countervailing measures, is that a remedy can be imposed against imports, only when there is causality between the import and the injury. It is fully consistent with such a fundamental principle of GATT/WTO that, under the SCM agreement, Part V remedies are not available, when there is no injury caused by the subsidized imports. In view of this, Korea does not follow the logic that the SCM agreement is deficient, because it does not allow the imposition of countervailing duties in the absence of injury caused by subsidized imports.

#### **2. Heterogeneous nature of fisheries products**

- It is also suggested in the submission that the trade-distorting effects of fisheries subsidies is particularly difficult to be demonstrated due to the heterogeneous nature of fisheries products. Hence, Part III of the SCM agreement does not provide necessary discipline for fisheries subsidies.<sup>17</sup>
- According to the submission, fisheries products are uniquely heterogeneous from the following standards:
  - (1) They reflect the large range both of species and of processing techniques;
  - (2) Products from quite distinct species can nevertheless be in direct competition at market; and
  - (3) Superficially similar products can command quite different prices.

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<sup>16</sup> TN/RL/W/12, paragraph 3

<sup>17</sup> TN/RL/W/12, paragraphs 4-6

- In the July session of the rules negotiation, several Members expressed a view that heterogeneity of fisheries products does not justify the special treatment of fisheries products, since the heterogeneity is not peculiar to those products. The example provided by the EC was electronic products, while Korea provided wine as an illustration of heterogeneous products. Another good example would be clothing products.
  - (1) Women's dresses, for example, reflect a large range both of materials and of processing techniques;
  - (2) Products from quite distinct tariff lines, for example a silk dress falling under sub-heading 49 in 6104 and a synthetic fibre dress falling under sub-heading 43, can nevertheless be in direct competition at market; and
  - (3) Superficially similar products, for example a generic silk dress at a discount store and a designer piece along one of the boutiques in George V in Paris, can command quite different prices.
- Thus, Korea is not convinced by the argument that the fisheries products should be provided with a special treatment because of the uniquely heterogeneous nature of fisheries products.
- A related argument on the heterogeneity of fisheries products is that raw fish, in contrast to processed fish, is highly perishable.<sup>18</sup> According to an FAO statistics, however, the share of fresh or chilled fish in the total trade volume of fish products is not more than 22%.<sup>19</sup>

### **3. The link between heterogeneity and the SCM regime**

- Were it to be established that fisheries products are uniquely heterogeneous, the link between heterogeneity of fisheries products and the difficulty of applying SCM regime is very tenuous.
- First of all, the difficulty of seeking remedy under Part III is a structural issue, and not limited to fisheries products. In more than seven years since the establishment of the WTO, there has been only a single case, where a WTO dispute panel ruled that 'serious prejudice' existed under Part III of the SCM agreement.<sup>20</sup> If the demonstration of adverse effect is difficult, it is not peculiar to the fisheries sector, but a structural problem of the SCM regime.
- Conversely, the difficulty of identifying a like product or a reference price did not stop the imposition of countervailing duties or anti-dumping duties against fisheries products.
- An example of the imposition of countervailing duty on fisheries product is the one imposed by the US on fresh Atlantic ground-fish from Canada in 1986. An example of anti-dumping duty imposed on fisheries products is the one imposed by the US on fresh and chilled Atlantic salmon from Norway. The latter case was even taken to a GATT dispute panel.<sup>21</sup>
- On the one hand, fishery products are not uniquely heterogeneous. On the other hand, the heterogeneity of fishery products did not prevent the application of trade remedy measures to the fishery products.

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<sup>18</sup> TN/RL/W/12, para 10

<sup>19</sup> FAO Fishery Statistics 1999, pp.14-18

<sup>20</sup> *Indonesia- Auto*, WT/DS54,55,59,64/R

<sup>21</sup> Report of the Panel adopted by the Committee on Anti-Dumping Practices on 27 April 1994.

#### IV. Conclusion

- For the reasons set out in the two preceding sections, Korea is not convinced of the arguments that the peculiarity of the fisheries subsidies and products justify the sectoral treatment of fisheries subsidies.
- Korea is fully conscious of the importance of the preservation of fish resources. However, as cited above, “the principal cause of stock depletion is inadequate management of fisheries resources”. Thus, more efforts should be made to deal with the genuine problems for the improvement of management of fish resources, including the strengthening of capacity of the coastal states, the suppression of IUU (illegal, unreported and unregulated) fishing activities as well as the suppression of over-catch and by-catch of small fish.
- More emphasis on such efforts would be particularly necessary for developing countries. A submission to the rules negotiation stated; “trade distortions and overcapacity impede the sustainable development of many (developing) countries with significant fisheries resources.”<sup>22</sup> For the reasons stated so far, in Korea’s view, the sectoral treatment of fisheries subsidies, while not making a meaningful contribution to the sustainable development of those countries, would tend to divert attention from the necessary efforts that should be made.
- At the same time, these efforts should be made in a coherent and balanced manner, without undermining other important values in an arbitrary and hasty manner. One of such important values is the security and the predictability of the multilateral trading system, to which all WTO Members are committed. The SCM is a major corner stone of the WTO system. The integrity of the SCM regime should be preserved, unless and before it is convincingly demonstrated why it is justified to provide sectoral treatment to fisheries subsidies. The arguments on the peculiarity of the fisheries, presented so far, fail to make such demonstrations.

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<sup>22</sup> TN/RL/W/3, para 4