

POSSIBLE APPROACHES TO IMPROVED DISCIPLINES ON FISHERIES SUBSIDIES

Communication from the United States

The following communication, dated 19 March 2003, has been received from the Permanent Mission of the United States.

Introduction

1. Since the WTO Ministerial Meeting at Doha, the Negotiating Group on Rules has taken the opportunity to lay the necessary foundation for the Group's work on fisheries subsidies by reviewing some of the special features of the fisheries sector and by identifying relevant work on fisheries subsidies done in other fora. It is now time to begin a constructive dialogue on concrete ideas for carrying out the mandate of paragraph 28 of the Doha Declaration, to "clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries." The United States intends this submission to contribute toward the development of clarified and improved disciplines by identifying some key issues and offering some ideas for initial discussion.

2. This paper reflects preliminary ideas only and is submitted without prejudice to consideration of alternative approaches as the negotiations proceed.

Overall objective

3. As an initial matter, it should be emphasized that the goal of clarified and improved rules is to provide better disciplines on government programmes that promote overcapacity and overfishing, or have other trade-distorting effects.¹ As provided for in Article 1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), such subsidies have harmful effects because they reduce the costs of inputs (money, goods, or services) below what would otherwise be the case under normal market conditions, or enhance revenues and income beyond what would otherwise be earned. Better disciplines on fisheries subsidies that promote overcapacity and overfishing should also contribute to reductions in illegal, unreported, and unregulated (IUU) fishing, a charge given by world leaders in the Johannesburg Plan of Implementation of the World Summit on Sustainable Development. Furthermore, by addressing fisheries subsidies, significant environmental and developmental benefits are likely to be realized.

¹ Other government programmes may help to reduce overcapacity and overfishing, and contribute to fisheries sustainability. These latter programmes are not the focus of the negotiations. Programmes for artisanal fisheries in developing countries are likewise not a focus.

4. It may be useful to review the reasons why existing SCM disciplines do not adequately address harmful subsidies in the fisheries sector. As described in a previous submission by eight Members (TN/RL/W/3), the existing SCM rules are primarily designed to address certain types of market distortions associated with subsidized products (such as effects on price and market share in competing markets). A distinctive feature of fisheries subsidies, however, is that such subsidies operate to limit non-subsidized participants' access to shared fisheries *resources* (e.g. catches are limited to lower levels than would otherwise be the case, or there is even a loss of the resource altogether). It may, however, be difficult to demonstrate the effects of these production distortions (e.g. price effects and loss of market share in a particular market) in a manner contemplated by the current rules. Clarifications and improvements in the rules are therefore needed to make disciplines on fisheries subsidies more effective.

Expanded category of prohibited ("red light") fisheries subsidies

5. One useful starting point for a discussion on clarified and improved disciplines would be to consider the possibility of expanding the category of prohibited ("red light") subsidies (*see* SCM Agreement, Article 3) expressly to cover those fisheries subsidies that directly promote overcapacity and overfishing, or have other direct trade-distorting effects. Such subsidies could be categorized either by the type of programme (e.g. programmes that are deemed to result in overcapacity or overfishing), and/or by the fishery that they benefit (e.g. subsidies that contribute to overcapacity and overfishing in fisheries that are already overfished). An agreement to eliminate these most harmful fisheries subsidies could be an effective approach to addressing the problems of the sector.

Serious prejudice and a presumptively harmful ("dark amber") category

6. Another approach, that could either supplement or be independent of the "red light" approach, would be to consider a "dark amber" category of subsidies. These subsidies would be *presumed* to be harmful unless the subsidizing government could affirmatively demonstrate that no overcapacity/overfishing or other adverse trade effects have resulted from the subsidy. If the presumption were not rebutted, such subsidies would be actionable. A "dark amber" category could be modelled on the now expired Article 6.1 of the SCM Agreement. For example, subsidies that exceed a certain value of production could be presumed to cause "serious prejudice," but the presumption could be rebutted if certain criteria were met, such as by an affirmative showing that the subsidy was not being used to fish in a fishery that is overfished, or that effective restrictions were placed on the operation of the programme so that it does not result in overcapacity or overfishing. In addition to considering a dark amber category of fisheries subsidies, the Rules Group should also explore ways of making the existing provisions of the SCM Agreement that pertain to serious prejudice fully operational and effective in disciplining fisheries subsidies.

Improved notification of subsidy programmes

7. To make better data available for Members to assess and categorize subsidies, the Rules Group should also consider ways to improve the quality of fisheries subsidies notifications under the SCM Agreement. This could include provision for more detailed fishery-specific information, including information about relevant management regimes, so as to make notifications of fisheries subsidies under the SCM Agreement more complementary of existing fishery-related notifications in other fora (e.g. on capacity). Members could also discuss ways to make the fisheries subsidy notification requirement more effective.

Institutional aspects and public outreach

8. In considering the possible structure of these improved disciplines, the Rules Group should explore ways to draw upon information about the state of fisheries stocks and similar expertise in

other organizations, including development of relationships with the UN Food and Agriculture Organization and regional fisheries management organizations. The Group could also find ways to obtain the views of non-governmental groups and individuals with expertise, including the fisheries industry and environmental conservation groups.

Next steps

9. The United States invites discussion of the ideas set forth above and encourages Members to put forth additional ideas for discussion.
