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DEVELOPMENT AND SUSTAINABILITY IN THE WTO FISHERY SUBSIDIES NEGOTIATIONS: ISSUES AND ALTERNATIVES

Communication from New Zealand

The following communication, dated 24 May 2006, is being circulated at the request of the Delegation of New Zealand.

In the interests of keeping the Rules Negotiating Group informed of related events outside the WTO, we attach the Summary of the Chair of the recent UNEP/ICTSD/WWF workshop on development and sustainability in the WTO fisheries subsidies negotiations.

DEVELOPMENT AND SUSTAINABILITY IN THE WTO FISHERY SUBSIDIES NEGOTIATIONS: ISSUES AND ALTERNATIVES

International Environment House
Geneva, Switzerland
11 May 2006

CHAIR'S SUMMARY

On 11 May 2006, UNEP, ICTSD, and WWF joined together in Geneva to convene an informal dialogue on “Development and Sustainability in the WTO Fishery Subsidies Negotiations”. The focus of the workshop was on developing country issues in the current WTO fisheries subsidies negotiations. Specifically, this meeting sought to address the following questions:

- What are the specific **development and sustainability objectives** of governments in the WTO fisheries subsidies negotiations?
- What kind of **programmes or policies** are currently in place, or are envisioned for the future, to meet these objectives?
- What are the **key technical questions** that most need answering in order to draft new WTO disciplines that achieve the desired outcomes?

Participants included approximately 78 individuals, including 26 representatives from Geneva-based WTO delegations, 27 government officials based outside of Geneva, and 25 IGOs and non-governmental experts. Nearly two-thirds of the participants were individuals associated with governments or organizations in developing countries. All participants attended in their personal capacities, and agreed to abide by the “Chatham House Rule”. The agenda, participants’ list, and the formal workshop presentations are available at the organizers websites.¹

This summary report was prepared by Anja von Moltke (UNEP, Economics and Trade Branch) under her personal responsibility as the workshop chair. It is neither a consensus document nor fully comprehensive. Instead it seeks to review the main issues raised and suggestions made by participants. This summary report, nevertheless, has been circulated for review to all workshop participants before its finalization.

KEY POINTS OF THE DISCUSSION

The importance of developing country issues to the fisheries subsidies negotiations

1. Participants broadly shared the view that effective consideration of developing country concerns remains critical to the success of the fisheries subsidies negotiations, and that discussion of “special and differential treatment” for developing countries should continue in parallel with steps towards the adoption of effective WTO disciplines to limit harmful fisheries subsidies.

¹ <http://www.unep.ch/etb/events/2006ICTSDWWFMay11.php> and
<http://www.ictsd.org/dlogue/2006-05-11/2006-05-11-desc.htm> and
http://www.panda.org/about_wwf/what_we_do/policy/trade_and_investment/news/index.cfm?uNewsID=68300

2. The need for continued parallel treatment of developing country issues does not detract from the pressing need to define new disciplines, including a prohibition on fisheries subsidies that contribute to overcapacity and over-fishing, as mandated by the Hong Kong ministerial declaration. Indeed, several participants noted the analytic impossibility of drafting S&DT provisions without having a good sense of the positive obligations to which they relate.

The need for balanced new disciplines

3. Developing countries have strong interests at stake in these talks. Many participants noted that developing countries stand to gain significant benefits from new rules that discipline the subsidies currently received by the industries of some of the world's most powerful fishing nations. These disciplines, however, will need to take account of the special circumstances of developing countries, including the need for policy space to protect livelihoods, promote development, and maintain food security.

4. The discussion also revealed the continuing challenge of balancing economic development policies with the need for sustainable long-term management of fisheries. Participants stressed both the urgent need for securing the means to support development and the fact that avoiding the depletion of fish stocks is a *sine qua non* of successful development within the fisheries sector.

Effective S&DT does not mean “carte blanche” for unsustainable subsidies

5. Many participants called for S&DT provisions that are truly effective in protecting the right to use certain subsidies to promote development in the fisheries sector. Priority must be given to poverty reduction policies in developing countries, where properly designed subsidies can play an important role. A number of participants further noted that the financial capacity of many developing countries to provide subsidies is often limited.

6. Still, participants repeatedly voiced—and none spoke to oppose—the view that S&DT should give flexibility to developing countries without creating a “blank cheque” that would encourage or allow developing countries to cause overcapacity or overfishing through their subsidies policies. This might need to include workable conditionalities related to the sustainability context in which fishing subsidies are implemented. Participants explored possibilities including the use of the “patently at risk fishery” concept, which has already been introduced into the negotiations, as well as other approaches, such as conditionalities based on the U.N. Code of Conduct for Responsible Fishing. Participants also noted the recent introduction into the negotiations of proposals for institutional mechanisms to help consider and implement such criteria.

7. Reference was also made to proposals that have been offered at the negotiating table for a “simplified” approach to S&DT, such as a *de minimis* rule or a provision giving developing countries a time-limited exemption from new fishing subsidies disciplines. While some participants commented that such mechanisms might form part of an eventual S&DT package, others felt that these approaches taken alone did not adequately address developing country and sustainability concerns.

A workable approach to defining “artisanal fishing” remains elusive

8. Participants discussed at some length the issues raised by the term “artisanal fishing.” A variety of approaches to defining the term for purposes of new WTO disciplines was examined, including restricting the term to “subsistence” fishing or to vessels under a certain size or to certain levels of labour-intensivity. Attention was also given to the question whether “artisanal fishing” should be distinguished from “small scale fishing.” Approaches to these issues seemed quite disparate around the table. It was pointed out, for example, that the size limit proposed by one participant would have allowed nearly the entire industrial fishery of one developed country to be

classified as “artisanal”. Differing views were also expressed regarding whether specific rules or exemptions for artisanal and small-scale fisheries should be limited to the context of developing countries.

9. There nevertheless appeared, some basic agreement among participants on at least two points: first, that fisherfolk and fishing communities at the low end of the economic development scale pose particular needs and challenges to policymakers; and second, that it is generally the goal of governments and fisherfolk alike to raise people out of “subsistence” lifestyles, in particular through increased commercial and trade activities. These facts led some participants to suggest that the interests of “artisanal” fisheries might be protected through general S&DT rules, or even through other elements of the new fishing subsidies disciplines (such as rules allowing subsidies needed for maintaining a “social safety net” for fisherfolk).

The discussion of subsidies related to fisheries access arrangements is progressing

10. Participants also discussed at length the issues raised by subsidies associated with fisheries access arrangements. This discussion helped clarify some important elements of the “subsidies for access” question. In particular, there appeared universal agreement that new WTO rules should not treat government-to-government access fee payments as “subsidies” flowing between distant water fleet nations and host EEZ nations.

11. In addition, those participants inclined to seek some new disciplines on “access subsidies” expressed clear sympathy with the concerns that have been raised at the negotiating table by small vulnerable economies, including the fear of limited sovereign states’ flexibility on how to negotiate such agreements and use the access fees. Participants from all perspectives appeared united in the view that new WTO rules should not impede or discourage the access payments on which many small vulnerable economies depend. Participants also generally agreed that the lack of transparency of current access arrangements poses significant problems. Some suggested that there might be a role for the WTO to address these problems.

12. With participants largely in agreement that access fees themselves should not be considered subsidies, the discussion turned to the question whether any other aspect of access arrangements should be considered a subsidy under new ASCM fisheries subsidies disciplines. While there was no attempt to reach a common view on this point, there seemed some basis for agreement that any “subsidy” that might be found within access arrangements could only arise between the distant water fishing nation (DWFN) and its own domestic fishing fleet, on whose behalf the DWFN secured access to foreign fishing grounds. In this regard, some participants suggested that a subsidy exists to the extent the access fees paid by the DWFN are not repaid to the DWFN government by its industry.

13. Other participants, however, argued that the amount (or even the existence) of a government-to-government access payment is irrelevant to the measurement of an access-related subsidy. According to this view, the proper measure of a subsidy would be the difference between the commercial value of the access enjoyed by the private fleet and the amount it paid to its government in return for the securing of that access. This raised the question whether the same would apply at the domestic level.

14. The quality of the “access subsidies” discussion suggested, in the chair’s view, that governments have more in common on this issue than has been apparent in the negotiations so far, and that further technical exploration of the definition of an access subsidy could be especially useful.

Further discussion—especially of specific programmatic interests—is needed

15. A number of participants shared lists of specific types of fisheries subsidy programmes maintained by their governments. The discussion that ensued around these lists was useful as

participants began to explore the nature of the rules needed for the protection of developing country interests. In particular, this part of the dialogue revealed the necessary links between crafting S&DT provisions and crafting other elements of the new fishing subsidies disciplines (such as exceptions to a prohibition, or a category of non-actionable fisheries subsidies).

16. Several participants expressed concern with the shortness of time remaining in the negotiations. The view was offered that continued discussion at the level of specificity achieved at this workshop was urgently needed. This sentiment seemed widely shared by the participants. The shortness of time notwithstanding, however, it appeared to the chair that participants in this workshop continue to feel optimistic that the technical and political challenges associated with the fisheries subsidies talks can and will be met.
