

FISHERIES SUBSIDIES: OVERCAPACITY AND OVEREXPLOITATION

Communication from New Zealand

The following communication, dated 23 April 2004, is being circulated at the request of the Delegation of New Zealand.

SUMMARY

1. Calls for prohibition of subsidies that promote overcapacity and overfishing are a common feature of initial proposals in the negotiation. But explicitly addressing overcapacity and overfishing through subsidy rules is problematical. Targeting programmes that have revenue or cost impacts for the industry would offer an effective means of addressing subsidy-induced overcapacity and overfishing as well as other trade distortions. An approach involving a broad prohibition of such programmes would have to be balanced by exceptions and transitional provisions, including special and differential provisions for developing countries.

INTRODUCTION

2. A common feature of several submissions presented over the past year is that they envisage a broad "red light" (prohibited) category of subsidies in the fisheries sector as a key discipline. There are good practical reasons for taking this approach: experience with current rules suggests that only a "red light", which prohibits subsidies *ex ante*, provides the requisite certainty and enforceability.

3. A number of possible approaches to defining an expanded red light category have been suggested. One submission¹ suggested expanding the category of prohibited subsidies expressly to cover those subsidies that "directly promote overcapacity and overfishing, or have other direct trade distorting effects." Another submission² proposed to prohibit "capacity enhancing subsidies". A third submission³ suggested prohibiting "all fisheries subsidies of a commercial nature, directly geared towards lowering costs, increasing revenues, raising production (by enhancing capacity), or directly promoting overcapacity and overfishing". Those proposing these approaches have had concerns about both environmental damage and more conventionally defined trade distortions that result from subsidies in the sector.

4. As the extracts quoted above indicate, the second common feature of these proposals is the focus on overcapacity and overfishing. If overcapacity and overfishing are to be taken as a starting

¹ TN/RL/W/77

² TN/RL/W/82

³ TN/RL/W/115

point or main point of reference the practical question that follows is how to incorporate them into improved subsidy disciplines.

HOW MIGHT OVERCAPACITY AND OVERFISHING BE ADDRESSED IN SUBSIDY RULES?

5. Concepts such as overcapacity⁴, overfishing⁵ or overexploitation or even “trade distortions” are not easy to address directly through subsidy disciplines. Current ASCM provisions typically refer to more easily tested trade or economic effects such as impacts on prices, production, imports or exports. “Overcapacity” and “overfishing” are more complex terms that are liable to prove problematical for interpretation and enforcement if incorporated directly into rules in those words.

6. To address overcapacity and overfishing through subsidy rules requires first an understanding of how subsidies contribute to those effects. An earlier submission to the Committee on Trade and Environment⁶ outlined the linkage:

“ ... it is generally agreed that subsidies that affect capacity or effort have effects on resource sustainability, although views differ on their specific positive and negative impacts. Virtually everyone agrees that some subsidies have negative environmental effects: they reinforce the tendencies to overfish and overinvest, thereby exacerbating an already difficult problem and undermining remedies. These subsidies encourage overfishing and overcapacity because they: (1) reduce fixed and variable costs; (2) enhance revenues and incomes; and (3) mitigate risks. With reduced costs and risks, and enhanced prices, vessel owners will tend to pursue harvests to an unsustainable degree and as well add capital [to] their operations. In fisheries that are already exploited at maximum sustainable yield (MSY) or beyond MSY, additional effort and capital further dissipate rents, lead to resource erosion, and generally result in an unsustainable level of economic activity.”

7. Of the three key factors identified here, two – costs and revenues – can more readily be quantified (and in practice we would expect most risk-related support to be picked up under the “costs” heading). These factors would, on the face of it, readily lend themselves to direct application in improved subsidy disciplines in the fisheries sector. Focusing on the effect of subsidies on industry costs and revenues would also ensure the WTO is not drawn into areas beyond its traditional competence.

CAPITAL OR OPERATING COSTS?

8. If costs and revenues are to provide a starting point we also need to consider which costs would be covered. Some earlier proposals seemed to envisage disciplines applying essentially to costs associated with overcapacity – primarily capital costs. Yet the first real test of any improved disciplines will be the extent to which they address overfishing (or overexploitation of fisheries resources, as others have put it). Overfishing is driven by overall fishing effort, in which overcapacity is a critical but not sole factor. This strongly suggests that improved disciplines will need to extend to variable costs as well as fixed costs.

⁴ “more capacity than needed for an economically healthy fishery” (WT/CTE/W/154)

⁵ “rates of fishing mortality that exceed sustainable levels” (WT/CTE/W/154)

⁶ WT/CTE/W/154

NEGATIVE OR POSITIVE LIST?

9. Support programmes in the fisheries sector are notorious for their lack of transparency. Lack of reliable information on programmes in a number of major subsidising countries has made it particularly difficult to quantify and analyse subsidy programmes.⁷ Inadequacies in WTO notification requirements and members' notifications have contributed to the problem.

10. This lack of transparency suggests that improved disciplines will need to anticipate difficulties in monitoring future subsidies. Lack of transparency also exacerbates risks of circumvention. These risks are already high because of the extent of vertical integration in the industry.

11. Circumvention risks would be minimised if the application of new rules was elaborated via a negative list rather than a positive list approach. In other words, a subsidy programme would be captured by new rules unless programmes of that type were specifically excluded.

POSSIBLE BASIS FOR EFFECTIVE SUBSIDY DISCIPLINES IN THE FISHERIES SECTOR

12. Several conclusions follow from this discussion. If modified subsidy rules are to be effective in addressing overcapacity and overfishing, as well as other trade distortions, they will need to:

- make prohibition the primary discipline;
- apply, in principle, to the full range of programmes that are liable to contribute to overcapacity or overfishing or other trade distortions; and
- use a negative list approach for exceptions to minimise circumvention risks.

As to how overcapacity and overfishing might be translated into new rules, an obvious approach would be to:

- take reduction of fixed or variable costs or enhancement of revenues or incomes as basic tests to be applied within new rules.

EXCEPTIONS

13. Submissions in this negotiating group (and, earlier, in other WTO bodies) have suggested a number of types of programme that should not be subject to new disciplines. Some categories of management or environmental programmes have been mentioned, for example, as have transitional programmes.

14. These issues will need to be the subject of detailed examination and negotiation. Exceptions would not necessarily be open-ended: some might be temporary in nature. Decisions will also be needed on whether a simple "exceptions" approach will suffice or whether a more positive "green light" category might also be needed. But in the interests of effectiveness and avoiding circumvention it seems preferable to start with primary disciplines that are comprehensive in their coverage, with only limited and defined exceptions. This simpler approach also has the advantage of limiting compliance costs.

⁷ See, for example, the detailed account in *Hard Facts, Hidden Problems*, WWF 2001 pp 10-24.

TRANSITION

15. Subsidy programmes in the fisheries sector in some countries are critical for the economics of the industry. In many cases withdrawal of large-scale subsidies can be expected to have important social as well as commercial impacts. It will not be realistic to expect rigorous new disciplines to take full effect immediately.

16. This suggests that a negotiation will need to address not only exceptions to general rules but also a need for transitional provisions that will allow realistic implementation arrangements. There are useful precedents in various WTO agreements. Again, these provisions should be considered once there is wider agreement on the shape of the basic disciplines.

NOTIFICATION

17. As mentioned above, notification requirements and some members' notification practices have contributed to a lack of transparency in relation to subsidies in the fisheries sector. This has been flagged in earlier submissions⁸ and remains an issue that will need to be addressed in the development of improved disciplines. Development of transitional provisions is likely to drive much of this work.

SPECIAL AND DIFFERENTIAL PROVISIONS

18. The mandate for this negotiation requires participants to take into account the needs of developing and least developed participants and, specifically, to take into account the importance of the fisheries sector to developing countries. As with general exceptions and transitional provisions, full discussion of special and differential provisions will only be practical once there is some convergence on the primary disciplines that are to be put in place.

⁸ See, for example, TN/RL/W/3 and TN/RL/W/21.