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Which Way Forward? WWF Reaction to Recent Proposals

WTO Fisheries Subsidies Negotiations — Geneva — 8 February 2011

After an extended period of relatively slow progress, the WTO fisheries subsidies negotiations are now moving intensively towards a revision of the draft text that has been the focus of the talks since 2007. With the NGR under a mandate to produce a revised draft in just a few months' time, a sense of urgency has entered the debate. Papers tabled recently by several delegations help narrow some of the remaining areas of disagreement, but also leave in place--or in some cases reinforce--important differences over key elements of new fisheries subsidies disciplines. How WTO members resolve these differences will determine whether, in accordance with the Hong Kong mandate, they adopt rules that effectively prohibit subsidies that drive overfishing, or will instead turn their backs on the progress that has been achieved, and on the promises governments have repeatedly made. We are approaching a critical turning point in the talks, with success or failure in the balance.

FAO data released in Rome last week indicate that only 15% of fisheries in 2008 were underexploited or moderately exploited--down from 20% in 2007.¹ With 85% of global fisheries now fished up to or beyond their biological limits, and with global fleets still far beyond sustainable capacity levels, there is an urgent need to end the subsidized race for dwindling fish stocks.

As the health of world fisheries continues to erode, WTO members are facing a fundamental test: Can the WTO meet its environmental responsibilities as enshrined in its charter? Or will short-sighted politics once again prevail over common sense, leaving governments to continue using taxpayer money to subsidize overfishing?

The proposals recently tabled by a number of delegations give cause for both hope and concern.

The Proposal of Japan

Japan is a powerful fishing nation, and one of the heaviest users of fisheries subsidies. It is also a nation that has shown positive leadership in global efforts to achieve responsible fishing and a strong system of international fisheries governance. It is unfortunate, therefore, that Japan continues to take positions so directly at odds with the Hong Kong negotiating mandate on fisheries subsidies. While the new Japanese paper (TN-RL-GEN-171) reveals some progress towards a more constructive position, its basic tone and approach are negative. Japan thus remains one of a small number of WTO members actively pursuing a "low ambition" outcome to the fisheries subsidies talks.

In its paper tabled on 17 January, Japan continues to argue that fisheries subsidies are not a major factor contributing to the current crisis of overcapacity and overfishing. This claim, backed by

¹ FAO, *The State of World Fisheries and Aquaculture 2010* (Rome 2010), p. 8.

some unpublished “statistical analysis” that has not yet been subject to peer review or even public scrutiny, is at odds with the great weight of international expert opinion as well as with common sense.² Japan’s fundamental claim—that the dangers of fisheries subsidies can be adequately addressed through good fisheries management alone—is at best a statement of theory or of hope. Certainly, it is not a description of the way the world really works.

There are three fatal flaws in the claim that management can replace strong subsidies disciplines:

First, the continuing deterioration of global fish stocks makes it painfully obvious that **responsible fisheries management is still the exception rather than the rule** in today’s world. While improvements in management are slowly being achieved in some places, it will take many years—perhaps very many years—for governments to develop the political will and institutional capacity to achieve sustainable fisheries management on a broad scale. In the meantime, fisheries subsidies will continue to encourage overcapacity and overfishing.

Second, even where basic elements of fisheries management are in place, subsidies can pose a significant threat to sustainability. As noted by UNEP in 2004,³ fisheries subsidies are **likely to lead to overcapacity in any fishery not subject to effective “rights-based” management** (such as “catch share” programmes) under which fishermen have direct economic incentives to limit fleet capacity. Such rights-based regimes are a “best practice” that today can be found in only a tiny fraction of the world’s fisheries.⁴

Third, fisheries subsidies can **retard progress towards good management** by maintaining stakeholders who might otherwise exit the industry. As evident in the history of some of politically powerful fishing communities in Europe and Canada, for example, subsidies that buffer enterprises against the economic consequences of overfishing can bolster constituencies that resist the same management restrictions which Japan would propose as safeguards against subsidized overcapacity and overfishing.

Since Japan evidently believes that fisheries subsidies are not really part of the problem, its latest paper again proposes a narrow approach to new disciplines. While Japan has for the first time called for prohibiting at least some subsidies to operating costs, the effect of its proposal overall is to reduce Article I to a scope far narrower than the current draft text and arguably even narrower than Japan’s own previous proposals. Japan’s current paper does this in a number of ways, including:

- by deleting language that would prohibit subsidies that encourage fishing in unequivocally overfished fisheries;

² Among the authoritative entities that have recognized the direct links between fisheries subsidies and overfishing are the OECD, the World Bank, the FAO, the Asian Development Bank, and the European Association of Fisheries Economists, among others. See WWF, *Healthy Fisheries Sustainable Trade*, App. 2.

³ UNEP, *Analyzing the Resource Impact of Fisheries Subsidies: A Matrix Approach* (Geneva 2004).

⁴ **NOTE:** The sustainability criteria that WWF has long proposed as a condition on S&DT would not require the implementation of rights-based management regimes. This means, in effect, that WWF supports conditions on S&DT that, even if they were fulfilled, could not guarantee qualifying subsidies would be harmless. WWF’s willingness to rely on Art. IV as the ultimate discipline on such subsidies is rooted in our recognition of compelling arguments based on equity, on the role of S&DT in supporting the development of underdeveloped industries, and on the financial and institutional constraints on many developing country fisheries management regimes. These arguments do not apply to developed countries, for whom WWF believes a broad range of capacity- and effort-enhancing subsidies should simply be prohibited..

- by continuing to rely on an unrealistically narrow definition of “capacity” that ignores technology and other factors that can dramatically increase fishing power;
- by proposing a carve-out for broadly defined class of “small scale” fishers in developed countries, despite the proven ability of “small” vessels to operate at high levels of technical and commercial development, and to aggregate into fleets with massive overcapacity and the ability to deplete fisheries;⁵

NOTE: According to FAO data released last week, approximately 80% or more of fishing vessels in all regions of the world, including Europe and North America, are less than 12m in length; 95% or more are less than 24m long.⁶

- by proposing extremely broad exceptions to the prohibitions, granting governments a wide range of potential excuses to justify subsidizing increased capacity or effort (such as, for example, “unexpected change of economic situation” or “measures necessary to ensure the social welfare of fishworkers”);
- by weakening the language of the Chair’s draft prohibiting subsidies to illegal, unreported, or unregulated fishing;⁷

Taken all together, Japan’s approach is a case of “the exceptions swallowing the rule.” It is hard to find a fishery subsidy in use today that would not be allowed by Japan’s combination of narrow prohibitions and generous loopholes.

Presumably as an enticement to elicit developing country support for a drastically weakened Article I, Japan offers language that would also dramatically weaken the limits and conditions on S&DT.⁸ Among the keys to this weakening would be:

- reducing Article V management conditions to a “best efforts” requirement for the broadly defined class of “small scale” fisheries; and
- exempting subsidies to operating costs (among others) from Article V altogether, within developing country EEZs.

These changes provide Japan’s proposal with what might be called “symmetrical low ambition”, and should be viewed as a lose-lose deal for all parties involved.

⁵ See generally, *Small Boats; Big Problems* (WWF 2008).

⁶ FAO, *The State of World Fisheries and Aquaculture 2010* (Rome 2010), p. 32 & Fig. 17.

⁷ While Japan argues that it has strengthened the text’s treatment of subsidies to IUU fishing (by transferring it to Art. I.2, and thus subjecting LDCs to its terms), it proposes removing the prohibitory language from the IUU clause. Japan’s rule would thus deny IUU fishers the benefits of exceptions to the Art. I.1 prohibitions, but subsidies to illegal fishing that do not fall within the narrow scope of Japan’s prohibitions would continue to be permitted.

⁸ In one step towards limiting S&DT, Japan does reiterate its call for differentiation among developing countries based on overall fishing power. While this concept clearly deserves consideration, its plausibility or operational effect within Japan’s proposal cannot be known. Given Japan’s call for weak disciplines overall, restricting the applicability of S&DT would be of uncertain impact.

The Proposal of Canada

In TN/RL/GEN/156/Rev.1, Canada refines and extends its proposal for a *de minimis* exception to Article I prohibitions. It remains, however, difficult to know whether Canada's proposal would have only a *de minimis* impact on the level of ambition of eventual fisheries subsidies rules. There are several reasons for concern:

- First, by leaving blank the threshold percentages (“X%” and “Y%”), Canada's proposal leaves open the possibility that very large amounts of subsidy money could flow under the *de minimis* exception.
- Second, Canada's rule would calculate the *de minimis* cap based on the value of an entire EEZ's production, but would allow concentration of the resulting subsidies on subsectors within a national fishing industry, thus allowing subsidies to particular fleets that would vastly exceed the *de minimis* level.
- Third, even leaving aside the potential for concentration of subsidies on subsectors, Canada's rule would allow subsidies that dramatically increase the level of capitalization—or dramatically reduce the operating costs—of specific subsectors. The concept of *de minimis*, if it is to be applied at all, should be expressed in relation to existing levels of capitalization or of operating costs in the specific fisheries to be subsidized.

In general, WWF considers that the question of *de minimis* treatment should be viewed with skepticism, and left to late stages of the negotiations, when the need for such an “escape hatch” can be better understood in the context of the other disciplines to be agreed.

The Proposal of Argentina, Chile, Egypt and Uruguay

In TN/RL/GEN/173/Rev.1, four important developing countries make a welcome contribution to the ongoing discussion of S&DT. Of particular importance is the paper's emphasis on the need to restrict S&DT subsidies to fisheries where existing capacity is demonstrably and substantially lower than the “full capacity” needed to harvest maximum sustainable catches. WWF has previously called this concept the “room to grow” test, and has called for adding it to the language of the Chair's text. The “room to grow” concept directly addresses the need to keep S&DT from fueling overcapacity and fisheries depletion.

Moreover, as articulated in GEN/173/Rev.1, the “room to grow” rule would reinforce the need for certain basic elements of fisheries management as preconditions to S&DT. Specifically, the rule would require adequate assessments of fishing capacity and stock health—along with the setting of quantitative catch limits—as steps towards ensuring that the “room to grow” criterion has been met. The paper further supports both fisheries management and the enforceability of WTO S&DT rules by requiring the public registration and licensing of vessels to be subsidized. All these conditions are fully consistent with the approach recommended in the joint technical paper on sustainability criteria published by WWF and UNEP in 2007.

Finally, by emphasizing the need for transparency in the application of the rule, the paper further supports an aspect of new fisheries subsidies rules that WWF considers absolutely essential to success.

Certain details of the language proposed by GEN/173/Rev.1 may require further technical refinement to be fully effective, and to provide sufficient flexibility in the required assessment techniques to allow compliance with the rules under different national and local circumstances. Overall, however, the basic content of GEN/173/Rev.1 would significantly strengthen the S&DT provisions of the Chair's text.

The Proposals of Ecuador & Peru, and of Morocco

In TN/RL/GEN/170 and GEN/172, three other important developing countries with substantial fishing industries also contribute to the evolution of the S&DT discussion. The focus of this submission is a proposal to broaden the language in the Chair's text granting additional flexibilities for subsidies to fishers at the low end of the development spectrum.

WWF fully supports WTO flexibilities for subsidies to subsistence and near-subsistence level fishers. But we have repeatedly cautioned against allowing this important policy goal to become an unintended loophole in new fisheries subsidies disciplines. Moreover, we reiterate our consistent call for Members to consider carefully the purpose and proposed legal effects of creating such a category within the new rules. Since WWF supports relatively broad S&DT, the question at hand should not be “what kinds of subsidies should be additionally allowed”, but rather “what special flexibilities in the conditions for S&DT should be allowed” for these least-developed fishers. In other words, the need for a special class of “artisanal” fishers (whether or not explicitly given that name) arises not from the need to increase the scope of S&DT for them, but rather to lighten the conditions they must meet.

This means that the goal of creating such a class of fishers under new WTO rules would be to allow a softening of the conditions articulated in Article V. It follows that such a rule is only needed where the burdens of Article V would not be reasonable. The definition of this class of fishers should thus depend on characteristics that are directly relevant to determining when the requirements of Article V cannot be reasonably imposed—such as where the decentralized and traditional nature of the fishery makes collecting catch data and imposing regulatory controls (such as vessel registries) difficult or impossible. In these cases, as explained in detail in the WWF-UNEP *Sustainability Criteria* paper of 2007, more qualitative and “community based” forms of management should be allowed.

WWF agrees that such fisheries could include enterprises operating above strictly “subsistence” economic levels, and could even include what might be called “small-scale” trade. But as trade intensifies, or as market logistics become more centralized, the ability to organize data collection and regulatory mechanisms rapidly increases. Peru itself is a leader in the practice of surveying and taking quantitative account of its artisanal fisheries. In many cases, even very poor fishermen can be subject to the rudiments of modern fisheries management without unreasonable costs or burdens.

In short, WWF advises caution in making any changes to the approach of the Chair's draft to the creation of an (unnamed) class of artisanal fishers. We remain especially concerned with proposals to base such a class even partly on vessel size—as vessel size has little to do with the level of social or economic organization of a fishery, or with its ability to cause depletion or its readiness for regulatory management.

We do, however, applaud the concept introduced in GEN/172 of phasing in the requirements of Article V over time. A key goal of subsidies to subsistence and near-subsistence fishers should be to raise their level of development to a condition that makes fuller application of Article V both plausible and desirable.

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