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## **WWF Comments on New U.S. Proposal on Fisheries Subsidies**

Geneva (26 March 2007) — As trade delegates meet this week for negotiations on new WTO rules to eliminate harmful fisheries subsidies, a proposal tabled by the United States has made an important contribution to the talks.

The new U.S. paper (TN/RL/GEN/145) constitutes the first proposal on fisheries subsidies to be brought forward by the United States since Hong Kong. Taken as a whole, the U.S. proposal moves the debate in a positive direction on a number of issues critical to the ultimate success of the fisheries subsidies talks.<sup>1</sup>

First, the U.S. paper calls for a prohibition on harmful fisheries subsidies that is broad while seeking to be balanced in its scope. The “general prohibition with limited exceptions” structure of the ban puts the burden where it should be: on governments seeking to justify the use of fisheries subsidies. The focus on subsidies benefiting fishing enterprises is also appropriate, so long as the rule covers both direct and indirect subsidies. As governments consider the details of the U.S. proposal, however, a few cautions should be noted:

- Several exceptions proposed by the U.S. require clarification and limitation to ensure they do not allow subsidies likely to contribute to overcapacity or overfishing. Particularly worrisome are exceptions for subsidies that can help create or maintain fishing capacity, such as subsidies to infrastructure, on-shore processing, disaster and unemployment relief, and “vessel safety” improvements. These need careful definition and should be conditioned on adherence to basic standards of responsible fisheries management.
- The prohibition should be given the same legal effect as the existing prohibitions under ASCM Art. 3. The language of the prohibition should track ASCM Art. 3, and should be equally subject to the “deemed specific” provision of ASCM Art. 2.3 and to dispute resolution provisions similar to ASCM Art. 4. The “red light” for harmful fisheries subsidies must not be merely “pale red.”
- The reference to “marine” wild-capture fisheries inappropriately excludes international fresh water fisheries. The recent proposal by Brazil (TN/RL/GEN/79/Rev.4 at fn.1) offers a better approach by excluding only inland fisheries of a purely national character.
- Any discussion of “flexibility for small programs” should proceed with the utmost caution, if it is to proceed at all. This proposal raises significant concerns both for sustainability and international equity.

Second, the U.S. paper includes two important proposals for strengthening the ability of WTO members to challenge non-prohibited fisheries subsidies through an expanded definition of “serious prejudice” under ASCM Art. 6. By allowing actions against both subsidized increases in fishing capacity and subsidized increases in catch share, the U.S. proposal seeks to prevent market distortions at the level of production and not only at the level of international sale. This key innovation is critical to making new disciplines work in

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<sup>1</sup> For a general discussion of the key issues now facing negotiators, see *Best of Texts, Worst of Texts* (WWF, June 2006) ([http://www.panda.org/about\\_wwf/what\\_we\\_do/marine/publications/index.cfm?uNewsID=72220](http://www.panda.org/about_wwf/what_we_do/marine/publications/index.cfm?uNewsID=72220))).

favor of both fish and fisherfolks, and responds to calls issued by a number of governments throughout the fisheries subsidies negotiations.<sup>2</sup> Here again, however, several details need further refinement. For example, a broader use of “dark amber” or other burden-shifting devices should be strongly considered. In addition, to be consistent with the realities of fisheries production and trade, the proposed language should be extended to cover “like or directly competitive” products, as in the case of export subsidies under ASCM Annex I, ¶ (d).

Third, the U.S. paper takes a good step forward on the issue of notification and transparency by calling for notifications to identify the fisheries affected by subsidies and to provide certain information about them. This again is a fundamental and necessary innovation. Policy coherence will remain impossible so long as governments are free to subsidize fishing without disclosing which fisheries will feel the effects. But the U.S. proposal will need to be strengthened in two ways if this innovation is to be made effective:

- Ambiguities in drafting need to be removed to ensure that governments cannot report subsidies without identifying and discussing the specific fisheries at stake. Indeed, where new rules allow subsidies directly to fishing enterprises, the specific enterprises and vessels involved should be named and tracked. The rules must not accept “we don’t really know where the money goes” as an answer.
- Failures to submit notifications should have significant legal consequences. The history of ASCM Art. 25 clearly shows that notification requirements need real teeth. The U.S. paper indicates a willingness to discuss “incentives to notify.” Other governments have made similar gestures. But it will take more than a “willingness to discuss” to overcome the widely shared history of non-compliance on notifications.

### **Other areas in need of development**

In the three areas noted above, the U.S. paper significantly advances the fisheries subsidies negotiations, and has set out a good framework for further discussion. In addition to the detailed issues mentioned above, however, two other topics will require additional review.

Most obvious is the need for fuller discussion of S&DT for developing countries. The U.S. paper encourages building on the approach proposed by Argentina. WWF agrees, but would add that the proposals from Brazil continue to bring important additional elements to the debate, including by recognizing that the health of target fish stocks must be considered alongside fleet capacity and responsible management. On the question of “subsidized foreign access”, the U.S. adopts the good approach proposed by Brazil and New Zealand (defining the subsidy as the transfer of rights by the distant water fleet nation rather than as the government-to-government payments), but offers a definition that could understate the value of the subsidy to the detriment of developing countries.<sup>3</sup>

Second, the growing dialogue between the FAO secretariat and WTO delegations reflects the need for explicit mechanisms to involve intergovernmental fisheries policy bodies in the administration of new WTO fisheries subsidies disciplines. More is needed here than simply encouraging panels to consult with external bodies. Governments should consider forming a standing entity or other administrative arrangements—either within or outside of the WTO structure—to provide expert advice, and should clarify the mandate to be given to such an entity.

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<sup>2</sup> See, e.g., TN/RL/GEN/138 (Argentina, 1 June 2006), ¶ 2; TN/RL/W/176 (Brazil, 31 March 2005), ¶ 17.2; TN/RL/W/77 (United States, 19 March 2003), ¶ 4; TN/RL/W/3 (Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States, 24 April 2002), esp. ¶ 9. See also statement of José Fritsch, Special Secretary for Aquaculture and Fisheries, at the WTO ministerial in Hong Kong, December 2005 (available at [www.panda.org/about\\_wwf/what\\_we\\_do/policy/news/index.cfm?uNewsID=54340](http://www.panda.org/about_wwf/what_we_do/policy/news/index.cfm?uNewsID=54340)).

<sup>3</sup> The economic value of the subsidy should be measured in terms of the value of the fish acquired rather than in terms of the theoretical “market” price of access; the latter depends too heavily on non-economic negotiating factors that are weighted heavily in favor of developed country stakeholders.