DISCIPLINING FISHERIES SUBSIDIES: INCORPORATING SUSTAINABILITY AT THE WTO & BEYOND

1-2 March 2007 — Geneva, Switzerland

CHAIR'S SUMMARY

I. Introduction

1. This two day Symposium, jointly organized by UNEP and WWF, was held at the Palais des Nations in Geneva on 1-2 March 2007. It constituted the latest in a series of conferences and workshops organized by the sponsors both jointly and individually since their first joint conference on fisheries subsidies in 1997.

2. Participants included more than a hundred and twenty individuals from fifty national governments (including officials from environment, trade, and fisheries agencies), as well as ten intergovernmental organizations, three regional fisheries management organizations, seventeen non-government organizations, and eight academic institutions. More than thirty participants made formal presentations. Participants were all invited to speak in their personal capacities. The symposium was presided over by former FAO COFI chairman, Mr. Will Martin, who noted the unique mix of participants and the opportunity presented for a dialogue between experts in fisheries and trade policies. The Chair also stressed that this Symposium was intended as an informal dialogue, and not in any sense as a negotiating forum.

3. The meeting was held at a critical juncture in the negotiations towards new WTO fisheries subsidies disciplines, with formal talks now resumed and focussed directly on specific language for proposed new rules. Trade ministers agreed at the Sixth Ministerial Meeting in Hong Kong to "strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing." This Symposium examined the related question of how WTO rules and national policies should deal with subsidies that may remain outside the scope of an eventual ban.

4. Opening presentations by the organizers and by the Chairman of the WTO Negotiating Group on Rules stressed the timeliness of the Symposium, the importance of its focus, and their high hopes and optimism for the future of the WTO fisheries subsidies talks.

5. This summary has been prepared under the responsibility of the Chair. Although it has been reviewed by all participants (with comments reflected in the final draft), it is not intended as a consensus document. Without attempting to itemize all of the important contributions made, it provides a synthesis of the main issues raised and suggestions offered by participants.

II. Main Findings and Points of Discussion

A. Why (and How) the "Sustainability Context" Matters

6. The economics and the impacts of fisheries subsidies have received much more extensive study than was the case when the topic first emerged onto the international agenda a decade ago. The studies that have been conducted have confirmed that fisheries subsidies often have direct consequences not only on profits and rents, but also on the sustainability of stocks.

7. Subsidies to the fishery sector are often directed at goals unrelated to fisheries management, such as social development. However, economists and policy analysts at leading intergovernmental organizations increasingly agree that subsidies to fishing activities can be sub-optimal or even counter-productive means to achieve such goals. Given their potential to have unintended negative consequences, fisheries subsidies should be carefully examined in every case. Still, some developing countries see subsidies as necessary to support industrial development (particularly in their own EEZs) and to achieve competitive parity with foreign fleets that have enjoyed subsidies for many years.

8. The impacts of fisheries subsidies on resources and on trade can depend heavily on the context in which subsidies are employed. In particular, many participants noted that three key indicators—namely the status of fish stocks, the capacity of fishing fleets, and the adequacy of fisheries management—have a direct and significant bearing on the likelihood that subsidies will contribute to overcapacity or overfishing in any given fishery. Several participants concluded that subsidies should not be used until these three key indicators are in proper condition. Participants took note of the multiple studies and national experiences that have illustrated the fundamental link between these key indicators and the effect of subsidies.

9. Governments worldwide have accepted the international obligation to manage fisheries for long term sustainability, and many participants noted the current urgency of this obligation. The U.N. Code of Conduct for Responsible Fishing articulates a genuine global consensus, even if its norms are broad and the specific application of those norms is subject to a degree of variability and interpretation. However, there remains a wide gap between the norms set out in the Code and the success of efforts to implement these norms.

10. An understanding of these realities has led to a "paradigm shift" in the approach of leading IGOs and many governments to financing fisheries development. After several decades of investment in expanded fishing capacity and effort, the trend since the 1990s has been on management strategies that emphasize sustainable fisheries and, where appropriate, alternative livelihoods. The urgency and relevance of this paradigm shift is evident in the approximately USD $50 billion lost annually in global resource rent from fisheries as a result of poor governance, This is a preliminary estimate, according to the ongoing "Rent Drain Project" by the World Bank and FAO.

11. The sustainability challenge facing governments is pressing. Several times it was repeated that "sustainability is not automatic" and that the burden is on governments to act vigorously to reverse the practices that today contribute to the unsustainable character of many of the world's fisheries. Disciplining fisheries subsidies is one tool in the "sustainability toolkit" but subsidy rules alone cannot eliminate overcapacity and overfishing.

12. Even where significant steps towards implementing the basic requirements of the Code have been taken, the results can fall short. For example, many North Atlantic fisheries enjoy well-developed legal infrastructures and significant levels of data and scientific analysis. Yet some of these fisheries have experienced overfishing and depletion. Several participants concluded that criteria built on the basic elements of the Code could not assure the genuinely sustainable use of subsidies.

B. Stock-Related Considerations

13. The relevance of stock health to the potential impacts of fisheries subsidies was noted, and provided a starting place for discussion. If a stock is not robust, and not subject to proper management, the use of fisheries subsidies can have a significantly perverse impact.

14. The focus of discussion was thus on approaches to stock assessment, the level of priority that should be given to stock assessment as a matter of policy, and the implications for possible criteria for gauging the risks of subsidization.

15. The principal limit on assessments is access to reliable data, although limited capacity for data analysis can also be problematic. Participants noted both the importance of sound data and the real limits on its acquisition, particularly in small-scale artisanal fisheries. In some fisheries, data-poor management techniques must be considered appropriate, particularly in small-scale, multi-species contexts.

16. However, data-poor management needs to be accompanied by precautionary approaches to management, with precaution rising in proportion to the lack of information. The emerging concept of ecosystem-based management requires substantially more data than single-species management, and implies an even stronger need for precaution where data is lacking.

17. In general, data-poor techniques should not be viewed as optimal or permanent solutions, and priority needs to be given to improving information about fish stocks and ecosystem conditions. Moreover, where stocks are not subject to formal assessment, the need for a formal review of the management context may be increased.

18. In the case of straddling, migratory and high-seas stocks, international cooperation is necessary to allow assessments that adequately cover the entire range of the stocks involved.

19. Stock-related data compiled by the FAO Secretariat is useful and relevant, but may not always be sufficient as a sole basis for decision-making. FAO data can, for instance, sometimes be "low resolution" where it is not provided on an individual fishery, stock-by-stock basis. The FAO category of "fully exploited" stocks, which represents roughly half of the fisheries for which categories have been assigned, comprises both stable, well-managed fisheries and fisheries that are being overfished without yet having declined to a biomass level below MSY equilibrium. In either case, the category reflects a judgment that no increases in catches are sustainable.

20. Economic data about fisheries performance—such as price fluctuations or catch per unit effort—can provide some useful indicators of stock condition, although economic signals can be masked by subsidies including, *e.g.*, the existence of low-interest loans or forgiven loans.

21. Some participants felt that improving data availability is not always the first priority for achieving responsible fishing where data-poor techniques are working and where other priorities require attention. Nevertheless, where subsidies are being introduced into data-poor fisheries, it is advisable in almost every case to improve data availability, (as well as government and institutional capability) before expanding capacity or effort. As levels of exploitation rise, the need for data generally rises.

C. Capacity-Related Considerations

22. Overcapacity is recognized as a critical problem and as one direct link between fisheries subsidies and overfishing. If capacity-enhancing subsidies are to be used at all, a precautionary approach might include making only "stepwise" investments over many years, and in the context of a strict stock management regime.

23. There was support for subsidies to "decommission " vessels that could help reduce the size of the fleet as part of facilitating reforms in fisheries management, and subsidies that help fishworkers in the transition to alternative/ and or diversified forms of employment.

24. Fisheries with high capacity are often difficult to manage in light of the uncertainties and rapid changes that can be caused by market forces and environmental fluctuations. Subsidizing as capacity nears "full" entails significant risks of overrunning sustainable limits.

25. Effective fishing capacity (fishing power) normally increases by approximately 2-4% per year as a result of improved technology and fishing techniques, without any visible increase in the number of fishing vessels. This introduces further need for cautionary approaches to capacity management and to policies regarding capacity-enhancing subsidies.

26. Quantitative approaches to capacity assessment depend on large amounts of data and on complex statistical formulas. They are relatively new, and still infrequently applied. Still, where they are possible, quantitative capacity assessments could contribute to criteria for the responsible use of subsidies. The use of a suite of internationally recognized qualitative indicators—such as changes in the total allowable catch to a season length, decreases in catch per unit effort, and the biological status of a fishery—can help identify overcapacity.

27. Rights-based fisheries management is receiving increased consideration from governments. Some experts feel that rights-based management is the best means to resolve the underlying cause of overcapacity.

28. Vessel registries are a critical tool of capacity assessment and management. Participants noted the current work at the FAO towards establishing a global fishing vessel registry.

D. Management-Related Considerations

29. The basic international normative framework for fisheries management consists of the U.N. Convention on the Law of the Sea (UNCLOS) as supplemented by the United Nations Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fishing and the international plans of action adopted by the FAO to promote implementation of the Code. The status of the Code of Conduct was discussed. A number of participants pointed out the integration of the Code's basic principles into binding international instruments (such as the U.N. Fish Stocks Agreement) and into the national laws of many states.

30. The principles articulated in the Code of Conduct are widely accepted. These include orienting management towards long term conservation and sustainable use of fisheries resources through science-based decision-making, use of the precautionary approach, and effective implementation of monitoring, control and surveillance (MCS) measures. There can be, however, significant variability in how management should be conducted on a case-by-case basis. Moreover, the Code's broad norms can be subject to various interpretations, particularly as the objectives of management are not uni-dimensional, but include biological, social, and economic considerations.

31. Nevertheless, the main challenge to sustainability comes from inadequate implementation of and adherence to the Code's norms. For example, adequate funding for MCS infrastructure is critical and not always in place for effective enforcement. Where capacity-enhancing or effort-enhancing subsidies are contemplated, the need for improved management is increased.

32. The management of shared or multi-national stocks depends on international cooperation at all stages of management from stock assessment through enforcement of management measures.

33. The management challenges facing developing countries, and particularly small island states with vulnerable economies, are significant. More financial and human resources are particularly needed for assessment and monitoring/enforcement activities. In many cases, regional cooperation is essential for effective results.

34. Participants discussed the possible value of developing questionnaires that could function as guides to assessing management programmes. Several participants noted, however, that

management-related sustainability considerations should not impose specific management decisions on developing countries. It was also suggested that governments consider incorporating risk assessment approaches into the evaluation of the readiness of fisheries for capacity-enhancing or effort-enhancing subsidies.

E. Small-scale Artisanal Fisheries

35. For the purposes of discussion, small-scale artisanal fisheries were loosely defined as including small, diffuse, impoverished, and low-tech fisheries (e.g. using undecked, owner-operated vessels equipped with non-automatic retrieval gear) that are typically subject to traditional community management arrangements

36. Many participants felt that small-scale artisanal fisheries pose challenges and opportunities for sustainable management that must be distinguished in several ways from the challenges and opportunities encountered in industrial fisheries. Public investment in small-scale artisanal fisheries can be a vital element of poverty-reduction strategies.

37. Small-scale artisanal fisheries are not immune from overcapacity or overexploitation, and subsidies to such fisheries should be approached with care.

38. The following sustainability considerations for small-scale artisanal fisheries were discussed.

- Current data-intensive assessment and management techniques are generally implausible, and may be unnecessary for proper management;
- Achieving sustainability in small-scale artisanal fisheries may often depend on factors other than improved fisheries management; such as coastal zone management, literacy, reduction of HIV/AIDS, conflict resolution, etc.
- Participants discussed whether employment-maximizing objectives could justify temporarily fishing beyond MSY (while avoiding irreversible damage to a stock). Some participants supported this view, while others clearly did not. In any case, participants noted that where resources are available for subsidies, purposeful fishing beyond MSY cannot be viewed as a necessary or desirable strategy.

F. Options for WTO Rules and Mechanisms

39. A background paper prepared by the organizers was presented (copy available at www.unep.ch/etb and www.panda.org/trade). The paper proposed several tests by which the suitability of "sustainability criteria" for use in the WTO could be judged, and went on to present a range of concrete options for such criteria. The paper also discussed various considerations for institutional mechanisms that might be adopted by the WTO in implementing new fisheries subsidies rules.

40. Substantial discussion took place regarding the feasibility of integrating sustainability considerations into WTO fisheries subsidies disciplines. There was broad agreement that the limits of the WTO's institutional competence must be taken into account and respected.

41. Some participants felt that sustainability considerations would inevitably be too complicated for consideration by the WTO. Others felt that the complexity of the sustainable management problem does not mean criteria for application in WTO rules must be overly complex, and that the WTO can address these issues successfully. Participants shared a preference for WTO rules to be as simple as possible, without being simplistic.

42. The need for sustainability-related conditionality will depend on the nature and scope of the prohibition WTO members eventually adopt. Some participants felt that the best way to encourage sustainability would be through a very broad prohibition; others disagreed on the grounds that some subsidies positively contribute to sustainable development.

43. It was noted that fisheries subsidies are often administered on a sector-wide basis, without distinction among fisheries or stocks affected. Some participants viewed this as a problem for including effective sustainability considerations in WTO rules. Others felt that dissociating subsidies from fishery-specific management policies is itself a core problem that underlies policy incoherence and that must be addressed by new WTO rules.

44. Various suggestions were shared regarding specific approaches to incorporating sustainability considerations into WTO fisheries subsidies rules. Among these were:

- Judgments requiring spatially and temporally specific information pose particular challenges, and may not be amenable to broadly applicable rules of thumb.
- The basic condition of a fishery can be known through various measures, including the use of "holistic questionnaires", without requiring unduly complex or data-intensive investigations. These approaches would not set hard and fast rules for judging fisheries, but would provide guidelines for acceptably objective judgments.
- Criteria can be applied in a variety of ways, including as elements of a "pre-authorization" process, as elements of an *ex post facto* evaluation; as single dispositive questions, or as elements of a list of considerations.
- Criteria based on norms originating outside the WTO can refer to the external origin(s) of the norms explicitly and/or restate them directly into WTO texts. Where the external origin is to be identified, this can be done with greater or lesser specificity, and as a closed or open list.
- The use of criteria and institutional mechanisms for expert advice also depends on how legal burdens of proof are distributed by the underlying rules.
- Different types of criteria can be applied in parallel, for example by using broad indicators alongside specific measures (*i.e.,* the existence of key MCS infrastructure).

45. Participants also discussed possible institutional mechanisms to support implementation of sustainability considerations in new WTO fisheries subsidies rules. The presentations by participants from the FAO and the WTO secretariat were especially useful in this regard. Among the points discussed were:

- Mechanisms having precedents in the existing WTO system include: the ad hoc use of individual experts or panels of experts engaged at the invitation of either disputants or panels; the creation of standing bodies within the WTO; and the creation of relationships with new or existing entities outside the WTO proper.
- There are several ways that expert advice can be used in the context of WTO rules, ranging from treating expert advice as part of the body of facts to giving expert bodies the right to make legally binding findings. Such advice can be sought either before a trade measure is taken, or after an alleged harm arises.
- Relations among IGOs with intersecting mandates can benefit from mission-specific liaison structures, such as the new memorandum of understanding between FAO and CITES, and the related FAO expert panel process.

46. Regardless of the particular criteria or institutional mechanisms adopted, several participants felt that the burden of proof associated with conditions on non-prohibited subsidies should rest on the nation granting the subsidies.

III. Conclusions and Ways Forward

47. The discussion throughout the Symposium confirmed the high level of interest among diverse stakeholders in crafting WTO rules that make a real contribution to sustainable fisheries through appropriate limits on fisheries subsidies. While the issues are at times complex, there was a general sense that plausible answers can and must be found.

48. Strong emphasis was placed on the need for a balanced and achievable approach, as well as for recognizing the special circumstances of developing countries, in order to find both "a solution for development" and "a solution for the environment."

49. Participants widely shared the view that a high priority must be given to public investments in responsible fisheries management. Participants also recognised the importance of social and economic development in developing countries, including through sustainable development in the fisheries sector. As a general rule, where government resources are available for fisheries subsidies, priority should be given to investment in responsible management to create conditions for both growth and sustainability.

50. A range of concrete options and mechanisms for integrating sustainability considerations into WTO rules was discussed. Many participants expressed the view that some clarification and deepening of the subject had been achieved, while further discussion and technical development of the issues would remain necessary.

51. The draft paper presented by the organizers was received as a useful contribution to the debate, and a number of specific questions and comments were offered. The organizers indicated that revisions to the paper would be forthcoming.