

FISHERIES SUBSIDIES – ARTICLES I, II AND IV

Communication from the Republic of Korea

Supplement

The following communication, dated 1 April 2011, is being circulated at the request of the delegation of Republic of Korea.

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1. On 29 March 2011, Korea submitted comments regarding the fuel subsidy (TN/RL/W/251) in which it discussed the fundamental problem of the "low fuel price" in the context of fisheries subsidies negotiations.
 2. One of the suggestions contained in the comments to address the problems and unfairness associated with the low fuel price was to identify a benchmark and use it as a mechanism to restrict the right to bring a claim based on the fuel subsidy in certain circumstances. More specifically, a Member with the fuel price below the benchmark is not allowed to bring a claim based on fuel subsidy against a Member whose fuel price is higher than such benchmark.¹
 3. The benchmark would basically mean an average price of fuel in a relevant international market in a given year (for instance, at the time when the Fisheries Annex comes into force). Given that international oil price is regularly reported and readily available from various reliable sources, we are of the view that retrieving such a benchmark would not pose a significant difficulty.
 4. The concept of a benchmark was introduced to provide an objective guideline to measure the level of a fuel price in a Member. The fact that a fuel price in a particular Member is below or above the benchmark bears no relationship to the question of whether a program of the Member relating to the fuel constitutes a subsidy or not. A governmental program or policy leading to a low fuel price (such as no or low taxation) in a Member may or may not be a subsidy within the meaning of Articles 1 and 2 of the SCM Agreement. Likewise, a governmental program or policy of a Member maintaining a high fuel price may or may not be a subsidy. This should be a separate inquiry based on provisions of the SCM Agreement.
 5. Nor does the concept of "benchmark" as proposed here have any relationship with the "benchmark" as discussed in the context of Article 14 of the SCM Agreement in determining the level of benefit. Rather, this is simply meant to be a tool to determine the level of fuel price in a Member in the limited context of dispute settlement proceeding regarding the fuel subsidy..

¹ The fuel price of a Member may be taken from the average fuel price prevailing in the territory of the Member in a given year.

6. In light of the above, this contribution includes a textual suggestion to make these points clear. More specifically, Korea inserted a footnote right after the term "fuel" in the Annex. In Korea's textual proposal of 22 September 2010, the provision addressing the fuel subsidy is Article II.1(a), so the footnote is inserted in the provision. The corresponding paragraph in November 2007 Chair's Text will be Article I.1(c). The newly added footnote is noted with underlines.

7. Korea reserves its right to modify or change its position depending on future developments and discussions on this issue among the Members. The current contribution is simply meant to be Korea's effort to initiate meaningful discussions on ways to address the low fuel price problem in the context of the Fisheries Annex. Korea is open to any suggestion or proposal from any other Member in this regard.

[Attachment: Footnote]

Article II

General Discipline on the Use of Subsidies

II.1 Except as provided for in Articles III and IV, no Member shall provide following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, that cause adverse effects to fish stocks through overcapacity¹ and over-fishing²:

- (a) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel³, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.
- (b) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities), provided that the main beneficiary of the infrastructure or facilities is not the general public of a Member.
- (c) Income support for natural or legal persons engaged in marine wild capture fishing.
- (d) Price support for products of marine wild capture fishing.

¹ For the purpose of this Agreement, the term "overcapacity" means that the fishing capacity at issue is greater than a desirable level of fishing capacity (*i.e.* target level) which may be either a long-term target sustainable yield, as reflected in the short-term in a total allowable catch (TAC), or a related long-term target for fixed inputs employed in fishing activity for the fishery in question.

² For the purpose of this Agreement, the term "overfishing" is normally expressed in terms of fishing mortality levels, that is, in terms of how many fish are killed during a certain reference period. Thus overfishing exists when total fishing mortality (harvesting) is at a rate that exceeds the maximum level that the stock can withstand on a sustainable basis (*i.e.* the maximum sustainable yield).

³ For the purpose of this Agreement, Members whose average fuel prices are below the average fuel prices in the relevant international market shall not invoke this provision *vis-à-vis* Members whose average fuel prices are higher than such prices in the international market, irrespective of whether the governmental programs for fuel maintained by the latter are regarded as a subsidy within the meaning of Articles 1 and 2 of the SCM Agreement. The average fuel prices in the relevant international market for this purpose shall mean the average prices of the fuel in [name of the international fuel markets] at the time this Agreement comes into force. Such prices shall be determined for each different category of fuel consumed by the fisheries industries.