

**SUBSIDIES TO FISHERIES INFRASTRUCTURE**

Paper from New Zealand

The following communication, dated 13 October 2005, is being circulated at the request of the Delegation of New Zealand.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/242), also be circulated as a formal document.

**I. INTRODUCTION**

1. Recent meetings of the Rules Negotiating Group have seen detailed discussions on a number of categories of fisheries subsidies. To date, there have been substantive exchanges on subsidies to: management services; vessel decommissioning and licence retirement; IUU fishing; and aquaculture.<sup>1</sup> There has also been a good initial discussion of categories of subsidies of particular importance to developing countries, including subsidies to artisanal fishing and subsidised access fee payments.<sup>2</sup>

2. The objective of this phase of discussions has been to develop a common understanding of the definitions and treatment of various categories of fish subsidies. This technical discussion is essential to ensuring that we produce clear and enforceable rules, irrespective of the ultimate structure of those rules.

3. The purpose of this paper is to initiate a dialogue on the category of “subsidies to fisheries infrastructure”. As with our previous paper on subsidies to management services, we have developed our framework with extensive reference to existing fisheries subsidies work that has been undertaken in other international forums. We look forward to hearing other Members’ views on this topic.

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<sup>1</sup> JOB(05)/44, *Fisheries Subsidies to Management Services* - New Zealand; TN/RL/GEN/41, *Fisheries Subsidies: Programmes for Decommissioning of Vessels and Licence Retirement* - United States; JOB(05)/100, *IUU Fishing and Fisheries Subsidies* - Japan; TN/RL/GEN/54, *Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies – Aquaculture* - Australia, Ecuador and New Zealand.

<sup>2</sup> TN/RL/GEN/56, *Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies* - Brazil; TN/RL/GEN/57/Rev.2, *WTO Fisheries Subsidies Disciplines: Architecture on Fisheries Subsidies Disciplines* - Antigua and Barbuda; Barbados; Dominican Republic; Fiji; Grenada; Guyana; Jamaica; Papua New Guinea; St. Kitts and Nevis; St. Lucia; Solomon Islands; and Trinidad and Tobago.

## II. SUBSIDIES TO FISHERIES INFRASTRUCTURE

### 1. General Infrastructure vs. Fisheries Infrastructure

4. Government provision of “general infrastructure” is excluded from the definition of a subsidy under Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). As noted in TN/RL/W/166, it is not New Zealand’s intention to include general infrastructure in any new fisheries subsidies disciplines.<sup>3</sup> In our view, it will be preferable for new fisheries subsidies disciplines to be consistent with the existing Article 1 definition of a “subsidy”. The more that new fisheries subsidies disciplines draw upon the existing concepts used within the ASCM, the more predictable and enforceable these disciplines will be.<sup>4</sup> We therefore think it is important that Members aim to reach a clear understanding in these negotiations of what types of programmes should be treated as fisheries infrastructure as opposed to general infrastructure.<sup>5</sup>

#### *Discussion of Subsidy Category*

5. Fisheries infrastructure accounts for a substantial proportion of government expenditure on global fisheries, particularly in developed countries. In 1997, the OECD estimated that OECD government financial transfers on fisheries infrastructure accounted for US\$2.47 billion, roughly equivalent to 43 per cent of total OECD government financial transfers related to fisheries.<sup>6</sup> The APEC 2000 study estimated that, in 1997, APEC Members spent approximately US\$2.63 billion on fishing port infrastructure enhancement alone, roughly equivalent to 21 per cent of the total APEC expenditure on fisheries programmes.<sup>7</sup>

6. However, despite the size of this category of subsidies, there is little detailed information available on the different types of infrastructure subsidies. As with management services, there may therefore be merit in trying to break down the category of fisheries infrastructure into sub-categories. Members can then consider how these sub-categories, or elements within them, should be treated under new rules and whether they should be exempt from any prohibition.

#### *Identification and Definition of Subsidy Category*

7. In attempting to identify the types of subsidy programmes that would fall within a fisheries infrastructure category, we have referred to the existing subsidy classifications in the fisheries subsidies literature.

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<sup>3</sup> TN/RL/W/166, *Fisheries Subsidies* - Argentina, Chile, Ecuador, New Zealand, Philippines and Peru.

<sup>4</sup> We are aware that this will also require a discussion on the issue of specificity. This will need to be considered further when we return to discussions on the structure of new rules for fish subsidy disciplines at a later stage. That discussion is however beyond the scope of the present paper.

<sup>5</sup> We note that this issue has already been raised by some Members. In TN/RL/W/172, *Contribution to the Discussion on the Framework for the Disciplines on the Fisheries Subsidies*, Japan, the Republic of Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu suggested that the construction of fishing ports, sewage facilities for fishing communities and coastal protection against storms and waves were included under general infrastructure and therefore should be outside the scope of new disciplines for fisheries subsidies by reason of Article 1 and Article 2 of the ASCM.

<sup>6</sup> OECD (2000), *Transition to Responsible Fisheries: Economic and Policy Implications*, Paris; OECD (2000), *Review of Fisheries in OECD Countries*, Paris. Also, in TN/RL/W159, *Fisheries Subsidies: Proposed Structure of the Discussion*, Japan noted that 69.7 per cent of Japan’s government financial transfers on fisheries goes toward “fishery infrastructure”.

<sup>7</sup> PriceWaterhouseCoopers LLP (2000), *Study into the Nature and Extent of Subsidies in the Fisheries Sector of APEC Members’ Economies*. The APEC 2000 study estimated the total value of APEC fisheries programmes in 1997 at US\$12.6 billion.

8. The UNEP study of 2004 identified three common types of fisheries infrastructure:<sup>8</sup>

- harbour facilities and moorage
- fishing port infrastructure enhancement
- support to producers organisations

9. The OECD has identified the following types of programmes as falling within the category of “fisheries infrastructure expenditure”:<sup>9</sup>

- support to build port facilities for commercial fishers
- reduced charges for use of government provided infrastructure
- support to improve fishing villages
- regional development grants
- support to enhance the fisheries community environment
- fisheries enhancement expenditure
- support for artificial reefs
- aid for restocking of fish resources
- expenditure on exploratory fishing

10. Drawing on these and other studies, we propose that subsidies to fisheries infrastructure that should be subject to further consideration pursuant to the Rules Negotiating Group mandate be broken down into the following three sub-categories:

- (i) subsidies to fishing port facilities
- (ii) subsidies to the development of fishing communities
- (iii) subsidies to processing facilities for fisheries products

11. To aid discussion, we have provided examples below of the types of programmes that could fall under these sub-categories.<sup>10</sup> We would reiterate that in considering subsidies to fisheries infrastructure pursuant to the Rules Negotiating Group mandate it is our view that only those programmes that: (a) are subsidies within the meaning of Article 1 of the ASCM, and therefore not “general infrastructure”; and (b) confer a benefit within the meaning of Article 1 of the ASCM on the fishing industry would fall within the scope of these sub-categories.

12. The primary objective of this paper is to try and identify the types of programmes that could be classified as fisheries infrastructure and therefore subject to new disciplines. Once clarity is reached on the scope of new disciplines with respect to infrastructure, the next question for Members to consider will be how these different types of subsidies should be treated under new rules. New Zealand is conscious that the fisheries infrastructure subsidy category comprises a large amount of fisheries expenditure and there is currently little clarity or transparency about the nature of spending in this area. Improved transparency is another important outcome that we would like to see as a result of these negotiations. We also believe that infrastructure programmes of the types listed below can have an effect on overfishing and overcapacity in that they artificially lower the cost of fishing and therefore may lead to a greater level of fishing than would occur in the absence of these programmes.

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<sup>8</sup> Porter, G (2004), *Analysing the Resource Impacts of Fisheries Subsidies: A Matrix Approach*, commissioned by Economics and Trade Branch, United Nations Environment Programme.

<sup>9</sup> OECD (2003), *Environmental Aspects of Fisheries Subsidies*, Background Paper prepared for the OECD Technical Expert Meeting on Environmentally Harmful Subsidies, Paris, 3-4 November; OECD (2000), *Transition to Responsible Fisheries: Economic and Policy Implications*, Paris.

<sup>10</sup> These lists are not exhaustive but rather are examples of the types of programmes we see falling under these sub-categories.

(i) Subsidies to Fishing Port Facilities

13. The fishing port facilities sub-category is considered to include the following:

- the construction and provision of harbour facilities, including vessel moorage facilities, wharves, transshipment facilities, vessel loading and unloading facilities, vessel cleaning facilities, and vessel sanitation facilities;
- the provision of transport infrastructure;
- the provision of facilities for vessel repair, including the use of slipways, dry docks, vessel lifts, ancillary cranes and pumps;
- the provision of storage facilities for raw and processed seafood, including cold stores, freezers and cooling rooms;
- the provision of facilities for the storage of fishing equipment, including the storage of fishing gear and nets and the storage of vessels in non-fishing periods;
- the provision of seafood landing areas.

***Treatment under New Rules***

14. We note that there are examples of subsidies to fishing port facilities listed in a number of the current WTO subsidies notifications under fisheries activities.<sup>11</sup> However, there is generally limited information available on the types of activities in this area. The types of subsidies in this sub-category are considerably varied and, as noted above, account for a sizeable share of total fisheries expenditure. We therefore believe that further discussion and information is needed before reaching a decision on how this sub-category, or different elements within it, should be treated under new rules.

(ii) Subsidies to the Development of Fishing Communities

15. The fishing community development sub-category is considered to include the following:

- the provision of housing for fishermen;
- the provision of transport infrastructure for fishing communities.

***Treatment under New Rules***

16. We are aware that for several Members many of the programmes in this area fulfil important social policy objectives. Consequently, removal of these subsidies may have unintended negative social or developmental impacts. Accordingly, subject to further discussion and information on these types of programmes, we consider that subsidies to the development of fishing communities would be a suitable candidate for exemption from any prohibited category of fisheries subsidies.

(iii) Subsidies to Processing Facilities for Fisheries Products

17. The fisheries processing facilities sub-category is considered to include the following:

- the provision of processing facilities, including the use and construction of: processing plants, equipment and systems; freezers; cooling rooms; packaging plants, equipment and systems; cleaning systems; waste disposal systems; and sanitation systems;

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<sup>11</sup> G/SCM/N/123/EEC, *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the ASCM* - European Communities, p 49; G/SCM/N/123/EEC/Add.5 - Denmark, p. 27; G/SCM/N/123/EEC/Add.24 - Sweden, pp. 33-34.

- the provision of storage facilities for raw and processed material, including cold stores, freezers and cooling rooms;
- the provision of seafood sales areas, including: market floors for sale of landed catch; auction facilities; and wholesale sale facilities;
- the provision of transport infrastructure to fishing processing facilities;
- the provision of sanitary facilities, including the installation of systems to improve water quality; waste disposal and sanitation measures.

### ***Treatment under New Rules***

18. Subsidies to processing facilities for fisheries products may have an indirect effect on fishing effort or capacity by reducing the costs and/or increasing the revenues associated with fishing, which would increase the incentive to fish. Unlike subsidies to the development of fishing communities, we are not aware of any mitigating reasons that would merit the exemption of subsidies to processing facilities from any prohibited category of fisheries subsidies. However, we are open to other Members' views on this point.

### **Subsidies to "Operational Infrastructure"**

19. In devising the list above, we have specifically focused on "capital infrastructure" subsidies more typically associated with indirect costs of production - e.g. ports, storage, and transport infrastructure - rather than on what could be referred to as "operational infrastructure" subsidies more typically associated with direct costs of production - e.g. subsidies to the provision of bait services, fuel, ice and at-sea fishing support services (such as transshipment and refuelling vessels). The UNEP study of 2004 treated fuel and bait related subsidies as part of a separate category of "subsidies to variable costs". The OECD has also treated fuel and bait related cost reducing transfers as sitting outside the infrastructure category. It is our view that these direct or variable cost subsidies should be prohibited under new disciplines, as set out in our paper of April 2004, TN/RL/W/154.<sup>12</sup>

### **Subsidies to "Conservation" and to "Research and Development"**

20. We have also excluded programmes whose primary objectives are conservation or research and development. Examples of conservation subsidies could include support for artificial reefs, aid for restocking of fish resources and, potentially, fisheries enhancement expenditure (listed above in the OECD infrastructure category).<sup>13</sup> As indicated in JOB(05)/44, we believe that 'conservation' and 'research and development' should be treated as separate subsidy categories and we would welcome other Members' views and contributions on these areas.

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<sup>12</sup> TN/RL/W/154, *Fisheries Subsidies: Overcapacity And Overexploitation* - New Zealand. We are aware however that these types of operational subsidies may have development objectives for developing countries. In TN/RL/GEN/56, *Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies*, Brazil suggested that subsidies to fuel, bait or ice supplied for fishing activities should be subject to certain special and differential treatment (S&DT) provisions. We are therefore open to discussing how these issues could be addressed within an S&DT framework to provide sufficient flexibility for developing countries, for example, through a de minimis provision. New Zealand hopes to be able to expand on this concept in a future paper.

<sup>13</sup> We note also that in TN/RL/W/172, Japan, the Republic of Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu referred to artificial reefs in the context of subsidies to "resource enhancement and protection of environment", along with ocean ranching, fingerlings release and fishing ground clean-up. It was proposed that subsidies to these areas should be treated as non-actionable.

***Special and Differential Treatment Considerations***

21. New Zealand recognises that subsidies to fisheries infrastructure can play an important part in the overall fisheries strategy of developing countries. Furthermore, developing countries' existing level of infrastructure is likely to be significantly lower than that of developed countries and therefore may require greater future expenditure. These factors will need to be addressed through adequate special and differential treatment provisions, if disciplines are placed on some subsidies to fisheries infrastructure. This is consistent with our mandate to take into account the importance of the fisheries sector to developing countries. Again, we would note that New Zealand is interested in exploring further how these and similar issues could be addressed through the use of a *de minimis* provision for developing countries.

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