

FISHERIES SUBSIDIES: LIMITATIONS OF EXISTING SUBSIDY DISCIPLINES

Submission from New Zealand¹

PURPOSE

1. A recent submission (TN/RL/W/3) by eight delegations commented (paragraph 16) that there may arise significant practical problems in applying existing SCM rules to fisheries sector subsidies. The submission commented that, in particular, the **heterogeneous nature of fisheries products** and the **economic structure of the fisheries industry** made it more difficult to identify the sort of market distortions at which SCM disciplines are directed. During the discussion in the rules negotiating group on 6 May several delegations sought further elaboration of this point. This paper responds to those requests.

SIGNIFICANCE OF THE GLOBAL STRUCTURE OF THE INDUSTRY

2. The point being made in relation to the “global structure” of the fishing industry is a straightforward one. A major problem addressed by the SCM Agreement is the harmful impact of subsidized imports in the market of another member. While Parts II and III may, in certain circumstances, provide for a dispute settlement remedy, the imposition by the importing member of countervailing duties under Part V is often the most practical “self-help” response to subsidized imports.

3. In the case of the fisheries sector most of the major subsidizing members are also major consumers, and have relatively limited exports. Indeed, they tend to be major importers. In these cases, subsidies can make it harder or impossible for other members’ exporters to compete in the subsidizing Member’s market. Countervailing duties under Part V are of little relevance in such a case; they can only be applied to imports into the complaining member’s market.

PROVISIONS OF PART III OF THE SCM AGREEMENT

4. Apart from distorting access to, and contributing to serious damage to **fisheries resources** (see TN/RL/W/3, paragraphs 9-11), the main impacts of subsidies in the fisheries sector take the form of **price suppression, price undercutting** and **displacement of imports** into the market of the subsidizing member or third-country markets.

5. In principle these impacts are addressed by the serious prejudice provisions in Part III of the SCM Agreement.² In order to demonstrate that a subsidy has caused “serious prejudice” to the interests of another member it is (since the lapse of Article 6.1) necessary to demonstrate that as a result of the subsidy:

¹ This Submission is without prejudice to New Zealand’s interpretation of the SCM Agreement.

² A remedy may also, in certain circumstances, be available under Part II.

- exports of a **like product** into the market of the subsidizing member or into a third-country market have been displaced or impeded; or that:
- there has been significant price undercutting by the subsidized product as compared with the price of a **like product** in the same market; or that:
- there has been **significant price suppression, price depression or lost sales** in the same market;

6. Establishing the trade-distorting **effects** of subsidies on market share or price is therefore central to the application of Part III disciplines as they currently stand. Although these effects occur in the fisheries sector, they are particularly difficult to demonstrate. This is essentially due to the heterogeneous nature of fisheries products. Fisheries products are so diverse that, in contrast to other sectors, unsubsidized reference prices are not generally available. This means that it is very difficult to establish what prices would be for particular fisheries products in the absence of subsidies. This is a critical problem: it is necessary to quantify the price effects of a subsidy in order to show that it causes significant price undercutting or price suppression.

HETEROGENEOUS NATURE OF FISHERIES PRODUCTS

7. Internationally traded fisheries products are characterised by a high degree of heterogeneity, reflecting the large range both of species and of processing techniques. Products from quite distinct species can nevertheless be in direct competition at market. Conversely, superficially similar fish products from the same family can command quite different prices.

EXAMPLE: HAKE

8. As one example, there are 16 species of hake caught round the world.³ All participate in international trade to some extent. While they form a family group and may be said to be capable of substituting for each other in the market, each has distinctive species characteristics that result in differences in market perception and value between them. Further, values may vary between products and supply sources of any one of the 16 species depending on how the product in trade has been produced and processed. (It may be trawl or line caught, processed and frozen at sea or taken to shore for land based processing, with or without the use of ice to maintain product quality). A pair of apparently similar products made from two different but related species, as in this case, may not command the same prices. Accordingly, neither could appropriately constitute a price reference point for the other.

ESTABLISHING REFERENCE PRICES

9. This heterogeneity makes it especially difficult to demonstrate the **effects** of transfers on the prices or market share of fisheries products, because of the potential for cross-subsidization and the lack of reference prices for specific products. Establishing price effects requires as a basis for comparison information about what prices would be in the absence of the subsidy. In other sectors, unsubsidized reference prices provide such a basis for comparison. However, because fisheries products are so heterogeneous, unsubsidized reference prices are in general simply not available, as an OECD Ad Hoc Experts Group established in 1989 to consider fisheries support found.⁴

10. As far as **processed products** are concerned, fisheries products constitute a highly heterogeneous collection. As the OECD found, "Products and markets vary considerably from

³ Multilingual Dictionary of Fish and Fish Products (4th Edition), prepared by OECD (Fishing News Books 1995)

⁴ Their report is contained in AGR/FI/EG(93)11/REV1 (OECD, 1993).

country to country making it difficult to establish a world reference price for a given commodity”.⁵ **Unprocessed fish** also form a highly heterogeneous collection of species. The OECD found as follows: “The problem of establishing an external reference price for raw fish is in general greater than for agricultural products. The difficulty stems from the fact that fishery products are highly perishable and heterogeneous. Raw fish is comparable to fresh fruit and vegetables for which PSEs have in general not been calculated.”⁶ Indeed, establishing even a **domestic** price for unprocessed fish may not be straightforward. The harvesting and processing sectors tend to be highly vertically integrated, obscuring the domestic prices for unprocessed fish.⁷

SUBSIDIES AND REFERENCE PRICES

11. Government **price support** artificially boosts producers’ profits on supported products, and may thereby enable them to lower prices of (ie effectively cross-subsidize) other products. Lower prices can in turn have the effect of undercutting or foreclosing imports of imported “substituting” product, or other fisheries products that may be significantly different but compete at similar prices in the market in similar demand segments (for example finfish and crustacea). To the extent that subsidized producers export their product, distortions to other markets will also result. However, in the absence of information about what undistorted prices would be (i.e. unsubsidized reference prices) it is **especially difficult in the fisheries sector to quantify any of these price (and hence market-share) effects.**

12. For similar reasons, it is also difficult to determine the effects on price or market share of **cost-lowering** subsidies, or those which **directly enhance revenue** (such as direct payments). If government lowers a producer’s costs or increases a producer’s revenue, in either the harvest or the processing sector, it thereby lowers the price floor at which that producer can profitably sell. This is liable to have the effect of lowering the price or market share available to competing producers in the affected market, potentially distorting international trade. However, quantifying the effect on the price or production of a given product is problematic. Support to the harvest industry, for instance, often takes the form of input subsidies, which lower the costs of credit, ships, fuel and suchlike. Such inputs may be employed, even by a single producer, in the production of a range of distinct fisheries products. In a multi-species fishery, for instance, a given input subsidy can lower production costs for a range of distinct unprocessed and processed products. Quantifying the effect on the price, or volume produced, of any single product is especially problematic in the fisheries sector, given the scope for cross-subsidization among products and the lack of unsubsidized reference prices for those products.

APPLICATION OF SCM PROVISIONS

13. These facts have obvious consequences for the viability of making assessments of effects on price and market share of like products required pursuant to an action under Part III of the SCM Agreement. Transfers to the sector artificially lower their recipients’ costs or boost their incomes. The resulting distortions to fisheries product markets are of a type that SCM provisions ought to discipline. It is a question of ensuring that they can be made operationally effective. In practice, for the technical reasons outlined above, it is not feasible to complete some of the critical investigation and analysis needed in order to apply the relevant Part III SCM provisions. This presents an obstacle to the application of current SCM rules in the fisheries sector.

⁵ AGR/FI/EG(93)11/REV1, paragraph 67.

⁶ Ibid, paragraph 57.

⁷ Ibid, paragraph 57.

CONCLUSION

14. The characteristics of fisheries products are the source of specific technical obstacles to the use of the “serious prejudice” and “determination of injury” provisions of the SCM Agreement. These impediments to the application of existing rules underline the need for specific measures to improve WTO disciplines on fisheries subsidies.
