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FISHERIES SUBSIDIES: UNEP WORKSHOP ON FISHERIES SUBSIDIES AND SUSTAINABLE FISHERIES MANAGEMENT

Communication from New Zealand

The following communication, dated 7 June 2004, is being circulated at the request of the Delegation of New Zealand.

In the interests of keeping the Rules Negotiating Group informed of related events outside the WTO, we attach the Summary of the Chairs of the recent UNEP Workshop on Fisheries Subsidies and Sustainable Fisheries Management. This Summary is provided for the information of Members.

UNEP WORKSHOP ON FISHERIES SUBSIDIES AND SUSTAINABLE FISHERIES MANAGEMENT

Geneva, 26-27 April 2004

SUMMARY OF THE CHAIRS

I. Introduction

- This workshop, which was held over the course of two full days at the Palais des Nations in Geneva, constituted the fifth workshop on fisheries subsidies organized by UNEP since 1997. The workshop was made possible with generous support from Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Germany.
- Participants included more than 100 individuals from 37 national governments (including officials from environment, trade, and fisheries agencies), as well as 8 intergovernmental organizations, 2 regional fisheries management organizations, 15 non-government organizations, and 4 academic institutions. All of the participants were invited in their personal capacities. The workshop included presentations from 22 invited experts from government, intergovernmental organizations, non-governmental organizations, and academic institutions.
- The workshop was co-chaired by Mr. Segfredo Serrano (Assistant Secretary, Philippine Department of Agriculture) and Ms. Cornelia Quennet-Thielen (Deputy Director General, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Germany).
- This summary has been prepared under the responsibility of the workshop's co-chairs. Although it has been reviewed by all participants, it is not intended as a consensus document. Without attempting to itemize all of the important contributions made, it provides an overview of the main issues raised and suggestions made by participants to address fisheries subsidies and sustainable fisheries management.

II. Main Findings and Points of Discussion

Cross-Cutting Issues (Session 1 – 4)

- The meeting was held at a critical juncture in the international dialogue over fishing subsidies and fisheries management, following several years in which basic analytical work on the issue has substantially matured, and in which governments have made real progress towards cooperative international solutions at the WTO, in the FAO, and elsewhere. Participants were mindful of the high priority given by heads of state at the 2002 World Summit for Sustainable Development (WSSD) to the fishing subsidies issue, and felt that it was now necessary to move from analysis to action, and to promote concrete steps towards practical outcomes, including the WTO negotiations on fisheries subsidies in accordance with the Doha Development Agenda.
- At this stage in the international discussion on fishing subsidies it is no longer a question of *whether*, but of *how* international cooperation to reform fishing subsidies should move forward. Diplomatic and analytic advances in the past two years have contributed to broad agreement that fishing subsidies often contribute to overcapacity and unsustainable levels of fishing, in particular in the absence of effective management systems. Subsidies contributing to overcapacity, to unsustainable fishing effort, and to illegal, unreported and unregulated (IUU) fishing need to be addressed most urgently.

- The problem is fundamentally interdisciplinary, and requires a holistic and integrated solution. The economic, social, and environmental aspects of the fishing subsidies problem are inextricably linked. New international disciplines must reflect these linkages, and must be carried forward through improved cooperation and coordination among relevant governmental institutions at the national, regional, and international levels, while respecting their various spheres of competence and authority.
- As recognized in the Doha Development Agenda, the problem of fishing subsidies is of particular importance to developing countries where the fisheries sector is a vital source of food security, employment, and foreign exchange. While poorly designed fishing subsidies can raise the same dangers in developing as in developed countries, properly designed interventions by developing country governments to foster the sustainable development of fisheries and addressing their specific concerns may be legitimate and necessary.
- It is important to bear in mind that artisanal fisheries comprise 45% of global fisheries and 90% of fishworkers worldwide. The overexploitation of some developing country fisheries has been compounded by the subsidization of distant water fleets from major fishing powers competing with local artisanal fisheries. Meanwhile, subsidies can create significant competitive disadvantages for poorer countries seeking to develop their fisheries resources, whether for export or for internal consumption.
- There has been a continuous evolution of the fisheries discussions in which a broad spectrum of stakeholders has helped to shape the debate. A common view exists that UNEP's workshops and studies continue to inform the discussions and negotiations on fisheries subsidies in various fora, including the WTO and the FAO. Many participants commented that this workshop in particular enjoyed an outstanding level of participation, and fostered an open, informal dialogue between governments, international organizations, and NGOs.

Session I — Sustainable Management of Fisheries: Basic Concepts and Tools

- The world is still far from achieving sustainable fisheries. According to the FAO, 75% of global marine fisheries are either overexploited, fully exploited, significantly depleted or recovering from overexploitation. This crisis has serious environmental, economic, and social consequences, especially in developing countries.
- The tools of fisheries management are increasingly well understood, but are yet to be fully and consistently applied. A series of international instruments - including the UN Code of Conduct for Responsible Fishing and its associated FAO International Plans of Action, and various regional fisheries management agreements - provide an increasingly coherent framework for effective fisheries management. However, better co-operation and more coherence are yet to be achieved among global fisheries agreements, regional fisheries management organizations, soft law instruments, and general international marine environmental treaties.
- There remains a very significant gap between international commitments and their implementation. Budgetary constraints and insufficient human and institutional capacity present obstacles that are compounded by the lack of political will to undertake difficult but necessary policy reforms. At the national level, better integration among relevant government agencies is widely needed.
- The economic conditions of the fishing sector are not yet conducive to sustainability: Open access continues to drive overinvestment and excess effort in many fisheries. In theory, the allocation of property rights is a good management tool for sustainable use of resources, but empirical evidence shows that the functioning of property rights depend on a coherent institutional context (e.g. improved cooperation between different regional regimes,

transparency, efficient monitoring and sanctioning mechanisms) which is normally not the case.

- Moreover, new market opportunities created by increasing trade and globalization have introduced incentives for overfishing, often in the presence of insufficient management, creating new challenges for both industrial and small-scale fisheries. Subsidies have contributed to distortions and overexploitation in many cases. In addition, valuation methods excluding consideration for inter-generational equity and welfare have aggravated the problem and given rise to ethical concerns.
- Given the importance of this sector to many developing countries, there is a need to adapt a variety of management measures in consultation with fishing communities, particularly in the artisanal context. This refers especially to community-based or co-management approaches. There remains, moreover, a need for improved understanding of the definition of artisanal fishing, and of the specific environmental and social values at stake.
- In assessing and improving fisheries management systems, there is a need to take into consideration the ecosystem approach. Maximum sustainable yield (MSY) is a uni-dimensional concept that, when singularly applied in investment decisions, fails to capture the full range of multi-dimensional challenges confronting fish stocks and the ecosystems on which they depend (such as the impact of fishing on non-target species or on the benthos).
- There remains a need for broader application of the precautionary approach in fisheries management, particularly in light of the increasingly characteristic « boom-bust » pattern of fisheries exploitation. Flags of convenience pose a major global problem, which, if not addressed, has the potential to undermine work at the national and regional levels.

Session II — The Resource Impact of Subsidies under Various Fishery Conditions

- Broad agreement now exists that fishing subsidies often contribute to fleet overcapacity and overfishing. International concern has been repeatedly expressed with these impacts, and with the need to halt subsidies that contribute to illegal, unreported, and unregulated (IUU) fishing.
- The resource impacts of fishing subsidies can vary according to type, and the commercial, regulatory, and environmental context in which they are applied. The fundamental approach of the draft UNEP « matrix » paper is thus to analyse the impacts of fishing subsidies in a given fishery in accordance with a combination of the existing management and bio-economic conditions and the design of the subsidy in question.
- The matrix paper is considered as a useful analytical tool and a sound basis upon which to move the discussions forward. Among the key findings to emerge from the paper and the workshop discussion were:
 - Most subsidies can be harmful to fish stocks, particularly in the absence of effective management. In the real world, few if any fisheries are subject to management that is sufficiently « effective » to ensure that certain kinds of fishing subsidies will not harm fisheries resources. In addition, some analyses suggest that certain fishing subsidies could be harmful even under ideal management conditions.
 - Subsidies that contribute directly to capacity or effort, such as subsidies to capital cost or to operating costs, are among the most harmful.
 - Subsidies to build or improve infrastructure are a matter of concern to a number of governments, and opinions appear to differ regarding their likely harmfulness

to resources. This is one instance in which the definition of a « fishing subsidy » continues to require discussion.

- Similarly, there remains substantial need for further discussion of subsidies associated with fisheries access agreements. It is generally acknowledged that access agreements have potential to provide benefits, but that improperly designed agreements can contribute to overexploitation and to inequities in the distribution of rents from fisheries resources.
- Properly designed fishing subsidies can contribute to the achievement of sustainable fisheries, including through government programs for the reduction of fishing capacity, the improvement of fishing techniques, or the limitation of fishing effort. But effective safeguards need to be in place when designing decommissioning or license retirement programmes in order to avoid altered incentives to enter or exit the industry or to invest in modernization or purchase of new vessels. These safeguards could include mandatory physical scrapping of vessels, prohibition of introduction of new vessels and commitment to time limits of the programme.
- There is potential for improvement of the « matrix » paper, including:
 - to take into even greater account real world conditions of sustainable fisheries management, where effective management is lacking;
 - to clarify the definition of « effective management », including by a more nuanced discussion of the role of property rights approaches to management, also taking into account the importance of proper science and enforcement;
 - to clarify the definition of « subsidies » used by the paper, and in particular its relationship to the definition used by the WTO subsidies agreement;
 - to give further attention to positive subsidies, such as those for environmentally friendly fishing gear; and
 - to clarify the impacts with which the paper is concerned, including by clarifying its treatment of trade impacts and by taking fuller account of the distinction between impacts on fish stocks and broader impacts on marine ecosystems.
- Further work building on the « matrix » paper could, for instance, expand the analysis to aquaculture and processing industries, address the dynamics of subsidies and fishery management systems, and elaborate on the differences of scale of subsidies and their impact taking into account the differences of subsidies to small-scale and artisanal fishing and those to large-scale and industrial fishing.

Session III — Experiences with Subsidies and Fisheries Management

- Advances in international cooperation on fishing subsidies must be reflected in improved national policies and their implementation. UNEP case studies illustrate that the interaction between subsidies and fisheries management policies requires better attention. They confirm the dangers of poorly managed subsidies in terms of their contribution to resource and environmental depletion, food security, and unemployment. Others suggest that certain underdeveloped fisheries can be expanded to make a significant contribution to development without the application of subsidies, provided proper trade and management conditions exist. The capacity for sustainable fisheries management varies significantly among countries and needs to be addressed on a country-by-country basis.
- All case studies confirm the need for more coherent and transparent policymaking. The unintended negative consequences of some subsidy programmes have been the result of a lack

of coordination among management officials and subsidies administrators, as well as the lack of data, transparency and advanced planning. A critical need is to improve information flow within governments and to the general public about fisheries management conditions, the application and impacts of subsidies, and the terms of access agreements.

- Given the nature of concerns over shared fisheries resources, national experiences also confirm the importance of improved regional cooperation to address links between the environment and fishing, including through Regional Fisheries Management Organizations (RFMOs) and the UNEP Regional Seas Programme.
- Fisheries access agreements are proliferating and could - if designed properly - assist in moving towards sustainable fisheries management. To date, however, access agreements have not returned the benefits hoped for by many developing countries, and have often been associated with stock depletion and with negative developmental results. The level of fishing allowed under access agreements needs to be determined by sound science and the precautionary approach, rather than by the amount of financial compensation paid. The terms of access agreements, including conditions of market access (both tariff and non-tariff), should be transparent to all interested stakeholders to ensure sustainable fisheries management and enforcement, as well as improved equity.
- The relationship of subsidies to IUU fishing is a subject of real concern, as well as of some sensitivity. There is evidence that subsidies continue to benefit IUU fishing. Although it is generally acknowledged that no government is deliberately and directly subsidizing IUU fishing, lack of adequate controls and the high mobility of fishing vessels present significant challenges.

Session IV — Reforming Fishing Subsidies at the International Level

- There is very broad support for achieving a successful outcome of the current WTO negotiations on fishing subsidies, in accordance with the Doha mandate and with the call by heads of state and governments at the 2002 World Summit for Sustainable Development. Now, the challenge is to clarify how the use of fishing subsidies can be disciplined in the framework of WTO-rules. Possible approaches for disciplines mentioned include banning all subsidies, banning subsidies with certain limited exceptions or differentiating between, prohibited (“red”), actionable (“amber”) and non-actionable (“green”) subsidies. New WTO disciplines should not, however, be viewed as the « only tool in the toolbox » or as a panacea to solve all fisheries-related problems. Clearly, a comprehensive range of complementary solutions will be necessary, both at the international and national levels.
- Appropriate priority is being given to the discussions at the WTO, given their actuality and potential importance. Rules on fisheries subsidies should be clear and possible to implement. The difficulty in designing new rules comes in substantial part from the interdisciplinary nature of the problem. A variety of views continue to characterize the discussion of how specific new rules on fishing subsidies might be designed. Presentations of possible approaches prompted a substantial and informative discussion of potential elements of new rules, based largely on the existing WTO Agreement on Subsidies and Countervailing Measures. Among the issues discussed were:
 - The degree to which the architecture of the rules may effect the ease with which the WTO can avoid entanglement in policy questions beyond its trade-related mandate;
 - Whether the issue of subsidies should be treated under the general rules on subsidies or an additional category for fishing subsidies should be created;

- Whether it would be desirable to adopt broad or narrow approaches to new disciplines;
 - The question of « burden of proof », and whether it should rest on the subsidizing party or the challenger in various circumstances;
 - The degree to which rules should focus on the design of a subsidy as opposed to the context or impacts of a subsidy;
 - The nature and role of « special and differential treatment » for developing countries;
 - The degree to which new institutional mechanisms may be needed to accompany improved disciplines; and
 - How to ensure that rules on fisheries subsidies contribute to a mutually supportive relationship between trade and environment, including between WTO rules and MEAs.
- New rules on fishing subsidies should emerge from cooperative dialogue and negotiations rather than from the decisions of dispute settlement panels. There was a general understanding that fishing subsidies should not be allowed to contribute to overcapacity or overfishing. Several options for dealing with other subsidies were expressed. Some voiced support for certain fishing subsidies being actionable if they cause negative effects. Other subsidies that can have positive impacts on resources could potentially be placed in a category that would allow them only if certain safeguards and disciplines were in place.
 - The special importance of the fisheries sector for developing countries was again emphasized. Further work is needed to address how this could be better taken into account in international policy, e.g. by exempting fisheries that are not fully exploited. In this case, regular stock assessments would be needed to avoid leaps from less than to full exploitation of the fishery.
 - It was emphasized that international policies to discipline fishing subsidies should respect the competencies and authorities of the individual intergovernmental bodies involved. Broad agreement exists that, to the extent possible, the WTO should avoid situations where it has to make judgments on the state of environmental resources or on the merits of fisheries management policies. One approach might be to seek simple and objective criteria by which the fisheries context could be made relevant without breaching the boundaries of the WTO's competence. A complementary approach would be improved information exchange and cooperation between relevant international bodies (in particular WTO, FAO, UNEP, RFMOs and relevant MEAs) to find a common basis for criteria.
 - Success at developing effective international fishing subsidies policies depends in part on enhancing coordination and improving information exchange among relevant international bodies, such as the WTO, FAO, UNEP, OECD, RFMOs and relevant MEAs to find a common basis for criteria. . Regular contacts among relevant IGO secretariats, as for instance initiated by the FAO, should be continued, expanded and institutionalised, and complemented by similar interactions among relevant government agencies.
 - Improved transparency and access to information about fishing subsidy programs is a necessary element of any new international policies. Transparency of fishing subsidy programs is indispensable for improved policies and disciplines, including through improved notifications, and can contribute to the proper planning and administration of subsidy programs at the national and local levels.

Moving Forward

- There was agreement that further discussions and explorations of the themes raised in this workshop will be both beneficial and necessary. The workshop revealed a growing commonality of purpose in the effort to ensure that subsidies do not detract from the achievement of sustainable fisheries. The months ahead are of particular importance in this regard, as work proceeds in the WTO and other fora.
 - The ability of UNEP in particular to make a positive contribution to the ongoing dialogue was clearly reaffirmed by the results of this workshop. UNEP's continued activities would be widely welcome, and could include, for example:
 - continuing to convene stakeholders and experts for interdisciplinary dialogue on fishing subsidies and sustainable fisheries management for workshops and studies;
 - continuing empirical and analytic work, with emphasis on the practical and concrete challenges of reforming the design and administration of fishing subsidies;
 - extending UNEP's work to help build national, regional, and international capacity for better integration of sustainable fisheries management, fishing subsidy, and trade policies;
 - assisting developing countries in assessing the impacts of subsidies and developing reform policies with a particular focus on the artisanal sector;
 - working to encourage and support an increased role for RFMOs in the international discussion of fishing subsidies and fisheries management;
 - addressing questions of valuation of fishery resources, including by taking into account inter-generational equity considerations; and
 - continuing an active role in regular meetings of relevant IGO secretariats and RFMOs, pursuing areas in which joint work may be of mutual benefit.
 - In light of widespread deficiencies in the implementation of international fisheries agreements - due in part to a lack of coordination among stakeholders - international organizations and governments should give priority to capacity building activities, in particular for developing countries. Regional dialogues could usefully be enhanced as part of this capacity-building effort.
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