

**ADDITIONAL VIEWS ON THE STRUCTURE OF THE
FISHERIES SUBSIDIES NEGOTIATIONS**

Communication from the United States

The following submission, dated 13 December 2004, is being circulated at the request of the Delegation of the United States.

The United States, along with other WTO Members, applauds the good progress that has been made in the fisheries subsidies negotiations to date. In particular, at the last several meetings of the Negotiating Group on Rules Members have engaged in a wide-ranging discussion concerning the appropriate structure of the negotiations. Many Members, including the United States, consider it essential to get the framework for the negotiations right from the outset.

A submission by six Members, discussed at the November 2004 meeting, persuasively summarized the advantages of an approach – the so-called “top down” approach -- that would centre on a prohibition, combined with appropriate exceptions.¹

The United States believes that a top down approach potentially offers a simple, administrable, enforceable and realistic structure for strengthened disciplines on fisheries subsidies, with sufficient flexibility to address the realities of the fisheries sector and the legitimate interests of Members. In contrast, the alternative approach proposed by some Members – the “bottom up” approach – appears to contemplate a very small number of prohibited subsidies and a large number of permitted subsidies. In our view, the bottom up approach could potentially lead to a set of disciplines weaker than the current rules.²

This submission is intended as a further contribution to Members’ understanding of the top down approach and how a negotiation centred on such an approach could be structured.

Scope of Prohibition

Our view is that the primary focus of the negotiations should be to strengthen disciplines on fisheries subsidies that contribute directly to overcapacity and overfishing. We have proposed in an earlier submission that the fundamental discipline applicable to these particularly harmful subsidies should be a prohibition.³ Other Members have expressed similar views.⁴ However, we recognize that there may be several ways to make such a prohibition operational in order to achieve this end. For example, it has been observed that it may be difficult to incorporate the concepts of overcapacity and

¹ TN/RL/W/166

² TN/RL/W/164

³ TN/RL/W/77

⁴ See TN/RL/W/82; TN/RL/W/115; TN/RL/W/154.

overfishing directly into the WTO rules system, given the difficulties of interpreting these concepts in the fisheries context.⁵ Likewise, a prohibition limited to subsidies for vessel construction (*i.e.*, capital costs), as suggested in one submission,⁶ would fail to capture other types of programmes that are potentially trade-distorting and may have adverse conservation effects (*e.g.*, price supports for fisheries products).

Obviously, the precise scope of the prohibition will need to be negotiated among Members. The United States is open to consideration of alternative approaches, including the broader prohibition discussed in the submission of the six Members.

In a previous submission in the Committee on Trade and Environment, the United States has given examples of programmes that should not be the target of strengthened disciplines because they generally do not contribute to overcapacity or overfishing: *e.g.*, government programmes for fisheries management and enforcement and government-funded programmes that facilitate the transition to sustainable fisheries.⁷ The top down approach affords sufficient flexibility to address these programmes appropriately. The submission of the six Members acknowledges that many existing fisheries subsidy programmes will likely *not* be prohibited in this round of negotiations.⁸ The types of programmes the submission suggests as candidates for exceptions to the prohibition coincide very closely with the examples the United States previously identified.⁹ As a further element of flexibility, a top down approach could also allow for a reasonable transition period for Members to reconsider their programmes and adapt them as needed to strengthened disciplines.

Transparency in Negotiating Exceptions

We agree with the six Members that a particularly strong advantage of a top down approach is its potential to improve the transparency of Members' subsidy programmes. For this reason, it is important that Members ground their consideration of possible exceptions in a thorough discussion of Members' particular current fisheries programmes rather than confining the discussion to broad "categories" of fisheries subsidies. While there has been considerable focus on fisheries subsidy categorization in studies by the OECD, APEC, UNEP and others,¹⁰ it is less clear what particular subsidy programmes would be encompassed in a given category. Thus, it is possible that even a seemingly benign category could be interpreted so broadly that it would result in the exclusion of programmes that some Members would wish to discipline. This problem would be avoided if Members were to bring forward information about particular programmes in the context of negotiating exceptions. Such a discussion would also alleviate concerns that exceptions to the prohibition would be open-ended and could lead to circumvention.

⁵ TN/RL/W/154.

⁶ See TN/RL/W/82.

⁷ WT/CTE/W/154 (2000), section II, paragraph 2. In the CTE paper, the United States suggested that certain programmes do not contribute to overcapacity and overfishing: *e.g.*, "government programmes for fisheries management, science, enforcement, and most publicly financed port and landings facilities. Government-funded programmes that facilitate the transition to sustainable fisheries are also not included in this list. Examples of these activities are publicly-funded programmes that: reduce fishing capacity (buybacks), enhance resources (hatcheries), support the development and adoption of clean harvesting technology (bycatch reduction devices), and facilitate adjustment to the economic distress associated with resource declines." Consideration of such programmes may provide a starting point for Members' discussions of possible exceptions to a prohibition.

⁸ TN/RL/W/166, paragraph 8.

⁹ *Id.*, paragraph 11.

¹⁰ See the discussion of previous efforts to categorize fisheries subsidies in TN/RL/W/58.

Exceptions Remain Actionable

In our view, exceptions to a prohibition should still be actionable under other provisions of the SCM Agreement. In that connection, Members might want to consider the possibility of clarifications of the “serious prejudice” provisions of Article 6 (Serious Prejudice) to make them more operational in the specific context of fisheries subsidies.¹¹

¹¹ The current Article 6 provisions (see Agreement on Subsidies and Countervailing Measures Article 6.3-6.5) contemplate a demonstration of adverse trade effects through comparisons of *e.g.*, market shares or prices in a given market, generally an export market. For reasons that have been detailed in previous submissions, it is particularly difficult to demonstrate these effects in the case of fisheries products, primarily because the distinctive trade distortions in the fisheries sector occur through limiting the productive access of non-subsidized fleets to exhaustible fisheries resources. See TN/RL/W/3, paragraphs 9-11; TN/RL/W/12; TN/RL/W/115, paragraphs 4-7.