

**DRAFTING PROPOSAL ON ISSUES RELATING TO ARTICLE V ("FISHERIES
MANAGEMENT") OF THE FISHERIES SUBSIDIES ANNEX TO THE
SCM AGREEMENT AS PROPOSED BY THE CHAIR IN TN/RL/W/213**

Communication from Norway

The following communication, dated 22 April 2008, is being circulated at the request of the Delegation of Norway.¹

1. Introduction

1. The issue of fisheries management as a condition for subsidization has received considerable interest during the negotiations. Various proposals were put forward by *inter alia* Argentina², Brazil³, Indonesia⁴, Japan & others⁵, and Norway⁶

2. This paper addresses the Chair's text (TN/RL/W/213) on the above mentioned issue as a contribution to the further negotiations in the Negotiating Group. Together with the comments and suggestions made in the Negotiating Group, they form the basis for the textual proposal set out below. We suggest that these amendments to Article V of Annex VIII of the Chair's text be made so as to provide Members with a better basis for further negotiations regarding these issues.

3. This submission is without prejudice to the views we may have on other parts of the Chair's text.

2. Fisheries management systems and fisheries management plans

4. In the negotiations, both the concepts of fisheries management systems and fisheries management plans have been put forward.

5. While there are no generally agreed definitions applicable to these concepts, in general terms a fisheries management system refers to the legal and institutional *framework* put in place to ensure the long-term conservation and sustainable use of fisheries resources.⁷ A fisheries management plan,

¹ This paper was submitted to the Negotiating Group as a room document in March 2008.

² See the proposals for an Article X.2 in TN/RL/GEN/138 and later revisions, and TN/RL/GEN/151/Rev.1

³ See TN/RL/W/212 p.3, and TN/RL/GEN/151/Rev.1

⁴ See the proposed Article 5.5(a) in TN/RL/GEN/150/Rev. 2

⁵ See the communication from Japan, the Republic of Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, in TN/RL/GEN/114/Rev.2, particularly Articles 1(a)(ii) and 5.

⁶ See TN/RL/GEN/144, proposed paragraph 3.

⁷ See, *inter alia*, *FAO Code of Conduct for Responsible Fisheries*, paragraph 7.1.1, where such a general system is described:

however, is one of the *tools* used by the authorities under such a system, and is directly targeted at the management of a particular fish stock, a group of fish stocks or a particular fishery.⁸

6. Every Member should have a fisheries management system in place that conforms to internationally recognized minimum standards. To ensure that subsidization does not lead to overcapacity and overfishing, however, it is necessary to relate the effect of a particular subsidy to its impact on the fishing effort in respect of one or more particular fish stocks. In our view, this implies that it is necessary to have management plans that target the particular fish stock(s) that the subsidization relates to in order to ensure that the subsidy does not lead to overfishing (i.e. an uptake above sustainable levels).

7. A fisheries management plan can include a number of measures to ensure that overfishing does not take place. While not all measures are necessary or appropriate for the management of each individual fish stock, certain measures are a *sine qua non* to avoid overfishing. These are:

- (a) "regular science based stock assessment", so that precautionary reference points can be established, and to regularly monitor the development of the stocks. Such reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce long-term maximum sustainable yield;⁹
- (b) Stock-specific management strategies for the measures to be used to maintain or restore the harvested stock at levels consistent with the precautionary reference point. Such strategies shall ensure that target reference points are not exceeded;
- (c) Stock-specific management plans that allocate quotas within a Total Allowable Catch (TAC) determined for each year, or other similarly effective measures that constrain the harvesting within safe biological limits; and
- (d) Control, enforcement and compliance measures, to ensure that the quotas are respected by the fishing vessels.

3. Explanation of the proposed amendments to the Chair's text

8. The Chair has in TN/RL/W/213 suggested a number of elements in Article V.1. We believe that this proposal goes in the right direction. Below we suggest certain modifications to the Chair's draft Article V.1. The purpose of these amendments is to set out more clearly the obligations

7.1.1 States and all those engaged in fisheries management should, through an appropriate policy, legal and institutional framework, adopt measures for the long-term conservation and sustainable use of fisheries resources. Conservation and management measures, whether at local, national, subregional or regional levels, should be based on the best scientific evidence available and be designed to ensure the long-term sustainability of fishery resources at levels which promote the objective of their optimum utilization and maintain their availability for present and future generations; short term considerations should not compromise these objectives.

Fisheries management systems are also addressed in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

⁸ Certain management tools are also addressed in the 1993 *FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*.

⁹ See the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, where Annex II contains guidelines for the application of precautionary reference points in conservation and management of straddling fish stocks and highly migratory fish stocks.

Members have to live up to in respect of the various elements that are necessary to ensure that any subsidization that is permitted does not result in overfishing. For that purpose we also suggest to "reformat" the Article and re-group the elements contained in the Chair's draft.

9. We consider that Members should have as an "over-arching" obligation to operate a fisheries management system that creates the legal and institutional *framework* to ensure the long-term conservation and sustainable use of fisheries resources. The *framework* must be complemented by stock-specific management plans for each fishery that is or will be subsidized, and other measures that ensure that non-stock-specific subsidies do not result in overfishing.

10. We, therefore, suggest to focus on fisheries management systems in Article V.1. The provision suggested below is almost identical to the first two sentences of the Chair's proposal, but we suggest to format the provision differently. We have also included the management measures suggested by the Chair as optional elements for any management system. Such measures may be necessary and appropriate for some but not all management plans

11. We, thereafter, suggest to specify the obligations relating to stock-specific measures in Article V.2. For this provision we suggest to create a direct link between subsidization and the targeted fish stock. Such a direct link was not present in the Chair's text, but we believe that it is useful. If a subsidy targets e.g. tuna fisheries, it is for such fish-stocks that management plans are required, and not for stocks unaffected by the subsidy.

12. In Article V.2 we also suggest to specify certain minimum requirements (e.g. science-based reference points for each stock concerned) for fisheries management plans. We suggest that the focus of the obligation be on the *result* to be achieved, i.e. that a subsidy shall not result in overfishing, rather than prescribing each and every measure that may be employed to reach that goal. In addition to the specific requirements set out in Article V.2, it will normally be necessary to also have in place some or all of the management measures listed in Article V.1.2

13. For non-stock-specific subsidies we suggest a more general reference to the obligation to ensure that such subsidies do not contribute to overfishing. We are also looking at whether subsidies for purposes such as "re-education" and "early retirement"¹⁰ should only be subject to Article V.1 and not Article V.2, and have suggested language to that effect in Article V.2.6.

14. We suggest to move "enforcement" to Article V.3, and specify more clearly what the enforcement measures shall achieve.

15. In respect of the notification requirements to the FAO and to the Committee on Subsidies and Countervailing Measures, we suggest that the management systems be notified to the FAO and the management plans and corresponding subsidies to the Committee pursuant to Article VI. We have not included prior "peer review" in the text below due to the strong opposition voiced by Members at the February meeting, but we favour a WTO "TPR-like" mechanism for fisheries subsidies, where a Member's subsidization will be subject to scrutiny at regular intervals, and would recommend further discussion on such a mechanism..

16. Finally we have moved the Chair's proposed obligation to have an enquiry point into new Article V.5, but kept the language unchanged.

¹⁰ See Article II(c)(1) and (2) of the Chair's proposal.

Annex – Suggested modifications to the Chair's proposed Article V (Fisheries Management)

Article V

*Fisheries Management*¹¹

V.1 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing and that ensures the long-term conservation and sustainable use of fisheries resources.¹²

1.1 The fisheries ~~Such~~ management system shall be based on internationally-recognized best practices for fisheries management ~~and conservation~~ as reflected in the relevant provisions of international instruments for the long-term conservation and sustainable use aimed at ensuring the sustainable use and conservation of marine species fisheries resources, such as, *inter alia*,

- i. the United Nations Convention on the Law of the Seas
- ii. the UN Fish Stocks Agreement,
- iii. the FAO Code of Conduct for responsible fisheries,
- iv. the 1993 FAO Compliance Agreement, and
- v. technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.

1.2 The fisheries management system shall, as appropriate, include:

- i. a system comprising authorization to fish (inter alia fishing permits, fishing licenses and vessel registries) ~~harvesting licenses or fees; vessel registries ;~~
- ii. ~~establishment and allocation of fishing possibilities rights, or allocation of exclusive quotas to vessels, individuals and/or groups; and related enforcement mechanisms;~~
- iii. single- or multi-species regulations and/or quotas ~~species-specific quotas;~~
- iv. restrictions on the use of fishing gear, closed seasons and/or areas ~~seasons and other stock management measures;~~
- v. vessel monitoring and catch control systems, which could include electronic tracking and on-board observers;
- vi. systems for reporting in a timely and reliable manner to the competent national authorities and relevant international organizations data on effort, catch and discards in sufficient detail to allow sound analysis; and
- vii. research and other measures related to conservation and stock maintenance and replenishment.

V.2 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall, for each fishery and/or fish stock for which the subsidy is directed,

¹¹ Chair's footnote 84: Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region.

¹² Explanatory footnote: The additional language mirrors more closely the FAO Code of Conduct. The importance of this addition is that the system should not only be *designed to prevent overfishing*, but should also *be implemented and enforced* so that overfishing is effectively avoided on a long –term basis

implement a fisheries management plan designed to prevent overfishing of that particular fish stock.

- 2.1 The fisheries management plan system shall include be based on a regularly updated science-based stock assessment including precautionary reference points for that stock or best biological information available as well as capacity and effort management measures.
- 2.2 The fisheries management plans that include science-based stock assessment, shall include the establishment of fishing mortality rates that will ensure that the fishing will be kept within the relevant precautionary reference points for that stock.
- 2.3 The scientific basis for the management plan shall have been approved by an internationally recognised, competent management or scientific body.¹³
- 2.4 The fisheries management plan shall include capacity and effort management measures that constrain harvesting within safe biological limits, either through the allocation of quotas within a Total Allowable Catch (TAC) determined for each year or through the application of other similarly effective stock management measures.
- 2.5 Each Member shall ensure that non-stock-specific subsidies do not result in overfishing. Where a subsidy relates to more than one fishery or fish stock, a management plan is required for each fish stock affected by the subsidy.
- 2.6 Subsidies referred to in Article II(c) shall only be subject to paragraph 1 of this Article.

V.3 ~~To this end, the~~ To ensure compliance with the provisions set out above, each Member shall adopt and implement pertinent necessary domestic legislation and administrative or judicial enforcement mechanisms.

~~It is desirable that such fisheries management systems be based on limited access privileges¹⁴.~~

V.4 ~~Information relating to the obligations set out in V.1 and V.2 as to the nature and operation of these systems, including the results of the stock assessments performed, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy¹⁵. Each individual subsidy or subsidy programme, as well as the relevant fisheries management plans, References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4.~~

V.5 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its fisheries management system,

¹³ Proposed new footnote: Such bodies include the scientific/biological bodies of a number of Regional Fisheries Management Organisations, and the Advisory Committee for Fisheries Management (ACFM) of the International Council for the Exploration of the Seas (ICES), and national research institutes..

¹⁴ Chair's footnote 85: ~~Limited access privileges could include, as appropriate to a given fishery, community based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.~~

¹⁵ Chair's footnote 86: ~~If the Member in question is not a member of the FAO, the notification for peer review shall be to another relevant international organization. The specific information to be notified shall be determined by the relevant body of the FAO or such other organization.~~

including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point.
