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Negotiating Group on Rules

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Communication from Australia, New Zealand and the United States

The following communication, dated 18 July 2008, is being circulated at the request of the Delegations of Australia, New Zealand and the United States.

Introduction

1. The fisheries subsidies negotiations in the Negotiating Group on Rules offer an unprecedented opportunity for the global community to take an important step towards reducing government support for overcapacity and overfishing in world fisheries. In these negotiations, the WTO is addressing a problem that has not only commercial significance but also enormous implications for the world's marine environment and sustainable development. A strong agreement on fisheries subsidies is a major potential "win-win-win" for the Doha Development Agenda, and one area where the WTO can deliver a strong environmental outcome. While significant differences on many issues remain, an agreement is within reach that can make a real difference for the world's fisheries resources and the hundreds of millions of people who depend on them for their food and livelihood. It is therefore useful to review progress in the negotiations since the Hong Kong Ministerial Declaration in December 2005 and identify the next steps needed to bring the negotiations to a successful conclusion.

2. A strong fisheries subsidies agreement is more important than ever. The underlying trends remain bleak. According to the UN Food and Agriculture Organization (FAO), three quarters of the world's fisheries have been fished at or beyond sustainable levels and cannot sustain further expansion of the harvest. This is particularly true for high value commercial stocks such as tunas and related species. At the same time, subsidy levels remain high, and it is now widely accepted that they undermine sustainable management and contribute to the poor state of many fisheries. Recent developments such as the June 2008 closure of the Mediterranean bluefin tuna purse seine fishery underscore that even developed countries with sophisticated management systems can find themselves caught in a spiral of subsidization, overcapacity, overfishing and stock collapse. Meanwhile, significant strains caused by rising fuel costs in the past year are triggering demands for even more subsidies. A strong system of multilateral rules on fisheries subsidies is now imperative to prevent a race to subsidize and ensure that short-term political responses do not undermine the long-term goal of putting fisheries on a sustainable path.

3. While the issues in the negotiations are novel and challenging, we have one great advantage: substantial common ground regarding our ultimate objective. Virtually all Members agree that the current situation cannot continue and that we must develop fisheries in ways that are economically sustainable and conserve the resource for future generations. The importance of fisheries as a source of both food and livelihoods has never been higher, particularly in developing countries, and these

concerns have a new urgency given the current surge in food prices. Six of the ten largest fish producers in the world are now developing countries, and developing countries account for nearly 50 per cent of fish exports. Developing countries have seen first hand how uncontrolled fishing in their coastal waters can lead to stock depletion and threats to livelihoods, and how subsidies have distorted production and trade patterns. Thus, there is general consensus that there should be no "blank check" to develop fisheries in a way that undermines their long-term sustainability.

4. The expertise of other specialized bodies is directly relevant to the fisheries subsidies negotiations, particularly work regarding fisheries management. Almost all Members agree that the WTO's actions to improve subsidy disciplines are no substitute for work in the FAO, regional fisheries management organizations and other bodies with expertise in marine fisheries. Since the Hong Kong Declaration, Members' understanding of the complementary relationship between our work and work in these other organizations has grown substantially. FAO observers have attended many of our meetings; the United Nations Environmental Programme (UNEP), the World Wildlife Fund and the International Centre for Trade and Sustainable Development (ICTSD) have sponsored numerous useful workshops and significant papers. Environmental organizations such as Oceana have also worked tirelessly to raise the international visibility of the negotiations. We will need to build on these efforts as the negotiations move forward. We welcome further FAO involvement in the WTO negotiations and would encourage further WTO awareness of and interaction with the work of the FAO.

Progress to Date

5. Following the Hong Kong Ministerial, the negotiations moved into a text-based phase, including comprehensive proposals and other contributions from many Members – some based on a "top down" approach (broad prohibition with appropriate exceptions) and others based on a "bottom up" approach (specific list of prohibited subsidies). These contributions helped identify key issues and convergences/divergences of approaches.

6. The Chair's draft text of a new fisheries subsidies agreement represents a substantial advance in the negotiations and a landmark in the efforts of the world community to get global fisheries back on a sustainable path. The text addresses all the key issues in innovative and thoughtful ways, drawing on virtually all contributions made by Members. It sets out a broad range of prohibited subsidies that contribute to overcapacity and overfishing as well as a prohibition of subsidies that affect fishing on "unequivocally overfished" stocks. Specific types of subsidies are excluded from the prohibition if they meet appropriate conditions (*e.g.*, for programs to reduce fishing capacity, adoption of selective fishing gear, vessel and crew safety). Developing countries may use otherwise prohibited subsidies under certain conditions (with additional flexibilities for developing country subsistence and small scale fishing). Most non-prohibited subsidies are subject to requirements that a fisheries management system based on internationally-recognized best practices be in place, and that subsidies must not create overcapacity or cause harm to stocks for which another Member has an identifiable interest. The text also provides for improved transparency and a role for the FAO and other fisheries experts in reviewing measures taken to comply with the management criteria and other sustainability conditions.

General Principles for Moving Forward

7. As negotiations resume, Members should have in mind certain core principles that need to be reflected in a new agreement in order to realize the commitment of the WTO to address some of the problems facing world fisheries. These core elements are:

- a strong prohibition as the backbone of new disciplines – an agreement must secure new rules disciplining harmful subsidies;
- complementary disciplines such as provided for in the Chair's current text (Articles I.2 and IV), which are needed to guard against circumvention and take account of the future evolution of fisheries subsidies policy and practice;
- appropriate special and differential treatment (SDT) that gives developing countries flexibility to meet their development needs but that does not undermine the objectives of the agreement;
- inclusion of measures for sustainability such as fisheries management for both developed and developing countries;
- clarification that all specific fisheries subsidies remain actionable under the current Agreement on Subsidies and Countervailing Measures;
- a significantly greater level of transparency concerning fisheries subsidies than in the current rules, and effective measures for surveillance and enforcement; and
- appropriate technical assistance for developing countries as envisioned by the Chair's text, including possible roles for the FAO and other organizations.

8. The co-sponsors believe that the Chair's text reflects the above elements appropriately and establishes a reasonable balance among them. Work toward further clarifications and improvements should be on the basis of the Chair's text.

Next Steps

9. As we move forward, Members should intensify technical work in areas where there appears to be emerging consensus. These include areas such as: a general discipline not to cause overcapacity or harm to the interests of other Members; provisions on fisheries management; improved transparency provisions, including enhanced notification and meaningful surveillance; and treatment of arrangements related to access to fisheries of developing countries.

10. We must also work to narrow differences on core issues, particularly with respect to the scope of the prohibition and related general exceptions. In this regard, there needs to be a more candid dialogue on Members' concrete problems with the current text and their specific needs. Such a dialogue has started through the bilateral process, but it should be intensified. There also needs to be more work on the conditions for providing SDT to developing countries. Discussion focused on specifics would lessen misunderstandings and facilitate carefully crafted solutions, thereby ensuring an agreement that secures real disciplines on harmful subsidies and ensures that subsidies do not threaten sustainability in the future.

11. Finally, we should retain the focus of the negotiations on disciplines on subsidies – not have it devolve into a discussion focused on fisheries management in which subsidies are incidental. To have an agreement that imposes only some fisheries management requirements but does little or nothing to

address subsidies would not address the focus of our negotiations. While management is a necessary element for sustainability, the record is painfully clear: even sophisticated management systems in developed countries have failed in many cases to preserve stock sustainability, and management does not address the market and trade-distorting effects of subsidies. A WTO agreement must be premised on what the WTO does best: impose meaningful disciplines on subsidies.

Conclusion

12. We are committed to achieving an ambitious and effective result on fisheries subsidies disciplines in this Round. Expectations are high given that the WTO has a one-time opportunity to make a real, effective contribution to resolving an environmental problem of global significance and putting the world's fisheries back on the track toward sustainability for present and future generations. We are at a crossroads where the sustainability of many fisheries is in the balance. We must act now; we cannot afford to wait until the race for the last fish is over. Given the importance of this sector for developing countries, both as an export earner and as a significant domestic industry, effective and strong disciplines on fisheries subsidies will make a major contribution to ensuring that this truly is a "development" Round.
