



International Centre for Trade
and Sustainable Development

WTO DISCIPLINES ON FISHERIES SUBSIDIES: ELEMENTS OF THE CHAIR'S DRAFT

29 January 2008, 9h00-17h30
Geneva, Switzerland

**Session 2:
Disciplines and Conditions on Non-Prohibited Subsidies
Presentation of David K. Schorr, WWF**

Intro

- Reiterate thanks
- We've all worked hard together towards workable sustainability criteria . . . Now they seem w/i reach
- . . . but we all know there's work to do . . . to find the right balance
- Need rules that are truly workable
- BUT ALSO must go beyond a mere ratification of status quo

SEE WWF's statement of 12 December

My basic thesis

“Reduce ambiguity w/o reducing ambition”

- Technically possible
- Politically attractive, b/c current ambiguity can “cut both ways”
 - . . . towards undue burden on govts . . .
 - . . . *or* towards insufficient sustainability

What I will cover

- Look at the sustainability criteria in the text
 - Nb – won't spend presentation time on Art. IV, but happy to get into it during discussions
- Propose focus on Art. V, b/c is comprehensive
- Look at ways to “simplify w/o weakening”
- Flag some key issues and concerns of WWF

COVERAGE of ART. V

Art. V covers all permitted fisheries subsidies, except:

- natural disaster relief *(chapeau to Art. I.1)*
- subsidies granted by LDCs *(Art. III.1)*
- DC subsidies to [artisanal/subsistence] fishing *(Art. III.2(a))*
- transfer of access rights to foreign DC EEZs *(Art. III.3)*

Article V

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. 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 aimed at ensuring the sustainable use and conservation of marine species, such as, inter alia, the Fish Stocks Agreement, the Code of Conduct, the Compliance Agreement, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights or allocation of exclusive quotas to vessels, individuals and/or groups, and related enforcement mechanisms; species-specific quotas, seasons and other stock management measures; vessel monitoring which could include electronic tracking and on-board observers; 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 research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges. Information 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 subsidy. 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.

Article V

The basic requirements	Elements of management system (mandatory or illustrative?)
<ul style="list-style-type: none"> • operate a fisheries management system <ul style="list-style-type: none"> • w/i Member's jurisdiction • designed to prevent overfishing • based on int'l best practices • adopt and implement pertinent legislation and enforcement mechanisms • prior notification of information about management system to FAO for peer review • notification of legislation and [enforcement] mechanisms to WTO . . . (plus requirements of Art. VI.1) 	<ul style="list-style-type: none"> • science-based stock assessment • capacity and effort management measures (incl. licenses or fees) • vessel registries • fishing rights or exclusive quotas . . . + "related enforcement mechanisms" • species-specific quotas, seasons and other stock management measures • vessel monitoring (could include electronic tracking + observers) • data on effort, catch and discards (sufficient "to allow sound analysis") • "research and other measures" related to conservation and stock maintenance and replenishment.

What about subs not covered by Art. V?

Natural Disaster Relief

(chapeau to Art. 1.1)

Requires a “science-based assessment” to establish “a sustainable level of fishing capacity”

. . . beyond which subsidized reconstruction is not permitted

NB – this is closest text comes to clear and direct requirement of a capacity assessment

Subsidies Granted by LDCs (*Art. III.1*)

No sustainability conditionality . . .

. . . but subject to Article IV

[**reminder**: Art. IV = basis for action if subs cause “depletion of, harm to, or overcapacity in respect of” certain stocks in which other members have an interest]

DC Subsidies to [Artisanal] Fishing *(Art. III.2(a))*

No sustainability conditionality . . .

. . . but subject to Article IV

. . . + hortatory encouragement to adopt Art. V
measures, “adapted as necessary”

Transfer of Access Rights to DC EEZs (Art. III.3)

No direct conditionality on fishery . . . but access agreement must have “requirements and support” for:

- science-based assessment (**before and regularly after** agreement)
- management and control measures
- vessel registries
- national and international reporting of effort, catches, and discards
- “such other measures as may be appropriate”

→ **What’s diff? . . . Reference to “before & regularly after”**

Also there are 2 categories covered by Art. V that have additional sustainability criteria language . . .

. . . But do they actually have additional sustainability criteria requirements?

Decommissioning & Capacity Reduction (Art. II(d))

In addition to requirements on type of program (e.g., scrapping):

... “management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery”

... (plus a list of examples such measures “may include”)

→ What’s additional to Art. V? ... I don’t really see anything ...

S&D for vessels over 10 meters (Art. III.2(b)(3))

A key limit = EEZ . . . Talk about that in Session 3
. . . For now, sustainability criteria?

. . . “(ii) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; and

(iii) that assessment has been subject to peer review”

→ What's additional to Art. V? . . . Again, I don't really see anything

Much or all of the sust criteria lang outside of
Art. V is redundant

➔ Need look no further than Art. V for our list .

But does Art. V strike right balance?

. . . It's not clear . . . Is list of elements mandatory or illustrative? Or a mix?

What *should be* the answer?

→ UNEP-WWF paper on Sust Criteria

UNEP-WWF Paper

- Criteria in 3 key categories: biol, indus, & regulatory

Regulatory

Based on “best practices” but not requiring 100%

- Sci based stock and capacity assessments
 - “count fish & boats”
- “controls” . . . A management plan, LRPs, binding regulations to limit effort &/or capacity
- enforcement mechanisms
- + three specific administrative requirements:
 - vessel registration
 - licensing of fishing
 - collecting basic catch data

Article V

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NB– Slide is for illustration only, and does not represent a formal proposal by WWF

But what about biological & industrial?

- The biological criteria are built into the text, but not directly into Art. V . . .
 - Art. I.2 and Art. IV
 - These are weaker than WWF would prefer . . . Closing barn door after horse has escaped
 - Probably implicit in Art. V also, but perhaps shld be made explicit in conditionality
- The industrial criteria . . . Not as explicit as shld be . . . Preferred old Argentine approach . . . Capacity or effort enhancing subs shld not flow to fisheries that are even close to full capacity.

Can these be too burdensome?

- They are fundamentally necessary to sound policy and to avoid production distortions
- If gov'ts are worried, look to
 - Flexibility in right to use different approaches
 - the standard of review, not to the basic content of the requirement . . . No one is asking for proof of sustainability . . . Rather, proof of minimum adequate management . . .

A few concerns

- Fisheries level criteria and conditions are sine qua non of meaningful rules . . . Assume this is what text means, but clarification is very important on this point
- International fisheries . . .
- Inland fisheries
- Peer review . . . Come back to this in discussion . . . Basic idea is correct and necessary, but need to avoid creating inappropriate obstacles to govt action . . .
 - More than “good laws are enough”; more than self certification
 - But perhaps less than mandatory pre-certification of every subsidy program

Merci!