

MEETING REPORT

UNEP Informal Expert Consultations on Fisheries Subsidies, 16th July 2003, Geneva

Opening Remarks

The meeting was opened by Mr. Hussein Abaza who explained that the mandate of UNEP includes providing information and offering assistance and capacity building to countries to address Environment, development, economic and trade issues in an integrated fashion. UNEP's work in this regard included: preparing training packages and modules; workshops; and country projects including in the fisheries sector. He thanked Gareth Porter, the independent consultant commissioned to prepare the papers, and also the German Federal Ministry for the Environment for financing the project. Ms. Anja von Moltke then explained that the aim of the meeting was to review two UNEP Papers on fisheries subsidies that had been prepared by Mr. Gareth Porter for UNEP. The first paper to be discussed in session I was an analytical framework to examine the resource impacts of fisheries subsidies using a matrix approach. The second paper discussed in session II made recommendations on disciplining fisheries subsidies drawing from the analytical framework. Session III served to discuss next steps in the preparation of these documents and other related projects. She expressed her hope for an open and frank exchange of views on the subsidies issue and assured the group, consisting of 15 experts from IGOs, NGOs and academia, that any views offered would not be attributed to their institutions.

SESSION I:

A Matrix Approach to analyzing the resource impacts of fisheries subsidies

a. Overview of the paper

Mr. Gareth Porter began with brief comments on the origin of the matrix concept/approach. He noted that his paper had attempted a technical analysis of the effect of subsidies on fisheries resources under different management and bio-economic parameters. He noted that the paper looked at eight subsidy categories under a framework of idealized management regimes including: open access; catch control (with no property rights); and an effective management system (with catch control and property rights notably ITQs). He also noted that the framework had utilized a tripartite assumption on the status of fisheries resources (over exploited, fully exploited, and less than fully exploited). Noting that there were few fisheries that were not fully exploited, he pointed out the difficulty in assessing the status of exploitation of fisheries resources especially in developing countries. He gave the example of Fiji where until one and a half years ago it was thought that its tuna fisheries was less than fully exploited but that a combination of foreign licenses and corruption had led these fisheries to being in a suspected status of over-exploitation.

b. Discussion of the analytical framework: General comments

The concept of effective management of a fishery. Participants questioned the underlying assumption in the framework that an ITQ was always an effective management system. In practice, it was noted, there were factors such as: poor enforcement; under-reporting; targeting of endangered species; corruption; and capital movement, which limited its effectiveness. For this reason, it was noted that there are other factors that ought to be taken into account when analyzing an effective management system in addition to ITQ's including status of resources, labour and economics. It was stated that there are other management systems such as the community rights systems in developing countries, which if applied

effectively can reach the same outcome as an ITQ and the paper should include a discussion on these other management systems. The group cautioned against implying that having in place a management regime, presupposes a resource problem noting that this could create a perverse incentive or a disincentive to address the resource issue through management regimes. The participants suggested that in revision, there should be improved discussions on what effective management entails. Rather than recommending a particular management system, it was proposed to focus on indicia of good or bad management systems and reasons why different management systems work or fail. In addition, they suggested that clarifications be made of the concepts of open access and catch control as used in the analytical framework. They also proposed that the issue of catch capacity be addressed under all categories whether over-fished or not.

Trade distortion vs natural resources protection. Participants felt that even though the paper aimed at highlighting the natural resource issue to the fisheries subsidies debate, it was still important to also address the trade distortion element for practical feasibility. This is because the trade distortion and resources issue are closely interlinked. Even if an effectively managed system has positive results with regard to the conservation of natural resources, it could at the same time affect production systems, hence leading to trade distortion. Also the trade distortion argument offers the most politically feasible alternative for challenging a subsidy before the WTO. For a party to challenge a subsidy, it must prove material harm. This is usually an economic injury against its interests due to trade distortion occasioned by subsidy application rather than allegation of injury to resources.

Injury to the wider eco-system. It was considered important to also discuss the injury to the whole eco-system in connection with the analysis of fisheries subsidies. ITQs could encourage cost-cutting production methods, which could include destructive fishing gear harmful to the broader eco-system. Subsidies to capital may also be harmful to the broader eco-system for similar reasons. It was also noted that often individual and global fishing quotas are set at levels higher than prudent for sustainable resources management. By-catch and rejection of fish stocks/species should also be addressed in the context of injury to the resource base and the eco-system more generally.

Others. It was observed that the question of allowable subsidies should be explored taking into account factors such as: the potential to overshoot, longevity of the subsidy in the sector (i.e. the difficulty in withdrawing a subsidy once introduced) and the moral hazard problem posed by some subsidy categories where the industry always expects to be bailed out. It was also pointed out that subsidies pose differing degrees of harm that could not be dealt with in detail in this paper. For example, it was suggested that marketing subsidies were more harmful to DCs than subsidies to infrastructure. Furthermore, participants noted that the paper relied too heavily on OECD data and recommended inclusion of data from DCs. Issues particularly relevant to DCs, including food security and market access, would have to be better addressed.

c. Analysis of impacts by subsidy category

Subsidies to infrastructure. It was observed that subsidies to infrastructure in combination with other factors could allow capacity to expand. It is therefore important to establish the linkage between capacity and effort (including effect on effort in distant and foreign waters) when analyzing this category. Some participants felt that what mattered was whether it is the government that finances the infrastructure, others felt that the crucial issue was cost recovery rather than government financing alone. It was also pointed out that distinctions have to be made between subsidized and unsubsidized situations where the government is involved in infrastructure development i.e. clarification of government investment in infrastructure development in general and where the investment is clearly intended to be a benefit to industry.

It was suggested that distinctions be made between the effect of subsidies to infrastructure in developing and developed countries. If one assumes that such subsidies increase profitability to the private sector and hence provide an incentive for over-fishing, this argument may not be true for DCs whose profitability does not change that much. For some DCs, subsidies to infrastructure could have a positive environmental impact since they reduce rejection of stock. In addition, if ports were developed, landing in ports would make it easier to monitor catch levels.

Support for management services and research. It was pointed out that management services and research benefit consumers more generally, so subsidies in this category are much more ‘implicit’. There was need for more research in DCs to: control level of catches; analyze the state of industry capitalization so as to find ways to increase profitability by reducing capitalization; provide alternatives to the private sector for choices that reflect bad allocation of investment. These can well support the goal of sustainable development. Another issue that arose was the potential trade problem that could occur if some countries recovered costs for management services and research and others did not especially for the states that had very expensive management systems. In this context, it was unclear whether the WTO would consider management services and research a subsidy. A participant suggested duck-tailing subsidies to management and research services for fisheries to the non-actionable subsidies under Article 8 of the Subsidies and Countervailing measures agreement¹

Subsidies for access to a foreign country’s waters. It was observed that in general, subsidies to bilateral/multilateral fishing fleets to access third party country waters provide incentive to these fleets to increase their effort. Distinctions however, have to be made between the provisions of the access agreement itself and benefits conferred to vessels, public and private access agreements and whether payment is for access or amount of catch. Banning of access agreements was found not to be politically feasible because: there are many developing countries, especially small-island states who depend on access agreements for their GDP; these countries have a right to issue access agreements as per the Law of the Sea provisions; and the huge political pressure from constituencies for countries such as the EU to have access agreements. Some of the problems associated with access agreements that were identified by the group include: over-capacity and second-generation access agreements; under-reporting; targeting of endangered species; and the difficulty faced by DC and LDCs in enforcing management standards. Another important issue raised was the practice of some developed countries of re-labeling access agreements as development aid. The trade distortion component of access agreements was also highlighted. With regard to market access, it was noted that some developed countries allow exports from countries with whom they have access agreements but not from those not under this umbrella. Participants also observed the difficulty of challenging access agreements under the Dispute Settlement Understanding since such agreements do not directly confer a benefit on own people but the third country government’s people. It was suggested that measures to make fisheries access agreements more sustainable be taken at the WTO level to ensure that such agreements come with sustainable management and research obligations. Because of the importance of these agreements to the GDP of LDCs and small island states, it was suggested that any disciplines imposed on them provide short-medium term exceptions for stocks that are not fully exploited, for example high sea pelagic for which there is a landing and processing obligation in the DCs, hence beneficial also for employment purposes. It was however noted that for some DCs, access agreements did not represent high GDP percentages though they had high natural resource impacts. For these countries, it was suggested that capacity-building efforts with regard to sustainable management and sustainable domestic production methods could be an alternative to access agreements.

¹ Non-actionable subsidies do not exist as a category in the SCM Agreement since 1 January 2000.

Subsidies to decommissioning of vessels and license retirement. It was observed that these subsidies present two major problems: the fact that decommissioning subsidies tend to replace older vessels with newer vessels, which could have more capacity; and a moral hazard problem where incentives are built into such programmes in such a way that industry always expects to be bailed out. On the whole it was felt that these subsidies are harmful, open to abuse and usually do not result in decreased fishing efforts. Other issues that were highlighted related to the question of exporting capacity to third party countries/capacity transfer, and the renting out of vessels, which are also addressed by the FAO Plan of Action. It was however recognized that decommissioning schemes might not be harmful if they are well designed, and that more work was needed on elements of a good decommissioning scheme. It was suggested to address the dynamic effects of decommissioning schemes through behavioral changes including: policy conditions requiring decommissioned vessels to be scrapped and not sold abroad or lent to others; and requiring permanent retirement of fishermen whose vessels have been scrapped and provisions of pensions for such fishermen. It was also suggested to explore other decommissioning schemes in addition to vessel buy back, for example gear and trawl buy back.

Subsidies to capital costs. These subsidies are mostly harmful as they are open to abuse and overshooting. It was however recognized that such subsidies could also be used to buy more selective gear (to reduce rejections) and to switch to more efficient techniques (in terms of labour and time consumption). It was suggested that this section needed more analysis and stronger arguments against harmful subsidies, as policy makers would take advantage of possible allowances, which could provide a potential to overshoot.

Subsidies to variable costs. It was observed that the main concern over these subsidies is their linkage to fishing efforts and the potential to over-shoot. The possibility of fuel subsidies contributing to increases in both capacity and effort as illustrated by the Senegal case in para. 127 of the document was emphasized. It was however pointed out that subsidies to variable costs could be useful to DCs when applied to fish stocks that are not over-exploited and are dedicated to the domestic market - a matter important for the food security of DCs. Another issue highlighted was the difficulty of defining a fuel subsidy especially if one takes into account tax subsidies and other preferences on fuel applied by some countries and not others.

Subsidies to income. Generally, it was argued that this section of the paper painted too favourable a picture of subsidies to income. For example, the matrix on p.39 was criticized for implying that subsidies to income were not harmful where there is over-capacity/full capacity. It was also observed that the effect of the subsidies had not been properly illustrated (e.g. the Newfoundland case, para 141). Suggested issues for consideration included: malleability and non-malleability of capital; the fact that subsidies to income contribute to increased efficiency and level of effort; and the issue of decoupling subsidies from decommissioning to income. It was also suggested that the analysis should take into account, the issue of longevity of subsidies once introduced and their continued detrimental effect to the fishery. It was noted that distinctions have to be drawn between subsidies to income and pure income payments that may be made in any job including fishing (payments not specific only to fishers). A key assumption the paper had made was that mobility of fishermen to other sectors was limited. The difficulty of fisher's retirement was also pointed out. For example, although closure of the North Sea is one of the suggested recovery plans for the stocks, it has the potential of hurting small-scale fishers. In addition, due to ITQs, closure appears not to be politically feasible. Suggestions made included relocation grants and retirement benefits on the condition of retiring from fishing permanently.

Marketing and price support subsidies. An issue was raised as to why these are combined and if it was following the OECD approach where they had been combined for institutional reasons. It was stated that although countries usually get involved in marketing due to consumer health reasons and requirements, the more important issue for the analysis was

price support. A participant asked for clarification of para 161 last sentence that no incentive exists for price support unless the fishery is over-exploited. It was generally agreed that price supports are damaging to resources.

SESSION II:

Disciplining fishery subsidies: incorporating considerations of impact on resources

Nature of the document. Participants suggested that an informational document aimed at enhancing the capacities of countries to understand the natural resources issue in the fisheries subsidies debate and pointing to sources of information on pertinent issues such as the status of fisheries resources provided UNEP with the greatest opportunity for value add in the current negotiations. As such, they suggested that the paper should not appear to be seeking to directly influence the ongoing WTO negotiations. In this context they pointed out the desirability of asking questions or raising pertinent issues rather than making recommendations. Participants also recommended that the paper avoid using the precautionary approach, as this was another issue bound to trigger controversy and polarize the members and to include more data from Developing Countries.

Traffic light boxes. Participants cautioned that traffic light subsidy boxes might trigger controversy and focus the debate on other issues rather than harm of subsidies. There was no consensus among those who did support the discussion of the different boxes about how many boxes to create and for what purpose. For example, should there be just one box with exceptions of allowable subsidies? Was a green box necessary? It was noted that the issue of whether to have a green box had been subject to vigorous debate at the WTO especially with regard to taking into account DC concerns and special and differential for these countries. Some participants felt that it was politically expedient to have such a box to deal with: proper decommissioning programmes such as those permanently retiring fishermen, emergency income support, and some of these DC concerns.

Management systems. As in the first paper, the ITQ system should not be used as a panacea for an effective management system. It was pointed out that in some DCs with ITQs such as Argentina, corruption and lack of control meant that management was not as efficient as implied. Problems of establishing level of catch due to under-reporting and difficulties in enforcement were also highlighted. Participants also called for clarification of the components of the clear simple indicators for the management and bio-economic conditions as suggested in Para 28. Participants noted that the FAO National Action Plan dealt with the issue of capacity transfer and that there were countries such as EU and some DCs who were keen to implement it. It would therefore be expedient for the paper to include relevant elements from this Plan in the proposal for designing a fisheries management regime.

Trade and WTO issues. In order to have the most politically feasible impact, participants emphasized the importance of highlighting the trade distortion issue in addition to the natural resources issue in the analysis of the impact of fisheries subsidies. Also to enhance achievement of practical results, they recommended more use of existing SCM disciplines to make arguments. The danger of shifting the Burden of Proof was also pointed out. For example, in the case of the light amber box subsidies, the paper suggests that the BOP is on the country providing the subsidy to show that it is not harmful while usually it is on the country challenging the subsidy to prove its harm (e.g. para 35). Technical inconsistencies within the paper were also pointed out including that Art 8 on non-actionable subsidies mentioned in the paper no longer exists. They also cautioned against second guessing what the WTO Dispute Settlement Panels might and might not do.

Information sources. Participants felt that the issue of who could make judgment on the environmental issue and sources of such information was unresolved in the analysis. For example, what does *any scientific institution* mean and who is to determine the scientific

institution with competence to offer information on the status of resources? A role for UNEP in identifying relevant international or regional organizations was suggested. National data from fishing statistics and evaluation campaigns Regional Fisheries Organizations (RFOs) were identified as possible sources of data and expertise on the status of fisheries resources. The group however recognized that RFOs operate under great political pressures and sometimes have to ignore scientific quotas due to these pressures. In addition, most of these RFOs are under-resourced and some regions do not have RFOs. Data might therefore not always be accurate. Another issue that came up was whether the RFOs had jurisdiction or merely advisory mandate and the need to clarify these linkages from the Law of the Sea provisions. On the whole, more involvement of RFOs was recommended.

Developing Country Concerns. The discussion focused on what ‘taking into account the importance of the sector to DCs’ as per para 28 of the Doha mandate entails. The group suggested that, rather than making specific suggestions on how to deal with this issue, the paper should make general observations and raise questions with regard to DC concerns. This would allow DCs to flag those issues most critical to them and make suggestions themselves. DCs have different agendas with regard to the negotiations depending on their interest so there is no one size fits all approach. It was therefore suggested that any exemptions might need to be narrowly focused rather than broad and general and that longer time frames might be considered. Issues that were raised included whether distinctions should be made between DCs and LDCs and whether general arguments could be made based on environmental and social-economic concerns such as food supply and irreversible environmental damage. Means for DCs to develop their infrastructures were also discussed. It was noted that there are various approaches to the definition of artisanal fisheries. Some take into account the size of the vessels while others consider the size of the operating accounts. It was noted that some of these artisanal fisheries are in fact more competitive than industrial ones (especially in developing countries) hence caution would have to be exercised in seeking exemption for them. For this reason, it was suggested that a way to tell who was small-scale or who to exempt was not necessarily by taking into account the size of vessel/labour intensity but rather the operating accounts of the fishery. Another suggestion was to analyze the matter from the point of view of the reason for the exception, i.e. is it so as to develop export sector or to stop the impoverishment of coastal communities.

Closing remarks: What next?

The meeting was closed after a brief explanation on the further process. After a careful review of the outcome of the meeting and an internal discussion both papers would be revised. They would then be shared with government representatives through their UNEP focal points and be discussed at an intergovernmental workshop towards the end of the year. UNEP hopes to hold this meeting back-to-back with the WTO Rules Negotiations Group in order to help developing country environment officials to attend also the WTO meeting. UNEP would seek the views of governments on the analysis and the results contained in the paper and offer a forum outside the WTO to discuss how to proceed on this contentious issue. UNEP sought suggestions on illustrative country studies on the impact of subsidies that could be presented at the workshop. Some participants offered to provide further help in terms of written comments on the papers, additional case studies or review of the revised papers. On behalf of UNEP, Anja von Moltke thanked the participants for all the useful input and the stimulating discussion.