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Fish Subsidies: The New Zealand Experience

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**Presentation by John Adank
Deputy Permanent Representative of New Zealand**

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- (A) Fish Subsidies: The New Zealand Experience**
- (B) The Future of the Fish Subsidies Issue in the WTO**

As you will see my presentation today is in two parts.

First, while I do not intend to cover the issue in the level of detail that some of the other country studies that have been presented and circulated today have, I thought it would be useful to begin with a summary of New Zealand's experience with subsidies in the fish sector.

Second, I wanted to spend most of my time focussing on the rather topical issue of the way in which discussions on fisheries subsidies have evolved within the WTO in recent years, and how we might expect the issue to further evolve in future.

A) New Zealand's experience with subsidies in the fish sector

Up until the 1980s the management of fisheries in New Zealand mainly consisted of government policies aimed at developing the resources. Between 1963 and 1983 concessionary loans were provided to harvesting, processing, and for export incentives. These development policies resulted in the achievement of greater catch levels by New Zealand operators. Throughout this period New Zealand was in a situation of open access to the fishery supported with Government financial support. But although the intention of the Government programmes was to promote the development of new deep water resources, effort in prime inshore fisheries also expanded quickly so that over-fishing of these species and over-capitalisation within the inshore fishing fleet became a serious problem by the early 1980s.

Concerns about excess capacity and over-fishing inshore stocks led to the introduction of an ITQ system in 1986 to ensure stock conservation and to facilitate industry restructuring. This option found favour because, in addition to its stock conservation objectives, it provided industry with a sound restructuring mechanism. There was an acknowledgment that TACs would have to be set to restrain and reduce fishing activity. The allocation of ITQs provided for these initial TAC reductions and for a restructuring assistance scheme.

Introducing the new system was not without its problems - Removing the embedded expectations created by previous management and support policies was expensive.

Considerable amounts of money were spent to purchase catch history rights so that TACs could be set at sustainable levels. Industry acceptance of the new management regime was contingent on the government compensating fishers for the incorrect investment decisions its previous policies had encouraged.

However experience with the move away from an open-access subsidised fishery to an unsubsidised property rights based system has been positive. Financial transfers have actually flowed back from the industry to the government: resource rentals were charged from 1986 to 1994. A policy of cost recovery has been in operation since then.

ITQs were introduced for 29 species, including twenty-one inshore and eight deep-water species. Other species have been introduced since 1986 and there are currently 42 species managed using ITQs. These species represent approximately 80 percent of the total commercial catch from New Zealand's EEZ. The Fisheries Act 1996 provides for further commercial species to be managed using ITQs.

The New Zealand fishery has grown considerably, by volume and by value, since ITQs were introduced in 1986 and since the government has moved away from its policies of subsidisation. In 1986 catches totalled 412 000 tonnes and were valued at NZ\$590 million. In 2000 catches were 650 000 tonnes and were valued at approximately NZ\$1.2 billion.

While appreciating that New Zealand's situation may not be readily transferable to other countries, we nevertheless believe that the New Zealand experience does demonstrate that an unsubsidised fishing sector is a real possibility and that it can hold mutual benefit for governments, the fishing industry and the fishermen themselves.

B) The Fish Subsidies Debate in the WTO

Evolution of the Fisheries Debate in International Fora

Before launching into the specific issue of fisheries subsidies and how it has been advanced in different international fora, I think its important to bear in mind that this issue can be seen as a specific aspect that has evolved out of the much broader international concern about the challenges facing world fisheries and the ways and means of ensuring their sustainability.

If we were to look back at how this broader concern has evolved, we could perhaps discern that the growth of international sentiment about the problems facing fisheries dates back to the early 1980s. It was during this time that it began to be increasingly recognised that world fisheries were facing a crisis situation as a result of over-exploitation of resources, overcapacity, inadequate conservation and management of resources, poor enforcement and other problems. We saw at the end of the 1980s and the beginning of the 1990s a huge amount of international activity aimed at improving the conservation, management and sustainability of fisheries.

A number of major milestones were achieved over this period: In 1989 the UN General Assembly adopted resolution 44/225 aimed at bringing the highly damaging practice of large-scale pelagic driftnet fishing to an end globally. Following on from this concerns about the problems faced in regard to unregulated high seas fishing activities were voiced at the 1992 Rio Earth Summit, and a mandate was agreed to commence negotiations leading in 1995 to an Agreement for the Conservation of Straddling Fish Stocks and High Migratory Fish Stocks, aimed at better implementing the provisions of the Law of the Sea Convention relating to cooperation in the conservation and management of these valuable resources. Around the same time as all of this activity FAO were negotiating a Code of Conduct for Responsible Fishing.

So alot happened in the area of fisheries conservation and management in the last two decades, and alot continues to happen across a range of different aspects. The point I would make here is that progressing one specific aspect of the debate, for example the question of developing effective conservation and management rules or effective enforcement mechanisms cannot be seen as providing an answer to all the challenges faced in the fisheries area. I say this because in the debate within international fora on fisheries subsidies I have often been surprised at the frequency with which the suggestion is made that “subsidies are not the real problem and other issues need to be addressed first”. In my view, the fact that there are other aspects of the sustainable fisheries equation to address is no reason for neglecting or delaying to address problems created by fish subsidies. Complementary action on a range of fronts will be essential - and the importance that some place in addressing one part of the issue should not be put forward as a reason for failing to address others. In effect, all relevant fora should play their part in accordance with their different mandates and competencies.

Recent Work in International Organisations on the Nature and Effects of Subsidisation in the Fisheries Sector

The fisheries subsidies aspect of the broader issue is one that has only really developed a profile since the mid 1990s, where it started to assume increased attention from a range of international organisations and commentators. In 1992 FAO estimated subsidies to be in the region of \$54.5 billion. Subsequent work by the World Bank, OECD, APEC, and FAO has tended to suggest that an estimate in the region of around \$15-20 billion is more likely.

These available evidence suggests that subsidies or financial transfers relate to a range of different programmes, and that the patterns of different expenditures among major fishing nations vary greatly. New Zealand, in a paper they submitted to the WTO CTE last year, set out some of the findings of its own analysis in relation to the material available about expenditures of the three major fishing nations involved in world fisheries trade : Japan, the EC and the US. Based on the data and material sourced by New Zealand, it was estimated that in 1996 Japan provided financial support of US\$4 billion to its marine fishing industry, with US\$1.8 billion provided in the EU, and US\$1 billion in the US. These figures represented 32%, 21% and 27% of the landed catch value of each respectively. These figures do not, however, provide any indication of the

types of financial support provided in relation to the fisheries sector, and it is necessary to look at the different types of the support to get a clearer picture of patterns of subsidization. There was clearly considerable variation between Japan, the EU and the US in regard to the types of financial support provided. In the US, for example, 61% of total support was provided in the form of government expenditure on research, resource management and enforcement, which the World Bank Study described as the "Resource Rent" category. While this category of support has also been estimated as the largest for the EU, it represented only 37% of total EU support and 5% of Japanese support. The proportion of direct budgetary support for fisheries in both domestic and foreign waters varied widely between the EU (45%), Japan (28%) and the US (6%).

Fish Subsidies and Sustainable Development: Remembering the Trade Dimension

A range of studies have demonstrated that fish subsidies are an important contributor to overfishing. This message is increasingly being heard by the international community. An equally important question to examine, particularly if fish subsidies are to be addressed through further work and negotiations at the WTO is the impact that such measures have on trade. This is an area that New Zealand is increasingly interested in seeing further attention focussed on.

A large share of fish production enters international trade, with about 40% exported in 1998, amounting to around \$51 billion in export value. Developed countries accounted for more than 80% of the total imports of fishery products in 1998 in value terms, with Japan, the EU and the US being leading importers. Fisheries exports also play a major role in the economies of a number of mainly developing countries. A number of developing countries rely on fisheries exports for between 40-60 per cent of their total exports. Net receipts of foreign exchange by developing countries from fisheries products are increasingly important to many of their economies and those earning now exceed net earnings from exports of coffee, tea, rice and rubber combined.

The fact that trade in fish products is so crucial to the economic development of some developing countries serve to underline the importance of developing a better understanding of the effect that subsidisation has on their trade and development prospects. As we have made clear in our papers to the WTO Committee on Trade and Environment, the effects of fisheries related subsidies on trade and sustainable development will differ depending on the nature of the subsidy measure. However, just looking at the nature of the financial transfer that the fisheries sector - the billions of dollars that continue to be directed at the sector that make the costs of fishing cheaper for fishing industries we think that it is possible to conclude that many subsidies will have negative trade and economic effects on fish exporting countries - particularly developing countries. A paper that the US tabled in the WTO CTE discussions in 1997 usefully identified some of these impacts as follows:

- Fisheries subsidies promote a misallocation of economic resources. They encourage over-production. Subsidised fleets tend to be too big and to fish too much. Subsidies represent resources that could be more efficiently used

elsewhere in the economy. Eliminating them can provide an advantage for strapped budgets.

- Subsidies induce a distorted market equilibrium. They are usually aimed at ensuring lower costs and tend to encourage fishing activity, lower prices and stimulate demand. Since these distortions tend to push short-term production beyond yield levels which are sustainable over the longer term, the inevitable market correction is delayed and risks are much more severe (e.g., the collapse of a fishery as an economic resource).
- Subsidies promote structural overcapacity by delaying exit from the market. In a situation of structural excess fishing capacity, the rationally expected response would be exit from the market by the least efficient producers. However, subsidies can serve to keep these producers from exiting the market, thus sustaining chronically inefficient fleets. This creates a permanent lobby for continued assistance.
- Subsidies affect trade by shifting the burden of adjustment onto non-subsidised producers. By removing market pressure to equate revenues with long term average costs, domestic subsidies tend to shift the burden of adjustment in overcapacity situations to foreign suppliers. This response further exacerbates the market distortions listed above.
- Subsidies can make it more difficult for developing countries to take full advantage of the fish resources in their own EEZs. When paid to distant water fleets, subsidies promote operations that often target highly migratory and straddling stocks. As a result, stocks that straddle the EEZ of a country but also exist in the high seas may be exploited on the high seas by a subsidised distant water fleet. These subsidised operations thus take resources that would be taken by other unsubsidised fleets, often of developing countries, operating in their own EEZs.

Developing a better understanding of, and better measurement techniques for determining, the trade impacts of subsidies in the fisheries sector will need to be a priority if further work on this issue is to be advanced in the WTO. This brings me to the main part of this presentation, the nature of the discussion of fish subsidies in the WTO.

Fish Subsidies in the WTO

The WTO Committee on Trade and Environment was established in 1995 with a mandate that includes examination of the “environmental benefits of removing trade restrictions and distortions.” The work of this Committee focuses on tariffs and non-tariff import restrictions, tariff escalation, internal taxes, subsidies and export restrictions pertaining to seven specific sectors - namely agriculture, energy, forestry, fisheries, non-ferrous material, textiles and clothing and leather. Its fair to say that

along with the MEA issue, subsidies in the fisheries sector has been probably the richest source of discussion for the CTE since its inception, largely because the arguments advanced in support the positive trade and environmental benefits of removing subsidies in the fisheries sector are seen as very compelling.

A range of papers have been submitted by New Zealand, Australia, the United States, Iceland and others which have highlighted the win/win/win - trade/environment/development - synergies that could be secured by action by WTO Members to address problems in this area.

Existing GATT/WTO Rules Applicable to Subsidies in the Fisheries Sector

A number of papers, including contributions from the WTO Secretariat have also usefully examined the existing WTO Rules on fisheries subsidies and how these relate to the fisheries sector. Its important to bear in mind as we look forward to what might be done to improve the situation in the fisheries sector that existing WTO disciplines - as contained in the WTO Agreement on Subsidies and Countervailing Measures - are already applicable to fisheries subsidies.

Prior to the entry into force of the WTO Agreements, the basic rules on subsidies which were contained in Article XVI of GATT 1947, were very limited. The SCM Agreement, which was derived from the Tokyo Round Subsidies Code attempted to tighten these disciplines, and for the purposes of the current discussion its probably best to simply bear in mind that the Agreement resulted in the creation of categories of prohibited subsidies (“red light”) and actionable subsidies (“amber light”).

Prohibited Subsidies are export subsidies and subsidies conditioned on the inclusion of domestic parts and labour. This category is subject to an accelerated dispute settlement process, and the Member found to grant such a subsidy must withdraw it without delay.

Actionable Subsidies are subsidies that can be granted and maintained. However, if the subsidy is causing “adverse effects” to the interests of other Members then action can be taken by those Members in accordance with Article 7. This provides for an accelerated dispute settlement process, and if “adverse effects” are found then the subsidising Member is required to take appropriate steps to remove the adverse effects or withdraw the subsidy.

But there have in fact been no WTO cases brought against subsidies in the fisheries sector under these SCM provisions. This of course should not be taken to mean that subsidies in the fishing sector are not a problem, but rather that these provisions do not offer a real answer to the problems associated with fisheries subsidies. There are a number of reasons to explain this. If we take the “prohibited subsidy” category, which covers, inter alia, export subsidies it is important to understand as the recent FAO Expert Group found that fish subsidies are generally not specifically targeted to support the export of fish products as such. In terms of proving that a subsidy is “actionable” the specific adverse trade effects of the subsidy in terms of a Members’ interest may also

be very difficult to quantify in any given case. Countervailing duty action is of course possible, but only if you can show that a subsidised product is causing material injury to a domestic industry.

One might well query whether these tests, as contained in the WTO generic subsidies disciplines, can really effectively address the particularities of subsidies in the fisheries sector? The available evidence suggests that the effectiveness of these rules in keeping subsidisation in the fisheries sector is in fact rather doubtful in light of the information about the ongoing extent of subsidisation in this sector.

Part of the problem also seems to be related to the difficulties in assembling factual information about subsidisation as financial transfers in many cases remain far from transparent. The recent work carried out by APEC and the OECD provided some useful information on the extent of subsidisation at a general level, but much more specific information about national policies will be needed to assist further analysis in this area.

Given this perception of the limitations of the existing trade rules in this area, increased attention has been directed to supplementing the existing WTO Subsidies disciplines with additional rules aimed at prohibiting or reducing specific subsidies practices in the fisheries sector. In addition, rules that would allow for greater transparency and monitoring of financial flows to fisheries also need to be explored. These objectives motivated a number of WTO Members to seek to have the issue of fish subsidies placed on the agenda of the 1999 Seattle Ministerial Conference.

Evolution of WTO Discussions up to and at the 1999 Seattle Ministerial Meeting

Fuelled by the evolving discussions within the Committee on Trade and Environment, in the lead-up to the 1999 Seattle WTO Ministerial Conference, a number of countries sought to include negotiations for strengthened WTO disciplines on fisheries subsidies on the WTO negotiating agenda. This issue was submitted to the General Council of the WTO in July 1999 by Iceland, and later supported and supplemented by New Zealand and other cosponsors with further language for a negotiating mandate. The proposal received widespread support amongst developed and developing countries, resulting in negotiations on fish subsidies being included in the draft Final Declaration developed at the Seattle Ministerial Conference.

The draft language as included in the draft text read as follows:

Subsidies and countervailing measures:In the context of these negotiations, the areas to be considered shall include, inter alia, certain subsidies that may contributor to overcapacity in fisheries and over-fishing or cause other adverse effects to the interests of Members. The work on fisheries subsidies shall be carried out in cooperation with the FAO and drawing also on relevant work under way within other intergovernmental bodies, including regional fisheries management organisations. It shall consist of (i) the identification and examination of subsidies which contribute to over-capacity , or have trade-

distorting effects, and (ii) the clarification and strengthening, as appropriate, of disciplines under the SCM Agreement with respect to such subsidies.

There did not appear to be serious opposition to this text in Seattle, although informal consultations among interested delegations did indicate that some key players would have preferred a shorter simplified text that would basically have two elements to a mandated work programme: (1) the identification and examination of subsidies that contribute to overcapacity or overfishing and their trade effects and (2) the clarification and strengthening, as appropriate of WTO disciplines with respect to such subsidies.

Regrettably, as we all know, the Seattle Ministerial failed to reach agreement on the Seattle Ministerial Declaration and in the absence of a new Round of WTO negotiations there is no mandate for a work programme on fisheries subsidies at this time.

However, in the last couple of weeks the WTO Membership have decided that a further Ministerial meeting will be held in Qatar in November. Accordingly, in the context of the preparations for the Qatar Ministerial it can be expected that delegations will once again seek the inclusion of a mandate on fisheries subsidies issues in the Declaration that will be proposed for adoption in Qatar.

Agreement in Qatar on such negotiations would send an extremely positive signal to the world at large of the capacity for the WTO to promote win/win/win scenarios for trade, environment, and sustainable development. Indeed, it is difficult for me - as a participant in WTO discussions on trade and environment over the last four years to expect that there could be any alternative more concrete contribution to be made by the WTO to advancing its work in the trade, environment and sustainable development area.

I know that there are still some WTO Members who may be a little reluctant to accept the WTO undertaking a role in this area. Some people here today may will argue that the jury is still very much out on the effects that subsidies in general have on trade and sustainable development in the fisheries sector. Certainly we would caution about coming to general conclusions about the specific effects of the range of different subsidies and financial transfer mechanisms that we see in place in the fisheries sector - they all need to be examined and analysed so that the international community can determine the best response to them. But at the same time I don't think that anyone would seek to argue that no financial transfers or subsidies to the fish sector negatively impact on trade or resource sustainability. And any work program pursued in the WTO would of course need to take into account all available analysis about the negative effects on trade and sustainable development that different subsidies programmes were perceived to have, before determining exactly how existing disciplines could best be supplemented.

So, in conclusion I would venture to suggest that the whole area of subsidies and financial transfers to fisheries is one that in the longer term will only be effectively addressed through strengthening the framework of trade rules that applies to limit or prohibit subsidies. The WTO has a key role to play in this regard and agreement on a

work programme that would enable negotiations in this area to commence should be seen as a key priority for the Qatar Ministerial meeting for those who are interested in seeing that meeting deliver positive outcomes for trade, environment, and development.