

出國報告：(出國類別：其他)

參加世界貿易組織（WTO） 貿易規則談判小組會議出國報告

服務機關：行政院農業委員會漁業署

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摘要

WTO 規則談判小組主席 Mr.Gillermo Valles Galmes 大使於 98 年 10 月 29 日至 30 日召開全體非正式會議，其中漁業補貼議題主要就去年（97）年 12 月所提第 3 版主席版主席文件漁業補貼「路徑圖」(roadmap)中，與「漁業管理」有關之各項問題，另觸及「透明度」及「爭端解決」議題。本次有關漁業補貼議題係安排。本次會議討論主題，主要包括：其中 10 月 29 日討論草案第 20 段「漁業管理」(FISHERIES MANAGEMENT CONDITIONALITIES)；另 30 日討論第 22 段「透明度」(TRANSPARENCY)及第 23 段「爭端解決」(DISPUTE SETTLEMENT)。

有關禁止性補貼範圍方面，依據香港部長宣言，其同意規則談判小組應加強漁業部門之補貼規範，包含藉由禁止某些造成過度捕撈與過漁之漁業補貼計畫，鑒此，我們認為對過度捕撈與過漁現象有直接影響之補貼計畫應列入禁止性補貼項目。至有些補貼計畫並不會造成過度捕撈與過漁，或在會員具有良好漁業管理制度下，將不會造成過漁及產能過剩，因此不應將其列為禁止性補貼。

不論是在開發中國家會員或已開發國家會員，小型與人力型漁業都是屬於社會與經濟上的弱勢族群，它們在有效的漁業管理制度下，對海洋資源造成損害微小。此外，小型漁業(Small scale fisheries)對於海洋生態與漁業資源環境之影響比大型船小很多，RFMO 保育管理措施亦有大小型船之區分，即對小型船之管理要求比大型船更有彈性，就補貼層面而言，對小型船之補貼對資源負面影響較為有限，但對小型船之生計維持則有支持生存及降低貧窮之大作用，通常於會員領海或專屬經濟海域作業，為社會穩定性一環，開發中及已開發國家皆有需要，故我們認為小型及人力型漁業補貼應列為可允許之補貼。

參加世界貿易組織（WTO）貿易規則談判小組會議出國報告

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參加世界貿易組織（WTO）貿易規則談判小組會議出國報告

壹、目的

本次會議重點 Mr.Gillermo Valles Galmes 規劃將討論去（97）年 12 月所提第 3 版主席文件漁業補貼「路徑圖」（roadmap）中，與「漁業管理」有關之各項問題，倘時間許可，另將觸及「透明度」及「爭端解決」議題。本次有關漁業補貼議題係安排於 98 年 10 月 29 日至 30 日召開。本次會議討論主題，就主席所提主席版文件漁業補貼「路徑圖」（roadmap）進行討論，主要包括：其中 10 月 29 日討論草案第 20 段「漁業管理」（FISHERIES MANAGEMENT CONDITIONALITIES）；另 30 日討論第 22 段「透明度」（TRANSPARENCY）及第 23 段「爭端解決」（DISPUTE SETTLEMENT）。

因此，本出國行程旨在表達我國對於主席路徑圖（Roadmap）中攸關漁業管理條件、透明化規範與爭端解決之各細項問題主要看法，期望藉由實際參與規則談判小組之漁業補貼會議，彙整蒐集相關國家對是項議題之立場與建議，由經濟部國際貿易局（多邊組陳研究員弘宜）、及漁業署（洪技正朝連）均指派辦理相關議題之同仁及林教授宜男、許研究員佳惠參團與會。

貳、過程

本次行程主要如次：我方此行就漁業補貼議題出席之相關會議及活動有三，包括於 98 年 10 月 28 日（星期三）為準備在 WTO 進行漁業補貼談判議題，於會議前與我常駐 WTO 代表團林家榮秘書、國際貿易局陳研究員弘宜、林教授宜男、許研究員佳惠及職洪朝連在我駐 WTO 辦公室內召開團務會議，先行討論這次談判任務主要之議程與確認相關議題之立場。會中決定本次議程主要如下：一、10 月 28 日，下午 6 點，核心四國（歐盟、日本、韓國及台灣）進行會前意見交流；二、10 月 29 日，上午 10 點及下午 3 點，參與「WTO 漁業補貼談判會議」，晚上 7 點半參與由我國 WTO 代表團主辦之核心四國餐會；三、10 月 30 日，上午 10 點及下午 3 點，參與「WTO 漁業補貼談判會議」。

相關情形謹臚陳如下：

一、核心四國（歐盟、日本、韓國、台灣）會議

10月28日晚上進行核心四國（Core 4：歐盟、日本、韓國、台灣）會議，由日本水產廳漁政部部長 Sato 主持，除我團外，其他與會者分別為歐盟團長 Neil MacDonald (Head of Unit, Directorate-General for Trade)、韓國外經貿部多邊局人員率團與會。本次核心四國會議主要就明後兩天主席擬欲討論的漁業管理條件、透明化與爭端解決議題先行溝通，同時就韓國所提之立場文件草案進行意見交換。僅摘陳核心四國會議情形如下：

- （一）針對漁業管理條件議題，日本表示，WTO 應向外尋求漁業管理的諮詢協助，亦即其應強化自身與 FAO 及 RFMOs 等漁業組織間的聯繫及合作。
- （二）歐盟表示，其相當期待美國及中國大陸對此等議題之回應與建議，特別是在透明化規範方面，蓋因現行 ASCM 的通知規範係完全失敗的制度，是以透明化規範成為新漁業補貼規範中最重要的一環，會員應對此制訂適切的機制。另歐盟提及，紐西蘭自身並無補貼，因此在漁業補貼規範強烈主張嚴苛之規定係可理解，惟美國境內情況並非如此，而其通知亦未遵守透明化規定，歐盟認為新漁業補貼規範須具平衡性，故其將運用透明化與爭端解決規範來迫使美國等會員降低禁止性補貼之嚴格規範。
- （三）我國主張在漁業管理條件議題部分，會員遵行共同標準之漁業管理對漁業補貼規範有效執行應有所助益，惟依 EEZ 及公海應有不同程度的漁業管理；同時我們支持更嚴格的透明化規範。
- （四）韓國解釋說明其提出不同於主席版草案規範架構，將補貼分為（一）Box I：毋須以過度捕撈/過漁為檢視條件之禁止性補貼、（二）Box II：須以過度捕撈/過漁為檢視條件之禁止性補貼及（三）Box III：允許性補貼三個層級來加以規範，而非現行主席版文件草案中的禁止性補貼與一般性例外的分類規範之主因，在於其新文件內容相較於主席版文件草案之規定而言，將更加實際可行。

(五) 對於韓國主張，只要有良善的漁業管理，漁業補貼不致造成過漁及產能過度部分，歐盟回應表示，吾等並無強而有力的證據來支持此項論點，因為不論是 OCEANA 或 WWF 等組織，其立場都係支持魚之友，故韓國此文件之建議，將遭受諸多會員之批評，且美國及紐西蘭等會員係不可能放棄主張制訂嚴格漁業補貼規範之立場，惟歐盟表示，對於韓國是項新修草案內容，嗣後將再進一步提供其意見。

(六) 攸關韓國此篇文件草案，我國表示日前已電郵相關意見與建議予韓國，待其回應相關問題後再議是否共同聯署。而韓方對此表示，其將彙整各方意見並修正草案內容後再次傳送草案內容，徵詢核心會員之意見，俾利其文件能於今年底之前順利提出。

二、貿易規則談判非正式會議（漁業補貼）

本（29）日續召開「貿易規則談判小組非正式會議」，討論漁業補貼議題。本日會議由我常駐 WTO 代表團方參事瑞松、林商務秘書家榮、陳商務秘書滿盈、國際貿易局陳研究員弘宜、淡江大學林教授宜男、許研究助理佳惠及職等共同出席，議程安排續討論本小組主席提出之路徑圖，會議討論重點謹臚陳如下：

(一) 第 20(a)段：一般例外及 S&D 是否以訂定漁業管理制度為條件或需其他條件？

1. 挪威認為一般例外及 S&D 均須以訂定漁業管理制度為條件，雖瞭解開發中會員有發展漁業之必要，惟補貼非長久之計，必須有管理制度，才能永續經營。
2. 紐西蘭認為 S&D 必須以魚群的健康為條件，必須有總量限制，不能超過可回復之漁獲量(sustainable yield)。
3. 日本、韓國等會員認為漁業管理無須所有會員適用同套規則，可參用 UNEP、OECD、FAO 及 RFMO 所定之規則作為原則，WTO 應加強與這些組織聯繫。
4. 巴貝多代表小型脆弱經濟體表示 S&D 不應有條件，對於已開發會員應有較嚴格之規定，惟對於開發中會員因其資源有限，應給予更多彈性，另強調小型脆弱經濟體無提供補貼之能力。
5. 美國亦認為一般例外及 S&D 均須以訂定管理制度為條件，第 1 版主席文件第 2

條及第 3 條已涵蓋許多規範，其他要素則可再進一步討論。

6. 歐盟認為除了漁業管理制度外，不需再有其他條件，但亦提醒會員部分補貼根本不需有漁業管理制度配合，例如有關提升船員安全之補貼。

7. 印度表示第 1 版主席文件第 5 條規定過於嚴格，難以執行，部分規範須再修正。

8. 中國大陸認為須以漁業管理制度為條件，但不應有其他條件，另不應就開發中國家發展程度再予區分適用之規範。

9. 澳洲認為漁業管理制度應給予開發中國家彈性，以使開發中國家能實質享有 S&D 待遇。

(二) 第 20(b) 段：漁業補貼制度是否需要共同之標準？此類標準須多細密？

1. 多數會員認為無需統一之管理標準，只須有共同之評估要素即可，規範內容可因地制宜，惟須達到防止過漁及產能過剩之效果。

挪威認為好的漁業管理制度可以防止過漁或產能過剩，存量評估只須有共用之評估因數即可，此類因素包括魚群總量評估、漁船數量、捕獲量之限制、監控與執行等。

2. 日本、韓國、美國、南非、澳洲、紐西蘭亦表達類似看法，並建議可參用 FAO、RFMO 所制定之規範；加拿大另建議可採行共同最低認定標準。

3. 東加代表太平洋島國表示，漁業管理制度只需採用共同之評估因素即可，不能太過細密，並考量漁業大國及開發中會員之差異性。巴貝多代表小型脆弱經濟體提出類似看法，並補充 FAO 等組織所訂定之準則可作為發展此類管理規範之基礎。

4. 我國主張漁業管理制度應有共同之標準，以確保會員有效執行漁業補貼規範。在公海部分，WTO 應加強與國際及區域漁業管理組織合作；在 EEZ 部分，會員應依據其國內情況及漁業特性，採行適當管理制度；同時，WTO 應設立專家小組，以檢視會員之管理制度。

5. 歐盟強調管理規範細密與否不是重點，無法有效執行及懲罰是主席版文件失敗之原因。

6. 印度亦認為訂定統一管理規範不切實際，因會員之資源及環境條件不同，統一規範可能無法執行，例如，在 EEZ 及公海即須不同之管理制度，此類制度須將會員本身之差異性納入考量。

(三)第 20(C)段：若無統一規範，會員不同之管理制度如何監控與執行？如何防止特定會員無效之管理制度，因其他會員之制度而得以維持魚群之健康？

1. 日本強調補貼僅係造成過漁及產能過剩之眾多原因之一，有效之管理制度可防止前述情形產生，並說明 RFMO 已有規範可對付非法捕魚。

2. 澳洲認為通知制度相當重要，並認為此方面應有國際標準。

3. 歐盟認為問題的重點在於執行，規範太過繁雜將難以遵守，此方面，WTO 應與其他國際組織合作。

(四)第 20(d)：國際間對於可恢復魚群數量已有共識，是否可納入這些標準，以作為管理之條件？

1. 澳洲、美國、歐盟、加拿大、紐西蘭、挪威、東加、厄瓜多、日本、巴西等多數會員認為有必要引用此類國際標準做為未來規範之基礎，惟此類不具拘束性之標準如何成為強制性規範仍有待討論。

2. 印度認為參用此類國際標準確有實益，惟強調管理制度應不斷演進。

中國大陸關切此類不具拘束性之準則，應由會員決定是否賦予強制力。

(五)第 20(e)段：魚群評估於漁業管理應扮演何種角色？

1. 會員普遍肯定魚群評估於漁業管理應扮演重要之角色。

2. 巴貝多建議會員應通知魚群評估之結果，已開發會員應逐年提交通知，開發中會員僅需定期通知，小型脆弱經濟體對於魚群數量是否處於健康狀態無須負舉證責任等。

3. 歐盟肯定魚群評估於漁業管理應扮演決定性之角色，惟質疑科學性魚群評估之可靠性，並要求開發中會員承諾執行此類評估。

4. 印度亦認為魚群評估為管理制度之基礎，惟強調執行此類評估之成本高昂，須考量開發中會員資源有限等因素，至於評估之標準，除科學知識外，傳統知識亦應納入考量。

5. 我國認為魚群評估於漁業管理扮演重要及必要角色，透過魚群評估，會員得了解魚群之情況，因此項工作需投大量之人力及物力，我們認為關於公海部分，國際及區域漁業管理組織之評估報告，已獲會員廣泛接受，可參採作為標準；在 EEZ 部分，因沿岸魚種較多樣化，魚群評估工作更加複雜，會員應得採行相對較粗略之評估方式。至於部分會員表示對於 EEZ 內之小型漁業進行魚群評估將有困難，未來規範應給予特別考量。

6. 挪威、美國等會員認為魚群評估應持續進行不斷更新，以確保魚群之健康，美國、日本並建議可參酌 FAO 及 RFMO 之標準等。

7. 加拿大認為魚群評估應為容許補貼之先決條件。

8. 中國大陸亦肯定魚群評估之重要性，惟強調執行此類評估之成本高昂，建議應給予開發中會員較長之調適期，並提供技術協助。

(六)第 20(f)段：提供增加產能補貼之前須進行魚群評估是否合乎邏輯？

1. 歐盟指出前述命題有誤，提升產能之補貼根本不容許存在，何需魚群評估。給予補貼即須有配套措施防止對魚群造成損害，執行管理制度即可以達到此點。日本亦提出同樣看法。

2. 挪威認為依 WTO 習慣，事前審查似不可行，建議可於會員貿易政策檢討時增設漁業補貼一項，以進行檢視。

3. 紐西蘭魚群評估為提供補貼之先決條件，且所有補貼，不限於提升產能之補貼，均應進行事前魚群評估。

4. 巴西雖同意進行於魚群評估，惟認為審查機制應於事後進行，至於審查機制，會員應進一步討論。

5. 印度反對以進行魚群評估作為提供補貼之先決條件，且除造成產能增加之補貼外，其他漁業補貼無須進行此類評估。

30 日召開最後 1 日「貿易規則談判小組非正式會議」，討論漁業補貼議題。本日會議由我常駐 WTO 代表團方參事瑞松、林商務秘書家榮、陳商務秘書滿盈、國貿局陳研究員弘宜、淡江大學林教授宜男、許研究助理佳惠及職等共同出席，議程安排續討論本小組主席提出之路徑圖，會議討論重點謹臚陳如下：

(一)第 20(g)、(h)段：鑑於 FAO 在討論其會員執行國際漁業公約上已有既定之角色，若增加其份量，會引發何種問題及關切？WTO 是否更適合進行此種檢視？

1. 會員大致同意由 FAO 及 RFMOs 於漁業管理扮演諮詢之角色，惟實際決定者，仍應由 WTO 擔任。我國、日本、韓國、美國、智利、歐盟、印度、哥倫比亞、加拿大、紐西蘭均表達類似看法。紐西蘭另強調，同儕檢視之目的在於增加透明化及協助執行，不在審核會員之管理制度。

2. 澳洲之看法與其他會員相異，該國雖同意 FAO 為檢視管理制度之適當機構，提醒會員 FAO 無通知制度，通知之義務必須加強，且須有檢視之機制，WTO 此方面的同儕檢視可由 FAO 進行。

(二)第 22(a)段：若會員援引禁止性補貼之例外時，應進行通知，在此情況下，若要求會員在通知中載明符合適用例外之特定標準，是否合乎邏輯？

1. 會員均同意應載明適用例外之符合性說明及相關判斷標準。

2. 另紐西蘭強調此類通知之內容應揭露足夠之特定資訊，應包含標準及目的、標準之內容及執行之相關資訊等。美國及挪威呼應紐西蘭之看法。

(三)第 22(b)段：事後通知制度是否能有效確保會員執行漁業管理之標準？有無其他有效替代方案？

1. 巴貝多、印度、土耳其、南非、挪威、日本、巴西、韓國、加拿大、中國等多數會員支持採用事後通知制度，理由包括：SCM 協定係採行事後通知制度，應採與該協定一致之做法、政府制度問題及造成行政負擔等。另關於審查制度，挪威建議採行年度審查方式。

2. 阿根廷、歐盟、紐西蘭等少數會員贊成事前通知制度。紐西蘭並指出 SCM 現有之全新及完整通知效果不彰，僅有 42%會員依法提出通知，且常延宕多年，恐無法提供魚群及時之保護。

澳洲認為如單純只為透明化，可同意採行事前通知，惟須視通知內容而定。

(四)第 22(C)：有何種機制可提供通知之誘因？

1. 澳洲認為現行規範對於不依規定提交報告之會員缺乏強制力，通知規範必須放入時限，並考量開發中會員之特殊需求。

2. 阿根廷、墨西哥、委內瑞拉等會員認為第 1 版主席文件第 25.10 條可提供良好之誘因。
 3. 印度認為通知需簡單易於執行，並考量開發中會員之需求。南非亦表示相同之看法。
 4. 紐西蘭認為 SCM 之全新完整通知效果不彰，建議應將未通知之補貼列為禁止性補貼。歐盟表示同意紐西蘭之看法。
 5. 挪威建議採行貿易政策檢討方式，以提供通知之誘因。
 6. 加拿大認為通知應維持 SCM 之現行方式，未提交通知不能有被推定為禁止性補貼之效果，可考量挪威之建議採行貿易政策檢討方式。韓國亦表達相同看法。
- (五)第 22(d)段：若推定未通知之補貼為禁止性補貼之方式不可行，有無其他方式可鼓勵會員及時提交通知？

中國大陸、巴貝多、印度等會員認為未提交通知不應被推定為禁止性補貼，且不應直接訴諸爭端解決，而應提交委員會討論。

(六)第 23(a)、(b)、(c)段：WTO 漁業補貼規範是否需提供特殊機制，提供爭端解決小組取得科學及其他技術專業諮詢？

1. 歐盟認為應強制爭端解決小組諮詢技術專家意見，並嚴格遵守之。我國亦表達類似之看法。
2. 多數會員認為 DSU 第 13 條賦予爭端解決小組得徵詢專家意見之規定已足夠，無須另設新機制。紐西蘭另建議可仿效 TBT 及 SPS 協定有關徵詢專家意見之規定。

參、心得

- 一、會員大致同意由 FAO 及 RFMOs 於漁業管理扮演諮詢之角色，惟實際決定者，仍應由 WTO 擔任。我國、日本、韓國、美國、智利、歐盟、印度、哥倫比亞、加拿大、紐西蘭均表達類似看法。紐西蘭另強調，同儕檢視之目的在於增加透明化及協助執行，不在審核會員之管理制度。
- 二、多數會員認為無需統一之管理標準，只須有共同之評估要素即可，規範內容可因地制宜，惟須達到防止過漁及產能過剩之效果。挪威認為好的漁業管理制度可以

防止過漁或產能過剩，存量評估只須有共用之評估因數即可，此類因素包括魚群總量評估、漁船數量、捕獲量之限制、監控與執行等。

肆、建議事項

有關我國未來參與漁業補貼議題所應加強注意事項，建議如下：

- 一、漁業補貼應依 EEZ 及公海應有不同程度的漁業管理。就公海一般有 RFMO 負責，各國應遵守；而經濟海域內，係屬各國管轄範圍，各國負有保育管理之責，各國亦應就其國內條件及漁業特性予以適當管理，以符永續性之要求，建請繼續爭取此項議題亦能納入考量。
- 二、在小型與人力型漁業方面，我們重申我們的立場認為，不論是在開發中國家會員或已開發國家會員，小型與人力型漁業都是屬於社會與經濟上的弱勢族群，它們在良善的漁業管理制度下，幾乎不可能對海洋資源造成損害，因此，給予其補貼對資源負面影響相當有限，但卻對小型船之生計維持有著支持生存與降低貧窮之大作用。肇此，我們認為小型及人力型漁業補貼應列為一般性例外，一體適用於所有 WTO 會員而非僅限於 S&D 待遇。
- 三、持續支持與日、韓合作策略，視議題談判進展，適時與其他會員結盟。

**Statement by the Separate Customs Territory of Taiwan, Penghu,
Kinmen and Matsu at Fisheries Subsidies Meeting**
Thursday 29 October, 2009

FISHERIES MANAGEMENT CONDITIONALITIES

20(b) How important is it for the effective operation of the disciplines that all Members' fisheries management systems and measures adhere to a common standard, and how prescriptive should that standard be?

Thank you, Mr. Chairman.

With respect to Question 20(b), my delegation is of the view that all Members' fisheries management systems shall comply with the same criteria, in order to ensure the effective implementation of fisheries subsidies disciplines. Nevertheless, the fisheries management systems should be applied differently for the waters in EEZ and high seas. To be specific, we are convinced that each Member shall have the responsibility for the conservation and management of its fisheries resources in the EEZ, while the RFMOs are taking care of the management in high seas. For the high seas, we share the views of many Members that WTO should strengthen the cooperation with international and regional fisheries management organizations. Moreover, every WTO Member, based on its domestic condition and fishery characteristics, should adopt an appropriate management system, for the sake of sustainability of its fisheries resources within EEZ. Meanwhile, the WTO should set up an expert group on fisheries subsidies, with the aim of reviewing the relevant management systems adopted by Member countries.

Thank you, Mr. Chairman.

20(e) What role should stock assessments play in any management conditionalities?

Thank you, Mr. Chairman,

My delegation is of the view that stock assessments play an essential and important role in fisheries management. Through stock assessments, Members could understand the status of fisheries resources and the pressure they are facing. Since the stock assessment is a complicated process of data gathering, statistics and mathematical model analysis that requires considerable inputs of manpower and financial investment, we are convinced that, for the high seas, the stock assessment results adopted by the international or regional organizations may get widely accepted by the WTO. As for the EEZs, we should recognize the diverse and multi-species nature of fish caught within Member's inshore and offshore. The stock assessment could mean a highly-complex process for obtaining statistical data and model exercises. Therefore, a relatively rough method of stock assessment for the fisheries resources of inshore and offshore fisheries should be considered. Furthermore, having recognized that many countries have encountered difficulties in carrying out the stock assessment for the small-scale fisheries within their EEZs, special consideration should therefore be taken into account.

Thank, Mr. Chairman.

**Statement by the Separate Customs Territory of Taiwan, Penghu,
Kinmen and Matsu at Fisheries Subsidies Meeting
Thursday 30 October, 2009**

FISHERIES MANAGEMENT CONDITIONALITIES

20(g) Given the existing role of the FAO in discussing FAO members' substantive implementation of various international fisheries instruments, what specific problems/concerns would there be if that role were enhanced in respect of stock assessments and/or fisheries management systems?

- Would the problems be the same if the review at the FAO were similar to reviews of notifications by WTO bodies (i.e., multilateral review among members, for transparency, rather than a mechanism for approval, whether by a panel of experts or a multilateral body)?

Thank you, Mr. Chairman.

Since not all the WTO Members are the members of FAO or other regional fisheries management organizations, it will be difficult to evaluate all the WTO Members' fisheries management systems through those fisheries management organizations. My delegation therefore would like to reiterate that it would be more appropriate if the WTO can establish an expert group on fishery subsidies. The fisheries expert group could be composed of several independent individuals highly qualified in the fields of fisheries management and fisheries economics, as well as the experts representing the FAO, the UNEP, the OECD, etc. Furthermore, the scientific stock assessment results and management systems adopted by FAO or other regional organizations could be an important reference or basis for the evaluation of WTO fisheries expert group. Meanwhile, the results

of the WTO-based review may also be taken into account by those international or regional organizations.

Thank you, Mr. Chairman.

TRANSPARENCY

22(b) Would a requirement to notify such subsidies after rather than before they were implemented be effective in ensuring that the pertinent criteria were respected? Are there effective alternatives?

Thank you, Mr. Chairman.

My delegation shares the views of many Members that it is difficult to adopt the prior notification practice. However, we consider it to be crucial that Members should submit complete and timely notifications, in order to provide meaningful information. We think it might be useful if the WTO Secretariat could periodically summarize and circulate all Members' notified types of fisheries subsidies programs and other related information for Members' reference. With that, if a Member considers that any measure taken by another Member is tantamount in effect to a subsidy but not being notified in accordance with the provisions of notification, they may bring this matter to the SCM Committee and request the Member concerned to fulfill its notification obligation.

I thank you, Mr. Chairman.

DISPUTE SETTLEMENT

23(a) Is it necessary for WTO fisheries subsidies rules to provide for a specific mechanism by which panels can obtain scientific and other technical expertise related to fisheries issues that may arise in disputes?

Thank you, Mr. Chairman,

Regarding to the question 23(a), my delegation's answer is "yes".

From our point of view, it is necessary for the rules of WTO fisheries subsidies to provide a specific mechanism that allows the panel to obtain scientific and other technical and professional opinions in case of a dispute. More specifically, it will avert a situation when the parties to the dispute might find controversial the suggestions made by experts chosen by the panel. With these in mind, we support the content of Article VIII.4 of Chair's text, i.e., we need the assistance of impartial third-party experts and scholars to get better knowledge of relevant information, such as if the fishery stocks have been over-fished or not.

Thank you, Mr. Chairman.

ANNEX VIII

FISHERIES SUBSIDIES

Note: The text on fisheries subsidies will be revised following discussion of the issues identified in the annexed fisheries subsidies roadmap.

FISHERIES SUBSIDIES – ROADMAP FOR DISCUSSIONS

THE NEGOTIATING MANDATE

1. The Ministerial mandate from Hong Kong directs this Negotiating Group to "strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing" and, as an integral part of the negotiations, to establish "appropriate and effective special and differential treatment for developing and least-developed Members".

GENERAL CONSIDERATIONS

2. The issue of fisheries subsidies continues to be the subject of a vigorous debate. My sense is that all participants recognize the global crisis of overcapacity and overfishing, with its consequent negative economic and environmental effects, and are committed to ensuring that the disciplines ultimately developed, whatever their form, must be *effective* in fulfilling the negotiating mandate from Ministers. That said, since I tabled my first draft text in document TN/RL/W/213, participants' views have continued to differ widely.

3. In my view, the existing differences are mainly due to varied perceptions among participants as to the exact scope and meaning of the mandate. Ministers in Hong Kong identified as the central focus of these negotiations the strengthening of disciplines, in particular through a prohibition, on subsidies that contribute to overcapacity or overfishing. Thus it is clear that crafting such new disciplines is at the core of the negotiations. During the negotiations, much of the debate in practice has been about other considerations that should modulate the impact of any new disciplines. In this regard, while the Group had many useful discussions on the basis of my first draft text, of both possible disciplines and other considerations, that text did not move us closer to a common understanding as to subsidies that should be prohibited and exempted from disciplines. I thus fully recognize that I will need to revise that text in view of the continued differences of view. The discussions to date have not, however, generated the necessary elements that would provide me with the basis for a revision that could lead to greater convergence.

4. As we resume our work, therefore, I believe that in the first instance in our discussions we should take a step back and reflect on the fundamental issues raised by the mandate. In particular, in my view the Group should work to identify those subsidies that contribute to overcapacity or overfishing, with a view to determining which of these should and should not be prohibited, while considering at the same time how to effectively address the needs and particularities of developing Members.

5. In this context, wherever certain participants may consider that certain subsidies should not be prohibited, the Group would need to consider the reasons advanced: for example, because such subsidies contribute only minimally to overcapacity or overfishing; because the effects of such subsidies could be adequately controlled by fisheries management or other means; because the small scale of certain subsidized operations would limit or eliminate the potential contribution to overcapacity or overfishing of the subsidies; or because of their importance to development priorities. In respect of any such proposed exemptions, the Group would need to consider how the integrity of the mandate would be ensured, such that any such subsidies would not in practice contribute to overcapacity or overfishing.

6. A basic issue that would need to be taken up is how the existence of overcapacity or overfishing can be established as objectively and precisely as possible. Given that many

questions of judgement would be involved in such determinations, one important question is the appropriateness of leaving it to each Member to judge its own situation, or if not the Member, who else could or should make such judgements.

7. A further fundamental issue is how to ensure adequate implementation, monitoring and surveillance. As is the case for all WTO rules, fisheries subsidies disciplines would need to include provisions for such mechanisms. Given the potential, as recognized in the mandate, for fisheries subsidies to contribute to overcapacity and overfishing, coupled with the mobile and undomesticated nature of the resources, a principal question would be how adequate surveillance of the effectiveness of the operation of the rules could be ensured, and whether the rules therefore should include enhanced surveillance mechanisms.

8. I believe that the best approach for the Negotiating Group to take in seeking a common understanding in respect of these basic conceptual issues is to discuss these issues on the basis of a number of more detailed questions. In this regard, to facilitate this process, in the next sections of this paper I raise a series of such questions, all of which are aimed at clarifying participants' positions on different aspects of the mandate.

9. I call upon all participants to re-engage in, and deepen, the debate of the basic concepts that must be addressed, and especially to come to grips with how the various elements of a new discipline will work together in a coherent way to effectively fulfil the mandate that we have received from the Ministers.

PROHIBITION

10. On the basis of this mandate, a core task for the Negotiating Group is to seek a common understanding as to the subsidies that "contribute to overcapacity and overfishing". As participants are aware, my first draft text took a "bottom-up" approach, listing particular specific subsidies that would be prohibited.¹ This list was drawn up based on submissions by and discussions among participants identifying those subsidies that the submitters considered contribute to overcapacity and/or overfishing. It is clear from the discussions that participants' views still differ widely regarding which subsidies should be prohibited.

11. I therefore would seek first a detailed discussion by the Group on which particular subsidies they believe should be prohibited (including but not limited to those referred to in my first draft text) in the light of the Ministerial mandate, addressing *inter alia* the following points:

- (a) For each subsidy that in your view should be prohibited, how does it contribute to overcapacity or overfishing?
- (b) If you believe that a given subsidy should not be prohibited, why? If this is because you do not consider that it contributes to overcapacity or overfishing, what are the specific reasons for this view?
- (c) Where you consider that a given subsidy that has been proposed for prohibition should not be included in a list of prohibited subsidies, because in your view it does not contribute to overcapacity or overfishing, how would

¹ On a fundamental point related to this list of measures, I wish to be clear that my first draft text would apply only to subsidies that are specific on any of the bases provided for in Article 2 of the Agreement (i.e., the list does not include subsidies that would not meet the definition of specificity in Article 2, but is not limited to subsidies that are specific on a sectoral basis to fisheries).

you address the question of interchangeability of subsidies? Specifically, how could non-prohibited subsidies that reduce costs to the fisheries sector be prevented from contributing to overcapacity or overfishing?

- (d) What should the scope of any prohibitions be, i.e., how far upstream or downstream should they reach, and should the focus be marine wild capture fisheries?
- (e) Should any or all proposed prohibitions be conditional on anything? If so, on what?
- (f) What role should there be for a provision such as the prohibition of non-listed subsidies in respect of "unequivocally overfished" fisheries?
- (g) If such a provision is viewed as unnecessary,
 - (i) How otherwise could it be ensured that a bottom-up list of prohibited subsidies would be effective in fulfilling the mandate?
 - (ii) What would be the justification for permitting subsidies in respect of overexploited fisheries?

GENERAL EXCEPTIONS

12. In my first draft text, the list of subsidies that would be prohibited is modulated by general exceptions, mainly for subsidies identified by participants as helping to reduce overcapacity and overfishing, and to improve environmental conditions in marine wild capture fisheries. In the light of the mandate from Ministers, i.e., to prevent them from undermining the effectiveness of the prohibition, these proposed exceptions as envisaged would be conditioned on the establishment and operation of fisheries management systems and measures.

13. Participants are asked to consider the following:

- (a) What measures are appropriate for inclusion in a list of general exceptions?
 - (i) For each such measure, is the rationale that it would be unlikely to contribute to, or would counteract, overcapacity or overfishing? If so, why?
 - (ii) For any measure proposed for a general exception in spite of possibly contributing to overcapacity or overfishing, what would be the rationale for excepting it from prohibition?
- (b) Where you consider that a given measure that has been proposed for a general exception should instead be prohibited, what are the reasons? Do you consider that the measure would contribute to overcapacity or overfishing, and if so, how specifically?
- (c) Should general exceptions be conditional in principle on having a fisheries management system in place (leaving for the section below the details concerning fisheries management):

- (i) Should each general exception be conditional on fisheries management?
 - Are there additional or alternative conditions that should apply?
 - Are there general exceptions that in your view should be unconditional? Which ones?
 - How could it be ensured that any unconditional exceptions would not contribute to overcapacity or overfishing?
- (d) If most WTO Members are committed to and already have implemented or are in the process of implementing fisheries management systems, what would be the difficulties, in practical terms, of agreeing to having fisheries management in place as a condition for making use of general exceptions?

SPECIAL AND DIFFERENTIAL TREATMENT

14. In the light of the mandate from Ministers, my first draft text contains special and differential treatment provisions whereby developing Members could provide certain capacity- and effort-enhancing subsidies that otherwise would be subject to prohibition. During the negotiations, developing Members have consistently acknowledged that subsidies by any country can contribute to the global problems of overcapacity and overfishing, and thus have indicated that they are not seeking a "blank check" allowing unlimited and unconditional subsidization. The difficulty in the negotiations on S&D provisions thus far is how to find a balance between flexibility for developing Members to provide subsidies to develop their fisheries sector on the one hand, and ensuring that such subsidies do not contribute to overcapacity and overfishing, on the other hand.

15. Participants are asked to reflect in detail on the following questions:

- (a) Do participants support an essentially full carve-out from the disciplines for LDCs?
- (b) For developing Members other than LDCs, is it appropriate and consistent with the mandate that S&D exceptions be broadest and subject to the fewest conditions for subsidies to the smallest-scale, closest to shore, and least commercial fishing operations, with exceptions becoming progressively narrower and subject to more conditions as the subsidized operations become larger-scale, further from shore, and more commercial?
 - (i) If so, how could such different types, scales and/or geographic areas of operations be defined and differentiated?
 - (ii) How would the resulting categories relate to the mandate to discipline subsidies that contribute to overcapacity or overfishing?
 - (iii) What types of conditionalities would apply, to which categories?
- (c) Are there other bases on which fisheries operations of developing Members could be categorized for the purpose of S&D exceptions, which would provide

the necessary flexibility to developing Members without contributing to overcapacity or overfishing?

- (d) If no other dividing lines among types, scales and/or geographic areas of operations can be identified, would all non-LDC developing Members receive the same S&D treatment in respect of their fisheries subsidies to all types, scales and geographic areas of fisheries operations?
 - (i) In such a situation, what should the exceptions be, and to what conditions should they be subject?
 - (ii) If all non-LDC developing Members were fully exempted from eventual prohibitions on, for example, subsidies for vessel construction/modification, and operating costs, how could it be ensured that such subsidies would not contribute to overcapacity or overfishing?
 - (iii) On what other basis could S&D treatment be structured?
- (e) Should some or all exemptions for developing Members be conditional on fisheries management?
 - (i) If so, which exemptions should be subject to such conditionality?
 - (ii) What sort of fisheries management conditionalities should these be and how could their effectiveness at preventing overcapacity and overfishing be ensured? Would self-certification that management was effective be sufficient?
- (f) If S&D exceptions were not conditioned on fisheries management, what other conditions should there be, if any, and how would those operate to prevent the subsidies from contributing to overcapacity or overfishing?
- (g) What is the appropriate role for technical assistance for developing Members to implement new disciplines?
 - (i) How can effective technical assistance for the implementation of management conditionalities be ensured while not indirectly making more resources available to subsidize?
 - (ii) How can developing Members' needs and donor Member's capabilities be reconciled in a way that contributes most efficiently to fulfilling the mandate?

GENERAL DISCIPLINE/ACTIONABILITY

16. Under the existing provisions of the SCM Agreement, specific subsidies benefiting the fisheries sector are actionable, and thus can be the subject of multilateral adverse effects challenges (e.g. serious prejudice) and countervailing measures if the applicable conditions are present. These provisions are not, however, designed to clearly identify any contribution that such subsidies may make to overcapacity or overfishing. With a view to creating predictability and certainty concerning how to identify and address such effects, my first draft

text contains certain guidelines on the basis of which a Member could challenge another Member's subsidies if those subsidies caused depletion of or harm to, or creation of overcapacity in respect of, stocks whose range extended into the challenging Member's EEZ, or particular stocks in which that Member had identifiable fishing interests.

- (a) Should new fisheries subsidies rules define any fisheries-specific negative effects from subsidies that could be challenged by other Members?
- (b) If so, how should such effects be defined?
 - (i) To what extent, if at all, should implementation by the subsidizing Member of sound fisheries management be considered to relevant evidence for a determination of whether its subsidies have caused such effects? Why?
 - (ii) What additional or alternative evidence would be relevant? Why?
- (c) If no parameters are established in respect of relevant evidence, what would be alternative approaches to ensure predictability and certainty in the application of general subsidy disciplines?

FISHERIES MANAGEMENT CONDITIONALITIES

17. The discussions in the Negotiating Group indicate that participants generally believe that exceptions – both general and S&D – should not be unconditional, given their potential to undercut the effectiveness of the disciplines on subsidies that contribute to overcapacity and overfishing.

18. The discussions also have indicated a widely-shared view that the principal conditionalities should pertain to fisheries management, a central component of which would be stock assessments, in part because of the difficulties of directly measuring the effect of particular subsidies on particular wild capture fisheries due to the mobile and undomesticated nature of the resource.

19. There are, however, differing views as to how much detail WTO fisheries subsidies rules should contain on fisheries management, in respect of both the substantive basis of such conditionalities and the appropriate fora and mechanisms for monitoring and enforcing their implementation. There has been considerable debate on the approach taken to these issues in my first draft text.

20. I would ask participants to reflect on the following questions:

- (a) Are there other conditionalities that should be applicable to exceptions (general and S&D), either in addition to or instead of fisheries management conditionalities?
- (b) How important is it for the effective operation of the disciplines that all Members' fisheries management systems and measures adhere to a common standard, and how prescriptive should that standard be?

- (c) If a common standard is not necessary or not acceptable, how could the effectiveness of different Members' systems in controlling overcapacity and overfishing be monitored and enforced?
- What would prevent one Member with ineffective management from overfishing stocks that were safeguarded/replenished by another Member's effective management measures?
- (d) Given that an international consensus already exists in respect of a substantial number of international fisheries management instruments, and those instruments themselves take account of the capacity constraints of developing countries, does it make sense to draw inspiration from those instruments for the substantive content of management conditionalities for using exceptions from the prohibition?
- (i) If not, why not?
 - (ii) If so, how could the typically non-binding nature and relatively general and flexible wording of those instruments be reconciled with a binding prohibition of subsidies that contribute to overcapacity or overfishing, and binding conditionalities concerning fisheries management where exceptions are used?
- (e) What role should stock assessments play in any management conditionalities?
- (i) If stock assessments are considered unnecessary, why, and how could overfishing and overcapacity be monitored in the absence of stock assessments?
 - (ii) If stock assessments are considered to be a necessary element, how could the rules take into account Members' different capabilities while ensuring that the assessments are as reliable and robust as possible?
 - (iii) To what extent if at all should the results of stock assessments form part of any conditionalities?
- (f) Is it logical to require a stock assessment before a capacity-enhancing subsidy is provided?
- (i) If not, why not?
 - (ii) If so, what practical problems would need to be resolved?
 - (iii) What timing and review mechanism for such stock assessments could best reconcile a Member's need to implement a given subsidy on the one hand, and other Members' need for multilateral surveillance/transparency in respect of the fisheries resources that would be affected by it on the other hand?
- (g) Given the existing role of the FAO in discussing FAO members' substantive implementation of various international fisheries instruments, what specific problems/concerns would there be if that role were enhanced in respect of stock assessments and/or fisheries management systems?

- Would the problems be the same if the review at the FAO were similar to reviews of notifications by WTO bodies (i.e., multilateral review among members, for transparency, rather than a mechanism for approval, whether by a panel of experts or a multilateral body)?
- (h) Why, if at all, would the WTO be better-positioned to perform such reviews of fisheries-related information?
- How could the necessary expertise be built into any WTO-based review of fisheries management, without the WTO becoming a fisheries management organization?

TRANSPARENCY

21. Most participants appear to believe that enhanced transparency in respect of fisheries subsidies should be an important outcome of the negotiations, as a necessary element in ensuring that the disciplines operate effectively. In this regard, my first draft text includes specific transparency provisions that would apply where exceptions are used; in particular, information related to subsidies for which exceptions were invoked would be notified to, and reviewed by, the WTO, and there would be consequences for non-notification. Concerning transparency in respect of fisheries management, given the technical questions that would arise in review of Members' fisheries management systems, as outlined in the previous section, my first draft text envisages a multilateral mechanism that would make use of outside fisheries expertise and institutions.

22. I would ask participants to reflect on the following issues:

- (a) Assuming that notifications would be required in respect of subsidies for which exceptions from the prohibition were invoked, is it logical for such notifications to include information addressing the conformity of the subsidies with the specific criteria and characteristics of the invoked exceptions?
- (b) Would a requirement to notify such subsidies after rather than before they were implemented be effective in ensuring that the pertinent criteria were respected? Are there effective alternatives?
- (c) What mechanisms could be built into the rules to create incentives to notify?
- (d) If a presumption that non-notified subsidies are prohibited is either not workable or not acceptable, what other approaches would be effective in encouraging the submission of complete and timely notifications, so as to provide meaningful information to Members?

DISPUTE SETTLEMENT

23. On dispute settlement, depending on the specific disciplines agreed, disputes clearly could arise which would focus on technical questions related to the fisheries sector rather than on purely legal issues. My first draft text suggests a mechanism that could be used to bring fisheries expertise into the dispute settlement process as needed.

- (a) Is it necessary for WTO fisheries subsidies rules to provide for a specific mechanism by which panels can obtain scientific and other technical expertise related to fisheries issues that may arise in disputes?
 - (i) If so, why would the provisions in Article 13 of the DSU not be sufficient?
 - (ii) Should resort to any such mechanism be mandatory for all panels dealing with disputes under the fisheries subsidies rules, or should such resort be at the discretion of each panel?
- (b) If such a specific mechanism is considered unnecessary, how could necessary expertise be assured in disputes involving technical fisheries issues?
- (c) How could it be ensured that panels would make use of available mechanisms, in particular the provisions in Article 13 of the DSU, when necessary?

IMPLEMENTATION

24. Given that any mechanisms ultimately agreed as part of new disciplines on fisheries subsidies will imply a certain degree of institutional infrastructure, expertise and resources, it is clear that implementation of the disciplines would pose certain difficulties, especially for developing Members. My first draft text envisages certain flexibilities in this respect, such as the possibility for regional bodies to fulfil the roles otherwise envisaged for national mechanisms, at least for developing Members, as well as provisions on technical assistance.

25. Participants are asked to consider the following issues in respect of the implementation of new disciplines:

- (a) What concrete mechanisms could be included in fisheries subsidies disciplines to facilitate their implementation to the maximum possible extent?
- (b) Would such mechanisms be limited to implementation of fisheries management, or would they address other aspects of the disciplines as well?
- (c) To the extent that disciplines foresee implementation of management or other obligations on a regional basis, how could it be ensured that the obligations were fulfilled in respect of and by each Member individually?

TRANSITION RULES

26. It is clear that whatever the new disciplines, Members would need a certain amount of time to bring their existing measures – subsidies and potentially fisheries management

systems – into conformity. My first draft text parallels the approach in the SCM Agreement, envisaging a longer transition period for developing than developed Members.

27. I would ask Members to reflect on the following points:

- (a) What would be the specific purpose of a transition period in the context of new disciplines on fisheries subsidies?
- (b) Should a transition period for bringing otherwise prohibited subsidies into conformity with new rules be available only in respect of such subsidies that have been notified?
- (c) To what extent should the length of a transition period be linked to the strength of the disciplines (i.e., the degree of the new obligations imposed on Members)?
- (d) How should a transition rule for developing Members take into account the nature and extent of special and differential treatment?
- (e) Should a transition period be linked to implementation of fisheries management systems on which exceptions would be conditioned, or should it only relate to bringing otherwise prohibited subsidies into conformity with the new disciplines?
- (f) Should transition periods vary based on the particular type of subsidy involved? What would be the implications of such differentiation on overcapacity and overfishing?
- (g) Should a transition rule require Members to report during the transition period on their progress in implementing new obligations?
