

EXPERTS GROUP MEETING
NAIROBI : 7-8 SEPTEMBER, 2009
African Group Paper on Fisheries Subsidies

1. The African Group recognizes that certain fisheries subsidies may contribute to the creation and perpetuation of excess fishing capacity and have the potential to encourage overfishing and distort trade patterns. In this vein, the Group fully endorses the mandate, as contained in the Doha and Hong Kong Ministerial Declarations, which aim to ‘clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries’¹. It must be borne in mind that this is the first time in the history of multilateral trade negotiations under the auspices of the WTO that fisheries subsidies as a negotiating subject is being taken on board. This implies that new subsidies disciplines in the fisheries sector would be developed.
2. It is acknowledged that the objective of disciplining all forms of fisheries subsidies, however, can pose a serious threat to the legitimate promotion of developing country fishing industries and communities. Restricting the necessary policy space for the strategic use of subsidies to attract domestic and foreign investors and to support the fishing industry in times of need is considered a serious limitation on developing countries, especially those that have not yet had the opportunity to develop the sector. The fisheries sector is of significant economic and trade importance to the African states, and is also a key factor in the maintenance of basic livelihoods, especially in the case of small-scale and artisanal fishing. It constitutes a potential area for economic diversification for several African states, currently facing challenges on account of global trade liberalization and erosion of trade preferences.
3. It is in striking a balance between the objectives of sustainability, environment and development that the Group recognizes the difficult task faced by the Chair of the Negotiating Group on Rules in formulating a text and crafting new rules on fisheries subsidies. To this effect, the Group agrees that the draft of the Chair’s text on fisheries subsidies is a good attempt in balancing different positions and provides a basis for negotiating further. There is, however, a legitimate fear that the Special and Differential Treatment provisions contained in Article III and the associated conditionality under Article V do not adequately address the need for preserving policy space, within sustainable limits.

On the scope of the prohibition and general exemptions,

4. The thrust of the Group’s concerns lie under Articles III and V of the Chair’s text. But the Group supports the general developing country view that the scope of prohibition in the Chair’s first draft is far too broad and the list of proposed prohibitions might contain certain types of subsidies that do not contribute to overcapacity and overfishing (esp. where good management exists). In addition, the Group agrees with the general developing country view that the exemptions proposed under Article II are too narrow (often not applicable to developing country members and/or not truly reflective of our programs).

¹ Paragraph 28 of the Doha Ministerial Declaration, WT/MIN (01)/DEC/1, 20 November 2001.

5. With respect to the structure of the disciplines, the Group has always taken the view that any structure adopted should adequately address their concerns, especially with regard to S&DT provisions and thus capture the development dimension. The Group has taken the view that the coverage of the prohibition should be limited to harvesting activities in the marine fishing sector, and not to include in-or-near port processing activities, which constitute a high value-added component of fisheries production in African states and hence an important part of their economic development strategies. Some developed countries (Canada, Norway) have sought for a general exemption for small-scale fisheries, available to all Members. Canada's specific proposal for the inclusion of de-minimis subsidies based on the small programmes of developed countries in the general exemptions clause, has not been supported by several members including the wider ACP and the SVEs Groups. It has been stressed that additional flexibility would be required for developing country small-scale fisheries (through S&DT) before any flexibilities are provided to developed country members.

On Special and Differential Treatment provisions (SDT)²,

6. Currently, the exemptions proposed for in the Chairs text, in relation to subsidies for vessel acquisition, construction, etc for industrial fishing vessels operating in the EEZs, is of relatively limited benefit to most African Members. The high cost of industrial vessel construction and acquisition makes such subsidies well out of the medium-term scope for the Group. Significantly more common subsidies among African states are currently those conferred on operating costs (such as to fuel, bait and ice). In addition, subsidies to such operating costs provided in the ACP states are generally very small in magnitude and therefore, rarely contribute to resource-depleting production distortions. Finally, the design of appropriate carve-outs must take into account the fact of surging fuel prices, which also enhances the significance of demands by the group for greater leeway in the use of fuel subsidies. It is hence proposed that exemptions under Article III.2 (b) (3) be extended to apply to operating cost subsidies as well (Article I.1(c) subsidies). This represents one of the key demands of the African as well as the ACP and the SVEs groups in the current negotiations on fisheries subsidies.
7. Another significant demand of the ACP Group is to widen the geographical scope of the proposed exemptions in the Chair's text for subsidizing industrial fishing vessels operating in a Member's Exclusive Economic Zone (EEZ), to beyond the EEZ, and in the high seas. Limiting such subsidies (as under Art. III.2.b.3) to vessels active within a developing country Member's EEZ is almost a commercial disaster for majority of the fishing vessels of some ACP states. This is because such vessels are often targeting highly migratory fish stocks such as tuna and therefore need to follow the fish. The existing provision in the text therefore is economically not a viable option for such

• ² Political note for internal reference: The major problem currently being faced in the fisheries subsidies negotiations is that while the protagonists of the fisheries subsidies disciplines are not against granting S & D treatment to developing countries, they are however, not prepared to grant similar treatment to other big fishing developing countries, which already have huge fishing capacity. It is, however, clear that '*one size fits all*' approach of S & D within the fisheries context might not be workable. For their part, the ACP countries while recognising the importance of sustainable exploitation of world marine resources, have been calling for appropriate and effective S&D that takes into account their developments needs, priorities and aspirations as well as livelihood and food security concerns.

Members who are currently in bilateral and regional arrangements for access to neighbouring Members' EEZs.

8. In the current text, SDT for commercial artisanal and small-scale fisheries is limited to decked vessels of size 10m (and undecked vessels of unlimited size). This does not take into account the size of the small-scale fishing vessels in the maritime space of African countries, which are found to be up to 24m in length. In the negotiating group, the Group has, therefore, been saying that if the length of vessel is to be the qualifying criterion for the S&D treatment, then the length should be increased to 24-25 meters. Questions have also been raised on the legitimacy of using the size of vessel length as a parameter.
9. On the treatment for subsistence fisheries falling in the Chair's first draft text, the African Group has no major concerns especially since the exemptions provided are tied to only indicative and not mandatory conditionality related to fisheries management systems. However, legal clarity still needs to be sought on whether the definition proposed is intended for subsistence fishing solely or to serve as the primary treatment of artisanal fisheries. In case of the latter, the Group has serious concerns with the definition, which, as it exists, categorizes the sub-sector as static and economically non-dynamic.

On the issue of access fees,

10. The Group has taken the view that new rules within the WTO cannot explicitly include fishing access agreements within the definition of subsidies, since most African as well as ACP states negotiate access fees at the state level. There is also a general consensus amongst the WTO membership that such payments, alone, are state-to-state transfers and therefore do not constitute a subsidy within the meaning of the ASCM. The Group has noted and welcomed the explicit exclusion of government-to-government transfer of funds from the Chair's first draft text (Footnote 9), which provides the necessary clarity and legal security and predictability in the treatment of access fees.
11. However, the Group has noted that a second-level transaction in relation to government-to-government fisheries access arrangements has been the subject of much debate. At issue are situations where the Distant Water Fishing Nation (DWFN) government transfers access rights to its private fishing fleet for less than the full amount of the access fees that it paid to the coastal or island government for access to its EEZ. Some WTO Members have considered that these transactions are, or should be, challengeable under WTO disciplines. This has been of huge concern to some African states as significant government revenue has been generated from fees paid in exchange for fisheries access to their EEZs (e.g. As much as 25% of total government revenue in several Pacific Island Countries is obtained from access fees revenue and this constitutes as much as 42% of GDP in two of these Pacific Islands). In this context, the Group has strongly welcomed a provision in the Chair's text that provides a carve-out for the onward transfer of the access rights from a distant water fishing nation (DWFN) to its private fleet provided that the fishery in question is within the range of the EEZ of a developing country (Art. III.3). this is a crucial development provision for many of our states, which should be maintained in any subsequent revisions of the text.
12. The Group, along with the ACP and the SVEs has formally submitted a proposal seeking strengthened language, under the proposed SDT provisions, to make TA more effective and operational.

On fisheries management related conditionality (Article V),

13. The Group continues to express its legitimate concerns regarding the capacity constraints it faces in implementing and enforcing these mechanisms. In broad terms, the African Group has been seeking an approach to management-related conditionality that reflects the concrete realities of developing country members. In addition, any new rules must provide for sufficient technical assistance (TA) to comply with Article V obligations, in particular as regards the management and conservation of fish stocks, the management of fishing capacity, effort and catch as well as the registration and monitoring of fishing vessels.
14. The African continues to have concerns regarding the capacity of the FAO to handle notifications and peer review of management systems and stock assessments and have also sought clarification as to how this system would work at the operational level. In addition, the Group is against the obligation for the conduct of a peer review prior to the granting of a subsidy.
15. The Group is working very closely with the ACP Group as well as the SVEs in order to get strengthened positions on the necessary flexibilities on SDT provisions with a view to ensuring that the development imperatives are delivered and the mandate not defeated.