



FISHERIES SUBSIDIES: DATA-POOR STOCKS AND NEGATIVE EFFECTS

Lunch Seminar – 6 May 2019

Room S3, World Trade Organization, Geneva

This lunchtime seminar aims to provide WTO negotiators with expert input on two topics relevant to a range of negotiating issues, including the prohibition of subsidies to overfished stocks and a potential 'hybrid' approach to subsidy disciplines.

The first presentation will focus on what methods exist for assessing the status of data-poor fisheries, and what 'alternative reference points' in addition to MSY, could potentially be specified in an agreement to encompass the wide variety of Member's fisheries management systems.

The second and third presentations will focus on the potential use of a 'negative effects' test in the disciplines; the first will provide background on the existing rules around prohibitions and effects-based disciplines in the WTO's Agreement on Subsidies and Countervailing Measures, while the second will look in more depth at the potential workability of an effects-based rule in the context of rules on fisheries subsidies, and considerations regarding its implementation.

AGENDA

13:00 – 13:30

Light lunch

13:30 – 13:40

Opening remarks

Alice Tipping – Lead, Fisheries Subsidies, IISD

13:40 – 14:40

Methods for assessing the status of data-poor fisheries

(15 minutes)

Maren Headley – Researcher, Caribbean Regional Fisheries Mechanism

What methods can be used to establish the status of stocks in data-poor fisheries? What methods can be used to establish the status of multi-species fisheries?

In addition to MSY, what alternative reference points, or proxies, can be used to establish the status of stocks in data-poor informally regulated fisheries, which could potentially be specified in an agreement?

If an agreement included a negative effects approach, how might governments be able to identify when a subsidy is having a negative effect on a data-poor or multi-species fishery?

Prohibited and actionable subsidies in the ASCM: Rules and remedies

(15 minutes)

Charles Julien – Counsel, White & Case LLP (15 minutes)

How are subsidies defined in the ASCM? What is the specificity rule, why does it exist and how is it applied in practice?

How do prohibited and actionable (effects-based) subsidy disciplines work under the ASCM? What remedies apply in each case, and why?

Negative effects test in subsidy rules: Workability and Implementation

(20 minutes)

Colette van der Ven – Director, Trade and Development, Emerging Enterprises pro bono program, Sidley Austin LLP (20 minutes)

What are the implications of negative effects test? (e.g. it introduces a threshold of application and therefore flexibility into the discipline, which has adv/disadv)

If the overfished stocks discipline (or another) includes a negative effects test, how to make it as workable as possible?

- Provide as much clarity as possible about when negative effects have occurred, e.g. by using
 - Stock-based factors (like Australia suggests)
 - Lists of subsidies (negative list of subsidies that are deemed not to have negative effects, or a positive list of subsidies that are deemed to have negative effects unless proven otherwise?)
 - Management-based factors (like EU suggests)
- Delegations could consider if/how to clarify how the burden of proof might apply (eg if determination stock is overfished, cap-enhancing subsidies assumed to have negative effect unless M proves otherwise)

What options do governments have in terms of the standard of review a panel might have over a negative effects decision? If there was a dispute over a subsidy provided to fishing of an overfished stock, would a panel

necessarily have to judge the soundness of a Member's fisheries management system? How could that outcome (which would be undesirable to most) be avoided?

How could governments approach the implementation of a subsidy discipline that involved a negative effects test, including as subsidies are designed, once a stock is declared to be overfished, and perhaps a couple of years after the stock is declared to be overfished (e.g. periodic review of the state of different fish stocks, the kinds of subsidies provided and the strength of management systems in place?)

What implementation challenges might DCs encounter in implementing a discipline with a negative effects test, and how could these challenges be met? (with respect to subsidies design and the need to maintain basic fisheries monitoring)

14:30 - 14:55

Open Discussion

14:55 – 15:00

Closing Remarks