

Doha Mandates

"In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 [i.e. the Antidumping Agreement] and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and leastdeveloped participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries."

(Paragraph 28 of the Doha Ministerial Declaration)

"We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements."

(Paragraph 29 of the Doha Ministerial Declaration)

Negotiations on WTO Rules

After the collapse at Cancun talks regarding WTO rules stalled for several months. The first post-Cancun meeting of the Negotiating Group on Rules – tasked with improving the WTO provisions governing anti-dumping, subsidies and countervailing measures, as well as regional trade agreements – was held in March 2004. At this time, Members decided to start a new informal process focusing on the technical details of the numerous proposals on the table.

By the end of 2004, Members had made almost 150 submissions, including proposals, comments and questions, as well as papers outlining their general approaches to the issues. Going into informal mode entailed a move on from the first phase of the work programme (issue identification) to eventually hashing out compromises. The issues under discussion are broad-ranging, as are Members' positions, which means that the technical phase is likely to take a long time. The Negotiating Group has no interim deadlines prior to the conclusion of the 'single undertaking'. As was the case at the conclusion of the Uruguay Round, Members are expected to wrap up talks on rules at a very late stage, after they have seen the outcomes in other areas.

Fisheries subsidies is the one area that has seen major progress since Cancun. Where Japan and Korea previously categorically opposed the creation of specific disciplines on fisheries subsidies, Japan made a proposal of its own in this area in June 2004. The debate has now moved to what the nature and extent of those disciplines should be. The 'Friends of Fish' (including the US, Iceland, Chile, New Zealand, Norway and Peru) favour a blanket ban or 'negative list', with all fisheries subsidies banned unless specifically excluded. In contrast, Japan proposes that 'really problematic' subsidies be identified and banned, whereas all other subsidies should be allowed.

Members have also met regularly on

regional trade agreements (RTAs) since March 2004, and have initiated open-ended informal discussions on transparency and systemic issues.

Mandated Deadlines

- 1 January 2005, conclusion of the negotiations as part of the single undertaking agreed in Doha. That deadline is now *de facto* extended until the Round concludes (no date has been set for this).

Background

The inclusion of trade remedy and subsidy rules in the Doha Round was a victory for developing countries. As frequent targets of anti-dumping and countervailing investigations – and subsequent import duties – on industrial goods, they had pushed for tightening disciplines on the use of remedies since before the WTO's failed Seattle Ministerial Conference. To secure a negotiating mandate in Doha, the 'Friends of Anti-dumping Negotiations' – a group comprising 14 developing and developed country Members – had to overcome stiff resistance from the US, which has traditionally viewed trade remedies as an essential tool of its trade policy. While not a 'Friend', the EU conceded pre-Doha that in order to achieve a negotiating mandate acceptable to all Members, concerns on trade remedy agreements would have to be addressed despite the issue's political sensitivity. This view finally prevailed in Doha, albeit with the potentially significant proviso that the negotiations must "preserve the basic concepts, principles and effectiveness of these Agreements." The explicit mention of fisheries subsidies in the Doha mandate for the rules negotiations was due to the concerted efforts of Iceland, the Philippines, the US and five other Friends of Fish.

Regional trade agreements have been under scrutiny in the WTO since its creation, but Members have thus far failed to come to any conclusions with

regard to any particular agreement's WTO compatibility, or to arrive at a common understanding of key definitions. At Doha, Members acknowledged for the first time the need for coexistence between regionalism and multilateralism. The challenge of the Doha Round negotiations is to devise an approach that balances the proliferation of RTAs with efforts under the WTO. Talks could have far-reaching effects on future agreements, particularly those under negotiation by the US and EU with single countries or groupings in Africa, the Caribbean and the Pacific; Latin America, the Middle East and Asia. Important regional initiatives within different continents, such as the projected ASEAN Free Trade Area, must also conform to WTO disciplines on RTAs.

Anti-dumping, Subsidies and Countervailing Measures

More proposals and questions/comments have been tabled on anti-dumping than on any other issue under consideration in the Negotiating Group. Among issues identified for 'clarification and improvement of the disciplines' are definitions for several key concepts under the Anti-dumping Agreement. These include: 'product under investigation/ consideration' and 'like product', domestic injury, dumped imports, standing rules, determination of 'normal value', constructed export price, conditions to disregard the export price practised, cumulative assessment of imports, price undertaking/lesser-price rule, public notice, period of data collection for anti-dumping investigations and treatment in case of a large number of exporters, producers, importers or types of products.

Of the proposals/comments submitted on the Agreement on Subsidies and Countervailing Measures, about half focus on the improvement and clarification of the Agreement's trade remedy (i.e. countervailing) provisions, while the other half centre on subsidies, focusing on issues such as definition of subsidy, export and local content subsidies, export credits, remedies for prohibited subsidies, serious prejudice, non-actionable subsidies, subsidy notifications, special and differential treatment, natural resource and energy pricing, taxation, and calculation of the amount of a subsidy.

This Briefing will go into details only with regard to negotiations on disciplines on fisheries subsidies, given that this is the only area that has seen major developments since Cancun

(see Doha Round Briefing Vol. 2 No.7).

Fisheries Subsidies

Since the establishment of the WTO's Committee on Trade and Environment, a number of Members have focused on the elimination of fisheries subsidies as possibly the greatest contribution the multilateral trading system could make to sustainable development. In particular, the Friends of Fish have pointed to the 'win-win-win' nature of such action: good for the environment, good for development and good for trade. Their major argument is that subsidies are at least partly responsible for the alarming depletion of many fish stocks, as much of the money is spent on commissioning new vessels or enhancing the efficiency of older boats. In the Negotiating Group on Rules, Japan and Korea long insisted that poor fisheries management, rather than subsidies, was the root cause of stock depletion, and the EU also took a cautious approach to potential disciplines. The EU, however, made a proposal advocating the prohibition of 'capacity-enhancing' subsidies in May 2003. After Japan made a proposal in June 2004 on subsidy disciplining, the debate has turned around.

The fisheries subsidy talks were revived post-Cancun with a proposal in April 2004 by New Zealand, focusing on overcapacity and overexploitation (TN/RL/W/154). The proposal noted that a number of previous submissions had sought to define categories of forbidden subsidies based on their contribution to over-fishing and to overcapacity in the fisheries sector. New Zealand, however, stressed that explicitly addressing these issues through subsidy rules was difficult, and suggested instead an approach based on a broad prohibition of programmes that have revenue or cost impacts for the fisheries industry and thereby lead to overcapacity and over-fishing. Under this comprehensive approach, New Zealand highlighted the need for exceptions and transitional provisions, including special and differential treatment for developing countries, and suggested the negotiation of a 'negative list' of exceptions to exempt environment-friendly and other subsidies. The Friends of Fish generally supported the approach. The EU felt it was too radical, however, and stressed the need for exemptions for programmes in developing countries and in poorer regions of the EU. Japan, Korea and Chinese Taipei said it went beyond the mandate agreed for the Doha Round.

In June, Japan made a surprise counter-proposal (TN/RL/W/159), which was a break through in that it recog-

nised the need for disciplines. Japan proposed a bottom-up or 'positive list' approach to defining harmful fisheries subsidies. While problematic subsidies should be banned, others, which served to promote sustainable development in the fisheries sector, should be allowed. Japan also supported further discussion of notification requirements and of special and differential treatment for developing countries. Korea, traditionally firmly grounded in Japan's anti-disciplines camp, supported the proposal. The Friends of Fish group welcomed the engagement of Japan in this area, and the US and Chile noted similarities between the Japanese paper and submissions by pro-disciplines countries. New Zealand was more cautious, stressing that Japan proposed an overly strong focus on overcapacity, and downplayed other important factors, including price support, operating costs and infrastructure. China supported the use of a 'positive list' rather than 'negative list' approach.

In September, Japan elaborated further on its earlier submission, proposing rules that would 'strike the balance' between the promotion of trade in fisheries products and the conservation of natural resources (TN/RL/W/164). Japan explicitly opposed a blanket ban on subsidies, and proposed that each type of subsidy be evaluated and placed in a 'box' according to its effect. Permitted subsidies supportive of sustainable development would end up in a 'green box'. These would include subsidies that "promote the conservation and sustainable utilisation of fisheries resources," including specific measures such as management plans, environmentally friendly fishing gear, surveys, research and monitoring, measures to enhance stocks and pre-

serve habitats, as well as the development and diffusion of new technologies.

In addition, the 'green box' could include measures that, as long as an adequate management plan was in place, did not have any harmful effects. Subsidies supporting illegal, unregulated and unreported (IUU) fishing or over-capacity would be placed in a 'red box', including subsidies "related to IUU fisheries and fishing vessel construction engaging in poorly managed fishery, which are against the conservation and sustainable utilisation of fisheries resources and encourage the fishing activities that exacerbate the status of the resources". Here, Japan differentiated between vessel construction in cases where fisheries were properly managed and where they were not, with construction subsidies

prohibited in the latter case. Certain subsidies fell outside the remit of fishing subsidies, according to the Japanese submission. These subsidies included: capacity building/human resources development; relief from natural disasters; and certain types of structural adjustment and regional development assistance.

The US called the proposal a “significant step backwards”. The Friends of Fish preferred the blanket ban or ‘negative list’ approach as proposed by New Zealand. The EU commented that the proposed ‘green box’ seemed rather full as compared to a slim ‘red box’. Korea and Chinese Taipei supported the Japanese approach.

In November, several Friends of Fish countries made a new proposal elaborating on the comprehensive ‘negative

list’ approach to disciplining fisheries subsidies (TN/RL/W/166). The proposal noted that the Japanese ‘positive list’ approach would take Members into areas foreign to the WTO, such as defining what constitutes a ‘properly managed’ fishery. The benefits of the comprehensive approach, according to the proponents, were its simplicity, enforceability, transparency and flexibility. The submission proposed the identification of exceptions to the subsidies prohibition as a next step, and provided an indicative list in this regard. The list included expenditures related to fisheries management, general infrastructure, social insurance programmes and decommissioning. The submission also noted the need for special and differential treatment for developing countries.

In discussions since Cancun, a number of developing countries, such as Brazil, Malaysia and Mauritius, have stressed that in order for developing countries to agree to any deal, they must be allowed the space to support the development of their fisheries sectors. India and Pakistan have noted that ‘artisanal fishing’ should be left outside any disciplines.

Proposals submitted to the Rules Negotiating Group are available at <http://docsonline.wto.org/> under the code TN/RL/W*.

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