



Doha Mandate:

"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 least developed 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

In 2005, the Negotiating Group on Rules - tasked with 'improving and clarifying' WTO provisions governing anti-dumping, subsidies and countervailing measures, as well as regional trade agreements - met mainly in informal sessions of a highly technical nature and entered into preliminary discussions on possible textual amendments to certain parts of the anti-dumping and subsidies agreements. Members' interests and positions remain highly divergent over a wide range of complex issues, and many expect the rules talks to wrap up only after the outcomes in other areas of the Doha Round negotiations are much clearer.

Members differed with regard to how they wanted the negotiations to progress. At the beginning of the year, the 'Friends of Anti-dumping Negotiations' (FAN) - a group comprising 14 developing and developed countries with a common interest in tightening rules governing anti-dumping investigations and measures - called for accelerated negotiations and the preparation of "a stepping-stone, that is, a textual basis [...] that can pave the way for the final stage of negotiations." The US, however, said it was not yet prepared to move to negotiations based on text, and India and Egypt emphasised the need for more attention to developing country issues such as special and differential treatment.

In his report to the Trade Negotiations Committee in July 2005, Chair Ambassador Guillermo Valles Galmes of Uruguay concluded that in order to complete negotiations on time, there must be text-based negotiations in 2006. His draft text for the Hong Kong ministerial declaration issued on 15 November would have ministers instruct the Chair to prepare consolidated texts of amendments to the anti-dumping and subsidies agreements that would form the basis for the final phase of the negotiations. In discussions following the circulation of the draft text, China, Brazil, Egypt, Switzerland and Venezuela said that setting deadlines would be premature at the current stage.

Within the rules negotiations, fisheries subsidies have been singled out as a specific subsidies category for further discussion. Since Cancun, substantial progress has been made in this area, and the discussion has moved from *whether* there should be specific disciplines on fisheries subsidies to the *nature* and *extent* of such disciplines. In 2005, Members have made a number of new submissions with a strong focus on the development dimension of the negotiations.

Members have also met regularly on regional trade agreements (RTAs), including in 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. This deadline is now *de facto* extended until the Round concludes.

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 FAN 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

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 the 'Friends of Fish' (FoF) - a loosely defined group of countries that includes Australia, Argentina, Chile, Ecuador, New Zealand, the Philippines, Peru, Norway, Iceland and the US.

During the first phase of negotiations from Doha in 2001 to Cancun in 2003, Members made 141 submissions of a mostly general nature. At the first post-Cancun rules meeting in March 2004, Members decided to start a new informal process focusing on the technical details of the numerous proposals tabled. Entering into informal talks entailed moving on from the issue identification of the first phase of the work programme to negotiating over compromises. Members submitted 55 elaborated proposals (both formal and informal) during this second phase. All but ten of these relate to trade remedies, i.e. anti-dumping and - to a lesser extent - countervailing measures.

During the third phase, which started in spring 2005, the Chair supplemented this process with bilateral and plurilateral consultations to discuss submissions proposing specific changes to the anti-dumping agreement. The number and composition of Members consulted varied from issue to issue.

Regional trade agreements (RTAs) have been under scrutiny in the WTO since its creation, but Members have thus far failed to reach 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.

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. In February 2005, the FAN put forward six negotiating objectives: mitigating the 'excessive effects' of antidumping measures; preventing such measures from becoming permanent; strengthening the due process and transparency of dumping proceedings; reducing the cost of antidumping cases (often prohibitive to small firms); ensuring a quick end to unjustifiable investigations; and improving and clarifying rules on what constitutes 'dumping' and 'injury.'

To that end, submissions by the FAN and other countries have tackled the question of how to improve the definitions of the technical terms in the anti-dumping agreement in a way that gives less opportunity for protection-seeking domestic industries and their governments to abuse the system. In this context, submissions have focused on more precise definitions for such terms as 'dumped imports', 'domestic industry'; the determination of 'normal value', 'constructed export price', 'like product', 'causation' and 'product under consideration'.

Other proposals address the procedures governing the initiation, conduct and completion of anti-dumping investigations. They seek to reduce the burden placed on exporters involved in such investigations (e.g. the obligation to provide financial data about 'affiliated parties') and to tighten the rules that give right to the initiation of an investigation in the first place, including a requirement that domestic industries that request the initiation of an investigation must represent a certain minimum share of total domestic production. 'Public interest' clauses aim to give exporters or other groups who may be affected by the anti-dumping measure opportunities to comment on the investigation application before procedures are started or when they are at an early stage. Submissions on 'facts available' seek to give exporters in an investigation greater flexibility to submit missing or supplementary information. Proposals also seek to improve rules on the level, scope and duration of measures, such as 'sunset clauses' that provide for the automatic termination of an anti-dumping measure five years after its imposition or the 'lesser duty rule' which stipulates that the amount of the duty collected may not exceed the dumping margin.

The US has focused in particular on introducing rules that would make it more difficult for exporters of dumped goods to circumvent anti-dumping duties or countervailing measures. Exporters have in the past tried to get around duties by modifying the product targeted by anti-dumping measures or by setting up assembly plants either in the country that imposed the duty or in third countries not affected by the measure. The US proposal on the prevention such practises met with strong resistance from the rest of the Membership and developing countries in particular. However, the US warned that it would block other initiatives in the rules negotiations should anti-circumvention be deleted from the Hong Kong ministerial declaration. At the time of writing, the draft text explicitly mentioned that rules regarding anti-circumvention proceedings ought to be clarified and improved.

Of the proposals/comments submitted on the subsidies and countervailing (SCM) agreement, about half focus on 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 the calculation of subsidy amount.

Fisheries Subsidies

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. The FoF has pointed to the 'win-win-win' nature of such action: good for the environment, good for development and good for trade. The group argues that subsidies are at least partly responsible for the alarming deple-

tion of many fish stocks and have contributed to the distortion of international fish trade by lowering the cost and increasing the volume of production.

Others, notably Japan and Korea, initially opposed this position, arguing that the principal cause of stock depletion was inadequate management of fisheries resources rather than subsidies and that the trade-distorting effects of fisheries subsidies should be discussed as part of the broader subsidies negotiations. However, in a June 2004 break-through submission, Japan acknowledged the need for disciplines on fisheries subsidies, turning the debate from *whether* specific disciplines should be established to how they should be addressed. The Japanese proposal was supported by Korea and Taiwan.

The proposals on fisheries subsidies are based on a 'traffic light' approach that includes three categories: a 'green box' of non-actionable subsidies; a 'red box' of prohibited subsidies; and possibly an 'amber box' of subsidies subject to disciplines if specific 'adverse effects' can be demonstrated. However, two alternative frameworks compete in the negotiations. The FoF have proposed a 'top-down' (positive or comprehensive list) approach, which calls for a general prohibition of fisheries subsidies that benefit the fishing industry with specific exceptions (see e.g. TN/RL/W/3, TN/RL/W/58 and TN/RL/W/166). Such an approach is also thought to enhance transparency of fisheries subsidies by providing Members an incentive to notify the programmes that they wish to maintain.

Japan, Korea and Taiwan support a 'bottom-up' (negative list) approach, which would require Members to identify prohibited subsidies on a case-by-case basis (TN/RL/W/172). They have argued that a blanket ban of subsidies, by limiting flexibility in the use of policy tools and eliminating an 'effect test', would differentiate fisheries from other sectors that are disciplined based on their trade impacts. They have proposed that all subsidies deemed to directly cause serious harm to fisheries resources should be prohibited, including subsidies for capacity-enhancement of fishing vessels and subsidies relating to illegal, unreported and unregulated (IUU) fishing. 'Green box' subsidies should include those with positive effects on fish stock recovery, social security, welfare, and research and development.

Special and Differential Treatment

Submissions by Brazil (TN/RL/W/174 and TN/RL/GEN/56) on the special concerns of developing countries included an elaborate list of special and differential treatment (SDT) provisions. Brazil called on developed countries to bear the brunt of the burden resulting from stricter fisheries subsidy disciplines, and to permit capacity-enhancing subsidies in developing countries under certain conditions. Its suggested 'green box' subsidies included: financial contributions to management services; support for adoption of environmentally-friendly fishing equipment and compliance with safety standards that do not have trade- or production-distorting effects; fees paid by other governments to access developing countries' Exclusive Economic Zones (EEZ); assistance to disadvantaged regions dependent on fisheries; and, under specific conditions, subsidies to small-scale fishing and capacity reduction. All subsidies not falling under the 'green box' would be considered 'red box' subsidies. In the case of least-developed countries (LDCs), these would be actionable for ten years, and challenged only if they were trade-distorting.

Furthermore, developing country members of regional fisheries management organisations (RFMOs) should be allowed to maintain certain capacity-enhancing subsidies within the limits of a "sustainable level of exploitation established under the RFMO." As a transparency-enhancing measure, Brazil suggested a notification requirement that would presume any subsidy not notified to be prohibited. Addressing Japan's concern about IUU fishing, Brazil proposed that all of a Member country's 'green box' subsidies should become challengeable under WTO rules if an RFMO found a single vessel registered in that country engaged in such activities. However, Japan contended that such an approach would adversely affect developing countries that have less capacity to enforce efficient management. Several developing country Members supported the strong S&D provisions proposed by Brazil, and Sri Lanka particularly appreciated the section on natural disasters that would allow financial support to fishermen struck by natural catas-

trophes. The EU, China and the FoF also welcomed the paper, while Japan, Korea and Taiwan criticised it.

Eight 'small vulnerable coastal states', including Antigua and Barbuda, Belize, Fiji, Guyana, the Maldives, Papua New Guinea, the Solomon Islands, and St Kitts and Nevis, had previously submitted a proposal that highlighted the relatively high dependence of their populations on fisheries, and called on Members to address the sustainable development concerns of small vulnerable coastal states, including the operationalisation of proposals on SDT for developing countries in this area (TN/RL/W/136). They would like to see the following to be excluded from the definition of a subsidy: access fees and development assistance; fiscal incentives to domestication and fisheries development; and assistance to artisanal fisheries.

In September 2005, the group - excluding Belize and the Maldives but joined by Barbados, the Dominican Republic, Grenada, Jamaica, St Lucia, and Trinidad and Tobago - reiterated this position (TN/RL/GEN/57). It also called into question both the appropriateness of the WTO as a forum for handling subsidies that are solely production-related and not trade-distorting, and the use of a 'traffic light' approach to addressing fish stock conservation issues. Reactions to the proposal were mixed. Brazil, Chile, China and Peru voiced concern about the proposal's implicit differentiation between small vulnerable coastal states and other developing countries.

Specific Issues

Several submissions elaborated on specific subsidies categories. The US submitted further clarifications on subsidies for vessel decommissioning as a candidate for the 'green box' (TN/RL/GEN/41). Some Members noted that the usefulness of decommissioning schemes depended on the criteria and conditions attached. New Zealand suggested that fisheries subsidies to management services should be allowed under WTO rules, but acknowledged that an agreed definition of 'management services' would be neces-

sary (TN/RL/GEN/36). New Zealand also highlighted issues related to infrastructure subsidies, arguing that subsidies specific to fisheries infrastructure could have an effect on overfishing and overcapacity and should therefore be prohibited under new disciplines (TN/RL/GEN/70). Japan, Korea and Taiwan were reluctant to distinguish between fisheries and other infrastructure, which they said was impossible to do in practice. In another submission, Japan linked IUU fishing and subsidies, arguing that subsidies for overseas transfers of fishing vessels may lead to IUU fishing (TN/RL/GEN/47). FoF members took this as an argument in favour of tackling fisheries subsidies in general, rather than trying to identify those that might lead to IUU fishing on a case-by-case basis.

In a joint submission, Australia, Ecuador and New Zealand raised general questions about subsidies to aquaculture (TN/RL/GEN/54). However, the EU and India questioned whether these subsidies would fall within the fisheries subsidies mandate. China opposed applying any new rules to inland fisheries and aquaculture. Following a second brief discussion of the issue in September 2005, aquaculture was dropped from the agenda for the time being.

The EU introduced enforcement issues into the debate, proposing a dual notification system for fisheries subsidies (TN/RL/W/178 and TN/RL/GEN/39). Members could choose either domestic control systems, whereby they would endorse fisheries subsidies in national law after they have been granted, or a multilateral control system requiring notification to the WTO prior to the provision of fisheries subsidies. A de minimis rule would impose less stringent notification requirements on small subsidies. Information about subsidies should be made readily available to WTO Members via the Internet. Members were reluctant

to discuss enforcement of disciplines without knowing the outcome of the various categories and sceptical about the effectiveness of the national enforcement solution. Brazil found the proposal insufficient to address developing country needs despite the inclusion of longer phase-in periods and technical assistance.

Regional Trade Agreements

In mid-November 2005, the Chair's draft text for the Hong Kong ministerial declaration proposed the following elements for an RTA 'transparency mechanism': early announcement, notification, consultative/review process, subsequent notification and reporting, dissemination of RTA information, technical support, transitional provisions, and appraisal of the implementation of the transparency mechanism. The text also had two transparency-related annexes, one on the 'submission of data by RTA parties' and another on 'outlines for the Secretariat's report'.

Several Members, including the US, Chile, Australia and the EU expressed support for the Chair's text, although the latter two would also like to see movement on 'systemic issues', i.e. the clarification and improvement of WTO rules on RTAs.

For instance, while GATT Article XXIV:8 (b) requires 'duties and other restrictive regulations of commerce' to be eliminated on 'substantially all the trade' between the parties to an RTA, WTO Members have so far been unable to agree on (i) what constitutes 'substantially all trade', and (ii) how to define the 'other restrictive regulations of commerce' that should be eliminated.

The EU and China have proposed limiting the discussions on 'substantially all trade' to a quantitative benchmark, which could be based on a percentage of tariff lines, the volume of trade in a given product, or a combination of the two. Japan has indicated a preference for a trade volume test, while Australia has proposed the elimination of all duties on a very high minimum of 95 percent of tariff lines at the six-digit level of the Harmonised System at the end of a transitional period. Australia has also proposed that at least 70 percent of 'highly traded' products should be liberalised when an RTA enters into force.

Members have tabled several proposals on the transition period for the full implementation RTAs (GATT Article XXIV:5 (c) requires this to happen 'within a reasonable period of time'). Convergence seems to be emerging on a 10-year period, but countries are flexible with longer timeframes, the EU in 'limited circumstances' and Japan for certain 'types of products'. The ACP group has proposed that liberalisation become operational only after the expiry of an 18-year transition period, and should be linked to countries' development and financial status.

No consensus has emerged on the inclusion and/or form of special and differential treatment (SDT) in RTAs, particularly those between developed and developing countries. In April 2004, African, Caribbean and Pacific (ACP) states submitted a proposal that called for SDT to be explicitly incorporated in any new WTO rules on regional trade agreements. China is the only other Member to have proposed that WTO rules on RTAs should explicitly allow SDT to be granted to developing countries.

The inclusion of the Enabling Clause as an issue for negotiations under the RTA transparency provisions has pitted developed against developing countries. ACP countries, Brazil, China, Egypt and India oppose it, while all developed countries - supported by a few developing countries such as Chile - favour its inclusion.