



ARTISANAL FISHING:

**PROMOTING POVERTY
REDUCTION AND COMMUNITY DEVELOP-
MENT THROUGH NEW WTO RULES ON
FISHERIES SUBSIDIES**

An Issue and Options Paper



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Community Development
Through New WTO Rules on Fisheries Subsidies**

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Prepared by David K.Schorr

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It is the aim of this paper to stimulate discussion on the treatment of artisanal fishing within efforts to clarify and improve WTO rules in a manner that contributes to sustainable development and the economic, social, and environmental health of the world's fisheries.

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United Nations Environment Programme

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In the field of environmental economics, ETB aims to promote the internalization of environmental costs and enhance the use of economic instruments to contribute to sustainable development and poverty reduction, including in the specific context of the WTO

For more information regarding UNEP's work on fisheries subsidies, please see <http://www.unep.ch/etb> or contact Anja von Moltke, Economic Affairs Officer, ETB at tel: 41-22-917 81 37, or email anja.moltke@unep.ch

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Abbreviations

ADB	Asian Development Bank
ASCM	WTO Agreement on Subsidies and Countervailing Measures
DFWs	Distant Water Fleets
EEZ	Exclusive Economic Zone
FAO	United Nations Food and Agriculture Organization
FAO SOFIA	FAO State of World Fisheries and Aquaculture
S&DT	Special and Differential Treatment
SFLP	Sustainable Fisheries Livelihood Programme
UNEP	United Nations Environment Programme
UNEP-ETB	UNEP Economics and Trade Branch
WSSD	World Summit on Sustainable Development (Johannesburg 2001)
WTO	World Trade Organization

Introduction

Since the earliest days of dialogue over fisheries subsidies at the WTO, it has been clear that “artisanal fishing” presents a special case. Although never precisely defined, the term has been repeatedly used to identify a set of interests and people likely to need particular treatment under new WTO fishing subsidy disciplines.

There are good and fundamental reasons for this. In the midst of a global fisheries crisis caused mainly by large, high-tech, industrial fleets, “artisanal fishing” refers broadly to small, underdeveloped, and often severely impoverished fishing communities whose immediate survival depends on their ability to continue benefiting from local fisheries that in many cases are centuries old. These communities are highly significant in human, economic, and environmental terms.

The artisanal fishing sector—regardless of any technical debate over its precise definition¹—provides direct employment to tens of millions of people, and indirect employment to tens of millions more (many of them women involved in fish processing). Artisanal fishing comprises 90% of all fishing jobs worldwide, approximately 45% of the world’s fisheries, and nearly a quarter of the world catch.² They provide critical income and edible protein to hundreds of millions across the globe. Moreover, artisanal fishers operate in some of the biologically richest and most sensitive waters on earth, often in tropical coastal zones where interactions with coral reefs and land-based ecosystems introduce complex interdependencies.

The special concern of WTO delegations for artisanal fishing communities reflects a broadly shared desire to ensure that small, vulnerable, and underdeveloped communities are not inadvertently harmed by new WTO rules that aim to eliminate unsustainable trade and production distortions in the fisheries sector. Subsidies to support such communities are in some crucial respects different in character from those granted to well-developed and globally competitive industries.

The urge to protect “artisanal fishing”—and, in essence, to provide certain derogations from new fisheries subsidies disciplines for artisanal fishing—thus has a relatively clear basis. Less well understood, however, is how this urge can or should be translated into practice within new WTO fisheries subsidies rules. As a contribution to the ongoing international dialogue, this paper aims to elucidate some of the technical and political issues underlying that question. In particular, this paper seeks to provide an analytic framework to facilitate discussion of two basic practical questions:

- What should be the scope of any special rules for subsidies to artisanal fisheries? In particular, what should be the definition of “artisanal fishing” within the ASCM?

¹ **A preliminary definition of “artisanal fishing”:** Part II of this paper is devoted to a discussion of the difficulties attending any attempt to define “artisanal fishing” precisely. Suggestions for narrowing such a definition in the WTO context are offered in ¶¶ 4.2-4.5. Elsewhere throughout this paper, the term is used in a general non-technical manner to refer to fishing having some or all of the following characteristics: small-scale; local (usually “in-shore”), relatively poor, non-industrial, and “low-tech”.

² UNEP 2004a, p. 2; FAO 1998, Part D, § 1.1.1; U.N. Atlas of the Oceans (“Key features of small scale and artisanal fisheries”).

- What limits or disciplines should apply to subsidies to artisanal fisheries under new WTO rules? Are there substantive conditions that should be applied? Or procedural conditions?

Rather than proposing definitive answers to these questions, this paper provides an analytic framework, and perhaps a few provocative words, in the hope of aiding discussion among governments and other stakeholders. The paper does, however, take as its fundamental orientation the need to find an approach that maximizes incentives for truly sustainable development.³

Accordingly, this paper is structured as follows: Part I comments on the context in which this discussion is taking place, looking at both the overall challenges facing the artisanal fishing sector and the discussion of “artisanal fishing” in the WTO so far. Part II then turns to the definitional debate that is preoccupying some delegations and stakeholders, exploring the difficulty of finding a ready-made definition of “artisanal fishing” from the usage of the term outside the WTO context. In an effort to move the definitional debate forward, and to inform other elements of the artisanal fishing discussion, Part III attempts to tease apart the “why” and “how” of subsidies to artisanal fisheries, reviewing basic policy objectives and the likely nature of subsidies to artisanal fisheries. Part IV then addresses in a general fashion some of the practical issues surrounding new WTO rules on subsidies to artisanal fisheries, offering a few specific suggestions regarding both definitional and other issues. The final part of the paper closes with several general conclusions and recommendations.

Part I — Context

The Sustainable Development Challenge

- 1.2. It is hard to imagine a human activity in which the twin imperatives of human development and environmental sustainability are more urgently united than in the case of artisanal fishing. The artisanal fishing sector includes some of the poorest and most underdeveloped communities on earth, and it is little wonder that the development policies of many governments and intergovernmental organizations are focused on the artisanal fishing sector.⁴
- 1.3. Moreover, as in so many situations where underdevelopment is a predominant problem, the issue of artisanal fishing also raises significant questions of international equity. While it is generally accepted that 75% of the world’s commercial fisheries are either fished to the limits of their natural carrying capacity, or beyond,⁵ and that aggregate global fishing

³ More particularly, this paper takes as its frame of reference UNEP’s institutional mission, the mandate of ¶¶ 28 & 31 of the WTO Doha Declaration, and the call for the elimination of harmful fishing subsidies issued by the 2001 World Summit On Sustainable Development in Johannesburg, (WSSD Plan of Implementation, ¶ 31(f)).

⁴ See, e.g., Asian Development Bank 1997, p. 35 (The ADB’s intervention in the artisanal fishing sector “provides great opportunity for addressing the crosscutting concerns of poverty reduction and environmental protection.”)

⁵ FAO SOFIA 2004, p. 32.

capacity needs to be reduced,⁶ the fact remains that many coastal developing countries have yet to enjoy the means to fully exploit the fisheries within their EEZs.

- 1.4. The developmental dimension of the artisanal fishing issue is thus fundamental. As the Ministerial Declaration adopted at the WTO's Sixth Ministerial Conference in Hong Kong on 18 December 2005 for the first time explicitly calls on Members to prohibit those subsidies that lead to overcapacity and overfishing, a key goal within the current WTO negotiations must be to ensure that new fisheries subsidies rules do not prevent governments from investing in the improvement of their underdeveloped artisanal fishing communities, or from achieving equitable access to marine fisheries resources.
- 1.5. But while governments universally recognize the developmental challenges facing many artisanal fishing communities, there has been less emphasis—and perhaps even less agreement—on the need for attention to the sustainability of artisanal fishing practices. Some stakeholders in the debate, perhaps employing a degree of diplomatic license, have at times even gone so far as to suggest that artisanal fishing is too small in scale or otherwise underdeveloped to present any significant threat to the environment or to resource husbandry. Unfortunately, history has already shown that this is not the case.
- 1.6. Even if responsibility for the wholesale depletion of many of the world's major fisheries undoubtedly lies at the feet of the highly mechanized industrialized fleets, it is equally true that “artisanal” fisheries around the world are increasingly facing challenges to their own sustainability. These challenges arise in a variety of circumstances. In some cases, the depletion of artisanal fisheries is again due—at least in part, and at times perhaps wholly—to the activities of industrial “distant water fleets” (DWFs) arriving to compete with traditional fishers.⁷
- 1.7. In a significant number of cases, however, challenges to the sustainability of artisanal fishing come directly from the actions of artisanal fishers themselves. This is true particularly where traditional patterns of fishing are undergoing change—which is likely the case in the majority of artisanal fisheries. In fact, the purely traditional fishery is fast becoming a thing of the past, as traditional fishers adopt new technologies, undertake new modes of social organization, and aim at new markets for their fish. The motorization of vessels and modernization of fishing gear in artisanal fisheries is perhaps the most fundamental of these changes.⁸

⁶ See Porter 1998.

⁷ The technical literature on artisanal fishing is replete with references to the problems caused by competition between off-shore fleets and artisanal fishers. See, e.g., SFLP Dakar Declaration 2001. See also U.N. Code of Conduct for Responsible Fisheries, ¶ 6.18 (referring to the need to grant “preferential access” to artisanal fishers in inshore waters).

⁸ See, e.g., Mathew 2003, p. 47 (“With the widespread adoption of motorization, small-scale fisheries have grown significantly over the past two decades. The rapid expansion of artisanal fishing capacity under open access regimes has begun to exert overfishing pressures on coastal fisheries resources, especially in Asia and Africa. There are increasing conflicts between different gear groups as a result of increased mobility of fishing vessels, capacity expansion and overfishing pressures.”). Regarding challenges to the sustainability of artisanal fisheries generally, see Asian Development Bank 1997, pp. 37-40; Boegaert 2003; FAO 2002.

- 1.8. These facts must, of course, be kept in perspective. Artisanal fisheries generally tend to be both “cleaner” and more efficient than many industrial fisheries. Discarded bycatch, for example, is typically much lower (or even close to zero) in artisanal fisheries. Moreover, the kinds of changes just described are often the result of purposeful development policies. Cumulatively, however, they have been associated with a significant expansion in the capacity and fishing power of many artisanal fleets. In more than a few cases, these changes have led previously underutilized fisheries to the brink of overexploitation or beyond.⁹ Unfortunately, in a small number of cases they have also been associated with the adoption of highly destructive fishing techniques, such as “dynamite” fishing on tropical reefs.¹⁰
- 1.9. Another factor affecting the sustainability of artisanal fisheries is the difficulty of establishing effective management regimes over them. Here again, it is worth confronting the notion that “traditional” fisheries do not require formal management regimes: this hopeful idea is fast becoming an anachronism. The need to formalize and improve the management of artisanal fisheries is gaining worldwide acceptance, and is the explicit policy goal of numerous governments.¹¹
- 1.10. Unfortunately, many of the essential qualities of “artisanal” fisheries make them especially hard to manage.¹² Their small-scale and highly diffuse nature (thousands of small craft, often landing fish at scores of remote landing points), their often low level of technology (including the absence of communications or monitoring gear), the sometimes entrenched informality of their customary governance, and even their often “multispecies” character all compound the daunting difficulties faced by fisheries managers everywhere.
- 1.11. Finally, it is worth noting the evidence that inappropriate subsidy policies can pose a real threat to the health of artisanal fisheries. In the first place, fisheries subsidies in general have been shown more likely to do harm than good under most real world circumstances.¹³ Moreover, there is already clear evidence that improper subsidies can have negative consequences for artisanal fishing in particular. For example, a case study published by UNEP in 2003 described the negative economic and environmental impacts of subsidies to the artisanal fishery in Senegal.¹⁴ In other cases, evidence has been brought to light of subsidies inadvertently supporting IUU fishing by artisanal enterprises.¹⁵ The need to eliminate harmful fishery subsidies from the artisanal sector has been explicitly recognized

⁹ See Mathew 2003, p. 54 (referring to overfishing pressures in artisanal fisheries in Asia and Africa, and pointing in particular to the case of Senegal);

¹⁰ See, e.g., Asian Development Bank 1997, ¶ 63, p. 27.

¹¹ For a sample of the literature on the challenges to managing artisanal fisheries, see Mathew 2003;; FAO 2002; FAO 1993.

¹² See generally “Governance of Small-scale Fisheries” in *UN Atlas of the Oceans* (referring to the “severe constraints faced by artisanal fisheries in terms of management”)

¹³ UNEP 2004b, pp. 45-48.

¹⁴ UNEP 2001a.

¹⁵ Dallmeyer 1989.

by international development experts and governments alike.¹⁶ Of course, it is also true that appropriate subsidies to artisanal fisheries can have positive effects.¹⁷

- 1.12. In summary, the problem of sustainability facing artisanal fisheries is no less fundamental than the problem of development. It is clear that artisanal fishing communities cannot enjoy development if they run out of fish, and governments must now increasingly confront the need to reorient their policies accordingly.¹⁸ It follows that WTO fisheries subsidies rules need to take serious account of the sustainability dimension in their treatment of artisanal fishing, even as the weight of new disciplines is concentrated on curbing subsidies to the world's most rapacious industrial fleets.

The Discussion of “Artisanal Fishing” in the WTO So Far

- 1.13. As noted above, the question of artisanal fishing has been on the table since the early phases of the WTO fisheries subsidies discussion. Apart from a recent attempt by Brazil¹⁹ to develop possible legal language the disciplines, treatment of the issue has been relatively general and non-technical in character- Appendix A, below, excerpts selected references to artisanal fishing in the WTO documentation from 2000 to November 2005.
- 1.14. Undoubtedly, the WTO discussion so far does not fairly reflect the intricacy of interests or views held by governments in relation to artisanal fishing. Nevertheless, it may be useful to identify a few basic themes and issues that run through the existing papers:
- (a) One theme common to a number of early submissions by the proponents of new rules (the “*demandeurs*”) is that subsidies to artisanal fisheries are not the intended focus of new WTO fisheries subsidies disciplines.²⁰ The technical implications of these comments have yet to be fully clarified. According to the formal notes of the seventh Rules Group negotiating session, the United States reportedly indicated that “artisanal fisheries in developing countries . . . were unlikely to cause overcapacity and overfishing and were not an appropriate object of increased disciplines.”²¹ A later submission by another *demandeur* suggested that subsidies to “small-scale” fisheries should be left in an actionable “amber” category, rather than subject to the prohibitions at the heart of proposed new rules.²²

¹⁶ See, e.g., Christy 1997, pp. 2, 11, 30.

¹⁷ FAO 2004, ¶ 18.

¹⁸ The need for a “paradigm shift” towards sustainable management of artisanal fisheries is explored in detail in a forthcoming UNEP paper, authored by Sebastian Mathew from ICSF.

¹⁹ TN/RL/GEN/79 (Brazil, 16 November 2005). (Note: the Brazil text was tabled during the final stages of authoring this paper, and after the completion of peer review. Accordingly, Brazil’s text is not analyzed here.)

²⁰ See, e.g., TN/RL/M/2 (Meeting Summary, 11 June 2002), p. 3, ¶ 16); TN/RL/W/77 (United States, 19 March 2003), ¶ 3 & fn. 1.

²¹ TN/RL/M/7 (Meeting Summary, 11 April 2003), p. 6, ¶ 25 (referring to comments by the United States). Whether this accurately reflects the full U.S. position remains to be seen.

²² TN/RL/W/115 (Chile, 10 June 2003), pp. 2-3, ¶ 1.5.

- (b) Outside of the *demandeur* group, submissions have also tended to urge either the exclusion of subsidies to artisanal fisheries from new rules, or at least their special treatment. The strongest position offered to date, tabled by a group of small island developing states, called for “measures undertaken by governments of small vulnerable coastal states to assist their artisanal fisheries sector” to be excluded from the definition of a fishing subsidy.²³ Japan and Korea have similarly raised repeated concerns with the treatment of their own artisanal or small-scale fisheries.²⁴ The recent submission from Brazil constitutes submitted the most concrete proposal so far, categorizing subsidies to small-scale and artisanal fishing into the green box, on condition that the fisheries are not “patently at risk”.²⁵
- 1.15. The widely (if vaguely) held desire to give some special consideration to subsidies to artisanal fisheries appears to be based on a loosely shared acceptance of two basic propositions:
- (i) That subsidies to artisanal fisheries are not likely to be harmful;²⁶ and
 - (ii) That subsidies to artisanal fisheries may be important and necessary components of government policies aimed at poverty alleviation and development.²⁷
- 1.16. While there can be no doubt about the truth of the second of these propositions, the notion that subsidies to artisanal fisheries are simply harmless deserves close scrutiny and debate. Where the submissions discussed above have tended to take this view, they refer sometimes to the unlikelihood such subsidies will cause “overcapacity or overfishing”²⁸ and at other times to the unlikelihood they will cause trade distortions.²⁹ These claims need to be combed apart and reviewed separately:
- (a) The susceptibility of artisanal fisheries to overcapacity and overfishing—and the role poorly considered subsidies can play in causing these evils—has already been established, as discussed above (¶¶ 1.2-1.12). This is not to say that the risks of overfishing or the potential harms of subsidies in the artisanal context are the same as in larger industrialized fisheries. Certainly the scale of those harms in any given fishery will tend to be smaller in the artisanal case. This does not, however, mean that the harms are trivial, either from a local perspective or in terms of the overall

²³ TN/RL/W/136 (Antigua and Barbuda, et al, 14 July 2003), p. 3.

²⁴ TN/RL/W/160 (Korea, 8 June 2004), pp. 3-4, ¶¶ 6 & 11; TN/RL/W/172 (Japan, 22 February 2005), p. 4, ¶¶ 15-16.

²⁵ TN/RL/GEN/79 (Brazil, 16 November 2005), pp.2-3

²⁶ See, e.g., TN/RL/M/2 (Meeting Summary, 11 June 2002), p. 3, ¶ 16; TN/RL/M/11 (Meeting Summary, 8 September 2003), pp. 5-6, ¶ 26.

²⁷ See, e.g., id.; TN/RL/W/11 (Japan, 2 July 2002), pp. 3-4, ¶ 17; TN/RL/W/115 (Chile, 10 June 2003), pp. 2-3, ¶ 1.5; TN/RL/W/136 (Antigua and Barbuda, et al, 14 July 2003), p. 3.

²⁸ See, e.g., TN/RL/M/7 (Meeting Summary, 11 April 2003), p. 6, ¶ 25 (comments of the United States).

²⁹ See, e.g., TN/RL/W/115 (Chile, 10 June 2003), pp. 2-3, ¶ 1.5; TN/RL/M/10 (Meeting Summary, 17 July 2003), pp. 8-9, ¶ 27 (comments of Chile).

impacts on the world's marine resources and ecosystems. It is important to recall that the artisanal sector represents a very significant proportion of total worldwide fishing. Indeed, several delegations have directly referred to the problem of achieving sustainability in artisanal fisheries, and have clearly assumed that subsidies to artisanal fisheries should not be treated as inevitably safe.³⁰

- (b) The argument that subsidies to artisanal fisheries will not generally lead to trade distortions raises an important point about the essential orientation of the fisheries subsidies negotiations: these talks are aimed not only at eliminating distortions caused by fisheries subsidies at the level of “trade” (i.e., international sale) but also at the level of fisheries production, where the interaction between subsidies and sustainable fisheries management is vitally important. In other words, fisheries subsidies more directly distort the access of producers to resources than the access of exporters to markets—because, obviously, before you sell a fish you have to catch it. This focus on “production distortions” has been repeatedly emphasized by governments and other stakeholders in the fisheries subsidies debate,³¹ and is fully consistent with the mandate and competence of the WTO.³² So once again the question returns to the issue of the impact of subsidies on the race for fish, where artisanal fisheries are undoubtedly implicated. This issue is discussed further in ¶ 1.20, below.
- (c) This emphasis on eliminating distortions at the production level does not, however, fully answer questions that have been raised regarding the proper territorial reach of new WTO fishing subsidies rules. Some stakeholders have argued that the impacts of artisanal fishing are too localized within national jurisdictions to be of legitimate international concern.³³ In this view, artisanal fisheries are simply so small and “coastal” that subsidies to them cannot have meaningful effects on international competition, even if the subsidies have negative impacts on sustainability. This argument, however, fails to recognize at least four ways in which artisanal fishing can (and increasingly does) have implications for international competition:
 - (i) **Artisanal fishery products are increasingly oriented towards international markets.**³⁴ Indeed, several delegations have already

³⁰ See, e.g., TN/RL/W/11 (Japan, 2 July 2002), pp. 3-4, ¶ 18 (noting the reality of overexploitation in small-scale coastal fisheries); TN/RL/W/176 (Brazil, 31 March 2005), p. 6, ¶ (ii)(b)(2) and TN/RL/GEN/79 (Brazil, 16 November 2005) p. 2 2.(2) (providing green box treatment to small-scale fisheries, provided such fisheries are not “patently at risk”).

³¹ See, e.g., TN/RL/W/3 (Australia, Chile, Ecuador, Iceland, New Zealand, Peru, the Philippines, and the United States, 24 April 2002), ¶¶ 10, 14–16; TN/RL/W/77 (United States, 19 March 2003), p.2, ¶ 4; TN/RL/W/176 (Brazil, 31 March 2005), p.5, ¶ 20.

³² WWF 2004, pp. 43-44, ¶ IV.B.4(e)(i).

³³ This argument was made forcefully by some participants at the June 2005 UNEP expert workshop convened in Geneva to review early drafts of this paper and of the Yu & Fonseca-Marti paper on S&DT. The argument does not appear to have been included in formal WTO submissions to date.

³⁴ In Mauritania, the artisanal sector increasingly exports fish of high commercial value to international markets. See UNEP forthcoming Failler “*Evaluation de l’Impact de la Libéralisation du Commerce : Une étude de cas sur le secteur des pêches de la République Islamique de Mauritanie*”

highlighted the interest of their governments in using subsidies “to raise income levels by expanding [artisanal fishing] into monetized activities for the domestic and speciality export market”³⁵ In other words, international competitive impacts are a direct objective of some subsidies to artisanal fishing. Some such supports would even likely qualify as “export subsidies” under current WTO rules.

- (ii) **Traditional nearshore artisanal fleets sometimes compete with foreign or export-oriented industrial fleets.**³⁶ Even where artisanal fishing is restricted to nearshore activities, conflicts between industrial and artisanal fleets can arise.³⁷
- (iii) **Artisanal fishing activities are increasingly expanding to offshore fisheries where foreign or export-oriented fleets may be active.** The ambitions of governments and fishermen alike for the development of artisanal fisheries often include the extension of fishing activities from traditional nearshore fishing grounds to more distant inshore or even offshore waters. The addition of motors, navigational aids, and refrigeration has allowed many traditional fleets to switch from day-long fishing trips to far more distant multi-day excursions. In this regard, it is interesting to note that in some cases artisanal fleets have proved more efficient and more successfully competitive than rival industrial fleets operating in the same waters.³⁸
- (iv) **Even a fishery that appears commercially isolated may be biologically linked to fisheries of international relevance.** Ocean ecosystems are complex and highly interdependent, often in ways that remain poorly

³⁵ TN/RL/W/136 (Antigua and Barbuda, et al, 14 July 2003), p. 3. This explicit interest in an export orientation was reiterated in TN/RL/GEN/57/Rev.1 (TN/RL/GEN/57/Rev.1 (Fiji, Jamaica, Papua New Guinea, and the Solomon Islands, 4 August 2005), p.1. See also Mathew 2003, p. 54 (discussing social effects of the “growing dependence on export markets” of artisanal fishing communities); FAO 1994, p. 13 (“In Senegal, a major part of the artisanal fishery sector is driven towards export”);

³⁶ For purposes of this paper, **the terms “nearshore” “inshore” and “offshore”** are used as defined by the FAO, *i.e.*: nearshore = “shallow waters at a small distance from the shore”; inshore= “waters of the shallower part of the continental shelf”; and offshore = “waters located well beyond the shores (beyond the edge of the nearshore or inshore waters) . . . part of the oceanic environment”. FAO 2005.

³⁷ See, *e.g.*, Asia Development Bank 1997 (noting problems arising from incursions by industrial fleets into inshore artisanal fisheries); UN Atlas of the Oceans 2005, entry on “Key features of smallscale and artisanal fisheries”) (“In many countries small-scale/artisanal fisheries are still developing rapidly-expanding markets (*e.g.* export markets”); Naamin et al. 1995, § 3.2.2 (finding a competitive relationship between the artisanal nearshore and industrial offshore skipjack tuna fisheries in Indonesia).

³⁸ See, *e.g.*, UNEP 2001a, p. 26 (in Senegal, subsidies to encourage development of an industrial fleet failed because the less-subsidized artisanal fleet proved more competitive).

understood.³⁹ This interdependence can include biological connections between fisheries close to shore and those further away, even up to the high seas.⁴⁰ Such links may be as simple as the migration of a given stock from nearshore spawning grounds to deep-sea homes. Or it could involve intricate relations among different species along a marine food chain. Or (as in the case of artisanal dynamite fishing on sensitive coral reefs), the larger ecosystem impacts may result from the degradation of habitats or the depletion of non-target species. In any case, biological interdependence in fisheries is tantamount to commercial interdependence in the race to catch fish, and the assumption that any marine fishery is isolated has often proved untrue and is almost always dangerous.

In short, competitive interaction between artisanal and industrial fishing fleets is common and growing. Even artisanal fishing at its increasingly rare “purely local” scale is a relevant factor in the international competition to catch and sell fish. As the UN has concluded:

Conflicts between artisanal and industrial fisheries for resources and on the market are increasingly frequent and may jeopardize development efforts.⁴¹

Indeed, the international relevance (or potential relevance) of many artisanal fisheries directly underlies the strong interest of some governments in protecting their freedom to subsidize these fisheries. This international competitive relevance does not mean, of course, that subsidies to promote artisanal fisheries should necessarily be prohibited under new WTO rules—indeed, considerations of equity and development may strongly suggest the contrary. But it clearly means that subsidies to artisanal fishing cannot simply be excluded entirely from the scope of such rules because they are unlikely to have international competitive effects.

- 1.17. As discussed below (¶¶ 2.3-2.4), the WTO submissions to date also raise but do not resolve the issue of defining “artisanal fishing”, leaving a particular confusion around the relationship between the terms “artisanal” and “small-scale”, and leaving open the delicate question whether special treatment for subsidies to “artisanal fishing” should be limited to developing countries, or should extend to some fisheries in developed countries as well.
- 1.18. In short, as delegations widely know, the discussion of “artisanal fishing” within the negotiations to date has raised more questions than it has answered, leading several governments to call directly for more detailed examination of the relevant issues.⁴²

³⁹ See generally FAO 2003a.

⁴⁰ See, *e.g.*, Macy & Brodziak 2001 (documenting previously unknown critical lifecycle interactions between in-shore and off-shore squid fisheries).

⁴¹ UN Atlas of the Oceans 2005 (entry on “Small-scale fisheries development”). For further evidence of the general growth in artisanal-industrial competition, see, *e.g.* SFLP Dakar Declaration 2001, ¶ 3(c); Mathew 2003, p. 52 (referring to 2001 FAO data showing half of tuna catch in Indian Ocean originating from artisanal fisheries); Asia Development Bank 1997, ¶¶ 12, 36(v), & 69.

Relationship to the S&DT Debate

- 1.19. This paper is being brought forward by UNEP in conjunction with a separate examination of possible approaches to “special and differential treatment” for developing countries within proposed new rules on fisheries subsidies.⁴³ Clearly, there is an important element of overlap between the topics treated by these two papers, and a few comments on the relationship between them may be in order:
- (a) This paper proposes an approach to artisanal fishing that focuses heavily on the goals of poverty alleviation, food security, and development—goals that also lie at the core of the broader S&DT question.⁴⁴ To the extent that effective rules for S&DT are included in new WTO fishing subsidies disciplines, the need for specific treatment of artisanal fishing may be reduced.
 - (b) This paper takes the view that special treatment of artisanal fishing within new WTO rules will be necessary and important, but also argues that such treatment is not without risks for delegations and stakeholders involved in the negotiations. In particular, it is critically important that the implications of special treatment for the sustainable management of fisheries be considered. Similar concerns clearly arise in the context of general approaches to S&DT on fishing subsidies, as reflected in the extensive treatment of the sustainability issue in the Yu & Fonseca-Marti paper.⁴⁵
- 1.20. The artisanal fishing and S&DT conversations also share a theoretical question raised by the focus of the fisheries subsidies issue on production distortions, discussed above (¶ 1.16(b)): to what extent should S&DT or provisions on artisanal fishing tolerate production distortions that would otherwise be discouraged by new fisheries subsidies disciplines?
- (a) The ASCM as it presently operates (or purports to operate) creates more policy space for subsidies in developing countries than in developed countries. Underlying this normative architecture appear to be two fundamental tendencies that exist in some tension with one another. First, the system at times seems to assume that subsidies in developing countries are less likely to cause trade distortions than developed country subsidies. Second, the system seems to tolerate some developing country subsidies even when they may lead to a certain degree of trade distortion. Some of the ongoing debate around the proper scope of “special and differential treatment” for developing countries may revolve around the interplay between these assumptions, and the degree to which one rather than the other should be given weight.
 - (b) But should, for example, the allowance for export subsidies by least developed countries serve as a model for tolerating “capacity-enhancing” subsidies to artisanal fisheries? Here, it may be helpful to keep in mind two facts that distinguish the

⁴² See, e.g., TN/RL/M/18 (Meeting Summary, 15 October 2004), pp. 2-3, ¶ 7; TN/RL/W/172 (Japan, Korea, Taiwan, 22 February 2005), p. 4, ¶ 17; TN/RL/W/176 (Brazil, 31 March 2005), p. 6, ¶ 21(ii)(a)(2) & fn. 12.; TN/RL/GEN/79 (Brazil, 16 November 2005), p. 1 2.(b)(2)& fn. 6.

⁴³ UNEP (2005), Yu & Fonseca-Marti, *Reflecting Sustainable Development and Special and Differential Treatment for Developing Countries in the Context of New WTO Fishing Subsidy Rules*

⁴⁴ See *id.*, pp. [4-9]

⁴⁵ See, e.g., *id.*, pp. [18-20, 24-25, 30]

toleration of trade distortions from the toleration of production distortions in the fishery sector:

- First, in the case of fisheries, production distortions result not only in a redistribution of the benefits of economic activity, they also may reduce overall activity by contributing to resource depletion. In other words, where trade distortions mainly effect how the pie is divided, production distortions can shrink the pie.
- Second, under broadly subscribed international treaty commitments, such as the U.N. Convention on the Law of the Sea and the U.N. Code of Conduct for Responsible Fisheries, governments bear a responsibility for the conservation and husbandry of fisheries resources both on the high seas and within their EEZs and territorial waters.⁴⁶

Proper consideration of the distinction between a focus on trade distortions (as classically defined) and on production distortions is thus critical to achieving a true “win-win-win” outcome for trade, environment, and sustainable development in the context of fisheries subsidies, both as regards S&DT and as regards artisanal fishing.

- 1.21. From the foregoing, it is clear that the artisanal fishing and S&DT discussions cannot be carried on in isolation. Indeed, the overlap between them poses an important practical question: assuming new WTO rules eventually do include special treatment for artisanal fishing, should such treatment be granted in the context of S&DT, or separately?

The negotiating proposals tabled so far have varied in their answers to this question. When a group of eight small island developing states tabled the first clear demand for special treatment of artisanal fishing, they proposed amending ASCM Art. 1 to exclude subsidies to artisanal fishing from the ASCM’s definition.⁴⁷ More recently, however, three of those delegations (joined by a fourth not involved in the first submission) tabled a proposal calling for special treatment of artisanal fishing subsidies as part of S&DT.⁴⁸ (Yu & Fonseca-Marti similarly include artisanal fishing within the scope of the S&DT options presented in their paper.) Brazil, on the other hand, has proposed artisanal fishing subsidies be treated as

⁴⁶ The extent of international legal obligations clearly differ according to whether a fishery is located on the high seas, within an EEZ, or in territorial waters. However, the common nature of fisheries resources, and the existence of some basic international duties, is reflected in the international legal treatment of fisheries in all three areas. See, UN Code of Conduct for Responsible Fisheries, Art. 1.3 (“The Code provides principles and standards applicable to the conservation, management and development of all fisheries”); see also *id.*, Art. 6; UN Convention on the Law of the Sea, Arts. 2:3 (“The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law”), 61:2 (duty to conserve EEZ resources).

⁴⁷ TN/RL/W/136 (Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St Kitts and Nevis. 14 July 2003), p.3.

⁴⁸ TN/RL/GEN/57/Rev.1 (Fiji, Jamaica, Papua New Guinea, and the Solomon Islands, 4 August 2005), p.4 ¶ 16.

“non-actionable” under a revitalized green light, apparently leaving them outside the scope of S&DT provisions Brazil has simultaneously suggested.⁴⁹

1.22. Beneath this “in or out of S&DT” issue are at least two specific policy questions:

- (i) Should special treatment for artisanal fisheries be limited to developing countries?
- (ii) What (if any) conditions or disciplines should be imposed on subsidies to artisanal fishing? To what degree should such conditions and disciplines be the same as those associated with other classes of subsidies that might qualify for S&DT?

Ultimately, the answers to these questions—*i.e.*, the effective scope and conditionality of special rules for subsidies to artisanal fishing—matter more than the formalistic problem of “in or out of S&DT”.⁵⁰

1.23. As evident in the discussion below, this paper tends to support the restriction of special treatment of artisanal fishing to developing countries (although the paper is not absolute on this point—see ¶¶ 3.4(a) & 4.2), and argues in favor of disciplining special treatment for artisanal fishing in ways that would likely need to apply to subsidies falling under general S&DT rules as well (e.g., the conditions imposed to prevent subsidies from contributing to unsustainable production distortions).

Part II — The Definitional Debate

The Definitional Debate in Perspective

2.1. Given the increasingly visible likelihood that some special treatment of “artisanal fishing” will be necessary within new fisheries subsidies rules, the problem of defining the term has come to the fore. In fact, as this paper was being drafted several other efforts to discuss or propose definitions of “artisanal fishing” were underway.⁵¹

⁴⁹ T N/RL/W/176 (Brazil, 31 March 2005); TN/RL/GEN/56 (Brazil, 4 July 2005), TN/RL/GEN/79 (Brazil, 16 November 2005)

⁵⁰ The proposals made in WWF’s technical treatise, *Healthy Fisheries, Sustainable Trade* illustrates this point. There, a proposed ban on “capacity-enhancing” fishing subsidies is relaxed for subsidies to artisanal fishing in developing countries, subject to certain conditions. In addition, WWF proposes that S&DT include a relaxation of the ban on capacity-enhancing subsidies for developing countries generally, also subject to similar conditions. The WWF treatise is not fully clear on how these parts of its proposal would interact. It appears, however, that the general S&DT provisions would grant more freedom to subsidize artisanal fisheries than the proposed “exception to the red box”. In other words, WWF’s proposal leaves unclear why, assuming good S&DT provisions were agreed, a separate treatment of artisanal fishing would be necessary at all. WWF 2004, ¶¶ V.D.2-6, V.H.3-4.

⁵¹ For example, the Commonwealth Secretariat is currently engaged in an intensive process to bring forward three regional papers on the definition of artisanal fishing. For overview, see also the Secretariat’s compilation of definitions in use for the terms “artisanal” fishing and fisheries, “small-scale” fishing and fisheries and “subsistence” fishing and fisheries, TN/RL/W/197 (Secretariat, 24 November 2005).

- 2.2. The definitional question is obviously critical, since a technical definition would provide one principal means of delineating the potential scope of any special treatment granted to "artisanal fishing" under new rules. In particular, the suggestion by some governments of a broad carve-out for subsidies to artisanal fisheries implies that the definition of "artisanal fishing" would be a critical substantive provision.
- 2.3. As noted above (¶ 1.17), the question of defining "artisanal fishing" has been given some direct attention within the WTO conversation so far. Indeed, a few rudimentary definitions have even been offered. The **United States** at one point, in an oral answer to an inquiry by Japan, stated:

As regards the term "artisanal fisheries", it referred to small-scale fisheries that employed labour intensive harvesting, processing and distribution technologies to exploit marine and inland fishery resources. Such fisheries typically targeted local rather than export markets.⁵²

One of the sponsors of the **small island developing states** paper also offered an oral definition:

On artisanal fisheries, [the sponsor] defined it to be the small-scale fisheries which are local in nature.⁵³

In an early CTE submission, **Japan** seems to have taken a similar approach, parenthetically defining "artisanal fisheries" as "small-scale coastal fisheries."⁵⁴

The most fully elaborated definition so far was offered by **Brazil** in a submission to the informal negotiating process in July 2005, in which it proposed artisanal fishing be defined as follows:

- (a) . . . fisheries activities performed at an in-shore basis with non-automatic net-retriever devices;
- (b) . . . activities carried out on an individual basis (including, but not necessarily, the family members);
- (c) the basic scope of the activities encompasses both family livelihood and a small profit trade; and there is no employer-employee relationship on the activities carried out.⁵⁵

⁵² TN/RL/M/8 (Meeting Summary, 10 June 2003), p. 9, ¶ 39.

⁵³ TN/RL/M/11 (Meeting Summary, 8 September 2003), p. 6, ¶ 27 (NOTE: the meeting summary does not identify the delegation making these remarks, other than as one of the sponsors of the paper under discussion). Consistent with this approach, a later submission by some small island developing states also refers consistently to "artisanal or small-scale fisheries." TN/RL/GEN/57/Rev.1 (Fiji, Jamaica, Papua New Guinea, and the Solomon Islands, 4 August 2005), p. 4, ¶ 16(ii).

⁵⁴ WT/CTE/W/173 (Japan, 23 October 2000), p. 3, ¶ 14. Japan has repeatedly used the formula "small-scale coastal fisheries" to define some of its own fishing sector. See, e.g., G/SCM/Q2/JPN/34 (Japan, 28 October 2002), p. 11 (responding to questions about one of its Article 25 notifications); see also TN/RL/W/160 (Korea, 8 June 2004), pp. 3-4, ¶¶ 6 & 11.

- 2.4. One confusion quickly evident in this early definitional dialogue is the juxtaposition of the terms “artisanal” and “small-scale.” With the exception of the Brazilian approach, the definitions noted above all appear to treat “artisanal” as a subset of “small-scale”. Other submissions to the negotiations have varied in the degree to which they distinguish between these terms—at times seeming to use them interchangeably⁵⁶ and at times distinguishing them.⁵⁷ Only the Brazilian paper has attempted clearly separate definitions, proposing that “small-scale” be taken to mean:

[A]ctivities carried out by vessels with total length not exceeding 24 meters and with a total catch not over 250 tons per year. In addition:

(a) if the fishery is under the management of a RFMO:

(a.1) and if a country limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 10% of the limit set to the country for that specific specie by that RFMO; or

(a.2) and if no country limit is set to a specific specie, the total catch of the country small-scale fleet for the specific species that have no individual limits shall not exceed 5% of the limit set to the country by that RFMO for those specific species that have no individual limits; or

(a.3) and if a global limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 0,5% of the global limit set to that specie by that RFMO; or

(b) if the fishery is not under the management of a RFMO, the annual increase of the volume catch by the country small-scale fleet for that specific specie shall not exceed 3% of the most recent volume catch data reported to a competent international organization.⁵⁸

In any case, as several delegations have noted, “there is no agreed definition of small-scale fisheries and each country has its own criteria based on the circumstances surrounding its fishery sector.”⁵⁹ The same could surely be said of term “artisanal fisheries” as well.

- 2.5. In fact, as discussed below, the definitional issue cannot really be resolved in isolation from other questions about the purpose and operation of special WTO rules for subsidies to

⁵⁵ TN/RL/GEN/56 (Brazil, 4 July 2005), p. 2, fn. 5., TN/RL/GEN/79 (Brazil, 16 November 2005), p. 3

⁵⁶ See, e.g., TN/RL/M/2 (Meeting Summary, 11 June 2002), p. 3, ¶ 16; TN/RL/W/11 (Japan, 2 July 2002), pp. 3-4, ¶ 17;

⁵⁷ See, e.g., TN/RL/M/7 (Meeting Summary, 11 April 2003), p. 6, ¶ 23 (reporting that one delegation noted “some developing countries had fisheries sectors that, although not artisanal, were small by international standards”)

⁵⁸ TN/RL/GEN/56 (Brazil, 4 July 2005), p. 2, fn. 4. Note that in its more recent submission, Brazil does not use a total catch of 250 tons per year as criteria for artisanal fishing anymore. TN/RL/GEN/79 (Brazil, 16 November 2005).

⁵⁹ TN/RL/W/172, (Japan, Korea, and Taiwan, 22 February 2005), p. 4, ¶ 17.

artisanal fisheries. In other words, the question “for whom?” cannot be answered adequately without a clearer understanding of “for what?”

- 2.6. In this regard, it is important to keep the entire discussion of special provisions for artisanal in perspective. The goal of such provisions should be to preserve certain rights of governments to subsidize artisanal fisheries *for reasons relating to their artisanal nature per se*, understanding that governments may also wish to provide subsidies to artisanal fisheries for reasons *not* related to their artisanal nature. Indeed, a given subsidy may be:
- (i) available only to artisanal fisheries;
 - (ii) available to artisanal and non-artisanal fisheries, but on a preferential basis to artisanal fisheries; or
 - (iii) equally available to artisanal fisheries and others.

For example, a government policy (or a WTO rule, for that matter), could make subsidies to on-board life-saving equipment uniquely available to artisanal fishers, preferentially available to artisanal fisher, or equally available to both artisanal and non-artisanal fishers. This paper is concerned only with the WTO’s treatment of the first two categories. If particular kinds of subsidies in the third category would require special treatment under new WTO disciplines (whether S&DT or provisions relating to specific classes of subsidies), these should be treated separately rather than “shoehorned” into provisions on artisanal fishing.

Obstacles to a Universal Definition of “Artisanal Fishing”

- 2.7. Any effort to craft a definition of "artisanal fishing" must obviously take account of how the term is commonly used by fisheries scientists and policymakers. Indeed, the term frequently appears both in formal governmental documents and in the substantial technical literature devoted to fishing and fisheries. A limited sampling of definitions drawn from formal and technical sources is set forth in Appendix B.
- 2.8. As illustrated below, even a brief review of primary and secondary sources quickly reveals that no single prevailing definition of "artisanal fishing" exists. Indeed, the term is so variously used that several authorities have concluded that it is impossible to find a definition that is both precise and generally applicable.⁶⁰ Moreover, as already seen, this polyphony is compounded by the frequent use of related terms, such as “small-scale” and “traditional”.
- 2.9. There are, of course, a number of elements that recur within the most common definitions and usages. An analysis of these elements may simultaneously illustrate the difficulty of discovering a single universal definition and help make it easier to comb out the specific interests and policy objectives at stake in the ongoing WTO debate. The most common

⁶⁰ See, e.g., UN Atlas of the Oceans, “Governance of Small Scale Fisheries” (“Small-scale fisheries, often also referred to as artisanal fisheries, are difficult to define unambiguously, as the term tends to apply to different circumstances in different countries”); FAO 2005 (entry for “artisanal fishing”) (“In practice, definition [of “artisanal fisheries”] varies between countries”); Mathew 2003, p. 52 (“The definition of what constitutes traditional, artisanal or small-scale could be any one or a combination of [a wide variety of] characteristics”); Coppola 2001, pp. 4 -5.

“definitional elements” contributing to definitions of “artisanal fishing” can be divided into four broad categories, as follows:

Table 1 — Elements of a Definition of “Artisanal Fishing”

Category	Definitional Elements	Typical examples⁶¹
Physical Attributes	Vessel type	Canoe, dory
	Vessel size	Short (e.g., < 10m); light
	Vessel motor	Unmotorized or small engine
Pattern of Fishing	Fishing gear/technique	Manual or small nets; passive; low tech
	Location of land base	Rural
	Location of fishery	In-shore
	Target type	Multi-species
Social Structure	Of fishery	Traditional (clan or community)
	Of fishing enterprise	Family crew, owner on board
Economic Condition	Market orientation	Direct consumption or local market
	Income level	Subsistence or very poor

2.10. Table 1 helps illustrate difficulty in arriving at a single universal definition of “artisanal fishing” in two ways:

- (i) First, existing definitions mix and match elements across categories in different ways. Regulatory definitions, for example, tend to focus on physical attributes of vessels or the specific fisheries targeted, while scientific definitions commonly look to social structure and economic condition.
- (ii) Second, and most compelling, existing definitions vary widely in the specific characteristics they associate with the various definitional elements. In fact, for each of the “typical examples” identified in Table 1, it is possible to find counterexamples. Thus, for instance, among fisheries labeled “artisanal” it is possible to find cases where the vessel is a trawler, or is quite large, or runs a powerful engine, or uses advanced technology, or is based in a city, or involves an off-shore fishery, or is targeted on a single pelagic species, or is organized around formal corporations with non-family crew, or is oriented towards export, or is returning a middle-class income to the fishers. Indeed, at least one case exists in which reference has been made to an “industrial artisanal fleet.”⁶²

⁶¹ These examples are not universal. See ¶ 2.10(ii).

⁶² Fundacion Patagonia Natural 2005 (click on “Coastal Fisheries” for java script reference).

As one expert has put it with gentle understatement: “There is thus no elegant definition” of artisanal fishing.⁶³

- 2.11. For those engaged in the WTO fisheries subsidies negotiations, the implications are clear: no definition of "artisanal fishing" is possible that is simultaneously universal, precise, and coherent. If the WTO were to adopt a definition covering every fishery currently considered “artisanal” by some relevant authority, the result would be so broad that widely disparate fisheries would fall within its scope. Such a definition would open a large and vague loophole in any new fisheries subsidies disciplines, with unpredictable consequences.
- 2.12. Accordingly, a definition of “artisanal fishing” will need to be tailored to the WTO context. But how, and on what basis? These questions cannot be fully answered without examining the goals of the proposed WTO provisions on subsidies to artisanal fisheries and the kinds of subsidies that may be involved.

Part III — Underlying Objectives and Practices

- 3.1. Why are governments so interested in the artisanal fishing issue within the context of subsidies and the WTO? In particular, two questions may help inform a more focused and coherent discussion:
 - What are the policy objectives that appear to underlie interest in “artisanal fishing” in the WTO context? and
 - What are the kinds of subsidies governments use today or appear likely to use in the future with regard to “artisanal fishing”?

Why Subsidize Artisanal Fishing?

- 3.2. It is difficult at present to know in detail what may motivate governments to provide subsidies to "artisanal fishing". Although there is a large technical literature on artisanal fishing generally, relatively little of it discusses subsidies policy. And within the bounds of the WTO debate so far, only a few governments have made references to the interests underlying their demands. Nevertheless, even if documentary support for any analysis may be thin, this paper will suggest five basic motives that, to one degree or another, appear to underlie the “artisanal fishing” debate.⁶⁴

- (a) **Poverty alleviation** — As noted throughout the technical literature, artisanal fishing communities (and particularly those associated with “subsistence” economic

⁶³ Mathew 2003, p. 52. Mathew presents this conclusion at the end of a compelling narrative illustration of the variety and inconsistency in the uses of the term “artisanal fishing”.

⁶⁴ A sixth policy objective that may underlie subsidies to artisanal fisheries should not be overlooked: “**Political rent capture**”. In the real world, not all subsidies are the creatures of rational policies, but may simply be the result of rent-seeking and special-interest politics. It may be likely that “political rent capture” is a more insidious problem where subsidies flow to larger, well-organized, and politically sophisticated industries—those, for example, that are able to pay for advocates to represent their interests in front of legislative or regulatory authorities. But it is worth recalling that political rent capture is one of the evils new rules on fishing subsidies are meant to confront, and that policies involving “artisanal fisheries” are not necessarily immune from this evil.

lifestyles) are often extremely poor. In many cases, artisanal fishing provides a source of “employment of last resort” when land-based economic activities (especially rural agriculture) suffer downturns.⁶⁵ Indeed, this “safety net” role of artisanal fisheries has in some cases been associated with overexploitation of stocks when subsistence fishing activities have increased dramatically to absorb the newly unemployed.⁶⁶

Poverty alleviation, including employment stability, is thus one obvious policy goal in the artisanal fishing sector.⁶⁷ For purposes of this paper, “poverty alleviation” is narrowly defined to mean the removal or prevention of extreme deprivation, or (in positive terms) the granting of assistance to meet basic human needs, including the need to engage safely and honorably in productive economic activity.

- (b) **Food security** — Fisheries are without a doubt a critical source of food protein for human nutrition. According to the FAO, more than 2.6 billion people depend on fish for at least 20% of their daily intake of animal protein.⁶⁸ In some countries, particularly in the developing world, fish provide more than half of human protein needs.⁶⁹ Artisanal, “subsistence”, and “small-scale” fisheries make an important contribution to this food supply, and the FAO has noted the need for increasing this contribution to food security through purposeful government action, including subsidies.⁷⁰
- (c) **Community/social development** — Closely related to poverty alleviation (but not identical—see ¶ 3.3(b)) is the goal of community and social development, defined in this paper to mean the evolution or transformation of the socio-economic circumstances of a community or of a productive sector through technological improvements, increased education, multiplication of personal and economic options, and general improvement of the standard of living.
- (d) **Improving sustainable fisheries management** — As noted throughout this paper—and indeed throughout the international dialogue over fisheries subsidies generally—the most critical challenge facing the fisheries sector is the sustainability challenge. Without improved husbandry of fisheries resources, there will be little chance of reversing the trend towards increased overexploitation that has plagued fisheries

⁶⁵ See, e.g., Asian Development Bank 1997, p. 6, ¶ 10. This point was also emphasized by several experts participating in a recent UNEP workshop held to review an early draft of this paper.

⁶⁶ See, e.g., FAO 2001, p.3.

⁶⁷ See, e.g., Asian Development Bank 1997, pp. 37-40, ¶¶ 86-92.

⁶⁸ FAO SOFIA 2004, p. 38.

⁶⁹ These countries include Bangladesh, Cambodia, the Congo, the Gambia, Ghana, Equatorial Guinea, Indonesia, Japan, Sierra Leone and Sri Lanka. *Id.*

⁷⁰ See, e.g., FAO 2003b generally, and ¶ 22(iv) in particular regarding subsidies. Note that this same paper identifies subsidies to industrialized fleets as among the problems currently limiting the contribution of artisanal fisheries to food security. *Id.*, ¶ 21.

worldwide for the past several decades.⁷¹ As noted above (¶¶ 1.5-1.12), this sustainability challenge confronts artisanal and industrial fisheries alike. While inappropriate subsidies are clearly a contributing factor underlying the current crisis of fisheries depletion, it is also true that properly designed subsidies can play a positive role in promoting the transition to sustainability.

- (e) **Preservation of fishing cultures and lifestyles** — Some governments appear interested in subsidizing “artisanal fishing” as a means to maintain particular cultures and lifestyles, especially in relatively rural areas. This goal does not necessarily call for poverty alleviation, food security, development, or improved fisheries management, but merely for the maintenance of desired types of community in the face of market pressures that would otherwise injure or even doom them. This motive is more likely typical of developed than developing countries.

3.3. Two comments on the foregoing objectives:

- (a) First, outside of the subsidies context, there may be other significant objectives underlying a government’s policies towards “artisanal fishing.” For example, governments may be concerned with “artisanal fishing” from a regulatory perspective, using the term to distinguish some fishing fleets under its jurisdiction from others, whether for the allocation of fishing rights or other regulations.
- (b) Second, the goal of community/social development stands out as unique in at least one important respect. Unlike the other objectives, “development” tends to imply the pursuit of substantial change in the patterns or intensity of fishing. Put another way, subsidies to promote the “development” of artisanal fishers means interventions aimed at altering some essential aspects of a fishery, whether by changing the extent or manner of fishing, the social or economic organization of fishing activity, or a combination of these. In many cases, such a policy will be aimed at expanding fishing, or at making fishing more efficient, or at creating improved processing and transportation. As noted at the outset (¶ 1.3), this may be consistent both with rational social policy and with establishing a more equitable distribution of access to the earth’s common natural resources. Nevertheless, it also obviously implies the need for attention to fisheries management and conservation of the aquatic ecosystem.

3.4. The preceding analysis suggests two intermediate conclusions:

- (a) First, it seems relatively non-controversial to suggest that subsidies to the artisanal fishing sector aimed at promoting poverty alleviation, food security, development of underdeveloped communities, and improved fisheries management should be allowed under new WTO rules. It is a finer question—and one that delegations and stakeholders may wish to discuss explicitly—whether the preservation of fishing cultures and lifestyles should likewise be adopted as a legitimate goal for the relaxation of any new fisheries subsidies disciplines. This question also appears

⁷¹ The FAO has noted “a consistent downward trend in the proportions of stocks offering potential for expansion” along with “an increasing trend in the proportion of overexploited and depleted stocks” dating from the 1970s and continuing through the most recent assessments. FAO SOFIA 2004, p. 32.

closely related to the question whether special provisions for artisanal fishing should be applicable universally or only to developing countries.

- (b) Second, the “sustainability challenge” remains front and center. It will not be possible to use definitional language alone to ensure that allowances for subsidies to artisanal fisheries promote sustainable development. As discussed in ¶ 3.3, some of the principal underlying motives for such subsidies—including job creation and community/social development—directly raise issues of sustainability and fisheries management.

What Kinds of Subsidies Are Involved?

- 3.5. Obviously, another key to understanding the scope of the current debate would be a review of existing trends in the subsidization of artisanal fishing. Unfortunately, this effort must be based, at least for the moment, on some degree of speculation, for two reasons. First, the subsidization of artisanal fisheries has been the subject of only a few published studies, and even the general question whether artisanal fishing is commonly subsidized appears to be the subject of differing views.⁷² Second, many stakeholders in the current negotiations appear to be more concerned with securing the future “policy space” for subsidies to artisanal fisheries than with protecting current subsidy practices.
- 3.6. Nevertheless, a brief review of the existing literature suggests that among the kinds of subsidies most likely to be associated with artisanal fishing are:⁷³
- Vessel / gear modernization (including motorization)
 - Landing and processing infrastructure (port facilities, refrigeration, roads/transport)
 - Export
 - Fuel
 - Other inputs (e.g., ice)
 - Training
 - Capital (cheap money)
- 3.7. Subsidies to artisanal fisheries, where they exist, also appear to take on a wide variety of forms, including direct cash transfers, subsidized loans, and tax deferrals, among others.⁷⁴
- 3.8. In short, governments (at least in the aggregate) are likely to be interested in using a broad range of subsidies for their artisanal fishing sectors, including some that appear likely to fall within the scope of general fisheries subsidies disciplines now under negotiation. It is particularly important, from the sustainability perspective, to note that some of these

⁷² It is common to hear government officials and experts suggest that subsidies to artisanal fisheries are virtually non-existent, a view supported by Mathew 2003, p. 50. Certainly, however, this has not been true historically, and it is clear that there are current cases in which subsidies do flow to artisanal fisheries. See, e.g., Blase 1982; Christy 1997, UNEP 2001a, UNEP 2001b.

⁷³ The following list is compiled from sources such as Blasé 1982, Christy 1997, UNEP 2001a, UNEP 2001b

⁷⁴ See sources in fn. 73

subsidies would be directly “capacity-enhancing” or “effort-enhancing”—among the class of subsidies that have often been identified as the most problematic.

Part IV — Practical Implications for WTO Rules

- 4.1. Following on the analysis of Parts II and III of this paper, what are the implications for a further discussion of the treatment of subsidies to artisanal fisheries under new WTO rules? Does the foregoing discussion provide any basis for crafting a WTO definition of “artisanal fishing”? What does it suggest about other provisions that may be necessary to achieve balanced and effective rules?

The Definitional Question, Revisited

- 4.2. In light of the “objectives and practices” discussed in Part III, one approach to resolving the definitional problem identified in Part II would be to agree that the principal aim of special treatment for subsidies to artisanal fisheries is to promote poverty alleviation, food security, and development. Such an approach would lead towards a definition that targets situations where poverty or underdevelopment are prevalent, and might, for example:
 - (a) Emphasize poverty and/or subsistence economic patterns;
 - (b) Emphasize very small vessels and/or vessels with small or no engines;
 - (c) Emphasize low levels of technological development and high labor-intensivity;
 - (d) Emphasize fishing very close to shore;

In addition, such a definition could either be limited to developing countries, or impose different tests and higher burdens on developed countries seeking to apply new rules to their own “artisanal fishing” sector.⁷⁵

- 4.3. From the perspective of sustainability, such an approach would have some clear advantages. First, the focus on poverty alleviation itself helps create conditions for improved fisheries management. As has been noted by the Asian Development Bank:

The widespread poverty in artisanal fishing communities contributes to resource degradation; hence, poverty reduction needs to be a priority concern.⁷⁶

Second, while very small-scale, low-technology fisheries can be subject to overexploitation or other forms of environmental degradation, especially where destructive fishing practices are involved, it is probable that there is less risk of overexploitation with fishing of this kind than where more powerful fleets are involved. In other words, to the extent “artisanal

⁷⁵ The approach suggested here excludes attention to the “cultural preservation” objective (see ¶ 3.2(e)) within any special rules for “artisanal fishing.” That is not, however, meant to imply that subsidies to maintain “traditional” fishing communities should be considered illegitimate under new WTO rules. But where such communities are not mired in poverty or underdevelopment, and particularly where they are in developed countries, it may be best to ensure that subsidies to them are consistent with the general fishing subsidies disciplines now under negotiation.

⁷⁶ Asian Development Bank 1997, p. 37, ¶ 86.

fishing” means fishing at the lower end of the technology and developmental scales, subsidization (and particularly subsidization aimed at basic poverty alleviation) would seem to carry relatively light risks for sustainable fisheries management.

- 4.4. However, the parameters for a definition of “artisanal fishing” proposed in ¶ 4.2 are not intended to comprise only the poorest and least developed of fisheries. Moreover, the analytic separation offered here between “poverty alleviation” and “development” is obviously somewhat artificial—and in any event subsidies directed at achieving significant development must clearly fall within the scope of any special treatment for artisanal fishing under new WTO rules.
- 4.5. In other words, even if limited to the purposes of poverty alleviation and development, special rules for subsidies to artisanal fishing are likely to cover a relatively broad range of government programs, including programs that, if improperly designed, could contribute to trade or production distortions and the accompanying overexploitation of resources, as discussed in ¶¶ 1.7-1.12. It would seem, then, that even with a carefully circumscribed definition, subsidies to artisanal fisheries will require some WTO discipline, and that a definition of “artisanal fishing” should not be seen as the basis for a simple carve-out from new fishing subsidies rules.

Other Elements of a WTO Approach

- 4.6. Assuming, then, that subsidies to artisanal fisheries are to be subject to some disciplines, there are at least three basic (and familiar) ways in which such disciplines might be applied:
 - (i) Distinctions could be made among the kinds of subsidies falling within the scope of the artisanal fishing provisions, with different levels of discipline applicable to each;
 - (ii) Substantive conditions, particularly related to the “fisheries management” context, could be applied; and
 - (iii) Procedural requirements could be imposed to encourage transparency and appropriate implementation.

Each of these will be considered briefly in turn.

Distinguishing different types of fisheries subsidies

- 4.7. As noted in ¶¶ 3.6-3.8, governments are likely to be interested in preserving their right to apply a broad range of subsidy types to their artisanal fishing sectors. Just as in the case of fisheries subsidies generally, some of these are likely to carry higher risks of production (as well as trade) distortions than others. For example, there is little question that capacity- or effort-enhancing subsidies raise more direct risks of distorting fisheries production than subsidies to land-based infrastructure.
- 4.8. Moreover, it may be possible to classify subsidies to artisanal fisheries according to a combination of their type and their underlying policy objective. Particularly recalling the analytic distinction offered in ¶ 3.3(b) between the objectives of “poverty alleviation” and “development”, a very rough correlation of risk to subsidy class might take the form of Table 2.

Table 2 — Possible Risks of Distortion to Production or Trade⁷⁷

	Poverty alleviation		Community/social development		Cultural conservation	
	Risk of Production Distortion	Risk of Trade Distortion	Risk of Production Distortion	Risk of Trade Distortion	Risk of Production Distortion	Risk of Trade Distortion
Vessel / gear modernization	--	--	High	Med	Med	Med
Land-based infrastructure	Low	Low	Med	Med	Low	Med
Export	Med	Low	High	High	Med	High
Fuel	Low	Low	High	Med	Med	Med
Other inputs	Low	Low	High	Med	Low	Med
Training	Low	Low	Med	Low	Low	Low
Capital	Med	Low	Med	Med	Low	Med

- 4.9. Obviously, even if the risk identifications in Table 2 were accepted as accurate, this table would not provide a basis for simply including or excluding particular classes of subsidy programs from any provisions adopted for subsidies to artisanal fisheries. In fact, distinguishing programs aimed at poverty alleviation from those aimed at development may be both theoretically and practically difficult. Still, a discussion of the various levels of risk associated with different categories within Table 2 may at least help distinguish the easier from the more difficult cases.

Substantive conditions on specially permitted subsidies

- 4.10. The recurring difficulty is how to ensure that subsidies to artisanal fisheries do not contribute to production distortions and the resulting exhaustion of fisheries. One general direction towards a solution that has been proposed is to allow special treatment for subsidies to artisanal fishing only under certain conditions, such as in fisheries that are not considered “patently at risk.”⁷⁸ This concept, and others that might be grouped under the general heading of the “fisheries management context”, will undoubtedly require extensive discussion and development. However, exploring the technical content of such conditions is beyond the task of this paper. Instead, it may be helpful to point out some of the specific

⁷⁷ **Several caveats on Table 2:** (i) this table is not based on any specific empirical analysis, and must be considered a rough suggestion for the purposes of stimulating dialogue; (ii) a “high” risk of trade or production distortion is not necessarily the same as a high risk of a resulting harm; (3) however, regarding the possible wisdom of less toleration of production distortions than trade distortions in the fisheries sector, see ¶¶ 1.20-1.20(b).

⁷⁸ TN/RL/W/176 (Brazil, 31 March 2005), ¶ 21(ii)(a)(2); TN/RL/GEN/56 (Brazil, 4 July 2005), p. 2 & fn. 6; TN/RL/GEN/79 (Brazil, 16 November 2005) p.2 & fn.8; see also WWF 2004, p. 29, ¶ II.C.5.

issues that might arise in an effort to attach such conditionality to subsidies to artisanal fisheries.

4.11. Whatever the precise content of “fisheries management context” conditions, it is clear that the basic idea is to recognize that the biological, industrial, and regulatory condition of a fishery can sometimes have a direct bearing on the likely impacts of fisheries subsidies. Substantial work has been done, and more remains to be done, to propose WTO rules that can take account of such contextual factors without requiring the WTO to exercise judgments or authority beyond its proper sphere of competence. In the case of artisanal fishing, the matter is further complicated:

- With regard to both the biological and the industrial condition of a fishery, “context sensitive” disciplines will likely need to refer to facts or judgments about things like the status of a fish stock or the effective capacity of a fishing fleet. But in artisanal fisheries, data limits can often be very severe due to the diffuse and sometimes remote nature of the fishery, and to the lack of resources for investigation. Thus, even the most basic need of modern fisheries management—to have some idea of “what’s out there”—can present a formidable problem.
- With regard to the regulatory condition of a fishery, “context sensitive” disciplines will likely need to refer to facts about the regulatory infrastructure of a fishery (such as, e.g., whether it is purely “open access” or subject to management). Here, the artisanal nature of the fishery—particularly if defined as suggested above—often implies a formal management system that is either rudimentary or absent (although in many cases there may be a traditional community-based management system). There is today a growing trend towards the active formal management of artisanal fisheries, but the social, political, and financial challenges remain significant.

Any rule system seeking to impose “fisheries management context” conditions on subsidies to artisanal fisheries must take account of these realities. But how? On the one hand, the problems mentioned above are not only real, they may be the focus of policies that go hand in hand with some of the subsidies for which governments are interested in preserving policy space. On the other hand, the acceleration of fishing capacity or effort in fisheries characterized by lack of data and thin regulation can be especially dangerous. And so the dog chases its tail.

4.12. The fundamental problem is one of **sequencing**. From a strictly environmental perspective, the “right” answer is relatively clear: governments should give priority to investments in data and management, and should avoid capacity- or effort-enhancing subsidies to artisanal fisheries until a sufficiently robust “fisheries management context” has been established. Unfortunately, this simple advice may be impractical where the demands of poverty alleviation and development are severe. One potential solution, therefore, would be to relax but not altogether relinquish the sequential imperative. Two examples of such an approach might be:

- (a) To require, for certain high risk classes of subsidies to artisanal fisheries, parallel and possibly equal investments in fisheries management infrastructure.

- (b) To allow high risk subsidies to artisanal fisheries in the absence of adequate management infrastructure, but only for a limited period of time.

Note, however, that provisions such as these should not be taken to extremes. Where a fishery is purely open access, or where even the most basic assessment of stocks or fleet capacities have not been performed, investment in capacity- or effort-enhancing subsidies seems a folly.

- 4.13. The foregoing discussion illuminates one other noteworthy aspect of the issue. The need for technology transfer and development assistance to developing countries in the artisanal fishing sector is increasingly recognized as a high international priority. Whether the dynamics of the current fisheries subsidies negotiations at the WTO provide an opportunity to encourage or secure increases in such assistance is a political question beyond the scope of this paper, but certainly not beyond the scope of the discussion this paper hopes to encourage.

Procedural limits and conditions

- 4.14. A third approach to providing special treatment for subsidies to artisanal fisheries, or to disciplining them, would naturally be the application of typical ASCM “procedural” devices, such as:

- (a) Notification requirements — It is standard practice within the WTO system to require advanced notification of measures which are permitted by exceptional rules or other derogations from core WTO obligations.⁷⁹ While notification requirements are often considered onerous, particularly by developing country governments, they are an essential component of functioning rules. Yu & Fonseca-Marti, for example, consider advance notification requirements an integral part of a robust approach to S&DT.⁸⁰

Subsidies to artisanal fishing benefiting from special treatment should be similarly conditioned upon advanced notification⁸¹. Moreover, in the fisheries context, effective disciplines will likely require information about the conditions of production, including some rudimentary information about the “fisheries management context” in which fishing subsidies are to be applied.⁸²

- (b) Distribution of the burdens of proof — The effectiveness of rules and the costs of their implementation often depend on which party to a potential dispute must carry the burden to prove a claim. In the case of disciplines on subsidies to artisanal fishing, these burdens should be allocated to maximize the ability of developing

⁷⁹ For a catalogue of WTO notification requirements, see *Updating of the Listing of Notification Obligations and the Compliance Therewith as Set Out in Annex III of the Report of the Working Group on Notification Obligations and Procedures*, G/L/223/Rev.12 (Council for Trade in Goods, 3 March 2005) and G/L/223/Rev.12/Corr.1 (29 March 2005).

⁸⁰ UNEP (2005), Yu & Fonseca-Marti, pp. [17, 30]

⁸¹ Both TN/RL/GEN/39 (EC, 12 May 2005) p.3 and TN/RL/GEN/79 (Brazil, November 2005) p.5 & Annex VIII article 6 demand any fisheries subsidy which is not notified to be prohibited.

⁸² For a more detailed discussion of this problem, see WWF 2004, ¶¶ V.G.4 and V.G.7.

countries to pursue poverty alleviation and development, without losing sight of the need to prevent unsustainable production distortions. Thus, for example, if new WTO rules were to allow capacity-enhancing subsidies to artisanal fisheries, but subjected such subsidies to stricter disciplines than non-capacity-enhancing subsidies, the burden to prove the capacity-enhancing character of a given measure might rest with the party challenging the subsidy. At the same time, however, if such a measure were allowed only in fisheries not considered “patently at risk”, the burden to demonstrate the elements of “not patently at risk” (such as, e.g., the existence of a capacity management plan) might rest on the government granting the subsidy.⁸³

Conclusions and General Recommendations

The discussion set forth above has taken as its presumption that subsidies to artisanal fisheries deserve and require special treatment under any new WTO fisheries subsidies disciplines. However, the paper emphasizes the irreducible link between the sustainable management of artisanal fisheries and the long-term economic and social health of the communities that depend on them. Further, the paper adopts the broad presumption—based on such empirical evidence as exists—that many classes of fisheries subsidies, and particularly those likely to increase fishing capacity or effort, can contribute significantly to the risk of overexploitation in artisanal fisheries.

In this context, the paper draws the following basic conclusions:

1. A universally applicable definition of “artisanal fishing” cannot be established solely on the basis of how the term is applied in practice outside the WTO context;
2. It is desirable to find a relatively narrow definition of “artisanal fishing” for application in the WTO context, in order to avoid opening unintended loopholes in any new fisheries subsidies disciplines;⁸⁴
3. In crafting an appropriate definition of “artisanal fishing”, close attention should be paid to the interests and policy objectives underlying the concerns of governments with this issue in the particular context of the WTO.
4. Among the most compelling objectives for attention to artisanal fishing are poverty alleviation, food security, and the development of underdeveloped communities and fisheries. However, the “development” objective inherently includes transformations of fishing practices, and often implies the intensification of fishing capacity and effort. Thus, to the limited extent that poverty alleviation programs can be distinguished from fisheries development programs, associated subsidies may merit different treatment under new WTO rules.

⁸³ This example is offered as an illustration. Note the potential relevance of the “sequencing” issues discussed in ¶ 4.12, above.

⁸⁴ When a draft of this paper was discussed at the UNEP workshop held in Geneva in June 2005, several participants took issue with this conclusion, suggesting instead that a broader definition of “artisanal fishing” may be required, particularly in light of the diversity of fisheries legitimately considered “artisanal.”

5. An emphasis on poverty alleviation and development suggests substantial overlap between the “artisanal fishing” and “S&DT” issues. To the extent that governments adopt robust S&DT for developing country fishing subsidies, the need for specific provisions for artisanal fishing may be reduced.
6. The potential application of subsidies to the cultural preservation of artisanal fishing communities (regardless of income or developmental levels) requires further discussion, and relates in part to the question whether WTO rules should recognize “artisanal fisheries” in developed countries.
7. Even accepting a more limited definition of artisanal fishing, it appears likely that governments will seek to protect their ability to apply a broad range of types of subsidies in their artisanal fishing sectors. Nevertheless, a discussion of the various types of subsidies that may be applied is necessary to illuminate the particular challenges and risks they raise within the artisanal fishing sector. It may also be useful to classify subsidies to artisanal fisheries in accordance with both their type and their underlying objectives.
8. It is unlikely that even an aggressive and successful effort to limit the definition of “artisanal fishing” and to distinguish those subsidies most likely to be harmful in the artisanal fishing context will solve the basic tension between the need for developmental subsidies and the dangers associated with the intensification of fishing. Thus, it will likely be necessary to apply disciplines to some permitted classes of subsidies to artisanal fisheries (particularly those classes covering subsidies likely to be effort- or capacity-enhancing).
9. The approach of disciplining subsidies through conditionality related to the fisheries management context—already proposed by some delegations outside of the artisanal fishing discussion—merits serious exploration, keeping in mind:
 - a. the limits imposed by the proper scope of the WTO’s institutional competence; and
 - b. the need to relax (but not abandon) the “sequencing imperative” that counsels in favor of establishing a robust fisheries management context prior to the purposeful expansion of artisanal fishing capacity or effort.
10. Effective rules on subsidies to artisanal fisheries will likely require nuanced use of procedural provisions already familiar to the ASCM, including notification requirements, distributions of burden of proof, and adjustments of available remedies.

It is hoped these conclusions can help inform a practical discussion of the treatment of artisanal fishing within new WTO fisheries subsidies rules, and assist governments and other stakeholders in their efforts to clarify and improve WTO rules in a manner that contributes to the economic, social, and environmental health of the world’s fisheries.

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Appendix A

References to Artisanal Fishing in WTO Submissions

The following are excerpts, in chronological order from October 2000 to the present, of formal submissions to the WTO CTE and Rules Group making reference to artisanal fishing (an effort has been made to include all references in Rules Group submissions; some references in CTE submissions have been omitted). Also included are some excerpts from Rules Group meeting reports, as well as one NAMA submission. References to “artisanal” or “small-scale” fishing have been highlighted in bold. (Emphasis added throughout.)

Japan — CTE submission (WT/CTE/W/173, 23 October 2000, p. 3)

[Section] 2. Comments on specific paragraphs [of WT/CTE/W/154 (US, 4 July 2000)]

14. 3rd paragraph:

The FAO International Plan of Action for the Management of Fishing Capacity requires members to reduce and progressively eliminate not only subsidies that have negative impacts on the environment, but also all factors undermining sustainability of marine resources. It should be noted that in implementing the Plan of Action due regard should be given to the needs of **artisanal** fisheries (**small-scale** coastal fisheries).

Japan — Art. 25 Notification (G/SCM/N/71/JPN, 29 May 2002, p. 104)

91. Fisheries Modernization Fund Interest Subsidy

1. Title of the subsidy programme

Fisheries Modernization Fund Interest Subsidy

2. Period covered by the notification

Fiscal year 1999 (April 1999 to March 2000)

3. Policy objective and/or purpose of the subsidy

The purpose of the programme is to contribute to the introduction of advanced fisheries' management for structural adjustment of **small- or medium-size fisheries**.

4. Background and authority for the subsidy

Ministry of Agriculture, Forestry and Fisheries.

5. Legislation under which it is granted

Fisheries Modernization Fund Law

6. Form of the subsidy/To whom and how the subsidy is provided

In order to contribute to introduce advanced fisheries' management for structural adjustment of **small- or medium-size fisheries**, the prefectural governments provide interest subsidy to finance organizations including fishery cooperatives, and the Government provides part of necessary expenses born by the prefectural governments.

7. Amount of the subsidy

¥1,837 million

8. Duration of the subsidy and/or any other time-limits attached to it

Duration of the subsidy is not clearly specified, since the subsidy is determined and provided based on a fiscal year.

9. Statistical data

N.A.

Rules Group Meeting Summary (TN/RL/M/2, 11 June 2002, p. 3)

16. It was observed that there was a need to differentiate between those subsidies that had harmful effects and those that did not; in this context, certain delegations noted that subsidies for **small scale** and **artisanal** fisheries would not have harmful trade effects and should not be subject to any new disciplines.

Japan — Rules Group submission (TN/RL/W/11, 2 July 2002, pp. 3-4)

V. Sustainable development of fisheries in developing countries

17. We are of the view that due consideration should be given to subsidies for fisheries development of developing countries as long as these subsidies do not harm sustainable use of fisheries resources. For instance, consideration should be given from the viewpoint of subsistence and food security in local communities to fisheries subsidies provided to coastal **small-scale** fisheries. However, such special and differential treatment of developing countries is not confined within the fisheries sector, and thus should be discussed as a generic matter of the ASCM.

18. It should be noted that over-exploitation occurs in not only developed countries but also developing countries, especially their **small-scale** coastal fisheries.³ In order to realize sustainable development of fisheries in developing countries, the FAO and other relevant international bodies with expertise in fisheries should examine this issue, taking into consideration the aspects of sustainable development of fisheries resources as well as of environment and development in developing countries.

³ - Porter, G, 2001. Fisheries Subsidies and Over fishing: Towards a Structured Discussion

Japan — Response to Questions on Notification (G/SCM/Q2/JPN/34, 28 October 2002, p. 11)

Q4. Please explain further the purpose of this aid. Provide specific examples of projects that have benefited from this aid.

Reply

The purpose of the programme is to contribute to the introduction of advanced fisheries' management for structural adjustment of **coastal small fisheries**. The programme, for example, supports renewal of fishing boats and equipments for **artisanal fishery** in an effort to facilitate improvement worker's safety in small scale coastal operations.

This subsidy apparently does not contribute to the increase of fishing capacity, judging from the fact that the number of the coastal fishing boats, as well as the production amount of coastal fishery, are decreasing continuously although these coastal fisheries are eligible to receive this subsidy.

United States — Rules Group submission (TN/RL/W/77, 19 March 2003, p. 1)

Overall objective

3. As an initial matter, it should be emphasized that the goal of clarified and improved rules is to provide better disciplines on government programmes that promote overcapacity and overfishing, or have other trade-distorting effects.¹ . . .

¹ - Other government programmes may help to reduce overcapacity and overfishing, and contribute to fisheries sustainability. These latter programmes are not the focus of the negotiations. Programmes for **artisanal** fisheries in developing countries are likewise not a focus.

Rules Group Meeting Summary (TN/RL/M/7, 11 April 2003, p. 6)

21. The next paper introduced was entitled "Possible Approaches to Improved Disciplines on Fisheries Subsidies" (TN/RL/W/77 [United States]). The sponsor considered that excessive subsidization had significantly contributed to overfishing and threatened the economic and environmental health of the world's fish stocks. By improving WTO disciplines on harmful fisheries subsidies, participants could demonstrate that trade liberalization benefits the environment and contributes to sustainable development. In its paper, the sponsor had identified some key issues and offered some ideas for initial discussion. It stressed that programmes that help to reduce overcapacity and overfishing, and contribute to fisheries sustainability, were not the focus, nor were programs that benefited **artisanal** fisheries in developing countries. In terms of the structure of disciplines, the sponsor saw merit in discussing the possibility of expanding the category of prohibited subsidies under the SCM Agreement to cover fisheries subsidies that directly contribute to overcapacity and overfishing or have other direct trade-distorting effects. Another possibility would be to shift the burden of proof to a subsidising Member to demonstrate that certain subsidies, perhaps above a certain level, did not contribute to overcapacity or overfishing. The sponsor also suggested exploring means to improve the quality of fisheries subsidies notifications under the SCM Agreement. It noted the importance of benefiting from the expertise of relevant

governmental organizations such as the FAO and regional fisheries management organizations, as well as obtaining the views of non-governmental groups and individuals interested in the issue, including the fisheries industry and the environmental community.

...

23. Many participants welcomed the first submission [TN/RL/W/77 (United States)], which moved in the right direction by making concrete proposals and by building on the existing disciplines of the SCM Agreement. These participants supported the approach of the paper, which distinguished between different types of fisheries subsidies based on their effects, and agreed with the objective of targeting those subsidies that caused over-capacity and over-fishing or had other trade-distorting effects. In this respect, various delegations understood the paper to focus on trade-distorting subsidies, and several liked the focus on subsidies that reduced costs or increased revenues for fishers. Some participants linked the effects-based approach to suggestions to categorize fisheries subsidies; categorization was a way to establish which subsidies had such effects and should be disciplined. One participant suggested that operational subsidies for fishing fleets were an example of subsidies that had negative effects, while subsidies for fisheries management and R&D were examples of subsidies that did not. Many participants reacted positively to the idea of expanding the "red light" (prohibited) category of subsidies for fisheries subsidies with negative effects, but did not rule out exploring the "dark amber" approach. In the view of certain participants, the key question was deciding which subsidies had negative effects and should be included in these categories, with several delegations suggesting a comprehensive approach. In this respect, one participant queried how the sponsor's suggestion to include in the prohibited category subsidies to fisheries that were overfished could work in practice. Some delegations appreciated the sponsor's statement that **artisanal** fisheries in developing countries were not the focus of the negotiations, with one participant noting that some developing countries had fisheries sectors that, although **not artisanal**, were **small** by international standards. The importance of improved notifications was emphasized by some participants.

...

25. In response to questions posed in document TN/RL/W/69, the sponsor considered that categorization of fisheries subsidies was necessary because different subsidy programmes required different disciplines. For example, government financing of management regimes ought not be considered as a subsidy *per se*, or in any event should be subject to lesser disciplines. Its paper was aimed at putting discussions on a more concrete basis rather than arguing about the meaning of the Doha mandate. As for a suitable definition for the "red light" category, the sponsor had no specific examples but believed that it should focus on subsidies causing overcapacity and overfishing or other trade-distorting effects. Regarding a "bright green category" mentioned by one participant, the sponsor had no specific ideas, but its paper did not cover **artisanal** fisheries in developing countries as they were unlikely to cause overcapacity and overfishing and were not an appropriate object of increased disciplines. Regarding expertise from other governmental or non-governmental organizations, the sponsor did not intend to detract from the intergovernmental nature of the WTO, but was of the view that such expertise could enrich the discussions.

Japan — Question to U.S. on W/77 (TN/RL/W/84, 30 April 2003, p. 1)

Question 2:

The paper also states in its footnote 1 that subsidies provided to **artisanal** fisheries in developing countries are out of the scope. Does the word “**artisanal**” mean **small-scale** coastal? Are then subsidies to medium and large-scale fisheries in developing countries subject to discussion?

Chile — Rules Group submission (TN/RL/W/115, 10 June 2003, pp. 2-3)

(ii) Amber category:

...

1.5. Considering that the following subsidies may not affect third countries, and may even be necessary to preserve the resources and/or social development of communities, where a Member considers its trade to be adversely affected by such subsidies, it shall be for the complaining Member to provide evidence of the injury.

1. Subsidies of a social nature, the final purpose of which is to resolve problems affecting **small-scale** fisheries, for the benefit of coastal communities and with a view to improving quality of life; . . .

Rules Group Meeting Summary (TN/RL/M/8, 10 June 2003, p. 9)

38. On the sub-agenda item of Fisheries Subsidies, four submissions were introduced and discussed. The first submission was entitled “Questions from Japan Concerning Papers on Fisheries Subsidies Issues” (TN/RL/W/84), which posed questions on the papers TN/RL/W/77 [(United States)] and TN/RL/W/58 [(Argentina, et al)]. With respect to TN/RL/W/77, the sponsor asked when participants had reached a consensus to provide better disciplines on subsidies that promote over-capacity and over-fishing, or have other distorting trade effects. It enquired whether “**artisanal**” fisheries meant **small-scale** coastal fisheries and whether subsidies to medium- and large-scale fisheries in developing countries would be subject to discussion. It enquired whether the production distortion of shared stocks caused by fisheries subsidies was the only reason the sponsor believed that fisheries subsidies differed from others and should be treated in a special fashion. It also asked if the Group’s discussion on fisheries subsidies should be limited to those provided to shared stocks fisheries and whether the sponsor had reasonable grounds to conclude that certain kinds of fisheries subsidies distorted trade to the same degree as export subsidies and thus needed tighter disciplines than other sectors. Regarding the improvement of notifications, the participant wondered whether this objective could be achieved within the framework of the Committee on Subsidies and Countervailing Measures. As for TN/RL/W/58, the sponsor of TN/RL/W/84 enquired about the grounds to proceed to categorization even though there was no consensus to do so, and the direction the sponsors envisaged for future discussion on fisheries subsidies with a mere reference to lists developed by various organizations with different objectives. It also asked if any Member had requested consultations under ASCM Article 7.1 regarding fisheries subsidies, what consultations were carried out and why the said injury was not rectified in the consultations.

39. In reaction to these questions, the sponsor of TN/RL/W/77 stated that the source for its view that there was a consensus to address these issues in the Group was the Doha mandate, where Ministers had clearly singled out fisheries subsidies for special attention. Paragraph 28 of the Doha Declaration specifically referred to paragraph 31 on Trade and

Environment which in turn recognized the importance of enhancing the mutual supportiveness of trade, environment and development, with regard to the fisheries subsidies negotiations. As regards the term "**artisanal** fisheries", it referred to **small-scale** fisheries that employed labour intensive harvesting, processing and distribution technologies to exploit marine and inland fishery resources. Such fisheries typically targeted local rather than export markets. The sponsor intended to include medium- to large-scale fisheries in developing countries in the discussions, while acknowledging the needs of those countries to develop their fisheries in a sustainable manner. It was ready to consider how special and differential treatment might apply to disciplines on fisheries subsidies. Furthermore, the participant did not intend to limit the discussion of improved disciplines to those provided to shared stocks; disciplines needed to be comprehensive enough to cover all significant fishery subsidies programmes that contributed to over-capacity or over-fishing or had other trade-distorting effects. It was open as to whether fisheries' specific factors should be taken into account in structuring disciplines, or whether a given stock is depleted. The possible reintroduction of ASCM Article 6.1 could be useful in strengthening disciplines on fisheries subsidies. As regards subsidy notifications to the SCM Committee, the current system was not providing useful and comprehensive information about particular fisheries programmes.

Certain Small Island States⁸⁵ — Rules Group submission (TN/RL/W/136, 14 July 2003, p. 3)

3. Artisanal Fisheries for Export and Domestic Markets

Any new fisheries subsidy disciplines on distant water and local fleets as suggested by the proponents of such disciplines would impact on a large number of coastal small vulnerable coastal states. However, heightened subsidies disciplines, if crafted without sufficient understanding or consideration of the particular circumstances of artisan fishers, could affect the development efforts of all small vulnerable coastal states in the fisheries sector. The **artisanal** fisheries sector remains central to the subsistence and monetized livelihood of coastal populations throughout the developing world in general and in particular in small vulnerable coastal states. Those involved in artisan fisheries are normally low-income groups. Moreover, in many coastal developing states, women disproportionately dominate or play an increasingly important role in the **artisanal** sector.

In many small vulnerable coastal states governments have specific programmes to assist these groups which often include direct assistance for the purchase of monetized inputs. This type of government assistance to low income, low technology fishers to raise income levels by expanding into monetized activities for the domestic and speciality export market are vital to the development efforts of small vulnerable coastal states and raising the standard of living of what are often very low income groups. As a result any disciplines that may be developed on fisheries subsidies must be crafted so that they exempt government programmes to raise income levels of **artisanal** fishers.

⁸⁵ Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St Kitts and Nevis.

...

Proposals

Small vulnerable coastal states therefore seek appropriate special and differential treatment in the current negotiations on fisheries subsidies disciplines. Article 1 of the ASCM shall be clarified to explicitly exclude the following from definition of subsidy:

...

- (3) **Artisanal Fisheries** - those measures undertaken by governments of small vulnerable coastal states to assist their **artisanal** fisheries sector.

Korea — NAMA submission (TN/MA/W/6/Add.3, 15 July 2003, p. 3)

15. For example, **small-scale** fisheries make up the majority of the Korean fisheries, with vessels under 10 meters in length comprising 94% of the total. It is unrealistic to surmise that these fishermen would quit fishing and change their profession when there is a large amount of imports from foreign countries. They not only have little capital, but are also too advanced in their ages to learn and acquire new skills to change occupations. As fishing is the only means to sustain their livelihoods, they would have no choice but to engage in more fishing than before in an effort to compensate for the income lost from the cheaper imports. This would cause social and political problems as well as resource depletion from the collapsing of local fishing communities.

Rules Group Meeting Summary (discussing W/115) (TN/RL/M/10, 17 July 2003, pp. 8-9)

27. Regarding fisheries subsidies, a submission entitled "*Possible Approaches to Strengthen the Disciplines Relating to Fisheries Subsidies*" (TN/RL/W/115) [(Chile)] was introduced. The sponsor believed that two categories of fisheries subsidies should be established. The first was a prohibited "red box" category of subsidies of a commercial character (those that lower costs or increase revenues or production) or directly promote over-capacity and over-fishing. As all subsidies have some trade effects, all other subsidies would be in an amber box, which would contain two sub-categories: those subsidies that had been notified plus those that could be assumed to have minimal trade effects (subsidies for **small-scale** fishing, for research or for resource management), and those that had not been notified. Regarding the first sub-category, if a Member felt that it was being harmed it would have to demonstrate that the subsidy was causing prejudice, while in the second sub-category, the subsidising Member would have to demonstrate its subsidies were not causing prejudice to the complaining Member. Lastly, the sponsor emphasised the need to improve notification quality. To this effect it suggested examining existing data in other fora, and having the Secretariat an updated table of notifications in this sector.

Rules Group Meeting Summary (discussing W/136) (TN/RL/M/11, 8 September 2003, pp. 5-6)

24. On the sub-item of Fisheries Subsidies, a submission entitled "*Fisheries Subsidies*" and sponsored by eight participants, was introduced. A sponsor stated that some Members had identified the elimination of fisheries subsidies as possibly the greatest contribution the multilateral trading system could make to sustainable development.

These Members argued that subsidies were partly responsible for the alarming depletion of many fish stocks, as much of the money was spent in commissioning new vessels or in enhancing the efficiency of old boats. The sponsors of this paper were coastal states, many of which were LDCs, with fish stocks in their exclusive economic zones which exceeded the existing capacity of their domestic fishing fleets. Significant government revenues had been generated for the sponsors from access fees from developed and developing country distant water fishing fleets. These access fees were almost always negotiated through bilateral agreements under which distant water fishing nations also provided invaluable development assistance. In order to attract investment in the fisheries sector, many developing and least developed small vulnerable coastal states offered incentives to both local and foreign fishers to supply domestic processing facilities. These access fees and incentives were vital if small vulnerable coastal states were to develop their fisheries sector, particularly for some very small island states where fish were the only resource. The sponsor urged participants to grant these access fees and incentives special and differential treatment in the current negotiations on fisheries subsidies. It referred to paragraph 28 of the Doha Declaration which reiterated the need to "... take into account the importance of this sector to developing countries". Furthermore, the right of small vulnerable coastal states to domesticate their fisheries sector was assured under the United Nations Convention on the Law of the Sea and any possible WTO discipline should not undermine the fundamental principles of the Law of the Sea. It requested that access fees and development assistance, fiscal incentives to domestication and fisheries development, and measures undertaken by governments of small vulnerable coastal states to assist their **artisanal** fisheries sector, be explicitly excluded from the definition of subsidy.

25. Many participants welcomed the submission, considered that the sponsors has identified legitimate interests, and expressed sympathy for the sponsors' request for S&D treatment. It was stated that management was not a proper issue for the WTO, and that the WTO should not restrict the freedom of governments to allow foreign access to their fish stocks. It was observed that access fees as such were not trade-distorting, and that current proposals would not directly restrict the ability of states to charge such fees; a subsidy issue would arise only where the fee-paying state seeking access to the fishery failed to recover those fees from its distant water fishers. It was further noted that the term "access payments" covered a variety of arrangements, which could be either harmful or beneficial, and that access arrangements that were not properly structured could lead to over-fishing and resource depletion, with little or no benefit to the developing countries as a whole. It was stated that development assistance was necessary and helpful, and should not be the subject of improved disciplines; however, subsidies to highly industrialized international fishing fleets of the developed world should not be hidden in the form of development assistance. It was observed that, in the course of development, care must be taken not to expand capacity so as to lead to over-fishing and trade distortions. Concern was also expressed regarding the suggestion to exclude certain measures from the definition of subsidy in Article 1, as the horizontal definition of subsidy should apply. It was suggested that S&D treatment be based on elements of Article 27 ASCM.

26. One participant believed that measures undertaken by governments of small vulnerable coastal states to develop their fisheries or to assist their **artisanal** fisheries

sector could not be considered to be harmful subsidies. The effects of fishery subsidies differed depending on the management schemes in place, and it was wrong to assume that over-harvests occurred in all areas of the world. Subsidies for the domestic fishery processing sector should be handled by clarifying general ASCM rules. Sustainable development of **artisanal** fisheries was important and coastal nations were entitled to manage fish stocks within their EEZs under international law. Another participant emphasised that the relationship between fisheries subsidies and depletion of fish stocks had not yet been verified; problems in management were the most significant cause of depletion. The S&D aspect of the paper facilitated understanding of the situation of **small-scale** low technology fisheries and was worthy of consideration. The participant brought the attention of the Group to its submission to the Negotiating Group on Market Access (TN/MA/W/6/Add.39).

27. One participant inquired why the sponsors chose to categorise themselves as small and vulnerable coastal states, what type of incentives the sponsors provided, and what was meant by "**artisanal**" fisheries. Another participant asked the sponsors to clarify what was meant by the "domestication" of fisheries, as any exemptions from disciplines should be clearly defined; to the extent it referred to fish processing, this might relate to industrial products rather than to fish. The sponsor responded that, the definition of a group of small and vulnerable states whose interests focused mainly on fisheries fit the economic reality of the sponsors. With regard to the types of incentives provided by the sponsors, it referred to types of subsidies listed in the proposal including low interest loans, tax exemptions, direct payments of income and access fees. On **artisanal** fisheries, it defined it to be the **small-scale** fisheries which are local in nature.

Korea — Rules Group Submission (TN/RL/W/160, 8 June 2004, pp. 3-4)

Which fisheries subsidies are covered by the proposed new rule?

6. New Zealand's proposal also raises several questions regarding the scope of subsidies subject to the new rule.

...

- (b) Support programmes such as assistance to fishing households with low income levels and **small-scale** fisheries are provided as a part of social welfare policy. Should those subsidies be prohibited just because they would have cost/revenue impacts?

...

11. Korea is ready to join the international efforts to enhance mutual supportiveness between trade and the environment by clarifying and improving the WTO disciplines on fisheries subsidies. Korea is of the view that such new disciplines on fisheries subsidies should be pursued while maintaining a balance among trade, environment and socio-economic development. It should also be noted that a wide spectrum of differences exist among the world's fisheries, compared with the manufacturing sectors. **Small-scale** subsistence fisheries still coexist side by side with large-scale commercial fisheries, and traditional coastal fisheries with modernized distant water fisheries.

Rules Group Meeting Summary (discussing W/164) (TN/RL/M/18, 15 October 2004, pp. 2-3)

7. One Participant submitted that any new disciplines should allow for the use of proper management of fisheries resources to alleviate poverty meet rural development objectives for developing countries. Subsidy programmes to enhance capacity in developing countries should include investment subsidies, measures of assistance including direct payments to encourage fishing and rural development, poverty eradication among the fishing community, training and educational programmes, assistance to the fishing industry or marketing boards and cooperatives, fiscal incentives and reducing marketing and transport costs. There was a need for a detailed discussion on subsidies for **artisanal** fishing to help clarify its scope. Developing countries should not be deprived from the opportunity to use subsidies to develop their fishing industries.

...

9. The sponsor [Japan] emphasized that the WTO was the proper forum for the consideration of fisheries resources sustainability. It did not deny totally the trade distorting effects of certain types of subsidies, but stressed that the concepts of conservation and suitable utilization of fisheries resources are fundamental. It emphasised the importance of its bottom-up approach and requested that it remain as a subject for future discussions. Finally, it expressed its readiness to accept S&D for developing countries, especially **artisanal** fishing. It added that it had no intention to categorize developing countries.

Japan — Rules Group submission (TN/RL/W/172, 22 February 2005, p. 4)

Small-scale fisheries

16. Each country has a different fishery environment in terms of the level of development and stock status. In some countries, large-scale commercial fisheries and **small-scale** subsistence fisheries co-exist. Also, there are vulnerable fishery sectors or groups of fishermen in each country. Given this situation, it would be desirable to allow flexibility for each country's domestic **small-scale** subsistence fisheries to ensure adequate protection for the vulnerable fishermen. At the same time, devices to prevent loopholes must be put in place.

17. However, there is no agreed definition of **small-scale** fisheries and each country has its own criteria based on the circumstances surrounding its fishery sector. Therefore, we perceive the need to discuss the issue of definition of **small-scale** fisheries eligible for exception to prohibition, and ways to prevent loopholes.

Rules Group Meeting Summary (discussing W/172) (TN/RL/M/25, 29 March 2005, p. 4)

13. . . . Questions were also posed regarding the definition of capacity enhancement; how such a concept could be effectively captured in WTO rules; what was meant by **small-scale** subsistence fisheries in general and within the context of the sponsors' own fisheries sectors; and why the sponsors hadn't included price support in their list of prohibited subsidies.

Brazil — Rules Group submission (TN/RL/W/176, 31 March 2005, p. 6)

- (ii) Classification of Fisheries Subsidies. Brazil favours the approach of classifying fisheries subsidies based both on their design and effects, according to the context in which they are provided
- (a) "Green Box" (non-actionable subsidies) – There should be an exhaustive list of non-actionable fisheries subsidies, provided that they do not have trade-distorting or production-distorting effects through enhancing capacity and overfishing. Subsidies that do not meet those conditions or do not fall within the exhaustive list should be considered prohibited subsidies. In this regard, Members may wish to discuss the following non-exhaustive list of examples of subsidies that could be considered non-actionable:
- ...
- (2) subsidies to **small scale** fishing¹², provided that such fisheries are not "patently at risk"¹³
- ...
- (b) "Red Box" (prohibited subsidies) – All remaining subsidies that do not fall within the "green box" shall be considered as prohibited subsidies, together with those subsidies that are already prohibited under the current disciplines in Article 3 of the ASCM. In other words, there would be a prohibition on fisheries subsidies that, by reason both of their design and effects, cause, for example: 1) the increase of fishing capacity or effort; 2) "illegal, unreported or unregulated" (IUU) fishing; 3) the increase of the domestic supply of fish, threatening the sustainability of the fishing resource. One exception could be envisaged: short-term emergency relief and adjustment to fishermen suffering significant loss of income as a result of reductions in fishing caused by conservation measures or unforeseeable natural disasters: (a) in case of unforeseeable natural disasters and; (b) to **small scale** fishermen suffering significant loss of income as a result of reductions in fishing caused by conservation measures.

¹² - Subsidies granted to non-automatic net-retriever fisheries activities developed in a **small scale**, usually encompassing **artisanal** fishing and family fishing. Brazil deems it important that a clear-cut concept of "**small scale** fishing" be worked out.

¹³ - For example, a fishery could be considered "patently at risk" if it has been determined "overexploited", "depleted", or "recovering" by the FAO. Brazil is willing to discuss and to further elaborate on this concept.

Brazil — Rules Group submission (TN/RL/GEN/56, 4 July 2005, p. 2) [revision of W/176]

- (ii) Classification of Fisheries Subsidies. Brazil favours the approach of classifying fisheries subsidies based both on their design and effects, according to the context in which they are provided:
- (a) "Green Box" (non-actionable subsidies) - There should be an exhaustive list of non-actionable fisheries subsidies, provided that they do not have trade-distorting or production-distorting effects through enhancing capacity and overfishing.

Subsidies that do not meet those conditions or do not fall within the exhaustive list should be considered prohibited subsidies. In this regard, Members may wish to discuss the following non-exhaustive list of examples of subsidies that could be considered non-actionable:

...

- (2) subsidies to **small scale** fishing⁴ and to **artisanal** fishing⁵, provided that such fisheries are not "patently at risk"⁶;

...

If any vessel and/or company of a Member is found to be engaged in IUU fishing according to any RFMO, serious prejudice, in the sense of paragraph (c) of Article 5 of the ASCM, shall be deemed to exist regarding all non-actionable subsidies granted by that Member.

- (b) "**Red Box**" (prohibited subsidies) – All remaining subsidies that do not fall within the "green box" shall be considered as prohibited subsidies, together with those subsidies that are already prohibited under the current disciplines in Article 3 of the ASCM. In other words, there would be a prohibition on fisheries subsidies that, by reason both of their design and effects, cause, for example: 1) the increase of fishing capacity or effort; 2) IUU fishing^[fn omitted]; 3) the increase of the domestic supply of fish, threatening the sustainability of the fishing resource. One exception could be envisaged: short-term emergency relief and adjustment (a) in case of unforeseeable natural disasters and (b) to **small scale** fishermen suffering significant loss of income as a result of reductions in fishing caused by conservation measures.

⁴ - Subsidies to **small scale** fishing are to be considered non-actionable if granted to activities carried out by vessels with total length not exceeding 24 meters and with a total catch not over 250 tons per year. In addition:

- (a) if the fishery is under the management of a RFMO:

(a.1) and if a country limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 10% of the limit set to the country for that specific specie by that RFMO; or

(a.2) and if no country limit is set to a specific specie, the total catch of the country small-scale fleet for the specific species that have no individual limits shall not exceed 5% of the limit set to the country by that RFMO for those specific species that have no individual limits; or

(a.3) and if a global limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 0,5% of the global limit set to that specie by that RFMO; or

- (b) if the fishery is not under the management of a RFMO, the annual increase of the volume catch by the country small-scale fleet for that specific specie shall not exceed 3% of the most recent volume catch data reported to a competent international organization.

⁵ - Subsidies to **artisanal** fishing are to be considered non-actionable if:

- (a) granted to fisheries activities performed at an in-shore basis with non-automatic net-retriever devices;
- (b) granted to activities carried out on an individual basis (including, but not necessarily, the family members);
- (c) the basic scope of the activities encompasses both family livelihood and a small profit trade; and there is no employer-employee relationship on the activities carried out.

⁶ - For example, a fishery could be considered "patently at risk" if any of the following conditions apply:

- the status of exploitation is "not known or uncertain" or is "overexploited," "depleted," or "recovering" according to the FAO; or
- the status of exploitation or of the target species is deemed equivalent to the foregoing by a competent regional or international authority having jurisdiction over the fishery.

Certain Small Island States⁸⁶— Rules Group submission (TN/RL/GEN/57/Rev.1, 4 August 2005)

I. INTRODUCTION

...

2. TN/RL/W/136 identified three primary categories of economic activity in the fisheries sector of small vulnerable coastal states as being:

- (i) Revenue generation from access fees for distant water fleets;
- (ii) Domestic and foreign fisheries export-related operations in the EEZ and territorial sea to supply canneries, loining facilities and domestic processing facilities;
- (iii) **Artisanal fishing** within the territorial sea and the EEZ for the domestic and export market.

3. The fisheries sector is not only of economic importance, but is also a key factor in the drive to eradicate poverty in developing countries. **Artisanal, or small-scale** fisheries, as providers of fisheries products for domestic consumption are important for maintaining food security.

...

V. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

...

16. Small vulnerable coastal states seek appropriate special and differential treatment in any disciplines on fisheries subsidies. In this regard the following should not be subject to subsidies disciplines:

⁸⁶ Fiji, Jamaica, Papua New Guinea, and the Solomon Islands

...

- (ii) Assistance to **artisanal or small-scale** fisheries. This requires a consensus on the definition of **artisanal or small-scale**. Some existing definitions of **artisanal** are based on vessel size in metres, capacity in gross registered tonnage (GRT), or area of operation in terms of proximity to the shoreline. We invite discussions on prevailing definitions used by Member States and possible approaches for arriving at a definition for use in the WTO; to facilitate the discussions, the sponsors of this paper will share information with Members on definitions currently being used in their respective jurisdictions;

...

Brazil — Rules Group submission (TN/RL/GEN/79, 16 November 2005) [revision of GEN/56]

- (ii) Classification of Fisheries Subsidies. Brazil favours the approach of classifying fisheries subsidies based both on their design and effects, according to the context in which they are provided:

- (a) "Green Box" (non-actionable subsidies) - There should be an exhaustive list of non-actionable fisheries subsidies, provided that they do not have trade-distorting or production-distorting effects through enhancing capacity and overfishing. Subsidies that do not meet those conditions or do not fall within the exhaustive list should be considered prohibited subsidies. In this regard, Members may wish to discuss the following non-exhaustive list of examples of subsidies that could be considered non-actionable:

...

- (2) subsidies to **small scale** fishing⁶ and to **artisanal** fishing⁷, provided that such fisheries are not "patently at risk"⁸;

...

Whenever any vessel and/or company of a Member is found to be engaged in IUU fishing according to any RFMO, the Member will dispose of a period of six (6) months to demonstrate that it took all necessary steps to withdraw the licence of that vessel and/or company and that the vessel and its engine are definitely scrapped. Additionally, the Member will dispose of a period of twelve (12) months to demonstrate that it had taken all necessary steps to improve its management schemes in relation to IUU fishing. If any of the two conditions are not fulfilled, serious prejudice, in the sense of paragraph (c) of Article 5 of the ASCM, shall be deemed to exist regarding all non-actionable subsidies granted by that Member.

"Red Box" (prohibited subsidies) – All remaining subsidies that do not fall within the "green box" shall be considered as prohibited subsidies, together with those subsidies that are already prohibited under the current disciplines in Article 3 of the ASCM. In other words, there would be a prohibition on fisheries subsidies that, by reason both of their

design and effects, cause, for example: 1) the increase of fishing capacity or effort; 2) IUU fishing; 3) the increase of the domestic supply of fish, threatening the sustainability of the fishing resource. One exception could be envisaged: short-term emergency relief and adjustment in case of unforeseeable natural disasters. Payments made by developed country governments for access to the EEZ fisheries resources of developing countries could be permitted, subject to specific conditions.

⁶- Subsidies to **small scale** fishing are to be considered non-actionable if (a) the share of the fishery sector of the country granting the subsidies represents more than [X%] of its GDP, in accordance with the most recent data from the World Bank, or (b) granted to activities carried out by vessels with total length not exceeding 24 meters that are used for catching a specific specie shall be considered part of the small-scale fleet for that specific specie. In addition:

(i) if the fishery is under the management of a RFMO:

(i.1) and if a country limit is set to a specific specie, the total catch of the country **small-scale** fleet for that specific specie shall not exceed 10% of the limit set to the country for that specific specie by that RFMO; or

(ii.2) and if no country limit is set to a specific specie, the total catch of the country small-scale fleet for the specific species that have no individual limits shall not exceed 5% of the limit set to the country by that RFMO for those specific species that have no individual limits; or

(i.3) and if a global limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 0,5% of the global limit set to that specie by that RFMO; or

(ii) if the fishery is not under the management of a RFMO, the annual increase of the volume catch by the country **small-scale** fleet for that specific specie shall not exceed 3% of the most recent volume catch data reported to a competent international organization.

Whenever the above-mentioned conditions (a) or (b) are not met, the entirety of the subsidies granted to the activities described in the first paragraph of this footnote (here footnote 4) is to be considered prohibited subsidies.

⁷ - Subsidies to **artisanal** fishing are to be considered non-actionable if:

1) granted to fisheries activities performed at an in-shore basis with non-automatic net-retriever devices provided that;

a) the activities are carried out on an individual basis (including, but not necessarily, the family members

(c) the basic scope of the activities encompasses both family livelihood and a small profit trade, and

(d) there is no employer-employee relationship on the activities carried out, or

Subsidies granted to fishermen associations shall fulfill the same conditions of this item in order to be considered non-actionable subsidies.

⁸ - For example, a fishery could be considered "patently at risk" if any of the following conditions apply:

- the status of exploitation is “not known or uncertain” or is “overexploited,” “depleted,” or “recovering” according to the FAO; or
- the status of exploitation or of the target species is deemed equivalent to the foregoing by a competent regional or international authority having jurisdiction over the fishery.

Korea— Rules Group submission (TN/RL/GEN/92, 18 November 2005)

6. The FAO defines **small-scale** fisheries as “**artisanal**” or “traditional” fisheries. From the FAO definitions, traditional fisheries involve households (as distinct from commercial companies) using relatively small amount of inputs in capital and energy, and small boats making short fishing trips close to shore. Also, a part of the FAO definition is the typical disposition of the catch which is mainly for local consumption.⁵ In a regional workshop on social feasibility in small-scale fisheries development, a small-scale fisheries definition is developed based on labour intensity, income level, degree of mechanization, level of production, amount and range of fishing activities, political inclination, employment, social mobility and financial dependency. All of these factors, except for financial dependency, are at low levels and are regarded as affected by the economic decisions and other constraints of the consumers purchasing the products produced by **small-scale** fisheries⁶

⁵. Traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any, making short fishing trips, close to shore, mainly for local consumption. In practice, definition varies between countries, e.g. from gleaning or a one-man canoe in poor developing countries, to more than 20 m. trawlers, seiners, or long-liners in developed ones. **Artisanal** fisheries can be subsistence or commercial fisheries, providing for local consumption or export. Sometimes referred to as small scale fishery", 2005, FAO Online Glossary

⁶. FAO, Report of Workshop on Social Feasibility in Small-scale Fisheries Development, 197

Appendix B

A Few Examples of Existing Usages and Definitions

This appendix gives a short sampling of current usages and definitions of the term “artisanal” in the fisheries context. These are not meant to be representative or exhaustive, but merely illustrative. (Emphasis added throughout.) (See also definitions offered by WTO delegations, ¶¶ 2.3-2.4, above.)

FAO 1993⁸⁷

DEFINITIONS OF KEY WORDS AND TERMS

Artisanal or Small-scale Fisheries (SSF): generally a labour-intensive fishing sub-sector whose operators use simple and practical technology, work in decentralized coastal areas, experience fluctuating production and low incomes, live in isolated areas usually under difficult conditions and occupy a relatively low social status in many countries. It is composed of private sector entrepreneurs operating at different organisational levels from single person operations, through informal micro-enterprises to formal sector business. It represents a mix of several entrepreneurs in the fish capture, processing and marketing areas and also in ancillary industries such as boat building, engine supply and repairs, ice plants, net manufacturing, fuel and fuelwood supplies and money lending; each contributing especially to food self-sufficiency and the creation of numerous jobs for both women and men.

FAO 2005⁸⁸

Definition: “Artisanal Fisheries” — Traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips, close to shore, mainly for local consumption. In practice, definition varies between countries, e.g. from gleaning or a one-man canoe in poor developing countries, to more than 20 m. trawlers, seiners, or long-liners in developed ones. Artisanal fisheries can be subsistence or commercial fisheries, providing for local consumption or export. Sometimes referred to as small-scale fisheries.

Asian Development Bank, Policy on Fisheries⁸⁹

From the Glossary:

⁸⁷ FAO 1993, p. v.

⁸⁸ FAO 2005 (online glossary)

⁸⁹ Asian Development Bank 1997, pp. iv & 6.

Artisanal fishery — Small-scale fishery generally limited to nearshore waters and inland water bodies, and employing labor-intensive fishing technologies.

From the text:

Artisanal (or small-scale) fisheries are generally limited to nearshore waters and inland water bodies, and employ labor-intensive fishing technologies. Artisanal fishing operations are typically family-based, using small craft (usually smaller than 12 meters [m] long) and fishing gear such as beach seine and gill nets, hook and line, and traps. In the Region, artisanal fisheries are estimated to contribute at least 50 percent of total fisheries production. The artisanal subsector is strategically significant to Bank operations, as it supports extensive rural employment in the DMCs, particularly in countries where fisheries have become the employer of last resort.

United Nations Code of Conduct for Responsible Fisheries

6.18 Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in **subsistence, small-scale and artisanal** fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

International Development Research Center, 2001⁹⁰

Various terminologies are used to label the range of fisheries (Table 1.1). The terms differ in the details of definition but not in substance. It is useful, however, to distinguish the largescale (commercial/industrial) from the small-scale (commercial, artisanal, subsistence) ends of the spectrum. Strictly speaking, all fisheries are commercial. Even the smallest artisanal fishery sells what is surplus to household needs. Today there are very few fisheries in which none of the catch is sold, and these are usually termed subsistence fisheries.

...

Traditional, artisanal, and subsistence fisheries are also in the category of small-scale fisheries, exploiting many of the stocks harvested by commercial fisheries. In addition, they exploit a great variety of very small stocks distributed over numerous management units (Figure 1.1). Some of these fisheries are mechanized but most use traditional fishing gear, such as small nets, traps, lines, spears, and hand-collection methods. Of all the fisheries, biodiversity of the catch is highest in these. For that reason, and because low gear used is unselective, these harvests include a greater variety of species than do those of the larger commercial fisheries. Traditional, artisanal, and subsistence fisheries tend to target the following groups of species:

- Fishes and invertebrates of coral reefs, typically with traps, spears, lines, and by hand;

⁹⁰ Berkes et al. 2001 ch. 1.4.

- Fishes and invertebrates of coastal lagoons and estuaries, typically using nets;
- Stream and river fisheries, typically using nets;
- Aquarium species in all habitats, using nets and noxious substances.

Chilean fisheries regulation, ca. 1996 (described)⁹¹

If they want to continue as artisanal fishermen, according to the Fishery Law, their boats must be less than 18 m in length and no more than 50 gross registered tonnes (GRT). Such a boat can no longer be managed with only the help of relatives.

Artisanal Fishing in France⁹²

Artisanal fishing refers to the use of boats under 25 metres in length. A subdivision specifies that boats under 12 metres represent 74% of the whole fleet, and those comprised between 12 and 25 metres correspond to 23% (Ofimer 2000).

⁹¹ This text is taken from *Samudra*, Issue No. 16, Nov. 1996, pp. 18 (http://www.icsf.net/jsp/publication/samudra/pdf/english/issue_16/ALL.pdf), which in turn is presenting a translation by Brian O’Riordan of an article from *Chile Pesquero*. *Samudra* presents the article without detailed attribution, and the original is apparently no longer available on line (see <http://www.chilepesquero.cl/>).

⁹² Gouin 2000, fn. 7.

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www.unep.ch/etb

UNEP DTIE

Economics and Trade Branch

Tel: +41 22 917 82 43

Fax: +41 22 917 80 76

E-mail: etb@unep.ch

