2. Fisheries Subsidies Negotiations under the WTO and Likely Policy Implications for the Pacific Island Countries

Vina Ram-Bidesi

Introduction

It is well known that Pacific Islands Countries (PICs) are heavily reliant on fish and fisheries products as a source of livelihood, food and foreign exchange. Fish and fishery products are one of the major traded food commodities and this trade is likely to increase in the future to meet the ever increasing demand for fish and seafood.\(^1\) The relationship between international fish trade, fisheries management and sustainable development is intrinsically intertwined.\(^2\) While the main aspects of this interdependence can be conceptualised, it however poses a major challenge for legal practitioners and policy makers when dealing with cross-disciplinary issues relating to fisheries management, subsidies and trade. Thus there is the need for an integrated and interdisciplinary approach when formulating fisheries policies whether it is at an international, regional, national or local level.

Expanding fish exports is seen to generate significant benefits and economic growth to the exporting country. However, this can simultaneously give rise to problems such as economic pressure to harvest fish unsustainably, or excessive investment in fishing capacity which in turn can lead to overfishing and depletion of stock on which the communities depend upon for their nutrition and livelihood. On the other hand, there is a growing interest in the potential synergistic relationship between trade rules, conservation and sustainable development objectives such as in relation to eco-labelling, reduction in subsidies and use of trade measures to promote more sustainable fisheries. Trade measures are seen as a more powerful enforcement mechanism for fisheries management because of the World Trade Organisation’s (WTO’s) rules-based system.

Defining the scope and breath of harmful fisheries subsidies has been a central aspect of the WTO negotiations.\(^3\) A subsidy is a government expenditure that makes a resource cheaper to produce than its full economic cost or makes a product cheaper to consumers. Subsidy payments and transfers are important policy tools used by governments to support an economic sector (institution, business or industry), with the aim of promoting an activity within it, which the

---

\(^2\) Deere (2000) further explores this link in *Net Gains: Linking Fisheries Management, International Trade and Sustainable Development*.
\(^3\) International Centre for Sustainable Trade and Development (ICSTD) 2006, p. 62.
government considers beneficial to the economy and society. In the context of
fishing, subsidies are provided to lower the cost of fishing or to increase revenues,
or both; such as budgetary assistance, tax exemptions, lower interest rates, grants
and price support schemes. Some subsidies are applied directly to boost
production and help secure profits and encourage export growth, while others are
targeted at improving efficiency and the scale of production.

Over the years, subsidies have helped in the development of fishing industries to
achieve their social and economic objectives. However, the high estimate of global
subsidies in the fisheries sector has raised concerns on their role in exacerbating
the decline in marine resources driven by the increase in demand for fish together
with advances in technology. These have contributed to overcapacity and
overfishing that not only depletes fish resources but also distorts the price of fish,
therefore its market and trade. Critics argue that subsidies contradict efforts to
liberalise trade and undermine development potential that can be unleashed by
properly-managed fisheries. Despite such concerns, some subsidies continue to
remain important in achieving public policy objectives.

This chapter outlines some key aspects of fisheries subsidy negotiations at the
WTO so far and analyses their possible implications for Pacific Island fisheries.
First, a brief background to the subsidies debate is outlined followed by a
discussion on the first draft text proposed by the Chair of the Negotiating Group
on Rules and how the provisions may influence the Pacific Islands fisheries sector
policies. The chapter then makes some possible suggestions on the approaches that
Pacific Island countries could use when discussions on fisheries subsidies resume.
While formal discussions on new subsidies rules are suspended and therefore the
final outcome is not clear, the chapter nevertheless makes some preliminary
assessment on the challenges it is likely to pose for legal and policy personnel
dealing with the fisheries sector issues.

Subsidies Rules at the WTO

The WTO Agreement on Subsidies and Countervailing Measures (ASCM)
Agreement) disciplines the use of subsidies by regulating the actions countries can
take to counter the effects of subsidies. Under the WTO Agreement, a country can
use the WTO’s dispute settlement procedure to seek withdrawal of the subsidy or
the removal of its adverse effects. A country can also carry out its own

---

4 For example, see Westlund, 2004.
7 Yu, V.P. and Fonseca, D. 2005.
investigation and ultimately charge extra duty “countervailing duty” on subsidized imports if they are found to hurt domestic producers.  

There have been a number of arguments by certain member countries, international agencies, non-government organisations (NGOs) and researchers that the current WTO subsidy rules cannot effectively regulate the impacts of fisheries subsidies on trade and have therefore put pressure within the WTO to expand, clarify and develop new rules on fisheries subsidies.  

Under the Agreement on Subsidies and Countervailing Measures (ASCM), fisheries subsidies are difficult to target as actionable because they are largely granted at the production level which causes production distortion while ASCM targets subsidies that cause trade distortion. It is therefore difficult to prove “adverse effects” to allow the subsidy to be punished under the WTO rules.  

The mandate in paragraphs 28 and 31 of the Doha Declaration states that members are to “clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of the sector to developing countries … with a view to enhance the mutual supportiveness of trade and environment.” In addition to this, members reaffirmed their commitment to strengthen the rules on fisheries subsidies at the Sixth Ministerial Conference in Hong Kong in 2005. Members agreed to prohibit subsidies that contribute to overfishing and overcapacity, improve transparency in reporting and strengthen the enforceability of rules. Members also agreed to address the importance of the sector to development priorities including reduction in poverty, food security and improved livelihood.  

*Agreement on Subsidies and Countervailing Measures*

The ASCM defines subsidies as any financial contribution provided by government that confers a benefit to a “specific” domestic industry. A financial contribution can be provided directly by the government or a public or private entity on behalf of the government such as direct payment, goods and services, price support, income support or foregone revenues. Under ASCM, subsidies are divided into three categories: prohibited, actionable and non-actionable. Prohibited subsidies are those that directly affect trade such as those that promote exports 

---

8 On 31 July 2008, the Subsidies Committee elected Members of a Permanent Group of Experts to assist in Dispute Panel and provide expert advisory services on issues relating to Subsidies.  
9 For example, see: Schorr 1998; WWF 1997; OECD 2003; Schorr 2004.  
10 Campling, L., Havice, E. and Ram-Bidesi, V. 2007 – outline some of the difficulties associated with implementing ASCM to discipline fisheries subsidies.  
12 WTO Ministerial Declaration, WT/MIN(05) DEC: D-2 para 9.  
13 ASCM- Article 1.  
14 ASCM – Article 1.
(export subsidy) or those that restrict imports (use of domestic goods). Actionable subsidies must show proof of having an adverse effect. The subsidizing government is required to pay for the loss incurred by the member that lodges the complaint but can continue with the subsidy. This means that harmful actionable subsidies may continue to persist even if action is taken against at the WTO.\(^{15}\) The third category of subsidies are non-actionable or permitted and include such things as research activities, assistance to disadvantaged regions and assistance to adapt to new environmental requirements.\(^{16}\)

**Progress on the Fisheries Subsidies Negotiations**

The initial discussion on fisheries subsidies began at the WTO’s Committee on Trade and Environment (CTE) in 1994 and gradually progressed into the Rules Negotiating Group. A number of proposals on new fisheries subsidies disciplines focusing on a diverse range of issues have been presented since then. Among the key issues include the structure and definitions, treatment of access agreements, exemptions to artisanal and small-scale fisheries, nature and extent of special and differential treatment for developing countries and environment management and conservation.

A coalition group called the “Friends of Fish”\(^{17}\) lobbied within the CTE to include discussions on fisheries subsidies, overcapacity and overfishing. Their submissions were essentially labelled as the “broad ban approach.”\(^{18}\) On the other hand, another group of Asian countries\(^{19}\) argued that WTO was not the right forum to deal with fisheries resource sustainability issues. Their main concern was that fisheries management issues and illegal, unreported and unregulated (IUU) fishing was outside the competence of WTO. This group’s submissions have been labelled as the “positive list” approach.\(^{20}\) Since 2004, as discussions progressed on subsidies, this latter group has raised some key issues that target harmful subsidies.\(^{21}\)

The European Union (EU) initially took a middle-ground on subsidies issues. By the end of 2006, EU’s approach to subsidies issues were more in line with that of


\(^{16}\) Under the ASCM, the provisions for permitted subsidies expired in 1999.

\(^{17}\) Australia, Ecuador, Iceland, New Zealand, Norway, Peru, Philippines and USA.


\(^{19}\) Japan, South Korea and Taiwan (Chinese Taipei).

\(^{20}\) ‘Broad ban’ – prohibit all subsidies except for those under the green box (applied for conservation) as opposed to ‘positive list’ – allows all subsidies and prohibit those that increase fishing capacity. [For a more detailed discussion – refer to Campling, L., Havice, E. and Ram-Bidesi, V. 2007, Part II].

Japan, Korea and Chinese Taipei. The proposals to the WTO from small vulnerable economies (SVEs)\textsuperscript{22} including the Pacific Island members argued that the fisheries sector is important for their economies as stated in the Doha Development Agenda and that access agreements and small-scale fisheries should be exempt from the subsidies rules.

From 2004 onwards, Brazil also took an active part in the negotiations.\textsuperscript{23} Brazil submitted a number of proposals that accelerated the progress in negotiations, particularly focusing on special and differential treatment (S&DT) provisions. The various submissions by the members have thus helped to shape the draft text released by the Chair of Negotiating Group on Rules.

\textbf{Proposed Chair’s Draft Legal Text on New Rules}

In releasing the draft text in November 2007, the chair of the Negotiating Group on Rules requested members to identify their interests while accommodating the interests and concerns of other members to seek a balance in moving forward the negotiations. The draft text on fisheries subsidies is to be appended as Annex VIII of the ASCM.\textsuperscript{24} In the chair’s draft text, government to government payments of access to marine fisheries are not considered as subsidies and therefore non-actionable. Article 1 provides a detailed list of prohibited subsidies while Article II outlines the general exceptions. These are briefly summarized in Table 1.

\footnotesize
\begin{itemize}
\item \textsuperscript{22} For example see: TN/RL/GEN/57/Rev.1 2005; TN/RL/GEN/57Rev.2 2005; TN/RL/W/136 2003.
\item \textsuperscript{24} TN/RL/W/213 2007.
\end{itemize}
Table 1: Proposed Prohibited and Permitted Subsidies in the Draft Chair’s Text

<table>
<thead>
<tr>
<th><strong>Prohibited Subsidies</strong></th>
<th>Goods and Services benefits relating to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition, construction, repair, renewal, renovation, modernization and boat building</td>
<td></td>
</tr>
<tr>
<td>Transfer of fishing or service vessels to third countries</td>
<td></td>
</tr>
<tr>
<td>Operating costs of fishing - license fees, fuel, ice, bait, personnel, insurance and gear support, at-sea support, handling in- or near-port processing, covering operating losses</td>
<td></td>
</tr>
<tr>
<td>Port infrastructure – landing facilities, fish storage facilities, in-or near-port processing facilities</td>
<td></td>
</tr>
<tr>
<td>Income support, price support</td>
<td></td>
</tr>
<tr>
<td>Transfer of access rights by government in another member’s jurisdiction</td>
<td></td>
</tr>
<tr>
<td>Vessels engaged in illegal, unreported or unregulated fishing</td>
<td></td>
</tr>
<tr>
<td>Vessels and fishing activity affecting fish stocks in “unequivocally overfished” condition</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Permitted Subsidies</strong></th>
<th>Improving crew safety without increase vessel capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption of selective fishing techniques</td>
<td></td>
</tr>
<tr>
<td>Adoption of techniques to reduce environmental impact of fishing</td>
<td></td>
</tr>
<tr>
<td>Compliance with fisheries management regime for sustainable use and conservation – eg VMS</td>
<td></td>
</tr>
<tr>
<td>Re-education, retraining or redeployment of fishworkers into non-fishing occupations</td>
<td></td>
</tr>
<tr>
<td>Early retirement or permanent cessation of employment of fishworkers to reduce capacity or effort</td>
<td></td>
</tr>
<tr>
<td>Vessel decommissioning or capacity reduction provided vessels are scrapped or permanently prevented from being used for fishing elsewhere; fish harvesting rights are permanently revoked; relinquish any claim associated with vessel or harvesting rights.</td>
<td></td>
</tr>
</tbody>
</table>

**Special and Differential Treatment (S&DT) Provisions**

Under Article II of the proposed rules, the least-developed countries (LDCs) are exempt from the use of prohibited subsidies. Non-LDC countries are allowed to provide prohibited subsidies to fisheries in inshore areas (i.e. territorial waters) that are characterised by non-mechanised fishing methods, and carried out by individuals, family members or group organised in associations. The catch is to be consumed by fishworkers and their family members and that fishing activities do not go beyond a small profit. In addition, fisheries management measures should be in place to ensure sustainability.

Developing country members are also allowed to provide construction-related subsidies that are otherwise prohibited for developed countries. These include port infrastructure, fish landing facilities, fish storage facilities, and in-or near-port processing facilities. They are also allowed to provide income support and price
support but these provisions are subject to having an effective fisheries management system based on internationally-recognised best practices described in the various international agreements under the Food and Agriculture Organisation (FAO).

Under the proposed rules, prohibited subsidies such as those for boat building, repairs, and to meet operating costs like fuel, ice, bait, insurance and gear, are also allowed for developing country members for undecked vessels and decked vessels that are less than 10 metres or 43 feet in length.

Developing member countries are also allowed prohibited subsidies for vessels construction, repair and modernisation of vessels greater than 10 metres provided that such vessels are able to satisfy a list of management-related criteria to reduce the risk of overcapacity in fishing. These criteria include fishing exclusively for identified target stocks within the member’s exclusive economic zone (EEZ), that the fish stocks have been subject to prior scientific assessment to ensure their capacity does not exceed beyond sustainable level and that assessment has to be subjected to peer review by a competent international organisation such as the FAO.

Likewise, under the S&DT provisions for developing countries, payments made from one government to another and then transferred to an external third party (such as an industry) are permitted subsidies if the fishery is conducted within the developing country member’s EEZ and the access agreement is made public and has provisions designed to prevent overfishing based on internationally recognized best practices for management and conservation.

Other Provisions

Article V of the draft text details the requirements for an effective fisheries management regime that reflects internationally recognised best practices among which include the United Nations Fish Stocks Agreement (1995), the Code of Conduct for Responsible Fisheries (1995) and the Compliance Agreement (1995), technical guidelines and plans of action. The incorporation of such fisheries instruments into national legislation and policy is aimed to ensure the use of science-based stock assessment, capacity and effort management based on allocation of fishing rights or quotas, a vessel monitoring system including observers on board and a system of timely reporting to national and international authorities. These are likely to have direct influence on the fisheries law and policy because they may require changes to domestic legislation, including changes to administrative and judicial enforcement mechanisms. Developing

---

country members can implement and operate the fisheries management measures at a regional level provided they fulfil their individual obligations for the regionally agreed management requirements.

In addition, each member country has to maintain an enquiry point to answer queries in relation to the fisheries management system including measures in place to address fishing capacity, effort and biological status of fisheries in question. Article VI outlines the notification requirements among which includes such things as notifying the ASCM committee the terms of fisheries access agreement and reporting on any applicable domestic fisheries legislation. Article VIII implies that any subsidies that are not notified would be deemed prohibited and thus vulnerable to litigation. The subsidising member has to demonstrate that the subsidy in question is not prohibited. On compliance and implementation of the rules, Article III (4) recognises the need for technical assistance for developing countries either bilaterally and/or through appropriate international organisations.

**Reaction to the Chair’s Draft Rules**

WTO members discussed the chair’s draft text during the Negotiating Group on Rules meetings that started in December 2007 and officially suspended in July 2008 when trade talks on the Doha Round came to a halt. The text bans several types of subsidy payments that enhance fishing capacity or create incentives to increase fishing. The text attempts to bridge the two broad views in the negotiations between the proponents of “top-down” blanket ban on fisheries subsidies (with negotiated exceptions), and those that support a “bottom-up” ban on specific kinds of subsidies. Developing countries are allowed to maintain a number of subsidies that are otherwise banned so as to assist in the development of their fishing industries to meet their economic and social objectives. However, all such subsidy payments are subject to having an effective fisheries management system in place. India questioned the conditionality imposed to qualify for S&DT while China and Brazil described the text as being both too rigid and overly burdensome. Japan, Korea and Chinese Taipei argued that prohibition of subsidies for port infrastructure, operating costs and near-port fish processing had little effect on overcapacity. Australia and New Zealand together with environmental groups like WWF and Oceania see the draft text as constructive because of the incorporation of environmental provisions. The Pacific Island members together with the African, Caribbean and the Pacific (ACP) welcomed the exemptions relating to access agreements. A particular concern to many developed and developing countries alike is the prohibition on fuel subsidies which they argue would deprive their fishers of their livelihood by making it

---

impossible for them to continue fishing, while there are some member countries who argue that if prohibition did not cover fuel subsidies, then any discipline on subsidies would be ineffective.\(^\text{28}\)

So far, discussions have focused on the treatment of small-scale fisheries, aspects of fisheries management and on the scope of the peer review mechanism for fisheries management measures. Norway submitted an amendment to the draft provision on fisheries management by distinguishing the legal and institutional aspect to that of practical implementation which calls for stock specific management plans. A number of countries found this to be rather burdensome and a costly proposal because of the difficulty in having stock-specific management plan for each fishery particularly in the small-scale and artisanal sector where scientific information is scant. WTO members remain divided on the conditions under which developing countries would be allowed to provide assistance to their fisheries sector.

On 28 May 2008, the chair issued a working document in the form of a matrix that summarized the core issues in negotiations, proposed chair’s text in addressing them and the various positions of the members to the text.\(^\text{29}\) Because of the many divergent views on key issues of the subsidies discussions, the Chair then circulated a new draft consolidated text in December 2008 which he termed as the “road map” in an attempt to reconcile the different approaches to disciplining fisheries subsidies.\(^\text{30}\) The focus of the road map is to focus on regulating subsidies that contribute to overfishing and overcapacity while also formulating appropriate and effective S&DT to address concerns of developing member countries. Responses so far on the Chair’s new road map reflect similar divides and sentiments. Small Vulnerable Economies (SVEs) together with some other developing country members say that the road map is more complex and prefer the initial draft text of the Chair as a better platform to move forward the discussions.\(^\text{31}\)

**Implications of Draft Rules for Pacific Islands Fisheries**

Being designated as a LDC, the Solomon Islands will be exempt as a WTO member from the proposed draft rules on prohibited subsidies. The exemption is important given the limited capacity not only to subsidise but also to implement obligations under the new disciplines.\(^\text{32}\) The draft text does not clarify how the overcapacity issues in relation to straddling or migratory fish stocks will be dealt

---

\(^{28}\) TN/RL/W/232 – Annex C.
\(^{29}\) TN/RL/W/232 – Annex C.
\(^{30}\) TN/RL/W/236.
\(^{32}\) Sisilo, R. Fisheries: Access Fees gets the nod in the WTO Chair’s Text, Island Business, January 2008.
with for the LDCs since they are exempt from the subsidy provisions of Article 1 of Annex VIII.\textsuperscript{33}

Fisheries access agreements such as the EU fisheries access agreements and the further transfer of EU fishing vessels are permitted since the agreement is government-to-government and is for access to a developing country EEZ.\textsuperscript{34} This allows the PICs the legal basis for subsidised access agreements which has been an important policy concern for a number of smaller island countries.

In the rural coastal areas of the Pacific Islands where income and employment opportunities are limited, development assistance through infrastructural support, boat building, marketing and operating costs such as fuel and bait are common means to encourage the communities to move to cash economy to improve their livelihoods. The provisions under the Article III.2(a) only allows use of non-mechanised gear and fishing equipment, and where fishing operations are not to go beyond a small profit trade and there is no major employer-employee relationship to qualify for subsidies operating cost. This provision and the use of the terms require further clarification. The terms “small-profit trade” and “no major employer-employee relationship” need to be clarified in order to ensure that these do not exclude those fishers who use their savings to purchase additional vessels and employ other fishers from their communities, or those who do not have boat and gear and who provide labour to earn wages. This has been a common practice in many islands where only some coastal households may be owners of vessels and the means of production. This provision is restrictive since it does not adequately consider the transitional stage of fishers who progress from subsistence to artisanal to commercial where resources permit.

For developing countries, subsidies for boat building, acquisition, repair and operating costs are allowed for undecked vessels and decked vessels that are less than 10 metres. While most subsistence and artisanal fishing vessels are small-scale, important artisanal commercial fisheries rely on subsidised operating expenses such as fuel and bait. Two important fisheries that employ vessels that are larger than 10 metres and are either decked or partially decked are the Samoan alia, and the Papua New Guinea pump boats. Thus, Article III(b)(2) on S&DT poses a major constraint to the development and progress of these artisanal operations. This provision will also be restrictive in light of the need to divert fishing effort from over-exploited inshore coastal areas to more deep sea and offshore areas as one of the major initiatives to build local capacity for domestic development of tuna fisheries in the Pacific Islands.

\textsuperscript{33} TN/RL/W/213: Article III.1 –Annex VIII.
\textsuperscript{34} Campling, L. FFA Fisheries Trade Briefing, Vol. 1, No. 2, January 2008, p. 5.
Lobbying for an extension in the allowable length of decked vessels under this provision, the ACP and countries such as India, China and Indonesia have argued this should be extended to 24 metres instead of the 10 metre limit. However, this has been opposed by members such as the EU and the United States (US) who are pushing for more strict rules. There is also a possibility that expanding such provisions can also make larger developing countries more competitive, thereby affecting the export markets for Pacific Island countries which may lack the economies of scale that the larger developing countries may have. Campling (2008) suggests that an alternative capacity parameter should be sought if PICs want to satisfy their legitimate development needs while simultaneously not allowing the S&DT provisions as a means to avoid the rules. Another option that could be explored would be to seek some kind of differentiation amongst the developing countries, such as distinguishing the SVEs from the rest of the developing countries. Creating the policy space for the progressive development of artisanal fishery would be an important objective in light of meeting the developmental needs of the Pacific Islands.

In the draft text, government can grant fishing access to individuals and groups as long as it does not affect straddling or highly migratory fish stocks of other member countries and affect stocks in which another member has identifiable fishing interests. Furthermore, in granting permissible subsidies, member’s management practices and compliance-related information will have to be verified with relevant international organisations.

Limiting subsidies to vessels within a developing country member’s EEZ implies that the exemptions granted will not be sufficient to achieve the economic viability of some of the vessel operations that require regional access beyond a member’s EEZ. Fisheries that can be affected by this provision would be vessels seeking regional access, such as domestic vessels from Papua New Guinea that fish in Federated States of Micronesia (FSM) waters under the FSM Arrangement. The longline tuna fishery where vessels from Fiji fish in Vanuatu and Solomon Island waters and the initiative under-way to create a sub-regional arrangement for South Pacific Albacore fishery to gain access to each others’ zones will be affected. The rationale for such arrangements has been to overcome the lack of economies of scale due to the small EEZs of members, as well as oceanographic and seasonal fluctuations affecting stock abundance. Therefore, the legal justification for the limitations within 200 mile EEZ is weak given the existence of bilateral and multilateral agreements and where fish stocks are straddling and high migratory.

37 Chair's Draft Text - Article IV.1 (a) & (b).
With the exception of subsistence fisheries under Article V.1, subsidies for developing countries are contingent upon satisfying a number of fisheries management measures. These include having a management system based on internationally recognised best practices such as the Code of Conduct, Compliance Agreement and the Fish Stocks Agreement. For example, subsidies relating to port infrastructure and other port facilities are permitted for developing countries, but are subject to strict environmental conditionality under Article V. The private sector in the Pacific Island countries is small and heavily reliant on government assistance for infrastructural support such as port construction and maintenance. Therefore any such restriction on infrastructure support is likely to affect the island communities’ fisheries development initiatives.

The smallness of Pacific Island Countries also poses capacity constraints and underscores the need for technical assistance in meeting the environmental management requirements. Besides limitations on resources such as skilled personnel and budgetary constraints, there is also lack of quantitative data on coastal and inshore fisheries on which to base management decisions and to meet reporting requirements.

The role of regional fisheries management organisations (RFMOs) is exemplified in the draft text to ensure that subsidies granted do not undermine resource sustainability. Members can only grant subsidies provided they satisfy the national requirements relating to regional fisheries management obligations. A number of exemptions to developing countries relate to coastal fisheries which do not directly come under the Western and Central Pacific Fisheries Commission (WCPFC) as the designated RMFO for the Western and Central Pacific. It is not clear how this issue will be dealt with in the Pacific region and whether this will leave a gap when dealing with coastal inshore fisheries. Will it require expanding the scope of the WCPFC as a RFMO to deal with coastal fisheries or will it facilitate a mechanism for cooperation with the Secretariat for the Pacific Community that deals with coastal fisheries issues?

In all, the matrix captures the divergent comments of the various members on the chair’s text. The Pacific delegation’s key submissions summarised by Campling (2008) are also reflected in this matrix.38

**Possible Approaches by Pacific Island Countries**

To ensure the flow of long-term sustainable benefits from their fisheries, the Pacific Island States would need to clearly define their current and future fisheries

development goals and objectives which in turn can help to identify the subsidies that are needed to achieve them. The impact of WTO subsidies discipline on PICs will need to be considered directly through their effect on domestic fisheries and through the impact of rules on their distant water partners fishing in the Western and Central Pacific region. Therefore, PICs will also need to consider the role played by domestic and foreign fisheries in their economies to meet their development aspirations and the subsidies that both may be able to use which will be beneficial to both parties.\textsuperscript{39} Many of the current management efforts in the inshore fisheries focus on the strengthening of community based resource management systems. The importance of such policy tools must also be reflected in any sustainability criteria for coastal fisheries management.

Many PICs have attempted to define their fisheries development aspirations through their national tuna management plans and national fisheries sector plans and policies. Comprehensive and updated national fisheries policies can help define the policy positions of the countries which in turn can assist in any subsidies negotiation process and also in forming different regional or international alliances necessary to support the desired positions.

In particular, PICs can lobby for exemption of desirable subsidies that must be protected through the S&DT provisions. Although developing countries such as PICs do not currently have the budget to support all of the subsidies they would like to provide, S&DT provisions will allow them to protect their rights to use subsidies to develop their industries in the future.\textsuperscript{40} On the other hand, if the S&DT provisions are wide-ranging and flexible, these may become more beneficial to large developing countries like China or Thailand by making them more competitive as opposed to small developing countries like the PICs. This can also have the potential to increase competitive pressure among the developed distant water fishing nations in the WCPFC region such as Japan and the US with, for example, the Chinese or Latin American vessels. PICs may also like to find other avenues to make the terms of S&DT for SVEs relatively more responsive to their economic development needs such as working closely with small island developing States or the ACP group.

In terms of the draft text, the specific areas that PICs may require more detailed analysis would be on the issue of identifying vessel length for the artisanal fishery that can accommodate the development aspirations of the domestic industry in PICs, but at the same time ensure that this does not create competition with larger developing country members. Secondly, there should also be some flexibility in granting subsidies to fishing operations beyond a member’s EEZ such as those that

\textsuperscript{39} Campling, L., Havice, E. and Ram-Bidesi, V. 2007.

\textsuperscript{40} Campling, L., Havice, E. and Ram-Bidesi, V. 2007, p. 120.
have bilateral or multilateral arrangements to fish in another member’s EEZ and where management and conservation conditions are effectively integrated into access agreements.

A key area emphasised in the draft text is resource management and conservation, and the potential role that could be played by RFMOs in ensuring that fishing activities are carried out in a sustainable manner and that there is no undue increase in fishing capacity. This is likely to increase the reporting requirements for the WCPFC on resource management issues in relation to whether a member can ultimately be granted subsidies. The complex reporting requirements will require additional capacity and resources which will need to be factored in during negotiations in the context of technical and development assistance in meeting the implementation and reporting requirements. One of the concerns that will need to be addressed is the ability and mandate of the WCPFC in dealing with other fish species and national inshore fisheries of artisanal commercial importance.

Since a summary of all different submissions exists, PICs could prepare their defense or support accordingly, as informal trade talks continue.

*Fisheries Policy Trends – Issue of Sustainability*

While overfishing and overcapacity could be due to many causes, there is a strong debate that these reflect an ineffective fisheries management regime – where there are “too many boats chasing too few fish” and that this problem cannot be solved without paying attention to subsidies which are a contributing factor. In addition, the WTO rules are also binding and therefore seen by many countries as playing an important role towards achieving the fisheries management objectives which in turn can provide long term gains from trade.

Achieving sustainable fisheries has been the centre of discussion for several country’s submissions to the WTO. While the chair’s consolidated draft text exempts certain subsidies, it does; however; require countries benefiting from waivers to operate effective fishery management systems to conserve fish stocks. The proposed sustainability criteria draws on the principles and concepts highlighted in the key international fisheries agreements such as the UN Code of Conduct for Responsible Fisheries and the UN Fish Stocks Agreement. The WCPFC therefore is well placed in attempting to implement a number of the key principles and practices for the conservation and management of highly migratory fish stocks in the Western and Central Pacific as required under the respective international fisheries instruments.

International fisheries instruments including the WCPF Convention also allow the use of trade-based measures for fisheries management and compliance such as
through the use of port State measures, vessel lists, and catch and trade documentation schemes. An example is the EU’s intention to combat IUU through the establishment of a catch documentation scheme for all its imports by 2010.41

In the context of international fisheries policy trends, therefore, what is becoming apparent is the need for an effective fisheries management regime to solve both environmental and fisheries trade problems. This; however; puts greater pressure on developing counties which are at various stages of their fisheries development. While these countries recognise the need for sustainable fisheries, they also depend on the fisheries sector to generate economic growth and support community livelihoods which makes their policy decisions more complex.

One of the areas of focus for PICs should be to continue participation in forums that help to define the sustainability criteria within the context of WTO rules that are practical and enforceable in relation to their fisheries and one that can meet their developmental goals. This could perhaps link the special development needs of developing countries under the implementation requirements of both the international fisheries as well as the trade instruments. This will require a concerted effort by national fisheries managers, policy makers, legal practitioners and trade personnel to coordinate and cooperate to implement an integrated approach to deal with such cross-cutting issues such as environment, trade and economic development. National policies to strengthen institutional frameworks for fisheries management and trade development through inter-departmental and inter-sectoral linkages will be a necessary first step.

Concluding Comments
The subsidies negotiations present opportunities to develop and protect domestic development interests, and encourage sustainable fishing practices, while at the same time, integrate developing country trade interests into the WTO rules. However, the diverse nature of Pacific Islands with their different development goals and expectations makes the PIC WTO members’ task more difficult in protecting a wide range of subsidies interests even of those Pacific Island States who are not signatories to the WTO. For example, some PICs rely on access agreements, while others focus on domestic development and for some the artisanal fisheries is more important. This will require cooperation and collaboration amongst PICs national fisheries, legal and trade officials, regional organisations and PIC’s WTO representatives to identify regional positions. An integrated institutional policy framework is also necessary at the national level to incorporate the various issues in a coherent and systematic manner to address national policy goals and interests.

41 See for example, Campling, FFA Fisheries Trade Briefing – Vol.1, No. 11, October 2008, p. 2.
While the formal discussion on new fisheries subsidies rules is on hold and dependent on the completion of the Doha Round, there are a number of points of interest already emerging with regard to fisheries policy implications. First, it is important to recognise that having an effective fisheries management regime with an effective enforcement and monitoring system is central to both trade and sustainable fisheries development. Thus, implementing the resolutions and decisions of the WCPFC is essential if subsidies are to be granted for domestic commercial tuna fisheries development. There is also a need for greater recognition of the complementary roles of fisheries subsidies under the WTO and the fisheries management instruments and agreements.

Defining and elaborating on an appropriate sustainability criteria and the process of applying the criteria to the different fisheries in the region (subsistence, artisanal, commercial) is also an important factor that is likely to influence PICs fisheries policies. Staying informed and engaged in these issues is important for PIC members in order to be able to have any influence on the outcome of the subsidies negotiations so as to achieve their fisheries development needs and goals.
Bibliography


**World Trade Organisation Documents**


WTO 2001, Doha Declaration. WT/MIN (01)/DEC Geneva, Switzerland.

WTO 2005, Hong Kong Ministerial Declaration. WT/MIN(05)/DEC Geneva, Switzerland.