

Third Expert Group Workshop: Oceans, Fisheries and the Trade System 28-29 May 2015 – Geneva, Switzerland

Summary of Discussion

Introduction

The E15Initiative Expert Group on Oceans, Fisheries and the Trade System held its third in Geneva on 28-29 May 2015. A participants list and agenda for the meeting are available on the group's page of the E15Initiative website (<http://E15initiative.org>). Apologies were received from Tabitha Mallory, Moustapha Kamal Gueye, Audun Lem, Guillermo Valles, Jung Hee Cho, Frank Asche, Sadeq Bigdeli, Ernesto Godelman, Rupert Howes, Ángel Alberto Rivera Benavides and Cathy Roheim.

The meeting consisted of seven sessions devoted to discussion of the draft policy options paper prepared by Theme Leader Rashid Sumaila, the strategic environment against which the policy options would be considered, and the group's next steps. The first substantive session of the meeting focused on the strategic environment, specifically, progress by governments on addressing fisheries subsidies and trade in the products of IUU fishing, and efforts by the private sector to address IUU fishing and improve low-income producers' access to sustainability standards. In subsequent sessions, the group discussed in detail each of the three work packages of policy options set out in the draft paper. The main objectives of these discussions were to collect detailed feedback on the feasibility and impact of the policy options suggested in the paper, in order to refine but also to streamline the ideas. The meeting concluded on Friday morning with a discussion about how the policy options paper would be finalised and how the ideas and connections developed during the group's discussions could be taken forward.

Session 1: Review of the strategic environment

Discussion in this session began with three scene-setting presentations: on progress on developing disciplines on fisheries subsidies in the WTO and other fora, by James Brown; on unilateral and multilateral efforts to address trade in the product of IUU fishing, by David Schorr; and on private sector efforts to address both trade in IUU fish products and access to sustainability standards, by Jim Cannon. While the shape of a fisheries subsidies outcome in the WTO Post-Bali Work Programme was still very unclear, there were increasing calls from many developing countries (in particular smaller ones, like the Africa-Caribbean-Pacific or ACP grouping) for the issue to be included as a priority. An outcome on fisheries subsidies in the Trans-Pacific Partnership (TPP) agreement could serve as inspiration for, and thus potentially be a positive contribution to, the WTO negotiations, but could absolutely not be forced on the WTO membership. It was difficult to identify what the incentives might be for countries to join a stand-alone plurilateral set of subsidies disciplines. The US had tried to cross-notify some subsidies in the regular WTO subsidies committee, but this hadn't been welcomed.

Trade-related efforts to address IUU fishing before 2010 had focused on the use of national laws to enforce multilateral rules. Some international instruments in regional fisheries management organisations and the FAO's International Plan of Action (IPOA) on IUU fishing contemplated the use of unilateral measures, albeit with a strong preference for multilateral options. The European Union's (EU) IUU regulation and the FAO's Port State Measures Agreement (PSMA) marked an important evolution in approach. The EU's system of import requirements and particularly its escalating warning system had had a big impact, although the system of government-to-government negotiations around catch verification was opaque and potentially questionable. The US' approach would likely rely on more direct information requirements around a set of at-risk species and facilitated access for "trusted traders" who met the verification requirements. Tensions between transparency and traceability, and sovereignty and commercial confidentiality were among the critical issues.

Private sector efforts to address IUU fishing used supply chain traceability and verification (and the critical step of auditing) to exclude illegal and unreported catch from supply chains, but only as effective as the degree of the market they represented: control documents required by just a few buyers simply drove product to other buyers. Improving developing country fisheries' access to sustainability certification involved both simplifying access to certification systems (e.g. through group certification under the Global Aquaculture Alliance) and providing less rigorous options, like Fisheries Improvement Projects (FIPs) which were processes and not designed to be consumer-facing standards. Sequencing of improvements was key to ensuring cost burdens were manageable.

Discussion of this external context underlined the relevance of tax and law enforcement efforts to addressing illegal activity. Initiatives to improve legality and sustainability were increasingly inter-related through efforts underway to integrate the data required along the production chain (e.g. through HACCP analysis) and as the product was traded (customs data). The EU and potential US import measures were probably technical requirements covered by the WTO TBT agreement, which meant it would be important to be explicit and transparent about what was required to achieve market access. The key to addressing fish traders' wariness around supply chain transparency was to enable information about how and where fish was caught and by whom to move along the supply chain without revealing commercial information about the roles played by different actors.

Session 2: Policy options paper: Introduction and challenges

Discussion of this part of the policy options paper, led off with comments by Amadou Tall and Shunsuke Managi, touched on definitional issues, questions of scope, and several points related to the broader context to the policy options that could be included. Some of these broader contextual issues included the general relationship between trade openness and fish catch levels at the global and regional levels, and the possible parallels between fossil fuel subsidy reform and fisheries subsidy reform, including the role of tax authorities. Fisheries trade issues were closely connected to fisheries management issues, although work on them was often advanced in regional economic communities. Several of the ideas in the paper could feed into other regional or global processes; for instance, fisheries subsidies were also under discussion in the Sustainable Development Goals under the UN Post-2015 Development Agenda.

Overall, the paper needed to explain the focus on using trade measures to support environmental and human development priorities. It should also explain what fisheries value chains currently looked like, the importance of fisheries management, but also why the group chose to focus on the three work packages in the paper (on IUU fishing, subsidies, and tariff and non-tariff measures). It could also explain that while there is a preference

for multilateral options, in light of the urgency of the issue and the need for expedited action, the paper also looks at other options which, although they might compromise on inclusiveness and multilateralism in the short term, do so to facilitate the building of broader solutions in the wider system in the longer term.

The main definitional issue related to IUU fishing; there was general agreement that the paper should use the FAO's definition, acknowledging that it was controversial and understanding of the concepts was in flux. The paper needed to distinguish between measures based on proof of illegality and measures that required proof of legality. There were many national examples of how IUU fishing had been stopped, to the benefit not only of the fish stocks but also the fishing community. Capturing these lessons learned would help to buttress the paper's arguments around why trade measures at an international level could help. The paper's treatment of modernisation subsidies and fisheries' socio-economic realities could be improved. Several scope questions emerged. The paper needed to address more clearly its scope with relation to aquaculture versus capture fisheries, fisheries that were not traded, and small-scale fisheries.

Session 3: Policy options: Trade measures to address IUU fishing

Discussion of the policy options around IUU fishing began with comments by Milton Haughton and Margaret Young. As with the introduction section, the section containing these policy options could better explain the context in which they were being provided: as critical elements of a solution to a problem that was, at its root, caused by over-capacity in fishing fleets, inadequate fisheries management, and greed, with climate change as a potential additional strain on geographic management systems. Development assistance would be required to address the underlying problem of fisheries management. Cooperation with the private sector was also critical.

There were already many voluntary instruments in place at the multilateral level around trade in IUU fish, but nothing binding. A multilateral arrangement could be built on the IPOA on IUU fishing and successful unilateral measures, supplemented by the principles underpinning the Lacey Act; in effect, scaling up existing tools and models. Further voluntary instruments through regional economic communities could also help to support the implementation of principles agreed multilaterally.

The paper should explain that while a multilateral solution that closed the market for illegal fish products would be the best option, cooperative unilateral measures (which were both feasible and potentially high impact) could be useful stepping stones towards a multilateral deal. The key was for unilateral measures to be anchored in multilaterally-agreed frameworks and principles, and for the paper to show how international action could move from unilateralism to something more multilateral. It would therefore be important to identify the need for a coordinated approach to this unilateralism. A series of parallel international conversations, including a variety of stakeholders, could support this coordination effort, perhaps by developing common building blocks on which cooperative unilateral measures could be built (e.g. definitions of fisheries, vessel registry systems, traceability and catch certification guidelines). Unilateral measures also needed to be fair: the impact of unilateral measures on developing countries and the cost of adjustments to meet import requirements was still not clear and needed to be monitored.

IUU trade measures could be designed to be WTO-consistent, particularly if they hewed closely to their objectives and were both designed and applied carefully to meet the requirements of the exceptions in GATT Article XX. Consultation with trading partners was essential. The policy options paper should mention examples of how countries have responded positively to trade measures (e.g. Ghana to the EU's "yellow card" warning). Unilateral measures could be multilateralised, but should be based on international standards, like the FAO's Catch Certification Guidelines, to increase their consistency with the TBT Agreement. References to multilateralising the TPP outcome should be made sensitively, perhaps coupled with references to potential risks

of the agreement (e.g. on investment rules) and other examples. The TBT Committee Decision of 2000 provide both substantive guidance and a procedural model of how to reach non-binding agreement in the WTO.

There was also general agreement to the idea of supporting the expansion of private sector schemes, tempered with a realistic assessment of what commercial information could, and could not, be made transparent. The main contribution trade policy could make was probably through Aid for Trade, which could be used to support transparency around fisheries, collecting enforcement and other data. The paper could include a stand-alone option, efforts to improve transparency around fisheries data, acknowledging, however, that data collection was very expensive. Improving fisheries data, work on which was also underway in the FAO, was a key point of synergy that would support both private and public sector IUU efforts.

Session 4: Policy options: Fisheries subsidies

Discussion on the subsidies policy options in the paper began with comments by Carl-Christian Schmidt and Alice Tipping. Improving transparency around fisheries subsidies was a fundamental requirement for further work on disciplines, as was understanding when a subsidy changed the level of fish harvested and the price impact of subsidy reform. There was very little information about subsidies to aquaculture, and while the two systems were linked and an argument that the principles underlying the two systems should be considered together, there was also a sense that the natural resource impacts of what subsidies existed would be small, and the impacts more akin to those of subsidies to agriculture.

In terms of the policy options suggested, one large remaining question was how to incentivise countries to join a “core group” that had adopted disciplines, while avoiding conflicts with WTO law. A step-wise approach that built a multilateral deal using a plurilateral outcome as its base might be more feasible. In terms of these multilateral options, it might in fact be possible to identify the “gap” in reductions reductions required to restore fisheries capacity to match sustainable harvest levels. It might be more difficult to identify what was an international fish stock (on which international negotiations would focus) but work was underway to estimate what these might be. A related question was whether focusing international disciplines on international fisheries was the right strategic approach, when most fishing took place within EEZs, including by distant water fishing nations. Relatively easier low-hanging options for multilateral disciplines could include fuel subsidies, or capacity-enhancing subsidies, building on the regional and multilateral IPOAs on capacity reform.

A crucial question was how to motivate progress towards fisheries subsidies disciplines. The motivations behind the proposal by the ACP group in the WTO might be worth exploring, as would the influence of subsidies on allocation of catch within RFMOs, and on South-South competition (between developing countries) for access to fish. There appeared to be renewed momentum around fisheries subsidies, both in the WTO negotiations and in the OECD’s work on government financial transfers (GFTs) that was worth capturing in the paper. One underlying the problem was the ongoing disconnect between different parts of government, in particular fisheries managers and finance and other economic ministries. The lack of coordination was particularly evident in responses to natural disasters, which in some cases resulted in re-building over-capacity of the fishing fleet.

Session 5: Policy options: Tariff and non-tariff measures in trade in fish products

Discussion in Session 5, on the paper’s tariff and non-tariff policy options, was informed by brief comments from Dick Nyeko and Christophe Bellmann. While in the IUU and subsidies work packages the objective was to ensure trade did not undermine the environment, the main objective of this work package was to ensure international markets functioned well and enabled developing country producers to move up value chains. The paper could usefully add in a description of what fisheries value chains currently looked like, and how they had changed in the last decade, particularly with the rise of large processing centres in Asia. With respect to the ideas in the paper, more flexible rules of origin (ROO) would support more efficient value chains. More flexible cumulation

would help, as would harmonised ROO, although the latter would be very difficult to achieve and might only be possible in the Trans-Atlantic Trade and Investment Partnership (TTIP) between the US and the EU. Mutual recognition of conformity assessment procedures, along with technical assistance and capacity-building, could also help producers meet SPS and TBT standards in import markets.

Several additional ideas were floated. These include differentiating in the Harmonised System (HS) tariff codes among non-marine (i.e. inland) capture fishery products, differentiating within aquaculture depending on methods of production, and further differentiating tariff lines to help identify species at risk of IUU fishing. Another potential addition was the importance of facilitating trade by improving infrastructure and border procedures, which could reduce the time and cost of trade and help to move informal traders into the formal sector. Including support for low-income producers to meet import standards in regional trade agreements (RTAs) could be helpful, particularly if rigorous conformity assessment systems like the EU's were adopted in other large import markets like the US and Japan.

It was also important to note that discrimination had a different meaning in the context of private standards. Many private standards organisations were moving towards adopting harmonised standards across producers and suppliers, while retail brands retained their own standards. A focus on the WTO Technical Barriers to Trade (TBT) agreement was useful, though, as it kept the private sector focused on a baseline set of principles. For instance, the TBT Committee's 2000 Decision on the Principles of International Standards, Guides and Recommendations establishes that if a standard is open to all producers, it is non-discriminatory.

A crucial issue that the paper needed to address was that of differentiating between products based on their (non-product-related) production and processing methods (PPMs). This was a controversial issue in international trade policy, and in other fora like climate change, but the distinction underlay many of the policy options suggested. The paper needed to acknowledge the PPM debate and the sensitivities around it, but also that the way in which fish has been produced matters. It could also clarify that tariff differentiation would be for data gathering purposes, not to enable tariff differentiation on the grounds of production method (although there was likely to be political pressure to do so once it was possible), and that understanding flows of diverse aquaculture product could even motivate better management of capture fisheries.

Session 6: Policy options paper: Conclusions

Discussion of the conclusions part of the paper identified several contextual points that could be added, and a sense of how to prioritise and sequence some of the policy options. Among the contextual points that could be added were: a sense of how these ideas might impact on small-scale fisheries, on youth employment and women traders, and the importance of multi-level governance and local implementation in making policy changes work. Developing countries increasingly realised that the future of fisheries was about improving utilisation and adding value to existing catch, not increasing harvests, and trade was a key part of this effort. This could also help in the adaptation and mitigation of climate change. Consumer demand for sustainable fish was also a factor. Many developing countries, particularly in Africa, were also turning to aquaculture for national and regional food supply. The paper could explain how trade could support sustainable aquaculture growth, for example by improving access to inputs as part of a national policy framework including competition and investment policy, in such a way as private actors maintain the sustainability aspects of the policy framework.

In terms of prioritising and sequencing the policy options (which all enjoyed overall support) identifying the catalysts, either ideas or processes or countries, that could move work packages

forward could help. In the sequencing of the ideas within the IUU work package, the paper could explain that real impact was in linking trade restrictions to improvements in fisheries use in source countries; it was a theory of change based on engagement. Unilateral measures also required strict compliance by the country's own nationals. Examples of the impact in both senses would help.

Discussion of the sequencing table in the conclusions section revealed general comfort with where the options had been placed, but also a need to clarify what the table represented (a combination of prescriptive and normative assessment) and to complement it with an assessment – either in tabular form or a narrative – with a description of which options would be more feasible and which would have more impact. Policy option 8 within the subsidies work package could become a 'short term' option.

Session 7: Next steps

Discussion of the group's next steps covered both the process for finalising the policy options paper and a broader exchange about how the ideas could be taken forward. The policy options paper will be revised again, taking into account the points made at this meeting, and then circulated in near-final form for any last comments by the group before being finalised and published. The think pieces and background paper would also be re-published in a special edition of *Marine Policy*, and some parts potentially in specialist law journals.

Group members noted several areas where the group's work could make a useful contribution to work underway in other places. These included work on multi-level governance in fisheries; the relationship between oceans (in particular marine protected areas) and climate change mitigation efforts, which was gradually being incorporated into the Global Environment Fund's work; work on energy subsidies; research on the relationship between subsidies and global fishing activities; and work underway on trade and IUU fishing, which was extremely topical. A facilitated stakeholder conversation around the EU and US' unilateral measures would be extremely helpful. The group's ideas were also directly relevant to trade negotiations group members' own networks were engaged in, and to technical work underway in regional organisations. They were also related to work underway on the financial aspects of the fisheries industry, including financing small-scale fisheries, investment rules but also money laundering in the fisheries sector.