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GENERAL AGREEMENT ON TARIFFS AND TRADE

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WORKING PARTY ON TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS

Fish and Fisheries Products

Note Submitted by the EEC

Fundamental change in international competitive conditions

1. The present international arrangements for trade in fishery products pre-date the general extension of fisheries jurisdictions in 1977. During the 1960s and 1970s, several rounds of multilateral negotiations led to the liberalization of international trade in the fisheries sector. This freeing of trade, while imposing strains on certain parts of the industry, was found to be in the general interest under the existing conditions of production and commerce.

In this respect the Community has been a major contributor. For example, in 1962, all whole fresh or frozen sea-fish other than herring entered the Community at 20 per cent or, in the case of tuna, 25 per cent. By 1985 the rates covered by the Community were in some cases zero; for the most important product, cod, it was 12 per cent, and for some of the relevant products annual quotas at lower or zero duties had been agreed.

In 1977, however, these competitive conditions were altered fundamentally by the general extension of fisheries jurisdiction. Conservation of resources was rightly considered the priority. But the impact of this extended jurisdiction on the conditions of competition in the fisheries sector was not reflected in corresponding adjustments to the arrangements governing international trade.

Within a very short period international competitive conditions were changed fundamentally. Certain coastal States incurred enormous losses through the expulsion or phasing-out of their distant water fleets from areas brought under the jurisdiction of third countries. Virtually overnight such coastal States were transformed from net exporters to net importers of fish. Other coastal States suddenly acquired control over access to vast fisheries zones, while lacking the resources to exploit them fully.

In accordance with Article 62 of the Law of the Sea, the resource-rich coastal States are obliged to allocate their surplus stocks to third countries. But whereas that Article lists a number of criteria for the

allocation of surpluses[1], these criteria are scarcely constraining and as a result coastal States feel free to determine:

(a) the size of the surplus;

(b) the conditions for its allocation; and

(c) the countries whose vessels may benefit from such allocations.

An in-built contradiction in the present international system

2. In the case of developing countries the provisions of the Law of the Sea have corrected an unbalanced situation under which the rich marine waters of many of these countries were fished by industrial countries and the coastal State received no benefit. Now developing countries are in a position to require both financial compensation and technical assistance to develop the domestic fishing industry, in return for access to their waters. A proliferation of bilateral agreements has ensued as a result of the new situation.

In the case of industrialized countries, however, access to surplus resources is increasingly conditional upon the granting of commercial benefits by the third country. This has a direct impact on, and may in certain circumstances be in contradiction with, the liberal multilateral trade context which obtains in the fisheries sector.

On the one hand, access to resources is determined entirely according to the coastal State's criteria, necessarily discriminatory, outside any multilateral scrutiny. On the other hand, the "price", commercial benefits, is subject to GATT (multilateral) rules. This is an in-built contradiction in the system which could, in the long term, contribute to an unsatisfactory situation, in terms of GATT, in the fisheries context.

How to seek a more balanced situation

3. The developing countries are a special case and it is normal that in return for access to their surplus resources all efforts should be made to develop their domestic fishing industry and their exports of fisheries products.

In the case of industrialized countries, however, should any attempt be made to correct the incoherence due to the fact that access to

[1]"... all relevant factors including, inter alia ... its (the coastal state's) other national interests ... and ... the need to minimize economic dislocation in states whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks"

markets is governed by strict, multilaterally agreed rules, whereas access to resources is subject only to the dictates of the national interest of the coastal State?

The problem could be approached in many ways. For example, a way to seek a more balanced situation would be to agree, for industrialized countries:

(a) criteria to determine where a "surplus" can be considered in existence; and

(b) a list of criteria which take into account the basic multilateral tenet of non-discrimination when deciding on surplus allocation.[1] In this respect the GATT rules for the implementation of import quotas could serve as an example.

Can the GATT ignore the problem of access to fish resources?

4. The problem of access to resources has become one that the GATT cannot ignore, due to the requirement by the resource-rich coastal States that commercial benefits be granted in payment for access, establishing - on a bilateral basis - a link between liberalization of trade and access to resources. If we continue to consider this as outside the scope of GATT, the risk exists that the other side of the coin, tariff concessions, will progressively escape the control of GATT and the strict application of the m.f.n. The incentive to bind in GATT the tariffs (or to decrease tariffs already bound) which may serve as payment for badly needed access to resources will diminish; the trend could even be reversed, and unbinding might result. In this way the bilateral nature of agreements on access to surplus resources would increasingly be reflected in trade practices.

Some interesting examples

It is worth noting - as an example - that the United States legislation[2] specifies that allocations of surplus between foreign countries shall be based on specific criteria, including:

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[1] As stated clearly in the FAO study "Coastal State Requirements for Foreign Fishing" (1983) "... Although the obligation to give other states access to the surplus is categorical, considerable flexibility is left under the Convention to the coastal state in its determination of what constitutes optimum utilization and in the crucial determinations of the allowable catch, the extent of the coastal state's harvesting capacity, the allocation of access and the terms and conditions under which access is granted. ... Few cases, quite understandably, acknowledge any obligation of the coastal state to give foreign vessels access to the surplus of its fishery resources. ... Criteria and procedures for determining surplus and its allocation are normally left to the discretion of the administration and its policy-makers."

[2] Magnuson Fishery Conservation and Management Act

"(i) whether, and to what extent, such nation imposes tariff barriers or non-tariff barriers on the importation, or otherwise restricts the market access, of United States fish or fishery products;

(ii) whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;"

As the OECD Study on Problems of Trade in Fishery Problems remarked, "The right to manage the sea fish resource within their EEZs, has provided coastal states with the possibility of allocating catch quotas for foreign fleets in return for various compensations, including trade concessions in fishery products. In fact, those bilateral arrangements relating to the surplus of the total allowable catch are largely based on the provision of commercial benefits."

The commercial benefits sought may take many forms. The following list is not intended to be exhaustive:

- joint ventures, where the product of the operation is sold under preferential conditions in the market of the foreign vessels

- over-the-side sales, where the foreign vessel must purchase a specified quantity of fresh caught by domestic harvesting vessels

- special conditions where imports are regulated by

  (i) licensing arrangements,
  (ii) monopoly or State trading,
  (iii) restrictive quota arrangements.

It is clear that the cases mentioned above scarcely reflect the commercial practices implied by GATT membership. It is also clear that if a resource-poor country regulates its imports by measures such as those mentioned above, it is in a better position to obtain access to foreign waters; a country which practises the open-trade policy advocated by GATT is at a disadvantage in this respect.