



*in collaboration with UNEP and WWF*

**GRULAC**

**SUSTAINABILITY CRITERIA FOR FISHERIES SUBSIDIES:  
THE LATIN AMERICAN AND THE CARIBBEAN CONTEXT**

# ***S&DT and Sustainability in the Chair's Text***

*David K Schorr, WWF Senior Fellow*



*September 23, 2009 — WTO Room B, Geneva, Switzerland*

## DOHA DECLARATION

*In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, **taking into account the importance of this sector to developing countries**. We note that fisheries subsidies are also referred to in paragraph 31.*

## HONG KONG DECLARATION

*[We] recall our commitment at Doha . . . note that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the **prohibition** of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and call on Participants promptly to . . . establish the nature and extent of those disciplines, including **transparency** and **enforceability**. Appropriate and effective **special and differential treatment** for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns;*

## DRAFT CONSOLIDATED CHAIR TEXTS OF THE AD AND SCM AGREEMENTS



José Fritsch, (**Brazil**), Marian Fischer Böll (**EC**), Monique Barbut (**UNEP**), Jim Leape (**WWF**), Jim Sutton (**NZ**), Robert Portman (**US**), and Domingo Panganiban (**Philippines**). Also participating in the event (but not pictured) were Ignacio Walker (**Chile**) and Mamadou Diop (**Senegal**).

Members agreed to negotiate the AD and SCM agreements, while participants agreed to negotiate the AD and SCM agreements. They also agreed to negotiate the AD and SCM agreements. Four years later, at Hong Kong, the Group on Rules of Origin agreed on the Chair Texts of the AD and SCM Agreements in December 2006, and I myself



## Marine Wild Capture Fish Production (FAO data 1999-2003)

Country	Production (t)	% Global Share	Accumulated Share
✓ China	73964471.00	17.27%	17.27%
✓ Peru	41773106.00	9.75%	27.03%
United States of America	24399075.00	5.70%	32.72%
Japan	24124750.70	5.63%	38.36%
✓ Chile	22304945.00	5.21%	43.56%
✓ Indonesia	20086660.00	4.69%	48.25%
Russian Federation	17251666.00	4.03%	52.28%
✓ India	14408709.00	3.36%	55.65%
Norway	14182111.00	3.31%	58.96%
✓ Thailand	13436451.00	3.14%	62.10%
Iceland	9899301.00	2.31%	64.41%
✓ Republic of Korea	9665436.00	2.26%	66.67%
✓ Philippines	9223143.00	2.15%	68.82%
Denmark	6924058.00	1.62%	70.44%
✓ Viet Nam	6741913.00	1.57%	72.01%
✓ Mexico	6538246.40	1.53%	73.54%
✓ Malaysia	6340746.00	1.48%	75.02%
✓ Taiwan Province of China	5372514.20	1.25%	76.27%
Canada	5115262.00	1.19%	77.47%
Spain	5099533.00	1.19%	78.66%
✓ Argentina	4667655.00	1.09%	79.75%
✓ Myanmar	4639539.00	1.08%	80.83%
✓ Morocco	4513021.40	1.05%	81.88%
✓ South Africa	3700144.00	0.86%	82.75%
United Kingdom	3636668.00	0.85%	83.60%
France	3442518.80	0.80%	84.40%
✓ Namibia	2973434.00	0.69%	85.10%
✓ Brazil	2893958.00	0.68%	85.77%

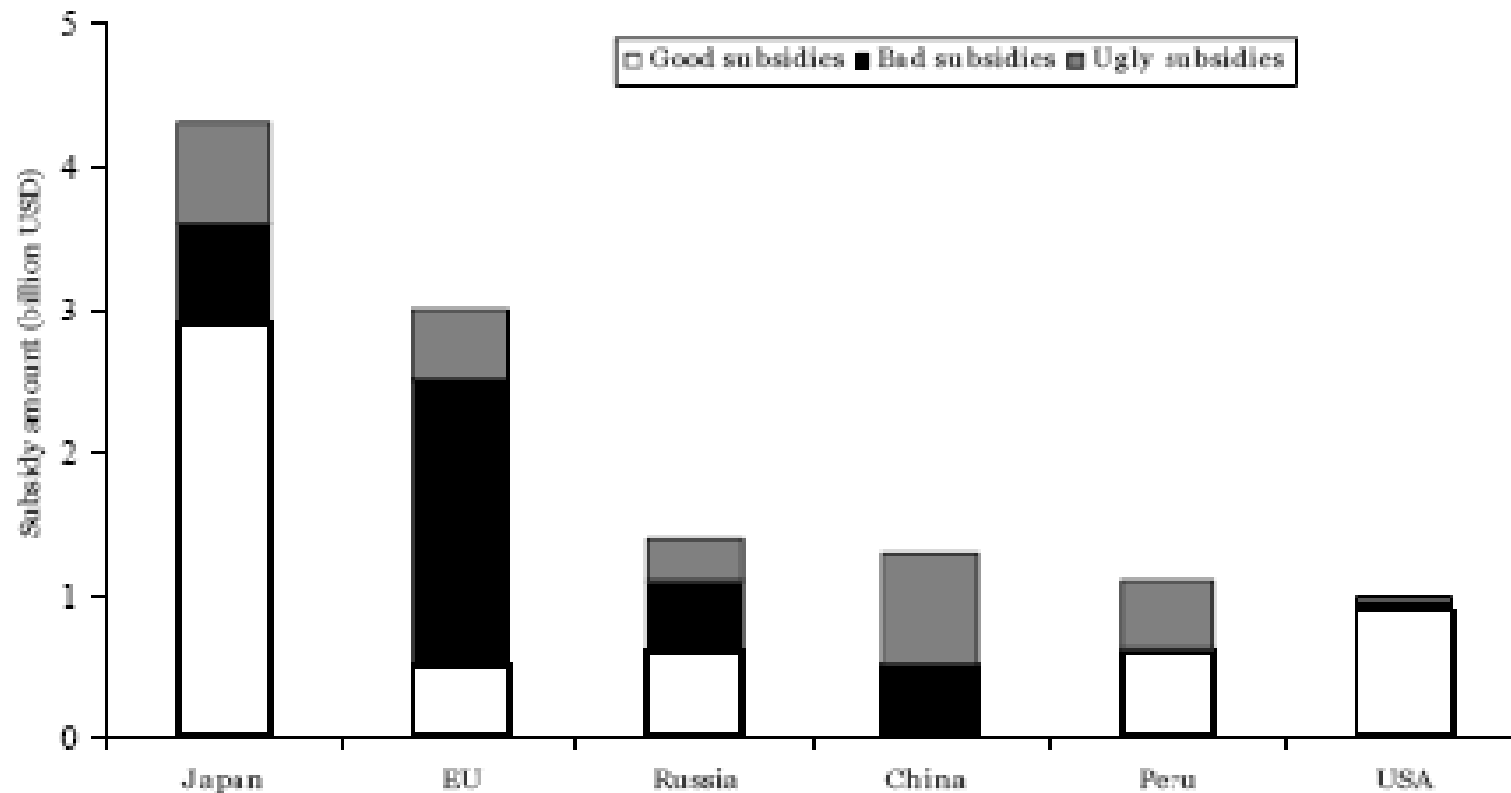


Figure 8: Subsidy estimates for major fishing nations.

- About 52% of the total global fisheries subsidy estimate is provided by 38 developed countries (US\$ 13.4 billion) and the remaining 48% from 103 developing countries (US\$ 12.3 billion);

## DOHA DECLARATION

In the context of these negotiations, participants should clarify and improve WTO disciplines on fisheries subsidies **into account the importance of this sector for developing countries**. We note that fisheries subsidies are addressed in paragraph 31.

## HONG KONG DECLARATION

[We] recall our commitment at Doha . . . note that there is broad agreement that the Group should strengthen disciplines on fisheries subsidies in the fisheries sector, including through the elimination of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and call on participants to . . . establish the nature and extent of disciplines including **transparency** and **enforceability**. Participants should give effective **special and differential treatment** to least-developed Members. In fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, food security and livelihood and food security concerns;

## CODE OF CONDUCT

## FOR

## RESPONSIBLE FISHERIES



WHAT'S THE CATCH?



José Fritsch, (**Brazil**), Marian Fischer Böll (**EC**), Monique Barbut (**UNEP**), Jim Leape (**WWF**), Jim Sutton (**NZ**), Robert Portman (**US**), and Domingo Panganiban (**Philippines**). Also participating in the event (but not pictured) were Ignacio Walker (**Chile**) and Mamadou Diop (**Senegal**).

# Structure of Chair's Text

Art. I *Prohibition of Certain Fisheries Subsidies*

Art. II *General Exceptions*

Art. III *Special and Differential Treatment of Developing Country Members*

Art. IV *General Disciplines on the Use of [Fisheries] Subsidies*

Art. V *Fisheries Management*

Art. VI *Notifications and Surveillance*

Art. VII *Transitional Provisions*

# Structure of Chair's Text

Art. I *Prohibition of Certain Fisheries Subsidies*

Art. II *General Exceptions*

Art. III *Special and Differential Treatment of Developing Country Members*

III.1 – LDCs

III.2(a) – [Artisanal fishing]

III.2(b) – Basic scope of remaining S&DT

III.3 – Access-related subsidies

III.4 – Technical assistance

Art. IV *General Disciplines on the Use of [Fisheries] Subsidies*

Art. V *Fisheries Management*

Art. VI *Notifications and Surveillance*

# KEY ISSUES

*(Overview)*

1. Scope of the prohibition?

2. Scope of S&DT?

3. Sustainability criteria for permitted subsidies (incl. S&DT)?

4. New institutional mechanisms (e.g., role for the FAO?)

5. New rules for notification, review, & enforcement?

**(closely linked issues)**



# **The Prohibition**

# Chair's Prohibition: What's in? . . . What's out?

Prohibitions	Exceptions					
	(subject to Arts. IV & V)			(Subject to Art. IV)		
Vessels: acquisition, construction, repair or modification (I.1(a))	Safety of vessel or crew. . . (if no capacity increase) (II(a))	Cleaner fishing: Selective gear, reduction of environmental impacts, or compliance with management regimes . . . (if no capacity increase )(II(b))	Decommissioning or capacity reduction . . . if vessels permanently scrapped, associated present or future harvesting rights removed (not transferred), and a management system in place (II(d))	Catch Shares: "User-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes." (II(e))		Natural disaster relief (I.1 chapeau) . . . <i>If</i> Incident-specific; time and place limited; and restored capacity not to exceed science-based sustainably levels (fn. 77)  (Notification requirement softened not to require advance notification) (VI.1 & fn. 88)
Operating costs (I.1(c))	Retirement , retraining to stop fishing (II.c)					
Landing, handling, near-port processing (I.1(c))						
Covering operating losses (I.1(c))						
Transfer of vessels to third countries (I.1(b))						
Port infrastructure "exclusively or predominantly" for marine fishing (I.1(d))						
Income support for persons engaged in marine fishing (I.1(e))						
Price supports (I.1(f))						
Transfer of foreign access rights (I.1(g))		For access to developing country EEZs, w/ transparency & mgt conditions (III.3)				
IUU fishing (I.1(h))						
Any subsidy affecting fishing on "unequivocally overfished" stocks (I.2)						

**NOTE:** This table is for teaching purposes only. It should not be considered a definitive interpretation of the Chair's text

## *Scope of the Prohibition: Some Questions*

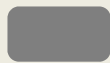
- The basics: direct subsidies to fishing capital (physical capacity) and operating costs?
  - Any doubt these must be included?
  - What are the most difficult areas?
- Other “core” (directly commercial) subsidies: processing, marketing, & price supports?
  - Defining the link to fishing? (physical? commercial?)
  - Production distortions vs. trade distortions?
- Indirect subsidies: infrastructure, social safety net?
  - Defining the link to fishing? (physical? commercial?) . . . Specificity?
  - Can “decoupling” from production be assured?

**S&DT:**  
**Scope + Conditions**

# Scope of S&DT – Limits

Prohibitions	S&DT			
	(subject to Art. IV & Art. V)		(subject to Art. IV)	
<b>Vessels:</b> acquisition, construction, repair or modification (I.1(a))	<b>Not prohibited</b> . . . for decked vessels ≤ 10m or undecked vessels of any length (III.2(b)(2))	<b>Not prohibited</b> . . . for vessels > 10m . . . fishing w/i own EEZ, and subject to stock-specific scientific assessment subject to FAO peer review (III.2(b)(3))	<b>Complete exemption for artisanal fishing</b> (defined as inshore, non-mechanized, owner operated, for subsistence or small profit trade. Hortatory language recommends certain “fisheries management measures”. (III.2(a))	<b>Complete exemption for LDCs</b> (III.1)
<b>Operating costs</b> (I.1(c))				
Landing, handling, near-port <b>processing</b> (I.1(c))				
Covering <b>operating losses</b> (I.1(c))				
<b>Transfer of vessels</b> to third countries (I.1(b))				
<b>Port infrastructure</b> “exclusively or predominantly” for marine fishing (I.1(d))	<b>Not prohibited</b> (III.2(b)(1))			
<b>Income support</b> for persons engaged in marine fishing (I.1(e))				
<b>Price supports</b> (I.1(f))				
<b>Transfer of foreign access rights</b> (I.1(g))		<b>Allowed</b> where access is to a developing country EEZ, subject to <b>transparency and management</b> conditions (III.3)		
<b>IUU fishing</b> (I.1(h))				
Any subsidy affecting fishing on “ <b>unequivocally overfished</b> ” stocks (I.2)				

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= purpose limit



= recipient limit



= geographic limit

Prohibitions	S&DT			
	(subject to Art. IV & Art. V)		(subject to Art. IV)	
Vessels: acquisition, construction, repair or modification (I.1(a))	Not prohibited for decked vessels ≤ 10m or undecked vessels of any length (III.2(b)(2))	Not prohibited . . . for vessels > 10m fishing w/i own EEZ, and subject to stock-specific scientific assessment subject to FAO peer review (III.2(b)(3))	Complete exemption for artisanal fishing (defined as inshore, non-mechanized, owner operated, for subsistence or small profit trade. Hortatory language recommends certain "fisheries management measures". (III.2(a))	Complete exemption for LDCs (III.1)
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# Scope of S&DT: Some Qs re. Chair's Draft

- **Subsidy coverage:**
  - . . . limited S&DT for operating costs . . . even less for processing?
  - . . . Does size of vessel matter?
- **Application beyond EEZs:**
  - . . . only for vessels <10m (or LDCs) . . . But if expanded, how to deal with need for international management?
- **Artisanal fisheres:**
  - . . . Is best solution to give near *carte blanche* for “inshore, non-mechanized, owner operated, for subsistence or small profit trade”?
- **Access-related subsidies:**
  - . . . the compromise seems have been embraced . . . ?

# Conditions on S&DT: "Sustainability Criteria"

Prohibitions	S&DT		
	(subject to Art. IV)	(subject to Art. IV)	
<b>Vessels:</b> acquisition, construction, repair or modification (I.1(a))	<b>Not prohibited</b> . . . for decked vessels ≤ 10m or undecked vessels of any length (III.2(b)(2))	<b>Not prohibited</b> vessels > 10m . . . fishing w/i own EEZ, and subject to stock-specific scientific assessment subject to FAO peer review (III.2(b)(3))	
<b>Operating costs</b> (I.1(c))			
Landing, handling, near-port <b>processing</b> (I.1(c))			
Covering <b>operating losses</b> (I.1(c))			
<b>Transfer of vessels</b> to third countries (I.1(b))	<b>Not prohibited</b> (III.2(b)(1))	Complete exemption for artisanal fishing (defined as inshore, non-mechanized, owner operated, for subsistence or small profit trade). Hortatory language recommends certain "fisheries management measures". (III.2(a))	Complete exemption for LDCs (III.1)
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<b>IUU fishing</b> (I.1(h))			
Any subsidy affecting fishing on <b>"unequivocally overfished"</b> stocks (I.2)			

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## SCOPE OF ARTICLE V

Not Covered by Art. V	Sustainability Criteria?
<b>Subsidies granted by LDCs</b> <i>(Art. III.1)</i>	No sustainability conditionality
<b>S&amp;DT for [artisanal] fishing</b> <i>(Art. III.2(a))</i>	Hortatory encouragement to adopt Art. V measures, “adapted as necessary”
<b>Transfer of access rights to DC EEZs</b> <i>(Art. III.3)</i>	No direct conditionality on fishery . . . but access agreement must have “requirements and support” for certain elements of a management regime.
<b>Natural disaster relief</b> <i>(chapeau to Art. I.1)</i>	Fleets cannot be restored beyond “a sustainable level of fishing capacity” established by a “science-based assessment”.
Covered by Art. V + <i>other language</i>	Additional Terms
<b>S&amp;D for vessels &gt; 10 m (in EEZ)</b> <i>(Art. III.2(b)(3))</i>	[Additional terms appear redundant with Art. V]
<b>Decommissioning/Capacity Reducing</b> <i>(Art. II(d))</i>	Requirements to ensure capacity is removed (+ other terms apparently redundant with Art. V)

## BEYOND ARTICLE V

Other “management conditions” language in the chair’s text is **largely redundant with Art. V . . .**

. . . with the possible exception of capacity assessment requirement for disaster relief subsidies

# Art. V – Basic Requirements

- operate a fisheries management system
  - w/i Member's jurisdiction
  - designed to prevent overfishing
  - based on int'l best practices
- adopt and implement pertinent legislation and enforcement mechanisms
- prior notification of management system to FAO for peer review
- notification of legislation and [enforcement] mechanisms to WTO

# Article V

V.1 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system shall be based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, Inter alia, the Fish Stocks Agreement, the Code of Conduct, the Compliance Agreement, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights or allocation of exclusive quotas to vessels, individuals and/or groups, and related enforcement mechanisms; species-specific quotas, seasons and other stock management measures; vessel monitoring which could include electronic tracking and on-board observers; systems for reporting in a timely and reliable manner to the competent national authorities and relevant international organizations data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges. Information as to the nature and operation of these systems, including the results of the stock assessments performed, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy. References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4.

# Art V Management Conditions

## Elements of management system *(mandatory or illustrative?)*

- science-based stock assessment
- capacity and effort management measures (incl. licenses or fees)
- vessel registries
- fishing rights or exclusive quotas . . . + “related enforcement mechanisms”
- species-specific quotas, seasons and other stock management measures
- vessel monitoring (could include electronic tracking + observers)
- data on effort, catch and discards (sufficient “to allow sound analysis”)
- “research and other measures” related to conservation & stock maintenance/replenishment

→ level of burden unclear . . . WWF calls for “reducing ambiguity without reducing ambition”



# SUSTAINABILITY CRITERIA FOR FISHERIES SUBSIDIES

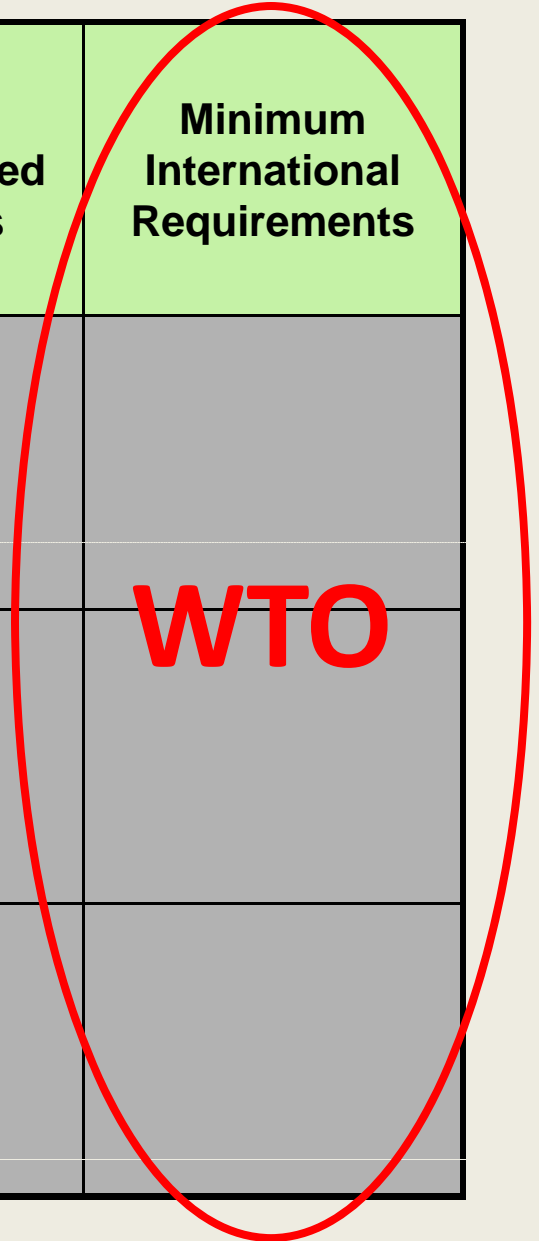
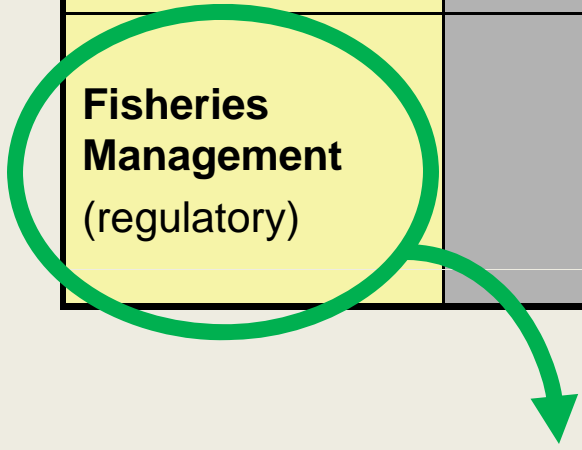
*Options for the WTO and Beyond*





	Best Practices	Minimum Recommended Conditions	Minimum International Requirements
Stock Health (biological)			
Fleet Capacity (industrial)			
Fisheries Management (regulatory)			

**WTO**





# *Elements of Management*

1. Assessment of stocks and fleets
  2. Regulatory control of fishing and capacity
  3. Surveillance and enforcement of limits
- ➔ Way forward?
- articulate basic elements clearly
  - reasonable flexibility in implementation
  - greatest flexibility for subsistence fishers

# Regulatory

Based on “best practices” but not requiring 100%

- Sci based stock and capacity assessments
  - “count fish & boats”
- “controls” . . . A management plan, LRPs, binding regulations to limit effort &/or capacity
- enforcement mechanisms
- + three specific administrative requirements:
  - vessel registration
  - licensing of fishing
  - collecting basic catch data

# Article V

The basic requirements	Elements of management system (mandatory or illustrative?)
<ul style="list-style-type: none"> <li>• operate a fisheries management system               <ul style="list-style-type: none"> <li>• w/i Member's jurisdiction</li> <li>• designed to prevent overfishing</li> <li>• based on int'l best practices</li> </ul> </li> <li>• adopt and implement pertinent legislation and enforcement mechanisms</li> <li>• prior notification of information about management system to FAO for peer review</li> <li>• notification of legislation and [enforcement] mechanisms to WTO                . . . (plus requirements of Art. VI.1)</li> </ul>	<ul style="list-style-type: none"> <li>• science-based stock assessment</li> <li>• capacity <b>OR</b> effort management measures (incl. licenses or fees)</li> <li>• vessel registries</li> <li>• <del>fishing rights or exclusive quotas . . . + "related enforcement mechanisms"</del></li> <li>• species-specific quotas, seasons and other stock management measures</li> <li>• vessel monitoring (could include electronic tracking + observers)</li> <li>• data on effort, catch and discards (sufficient "to allow sound analysis")</li> <li>• "research and other measures" related to conservation and stock maintenance and replenishment.</li> </ul>

NB– Slide is for illustration only, and does not represent a formal proposal by WWF

# Technical Assistance

(“aid for trade”?)

- Chair’s Draft: WTO members “shall establish mechanisms for, and facilitate, the provision of technical assistance” for compliance with management conditions
- ACP/SVE groups propose modifications (paper tabled 16 May 2008):
  - Strengthens rhetoric, calling for **“effective & operational structure”** for aid
  - quasi-conditionality on the conditionality: compliance with management requirements **“may depend on effective and timely assistance” . . . which “shall be provided”**
  - WTO review (SCM Subcommittee)

→ **The Big Q: Can aid requirements be given teeth?**

# Conditions on S&DT: The Basic Q:

**What will “no blank cheque” really mean?**

# Conditions on S&DT: Some other Qs:

- Key elements of “management” criteria?
  - Administrative infrastructure (licensing & registries)?
- How will stock status and fleet size fit in?
- Criteria for international fisheries?



*in collaboration with UNEP and WWF*

**GRULAC**

**SUSTAINABILITY CRITERIA FOR FISHERIES SUBSIDIES:  
THE LATIN AMERICAN AND THE CARIBBEAN CONTEXT**

**S&DT**

**ility**

**Thanks for your  
attention!**

*September 23, 2009 — WTO Room B, Geneva, Switzerland*