

**Written Testimony of Mark Linscott
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**Before the Senate Subcommittee on International Trade, Customs and Global
Competitiveness**

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Chairman Wyden, Ranking Member Crapo, Members of the Subcommittee, thank you for convening this hearing today. I am Mark Linscott, Assistant United States Trade Representative for Environment and Natural Resources. I appreciate the opportunity to appear before you today to provide testimony on the efforts and interest of the Office of the United States Trade Representative in protecting and conserving the world's marine resources. Our trade policies have a role to play in advancing key environmental objectives globally, and we have increasingly sought out opportunities to harness our trading relationships to achieve some of these aims. From our efforts to address concerns with illegal logging to our focus on marine conservation issues, we are pressing ahead with a robust trade and environment agenda.

State of the World's Fisheries

As you heard from the previous panel, the state of the world's fisheries is grim. According to the United Nations Food and Agriculture Organization (FAO) 80 percent of global fish stocks are classified as fully exploited, overexploited, depleted, or recovering from depletion. Contributing to this crisis are highly subsidized global fishing fleets which can find and capture marine resources in what were once untouchable and impossible to reach places. Construction and modernization subsidies have built a global fleet capacity 2.5 times larger than that needed to catch the resource available. Such subsidies have led not only to overexploitation of fish populations and undermining fisheries management schemes, but are preventing the recovery of depleted fish populations, and affecting coastal communities, livelihoods and efforts to achieve sustainable development. Some estimates suggest that harmful subsidies account for approximately 15 to 20 percent of the value of global wild capture fisheries production. For the purpose of today's hearing, I will focus my

remarks on the U.S. objectives and progress made on the fisheries subsidies negotiations in the World Trade Organization's (WTO) Doha Development Round and highlight elements within the recently launched Trans-Pacific Partnership negotiations, where we have potential to further our effort to address the state of the world's fisheries and eliminate harmful fisheries subsidies. And I would also note that while our focus is on how these negotiations can contribute to the sustainable development of global fisheries, we believe these efforts will additionally reduce distortions in global seafood markets in ways that will significantly benefit U.S. fishermen.

Overview of the Doha Development Round

The United States continues to play a leadership role in pressing for strong rules on fisheries subsidies as part of a Doha Development Agenda package. Our role in this important work is driven by an element of USTR's mission: to leverage trade negotiations and relationships to pursue environmental objectives. The United States is committed to seeking a strong agreement that will prohibit the most harmful forms of fisheries subsidies and be enforced through WTO dispute settlement.

The United States has long identified fisheries subsidies as a key area in which trade liberalization can contribute to environmental conservation and sustainable development, and in turn, help improve the state of the world's oceans, fisheries and fishing communities. It was with this in mind that USTR pressed strongly for inclusion of this issue in the Doha mandate. In fact, the WTO fish subsidies negotiations are probably the best example of how the WTO can promote sustainable development.

Since 2001, when Ministers at the Doha Ministerial Conference agreed to a specific mandate directing WTO Members to "clarify and improve disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries," USTR has been actively pursuing an ambitious result that will include a prohibition of the most harmful subsidies which directly enhance capacity to overfish the world's oceans. The Doha mandate reflected an acknowledgement that subsidies that contribute to overfishing and overcapacity not only distort trade, but also lead to the depletion of a critical natural resource and make it more difficult for developing countries to develop their own fisheries resources to feed their people. Harmful foreign subsidies also provide

an unfair advantage in the global marketplace to producers in those countries that seek to maintain or build up new fishing capacity than otherwise would be the case absent direct government assistance. These negotiations represent a milestone for the WTO, because for the first time, concerns for environmental conservation, not merely traditional trade concerns, played a major role in the launch of a trade negotiation. The need for strong measures to address over-fishing and overcapacity is as strong now as when Doha was launched.

Brief History and Status of the Doha Negotiations

The WTO fisheries subsidies negotiations have gone through several phases since they were launched as part of the Doha Development Agenda (DDA) in 2001. In fact, we have come a long way since the early days when some foreign delegations even questioned whether there was a specific negotiating mandate. The WTO's Hong Kong Ministerial in 2005 resulted in a strong ministerial statement that continues to serve as the way forward for the negotiations. This statement asserted that delegations "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.**"

Following adoption of the Hong Kong mandate, delegations proceeded to clarify their positions on the level of appropriate ambition for the prohibition of fisheries subsidies. While the United States has from the outset pushed for a broad prohibition on subsidies that contribute to overcapacity and over-fishing with only limited exceptions, some of our trading partners have argued for a much more limited prohibition. In November 2007, then-Chairman Guillermo Valles (Uruguay) issued a landmark text, which could be in the form of an annex to the existing WTO Subsidies and Countervailing Measures Agreement and which would prohibit almost all kinds of potentially harmful subsidies. It also contains provisions on special and differential treatment (SDT), general exceptions for both developed and developing countries, fisheries management requirements, notification and surveillance and dispute settlement.

Because the fisheries subsidies negotiations involved entirely new, highly complex issues that the WTO had never addressed before, in December 2008 the Chair issued a detailed "roadmap" of questions in an attempt to move forward on key contentious issues within the text. These roadmap

discussions took up much of 2009 and were a useful exercise to help clarify Members' positions. Following this, Members, including the United States, have proceeded to submit new proposals, which have all followed the basic architecture of the 2007 text, reaffirming it as the way forward for the negotiations.

Overview of the U.S. April 2010 Proposal

The United States has been a strong supporter of the level of ambition proposed by the 2007 Chair's text, and our overall objective for these negotiations continues to be the elimination of harmful subsidies to the fishing sector, the promotion of sustainable fishing practices and effective and appropriate 'Special and Differential Treatment' for developing countries. Our most recent proposal, submitted in April 2010, took an important step toward deepening the Group's discussion on a range of technical and legal matters that will need to be addressed to produce an effective and implementable agreement. The development of an entirely new agreement, bringing WTO disciplines to bear on the complex world of global fisheries, while at the same time remaining within the WTO's competency and producing an agreement that can be effectively enforced through the WTO rule system, is a challenge the WTO has never faced before and one which requires attention to the most technical of details.

We intended through our April 2010 proposal to demonstrate support for a high level of ambition and a strong prohibition on subsidies, particularly for over-fished and over-exploited fish stocks, as well as to clarify the scope of some of the exceptions to the prohibitions on subsidies.

To outline a few elements of our proposal:

We believe that the discussions by the Group to date reveal broad agreement that a subsidy should not contribute to further pressure on fish stocks that are already in poor condition, even if the subsidy is not among those specifically prohibited. Through our proposal, we seek clarification of certain definitions and conditions in an effort to make the text easier to implement. These clarifications include: (1) the biological conditions of the fish stock in question that would trigger application of the prohibition (in essence identifying those stocks that are in such a poor state that **all subsidies for fishing this stock should stop**); (2) removal

Comment [R1]: While there may be cases where a stock is in such bad state that all fishing should stop, halting all fishing is beyond the scope of a WTO subsidies discipline. Additions seek to clarify intended reach of U.S. proposal for Art. I.2 of the draft WTO subsidies annex.

This comment is consistent with input provided by NOAA to USTR for U.S. introduction of its proposal in Geneva in May; USTR oral intervention took this input into account.

of the implication that there can be no element of scientific ambiguity concerning the stock conditions; and (3) definitions of certain terms such as “fishing activity” and “fish stocks.” For example, defining ‘fish stocks’ in terms of geographic and management units, which recognizes the fact that stock conditions vary from place to place; for instance, Atlantic cod may be depleted in one area of the ocean, but in good shape in other areas.

The Chair’s text consists of a general prohibition, followed by a cause of action for non-prohibited subsidies that cause harm to fish stocks. The U.S. April proposal seeks to improve the drafting regarding this portion of the text in order to make it operational in practice and to prevent the creation of unintended loopholes. In our proposal, similar to the Chair’s text, no Member shall “cause or perpetuate harm” through the use of any subsidy to the relevant fish stocks, including overfishing and the creation of overcapacity with respect to those stocks. We have also provided additional guidance as to what situations would constitute evidence of “harm,” *i.e.*, evidence that overcapacity or overfishing is developing. Under this scenario, a complaining Member in dispute settlement would have the burden of demonstrating that harm has occurred and that the subsidies in question are a cause of the harm. We also indicate that in certain situations, harm can be deemed to exist, regardless of whether evidence of overfishing or overcapacity is present. We identify two such situations: (1) there is no valid scientific assessment establishing a sustainable level of harvest for the stock; and (2) the subsidizing Member has not implemented a management plan for the stock. In those cases, the burden would shift to the subsidizing Member to demonstrate that the subsidy in question has not caused harm. Without a stock assessment or management plan in place, this would be a very difficult burden for a subsidizing Member to satisfy. Therefore, this provision should encourage Members to strengthen their management regimes.

This is a snapshot of some of the elements of the most recent U.S. proposal in the Doha fisheries subsidies negotiations. Due to its highly technical nature, we worked with agencies such as the National Marine Fisheries Service, the Department of Commerce’s International Trade Administration and the Department of State to develop the proposal. We also worked closely with our official advisors on the Trade and Environment Policy Advisory Committee – TEPAC. In

upcoming meetings in Geneva, we plan to work closely with other developing country delegations who are interested in proposing an approach to special and differential treatment for developing countries that can realistically address some of the challenges they face, particularly with subsistence fishing populations, but ensure there is no loophole for countries that already have big industrial fleets.

The Trans-Pacific Partnership (TPP)

The Trans-Pacific Partnership (TPP) is a potential platform for economic integration across the Asia-Pacific region, and is where we have the prospect to further our effort to address the state of the world's fisheries and harmful fisheries subsidies that contribute to overcapacity and overfishing. With its rapid growth and large markets, the Asia-Pacific region is vital to the expansion of U.S. trade and to the creation and retention of high-quality, high-paying export-supported jobs in the United States. The United States is negotiating with an initial group of seven like-minded countries (Singapore, Chile, New Zealand, Brunei, Australia, Peru, and Vietnam) to craft a platform for a high-standard, 21st-century agreement -- one that reflects U.S. priorities and values.

Potential Areas for TPP Marine-related Obligations

The TPP presents a unique opportunity to address marine and ocean conservation, over-fishing and unfair fishing practices among key Pacific nations. Six of the eight TPP partners (Chile, Peru, Vietnam, Australia, New Zealand and the United States) have major fishing interests. Therefore, a robust package of marine conservation measures, within both the Environment Chapter and under a framework for environmental cooperation, would be a strong complement to our efforts on fisheries subsidies in the Doha Round. While we are continuing to explore options for issues to include in an environmental chapter in the TPP, there was significant interest in the 2nd Round of negotiations in further considering "21st century issues," which include: environmental goods and services; **oceans and marine governance**; wildlife trade; illegal logging and associated trade; biodiversity and trade; and climate change and trade. We will continue to discuss these ideas with the Congress, key stakeholder groups and other U.S. government agencies as the TPP negotiations move forward.

USTR's Office of Environment and Natural Resources is responsible for negotiating environment chapters in all trade agreements, whether bilateral, regional or multilateral. These chapters typically

include obligations on effective enforcement of laws, non-derogation of environmental protections in encouraging increased trade or investment, domestic procedural protections, and promotion of public participation in environmental matters. We also work closely with the State Department in negotiating and implementing environmental cooperation mechanisms associated with free trade agreements (FTAs).

An environment chapter in the TPP should strengthen country commitments to enforce their environmental laws and regulations, including in areas related to ocean and fisheries governance, through the effective enforcement obligation subject to dispute settlement. With respect to potential areas for marine-related obligations, a few of the ideas percolating and still in the early stages of development include, obligations and commitments that would address harmful subsidies for fishing, protect critically endangered marine species, combat illegal fishing and improve fisheries management, ensure safety of seafood imports and exports, and improve compliance with domestic and international programs and agreements, all or some of which could potentially be considered as elements of a TPP environmental agreement. We are also prepared to explore these issues within the context of an environmental cooperation package to enhance commitments made by governments in the environment chapter of a TPP agreement.

Conclusion

In concluding I would like to thank you for the opportunity to appear before you today to outline USTR's efforts to advance trade negotiations in a way that can help to conserve one of the world's most critical natural resources. These negotiations can also help to level the playing field for our nation's fishermen, processors and exporters through elimination of some of the most harmful practices that contribute to overcapacity and overfishing on the high seas. We recognize this as one of the key areas where USTR has the responsibility and capacity to make a difference on this critical issue.