

Public Comment for the Record
To: U.S. Commission on Ocean Policy
1120 – 20th Street, NW
Suite 200 North
Washington, D.C. 20036
Fax (202) 418-3475
E-mail: mail@oceancommission.gov

PUBLIC COMMENT: ABUSIVE TRANSFER PRICING IN TRANSNATIONAL SEAFOOD TRADE – AN ISSUE OF ACCOUNTABILITY & TRANSPARENCY

1. Introductory Summary on Abusive Transfer Pricing: Mandate & Needs
2. Statement to the U.S. Commission on Ocean Policy by Stephen Taufen, founder, Groundswell Fisheries Movement; Seattle Meeting, 14 June 2002
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From: Stephen R. Taufen, Founder
Groundswell Fisheries Movement
P.O. Box 19257
Seattle, Washington 98109-1257
Tel. No.: restricted (whistle-blower)
E-mail: staufen@seanet.com

1. Introductory Summary of Public Testimony

ISSUE: Abusive Transfer Pricing (ATP) – the cross-border product laundering of U.S. seafood products among affiliates of global fishing companies, using illicit bookkeeping methods in processing and the conduct of trade – negatively affects the export valuation of national resources and regional economies. In Alaska, ATP has created ‘an alternative essence of management’ from that promised in the Magnuson Fisheries Conservation and Management Act of 1976 (MFCMA).

ATP is the major price-fixing mechanism used to destroy small boat fisheries and extract billions in economic multiplier benefits from U.S. maritime communities – especially in Alaska. ATP is predicted to be this Century’s leading tax and finance global concern and is important for the Commission to consider regarding Federalism, as a matter of national economic security.

MANDATE: Transnational seafood corporations must be increasingly scrutinized to guarantee the protection of U.S. Commerce, to deal with economic and tax returns from national assets. ATP is a matter requiring increased Accountability and Transparency; and its implications must be an integral concern for policy makers for economic management, and connect with conservation policy. Correcting the massive drain on the U.S. economy from such illicit practices is key to restoring the livelihoods of thousands of Alaskan fishers and protecting them from antitrust harm.

The Commission should, like the United Nations and Organization for Economic Cooperation and Development, take Transfer Pricing abuses and issues into full consideration. And similarly, should establish an Ad Hoc Committee on Transfer Pricing in order to gather the

information and gain the insights needed to properly deal with these accounting behavioral problems.

NEEDS: It is recommended that the U.S. Commission on Ocean Policy should:

1. Solicit testimony and evidence from the Internal Revenue Service, Seattle International Division, Large and Medium-sized Business Group experts, and the public and academia, about Abusive Transfer Pricing.
2. Establish an Ad Hoc Committee on Transfer Pricing – including IRS experts, economic specialists who have expertise in ATP issues, and at-large members of the fishing industry who deal annually with ATP's consequences. They should fully examine the false economics (leaving out ATP, i.e. taxes) used to support legislative and policy actions such as the so-called American Fisheries Act, and the Crab Rationalization schemes in Alaska.
3. Issue a report to the U.S. Senate on findings of the Ad Hoc Committee, to such ATP experts as Senator Byron Dorgan (author of paper GLOBAL SHELL GAMES) ;and
4. Consider additional efforts by the General Accounting Office regarding the economic structure of the U.S. North Pacific seafood industry, and its ATP practices. Coupled with further action by the Commission to guarantee the economic protection of U.S. fisheries for Citizens and taxpayers in the national interest.

2. Public Statement delivered at Seattle Meeting 14 June 2002

My name is Stephen Taufen, founder of the Groundswell Fisheries Movement – educating the public about the international tax frauds of Abusive Transfer Pricing (ATP). For the record, I have degrees in Accounting and Physical Geography, 20 years experience in Alaska fisheries from cost accounting to operations management – and even some fishing time on deck. I have been working the past few years as an economic consultant to the agricultural tree fruit sector of the Northwest, doing foreign marketing plans and regional economic analysis to promote U.S. exports.

I write editorials and articles in the West Coast fishing industry press, and a series entitled, “Bonsai Buccaneers in The Fish Republic of Alaska” – about the lack of law enforcement that has granted tax-evading foreigners ‘*letters of marque*’ to privateer against the U.S.A.

Anecdote addressed to Chairman, Ret. Adm. Watkins: Admiral, I'm glad to find out that it is indeed warm in this room, as I thought it might be because I just returned from several months in the cold winds of the Navy's former base at Adak Island, wearing a parka, and had not adjusted yet. They tell a Cold War era story there about the day when the Navy's giant paper-shredder broke a blade while destroying SOSUS system, secret submarine- and likely even whale-tracking documents...

Admiral Watkins interrupts jokingly: “*You mean to tell me that we shredded our documents?*”

Taufen jokingly replies: *No Sir! You absolutely pulverized and incinerated them! And let the record show it was in the name of national security...*

Anyway... they tell the story that the blade punctured the outlet tube and as a Navy technician fed tons of documents into the shredder, fist-sized chunks blew for hours out into the notorious high winds of Adak, and spewed into the Pacific Ocean, where over twenty Russian fishing trawlers – replete with all manner of electronic gear – swooped into the bay to pick up this snowfield of top secret paper floating on the water. They were certainly ‘fishing for something’ – in the interests of military security – until they were chased away by P3 Orion warplanes.

I am going to tell you today about another paperwork issue that demands equal attention in the interests of the economic security of our Nation’s coastal fisheries.

I am here today as a ‘*private attorney general*’, a federal level whistle-blower on several such ‘product laundering’ cases involving U.S.–Japan affiliates in the Alaskan fisheries of the North Pacific Ocean. Groundswell also addressed these issues in 1999 when I spoke in a University of Washington School of Marine Affairs seminar and at an NGO-Fisheries event at the WTO-Seattle, sponsored by John Foss’ Sustainable Fishing Coalition, about Abusive Transfer Pricing and Accountability and Transparency. (See report below.)

These same illicit bookkeeping tactics are employed around the world, but particularly by Japanese financed operations. But are certainly not limited to them, as Korean, U.S., Russian and other multinationals economically structure their fishery operations to practice this global product laundering through multiple affiliates in several countries.

The Internal Revenue Service criminal investigation division, and international division – its Large- and Medium-sized Business experts, and audit agents are very familiar with these creative bookkeeping frauds. Prior to my whistle-blowing in 1992 and again in 1999, the National Marine Fisheries Service (NMFS) special agents made the IRS aware in 1988-89 of large-scale ‘product manifesting’ frauds that occurred through what were known as *customary overpack* practices regarding products bound to Japanese parent firms from their Alaskan subsidiaries. In particular, where ten kilogram surimi packages were overpacked by as much as ten-percent by weight. As these products left Alaska on board Japanese trampers at stated weights well below their actual fill, huge amounts of revenue were laundered across international borders, escaping a U.S. tax nexus.

But, sadly, the IRS failed to act, at that time. However, this is but one example of the illicit record-keeping practices that threaten the Balance of Trade, as multinationals violate multiple U.S. laws in the Conduct of Trade, and the accounting for it – both inbound and outbound across national borders. It is an issue of whether corporations or Peoples rule, and whether or not our antitrust and tax laws can be – will be – enforced.

This has grave effects on the means of production, products produced, and the product cycle itself, as well as on the distribution of and marketing arenas for U.S. seafood products, and whether or not value-added processing occurs in the U.S. or abroad. More importantly, Abusive Transfer Pricing is used to falsify the wholesale export prices and this in turn is used to ratchet down grounds prices paid to U.S. fleets: to destroy small businesses and our fishing communities.

In Alaska, the economic peril point of excessive foreign-ownership and –investment was exceeded long ago. What foreign multinationals and the U.S. corporations who have followed them in practicing such transnational product laundering schemes now have, is excessive economic power, ‘plenary power’ over U.S. fishers and independent, domestically financed fleets. With all due respect to the former Senator Warren Magnuson, he has surely rolled over repeatedly about what Groundswell calls ‘an *alternative essence of management*’ from that promised in Magnuson’s 1976 fisheries management act. We have failed to address the economic management issues coincident with the Act’s spirit and intent.

Fair bargaining is no longer possible and our communities reflect the damages of these price-fixing, racketeering practices. The North Pacific Fishery Management Council and its panels are infused with conflicts-of-interest and no longer serve the People as they grant monopolistic, oligopsonistic hegemony to this corporate cabal and its relatives.

Abusive Transfer Pricing is predicted to be the largest global finance and tax topic in this Century. You may wish to review findings and data available from the United Nations group of experts or Organization for Economic and Cooperative Development guidelines on this important topic. Fair trade is not possible without addressing these global strategies and dealing with the companies who practice these frauds, throughout their global books. And dealing with the CPAs who assist them.

I have a case still pending against such Certified Public Accomplices – those few in the profession who assist multinationals in these schemes, against the public’s best interests – at the Washington State Board of Accountancy. But quite frankly, it appears that case will never move forward because, apparently, “snakes don’t eat their own.” You know about ENRON. Now you know about the FISHRON taking place in global fisheries – of ATP that destroys fair trade.

For the U.S., billions are lost each year. For pollock alone, during the decade from 1988 to 1999, an estimated \$3.7 to \$6.5 billion in economic losses occurred in Alaska, and I am on the federal record at the Maritime Administration on the American Fisheries Act docket, with these estimates. Domestic banks are not participating in our fisheries, due to these accounting practices, which falsify the profitability as U.S. protein is globally shifted away instead of being sold on profit-making U.S. markets.

There is no national resource price paid for access to these fisheries, so in the spirit and intent of the MFCMA, it is highly important that we consider these economic management issues of Accountability and Transparency in seafood trade.

Please direct your attentions to this grave Federalism and Commerce issue, which also has grave effects on fishery management, and destructs our fish harvester-based communities. Lack of adequate law enforcement against ATP represents an enormous subsidy to foreign economic warriors who privateer in U.S. waters.

Thank you.

Stephen R. Taufen, P.O. Box 19257, Seattle, WA 98109 staufen@seanet.com

Attached below: 2 articles, Transfer Pricing & WTO: Accountability & Transparency

3. Transfer Pricing - What it means to a fish harvester...

Transfer Pricing Affects Fish Catch and Sales Prices

[Revised 1995 article to Bristol Bay fishermen in THE AIFMA LEADER;
The Alaska Independent Fishermen's Marketing Association's newsletter.]

North Pacific fishermen wonder why fish prices seldom seem linked to final market prices. Grounds prices in many species are on the decline though final consumer prices often are not. You may have asked, "*How do these large gaps occur and who really ends up with the profits? Are other forces, such as global tax avoidance, at work?*"

Japanese ownership of U.S. processors and investments in the fishing industry are increasingly suspect as an anti-competitive force. After all, Japan is the leading consumer of much of Alaska's seafood products. Suspicion runs high that U.S. managers are often under some type of foreign "**directive and control**" when it comes to setting fish prices paid to processors or even fishermen.

Structure implies Strategy! And multinationals operate in a world of economic globalism, wherein they must make global-level decisions that often ignore government restrictions, such as taxes.

For seafood, the multinational structure often runs from the grounds to the final retailers in Japan's markets. So, the majority of our North Pacific seafood goes to Japan through a layer of importers who are scantily distinct from the multinational enterprises (MNEs) who parent many foreign-controlled processors to whom fishermen deliver the lion's share of the catch.

And since Japanese trading firms often act collectively, opportunities for restraint of trade from cartelized activities exist. Likewise, Japanese banks and buyers financed much of the industry's debt, and by matching it with tough pre-season sales agreements that allow them to procure the product they desire.

The ongoing Bristol Bay salmon price-fixing lawsuit reflects these concerns. Likewise, there are loud echoes in the hallways of the inshore-offshore pollock allocation debate from voices which gasp at Japan-led requests for a greater shoreside percentage.

Underlying competitive concerns, by offshore firms who may not be foreign-owned, is the commonly shared concern by independent harvesters over their delivery price to all processors.

An Alaska State economist, Mr. Gunnar Knapp of the Salmon Market Information Service stated in 1994, that "There is nothing written that says prices paid to fishermen need to be fair." Is Mr. Knapp correct?

Well, the U.S. has had tax laws on the books for many years regarding international product transfers between related affiliates of a MNE, or similar cross-border transactions.

These "intrafirm transfers" are covered under Internal Revenue Service Tax Code section 482 — known as **Transfer Pricing**. Since the 1930's, the IRS has watched over such opportunities for "milking off profits" and "loading-in expenses" without paying a fair share of U.S. taxes. When abusive, these actions are often called "**product laundering**."

Transfer pricing (TP) is a complex issue of great magnitude. It is the leading tax issue for international business. Let's see if we can define it and show how it influences fish prices and affect regional economic rewards from fisheries.

A 'transfer price' is the price charged by one company to a related company, whenever they allocate income and expenses among themselves.

At issue in U.S. fisheries is the price that an affiliated subsidiary charges for resources obtained and processed in the U.S., which were transferred as products to its overseas parent. On the other hand are expenses the foreign parent charges to the U.S. subsidiary for management services, technical know-how, equipment costs, labor or other services provided.

The latter can be falsely “loaded-in costs” which may bear no relationship to the actual factors underlying the production requirements themselves or U.S. nexus needs. Such expenses, and especially royalties, are large objects of scrutiny by tax authorities.

According to John Fraedrich and Connie Rae Bateman in a 1996 article entitled “*Transfer Pricing by Multinational Marketers: Risky Business*” such “TP policies sometimes reflect competitive dynamics set by default or in line with competition, cost and profit objectives to promote the efficiency of the seller, or resource allocations decisions... [for] extra resources needed on the value-added end of production,”.

However, the underlying concern is often global taxes and where to pay them. Transfer pricing decisions are made daily within multinational corporations for both tangible and intangible outputs in “intrafirm exchanges” among their affiliates or subsidiaries. ***The bottom line at IRS is whether or not the U.S. company properly reflects income attributable to its operations within the U.S., or whether its foreign parent is using pricing strategies to avoid higher effective U.S. taxes.***

In a 1979 Pacific Rim Studies report “*Foreign Investment in the U.S. Fishing Industry*”, authors Jeremiah Sullivan and Per Heggelund predicted that among the problems of Japanese ownership in North Pacific fisheries would be the repatriation of profits by using transfer-pricing practices. Although they may not have understood how abusive these practices could become, they clearly understood that its effects went beyond the taxes lost and revenues denied to our communities through multiplier effects.

They stated that the most devastating effects would be that U.S. domestic investors might conclude that investments in seafood companies would be unwise due to the false level of unprofitability these foreign firms would demonstrate after practicing such repatriations using abusive transfer pricing. Now, we can easily conclude that they were correct and the industry has gone beyond the economic ‘peril point’ of foreign ownership and control.

Another tragic feature in today’s world of globalization is that many CPAs are now earning a large part of their income, at a harm to the U.S., by showing these MNEs the “tricks of the transfer pricing trade”. They do so despite holding public licenses requiring standards of “honesty and integrity” in the public trust.. Often using dollars already “milked-off”, MNEs simply use such ‘certified public accomplices’, and tax attorneys, to fight off any IRS inquiries.

IRS international exam powers are based on the concept of whether or not such ‘controlled transfers’ take place under the same market influences as uncontrolled transactions between separate firms responding to normal market forces. That is, “***Are prices determined ‘at arm’s length’ to clearly reflect the income of any such organization?***”

Under section 482 rules, the IRS can simply reallocate the “correct” level of profits to the U.S. side, but it seldom recaptures the full amount of taxes unpaid. Meanwhile, the net-of-tax revenues also remain overseas. Such outbound shifts are a real concern for economists, since they bleed away the revenues, which through multiplier effects, are key drivers of regional economic health, and underlie a lack of jobs.

In the Alaska seafood industry, we can ask if a foreign parent company is “milking profits” away from its U.S. subsidiary by **Abusive Transfer Pricing**. ATP is where prices and costs are clearly set arbitrarily to satisfy global tax strategies rather than the true, underlying economic circumstances.

At the least, this means the U.S. processor has less cash on hand when it comes to setting prices paid to U.S. fishermen.

Allowing abusive transfer pricing is like cutting the legs off of our fish price bargaining table before we even sit down at it to negotiate.

As the IRS pursues U.S. businesses who send our national resources overseas, an underlying concept is the establishment of a “fair and economically justified price” for those resources. The cost of fish landings is a key component of the price for U.S. seafood.

So — to counter Mr. Knapp’s assessment — the fairness of fish prices IS directly tied to whether or not transfer prices were indeed fairly determined or “abused” U.S. tax laws.

The IRS has established a Seafood Specialty Group [1] in the Seattle office to begin the investigation of many foreign owned firms on matters of global, intrafirm transfer pricing methods and whether or not there were abusive transfers. The National Marine Fisheries Service first approached the IRS on this matter in 1989. The author has also pressed hard for IRS scrutiny, particularly of Japanese-owned firms.

It can be criminal to deliberately scheme to deny the U.S. of its tax share. However, as a rule, the cases are usually handled under civil examination where the burden of proof lies on the taxpayer to convince tax authorities that it has used “basic arm’s length standards”. Consequently, the closest thing to an international standard method of evaluating cross-border transactions is known as a “*comparable uncontrolled price*” (which also applies to cost *transaction* values) — i.e., the CUP (or CUT) method.

Yet, the leading concern for fish harvesters, as the parties work out agreements in tax audits of MNEs, will be the possible establishments of “advance pricing agreements” (APAs) that fail to consider harm already done to harvesters. APAs address IRS section 482 issues where the taxpayer works out a formula or basis for transfer prices and allowable expense practices, to establish in advance how its future financial transactions will be viewed.

“Who is representing U.S. fishermen during APA-setting, and putting the legs back on the bargaining table for fish prices?” Also, “Who is representing the U.S. when it comes to the original Magnuson Fishery Conservation and Management Act’s (MFCMA) ‘spirit and intent’ of *Americanization* — as defined by the highest overall taxable profits from our fisheries — to obtain the greatest overall benefits for our nation?”

After all, the U.S. decided not to charge a national resource price for the fish caught in its Exclusive Economic Zones (200-mile limits). Instead, a decision was made that two economic sectors — harvesters and processors — would ‘marry’ as the economic proxies to the rights of U.S. citizens for fishery worth and that both would contribute to regional economies.

The main economic artery created by that decision was to be the creation of income driving forces through revenues created by value-added processing in the U.S. The underlying rewards for citizens were tax contributions and domestic jobs and the household respending that accompanies them. Directly linked to the health of our communities, this squarely places ATP concerns among the most important issues in the industry.

Clearly, the balance of these proxy rights is the most basic and primary concern for policy making in the industry. There is an obvious need for proper evaluation of foreign ownership and abusive transfer pricing activities. Indeed, nowhere in this APA process is there a provision for third-party rights such as those of the fishermen to receive their portion in “an economically fair and justified price,” especially if it has not yet been attained.

In many species, catch prices are cascading, denying the harvesting sector its rightful rewards. For that reason alone, the entire record of the Bristol Bay antitrust suit should be made public, and not protected by lawyer tricks of “confidentiality orders.” That is an outright contempt of the American taxpayer’s rights to know.

The North Pacific Fisheries Management Council (NPFMC) has great responsibility to U.S. citizens and taxpayers. The MFCMA should be changed to deny foreign “agents of influence” from surreptitiously operating under the mask of U.S. faces on our public agencies or during any testimony. The Act should also require the full disclosure of all financial documents and transfer pricing criteria to U.S. authorities, under strengthened guidelines that guarantee access to foreign owner’s records to ensure fairness.

Groundswell calls for a “rising above gear issues, getting around onshore & offshore allocations, and going beyond a focus on species.” Minor issues have distracted us from examining the truth of foreign ownership, exposing ATP, and following up on MFCMA with the second-generation legislation needed to truly obtain the maximum economic benefit from U.S. fisheries. We have forsaken alternative markets, welcomed a broken price mechanism, and created severed bonds between independent yet captive harvesters and their compromised processors who serve foreign interests.

Only if we are armed with the economic facts can correct policy result. This will not be attained by employing typical neo-classical economists. Rather, start with a review of the history of the ‘banana republics’ of Central America, and “the grain merchants”, or other agricultural examples.

Then, understand and apply the new paradigms of “competitive advantages within industry-segments”, and toss out the stand-alone notion of “comparative factor advantages” and especially the incorrect theory of “free trade” between nations.

The global tax strategies of MNEs can readily prevent U.S. subsidiaries from paying for national resources at values reflecting fair market prices.

ATP strategies can keep currency rate changes and market forces from influencing your fish price. **The current East Asian financial crisis will only increase the pressures for repatriation.** Japanese banks will be under increasing pressures to lower all cash outflows through their U.S. subsidiaries, and that will mean lower fish prices. In effect, fishermen may directly subsidize the crisis.

So, as fishermen, you must become increasingly concerned and educate yourselves on the modern complexities of how these tax and trade issues work together against you.

Stephen Taufen of the *Groundswell* Fisheries Movement. P.O. Box 19257; Seattle, WA 98109.

[1] In a telling example of what is wrong, IRS was unable to obtain willing cooperation from US CPAs to enable it to have industry accounting expertise to establish the SSG. They could make more money representing clients against the IRS than helping our Nation stop these fraudulent abuses. Address APA concerns directly to: IRS Int’l. Seafood Group; Mailstop W137, Room 2348; 915 Second Ave.; Seattle, WA 98174.

Additional Note: In the recent quest for Japan to secure its loans to shoreside catcher/delivery boats and guarantee its shoreside Alaskan facilities generate in perpetuity what John Maynard Keynes called “asset-interest earnings”, there has been a quest for processor quotas and individual fish harvester quotas in crab. It is a means of securing commodity-based earnings, turning what would otherwise be relatively bad loans into good loans.

The Commission on Ocean Policy should be concerned that these loans were made in increasing numbers during the 1990’s to obtain foreign rights to U.S. fish stocks, because Abusive Transfer Pricing sheds light on the processor subsidiary-to-foreign-parent behaviors used to accumulate the dollars loaned to vessels. Should IPQs and IFQs be granted, and exclusive processor clubs established over fleet quasi-cooperatives (not real cooperatives, as already protected under agricultural laws.) it would forever solidify foreign hegemony over Alaska and have grave effects on other species. With the Alakayak antitrust case on salmon yet unresolved, this is not a good time to create permanent plantations for foreign imperialists.

4. The WTO & Fisheries: An Issue of 'Accountability & Transparency' **A Case of Global Production and Transfer Pricing Strategies versus Citizen-Taxpayer Rights** Approx. draft as submitted to the Institute of Agriculture Trade and Policy, for website publication.

In accordance with the Laws of the Sea, fisheries within the 200 nautical mile limits of countries represent national economic treasures. However, fish stocks aren't fenced-in by political boundaries such as these Exclusive Economic Zones (EEZs). This makes global accountability – the proper reporting of their catch and stock levels, and economic value – an important goal in preserving these resources and the sharing of their commonwealth.

Similarly, multinational corporations involved in world fisheries are not constricted by political boundaries. One way they 'school up' in other nations is by the simple and legal means of direct foreign investment in host nation subsidiaries. Of course, their network of affiliates is usually under centralized control from the parent company back in the home nation.

Consequently, transparency – openness to the financial records of multinational enterprises (MNEs) and the intentions behind them – becomes an equally important consideration.

This lack of boundaries allows two concerning situations to develop in world fisheries. First, migratory stocks that leave one nation can be captured while on the high seas, or within the waters of another nation's EEZ. The latter may be by a MNE within its home nation's waters, or where it fishes under 'the privateer's license' – *letters of marque* – within another nation's waters.

Second, MNEs may use ownership of buying and processing facilities in other nations as a means to secure 'directive and control' over foreign resources. They can decide the means of production, where the host nation's fish are processed and into which product forms, who distributes them, and where they are marketed – even where profits occur or accrue.

These decisions can adversely affect the economic value of any host nation's fish products that are subject to the grasp of taxation. That is, profits are apportioned in the global corporation within the stages of production and in accordance with elements of wealth creation (labor, capital, know how, etc.).

The ability to extract taxes – in lieu of a national resource price for the catch of the fish or rights to its allocation – follows the production decisions and revenue and costs allocations of these MNEs. So, it all hinges on honesty and integrity in accounting records.

Again, accountability – this time for proper allocation of financial transactions to the activities associated with production and marketing circumstances, and methods of valuation – arises as a critical concern. Logically, transparency is required to ensure it.

These two issues are key to all global economic activity, in both goods and services, and are an important part of the discussions of the World Trade Organization (WTO). *Accountability and transparency* are also crucial to foreign aid and other decisions, such as IMF or World Bank assistance, since much of the funds flow through corporations. Without financial standards, safeguards and access to information, banks, governments and citizens can't even keep score on the game of corporate globalization.

And since we are living in a globalized economy of 'transnationalized capitalism', key economic issues include the rights of 'democratized' governments and citizens versus the rights of MNEs regarding resources. This means to the values of resources and to the markets for products produced from them, as well as rewards for technical 'know how' and services.

These rights involve not only taxation and the distribution of net of tax dollars (components of labor, operating expenses and supplies, overhead, amortization and profits), but also the ability to secure maximum commonwealth from value-added localized production. This is important so that resource wealth furthers economic increments in cycles of re-spending within a particular nation's boundaries.

Thus, in nations where fisheries ‘conservation and management’ are mandated under special law, such as the U.S., ‘economic management’ is paramount, too, in order to ensure those goals and even to pay for policy measures. Furthermore, global *accountability and transparency* are primary requirements not only to guarantee that fisheries are sustainable, but also to make sure that the fair value of these national treasures becomes known, maybe even [especially] equitably shared.

Economic Sovereignty and Resource Rights:

Put another way, dollars removed from an economy also remove associated economic multiplier effects – the repeated rewards of localized rounds of redistribution between suppliers (including laborers) and producers.

Accordingly, one of the key issues of critics of the WTO regarding resources involves where the various stages of production take place and who gets to earn the wages and incomes associated with them, and to tax it, if at all. Globalized production strategies easily affect the inherent ability of many nations to bear the burdens of government. Both personal taxation and taxes on product and services form the root ability to govern – the core issue of covering the costs of sovereignty.

This critic’s main questions of the WTO are, “Will governments retain the sovereign rights to know what goes on inside globalized corporations and their affiliates, to govern the reporting of their financial transactions and resource allocations, and the ability to tax their economic activities which occur (or even determine which should occur) within their realm? [This is before ENRON!]

Likewise, “If a nation is comprised of taxable citizens who provide its means and reason to govern, how will common rights to the wealth and health of its renewable resources be assured? In addition, “What will be the limits placed under the WTO on government- and citizen-rights to know about the internal financial and production workings of transnationalized businesses?”

To answer these questions requires political and legal foundations and involves extensive, democratic debate – which rests on mores and values, and having the time to properly consider the extended consequences of decisions. **Ultimately, *accountability and transparency* become the keys to ensuring citizen and government rights. Nowhere is this more true, based on the author’s experience, than in renewable national resources such as fisheries.**

And therein is a basic fear of the critics of the WTO, that citizens are not being included while personal and national rights are foregone. And the apex of their concern is about citizen-level rights to have a democratic voice and to constrain activities that may even be detrimental not only to humanity, but to the environment.

Under the WTO, they ask “Will products be allowed to bear appropriate social costs, amortization of environmental damage or even the burden of the costs of running a government: i.e. the cash drain of taxation? Or, will transnationalized corporations become the new rulers of our lives and our pockets?”

One can make a good case against most corporate taxation, save for including “aversion or repair costs” for environmentally harmful products. After all, costs are passed along in product prices. But, the corporate- versus laborer- (or resource harvester) ‘split of profits’ has everything to do with the ability to tax a citizenry. And taxes are needed in order to maintain any democratically principled, economically capitalist, representative republic.

Big questions, and crucial concerns. In any case, *accountability and transparency* will be there as leading concerns, for without them, citizens and their governments will not even be able to keep score on the game of globalization.

For some U.S. fisheries, the problems have already risen to crisis proportions. In the North Pacific, foreign-controlled corporations (FCCs) practice creative bookkeeping to milk-off profits from the US while loading-in expenses, in order to reallocate profits to fit their global tax strategies. This technique is known as “abusive transfer pricing”, and it is the leading tool of MNEs used to avoid the cash drains of taxation.

Likewise, multinational fishing companies can utilize catch strategies that damage sustainability of fish stocks when they take fish in multiple nations' EEZs, though the fish may actually 'belong' to another nation. This appears to be the case for Alaskan salmon, and Japanese fleets 'privateering' in the Russian EEZ. Could this be in 'retaliation' for antitrust or tax law enforcement in the US, or a just a 'global policy adjustment'?

In the process, the catch rights of US fishermen have been adversely affected, and they have not been compensated for their losses. So, the WTO will also have to decide how to handle these complex 'adjustments' and if 'small businesses' also get financial protection involving resource rights granted by citizen-nations.

Again, the only way to know what is going on and resolve the issues is to maintain citizen rights to *accountability and transparency*.

Abusive Transfer Pricing in Fisheries:

To understand this global tax topic, there are some key terms and concepts that the reader will need to know. A **“transfer price” is the price charged by one company to a related company, whenever they allocate income and expenses among themselves.** This can be the price that affiliate charges for product obtained in the U.S. and then transferred to its overseas parent. It can also be expenses charged to the U.S. subsidiary by its foreign parent for management services (and labor) provided etc.

The bottom line is whether or not the U.S. (host nation) company properly reflects income attributable to its operations in the U.S., or whether its foreign parent is using pricing strategies to avoid higher effective U.S. taxes. If the latter occurs, often against multiple IRS codes, the practice is known as “abusive transfer pricing” (ATP). When it is products that are used to "milk-off" or shift revenues overseas, while "loading-in costs" against them into the U.S. (or host nation) subsidiary, against tax authority codes, it is also known as 'product laundering'.

Other useful terms are "over-invoiced imports (cost load-ins) and under-invoiced exports (milked-off revenues)". And when companies move product at understated weights in order to under-bill exports, "product manifesting" is the term. Thus, both price- and quantity-manipulation methods occur.

An 'arm's length price' is what the price would have been if the sales or services were between unrelated parties which literally stand "at arm's length" from each other. It is known in the world of taxation as the “comparable uncontrolled price” (CUP).

Transfer pricing is a highly important, international topic and the Organization for Economic Cooperation and Development (OECD) guidelines favor using the “CUP Method” based on a "Basic Arm's Length Standard" (BALS) to determine the amount shifted and taxes avoided — generally preferred over other profit comparison or apportionment methods.

Let's revisit the late-1970's, after OPEC's 'supplier nation' efforts to form a cartel in resource supply. Quite another thing was happening in Alaska's fisheries – what *Groundswell* calls a buyers-as-owners cartel was being formed.

The world economies strove for balance by maintaining high differentials in interest rates – a primary engine of trade and investment – which favored Japan for over a decade, in an effort to “trilateralize” the world, and give Asia a place in global trade. A financial “bubble economy” resulted, and during that time, Japanese MNEs easily financed investments in Alaskan seafood processing facilities. After all, one key resource desired by Japan is the world's fish. Essential PROTEIN!

Meanwhile, domestic firms who were strapped with high interest rates throughout the late-1970's and well into the 1980's found themselves unable to fully invest and take advantage of U.S. EEZ rights. The leading problem was a lack of domestic investment, and long-term vision.

An argument was made that Japan is a primary seafood market, its consumers have both the funds and tastes, or economic need, and the situation somehow seemed fair. However, as time went by, consumer prices seemed little affected, while Alaskan fishermen seemed to get an ever-smaller piece of the economic pie.

So, a major concern became whether or not the spirit and intent of the 1978 Magnuson Fisheries Conservation and Management Act (MFCMA) was being sustained – the promise known as ‘Americanization’. Or, was a criminal extraction of wealth occurring at the hands of transnational firms? And were a limited group of foreigners right back in control?

And the counter argument rears its head, again – Japanese firms invested, so shouldn’t they have the right to determine where products are produced, and marketed, along with who gets what share? But what of the rest of the world’s demand for seafood, especially after “Mad-cow disease” and other health scares?

In the meantime, the transnationalized economy of the world progressed, and MNEs became increasingly sophisticated in keeping the profits for themselves. Even before the Japanese bubble burst, increasing pressures caused Japanese multinationals to take ever-greater risks in ensuring that cash drains were eliminated from their fishery businesses – especially the drains of taxation.

No nation’s businesses seemed as expert in learning the practices of global tax strategies as did Japan’s. After all, it is a nation built on using the world’s resources while at the same time running an export-dominated economic structure while ignoring many domestic needs. And its people generally supported those goals.

The problem is, many of the techniques its corporations adopt in foreign nations are illegal there. And since the 1930’s, the US has had Internal Revenue Service codes which cover the milking-off of profits from one affiliate to the other in order to avoid taxation – the realm of section 482 of the Internal Revenue Code: Transfer Pricing.

Beginning in the 1970’s, certain Japanese fishing companies not only acquired US subsidiaries, but along with them got a host of product cost modeling and microeconomic information. Then, using their access to financial data along with access to raw product, they began the fine art of perfecting their ‘transfer prices’ – for both costs and revenues – until their US subsidiaries reflected little or no taxable profits, or better yet, deficits which earn tax loss carry-forwards. **In fact, lack of book profits in their US Subsidiaries’ books is a hallmark of transfer pricing abuse.**

Not only did they often manipulate actual financial values, but many even practiced what among Japanese firms is known as “customary overpack” in order to load more product weight into packages than was shown as the stated, or billable weight. Using these product-manifesting techniques, for example, they managed to get nearly an additional ten percent of surimi (pollock fish paste) into export packages and thus imported greater amounts into Japan than allowed under quota restrictions. Along with that, they diminished the revenues attributable to their US subsidiary and subject to US taxation.

Next, many bought sugar on the world market, paying import tariffs to US Customs, used it in their US facilities, then exported the product (surimi) to their Japanese affiliates. They loaded-in the full costs of the sugar into the US affiliate’s books, and used these higher expenses to also lower taxable incomes. However, they later matched manufacturing records with importation documents and applied for 100% sugar drawbacks. And these funds could be taken outside US taxation by the sugar importing entity or some other affiliate.

In addition, they often charged technical fees for processing know how, that related to the product forms which foreign customers desire, against the US facility. These charges should arguably be attributable to Japanese sales affiliates, under IRS interpretation.

Meanwhile, US managers were not allowed to make their own decisions on means of production, product lines, or markets. Such foreign-based, centralized ‘directive and control’ was needed to maintain a system of globalized tax and production strategies designed to favor the home nation’s parent company, first and foremost.

Likewise, they loaded-in technician labor costs, and failed to pass along to US employees the knowledge of how to process certain products despite the US being a leader in food technology and capability. In other cases, they also manipulated asset classifications to accelerate depreciation charges

and amortize the costs of assets more rapidly than allowed. Along with that, whenever US profits appeared imminent, despite the many bookkeeping tricks already performed, they could still use arbitrary charges or royalty assessments to further pull down US-side profitability.

In the end, the goal was met, as the US affiliate often became unprofitable, and thus nontaxable. Equally important, domestic investors seeing these losses were thus scared-off from investing in US fisheries and challenging for the rights to market US resources.

These events were all predicted in a 1979 Pacific Rim Study by University of Washington professor Jeremiah Sullivan and University of Alaska professor Per Heggelund. It was as if time stood still while their predictions of the effects “Foreign Investment in the US Seafood Industry” rolled in the door unchallenged.

So, in the end, “It’s America’s fault” again. That’s why it is all the more important to wake-up now to the consequences and examine the situation, and the practices of vertically integrated, multinational seafood corporations as WTO rules develop.

Tax Coffers Drained by Global Strategies:

Let’s digress from fisheries for a moment to examine the wider problem of corporations, which somehow manage not to pay any US income taxes at all.

In March 1999, the General Accounting Office (GAO) released a report about who pays taxes, and who doesn’t, number GGD-99-39, “**Tax Administration: Foreign- and U.S.-Controlled Corporations That Did Not Pay U.S. Income Taxes, 1989-95.**”

The report was prepared for Senator Byron Dorgan (D-ND) and Congress, based on “long-standing concerns about whether foreign-controlled corporations (FCC) are abusing transfer prices and not paying income tax”. It follows up on earlier reports, especially a 1995 GAO report, GGD-95-101, entitled, “**International Taxation: Transfer Pricing and Information on Nonpayment of Tax.**” These reports also cover U.S.-controlled corporations (USCCs) who pay NO income tax.

Despite the fact that this current report does not specifically determine whether the corporations were practicing ATP, nor name any firms, it contains some interesting and highly significant facts.

First, about 60,000 FCCs and 2.3 million USCCs filed U.S. income tax returns in 1995. Yet, “In each year from 1989 through 1995, a majority of corporations, both foreign- and U.S.-controlled, paid no U.S. income tax ... for a variety of reasons ... current-year operating losses, losses carried forward, ... or sufficient tax credits.” Likewise, “Other corporations may report no taxable income because of the improper pricing of intercompany transactions.” This latter situation is one of abusive transfer pricing.

Second, the report compares firms, saying “The percentage of FCCs not paying taxes ranged from 67 percent to 73 percent during those years, while the percentage of USCCs not paying taxes ranged from 59 to 62 percent.” Moreover, looking at it another way, “in 1995, large FCCs paid \$8.31 of tax per \$1,000 in gross receipts, significantly less than the \$15.58 paid by large USCCs.”

The earlier GAO report outlined that for 1991, approximately 35,300 FCCs doing business in the U.S. had \$360 billion in sales, and \$610 billion in assets, yet paid ZERO income taxes. Now, that number is as high as 43,800 FCCs. Taking one look at their products, and at national subsidies they sometimes receive, do you really believe they make no profits?

How much damage does ATP do to the US? Professors Simon Pak and John Zdanowicz of Florida International University recently released a report titled “**U.S. Trade With the World: An Estimate of 1998 Lost U.S. Federal Income Tax Revenues Due to Over-Invoiced Imports and Under-Invoiced Exports**”. Using U.S. Customs’ data, they state that “**The total estimated tax loss for 1998 is \$35.6 Billion [to] \$47.45 Billion.**” Again, this matches up to President Clinton’s IRS-based concerns about ATP, while running for office in 1992.

Difficulty in Dealing with the Problems of Accountability and Transparency in Fisheries:

Coming back to fisheries, in 1989, the National Marine Fisheries Service brought its product manifesting concerns to the IRS, which failed to act at that time. Yet, by 1991, the IRS was awakened by a case involving the largest Japanese seafood company and abusive transfer pricing concerns within its Alaskan subsidiaries.

Closely following that were other cases, involving both Japanese and Korean fishing ventures with US affiliates. And by 1997, the IRS had formed a Seafood Specialty Group in its Seattle international division specifically to examine these problems.

During the 1990's, several individuals filed personal lawsuits, which also hinged on abusive transfer pricing or tax fraud elements. A leading case involved the right of US managers to 'bonuses based on profits' and to the rights to technological 'know how' that was incorporated into Alaskan subsidiaries of Japanese-owned MNEs. These were issues of the accountability for multinational transactions. Even today, there are ongoing cases where these creative bookkeeping practices are key to unraveling the damage done to US citizens and firms by FCCs in fisheries, let alone tax coffer losses.

In addition, a key problem in prosecuting such cases involved the access to records – the transparency problem. Not only was this access required for court cases, but it was also essential for fisheries policy-making and public testimony to what was actually occurring in foreign-owned Alaskan seafood affiliates.

In such cases, both the corporate power of resistance to production of records under legal discovery processes along with the taxpayer non-disclosure protections of the IRS served to damage both private and public interests. That resistance was bought and paid for through the use of fraudulently retained funds, recycled to further hide the fraud, and also hide the reasons for change in public policy.

Considering this, one can see how cases never even make the courtroom, especially when confidentiality agreements and gag-orders are leading tools of the corporate lawyers against 'poorer' plaintiffs.

Worse yet, certified public accountants (CPAs) and the work performed for these foreign affiliates are increasingly becoming buried behind a wall of 'lawyer-client privilege' that extends far darker than normal 'work-product privileges'. Large corporations practicing abusive tax methods bleed off millions and then use these funds to fight all comers, usually with the help of publicly-licensed CPAs.

In short, in the case of abusive transfer pricing, CPA has often come to mean ***certified public accomplice***. And if the truth were to be known, this is a major source of revenue for the modern CPA firm who is also building up its staff of in-house lawyers just to gain such protection by using "beyond the public" privileges.

With increasing CPA engagements by foreign-owned firms who pay no taxes in the US, fighting off the IRS after having used such 'creative bookkeeping' techniques, the transnationals corrupt the very mechanisms of enforcement. This also corrupts the publicly licensed professionals whom citizens rely upon for ensuring *accountability and transparency*. Without a nation's accounting professionals adhering to licensed standards of public integrity and service, where are governments headed?

Similarly, without making the courtroom in fights to undo the damages of crooked corporations, citizens are not only denied justice, but society is denied an adequate look at the practices of such corporations.

Again, fish policy suffers, too. And remember, Alaska's assistant attorney general James Forbes declared in 1993, after examining these foreign fish companies on antitrust issues, that Alaska needs to consider their 'oligopsonistic' structure before making any fish policy.

So, *accountability and transparency* are key to maintaining the Civil Rights of a nation's citizens. And enforcement remains a key, because the lack of adequate *accountability and transparency* can cause an entire industry's economic structure to go awry. But when these corporations also use the power of ill-gotten gains to influence the body politic, what of the possibilities for adequate enforcement?

In a related concern, government officials often see their paths to personal glory paved with the campaign contributions of corporations and the accolades of having “created jobs”. When in fact, concessions given to relocating subsidiaries often form the very basis for a lack of enforcement or obligation to bear a fair share of the burdens of government. Labor costs are often squeezed later, or jobs evaporate at the corporate whim.

The important factor is that local and national governments have blindly joined global corporations in local projects without any responsibility for ‘global’ concerns. This topic, alone, could occupy volumes. Yet, a critical point remains: governments need to decide whether or not their ‘partners’ are citizens or transnationalized capitalism, and its corporate masters. What are at stake are often the basic economic rights of all other businesses and wage earners.

What we see in Alaskan fisheries, in part today, is the demise of the independent harvester through lower fish prices, along with the effects on fishery practices. In large measure, these lower prices are the direct result of abusive transfer pricing along with the consolidation of processing firms and fleets.

And if fleets cannot secure their promised share of the economic pie, as partners or economic co-proxies with US processors, then the future of US fisheries ‘economic management’ under the MFCMA is at stake.

In 1998, testimony was given by *Groundswell* to the North Pacific fishing industry’s Advisory Panel (AP) that for pollock alone, in a decade’s time, it is conservatively estimated that over \$430 million was bled-off from these practices. The economic multiplier effects compute to approximately \$2.15 billion of negative effects on US fishing communities. [Subsequent data show an estimated decade of loss estimated at \$3.7 to \$6.5 billion, for pollock alone, when considering the regional economic multipliers.]

The AP then ordered the North Pacific Fisheries Management Council (NPFMC, or Council) to examine the market and fisheries grounds price effects of abusive transfer pricing before moving forward with its considerations of increased pollock allocations to what are primarily Japanese-owned FCCs in the shoreside sector. The Council failed to adequately examine the situation – and again, the key issue remains *accountability and transparency*.

Another crucial factor in their failure may have been the ‘conflicts of interest’ on the Council itself. And, again, without adequate disclosure, *accountability and transparency*, and the ability of citizens to act upon what is learned, foreign “agents of influence” were apparently able to manipulate fish policy, once more, to their gain at the expense of US taxpayers and resource owners.

In turn, this led to bad legislation in the form of the ill-named American Fisheries Act (AFA) of 1998, which effectively destroyed competition in the North Pacific pollock industry and awarded FCCs undue resource allocation rights – without ever resolving the problems of whether they pay their fair share in taxes. Worse yet, it left all US firms vulnerable to continued misstatements of true worth for product exports.

Since these FCCs are often the buyers (or among its affiliated ‘cartel-like’ group) for product from other sectors, the entire industry is left to suffer from its effects. [Species by species, since the Federal government, DOJ Antitrust, has said it will not investigate and prosecute over a single species event.]

With a conflicted board and insufficient action within fisheries management itself, the burden then falls solely upon the IRS for enforcement, and there are several key problems with that. First, the IRS rarely recovers but a fraction of the milked-off revenues and taxes. Second, the net-of-tax dollars are not recovered to multiply in the US economy. Third, domestic investors still have no accurate and honest information upon which to base their financing decisions regarding US fisheries, and the foreign firms maintain further hegemony over US resources.

Fourth, other economic sectors (such as harvesters, i.e. labor) become subject to overpowering influences illegally gained by other sectors. So, along with *accountability and transparency* goes enforcement. After all, enforcement of national laws is one of the more important reasons we pay taxes.

WTO – A Case of Transnational Capitalism

versus Citizen-Based Democracies:

It is not only for fisheries that knowledge of abusive transfer pricing is essential to understanding resource and manufacturing etc. trade. This is predicted to be the leading global financial and tax concern of the next century. Already, world governments are rushing to develop adequate protections, and even individual regions or states within nations are concerned.

What is at risk in the evolving economy of 'transnationalized capitalism' are the important standards of generally accepted accounting principles which stem from public concern and a desire to ensure that all users of financial reports are adequately informed. What is at risk is the ability of nations and agencies to develop adequate laws, regulations and other protections along with proper policy regarding world resources.

What are ultimately at risk are the rights of citizenry, and the right to effective democratic governments. And if we are not careful in creating the WTO's rules, in the end, the laboring masses will be paid poorly and taxed heavily, suffer tremendous losses of freedom, and see individual economic choices taken away as governments meet their demise and transnationalized capitalism rules.

It might even be said that transparency and accountability are the keys to a free humanity, itself. And without individual rights and powers, including the rights to know, does anyone really believe that corporations themselves will have the 'soul' to protect our resources and meet multiple individual needs?

Should we even strive for a WTO if citizens don't have at least a power equal to, even exceeding that of the legal constructs called corporations? After all, don't corporate rights stem from the legal grants given them from citizens themselves? And, if the corporate form has gone awry and is overwhelming the very legal systems which created it, isn't it the right of citizens to reform its legal boundaries? So, shouldn't we really be working on a taxpaying- and product consuming- citizens trade organization, rather than a corporate globalist-dominated WTO?

In conclusion, for fisheries, the issues of abusive transfer pricing, the needs of *accountability and transparency*, and concerns of foreign investment join other important WTO topics such as genetically modified organisms, phytosanitary restrictions, ecosystem and resource sustainability concerns, and the allowance of tax and other subsidies.

Interestingly, a failure to adequately control these transnational corporations and prosecute abusive transfer pricing (ATP) is equivalent to granting foreigners a subsidy in US fisheries for coming here to take our resources away on the cheap. This redefines the cliché to be "TAX-FREE trade."

Thus, the enforcement of ATP laws by all world governments seems key to ensuring that the goals of the WTO to eliminate subsidies and false-values – and ensure international competitiveness 'free' from disparate tariffs or taxes – are met.

Finally, we are still left with other questions. Just how does the WTO plan to uphold global fish sustainability and ecosystem policy? By what mechanism will that occur, and how will a 'consensus-based' WTO restrain corporate greed? Will a WTO decision against the octopus (a parent company) also apply to its global tentacles? Or will a ruling against one nation's firms also apply to all of their many globalized operations?

So, not forgetting Nature, with all the big political fish eating all the little political fish, what will be the destiny of the real fish?

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Stephen R. Taufen, *Groundswell* Fisheries Movement – Grassroots, fair trade advocacy in North Pacific Fisheries; drafted in 1999 at Seattle WTO for a NGO Fisheries seminar sponsored by John Foss' Sustainable Fishery Network. Needs revision and updating. Comments are welcome.

END OF PUBLIC COMMENT TO COMMISSION ON OCEAN POLICY