

**CONTRIBUTION TO THE DISCUSSION ON THE FRAMEWORK
FOR DISCIPLINES ON FISHERIES SUBSIDIES**

Paper from Brazil

The following communication, dated 30 June 2005, is being circulated at the request of the Delegation of Brazil.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/139), also be circulated as a formal document.

1. Brazil welcomes the broad discussion at the Negotiating Group on Rules (NGR) meeting in April 2005 on the Brazilian contribution to the discussion on the framework for disciplines on fisheries subsidies. Although this submission reproduces the last section of document TN/RL/W/176, some changes and improvements were introduced so as to incorporate comments made by Members and to further develop some of the suggested ideas put forward by Brazil.

2. We recall that Brazil's proposal of 31 March 2005 sought to suggest an approach on how the special and differential treatment for developing countries could be properly captured under the future disciplines on fisheries subsidies. The Brazilian proposal consists of the following:

- (i) Definition of Fisheries Subsidies. Except for inland fisheries¹, all capture fisheries² subsidies programmes should be included in the definition of "fisheries subsidies". The definition of fisheries subsidies must include all financial contributions or income or price support by a government — as defined in Article 1 of the ASCM — that are given to or on behalf of fishing interests. Any such governmental payment given to or on behalf of fishing interests shall be considered "specific" within the meaning of Article 2 of the ASCM. Moreover, subsidies granted for the purchase of foreign access rights (government-to-government payments for access by their domestic fleets to foreign EEZ fisheries) should also be covered by the definition of fisheries subsidies. Public service of fisheries management should not, in principle, be defined as fisheries subsidy (stock assessments, regulatory enforcement, licensing, etc.)³.

¹ In this proposal, inland fisheries refer to fisheries in internal waters of any country. That is to say, all waters, other than lawfully claimed archipelagic waters, landward of the baseline from which the territorial sea is measured.

² Since the disciplines required to address subsidies to aquaculture would differ in important aspects from those proposed for capture fisheries, they are not part of this proposal. In this proposal, aquaculture refers to the business of raising marine or freshwater fish or shellfish under controlled conditions

³ In document TN/RL/GEN/36, New Zealand suggests "that subsidies to management services should not be prohibited under new disciplines on fish subsidies". Brazil is willing to discuss the scope of the concept

- (ii) Classification of Fisheries Subsidies. Brazil favours the approach of classifying fisheries subsidies based both on their design and effects, according to the context in which they are provided:
- (a) "Green Box" (non-actionable subsidies) - There should be an exhaustive list of non-actionable fisheries subsidies, provided that they do not have trade-distorting or production-distorting effects through enhancing capacity and overfishing. Subsidies that do not meet those conditions or do not fall within the exhaustive list should be considered prohibited subsidies.
- In this regard, Members may wish to discuss the following non-exhaustive list of examples of subsidies that could be considered non-actionable:
- (1) subsidies that are aimed at improving conservation and the sustainable use of fisheries resources:
- (a) subsidies to research activities undertaken to improve fisheries management or environmental protection;
- (b) subsidies for compliance with safety or sanitary standards;
- (c) subsidies for the adoption of environmentally preferable gear or techniques.
- (2) subsidies to small scale fishing⁴ and to artisanal fishing⁵, provided that such fisheries are not "patently at risk"⁶;
- (3) subsidies for capacity reduction⁷;

of "public service of fisheries management", as well as whether subsidies under that concept should be considered "green" subsidies.

⁴ Subsidies to small-scale fishing are to be considered non-actionable if granted to activities carried out by vessels with total length not exceeding 24 meters and with a total catch not over 250 tons per year. In addition: (a) if the fishery is under the management of a RFMO:

(a.1) and if a country limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 10% of the limit set to the country for that specific specie by that RFMO; or

(a.2) and if no country limit is set to a specific specie, the total catch of the country small-scale fleet for the specific species that have no individual limits shall not exceed 5% of the limit set to the country by that RFMO for those specific species that have no individual limits; or

(a.3) and if a global limit is set to a specific specie, the total catch of the country small-scale fleet for that specific specie shall not exceed 0,5% of the global limit set to that specie by that RFMO; or

(b) if the fishery is not under the management of a RFMO, the annual increase of the volume catch by the country small-scale fleet for that specific specie shall not exceed 3% of the most recent volume catch data reported to a competent international organization.

⁵ Subsidies to artisanal fishing are to be considered non-actionable if:

(a) granted to fisheries activities performed at an in-shore basis with non-automatic net-retriever devices;

(b) granted to activities carried out on an individual basis (including, but not necessarily, the family members);

(c) the basic scope of the activities encompasses both family livelihood and a small profit trade; and there is no employer-employee relationship on the activities carried out.

⁶ For example, a fishery could be considered "patently at risk" if any of the following conditions apply:

- the status of exploitation is "not known or uncertain" or is "overexploited," "depleted," or "recovering" according to the FAO; or
- the status of exploitation or of the target species is deemed equivalent to the foregoing by a competent regional or international authority having jurisdiction over the fishery.

⁷ In document TN/RL/GEN/41, the US suggested that "buyback and similar programmes designed to permanently remove overcapacity from fisheries are strong candidates for an exception to an expanded

- (4) subsidies aimed at fishermen retraining, to facilitate movement of labor out of the fishery sector and early retirement schemes.

If any vessel and/or company of a Member is found to be engaged in IUU fishing according to any RFMO, serious prejudice, in the sense of paragraph (c) of Article 5 of the ASCM, shall be deemed to exist regarding all non-actionable subsidies granted by that Member.

- (b) "Red Box" (prohibited subsidies) – All remaining subsidies that do not fall within the "green box" shall be considered as prohibited subsidies, together with those subsidies that are already prohibited under the current disciplines in Article 3 of the ASCM. In other words, there would be a prohibition on fisheries subsidies that, by reason both of their design and effects, cause, for example: 1) the increase of fishing capacity or effort; 2) IUU fishing⁸; 3) the increase of the domestic supply of fish, threatening the

prohibition of fisheries subsidies in the WTO, provided that appropriate programme conditions are attached". In document TN/RL/GEN/47, Japan suggested that vessels "subject to the decommissioning programme must be scrapped including its engine and equipment in order to avoid the leakage of vessels and gears to other fisheries. In addition, the fishing licenses associated with the decommissioned vessels have to be withdrawn". Brazil shares those views and is willing to discuss examples of subsidies programmes designed to reduce capacity as well as the appropriate conditions attached to those programmes aimed at avoiding the return of removed overcapacity or an increase in capacity.

⁸ In document TN/RL/GEN/47, Japan notes that "overseas transfers of fishing vessels to non-CPCs of RFMOs could directly result in IUU fisheries and therefore subsidies for those activities should be prohibited. Furthermore, the re-transfer to non-CPCs through CPCs of RFMOs is also problematic. Such a case can be prevented by establishing an appropriate bilateral arrangement between exporting and importing countries. Subsidies for overseas transfers of fishing vessels to CPCs of RFMOs might also be among the prohibited subsidies, unless such a bilateral arrangement exists". In order to stimulate discussions, Members could consider the basic definitions of "illegal," "unreported," and "unregulated" fishing set out by the International Plan of Action (IPOA):

3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).

sustainability of the fishing resource. One exception could be envisaged: short-term emergency relief and adjustment (a) in case of unforeseeable natural disasters and (b) to small scale fishermen suffering significant loss of income as a result of reductions in fishing caused by conservation measures.

3. There shall be a period of 3 (three) years for Members to phase out and eliminate their subsidies programmes that will fall within the prohibited subsidies category, from a level to be agreed. From the entry into force of these rules, Members will not be permitted to create new prohibited subsidies.

4. Notification requirements applicable to all fishing subsidies should require detailed reporting about the actual uses of the subsidies, necessarily including information:

- regarding the identification of fisheries in which subsidized fishing takes place under a given subsidy program;
- about the status of the fisheries in question;
- about subsidy amounts on a per vessel, per fleet, and per fishery basis;
- and specific description of how subsidies are actually applied;
- whether the fishery is under management by a RFMO, the nature of the monitoring, the quantitative limits applicable to the Member and the RFMO website; and
- identification of specific enterprises receiving subsidies.

It should also be required that notifications include information about steps taken to ensure that the notified subsidy does not contribute to IUU fishing activities. Any subsidy at a national level which is not notified, or reported on, would be presumed prohibited⁹. Articles 8.3, 8.4 and 8.5 of the ASCM, amended as necessary, could be used in the future disciplines on transparency and notification.

Special and differential treatment for developing country Members

5. The provisions of Article 27 of the ASCM should fully apply to fisheries subsidies¹⁰. Since those provisions are not entirely appropriate to address the specific needs of developing country and least developed country Members in the fishing sector and taking into account social and environmental criteria, Brazil proposes that:

- (i) The following fisheries subsidies should be permitted to developing country Members, according to Articles 5, 6 (except paragraph 1) and 7 of the ASCM¹¹:
 - (1) Subsidies which increase fishing capacity or effort of Members that are part of a RFMO. Those subsidies should not allow the enhancement of the Member's fishing capacity beyond the sustainable level of exploitation defined by the limits established under the RFMO. Specifically, those subsidies must fall within one or more of the following exhaustive list:
 - (a) subsidies to fishing vessel construction or repair;

⁹ Brazil shares EC's view expressed in document TN/RL/GEN/39 that any subsidy which is not notified would be presumed prohibited.

¹⁰ Some of the current provisions of Article 27 may have to be refined in the light of what is being suggested in this proposal.

¹¹ Brazil is open to discuss any possible amendment that may be needed in those articles, in order to cope with the specificities of the fishing sector. For instance, the current definition of "adverse effects" may have to be clarified, in order to capture the impacts of a subsidy program on production. The same point was raised by the United States in document TN/RL/W/169.

- (b) subsidies to vessel modernization or gear acquisition or improvement.
 - (2) Fuel, bait or ice supplied for fishing activities.
 - (3) Payments received from other governments for access to the EEZ fisheries resources of the developing country¹²;
 - (4) Assistance to disadvantaged regions within the territory of a Member pursuant to a general framework of regional development in the sense of Article 8.2 (b) of the ASCM.
- (ii) Serious prejudice in the sense of paragraph (c) of Article 5 of the ASCM shall be deemed to exist in the case of:
- (a) subsidies benefiting any vessel and/or company not operating under the rules and/or limits established by a RFMO to a Member;
 - (b) any vessel and/or company is found to be engaged in IUU fishing according to any RFMO. In this situation, serious prejudice shall be deemed to exist regarding all actionable subsidies granted by the developing country Member;
 - (c) subsidies granted to any vessel and/or company involved with the exploitation of fisheries "patently at risk";
 - (d) subsidies granted to a fleet or an enterprise to cover operating losses.
- (iii) the following special and differential treatment should be accorded to least-developed country Members:
- (1) "red box" subsidies that are prohibited under Article 3 of the ASCM and those listed in paragraph 21.(ii)(b) above should be considered actionable subsidies for a period of 10 (ten) years.

6. There shall be a period of 5 (five) years for developing country Members to phase out and eliminate their subsidies programmes that will fall within the prohibited subsidies category, from a level to be agreed.

¹² The same issue was raised by Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St Kitts and Nevis under the item "revenue generation from access fees" (TN/RL/W/136)