

FISHERIES SUBSIDIES

Communication from the United States

The following communication, dated 20 April 2006, is being circulated at the request of the Delegation of the United States.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/110), also be circulated as a formal document.

The United States submits this paper as a contribution to Members' consideration of proposals on new fisheries disciplines in the form of legal text. In the attachment, we propose text in three areas: (1) appropriate conditions to attach to vessel capacity reduction (buyback) programmes, which have been proposed as a potential exception to a broad prohibition; (2) provisions for the Committee's periodic review of the effectiveness of new disciplines on fisheries subsidies, including a role for intergovernmental organizations with fisheries expertise; and (3) provisions for appropriate involvement of fisheries experts in addressing technical and scientific questions that may arise in dispute settlement proceedings under new fisheries subsidies disciplines. These texts are a work in progress, and the United States may put forward additional views on these issues.

Exception to a broad prohibition for vessel capacity reduction (buyback) programmes, with appropriate conditions. There appears to be broad agreement among WTO Members that certain programmes aimed at removing overcapacity in targeted fisheries (often referred to as "buyback" programmes) can be an effective tool in addressing the problems of the sector. However, there is also general consensus that these programmes need to be carefully structured so that the removed capacity does not return. Recent text-based proposals premised on a broad prohibition have advocated an exception to the prohibition for such programmes if appropriate conditions are defined. *Fisheries Subsidies -- Framework for Disciplines – Paper from New Zealand*, TN/RL/GEN/100 (Annex VIII, paragraph 1(b)); *Possible Disciplines on Fisheries Subsidies – Paper from Brazil*, TN/RL/GEN/79/Rev.1 (Article 2.1(b)). Submissions from other Members supporting alternative approaches to new disciplines have also acknowledged the need to develop appropriate conditions for such programmes.¹

¹ See *Contribution to the Discussion of the Framework for the Disciplines on the Fisheries Subsidies – Communication from Japan, the Republic of Korea, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*, TN/RL/W/172 (paragraph 14(i)); *Fisheries Subsidies – Submission of the European Communities to the Negotiating Group on Rules*, TN/RL/W/82 (p. 3).

The United States submits the attached text as a basis for discussion of this issue. The proposal builds on the United States' previous submission in May 2005. *Fisheries Subsidies: Programmes for Decommissioning of Vessels and License Retirement – Communication from the United States*, TN/RL/GEN/41. Members would be required to explain in their notifications how the programmes meet each of the specified conditions for the exception. Further, as we have stated in previous submissions, exceptions to a prohibition should remain actionable under the other relevant WTO rules.

Provision of fisheries expertise in the implementation and enforcement of a fisheries subsidies agreement. Members will also need to consider the appropriate mechanisms for giving the WTO an ability to draw upon fisheries expertise from other organizations in the implementation and enforcement of stronger rules on fisheries subsidies. Proposals to date have not expressly addressed this element. The United States proposes the attached text, which seeks to address two aspects of this issue:

- (1) periodic review by the Committee on Subsidies and Countervailing Measures of the effectiveness of new disciplines, including an appropriate role for the intergovernmental bodies with fisheries expertise (such as the UN Food and Agriculture Organization) in such a review;
- (2) potential use of fisheries expertise in addressing scientific or technical questions involved in disputes under a fisheries subsidies agreement. The proposal on the latter question is adapted from Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures.

We believe that the attached proposals could be adapted equally well to an annex approach (as suggested by Brazil) or as an amendment to the ASCM agreement (as suggested by New Zealand).

Exception for Vessel capacity reduction programmes:

Provided that they are notified in accordance with [revised fisheries notification requirements,] nothing in [provision on prohibited fisheries subsidies] shall prevent a Member from adopting the following measures:

() subsidies for vessel capacity reduction programmes, provided that:

- (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;
- (2) the fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;
- (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in any fishery; and
- (4) there are in place fisheries management control measures designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups.

Review

__1. The Committee on Subsidies and Countervailing Measures shall review the implementation and operation of this [agreement on fisheries subsidies] every __ years, taking into account the objectives thereof. In this regard, the Committee shall, as appropriate, request information from persons and organizations with expertise in fisheries management, conservation and stock assessment, such as the United Nations Food and Agriculture Organization and regional fisheries management organizations.

__2. In particular, the Committee shall consider the following, among other issues: *[identify particular areas for attention –e.g., if aquaculture is ultimately excluded from a prohibition, Members could agree specifically to reexamine the continued adequacy of the existing ASCM rules for this sector. This list would not be an exhaustive list.]*

Consultations and Dispute Settlement

[Note: it is assumed that the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and settlement of related to new rules on fisheries subsidies, with the following additional provisions. When the form of the ultimate agreement (annex or amendment) is determined, Members can consider whether or not an explicit reference to the applicability of the DSU is necessary.]

__1. In a dispute under this [agreement on fisheries subsidies] involving scientific or technical questions related to fisheries, a panel should seek advice from fisheries experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries experts group, or consult the United Nations Food and Agriculture Organization or other relevant international organization, at the request of either party to the dispute or on its own initiative.

__2. Nothing in this [agreement on fisheries subsidies] shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.
