

FISHERIES SUBSIDIES

Submission of the European Communities

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

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/117), also be circulated as a formal document.

Introduction

Over the last few months, the Rules Group has done much good work to clarify the main problem areas which have to be addressed in any new disciplines on fisheries subsidies. Following the Hong Kong ministerial, Members have been asked to make their text-based proposals so that the work of the Group can intensify so that the timeframe foreseen can be met. In that spirit, the European Communities is determined to make a full contribution to the work of the Group with a simple, transparent and comprehensive proposal which addresses the problem of overfishing.

It seems therefore obvious that the most effective way of addressing this problem is to ban the most problematic subsidies, i.e. those that relate to capacity in the context of the construction of new vessels and treatment of subsidies given for the modernisation of existing vessels. The guiding principle must be that public aid can under no circumstances contribute to overcapacity.

Proposal

The EC agrees with the view expressed by some Members that new disciplines for fisheries subsidies must be simple, transparent and enforceable. On the basis of its previous submissions to the Group¹, the EC is proposing elements of a future text that prohibits subsidies contributing to overcapacity.

A very important aspect of the present proposal is the introduction of an effective transparency and enforcement mechanism with regard to fisheries subsidies. This can be achieved either through an effective WTO control system of notification and review or, alternatively, through an enforcement system implemented domestically which has equivalent effect to the WTO one. In this context, the Community considers that the Group of Experts concept which is already mentioned in the current Agreement on Subsidies and Countervailing Measures is one that can be effectively utilised here.

¹ TN/RL/W/82 of 23 April 2003 and TN/RL/GEN/39 of 12 May 2005

Significantly, the proposal addresses to what extent disciplines should apply to developing countries. The EC recognises the legitimate concerns of developing countries with regard to the development of their fisheries industries, ranging from poverty reduction and food security to legitimate development needs. The EC is proposing that developing countries should be exempted from fisheries subsidies disciplines for an appropriate period of time. In this context, the EC appreciates the contributions made by other Members to devising a system which would allow special treatment for developing countries. In the EC proposal on this matter, the aim is to provide as generous a treatment as possible while leaving the system simple and effective.

Lastly, the proposal does not touch upon the issue of *de minimis* subsidies, but this is an issue the EC referred to in its proposal on transparency and enforcement of 2005. Other Members have also raised this issue and this is one that will need to be addressed in the near future.

Conclusion

In a recent submission, a group of Members has set out their views concerning the principles that should guide Members when developing new fisheries subsidies disciplines². The EC considers that the present proposal is fully in line with the principles that are set out in that submission. Finally, the EC is also convinced that this negotiating text complies with the guidance provided by Ministers in Hong Kong on further work on fisheries subsidies.

² TN/RL/W/196 of 22 November 2005, paragraph 14.

Annex - New Articles in the Agreement on Subsidies and Countervailing Measures on Fisheries subsidies. In the text below, the body of Articles is referred to as “the Annex”. This is without prejudice to the final architecture of the fisheries disciplines.

*Article 1
Scope and Definitions*

1. *The Annex covers any fisheries subsidy, i.e. subsidies as defined in Article 1.1 of the SCM Agreement that are granted to enterprises engaged in marine wild capture fisheries.*
2. *Fisheries subsidies shall encompass any subsidy programme and/or the disbursements made under such programme as well as ad hoc subsidies.*

*Article 2
Prohibited Subsidies*

1. *The following subsidies shall be prohibited :*
 - (a) *Subsidies for the construction of new fishing vessels,*
 - (b) *Subsidies for the renovation of existing vessels, and*
 - (c) *Subsidies for the permanent transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.*

*Article 3
Permitted Subsidies*

1. *The following subsidies are permitted:*
 - (a) *Subsidies contingent upon a reduction in fishing capacity or that are provided for the specific purpose of mitigating the negative social and economic consequences of reductions in capacity;*
 - (b) *Subject to a non increase in capacity, subsidies that are granted in the context of conservation measures, for product development, for modernisation of vessels including improved working conditions and safety on board, and subsidies that promote more environmentally friendly fishing operations.*
2. *Subsidies covered by paragraph 1 of this Article shall not be subject to Article 2 of this Annex and Parts III and V of the SCM Agreement.*

Article 4
Review

1. *Articles 2 and 3 shall be reviewed after five years beginning with the date of the entry into force of this Agreement and thereafter every five years.*
2. *The Permanent Group of Experts established under Article 24.3 of the SCM Agreement shall periodically review the subsidisation practices of Members to which this Annex applies and produce a comprehensive report thereon on a biannual basis. The report of the PGE shall be published forthwith. Upon request by any Member, the subsidisation practices of a developing country Member shall also be subject to a review.*

Article 5
Transparency

1. *Subsidies for which Article 3 is being invoked shall be notified prior to the adoption of the programme or, in case of an ad hoc grant, prior to the commitment.*
2. *All other subsidies shall be notified no later than upon the date of adoption of the programme, or in case of an ad hoc grant, the date of commitment.*
3. *Members shall, upon request by any Member, provide translations in an official language of the WTO of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.*
4. *Subparagraphs 1 to 3 of this Article shall not apply to a Member that has notified to the WTO that it has transposed the provisions of this Article into its domestic legal system. Without prejudice to Article 30 of the SCM Agreement, the Permanent Group of Experts established under Article 24.3 of the SCM Agreement shall examine within 9 months from the date of notification whether the transposition and enforcement are adequate. The examination shall be conducted on the basis of a notification by the Member concerned of its domestic legislation and relevant administrative procedures as well as any amendments thereof having regard to the following criteria:*
 - a) *the implementation of a rigorous and timely reporting system for subsidies to the fisheries sector given by all levels of government to the relevant body within the WTO Member;*
 - b) *the existence of an ex-post monitoring mechanism of the subsidies that are granted to the fisheries sector, including the publication of periodic ex-post reports;*
5. *The Secretariat shall make publicly available any notifications in accordance with the provisions of this Agreement, upon receipt thereof.*
6. *A breach in notification procedures renders the subsidy concerned prohibited and any amounts already disbursed shall be recovered.*
7. *The procedural provisions of this Article will also apply to developing country Members. The PGE will assess within one year from the entry into force of this Article which transitional arrangements are required in this respect, taking particular account of the institutional and financial resource constraints of and the need for flexibility for LDCs/small and vulnerable economies.*

Article 6
Developing Country Members

- 1. Except where provided otherwise, the provisions of this Annex do not apply to a developing country Member for as long as such Member does not, as from the entry into force of this Annex, increase its fishing capacity, to an extent that it is an impediment to the sustainable exploitation of fishery resources worldwide.*
 - 2. Any Member can refer the matter whether such an impediment is taking place or is imminent, as the case may be, to the Permanent Group of Experts established under Article 24.3 of the SCM Agreement*
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