

FISHERIES SUBSIDIES: SPECIAL AND DIFFERENTIAL TREATMENT

Paper from Argentina

The following communication, dated 31 May 2006, is being circulated at the request of the delegation of Argentina.

This is Argentina's first submission on the above-mentioned subject. Others may follow, depending on developments in the negotiations.

I. INTRODUCTION

1. Since the Sixth Ministerial Conference in Hong Kong, the Negotiating Group on Rules has made significant headway with its work on developing suitable disciplines for fisheries subsidies. It is to be noted that the progress made has been on the basis of the legal drafts proposed by Members.
2. Argentina is firmly in favour of stepping up this work, because the establishment of a broad prohibition on trade- and production-distorting subsidies that adversely affect fisheries resources will contribute significantly to restoring fish stocks to sustainable levels before 2015. This will be in keeping with the objectives set at the Johannesburg World Summit on Sustainable Development.
3. This paper is intended as input to the formulation of provisions on special and differential treatment that are to be incorporated in future disciplines on fisheries subsidies, bearing in mind the sector's relevance to the developing and least developed countries (*development dimension*) and the need to ensure that fishing does not adversely affect the resources and sustainability of the ecosystem (*environmental dimension*).

II. SPECIAL AND DIFFERENTIAL TREATMENT REGARDING FISHERIES SUBSIDIES

4. Special and differential treatment must be so designed as to be consistent with the priorities of development, poverty reduction, and ensuring means of subsistence and improved food security for developing and least developed countries: in other words it must not consist merely of longer transition periods or the establishment of statistical criteria that are unable to accommodate the different needs and priorities of the developing and least developed countries.
5. This means that the special and differential treatment must be given a flexible and dynamic form, avoiding undue restrictions on developing countries pursuing their needs but at the same time taking into account the international obligations laid down in the United Nations Convention on the Law of the Sea (1982) and the standards developed in the FAO Code of Conduct for Responsible

Fisheries (1995), in so far as such countries have responsibility for ensuring sustainable use of live aquatic resources in the interests of environmental conservation.

6. Special and differential treatment therefore needs to be:

- *Responsible*: in all instances, the granting or maintenance of the subsidies identified should be part of a national fisheries management scheme, in keeping with the FAO Code of Conduct for Responsible Fisheries (1995).
- *Selective*: identification of subsidies – in addition to those available in the permissible subsidies category – that are of particular relevance in terms of allowing the developing countries to pursue their development needs.
- *Limited*: identification of situations which, if approved, would enable the developing Member to grant or maintain some of the subsidies programmes identified.
- *Transparent*: the subsidies programmes identified and the approval of the conditions in which they will be implemented should be subject to an improved general discipline on notification and transparency.

III. EXPLANATION OF THE PROPOSAL

7. This proposal assumes that the general structure of the disciplines is based on the establishment of a "**prohibition defined by exclusion**" with limited exceptions. It is therefore compatible with the proposals submitted by New Zealand (TN/RL/GEN/100) and Brazil (TN/RL/GEN/79/Rev.2).

8. There is a broad consensus in the Rules Group that the sustainability of resources is most at risk from subsidies for "*fishing vessel construction and modernization and gear acquisition*". It can nevertheless be conceded that there may be specific situations in which a developing country needs to resort to such subsidies (e.g. surplus species in its exclusive economic zone; high seas quotas established by a regional fisheries management organization (RFMO); the Member plans to develop a national fleet to replace capacity of a foreign fleet operating in its exclusive economic zone). This proposal allows for a developing country finding itself in any of these situations to resort to such programmes.

9. It is acknowledged besides that a developing country could find itself in a situation where it will need to resort to some kind of subsidy in order to sustain the *fishing effort* (e.g. supply of fuel, bait or ice or other costs). It should be borne in mind however that these subsidies, like subsidies to increase capacity, can produce trade distortions and lead to overfishing. They should therefore be allowed only as part of a responsible fisheries plan and should cause no injury to the interests of other Members.

10. Paragraph 9 of Annex D to the Hong Kong Declaration recognizes Members' shared concern that the future discipline should achieve a proper balance between trade and environmental aspects. This is why the granting or maintenance of certain fisheries subsidies programmes should be contingent on the existence of a national fisheries administration plan that meets recognized international standards such as the FAO Code of Conduct for Responsible Fisheries (1995), in order to ensure sustainable fishing activities.

11. We also recognize the contribution that *artisanal fishing* makes to food security and the means of subsistence of developing countries. We therefore endorse Brazil's proposed definition (TN/RL/GEN/79/Rev.2) of artisanal fishing which links the latter to subsistence and distinguishes it

from small scale fishing, as the two refer to different situations. We believe that artisanal fishing defined in these terms should be without restrictions for the developing countries.

12. Any comprehensive discipline for fisheries subsidies must necessarily envisage *government-to-government payments for access to distant fishing grounds*. Provisions on this point should take into account: (a) the right of coastal countries to charge for access to their fishing grounds in accordance with the United Nations Convention on the Law of the Sea; and (b) the income contributed by governments to acquire access for a fleet to distant fishing grounds in practice has much the same effects as would a subsidy. We therefore agree with Brazil's idea¹ of including in the special and differential provisions the right to receive payment for access to fishing grounds or other rights, along with strict requirements on granting countries so that no adverse effects are produced.

13. We believe that the disciplines will be fully effective only to the extent that there is an improved notification procedure and some other mechanism to secure transparency in fisheries subsidies² which covers all fisheries subsidies programmes, including those notified under special and differential provisions. At the same time, account should be taken of the special needs of the least developing countries through greater flexibility, and of the fact that some developing countries may need technical assistance if they are to comply properly with notification requirements.

¹ Articles 7.1(ii)9 and 4.4 of Brazil's paper (TN/RL/GEN/79/Rev.2).

² Argentina views positively the United States' proposal in TN/RL/GEN/127 to establish a mechanism to review disciplines on fisheries subsidies. The possibility of a broad system for review and improving transparency could be envisaged.

IV. PROPOSED LEGAL DRAFT:

Article X³

Special and Differential Treatment

X.1 Notwithstanding the provisions of Article xxx, developing country Members shall be allowed to maintain or grant the following fisheries subsidies:

- (a) For fishing vessel construction, repair or modernization; and/or gear acquisition or improvement⁴;

provided that their purpose is:

- (i) to increase the Member's fleet capacity to cover the fishing of surplus species⁵ in its Exclusive Economic Zone; or
- (ii) to replace foreign vessels operating in its Exclusive Economic Zone without increasing current fishing capacity; or
- (iii) to fill high seas fishing quotas established by a regional fisheries management organization.
- (b) Subsidies to support the operation of fishing fleets (e.g. supply of fuel, bait or ice), in so far as they cause no serious prejudice to another Member within the meaning of Article 6.3 of the Agreement on Subsidies and Countervailing Measures.
- (c) Subsidies to artisanal fisheries.⁶

X.2 For the subsidies referred to in (a) above, the granting Member shall ensure that every fishing vessel constructed or modernized possesses a valid fishing licence and is registered under a national registration system.

X.3 Members granting or maintaining subsidy programmes covered by (a) and (b) of X.1 above, shall have a national fisheries management system in keeping with the FAO Code of Conduct for Responsible Fisheries, 1995.

³ This legal draft is intended as part of a general framework of disciplines based on the principle of a "broad prohibition defined by exclusion" which is in balance with exceptions and transitional provisions.

⁴ The reference to "gear improvement" does not include the improvement of gear used in order to comply with environmental standards as this should be included in the category of permissible subsidies, which all Members may apply.

⁵ For the purposes of this subparagraph "surplus species" shall mean species in respect of which the catch capacity of the fleet fishing in an EEZ is insufficient to cover the maximum allowable catch for the species in question, determined in accordance with Articles 61 and 62 of the United Nations Convention on the Law of the Sea.

⁶ Argentina shares Brazil's idea set out in TN/RL/GEN/79/Rev.2 that artisanal fishing should comprise the fishing activities related to the subsistence of the fisherman and his family. That is to say, activities performed at an in-shore basis with non-automatic net-retriever devices, provided that (a) the activities are carried out on an individual basis, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; (c) there is no employer-employee relationship in the activities carried out. Conditions (a), (b) and (c) will likewise apply in the case of subsidies to fishers' associations.

X.4 Payments or other financial transfers received in direct or indirect exchange for access by foreign vessels to fishing resources of the developing country's EEZ or any other rights established by a regional fisheries management organization shall be exempt from the prohibition laid down in Article XX.⁷

X.5 The subsidy programmes referred to in X.1 above shall be subject to compliance with the provisions on notification and transparency in Article XX.⁸

⁷ This provision should be complementary to the inclusion of such payments or transfers in the actionable subsidies category, as in Articles 7.1(ii) and 4.4 of Brazil's paper (TN/RL/GEN/79/Rev.2).

⁸ Additional flexibilities may be provided for in the case of subsidies granted by least developed countries. Provision should also be made for technical assistance to developing countries that need it in order to comply with the provisions on notification.