

FISHERIES SUBSIDIES: SPECIAL AND DIFFERENTIAL TREATMENT

Paper from Argentina

Revision

The following paper, dated 25 January 2005, is circulated at the request of the delegation of Argentina.

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This is the first revision of Argentina's paper of June 2006 (TN/RL/GEN/138). Other papers may follow, depending on developments in the negotiations.

I. INTRODUCTION

1. Argentina thanks the Negotiating Group on Rules for the attention and interest paid to the paper "Fisheries Subsidies: Special and Differential Treatment" (TN/RL/GEN/138) and welcomes the wide-ranging discussions held in both formal and informal meetings.
2. This submission is a revision of the former paper and its aim is to incorporate some of the comments made by Members and to enlarge on the ideas and concepts set forth in the previous paper.
3. Its starting point is the belief that the WTO is in a position to contribute significantly, within its sphere of competence, to the conservation of resources through strict disciplines on subsidies that distort production, trade and the sustainability of fisheries resources. Adopting an approach based on a prohibition "defined by exclusion" to be applied to fishing subsidies (particularly those leading to over-capacity and over-fishing) offers the advantage of allowing for a scheme that is both effective and applicable within the WTO.
4. This submission maintains the principles set forth in the original proposal: the provisions on special and differential treatment must be substantive and able to meet development, subsistence and food security needs; they must also provide clear parameters for defining objective situations in which subsidies may be granted or maintained, in order to provide safeguards for the sustainability of fisheries resources.

II. EXPLANATION OF THE REVISION

5. To facilitate understanding of the text and show how it differs from the previous paper, the changes and additions are indicated paragraph by paragraph:
 - (a) **Paragraph X.1:** the list of subsidies allowable for developing country Members set forth in paragraph 1 of the former legal draft is maintained: *(a) for fishing vessel construction, repair,*

modification or outfitting, including gear acquisition or improvement; (b) for the support of fishing fleet operation (e.g. supply of fuel, bait or ice); or (c) for artisanal fisheries.

However, the conditions set forth in paragraph X.1(a) (i), (ii) and (iii) of the former text have been grouped together in **Paragraph X.2.**

(b) **Paragraph X.2:** operationalizes the concept of "*surplus species*" by means of an objective and quantifiable parameter while maintaining the purpose of the original proposal, namely to establish clearly that in order for a subsidy to be granted or maintained, the national fishing capacity must be structurally inadequate to cover a species or group of species and, in addition, the Member must guarantee that resources will not be affected.

To this end, a quantitative threshold is included in order to define when national fishing capacity will be deemed "*substantially lower*" than that needed for the sustainable fishing of a species or group of species. Developing country Members would thus be able to resort to subsidies only when the existing fishing capacity does not exceed (50 per cent) of that needed to cover the total allowable catch of a species or group of species.

The purpose of introducing the concepts "existing fishing capacity" and "domestic capacity" is to make the terms of the proposal more precise. With the concept "domestic capacity", the beneficiaries of subsidies are defined so that circumvention can be avoided. The notion of "existing capacity" has been introduced to address the situation envisaged in *paragraph XI(a)(ii)* of the former legal draft, ensuring that any increase in domestic fishing capacity corresponds to a decrease in the foreign fleet operating in areas under domestic jurisdiction.

The new text further establishes that the determinations required by Paragraph X.2 must be done by the Member State. The determinations are based on concepts that are widely used in fisheries contexts and are internationally accepted. In this way, when carrying out the requisite measurement to determine whether capacity is *substantially lower*, a *total allowable catch* will have to be calculated on the basis of the best available information and will have to be compatible with the objective of achieving or maintaining the *maximum sustainable yield*¹ of fish stocks, taking account of the environmental impact, and in accordance with the United Nations Convention and the FAO Code of Conduct for Responsible Fisheries.

(c) **Paragraph X.3:** reflects the further conditions set in *paragraphs X.2 and 3* of the former legal draft. The FAO Code of Conduct for Responsible Fisheries is referred to not in order to turn a voluntary document into a mandatory one, but to introduce a standard that enjoys wide recognition in much of the international community.

It also makes clear that compatibility between national fisheries management systems and the FAO Code of Conduct is to be understood as applying only to the implementation of these disciplines and will be without prejudice to the observance of commitments deriving from other international agreements.

(d) **Paragraph X.4:** since provisions on special and differential treatment amount to an exception to the general prohibition which, according to the approach endorsed by Argentina, should be the backbone of the discipline, the burden of proving or demonstrating fulfilment of the conditions for resorting to the subsidies in question must be on the developing country Member.

¹ This objective is among the Millennium Goals set at the World Summit on Sustainable Development. Paragraph 30(a) states in this connection: "To achieve sustainable fisheries, the following actions are required at all levels: (a) Maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015;"

(e) **Paragraph X.5:** introduces no changes to the previous draft.

6. The revised draft does not include payments for access to remote fisheries because there is a growing consensus that government-to-government payments are not deemed to be fisheries subsidies. It is understood, however, that the general disciplines should include the instances in which the transfer of such rights by a government to specific enterprises is not done in exchange for a fair trade price.

7. Lastly, it should be noted that in reworking the text, particular account was taken of the concerns expressed by some delegations that the WTO should act within its sphere of competence. We therefore included a criterion already to be found in other agreements (such as the Agreement on Sanitary and Phytosanitary Measures), in which the determinations are made by the Member applying the standard. The WTO only indicates the standard that Members are to take as a reference.

8. A system such as this means that, in disputes, panels will not have to make new determinations, as the standard of review will be to establish whether the government took due account of standards issued by internationally recognized technical bodies.

Article X

Special and Differential Treatment²

X.1 Notwithstanding Article xxx and subject to the conditions set in this Article, developing country Members may maintain or grant the following fisheries subsidies:

- (a) For fishing vessel construction, repair, modification or outfitting, including gear acquisition or improvement; or
- (b) for the support of fishing fleet operation (e.g. supply of fuel, bait or ice); or
- (c) for artisanal fisheries.³

X.2 The subsidies referred to in (a) and (b) above may be maintained or granted only on condition that their purpose is to increase domestic fishing capacity⁴ if the developing country Member determines that the existing fishing capacity⁵ is substantially lower⁶ than that needed to:

- (a) cover the total allowable catch⁷ of a given species or group of species in its maritime domain⁸; or
- (b) fill fishing quotas⁹ agreed within the framework of a regional fisheries management organization or other international agreement.

² 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.

³ 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.

⁴ For the purpose of this article "domestic fishing capacity" means the capacity of fishing vessels flagged by a Member State, owned by companies constituted under the domestic law of that Member State, and operated by crews the members of which are in the majority nationals of that State.

⁵ For the purpose of this article "existing fishing capacity" means the total capacity authorized by the Member State for the fishing of a species or group of species in its Maritime domain, namely the domestic fishing capacity plus other vessels authorized by the Member State to fish in its maritime domain.

⁶ For the purpose of this article "substantially lower" means less than [50%] of the capacity needed to cover the total allowable catch.

⁷ For the purpose of this article "total allowable catch" refers to quantitative limits imposed by the Member State on the catch of a given species or a group of species, which must be based on the best scientific information available and allow the maximum sustainable yield of the species or group of species to be reached or maintained without affecting existing fisheries or the marine ecosystem as a whole, in accordance with the United Nations Convention on the Law of the Sea and the Code of Conduct for Responsible Fisheries.

⁸ For the purpose of this article "maritime domain" refers to the areas subject to the sovereignty or jurisdiction of the Member State as established in the United Nations Convention on the Law of the Sea.

⁹ For the purpose of this article "quotas" means enforceable quantitative limits, established through scientific assessment, imposed on fish volumes of a given species for a specified period.

X.3 Developing country Members may not maintain or grant subsidies referred to in paragraph 1 (a) and (b) above unless they demonstrate that:

- (a) Every fishing vessel constructed, repaired, modified, outfitted or otherwise benefited by a subsidy has a valid fishing licence and is registered under a national registration system;
- (b) fishing permits granted to subsidized vessels apply solely for the species or group of species defined in accordance with paragraph 1 and may not be used for the fishing of other species; and
- (c) they have a national fisheries management system in line with the FAO Code of Conduct for Responsible Fisheries (1995).¹⁰

X.4 The burden of proving fulfilment of the conditions set in paragraphs 2 and 3 shall be on the Member State seeking to grant or maintain subsidies under this Article.

X.5 The subsidy programmes referred to in paragraph 1 shall be subject to compliance with the provisions on notification and transparency in Article XXX.¹¹

¹⁰ Determination in the World Trade Organization of the consistency of a national fisheries management system with the FAO Code of Conduct will be restricted to the application of this Annex and will be without prejudice to the observance of commitments under other international agreements.

¹¹ 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.