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Negotiating Group on Rules

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SPECIAL AND DIFFERENTIAL TREATMENT

Proposal from Argentina and Brazil

The following communication, dated 14 September 2007, is being circulated at the request of the Delegations of Argentina and Brazil.

1. Argentina and Brazil welcome the broad discussion on fisheries subsidies at the Negotiating Group on Rules (NGR) meetings, particularly regarding special and differential treatment (S&D). In order to contribute to the discussions on the subject, Argentina and Brazil present this legal text proposal, that reaffirms our key principles regarding S&DT for developing countries in the fisheries negotiations. This legal draft is a work in progress and does not constitute Members' final position on the matter.

2. Argentina and Brazil emphasize the need of strict disciplines on fisheries subsidies as an significant contribution to the conservation of marine resources. Therefore, this legal draft is intended as part of a general framework of disciplines based on the principle of a broad prohibition with specific exceptions, considered under some conditions ("fishery adverse effects").

Article X

Special and Differential Treatment

X.1 Notwithstanding Article XXX [prohibition] and subject to the conditions set in this Article, developing country Members shall be allowed to maintain or grant the following fisheries subsidies:

- (a) for fishing vessel construction, acquisition, repair, modification or modernization, including gear acquisition or improvement; or
- (b) to support the operation of fishing fleets (such as supply of fuel, bait or ice); or
- (c) to fishing activities related to the subsistence and livelihood of the fishermen and their families.¹

X.2 The subsidies referred to in (a) and (b) above may be maintained or granted only:

- (a) to exploit non endangered species or group of species² in the subsidizing Member maritime jurisdiction³; or
- (b) to fill fishing quotas or any other rights⁴ agreed within the framework of a regional fisheries management organization or arrangement, which operates under a fisheries management system that is based on relevant international standards and practices.

X3. The subsidies referred to in X.1 that increase domestic fishing capacity⁵ may be only maintained or granted provided that the developing country Member specifically determines that the resulting fishing capacity⁶ will exploit species with no or almost no fishing activities, or that are being exploited below levels which are capable of producing a maximum sustainable yield, or will be in compliance with X.2 (b).

¹ Those activities are performed at an in-shore basis with non-automatic net-retriever devices, provided that (a) the activities are carried out by fishermen, on an individual basis or organized in associations, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; and (c) there is no major employer-employee relationship on the activities carried out.

² For the purposes of this Annex, "endangered specie" shall mean all species except those that are (a) in a very healthy situation, with no or almost no fishing activities, or (b) that are being exploited below or at levels which are capable of producing a maximum sustainable yield, based on the best scientific information available.

³ "Maritime jurisdiction" encompasses the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf as defined in the United Nations Convention of the Law of the Sea (UNCLOS).

⁴ For the purpose of this article "quotas or any other rights" means enforceable quantitative limits, established through scientific assessment, imposed on fish volumes for specified period.

⁵ For the purpose of this article "domestic fishing capacity" means the capacity of fishing vessels flagged by a Member, owned by companies constituted under the domestic law of that Member, and operated by crews the members of which are in the majority nationals of that Member.

⁶ For the purpose of this article "resulting fishing capacity" means the total capacity authorized by the Member for the fishing of a species or group of species in its Maritime jurisdiction, namely the domestic fishing capacity plus the capacity of other vessels authorized by the Member to fish in its maritime jurisdiction.

X.4 Developing countries Members shall only be allowed to grant or maintain fisheries subsidies referred to in paragraph 1 (a) and (b) above if they have a national fisheries management system in place⁷ which, *inter alia*, ensures that there are no vessels involved in fishery activities of any endangered species.⁸

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.⁹

⁷ Where relevant international standards and practices exist (for example the FAO Code of Conduct for Responsible Fisheries of 1995), Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems.

⁸ In the sense of not having any vessel to cause a "fishery adverse effects" to the interest of other Members.

⁹ 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.