

**FISHERIES SUBSIDIES:  
SPECIAL AND DIFFERENTIAL TREATMENT AND  
FISHERY ADVERSE EFFECTS**

Paper from Argentina and Brazil

Revision

The following communication, dated 22 November 2007, is being circulated at the request of the Delegations of Argentina and Brazil.

1. The present revised proposal by Argentina and Brazil attempts to take into account the comments and suggestions made at the Negotiating Group on Rules (NGR) meetings, particularly concerning special and differential treatment (S&D) and "fishery adverse effects" provisions.
2. This proposed legal text should be understood as part of a general framework of disciplines based on the principle of a broad prohibition with specific exceptions, as well as substantive S&D treatment and strong conditionalities. Argentina and Brazil would like to remark that only a strict approach to fisheries subsidies could be effective to trade and environment. In this sense, the Doha Round should contribute to a generalized improvement of market access for fishing products as well as to the conservation of marine resources.
3. The joint text reflects Argentina's and Brazil's commitment to ensure that S&D treatment (as well as the general exceptions) does not contribute to over-fishing and overcapacity. This document deals solely with S&D and "fisheries adverse effects". It seeks to provide a dynamic condition in order to address both the so-called "boat problem" and "fish problem".
4. In order to guarantee that the future fisheries provisions function effectively, it is important to stress that provisions related to notification mechanisms, "remedies" and other supplementary disciplines are also necessary, as recognized by several previous proposals circulated at the NGR.
5. This revised document is intended to elaborate on concepts and ideas presented in previous proposals without diminishing the level of ambition. On the contrary, some additional criteria have been developed or refined in order to allow a higher level of security. In this regard, Argentina and Brazil consider that the use of qualitative elements, such as "reasonably lower" fishing capacity, "moderate exploitation", or "sustainable allowable catch", may be useful to indicate the intended safe margins for S&D programmes.
6. Concerning fishing activities related to livelihood and subsistence, Argentina and Brazil consider that the proposed approach is workable. Notwithstanding, they are open to further discussion on this subject.

7. Argentina and Brazil understand that the proposed S&D treatment, along with the exceptions provision, should be subject to certain conditions of actionability. As drafted the "fisheries adverse effects" provisions would function similarly to the rebuttable presumption clause under now elapsed Art. 6.1 of the ASCM. In the case of a claim under the WTO dispute settlement system, the burden of proof would revert to the alleged subsidiser country.

8. This legal draft is a work in progress and does not constitute Members' final position on the subject.

## Article X

### *Special and Differential Treatment*

- X.1 Notwithstanding Article Y [prohibition] and subject to the conditions set forth 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.<sup>1</sup>
- X.2 The subsidies referred to X.1 (a) and (b) above may be only maintained or granted when the Member specifically determines that its domestic fishing capacity<sup>2</sup> is reasonably lower than necessary to harvest a sustainable allowable catch<sup>3</sup> of:
- (a) non-overexploited stocks<sup>4</sup> located exclusively in the Member's maritime areas;<sup>5</sup> or
  - (b) fishing quotas<sup>6</sup> or any other rights<sup>7</sup> 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, provided that the Member is a coastal State in the managed region.

---

<sup>1</sup> Those activities are performed exclusively within the Territorial Sea, with non-automatic gear-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.

<sup>2</sup> "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.

<sup>3</sup> "Sustainable allowable catch" means a total allowable catch below levels which are capable of producing a long term maximum sustainable yield, based on the best scientific evidence available.

<sup>4</sup> "Overexploited stocks" shall mean all fish stocks except those target stocks that are being exploited below levels which are capable of producing a long term maximum sustainable yield (including the ones with no or almost no fishing activities), based on the best scientific evidence available.

<sup>5</sup> "Maritime areas" 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).

<sup>6</sup> The term "quotas" means enforceable quantitative limits, established through scientific assessment, applicable on fish volumes for specified period.

<sup>7</sup> The term "any other rights" means the Member's rights to fish stocks (including those with no or almost no fishing activities), that are being exploited below levels which are capable of producing a long term maximum sustainable yield and for which no specific quota has been established but are within constant monitoring by the relevant regional fisheries organizations or arrangements.

- X.3 A Member that grants or maintains subsidy programmes pursuant to X.1 (a) or (b) shall ensure that, even if fully utilized, the resulting fishing capacity<sup>8</sup> is below than necessary to harvest a sustainable allowable catch of the exploited stock and results in no more than moderate exploitation so that limited potential for further non-subsidized expansion of production remains.
- X.4 The fisheries subsidies referred to in paragraph X.1 (a) or (b) shall be subject to compliance with the provisions on notification and transparency in Article XXX.<sup>9</sup>

## Article XX

### *Fishery Adverse Effects*

- XX.1 No Member should cause, through the use of any fishery subsidy referred to in Article Z [exceptions] and Article X.1 (a) and (b), fishery adverse effects.
- XX.2 For the purpose of this Annex, a fishery adverse effect shall be deemed to exist if:
- (a) the Member does not have an effective national fisheries management system<sup>10</sup> in place; or
  - (b) the subsidy targets overexploited stocks.

---

<sup>8</sup> "Resulting fishing capacity" means the total capacity authorized by the Member for the fishing of a stocks or group of stocks in its maritime areas, namely the domestic fishing capacity plus the capacity of other vessels authorized by the Member to fish in its maritime areas.

<sup>9</sup> Additional flexibilities should be provided for in the case of subsidies granted by least developed countries, such as longer implementation periods under "Transitional Provisions". Provisions should also be made for technical assistance to developing countries that need it in order to comply with the provisions on notification.

<sup>10</sup> National fisheries management system may include, *inter alia*, conservation and management measures based on the best scientific evidence available; fisheries management control measures; mechanisms established to identify and quantify fishing capacity; vessel registration and licensing system; limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels; and timely and reliable statistics available on catch and fishing effort in sufficient detail to allow sound statistical analysis. Where relevant international standards and practices exist, such as 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.