

**FISHERIES SUBSIDIES**

Communication from Argentina, Chile, Ecuador, New Zealand, Philippines, Peru

The following submission, dated 1 November 2004, is being circulated at the request of the Delegations of Argentina, Chile, Ecuador, New Zealand, Philippines, and Peru.

1. The Doha ministerial declaration calling for improved WTO disciplines on fisheries subsidies reflects Members' concerns about the potentially harmful trade, developmental, and environmental effects of subsidies to the fisheries sector. In a world where 75 per cent of fish stocks are estimated to be overexploited, fully exploited, or significantly depleted, fisheries subsidies constitute 20-25 per cent of industry revenues. While a number of factors contribute to the depletion of the world's fish stocks, harmful fisheries subsidies are one important factor within the WTO's competence to address.

2. Good progress has been made in the negotiations to date. The Chair's Report to the Trade Negotiations Committee in June noted that there has been "a shift in the debate from the issue of *whether* there is a need for specific disciplines in the sector to the question of the *nature* and *extent* of any such disciplines".<sup>1</sup>

3. This submission provides a further contribution to this discussion by elaborating on an approach that offers a simple, enforceable, and flexible structure for new disciplines on fish subsidies.

*Piecemeal or broadly-based approach?*

4. At our most recent meeting we have seen an elaboration of one possible approach to the negotiation: the so-called "bottom-up" approach. In essence, this approach involves identification of particular programmes to be prohibited and particular programmes to be permitted. A number of delegations have raised concerns with this approach. The most recent version of this proposal was criticised for focusing exclusively on resource effects and disregarding trade effects. Another concern was that it incorporated concepts whose introduction into WTO rules and jurisprudence would be problematical, such as the concept of a "properly managed" fishery, or which lie outside the competence or objectives of the WTO (for example, the regulation of fisheries). There were also questions about the internal rigor of a piecemeal approach of this type.

5. The main alternative is to establish a broader prohibition on fish subsidies. Variants of such an approach have been put forward by a number of delegations over the past year and a half. Views have differed on the scope of a prohibition and on how this might be implemented, but all have suggested targeting subsidies that have certain impacts. Some have called for a prohibition of

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<sup>1</sup> TN/RL/9, paragraph 8

programmes promoting overcapacity, others have extended this to include programmes that encourage overfishing and/or that have other trade distorting effects. A number of these proposals also envisage identifying subsidies that would be exempted from a broader prohibition.

*Options for implementing a broadly-based prohibition*

6. Conceptually there is a lot of commonality in the various proposals for broadly-based prohibitions. From debate so far it seems quite possible that consensus will eventually be found around an approach of this type. A key challenge is to identify ways of translating the concept into rules that are simple and enforceable.

7. A rule calling for prohibition of programmes that encourage overcapacity, overfishing and/or other trade distortions, possibly combined with an illustrative or definitive list, is one option. Though questions may arise about the desirability of attempting to introduce concepts such as overcapacity and overfishing into rules and jurisprudence, it would be useful to examine drafting proposals built around this approach.

8. An alternative, which starts from a similar concept but implements it in a different way, is to start with a prohibition on subsidies that benefit the fishing industry. The task in the negotiations would then primarily be to identify and define the exceptions to this prohibition – namely, those subsidies that would *not* be prohibited under new rules. This approach has a number of features that might make it attractive as a basis for our negotiations:

- *Simplicity and enforceability* It establishes a clear rule, using language and concepts that already have a solid basis within the SCM Agreement. It would essentially just extend the red box to cover subsidies that benefit the fishing industry and establish a list of defined exceptions.
- *Transparency* The starting point of the new disciplines will be a prohibition on subsidies that benefit the fishing industry. The negotiation will then centre on identifying and defining the exceptions to this prohibition. The general rule will provide a strong incentive on Members to come forward with programmes that they wish to maintain. In this way the negotiations will improve our knowledge and understanding of fish subsidies. This will be a significant achievement in itself.
- *Flexibility* This approach provides for flexibility. It does not equate to a “blanket ban” on all fish subsidies. Rather, it suggests a legal structure that starts with a prohibition on subsidies that benefit the fishing industry, and then elaborates exceptions to that prohibition. In no sense would such an approach prejudice the level of ambition of the negotiations. Rather, the exact scope of the broad-based prohibition will be determined by the number of subsidies that are agreed should be excluded from that prohibition. It is apparent from discussions so far that a wide variety of existing subsidy programmes on fisheries will not be prohibited as a result of this round of negotiations. This approach would also be flexible enough to “take into account the importance of this sector to developing countries” as specified in our mandate.

9. It will be important in these negotiations to get the structure of new fisheries disciplines right. An approach that starts with a prohibition on subsidies that benefit the fishing industry, and then defines exceptions to that prohibition, offers a simple, enforceable and flexible structure that would also lead to greater transparency with respect to fish subsidies.

*Next steps in the negotiation*

10. The approach outlined above suggests a negotiation that centres on identifying and defining those programmes that will not be subject to the prohibition. However, under any approach, it seems that there is a need to consider subsidies that would not be prohibited.

11. We already have some indication in a number of submissions to this group of some of the areas that will require consideration in this regard. These might include:

- government expenditures for management frameworks, including those relating to surveillance, monitoring, enforcement and associated research;
- government expenditures for general infrastructure;
- certain fisheries-related social insurance programmes (e.g. job training to assist the transition out of the industry);
- government expenditures for access;
- appropriately structured decommissioning subsidies.

12. A discussion of these programmes, and other types of programmes that Members may wish to maintain under any new disciplines on fish subsidies, would seem to be a logical next step in our negotiations.

*Developmental considerations*

13. In parallel with this, early attention must also be given to special and differential treatment. In examining programmes that might not be prohibited within the framework of new fish subsidy disciplines we shall need to find ways to work toward more practical methods to address specific needs of Members at all levels of development. We already have one submission by a group of developing countries identifying areas of interest and concern.<sup>2</sup> Identifying other specific areas of concern will assist the Negotiating Group to consider at an early stage how such concerns may be accommodated in a targeted and effective way. At the same time, we anticipate an end result that will not exclude major players with major fishing industries from effective disciplines.

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<sup>2</sup> Submission by the Delegations of Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St Kitts and Nevis (TN/RL/W/136).