

POSSIBLE DISCIPLINES ON FISHERIES SUBSIDIES

Paper from Brazil

Revision

The following communication, dated 8 March 2007, is being circulated at the request of the Delegation of Brazil.

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1. Brazil welcomes the renewed debate on fisheries subsidies at the Negotiating Group on Rules (NGR) meeting, in February 2007. In order to contribute to the discussions on the subject, Brazil presents the following revised framework for disciplines on fisheries subsidies.
 2. It should be noted that this submission builds upon and expands on Document TN/RL/GEN/79/Rev.3, so as to incorporate comments made by Members and to further develop some of the suggested ideas put forward in the previous sessions of the NGR.
 3. This legal draft remains a work in progress and does not constitute Brazil's final position on the matter.

ANNEX VIII TO THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Preamble

Members,

Recalling the commitment at Doha to enhance the mutual supportiveness of trade and environment;

Noting the necessity to strengthen disciplines on subsidies in the fisheries sector;

Conscious of the negative effects of overcapacity and overfishing on the fisheries resources;

Reaffirming that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements;

Determined to strengthen ASCM provisions with a view to making them more precise, effective and operational;

Considering the social and economic importance of the fisheries sector to developing country Members;

Hereby *agree* as follows:

Article 1

Definitions and coverage

- 1.1 This Annex provides for specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM).
- 1.2 This Annex shall not apply to inland fisheries¹ and to aquaculture.²
- 1.3 This Annex covers any subsidy — as defined in Article 1 of the ASCM — given to or on behalf of any company and/or person linked in fact or in law, directly or indirectly³, to harvesting activities of capture fisheries ("fishery subsidy"). Fisheries subsidies shall encompass any subsidy programme and/or the disbursement made under such programme.
 - 1.3.1 In case of a government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction⁴ or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), a fishery subsidy shall be deemed to exist if a benefit is conferred in the onward transfer of those access rights from the paying government.

¹ "Inland fisheries" are fisheries which are carried out in freshwater or estuaries of a Member and whose target species are those that spend all of their life-cycle therein.

² "Aquaculture" is the farming of aquatic organisms, including fish, molluscs and crustaceans, provided that no capture fisheries is used to feed raised fish or is farmed.

³ The term "directly or indirectly" is used in this Annex in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994.

⁴ "Maritime jurisdiction" encompasses the Territorial Sea and the Exclusive Economic Zone, which are defined in the United Nations Convention of the Law of the Sea (UNCLOS).

- 1.3.2 "Public services of fisheries resource management" shall not be considered a fishery subsidy.⁵

Article 2
Prohibition

- 2.1 A Member shall neither grant nor maintain any fishery subsidy.

Article 3
Exceptions

- 3.1 The following fisheries subsidies, provided the conditions set out in this paragraph are properly fulfilled, shall not fall under the prohibition set out in Article 2:

- (a) subsidies providing a social safety net for fishermen:
 - (i) early retirement schemes;
 - (ii) re-education, training or alternative employment assistance;
 - (iii) social programmes;
 - (iv) life insurance; and/or
 - (v) livelihood income support to compensate for unemployment or for the suspension of capture fishery activities;
- (b) subsidies for fisheries research, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment;
- (c) subsidies related to fisheries stock enhancement, including marine conservation and protection, marine environment restoration, artificial reefs and by-catch mitigation devices;
- (d) subsidies aimed solely at improving vessel and crew safety⁶, provided that the improvement is undertaken to comply with international or domestic standards;
- (e) subsidies for vessel capacity reduction programmes, provided that the:
 - (i) vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;
 - (ii) fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; and

⁵ "Public services" are all services supplied in the exercise of governmental authority, which is carried out neither on a commercial basis nor in competition with other services suppliers. "Public services of fisheries resource management" are any governmental public service supplied with the objective of improving the management of fisheries resources.

⁶ Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.

- (iii) owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries;
 - (f) other fisheries subsidies that are indirectly linked to harvesting activities of capture fisheries, such as fishing port facilities and inland processing facilities for fisheries products.
- 3.2 In case of natural or environmental disasters, the prohibition of Article 2 shall temporarily not apply, so as to enable governments to provide short-term emergency relief and to implement recovery adjustment programmes.

Article 4
Special and Differential Treatment of Developing Country Members

- 4.1 Notwithstanding the provisions set out in Articles 2 and 3, developing country Members shall be allowed to grant or maintain fisheries subsidies to:
- (a) fishing activities related to the subsistence and livelihood of the fishermen and their families⁷, including the provision of goods and services by a government under the form of infrastructure, other than general infrastructure, benefiting those fishermen and their families;
 - (b) fishing vessel construction, repair or vessel modernization or gear acquisition or improvement, provided that the purpose is to exploit:
 - (i) fisheries in the Member's maritime jurisdiction; or
 - (ii) high seas fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement.
 - (c) fuel, bait and/or ice supplied for fishing activities.

Article 5
Fishery Adverse Effects

- 5.1 No Member should cause, through the use of any fishery subsidy referred to in Article 3 and Article 4.1 (b) and (c), fishery adverse effects to the interest of other Members.
- 5.2 For the purpose of this Annex, a fishery adverse effect shall be deemed to exist if:
- (a) the Member does not have a national fisheries management system in place, which may include, *inter alia*: conservation and management measures based on the best scientific evidence available; fisheries management control measures (fisheries

⁷ 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.

monitoring, surveillance, control and enforcement mechanisms); 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 analysis⁸; or

- (b) the volume of the total catch by a Member of any "endangered specie"⁹ and the number of vessels used in those fishing operations are not decreasing, as compared to the total catch volume and number of vessels it had during the previous year.

Article 6 **Notification**

- 6.1 A fishery subsidy for which the provisions of Articles 3 and 4 are invoked shall be notified to the Committee of Subsidies and Countervailing Measures. On a yearly basis, any such notification shall be made, *mutatis mutandis*, in accordance with the provisions of Article 25 of the ASCM.
- 6.2 In addition, for fisheries subsidies of Article 3 and 4.1 (b) and (c) the notification shall contain the following information:
- (a) the total catch (in volume terms) by the Member of endangered species, with breakdown by fishery, and the number of vessels used in those catching operations, with breakdown by operated location areas;
 - (b) the total catch (in volume terms) by the Member of not-endangered species, with breakdown by fishery, and the number of vessels used in those catching operations, with breakdown by operated location areas;
 - (c) the criteria and scientific information used to set the status of the fishery;
 - (d) whether the fishery in question is under management of a regional fisheries management organization or arrangement and which are the nature of the monitoring and the quantitative limits applicable to the Member;
 - (e) national fisheries management systems in place, with sufficient information to enable Members to evaluate and to understand their framework and operation; and
 - (f) government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), with breakdown by recipient country, total amounts paid, amounts received on the onward transfer of the access rights, fisheries data (in accordance with items (a) and (b) of this paragraph) and other relevant information.

⁸ Where relevant international standards and practices exist, Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems.

⁹ 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 that are being exploited below or at a calculated sustainable allowable catch, based on the best scientific information available; or (b) under the administration of a RFMO or a regional fisheries management arrangement, which operate under a fisheries management system that is based on relevant international standards and practices.

- 6.3 Any fishery subsidy which is not notified shall be deemed to cause a fishery adverse effect.

Article 7
Monitoring

- 7.1 Upon request of a Member, at any time, the Secretariat shall review a notification made pursuant to Article 6, and where necessary may require additional information from the subsidizing Member concerning the notified fishery subsidy under review. The Secretariat shall report its findings to the Committee. The Committee shall promptly review the findings of the Secretariat with a view to determining whether the conditions and criteria set out in Articles 3, 4 and 5 have been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the request for review, provided that such a request is made at least 2 (two) months before the regular meeting of the Committee.
- 7.2 Upon the request of a Member, the determination by the Committee referred to in paragraph 1, or the failure of the Committee to make such a determination, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the Members within 120 days from the date when the matter was referred to the arbitration body. The DSU shall apply to arbitrations conducted under this paragraph.

Article 8
Prevention of circumvention

- 8.1 Members shall not have recourse to rules of origin (preferential or non-preferential), the flag of a vessel and access rights, among others, as a means to undermine the objectives set out in the preamble and to circumvent their obligations under this Annex.

Article 9
Review

- 9.1 The provisions of this Annex shall be reviewed by the Committee after a period of 8 (eight) years from the date of its entry into force, with a view to determining whether any modification is necessary.

Article 10
Transitional provisions

- 10.1 Any fisheries subsidy which has been established within the territory of a Member before the date of the entry into force of this Annex shall be notified to the Committee in no later than 90 days after that date.
- 10.2 From the entry into force of this Annex, there shall be a period of three years for developed country Members and a period of five years for developing country Members to gradually phase out and eliminate fisheries subsidies that are inconsistent with the provisions of this Annex. The starting point of the reduction shall be the 2003-2005 average of the fisheries subsidies prohibited under Article 2. Members shall not be allowed to adopt new prohibited fisheries subsidies or to extend the scope of any existing prohibited fisheries subsidy.

- 10.3 Any least-developed country Member shall phase out its fisheries subsidies within an eight-year period, preferably in a progressive manner, from the date of entry into force of this Annex. If such least-developed country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the Member in question. If the Committee determines that the extension is justified, the Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the least-developed country Member shall phase out those fisheries subsidies within 3 (three) years from the end of the last authorized period.
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