

POSSIBLE APPROACHES TO IMPROVED DISCIPLINES ON FISHERIES SUBSIDIES

Communication from Chile

General background

1. Considerable progress has been made in the last two meetings with submissions in addition to those already received from the group of countries known as "Friends of Fish" (TN/RL/W/58 and TN/RL/W/3) and the papers from the United States (TN/RL/W77) and the European Communities (TN/RL/W/82). Chile wishes to add the following contribution.
2. In line with the above documents, Chile considers that the existing disciplines of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) do not adequately regulate fisheries subsidies, primarily because fisheries resources are a classic example of the "tragedy of the commons". Indeed, while it is in the global interest to conserve fish stocks, the immediate incentive for owners of fishing vessels is to catch as much fish as possible, the incentive becoming even greater when fishing is subsidized.
3. The traditional solution to the "tragedy of the commons" is to establish property rights, so as to provide a direct incentive for conservation. However, not all oceans – and certainly not the high seas – are subject to property rights, and the dynamics and migratory nature of fish populations make it impossible to assign such rights. Because of the specific nature of the fisheries sector, therefore, the effect of the subsidies enjoyed by some countries' high-sea fleets is to limit access to common fisheries resources (fish) for non-subsidizing fleets and countries and to resources under national jurisdiction, which are the property of coastal States (migratory species). Limited access unquestionably constitutes a barrier to trade for all non-subsidizing countries and diminishes their opportunities to participate on equal terms.
4. The provisions of the SCM Agreement were designed to address market distortions and harmful trade effects caused by subsidies, which translate directly into lower relative prices for subsidized products and hence stand in the way of equitable market access. However, it is extremely difficult to demonstrate the damaging trade effects of fisheries subsidies, which are to make competition in operations involving shared resources unviable for non-subsidized fleets, in the context of the existing provisions of the SCM Agreement.
5. This distinctive feature of fisheries subsidies, which limit access to shared resources and in certain cases even to one's own resources, is sufficient reason to make such subsidies subject to special treatment under the SCM Agreement. In other words, the Agreement's existing disciplines need to be improved. As indicated in document TN/RL/W/3, the fisheries sector is governed by dynamics that are different from those of other business sectors.
6. Chile has been seeking to achieve sustainable management of its fisheries. Periods of closure and maximum quotas for capture have been established in order to conserve resources, which is not always an easy or popular task. Since fish stocks are not subject to property rights – a feature unique to the fisheries sector – and the fish is caught by fleets which in all likelihood would be unable to

engage in distant-water operations without various types of subsidy, this conservation measure, designed to guarantee the sustainable development of fisheries resources, loses much of its impact. This evidently raises economic problems and unquestionably involves a trade aspect.

7. Another factor to be considered is that lack of access is not the only trade distortion caused by fisheries subsidies. It is also necessary to take into account *inter alia* the loss of share in the markets of subsidizing countries. Chile is unable to export its fisheries products – or exports less than it could – to markets that are self-sufficient thanks to the harvests made by their subsidized fleets. The difficulty of applying the existing disciplines of the SCM Agreement in order to resolve the problem has already been mentioned in this Negotiating Group.

8. In view of the above, Chile proposes that several provisions relating to fisheries subsidies be included in the SCM Agreement. The proposal provides for an express ban on fisheries subsidies of a commercial nature that promote aspects such as overcapacity and overfishing. It also makes provision for an amber box for all remaining subsidies, which will not be subject to such a ban to the extent that notification requirements are satisfied. Such requirements should be addressed in the relevant discussions of the Negotiating Group on Rules.

Provisions to be added to the SCM Agreement

(i) Red light:

1.3 All fisheries subsidies of a commercial nature, directly geared towards lowering costs, increasing revenues, raising production (by enhancing capacity), or directly promoting overcapacity and overfishing, shall be expressly prohibited. The following, *inter alia*, are prohibited subsidies:

1. Subsidies designed to transfer a country's ships for operation on the high seas or in the local waters of a third country.
2. Subsidies that contribute to the purchase of ships, whether new or used.
3. Subsidies to help modernize an existing fleet.
4. Subsidies that contribute to reducing the costs of production factors.
5. Subsidies that generate positive discrimination in the tax treatment of the economic activity of operators involved in the capture, processing and/or marketing of fisheries resources.
6. Subsidies that result in positive discrimination in access to credit.

(ii) Amber category:

1.4 The remaining subsidies, which have not been incorporated into the red light box shall not be prohibited, to the extent that they are sufficiently accredited and notified in the WTO. Since subsidies always affect trade, however, no Member shall cause, through use of these subsidies, the trade interests of other Members to be adversely affected. Hence, any Member affected by such a subsidy shall present arguments in support of its claim only and strictly where the subsidizing Member has fully complied with the notification procedures established for the purpose in the context of the SCM Agreement. Where the subsidizing Member has not fully met its notification obligations or has failed to notify the programme, it shall be determined

that that Member has the responsibility of demonstrating that the subsidy at issue does not cause trade injury to the complaining Member.

1.5. Considering that the following subsidies may not affect third countries, and may even be necessary to preserve the resources and/or social development of communities, where a Member considers its trade to be adversely affected by such subsidies, it shall be for the complaining Member to provide evidence of the injury.

1. Subsidies of a social nature, the final purpose of which is to resolve problems affecting small-scale fisheries, for the benefit of coastal communities and with a view to improving quality of life;
2. Subsidies relating to fisheries management, including research and administrative and other measures, the sole purpose of which is to ensure the sustainability of hydro-biological resources and their environment.

Improvements in the quality of notifications (transparency)

The amber box proposal requires a proper system for the notification of fisheries subsidies, which should be discussed in the Negotiating Group on Rules. The following are some of the questions to bear in mind in the discussions:

- (i) Notifications of fisheries subsidies should be complementary to the existing notifications in other forums, in particular the FAO.
 - (ii) Notifications relating to fisheries subsidies should be mandatory, in particular for subsidies in the amber category.
 - (iii) Chile endorses the idea put forward by the EC that the WTO Secretariat should keep a "scoreboard" of notifications received per Member and per type of subsidy, which would be made available publicly.
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