

U.S. FISH SUBSIDIES PROPOSAL

*Introduced in the World Trade Organization (WTO) Negotiating Group on Rules, May 2, 2007
(available at www.ustr.gov)*

Broad-Based Prohibition (“top-down approach”): A ban on all subsidies “that confer a benefit on enterprises engaged in the harvesting of marine wild capture fisheries.” Extends to on-the-water processing and transport and potentially indirectly to onshore processing if shown to “confer a benefit” on harvesting. Excludes aquaculture, although subsidies related to associated wild capture activities (*e.g.*, harvesting of juvenile fish for farming or wild fish for feed stock) would be prohibited.

Exceptions to Prohibition: Limited exceptions to the prohibition for programs that do not contribute to overcapacity, *e.g.*: vessel decommissioning schemes; research for fisheries management; measures to protect marine resources/habitat; limited infrastructure for fishing communities; unemployment and other social programs for fishermen; disaster relief; improvement of vessel/crew safety. Exceptions would still be subject to the existing provisions of the WTO Subsidies and Countervailing Measures (SCM) Agreement, which allow challenges to subsidies that cause certain trade-distorting effects. Government services for fisheries management/enforcement not covered.

Access payments: Government-to-government payments (that allow distant water fleets access to developing country fishing grounds) are not covered, but further transfer of fishing rights to the distant water fleet is prohibited unless the fleet pays reasonable compensation, the terms and conditions of access are disclosed and the access arrangement provides for a science-based stock assessment and compliance with relevant fisheries management systems.

Serious Prejudice: Exceptions would be subject to new disciplines under SCM Agreement serious prejudice provisions if they, *in fact*, result in an increase in capacity or relative catch share. Burden of proof would be on the complaining WTO Member.

Small Programs: No text proposed, but placeholder provides for an exception for “programs that provide a small benefit but that would otherwise be inconsistent with the prohibition.” Subject to serious prejudice and notification requirements.

Special and Differential Treatment (S&D): No text proposed, but placeholder refers to Argentina’s proposal (TN/RL/GEN/138/Rev.1) as a good starting point. Argentina’s proposal envisions an exception for capacity-enhancing developing countries to exploit underutilized fisheries stocks in their Exclusive Economic Zones, subject to criteria related to sustainability and management.

Notifications and Transparency: WTO subsidy notifications would provide additional information on which fisheries benefit from subsidies, and how conditions on the exceptions would be satisfied. Members would also establish an enquiry point to respond to enquiries from other Members (and interested parties) concerning its fisheries management system. Placeholder for further consideration of enhanced incentives to notify.

Additional Provisions: Anti-Circumvention provision related to flags of convenience; periodic review provision to improve/update disciplines in future; transitional arrangements – phase-out of inconsistent programs; provision for fisheries expertise in dispute settlement.