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FISHERIES SUBSIDIES FRAMEWORK FOR DISCIPLINES

Communication from Japan; the Republic of Korea; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 20 April 2006, is being circulated at the request of the Delegations of Japan; the Republic of Korea; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/95), also be circulated as a formal document.

The co-sponsors submit the attached paper as a contribution to the fisheries subsidies negotiations in the form of legal drafting.

This contribution provides a basic framework of the discipline on fisheries subsidies. The Annex is to be elaborated and attached in order to show the overall structure of our proposal.

The co-sponsors look forward to discussing this proposal with other delegations, and would expect to further refine and expand on this proposal in light of the debate including definitions of various terms in the disciplines.

New Disciplines on Fisheries Subsidies:
Proposed Amendments to the Agreement on Subsidies and Countervailing Measures

Article 1 Definition of a Subsidy

1.1(a)(1) (iii) (add following footnote)

For the sake of clarity, creation and implementation of fisheries resources management measures do not constitute services stipulated in this sub-paragraph.

Article 3 Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) (no change)
- (b) (no change)
- (c) following fisheries subsidies provided for capture fisheries at sea:
 - (i) subsidies for the construction of fishing vessels, unless all the conditions set forth in Annex VIII are satisfied;
 - (ii) subsidies for the modification of fishing vessels, unless all the conditions set forth in Annex VIII are satisfied;
 - (iii) subsidies for shipbuilding yards contingent upon the construction of fishing vessels;
 - (iv) subsidies for overseas transfers of fishing vessels to non-participants of regional fisheries management organizations (referred to in this Article as “RFMOs”)¹; and
- (v) subsidies relating to illegal, unreported and unregulated fishing².

1 The term “non-participants of regional fisheries management organizations” means the countries or entities who are neither contracting parties nor cooperating non-contracting parties, entities or fishing entities of any one of the RFMOs. RFMOs mean sub-regional or regional fisheries management organizations or arrangements.

2 The term “illegal, unreported and unregulated fishing” shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO).

Article 8 Identification of Non-Actionable Subsidies

8.1 Notwithstanding the provisions of Parts III and V, the following subsidies shall be understood as having no, or at most minimal, trade distorting effects or negative effects on fisheries resources management, and thus considered non-actionable:

- (a) subsidies for the fishing vessel decommissioning provided that the vessel is scrapped and its fishing license is withdrawn;

- (b) subsidies for fisheries stock enhancement and marine environment protection;
- (c) subsidies for research and development for sustainable fisheries;
- (d) subsidies for unemployment relief, early retirement or re-education, retraining and alternative employment assistance of fishermen;
- (e) subsidies for social safety net for fishermen;
- (f) subsidies for small-scale and artisanal fisheries³; and

3 Small-scale and artisanal fisheries in this Agreement shall be interpreted as activities carried out by fishing vessels with total length not exceeding (X) meters.

- (g) subsidies for access fee to fisheries resources in the EEZs of other countries.

Necessary modification needs to be made on Article 8.3 – 8.5 and Article 31 of the current SCM Agreement.

Article 27 Special and Differential Treatment of Developing Country Members

27.1 – 27.15 (no change)

27.16 The prohibition under sub-paragraphs (i), (ii) and (iii) of paragraph 1(c) of Article 3 shall not apply to:

- (a) developing country Members referred to in Annex VII.
- (b) other developing country Members whose production of marine capture fisheries is not more than (X) % of that of the world (or the total gross tonnage of production is not more than (X) million metric tons) in the latest (two to five) consecutive years based on the most recent data available from the FAO on the date of entry into force of paragraph 1(c) of Article 3 for such Member.

27.17 Any other developing country Members not referred to in paragraph 16(a) or 16(b) shall phase out the subsidies specified in sub-paragraphs (i), (ii) and (iii) of paragraph 1(c) of Article 3 within the (seven to ten) years since the date of entry into force of paragraph 1(c) of Article 3 for such Member.

27.18 Should developing country Members referred to in paragraph 16(b) have increased their production of marine capture fisheries to more than (X) % of that of the world (or the total gross tonnage of production is more than (X) million metric tons) for (two to five) consecutive years based on the most recent data available from the FAO, the subsidies specified in sub-paragraphs (i), (ii) and (iii) of paragraph 1(c) of Article 3 shall be phased out within (seven to ten) years since the date of entry into force of paragraph 1(c) of Article 3 for such Member or (two to five) years from the date of the publication of such data, whichever comes later.

At this moment, new paragraph is put at the end of current paragraph 15 for convenience. Overall structure of Article 27 will be reviewed at later stage.

Article 28 Existing Programmes

28.1 (no change)

28.2 (no change)

28.3 Subsidy programmes which have been established within the territory of any Member and which fall under sub-paragraphs (i), (ii) and (iii) of paragraph 1(c) of Article 3 shall be:

- (a) notified to the Committee not later than 90 days after the date of entry into force of paragraph 1(c) of Article 3 for such Member and in every two years thereafter; and
- (b) brought into conformity with the provisions of this Agreement within (six) years of the date of entry into force of paragraph 1(c) of Article 3 for such Member and until then shall not be subject to Part II.

At this moment, new paragraph is put at the end of current paragraph 2 for convenience. Overall structure of Article 28 will be reviewed at later stage.

(To be elaborated)

ANNEX VIII
CONDITIONS FOR VESSEL CONSTRUCTION AND MODIFICATION SUBSIDIES
REFERRED TO IN SUB-PARAGRAPHS (i) AND (ii) OF PARAGRAPH 1(c) OF ARTICLE 3

Unless all of the following conditions are satisfied, subsidies for vessel construction or modification are prohibited.

1. A system where a government of Member controls the number of fishing licenses is in place and under such system:
 - each fishing vessel obtains a license from the government, and
 - each fishing vessel to be constructed or modified possesses a valid fishing license or is confirmed to obtain license after the construction or modification.
2. (a) In case of the fishing vessel construction, the existing fishing vessel(s) are withdrawn in exchange for the new vessel to be constructed. In addition, neither (i) gross tonnage, (ii) volume of fish hold, nor (iii) engine power of the new vessel increases compared with the sum of (i) gross tonnage, (ii) volume of fish hold, and (iii) engine power of the vessels to be withdrawn. Furthermore, in case there are multiple vessels to be withdrawn, the gross tonnage of the newly constructed vessel is reduced by more than 20% of the sum of the gross tonnage of the vessels to be withdrawn.

(b) In case of the fishing vessel modification, neither (i) gross tonnage, (ii) volume of fish hold, nor (iii) engine power increases.

footnote Increase of the gross tonnage of a vessel to be constructed or modified which results from the improvement of safety or the working conditions of the crew is exceptionally deemed to satisfy the conditions of the paragraphs 2(a) and 2(b) of this Annex, provided that neither the volume of fish hold nor the engine power increases.
