

## FISHERIES SUBSIDIES ARTICLE II *DE MINIMIS* EXEMPTION

### Communication from Canada

#### Revision

The following communication, dated 17 January 2011, is being circulated at the request of the Delegation of Canada.

#### **Introduction**

In spring 2008, Canada proposed the addition of a new provision (TN/RL/GEN/156), in Article II of the Chairman's proposed Annex VIII of the SCM Agreement (TN/RL/W/213). This proposal would add a provision to the fisheries annex, and allow Members to provide a certain amount of support (X%) to fishing activities within waters subject to a Member's national jurisdiction, provided the value of programs did not exceed a set percentage of the landed value of fish harvested in these waters.

Since that time, Canada has listened carefully to Members' comments and concerns and would like to present a revision to its paper, to better incorporate Special and Differential Treatment (S&DT).

#### ***De Minimis* Proposal**

1. During the course of the fisheries subsidies negotiations, various Members have suggested that any eventual prohibition of subsidies to the fisheries sector should also include an exemption for programs in support of small-scale fishing activities/programs. However, while several alternatives have been raised and discussed in the negotiating group in this regard, the terms "small programs", "small-scale fishing" and "artisanal fishing activities" have proven very difficult to define.
2. The discussions on this issue have generally been in the context of developing countries. The Chairman's first draft text provided S&DT that was directed at this issue for developing countries, but it was silent with respect to other Members. However, during plurilateral discussions in late 2010 there seemed to be a degree of convergence around the fact that small-scale or artisanal fishing activities are a reality for many Members, regardless of their level of development.
3. In line with the view that disciplines should be transparent, workable, enforceable, and build on existing ASCM and WTO principles, in spring 2008, Canada presented for Members' consideration, TN/RL/GEN/156, an additional provision in Article II of the Chairman's

proposed Annex VIII of the SCM Agreement. This would add a provision to the fisheries annex, proposed as paragraph "f" under Article II: General Exceptions, and would allow Members to provide a certain amount of support (X%) to fishing activities within waters subject to a Member's national jurisdiction, as long as the value of programs did not exceed a set percentage of the landed value of fish harvested in these waters. As part of Article II, this new provision would be subject to Article V.

4. It may be argued that on a *de facto* basis TN/RL/GEN/156 did provide S&DT for developing countries with large scale fisheries given their dominance of the global catch, e.g., the *de minimis* threshold for India would have been near five times that of Canada, and China near three times that of the United States. However, since that submission, Canada has recognized that its *de minimis* proposal did not recognize all developing country needs, particularly those of LDCs, SVEs and other small-scale fishing countries.
5. To better address development needs, Canada is now proposing to include a new component for developing countries accounting for less than 0.5% of the global fishery. We propose that these countries would have access to a larger *de minimis* exemption than available to developed and larger-scale fishing developing countries, reflecting unique development needs (X% + Y%). An absolute *de minimis* component has also been included to include those situations where the fishing is at such a small scale that even the enhanced *de minimis* exemption (X% + Y%) would not exempt a small subsidy. For example, where the total catch of a country is \$150,000 and a fuel subsidy of \$15,000 is provided, the subsidy is 10% of the value of the catch and would exceed any *de minimis* level, but would be exempted by the fixed amount threshold.

#### **New Text Provision for Annex VIII, Article II(f)**

##### *Article II*

##### *General Exceptions*

Notwithstanding the provisions of Article I, and subject to the provisions of Article V:

(a) ...

(f) *A Member may provide subsidies that are used exclusively in support of fisheries conducted within waters subject to its jurisdiction, if*

(i) *the annual amount of subsidies does not exceed X% of the average annual landed value of fish harvested in these waters for the three preceding years for which data is available, or*

(ii) *for developing country Members accounting for less than 0.5% of the average annual global fish catch over the three preceding years for which data is available, the annual amount of subsidies does not exceed X% + Y%, or \$US xxx xxx, whichever is greater.*

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