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**ADVANCING TOWARD A MULTILATERAL OUTCOME ON
FISHERIES SUBSIDIES IN THE WTO**

EUROPEAN UNION

The following communication, dated 18 October 2016, is being circulated at the request of the delegation of the European Union.

The global trading community has long attempted to develop new disciplines regarding fisheries subsidies. These efforts have so far not led to any outcomes despite the interest and dedication of multiple WTO Members. It is perplexing that no progress has been made until now even though the situation surrounding global fisheries is alarming.

Fisheries subsidies, similarly to other types of subsidies, can only effectively be addressed through a multilateral agreement covering all WTO Members. The fact that the sustainability of global fisheries is at stake, further reinforces the need for multilateral action.

The 2030 Agenda for Sustainable Development agreed by the global community and notably the UN Sustainable Development Goal 14.6 sets out the objective to prohibit by 2020 certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies. SDG 14.6 further recognises that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organisation fisheries subsidies negotiation.

It is now necessary to start defining the possible disciplines and to engage in text-based negotiations. In order to be efficient it is necessary to define the types of subsidies that are harmful and accept that the effect of policies on the sustainability of fish stocks is not entirely captured by an overfishing indicator.

Against this background, this submission sets out in more detail the kind of subsidies that are harmful from a commercial and environmental point of view and therefore should be eliminated or prevented from being granted in the future. For the purpose of this submission the issue of fisheries subsidies comprises four main components:

- i) prohibited subsidies linked to overcapacity;
- ii) prohibited subsidies linked to illegal, unreported and unregulated (IUU)-fishing;
- iii) transparency;
- iv) special-differential treatment (SDT).

In order to build on the existing consensus, this submission acknowledges the principles established in the SDG 14.6 while identifying in a factual manner the particular types of subsidies that contribute to those effects.

The submission proposes a ban on capacity increasing subsidies but foresees special and differential treatment that would allow developing and least developed countries to derogate from such a ban under certain conditions. The proposed approach aims to go as far as possible in

prohibiting capacity-enhancing subsidies which lead to overcapacity and overfishing, and at the same time defines a clear and transparent framework based on international law for special and differential treatment, recognising that fishing activities are a traditional and economically important activity for multiple communities. This would help contribute to creating a level playing field for operators.

The submission also proposes a prohibition of subsidies that contribute to IUU fishing, which would apply to operators whose vessels are included in the subsidising country's IUU-vessel list and/or that of a Regional Fisheries Management Organisations (RFMOs).

Finally, transparency needs to be an essential element of any outcome on fisheries subsidies. This submission proposes a notification requirement for information that is strictly necessary and relevant, while not being overly burdensome for WTO Members.

In view of the global commitment made in SDG 14.6 to advance rapidly to discipline certain fisheries subsidies, immediate efforts are needed in the WTO to restart negotiations with a view to preparing an outcome for the 11th WTO Ministerial Conference that will be held in Buenos Aires in 2017.

In pursuance of this objective, the following draft captures the essential elements of a possible future agreement on fisheries subsidies.

Proposal for WTO disciplines on fisheries subsidies

Acknowledging the commitments established under the 2030 Agenda for Sustainable Development and notably UN Sustainable Development Goal 14 on the conservation and sustainable use of oceans, seas and marine resources for sustainable development,

Acknowledging UN Sustainable Development Goal 14 target 6 which sets out that the signatories of the 2030 Agenda for Sustainable Development should, by 2020 prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies,

Recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organisation fisheries subsidies negotiation,

Recognising that overcapacity contributes to overfishing and constitutes a serious threat to the conservation and sustainable exploitation of living marine resources,

The Parties agree as follows:

Article 1

1.1. The Parties shall not grant or maintain any of the following subsidies⁽¹⁾:

- (a) subsidies that increase the marine fishing⁽²⁾ capacity of a fishing vessel⁽³⁾ or support the acquisition of equipment that increases the ability of a fishing vessel to find fish;*
- (b) subsidies that support the construction of fishing vessels or the importation of fishing vessels; and*
- (c) subsidies for the transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.*

Article 2

2.1. A Party shall not grant or maintain any subsidy benefitting an operator⁽⁴⁾ if its fishing vessel or, in case it operates more than one fishing vessel, any of its fishing vessels is included in the IUU fishing vessel list of that Party or of a Regional Fisheries Management Organisation (RFMO).

Article 3

3.1. The Parties shall notify, in accordance with the provisions of Article XVI:1 of GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, all kind of subsidies that support, directly or indirectly, marine fishing activity.

3.2. In addition to the information set out in Article 25.3 of the Agreement on Subsidies and Countervailing Measures the following must be included in the notification:

- (a) programme name;
- (b) legal basis and granting authority for the programme;
- (c) level of support provided; and
- (d) type or kind of marine fishing activity supported by the programme.

Article 4

4.1. Article 1 does not apply to subsidies granted or maintained by developing and least developed countries for fishing vessels of less than 10 meters which are used for subsistence fishing⁽⁵⁾.

4.2. Developing and least developed countries may grant or maintain subsidies referred to under Article 1 if the following conditions are met:

- (a) the stock or stocks targeted by the fishing vessel that a Party intends to subsidise must not be recognised as overfished by the national authorities of the Party in the waters under the sovereignty and jurisdiction of which the fishing takes place, or by the relevant Regional Fisheries Management Organisations; and
- (b) the targeted stock is managed on the basis of the best available science, consistent with the conservation and cooperation obligations under the relevant international law⁽⁶⁾, as reflected in UNCLOS, conservation and management measures of competent RFMOs, and generally accepted standards for the conservation and management of fisheries resources; and
- (c) the subsidising Party presents a management plan⁽⁷⁾ for the fleet segment it intends to subsidise demonstrating that the subsidies will not contribute to overfishing.

4.3. The information referred to in Article 4.2 shall be notified to the WTO Secretariat. Developing countries and least developed countries granting or maintaining subsidies referred to in Article 1 for fishing vessels referred in Article 4.1 shall notify this to the WTO Secretariat.

(1) This Agreement applies to subsidies within the meaning of Article 1.1 of the SCM Agreement that are specific in accordance with the provisions of Article 2 of that Agreement. A subsidy shall be attributable to the Party granting it, regardless of the flag of the fishing vessel benefitting from the subsidy. This Agreement does not apply to subsidies for aquaculture and to fuel de-taxation schemes, or to subsidies compensating for damage caused by natural disasters.

(2) For the purpose of this Agreement, the term "fishing" means searching for, attracting, locating, catching, taking and processing fish on board, transshipping or transferring or landing fish or any activity which can reasonably be expected to result in these activities.

(3) For the purpose of this Agreement, the term "fishing vessel" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for commercial fishing or fishing related activities.

(4) For the purpose of this Article, an operator includes any person involved in the operation, management or ownership of a fishing vessel.

(5) The term "subsistence fishing" refers to fishing activities undertaken by an individual household for consumption by the members of that household and kin of the fishers as opposed to fishing activities undertaken for commercial purposes. Nevertheless, part of the fish caught can be sold or exchanged for other goods or services.

(6) Relevant international law includes, amongst others, the United Nations Convention on the Law of the Sea (UNCLOS), the UN Agreement for the Implementation of the Provisions of UNCLOS relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to promote Compliance with International Conservation and Management Measures by Fishing vessels on the High Seas, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, and the FAO Code of Conduct for Responsible Fisheries.

(7) The management measures contained in the plan should aim at ensuring the sustainable exploitation of the stock. They shall refer to the stocks, fishery and area to which it applies, quantify projected fishing mortality rates, indicate provisions on fishing vessel monitoring and systems for reporting data and catch in sufficient detail.
