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Negotiating Group on Rules

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**NEGOTIATING GROUP ON RULES
FISHERIES SUBSIDIES**

WORK PROGRAMME

SEPTEMBER – DECEMBER 2018

Communication from the Chair

Revision

The attached revision to the fisheries subsidies work programme reflects the changes to the timetable for the November meeting cluster that were agreed by the Negotiating Group at the September cluster. For ease of reference, these changes are highlighted. This revision also incorporates the correction that was previously circulated as TN/RL/30/Corr.1. No other changes have been made to the work programme as originally circulated on 31 July 2018.

To facilitate the work of the Incubator Groups, including that of the rapporteurs, delegations that are **participants in Incubator Groups**, as well as **visiting delegations**, are requested to submit to the Secretariat for distribution to the Incubator Groups their **inputs in bullet point format**, along with any comments, by **close of business on Thursday 25 October 2018**.

Delegations **wishing to visit** any Incubator Group(s) are requested to so inform the Secretariat by the **same deadline**.

Introduction to final version of the work programme

No comments have been received on the final revision of the draft fisheries subsidies work programme as circulated by fax to all delegations on 27 July 2018. Therefore, that version, contained herein, is now final. The explanations below, which are retained from the 27 July 2018 communication, form an integral part of the work programme.

Results of the consultations since the meeting of 12 July and of the discussion at the meeting of 24 July

In the consultations held following the 12 July meeting, Members reaffirmed that it is time for the work of the Negotiating Group to shift gears into a more substantive mode, and indicated continued support for introducing some form of less-than-plenary processes into our work stream. More specifically, I heard messages of support from a range of delegations for retaining the Incubator Group process in some manner and, in that vein, openness to exploring possible revisions to how this process originally was proposed in the first draft work programme. I also heard a general acknowledgement from a broad spectrum of delegations that there was value in maintaining, as an explicit part of the NG Rules process, a brainstorming space, so long as this remains transparent and does not become a parallel "negotiating" process.

A number of delegations called for text-based discussions to be included in the work programme, and to reduce the profile in the work programme of the Incubator Groups, if retained, for example through intersessional work. Some delegations also queried whether the Incubator Groups, if retained, could be made somewhat larger. I also heard calls for dedicated space during the clusters for introducing and discussing new proposals in open-ended meetings, and for reducing the time allocated to the Streamlining Phase 2, on the assumption that this can be completed by the end of the September cluster. A number of delegations also expressed support for having technical sessions at each cluster, as well as space for bilateral meetings among delegations. Some delegations also requested that we continue to have fisheries expert resource persons present during all clusters.

On the basis of the above points, raised at the 12 July meeting and further discussed in the consultations held thereafter, I circulated by fax dated 20 July (contained in document RD/TN/RL/55) a revised draft work programme. Following circulation of that revised version, I held additional consultations with delegations concerning certain aspects of the work programme as proposed. I also have taken careful note of the views expressed and issues raised at the meeting of 24 July. On the basis of these additional inputs, I have introduced a few new points in the explanations below, as well as some clarifications in respect of the Incubator Groups in those explanations and in the Rules of Operation of the Incubator Groups.

The description and explanation of each element as reflected in this new revision of the work programme are set forth below.

Duration of and interval between fisheries subsidies meeting clusters

No delegation has raised issues concerning the weeks proposed for the meeting clusters, or for the extension of the clusters to five days.

Accordingly, the dates for the meeting clusters – in late September, early November and early December – as contained in the 20 July revised draft work programme, are retained in this version.

Nature and mix of activities

Incubator Groups

The Incubator Groups have been retained as part of the draft work programme. The explanations on the following points as reflected in the 20 July revised version, with some additional emphasis and clarifications based on views expressed since circulation of that version, apply to the Incubator Groups:

- Incubator Group internal meetings and consultations with other delegations would now take place intersessionally (during the week preceding each cluster), rather than during the cluster itself.

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- All four Incubator Groups would meet during these pre-cluster periods, on consecutive days. This allows each Group to contribute to the work of each cluster, and allows the full list of topics to be addressed by the end of this year, without Incubator Group meetings being held in parallel. All of these considerations were identified by various delegations.
 - The assignment of topics to Incubator Groups has been reorganized. (The list of topics as previously circulated has not changed.) The topics to be addressed by the Incubator Groups in each pre-cluster set of meetings relate to the subject of the text-based discussion that has now been introduced as an element of each cluster. (For example, the topics assigned to Incubator Groups for their September pre-cluster work all are relevant to the topic of capacity-enhancing/capacity-maintaining subsidies, subsidies contributing to overcapacity and overfishing, which is the focus of the September text-based discussion.)
 - While this rule has not been modified, it is recalled that considerations related to special and differential treatment should be taken up in an integrated manner, as relevant, in the discussion of each assigned topic.
 - The Incubator Groups' rules have been adjusted to emphasize and make more explicit the following points:
 - The Incubator Groups are not negotiating bodies. They are not expected to agree on any specific outcomes, but to brainstorm ideas internally and with consulting delegations.
 - The Incubator Groups are expected to report all ideas and suggestions – including those generated with consulting delegations – to the plenary, with no filtration or judgement, and also to report on any concerns or considerations that might be raised in the discussions.
 - The mode of engagement by consulting delegations is of exactly the same brainstorming nature as the internal work of the Incubator Groups. Thus, the purpose of the consultations is for the consulting delegations to contribute their own ideas and suggestions on the topic that the Incubator Group is discussing. These consultations thus are not solely for the Incubator Group participants to report to the consulting delegations on their discussions.
 - There is, therefore, no difference in status or mode of engagement between the Incubator Group participants and consulting delegations. Nor is there any difference in the status of their respective contributions on any given topic. All of those contributions – from all sources – must be reported back to the plenary on an equal footing.
 - The analysis and debate on the merits of all of the ideas and suggestions will take place exclusively in the plenary process.
 - The "context from prior discussions" element in the table listing the topics to be discussed is intended only as a reminder, and is not intended to constrain either the discussion of the topic by the Incubator Group in question, or the ideas and suggestions it may develop.
 - The ideas and suggestions to be reported back by each Incubator Group to the plenary process shall be without attribution.
 - Any delegation wishing to submit ideas or suggestions to an Incubator Group anonymously can do so through the Secretariat.
 - Nothing reported back by Incubator Groups will be automatically included into the texts in the /274 document. Rather, the outputs of the Incubator Groups are intended to serve as potential inspiration and reference for the open-ended text-based discussions and other substantive work of the Negotiating Group.

- If necessary, in particular to accommodate the participation of capital-based officials, representation can be on a 1 + 1 basis.
- Specific time blocks are designated for the Incubator Groups to meet internally and to consult with other interested delegations. Each consulting delegation will have an individual appointment with the Incubator Group in question. The Secretariat will assist the Incubator Groups and consulting delegations with the scheduling.
- Specific time blocks are designated within each meeting cluster for the Incubator Groups to prepare their reports for the Negotiating Group, and for the Negotiating Group to hear and discuss the reports, and the ideas and suggestions that they contain.
- While the NG Chair would not participate in the work of the Incubator Groups, he would visit them while they are meeting, to take stock of progress, to ensure that the work is proceeding in the intended brainstorming mode, and to provide any advice.
- The composition of the Incubator Groups has been adjusted by including a few additional delegations as Incubator Group participants, while seeking to maintain the overall balance of each Incubator Group.

Orientation meeting for the Incubator Group process

In response to numerous requests made at the 24 July meeting, I will organize, shortly after Jeûne Genevois, an **orientation meeting** for the Incubator Group process. I will communicate the details as soon as possible.

Review of the Incubator Group process

Regarding the Incubator Group process, as indicated in the above explanations and in the Rules of Operation of the Incubator Groups, as Chair I will maintain close contact with the Incubator Groups and will be monitoring continuously how well they are functioning. In response to numerous requests made at the 24 July meeting, I also will seek the views of Members concerning the functioning of the process.

Text-based discussion and additional discussion of issues

Each meeting cluster now incorporates one day for a text-based discussion of particular provisions contained in the /274 document. These text-based discussions would come after the reporting back by Incubator Groups, so that the substance of those reports, including any ideas and suggestions, can be borne in mind during the text based discussion.

The text-based discussions will be in "open-ended small group" format, meaning that all interested delegations are invited to attend.

During the November and December clusters, the day following the text-based discussions will be devoted to a further discussion of issues arising in the text-based discussions and of ideas generated in Incubator Groups and in the plenary discussion of their outputs.

Designated time slots for introduction and discussion of any new proposals

Time is set aside at each cluster for introduction and discussion of any new proposals in open-ended session. Time also is set aside for further discussion of proposals introduced at previous clusters.

Streamlining Phase 2

Time is set aside at each cluster for completion of the Streamlining Phase 2 as presented in the first draft of the work programme. The time designated for this activity in the November and December

clusters is on an as-needed basis, and will be reallocated to other activities if not needed for streamlining.

Technical sessions

Time is allocated at each cluster for a technical session. The topics suggested to date are indicated in the schedules for the meeting clusters.

Time for bilateral meetings among delegations

Time is set aside at the beginning of each cluster for bilateral meetings among delegations. This timing is to accommodate constraints which have been identified on the ability of the capital-based officials of some delegations to participate in the entirety of a five-day meeting cluster.

Involvement of Ambassadors

This new revision of the work programme maintains the previously-indicated meeting at the Ambassador + 1 level shortly before the September cluster.

Call for needs-based financial support for capital-based officials to attend meeting clusters

Members will recall that LDCs and certain other Members made a call at the 24 July meeting for financial support for their capital-based officials to attend fisheries subsidies meeting clusters. As the Secretariat does not have the possibility to provide support of this kind, I encourage the Members making this call to explore possibilities with potential donor Members.

Suggested additional topics for Secretariat factual papers (as referred to in in the first draft work programme and at the 12 July meeting)

- Statistics on fish catch by area, by country, by sector (small-scale, artisanal, industrial)
- Amount of subsidization going to small-scale, artisanal, and industrial fishing
- Fuel subsidies to the fisheries sector – including from Members' notifications as well as OECD statistics on specific and horizontal fuel subsidies to the sector, dual pricing schemes, road tax exemptions, export duties, and other export restrictions
- Contribution to food security by sector (artisanal, small scale, large scale) by zone and Member
- Contribution to employment by sector (artisanal, small scale, large scale) by zone and Member
- Government support for the acquisition and construction of vessels, including fleet renewal programmes
- Descriptive paper on Regional Fisheries Management Organizations (RFMOs) and Regional Fisheries Bodies (RFBs)
- Descriptive paper on RFMOs' IUU vessels lists

Specific proposed dates for meetings and meeting clusters

The dates proposed for fisheries subsidies meetings in the September-December period are as follows:

Week of 10 September (exact timing to be determined)

- **Orientation meeting – Incubator Group process**

17 September – AM only: Ambassadors + 1 - Fisheries subsidies briefing (date chosen to ensure the presence in Geneva of Ambassadors)

18-21 September – Pre-cluster **Incubator Group** meetings

24-28 September - AM and PM: NG Rules fisheries subsidies cluster

29 October-2 November – Pre-cluster **Incubator Group** meetings

5-9 November - AM and PM: NG Rules fisheries subsidies cluster (dates chosen to maintain the interval following the September cluster, and to avoid overlap with the Rules week in late October)

27-30 November – Pre-cluster **Incubator Group** meetings

3-7 December – AM and PM: NG Rules fisheries subsidies cluster.

Possible presence of fisheries expert resource persons at the clusters

The Secretariat is exploring the possibilities for having a fisheries expert resource person present at the clusters.

NEGOTIATING GROUP ON RULES

FISHERIES SUBSIDIES WORK PROGRAMME SEPTEMBER-DECEMBER 2018

SCHEDULE AND OUTLINE OF ACTIVITIES

(Note: all AM sessions will run from 10:00 to 13:00; all PM sessions will run from 15:00 to 18:00)

SEPTEMBER CLUSTER AND RELATED ACTIVITIES

Week of 10 September (exact timing to be determined)

Orientation meeting – Incubator Group process

Monday, 17 September 2018

AM – Ambassadors + 1 – Briefing

Pre-cluster Incubator Group meetings

Tuesday, 18 September 2018 – Incubator Group I – AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC: 1) List versus effects approach, or hybrid approach

Wednesday, 19 September 2018 – Incubator Group II – AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC: 2) Identifying harmful subsidy effects: negative effects on fish stocks; effects on fishing capacity; effects on fishing effort

Thursday, 20 September 2018 – Incubator Group III – AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC: 3) Approaches to "positive" or "non-harmful" subsidies

Friday, 21 September 2018 – Incubator Group IV – AM: internal meeting; PM: opportunity for consultations with interested delegations internal meeting

- TOPIC: 11) Distinguishing in the disciplines capacity versus overcapacity; fishing activity versus overfishing

24-28 September 2018 cluster – theme – Transparency, institutional arrangements

Monday, 24 September 2018

- AM – Incubator Groups I – IV – preparation of reporting for plenary discussion
+

Time for bilateral meetings among delegations

- PM – Time for bilateral meetings among delegations

Tuesday, 25 September 2018

- AM – Technical session - Transparency rules in the disciplines – experience-sharing among Members (Open-ended informal)
 - Difficulties or issues encountered in notifying fisheries subsidies
 - What is/would be needed to fulfil existing obligations

- What additional issues would arise in respect of providing proposed new information elements
- PM - Thematic discussion – transparency provisions (Open-ended informal)
 - Issues arising from past discussions and existing documents regarding proposed transparency provisions, including special and differential treatment (Suggested discussion questions to be provided by Chair)

Wednesday, 26 September 2018

- AM - Thematic discussion – institutional arrangements (Open-ended informal)
 - Issues arising from past discussions and existing documents regarding institutional arrangements (implementation, surveillance, enforcement) (Suggested discussion questions to be provided by Chair)
- PM – Incubator Group reports, and discussion (Open-ended informal)
 - Incubator Groups report on their process and present the ideas generated; discussion by the Negotiating Group

Thursday, 27 September 2018

- AM/PM - Text-based discussion – Articles 3.11-3.13, TN/RL/W/274/latest Rev. Capacity enhancing/capacity maintaining subsidies, subsidies contributing to overcapacity and overfishing (Open-ended small group)
 - All interested delegations are invited to attend

Friday, 28 September 2018

- AM – Streamlining Phase 2¹ (Open-ended informal)
 - The time available would be used to make as much progress as possible in cleaning the text (for numbering, cross-references, duplication of concepts, etc.). The work would carry over to the following clusters, if needed, until completed.
- PM – Wrap-up session (Open-ended informal)
 - Opportunity to introduce new proposals, as needed.
 - Wrap-up session, including opportunity to raise other fisheries subsidies issues

¹ The basis of the Streamlining Phase 2 work will be a room document, to be circulated in advance, containing all streamlined texts from TN/RL/W/274/Rev.5 plus all other elements in the /29 document that had not by then been brought into the /274 document. Cross-references and apparently duplicated concepts will be highlighted. The validated text resulting from this process will become a further revision of the /274 document.

NOVEMBER CLUSTER AND RELATED ACTIVITIES

Pre-cluster Incubator Group meetings

Monday, 29 October 2018 – Incubator Group IV - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPICS: 6) Relationship between stock assessment or appraisal (however performed) and fishing limits set (quotas, days, etc.)
18) Role in the disciplines for outside expertise

Tuesday, 30 October 2018 – Incubator Group III - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPICS: 14) Subsidies for fishing in high seas areas/for species that are not under management by an RFMO
17) Transparency provisions

Wednesday, 31 October 2018 – Incubator Group II - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPICS: 10) References, if any, to fisheries management in the disciplines
15) Applicability of disciplines to at-sea activities

Thursday, 1 November 2018 – Incubator Group I - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPICS: 9) Identifying overfished stocks or determining overfished condition
16) Applicability of disciplines to on-shore activities (in addition to at-sea activities)

Friday, 2 November 2018

- AM/PM – Incubator Groups I-IV – preparation of reporting for plenary discussion
- Incubator Groups to provide their reports to the Secretariat **not later than 16:30** (for circulation to Members)

5-9 November 2018 cluster

Monday, 5 November 2018

- 0900-1300 – Incubator Groups I-IV – Open-ended informal sessions of Incubator Groups (1 hour per Group, in sequence) relating to their work in the September cluster. Opportunity for interested delegations to pose questions about the Incubator Groups' reports from the September cluster and to engage in further brainstorming on the topics addressed.
- PM – Time for bilateral meetings among delegations

Tuesday, 6 November 2018

- 0900-1300 – Incubator Groups I-IV – Open-ended informal sessions of Incubator Groups (1 hour per Group, in sequence). Opportunity for interested delegations to pose questions about the Incubator Groups' reports for the November cluster (circulated on Friday 2 November) and to engage in further brainstorming on the topics addressed
- 13.15 – 14.45 – Technical session – Subsidies and their link to the situation of a given fish stock (Open-ended informal)
- PM – Incubator Group reports, and plenary discussion (Open-ended informal)

- Incubator Groups report on their process and present the ideas generated; discussion by the Negotiating Group

Wednesday, 7 November 2018

- AM/PM – Text-based discussion – Articles 3.6-3.8, TN/RL/W/274/Rev.5, Overfished discipline (Open-ended small group)
 - All interested delegations are invited to attend

Thursday, 8 November 2018

- AM/PM – (Open-ended informal)

Further discussion of issues arising from text-based discussion and of ideas generated in Incubator Groups and in plenary discussion of their outputs to date (September and November clusters)

+

Further discussion of any previously-introduced new proposals

Friday, 9 November 2018

- AM – Streamlining Phase 2 as needed and/or Opportunity to introduce new proposals (Open-ended informal)
 - Members will be asked to confirm the changes made and respond to the questions raised during the September cluster (on numbering, cross-references, placeholders), as reflected in RD/TN/RL/57/Rev.1. In addition, the final element of the Phase 2 streamlining, the work on apparent duplication in the text, will be undertaken in this session. This work would carry over to the following cluster, if needed, until completed.
 - Opportunity to introduce new proposals, time permitting and as needed
- PM – Wrap-up session (Open-ended informal)
 - Confirmation/validation of results of the Phase 2 streamlining completed to date.
 - Opportunity to introduce new proposals, as needed (if insufficient time in AM session).
 - Wrap-up session, including opportunity to raise other fisheries subsidies issues

DECEMBER CLUSTER AND RELATED ACTIVITIES

Pre-cluster Incubator Group meetings

Tuesday, 27 November 2018 – Incubator Group I - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPICS: 4) Recognition by a subsidizing Member of an IUU determination, in respect of one of its flagged vessels, made by an RFMO
5) Recognition by a subsidizing Member of an IUU determination, in respect of one of its flagged vessels, made by a coastal state Member

Wednesday, 28 November 2018 – Incubator Group II - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC: 13) Whether the disciplines should make any distinctions among different RFMOs

Thursday, 29 November 2018 – Incubator Group III - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC: 7) Definition of IUU/standard for IUU determinations
8) Approaches to referring to different scales of fishing activity (e.g., small-scale, artisanal, industrial)

Friday, 30 November 2018 – Incubator Group IV - AM: internal meeting; PM: opportunity for consultations with interested delegations

- TOPIC:12) Reach/coverage of IUU disciplines

3-7 December 2018 cluster

Monday, 3 December 2018

- AM – Incubator Group I-IV – Preparation of reporting for plenary discussion
+
Time for bilateral meetings among delegations
- PM – Time for bilateral meetings among delegations

Tuesday, 4 December 2018

- AM – Technical session - Social and economic role of artisanal and small-scale fisheries in developing countries - Presentations by Members/outside experts, information-sharing among Members (Open-ended informal)
- PM – Incubator Group reports, and discussion
 - Incubator Groups report on their process and the ideas generated; discussion by the Negotiating Group (Open-ended informal)

Wednesday, 5 December 2018

- AM/PM – Text-based discussion – Article 3.1, TN/RL/W/274/latest Rev., IUU fishing (Open-ended small group)
 - All interested delegations are invited to attend

Thursday, 6 December 2018

- AM/PM – (Open-ended informal)

Further discussion of ideas arising from text-based discussions and of generated in Incubator Groups and in plenary discussions of their outputs to date (September, November and December clusters)

+

Further discussion of any previously-introduced new proposals

Friday, 7 December 2018

- AM –Streamlining Phase 2 as needed, and/or Opportunity to introduce new proposals (Open-ended informal)
 - The time available would be used, as needed, to make as much progress as possible in cleaning the text (for numbering, cross-references, duplication of concepts, etc.).
 - Opportunity to introduce new proposals, time permitting and as needed
- PM –Wrap-up session (Open-ended informal)
 - Opportunity to introduce new proposals, as needed (if insufficient time in AM session)
 - Wrap-up session, including opportunity to raise other fisheries subsidies issues

Incubator Groups

Rules of Operation

Purpose and specific objective

- The purpose of the Incubator Group process is to generate ideas aimed at bridging gaps and increasing convergence. The purpose is not to restate or discuss delegations' positions, as these are well-known and understood. The Incubator Groups are not negotiating bodies.
- The specific objective of each Incubator Group is to develop, for each topic assigned to it, a range of possible options to be reported back in plenary sessions of the Negotiating Group, for further discussion there.
- The "context from prior discussions" provided in the table below containing the non-exhaustive list of topics is intended only as a reminder of issues as expressed in the texts and prior discussions. It is in no way intended to constrain the nature or scope of the discussion of any topic, nor to constrain the ideas and suggestions related to that topic that may be developed in the Incubator Group in question.
- Special and differential treatment considerations are to be taken up in an integrated manner, as relevant, in the discussion of each assigned topic.
- All ideas and suggestions developed in the Incubator Groups, including all that have been contributed by consulting delegations, are to be reported back in plenary, without attribution.
- It is neither necessary nor expected that the Incubator Groups as a whole reach agreement on the ideas and suggestions, nor could Incubator Groups take decisions on any matter before the Negotiating Group.
- The ideas and suggestions reported by the Incubator Groups in plenary will not be automatically introduced into the texts in the /274 document. Instead, these Incubator Group outputs are intended as potential inspiration and reference for the open-ended text-based discussions and other substantive work of the Negotiating Group as a whole.

Mode of engagement by participants

- Nomination to each Incubator Group is on the basis of individual delegations, rather than groups of delegations.
- To foster a brainstorming atmosphere, each delegation that is part of an Incubator Group should be represented by a single participant. This does not always have to be the same individual. If necessary, in particular to accommodate the participation of capital-based officials, representation can be on a 1 + 1 basis.
- Participation in an Incubator Group is subject to the condition that each participant be both empowered and prepared to engage in a genuine brainstorming, idea-floating mode.
- To that end, participation in the Incubator Groups is on a "without prejudice" basis. The suggestions made and other contributions to the discussion by any participant or consulting non-participant shall be understood as individual contributions for the purpose of discussion unless presented as reflecting the position of the delegation in question.
- Any delegation wishing to submit ideas or suggestions to an Incubator Group on an anonymous basis can do so through the Secretariat.
- To ensure productive discussions, each participant in an Incubator Group should come to each meeting with specific solution-oriented ideas on the assigned topic, to share and discuss in the Incubator Group.
- Each participant in an Incubator Group also should be ready to explore in an open-minded way the ideas of the other participants, and of consulting delegations.

Mode of engagement for other delegations consulting with an Incubator Group

- The purpose of providing opportunities for delegations to consult with Incubator Groups in which they are not participants is to allow consulting delegations to make contributions to and provide inputs into the idea-generating work of the Incubator Groups.
- That is, the purpose is not for the consulting delegations to restate or discuss their positions, nor for Incubator Groups to limit consultations to informing the consulting delegations.
- The mode of engagement by consulting delegations therefore is of exactly the same brainstorming nature as the internal work of the Incubator Groups.
- Consulting delegations therefore should bring to the Incubator Group ideas and suggestions for bridging gaps, and should be prepared to engage in discussion with the Group on that basis, in respect of the topic under discussion in the Group.
- There is no difference in status or mode of engagement between the Incubator Group participants and the consulting delegations. Nor is there any difference in status between their respective contributions on a topic.
- Any delegation wishing to submit ideas or suggestions to an IG on an anonymous basis can do so through the Secretariat.
- To maintain the Incubator Groups' brainstorming atmosphere during the visits of consulting delegations, each visiting delegation will have an individual appointment for its visit. If necessary, in particular to accommodate the participation of capital-based officials, representation can be on a 1 + 1 basis.
- The Secretariat will assist the Incubator Groups and consulting delegations with scheduling the visits.

Organization of the work of the Incubator Groups

- Each Incubator Group is free to decide the specifics of organizing its work.
- Each Incubator Group will need to select a rapporteur, either one individual for all assigned topics, or one individual per topic.
- The rapporteur will report at the plenary sessions of the Negotiating Group, without attribution, on the points raised on each topic, and in particular on all ideas and suggestions discussed in the Incubator Group – whether originating within the Group or raised by a consulting delegation. The reports also shall reflect any concerns or other considerations raised in the discussions.

Role of the Negotiating Group Chair

- The NG Chair will visit all Incubator Groups while they are meeting, to take stock of progress, to ensure that the work is proceeding in the intended brainstorming mode, and to provide advice as requested.
- The NG Chair will neither Chair nor take part in the Incubator Groups' discussions.
- The Chair will consult with the Groups intersessionally as needed.

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Composition of Incubator Groups

<u>Incubator Group I</u>	<u>Incubator Group II</u>	<u>Incubator Group III</u>	<u>Incubator Group IV</u>
Colombia St. Lucia ² Egypt El Salvador India Korea, Rep. of New Zealand Norway Thailand	Argentina Australia Canada Chile Guatemala Iceland Philippines Senegal Sri Lanka Venezuela, Bolivarian Rep. of	Brazil Haiti Indonesia Pakistan Peru Russian Federation South Africa Chinese Taipei Turkey United States	Bangladesh China Costa Rica Ecuador European Union Japan Morocco Oman Vanuatu

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Non-exhaustive list of topics assigned to Incubator Groups

TOPIC	CONTEXT FROM PRIOR DISCUSSIONS <u>NB:</u> S&DT considerations should be integrated for each topic as relevant	INCUBATOR GROUP
1) List versus effects approach, or hybrid approach	Potentially relevant to overcapacity / overfishing, overfished stocks What types of subsidies would be listed, in a list; Whether any listed subsidies would be illustrative or exhaustive; How, specifically, lists and effects could be combined into a hybrid approach, and in the context of which specific disciplines; etc.	I
2) Identifying harmful subsidy effects: negative effects on fish stocks; effects on fishing capacity; effects on fishing effort	Potentially relevant to overcapacity / overfishing, overfished stocks Differences, if any, in effects of different kinds of subsidies in different contexts; Approaches to referring to such effects in the disciplines; etc.	II
3) Approaches to "positive" or "non-harmful" subsidies	Mechanism (e.g., list or other); Context (e.g., horizontal or for particular disciplines); How to avoid creating loopholes; Whether applicable to all Members, or via S&DT; etc.	III

² The delegation of Dominica has been replaced in its capacity as representative of the Organization of Eastern Caribbean States to the WTO by the delegation of St. Lucia.

TOPIC	CONTEXT FROM PRIOR DISCUSSIONS NB: S&DT considerations should be integrated for each topic as relevant	INCUBATOR GROUP
4) Recognition by a subsidizing Member of an IUU determination, in respect of one of its flagged vessels, made by an RFMO	Whether such a determination, once made known to the subsidizing Member, would automatically trigger a subsidy prohibition; Whether conditioning this trigger on the RFMO having followed its own established procedures, which were in accordance with the applicable international rules would be necessary/sufficient; If not, what additional information or procedures would be needed before the prohibition was triggered; Whether there would be any distinction between RFMOs to which the subsidizing Member was party or cooperating non-party, versus those with which it had no relationship; How to address the situation where the flag state and the subsidizing Member are not the same; etc.	I
5) Recognition by a subsidizing Member of an IUU determination, in respect of one of its flagged vessels, made by a coastal state Member	Whether such a determination, once made known to the subsidizing Member, would automatically trigger a subsidy prohibition; If not, what additional information or procedures would be needed before the prohibition was triggered; Whether there would be any distinction depending on whether the subsidizing Member and the coastal state Member had a fishing access arrangement; If so, how such a distinction would be reflected in the disciplines; How to address the situation where the flag state and the subsidizing Member are not the same; etc.	I
6) Relationship between stock assessment or appraisal (however performed) and fishing limits set (quotas, days, etc.)	Whether and how the disciplines should address situations where total authorized fishing effort exceeds the sustainable level established from the assessment or appraisal (e.g., in the event of such a gap, would a subsidy prohibition be triggered?); Contexts in which this would be relevant (e.g., only RFMOs, also coastal states); etc.	IV
7) Definition of IUU / standard for IUU determinations	Whether the disciplines should specify a standard for RFMO IUU determinations; If so, whether that should be the definition as set forth in the FAO IPOA-IUU (2001); Whether the disciplines should apply a uniform standard to all coastal state Members' determinations (e.g., the definition in the IPOA-IUU); Whether instead the standard in the disciplines for coastal state Members' IUU determinations should be that specified in those Member's domestic legislations; etc.	III
8) Approaches to referring to different scales of fishing activity (e.g. small-scale, artisanal, industrial)	Whether it is possible to make such distinctions in the disciplines in the absence of agreed definitions; If so, how; Contexts in the disciplines, if any, where such distinctions would be relevant; etc.	III

TOPIC	CONTEXT FROM PRIOR DISCUSSIONS NB: S&DT considerations should be integrated for each topic as relevant	INCUBATOR GROUP
9) Identifying overfished stocks or determining overfished condition	By whom; Based on what standards and/or methodologies; Approaches in the disciplines for multi-species fisheries, tropical waters, data-poor situations, unassessed stocks; Any relevant distinctions in such identification depending on geographical location (territorial seas, EEZs, high seas); Whether the disciplines should explicitly address the situation where a coastal state Member and an RFMO share management responsibility for a given stock or species, and they disagree regarding the status of the stock; etc.	I
10) References, if any, to fisheries management in the disciplines	Context(s) where references would be relevant/necessary - e.g., particular disciplines, S&DT; Applicable standard or basis; Nature of references / descriptions in the disciplines; Operational role in the disciplines; etc.	II
11) Distinguishing in the disciplines capacity vs overcapacity; fishing activity vs overfishing	Potentially relevant to overcapacity / overfishing, overfished stocks Necessity or not of making such distinctions in the rules; Practical aspects of making such distinctions; etc.	IV
12) Reach /coverage of IUU disciplines	Whether the prohibition of subsidies to IUU fishing should apply only in respect of the vessel involved; Whether the prohibition also should apply to the operator of the vessel, and if so, the breadth of the concept of "operator"; Duration of the subsidy prohibition, and determinants of when IUU fishing has ceased/been corrected/been punished - in the case of RFMO listings - in the case of determinations by coastal state Members; etc.	IV
13) Whether the disciplines should make any distinctions among different RFMOs	If any such distinctions were made, to what would they apply - IUU determinations, determinations of stock status, setting and allocation of fishing rights, etc.; The basis for any such distinctions (e.g., currently in existence vs future, particular recognition process); etc.	II
14) Subsidies for fishing in high seas areas / for species that are not under management by an RFMO	Whether the disciplines should address this issue; If so, specific situations of this type where disciplines would apply, and what those disciplines would be; etc.	III
15) Applicability of disciplines to at-sea activities	Limitations, if any, on applicability to any at-sea activities: e.g., catching or taking, processing, at-sea servicing of fishing vessels, etc.	II

TOPIC	CONTEXT FROM PRIOR DISCUSSIONS <u>NB:</u> S&DT considerations should be integrated for each topic as relevant	INCUBATOR GROUP
16) Applicability of disciplines to on-shore activities, in addition to at-sea activities	On-shore activities, if any, to which disciplines should apply; How to distinguish, e.g., "general infrastructure"; Geographic reach of any such disciplines; etc.	I
17) Transparency provisions	Information requirements beyond those in SCM Article 25; Rationale for each such requirement; Nature of information to address, and/or to demonstrate avoidance of, negative consequences of subsidies (e.g., contribution to overcapacity or overfishing, fishing/effects on overfished stocks, subsidization of IUU fishing, etc.); etc.	III
18) Role in the disciplines for outside expertise	Whether, if disciplines refer to certain technical fisheries concepts, there should be provisions for obtaining or relying on outside expertise; In the context of which specific parts of the disciplines this would be relevant, and the nature of any such reliance; Approaches to referring to this in the disciplines; etc.	IV