

**FISHERIES SUBSIDIES – ARTICLES I, II AND IV**

Communication from the Republic of Korea

The following communication, dated 21 September 2010, is being circulated at the request of the Delegation of Korea.

**I. INTRODUCTION**

1. With this contribution, the Republic of Korea ("Korea") submits its textual proposal for certain provisions of the Annex VIII of the *Agreement on Subsidies and Countervailing Measures* (the "SCM Agreement") to follow up with its previous conceptual proposal dated 24 November 2009.<sup>1</sup> This textual proposal also reflects comments and suggestions from various Members that Korea has received since the submission of the conceptual proposal. Korea's textual proposal in this submission only addresses Articles I, II and IV of the Chair's Text. We note, however, that the suggested changes of these articles may also entail subsequent or corresponding changes in other articles of the Chair's Text. Korea also plans to submit its textual proposal for the other articles in due course if that is deemed necessary.

**II. BASIC OBJECTIVES OF THE KOREA'S TEXTUAL PROPOSAL**

2. Korea seeks to achieve following objectives in this textual proposal:

- *Achieving the Goal of the Fisheries Subsidies Discipline:* Korea aims to ensure to achieve the goal of the fisheries subsidies negotiations by introducing a framework which fosters Members' measures that help conserve fish stocks, penalizes Members' measures that adversely affect fish stocks, and eliminates unintended loopholes in the Chair's Text;
- *Enhancing the Effectiveness of the Fisheries Management System:* In particular, Korea aims to introduce a framework in which the importance of the Fisheries Management System ("FMS") is adequately recognized and in which Members are provided with appropriate and practical incentives to put an effective FMS in place;
- *Maintaining Consistency with the SCM Agreement:* Korea also aims to ensure that the provisions to be included in the Annex do remain consistent with the basic principles and jurisprudence of the SCM Agreement;

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<sup>1</sup> *Framework of the Discipline of Fisheries Subsidies*, Communications from the Republic of Korea, TN/RL/W/245 (24 November 2009).

- *Clarifying Terms in the Chair's Text:* Korea aims to clarify, to the extent possible, some of the ambiguous terms contained in the Chair's Text so as to preempt unnecessary disputes over interpretation of the Annex in the future; and
- *Balancing Members' Interest in the Prospective Regime:* Finally, Korea aims to introduce a fisheries subsidies regime in which all Members' interests are fairly reflected and in which all Members share equitable burden in the administration of the Annex without allowing certain Members to take advantage of the new regime to disproportionately benefit from commercial gains.

### **III. EXPLANATIONS ON THE KEY ELEMENTS OF THE KOREA'S TEXTUAL PROPOSAL**

3. In order to achieve above objectives, Korea has made following specific changes to the Chair's Text. First, Korea has moved certain prohibited subsidies in Article I of the Chair's Text to a new article providing for actionable subsidies and made them subject to an adverse effect test. Korea has also brought Article IV of the Chair's Text stipulating "General Disciplines on the Use of Fisheries Subsidies" into the same new article. This new article is now Article II of Korea's textual proposal as attached. Korea has maintained the title of the new article as "General Disciplines on the Use of Fisheries Subsidies" as, in its view, this term also covers the new actionable subsidy subject to an adverse effect test as proposed by Korea.

4. Korea has then restructured Article II of the Chair's Text regarding general exceptions which has now become Article III of the attached Korea's textual proposal. Korea has tried to categorize respective grounds for general exceptions in a more organized fashion. These changes and rationales behind them are set forth in detail below.

#### **1. RE-FORMULATING PROHIBITED SUBSIDIES (ARTICLE I OF KOREA'S TEXTUAL PROPOSAL)**

5. As explained in Korea's November 2009 proposal, one of the fundamental flaws of the Chair's Text in our view is its prohibition-oriented approach. The disproportionate focus on the stockpiling of prohibited subsidies is not simply consistent with the basic principles of the SCM Agreement nor with the mandates of the Doha and Hong Kong Ministerial Declarations. In fact, adding eight new prohibited subsidies in the prohibition list is a significant departure from the SCM Agreement where only *two* types of subsidies, based on clear consensus among Members, have been traditionally denounced as prohibited subsidies with stringent penalties. Korea is not convinced whether the eight enumerated subsidies in the Chair's Text have secured a similar level of consensus at this point. We also note that the mandates from the Ministerial Declarations clearly stipulate prohibition as one, not all, of the new disciplines.<sup>2</sup>

6. Nor are we persuaded that such a drastic departure would somehow help Members achieve the objectives of the Annex or that the administration of the Annex would become any simpler as some Members suggest. As we mentioned in previous meetings, the "level of ambition" in this negotiation is highly dependent on the "level of consensus." We fear that ambition without consensus would lead us nowhere in this new legal framework. As far as the Chair's list of prohibited subsidies is concerned, in our view a critical mass of consensus has yet to be formed.

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<sup>2</sup> For instance, the Hong Kong Ministerial Declaration states in paragraph 9 of Annex D, *inter alia*, that "... the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing." (emphasis added).

7. This recognition has prompted Korea to consider dividing Chair's prohibited subsidies into two categories; those that seem to have garnered sufficient consensus for outright prohibition and those that do not seem to have cleared that threshold yet. While the former remains in the prohibited subsidies category in Article I of Korea's textual proposal, the latter is now transferred to Korea's new Article II as a new concept of actionable subsidies subject to an adverse effect test. Korea has maintained four types of subsidies (shipbuilding & facilities subsidies, fishing vessel transfer subsidies, access right transfer subsidies, and IUU fishing subsidies) in paragraph 1 of Article I as we believe that they pose more manifest and undeniable harm to fish stocks than the other four through the creation of overcapacity and over-fishing over a long period of time. Arguably all these remaining four subsidies constitute a long-term platform for fishing activities, thus for lingering overcapacity and over-fishing, as opposed to mere facilitation of fishing activities *and* rarely serve legitimate governmental purposes other than creation of overcapacity and over-fishing themselves. In our view, these subsidies should be prohibited *ex ante*.

8. Korea also notes that this concept is consistent with the approach taken by the SCM Agreement which tends to divide subsidies into two categories in evaluating the benefit from an alleged subsidy. Thus subsidies that are conferred on capital assets are regarded as so-called "non-recurring subsidies" the benefit of which is deemed to exist during the period of depreciation for fixed capital assets.<sup>3</sup> On the other hand, subsidies conferred on non-capital asset mainly for the purpose of covering business operating cost of a company are regarded as "recurring subsidies" and their benefits are considered to exist only in the year of receipt. This practice under the SCM Agreement concerning different effects of subsidies should guide the Members in this fisheries subsidy negotiation as well. In Korea's view, under this jurisprudence the four subsidies in Article I of Korea's textual proposal may well be categorized as non-recurring subsidies while the other four as recurring ones.<sup>4</sup>

9. Paragraph 2 of Article 1 of Korea's textual proposal includes a provision which is basically the same as the one contained in paragraph 2 of Article I of the Chair's Text. We have included the term "manifestly" following the term "unequivocally" to convey the meaning that any claimed overfished condition should be objectively proved by relevant marine scientific data. In the same spirit, we have also included a footnote that defines the "overfished" condition. We have also added the term "negatively" in front of the term "affecting" so as to give additional clarity to the meaning of the term recognizing that the term "affecting" has too broad coverage under the WTO jurisprudence.

10. Korea also take note of the need to discuss introducing more precise rules for fishing activities taking place in particularly vulnerable maritime areas. For instance, Korea is of the view that fishing activities in high seas are likely to pose a more significant threat to the global fish stocks than those in offshore as they take place outside jurisdictions of any particular Member and as they are usually undertaken on a commercial scale for commercial gains. We note that this recognition of the *nature* of such fishing may prompt the Members to consider a norm that applies to *all* Members without exception.

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<sup>3</sup> Korea notes that most Members stipulate 10 years as the period for capital asset depreciation for vessels and other water transportation equipment.

<sup>4</sup> Korea realizes that general port infrastructure may be regarded as fixed capital asset under this categorization. But it should be noted that the SCM Agreement originally took the position that regional development subsidies do not even come to the purview of the SCM Agreement as non-actionable subsidies. This non-actionable subsidy category is currently scheduled to be resurrected under the Chair's Text with the apparent support of the Members. As Korea explained in previous proposal of November 2009, most of the time port infrastructure is closely related to a regional development plan which may turn out to be a non-actionable subsidy. Korea also notes that Article 1.1(a)(iii) of the SCM Agreement excludes general infrastructure subsidies which not infrequently include port infrastructure subsidies. This special treatment of the general infrastructure subsidy under the SCM Agreement evidences that this subsidy is different from other capital asset subsidies and that it should belong to the actionable subsidy category.

## **2. RESTRUCTURING OF ACTIONABLE SUBSIDIES (ARTICLE II OF KOREA'S TEXTUAL PROPOSAL)**

11. Then, Korea has created a new article, as Article II of its textual proposal, to restructure actionable subsidies. We believe that this restructuring of the actionable subsidies will be able to strike a balance between competing interests and positions among Members. This article includes the four subsidies transferred from Article I and existing actionable subsidies of Article IV of the Chair's Text under the title of "General Discipline on the Use of Subsidies." As noted above, the title of Article IV of the Chair's Text remains the same in the new Article II of Korea's textual proposal.

12. First, paragraph 1 of Article II of the Korea's textual proposal introduces a new actionable subsidy category requiring an adverse effect test. As noted in the above section, four subsidies have been moved from Article I of the Chair's Text to this new article; *i.e.*, operating cost subsidies, port infrastructure subsidies, income support, and price support. In our view, these four subsidies are not amenable to outright prohibition *ex ante*. For instance, operating cost subsidies may help maintain fishing activities but they do not necessarily create new fishing capacity from scratch which will remain for an extended period of time. Port infrastructure subsidies may also help maintain fishing activities but they do not necessarily create new fishing capacity from scratch either. Furthermore, port infrastructure establishment is usually closely related to regional development plans of Members. The same is also applicable to income support and price support: they may help maintain fishing activities without necessarily creating new fishing capacity that lingers for a long period of time. In short, all these subsidies may indeed facilitate fishing activities, but they are distinguishable from the four prohibited subsidies in Article I, which by nature involve overcapacity and thus over-fishing.

13. Paragraph 2 of Article II then stipulates the details of the adverse effect test. Korea underscores that the adverse effect test is a science-based assessment to determine the impact of the alleged subsidies on fish stocks and to evaluate any preventive or mitigating effect of any applicable FMS. In the paragraph Korea also seeks to clarify that when multiple factors are found to have contributed to the adverse effect, those caused by other factors should not be attributed to the challenged subsidy.

14. Paragraph 2 also includes an incentive for Members that have effective FMS in place. In our view, it is the enhancement of the effectiveness of the FMS, not the blanket prohibition of all subsidy measures, that will help conserve the fish stocks in the long run. In this spirit, Korea suggests that a reviewing panel favorably consider the existence of an effective FMS in its adverse effect analysis. In Korea's view this provision is closely related to Article V of the Chair's Text (Fisheries Management) laying out various requirements for FMS. Thus, if a responding Member proves that a viable FMS is in place, a reviewing panel should accord an appropriate evidentiary weight to the circumstances.

15. In fact, several studies from various international organizations, including the OECD and UNEP, have found the linkage between the FMS and fish stocks to be empirically relevant. If the fundamental objective of the fisheries subsidies negotiation is to "conserve" fisheries resources as opposed to "penalize" certain non-abiding Members, the focus of the Annex should be shifted from the current listing of prohibited subsidies to the introduction of a system that can foster viable FMS. In this respect, Korea finds relevant the U.S. textual proposal that clarifies administration of FMS in Article V of the Chair's Text.<sup>5</sup>

16. Finally, paragraph 3 of Article II incorporates Article IV of the Chair's Text. In Korea's view, the actionable subsidies under the title of "General Discipline" in Article IV of the Chair's Text addresses a different situation and serves a different purpose than actionable subsidies subject to the

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<sup>5</sup> See *Fisheries Subsidies-Articles I.2, II, IV and V*, Communication from the United States, TN/RL/GEN/165 (22 April 2010), at 8-9.

adverse effect test being proposed by paragraph 1 of Article II of the Korea's textual proposal. While the general discipline under Article IV of the Chair's Text addresses the situation where a Member's specific fishing right or interest under a fisheries agreement is infringed upon by another Member, the actionable subsidy subject to the adverse effect test concerns the situation where a Member's subsidy programs cause adverse effect to fish stocks without reference to fishing right or interest. So, in our view, these two actionable subsidies address two different situations.

17. Having said that, however, both of them also share a commonality as actionable subsidies by requiring additional conditions to be satisfied before being regulated, which differentiates them from the *ex ante* prohibited subsidies in Article I. This prompted Korea to collapse these two actionable subsidies in the same article in its textual proposal.

18. In the same paragraph, Korea also notes the inclusion of the term "over-fishing" in addition to "overcapacity." We tried to reflect the fact that those two terms are used together in the actionable subsidies of Article II of Korea's textual proposal and that regulating over-fishing is more important than or at least equally important as regulating overcapacity when it comes to conservation of fish stocks.

### **3. RESTRUCTURING OF GENERAL EXCEPTIONS (ARTICLE III OF THE KOREA'S TEXTUAL PROPOSAL)**

19. Finally, in Article III, Korea has attempted to restructure Article II of the Chair's Text to make the general exceptions list more consistent and logical. Korea notes that, unlike what its title connotes, Article II of the Chair's Text adopted a narrow and limited exception approach. Korea is concerned that such an approach may lead to the deprivation of a Member's authority to carry out some of the key functions of the government based on socio-economic consideration. At the same time, there are governmental measures that need to be encouraged to achieve the goals of the fisheries subsidies discipline: they are subsidies for (1) the enhancement of the safety of the crews and employees; (2) the adoption of gear for selective fishing techniques; (3) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (4) implementation and compliance with fisheries management regimes; and (5) support measures for fishworkers in exchange for their suspension of fishing activities.

20. Korea has attempted to accommodate all these instances in the general exceptions category in a systematic fashion so that they are not abused as loopholes for the fisheries subsidies norms while they do not overly constrain the legitimate authority of Members' governments in formulating and administering various policies to facilitate the achievement of the Annex or to achieve their socio-economic considerations.

21. Particularly, Korea included in sub-paragraph (4) of paragraph (b) Members' support measures that are provided to their fishworkers on the condition that they temporarily suspend their fishing activities. In our view, this "subsidy not to fish" apparently helps Members achieve the objectives of the Annex and should be permitted as such. We have also clarified that if such support measures are offered in exchange for a temporary suspension, they should be permitted only during the pendency of the suspension. We note that permanent cessation of fishing activities by fishworkers can be covered by sub-paragraph (2) of paragraph (c) of the article.

22. In paragraph (c), Korea proposes to introduce a new introductory provision regarding Members' authority to adopt measures based on legitimate socio-economic consideration. As a new item under the paragraph, Korea also proposes to include governmental support programmes for impoverished fishing households whose livelihood has been traditionally dependent on the governmental programmes and whose livelihood will be seriously threatened in the absence of such programmes. In Korea's view, preserving the fishing activities by impoverished fishing households

taking place in a small scale is closely related to the achievement of important socio-economic objectives of Members. At the same time, we realize that this exception could turn into an unintended loophole or seriously undermine achieving the objective of the Annex unless specific outer parameters are imposed. As such, we included in items (i) to (iii) requirements to invoke this exception. More specifically, item (iii) is designed to impose quantitative limitation for a Member to invoke this particular exception.

23. In sub-paragraph (4), we also included a general exception for a production de-coupled income support of a Member, which is offered to help sustain the livelihood of fisheries households but does not in any way contribute to the increase of the catch or production.

24. Sub-paragraph (5) includes exception for natural disaster relief effort which is originally included in the introductory provision of paragraph 1 of Article 1 of the Chair's Text. In our view, Members' natural disaster relief efforts are also closely related to the socio-economic policy consideration and thus should be more properly categorized as one of the grounds for general exceptions rather than an exception to the scope of Article I.

#### **IV. CONCLUSION**

25. Korea is open to any comments and suggestions of the Members regarding this textual proposal. Again, the main objective of Korea in submitting this textual proposal is to revive the momentum of this crucial negotiation and to bring Members' attention to some of the important structural issues of the fisheries subsidies negotiations.

26. Korea sincerely hopes that its contribution could assist not only the Negotiating Group on Rules but also each Member participating in the negotiations in evaluating various pending issues from new perspectives, exploring new avenues to address these pending issues and agreeing upon practical and manageable norms on fisheries subsidies.

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[Attachment 1: Article Comparison Table]

[Attachment 2: Korea's Textual Proposal]

**ATTACHMENT 1 : ARTICLE COMPARISON TABLE**

ARTICLES IN CHAIR'S TEXT	CORRESPONDING ARTICLES IN KOREA'S TEXTUAL PROPOSAL	COMMENT
Article I	Article I	Restructured
N/A	Article II	Newly inserted and combined with Article IV of the Chair's Text
Article II	Article III	Restructured
Article III	Article IV	*
Article IV	Article II	Not changed and moved to Article II of Korea's textual proposal
Article V	Article V	*
Article VI	Article VI	*
Article VII	Article VII	*
Article VIII	Article VIII	*

\* May also entail subsequent or corresponding changes

## ATTACHMENT 2 FISHERIES SUBSIDIES

### *Article I*

#### *Prohibition of Certain Fisheries Subsidies<sup>1</sup>*

I.1 Except as provided for in Articles III and IV, the following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited:

- (a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels<sup>2</sup> or service vessels<sup>3</sup>, including subsidies to boat building or shipbuilding facilities<sup>4</sup> for these purposes.
- (b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.
- (c) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.<sup>5</sup>
- (d) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.<sup>6</sup>

I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity<sup>7</sup> negatively affecting fish stocks<sup>8</sup> that are in an unequivocally and manifestly overfished condition<sup>9</sup> shall be prohibited.

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<sup>1</sup> For the purpose of this Agreement, any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.

<sup>2</sup> For the purposes of this Agreement, the term "fishing vessels" means vessels used for marine wild capture fishing and/or on-board processing of the products thereof.

<sup>3</sup> For the purposes of this Agreement, the term "service vessels" means vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.

<sup>4</sup> For the purpose of this Agreement, the term "boat building or shipbuilding facilities" means facilities for fishing vessels and/or service vessels as defined in footnotes 2 and 3 above.

<sup>5</sup> Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement.

<sup>6</sup> The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as 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.

<sup>7</sup> For the purpose of this Agreement, the term "fishing activity" means any activity related to fishing for marine wild capture stocks, as well as any operation in support of such fishing including harvesting, landing, processing, transshipping at sea or in port, refueling, resupplying and transporting.

<sup>8</sup> For the purpose of this Agreement, the term "fish stock" means fish that a regional fisheries management organization treats as a unit for purposes of conservation and management. In the absence of any



## *Article II*

### *General Discipline on the Use of Subsidies*

II.1 Except as provided for in Articles III and IV, no Member shall provide following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, that cause adverse effects to fish stocks through overcapacity<sup>10</sup> and over-fishing<sup>11</sup>:

- (a) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.
- (b) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities), provided that the main beneficiary of the infrastructure or facilities is not the general public of a Member.
- (c) Income support for natural or legal persons engaged in marine wild capture fishing.
- (d) Price support for products of marine wild capture fishing.

II.2 An enquiry to determine the existence of overcapacity and over-fishing caused by the subsidies in paragraph 1 shall be based on objective examination of all relevant facts including marine scientific evidence. The enquiry shall be conducted through a science-based assessment to determine impact of the subsidies on fish stocks and/or any preventive or mitigating effect of an applicable fisheries management system.

- (a) When multiple factors are determined to have caused the alleged overcapacity and over-fishing, those caused by other factors must not be attributed to the challenged subsidy.

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relevant consideration of the issue by a regional fisheries management organization, a "fish stock" means fish, identified on the basis of geographical and scientific characteristics, that can be reasonably treated as a unit for purposes of conservation and management.

<sup>9</sup> For the purpose of this Agreement, the term "fish stocks that are in an unequivocally and manifestly overfished condition" means the following:

- (a) Fish stocks within the jurisdiction of a Member that are designated by the Member, based on sufficient scientific evidence, to be in such condition;
- (b) Fish stocks designated by Regional Fisheries Management Organizations and Arrangements, among fish stocks falling under their respective competence, to be in such condition; or
- (c) Fish species listed in the Appendices I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

<sup>10</sup> For the purpose of this Agreement, the term "overcapacity" means that the fishing capacity at issue is greater than a desirable level of fishing capacity (*i.e.*, target level) which may be either a long-term target sustainable yield, as reflected in the short-term in a total allowable catch (TAC), or a related long-term target for fixed inputs employed in fishing activity for the fishery in question.

<sup>11</sup> For the purpose of this Agreement, the term "overfishing" is normally expressed in terms of fishing mortality levels, that is, in terms of how many fish are killed during a certain reference period. Thus overfishing exists when total fishing mortality (harvesting) is at a rate that exceeds the maximum level that the stock can withstand on a sustainable basis (*i.e.* the maximum sustainable yield).

- (b) The examination of possible impact of the subsidies on fish stocks shall include all relevant factors and indices having a bearing on the state of the fish stocks or fishing activities in question, including increase of the catch by the alleged recipients, increase of the individuals or entities engaged in fishing activities, increase of the sales volume and profits of the fish stocks, actual or potential decline in the fish stocks, and the amount of the subsidy in both absolute and relative terms. This list is not exhaustive, nor can one or several of these factors be decisive.
- (c) The existence of overcapacity and over-fishing shall be determined taking into account available pertinent information from various sources including Members concerned and relevant international organizations. Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, *inter alia*, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ("Fish Stocks Agreement"), the *Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization* ("Code of Conduct"), the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* ("Compliance Agreement"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.
- (d) Bearing in mind that an effective fisheries management system satisfying the conditions set out in Article V may mitigate or disprove the alleged adverse effect, the panel reviewing a dispute under this Article shall duly take into consideration the existence, effectiveness and reliability of the fisheries management system established and maintained by a responding Member. The responding Member shall bear the burden of proof regarding the existence, effectiveness and reliability of the fisheries management system.

II.3 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity and over-fishing in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member; or (b) stocks in which another Member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes. The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, *inter alia*, the *Fish Stocks Agreement*, the *Code of Conduct*, the *Compliance Agreement*, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.

### *Article III*

#### *General Exceptions*

Notwithstanding the provisions of Articles I and II, and subject to the provision of Article V, following subsidies shall be permitted:

- (a) Subsidies exclusively for improving fishing or service vessel and crew safety, provided that:
  - (1) such subsidies do not involve new vessel construction or vessel acquisition;
  - (2) such subsidies do not give rise to any increase in marine wild capture fishing capacity<sup>12</sup> of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and
  - (3) the improvements are undertaken to comply with safety standards.
- (b) Subsidies exclusively for facilitating the achievement of the objectives of this Annex by supporting:
  - (1) the adoption of gear for selective fishing techniques<sup>13</sup>;
  - (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing;
  - (3) the adoption of measures to ensure compliance with fisheries management regimes aimed at sustainable use and conservation (e.g., installing devices for Vessel Monitoring Systems, adopting electronic catch reports, or deploying observers); or
  - (4) the adoption of measures to sustain the livelihood of fishworkers on the condition that they suspend the fishing activity if the duration of the measures is confined to the period of actual suspension;

provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn.
- (c) Subsidies exclusively for operating and administering governmental programmes which aim to achieve Members' legitimate socio-economic policy objectives by supporting:

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<sup>12</sup> For purposes of this Agreement, the term "fishing capacity" means the ability to harvest fish, as determined on the basis of generally accepted methods for assessing such ability, including standards and guidance developed by the UN Food and Agriculture Organization and relevant international organizations.

<sup>13</sup> For the purpose of this Agreement, the term "selective fishing techniques" means gear modifications or methods of fishing that reduce the mortality or incidental take of non-target fisheries or other marine species, or otherwise reduce negative impact on ecosystems.

- (1) re-education, retraining or redeployment of fishworkers<sup>14</sup> into occupations unrelated to marine wild capture fishing or directly associated activities;
  - (2) early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort;
  - (3) maintenance of livelihood of impoverished fishworkers whose economic sustenance will be threatened in the absence of governmental programs, provided that:
    - (i) the fishing activities take place on an inshore basis or within the EEZ of the Member providing the subsidies or within the EEZ of an adjacent Member who has provided access rights to fishworkers of the former Member regarding the fishery in question;
    - (ii) the fishing activities cover most of the household living expenses of fishworkers and constitute a predominant source of income for such household; and
    - (iii) the amount of the annual total catch of a Member claimed to fall under this sub-paragraph does not exceed [X]% of the annual total catch of the Member arising from the whole fishing activity in the base year.
  - (4) decoupled income support schemes for fishworkers and fishing communities provided that they are not related to catch or production increase, or productivity enhancement, and are introduced only to achieve social welfare objectives; or
  - (5) the relief of a particular natural disaster, provided that they are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery.
- (d) Subsidies exclusively for vessel decommissioning or capacity reduction programmes, provided that:
- (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;
  - (2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;
  - (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting

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<sup>14</sup> For the purpose of this Agreement, the term "fishworker" means an individual employed in marine wild capture fishing and/or directly associated activities.

rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and

- (4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas.
- (e) User-specific allocations from Members' governments to individuals and groups under limited access privileges<sup>15</sup> and other exclusive quota programmes.

*[Note: Korea's Textual Proposal submitted with this contribution only addresses Articles I, II, and IV of the Chair's Text and does not change Articles III, V, VI, VII, or VIII of the Chair's Text.]*

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<sup>15</sup> For the purpose of this Agreement, the term "limited access privilege" means the allocation to an individual or a group of individuals of the privilege to harvest a certain amount of fish, commonly expressed as a percentage of the total allowable catch of a fishery that may be received by, or held for the exclusive use of, that individual or group.