



11 July 2019

(19-4606)

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Negotiating Group on Rules

Original: English

A CAP-BASED APPROACH TO ADDRESSING CERTAIN FISHERIES SUBSIDIES

Submission of Argentina, Australia, the United States and Uruguay

Revision

The following communication, dated 11 July 2019, is being circulated at the request of the Delegations of Argentina, Australia, the United States and Uruguay.

This revised proposal for a cap-based approach attempts to address questions and concerns raised by a variety of Members and incorporates the following key changes:

- In response to concerns about the use of export data and its inclusion of aquaculture, this updated proposal removes export data as a parameter for assigning the tiers.
- In response to questions regarding government fisheries authority expenditures for fishery management and enforcement, this updated proposal clarifies the types of government outlays that would not fall within the scope of the cap.
- In response to concerns that the cap could inadvertently allow Members to continue harmful subsidies, this revised proposal makes clear that Tier 1 Members would be encouraged to prioritize reductions for harmful subsidies, while allowing flexibility to maintain subsidies that encourage sustainability of the fisheries sector. In response to the unique circumstances of Tier 1 Members with historically low or no subsidies, this updated proposal would extend the option of a default cap to such Tier 1 Members and exclude them from reduction commitments.
- In order to address a variety of concerns, including that the default cap value was not realistic and did not provide a reasonable alternative to engaging in a request-offer negotiation, the default cap value has been raised to \$50 million.
- In response to Members' questions regarding potential changed circumstances in the future, this updated proposal adds a procedure for making adjustments to a Member's cap schedule due to such changed circumstances.
- In response to concerns about locking in the status quo, we have clarified that the review mechanism envisaged (in addition to ad hoc requests for adjustments to Members' scheduled caps) would include a review every five years of the overall operation of the cap-based approach, including further reductions and adjustments to Members' schedules.

1. While Members appear to broadly agree on the need to prohibit subsidies contributing to illegal, unreported and unregulated (IUU) fishing and overfished stocks, significant differences of view persist in the Negotiating Group on Rules (RNG) on addressing subsidies that may contribute to overcapacity and overfishing, in particular subsidies for boat building and operating costs, such as for fuel. This also appears to be an area where Members of all levels of development see the need for some flexibility in order to operate or maintain programs to support their fishermen, including in small scale and artisanal fisheries. A potential approach that would impose meaningful constraints on subsidies while at the same time responding to these repeated calls for flexibility

could entail negotiating Member-specific subsidy caps, expressed in monetary terms, and in certain cases phasedowns. Such an approach would be based on the following parameters.

- Subsidies in excess of a Member's cap would be prohibited.
- Subsidies that support IUU, fishing beyond national jurisdiction (see text proposal in **RD/TN/RL/91**), and subsidies for fishing that negatively affect overfished stocks would be prohibited, notwithstanding a Member's subsidy cap. The cap is intended to supplement such prohibitions.
- Members would also commit to maintain fisheries management and conservation measures, so as not to contribute to adverse impacts on their fisheries resources.
- A cap would be without prejudice to the rules and disciplines contained in the GATT 1994 or the SCM Agreement.

2. The modalities of such an approach would include the following elements:

Baseline subsidy notification and additional information. As a first step, and consistent with Article 25.3 of the SCM Agreement and Subsidy Committee practice¹, all Members would establish a baseline for a subsidy cap by submitting an up-to-date fisheries subsidies notification (i.e., covering the most recent two years). Critically, the value of any subsidies given must be provided if available, even if only a reasonable estimate. Government agencies' expenditures for fisheries management and enforcement would not be included in Members' caps.

Member-Specific Subsidy Caps/Default Cap. Taking into consideration this information, Members would establish individual Member limits (or "caps") on such subsidies that would be reflected in a Schedule to the agreement. In order to take into account the specific circumstances of Members, a three-tier approach that is representative of Members' respective contributions to global marine capture production could be pursued, based on the following parameters.

- In order to determine the tier in which a Member falls for the purposes of subsequently negotiating and establishing subsidy commitments, *tiered commitment levels* would be based on a three-year average of FAO marine capture production for the most recent representative period for which data are available, 2015-2017.
- *Tier 1:* Members that account for 0.7% or more of global marine capture production would be required to negotiate with other Members, on a request-offer basis, individual "subsidy caps" in monetary terms to be reflected in a Schedule to the agreement. However, Tier 1 Members that have historically low or no subsidies, may wish to accept the "Default Subsidy Cap" value of \$50 million annually. Members in Tier 1 that opt for the Default Cap would not be required to reduce their subsidy programs over time.
- *Tier 2:* Members that account for more than 0.05% of global marine capture production (but less than 0.7%, per above) would also have the option to negotiate a cap, based on the recent subsidy information provided, or to accept the same "Default Subsidy Cap" value of \$50 million annually.
- *Tier 3:* Members that account for less than 0.05% of global marine capture production would not be required to schedule a cap.

Reduction Commitments. In order to ensure a fair and balanced outcome that fulfils the Ministerial mandate, any Member in Tier 1 that does not choose the Default Cap would also be required to reduce its subsidy cap over a negotiated period of time at a rate commensurate with its overall level of subsidization, meaning that those Members with the largest subsidy caps would also be expected to undertake the largest subsidy cuts. In addition, Members are encouraged to prioritize reductions for any harmful subsidies over time, while retaining flexibility to maintain subsidies that encourage sustainability of the fisheries sector. During the request-offer negotiations, consideration would be given to the nature of a Member's fisheries subsidy programs, and to situations in which a Member has historically notified relatively small fisheries subsidy programs. Additional consideration should be given to incentivizing Tier 2 Members that voluntarily reduce their cap (e.g., with priority technical assistance).

Transparency: Tier 1 and 2 Members would need to maintain up-to-date fisheries subsidy notifications in order to continue to benefit from their cap. Tier 3 Members would also need to maintain up-to-date fisheries subsidy notifications in order to maintain their exempt status.

Review mechanism: The agreement would include a review mechanism, so that Members' caps (and Tier levels) can be reviewed and, as appropriate, revised, over time. For example, Members would monitor marine capture production data to identify any changes in individual Members' global shares of marine capture production that would shift a Member from one Tier to another. In addition, Members could agree on a procedure for Members in Tier 1 or Tier 2 seeking adjustments to their cap on the basis of changed circumstances to notify such adjustments to [the Committee] for positive consideration, and which could be finalized and adopted within a short period of time (for example, 60 days) if no objection is raised. Finally, five years after entry into force of the agreement, Members would also undertake a review of the overall operation of the cap-based approach as part of a built-in review of the new fisheries disciplines as a whole and negotiate any further reductions or adjustments, as necessary. Subsequent reviews would occur every five years.

3. To implement the approach outlined above, the RNG would establish a clear process and associated time frame for negotiating subsidy caps in order to include these caps in a schedule as part of the final agreement:

- *Spring 2019:* For the purpose of RNG negotiations, Members notify existing fisheries subsidies programs consistent with Article 25.3 of the SCM Agreement (notwithstanding the SCM Agreement notification deadline of 30 June).
- *Summer 2019:* Members falling in Tier 1 and Tier 2, should they opt to do so, engage in request-offer negotiations regarding subsidy cap and reduction commitments, as appropriate. Members in Tier 1 and Tier 2 wishing to use the Default Cap would notify their intent to do so to the WTO Secretariat.
- *Autumn 2019:* Members negotiate and finalize subsidy cap and reduction schedules.

4. In order to facilitate Members' review and understanding of this proposal, the Table in the Annex sets out relevant FAO marine capture production for the periods 2015-2017, and Tier designations under the principles outlined above.

ANNEX I*Revision***MEMBERSHIP TABLES ACCORDING TO MARINE CAPTURE PRODUCTION AND TIERS**(FAO FISHERIES AND AQUACULTURE INFORMATION AND STATISTICS BRANCH
ONLINE QUERY, ACCESSED 23 APRIL 2019.)Notes on Categories:

Members: Entries reflect FAO nomenclature and data, except to the extent adjusted to correspond to official WTO Member names. They do not necessarily reflect the cosponsors' nomenclature or recognition of specific jurisdictions.

Tiers: See explanation in Paragraph 2 above. WTO Members with no marine capture reported in the FAO database are designated by default as Tier 3 and denoted 3* in the table.

Marine Capture Production: Marine capture data from FAO does not include aquaculture nor capture from inland waterways. FAO defines capture production as excluding aquaculture and mariculture. It reflects wild catch of aquatic species from "nineteen major marine fishing areas with their adjacent seas; and Oceans/suboceans (suboceans are climatic belts within oceans.)". Consistent with FAO's "State of World Fisheries and Aquaculture" report and initial data presented by the Secretariat to the NGR, data were generated to exclude the categories "aquatic plants", "whales, seals, and other aquatic mammals", and the subcategory for alligators and crocodiles. All other aquatic species are included, such as crustaceans, molluscs, finfish, and FAO's "miscellaneous" category, which includes items such as sea urchins and turtles. (FAO Fisheries and Aquaculture Information and Statistics Branch online query, accessed 23 April 2019).

WTO Member	Production (MT): Average Marine Capture, 2015-17	Prod. World Share	Tier
Tier 1 – 26 Members, sorted by Marine Capture World Share			
China	13,789,343	17.30%	1
Indonesia	6,183,529	7.76%	1
European Union¹	5,328,002	6.68%	1
United States²	4,981,511	6.25%	1
Russian Federation	4,410,954	5.53%	1
Peru	4,230,066	5.31%	1
India	3,643,852	4.57%	1
Japan	3,235,552	4.06%	1
Vietnam	2,953,673	3.71%	1
Norway	2,231,634	2.80%	1
Philippines	1,848,794	2.32%	1
Chile	1,734,146	2.18%	1
Malaysia	1,512,608	1.90%	1
Korea, Republic of	1,449,522	1.82%	1
Morocco	1,381,140	1.73%	1

¹ Includes FAO data for Aruba, Bonaire/S.Eustatius/Saba, Curaçao, French Guiana, French Polynesia, French Southern Terr., Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, Saint Barthélemy, Saint Martin, Sint Maarten, St. Pierre and Miquelon, and Wallis and Futuna Is.

² Includes FAO data for American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and US Virgin Islands.

WTO Member	Production (MT): Average Marine Capture, 2015-17	Prod. World Share	Tier
Mexico	1,363,052	1.71%	1
Thailand	1,316,457	1.65%	1
Myanmar	1,185,237	1.49%	1
Iceland	1,183,032	1.48%	1
Chinese Taipei	828,242	1.04%	1
Canada	821,951	1.03%	1
Argentina	781,586	0.98%	1
Ecuador	668,866	0.84%	1
Bangladesh	621,283	0.78%	1
Mauritania	587,703	0.74%	1
South Africa	566,080	0.71%	1
Tier 2 – 46 Members, sorted by Marine Capture World Share			
Namibia	506,132	0.63%	2
Brazil	478,096	0.60%	2
Angola	469,540	0.59%	2
Sri Lanka	436,190	0.55%	2
Senegal	434,181	0.54%	2
New Zealand	427,511	0.54%	2
Nigeria	408,587	0.51%	2
Pakistan	373,354	0.47%	2
Turkey	340,459	0.43%	2
Oman	294,722	0.37%	2
Papua New Guinea	276,148	0.35%	2
Ghana	261,845	0.33%	2
Venezuela, Bolivarian Rep. of	239,715	0.30%	2
Mozambique	209,796	0.26%	2
Cameroon	200,127	0.25%	2
Sierra Leone	200,000	0.25%	2
Australia	174,765	0.22%	2
Yemen	155,518	0.20%	2
Panama	139,081	0.17%	2
Hong Kong, China	138,507	0.17%	2
Maldives	133,267	0.17%	2
Seychelles	122,763	0.15%	2
Cambodia	120,638	0.15%	2
Tunisia	113,788	0.14%	2
Madagascar	107,963	0.14%	2
Egypt	105,785	0.13%	2
Belize	103,160	0.13%	2
Guinea	100,000	0.13%	2
Saint Kitts and Nevis	83,873	0.11%	2
Ukraine	73,233	0.09%	2
United Arab Emirates	73,000	0.09%	2
Saudi Arabia, Kingdom of	68,071	0.09%	2
Solomon Islands	65,118	0.08%	2
Côte d'Ivoire	60,993	0.08%	2
Tanzania	60,232	0.08%	2

WTO Member	Production (MT): Average Marine Capture, 2015-17	Prod. World Share	Tier
Colombia	58,583	0.07%	2
The Gambia	55,852	0.07%	2
Georgia	55,599	0.07%	2
Uruguay	54,237	0.07%	2
El Salvador	51,281	0.06%	2
Vanuatu	50,324	0.06%	2
Suriname	45,398	0.06%	2
Nicaragua	45,059	0.06%	2
Republic of the Congo	44,932	0.06%	2
Fiji	41,764	0.05%	2
Guyana	39,859	0.05%	2
Tier 3 – 64 Members, sorted by Marine Catch World Share			
Saint Vincent and the Grenadines	27,308	0.03%	3
Cabo Verde	25,438	0.03%	3
Cuba	21,892	0.03%	3
Togo	21,004	0.03%	3
Gabon	20,000	0.03%	3
Mauritius	19,666	0.02%	3
Benin	17,095	0.02%	3
Kenya	16,268	0.02%	3
Haiti	15,910	0.02%	3
Qatar	15,026	0.02%	3
Bahrain, Kingdom of	15,000	0.02%	3
Costa Rica	14,700	0.02%	3
Guatemala	14,370	0.02%	3
Jamaica	13,617	0.02%	3
Trinidad and Tobago	13,064	0.02%	3
Dominican Republic	12,954	0.02%	3
Liberia	12,536	0.02%	3
Honduras	10,553	0.01%	3
Brunei Darussalam	9,509	0.01%	3
Samoa	9,450	0.01%	3
Guinea-Bissau	6,550	0.01%	3
Democratic Republic of the Congo	6,366	0.01%	3
Albania	6,203	0.01%	3
Kuwait, the State of	4,586	0.01%	3
Antigua and Barbuda	3,165	0.00%	3
Grenada	2,602	0.00%	3
Saint Lucia	2,090	0.00%	3
Djibouti	2,085	0.00%	3
Tonga	1,586	0.00%	3
Barbados	1,564	0.00%	3
Macau, China	1,500	0.00%	3
Israel	1,324	0.00%	3
Singapore	1,203	0.00%	3
Montenegro	895	0.00%	3
Dominica	861	0.00%	3

WTO Member	Production (MT): Average Marine Capture, 2015-17	Prod. World Share	Tier
Jordan	277	0.00%	3
Armenia	-	0.00%	3*
Botswana	-	0.00%	3*
Burkina Faso	-	0.00%	3*
Burundi	-	0.00%	3*
Chad	-	0.00%	3*
Eswatini	-	0.00%	3*
Kazakhstan	-	0.00%	3*
Kyrgyz Republic	-	0.00%	3*
Lao People's Democratic Rep.	-	0.00%	3*
Lesotho	-	0.00%	3*
North Macedonia	-	0.00%	3*
Malawi	-	0.00%	3*
Mali	-	0.00%	3*
Moldova, Rep. of	-	0.00%	3*
Mongolia	-	0.00%	3*
Nepal	-	0.00%	3*
Niger	-	0.00%	3*
Paraguay	-	0.00%	3*
Rwanda	-	0.00%	3*
Switzerland	-	0.00%	3*
Uganda	-	0.00%	3*
Zambia	-	0.00%	3*
Zimbabwe	-	0.00%	3*
Afghanistan	-	0.00%	3*
Bolivia, Plurinational State of	-	0.00%	3*
Central African Republic	-	0.00%	3*
Liechtenstein	-	0.00%	3*
Tajikistan	-	0.00%	3*
Total for all WTO Members with reported data	77,305,081		
Total, Non-Member countries & territories	2,404,902		
Global Total	79,709,983		