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Negotiating Group on Rules

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PROHIBITING SUBSIDIES TO FISHING VESSELS NOT FLYING THE MEMBER'S FLAG

Submission of Argentina, Australia, Indonesia, Japan, New Zealand, the United States and Uruguay

Revision

Members appear to broadly converge around the need to address subsidies for industrial fishing, and to prohibit subsidies contributing to illegal, unreported, and unregulated (IUU) fishing. One area that Members have yet to address explicitly, that is linked to both industrial fishing and IUU fishing activity, is the impact that subsidies can have on fishing activity by vessels that are owned by nationals of a WTO Member but are not flying the subsidizing Member's flag. The well-documented practice of registering and fishing under a Flag of Convenience (FOC), combined with the practice of flag-hopping between FOCs, enables fishing vessels to evade monitoring, control, and surveillance measures by flag states and regional fisheries management organizations (RFMOs) and to engage in IUU fishing and overfishing. Fleets also use FOCs to flag to countries that have little capacity or ability to exercise adequate control over distant fishing activity, creating an enabling environment for IUU fishing and other harmful fishing activity.

A prohibition on subsidies to vessels that are not flying the flag of the subsidizing WTO Member could have far-reaching beneficial impacts. The majority of companies employing FOCs are located in countries that collectively also have the largest distant water fleets fishing across the globe; removing subsidies to the estimated 15% of fishing vessels flying a FOC or listed as "flag unknown" would remove artificial distortions and potentially harmful incentives currently affecting the fishing economy. Banning subsidies to vessels not flying the subsidizing WTO Member's flag would also place responsibility for fishing activity firmly back in the jurisdiction of the subsidizing Member, and enable WTO Members to contribute to the enforcement, legal, and prosecutorial tools available to counter illegal fishing activity. A prohibition on subsidies to vessels not flying the subsidizing WTO Member's flag would complement other prohibitions, particularly the proposal to prohibit subsidies contingent upon fishing in areas beyond national jurisdiction (RD/TN/RL/91/Rev.1).

We also note that the issue of reflagging has been raised in these negotiations previously, including most recently in Japan's paper (RD/TN/RL/99, para. 5), and text is included in the "Scope" section of RL/274/Rev.6: "Article 2.3 [For the purposes of this instrument, a subsidy shall be attributable to the Member granting it, regardless of the flag of the vessel involved [benefitting from the subsidy] [or the application of rules of origin to the fish involved.]]"

Proposed Text:

X. No Member shall grant or maintain any of the following subsidies within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

[.....]

X.X Subsidies for a vessel not flying the flag of the subsidizing Member.

* A limited transition period may be necessary to allow for a Member to address a flagging arrangement under an existing access arrangement.